

[Form for ARES Applicants]

[The Form for ARES Applicants has been prepared by the Staff of the Illinois Commerce Commission. It is intended to be a source of information and a template that may be of use to entities petitioning the Illinois Commerce Commission for a Certificate of Service Authority to be an Alternative Retail Electric Supplier ("ARES") under Section 16-115 of the Public Utilities Act ("Act") [220 ILCS 5/16-115] and 83 Ill. Adm. Code 451 ("Part 451"), Certification of Alternative Retail Electric Suppliers. This form is presented in a generic format and should be individually tailored by each ARES applicant before sending to the Illinois Commerce Commission. **Some text, including bracketed text that identifies possible responses, should be replaced with the correct information or deleted entirely, as applicable. Section references should not be altered.** This Form is not intended to constitute legal advice regarding compliance with Section 16-115 of the Act, 83 Ill. Adm. Code 451, or any applicable case law.]

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

**SmartEnergy Holdings, LLC** :  
:  
Application for Certificate of :  
Service Authority under Section :  
16-115 of the Public Utilities Act. :

Docket No. *16-0427*

APPLICATION

**SmartEnergy Holdings, LLC** ("Applicant"), hereby requests that the Illinois Commerce Commission ("Commission") grant it a certificate of service authority pursuant to Section 16-115 of the Public Utilities Act ("Act"). **SmartEnergy Holdings, LLC** is filing under subpart **D** (Subpart B, D, D or E) of Part 451. In support of its application, Applicant states as follows:

REQUIREMENTS FOR ALL APPLICANTS [451.20]

1. State whether Applicant currently has authority from the Commission to be an ARES, and if so, the Docket Number under which such authority was granted.

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**- Applicant does have authority from the Commission to be an ARES under docket No. 15-0557. Applicant requests that this current authority be consolidated with any authority granted pursuant to this application.**

2. A statement to disclose whether it is licensed as an alternative retail electric supplier in any other jurisdictions, similar to the licensure required under Section 16-115 of the Illinois Public Utilities Act. Additionally, the Applicant is directed to disclose whether it, or any of its affiliates, has had any complaints filed against it for its provision of any services in the electric or gas industry in this or any other jurisdiction. If yes, the Applicant is directed to include in its response the nature of the complaint, the jurisdiction, and the ultimate resolution.

**- Applicant is currently licensed in Ohio (13-646 (2)), Pennsylvania (A-2014-2416214), Delaware (2014602421), New Jersey (EE131110061L), New York (45-4166532), Rhode Island (Docket D-96-6 (S7)) and Massachusetts (CS-120). Please see the attached complaint log which details the nature and chronology of all customer complaints as well as their resolution dates. Please note that all complaints were rectified internally and none were escalated to the incumbent utility commission.**

**-Please see Attachment H**

3. Applicant certifies that it will comply with all applicable Federal, State, regional and industry rules, practices, policies, procedures and tariffs for the use, operation, maintenance, safety, integrity, and reliability of the interconnected electric transmission system; [451.20(a)]

**- SmartEnergy Holdings, LLC will comply with the above requirements. Please see the below certification.**

4. Applicant agrees to submit good faith schedules of transmission and energy in accordance with applicable tariffs. [451.20(a)]

**- SmartEnergy Holdings, LLC will comply with the above requirements. Please see the below certification.**

5. Applicant certifies that it will comply with informational and reporting requirements that the Commission may by rule establish; [451.20(b)]

- **SmartEnergy Holdings, LLC will comply with the above requirements. Please see the below certification.**

6. Applicant certifies that it will provide for review by Staff on a confidential and proprietary basis data related to contracts for the purchase and sale of electric power and energy; [451.20(b)]

- **SmartEnergy Holdings, LLC will comply with the above requirements. Please see the below certification.**

7. Applicant's name and street address: [451.20(c)(1)]

**SmartEnergy Holdings, LLC  
575 Lexington Avenue, 4<sup>th</sup> floor  
New York, NY 10022**

- a) **Federal Employer Identification Number: [451.20(c)(2)] 45-4166532**
- b) **Type of business entity: LLC**
- c) **Jurisdiction in which and under whose laws business entity was created: Delaware (1/5/2012)**
- d) **Other names under which Applicant does business (D/B/A):  
SmartEnergy**
- e) **Registered Agent in Illinois:  
Business Filings Incorporated  
118 West Edwards, Suite 200  
Springfield, Illinois 62704**

8. The Applicant shall demonstrate that:

- a) Applicant is licensed to do business in the State of Illinois, as demonstrated in Attachment A. [451.20(d)(1)]
- b) Applicant's employees that will be installing, operating, and maintaining generation, transmission, or distribution facilities within the State of Illinois, as well as any entity with which the Applicant has contracted to perform those functions, have the requisite knowledge, skills, and competence to perform those functions in a safe and responsible manner in order to provide safe and reliable

service in accordance with the criteria stated in Section 16-128(a) of the Act [220 ILCS 5/16-128(a)], as demonstrated in Attachment \_\_. [451.20(d)(2)]

**- Not Applicable**

9. Applicant shall certify compliance with all other applicable laws and regulations and Commission rules and orders; [451.20(e)]

**- SmartEnergy Holdings, LLC will comply with the above requirements. Please see the below certification.**

10. Applicant shall certify it will procure renewable energy resources as required by Section 16-115D and subsection (d) of Section 16-115 of the Act, **OR** shall certify that Section 16-115D and subsection (d) of Section 16-115 of the Act do not apply to it pursuant to subsection (h) of Section 16-115D of the Act. [451.20(f)].

**- SmartEnergy Holdings, LLC intends to fully comply with Subsection 16-115(d)(5) of the Act and the specific requirements to procure renewable energy resources as defined in the Illinois Power Agency Act.**

11. Applicant shall certify that it will source electricity from clean coal facilities, as required by Section 16-115(d)(5) of the Act. [451.20(g)]

**- SmartEnergy Holdings, LLC will comply with the above requirements. Please see the below certification.**

REQUIRED FILINGS AND PROCEDURES [451.30]

12. Applicant will publish notice of its application for certification in the Official State Newspaper within 10 days following its filing of the application for certification. The applicant will file proof of publication with the Clerk of the Commission within 5 days after publication. [451.30(a)]

**- SmartEnergy Holdings, LLC will publish notice within 10 days following the filing of this application for certification. SmartEnergy Holdings, LLC will then provide the Clerk of the Commission with proof of publication within 5 days after publication.**

13. Applications for certification shall be verified as required by Section 200.130 of the Commission's "Rules of Practice" (83 Ill. Adm. Code 200.130)

**- SmartEnergy Holdings, LLC will comply with the above requirements. Please see the below certification.**

14. Geographic area in which Applicant seeks to be authorized to offer service (if less than entire State, provide detailed description) and the types of services it intends to offer. [451.30(c)]

**- SmartEnergy Holdings will be offering electric supply to residential and commercial customers throughout the entirety of Illinois including the Ameren, ComEd, and MidAmerican service territories. Applicant's services will include: supplying retail customers with their expected electric generation load requirements by purchasing energy and related services through wholesale generation suppliers and traders participating in the various wholesale markets.**

a) Description of Applicant's business. Applicant is not affiliated with an Illinois utility. **Since 2013 Smart Energy Holdings has provided competitive electricity supply products to over 40,000 customers throughout New Jersey, Pennsylvania, Ohio, Massachusetts, Illinois and Delaware.** [451.30(c)(1)]

b) Description of the characteristics of customer group(s) Applicant proposes to serve. [451.30(c)(2)]

**- Residential and Commercial customers**

c) Proof that applicant notified the designated in-state agent for each affected utility that Applicant intends to serve customers in that utility's service area, as demonstrated in Attachment B. [451.30(c)(3)]

15. The applicant shall certify compliance with all terms and conditions required by Sections 16-115A(a), (b), and (f), 16-119, 16-123, 16-125(b) and (c), 16-127, and 16-128(a) of the Act, to the extent those Sections have application to the services being offered by the alternative retail electric supplier; [451.30(d)(2)]

**- SmartEnergy Holdings, LLC will comply with the above requirements. Please see the below certification.**

16. Application shall include Contact Persons for the following:

- a) issues related to processing this application,  
**Lloyd Spencer**  
**COO**  
**575 Lexington Avenue, 4<sup>th</sup> Floor**  
**New York, NY 10022**  
**212-779-7000 (phone)**  
**212-779-3061 (fax)**  
**regulatory@smartenergy.com**
  
- b) issues related to retail customers, including complaint resolution, and  
**Jackie Kern**  
**CMO**  
**575 Lexington Avenue, 4<sup>th</sup> Floor**  
**New York, NY 10022**  
**212-779-7000 (phone)**  
**212-779-3061 (fax)**  
**regulatory@smartenergy.com**
  
- c) technical issues, including scheduling of generation, transmission, and distribution, and issues arising from relationships with other providers of electric services.  
**Lloyd Spencer**  
**COO**  
**575 Lexington Avenue, 4<sup>th</sup> Floor**  
**New York, NY 10022**  
**212-779-7000 (phone)**  
**212-779-3061 (fax)**  
**regulatory@smartenergy.com**

17. Applicant **does not agree** to accept service by electronic means. [451.30(e)]

CUSTOMER RECORDS AND INFORMATION [451.40]

Form for ARES Applicants

18. Applicant agrees to adopt and follow rules and procedures ensuring that authorizations received from customers, customer billing records, and requests for delivery service transmitted to utilities are retained for a period of not less than two calendar years after the calendar year in which they were created. [451.40(a)]

**- SmartEnergy Holdings, LLC will comply with the above requirements. Please see the below certification.**

19. Applicant agrees to adopt and follow rules and procedures to preserve the confidentiality of its customer's data. [451.40(b)]

**- SmartEnergy Holdings, LLC will comply with the above requirements. Please see the below certification.**

LICENSE OR PERMIT BOND REQUIREMENTS [451.50]

20. Applicant is required to execute and maintain a copy of the license or permit bond in the name of the People of the State of Illinois issued by a qualifying surety or insurance company authorized to transact business in the State of Illinois. The amount of the bond shall equal the amount specified in Part 451.50(a) for the appropriate group of customers the Applicant seeks certification to serve.

**- Please see attachment I**

FINANCIAL QUALIFICATIONS

21. Applicant meets one of the six financial criteria set forth in 451.320(a)(2), as demonstrated in Attachment C. Applicant maintains a line of credit with Shell Energy in an amount greater than \$1m for greater than one year.

Available Credit under facility	\$5,000,000
Current utilization	\$3,260,000
2015 Sales	\$16,000,000
<u>10%</u>	<u>\$1,600,000</u>

Attachment C: SmartEnergy Financial Statements

Attachment D: Confidential Loan Documentation

Attachment E: PJM letter of good standing

22. Applicant **will not** provide electric power and energy with property, plant and equipment that it owns, controls, or operates.

TECHNICAL QUALIFICATIONS [Clearly state 451.120, 451.230, 451.330, or 451.420]

23. Applicant **will not** use electric generation, transmission or distribution facilities that it owns, controls or operates in serving customers.

Applicant meets the requirements of **Part 451.330 as demonstrated in Attachment F.**

Technical qualifications	Individuals
At least four years' experience buying and selling power and energy in wholesale markets and one-year scheduling experience working for an entity that is either a member of PJM or a market participant in Midwest ISO.	<b>Lloyd Spencer</b>

- **Resume of COO, Lloyd Spencer**
- **Resume of Forecasting & Scheduling consultants, Gabriel Phillips and Jonathan Spivak**

[for Subparts B, C, D, or E] The following individuals on Applicant's staff have experience working with Applicant's facilities or an electric generation, transmission, or distribution facility that is substantially similar to the facility that Applicant owns: **Not Applicable**

[for Subparts B, C, or D] The following individuals on Applicant's staff have experience buying and selling power and energy in wholesale markets: **Lloyd Spencer, Gabriel Phillips and Jonathan Spivak**

[for Subparts C or D] The following individuals on Applicant's staff have experience working for an entity that is either a member of PJM, a market participant in the Midwest ISO, or has a system operator certificate from NERC, or has earned

Form for ARES Applicants

Certified Energy Procurement Professional status by the Association of Energy Engineers (or equivalent certification): **Lloyd Spencer, Gabriel Phillips and Jonathan Spivak**

[for Subparts C, D, or E] Applicant agrees to maintain the following telephone number, fax number, and address where Applicant's staff can be directly reached at all times. Applicant understands that maintenance of an answering service or machine, pager, or similar message-taking procedure does not satisfy this requirement. [451.230(c), 451.330(c), 451.420(b)]

Telephone # **212-255-8050**

Fax # **212-779-3061**

Address **575 Lexington Avenue, 4<sup>th</sup> floor  
New York, NY 10022**

**MANAGERIAL QUALIFICATIONS** [Clearly state 451.130 and 451.140, 451.240 and 451.250, 451.340 and 451.350, or 451.430]

24. Applicant meets the managerial qualifications set forth in [Part 451.130], as demonstrated in Attachment G. Attachment G includes an exhibit containing a corporate organizational chart and identifying the persons or agents who are being used to meet each of the requirements of Part [list applicable code part: 451.130(b), 451.240(b), or 451.340(b)].

<b>Managerial Qualifications</b>	<b>Individuals</b>
<b>The following individual in a management position on Applicant's staff has three or more years' experience in a business enterprise:</b>	<b>Dan Kern Jackie Kern Lloyd Spencer</b>
<b>The following individuals in management positions on Applicant's staff have four years' experience with enterprise financial and administration responsibilities including profit and loss responsibilities:</b>	<b>Dan Kern Jackie Kern Lloyd Spencer</b>
<b>The following three individuals in management positions on Applicant's staff have four years' experience buying and selling power and energy in wholesale markets:</b>	<b>Lloyd Spencer Gabriel Phillips Jonathan Spivak</b>
<b>The following three individuals in management positions on Applicant's staff have four years electric system operational experience:</b>	<b>Lloyd Spencer Gabriel Phillips Jonathan Spivak</b>

25. Applicant is relying on one or more agents or contractors to meet the technical and managerial requirements of Part 451.130 and 451.340. Each agent and contractor on whom the Applicant relies to meet these requirements is disclosed on Attachment F. Attachment should include narrative and/or resumes of agent's or contractor's key personnel showing clearly how each applicable technical or managerial experience requirement is being met. 451.350(a) Applicant certifies

that each such agent or contractor will comply with all the sections of Part 451 that are applicable to the functions to be performed by the respective agent or contractor. 451.350(b)

FINANCIAL QUALIFICATIONS FOR SINGLE BILLING SERVICE [451.510]

26. Applicant **does not intend** to provide single billing services.

GENERAL PROVISIONS FOR APPLICANTS FILING UNDER SUBPART D [451.310]

27. Subpart C and D applicants must certify compliance with all terms and conditions required by Section 16-115A(c) of the Act. 451.310(a)  
**- SmartEnergy Holdings, LLC will comply with these requirements. Please see the below certification.**
28. Applicant shall state any limitations that will be imposed on the number of customers or maximum load to be served and certify that it will not deny service to a customer or group of customers nor establish any differences as to prices, terms, conditions, services, products, facilities, or in any other respect, whereby such denial or differences are based on race, gender or income nor deny service to a customer or group of customers based on locality nor establish any unreasonable differences as to prices, terms, conditions, services, products, or facilities as between localities. [451.310 b)]  
**- Not applicable**
29. Applicant **has not** been denied an electric supplier license in any state in the United States
30. Applicant **has not** had an electric supplier license suspended or revoked by any state in the United States.
31. Applicant **has** other electric supplier license applications pending in the United States: **New Hampshire** [451.310(c)(3)]
32. Applicant **is not** the subject of any lawsuits that were filed in a court of law or formal complaints that were filed with a regulatory agency alleging fraud,

deception or unfair marketing practices, or other similar allegations.  
[451.310(c)(4)]

33. Applicant certifies that its marketing materials which make statements concerning prices, terms and conditions of service contain information that adequately discloses the prices, terms and conditions of the products or services that the Applicant is offering or selling to the customer. [451.310(d)(1)]

**- SmartEnergy Holdings, LLC will comply with these requirements. Please see the below certification.**

34. Applicant certifies that before any customer is switched from another supplier, Applicant will give the customer written information that adequately discloses, in plain language, the prices, terms and conditions of the products and services being offered and sold to the customer. [451.310(d)(2)]

**- SmartEnergy Holdings, LLC will comply with these requirements. Please see the below certification.**

35. Applicant certifies it will provide documentation to the Commission and to customers that substantiates any claims made by the Applicant regarding the technologies and fuel types used to generate the electricity offered or sold to customers. [451.310(d)(3)]

**- SmartEnergy Holdings, LLC will comply with these requirements. Please see the below certification.**

36. Applicant certifies it will provide to the customer itemized billing statements that describe the products and services provided to the customer and their prices, and provide an additional statement, at least annually, that adequately discloses the average monthly prices, and the terms and conditions, of the products and services sold to the customer. [451.310(d)(4)]

**- SmartEnergy Holdings, LLC will comply with these requirements. Please see the below certification.**

37. Applicant certifies it will include materials comprising the consumer education program (pursuant to Section 16-117 of the Act [220 ILCS 5/16-117]) with all initial mailings to potential residential and small commercial retail customers and

Form for ARES Applicants

before executing any agreements or contracts with such customers, and that Applicant will provide these materials at no charge to residential and small commercial retail customers upon request. [451.310(e) and 451.310(f)]

**-SmartEnergy Holdings, LLC will comply with these requirements. Please see the below certification.**

38. Applicant certifies it will provide to residential and small commercial retail customers on a semiannual basis information on how to obtain a list of alternative retail electric suppliers that have been found in the last 3 years by the Commission (pursuant to Section 10-108 of the Act [220 ILCS 5/10-108]) to have failed to provide service in accordance with the terms of their contracts (pursuant to Section 16-117(g)(4)(C) of the Act). [451.310(g)]

**- SmartEnergy Holdings, LLC will comply with these requirements. Please see the below certification.**

39. Applicant certifies it will maintain sufficient managerial resources and abilities to provide the service for which it has a certificate of authority. [451.340(d)]

**- SmartEnergy Holdings, LLC will comply with these requirements. Please see the below certification.**

40. The applicant agrees that in the event the applicant bills any residential customer directly for supply, the applicant shall ensure that when marketing to residential customers who receive any type of low income energy assistance, the applicant has entered into the necessary agreements to allow low-income customers to receive Low Income Home Energy Assistance Program (LIHEAP) benefits and Percentage of Income Payment Plan (PIPP) benefits. In the event that the applicant is granted Commission authorization to provide supplier single billing to residential customers, the applicant shall ensure that, when marketing to residential customers who receive any type of low-income energy assistance, the applicant has entered into the necessary agreements to allow low-income customers to receive Low Income Home Energy Assistance Program (LIHEAP) benefits and Percentage of Income Payment Plan (PIPP) benefits.

Form for ARES Applicants

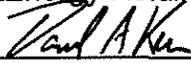
**- SmartEnergy Holdings, LLC will comply with these requirements. Please see the below certification.**

Form for ARES Applicants

WHEREFORE, Applicant requests that the Commission grant its application for service authority to serve retail customers [identify the characteristics of the customer group(s) that Applicant proposed to serve] in [describe area for which certification is sought, as in paragraph 7 above].

Respectfully submitted,

SmartEnergy Holdings, LLC

By: 

Daniel A. Kern

CEO

Name of Attorney

Attorney's Firm or Company Name

Address of Attorney

Attorney's Telephone Number

Attorney's Fax and E-mail (optional)

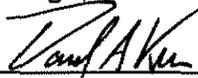
**Scott W. MacCormack**  
**SmartEnergy Holdings, LLC**  
**Davis Wright Tremaine, LLP**  
**1201 Third Avenue**  
**Suite 2200**  
**Seattle, WA 98101**  
**Telephone: 206 757-8263**  
**Fax: 206-618-3798**  
**Email: scottmaccormack@dwt.com**

VERIFICATION

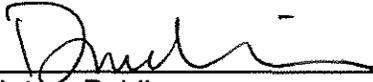
STATE OF New York  
COUNTY OF New York

ss:

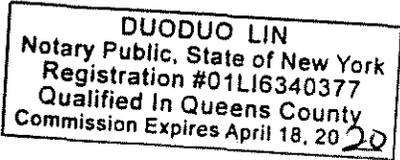
Daniel A. Kern, being first duly sworn, deposes and says that he is the CEO of SmartEnergy,LLC, that he has read the foregoing Application of SmartEnergy Holdings, LLC, and all of the attachments accompanying and referred to within the Application; and that the statements contained in the Application and the attachments are true, correct and complete to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
Daniel A. Kern

Subscribed and sworn to before me  
this 30 day of August, [year].

  
\_\_\_\_\_  
Notary Public

[Stamp of Notary]



**Attachment A: IL Business License(Please see next page)**



## OFFICE OF THE SECRETARY OF STATE

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JESSE WHITE • Secretary of State

JULY 21, 2015

0524139-1

BUSINESS FILINGS INCORPORATED  
118 WEST EDWARDS SUITE 200  
SPRINGFIELD, IL 62704-0000

RE SMARTENERGY HOLDINGS, 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

05241391

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.

This space for use by Secretary of State.

Filing Fee: \$500

Penalty: \$

Approved: *[Signature]*

**FILED**

JUL 21 2015

JESSE WHITE  
SECRETARY OF STATE

1. Limited Liability Company Name: SmartEnergy Holdings, 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: Delaware

4. Date of Organization: 1/5/2012

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 c/o is unacceptable.)  
575 Lexington Avenue, 4th Floor  
Number Street Suite #  
New York, NY 10022  
City State ZIP Code

7. Registered Agent: Business Filings Incorporated  
First Name Middle Name Last Name  
Registered Office: 118 West Edwards, Suite 200  
Number Street Suite #  
(P.O. Box alone or c/o is unacceptable.) Springfield IL 62704  
City 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: NA

(continued on back)

LLC-45.5

9. Purpose(s) for which the Company is Organized and Proposes to Conduct Business in Illinois: SmartEnergy would like to be licensed as an Alternative Retail Electric Supplier ("ARES") in the state of Illinois. SmartEnergy is organized to be an Alternative Retail Electric Supplier ("ARES").

10. The Limited Liability Company: (check one)

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

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

Daniel Kern

575 Lexington Avenue, 4th Floor

New York, NY 10022

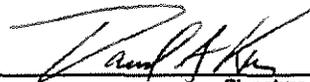
11. The Illinois Secretary of State is hereby appointed the agent of the Limited Liability Company for service of process under circumstances set forth in subsection (b) of Section 1-50 of the Illinois Limited Liability Company Act.

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: 7/10/2015

Month, Day, Year



Signature

Daniel A Kern, CEO- mBR

Name and Title (type or print)

Member of SmartEnergy Holdings, LLC

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.

**ATTACHMENT B: In-state agent contacts**

**Commonwealth Edison Company**

Thomas S. O'Neill, Sr. Vice President & General Counsel

440 S. LaSalle St., Ste. 3300

Chicago, IL 60605

Phone: (800) 483-3220

E-Mail: [thomas.oneill@comed.com](mailto:thomas.oneill@comed.com)

**From:** Lloyd Spencer

**Sent:** Friday, January 02, 2015 3:38 PM

**To:** [essd@comed.com](mailto:essd@comed.com)

**Cc:** [thomas.oneill@comed.com](mailto:thomas.oneill@comed.com)

**Subject:** New RES setup

Dear Sir / Madam,

I am writing in connection with an ARES application to the IL state commission. The application requires:

**"Proof that applicant notified the designated in-state agent for each affected utility that Applicant intends to serve customers in that utility's service area"**

SmartEnergy hereby notifies ComEd that it intends to serve customers in the ComEd service area.

Regards,

Lloyd Spencer

COO

**SmartEnergy** 

575 Lexington Avenue New York, NY 10022

tel: 212 971 9726 fax 212 779 3061

[www.SmartEnergy.com](http://www.SmartEnergy.com)



575 Lexington Avenue New York, NY 10022  
tel 212 779 7000 fax 212 779 3061

August 15, 2016

Ameren Transmission Services Business Center  
1901 Chouteau  
St. Louis, MO 63103  
Mail Code: 635

Attention: Patrick Eynon

Mr. Eynon,

I am writing to you to provide notice of our plans to register to serve load within the Ameren Illinois (AMIL) control area.

SmartEnergy is already licensed in IL and serving residential customers in Commonwealth Edison territory. We have a membership application pending with Midwest ISO.

Attached please find the required documents, please let me know if you have any questions.

Regards,

A handwritten signature in black ink that reads "Lloyd Spencer".

Lloyd Spencer

COO

## Lloyd Spencer

---

**From:** Lloyd Spencer  
**Sent:** Thursday, August 25, 2016 11:43 AM  
**To:** 'wpwalz@midamerican.com'  
**Subject:** New ARES application

Mr Walz,

I am writing in connection with an ARES application to the IL state commerce commission. The application requires:

“Proof that applicant notified the designated in-state agent for each affected utility that Applicant intends to serve customers in that utility’s service area”.

SmartEnergy hereby notifies MidAmerican Energy that it intends to serve customers in the MidAmerican service area.

Regards,

Lloyd Spencer  
COO

**SmartEnergy**   
575 Lexington Avenue New York, NY 10022  
tel 212 971 9726 fax 212 779 3061  
[www.SmartEnergy.com](http://www.SmartEnergy.com)

**Attachment C: Financial Statements (Please see next page)**

**SMARTENERGY HOLDINGS, LLC**  
**FINANCIAL STATEMENTS**  
**DECEMBER 31, 2015 AND 2014**

**DYLEWSKY, GOLDBERG & BRENNER, LLC**  
**CERTIFIED PUBLIC ACCOUNTANTS**

**SMARTENERGY HOLDINGS, LLC**

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Dylewsky, Goldberg & Brenner, LLC  
CERTIFIED PUBLIC ACCOUNTANTS

## INDEPENDENT AUDITOR'S REPORT

To the Members of  
SmartEnergy Holdings, LLC

We have audited the accompanying financial statements of SmartEnergy Holdings, LLC which comprise the balance sheets as of December 31, 2015 and 2014, and the related statements of operations, changes in members' equity (deficit) and cash flows for the years then ended, and the related notes to the financial statements.

### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

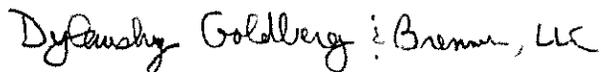
# Dylewsky, Goldberg & Brenner, LLC

## Opinion

In our opinion, the financial statements referred to present fairly, in all material respects, the financial position of SmartEnergy Holdings, LLC as of December 31, 2015 and 2014, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

## Emphasis of Matter Regarding Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 3 to the financial statements, the Company is in default of its debt covenants with its lender and has not obtained a waiver subsequent to year end. If the debt is called it would raise substantial doubt about its ability to continue as a going concern. Management's plans regarding those matters also are described in Note 3. The financial statements do not include any adjustments that might result from the outcome of this uncertainty. Our opinion is not modified with respect to that matter.



Dylewsky, Goldberg & Brenner, LLC  
Stamford, Connecticut

April 21, 2016

**SMARTENERGY HOLDINGS, LLC**  
**BALANCE SHEET**  
**DECEMBER 31, 2015 AND 2014**

**ASSETS**

	<b>2015</b>	<b>2014</b>
<b>Current Assets</b>		
Cash	\$ 27,916	\$ 120,053
Accounts receivable, net	2,777,257	906,183
Collateral deposits	254,000	208,500
Prepaid expenses	42,498	-
Prepaid marketing costs	153,008	100,648
<b>Total Current Assets</b>	<b>3,254,679</b>	<b>1,335,384</b>
 <b>Property and Equipment, net</b>	 <b>48,837</b>	 <b>44,730</b>
	<b>\$ 3,303,516</b>	<b>\$ 1,380,114</b>

**LIABILITIES AND MEMBERS' EQUITY (DEFICIT)**

<b>Current Liabilities</b>		
Accounts payable and accrued liabilities	\$ 3,645,179	\$ 1,170,754
Revolving credit facility	1,345,473	359,227
Collateral credit facility	254,000	223,000
<b>Total Current Liabilities</b>	<b>5,244,652</b>	<b>1,752,981</b>
 <b>Members' Deficit</b>	 <b>(1,941,136)</b>	 <b>(372,867)</b>
	<b>\$ 3,303,516</b>	<b>\$ 1,380,114</b>

See accompanying notes to financial statements.

**SMARTENERGY HOLDINGS, LLC**  
**STATEMENT OF OPERATIONS AND MEMBERS' EQUITY (DEFICIT)**  
**YEARS ENDED DECEMBER 31, 2015 AND 2014**

	<b>2015</b>	<b>2014</b>
<b>Revenue</b>		
Sales, net	\$ 15,992,612	\$ 2,716,355
Cost of sales	12,835,179	2,418,523
<b>Gross Profit</b>	3,157,433	297,832
<b>Expenses</b>		
Selling expenses	2,988,507	1,114,067
General and administrative expenses	1,842,293	1,145,757
Startup and organizational costs	1,660	1,768
Total Expenses	4,832,460	2,261,592
<b>Net loss before other expense</b>	(1,675,027)	(1,963,760)
<b>Other income (expense)</b>		
Interest income	20	137
Interest expense	(139,779)	(19,511)
Total other expense	(139,759)	(19,374)
<b><u>NET LOSS</u></b>	(1,814,786)	(1,983,134)
Members' equity (deficit) - beginning of year	(372,867)	586,169
Capital contributions	246,517	1,024,098
Members' deficit - end of year	\$ (1,941,136)	\$ (372,867)

See accompanying notes to financial statements.

**SMARTENERGY HOLDINGS, LLC**  
**STATEMENT OF CASH FLOWS**  
**YEARS ENDED DECEMBER 31, 2015 AND 2014**

	<b>2015</b>	<b>2014</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net Loss	<u>\$ (1,814,786)</u>	<u>\$ (1,983,134)</u>
Adjustments to Reconcile Net Loss to Net Cash		
Used by Operating Activities:		
Depreciation and amortization	34,093	29,820
Service fee capital contributions	246,517	174,098
Bad debt expense	195,329	40,693
Changes in Operating Assets and Liabilities:		
Accounts receivable	(2,066,403)	(886,656)
Collateral deposits	(45,500)	(132,000)
Prepaid expenses	(42,498)	-
Prepaid marketing costs	(52,360)	(100,648)
Accounts payable and accrued expenses	<u>2,474,425</u>	<u>1,063,786</u>
Total Adjustments	<u>743,603</u>	<u>189,093</u>
Net Cash Used by Operating Activities	<u>(1,071,183)</u>	<u>(1,794,041)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Purchase of property and equipment	<u>(38,200)</u>	<u>-</u>
Net Cash Used by Investing Activities	<u>(38,200)</u>	<u>-</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Capital contributions from members	-	850,000
Revolving credit facility advances	16,177,495	2,133,413
Revolving credit facility repayments	(15,191,249)	(1,774,186)
Collateral credit facility advances	<u>31,000</u>	<u>223,000</u>
Net Cash Provided by Financing Activities	<u>1,017,246</u>	<u>1,432,227</u>
<b><u>NET DECREASE IN CASH AND CASH EQUIVALENTS</u></b>	<b>(92,137)</b>	<b>(361,814)</b>
Cash and cash equivalents - beginning of year	<u>120,053</u>	<u>481,867</u>
Cash and cash equivalents - end of year	<u>\$ 27,916</u>	<u>\$ 120,053</u>
<b>Supplemental cash flow information</b>		
Interest paid	\$ 139,779	\$ 18,897

See accompanying notes to financial statements.

**SMARTENERGY HOLDINGS, LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2015 AND 2014**

**NOTE 1 OPERATIONS**

**Nature of Organization**

SmartEnergy Holdings, LLC (“SmartEnergy” or the “Company”) was formed January 2012 as a Delaware limited liability company and commenced operations September 2013.

SmartEnergy’s business primarily involves the sale of retail electricity to residential and commercial customers in Ohio, Pennsylvania, New Jersey, Massachusetts and Delaware under variable-priced, cancellable agreements. The Company markets electricity and derives its gross margin from the difference between the price at which it sells the commodity to its customers and the price at which it purchases the associated volumes from its suppliers.

**NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Operating Revenues**

Operating revenues are recorded as the electricity is delivered to customers. At the end of each month, SmartEnergy accrues an estimate for the unbilled amount of electricity delivered. The accrual is based upon the amount of electricity delivered to customers at estimated average rates.

**Recently Issued Accounting Standards**

In May 2014, the Financial Accounting Standards Board (“ASU”) 2014-09, *Revenue from Contracts with Customers*, which requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The ASU will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective. The new standard is effective for the Company in the year 2018. Early application is not permitted. The Company is evaluating the effect that ASU 2014-09 will have on its financial statements and related disclosures. The standard permits the use of either the retrospective or cumulative effect transition method. The Company has not yet selected a transition method nor has it determined the effect of the standard on its ongoing financial reporting.

**Cash and Cash Equivalents**

All highly liquid, temporary cash investments with an original maturity of three months or less when purchased are considered to be cash equivalents. For the purpose of the statement of cash flows, cash and cash equivalents consist of cash and cash equivalents as defined above.

**Use of Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from such estimates and such differences could be material.

**SMARTENERGY HOLDINGS, LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2015 AND 2014**

**NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

**Accounts Receivable**

Accounts receivable are reported at the amount management expects to collect from outstanding balances. Differences between the amount due and the amount management expects to collect are reported in the results of operations of the year in which those differences are determined, with an offsetting entry to allowance for doubtful accounts. Balances that are still outstanding after management has used reasonable collection efforts are written off through a charge to allowance for doubtful accounts and a credit to accounts receivable.

**Property and Equipment**

Property and equipment are recognized at cost less accumulated depreciation and any accumulated impairment losses. Cost includes expenditures that are directly attributable to the acquisition of the asset to bring the asset to a working condition for its intended use. The commencement date for capitalization of costs occurs when SmartEnergy first incurs expenditures for the qualifying assets and undertakes the required activities to prepare the assets for their intended use.

Depreciation commences when the assets are available for use and is recognized on a straight-line basis to depreciate the cost of these assets to their estimated residual value over their estimated useful lives. Maintenance and repairs are charged to expense as incurred. When significant parts of an item included in fixed assets have different useful lives, they are accounted for as separate components of the asset and depreciated over their estimated useful life on a straight-line basis.

Estimated useful lives are as follows:

<u>Asset Category</u>	<u>Depreciation Method</u>	<u>Useful Life</u>
Computer software	Straight-line	3 years

An item of property and equipment is derecognized upon disposal or when no future economic benefits are expected to arise from the continued use of the asset. Any gain or loss arising on derecognition of the asset (calculated as the difference between the net disposal proceeds and the carrying amount of the item) is included in operating results in the period the item is derecognized.

**Uncertainty in Income Taxes**

SmartEnergy evaluates all significant tax positions as required by accounting principles generally accepted in the United States of America. As of December 31, 2015 and 2014, SmartEnergy does not believe that it has taken any positions that would require the recording of any additional tax liability nor does it believe that there are any unrealized tax benefits that would either increase or decrease within the next year.

**SMARTENERGY HOLDINGS, LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2015 AND 2014**

**NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

**Advertising**

SmartEnergy expenses non-direct response advertising production costs when incurred and communication costs the first time the advertising occurs. SmartEnergy also utilizes direct response advertising including telemarketing, brochures, and direct-mail advertisements. Direct response advertising expenses are capitalized when incurred (as prepaid marketing costs) and amortized over a period of three months, the period SmartEnergy expects to obtain sales as a result of the advertisements. Advertising expenses are included in selling expenses. Total advertising expenses incurred as of the years ended December 31, 2015 and 2014 were \$2,431,740 and \$1,038,075, respectively.

**NOTE 3 GOING CONCERN**

As shown in the accompanying financial statements, SmartEnergy has incurred losses and suffered negative cash flows from operations for the years ended December 31, 2015 and 2014. As a result, SmartEnergy is in default of its debt covenants with its lender and has not obtained a waiver subsequent to year end.

As SmartEnergy grows, the managing members believe they have the resources and willingness to fund SmartEnergy's operations if the lender chooses to call the loan. Subsequent to year end the lender has not yet called the loan.

**NOTE 4 ACCOUNTS RECEIVABLE**

Accounts receivable consisted of the following for the years ended December 31:

	<u>2015</u>	<u>2014</u>
Billed accounts receivable	\$ 1,895,937	\$ 523,782
Unbilled accounts receivable	<u>902,538</u>	<u>392,280</u>
	2,798,475	916,062
Less: allowance for doubtful accounts	<u>(21,218)</u>	<u>(9,879)</u>
Total Accounts Receivable, net	\$ <u>2,777,257</u>	\$ <u>906,183</u>

**SMARTENERGY HOLDINGS, LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2015 AND 2014**

**NOTE 5 PROPERTY AND EQUIPMENT**

Property and equipment consisted of the following for the years ended December 31:

	<u>2015</u>	<u>2014</u>
Computer software	\$ 127,660	\$ 89,460
Less: accumulated depreciation	<u>(78,823)</u>	<u>(44,730)</u>
Total Property and Equipment, net	\$ <u>48,837</u>	\$ <u>44,730</u>

**NOTE 6 COLLATERAL DEPOSITS**

Collateral deposits represent cash which is posted with various regional transmission organizations (“RTO”) and local distribution companies (“LDC”) as collateral for performance assurance, default supply, or for other financial assurance programs, and are classified as current based on the duration and nature of the deposit requirements.

**NOTE 7 RELATED PARTY TRANSACTIONS**

SmartEnergy and Main Street Direct, LLC (“Main Street”), an entity controlled by the majority members of SmartEnergy, have entered into an agreement to have Main Street provide various marketing and administrative services to SmartEnergy through August 2018. The services include marketing, accounting, payroll, human resource, secretarial, and computer services, as well as, other office expense and facility usage. In consideration for providing the services, SmartEnergy pays 117.65% of actual costs incurred on their behalf. Fees charged in 2015 and 2014 for these services amounted to \$246,518 and \$174,099, respectively and were recorded as offsets to additional capital contributed by certain members. Amounts due from SmartEnergy to Main Street are included in accounts payable and accrued liabilities at December 31, 2015 and 2014 were \$1,166,206 and \$592,551, respectively.

**NOTE 8 TRANSACTION AGREEMENT**

SmartEnergy has entered into certain transaction agreements with Shell Energy North America (US), L.P. (“Shell Energy”). SmartEnergy has agreed to purchase gas and power from Shell Energy and to receive certain related services and financing.

In the transaction agreement, SmartEnergy has agreed to use the personal property, certain instruments, accounts receivable, deposit accounts, and investment property of SmartEnergy as collateral against any default on their obligations under the agreement. The security grants Shell Energy first priority security, interest in, general lien upon, and right of set-off against the collateral to secure obligations. The agreement also includes certain covenants that SmartEnergy must maintain.

**SMARTENERGY HOLDINGS, LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2015 AND 2014**

**NOTE 8 TRANSACTION AGREEMENT (continued)**

As part of the agreement, secured bank accounts were established at SmartEnergy's bank whereby Shell Energy has direct access to withdraw funds. The balance in the secured cash accounts at December 31, 2015 and 2014 were \$1,988 and \$105,406, respectively.

SmartEnergy also maintains a loan agreement with Shell Energy to finance the purchase of electrical power and gas, and to provide collateral support to third parties, subject to certain conditions. The facility's pooled principal amount begins at \$250,000 and increases up to \$20,000,000. The amount increases in four levels based on triggers calculated from the combined volume of gas and/or power being consumed by SmartEnergy's customers. The triggers begin at 1,000 MMBtus (Level 1 trigger) and increase to 1,500,000 MMBtus (Level 4 trigger). Under the loan agreement, SmartEnergy currently has a revolving credit facility, a collateral credit facility, and a storage credit facility. There was no drawdown on the storage credit facility at December 31, 2015.

The revolving credit facility carries a variable interest rate calculated daily on a per annum basis of 360 days. The interest rate is calculated as 4% plus the greater of LIBOR or 3%. SmartEnergy is in technical default on its facility, as a result, the interest rate has been increase by an additional interest factor of 5% in accordance with the terms of the agreement. The interest as of the year ended December 31, 2015 is 8%.

Both the collateral and the storage credit facilities carry a variable interest rate calculated daily on a per annum basis of 360 days. The interest rate is calculated at the greater of 4% or LIBOR plus 4% which ever is greater, (8% as of the year ended December 31, 2015). If SmartEnergy defaults on the payment of the facility the interest rate will increase by the additional interest factor (5%) but it cannot exceed the maximum interest rates allowable under law.

SmartEnergy can terminate the transaction agreement after the primary term date of August 19, 2018 at their request provided that SmartEnergy meets various conditions, including but not limited to the following: SmartEnergy is not in default of the agreement, Shell Energy has no further obligations to deliver products or render services on behalf of SmartEnergy, and SmartEnergy has no further obligations to Shell Energy. The transaction agreement can also be terminated by SmartEnergy prior to the primary term date in the case of a Shell Energy default by providing 90 days written notice of termination.

**NOTE 9 MEMBERS' EQUITY AND WARRANTS OUTSTANDING**

SmartEnergy has granted warrants to Shell Energy which are exercisable into 180,000 Class B units. The warrants have an exercise price of \$1.00 per unit and shall vest ratably over a sixty month period from the grant date. The warrants if not exercised will expire five years following SmartEnergy's receipt of the last scheduled delivery of power, or gas, whichever is later under the transaction agreement with Shell. The warrants also carry certain cashless exercise and drag-along rights.

**SMARTENERGY HOLDINGS, LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2015 AND 2014**

**NOTE 9 MEMBERS' EQUITY AND WARRANTS OUTSTANDING (continued)**

According to U.S. GAAP, the value of warrants should be recognized in the financial statements based upon the fair value of the warrant at the grant date. SmartEnergy has run deficits since inception and management has evaluated the warrants to have a fair value of insignificant value. Therefore, no amounts have been recorded for the warrants in the financial statements.

**NOTE 10 PURCHASE OF RECEIVABLES AGREEMENT**

SmartEnergy has entered into a purchase of receivables agreement ("POR") with a local distribution company ("LDC"). The POR is for SmartEnergy to sell and for the LDC to purchase, without recourse, certain accounts receivable arising from the sale of retail electric services provided in the ordinary course of business by SmartEnergy within the LDC's service area.

**NOTE 11 CONCENTRATIONS OF CREDIT RISK**

Financial instruments which potentially subject SmartEnergy to concentrations of credit risk consist principally of cash deposits and money market funds. SmartEnergy places its cash deposits in Federal Deposit Insurance Corporation ("FDIC") insured financial institutions. The cash deposits may exceed FDIC-insured levels from time to time.

*Commodity Price Risk*

SmartEnergy is exposed to market risks associated with commodity prices and market volatility where estimated customer usage does not match actual customer usage. Management actively monitors these positions on a daily basis in accordance with its risk management policy. This policy sets out a variety of limits, or most importantly, thresholds for open positions in electricity. SmartEnergy's exposure to market risk is affected by a number of factors, including accuracy of estimation of customer commodity usage, commodity prices, and volatility and liquidity of markets. SmartEnergy may enter into derivative instruments and/or forward purchases in order to manage exposures to changes in commodity prices. The derivative instruments that may be used are designed to fix the price of supply for estimated customer commodity demand and thereby fix margins. Derivative instruments are generally transacted over-the-counter. The inability or failure of SmartEnergy to manage and monitor the above market risks could have a material adverse effect on the operations and cash flows of SmartEnergy. SmartEnergy's ability to mitigate weather effects is limited by the degree to which weather conditions deviate from normal.

*Customer Credit Risk*

In some markets, SmartEnergy has customer credit risk and, therefore, credit review processes have been implemented to perform credit evaluations of customers and manage customer default. If a significant number of customers were to default on their payments, it could have a material adverse effect on the operations and cash flows of SmartEnergy. Management factors default from credit risk in its margin expectations.

**SMARTENERGY HOLDINGS, LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2015 AND 2014**

**NOTE 12 INCOME TAX STATUS**

The Company, which is a limited liability company, has elected under the Internal Revenue Code to be taxed as a Limited Liability Company. In lieu of federal corporate income taxes, the members of a Limited Liability Company are taxed on their proportionate share of the Company's taxable income. The Company is subject to certain state franchise and gross receipts taxes. Therefore, no provision or liability for federal income taxes has been included in the financial statements.

**NOTE 13 SUBSEQUENT EVENTS**

SmartEnergy has evaluated subsequent events through April 21, 2016, the date that the financial statements were available to be issued.

## ATTACHMENT D: Confidential Loan Documentation

003-13.6  
Loan Agreement

### LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") is made and entered into as of August 19, 2013 and shall become effective as of the Effective Date, by and between SHELL ENERGY NORTH AMERICA (US), L.P., a Delaware limited partnership with offices at 1000 Main Street, 12<sup>th</sup> Floor, Houston, Texas 77002 (the "Lender") and SMARTENERGY HOLDINGS, L.L.C, a Delaware limited liability company ("Customer") and each of the Customer Parties (the "Borrower Entities").

### RECITALS

The Borrower Entities have requested that Lender provide financing to the Borrower Entities for the sole purpose of assisting the Borrower Entities in the purchase of its physical power and gas and related products requirements, the provision of related services from Lender, and the provision of collateral support to certain third parties, and Lender is willing to provide such financing upon the terms and conditions hereinafter set forth.

In consideration of the mutual covenants and agreements herein contained, Lender and each of the Borrower Entities jointly and severally agree as follows:

### AGREEMENT

#### 1. DEFINITIONS.

Capitalized terms used and otherwise defined herein shall have the meanings ascribed to them as set forth in Appendix A attached to and made a part of this Agreement, or as defined in the Global Agreement.

#### 2. AMOUNT AND TERMS OF CREDIT FACILITIES

Lender hereby agrees to establish such Credit Facilities as are each specifically identified on a Schedule attached hereto from time to time and as agreed upon by each Borrower Entity. Each Borrower Entity agrees that it is jointly and severally responsible for payment and repayment of all amounts owed pursuant to this Agreement (including each individual Credit Facility that is established). Each such Schedule shall identify for such Credit Facility, among other things, the following: the date such Credit Facility was established, the amount of such Credit Facility, the applicable Maturity Date, the repayment terms, the applicable Loan Interest Rate, the Authorized Borrower Entity and, in addition to the other terms and conditions expressly set forth in this Agreement, any specific terms and conditions for such Credit Facility. The Credit Facilities shall be evidenced separately or collectively by one or more promissory notes (referred to herein as the "Notes" or the "Promissory Notes") each of which shall be jointly and severally executed by each Borrower Entity.

#### 3. INTEREST.

3.1. Interest Calculation. Interest provided in the Notes shall be calculated daily on principal sums actually advanced to the applicable Authorized Borrower Entities pursuant to the terms of this Agreement plus any accrued interest and only from the date or dates of such advances or accruals to the date of repayment. Liability for payment of principal and interest provided in the Notes shall be limited to principal amounts actually advanced to or for the benefit of the applicable Authorized Borrower Entities pursuant to this Agreement and interest on such amounts calculated as aforesaid. Interest on the Notes shall be calculated on a per annum basis of 360 days and for the actual number of days (including the first day but excluding the last day) elapsed unless such calculation would result in a usurious rate, in which case the interest shall be calculated on a per annum basis of a year

of 365 or 366 days, as the case may be. Lender shall provide to the applicable Borrower Entity interest calculations for all interest charges under the Notes.

3.2. Interest Application.

Each Drawdown shall bear interest at the applicable Loan Interest Rate as set forth in such Credit Facility from the date of such advance to the earlier of (i) the date of repayment, or (ii) the applicable Maturity Date. Any amounts of principal or interest not paid when due shall bear interest at the Past Due Rate.

3.3. Interest Adder. If a Borrower Entity is not in compliance with the Financial Metrics and in addition to any other rights and remedies that Lender may have, the Borrower Entities Loan Interest Rate shall be increased by the Interest Adder.

4. **ACCEPTANCE OF PRE-PAYMENT; NO WAIVER.** The Notes may be prepaid at any time, and from time to time, in whole or in part, without premium or penalty. The acceptance by Lender of any payment under this Agreement or the Notes which is less than the payment in full of all amounts due and payable at the time of such payment shall not (i) constitute a waiver of or impair, reduce, release or extinguish any remedy of Lender or the rights of Lender to exercise the foregoing option or any other option granted to Lender or any other party to this Agreement or the Notes, governing, guaranteeing or evidencing the loan(s) made hereunder, at that time or at any subsequent time, or nullify any prior exercise of any such option, or (ii) impair, reduce, release, extinguish or adversely affect the obligations of any Borrower Entity, each of who is liable under such Notes.

5. **REPRESENTATIONS AND WARRANTIES OF EACH BORROWER ENTITY**

In order to induce Lender to enter into this Agreement, each Borrower Entity individually represents and warrants, now and continuing throughout the term of this Agreement (which representations and warranties will survive the delivery of the Notes and the making of the loans hereunder), that:

5.1. Binding Obligations. The Notes and this Agreement constitute valid and binding, joint and several obligations of each of the Borrower Entities enforceable in accordance with their terms (except that enforcement may be subject to any applicable bankruptcy, insolvency or similar laws generally affecting the enforcement of creditors' rights).

5.2. No Legal Bar or Resultant Lien. The Notes and this Agreement do not and will not result in the breach of, or constitute a default under, any provisions of its articles of organization, regulations, or any material contract, agreement, instrument or Governmental Requirement to which any Borrower Entity is subject, or result in the creation or imposition of any Lien upon any Property of any Borrower Entity, other than those permitted by this Agreement or a Transaction Agreement.

5.3. No Consent. Each Borrower Entity's execution, delivery and performance of the Notes and this Agreement do not require the consent or approval of any other Person which has not been obtained, including, without limitation, any Governmental Authority.

5.4. Existence. Each Borrower Entity is duly organized, legally existing and in good standing under the laws where it was formed.

5.5. Power and Authorization. Each Borrower Entity is duly authorized and empowered to create and issue the Notes and execute, deliver and perform this Agreement. All action on each Borrower Entity's part requisite for the due creation and issuance of the Notes and for the due execution, delivery and performance of this Agreement has been duly and effectively taken.

## 6. COVENANTS OF EACH BORROWER ENTITY

Each Borrower Entity covenants with Lender as follows:

- 6.1. Payments. Each Borrower Entity will make all payments required pursuant to this Agreement, including each Credit Facility, on a timely basis.
- 6.2. Use of Funds. All funds drawn under a Credit Facility will be used solely for the purposes specified in such Credit Facility.
- 6.3. Inspections. Lender, or its representatives, will be permitted access to inspect and review at any time during normal business hours each Borrower Entity's records concerning payments made with advances hereunder; provided, however, that if no Event of Default has occurred under this Agreement, Lender will provide two (2) Business Days advance written notice to such Borrower Entity of such inspection and review.
- 6.4. Further Assurances. Each Borrower Entity will execute such additional instruments as may be reasonably requested by Lender and are necessary in order to carry out the intent of this Agreement.

## 7. EVENTS OF DEFAULT AND REMEDIES

- 7.1. Events of Default. Any of the following events shall constitute an Event of Default hereunder (each an "Event of Default"):
  - 7.1.1. any Borrower Entity fails to make any payment when due of any principal or interest due under this Agreement or on the Notes, which failure remains unremedied for a period of three (3) Business Days after written notice;
  - 7.1.2. any representation or warranty made by a Borrower Entity herein is false or misleading in any material respect when made or when deemed made or repeated;
  - 7.1.3. the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within three (3) Business Days after written notice;
  - 7.1.4. any Borrower Entity becomes Bankrupt;
  - 7.1.5. An Additional Event of Default occurs;
  - 7.1.6. the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of any Borrower Entity under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount, which results in such indebtedness becoming, immediately due and payable or (ii) a default by any Borrower Entity in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount.
- 7.2. Acceleration of Payment. Upon the occurrence of any Event of Default under Section 7.1.4, the entire principal amount of the Facility Indebtedness then outstanding hereunder or under the Notes, together with interest then accrued thereon shall become immediately due and payable, all without written notice and without presentment, demand, notice of intent to accelerate, notice of acceleration, protest, notice of protest or dishonor or any other notice of default of any kind, all of which are hereby expressly waived by each Borrower Entity. Lender shall also have the right, upon the occurrence and at any time during the continuance of any other Event of Default described in Section 7.1 hereof, at its election to declare the Notes to be immediately due and payable without presentment,

protest, or notice of any kind, all of which are hereby expressly waived by each Borrower Entity.

- 7.3. Termination of Commitment. Upon the happening of any Event of Default, any obligation of Lender to advance funds hereunder, and all other obligations (if any) of Lender hereunder, shall immediately cease and terminate, unless and until the Lender shall reinstate same in writing.
- 7.4. Funds Expended. Any of Lender's funds used for the purposes referred to in this Article 7 shall be deemed advances under the Notes or under this Agreement, and in any event shall bear interest at the Past Due Rate as set forth herein.

#### 8. CONDITIONS TO EACH ADVANCE

Conditions to Each Advance. Lender shall not be obligated to make any advance under this Agreement including any Credit Facility unless and until the following conditions shall have been satisfied (with proof thereof in form and sufficiency as may be reasonably requested by Lender) or waived by Lender:

- 8.1. The representations and warranties made in Article 5 hereof shall be true and correct on and as of the date of the advance with the same effect as if made on such date; Lender shall have received such certifications in this respect as Lender may reasonably request;
- 8.2. Lender shall have received a completed Drawdown Notice from an Authorized Borrower Entity and if the Drawdown Notice is pursuant to the Collateral Credit Facility, such Drawdown Notice must be accompanied by supporting documentation from the party requesting the collateral; and
- 8.3. There shall be no Event of Default, no pending Event of Default or anticipatory breach by any Borrower Entity under this Agreement, any Transaction Agreement or any of the Notes.

#### 9. SECURITY

As security for the obligations hereunder, each Borrower Entity has executed a security agreement and a secured account agreement and has posted the Performance Assurance Amount (if any) and has entered into such other security arrangements as set forth in the applicable Transaction Agreements. In an Event of Default by a Borrower Entity and in addition to any other rights that Lender may have, each Borrower Entity hereby jointly and severally authorizes Lender to offset such Borrower Entity's obligations to Lender hereunder against any such security arrangements.

#### 10. GENERAL TERMS AND PROVISIONS

- 10.1. Advance Not a Waiver. No advance of loan proceeds hereunder shall constitute a waiver of any of the covenants or conditions of Lender's obligation to make further advances nor, in the event any Borrower Entity is unable to satisfy any such condition, shall any such advance or waiver have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default as hereinabove provided.
- 10.2. Conditions for Benefit of Lender. All conditions to the obligations of Lender to make advances hereunder are imposed solely and exclusively for the benefit of Lender and its assigns, and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make advances in the absence of strict compliance with any or all of such conditions, and any or all of such conditions may be freely waived in whole or in part by Lender at any time if, in Lender's sole discretion, Lender deems it advisable to do so.

- 10.3. **Compliance Responsibility.** Notwithstanding the review and approval by Lender of any matters specified in this Agreement, Lender shall have no responsibility hereunder for compliance by any Borrower Entity with Governmental Requirements. EACH BORROWER ENTITY EXPRESSLY ASSUMES SUCH RESPONSIBILITY AND SHALL INDEMNIFY AND HOLD LENDER HARMLESS FROM ANY CLAIM, ACTION, OR SUIT CLAIMING BREACH OF SUCH RESPONSIBILITY BY LENDER.
- 10.4. **Drawdown Notices Provisions.** Drawdown Notices may be sent to Lender via facsimile in accordance with the notice provisions set forth in the Global Agreement or via electronic mail to such electronic mail addresses as may be specified by Lender from time to time in writing. Drawdown Notices sent via electronic mail shall be deemed received by Lender when opened by Lender. Each Borrower Entity understands and agrees that Lender does not represent or warrant that it is able to receive electronic mail communication or that such communication will be opened in a timely manner. Should any Borrower Entity choose to send any Drawdown Notice via electronic mail, it does so at its own risk. Lender agrees to use commercially reasonable efforts to promptly notify the applicable Borrower Entity via electronic e-mail when it receives and opens a notice request via electronic mail, but it shall not be considered a breach of Lender's obligations hereunder should it inadvertently fail to do so.
- 10.5. **Compensation to Lender; Interest.** It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, if the transactions contemplated hereby would be usurious under applicable law (including the laws of the State of Texas and the laws of the United States of America), then, notwithstanding anything to the contrary in the Notes, this Agreement, the security agreements or any agreement entered into in connection with or as security for the Notes, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, charged or received under the Notes, this Agreement, the security agreements, any agreement entered into in connection with or as security for the Notes or otherwise in connection with the Notes, shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on the Notes by the holder thereof (or, if the Notes shall have been paid in full, refunded to the applicable Borrower Entity); and (ii) in the event that the maturity of the Notes is accelerated by reason of an election of the holder thereof resulting from any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount allowed by applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on the Notes (or, if the Notes shall have been paid in full, refunded to such Borrower Entity).
- 10.6. **Renewal, Extension or Rearrangement.** All provisions of this Agreement and the security agreements relating to the Notes or other Facility Indebtedness shall apply with equal force and effect to each and all promissory notes hereinafter executed which in whole or in part represent a renewal, extension for any period, increase or rearrangement of any part of the Facility Indebtedness originally represented by the Notes or of any part of such other Facility Indebtedness and this Agreement shall remain in effect so long as any Facility Indebtedness remains outstanding.
11. **Global Agreement.** Lender and each Borrower Entity agree that except as otherwise expressly provided to the contrary herein, the terms of the Global Agreement are incorporated herein and shall apply to this Agreement *mutatis mutandis*.

Loan Agreement

[This Agreement is signed on the next page.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective as of the Effective Date.

**LENDER:**

**SHELL ENERGY NORTH AMERICA (US), L.P.**

BY: \_\_\_\_\_  
NAME: Thomas P. Stokes  
TITLE: Vice President Finance and Treasurer

On behalf of each Borrower Entity

**BORROWER ENTITIES:**

**SMARTENERGY HOLDINGS, LLC**

BY:   
NAME: Daniel A. Korman  
TITLE: CEO

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective as of the Effective Date.

**LENDER:**

**SHELL ENERGY NORTH AMERICA (US), L.P.**

BY:   
NAME: Thomas P. Stokes  
TITLE: Vice President Finance and Treasurer

On behalf of each Borrower Entity

**BORROWER ENTITIES:**

**SMARTENERGY HOLDINGS, LLC**

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

## APPENDIX A – DEFINITIONS

“Agreement” shall mean this Loan Agreement, as it may from time to time be amended or supplemented.

“Authorized Borrower Entity” means the Borrower Entity authorized to issue a Drawdown Notice for funds under a Credit Facility.

“Borrower Entities” means each of the Customer Parties, provided that each such entity is also a signatory to this Agreement.

“Credit Facility” means the financing facility described in a Schedule attached hereto.

“Cross Default Amount” shall mean the sum of \$50,000.

“Drawdown” means any advance under a Credit Facility.

“Drawdown Date” means the date in which a Drawdown occurs.

“Drawdown Notice” means an irrevocable notice from an Authorized Borrower Entity to Lender in the required form requesting a Drawdown in the form attached hereto as Exhibit A.

“Event of Default” shall have the meaning set forth in Section 7.1 of this Agreement.

“Facility Indebtedness” shall mean any and all amounts owing by a Borrower Entity to Lender in connection with the Notes or this Loan Agreement (including the Credit Facilities).

“Global Agreement” means that certain Global Agreement, of even date herewith, by and among Lender and each Borrower Entity, as may be amended, supplemented, modified and restated from time to time.

“Interest Adder” means 50 basis points.

“LDC” means a local distribution company.

“Lender” has the meaning set forth in the introductory paragraph to this Agreement, including any permitted successors and assigns.

“Level I Trigger” means the Borrower Entities’ delivery to customers in a single calendar month of a combined volume of gas and/or power of at least 1,000 MMBtus (based on an 8.5 MMBtu heat rate equivalent for each MWh delivered).

“Level II Trigger” means the Borrower Entities’ delivery to customers in a single calendar month of a combined volume of gas and/or power of at least 300,000 MMBtus (based on an 8.5 MMBtu heat rate equivalent for each MWh delivered).

“Level III Trigger” means the Borrower Entities’ delivery to customers in a single calendar month of a combined volume of gas and/or power of at least 800,000 MMBtus (based on an 8.5 MMBtu heat rate equivalent for each MWh delivered).

“Level IV Trigger” means the Borrower Entities’ delivery to customers in a single calendar month of a combined volume of gas and/or power of at least 1,500,000 MMBtus (based on an 8.5 MMBtu heat rate equivalent for each MWh delivered).

“Loan Interest Rate” shall have the meaning ascribed to it in the applicable Schedule.

“Notes” or “Promissory Notes” shall mean the Promissory Note or Promissory Notes evidencing each Credit Facility and the term “Note” or “Promissory Note” shall mean any of them.

“Past Due Rate” shall mean the lesser of (a) the Loan Interest Rate set forth in the Schedule for the applicable Credit Facility plus 500 basis points and (b) the highest rate allowed by applicable law.

"Pooled Principal Amount" shall be,

- (i) initially, TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) for use only under the terms of Schedule 2 of this Agreement (Collateral Credit Facility).
- (ii) Upon the Borrower Entities' achievement of the Level I Trigger, the Pooled Principal Amount shall automatically increase to the sum of FIVE MILLION DOLLARS (\$5,000,000) for use under the terms of any Credit Facility.
- (iii) Upon the Borrower Entities' achievement of the Level II Trigger, the Pooled Principal Amount shall automatically increase to the sum of TEN MILLION DOLLARS (\$10,000,000) for use under the terms of any Credit Facility.
- (iv) Upon the Borrower Entities' achievement of the Level III Trigger, the Pooled Principal Amount shall automatically increase to the sum of FIFTEEN MILLION DOLLARS (\$15,000,000) for use under the terms of any Credit Facility.
- (v) Upon the Borrower Entities' achievement of the Level IV Trigger, the Pooled Principal Amount shall automatically increase to the sum of TWENTY MILLION DOLLARS (\$20,000,000) for use under the terms of any Credit Facility.

"Property" shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"TDSPs" shall mean transmission and distribution service providers, including LDCs.

EXHIBIT A  
FORM OF DRAWDOWN NOTICE

TO: SHELL ENERGY NORTH AMERICA (US), L.P.

FROM: [●]

DATE: Insert Date

1. This Drawdown Notice is delivered to you pursuant to Schedule ● the Loan Agreement dated as of [INSERT DATE], between ● as an Authorized Borrower Entity and SHELL ENERGY NORTH AMERICA (US), L.P. as Lender (the "Loan Agreement"). Capitalized terms used herein, and not otherwise defined herein, shall have the meanings attributed to such terms in the Loan Agreement.

2. Borrower Entity hereby requests the following Drawdown:

- (a) Drawdown Date: \_\_\_\_\_
- (b) Amount of Drawdown: \_\_\_\_\_
- (c) Payment, issuance or delivery instructions: \_\_\_\_\_

3. Borrower Entity hereby warrants and represents unto Lender that the following is true, correct, and complete as of the date of the Drawdown Notice:

A. The sum of (i) the principal amount outstanding under the Notes plus (ii) the amount of the Drawdown requested is not greater than the Pooled Principal Amount.

B. All conditions precedent to the making of the advance requested by this Drawdown have been fully satisfied.

C. All representations and warranties set forth in the Loan Agreement are true and correct as if made on the Effective Date.

D. No Event of Default or event that could become an Event of Default under the Loan Agreement after notice or lapse of time has occurred and is continuing.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

Yours very truly,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NOTE: If the Drawdown Notice is pursuant to the Collateral Credit Facility, attach a copy of the request for collateral support from the party requesting the Collateral or the applicable utility

EXHIBIT B - FORM OF PROMISSORY NOTE

US \$20,000,000

Date: August 19, 2013

SmartEnergy Holdings, LLC and each of the Borrower Entities (as such term is defined in the Loan Agreement (defined below)) (collectively, the Borrower Entities), each with principal offices at 575 Lexington Avenue, New York, NY 10022, for value received, promises to pay in accordance with the terms of the Loan Agreement, with the balance being due in full on or before the earliest of (i) the Primary Term Date or (ii) the occurrence of an Event of Default under the Loan Agreement, to the order of Shell Energy North America (US), L.P., a Delaware limited partnership ("Shell Energy"), at Shell Energy's offices located at 1000 Main, Houston, Texas 77002 or at such other address as Shell Energy may advise from time to time, in coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, the principal sum of TWENTY MILLION DOLLARS (US\$20,000,000) or so much thereof as may be advanced and from time to time and outstanding under one or more Credit Facilities pursuant to the Loan Agreement.

All capitalized terms which are used but not defined in this Note shall have the same meanings as in the Loan Agreement dated of even date herewith, between the Borrower Entities and Shell Energy (such Loan Agreement, together with all amendments or supplements thereto, being the "Loan Agreement").

In addition to the principal amount referred to in the first paragraph of this Note, the Borrower Entities also jointly and severally agree to pay interest on all amounts advanced hereunder and remaining from time to time outstanding from the date hereof until maturity at the rate set forth in the Loan Agreement. Past due principal and interest shall bear interest from maturity (whether caused by acceleration or otherwise) until paid at the rate set forth in the Loan Agreement. Interest shall be calculated on the basis of the actual number of days elapsed (including the first day, but excluding the last) and computed as if each year consisted of 360 days unless such calculation would result in a usurious rate, in which event interest shall be calculated on the basis of a 365 or 366 day year, as the case may be.

Accrued interest and principal advances hereunder are due and payable in full at the maturity of this Note.

This Note may be prepaid at any time, and from time to time, in whole or in part, without premium or penalty.

Payment made by a Borrower Entity under this Note shall be made in immediately available funds before 2:00 p.m., Houston time, on the date that such payment is required to be made. Any payment received and accepted by Shell Energy after such time shall be considered for all purposes (including the calculation of interest, to the extent permitted by law) as having been made on the next following Business Day.

If the date for any payment hereunder falls on a day which is not a Business Day, then for all purposes of this Note the same shall be deemed to have fallen on the next following Business Day, and such extension of time shall in such case be included in the computation of payments of interest.

Each Borrower Entity expressly waives valuation and appraisal, demand and presentment for payment, notice of nonpayment, notice of intent to demand or accelerate, notice of demand, notice of acceleration, protest, notice of protest, notice of dishonor, bringing of suit, and diligence in taking any

action to collect amounts due hereunder and in the handling of any collateral securing amounts due or to become due hereunder.

This Note is issued pursuant to and subject to the terms and provisions of the Loan Agreement. Reference is made to the Loan Agreement for provisions for the acceleration of the maturity hereof on the occurrence of certain events specified therein, for interest rate computations, for the reimbursement of attorneys' fees or other costs of collection or enforcement, and for all other pertinent purposes. In the event of a conflict between the terms and provisions of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall prevail.

THIS NOTE SHALL BE DEEMED TO HAVE BEEN EXECUTED IN THE STATE OF TEXAS AND SHALL BE GOVERNED BY THE LAWS OF SUCH STATE (WITHOUT GIVING EFFECT TO CONFLICT OF LAWS RULES OR CHOICE OF LAWS RULES THEREOF).

THIS NOTE, THE LOAN AGREEMENT, THE GLOBAL AGREEMENT AND THE OTHER TRANSACTION AGREEMENTS TO WHICH EACH PARTY HERETO IS A PARTY THERETO REPRESENT THE FINAL AGREEMENT OF THE PARTIES WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

ON BEHALF OF EACH OF THE BORROWER ENTITIES:

**BORROWER ENTITY:**

**SMARTENERGY HOLDINGS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE 1 – REVOLVING CREDIT FACILITY

Establishment Date:	Effective Date
Borrower Entity entitled to draw on this Credit Facility (Authorized Borrower Entity):	SmartEnergy Holdings, LLC
Revolving Credit Facility Amount:	Pooled Principal Amount less any amounts outstanding under any other Credit Facility
Revolving Credit Facility Maturity Date:	Primary Term Date
Loan Interest Rate:	The lesser of (a) the highest rate allowed by applicable law and (b) 4%, plus the Interest Adder (if applicable), plus the greater of (i) LIBOR and (ii) 3%

1. **Revolving Credit Facility.** Subject to the provisions of this Agreement, Lender hereby agrees to establish a revolving credit facility up to the Revolving Credit Facility Amount set forth above (the "Revolving Credit Facility"). The principal amount outstanding under the Revolving Credit Facility may revolve and an Authorized Borrower Entity may borrow, repay and re-borrow amounts under the Revolving Credit Facility; *provided, however*, that at no time shall the principal amount outstanding under the Revolving Credit Facility exceed the Revolving Credit Facility Amount.
2. **Promissory Note.** To evidence the Revolving Credit Facility, the Borrower Entities have issued, executed and delivered to Lender a Promissory Note dated of even date with this Agreement, in which the balance is payable in full on or before the Revolving Credit Facility Maturity Date, bearing interest at the Loan Interest Rate for the Revolving Credit Facility and which is otherwise in the form attached to this Agreement as **Exhibit B** (the "Promissory Note").
3. **Obligation to Advance Sums, Repayment Date.** Lender shall not be obligated to advance to a Borrower Entity any sums under the Revolving Credit Facility after the Revolving Credit Facility Maturity Date and at no time may any individual tranche of the Revolving Credit Facility, as more fully explained below, remain outstanding beyond the 20<sup>th</sup> day of the calendar month following the month in which the Drawdown was made. The earlier of the date such tranche is paid off or the 20<sup>th</sup> day of the month following the month in which the Drawdown was made shall be the "Tranche Repayment Date". For example, a Drawdown made on January 5, January 20 or January 30 will each have a Tranche Repayment Date (i.e., due date) of February 20. Any subsequent adjustments to invoices or other items directly associated with a Drawdown shall be deemed to have occurred as of the original date of such affected Drawdown provided that the party requesting the subsequent adjustment has notified the other party in writing of the amount of such adjustment and reason for such adjustment at least two Business Days prior to the effected Tranche Repayment Date.
4. **Drawdown of Revolving Credit Facility.** The Authorized Borrower Entity may request Drawdowns by delivering a Drawdown Notice to Lender before 9:30 a.m. (Houston local time) on the requested Drawdown Date or the Authorized Borrower Entity shall be deemed to have requested a Drawdown on the applicable due date for any remittance required pursuant to Section 4.2.5 of the Security Agreement; *provided, however*, that the principal amount outstanding under the Revolving Credit Facility at any time may not exceed the Revolving Credit Facility Amount. The Authorized Borrower Entity hereby irrevocably directs Lender to deposit all funds drawn from the Revolving Credit Facility under this Agreement and the Promissory Note into the Primary Secured Account.

5. Repayment of Revolving Credit Facility. All amounts outstanding under the Revolving Credit Facility together with all interest accrued under the Revolving Credit Facility shall be due and payable on the earlier of (i) the applicable Tranche Repayment Date, (ii) the Revolving Credit Facility Maturity Date, or (iii) the occurrence of an Event of Default under the Loan Agreement and the acceleration of the Notes by Lender; *provided, however*, if such date is not a Business Day, then payment of the principal and interest is due on the next Business Day.
6. Use of Funds under the Revolving Credit Facility. All Drawdowns of the Revolving Credit Facility shall be used for the sole purpose of paying amounts owed by a Borrower Entity to Lender under one or more of the Transaction Agreements or as otherwise set forth in Section 4.2.5 of the Security Agreement.

Lender and each Borrower Entity agrees to the establishment of this Revolving Credit Facility pursuant to the Loan Agreement.

SIGNATURE PAGE TO FOLLOW

SCHEDULE 1 – REVOLVING CREDIT FACILITY  
SIGNATURE PAGES  
August 19, 2013

**LENDER:**

**SHELL ENERGY NORTH AMERICA (US), L.P.**

By: \_\_\_\_\_  
Name: Thomas P. Stokes  
Title: Vice President Finance and Treasurer

**BORROWER ENTITIES:**

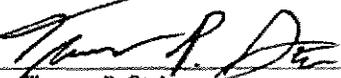
**SMARTENERGY HOLDINGS, LLC**

By:  \_\_\_\_\_  
Name: Daniel A. Kern  
Title: CEO

SCHEDULE 1 – REVOLVING CREDIT FACILITY  
SIGNATURE PAGES  
August 19, 2013

**LENDER:**

**SHELL ENERGY NORTH AMERICA (US), L.P.**

By:   
Name: Thomas P. Stokes  
Title: Vice President Finance and Treasurer

**BORROWER ENTITIES:**

**SMARTENERGY HOLDINGS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE 2 – COLLATERAL CREDIT FACILITY

Establishment Date:	Effective Date
Borrower Entities entitled to Draw on this Credit Facility (Authorized Borrower Entities):	SmartEnergy Holdings, LLC
Collateral Credit Facility Amount:	The Pooled Principal Amount less any amounts outstanding under any other Credit Facility
Collateral Credit Facility Maturity Date:	Primary Term Date
Loan Interest Rate:	The lesser of (a) the highest rate allowed by applicable law and (b) 4%, plus the Interest Adder (if applicable), plus the greater of (i) LIBOR and (ii) 4%

### 1. Establishment of Collateral Credit Facility.

Subject to the provisions of this Agreement, Lender hereby agrees to post collateral up to the Collateral Credit Facility Amount in accordance with applicable Tariff requirements, for the benefit of a Borrower Entity, in the form of cash, letters of credit or guaranties with PJM Interconnection, LLC (“PJM”), ISO New England Inc. (“ISO-NE”), New York Independent System Operator (“NYISO”), or other Independent System Operators as defined in the Global Agreement and TDSP providers in support of such Borrower Entity’s business in the Service Territories. The outstanding principal amount of the Collateral Credit Facility may revolve and the Authorized Borrower Entities may borrow, repay and re-borrow amounts under the Collateral Credit Facility; *provided, however*, that at no time shall the total amount outstanding under the Collateral Credit Facility exceed the Collateral Credit Facility Amount.

### 2. Collateral Posting.

For purposes of any collateral posted on behalf of such Borrower Entities, but under Lender’s account with a third party (taking into account Lender’s other activities within such third party), the actual amount of collateral to be posted on behalf of such Borrower Entity shall be (a) determined by Lender in its sole discretion and based upon Lender’s reasonable estimation (but always in accordance with any applicable Tariffs) of the amount of collateral that such Borrower Entity would have been required to post with such parties, as applicable, directly and (b) in such amount (up to the amount then available under the Collateral Credit Facility) and in such form as may be agreed upon by Lender and such parties. Each Borrower Entity further understands and agrees that there may be various methods of calculating the amount of collateral required in support of such Borrower Entity’s business due to Lender’s credit quality and its other on-going business with such counterparties. Lender’s method of calculating the amount of collateral required (or that would have been required) of such Borrower Entity absent this Agreement shall be controlling (provided always that it is compliance with any applicable Tariff).

If allowed by applicable Tariffs and required by Lender, all collateral postings made by a Borrower Entity with funds drawn under the Collateral Credit Facility shall be and remain in the name of Lender but be for the benefit of such Borrower Entity. If such collateral postings are in the name of such Borrower Entity, such Borrower Entity shall irrevocably direct in writing that all monies that are returned or relinquished by the parties with whom such collateral has been posted be deposited in the Primary Secured Account established in such Borrower Entity’s name. The amount of any collateral posting reduction, return or relinquishment shall be treated as a

repayment of the Collateral Credit Facility, and such amount shall be available to be re-borrowed by the Authorized Borrower Entities subject to the other terms of the Collateral Credit Facility.

3. Promissory Notes. To evidence the Collateral Credit Facility, each Borrower Entity has issued, executed and delivered to Lender a Promissory Note dated of even date with this Agreement, in which the balance is payable in full on or before the Collateral Credit Facility Maturity Date, bearing interest at the Loan Interest Rate for the Collateral Credit Facility and which is otherwise in the form attached to this Agreement as **Exhibit B** (the "Promissory Note").
4. Drawdown on Collateral Credit Facility. Lender shall not be obligated to post any amounts pursuant to the Collateral Credit Facility if an Event of Default has occurred or is continuing under this Agreement or the Transaction Agreements or when the amount of a Drawdown Notice, when aggregated with prior requests for Drawdowns, exceed the amount then available under the Collateral Credit Facility. Lender shall give each Borrower Entity prompt notice of the foregoing.
  - 4.1. NYISO and PJM Collateral Support. Each Borrower Entity understands that NYISO and PJM (collectively, the "ISOs") calculate the amount of collateral required on a daily basis and Lender, as each Borrower Entity's scheduling coordinator or qualified scheduling entity, as applicable, in the applicable ISO market, is responsible to each ISO for posting the required collateral support. As such, each Borrower Entity hereby authorizes Lender to draw on the Collateral Credit Facility up to the amount then available under the Collateral Credit Facility, for the sole purpose of posting the amount of collateral required to be posted on such Borrower Entity's behalf with each such applicable ISO. Once each calendar month, Lender shall provide such Borrower Entity with calculations showing the amount of funds drawn on behalf of such Borrower Entity under the Collateral Credit Facility with respect to each such ISO. Such Borrower Entity shall have 10 Business Days following receipt of such calculations (which may be sent by Lender to such Borrower Entity via electronic mail) to accept or dispute, in good faith and in writing, such calculations, following which such Borrower Entity shall conclusively be deemed to have accepted such calculations. If such Borrower Entity disputes a collateral support draw pursuant to this provision, the parties shall work together in good faith to promptly resolve the dispute. If acceptable to the ISO, all collateral posted hereby by Lender on behalf of a Borrower Entity shall be posted by Lender (on behalf of such Borrower Entity) directly with such ISO. If Lender ceases to be each Borrower Entity's scheduling coordinator or qualified scheduling entity, as applicable, in (i) PJM, Section 4.2 shall be applicable with respect to the posting of collateral support with respect to PJM, and (ii) NYISO, Section 4.5 controls.
  - 4.2. ISO-NE and TDSP Collateral Support. All advances under the Collateral Credit Facility for posting with ISO-NE (and NYISO and PJM, if applicable pursuant to Section 4.1) or TDSPs shall be made by Lender to such applicable Borrower Entity or posted directly to the applicable third-party on behalf of such Borrower Entity as soon as reasonably possible, but in any event within two (2) Business Days of Lender's receipt of a properly completed Drawdown Notice submitted to Lender by an Authorized Borrower Entity.
  - 4.3. Repayment of Collateral Credit Facility. Except as otherwise provide below, all amounts outstanding under the Collateral Credit Facility, together with all interest accrued under the Collateral Credit Facility shall be due and payable on the earlier of (i) the Collateral Credit Facility Maturity Date; or (ii) the occurrence of an Event of Default under the Loan Agreement and acceleration of the Notes; *provided, however*, if such date is not a Business Day, then payment of the principal and interest is due on the next Business Day. All interest accrued under the Collateral Credit Facility, for the immediately preceding month, shall be due and payable on the last day of each month; *provided, however*, if such day is not a

Business Day, then payment of the interest is due on the next Business Day following the last day of the month.

- 4.4. Third Party Draws on Collateral Postings. Should a third party which is holding any amount drawn under the Collateral Credit Facility draw on such collateral in payment of amounts owed to it by a Borrower Entity for any reason other than Lender having committed an Event of Default under the NYISO Scheduling Coordinator Agreement, the PJM Scheduling Coordinator Agreement, or the ISO-NE Scheduling Coordinator Agreement, as applicable, such Borrower Entity agrees to remit to Lender such amount so drawn, together with any accrued but unpaid interest, within one (1) Business Day following the date such amount is drawn due to actions by such Borrower Entity.
- 4.5. Repayment upon Termination of Transaction Agreements. Upon termination or expiration of the NYISO Scheduling Coordinator Agreement, all amounts outstanding under the Collateral Credit Facility for posting with NYISO for or on behalf of a Borrower Entity, together with any accrued but unpaid interest thereon shall be due and payable within one (1) Business Day following the termination or expiration of such agreement.
- 4.6. Use of Funds under the Collateral Credit Facility. The Borrower Entities shall expend all advances made by Lender to such Borrower Entity under the Collateral Credit Facility only for posting required collateral with an Independent System Operator and for posting required collateral with TDSIPs in support of such Borrower Entity's business with customers in the Service Territories.

\*\*\*\*\*

Lender and each Borrower Entity agree to the establishment of this Collateral Credit Facility pursuant to the Loan Agreement.

SIGNATURE PAGES TO FOLLOW  
SCHEDULE 2 – COLLATERAL CREDIT FACILITY  
SIGNATURE PAGES  
August 19, 2013

**LENDER:**

**SHELL ENERGY NORTH AMERICA (US), L.P.**

By: \_\_\_\_\_  
Name: Thomas P. Stokes  
Title: Vice President Finance and Treasurer

**BORROWER ENTITIES:**

**SMARTENERGY HOLDINGS, LLC**

By:  \_\_\_\_\_  
Name: Daniel A. Kern  
Title: CEO

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SCHEDULE 2 -- COLLATERAL CREDIT FACILITY  
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August 19, 2013

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By: 

Name: Thomas P. Stokes

Title: Vice President Finance and Treasurer

**BORROWER ENTITIES:**

**SMARTENERGY HOLDINGS, LLC**

By: \_\_\_\_\_

Name:

Title:

SCHEDULE 3 – STORAGE CREDIT FACILITY

Establishment Date:	Effective Time
Borrower Entities entitled to Draw on this Credit Facility (Authorized Borrower Entities):	SmartEnergy Holdings, LLC
Storage Credit Facility Amount:	The Pooled Principal Amount less any amounts outstanding under any other Credit Facility
Storage Credit Facility Maturity Date:	Primary Term Date
Loan Interest Rate:	The lesser of (a) the highest rate allowed by applicable law and (b) 4%, plus the Interest Adder (if applicable), plus the greater of (i) LIBOR and (ii) 4%

1. Establishment of Storage Credit Facility.

Subject to the provisions of this Agreement, the Lender hereby establishes in favor of the Borrower Entities a Storage Credit Facility up to the Storage Credit Facility Amount (the "Storage Credit Facility"). The outstanding principal amount of the Storage Credit Facility may revolve and the Authorized Borrower Entities may borrow, repay and re-borrow amounts under the Storage Credit Facility; *provided, however*, that at no time shall the total amount outstanding under the Storage Credit Facility exceed the Storage Credit Facility Amount.

2. Obligation to Advance Funds. Lender shall not be obligated to advance to the Borrower Entities any sums under the Storage Credit Facility after the earlier of the termination of the Master Gas Agreement and the Primary Term Date.

3. Promissory Notes. To evidence the Storage Credit Facility, the Borrower Entities have issued, executed and delivered to Lender a Promissory Note dated of even date with this Agreement, in which the balance is payable in full on or before the Storage Credit Facility Maturity Date, bearing interest at the Loan Interest Rate for the Storage Credit Facility and which is otherwise in the form attached to this Agreement as **Exhibit B** (the "Promissory Note").

4. Drawdown on Storage Credit Facility.

An Authorized Borrower Entity may request an advance on the Storage Credit Facility by delivering to Lender a Drawdown Notice. All advances under the Storage Credit Facility shall be made by the Lender to such Borrower Entity within five (5) Business Days of Lender's receipt of a properly completed Drawdown Notice submitted to Lender by such Borrower Entity and further provided that the individual amount of such Drawdown Notices, when aggregated with prior advances which remain outstanding, do not exceed the principal amount of the Storage Credit Facility.

5. Repayment of the Storage Credit. The amount of principal under the Storage Credit Facility shall be determined on an LDC by LDC basis and shall be paid on the Storage Credit Repayment Date shall be equal to the following for each LDC:

$$(MWA/(\text{Storage Amount} + \text{CMI})) * \text{Principal Amount}$$

Where:

MWA = the amount of natural gas withdrawn from storage or otherwise transferred from such Borrower Entity's account with the storage facility

measured in MMBtu for the immediately preceding month (the "Monthly Withdrawal Amount")

Storage Amount = the amount of natural gas in storage at the end of the second preceding month measured in MMBtu

CMI = the amount of natural gas injected into storage or otherwise transferred into such Borrower Entity's account with the storage facility, measured in MMBtus for the immediately preceding month (the "Current Monthly Injection" amount)

Principal Amount = the current amount outstanding under the Storage Credit Facility at the end of the second preceding month plus any additional draws on the Storage Credit Facility during the immediately preceding month (prior to any payments for the immediately preceding month)

The principal amount due as calculated above on the last day of each month and all interest accrued under the Storage Credit Facility shall be due and payable on the last Business Day of each month for the immediately preceding month (the "Storage Credit Facility Repayment Date") and the Borrower Entities shall pay to Lender on the Storage Credit Facility Repayment Date such principal amount due and interest; provided, however, if such day of the month is not a Business Day, then payment of the principal amount due and interest is due on the next Business Day following such day. Without prejudice to the foregoing, all amounts outstanding under the Storage Credit Facility together with all interest accrued under the Storage Credit Facility shall be due and payable on the earlier of (i) April 30<sup>th</sup> of each year, (ii) the Storage Credit Facility Maturity Date, or (iii) the occurrence of an Event of Default under the Loan Agreement and the acceleration of the Notes by Lender; *provided, however*, if such date is not a Business Day, then payment of the principal and interest is due on the next Business Day.

6. Use of Funds under the Storage Credit Facility. The Borrower Entities shall expend all advances made or deemed made by Lender to the Borrower Entities or for the benefit of the Borrower Entities under the Storage Credit Facility to purchase natural gas from Lender and to inject such natural gas into storage as required by such LDC's Tariff.

\*\*\*\*

Lender and each Borrower Entity agree to the establishment of this Collateral Credit Facility pursuant to the Loan Agreement.

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SCHEDULE 3 – STORAGE CREDIT FACILITY  
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Title: Vice President Finance and Treasurer

**BORROWER ENTITIES:**

**SMARTENERGY HOLDINGS, LLC**

By:  \_\_\_\_\_  
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SCHEDULE 3 – STORAGE CREDIT FACILITY  
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