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November 28, 2016

ETARIFF FILING

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

Re: Western Antelope Dry Ranch LLC
Docket No. ER16-1956-000
Notice of Non-Material Change in Status

Dear Secretary Bose:

Western Antelope Dry Ranch LLC ("Seller") hereby submits for filing this Notice of Non-Material Change in Status (this "Notice") in compliance with the reporting requirements set forth in section 35.42 of the regulations of the Federal Energy Regulatory Commission (the "Commission")[1] and Order Nos. 652 and 816.[2] Seller is filing this Notice to report the disposition of jurisdictional facilities resulting from the acquisition by SPW Solar Holdings 3, LLC, a Delaware limited liability company ("SPW3") of one hundred percent (100%) of the membership interests in Seller (the "Transaction"). More specifically, Seller is filing this Notice to report the disposition to JPM Capital Corporation, a Delaware corporation and passive investor in SPW3 ("JPMCC"), of an indirect, passive interest in Seller as a result of the Transaction.[3] Seller also submits, in Attachment B, a revised tariff and corresponding blackline adding the docket number in which FERC granted Seller market-based rate authority and

[1] 18 C.F.R. § 35.42.

[2] *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097, *order on reh'g*, 111 FERC ¶ 61,413 (2005) ("Order No. 652"); *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, 153 FERC ¶ 61,065 (2015) ("Order No. 816"), *order on reh'g and clarification*, Order No. 816-A, 155 FERC ¶ 61,188 (2016).

[3] *Western Antelope Dry Ranch LLC*, 156 FERC ¶ 62,133 (2016).

language to permit the sale of primary frequency response service at market-based rates in accordance with Order No. 819.[4]

As demonstrated below, the Transaction does not materially change the facts and circumstances that the Commission relied upon in granting market-based rate authority to Seller because the Transaction constitutes a standard tax equity investment that does not alter the entity controlling Seller or its assets. Seller respectfully submits that the Transaction similarly does not create an affiliation between Seller and JPMCC for purposes of the market screens, and Seller provides at Attachment A the relevant excerpts from the Amended and Restated Limited Liability Company Agreement of SPW Solar Holdings 3, LLC (the "SPW3 LLC Agreement"), the sole member of Seller, needed to reach this conclusion.

I. COMMUNICATIONS

Communications with regard to this notice should be addressed to:

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II. DESCRIPTION OF SELLER

Seller is a Delaware limited liability company with its principal place of business in Salt Lake City, Utah. Seller owns and operates a solar photovoltaic power project with a nameplate capacity rating of approximately 10 MWac located in Lancaster, Los Angeles County, California (the "WADR Project"). The WADR Project is located within the California Independent System Operator Corp. ("CAISO") balancing authority area. Seller's sole business is the ownership and operation of the WADR Project. Seller has obtained market-based rate authority[5] and has filed notices with the Commission of Seller's status as a qualifying facility[6] and an exempt wholesale

[4] *Third-Party Provisions of Primary Frequency Response Service*, Order No. 819, 153 FERC ¶ 61,220 (2015).

[5] *See Elevation Solar C LLC et al.*, Docket Nos. ER16-1901-000 et al. (delegated letter order issued August 5, 2016).

[6] Docket No. QF16-945.

generator.[7] The WADR Project achieved mechanical completion in November 2016. Seller is committed to sell the entire output of the WADR Project under a 20-year power purchase agreement with a non-affiliate, the City of Lancaster, d/b/a Lancaster Choice Energy. Seller does not own or operate any transmission or distribution facilities other than those limited interconnection facilities needed to connect the WADR Project to the CAISO-controlled transmission system. Seller does not own or control any inputs to electric power production, as defined in 18 C.F.R. § 35.36.

Prior to the closing of the Transaction, Seller was a wholly-owned direct subsidiary of FTP Power LLC, a Delaware limited liability company ("FTP"). FTP had the right to control Seller and the WADR Project on a day-to-day basis. FTP's principal business is directly and indirectly owning, operating, and developing renewable energy generation facilities throughout the United States.

III. NOTICE OF NON-MATERIAL CHANGE IN STATUS

On August 19, 2016, the Commission issued an order authorizing the disposition of jurisdictional facilities resulting from the acquisition by SPW3 of one hundred percent (100%) of the membership interests in Seller and the simultaneous disposition to JPMCC of an indirect, passive interest in Seller.[8] Seller submits this Notice as a result of the consummation of the Transaction on November 8, 2016.[9] As discussed below, the Transaction does not affect the Commission's prior determination that Seller satisfies the requirements for market-based rate authorization.

Pursuant to the Transaction, (1) SPW3 owns one hundred percent (100%) of the membership interests in Seller, (2) JPMCC owns one hundred percent (100%) of the non-controlling, passive Class A Units in SPW3, and (3) SPW Solar Managing Member 3, LLC, a Delaware limited liability company and wholly-owned indirect subsidiary of FTP ("SPWSMM3"), owns one hundred percent (100%) of the controlling Class B Units in SPW3. Under the SPW3 LLC Agreement, SPWSMM3 is the Managing Member of SPW3 with the right to control SPW3 and, through SPW3, Seller and the WADR Project on a day-to-day basis. Section 6.01 of the SPW3 LLC Agreement, set forth in full on Attachment A, provides that:

> Except as otherwise expressly provided in this Agreement, including the provisions of Section 6.02, Section 6.03 and Section 6.04, the management of the Company is fully vested in

[7] Notice of Exempt Wholesale Generator Status by Western Antelope Dry Ranch LLC, Docket No. EG16-120 (filed June 22, 2016).

[8] *Western Antelope Dry Ranch LLC*, 156 FERC ¶ 62,133 (2016).

[9] Seller submitted a Notice of Consummation to the Commission on November 10, 2016.

> the Managing Member, acting exclusively in its membership capacity. The Managing Member shall cause the Company and each applicable Project Company to take all necessary actions to perform its obligations and enforce its rights under the Transaction Documents to which it is a party and to otherwise carry out its purposes (including, in the case of the Company, the purposes set forth in Section 2.04). The Managing Member is hereby authorized to cause the Company to execute, deliver and perform the obligations set forth in the Purchase Agreement, the [Amended and Restated Master Management and Administrative Services Agreement] and the documents and agreements required pursuant to the terms thereof.

As holder of the Class A Units, JPMCC has limited consent and veto rights over major corporate actions necessary to protect its investments, including rights that are comparable to the rights retained by the lenders in a typical project financing. Specifically, JPMCC only has voting rights with respect to certain actions set forth in Section 6.03 of the SPW3 LLC Agreement and certain other major administrative actions.[10] An exhaustive list of these major corporate actions is provided on Attachment A. JPMCC has the right to consent to certain actions by SPW3 (and through SPW3, Seller) that could potentially impact JPMCC's investment and do not grant JPMCC and right to control the day-to-day business or operations of SPW3, Seller, or the WADR Project. Accordingly, JPMCC has only non-controlling, passive tax equity interests in SPW3 and, through SPW3, Seller.

[10] As is typically the case, the rights at issue in the Transaction may vary somewhat from those included in other transactions approved by the Commission, but none of these variations is material to the ultimate conclusion that the power to manage Seller and the WADR Project is fully vested in SPW3's Managing Member through SPW3 as Seller's sole member. For example, Section 6.05 of the SPW3 LLC Agreement provides that SPW3's Managing Member will prepare annual operating budgets for Applicant and the WADR Project that are subject to the consent and approval of the Members of SPW3. The rights of SPW3's Members to approve the annual operating budget do not grant them sufficient power over SPW3 or Seller's annual operating budget to hinder or control SPW3 or Seller's day-to-day operations. SPWSMM3, as Managing Member of SPW3, prepares and submits the budget for approval and will include in such budgets sufficient amounts to fund all of its activities as the Managing Member. The Commission previously has found that consent and veto rights that are substantially similar to those provisions set out in Attachment A do not confer control over a public utility. *See, e.g.*, *Carolina Power & Light Co.*, 94 FERC ¶ 61,273 at 62,006 (2001) (finding that the right to approve a budget did not confer control because the budget preparer would include enough to fund its activities); *Caney River Wind Project, LLC*, Docket No. ER11-4501-003 (letter order issued March 22, 2012) (approving position that tax equity investors' rights to protect their investments, including the right to approve annual budgets, did not confer control over a public utility or allow tax equity investors to participate in the public utility's day-to-day control as it engages in wholesale power transactions).

As demonstrated by the information provided in Attachment A hereto, the limited consent rights attached to JPMCC's Class A Units are no greater than the rights that the Commission held to be passive in *AES Creative Resources*.[11] In *AES Creative Resources*, the Commission held that passive tax equity investors with limited consent rights with respect to major decisions of electric generation companies were not affiliates of such electric generation companies for purposes of the Commission's market power analysis. Accordingly, as a holder of the Class A Units, JPMCC is not an affiliate of Seller. Therefore, the Transaction does not raise any horizontal or vertical market power concerns, and constitutes a non-material change in the status of Seller.

IV. CONCLUSION

As explained above, the Transaction does not materially change the facts and circumstances that the Commission relied upon in granting market-based rate authority to Seller. Therefore, Seller respectfully requests that the Commission accept for filing this Notice and find that no further inquiry is necessary.

Respectfully submitted,

/s/ Jason Johns

Jason Johns
Jennifer L. Mersing
STOEL RIVES LLP
Counsel for Western Antelope Dry Ranch LLC

[11] 129 FERC ¶ 61,239 (2009).

Attachment A

Western Antelope Dry Ranch LLC's
Responses to Commission Staff's Questions
Regarding the Class A Interests

Consistent with the Commission's practice in other proceedings involving passive investors, Seller provides the following information:

1. ***Please clarify whether any of the passive interests include voting rights (i.e., common stock or the equivalent of common stock).***[1]

   The Class A Units in SPW3 held by JPMCC do not confer full voting rights. The limited consent rights attached to the Class A Units are described below and in Exhibit 1 to this Attachment.

2. ***If the passive interests are non-voting, please clarify the following:***

   a. ***Do they represent a separate class of security in Seller's ownership structure?***

      Seller is a wholly-owned subsidiary of SPW3. The ownership of SPW3 is comprised of two classes of membership interests, the Class A Membership Interests, as represented by Class A Units, and the Class B Membership Interests, as represented by Class B Units. Neither class of membership interests provide the right to control SPW3 and, through SPW3, Seller. Rather, control of SPW3 and, through SPW3, Seller, is dictated by the Amended and Restated Limited Liability Company Agreement of SPW Solar Holdings 3, LLC and is placed in the Managing Member (SPWSMM3).

      i. ***If so, do such securities confer on the holder limited consent/veto rights over major corporate actions that could affect the value of the holder's investment?***

         There are limited consent rights attached to the Class A Units. See Exhibit 1 to this Attachment for the relevant excerpts from the Amended and Restated Limited Liability Company Agreement of SPW Solar Holdings 3, LLC.

   b. ***Is there a list describing the major corporate actions over which the holder of the passive or non-voting securities has consent/veto rights?***

[1] As used herein, "voting security" means "any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company." 18 C.F.R. § 366.1 (2010); see also *AES Creative Resources, L.P.*, 129 FERC ¶ 61,239 at P 24 (2009).

i. ***If so, please file a publicly available exhaustive list describing the major corporate actions over which the holder of the passive or non-voting securities has consent/veto rights.***

See Exhibit 1 to this Attachment, which sets forth an exhaustive list of the major corporate actions over which the Investors have consent/veto rights.

c. ***Do the holders of the asserted passive or non-voting securities have any power to remove the manager (e.g., the general partner if a partnership, or managing member if a manager-managed limited liability company) of the facility?***

A supermajority of the holders of the Class A Units may remove the Managing Member of SPW3 for certain actions. See Exhibit 1 to this Attachment for a description of such removal rights.

i. ***If so, is their power to remove limited to "cause", i.e., situations such as criminal activity/fraud on the part of the manager?***

The Class A members must have cause to remove the managing member of SPW3. See Exhibit 1 to this Attachment for the definition of "Cause".

ii. ***Or, under what circumstances can they remove the manager?***

See Exhibit 1 to this Attachment for a description of the removal rights held by the Investors.

d. ***If it is asserted that the securities in question confer only limited approval/veto rights, who exercises day-to-day control over Seller's jurisdictional facilities?***

SPWSMM3, as Managing Member of SPW3, has the right to control Seller and the WADR Project on a day-to-day basis.

e. ***Does the holder of the asserted passive or non-voting securities have any day-to-day input or control over the facility?***

None of JPMCC or any of its affiliates has any day-to-day input or control over the WADR Project or the sale of power from the WADR Project.

EXHIBIT 1
TO ATTACHMENT A

EXCERPTS FROM
AMENDED AND RESTATED LIMITED LIABILITY COMPANY
AGREEMENT OF SPW SOLAR HOLDINGS 3, LLC

MANAGING MEMBER

6.01 ***Management by Members***. Except as otherwise expressly provided in this Agreement, including the provisions of Section 6.02, Section 6.03 and Section 6.04, the management of the Company is fully vested in the Managing Member, acting exclusively in its membership capacity. The Managing Member shall cause the Company and each applicable Project Company to take all necessary actions to perform its obligations and enforce its rights under the Transaction Documents to which it is a party and to otherwise carry out its purposes (including, in the case of the Company, the purposes set forth in Section 2.04). The Managing Member is hereby authorized to cause the Company to execute, deliver and perform the obligations set forth in the Purchase Agreement, the MMASA and the documents and agreements required pursuant to the terms thereof. Subject to the provisions of this Agreement, each Member agrees that it will not exercise its authority under the Act to bind or commit the Company to agreements, transactions or other arrangements, or to hold itself out as an agent of the Company. Decisions or actions taken in accordance with the provisions of this Agreement shall constitute decisions or actions by the Company and shall be binding on the Company. Decisions or actions taken by the Managing Member in accordance with the provisions of this Agreement shall constitute decisions or actions by the Company and shall be binding on each Member, officer and employee of the Company. The Managing Member shall not be entitled to compensation for services rendered pursuant to this Article 6.

"Managing Member" – sPower Class B Member (on and as of the Original Effective Date) or any subsequent replacement or successor managing member of the Company in accordance with the terms of this Agreement.

"sPower Class B Member" – SPW Solar Managing Member 3, LLC, a Delaware limited liability company.

6.06 ***Removal of the Managing Member***. The Managing Member shall not be removed from its capacity of Managing Member without Cause. If Cause exists as to the Managing Member, the Managing Member may be removed from its capacity of Managing Member upon the vote or written consent of a Supermajority of Class A Members both prior to and after the Flip Point. The appointment of a replacement Managing Member shall require the vote or written consent of a Supermajority of Class A Members both prior to and after the Flip Point.

"Cause" – with respect to the Managing Member, the Administrator or the Tax Matters Member, the (i) commission by the Managing Member, the Administrator or Tax Matters Member, as applicable, acting in its capacity as such, of fraud, willful misconduct or gross negligence, (ii) Bankruptcy of the Managing Member, the Administrator or Tax Matters Member, as applicable, (iii) material breach by the Managing Member, the Administrator or Tax Matters Member, as applicable, of its obligations hereunder; *provided*, *however*, that in the case of this clause (iii), if such breach is curable, the Managing Member, the Administrator or Tax Matters Member shall have the opportunity to cure such breach or violation within thirty (30) Days of becoming aware of such breach; *provided*, that if such breach cannot be cured within such period, no Material Adverse Effect has yet occurred, and the Managing Member, the Administrator or the Tax Matters Member, as applicable, is proceeding with diligence to cure

such breach, the thirty (30) Day cure period shall be extended by an additional period not to exceed thirty (30) Days.

Loans from the Managing Member to the Company or any Project Company to pay obligations of the Company or any Project Company are not subject to Class A Member approval.

4.03 ***Member Loan***.

(b) Any loan or advance made by the Managing Member pursuant to this Section 4.03 shall bear interest, unless otherwise agreed by such Managing Member in its sole discretion, equal to the lesser of (x) the Reference Rate plus two percent (2%) or (y) the highest rate of interest that may be charged by the Managing Member to the Company in accordance with applicable Law, which interest shall be payable monthly in arrears. The incurrence of indebtedness by the Company pursuant to any loan or advance made by the Managing Member pursuant to this Section 4.03 shall not require the consent of any Class A Member. The Company shall apply all Distributable Cash first to pay accrued interest on all outstanding advances or loans and second to the payment of the principal of such outstanding advances or loans made under this Section 4.03 and, unless and until the outstanding principal amount of all such advances and loans is repaid in full together with all interest thereon and all other amounts due in respect thereof, there shall be no distributions to the Members under this Agreement pursuant to Article 5 or otherwise.

VOTING RIGHTS OF THE MEMBERS

Each Class A Membership Interest, as represented by a Class A Unit, entitles the Class A Member holding such interest to one vote for purposes of any vote, consent or approval of the Members required under the SPW3 LLC Agreement. Each Class B Membership Interest, as represented by a Class B Unit, entitles the Class B Member holding such interest to one vote for purposes of any vote, consent or approval of the Members required under the SPW3 LLC Agreement. Unless otherwise specifically stated, those matters under the SPW3 LLC Agreement that are required to be voted upon by the Members require the affirmative consent or approval of the Required Voting Percentage.

"Class A Member" – to the extent that a Member holds Class A Units, such Member is a Class A Member. A Class A Member may also hold Class B Units.

"Class A Membership Interest" – with respect to any Class A Member, (a) such Class A Member's status as a Class A Member; (b) such Class A Member's share of the income, gain, loss, deduction and credits of, and the right to receive distributions from, the Company; (c) all other rights, benefits and privileges enjoyed by such Class A Member (under the Act, this Agreement, or otherwise) in its capacity as a Class A Member, including such Class A Member's rights to vote, consent and approve and otherwise to participate in the management of the Company, to the extent provided in this Agreement; and (d) all obligations, duties and liabilities imposed on such Class A Member (under the Act, this Agreement or otherwise) in its capacity as a Class A Member, including any obligations to make Capital Contributions.

"Class A Units" – Units representing Class A Membership Interests in the Company having the rights, preferences and designations provided for such Class A Units herein.

"Class B Member" – to the extent that a Member holds Class B Units, such Member is a Class B Member. A Class B Member may also hold Class A Units.

"Class B Membership Interest" – with respect to a Class B Member, (a) such Class B Member's status as a Class B Member; (b) such Class B Member's share of the income, gain, loss, deduction and credits of, and the right to receive distributions from, the Company; (c) all other rights, benefits and privileges enjoyed by such Class B Member (under the Act, this Agreement, or otherwise) in its capacity as a Class B Member, including such Class B Member's rights to vote, consent and approve and otherwise to participate in the management of the Company, to the extent provided in this Agreement; and (d) all obligations, duties and liabilities imposed on such Class B Member (under the Act, this Agreement or otherwise) in its capacity as a Class B Member, including any obligations to make Capital Contributions.

"Class B Units" – Units representing Class B Membership Interests in the Company having the rights, preferences and designations provided for such Class B Units herein.

"Majority of all Members" - the Members collectively holding more than 50% of all the then outstanding Class A Units and more than 50% of all the then outstanding Class B Units.

"Required Voting Percentage" - means the following:

(a) prior to the date the Flip Rate occurs, (i) as to matters for which Member approval is required hereunder not covered by clause (ii), the Majority of all Members and (ii) as to matters for which Member approval is required hereunder described in Section 6.03(a), Section 6.03(b), Section 6.03(c), Section 6.03(d), Section 6.03(e)(i), Section 6.03(f), Section 6.03(g), Section 6.03(h), Section 6.03(i), Section 6.03(k), Section 6.03(l), Section 6.03(m), Section 6.03(n), Section 6.03(p), Section 6.03(q), Section 6.03(r), Section 6.03(s), Section 6.03(t), Section 6.03(u), Section 6.03(v), Section 6.03(w), Section 6.03(y), Section 6.03(z), Section 6.03(cc) and Section 6.03(ee), the Supermajority of all Members; and

(b) following the date the Flip Rate occurs, (i) as to items for which Member approval is required hereunder not covered by clause (ii) below, Members holding a majority in interest of the Members' rights to distributions of Distributable Cash under Section 5.02(a) (disregarding any temporary or curative cash distributions permitted hereunder) and (ii) as to matters for which Member approval is required hereunder described in Section 6.03(d), Section 6.03(f), Sections 6.03(g)(i), Section 6.03(g)(ii) (solely with respect to a change in legal form), Section 6.03(i), Section 6.03(k) (unless the Company certifies in writing that the transaction is arm's length), Section 6.03(l), Section 6.03(m), Section 6.03(n) (other than subclauses (i) through (ii) thereof), Section 6.03(p), Section 6.03(q), Section 6.03(r), Section 6.03(s), Section 6.03(t), Section 6.03(u), Section 6.03(v), Section 6.03(w), Section 6.03(y) and Section 6.03(z), a Majority of all Members.

"Supermajority of all Members" - the Members collectively holding at least 75% of all the then outstanding Class A Units and at least 75% of all the then outstanding Class B Units.

DECISIONS REQUIRING THE APPROVAL OF THE MEMBERS REPRESENTING THE REQUIRED VOTING PERCENTAGE

5.01 ***Allocations.***

(f) ***Income Tax Allocations; Code Section 704(c).*** Except as otherwise provided in this Section 5.01(f) each item of income, gain, loss, and deduction of the Company for federal income tax purposes shall be allocated among the Members in the same manner as such items are allocated for book purposes pursuant to this Section 5.01. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with the definition of Gross Asset Value) using the allocation method under Treasury Regulation Section 1.704-3 chosen by the Managing Member with the written consent of a Majority of Class A Members, such consent not to be unreasonably withheld. In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (ii) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder; *provided* that any items of loss or deduction attributable to property contributed by a Member shall, to the extent of an amount equal to the excess of (A) the federal income tax basis of such property at the time of its contribution over (B) the Gross Asset Value of such property at such time, be allocated in its entirety to such contributing Member and the tax basis of such property for purposes of computing the amounts of all items allocated to any other Member (including an assignee of the contributing Member) shall be equal to its Gross Asset Value upon its contribution to the Company. Any elections or other decisions relating to such allocations shall be made by the Managing Member in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 5.01(f) are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of items of income, gain, loss, deduction or credit, or distributions pursuant to any provision of this Agreement.

5.07 ***Substitute Payments***.

(a) In the event that the Company or any Project Company receives any net proceeds (which are not Liquidation Proceeds) either (i) as indemnification, compensation or reimbursement for the reduction in any past, present or future electrical production, or (ii) without duplication with clause (i), from warranty payments and insurance claims relating to the construction, development, maintenance, testing and/or operation of a Project, then the Managing Member shall determine the characterization and proposed distribution of such net proceeds; *provided* that any such characterization and proposed distribution shall be approved by Members holding the Required Voting Percentage and, if so approved, the Members shall

execute any amendments to this Agreement required to implement such characterization and proposed distribution; *provided, further*, that Section 5.02(b) shall govern the distribution of any portion of such net proceeds that are applicable to indemnification, compensation or reimbursement for the loss of ITCs. If no agreement has been reached by the Managing Member and Members holding the Required Voting Percentage within thirty (30) Days following receipt by an amount described in this Section 5.07(a), then the actual determination shall be finally referred to a partner of the Certified Public Accountants acting as an independent expert (an "***Independent Expert***") who shall be appointed by the consent of all Members (such consents not to be unreasonably withheld).

(c) In the event that the Company receives any net proceeds (which are not Liquidation Proceeds) either from sales of the Projects or the components thereof, casualty or condemnation payments or termination payments under a Power Purchase Agreement ("***Subject Proceeds***"), the Managing Member shall distribute such Subject Proceeds to the Members in accordance with the following priority: *first* to the Class A Members in an amount equal to the sum of any applicable Recapture Amount plus a gross up on such Recapture Amount to keep the Class A Members whole as if the associated Recapture Event had not occurred and *thereafter* to the Members in the manner that reasonably reflects the Members' present value interests in the incremental net cash flows if such early termination of the Power Purchase Agreement had not occurred; *provided* that any such characterization and proposed distribution, and any amendments to this Agreement required to implement such characterization and proposed distribution, shall be approved by Members holding the Required Voting Percentage. If no agreement has been reached by the Managing Member and Members holding the Required Voting Percentage within thirty (30) Days following receipt by an amount described in this Section 5.07(c), then the actual determination shall be finally referred to an Independent Expert who shall be appointed by the consent of all Members (such consents not to be unreasonably withheld).

6.03 ***Consent Required for Certain Action***. Any other provision of this Agreement to the contrary notwithstanding, without the prior written consent of the Members holding the Required Voting Percentage (which consent shall not be unreasonably withheld, conditioned or delayed), the Managing Member shall not cause or permit, or take any action which causes or permits the Company to (or cause or permit any Project Company to):

(a) incur or assume any indebtedness by the Company or permit any Project Company to incur or assume any indebtedness (including by means of guaranteeing the obligations of another Person), except for:

(i) indebtedness secured by Permitted Liens and the Financing Lien;

(ii) indebtedness consisting of obligations arising in the ordinary course of the business of the Company or any Project Company;

(iii) indebtedness incurred pursuant to Section 4.03; or

(iv) other unsecured indebtedness of the Company or any Project Company in principal amount not in excess of $250,000 at any time outstanding for all Project Companies and the Company in the aggregate;

(b) encumber the Assets or rights of the Company, or permit any Project Company to Encumber the assets or rights of such Project Company other than Permitted Liens;

(c) sell, assign, lease or otherwise transfer any asset or group of assets of the Company or permit any Project Company to sell, assign, lease or otherwise transfer any asset or group of assets of such Project Company, in either case, with a value in excess of $250,000 individually or in the aggregate other than, with respect to the each Project Company, (i) sales of electric power, (ii) the transfer of any related environmental credits or (iii) the transfer of an asset that is worn out, obsolete, or no longer necessary or useful for the operation of the applicable Project;

(d) hire or permit any Project Company to hire any employees, enter into or adopt or permit any Project Company to entire into or adopt any bonus, profit sharing, thrift, compensation, option, pension, retirement, savings, welfare, deferred compensation, employment, termination, severance or other employee benefit plan, agreement, trust, fund, policy or arrangement for the benefit or welfare of any directors, officers or employees of the Company or any Project Company;

(e) (i) amend, modify, assign, release or relinquish the rights or obligations of any party to, cancel, suspend, renew (unless such renewal is on substantially similar terms and conditions), replace, terminate or resolve any material dispute relating to any Investment Document or (ii) amend, modify, assign, release or relinquish the rights or obligations of any party to, cancel, suspend, renew (unless such renewal is on substantially similar terms and conditions), replace, terminate or resolve any material dispute relating to any, or execute or enter into any additional, Material Contract, other than any amendments or modifications to any Material Contracts (other than any Power Purchase Agreements), which amendment or modification involves less than Fifty Thousand Dollars ($50,000) per year and could not reasonably be expected to have a Material Adverse Effect;

(f) (i) change its or permit any Project Company to change methods of accounting as in effect on the Effective Date, except as required by GAAP, or take or permit any Project Company to take any action, other than reasonable and usual actions in the ordinary course of business or specifically contemplated under the Transaction Documents, with respect to accounting policies or procedures, unless required by GAAP, (ii) consent to any tax audit adjustment or (iii) engage a Certified Public Accountant in replacement of Novogradac & Company LLP;

(g) (i) enter into or permit any Project Company to entire into a joint venture with, merge into or consolidate with any Person or acquire all or substantially all of the Assets or stock of any class of any Person, or (ii) change its or permit any Project Company to change its legal form, recapitalize or liquidate, wind-up or dissolve (except as permitted under this Agreement);

(h) take or permit any Project Company to take any action that would result in an event of default, or that would result in the acceleration of any obligation or termination of any right, under any Transaction Document;

(i) (i) change the purpose of the Company or engage in any business other than as set forth in Section 2.04, (ii) permit any Project Company to change its purpose or (iii) engage or permit any Project Company to engage in any business other than the direct or indirect development, construction, ownership, maintenance, management and operation of the Projects and sales of electricity and renewable energy credits;

(j) make or permit any Project Company to make any capital expenditures, other than (i) as contemplated by the Material Contracts and in accordance with the Approved Budget, (ii) expenditures required by law or necessary to prevent or mitigate an emergency situation or to preserve the value of the Project's property and Assets, as applicable, (iii) capital expenditures paid for from funds on reserve and consistent with the uses contemplated for such reserves, or (iv) solely with respect to any Project Company, capital expenditures not in excess of $250,000 per year;

(k) approve, execute, deliver, amend, modify or terminate any contract, lease or agreement with an Affiliate of any Member except as otherwise permitted without consent under this Agreement;

(l) permit (i) possession of property of the Company or any Project Company by any Member, (ii) the assignment, transfer or pledge of rights of the Company or any Project Company in specific property of the Company for other than a Company or Project Company purpose or other than for the benefit of the Company or Project Company or (iii) any commingling of the funds of the Company or any Project Company with the funds of any other Person that is not the Company or a Project Company;

(m) (i) sell or issue any interest, or any option, warrant or similar right to acquire any interest, of any kind in the Company or any Project Company, including any Membership Interest, except for issuances of additional Units pursuant to Section 3.04, or (ii) except as otherwise specified in this Agreement, (A) distribute any Assets of the Company or any Project Company or (B) redeem, purchase or otherwise acquire any interest in the Company;

(n) be treated, for U.S. federal income tax purposes, as an entity other than a partnership or permit any Project Company to be treated as an entity other than a disregarded entity, or take or permit any Project Company to take any of the following listed actions;

(i) cause the Company or any Project Company to sell or grant (or permit to be sold or granted) any ownership interest in a Project (for the avoidance of doubt, Dispositions of Membership Interests shall be governed by the provisions of Section 3.03 without regard to this clause (i));

(ii) voluntarily and permanently remove, or permit any Project Company to voluntarily and permanently remove, any Project from service (other than a removal from service caused by a force majeure event or casualty); or

(iii) making any federal income tax election (or corresponding state or local income tax election) for the Company or any Project Company, except as otherwise expressly provided in this Agreement.

(o) settle or permit the Company or any Project Company to settle any claim of or against the Company or Project Company, or confess or permit the Company or any Project Company to confess a judgment against the Company or any Project Company with respect to claims (or any series of claims), in each case in excess of $250,000 with respect to any individual Project or in the aggregate or which includes consent to or award of an injunction, specific performance or other equitable relief;

(p) amend or permit any Project Company to amend, or fail to obtain, or permit any Project Company to fail to maintain, or, as a result of the breach of its terms, cause the revocation of, any Governmental Approval required for the operation, ownership, management or maintenance of a Project or the sale or transmission of power therefrom in a manner that would have or could reasonably be expected have a Material Adverse Effect;

(q) engage or permit any Project Company to engage in any speculative operating activities, any speculative energy or credits sales, any forward contracts or any similar transactions;

(r) except in accordance with Section 6.08, change, amend or substitute or permit the Company or any Project Company or the Administrator (provided the Administrator is an Affiliate of the Company) to change, amend or substitute the insurance required to be maintained by (x) the Company or the Project Company pursuant to this Agreement or (y) the Administrator pursuant to the MMASA;

(s) loan any funds of the Company, or permit any Project Company to loan any of its funds, to any Person, or providing any guaranty of another Person's obligations;

(t) guarantee or permit any Project Company to guarantee, in the name or on behalf of the Company or any Project Company, the payment of money or the performance of any contract or other obligations of any Person except for guarantees of obligations, endorsements and other similar guarantees under the Financing Loan Documents or in the ordinary course for proper Company or any Project Company purposes;

(u) fail to (i) deposit all cash of the Company and each Project Company in an account maintained for the Company, and (ii) if not held in cash, invest any such deposited funds in Cash Equivalents;

(v) take or file or permit any Project Company to take or file any action or institute any proceedings in Bankruptcy;

(w) take any action reserved for, or which requires the consent of, the Members under any other Section of this Agreement;

(x) approve any Project Company Purchase Price proposed under the Purchase Agreement;

(y) approve any public announcement regarding the Purchase Agreement;

(z) transfer any Company property that constitutes "capital gain property" within the meaning of Treasury Regulation Section 1.755-1(a)(1), other than in connection with a liquidation of the Company or a transfer or assignment approved under clause (c) above;

(aa) replace or approve the replacement of the manager under the Shared Facilities Agreement, the Interconnection Agreement or the LGIA Co-Tenancy Agreement, unless the replacement manager is an Affiliate of sPower and the existing manager is not in material breach of its obligations under such agreement;

(bb) direct or otherwise cause the manager under the Shared Facilities Agreement, the Interconnection Agreement or the LGIA Co-Tenancy Agreement to take or refrain from taking any action, other than in in accordance with the Prudent Operator Standard;

(cc) vote, grant approval or otherwise make any decision (i) under Section 8.3 of the Shared Facilities Agreement, (ii) otherwise under the Shared Facilities Agreement if the vote, grant of approval or decision of all Co-Owners or all applicable Co-Owners thereunder is required, (iii) Section 3.1 of the LGIA Co-Tenancy Agreement or (iv) otherwise under either the Shared Facilities Agreement or the LGIA Co-Tenancy Agreement if any such vote, grant of approval or decision could reasonably be expected to result in a Material Adverse Effect;

(dd) amend, modify, terminate or replace, or permit any Project Company to amend, modify, terminate or replace, any Letter of Credit or O&M Letter of Credit, other than any amendments (i) to extend such Letter of Credit or increase any amount of such Letter of Credit as required by the terms of the applicable Material Contract or (ii) decrease the amount of such Letter of Credit as permitted by the terms of the applicable Material Contract, and in the case of any amendment pursuant to clause (i) or (ii) hereof, solely to the extent any cost or expense expected to be incurred in connection with such amended Letter of Credit does not exceed the applicable amount set forth in the Base Case Model; or

(ee) waive or approve any waiver of any condition precedent set forth in Section 2.4 of the Purchase Agreement.

6.05 ***Approved Budgets***. The Managing Member shall prepare or cause to be prepared for each fiscal year of the Company an operating budget for each Project setting forth the anticipated revenues and expenses of the Project Company for such fiscal year and an estimate of project taxable income or loss for such fiscal year; *provided, however*, if the Managing Member has actual knowledge of an event beyond such fiscal year that will significantly and adversely affect the budget beyond such fiscal year, the Managing Member will notify the Members of such event when it delivers the proposed operating budget. The initial operating budget for the balance of the year 2016 and the next succeeding calendar year, with respect to any Project Company if acquired by the Company in 2016, and the year 2017, with respect to any Project Company acquired in 2017, is attached as Exhibit E. Upon the Managing Member's approval of a proposed operating budget for the succeeding fiscal year (commencing with the 2018 fiscal year), the Managing Member shall, not later than November 10 of the then-current fiscal year (commencing no later than November 10, 2017), submit the proposed operating budget for the

succeeding fiscal year to the Members for their review; *provided*, that any Member may request within ten (10) Business Days following receipt of such proposed operating budget that the Independent Engineer review and comment on the adequacy of such budget and following receipt of such a request the Company shall, at its sole cost and expense, submit such budget to the Independent Engineer for its review and comment and shall make available to the Members all responses and recommendations provided by the Independent Engineer. Unless the Majority of all Members (without regard to the Managing Member or any Member who is an Affiliate of the Managing Member) object in writing to such proposed operating budget not later than November 30 (which date shall be extended by the number of days, if any, that the proposed operating budget was delivered late to the Members), such operating budget shall be deemed approved by the Members (each budget as attached hereto, approved or deemed approved, an "***Approved Budget***"). If such Members disapprove the proposed operating budget, the Managing Member shall prepare or cause to be prepared a revised budget, which shall be submitted to the Members for their approval as set forth in the preceding sentence; upon final approval of such budget by Members collectively holding the Required Voting Percentage, such budget shall become an Approved Budget hereunder. To the extent that amounts relating to any items of a proposed budget are not approved, the corresponding amounts for the items in the preceding year's budget will continue as part of the budget for such year, until a more current amount for such item is approved in accordance with this Section 6.05. The Managing Member may from time to time during the fiscal year amend the Approved Budget for each Project Company to decrease expected expenditures, or to increase expected expenditures, by an amount not to exceed in the aggregate for all such amendments ten percent (10%) of the aggregate expense amount reflected in the Approved Budget for the applicable Project Company during such year. Any variances from an Approved Budget for a Project Company in excess of ten (10%) percent for such Project Company in the aggregate during such year shall require the approval of the Majority of all Members, and if so approved, each such variance shall be added to the Approved Budget, which, as so amended, shall thereafter be the Approved Budget for such Project Company for the year.

7.01 ***Tax Elections.***

The Managing Member shall make no other tax elections for the Company or any Project Company except as otherwise provided herein without the written consent of the Class A Members, such consent not to be unreasonably withheld; *provided, however*, that the Managing Member may elect to extend the time for filing any Company Federal Tax Return as provided for under the Code and applicable State statutes, so long as the Class A Members receive written notice of such extension in a timely matter and in any event (i) such return shall be filed no later than August 1 and (ii) such notice shall be received no later than February 1. Neither the Company nor any Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of Chapter 1 of subtitle A of the Code or any similar provisions of applicable state law. No Member, Managing Member, officer or Representative of the Company or any Project Company is authorized to, or may, file IRS Form 8832 (or such alternative or successor form) to elect to have the Company or any Project Company be classified as a corporation for federal income tax purposes under Regulation Section 301.7701-3. The Managing Member shall, in addition, affirmatively take such action within its control as may be necessary or required to maintain the status of the Company as a partnership for federal income tax purposes. Any Federal Tax Returns that will be

filed by the Company will be filed on a basis that is consistent with the allocation of federal income tax depreciation and amortization and other tax items as agreed or determined pursuant to the Base Case Model, and such allocations shall be binding on the Company and the Members for all tax reporting purposes, and neither the Company nor any Member shall take inconsistent positions with respect thereto (other than as the result of a judicial or administrative determination prosecuted by the Company in the manner materially in accordance with this Article 7).

The following terms contain circumstances under which approval by the Members representing the Required Voting Percentage is required:

"Capital Contributions" - with respect to any Member, the amount of money and the net agreed value (as agreed to by Members holding the Required Voting Percentage) of any property (other than money) contributed to the Company by the Member. Any reference in this Agreement to the Capital Contribution of a Member shall include a Capital Contribution of its predecessors in interest.

"Certified Public Accountants" - a nationally recognized firm of independent public accountants selected from time to time by the Managing Member approved by Members holding the Required Voting Percentage. The initial Certified Public Accountants are Novogradac & Company LLP.

"Depreciation" - for each Allocation Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Allocation Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Allocation Year, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Allocation Year bears to such beginning adjusted tax basis, *provided, however*, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Allocation Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managing Member and approved by Members holding the Required Voting Percentage.

"Distributable Cash" - as of any date, all cash, cash equivalents and liquid investments (excluding Capital Contributions) held by the Company as of such date less (A) all reasonable reserves and (B) Liquidation Proceeds. Reasonable reserves shall consist of any combination of the following reserves as reasonably determined by the Managing Member: (i) necessary for payment of expenses expressly included in the Approved Budget, (ii) necessary to prevent or mitigate an emergency situation, (iii) established with the prior written consent of the Members holding the Required Voting Percentage or (iv) subject to Section 6.05, necessary to allow the Company to meet expenses that are clearly identified and expected with reasonable certainty to become due and which are not included in the Approved Budget.

"Gross Asset Value" - with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross Fair Market Value of such asset, as agreed to by Members holding the Required Voting Percentage;

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross Fair Market Values (taking section 7701(g) of the Code into account), as agreed to by Members holding the Required Voting Percentage, as of the following times: (A) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company; (B) in connection with the grant of an interest in the Company other than a de minimis interest as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a Member capacity or by a new Member acting in a member capacity or in anticipation of being a Member; (C) after the last Substantial Completion Funding Date, the acquisition of an additional interest in the Company by any new or existing Member in exchange for a Capital Contribution (including, for the avoidance of doubt, if there is an Additional Capital Contribution pursuant to Section 4.02(i)); and (D) the liquidation of the Company within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g), provided that an any adjustment described in clauses (A) and (B) of this paragraph shall be made only with the prior written consent of the Members holding the Required Voting Percentage;

(iii) The Gross Asset Value of any item of Company assets distributed to any Member shall be adjusted to equal the gross Fair Market Value (taking Code Section 7701(g) into account) of such asset on the date of distribution, as agreed to by Members holding the Required Voting Percentage; and

(iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m) and Section 5.01(b)(vii), *provided, however*, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (iv) to the extent that an adjustment pursuant to subparagraph (ii) is required in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (iv). If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraph (i), (ii), or (iv), such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset.

DECISIONS REQUIRING THE APPROVAL OF THE SUPERMAJORITY OF ALL MEMBERS

3.04 ***Creation of Additional Membership Interest.*** Additional Membership Interests may be created only with the prior written consent of the Supermajority of all Members, which consent may be withheld in any such Member's sole discretion. If such creation and issuance has been so approved, such Membership Interest shall be issued to existing Members or to other Persons in each case as specified in such consent, and such other Persons may be admitted to the

Company as Members at the time, and on such terms and conditions as may be specified in such consent. The terms of admission or issuance pursuant to such written consent must specify the allocation of items of income, gain, loss, deduction or credit applicable thereto and may provide for the creation of different classes or groups of Members having different rights, powers, and duties. The Members shall reflect the creation of any such new class or group in an amendment to this Agreement indicating the different rights, powers, and duties. Any such admission is effective only after the new Member has executed and delivered to the Members an instrument containing the notice address of the new Member, the Assignee's ratification of this Agreement and agreement to be bound by it, and its confirmation that the representations and warranties in Section 3.02(a) are true and correct with respect to it. The provisions of this Section 3.04 shall not apply to Dispositions of Membership Interests or admissions of Assignees in connection therewith, such matters being governed by Section 3.03.

DECISIONS REQUIRING UNANIMOUS CONSENT OF ALL MEMBERS

12.01 ***Dissolution.*** The Company shall dissolve and its affairs shall be wound up on the first to occur of the following events (each a "***Dissolution Event***"):

(b) the unanimous consent of the Members to dissolve the Company[.]

DISTINCT CONSENT RIGHTS OF CLASS A MEMBERS

Separate from those matters that require a vote of the Members, certain matters require the consent of, or notice from, "the Class A Member," "a Majority of Class A Members," or "a Supermajority of Class A Members."

"Majority of Class A Members" - Members collectively holding more than 50% of the then outstanding Class A Units.

"Supermajority of Class A Members" - Members collectively holding at least 75% of the then outstanding Class A Units.

2.04 ***Purposes.***

(a) The purposes of the Company are limited to engaging in the ownership of the Project Companies, the acquisition, construction, installation, lease, ownership and sale, and the operation, management, maintenance and financing of the Projects located in California and all other rights and Assets necessary for the ownership and operation of such Projects and the sale and transmission of power therefrom, and the purchase, ownership, use, transmission, marketing and sale of any input, output or right associated therewith, and all actions incidental, necessary or appropriate to the foregoing that may be engaged in by a limited liability company formed under the Act; provided that, with the prior written consent of the Class A Member, the Company may engage in such activities in other states or jurisdictions.

3.03 ***Dispositions and Encumbrances of Membership Interests.***

(b) ***Dispositions of Membership Interests***.

(i) ***General Provision***. A Member may not Dispose of all or any portion of its Units except by complying with all of the following requirements:

(A) ***Prior to the Flip Point***. Prior to the occurrence of the Flip Point, the following rules apply:

(I) (I) Disposition of more than 49% of the Class B Units by the Class B Member (taking into account all Dispositions by the Class B Member) (a) may only be made upon the consent of the Majority of Class A Members, and (b) may not be made to a Disqualified Assignee.

(II) (II) Disposition of 49% or less of the Class B Units by the Class B Member (taking into account all Dispositions by the Class B Member) (a) may only be made upon the consent of the Majority of Class A Members and (b) may not be made to a Disqualified Assignee; *provided* that the consent of the Majority of Class A Members shall not be required pursuant to clause (a) of this Section 3.03(b)(i)(A)(II) from and after the Final Class A Equity Capital Contribution Date.

4.01 ***Capital Contributions.***

(c) On each Equity Capital Contribution Date, subject to the satisfaction or waiver of the relevant Capital Contribution Conditions Precedent, the Class A Member shall make a Capital Contribution to the Company in an amount equal to the Mechanical Completion Funding Amount and/or the Substantial Completion Funding Amount, as applicable, plus (if the Class A Adjustment Amount is positive) or minus (the absolute value thereof, if the Class A Adjustment Amount is negative) the Class A Adjustment Amount, as applicable; provided, that, the Class A Member shall only be required to make Capital Contributions to the Company on a maximum of eleven (11) distinct Equity Capital Contribution Dates and any additional Equity Capital Contribution Dates in excess thereof shall require the prior written consent of the Majority of Class A Members.

5.01 ***Allocations*****.**

(f) ***Income Tax Allocations; Code Section 704(c).*** (See above.)

6.06 ***Removal of the Managing Member*****.** (See above.)

7.01 ***Tax Elections.*** (See above.)

7.02 ***Tax Matters Member.***

(a) For the period prior to the Title XI 2015 BBA Effective Date, Managing Member is hereby designated as the "tax matters partner" of the Company pursuant to Code Section 6231(a)(7) (the "***Tax Matters Member***"). The Tax Matters Member shall take such action as may be necessary to cause, to the extent possible, each other Member to become a "notice partner" within the meaning of Sections 6231(a)(8) and 6223 of the Code. On and after

the Title XI 2015 BBA Effective Date, the Managing Member shall be, to the extent permitted under Title XI 2015 BBA and Applicable Title XI 2015 BBA Law, the "partnership representative" as that term is described in Code Section 6223 of Title XI 2015 BBA (the "***Partnership Representative***"). Following the designation of the Partnership Representative, any references to "Tax Matters Member" in this Agreement with respect to any time following the Title XI 2015 BBA Effective Date, shall be deemed to refer to the Partnership Representative, and the Partnership Representative shall succeed to all of the duties and obligations of the Tax Matters Member that existed prior to the Title XI 2015 BBA Effective Date, subject to any limitations contained herein. The Managing Member is hereby directed and authorized to take whatever steps the Managing Member, in its reasonable discretion, deems necessary or desirable to perfect such designation, including filing any forms or documents with the IRS, taking such other action as may from time to time be required under the Treasury Regulations and directing the Manager to take any of the foregoing actions. The Managing Member will remain as the Tax Matters Member and Partnership Representative, as applicable, so long as it retains any ownership interests in the Company unless (i) the Managing Member requests that it not serve as Tax Matters Member or Partnership Representative, as applicable, (ii) the Tax Matters Member or Partnership Representative, as applicable, has engaged in or committed fraud, willful breach, or willful misconduct or exhibited gross negligence, or (iii) the Managing Member has otherwise been removed as Manager pursuant to Section 6.06; provided, however, that notwithstanding the foregoing, the Managing Member shall not be permitted to resign unless and until the Members have found a replacement Tax Matters Member or Partnership Representative, as applicable, approved in writing by the Class A Members; provided, further, that any replacement Tax Matters Member or Partnership Representative, as applicable, must be approved by the Consent of the Class A Members.

(b) At the Company's expense, the Tax Matters Member shall cause to be prepared and signed by a nationally recognized accounting firm, chosen by the Tax Matters Member and reasonably satisfactory to the Majority of Class A Members ("***Tax Return Preparer***"), the IRS Form 1065 along with all accompanying Schedules (including Schedule K-1s) for the Company (or successor IRS federal income tax return required to be filed for the Company (the "***Federal Tax Return***"), along with all necessary state and local income Tax Returns for the Company. The Tax Matters Member shall use good faith efforts to prepare, or cause the Tax Return Preparer to prepare all such Tax Returns in a manner consistent with this Agreement, including the Fixed Tax Assumptions and the Base Case Model (except to the extent that a Fixed Tax Assumption is adjusted or recalculated as described in Section 5.05(b)(iii)(A)(II)), along with the Tax Return Preparer's Certification and the Tax Matters Member shall alert the Class A Members, by timely written notice, of any proposed inconsistencies, differences or changes therefrom. If at least a Supermajority of the Class A Members assert in writing within fifteen (15) days that any such proposed inconsistencies, differences or changes, have not been accurately identified, and/or handled in accordance with the foregoing return preparation procedures of this Section 7.02(b), such dispute shall be resolved in a manner equivalent to a Flip Point dispute under Section 11.03.

(k) For any Partnership Adjustment which results in an Imputed Underpayment, then, the Partnership Representative (and if the Partnership Representative is not the Class B Member, the Partnership Representative shall at the request of the Class B Member) may (1) cause the Company to make a Section 6226 Election if, under Applicable Title XI 2015

BBA Law in effect at the time the election is made, *provided, however,* that if a change in law has occurred that would cause the audit or contest rights or obligations to move to the partners, then (a) the Members will negotiate in good faith to make an election or otherwise achieve the same result as a Section 6226 Election without moving such audit or contest rights or obligations to the partners, and (b) to the extent the Members cannot reach an agreement under (a), the Company must receive the consent of the Class A Member before making a Section 6226 Election, or (2) with the Consent of the Class A Members, require that the Members affected by the Partnership Adjustment file amended returns that take into account all Partnership Adjustments for that Allocation Year and pay any additional tax due pursuant to Section 6225(c) of Title XI 2015 BBA and Applicable Title XI 2015 BBA Law (a "***Section 6225(c) Election***") pending a Final Partnership Adjustment; provided, that if a Section 6225(c) Election is made, the affected Class A Members shall agree in writing that such Class A Members will comply with their Capital Contribution obligations set forth in Sections 4.02(f) and (g), if any.

13.03 ***General Procedures for Indemnity Obligations***.

(d)

(iv) Unless the Class B Member has accepted liability for a General Indemnity Claim in writing, the Class B Member shall not settle any such General Indemnity Claim without the prior written consent of the Indemnified Persons. The Indemnified Persons shall not settle any General Indemnity Claim without the prior written consent of the Class B Member unless the Class B Member has refused to accept liability for such General Indemnity Claim or failed to defend the Indemnified Persons against such General Indemnity Claim pursuant to the terms of this Agreement.

(vi) Notwithstanding anything herein to the contrary, the Class B Member shall not, without the prior written consent of the Indemnified Parties, settle any General Indemnity Claim, unless such settlement includes an unconditional release of all Indemnified Parties from any liability arising out of such General Indemnity Claim.

13.04 ***Member Indemnification Procedures***.

(d) If the Managing Member, on behalf of the Company, notifies the Member Parties within such Notice Period that it does not dispute the Company's obligation to Indemnify the Member Parties against such General Indemnity Claim, then, except as hereinafter provided, the Managing Member, on behalf of the Company, shall have the right, but not the obligation, to defend by all appropriate proceedings, and with counsel chosen by the Managing Member (with the consent of each Class A Member if the Member Party is the Class B Member or an Affiliate of the Class B Member), such right being exercisable only in the same notice in which it notifies the Member Parties that it does not dispute the obligation to Indemnify them against the General Indemnity Claim.

(g) If a Member Party shall have an indemnification Claim against the Company under Section 13.01(d) which does not involve an indemnification Claim or demand being asserted against or sought to be collected from such Member Party by a Third Person, such Member Party shall promptly send a Claim Notice with respect to such Claim to the Managing

Member (and, if the Member Party is a Class B Member or an Affiliate of a Class B Member, each of the Class A Members). If (i) the Managing Member or (ii) the Member Party seeking indemnification under Section 13.01(d) is a Class B Member or an Affiliate of a Class B Member, and a Majority of Class A Members, in each case on behalf of the Company, does not notify such Member Party within the Notice Period that it disputes such indemnification Claim, the amount of such indemnification Claim shall be conclusively deemed a liability of the Company hereunder.

ATTACHMENT B

WESTERN ANTELOPE DRY RANCH LLC
CLEAN TARIFF

1. **Availability.** Seller will make wholesale electric energy, capacity, and ancillary services available under this Tariff to any purchaser, except as prohibited below.

2. **Applicability.** This Tariff is applicable to all sales of energy, capacity, and ancillary services by Seller not otherwise subject to a particular rate schedule of Seller.

3. **Rates.** All sales shall be made at the rates established between the purchaser and Seller.

4. **Other Terms and Conditions.** All other terms and conditions shall be established by agreement between the purchaser and Seller.

5. **Compliance with Commission Regulations.** Seller shall comply with the provisions of 18 C.F.R. Part 35, Subpart H, as applicable, and with any conditions the Commission imposes in its orders concerning Seller's market-based rate authority, including orders in which the Commission authorizes Seller to engage in affiliate sales under this Tariff or otherwise restricts or limits the Seller's market-based rate authority. Failure to comply with the applicable provisions of 18 C.F.R. Part 35, Subpart H, and with any orders of the Commission concerning Seller's market-based rate authority, will constitute a violation of this Tariff.

6. **Limitations and Exemptions Regarding Market Based Rate Authority.** Seller does not have any limitations on its market-based rate authority except as otherwise provided in this Tariff. The Commission granted Seller in Docket No. ER16-1956-000 the following waivers and blanket authorization: (a) waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15 and 35.16; (b) waiver of the requirements of Part 41 and Part 101, with the exception that waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects; (c) waiver of Part 141 of the Commission's regulations concerning accounting and reporting requirements, with the exception of 18 C.F.R. §§ 141.14 and 141.15; and (d) blanket approval as to Section 204 of the FPA and Part 34 of the Commission's regulations for all future issuances of securities and debt and assumption of liabilities.

7. **Ancillary Services.**

PJM: Seller offers regulation and frequency response service, energy imbalance service, and operating reserve service (which includes spinning, 10-minute, and 30-minute reserves) for sale into the market administered by PJM Interconnection, L.L.C. ("PJM") and, where the PJM Open Access Transmission Tariff permits, the self-supply of these services to purchasers for a bilateral sale that is used to satisfy the ancillary services requirements of the PJM Office of Interconnection.

New York: Seller offers regulation and frequency response service, and operating reserve service (which include 10-minute non-synchronous, 30-minute operating reserves, 10-minute spinning reserves, and 10-minute non-spinning reserves) for sale to purchasers in the market administered by the New York Independent System Operator, Inc.

New England: Seller offers regulation and frequency response service (automatic generator control), operating reserve service (which includes 10-minute spinning reserve, 10-minute non-spinning reserve, and 30-minute operating reserve service) to purchasers within the markets administered by the ISO New England, Inc.

California: Seller offers regulation service, spinning reserve service, and non-spinning reserve service to the California Independent System Operator Corporation ("CAISO") and to others that are self-supplying ancillary services to the CAISO.

MISO: Seller offers regulation service and operating reserve service (which include 10-minute spinning reserve and 10-minute supplemental reserve) for sale to the Midcontinent Independent System Operator, Inc. (MISO) and to others that are self-supplying ancillary services to MISO.

Southwest Power Pool: Seller offers regulation service and operating reserve service (which include 10-minute spinning reserve and 10-minute supplemental reserve) for sale to the Southwest Power Pool, Inc. (SPP) and to others that are self-supplying ancillary services to SPP.

Third-party ancillary services: Seller offers Regulation Service, Reactive Supply and Voltage Control Service, Energy and Generator Imbalance Service, Operating Reserve-Spinning, Operating Reserve-Supplemental, and Primary Frequency Response Service. Sales will not include the following: (1) sales to an RTO or an ISO, *i.e.*, where that entity has no ability to self-supply ancillary services but instead depends on third parties; and (2) sales to a traditional, franchised public utility affiliated with the third-party supplier, or sales where the underlying transmission service is on the system of the public utility affiliated with the third-party supplier. Sales of Operating Reserve-Spinning and Operating Reserve-Supplemental will not include sales to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers, except where the Commission has granted authorization. Sales of Regulation Service and Reactive Supply and Voltage Control Service will not include sales to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers, except at rates not to exceed the buying public utility transmission provider's OATT rate for the same service or where the Commission has granted authorization.

8. **Seller Category.** Seller is a Category 1 Seller, as defined by 18 C.F.R. 35.36(a), in all regions.

9. **Effective Date.** This Tariff is effective on the date specified by the Commission. This Tariff shall continue in effect until terminated or changed in accordance with any applicable regulatory requirements.

ATTACHMENT B

WESTERN ANTELOPE DRY RANCH LLC
BLACKLINE TARIFF

1. **Availability.** Seller will make wholesale electric energy, capacity, and ancillary services available under this Tariff to any purchaser, except as prohibited below.

2. **Applicability.** This Tariff is applicable to all sales of energy, capacity, and ancillary services by Seller not otherwise subject to a particular rate schedule of Seller.

3. **Rates.** All sales shall be made at the rates established between the purchaser and Seller.

4. **Other Terms and Conditions.** All other terms and conditions shall be established by agreement between the purchaser and Seller.

5. **Compliance with Commission Regulations.** Seller shall comply with the provisions of 18 C.F.R. Part 35, Subpart H, as applicable, and with any conditions the Commission imposes in its orders concerning Seller's market-based rate authority, including orders in which the Commission authorizes Seller to engage in affiliate sales under this Tariff or otherwise restricts or limits the Seller's market-based rate authority. Failure to comply with the applicable provisions of 18 C.F.R. Part 35, Subpart H, and with any orders of the Commission concerning Seller's market-based rate authority, will constitute a violation of this Tariff.

6. **Limitations and Exemptions Regarding Market Based Rate Authority.** Seller does not have any limitations on its market-based rate authority except as otherwise provided in this Tariff. The Commission granted Seller in Docket No. ER16-**1956**-000 the following waivers and blanket authorization: (a) waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15 and 35.16; (b) waiver of the requirements of Part 41 and Part 101, with the exception that waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects; (c) waiver of Part 141 of the Commission's regulations concerning accounting and reporting requirements, with the exception of 18 C.F.R. §§ 141.14 and 141.15; and (d) blanket approval as to Section 204 of the FPA and Part 34 of the Commission's regulations for all future issuances of securities and debt and assumption of liabilities.

7. **Ancillary Services.**

PJM: Seller offers regulation and frequency response service, energy imbalance service, and operating reserve service (which includes spinning, 10-minute, and 30-minute reserves) for sale into the market administered by PJM Interconnection, L.L.C. ("PJM") and, where the PJM Open Access Transmission Tariff permits, the self-supply of these services to purchasers for a bilateral sale that is used to satisfy the ancillary services requirements of the PJM Office of Interconnection.

New York: Seller offers regulation and frequency response service, and operating reserve service (which include 10-minute non-synchronous, 30-minute operating reserves, 10-minute spinning reserves, and 10-minute non-spinning reserves) for sale to purchasers in the market administered by the New York Independent System Operator, Inc.

New England: Seller offers regulation and frequency response service (automatic generator control), operating reserve service (which includes 10-minute spinning reserve, 10-minute non-spinning reserve, and 30-minute operating reserve service) to purchasers within the markets administered by the ISO New England, Inc.

California: Seller offers regulation service, spinning reserve service, and non-spinning reserve service to the California Independent System Operator Corporation ("CAISO") and to others that are self-supplying ancillary services to the CAISO.

MISO: Seller offers regulation service and operating reserve service (which include 10-minute spinning reserve and 10-minute supplemental reserve) for sale to the Midcontinent Independent System Operator, Inc. (MISO) and to others that are self-supplying ancillary services to MISO.

Southwest Power Pool: Seller offers regulation service and operating reserve service (which include 10-minute spinning reserve and 10-minute supplemental reserve) for sale to the Southwest Power Pool, Inc. (SPP) and to others that are self-supplying ancillary services to SPP.

Third-party ancillary services: Seller offers Regulation ~~**and Frequency Response**~~ Service, Reactive Supply and Voltage Control Service, Energy and Generator Imbalance Service, Operating Reserve-Spinning, ~~**and**~~ Operating Reserve-Supplemental, **and Primary Frequency Response Service**. Sales will not include the following: (1) sales to an RTO or an ISO, *i.e.*, where that entity has no ability to self-supply ancillary services but instead depends on third parties; and (2) sales to a traditional, franchised public utility affiliated with the third-party supplier, or sales where the underlying transmission service is on the system of the public utility affiliated with the third-party supplier. Sales of Operating Reserve-Spinning and Operating Reserve-Supplemental will not include sales to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers, except where the Commission has granted authorization. Sales of Regulation ~~**and Frequency Response**~~ Service and Reactive Supply and Voltage Control Service will not include sales to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers, except at rates not to exceed the buying public utility transmission provider's OATT rate for the same service or where the Commission has granted authorization.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the foregoing document upon each person designated on the official service list compiled by the Secretary in this docket.

DATED: November 28, 2016.

/s/ Jason Johns

Jason Johns
STOEL RIVES LLP
Counsel for Western Antelope Dry Ranch LLC

FERC rendition of the electronically filed tariff records in Docket No. ER16-01956-001
Filing Data:
CID: C005116
Filing Title: Western Antelope Dry Ranch LLC MBR Tariff
Company Filing Identifier: 2
Type of Filing Code: 70
Associated Filing Identifier: 1
Tariff Title: FERC Electric Tariff
Tariff ID: 1
Payment Confirmation:
Suspension Motion:

Tariff Record Data:
Record Content Description, Tariff Record Title, Record Version Number, Option Code:
Section 1, Market-Based Rate Tariff, 1.1.0, A
Record Narative Name: N/A
Tariff Record ID: 1001
Tariff Record Collation Value: 1000 Tariff Record Parent Identifier: 0
Proposed Date: 2016-06-18
Priority Order: 501
Record Change Type: CHANGE
Record Content Type: 1
Associated Filing Identifier: 1

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Document Content(s)

Western Antelope Dry Ranch LLC Change in Status.DOC.....1-32

FERC GENERATED TARIFF FILING.RTF.....33-35