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## **Attachment A-1 Jurisdictions of Operation**

Mega Energy is licensed in the following jurisdictions to conduct business as a retail electric supplier:

Mega Energy of New England, LLC (**Massachusetts- CS-106 and Connecticut – Docket #13-03-09**)

Mega Energy of Maine, LLC (**Docket # 2013-00276**)

Mega Energy of New Hampshire, LLC (**DM14-001**)

Mega Energy, L.P. (**Texas #10141**)

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**Attachment A-2**  
**License to do business in the State of Illinois**

Attached is a letter from the Office of the Secretary of State, Department of Business Services, to do business in the State of Illinois.



## OFFICE OF THE SECRETARY OF STATE

NOVEMBER 26, 2014

JESSE WHITE • Secretary of State

0495670-2

CAPITOL CORPORATE SERVICES INC  
1315 W LAWRENCE AVE.,  
SPRINGFIELD, IL 62704-0000

RE MEGA ENERGY OF ILLINOIS, LLC

DEAR SIR OR MADAM:

IT HAS BEEN OUR PLEASURE TO APPROVE YOUR REQUEST TO TRANSACT BUSINESS IN THE STATE OF ILLINOIS. ENCLOSED PLEASE FIND THE APPROVED APPLICATION FOR ADMISSION.

PLEASE NOTE! THE LIMITED LIABILITY COMPANY MUST FILE AN ANNUAL REPORT PRIOR TO THE FIRST DAY OF THIS MONTH OF QUALIFICATION NEXT YEAR. FAILURE TO TIMELY FILE WILL RESULT IN A \$300 PENALTY AND/OR REVOCATION. A PRE-PRINTED ANNUAL REPORT WILL BE MAILED TO THE REGISTERED AGENT AT THE ADDRESS ON OUR RECORDS APPROXIMATELY 45 DAYS BEFORE THE DUE DATE.

MANY OF OUR SERVICES ARE AVAILABLE AT OUR CONTINUOUSLY UPDATED WEBSITE. VISIT [WWW.CYBERDRIVEILLINOIS.COM](http://WWW.CYBERDRIVEILLINOIS.COM) TO VIEW THE STATUS OF THIS COMPANY, PURCHASE A CERTIFICATE OF GOOD STANDING, OR EVEN FILE THE ANNUAL REPORT REFERRED TO IN THE EARLIER PARAGRAPH.

SINCERELY YOURS,

JESSE WHITE  
SECRETARY OF STATE  
DEPARTMENT OF BUSINESS SERVICES  
LIMITED LIABILITY DIVISION  
(217) 524-8008

*Attachment A-2*

04956702

Form **LLC-45.5**

May 2012

Secretary of State  
Department of Business Services  
Limited Liability Division  
501 S. Second St., Rm. 351  
Springfield, IL 62756  
217-524-8008  
www.cyberdriveillinois.com

Illinois  
Limited Liability Company Act  
Application for Admission to  
Transact Business

FILE #

This space for use by Secretary of State.

**SUBMIT IN DUPLICATE**  
Type or Print Clearly.

**FILED**

NOV 26 2014

JESSE WHITE  
SECRETARY OF STATE

Payment must be made by certified check, cashier's check, Illinois attorney's check, C.P.A.'s check or money order payable to Secretary of State.

This space for use by Secretary of State.

Filing Fee: \$500

Penalty: \$

Approved: *JW*

1. Limited Liability Company Name:

Mega Energy of Illinois, LLC

2. Assumed Name:

(This item is only applicable if the company name in item 1 is not available for use in Illinois, in which case form LLC 1.20 must be completed and submitted with this application.)

3. Jurisdiction of Organization: TX

4. Date of Organization: 11/24/2014

5. Period of Duration: Perpetual

(Enter Perpetual unless there is a Date of Dissolution provided in the agreement, in which case enter that date.)

6. Address of the Principal Place of Business: (P.O. Box alone or o/o is unacceptable.)

5056 Westhelmer Rd., Suite 1111

Number	Street	Suite #
<u>Houston</u>	<u>TX</u>	<u>77056</u>
City	State	ZIP Code

7. Registered Agent: Capitol Corporate Services, Inc.

First Name	Middle Name	Last Name
------------	-------------	-----------

Registered Office: 1315 W Lawrence Ave

Number	Street	Suite #
<u>Springfield</u>	<u>IL</u>	<u>62704</u>
City	State	Zip Code

Note: The registered agent must reside in Illinois. If the agent is a business entity, it must be authorized to act as agent in this state.

8. If applicable, Date on which Company first conducted business in Illinois: \_\_\_\_\_

(continued on back)

Attachment A-2

LLC-45.5

9. Purpose(s) for which the Company is Organized and Proposes to Conduct Business in Illinois:

To engage in any lawful act or activity for which Limited Liability Companies may be organized under the General Limited Liability Laws of Texas and as permitted under the Illinois Limited Liability Act.

10. The Limited Liability Company: (check one)

a.  Is managed by the manager(s) (List names and addresses.)

Javed Meghani

5056 Westheimer Road, Suite 1111, Houston, Texas 77056

b.  has management vested in the member(s) (List names and addresses.)

11. The Illinois Secretary of State is hereby appointed the agent of the Limited Liability Company for service of process under circumstances set forth in subsection (b) of Section 1-50 of the Illinois Limited Liability Company Act.

12. This application is accompanied by a Certificate of Good Standing or Existence, duly authenticated within the last 60 days, by the officer of the state or country wherein the LLC is formed.

13. The undersigned affirms, under penalties of perjury, having authority to sign hereto, that this application for admission to transact business is to the best of my knowledge and belief, true, correct and complete.

Dated: 11/25/14

Month, Day, Year

  
Signature

Javed Meghani, Manager

Name and Title (type or print)

If applicant is signing for a Company or other Entity, state Name of Company and indicate whether it is a member or manager of the LLC.

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**Attachment A-3**

**Copies of the notifications sent to the affected utility that  
Mega Energy intends to serve.**



December 5, 2014

Thomas S. O'Neill  
Commonwealth Edison Company  
440 S. LaSalle St., Ste. 3300  
Chicago, IL 60605

RE: Mega Energy of Illinois, LLC

Mr. O'Neill,

I am writing to give notice that Mega Energy of Illinois, LLC plans to register with ComEd and serve load within the ComEd Illinois control area once we have approval from the Illinois Commerce Commission.

You can contact me directly at the number below if you have any questions.

Thank you,

A handwritten signature in black ink that reads "Mary E. Morgan". The signature is written in a cursive style and is positioned above the printed name.

Mary E. Morgan

Controller

Mega Energy of Illinois, LLC

5065 Westheimer Road

Suite 1111

Houston, TX 77056

713-590-3346



we energize your world  
[www.megaenergyllc.com](http://www.megaenergyllc.com)

Galleria Financial Center  
5065 Westheimer Rd, Ste 1111  
Houston, Texas 77056



Thomas S. O'Neill  
Commonwealth Edison Company  
440 S. LaSalle St., Ste. 3300  
Chicago, IL 60605



December 5, 2014

Ameren Transmission Services Business Center  
1901 Chouteau  
St. Louis, MO 63103  
Mail Code: 333  
Attention: Patrick Eynon

RE: Mega Energy of Illinois, LLC

Mr. Eynon,

I am writing to give notice that Mega Energy of Illinois, LLC plans to register with Ameren and serve load within the Ameren Illinois control area once we have approval from the Illinois Commerce Commission.

You can contact me directly at the number below if you have any questions.

Thank you,

  
Mary E. Morgan  
Controller

Mega Energy of Illinois, LLC  
5065 Westheimer Road  
Suite 1111  
Houston, TX 77056  
713-590-3346



Galleria Financial Center  
5065 Westheimer Rd, Ste 1111  
Houston, Texas 77056

Ameren Transmission Services Business Center  
1901 Chouteau  
St. Louis, MO 63103  
Mail Code: 333  
Attention: Patrick Eynon



**Attachment A-4  
License or Permit Bond No. CMS0280566**

License or Permit Bond

License or Permit Bond No. **CMS0280566**  
RLI Insurance Company  
525 W. Van Buren, #350  
Chicago, IL 60607

KNOW ALL MEN BY THESE PRESENTS, That we, Mega Energy of Illinois, LLC as Principal, and RLI Insurance Company, a Illinois Corporation, and authorized to do business in Illinois, as Surety, are held and firmly bound unto THE PEOPLE OF THE STATE OF ILLINOIS as Obligee, in the sum of THREE HUNDRED THOUSAND AND NO/100 Dollars (\$300,000), for which sum, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH, That WHEREAS, the Principal has been or is about to be granted a license or permit to do business to operate as an ARES (Alternative Retail Electric Supplier) under 220 ILCS 5/16-115 and is required to execute this bond under 83 Illinois Administrative Code Part 451.50 by the Obligee.

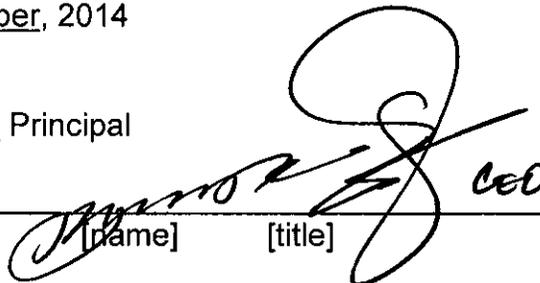
NOW, Therefore, if the Principal fully and faithfully perform all duties and obligations of the Principal as an ARES, then this obligation to be void; otherwise to remain in full force and effect.

This bond may be terminated as to future acts of the Principal upon thirty (30) days written notice by the Surety; said notice to be sent to 527 East Capitol Avenue, Springfield, Illinois 62701, of the aforesaid State of Illinois, by certified mail.

Dated this 30th day of December, 2014

Mega Energy of Illinois, LLC Principal

by: \_\_\_\_\_

 [name] [title] CEO

RLI Insurance Company Surety

by: \_\_\_\_\_

 Tasha Gordon-Jackson, Attorney-in-Fact



RLI Surety  
 9025 N. Lindbergh Dr. | Peoria, IL 61615  
 Phone: (800)645-2402 | Fax: (309)689-2036  
 www.rlicorp.com

# POWER OF ATTORNEY

## RLI Insurance Company

**Know All Men by These Presents:**

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That **RLI Insurance Company**, an Illinois corporation, does hereby make, constitute and appoint:

Michele L. Grogan, Ann Higgins, Robin Rutlin, Tasha Gordon-Jackson, jointly or severally

in the City of Minneapolis, State of Minnesota, its true and lawful Agent and Attorney in Fact, with full power and authority hereby conferred, to sign, execute, acknowledge and deliver for and on its behalf as Surety, the following described bond.

**Any and all bonds provided the bond penalty does not exceed Twenty Five Million Dollars (\$25,000,000.00).**

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

The **RLI Insurance Company** further certifies that the following is a true and exact copy of the Resolution adopted by the Board of Directors of **RLI Insurance Company**, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the **RLI Insurance Company** has caused these presents to be executed by its Vice President with its corporate seal affixed this 23rd day of September, 2014.



**RLI Insurance Company**

By: [Signature]  
 Roy C. Die Vice President

State of Illinois }  
 County of Peoria } SS

**CERTIFICATE**

On this 23rd day of September, 2014, before me, a Notary Public, personally appeared Roy C. Die, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and acknowledged said instrument to be the voluntary act and deed of said corporation.

I, the undersigned officer of **RLI Insurance Company**, a stock corporation of the State of Illinois, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** this 30th day of December, 2014.

By: [Signature]  
 Jacqueline M. Bockler Notary Public

**RLI Insurance Company**

By: [Signature]  
 Roy C. Die Vice President

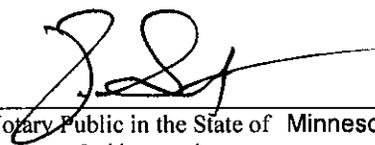


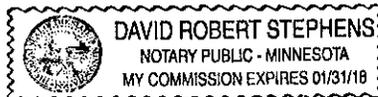
ACKNOWLEDGMENT BY SURETY

STATE OF Minnesota }  
County of Hennepin } ss.

On this 30<sup>th</sup> day of December, 2014, before me personally appeared Tasha Gordon-Jackson, known to, me to be the Attorney-in-Fact of RLI Insurance Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.

  
\_\_\_\_\_  
Notary Public in the State of Minnesota  
County of Hennepin



---

## **Attachment A-5 Financial Qualifications**

The following documents are attached to satisfy the financial criteria set forth in Part 451.320(a)(4)(A).

The Unconditional Guaranty in the amount of \$300,000

The ratings agency report

A good faith estimate of the expected peak hourly demand over the next 12 months

**GUARANTY**

This Guaranty Agreement (this "Guaranty") dated effective as of **January 6, 2015** is entered into by **Sumitomo Corporation of America** ("Guarantor"), a New York corporation, in favor of the People of the State of Illinois ("Counterparty") through the **Illinois Commerce Commission**, a regulatory agency organized under the state of Illinois. This Guaranty shall be paid in accordance with an Illinois Commerce Commission Order authorizing the payment pursuant to 83 Ill Adm Code 451.

**Recitals:**

A Guarantor desires that Counterparty enter into transactions with **Mega Energy of Illinois, LLC** ("Guaranteed Party"), under one or more agreements and/or confirmations for the purchase and sale of electricity (as amended, supplemented, renewed, or extended, collectively, the "Contract"), and

B. Guarantor's subsidiary, Pacific Summit Energy LLC ("PSE") and Guaranteed Party have entered into an agreement in which PSE supplies electricity to Guaranteed Party, and

C Guarantor will directly or indirectly benefit from the Contract to be entered into between Counterparty and Guaranteed Party,

NOW, THEREFORE, in consideration of Counterparty entering into the Contract with Guaranteed Party, Guarantor hereby covenants and agrees as follows

1. **Guaranty** Subject to the terms and conditions hereof, Guarantor hereby irrevocably and unconditionally guarantees the timely payment when due of the obligations of Guaranteed Party (the "Obligations") to Counterparty under the Contract. To the extent that Guaranteed Party shall fail to pay any Obligation, Guarantor shall promptly pay to Counterparty the amount due. This Guaranty shall constitute a guarantee of payment and not of collection. Guarantor shall also be liable for the reasonable attorneys' fees and expenses of Counterparty's external counsel incurred in any effort to collect or enforce any of the Obligations under this Guaranty; provided, however, such fees and expenses shall be payable by Guarantor only to the extent that Counterparty is successful in enforcing payment of the Obligations under this Guaranty.
2. **Limitations** Guarantor's liability hereunder shall be limited to payments expressly required to be made under the Contract (even if such payments are deemed to be damages) and in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive, or any other damages, except to the extent specifically provided in the Contract to be due from Guaranteed Party. Guarantor reserves the right to assert rights, setoffs, counterclaims and other defenses which Guaranteed Party may have to payment of any Obligation under the Contract, other than defenses arising from the bankruptcy, insolvency, dissolution, or liquidation of Guaranteed Party and other defenses expressly waived herein. The aggregate amount covered by this Guaranty shall not exceed **U.S. \$300,000 (Three Hundred Thousand United States Dollars)**, plus reasonable attorneys' fees and expenses payable by Guarantor as provided herein.
3. **Termination**. This Guaranty is a continuing guaranty and shall remain in full force and effect unless and until terminated by Guarantor upon ten (10) business days' prior written notice to Counterparty. No termination shall affect, release or discharge Guarantor's liability with respect to any Obligations existing or arising under the Contract prior to the effective date of termination.
4. **Nature of Guaranty** The Guarantor's obligations hereunder with respect to any Obligation shall not be affected by the existence, validity, enforceability, perfection, release, or impairment of value of any collateral for such Obligations. Counterparty shall not be obligated to file any claim relating to the Obligations owing to it in the event that Guaranteed Party becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of Counterparty to so file shall not affect the Guarantor's obligations hereunder. In the event that any payment to Counterparty in respect to any Obligations is rescinded or must otherwise be returned for any reason whatsoever, Guarantor shall remain liable hereunder in respect to such Obligations as if such payment had not been made.
5. **Subrogation**. Guarantor waives its right to be subrogated to the rights of Counterparty with respect to any Obligations paid or performed by Guarantor until all Obligations have been fully and indefeasibly paid to

Counterparty, subject to no rescission or right of return, and Guarantor has fully and indefeasibly satisfied all of Guarantor's obligations under this Guaranty.

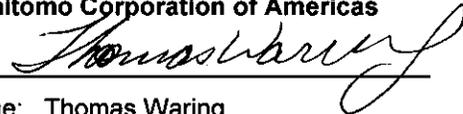
6. **Waivers.** Guarantor hereby waives any circumstance which might constitute a legal or equitable discharge of a surety or guarantor, including but not limited to (a) notice of acceptance of this Guaranty; (b) presentment and demand concerning the liabilities of Guarantor; (c) notice of any dishonor or default by, or disputes with, Guaranteed Party; and (d) any right to require that any action or proceeding be brought against Guaranteed Party or any other person, or to require that Counterparty seek enforcement of any performance against Guaranteed Party or any other person, prior to any action against Guarantor under the terms hereof. Guarantor consents to the renewal, compromise, extension, acceleration, or other modification of the terms of the Obligations, and to any change, modification or waiver of the terms of the Contract, without in any way releasing or discharging Guarantor from its obligations hereunder. Except as to applicable statutes of limitation, no delay of Counterparty in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights, or a release of Guarantor from any obligations hereunder.

7. **Notice.** Any payment demand, notice, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by facsimile, to the addresses set forth below. Notice given by personal delivery or mail shall be effective upon actual receipt, or, if receipt is refused or rejected, upon attempted delivery. Notice given by facsimile shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by facsimile shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving Notice as provided above of such change of address.

8. **Miscellaneous.** THIS GUARANTY SHALL BE IN ALL RESPECTS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. No term or provision of this Guaranty shall be amended or modified except in a writing signed by Guarantor and Counterparty. Counterparty may, upon notice to Guarantor, assign its rights hereunder without the consent of Guarantor. Guarantor may assign its rights and obligations hereunder only with the prior written consent of Counterparty. Subject to the foregoing, this Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of and be enforceable by Counterparty, its successors and assigns. All references herein to Guaranteed Party shall be deemed to include all successors and assigns, whether immediate or remote, of Guaranteed Party under the Contract. This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty, and supersedes all prior guaranties issued by Guarantor in connection with Obligations under the Contract.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty effective as of the date first herein written.

Sumitomo Corporation of Americas

By: 

Name: Thomas Waring

Title: Vice President

Address of Counterparty:

Illinois Commerce Commission

527 East Capitol Avenue

Springfield, Illinois 62701

Attn: Financial Analysis Division

Fax No.: 217-785-5431

Address of Guarantor:

Sumitomo Corporation of Americas

300 Madison Avenue

New York, New York, 10017

Attn: Treasury Department

Fax No.: 212-207-0844



## **Rating Action: Moody's affirms Sumitomo Corp's A2/P-1 ratings; revises outlook to negative**

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**Global Credit Research - 15 Jul 2014**

Tokyo, July 15, 2014 – Moody's Japan K.K. has affirmed the A2 issuer and senior unsecured ratings of Sumitomo Corporation and its supported subsidiaries.

Moody's has also affirmed Sumitomo's Prime-1 short term rating.

At the same time, Moody's has changed the ratings outlook to negative from stable.

A full list of affected ratings is provided at the end of this press release.

### **RATINGS RATIONALE**

"The change in the outlook to negative mainly reflects Moody's increasing concerns over Sumitomo's high leverage and the weak state of its earnings relative to its A2 ratings", says Maki Hanatake, a Moody's Vice President and Senior Credit Officer.

In this context, Moody's notes that Sumitomo's leverage remains high with debt/EBITDA and net debt/EBITDA at 9.8x and 7.2x (reported basis), respectively, for FYE03/2014, up from 7.1x and 5.5x in FYE03/2012.

The increase in leverage was mainly due to a rise in debt, while EBITDA also slightly deteriorated during this same timeframe of two years.

Moody's further notes that Sumitomo has been managing its investments by achieving a balance between expanding and recycling assets. However, the growth in debt outpaced the growth in cash flow, which contributed to the increase in leverage.

Sumitomo's return on assets also decreased to 2.7% in FYE03/2014 from 3.5% in FYE03/2012.

Meanwhile, Moody's affirmation of Sumitomo's A2 rating reflects the company's well diversified business portfolio and relatively stable earnings in some major business segments, as well as relatively low dependence on earnings from its more volatile energy and mineral resources businesses.

Under its current medium-term management plan (from FYE3/2014 to FYE03/2015), the company plans to make JPY750 billion -- a record high -- in new investments and loans.

At the same time, it plans to divest about JPY770 billion of assets during these two years in order to improve ROA by shifting to more profitable assets.

In this situation, Moody's will continue to monitor the company's ability to enhance its cash flow and, at the same time, accommodate its investments through the use of internal cash flow and asset sales.

Moody's notes that Sumitomo has strong relationships with its main banks and this factor is key to supporting its overall rating.

As a result, Moody's incorporates two notches of uplift from its underlying credit profile to reflect the Japan support system.

The rating outlook could return to stable if the company improves financial leverage by enhancing earnings and cash flow from a well-balanced business portfolio, and prudently manages the risks associated with its investment.

These risks include concentration risk, country risk and foreign exchange risk.

The company could face downward ratings pressure if financial leverage worsens. Its ratings could also be downgraded if earnings and cash flow deteriorate -- as a result of weaker management of risks, or a fall in the quality of investments -- and earnings volatility increases significantly.

Sumitomo Corporation's ratings were assigned by evaluating factors that Moody's considers relevant to the credit profile of the issuer, such as the company's (i) business risk and competitive position compared with others within the industry; (ii) capital structure and financial risk; (iii) projected performance over the near to intermediate term; and (iv) management's track record and tolerance for risk. Moody's compared these attributes against other issuers both within and outside Sumitomo Corporation's core industry and believes Sumitomo Corporation's ratings are comparable to those of other issuers with similar credit risk.

Sumitomo Corporation, headquartered in Tokyo, is one of Japan's largest trading companies.

#### RATINGS AFFECTED:

Issuer: Sumitomo Corporation

Outlook, Changed To Negative From Stable

- Commercial Paper, Affirmed P-1
- Issuer Rating, Affirmed A2
- Senior Unsecured Bank Credit Facility, Affirmed A2
- Senior Unsecured Regular Bond/Debenture, Affirmed A2
- Senior Unsecured Shelf, Affirmed (P)A2

Issuer: Sumitomo Corporation Capital Asia Pte. Ltd.

Outlook, Changed To Negative From Stable

- Senior Unsecured Medium-Term Note Program, Affirmed (P)A2/(P)P-1
- Senior Unsecured Regular Bond/Debenture, Affirmed A2
- Senior Unsecured Regular Bond/Debenture, Affirmed P-1

Issuer: Sumitomo Corporation Capital Europe plc

Outlook, Changed To Negative From Stable

- Commercial Paper, Affirmed P-1
- Senior Unsecured Medium-Term Note Program, Affirmed (P)A2/(P)P-1
- Senior Unsecured Regular Bond/Debenture, Affirmed A2

Issuer: Sumitomo Corporation of America

Outlook, Changed To Negative From Stable

- Commercial Paper, Affirmed P-1
- Senior Unsecured Medium-Term Note Program, Affirmed (P)A2/(P)P-1
- Senior Unsecured Regular Bond/Debenture, Affirmed A2

#### REGULATORY DISCLOSURES

For ratings issued on a program, series or category/class of debt, this announcement provides certain regulatory disclosures in relation to each rating of a subsequently issued bond or note of the same series or category/class of debt or pursuant to a program for which the ratings are derived exclusively from existing ratings in accordance with Moody's rating practices. For ratings issued on a support provider, this announcement provides certain regulatory disclosures in relation to the rating action on the support provider and in relation to each particular rating action for securities that derive their credit ratings from the support provider's credit rating. For provisional ratings, this announcement provides certain regulatory disclosures in relation to the provisional rating assigned, and in relation to a definitive rating that may be assigned subsequent to the final issuance of the debt, in each case where

the transaction structure and terms have not changed prior to the assignment of the definitive rating in a manner that would have affected the rating.

For further information please see the ratings tab on the issuer/entity page for the respective issuer on [www.moodys.com](http://www.moodys.com). For any affected securities or rated entities receiving direct credit support from the primary entity(ies) of this rating action, and whose ratings may change as a result of this rating action, the associated regulatory disclosures will be those of the guarantor entity. Exceptions to this approach exist for the following disclosures, if applicable to jurisdiction: Ancillary Services, Disclosure to rated entity, Disclosure from rated entity.

Regulatory disclosures contained in this press release apply to the credit rating and, if applicable, the related rating outlook or rating review.

Moody's Japan K.K. is a credit rating agency registered with the Japan Financial Services Agency and its registration number is FSA Commissioner (Ratings) No. 2. The Financial Services Agency has not imposed any supervisory measures on Moody's Japan K.K. in the past year.

Please see [www.moodys.com](http://www.moodys.com) for any updates on changes to the lead rating analyst and to the Moody's legal entity that has issued the rating.

Please see the ratings tab on the issuer/entity page on [www.moodys.com](http://www.moodys.com) for additional regulatory disclosures for each credit rating.

Maki Hanatate  
VP - Senior Credit Officer  
Corporate Finance Group  
Moody's Japan K.K.  
Atago Green Hills Mori Tower 20fl  
2-5-1 Atago, Minato-ku  
Tokyo 105-6220  
Japan  
JOURNALISTS: 813-5408-4110  
SUBSCRIBERS: 813-5408-4100

Ian Lewis  
Associate Managing Director  
Corporate Finance Group  
JOURNALISTS: 813-5408-4110  
SUBSCRIBERS: 813-5408-4100

Releasing Office:  
Moody's Japan K.K.  
Atago Green Hills Mori Tower 20fl  
2-5-1 Atago, Minato-ku  
Tokyo 105-6220  
Japan  
JOURNALISTS: 813-5408-4110  
SUBSCRIBERS: 813-5408-4100

# MOODY'S

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**Mega Energy of Illinois, LLC**  
**Estimated peak hourly demand**

	Meters	Usage	MWs	45 Days	Price	Guarantee
Commercial	165	28,875,000	3.2962	1080	46.68	166,177.60
Residential	1000	11,939,649	1.3630	1080	46.68	68,713.50
	<b>1165</b>	<b>40,814,649</b>	<b>4.659207</b>			<b>234,891.10</b>

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## Attachment A-6 Managerial Qualifications

Mega Energy of Illinois has a management team and consultants comprised of individuals with significant experience. The management team has a total combined experience of 48 years in the energy industry and 28 years in retail energy markets, which includes contracting with customers and providing contracted services. Mega Energy's officers have extensive experience in energy risk management, electricity retail management, billing, marketing and regulatory compliance.

### **Javed Meghani, Chief Executive Officer**

Javed Meghani started Mega Energy, LP, a retail electricity provider, in Texas in 2007. He built the company to over 13,000 customers before exiting the Texas market at the end of 2012. Mr. Meghani has over 25 years of experience as a successful business owner in both the retail and wholesale consumer goods market. As the head of the management team of the Mega Energy, Mr. Meghani is involved in all aspects of the energy business including strategic growth plans, negotiation of contracts, budget oversight, financial decisions and sales and marketing.

### **Mary Morgan, Controller**

Mary Morgan, Controller, has been involved in the retail electricity business since 2009 starting on the audit side with the firm Blair, Robertson and Associates PLLC. Her assignments there also included systems analysis and assessment, business risk analysis, internal controls testing for REP's. Mary joined Mega in July, 2010 as Controller. Mary has responsibility for all accounting related activity including financial statement preparation and external audit management, budgeting/cash forecasting and banking relations. Mary has oversight responsibility for all day to day operations and operating systems and internal and third party customer care center activity. In addition, she manages the Company's regulatory activity including interpretation and implementation of ERCOT/ISO-NE and PUCT policies as they apply for REP's to assure Mega's continued compliance. As a member of the senior management team, she works closely with CEO and other senior managers to achieve operational and financial objectives.

### **James Malick, Director of Supply**

James Malick Director of Supply & Pricing joined Mega in October 2013. His responsibilities include market analysis, load profile analysis & pricing, Scheduling, Forward hedging Term and near term markets, Custom Broker Pricing Request, Daily position management based on weather analysis and sets pricing for both Residential and Commercial customers. Mr. Malick has 13 years of experience in the energy industry both on the Wholesale and Retail side. Prior to Mega, James was the Director of Supply at Bounce Energy and successfully managed commodity risk for that organization for two of the most volatile years 2011-2013 in the ERCOT, PJM & NYISO mkts as the company grew exponentially from 25,000 to 75,000 customers. Prior to that James was a wholesale Power Trader (ERCOT) for four years at EdF Trading North America trading both physical and financial products for generation assets and proprietary trading positions. Prior to EdF he held

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several power trading positions at Direct Energy, The Energy Authority, ACES Power Marketing, APX inc. and RWE Trading Americas.

**Debbie Wernet, Chief Operating Officer (Retired), Consultant**

Ms. Wernet served as Mega Energy's Chief Operating Officer until December 2013 and she continues on as a consultant for Mega Energy. Ms. Wernet has had a long and successful career in the retail electricity and wholesale markets spanning over a decade. From 2006 to 2010, Ms. Wernet was the President of Acacia Energy where she managed all facets of the business and in 2007, successfully entered Acacia into the ERCOT market serving commercial and government entities. Prior to leading Acacia Energy as President, Ms. Wernet was President of US Energy Savings Corp, known now as Just Energy, a publicly traded company where she lead the company's efforts to expand to various markets throughout the US. In addition to her experience in the retail energy space, she lead Shell Energy's power trading group and finally all commercial areas and over a decade ago worked at Enron where she headed up natural gas and electricity project financing groups in the U.S. and abroad.

**A. ESCO Advisors Consulting Staff:**

The ESCO Advisors management team consists of energy industry professionals, each with a specific field of expertise and all of whom started their own energy supply company or served in senior management positions with some of the largest energy supply companies in the country. With over 50 years of experience in starting, building, managing, growing and successfully selling energy supply companies, ESCO Advisors has positioned itself to be the leader in the energy risk management and managed software solutions market.

**Jon Parrella, President / CEO.**

Mr. Parrella specializes in all aspects of business development from planning to financing to development and analysis. Prior to ESCO Advisors, he founded and built Discount Power, Inc., one of the largest ESCOs in the CT market. Discount Power grew to over \$60 million in revenue in only 14 months with over 20 employees and 75,000 residential customer equivalents. Mr. Parrella was involved in developing the products, hedging strategies, systems implementation, receivables financing, and equity capital infusion. Prior to DPI Mr. Parrella was the Director of Sales for Artera Group, Inc. Mr. Parrella established and supported selling network optimization solutions in partnership with HP to the largest Telephone and Internet companies in Latin America. Mr. Parrella graduated with high honors with a dual degree in business management and psychology with a minor in electrical engineering from Rensselaer Polytechnic Institute.

**Steve Malkiewicz, Director of Risk Management / CFO.**

Mr. Malkiewicz currently serves as Chief Financial Officer and leads our Energy Supply / Risk Management practice area. Formerly Managing Director and founder of St. Clair Energy Associates LLC, a management consulting firm serving the energy/utilities industry, his experience is a unique blend of financial and analysis assignments, with strategic and operational responsibilities, including helping to establish, finance and build several new businesses in the retail energy space. This background has provided him with a broad understanding of the energy markets, in-depth knowledge of quantitative methods, and hands-on experience

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with implementation. Mr. Malkiewicz has founded or assisted in forming and building several new businesses, serving in C-level roles in operations, risk management, supply management, regulatory and finance. Mr. Malkiewicz began his career as an auditor and consultant at Arthur Andersen in the Chicago and Detroit offices, and also served as a senior officer of a gas distributor and marketer in the Midwest. He is a Certified Public Accountant and a member of the Global Association of Risk Professionals. He has a Bachelor of Business Administration in Accounting from Eastern Michigan University.

**Sebastian Molnar**, Director of CRM Development / CTO.

Mr. Molnar is an energy industry expert in designing custom software solutions and web-based applications. He has developed commission tracking engines, automated enrollment processing systems, automated fixed price product management solutions, CRM solutions, demand forecasting solutions, reporting engines, and everything in between. Prior to ESCO Advisors, he was the Operations Manager at Mags Net, the second largest privately-owned Internet Service Provider in Connecticut. He also founded GetOutsource Group in 2000 and built Go2Verify, one of the most advanced fraud detection platform used for credit card processing for online transactions.

**Irv Lebovics**, SVP Sales.

Mr. Lebovics is a career sales professional with over 30 years of executive-level experience in B-to-B and B-to-C sales to customers in the U.S. and internationally. He is an expert in strategy development and execution, in establishing and growing internal sales organizations that deliver against revenue targets, and in the development and support of external distribution channels. Prior to ESCO Advisors, Mr. Lebovics was the Vice President of Sales at Discount Power, Inc. where he established and implemented the company's sales strategy, oversaw its market launch and built its electricity broker network. Within nine months, over 600 brokers had been signed in the Connecticut market. That broker channel signed over 75,000 residential customer equivalents generating over \$60 million in revenue for the company. Prior to DPI Mr. Lebovics was SVP of Sales for Artera Group, Inc. a company that developed network optimization software to improve the speed of data transmission across the Internet. Mr. Lebovics was critical to the establishment of a distribution channel for the company's Artera subscription software through a global network of Internet Service Providers including Hughes Network Systems and Hewlett Packard. Mr. Lebovics attended the New York Institute of Technology.

**Ian Palao**, Director of Risk Analytics.

Mr. Palao specializes in commodity risk management and the science of meteorology/climatology. He has 15 years of experience in the energy/utility industry where he used his skills and knowledge of meteorology and advanced statistics. From 2000 through 2011, he worked at TXU Energy Trading/Luminant Energy in Dallas where he served in three capacities. Most recently, he served as Capital/Liquidity Manager of the trading portfolio, optimizing the use of capital while still maintaining profitability. Prior to that, he managed the Weather Derivatives trading desk, devising strategy and executing trades for both speculative and hedging purposes. Upon joining TXU, he served as manager of the Quantitative Risk Group, assisting the company in the identification, quantification, and remediation of financial risks inherent in the company's multi-commodity trading portfolio.

# Mega Energy of Illinois, LLC



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In his first foray into energy/utilities, he was a Marketing Executive with Louisiana Gas Service Company, a local distribution company, where he primarily marketed natural gas technology to commercial and industrial customers. Before that, he served as a Research Scientist under contract to the National Oceanic and Atmospheric Administration (NOAA). Mr. Palao has an M.B.A. from Tulane University. He also has both an MS and BS in Meteorology from Florida State University.

**Gary M. Goncalves**, Chief Operations Officer.

Mr. Goncalves was a founding partner of AmericaWide Energy, LLC, a licensed Electrical Supplier in the State of CT. For AmericaWide Energy, he served as its President, CEO, and Chairman of the Board. In this capacity, Mr. Goncalves guided the Company through founding; state licensing; acceptance to ISO-NE; Tariff approval from the Federal Energy Regulatory Commission; EDI testing with CT Utilities Connecticut Light and Power and United Illuminating; alignment with strategic partners; and obtainment of credit line financing for up to 10 million dollars.

Prior to his energy industry experience, Mr. Goncalves retired in 2009 as a Sr. Executive, having spent a very successful 30 year career with the General Reinsurance Corporation in Stamford, CT. At General Re, he had held the positions of Vice President of Information Technology as well as Vice President of Finance, where he served as Global Technology Operations Manager for his final three (3) years.

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**Attachment A-7  
ESCO Advisors Service Agreement**



## CONSULTING & SERVICES AGREEMENT

THIS CONSULTING & SERVICES AGREEMENT (the "Agreement") is made and entered into this 20th day of March, 2013 (the "Effective Date") by and between Mega Energy Holdings LLC, a Texas Limited Liability Company duly organized under law and having a usual place of business at 2800 Post Oak Blvd., Houston, TX 77056 (hereinafter referred to as the "Company") and PML Energy Holdings, LLC dba ESCO Advisors, a Florida Limited Liability Company duly organized under law and having a usual place of business at 5103 Rolling Fairway Drive, Valrico, FL 33596 (hereinafter referred to as the "Consultant"). Each referred to as a "Party" and collectively "Parties".

WHEREAS, the Company wishes to engage the Consultant to provide the services described herein and Consultant agrees to provide the services for the compensation and otherwise in accordance with the terms and conditions contained in this Agreement.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, accepted and agreed to, the Company and the Consultant, intending to be legally bound, agree to the terms set forth below.

### 1. DEFINITIONS:

- (a) "ESCO Technology / ESCOWare™" means (a) the ESCO name, logo, and domain name; the product and service names associated with the Service; and other related trademarks and service marks; (b) the Content; and (c) other technology, software, hardware, products, processes, algorithms, user interface, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information.
- (b) "Client-Facing Application" means components of the Service intended for use by Users.
- (c) "Content" means the audio and visual information, documents, software, products, and services contained or made available to the Company through the Service.
- (d) "Core Application" means components of the Service intended for Users.
- (e) "Customer Data" means any data, information, or material Company or any User provides or submits through the Service.
- (f) "Including," "include," and their variants means including without limitation.
- (g) "IPRs" means ideas and inventions (patentable or not), patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain names, know-how, trade secrets, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.
- (h) "Outsource Application" means components of the Service intended for use primarily by Company's subcontractors.

- (i) **“Software Service”** means ESCO’s specific software products of online customer and broker management, billing, data analysis, or other corporate Energy Related Product (ERP) services identified, or ancillary online or offline products and services Consultant provides to Company, including ESCO Technology and Content.
  - (j) **“Risk Service”** means software products of demand forecasting, hedging, pricing, or other risk management services identified.
  - (k) **“Users”** means Company’s employees, consultants, contractors, brokers, or agents authorized to use the Service who have been supplied User IDs and passwords by Company (or by Consultant at Company’s request).
  - (l) **“Serve Load”** means that the Company has begun to enroll customers and that they have begun to have billing for power or gas on the wholesale market.
2. **TERM.** Commencing as of the Effective Date and continuing for an initial period as defined in Appendix B (the “Initial Term”). The continuing period as defined in Appendix B (the “Term”) will begin on the date that the Company begins to Serve Load, unless earlier terminated pursuant to Article 6 hereof, the Consultant agrees that it will serve as a Consultant to the Company. This Agreement shall automatically extend for successive periods (the “Extended Term”) as defined in Appendix B unless either party gives written notice of its intention to not extend the Agreement as defined in Appendix B.
3. **DUTIES AND SERVICES.** Consultant & Company duties and responsibilities are described in Appendix A (collectively, the “Duties” or “Services”). Appendixes may only be amended with the written agreement of both parties.
4. **CONSULTING & SERVICE FEES.**
- (a) Subject to the provisions hereof, the Company shall pay Consultant consulting and service fees as listed in Appendix B, which is a part of this document and which may only be amended with the written agreement of both parties.
  - (b) All invoices rendered by Consultant will be delivered to Company via email to: mmorgan@megaenergyllc.com. Invoices shall be due and payable as outlined in Appendix B by electronic funds transfer, automated clearinghouse (ACH) transaction, if by check, remit payment to the Connecticut address or if by a company credit card processing charges will be added.
  - (c) Consultant shall be entitled to prompt reimbursement for all expenses incurred in the performance of Duties, upon submission and advance approval by Company of written statements and receipts in accordance with the then regular policies and procedures of the Consultant. Expense reports will be submitted via email to the email address specified in 4(b).
5. **RELATIONSHIP.** The Consultant agrees that all Services will be rendered as an independent contractor and that this Agreement does not create an employer-employee relationship between the Consultant and the Company.

6. TERMINATION.

- (a) **Termination for Convenience.** Notwithstanding anything to the contrary set forth elsewhere in this Agreement, Company may terminate this Agreement or part of this Agreement, for any reason, or no reason, upon providing Consultant with at least thirty (30) calendar days prior written notice of such termination (the "Company Termination for Convenience"). Should Company exercise its options set forth in this Section, the Company will continue to be subject to the terms and conditions set forth herein through the date of termination, and will be obligated to pay the Early Termination Fee as set forth in Section 7(a) below.
- (b) **Termination for Breach.** The occurrence of any of the following shall constitute a breach, giving the non-breaching Party the right to terminate this Agreement for cause.
  - i. **Nonpayment.** In the event Company shall fail to pay when due any payment or other undisputed amount due hereunder and such failure shall continue for a period of ten (10) days after Consultant delivers written notice of delinquency to Company, Consultant, at its sole option, shall have the right to terminate this Agreement for default. In addition, Consultant shall have the right, at its sole discretion, to stop providing Services to Company under this Agreement, and Consultant shall be relieved of any future obligations to perform Services under this Agreement. Consultant shall retain all amounts previously paid by Company, and Company shall remain liable for all obligations upon termination as provided in this Agreement.
  - ii. **Material Breach.** In the event either Party shall default on, fail to perform, or observe any other material Covenant, condition or agreement to be performed or observed by it hereunder, and such failure shall continue for a period of ten (10) days after receipt of written notice (the "Cure Period"); or
  - iii. **Bankruptcy/Insolvency.** In the event either Party shall commit an act of bankruptcy within the meaning of the Federal Bankruptcy Act, or bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other proceedings shall be instituted by or against either Party or all or any substantial part of its property under any federal or state law and such proceeding shall not be dismissed within ninety (90) days.

7. OBLIGATIONS UPON TERMINATION.

- (a) **Early Termination Fee.** If the Company terminates this Agreement for convenience, Company agrees to pay to Consultant a termination for convenience fee (the "Early Termination Fee"), in addition to any charges for Services rendered prior to termination. The Early Termination Fee shall be calculated on the effective date of the Company Termination for Convenience and shall be an amount equal to the average of the highest three months bills during the Term or the Extended Term multiplied by half of the remaining months in the unexpired Term or Extended Term of the Agreement. Notwithstanding payment of the Early Termination Fee set forth herein, neither Party shall be limited from pursuing additional remedies available to it, including without limitation injunctive relief. The Company Termination for Convenience shall not relieve Company of its obligation to pay all fees that

have accrued or are otherwise owed by Company under this Agreement.

- (b) **Fee for Breach.** In the event of a termination for breach by Company, the Company shall remain obligated to pay Consultant: (i) the aggregate of the monthly charges remaining for Services rendered prior to the termination for default; (ii) any and all costs and expenses incurred by Consultant to shut down the Company's environment; and (iii) a non-penalty fee comprised of the Early Termination Fee. Notwithstanding the payment of any of the fees set forth herein in this Section, neither Party shall be limited from pursuing additional remedies available to it, including without limitation injunctive relief. In the event of a termination for breach by Consultant, the Company shall be entitled to any and all remedies in law or equity.
- (c) **Return of Materials.** Upon termination of this Agreement pursuant to this Section, each Party shall promptly return to the other Party, or at the option of the owner, certify the destruction of, all data, programs and materials of the other held in connection with the performance of the Agreement. Consultant shall not be responsible for the retention of Company's programs or Customer Data for a period in excess of sixty (60) days following the effective date of such termination. Within such period Company must make arrangements with Consultant for the transmission of such programs or Customer Data to Company's designated data center. The receiving data center will supply necessary media and pay shipping costs.
- (d) **Orderly Transition.** Consultant agrees to assist Company to the extent is able to, with the orderly transition of services performed as part of this Agreement to another provider per the written instructions of Company. Company agrees to pay all reasonable Consultant expenses to assist in the transition, including hourly rates as outlined in Appendix B.

## 8. USING ESCO TECHNOLOGY

- (a) **Consultant's Responsibilities.** Consultant shall provide telephone and online support from 9am until 7pm EST. Consultant shall use commercially reasonable efforts to make the Service generally available 99.5% of each calendar month, except for: (a) planned downtime with at least 48 hours' advance notice and scheduled to the extent reasonably practicable during the weekend hours from 9pm Friday to 6am Monday EST; and (b) downtime caused by circumstances beyond Consultant's reasonable control, including acts of nature, acts of government, flood, fire, civil unrest, threat of terrorism, strike or other labor problem not involving Consultant's employees, telecommunications or computer failures or delays, and network intrusions or denial of service attacks. Consultant shall use commercially reasonable efforts to maintain the confidentiality of Customer Data and the security and integrity of the Service.
- (b) **Company's Responsibilities.** In addition to Company's other obligations, Company is solely responsible for: (a) determining whether the Service will meet Company's needs; (b) issuing appropriate passwords for Users or asking Consultant to do so on Company's behalf; (c) selecting and training appropriate individuals to use the Service; (d) all activities that occur under User accounts; (e) using commercially reasonable efforts to prevent unauthorized access to or use of the Service or any Content in whole or in part; (f) notifying Consultant promptly of any actual or suspected unauthorized access/use; (g) abiding by all applicable local, state, national, and foreign laws, treaties and regulations, including those related to data privacy, communications, and the transmission of technical or personal data; (h) the accuracy, quality, integrity, legality, reliability,



and appropriateness of all Customer Data; (h) complying with Consultant's Client Services policies to obtain support and other services under this Agreement; (i) not impersonating another

User or providing false identity information for any purpose; (j) providing, installing, and maintaining computer equipment and communications tools and access as Consultant specifies from time to time; and (k) establishing adequate backup plans if there is any Service or other malfunction.

- (c) **Core Application Guidelines.** Company shall use the Core Application solely for internal business purposes and shall not: (a) make it available in whole or in part to any third party; (b) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (c) send or store any material which is infringing, obscene, threatening, libelous, unlawful, tortious, harmful to children, violates third party rights, or which Consultant otherwise deems objectionable; (d) send or store material with any virus, worm, or other harmful computer code; (e) interfere with or disrupt the integrity or performance of the Service in whole or in part; or (f) attempt to gain unauthorized access to the Service or any other system or network.
- (d) **Third-Party Providers.** Certain third-party providers, some of which may be listed on Consultant's website, offer products and services related to the Service, including implementation, customization, and other consulting services and applications (both offline and online) that work in conjunction with the Service, such as by exchanging data with the Service or by offering additional functionality. Consultant is not responsible for any exchange of data or other interaction between Company and a third-party provider, including purchase of any product or service, all of which is solely between Company and the third-party provider.
- (e) **Privacy Statement.** Consultant's Privacy Policy: [http://www.escoadvisors.com/privacy\\_policy.php](http://www.escoadvisors.com/privacy_policy.php) is incorporated herein by reference. Please review it because it applies to Company's use of the Service.

## 9. PROPRIETARY RIGHTS

- (a) **Reservation of Rights.** Consultant and Consultant's licensors own all right, title, and interest, including all related IPRs, in and to the ESCO Technology, the Content, the Service, and any suggestion, idea, enhancement request, feedback, recommendation, or other information provided by the Company or anyone else relating to any of the foregoing except Customer Data and Company's website. Except for the express license granted herein, Consultant grants no license or other right to Company or any User; all such other rights are expressly reserved to Consultant. As long as Company uses the Service, Company shall not challenge any ownership or other right of Consultant with respect to the Service or any IPR.
- (b) **License Grant.** Subject to the terms of this Agreement, Consultant grants Company and Company's Users a non-exclusive, non-sublicense able (except for Client-Facing Applications and Outsource Applications), non-transferable, right to access and use the Service.
- (c) **Restrictions.** Company shall not (a) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (b) modify, copy or create derivative works based on the Service or ESCO Technology in whole or in part; (c) disassemble, reverse engineer, or decompile the Service or any ESCO Technology, or access to.: (i) build a competitive product or service, (ii) build a product or service



using similar idea, feature, function, or graphic of the Service, or (iii) copy any idea, feature, function, or graphic of the Service.

- (d) **Customer Data.** Company owns all Customer Data, which shall be considered Confidential Information. However, Consultant may access User accounts, including Customer Data, to respond to service or technical problems or at Company's request or to compile anonymous user statistics in aggregate, in compliance with Consultant's Privacy Policy.
- (e) **Suggestions.** Company grants Consultant a paid-up, worldwide, irrevocable license to use or incorporate into the Service any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Company or Company's Users during the term of this Agreement relating to the operation of the Service.

#### 10. REPRESENTATIONS AND WARRANTIES.

(a) **Company represents and warrants as follows:**

- i. That it is a limited liability Company duly organized and validly existing under the laws of the State of Texas, is qualified to transact business, and is in good standing as a corporation in the jurisdictions where it is required to qualify in order to perform its obligations under this Agreement.
- ii. That this Agreement has been executed by a person duly authorized to bind the Company, and delivered by Company.

(b) **Consultant represents and warrants as follows:**

- i. That it is a Limited Liability Company duly organized and validly existing under the laws of the State of Florida, is qualified to transact business, and is in good standing as a limited liability company in the jurisdictions where it is required to qualify in order to perform its obligations under this Agreement.
- ii. That this Agreement has been executed by a person duly authorized to bind the Consultant, and delivered by Consultant.
- iii. That it has the experience and the expertise to deliver the Implementation and Operational Services described in Appendix A that have been agreed upon by "Customer" and are made a part of this Agreement.

#### 11. DISCLAIMER OF ALL OTHER WARRANTIES AND REPRESENTATIONS.

EXCEPT AS EXPRESSLY PROVIDED, CONSULTANT MAKES NO, AND HEREBY DISCLAIM ANY, WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AT LAW OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ALL OF WHICH ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WITHOUT LIMITING THE FOREGOING WE MAKE NO PROMISE: (I) AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE SERVICE OR ANY

CONTENT, ALL OF WHICH ARE PROVIDED STRICTLY ON AN "AS IS" BASIS; (II) AS TO ANY THIRD-PARTY PROVIDER OR ANY OF ITS PRODUCTS OR SERVICES,

WHETHER OR NOT CONSULTANT MAY HAVE DESIGNATED IT OR ITS PRODUCTS OR SERVICES AS "CERTIFIED," "VALIDATED," OR OTHERWISE; (II) THAT THE USE OF THE SERVICE WILL BE SECURE, UNINTERRUPTED, OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (IV) THAT THE SERVICE WILL MEET COMPANY'S REQUIREMENTS OR EXPECTATIONS; (V) THAT ANY CUSTOMER DATA WILL BE ACCUARTELY OR RELIABLY STORED, (VI) THAT ERRORS OR DEFECTS WILL BE CORRECTED, OR (VII) THAT THE SERVICE WILL BE FREE OF ANY VIRUS OR OTHER HARMFUL COMPONENT, ALTHOUGH CONSULTANT WILL NOT KNOWINGLY INSERT AND SUCH HARMFUL CODE.

12. **EXCLUSIVITY.** The parties acknowledge and agree that Consultant is being granted exclusive rights with respect to the Services to be provided to the Company.

13. **CONFIDENTIALITY.**

(a) **Definitions.** For the purposes of this Article, the terms set forth below shall have the following meanings:

i. **Confidential Information.** For the purposes of this Agreement, Confidential Information shall mean and collectively include: all information relating to the business, plans and/or technology of the Company including, but not limited to technical information including inventions, methods, plans, processes, specifications, characteristics, assays, raw data, scientific preclinical or clinical data, records, databases, formulations, clinical protocols, equipment design, know-how, experience, and trade secrets; developmental, marketing, sales, customer, supplier, consulting relationship information, operating, performance, and cost information; computer programming techniques whether in tangible or intangible form, and all record bearing media containing or disclosing the foregoing information and techniques including, written business plans, patents and patent applications, grant applications, notes, and memoranda, whether in writing or presented, stored or maintained in or by electronic, magnetic, or other means.

ii. Notwithstanding the foregoing, the term "Confidential Information" shall not include any information which: (a) can be demonstrated to have been in the public domain or was publicly known or available prior to the date of the disclosure to Consultant; (b) can be demonstrated in writing to have been rightfully in the possession of Consultant prior to the disclosure of such information to Consultant by the Company; (c) becomes part of the public domain or publicly known or available by publication or otherwise, not due to any unauthorized act or omission on the part of Consultant; or (d) is supplied to Consultant by a third party without binder of secrecy, so long as that such third party has no obligation to the Company or any of its affiliated companies to maintain such information in confidence.

(b) **Nondisclosure to Third Parties.** Except as required by Consultant's Duties, Consultant shall not, at any time now or in the future, directly or indirectly, use, publish, disseminate or otherwise disclose any Confidential Information to any third party without the prior written

consent of the Company which consent may be denied in each instance and all of the same, together with publication rights, shall belong exclusively to the Company.

**14. LIMITATION OF LIABILITY.**

**(a) LIMITATION ON TYPES OF DAMAGES.**

**NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY SET FORTH IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY (INCLUDING ITS OFFICERS, EMPLOYEES, AND/OR AFFILIATES) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF BUSINESS, ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER ARISING IN CONTRACT (INCLUDING BREACH OF WARRANTY), TORT (INCLUDING A PARTY'S NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED, HAD REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.**

**(b) LIMITATION ON AMOUNT OF DAMAGES.**

**CONSULTANT'S CUMULATIVE LIABILITY TO COMPANY SHALL NOT EXCEED THE SUM OF ALL FEES AND AMOUNTS PAID BY COMPANY TO CONSULTANT IN THE TWELVE CALENDAR (12) MONTHS PRIOR TO THE DATE OF THE CLAIM.**

- (c) Intentional Risk Allocation.** In furnishing the Company with advice and other services as herein provided neither Consultant nor any officer, director, employee or agent thereof shall be liable to the Company or its creditors for errors of judgment or for anything, except for Consultant's gross negligence or intentional or willful misconduct in the performance of its duties under this Agreement. The warranty disclaimer and limitations of liability in this Agreement are intended to limit the circumstances and amount of liability. The limitations of liability are separately intended to limit the forms of relief available to the Parties. Each of the Parties is willing to enter into this Agreement only in consideration of and in reliance upon the provisions of this Agreement limiting such Parties exposure to loss and liability. Such provisions are an essential part of the bargain underlying this Agreement and have been reflected in the Fees and other consideration specified in this Agreement. The Company acknowledges that all opinions and advice (written or oral) given by Consultant to the Company in connection with Consultant's engagement are intended solely for the benefit and use of the Company in considering the transaction to which they relate, and the Company agrees that no person or entity other than the Company shall be entitled to make use of or rely upon the advice of Consultant to be given hereunder, and no such opinion or advice shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time, in any manner or for any purpose, nor may the Company make any public references to Consultant, or use Consultant's name in any annual reports or any other reports or releases of the Company without Consultant's prior written consent.

15. **INDEMNIFICATION.** Company agrees to indemnify Consultant, and Consultant agrees to indemnify Company and hold it harmless against any losses, claims, damages or liabilities arising out of, in connection with, or relating in any manner, directly or indirectly, to this Agreement, or the rendering of services by Consultant in accordance with this Agreement, but only to the extent such losses, claims, damages or liabilities arose out of the gross negligence or willful misconduct of the Party, or any violation of applicable law by the Party. Such gross negligence or willful misconduct must be determined by a court of competent jurisdiction. Additionally, the negligent Party agrees to reimburse the other Party immediately for any and all expenses, including, without limitation, attorney fees, incurred in connection with investigating, preparing to defend or defending, or otherwise being involved in, any lawsuits, claims or other proceedings arising out of or in connection with or relating in any manner, directly or indirectly, to this Agreement or the rendering of any services in accordance with the Agreement (as defendant, nonparty, or in any other capacity other than as a plaintiff, including, without limitation, as a party in an inter-pleader action). The Parties further agree that the indemnification set forth in this paragraph shall extend to any controlling person, strategic alliance, partner, member, shareholder, director, officer, employee, agent or subcontractor of the Party and their heirs, legal representatives, successors and assigns.
16. **SEVERABILITY.** In case any one or more of the provisions or parts of a provision contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement; and this Agreement shall, to the fullest extent lawful, be reformed and construed as if such invalid or illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provision or part reformed so that it would be valid, legal and enforceable to the maximum extent possible. Without limiting the foregoing, if any provision (or part of provision) contained in this Agreement shall for any reason be held to be excessively broad as to duration, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the fullest extent compatible with then existing applicable law.
17. **AMENDMENTS.** This Agreement may be amended or modified, in whole or in part, only by an instrument in writing signed by all parties hereto. Any amendment, consent, decision, waiver or other action to be made, taken or given by the Company with respect to the Agreement shall be made, taken or given on behalf of the Company only by authority of the Company's Board of Directors.
18. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall be deemed a single agreement.
19. **GOVERNING LAW.** This Agreement shall be construed in accordance with and governed for all purposes by the laws of New York applicable to contracts executed and wholly performed within such jurisdiction. Any dispute arising hereunder shall be referred to and heard in only a court located in Fairfield County, Connecticut.
20. **COMPLIANCE WITH LAW.** Each Party will, at all times during the Term and at its own expense, comply with all applicable federal, state and local laws, rules and regulations, and will maintain in full force and affect all governmental permits required for performance under this Agreement.

Each Party will immediately notify the other Party in writing of the commencement of any action, suit or



proceeding, and of the issuance of the threatened issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality, involving its activities under this Agreement or which may affect its ability to perform its obligations hereunder.

- 21. **EQUAL OPPORTUNITIES CLAUSE.** With respect to the performance of the Services, Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.
- 22. **NO WAIVER.** Failure on the part of any Party to complain of any act or failure to act of any other Party or to declare any Party in default, irrespective of the duration of such failure, will not constitute a waiver of rights hereunder. No waiver hereunder will be effective unless it is in writing and executed by the Party waiving the breach or default.
- 23. **NOTICES.** Any notices to be given to a Party will be deemed to have been given if delivered personally in writing, or if sent by facsimile, express, overnight or registered mail to a Party at the respective addresses. Any notice will be deemed to have been given on the day it was received.

(a) Notices to Company will be sent to:

Name: Mary Morgan  
Title: Controller  
Company: Mega Energy Holdings LLC  
Address: 2800 Post Oak Blvd.  
Houston, TX 77056  
Tel: 713-590-3346  
Fax: 713-487-0064

(b) Email: [mmorgan@megaenergyllc.com](mailto:mmorgan@megaenergyllc.com) Notices to Consultant and payment by check should be sent to:

Jonathan Parrella  
President  
PML Energy Holdings, dba ESCO Advisors  
100 Mill Plain Road, 3<sup>rd</sup> Floor  
Danbury, CT 06811  
Tel: 203-858-1915  
Fax: 203-794-7116  
[Jon@escoadvisors.com](mailto:Jon@escoadvisors.com)

(c) Wire Transfer and ACH payment address:

JP Morgan Chase Bank, N.A.  
Valrico, Florida  
ABA Routing No.: 267 084 131  
Account No.: 96 2484432  
For credit to: PML Energy Holdings, LLC dba ESCO Advisors

24. **SUCCESSORS AND ASSIGNS.** This Agreement will be binding upon and will inure to the benefit of each of the Parties, and their respective heirs, representatives, and successors, except as herein limited. This



Agreement may not be assigned or otherwise transferred by either Party without the prior written consent of the other; provided that either Party may assign this Agreement without the approval of the other Party (a) upon the sale of all or substantially all the assets of such Party or merger or consolidation involving such Party, (b) to an Affiliate of such Party, or (c), to another Person so long as the new entity retains substantially the same ownership group or shareholders as the assignor.

25. **SURVIVAL.** Neither the termination of this Agreement nor the completion of any services to be provided by Consultant hereunder, shall affect the provisions of this Agreement that shall remain operative and in full force and effect. This Agreement supersedes all prior agreements, written or oral, between the Company and the Consultant relating to the subject matter of this Agreement.

EXECUTED, under seal, effective as of the Effective Date

Mega Energy Holdings LLC

PML ENERGY HOLDINGS, LLC  
dba ESCO ADVISORS

By:   
Debbie Wernet  
COO  
Hereunto Duly Authorized

By:   
Jon Parrella  
President

**Appendixes**

Appendix A – Services  
Appendix B – Terms & Fees

## “Appendix A” Duties & Services

### Statement of Electric Risk Management Services

- Consultant will submit to the ISO’s listed below on behalf of the Company a schedule for 100% of the Company’s forecasted load (“Day-Ahead Percentage”) in the day-ahead market.
- Consultant will submit a rolling seven (7) day day-ahead schedule to each of the ISOs.
- Company must provide Consultant with digital certificates / login credentials for each of the applicable ISO’s listed below to access tools, invoices, and scheduling resources:
  - ISONE
  - NYISO
  - PJM
  - ERCOT
- Company must notify Consultant in writing at least ten (10) days prior to a change to the Day-Ahead Percentage.

#### DESCRIPTION OF WORK AREA

#### TIMING

DESCRIPTION OF WORK AREA	TIMING
<b>ENERGY SCHEDULING</b>	
Review the weather forecasts for each scheduling area	Daily
Run or retrieve the short-term energy forecasts from ESCOWare	Daily
Review supply position, spot purchases and sales	Daily
Review CIS enrollment activity for latest information and updates	Daily
Process and submit schedules to the various ISOs	Daily
Obtain initial (10-day) actual volumes via ISO tools	Daily
Summarize weekly scheduling activity, including bilateral supply, spot/LMP purchases and sales	Weekly
Obtain final settlement (60-day or 90-day) actual volumes via ISO tools	Monthly

<b>SUPPLY AND RISK MANAGEMENT – INITIAL SET-UP ACTIVITIES</b>	
Obtain a copy of the existing risk management policies, if available	One Time
Obtain copies of all ISDA, EEl, and other supply enabling agreements	One Time
Obtain copies of all wholesale trades and trade confirmations	One Time
Review wholesale suppliers for creditworthiness; obtain bond ratings and evaluate	One Time
Obtain and review banking and wholesale supply agreements for risk parameters	One Time
Obtain account balances for any financial assurance accounts held by wholesale suppliers, ISOs and EDCs; review each underlying calculation	One Time
Interview Company to determine their business objectives, and risk tolerance; establish business policies for front, middle and back office supply management activities	One Time
Establish who will comprise the Risk Management Oversight Committee; recommend steps to make formation of the RMOc official; set meeting schedule	One Time

<b>SUPPLY AND RISK MANAGEMENT – ONGOING ACTIVITIES</b>	
Review financial assurance account balances and underlying calculations; determine susceptibility to margin calls	Daily
Negotiate and complete any new enabling agreements for wholesale supply	Weekly
Prepare and analyze the Company's hedged position for each congestion zone; determine if additional supply hedges should be purchased or sold; rebalance	Weekly
Initiate trading activities with wholesale counterparties; run pricing analyses; execute supply trades	Daily
Obtain volume information after initial and final settlements; make comparison to forecasts and back casts and determine forecasting accuracy; make adjustments	Monthly
Conduct periodic meetings of the Risk Management Oversight Committee; present findings and discuss	Periodic
Run forecasting scenarios; recommend seasonal hedging strategies	Seasonal

<b>RETAIL PRICE SUPPORT – INITIAL SET-UP ACTIVITIES</b>	
Obtain from Company their established contact for Retail Price Support	One Time
Discuss with Company their products and price features; determine priced and/or capped sales obligations; determine pricing support needed	One Time
Obtain a listing of all current product offers being made by Company and price if available	One Time
Obtain each product's Energy Facts Label, or Emissions Label	One Time
Establish costs to be tracked for each congestion zone and market, including (i) capacity (ICAP and UCAP); (ii) wholesale energy blocks; (iii) Ancillary services; (iv) line losses and UFE; (v) load shaping costs by rate class and load profile; (vi) EDC charges, if any; (vii) renewable energy credits and/or certificates; and (viii) other costs.	One Time

<b>RETAIL PRICE SUPPORT – ONGOING ACTIVITIES</b>	
Maintain wholesale price curves, with periodic updating based on new wholesale supply quotes, for each market and congestion zone	Daily
Review and analyze ISO and EDC cost information for ancillary service fees, line losses and UFE, other expenses	Monthly
Use ESCOWare tool to analyze rate classes and load profiles by month and/or season and maintain a load shaping premium price curve for each load profile	Periodic
Review and analyze day-ahead and real-time LMPs; run statistical analyses and determine deviations from normal for use in the Hedge Analysis	Periodic

<b>RETAIL PRICE SUPPORT – REPORTING</b>	
Wholesale energy block prices	Daily
ICAP and UCAP prices	Monthly
Ancillary services	Monthly
Line Losses	Monthly
UFE	Periodic
Load shaping costs	Monthly
Renewable energy costs	Monthly

## Attachment A-8 Corporate Structure

