



**ENVIRONMENTAL LAW & POLICY CENTER**  
Protecting the Midwest's Environment and Natural Heritage

April 9, 2009

Ms. Mary Jo Kunkle  
Executive Secretary  
Michigan Public Service Commission  
6545 Mercantile Way, Ste 7  
Lansing, Michigan 48911

**Re: MPSC Case Nos. U-15805 and U-15889**

Dear Ms. Kunkle:

The following is attached for paperless electronic filing:

- The Environmental Coalition's Motion For Leave To File Surrebuttal Testimony
- Surrebuttal Testimony of George E. Sansoucy on Behalf of the Ecology Center, Environmental Law & Policy Center and Michigan Environmental Council.
- Electronic Service List

Very truly yours,

Bradley D. Klein  
Environmental Law and Policy Center

cc: All Parties of Interest



# STATE OF MICHIGAN

## MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for CONSUMERS ENERGY COMPANY to fully comply with Public Acts 286 and 295 of 2008.

Case N<sup>o</sup>: U-15805; U-15889  
(Consolidated)

### ELECTRONIC SERVICE LIST

On the date below, an electronic copies of the attached Direct Testimonies of David A. Wright, Richard A. Policy and George E. Sansoucy on Behalf of the Ecology center, Environmental Law & Policy Center and Michigan Environmental Council was served on the following:

Name/Party	E-mail Address
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The statements above are true to the best of my knowledge, information and belief.

Date: March 23, 2009

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

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**STATE OF MICHIGAN**  
**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

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In the matter, on the Commission's own motion )  
regarding the regulatory reviews, revision )  
determinations, and/or approvals necessary for )  
CONSUMERS ENERGY COMPANY to )  
fully comply with Public Acts 286 and 295 )  
of 2008. )

Case No. U-15805

In the matter, on the Commission's own motion, )  
regarding the regulatory reviews, revisions, )  
determinations, and/or approvals necessary for )  
CONSUMERS ENERGY COMPANY to )  
fully comply with Public Acts 286 and 295 )  
of 2008. )

Case No. U-15889

**MOTION OF THE MICHIGAN ENVIRONMENTAL COUNCIL, ECOLOGY CENTER,  
AND ENVIRONMENTAL LAW & POLICY CENTER FOR LEAVE TO FILE  
SURREBUTTAL TESTIMONY**

Pursuant to Rule 335 of the Michigan Public Service Commission's Rules of Practice and Procedure, 1986 AACSR 460.17335, the Ecology Center, Environmental Law & Policy Center and the Michigan Environmental Council, (collectively, "Environmental Coalition" or "EC") requests that the presiding Administrative Law Judge (ALJ) grant this motion for leave to file the attached surrebuttal testimony of George E. Sancoucy.

In support of this motion, the Environmental Coalition states:

1. On April 6, 2009, Consumers Energy Company (CECo) filed the rebuttal testimony of Thomas M. Cox and David F. Ronk, Jr.
2. Mr. Cox and Mr. Ronk's rebuttal testimony addresses the testimony of EC witness George E. Sancoucy.
3. The EC seeks permission to file the attached surrebuttal testimony in this case because:

- a. Mr. Cox's testimony regarding the wind industry's non-regulated assessment of turbine life to be used as a proxy for the total depreciation of the entire development ignores many factors for which the Company has experience in a wide variety of properties.
  - b. Mr. Ronk's rebuttal testimony regarding the price of \$174.20/MWh as being justifiable for the PPA's in Michigan is inconsistent with credible prices discussed by other regulatory authorities and in the Detroit Edison docket, U-15806.
  - c. Mr. Ronk's rebuttal testimony regarding the purpose of the 20% fixed charge rate for network upgrade costs penalizes the renewable energy program for new transmission property and jeopardizes the overall success of the program.
4. Surrebuttal is a discretionary decision permitted by Rule 325(3) of the Commission's Rules of Practice and Procedure, 1986 AACRS R460.17325(3).
  5. Mr. Sansoucy's attached surrebuttal responds directly to Mr. Cox and Mr. Ronk's rebuttal testimony and it will be relevant to a dispute in this case within the meaning of MRE 401 that is material to the outcome of that dispute.

For these reasons, the EC requests that the ALJ exercise her discretion and permit the EC to file surrebuttal testimony in this case.

Dated: April 9, 2009

By:

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On behalf of:  
The Ecology Center  
Environmental Law & Policy Center  
Michigan Environmental Council

**STATE OF MICHIGAN**  
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Case No. U-15805

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Case No. U-15889

**SURREBUTTAL TESTIMONY OF GEORGE E. SANSOUCY, P.E.**  
**ON BEHALF OF ECOLOGY CENTER,**  
**ENVIRONMENTAL LAW & POLICY CENTER,**  
**AND THE MICHIGAN ENVIRONMENTAL COUNCIL**

**April 9, 2009**

**Background and Qualifications**

**Q. Please state your name, business address, and affiliation.**

A. My name is George E. Sansoucy. My business address is 32 Nimble Hill Road, Newington, New Hampshire 03801. My testimony is on behalf of the Michigan Environmental Council.

**Q. What are your educational background and professional qualifications to appear in this proceeding?**

A. I have a Bachelors and a Masters of Science Degree in Civil Engineering and am a Registered Professional Engineer in New Hampshire. My firm, George E. Sansoucy, P.E., LLC, provides valuation, consulting and engineering services to clients throughout the United States. The firm's two primary services are 1) the valuation of public utility infrastructure, energy projects, and complex industrial properties, and 2) consultation services on energy and regulatory matters involving public and private utilities sector in the United States. I have testified in legal and regulatory proceedings before state and federal courts and administrative agencies, including the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission. I have testified in Case No. U-14992 before the Michigan Public Service Commission in the matter of the application of Consumers Energy Company for approval of a Power Purchase Agreement and for relief in connection with the sale of the Palisades Nuclear Power Plant and other assets.

1 **Q. What materials have you reviewed in preparation of this testimony?**

2 A. I have reviewed all of the testimony and exhibits from Case Nos. U-15805 / U-15889,  
3 Consumers Energy's ("Consumers") Renewable Energy and Energy Optimization Plans.  
4 I have also reviewed PA 295, the Commission's Order in U-15800, Consumers Annual  
5 Reports to the Federal Energy Regulatory Commission, elements of U-15245 and other  
6 documents in our files. Also I have reviewed the rebuttal testimony of Mr. Cox and Mr.  
7 Ronk.

8 **Exhibits**

9 **Q. Are you submitting any exhibits in support of your testimony?**

10 A. Yes. I have prepared Exhibit 4 which consists of excerpts from the early Consumers  
11 Energy FERC forms 1's to the Federal Energy Regulatory Commission showing historic  
12 lives used by the Company prior to the sale of its transmission lines and towers, and its  
13 operation and maintenance costs. I am also submitting Exhibit 5, a document filed by The  
14 Detroit Edison Company in Michigan PSC Docket Number U-15806.

15  
16 **Purpose of Testimony**

17 **Q. What is the purpose of your testimony?**

18 A. My testimony rebuts rebuttal testimony presented by David F. Ronk, Jr., and Mr. Cox.  
19  
20  
21  
22  
23

**Testimony**

**Q. What is your response to Mr. Cox's first rebuttal testimony regarding 20 year depreciation?**

A. I disagree with Consumers in relying upon only the wind industry's non-regulated assessment of turbine life to be used as a proxy for the total depreciation of the entire development. Consumers Energy has extensive experience with many of the components that are going to be constructed as part of a wind farm. For example, site development, roads and trails are common items for which the Company has experience in a wide variety of properties. Foundations are common in all types of property depreciated by the Company. The monopole structures are a type of structure familiar to Consumers, as it is similar to monopole transmission line structures that Consumers currently, or in the past, has owned, operated, and depreciated. Wire, conduit, and substations system control are all types of property common to Consumers current or past transmission operations and fully within the ability of Consumers to depreciate. Certain portions of the turbines, housings, mounts, transmission wiring and other non-rotating gear will likely have a service life in excess of the rotating machinery. It is appropriate to consider the lives of site, foundations, heavy steel structures, conduits, substations and other types of long lived items which have been part of both hydroelectric plants and transmission systems owned by Consumers. When Consumers owned its transmission plant, it used lives of 40 to 75 years for different components. For example, towers were 75 years (line 24 , page 337.1, exhibit GES-4)

1 **Q. Do you wish to rebut Mr. Ronk's rebuttal testimony?**

2 A. Yes. I wish to rebut Mr. Ronk's rebuttal testimony regarding the price of \$174.20/MWh  
3 as being justifiable for the PPA's in Michigan. As previously stated, credible prices that  
4 are sought and discussed by other regulatory authorities are in the budget range of  
5 \$100/MWh to \$150/MWh for the purchase of wind. In the Detroit Edison docket, U-  
6 15806, Detroit Edison's Renewable Energy Plan, the company submitted on March 27,  
7 2009 an ex-parte application for the approval of a renewable energy contract, namely a  
8 wind contract with Heritage Renewable Energy. (Exhibit 5). The pricing of that contract  
9 as provided on page 5 of the Executive Summary is \$115/MWh. This document also  
10 may be found publicly on the Michigan Public Service Commission web site for docket  
11 U-15806.

12  
13 **Q. In his rebuttal testimony at page 5, Mr. Ronk claims that the purpose of the 20%  
14 fixed charge rate for network upgrade costs is to estimate the impact of these capital  
15 investments on the annual expenses that the Company will ultimately have to pay  
16 for transmission. Do you agree with this statement?**

17 A. No. The 20% fixed charge rate as referenced by Mr. Ronk is an affiliate transaction and is  
18 too much. It penalizes the renewable energy program for new transmission property and  
19 jeopardizes the overall success of the program. The fixed charge rate for transmission  
20 upgrades should be capped at a total rate of between 15 -16% by the Commission,  
21 including all returns, taxes, depreciation, and operations and maintenance. (See historic  
22 depreciation and historic operation and maintenance costs prior to Consumers sale of the  
23 transmission system in Sansoucy Exhibit 4).

1

2 **Q. Does this complete your surrebuttal testimony?**

3 **A. Yes.**

STATE OF MICHIGAN  
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of 2008. )	

**EXHIBITS 4 & 5 OF  
GEORGE E. SANSOUCY**

**ON BEHALF OF  
THE ECOLOGY CENTER,  
ENVIRONMENTAL LAW & POLICY CENTER,  
AND MICHIGAN ENVIRONMENTAL COUNCIL**

**April 9, 2009**

**ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC UTILITY PLANT (Account 108)**

1. Explain in a footnote any important adjustments during year.
2. Explain in a footnote any difference between the amount for book cost of plant retired, Line 11, column (c), and that reported for electric plant in service, pages 204-207, column 9d), excluding retirements of non-depreciable property.
3. The provisions of Account 108 in the Uniform System of accounts require that retirements of depreciable plant be recorded when such plant is removed from service. If the respondent has a significant amount of plant retired at year end which has not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired. In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications.
4. Show separately interest credits under a sinking fund or similar method of depreciation accounting.

**Section A. Balances and Changes During Year**

Line No.	Item (a)	Total (c+d+e) (b)	Electric Plant in Service (c)	Electric Plant Held for Future Use (d)	Electric Plant Leased to Others (e)
1	Balance Beginning of Year	3,713,292,517	3,713,287,222	5,295	
2	Depreciation Provisions for Year, Charged to				
3	(403) Depreciation Expense	206,738,004	206,738,004		
4	(413) Exp. of Elec. Plt. Leas. to Others				
5	Transportation Expenses-Clearing	293,720	293,720		
6	Other Clearing Accounts				
7	Other Accounts (Specify):				
8					
9	TOTAL Deprec. Prov for Year (Enter Total of lines 3 thru 8)	207,031,724	207,031,724		
10	Net Charges for Plant Retired:				
11	Book Cost of Plant Retired	49,775,657	49,775,657		
12	Cost of Removal	108,691,939	108,691,939		
13	Salvage (Credit)	3,439,434	3,439,434		
14	TOTAL Net Chrgs. for Plant Ret. (Enter Total of lines 11 thru 13)	155,028,162	155,028,162		
15	Other Debit or Cr. Items (Describe):	-46,731,866	-46,731,866		
16					
17	Balance End of Year (Enter Totals of lines 1, 9, 14, 15, and 16)	3,718,564,213	3,718,558,918	5,295	

Name of Respondent Consumers Energy Company		This Report Is: (1) <input type="checkbox"/> An Original (2) <input checked="" type="checkbox"/> A Resubmission		Date of Report (Mo, Da, Yr) 08/27/2002	Year/Period of Report End of 2000/Q4
ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC UTILITY PLANT (Account 108)					
<p>1. Explain in a footnote any important adjustments during year.</p> <p>2. Explain in a footnote any difference between the amount for book cost of plant retired, Line 11, column (c), and that reported for electric plant in service, pages 204-207, column 9d), excluding retirements of non-depreciable property.</p> <p>3. The provisions of Account 108 in the Uniform System of accounts require that retirements of depreciable plant be recorded when such plant is removed from service. If the respondent has a significant amount of plant retired at year end which has not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired. In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications.</p> <p>4. Show separately interest credits under a sinking fund or similar method of depreciation accounting.</p>					
Section A. Balances and Changes During Year					
Line No.	Item (a)	Total (c+d+e) (b)	Electric Plant in Service (c)	Electric Plant Held for Future Use (d)	Electric Plant Leased to Others (e)
Section B. Balances at End of Year According to Functional Classification					
18	Steam Production	846,904,180	846,903,938	242	
19	Nuclear Production	1,276,100,521	1,276,100,521		
20	Hydraulic Production-Conventional	7,567,937	7,567,937		
21	Hydraulic Production-Pumped Storage	84,069,252	84,069,252		
22	Other Production	38,110,550	38,110,550		
23	Transmission	231,933,624	231,928,955	4,669	
24	Distribution	1,199,625,660	1,199,625,276	384	
25	General	34,252,489	34,252,489		
26	TOTAL (Enter Total of lines 18 thru 25)	3,718,564,213	3,718,558,918	5,295	

Name of Respondent Consumers Energy Company		This Report Is: (1) <input type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission		Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of 2000/Q4
ELECTRIC OPERATION AND MAINTENANCE EXPENSES					
If the amount for previous year is not derived from previously reported figures, explain in footnote.					
Line No.	Account (a)	Amount for Current Year (b)		Amount for Previous Year (c)	
1	1. POWER PRODUCTION EXPENSES				
2	A. Steam Power Generation				
3	Operation				
4	(500) Operation Supervision and Engineering	10,273,878		12,342,299	
5	(501) Fuel	302,913,306		309,423,547	
6	(502) Steam Expenses	11,482,364		11,463,745	
7	(503) Steam from Other Sources				
8	(Less) (504) Steam Transferred-Cr.				
9	(505) Electric Expenses	7,204,743		7,195,092	
10	(506) Miscellaneous Steam Power Expenses	8,304,105		8,346,216	
11	(507) Rents				
12	(509) Allowances				
13	TOTAL Operation (Enter Total of Lines 4 thru 12)	340,178,396		348,770,899	
14	Maintenance				
15	(510) Maintenance Supervision and Engineering	4,852,958		5,106,282	
16	(511) Maintenance of Structures	4,151,219		5,264,956	
17	(512) Maintenance of Boiler Plant	23,846,914		20,173,799	
18	(513) Maintenance of Electric Plant	9,613,988		5,294,256	
19	(514) Maintenance of Miscellaneous Steam Plant	2,404,761		2,110,670	
20	TOTAL Maintenance (Enter Total of Lines 15 thru 19)	44,869,840		37,949,963	
21	TOTAL Power Production Expenses-Steam Power (Entr Tot lines 13 & 20)	385,048,236		386,720,862	
22	B. Nuclear Power Generation				
23	Operation				
24	(517) Operation Supervision and Engineering	7,369,997		8,226,512	
25	(518) Fuel	28,624,899		29,611,593	
26	(519) Coolants and Water	4,513,331		4,274,803	
27	(520) Steam Expenses	10,131,021		12,045,506	
28	(521) Steam from Other Sources				
29	(Less) (522) Steam Transferred-Cr.				
30	(523) Electric Expenses	2,228,927		2,290,297	
31	(524) Miscellaneous Nuclear Power Expenses	26,607,239		27,823,327	
32	(525) Rents	102,172		151,111	
33	TOTAL Operation (Enter Total of lines 24 thru 32)	79,577,586		84,423,149	
34	Maintenance				
35	(528) Maintenance Supervision and Engineering	6,665,179		7,552,266	
36	(529) Maintenance of Structures	1,453,038		1,262,196	
37	(530) Maintenance of Reactor Plant Equipment	12,682,156		15,807,677	
38	(531) Maintenance of Electric Plant	6,382,971		4,033,981	
39	(532) Maintenance of Miscellaneous Nuclear Plant	3,423,615		2,380,472	
40	TOTAL Maintenance (Enter Total of lines 35 thru 39)	30,606,959		31,036,592	
41	TOTAL Power Production Expenses-Nuc. Power (Entr tot lines 33 & 40)	110,184,545		115,459,741	
42	C. Hydraulic Power Generation				
43	Operation				
44	(535) Operation Supervision and Engineering	643,675		723,738	
45	(536) Water for Power	981,796		881,053	
46	(537) Hydraulic Expenses	2,868,381		3,370,987	
47	(538) Electric Expenses	1,338,968		1,426,237	
48	(539) Miscellaneous Hydraulic Power Generation Expenses	942,684		1,059,431	
49	(540) Rents	2,079		574	
50	TOTAL Operation (Enter Total of Lines 44 thru 49)	6,777,583		7,462,020	

Name of Respondent Consumers Energy Company		This Report Is: (1) <input type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of 2000/Q4
ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)				
If the amount for previous year is not derived from previously reported figures, explain in footnote.				
Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)	
51	C. Hydraulic Power Generation (Continued)			
52	Maintenance			
53	(541) Maintenance Supervision and Engineering	363,887	287,399	
54	(542) Maintenance of Structures	281,314	341,271	
55	(543) Maintenance of Reservoirs, Dams, and Waterways	1,697,146	960,264	
56	(544) Maintenance of Electric Plant	1,334,676	829,235	
57	(545) Maintenance of Miscellaneous Hydraulic Plant	682,015	860,573	
58	TOTAL Maintenance (Enter Total of lines 53 thru 57)	4,359,038	3,278,742	
59	TOTAL Power Production Expenses-Hydraulic Power (tot of lines 50 & 58)	11,136,621	10,740,762	
60	D. Other Power Generation			
61	Operation			
62	(546) Operation Supervision and Engineering	102,376	119,179	
63	(547) Fuel	1,744,599	5,047,089	
64	(548) Generation Expenses	-4,747	107,429	
65	(549) Miscellaneous Other Power Generation Expenses	81,823	98,212	
66	(550) Rents			
67	TOTAL Operation (Enter Total of lines 62 thru 66)	1,924,051	5,371,909	
68	Maintenance			
69	(551) Maintenance Supervision and Engineering	138,079	123,773	
70	(552) Maintenance of Structures	5,254	4,488	
71	(553) Maintenance of Generating and Electric Plant	445,700	2,113,078	
72	(554) Maintenance of Miscellaneous Other Power Generation Plant			
73	TOTAL Maintenance (Enter Total of lines 69 thru 72)	589,033	2,241,339	
74	TOTAL Power Production Expenses-Other Power (Enter Tot of 67 & 73)	2,513,084	7,613,248	
75	E. Other Power Supply Expenses			
76	(555) Purchased Power	925,105,963	850,313,686	
77	(556) System Control and Load Dispatching	10,841,585	8,180,348	
78	(557) Other Expenses	82,563	109,758	
79	TOTAL Other Power Supply Exp (Enter Total of lines 76 thru 78)	936,030,111	858,603,792	
80	TOTAL Power Production Expenses (Total of lines 21, 41, 59, 74 & 79)	1,444,912,597	1,379,138,405	
81	2. TRANSMISSION EXPENSES			
82	Operation			
83	(560) Operation Supervision and Engineering	1,415,727	2,219,945	
84	(561) Load Dispatching			
85	(562) Station Expenses	741,923	762,624	
86	(563) Overhead Lines Expenses	961,091	956,617	
87	(564) Underground Lines Expenses			
88	(565) Transmission of Electricity by Others	11,057,502	6,337,403	
89	(566) Miscellaneous Transmission Expenses	2,155,325	1,358,191	
90	(567) Rents	34,843	22,375	
91	TOTAL Operation (Enter Total of lines 83 thru 90)	16,366,411	11,657,155	
92	Maintenance			
93	(568) Maintenance Supervision and Engineering	185,263	155,850	
94	(569) Maintenance of Structures	2,762,892	2,471,671	
95	(570) Maintenance of Station Equipment	5,152,818	5,081,050	
96	(571) Maintenance of Overhead Lines	2,402,819	2,425,759	
97	(572) Maintenance of Underground Lines	123,081	57,902	
98	(573) Maintenance of Miscellaneous Transmission Plant	90,580	77,956	
99	TOTAL Maintenance (Enter Total of lines 93 thru 98)	10,717,453	10,270,188	
100	TOTAL Transmission Expenses (Enter Total of lines 91 and 99)	27,083,864	21,927,343	
101	3. DISTRIBUTION EXPENSES			
102	Operation			
103	(580) Operation Supervision and Engineering	12,481,322	12,451,045	

Name of Respondent Consumers Energy Company		This Report Is: (1) <input type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of 2000/Q4
ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)				
If the amount for previous year is not derived from previously reported figures, explain in footnote.				
Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)	
104	3. DISTRIBUTION Expenses (Continued)			
105	(581) Load Dispatching			
106	(582) Station Expenses	3,248,122	3,163,965	
107	(583) Overhead Line Expenses	4,499,566	4,917,113	
108	(584) Underground Line Expenses	2,639,342	2,047,087	
109	(585) Street Lighting and Signal System Expenses	456	-82,636	
110	(586) Meter Expenses	2,796,377	3,020,534	
111	(587) Customer Installations Expenses	8,210,724	8,133,183	
112	(588) Miscellaneous Expenses	8,681,549	8,867,192	
113	(589) Rents	2,280,481	3,271,803	
114	TOTAL Operation (Enter Total of lines 103 thru 113)	44,837,939	45,789,286	
115	Maintenance			
116	(590) Maintenance Supervision and Engineering	3,051,121	3,363,756	
117	(591) Maintenance of Structures	323,031	325,656	
118	(592) Maintenance of Station Equipment	5,267,304	5,626,281	
119	(593) Maintenance of Overhead Lines	34,895,115	38,961,012	
120	(594) Maintenance of Underground Lines	2,087,520	1,905,880	
121	(595) Maintenance of Line Transformers	465,710	468,336	
122	(596) Maintenance of Street Lighting and Signal Systems	1,484,957	1,366,761	
123	(597) Maintenance of Meters	986,861	1,074,270	
124	(598) Maintenance of Miscellaneous Distribution Plant	83,048	73,580	
125	TOTAL Maintenance (Enter Total of lines 116 thru 124)	48,644,667	53,165,532	
126	TOTAL Distribution Exp (Enter Total of lines 114 and 125)	93,482,606	98,954,818	
127	4. CUSTOMER ACCOUNTS EXPENSES			
128	Operation			
129	(901) Supervision	6,611,844	7,127,420	
130	(902) Meter Reading Expenses	7,705,852	8,297,762	
131	(903) Customer Records and Collection Expenses	19,343,649	20,726,999	
132	(904) Uncollectible Accounts	6,203,538	4,160,031	
133	(905) Miscellaneous Customer Accounts Expenses	609,921	655,925	
134	TOTAL Customer Accounts Expenses (Total of lines 129 thru 133)	40,474,804	40,968,137	
135	5. CUSTOMER SERVICE AND INFORMATIONAL EXPENSES			
136	Operation			
137	(907) Supervision	74,519	161,707	
138	(908) Customer Assistance Expenses	12,637,142	27,246,679	
139	(909) Informational and Instructional Expenses	715,445	640,196	
140	(910) Miscellaneous Customer Service and Informational Expenses			
141	TOTAL Cust. Service and Information. Exp. (Total lines 137 thru 140)	13,427,106	28,048,582	
142	6. SALES EXPENSES			
143	Operation			
144	(911) Supervision	1,326,492	231,008	
145	(912) Demonstrating and Selling Expenses	1,013,381	1,033,659	
146	(913) Advertising Expenses			
147	(916) Miscellaneous Sales Expenses			
148	TOTAL Sales Expenses (Enter Total of lines 144 thru 147)	2,339,873	1,264,667	
149	7. ADMINISTRATIVE AND GENERAL EXPENSES			
150	Operation			
151	(920) Administrative and General Salaries	28,629,746	32,508,728	
152	(921) Office Supplies and Expenses	6,232,153	12,720,264	
153	(Less) (922) Administrative Expenses Transferred-Credit	3,535,200	3,842,400	

Name of Respondent Consumers Energy Company		This Report Is: (1) <input type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission		Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of 2000/Q4
ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)					
If the amount for previous year is not derived from previously reported figures, explain in footnote.					
Line No.	Account (a)	Amount for Current Year (b)		Amount for Previous Year (c)	
154	7. ADMINISTRATIVE AND GENERAL EXPENSES (Continued)				
155	(923) Outside Services Employed	4,413,609		5,562,701	
156	(924) Property Insurance	-1,952,369		5,812,026	
157	(925) Injuries and Damages	6,679,317		3,455,203	
158	(926) Employee Pensions and Benefits	67,674,646		70,481,984	
159	(927) Franchise Requirements				
160	(928) Regulatory Commission Expenses	782,637		667,989	
161	(929) (Less) Duplicate Charges-Cr.				
162	(930.1) General Advertising Expenses	1,241,509		1,137,607	
163	(930.2) Miscellaneous General Expenses	3,506,471		4,845,797	
164	(931) Rents	1,563,153		1,294,059	
165	TOTAL Operation (Enter Total of lines 151 thru 164)	115,235,672		134,643,958	
166	Maintenance				
167	(935) Maintenance of General Plant	1,326,156		1,975,748	
168	TOTAL Admin & General Expenses (Total of lines 165 thru 167)	116,561,828		136,619,706	
169	TOTAL Elec Op and Maint Expn (Tot 80, 100, 126, 134, 141, 148, 168)	1,738,282,678		1,706,921,658	

NUMBER OF ELECTRIC DEPARTMENT EMPLOYEES	
<p>1. The data on number of employees should be reported for the payroll period ending nearest to October 31, or any payroll period ending 60 days before or after October 31.</p> <p>2. If the respondent's payroll for the reporting period includes any special construction personnel, include such employes on line 3, and show the number of such special</p>	<p>construction employees in a footnote.</p> <p>3. The number of employees assignable to the electric department from joint functions of combination utilities may be determined by estimate, on the basis of employee equivalents. Show the estimated number of equivalent employees attributed to the electric department from joint functions.</p>
1. Payroll Period Ended (Date)	12/31/2000
2. Total Regular Full-Time Employees	5,777
3. Total Part-Time and Temporary Employees	60
4. Total Employees	5,837

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Name of Respondent Consumers Energy Company	This Report Is: (1) <input type="checkbox"/> An Original (2) <input checked="" type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 08/27/2002	Year/Period of Report End of 2000/Q4
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DEPRECIATION AND AMORTIZATION OF ELECTRIC PLANT (Account 403, 404, 405)  
(Except amortization of aquisition adjustments)

1. Report in Section A for the year the amounts for: (a) Depreciation Expense (Account 403); (b) Amortization of Limited-Term Electric Plant (Account 404); and (c) Amortization of Other Electric Plant (Account 405).

2. Report in Section 8 the rates used to compute amortization charges for electric plant (Accounts 404 and 405). State the basis used to compute charges and whether any changes have been made in the basis or rates used from the preceding report year.

3. Report all available information called for in Section C every fifth year beginning with report year 1971, reporting annually only changes to columns (c) through (g) from the complete report of the preceding year.

Unless composite depreciation accounting for total depreciable plant is followed, list numerically in column (a) each plant subaccount, account or functional classification, as appropriate, to which a rate is applied. Identify at the bottom of Section C the type of plant included in any sub-account used.

In column (b) report all depreciable plant balances to which rates are applied showing subtotals by functional Classifications and showing composite total. Indicate at the bottom of section C the manner in which column balances are obtained. If average balances, state the method of averaging used.

For columns (c), (d), and (e) report available information for each plant subaccount, account or functional classification Listed in column (a). If plant mortality studies are prepared to assist in estimating average service Lives, show in column (f) the type mortality curve selected as most appropriate for the account and in column (g), if available, the weighted average remaining life of surviving plant. If composite depreciation accounting is used, report available information called for in columns (b) through (g) on this basis.

4. If provisions for depreciation were made during the year in addition to depreciation provided by application of reported rates, state at the bottom of section C the amounts and nature of the provisions and the plant items to which related.

A. Summary of Depreciation and Amortization Charges					
Line No.	Functional Classification (a)	Depreciation Expense (Account 403) (b)	Amortization of Limited Term Elec- tric Plant (Acc 404) (c)	Amortization of Other Electric Plant (Acc 405) (d)	Total (e)
1	Intangible Plant		649,595	308,741	958,336
2	Steam Production Plant	42,171,900			42,171,900
3	Nuclear Production Plant	40,129,420		56,440,322	96,569,742
4	Hydraulic Production Plant-Conventional	1,559,600			1,559,600
5	Hydraulic Production Plant-Pumped Storage	5,574,200			5,574,200
6	Other Production Plant	746,800			746,800
7	Transmission Plant	11,930,900			11,930,900
8	Distribution Plant	96,741,300			96,741,300
9	General Plant	7,883,884			7,883,884
10	Common Plant-Electric	10,548,941	1,844,436	5,640,522	18,033,899
11	TOTAL	217,286,945	2,494,031	62,389,585	282,170,561

B. Basis for Amortization Charges

1. Amortization of Limited Term Plant is based on the life of the original building leases.

2. No change in the rates for accounts 404 and 405.

3. Amortization of Intangible Plant is based on the estimated life of the intangible plant.

4. Common Plant Depreciation and Amortization Expenses:

	Account 403	Account 404	Account 405	Total
A. Allocation of Common Depreciation & Amortization Expenses	10,548,941	1,844,436	5,640,522	18,033,899
B. Allocation of Gas Depreciation Expense	0	0	0	0
Total	10,548,941	1,844,436	5,640,522	18,033,899

Name of Respondent Consumers Energy Company		This Report Is: (1) <input type="checkbox"/> An Original (2) <input checked="" type="checkbox"/> A Resubmission		Date of Report (Mo, Da, Yr) 08/27/2002		Year/Period of Report End of 2000/Q4	
DEPRECIATION AND AMORTIZATION OF ELECTRIC PLANT (Continued)							
C. Factors Used in Estimating Depreciation Charges							
Line No.	Account No. (a)	Depreciable Plant Base (In Thousands) (b)	Estimated Avg. Service Life (c)	Net Salvage (Percent) (d)	Applied Depr. rates (Percent) (e)	Mortality Curve Type (f)	Average Remaining Life (g)
12	Steam						
13	310.2	836	55.00		1.58		
14	311.0	181,981	43.00	-5.70	2.54		
15	312.0	523,118	38.00	-7.00	3.04		
16	314.0	184,337	43.00	-6.20	2.40		
17	315.0	49,734	40.00	-6.10	2.69		
18	316.0 & 316.1	14,356	26.00	-8.30	4.74		
19							
20	Total	954,362					
21							
22	Campbell #3						
23	310.2	19	39.00		2.37		
24	311.0	182,611	39.00	-5.40	2.60		
25	312.0	293,650	37.00	-5.70	2.88		
26	314.0	55,000	38.00	-5.50	2.72		
27	315.0	38,516	39.00	-5.40	2.61		
28	316.0 & 316.1	5,317	33.00	-6.60	3.22		
29							
30	Total	575,113					
31							
32	Hydro						
33	330.3	41	105.00		2.47		
34	331.0 & 331.3	3,540	71.00		2.15		
35	332.0 & 332.1	45,882	76.00	-30.00	2.70		
36	333.0	5,020	85.00		2.16		
37	334.0	2,665	68.00		2.40		
38	335.0	1,692	45.00		2.64		
39	336.0	64	54.00		2.18		
40							
41	Total	58,904					
42	Ludington Pumped Storg						
43	331.0	15,982	55.00	-47.00	3.23		
44	332.0	97,348	55.00	-47.00	3.27		
45	333.0	37,792	55.00	-47.00	3.91		
46	334.0	5,256	55.00	-47.00	3.25		
47	335.0	1,774	55.00	-47.00	3.57		
48	336.0	1,536	55.00	-47.00	3.22		
49							
50	Total	159,688					

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DEPRECIATION AND AMORTIZATION OF ELECTRIC PLANT (Continued)							
C. Factors Used in Estimating Depreciation Charges							
Line No.	Account No. (a)	Depreciable Plant Base (In Thousands) (b)	Estimated Avg. Service Life (c)	Net Salvage (Percent) (d)	Applied Depr. rates (Percent) (e)	Mortality Curve Type (f)	Average Remaining Life (g)
12	Other						
13	341.0	759	32.00	-5.00	3.76		
14	342.0	401	35.00	-5.00	2.75		
15	344.0	34,163	36.00	-5.00	1.79		
16	345.0	1,130	28.00	-5.00	5.32		
17	346.0	400	18.00	5.00	9.42		
18							
19	Total	36,853					
20							
21	Transmission						
22	350.2	15,550	75.00		1.38	R3	
23	352.0	10,568	60.00	-15.00	2.01	R4	
24	353.0	187,435	50.00	-12.00	2.33	R2	
25	354.1	93,984	75.00	-90.00	2.62	R3	
26	354.2	4,712	75.00		1.38	R3	
27	355.1	57,085	60.00	-45.00	2.50	R2.5	
28	355.2	6,393	70.00		1.51	R5	
29	356.0	121,029	60.00	-40.00	2.44	R3	
30	357.0		55.00	-20.00	2.29	S3	
31	358.1		40.00	-10.00	2.81	R2	
32	358.2		50.00		2.10	R2	
33	359.0	971	75.00		1.43	R3	
34							
35	Total	497,727					
36							
37	Distribution - HV						
38	360.4	15,832	75.00		1.38	R3	
39	361.1	8,668	60.00	-15.00	2.01	R4	
40	362.1	179,217	50.00	-12.00	2.33	R2	
41	364.1	1,387	75.00	-90.00	2.62	R3	
42	364.2	89	75.00		1.38	R3	
43	364.3	69,051	60.00	-45.00	2.50	R2.5	
44	364.4	6,891	70.00		1.51	R5	
45	365.2	53,937	60.00	-40.00	2.44	R3	
46	366.1	801	55.00	-20.00	2.29	S3	
47	367.1	2,957	40.00	-10.00	2.81	R2	
48	367.2	5	50.00	1.00	2.10	R2	
49							
50	Total	338,835					

Name of Respondent Consumers Energy Company		This Report Is: (1) <input type="checkbox"/> An Original (2) <input checked="" type="checkbox"/> A Resubmission		Date of Report (Mo, Da, Yr) 08/27/2002		Year/Period of Report End of 2000/Q4	
DEPRECIATION AND AMORTIZATION OF ELECTRIC PLANT (Continued)							
C. Factors Used in Estimating Depreciation Charges							
Line No.	Account No. (a)	Depreciable Plant Base (In Thousands) (b)	Estimated Avg. Service Life (c)	Net Salvage (Percent) (d)	Applied Depr. rates (Percent) (e)	Mortality Curve Type (f)	Average Remaining Life (g)
12	Distribution						
13	360.2	14,391	60.00		1.50	R2	
14	361.0	19,985	50.00	-15.00	2.17	S0.5	
15	362.0	291,236	38.00	-2.00	2.55	S-.5	
16	364.0	523,479	50.00	-132.00	4.39	R2	
17	365.0	480,279	55.00	-30.00	2.26	R1.5	
18	366.0	43,302	50.00	-30.00	2.46	S0.5	
19	367.0	311,728	45.00	-25.00	2.64	L2	
20	368.0	481,695	40.00	-25.00	2.92	S2	
21	369.1	139,580	45.00	-87.00	3.95	R1	
22	369.2	269,218	40.00	-25.00	3.01	R3	
23	370.0	122,351	29.00	-19.00	3.85	R1	
24	371.0	6,232	12.00	-6.00	8.41	L1	
25	373.0	68,036	30.00	-90.00	6.01	R0.5	
26							
27	Total	2,771,512					
28							
29	General						
30	389.2	177	50.00		11.76	S4	
31	390.0 & 390.1	36,455	40.00	-15.00	5.20	R2	
32	391.0 & 391.1	1,395	27.00	10.00	5.93	S-0.5	
33	391.2 & 391.3	8,571	7.00		24.60	R4	
34	393.0 & 393.1	82	35.00	5.00	8.37	S1.5	
35	394.0 & 394.1	4,646	26.00	10.00	5.67	L2	
36	395.0 & 395.1	4,408	25.00		5.55	S2	
37	396.0	593	12.00	20.00	17.50	L1	
38	397.0 & 397.1	35,450	20.00	-10.00	9.21	L2	
39	398.0 & 398.1	1,334	24.00		5.37	L2	
40							
41	Total	93,111					
42							
43							
44	See Footnote for						
45	Reponse to						
46	Instruction 4						
47							
48							
49							
50							

Name of Respondent Consumers Energy Company	This Report is: (1) <input type="checkbox"/> An Original (2) <input checked="" type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 08/27/2002	Year of Report 2000/Q4
FOOTNOTE DATA			

**Schedule Page: 336 Line No.: 13 Column: b**

(1) Amounts in Column (b) are the average of the beginning and ending balances for 2000.

**Schedule Page: 336 Line No.: 13 Column: e**

(2) Depreciation Rates in column (e) are per MPSC Order No. U-10754, effective December 5, 1996 and MPSC Order No. U-11724, effective April 1, 2000 (Ludington).

**Schedule Page: 336.2 Line No.: 46 Column: a**

RESPONSE TO INSTRUCTION 4

Nuclear Decommissioning (External Trust Fund) per MPSC order in case no. U-11662 effective January 1, 1999.

	Palisades	Big Rock
Estimated 1997 Cost (000)	504,234	293,861
Inflation Rate	4.54	4.52
Earnings Rate	7.18	7.18
Plant Retirement Date	2007	2000

The Big Rock plant was retired August 29, 1997, but collection of decommissioning funds continued until December 31, 2000.

In 2000, the operating license for the Palisades Nuclear Plant was extended to the year 2011.



Jon P. Christinidis  
(313) 235-7706  
christinidisj@dteenergy.com

March 27, 2009

Ms. Mary Jo Kunkle  
Executive Secretary  
Michigan Public Service Commission  
6545 Mercantile Way  
Lansing, Michigan 48909

Re: In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for The Detroit Edison Company to fully comply with Public Acts 286 and 295 of 2008  
MPSC Case No. U-15806-K (Paperless e-file)

Dear Ms. Kunkle:

Attached for electronic filing is The Detroit Edison Company's Ex Parte Application for Approval of Renewable Energy Contract, redacted Detroit Edison/Heritage Renewable Energy Contract, Exhibit No. A-8 (JHB-4) from Case No. U-15806-RPS, Affidavit of Irene M. Dimitry, Affidavit of Barbara J. Tuckfield and Affidavit of Kenneth D. Johnston in the above-captioned matter. Also attached is a Proof of Service.

Very truly yours,

Jon P. Christinidis

JPC/kbt  
Attachment  
cc: Service list

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,	)	
regarding the regulatory reviews, revisions,	)	
determinations, and/or approvals necessary for	)	Case No. U-15806-K
The Detroit Edison Company to fully comply	)	
with Public Acts 286 and 295 of 2008.	)	
_____	)	

**EX PARTE APPLICATION FOR APPROVAL  
OF RENEWABLE ENERGY CONTRACT**

The Detroit Edison Company (“Detroit Edison”, “Company” or “Applicant”), a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office at One Energy Plaza, Detroit, Michigan 48226, hereby files this application pursuant to the Rules of Practice and Procedure Before the Commission R460.17101 et seq., the Michigan Court Rules MCR 2.100 et seq., and the Michigan Administrative Procedures Act (MCL 24.201 et. seq.) seeking the Michigan Public Service Commission’s (“Commission”) ex parte approval of a Renewable Energy Contract pursuant to 2008 PA 295 (MCL 460.1001 et. seq.), ex parte approval of the associated renewable energy transfer price for recovery under the Company’s Power Supply Cost Recovery process under MCL 460.6j, ex parte approval of the capacity charges set forth in Case No. U-15806-RPS Exhibit No. A-8 (JHB-4) 2009 Forecasted Transfer price schedule, column (k) for purposes of MCL 460.6j(13)(b) and ex parte approval of any additional approvals that the Commission may deem necessary under MCL 460.6j. In support of its request, Detroit Edison states as follows:

1. Detroit Edison is a wholly-owned subsidiary of DTE Energy Company, supplying retail electric service to customers located in Southeast Michigan, and is a public utility and electric provider subject to the jurisdiction of the Commission.

2. Applicant is presently serving its jurisdictional metered electric customers under rates and charges approved by the Commission.

3. On October 6, 2008, Governor Jennifer M. Granholm signed 2008 PA 295, the “clean, renewable, and efficient energy act,” into law. This Application is being filed in accordance with 2008 PA 295 (MCL 460.1001 et. seq.) and the Commission’s October 21, 2008 Order in Case No. U-15806 and December 4, 2008 Order in Case No. U-15800, implementing 2008 PA 295.

4. The “clean, renewable, and efficient energy act” requires Commission approval of certain types of contracts entered into by electric providers, like Detroit Edison, for purposes of 2008 PA 295, specifically including Renewable Energy Contracts. An Electric Provider includes “[a]ny person or entity that is regulated by the commission for the purpose of selling electricity to retail customers in this state.” (MCL 460.1005(a)(i)) A Renewable Energy Contract is defined by 2008 PA 295 to mean “a contract to acquire renewable energy and the associated renewable energy credits from 1 or more renewable energy systems.” (MCL 460.1011(c)) A Renewable Energy System means “a facility, electricity generation system, or set of electricity generation systems that use 1 or more renewable energy resources to generate electricity.” (MCL 460.1011(k)) A Renewable Energy Resource is defined to include “[w]ind energy.” (MCL 460.1011(i))

5. Renewable Energy Contracts are required to be approved by the Commission pursuant to MCL 460.1033(3), which relevantly provides:

“An electric provider shall submit a contract entered into pursuant to subsection (1) [*Subsection 1(b) includes, and provides for approval of, unsolicited Renewable Energy Contracts*] to the commission for review and approval. If the commission approves the contract, it shall be considered to be consistent with the electric provider’s renewable energy plan. The commission shall not approve a contract based on an unsolicited proposal unless the commission determines that the unsolicited proposal provides opportunities that may not otherwise be available or commercially practical.”

For Renewable Energy Contracts, the Commission must determine whether the contract provides reasonable and prudent terms and conditions pursuant to MCL 460.1037 and complies with the retail rate impact limits under MCL 460.1045.

6. On December 4, 2008, the Commission issued a Temporary Order in Case No. U-15800 pursuant to MCL 460.1191(1), which relevantly provides:

“Within 60 days after the effective date of this act, the commission shall issue a temporary order implementing this act, including but not limited to, all of the following:

- (a) Formats of renewable energy plans for various categories of electric providers.
- (b) Guidelines for requests for proposals under this act.”

The Commission’s December 4, 2008 Order explains that:

“Under Section 37, all providers whose rates are regulated by the Commission must file renewable energy contracts or contracts to purchase RECs with or without the associated energy with the Commission for review and approval. The Commission intends to review and approve these submitted contracts on an expedited basis with a target of issuing the order within 30 calendar days from the date of filing of each contract.” (MPSC Case No. U-15800 Order dated December 4, 2008, p. 16)

7. The attached 20-year contract between Detroit Edison and Heritage Sustainable Energy, LLC. (hereinafter “Heritage”) is a Renewable Energy Contract pursuant to 2008 PA 295 involving the provision of 14-16 Megawatts nameplate of wind-powered electric capacity, energy and associated renewable and environmental benefits, including Renewable Energy Credits (hereinafter “RECs”) from Heritage to Detroit Edison. (See Attached Redacted Detroit Edison/Heritage Renewable Energy Contract)

8. A limited number of commercially sensitive terms and conditions in the Detroit Edison/Heritage Renewable Energy Contract have been redacted to maintain confidentiality, consistent with past practice at the Commission. For example, the Commission determined in MPSC Case No. U-11130 that executed wholesale power purchase agreements contain confidential information. As a result, the Commission limited disclosure of the confidential portions to the MPSC Staff only in order to “strike a proper balance between the public interest in disclosure and the protection of commercially sensitive information in a competitive environment.” MPSC Case No. U-11130, Order dated October 20, 1997 p. 13; Accord, MPSC Case No. U-11631, Order dated April 14, 1998; MPSC Case No. U-11804 Order dated December 21, 1998; MPSC Case No. U-11688 Order dated June 26, 1998; MPSC Case No. U-11661, Order dated June 26, 1998. More recently, in MPSC Case No. U-14626 the Commission approved multiple renewable energy contracts with various contract provisions redacted. (MPSC Case No. U-14626 Order dated October 18, 2005; see also MCL 460.1193(2) “*The Commission and a provider shall handle confidential business information under this act in a manner consistent with state law and general rules of the Commission.*”) In order to maintain a reasonably competitive environment for the provision of renewable energy, advanced cleaner energy and related equipment, products and services to Detroit Edison and its customers, it is

important to maintain the confidentiality of commercially sensitive information. Detroit Edison has therefore redacted portions of the Detroit Edison/Heritage Renewable Energy Contract.<sup>1</sup> (See attached Affidavit of Irene M. Dimitry, Detroit Edison's Director of Renewable Energy) The original unredacted Detroit Edison/Heritage Renewable Energy Contract is available for inspection by the MPSC Staff at the Company's premises.

9. This Detroit Edison/Heritage Renewable Energy Contract is an unsolicited proposal that provides opportunities that may not otherwise be available or commercially practical under reasonable and prudent terms and conditions. For example, the Detroit Edison/Heritage Renewable Energy Contract is projected to commence commercial operation by December 31, 2009, or sooner. The rapid commercial operation date of this new renewable energy project, including wind capacity, energy and RECs, is an opportunity that is unlikely to otherwise be available given the current long lead times for studying and approving interconnection requests. In addition, the contract pricing of a flat \$116.00 per Megawatt hour net energy delivered less a \$1.00 per Megawatt hour administration expense charge is lower than otherwise may be available in the future when demand may increase and credit markets are more stable. Specifically, the contract pricing of a net \$115.00 per Megawatt hour net energy delivered is less than the sum of the average proposed wind energy transfer price and the average cost of RECs procured through Renewable Energy Contracts within Detroit Edison's Renewable Energy Plan, in part because Heritage intends to take advantage of "bonus depreciation" opportunities recently extended by the Federal government for a short window of time. This bonus depreciation is only available for projects with a 2009 or 2010 in-service date and for costs incurred in 2008 and 2009, provided a contract was signed after 2007. Finally, in the future,

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<sup>1</sup> Detroit Edison reserves the right to redact different or additional terms and conditions in future contracts as circumstances and conditions warrant.

after credit markets stabilize and/or if national renewable energy standards are established, it may be difficult to obtain new wind turbines because they are long lead-time items produced by a limited number of manufacturers at facilities with limited manufacturing capacity. The wind turbines that would supply the Detroit Edison/Heritage Renewable Energy Contract are presently available at pricing levels consistent with this contract. However, with limited construction time remaining in 2009 and the potential volatility of turbine pricing due to unstable credit markets, the Detroit Edison/Heritage Renewable Energy Contract must be approved by the MPSC by no later than April 30, 2009 or Heritage has the right to terminate the agreement. (See attached Affidavit of Irene M. Dimitry, Detroit Edison Director of Renewable Energy; Detroit Edison/Heritage Renewable Energy Contract Provision 17.3)

10. The Detroit Edison/Heritage Renewable Energy Contract is consistent with Detroit Edison's Renewable Energy Plan filed in MPSC Case No. U-15806-RPS and is otherwise reasonable and prudent under MCL 460.1037 and consistent with the retail rate impact limits under MCL 460.1045. (See attached Affidavits of Irene M. Dimitry, Detroit Edison Director of Renewable Energy, Barbara J. Tuckfield, Regulatory Accounting Expert, and Kenneth D. Johnston, Regulatory Consultant)

11. The Company is also requesting that the Commission approve renewable energy transfer prices consistent with the Exhibit No. A-8 (JHB-4) 2009 Forecasted Transfer Price schedule, Column (I), (which was filed within Detroit Edison's Renewable Energy Plan in Case No. U-15806-RPS) for the energy and capacity associated with the Detroit Edison/Heritage Renewable Energy Contract for recovery under the Company's Power Supply Cost Recovery process under MCL 460.6j. (See attached MPSC Case No. U-15806-RPS Exhibit No. A-8 (JHB-4) Column (I); See also MCL 460.1047(2)(b)(iv); MCL 460.1049(3)(c)) The Company is herein

requesting that this Exhibit No. A-8 (JHB-4) schedule of renewable energy transfer prices remain in effect for the 20-year term of the Detroit Edison/Heritage Renewable Energy Contract for purposes of recovery under the Company's Power Supply Cost Recovery process under MCL 460.6j. The Company herein also specifically requests approval of the capacity charges set forth in Exhibit No. A-8 (JHB-4) 2009 Forecasted Transfer Price schedule, Column (k) for purposes of MCL 460.6j(13)(b) and any additional approvals that the Commission may deem necessary under MCL 460.6j. (MCL 460.6j(13)(b) provides, in pertinent part, "*In its order in a power supply cost reconciliation, the commission shall...(b)Disallow any capacity charges associated with power purchased for periods in excess of 6 months unless the utility has obtained the prior approval of the commission.*")

12. The approvals requested in this Application will not result in "*an alteration or amendment in rates or rate schedules*" and "*will not result in an increase in the cost of service to customers*" because the Detroit Edison/Heritage Renewable Energy Contract is consistent with the planned activities, expenses and revenue recovery mechanism surcharges described in Detroit Edison's Renewable Energy Plan in Case No. U-15806-RPS and therefore "*may be authorized and approved without notice or hearing.*" (MCL 460.6a(1)) Neither will there be any increase in Detroit Edison's PSCR factors or other charges for electric service resulting from the requested approvals. (See attached Affidavits of Irene M. Dimitry, Director of Renewable Energy, Barbara Tuckfield, Regulatory Accounting Expert, and Kenneth D. Johnston, Regulatory Consultant.) Thus, approval of this Application without notice or hearing is lawful and appropriate.

WHEREFORE, for the reasons stated above, Detroit Edison respectfully requests that the Commission expeditiously issue an *ex parte* order in this case by no later than April 30, 2009 that:

- (i) Consistent with 2008 PA 295, approves the attached Detroit Edison/Heritage Renewable Energy Contract in its entirety and also approves the associated Exhibit No. A-8 (JHB-4) 2009 Forecasted Transfer Price schedule, Column (l), (filed within Detroit Edison's Renewable Energy Plan in Case No. U-15806-RPS) as the schedule of renewable energy transfer prices for the Detroit Edison/Heritage Renewable Energy Contract for recovery under the Company's Power Supply Cost Recovery process under MCL 460.6j for the 20-year term of the Renewable Energy Contract;
- (ii) Determines that the Detroit Edison/Heritage Renewable Energy Contract is reasonable and prudent and provides opportunities that may not otherwise be available or commercially practical;
- (iii) Provides approval of the capacity charges set forth in Case No. U-15806-RPS Exhibit No. A-8 (JHB-4) 2009 Forecasted Transfer Price schedule, Column (k) for purposes of MCL 460.6j(13)(b), and provides for any additional approvals that the Commission may deem necessary under MCL 460.6j;
- (iv) Determines that the Detroit Edison/Heritage Renewable Energy Contract and related approvals will not result in an alteration or amendment in Detroit Edison's rates or rate schedules and will not result in an increase in the cost of service to Detroit Edison's customers and therefore may be authorized and approved without notice or hearing.

- (v) Grants such further relief as the Commission may deem necessary or appropriate.

Respectfully submitted,

THE DETROIT EDISON COMPANY

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

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Bruce R. Maters (P28080)  
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Dated: March 27, 2009

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**LONG-TERM NON-FIRM  
RENEWABLE ENERGY CREDIT  
AND RENEWABLE  
POWER PURCHASE AGREEMENT**

**BETWEEN**

**THE DETROIT EDISON COMPANY**

**AND**

**HERITAGE STONEY CORNERS WIND FARM I, LLC**

**MARCH 17, 2009**

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## LONG-TERM NON-FIRM RENEWABLE ENERGY CREDIT AND RENEWABLE POWER PURCHASE AGREEMENT

This Long-Term Non-Firm Renewable Energy Credit and Renewable Power Purchase Agreement is made and entered into as of March 17, 2009 (the “Effective Date”) by and between THE DETROIT EDISON COMPANY (“Buyer”) and HERITAGE STONEY CORNERS WIND FARM I, LLC, a Michigan limited liability company (“Supplier”). Buyer and Supplier are referred to individually as a “Party” and collectively as the “Parties.”

**WHEREAS**, Buyer is an operating electric public utility, subject to the applicable rules and regulations of the MPSC, as defined herein in Section 1.64, and the FERC, as defined herein in Section 1.42;

**WHEREAS**, Supplier desires to build the Generating Facility, as defined herein in Section 1.45, which is located in or around Richland Township, Michigan, and which Supplier desires to designate as a Renewable Energy System, as defined herein in Section 1.93, with the MPSC in order to comply with the requirements of this Agreement;

**WHEREAS**, the Parties intend that the electricity generated by the Generating Facility will comply with the requirements of the Clean, Renewable and Efficient Energy Act and satisfy a portion of Buyer’s obligations under the Renewable Energy Credits requirements; and

**WHEREAS**, Supplier desires to sell to Buyer all the non-firm energy generated by the Generating Facility and all the associated Renewable Energy Credits and Renewable Energy Benefits, and Buyer desires to purchase such energy, Renewable Energy Credits, and Renewable Energy Benefits from Supplier upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Supplier, intending to be legally bound, hereby agree as follows:

### **DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set forth below:

- 1.1 “Adjusted Delivered Amount” means, with respect to the calculation of a Shortfall for any Contract Year, the sum of (a) the Delivered Amount for such Contract Year and (b) the aggregate Deemed Delivered Amount for such Contract Year for (i) any Force Majeure, (ii) any Emergency, (iii) any curtailment as a result of the receipt of a curtailment notice from Buyer pursuant to Section 11.7, or (iv) the inability or failure of Buyer to accept Energy for any reason, including as a result of any curtailment by the Transmission Provider or the Control Area Operator, or a default by Buyer hereunder.
- 1.2 “Affiliate” means, with respect to any Person, each Person that directly or indirectly controls or is controlled by or is under common control with such

Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) as used with respect to any Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise.

- 1.3 “After Tax Basis” means a basis such that any payment received or deemed to have been received by a Party (the “Original Payment”) under the terms of Section 19.1 of this Agreement shall be supplemented by a further payment to such Party so that the sum of the two (2) payments shall equal the Original Payment, after taking into account (a) all Taxes that would result from the receipt or accrual of such payments, if legally required, and (b) any reduction in Taxes that would result from the deduction of the expense indemnified against, if legally permissible, calculated by reference to the highest federal and Michigan statutory Tax rates applicable to corporations doing business in Michigan and on a net present value basis by reference to the applicable federal rate then in effect under section 1274(d) of the Internal Revenue Code of 1986, as such Law may be amended or superseded.
- 1.4 “Agreement” means this Long-Term Non-Firm Renewable Energy Credit and Renewable Power Purchase Agreement together with the Exhibits attached hereto, as such may be amended from time to time.
- 1.5 “Average Monthly Michigan Hub Firm Price” means the weighted average monthly price in dollars per MWh as calculated pursuant to the following procedures. The Average Monthly Michigan Hub Firm Price is calculated as the monthly average, weighted by hours, of the (i) Daily Michigan Hub Firm On-Peak Price and (ii) Daily Michigan Hub Firm Off-Peak Price, for such month. The Daily Michigan Hub Firm On-Peak Price is calculated for a given day as the price set forth in Megawatt Daily’s price survey for Day-ahead markets for the MISO / On-peak / Michigan Hub basis location. The Daily Michigan Hub Firm Off-Peak Price is calculated for a given day as the price set forth in Megawatt Daily’s price survey for Day-ahead markets for the MISO / Off-peak / Michigan Hub basis location.
- 1.6 “Base Hours” has the meaning ascribed to that term in Exhibit 19.
- 1.7 “Billing Period” has the meaning ascribed to that term in Section 9.2.1.
- 1.8 “Business Day” means any day other than Saturday, Sunday, and any day that is a holiday observed by Buyer.
- 1.9 “Buyer” has the meaning set forth in the preamble of this Agreement, and includes such Person’s permitted successors and assigns.
- 1.10 “Buyer’s REC Account” means the account maintained by the MPSC Administrator for the purpose of tracking the production, sale, transfer, purchase, and retirement of RECs by Buyer.

- 1.11 “Buyer’s Required Regulatory Approvals” means the approvals, consents, authorizations, or permits of, or filing with, or notification to, the Governmental Authorities listed on Exhibit 9.
- 1.12 “Clean, Renewable and Efficient Energy Act” means an act of the Michigan Legislature relating to energy and requiring certain providers of electric utility service to comply with the standards for renewable energy, and providing for other matters relating thereto, codified as Michigan Revised Statutes, chapter MCL 460.1007 to 460.1195, the regulations promulgated there under inclusive, as such Laws may be amended or superseded.
- 1.13 “Commercial Operation” means that the Generating Facility has been constructed in accordance with the requirements of the IOA, the EPC Contract, and Good Utility Practice and has delivered Energy to the Delivery Point and all of the requirements set forth in Article 10 and Exhibits 6 and 7 have been satisfied. If Commercial Operation is not achieved on the first day of a month, then Commercial Operation shall be deemed to be achieved on the first day of the following month.
- 1.14 “Commercial Operation Date” means the date on which Commercial Operation occurs.
- 1.15 “Confidential Information” has the meaning ascribed to that term in Section 29.1.
- 1.16 “Contract Representative” of a Party means the individual designated by that Party in Exhibit 4 responsible for ensuring effective communication, coordination, and cooperation between the Parties. A Party may change its Contract Representative by providing notice of such change to the other Party in accordance with the procedures set forth in Section 30.1.
- 1.17 “Contract Year” means each year beginning on January 1 and ending on December 31 of such year following the Commercial Operation Date; provided, however, that the first Contract Year shall commence on the Commercial Operation Date and end on the following December 31.
- 1.18 “Control Area” means an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to (a) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s) with the load within the electric power system(s); (b) maintain scheduled interchange with the other Control Areas, within the limits of Good Utility Practice; (c) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and (d) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.
- 1.19 “Control Area Operator” means a Person, its agents, and successors that are responsible for the operation of the Transmission System and for maintaining reliability of the electrical transmission system(s), including the Transmission System, within the Control Area.

- 1.20 “Cure Period” has the meaning ascribed to that term in Section 25.2.
- 1.21 “Default Notice” means the notice of an Event of Default to the Defaulting Party.
- 1.22 “Defaulting Party” has the meaning ascribed to that term in Section 25.1.
- 1.23 “Deemed Delivered Amount” means the quantity of Energy, expressed in MWh, that would have been produced by the Generating Facility and delivered to the Delivery Point during any period, determined by taking into account (i) the actual 10-minute (or more frequent) wind speeds (interpolated over time intervals, if necessary) measured by wind monitoring equipment located on each Wind Turbine that was available for operation immediately prior to the commencement of the period in question and expected to be available for the duration of the period in question or prorated accordingly or, if such monitoring equipment is unavailable during a relevant interval, then using other available data or interpolated data determined using industry standard practices, as reasonably accepted by Supplier and Buyer; and (ii) the generation determined by the power curve provided by the manufacturer of the Wind Turbines reflecting the Energy that would be produced by a Wind Turbine at all operational speeds, as applied to the wind speeds referred to in clause (i), as adjusted for line losses to the Delivery Point, using historical data compiled by Supplier and reasonably agreed or confirmed by Buyer.
- 1.24 “Defaulting Party” has the meaning ascribed to that term in Section 25.1.
- 1.25 “Delivered Amount” means, with respect to any Contract Year, the actual amount of Energy delivered by Supplier and accepted by Buyer at the Delivery Point during such Contract Year.
- 1.26 “Delivered RECs” means RECs that have been delivered by Supplier to Buyer during a Contract Year pursuant to the terms of this Agreement, in accordance with the Clean, Renewable and Efficient Energy Act and which have been properly recorded to Buyer’s REC Account by the MPSC Administrator.
- 1.27 “Delivery Point” means the delivery point as defined by the IOA or other delivery point on the Transmission System set forth in Exhibit 5, and any other delivery point as may be mutually agreed upon by the Parties.
- 1.28 “Derating” means a condition of the Generating Facility as a result of which it is unable to produce the forecasted Energy during a Dispatch Hour.
- 1.29 “Detroit Edison Company, The” means The Detroit Edison Company, a Michigan corporation and operating electric public utility, and any successor entity thereto, subject to the applicable rules of the MPSC and the FERC.
- 1.30 “Disclosing Party” has the meaning ascribed to that term in Section 29.1.

- 1.31 “Dispatch Hour” means each hour from the Operation Date through the end of the Term.
- 1.32 “Dispute” has the meaning ascribed to that term in Section 22.1.
- 1.33 “Effective Date” has the meaning ascribed to that term in the preamble of this Agreement.
- 1.34 “Emergency” means any circumstance or combination of circumstances or any condition of the Generating Facility, the Interconnection Facilities, the Transmission System, or the transmission system of other electric utilities which is reasonably likely to (a) endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property; or (b) adversely affect, degrade, or impair Transmission System reliability or transmission system reliability of other electric utilities.
- 1.35 “Energy” means three phase 60 Hz electrical energy (measured in MWh) that is generated by the Generating Facility from and after the Operation Date. Energy shall also mean the capacity intended to be available and/or delivered to Buyer at the specifications and Delivery Point stated herein.
- 1.36 “Energy Replacement Costs” has the meaning ascribed to that term in Section 3.5
- 1.37 “Environmental Law” shall mean any federal, state, local, or other law (including common law), regulation, rule, ordinance, code, decree, judgment, binding directive, or judicial or administrative order relating to the protection, preservation, or restoration of human health, the environment, or natural resources, including any law relating to the releases or threatened releases of Hazardous Substances into any media (including ambient air, surface water, groundwater, land, and surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport, and handling of Hazardous Substances.
- 1.38 “EPC Contract” has the meaning set forth in Exhibit 6.
- 1.39 “EPT” means Eastern Standard Time or Eastern Daylight Time, which ever is then prevailing.
- 1.40 “Event of Default” has the meaning ascribed to that term in Section 25.1.
- 1.41 “EWG” means an exempt wholesale generator pursuant to Section 32 of the Public Utility Holding Company Act of 2005, as such Law may be amended or superseded.
- 1.42 “FERC” means the Federal Energy Regulatory Commission and any successor entity thereto.
- 1.43 “First Full Contract Year” means the first Contract Year that is a full calendar year.

- 1.44 “Force Majeure” has the meaning set forth in Section 21.2.
- 1.45 “Generating Facility” means Supplier’s renewable generating power plant, including any associated facilities and equipment required to deliver Energy to the Delivery Point, as further described in Exhibits 1 and 5 hereto.
- 1.46 “Good Faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
- 1.47 “Good Utility Practice” means (a) the applicable practices, methods, and acts required by or consistent with applicable Laws and reliability criteria, whether or not the Party whose conduct at issue is a member of any relevant organization, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or (b) any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to acceptable practices, methods, or acts generally accepted in the region and industry. Good Utility Practice shall include compliance with applicable Laws and regulations, applicable reliability criteria, and the criteria, rules, and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules, and standards of any successor organizations.
- 1.48 “Governmental Authority” means, as to any Person, any federal, state, local, or other governmental, regulatory, or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over such Person or its property or operations.
- 1.49 “Hazardous Substance” means (a) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, friable asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls (PCBs) in regulated concentrations; (b) any chemicals or other materials or substances which are now or hereafter become defined as, or included in, the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants”, “pollutants”, or words of similar import under any Environmental Law; and (c) any other chemical or other material or substance, exposure to which is now or hereafter prohibited, limited, or regulated as such under any Environmental Law including the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., or any similar state statute, as such Laws may be amended or superseded.


- 1.50 “IEEE-SA” means the Institute of Electrical and Electronics Engineers Standards Association and any successor entity thereto.
- 1.51 “Indemnified Party” has the meaning provided in Section 19.1.
- 1.52 “Indemnifying Party” has the meaning provided in Section 19.1.
- 1.53 “Interconnection Facilities” means the equipment and facilities, including any modifications, additions, and upgrades made to such facilities, which are necessary to connect the Generating Facility to the Transmission System as described in Exhibit 5.
- 1.54 “Invoice” means the statements described in Section 9.2 setting forth the Energy delivered to the Delivery Point, if any, and the associated payment due for the Billing Period, and in the case of an invoice delivered for the last month in a Contract Year, the Supply Amount and Shortfall, if any, including the Replacement Costs and REC Replacement Costs.
- 1.55 “IOA” means the Interconnection and Operating Agreement that has been or will be executed between Supplier and Transmission Provider, or its successors, for the Generating Facility.
- 1.56 “Law” means any federal, state, local, or other law (including any Environmental Laws), common law, treaty, code, rule, ordinance, binding directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, which is binding on a Party or any of its property.
- 1.57 “Loss” means any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, penalties, sanctions, Taxes, judgments, damages, losses, or expenses imposed by a third-party upon an Indemnified Party or incurred in connection with any claim by a third-party against an Indemnified Party pursuant to Article 19.
- 1.58 “Material Adverse Effect” means, with respect to a Party, a material adverse effect on the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate, or on the business, operations, or financial condition of such Party.
- 1.59 “Maximum Annual Amount” has the meaning ascribed to that term in Section 3.3 and Exhibit 13.
- 1.60 “Mechanical Availability Guaranty” has the meaning ascribed to that term in Exhibit 19.
- 1.61 “Meter” means any of the physical or electronic metering devices, data processing equipment, and apparatus associated with the meters owned by Buyer or its designee required for (a) an accurate determination of the quantities of Delivered Amounts and Station Usage from the Generating Facility and for recording other related parameters required for the reporting

of data to Supplier, and (b) the computation of the payment due to Supplier from Buyer. Meters do not include any check meters Supplier may elect to install as contemplated by Section 9.1.1.

- 1.62 “MISO” means the Midwest Independent Transmission System Operator, Inc. and any successor entity thereto.
- 1.63 “Moody’s” means Moody’s Investor Services, Inc. and any successor entity thereto.
- 1.64 “MPSC” means the Michigan Public Service Commission and any successor entity thereto.
- 1.65 “MPSC Administrator” means the Person appointed by the MPSC to administer the RECs established pursuant to the Clean, Renewable and Efficient Energy Act.
- 1.66 “MPSC Approval Date” means the date on which an order of the MPSC approving this Agreement becomes effective.
- 1.67 “MW” means a megawatt of electrical capacity.
- 1.68 “MWh” means a megawatt hour of electrical energy.
- 1.69 “NERC” means the North American Electric Reliability Corporation and any successor entity thereto.
- 1.70 “Non-Defaulting Party” means the Party other than the Defaulting Party.
- 1.71 “OATT” means Transmission Provider’s or Control Area Operator’s then-effective Open Access Transmission Tariff, which has been accepted for filing by the FERC.
- 1.72 “Off-Peak” means hours ending 01 through 06 EPT, hours ending 23 through 24 EPT, and all hours on Sunday and NERC designated holidays.
- 1.73 “On-Peak” means hours ending 07 through 22 EPT Monday through Saturday, other than on NERC designated holidays.
- 1.74 “Operating Hours” has the meaning ascribed to that term in Exhibit 19.
- 1.75 “Operating Representative” means any of the individuals designated by a Party, as set forth in Exhibit 4, to transmit and receive routine operating and Emergency communications required under this Agreement. A Party may change any of its Operating Representatives by providing notice of the change to the other Party in accordance with the notice procedures set forth in Section 30.1 herein.
- 1.76 “Operation Date” means the first date on which the first Wind Turbine that is a component of the Generating Facility is energized and operates in parallel with the Transmission System and delivers Energy to the Delivery Point.

Fifteen (15) calendar days prior to any synchronization to the Transmission System, Supplier shall provide written notice to Buyer's Contract Representative, as set forth in Exhibit 4, that Supplier is preparing to synchronize to the Transmission System and the date on which such synchronization will occur.

- 1.77 "Party" means each Person set forth in the preamble of this Agreement and its permitted successor or assigns.
- 1.78 "Person" means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.
- 1.79 "Planned Operation Date" means the date specified in Exhibit 6 as the date on which the Operation Date is expected to occur.
- 1.80 "Planned Outages" has the meaning ascribed to that term in Section 12.1.
- 1.81 "Power Quality Standards" means the Power Quality Standards established by NERC, MISO, Buyer, IEEE-SA, National Electric Safety Code, the National Electric Code, and their respective successor organizations or codes, as they may be amended or superseded from time to time, and consistent with Good Utility Practice.
- 1.82 "Product" means (a) all Energy produced (i) by the Generating Facility, except Station Usage and (ii) pursuant to Section 3.2.2, if any; (b) all RECs; and (c) all Renewable Energy Benefits.
- 1.83 "Product Rate" means the rate set forth in Exhibit 2A of this Agreement under "Product Rate."
- 1.84 "Project Milestone" means each of the milestones listed in Exhibit 6 under the heading "Project Milestone."
- 1.85 "Project Milestone Schedule" means the schedule of Project Milestones, completion dates, and required documentation specified in Exhibit 6.
- 1.86 "PTC" means the production tax credit established pursuant to Section 45 of the U.S. Internal Revenue Code of 1986, as such Law may be amended or superseded.
- 1.87 "QF" means a cogeneration or small power production facility which meets the criteria as defined in Title 18, Code of Federal Regulations, §§ 292.201 through 292.207, as such Law may be amended or superseded.
- 1.88 "REC Replacement Costs" has the meaning ascribed to that term in Section 3.6.
- 1.89 "REC Shortfall" means the RECs attributable to a Shortfall.
- 1.90 "Receiving Party" has the meaning ascribed to that term in Section 29.1.

- 1.91 “Renewable Energy Benefits” means any and all renewable and environmental attributes, emissions reductions, credits, offsets, allowances, or benefits, however entitled, (a) allocated, assigned, awarded, certified, or otherwise transferred or granted to Supplier or Buyer by the REC Administrator or any Governmental Authority in any jurisdiction in connection with this Agreement; or (b) associated with the production of energy from the Generating Facility, or based in whole or part on the Generating Facility’s use of renewable resources for generation, or because the Generating Facility constitutes a renewable energy system, or because the Generating Facility does not produce greenhouse gases, regulated emissions, or other pollutants, whether any such credits, offsets, allowances, or benefits exist now or in the future, or whether they arise under existing Law or any future Law, or whether such credit, offset, allowance, or benefit or any Law, or the nature of such, is foreseeable or unforeseeable, but in all cases shall not mean RECs or Tax Credits. Renewable Energy Benefits includes such credits, offsets, allowances, or benefits attributable to Energy sold under this Agreement, and Energy consumed by the Generating Facility, such as Station Usage or Standby Service.
- 1.92 “Renewable Energy Credit” or “REC” means, commencing with the Operation Date and for each Contract Year, a unit of credit which equals one MWh of electricity generated, acquired, or saved by a Renewable Energy System or efficiency measure or as calculated by the MPSC operations staff and certified by the MPSC Administrator pursuant to the Clean, Renewable and Efficient Energy Act.
- 1.93 “Renewable Energy System” means, with respect to Michigan, a “renewable energy system” as defined in the Clean, Renewable and Efficient Energy Act.
- 1.94 “Shortfall” means 
- 1.95 “S&P” means Standard and Poor’s Ratings Group, a division of McGraw Hill, Inc., and any successor entity thereto.
- 1.96 “Standby Service” means the electric service supplied by Wolverine Power Cooperative.
- 1.97 “Station Usage” means all Energy consumed by the Generating Facility.

- 1.98 “Supplier” has the meaning set forth in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.99 “Supplier’s Lenders” means any Persons other than an Affiliate of Supplier, and their permitted successors and assignees, whose business it is in the ordinary course to provide funding in connection with any development, bridge, construction, permanent debt, or tax equity financing or refinancing (collectively, “Financing”) and, in this case, Financing for the Generating Facility.
- 1.100 “Supplier’s Required Regulatory Approvals” means the approvals, consents, authorizations, or permits of, or filings with, or notifications to, the Governmental Authorities listed on Exhibit 10.
- 1.101 “Supply Amount” means, with respect to any Contract Year, the annual amount of Energy stated in Exhibit 13, in each case unless reduced pursuant to this Agreement. The Supply Amount is firm for Energy, subject to the requirements of this Agreement.
- 1.102 “Tax” means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees, or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty, or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.
- 1.103 “Tax Credits” means any state, local, and/or federal production tax credit, tax deduction, and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities.
- 1.104 “Term” has the meaning ascribed to that term in Section 2.2.
- 1.105 “Transmission Provider” means MISO and any successor operator or owner of the Transmission System.
- 1.106 “Transmission System” means the facilities used for the transmission of electric energy in interstate commerce, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Provider, except the Interconnection Facilities.
- 1.107 “Wind Turbines” means the wind turbine generators integrated into the Generating Facility.
- 1.108 “Wind Turbine Supply Agreement” means Supplier’s master wind turbine purchase agreement or other wind turbine purchase agreement under which

Supplier has the right to allocate wind turbines to satisfy the proposed capacity output of the Generating Facility within the timeframe required to achieve the Commercial Operation Date.

- 1.109 “Yearly REC Amount” means the amount of firm RECs for each Contract Year stated in Exhibit 18, as modified to reflect adjustments in the Supply Amount on a one REC to one MWh basis.

## **TERM, TERMINATION, AND SURVIVAL OF OBLIGATIONS**

- 2.1 Effective Date. This Agreement shall become effective on the Effective Date.
- 2.2 Term. Supplier’s obligation to deliver Product and Buyer’s obligation to accept and pay for Product under this Agreement shall commence on the Operation Date and shall continue for a period of twenty (20) years from January 1 immediately following the Commercial Operation Date, subject to earlier termination of this Agreement pursuant to the terms hereof (the “Term”); provided, however, that unless the approvals described in Article 17 are received as contemplated thereby, Buyer shall not be obligated to accept or pay for any Product.
- 2.3 Termination.
- 2.3.1 Mutual Agreement. This Agreement may be terminated by written agreement of the Parties.
- 2.3.2 For Cause. This Agreement may be terminated at any time by the Non-Defaulting Party upon ten (10) Business Days’ prior written notice to the Defaulting Party if an Event of Default has occurred and is continuing after the applicable Cure Period (if any) set forth in Section 25.2 has expired.
- 2.3.3 Optional Termination. This Agreement may be terminated in accordance with Article 17 in the event the approvals contemplated thereby are not obtained or are granted with conditions that are not reasonably acceptable to either Party. Upon such termination of this Agreement, except as provided in Section 2.4, neither Party shall owe any obligation to the other Party.
- 2.3.4 Force Majeure. This Agreement may be terminated by a Party if the other Party’s obligations hereunder have been excused by the occurrence of an event of Force Majeure for longer than six (6) consecutive months.
- 2.4 Effect of Termination - Survival of Obligations. Any termination of this Agreement or expiration of the Term shall not release either Party from any applicable provisions of this Agreement with respect to:
- 2.4.1 The payment of any amounts owed to the other Party arising prior to or resulting from termination of, or on account of breach of, this Agreement;

- 2.4.2 Indemnity obligations contained in Article 19, which shall survive to the full extent of the statute of limitations period applicable to any third-party claim;
- 2.4.3 Limitation of liability provisions contained in Article 20;
- 2.4.4 For a period of one (1) year after the termination date, the right to submit a payment dispute pursuant to Article 22;
- 2.4.5 The resolution of any dispute submitted pursuant to Article 22 prior to, or resulting from, termination; or
- 2.4.6 The confidentiality provisions contained in Article 29.

### **SUPPLY SERVICE OBLIGATIONS**

- 3.1 Energy. Subject to the other provisions of this Agreement, commencing on the Commercial Operation Date, Supplier shall supply and deliver Energy to Buyer at the Delivery Point.
- 3.2 Dedication. All Product shall be dedicated exclusively to Buyer for the Term of this Agreement.

3.2.1 Supplier shall not, without Buyer's prior written consent (which Buyer may withhold in its sole discretion), (a) sell, divert, grant, transfer, or assign Product to any Person other than Buyer or (b) provide Buyer with electric energy, RECs, or Renewable Energy Benefits from any source other than the Generating Facility.

[REDACTED]

[REDACTED]

- 3.3 Buyer's Obligation and Delivery. Buyer shall take delivery of Energy at the Delivery Point in accordance with the terms of this Agreement. Supplier shall be responsible for all costs associated with delivery of the Energy to the Delivery Point. Buyer shall be responsible for all costs associated with receipt of the Energy at the Delivery Point. Notwithstanding anything in this Agreement to the contrary, Buyer shall (i) be obligated to purchase or accept

delivery of Energy from the Generating Facility only if the Generating Facility is at the time qualified as a Renewable Energy System and Buyer receives the RECs associated with such Energy as contemplated by this Agreement and (ii) not be required to purchase or accept more [REDACTED] [REDACTED] (“Maximum Annual Amount”).

3.4 Consumption. Supplier shall acquire Standby Service necessary to meet Station Usage.

3.5 Energy Replacement Costs.

3.5.1 Subject to the right of a Shortfall Makeup, commencing [REDACTED] [REDACTED] and for each Contract Year thereafter, in the event of a Shortfall, Supplier shall pay Buyer the replacement costs for energy attributable to the Shortfall, as calculated by Buyer pursuant to Section 3.5.2 (“Energy Replacement Costs”).

3.5.2 The Energy Replacement Costs shall be calculated by Buyer and shall equal the [REDACTED] Average Monthly Michigan Hub Firm Price for the [REDACTED] [REDACTED] creating the Shortfall. Within five (5) Business Days of the end of any Contract Year during which a Shortfall occurred, Supplier shall provide Buyer with written notice of such Shortfall.

3.5.3 The Parties recognize and agree that the payment of Energy Replacement Costs by Supplier pursuant to this Section 3.5 is an appropriate remedy in the event of a Shortfall, and that any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes expected future costs of a Shortfall to Buyer at the time of the Effective Date. The Parties further acknowledge and agree that the actual costs of a Shortfall to Buyer are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient, and the damages calculated hereunder constitute a reasonable approximation of the harm or loss to Buyer.

3.5.4 All information used by Buyer to calculate Energy Replacement Costs shall be verifiable by Supplier; and Buyer shall provide a copy of all such information to Supplier supporting such calculations within five (5) Business Days of the request by Supplier for such information, and Supplier agrees to treat such information as Confidential Information pursuant to Article 29.

3.6 REC Replacement Costs.

3.6.1 [REDACTED] [REDACTED] commencing with the [REDACTED] [REDACTED] and for each Contract Year thereafter, in the event of a REC Shortfall, Supplier shall pay Buyer the replacement costs for RECs attributable to the REC Shortfall (“REC Replacement Costs”).

- 3.6.2 The REC Replacement Costs shall be calculated by Buyer and shall be based on the quoted market costs of purchasing replacement RECs to cover the REC Shortfall that are of a non-solar and comparable character and with a comparable expiration date or, if replacement REC market quotes are unavailable, the weighted average cost of non-solar replacement RECs already in Buyer's REC Account delivered for the most recent Contract Year in which a REC Shortfall occurred.
- 3.6.3 The Parties recognize and agree that the payment of REC Replacement Costs by Supplier pursuant to this Section 3.6 is an appropriate remedy in the event of a REC Shortfall, and that any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes expected future costs of a REC Shortfall to Buyer at the time of the Effective Date. The Parties further acknowledge and agree that the actual costs of a REC Shortfall to Buyer are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient, and the damages calculated hereunder constitute a reasonable approximation of the harm or loss to Buyer.
- 3.6.4 All information used by Buyer to calculate REC Replacement Costs shall be verifiable by Supplier; and Buyer shall provide a copy of all such information to Supplier supporting such calculations within five (5) Business Days of the request by Supplier for such information, and Supplier agrees to treat such information as Confidential Information pursuant to Article 29.

3.7 Adjustment to Supply Amount.

- 3.7.1 Increase or Decrease Prior to Commercial Operation. No later than the sooner of (a) twelve (12) months after MPSC approval of this Agreement and (b) the Commercial Operation Date, Supplier may, only once as set forth in this Section 3.7.1, adjust the Supply Amount, Yearly REC Amount, and the capacity values in Exhibit 1. Supplier may increase such amounts such that (a) the increased Supply Amount for each Contract Year shall not exceed one hundred and ten percent (110%) of the original Supply Amount for that Contract Year as of the Effective Date and (b) the Yearly REC Amount for each Contract Year shall increase in the same proportion as the increase of the Supply Amount for that Contract Year. Supplier may decrease such amounts such that (a) the decreased Supply Amount for each Contract Year shall not be less than ninety percent (90%) of the original Supply Amount for that Contract Year as of the Effective Date and (b) the Yearly REC Amount for each Contract Year shall decrease in the same proportion as the decrease of the Supply Amount for that Contract Year.
- 3.7.2 Increase of Supply Amount After Commercial Operation Date. On or before October 1 of each Contract Year, Supplier may increase the Supply Amount and Yearly REC Amount by providing written notice of such increase to Buyer, provided that (a) the increased Supply Amount for each Contract Year shall be no greater than one hundred

and ten percent (110%) of the original Supply Amount for that Contract Year as of the Effective Date, as the Supply Amount may be modified pursuant to Section 3.7.1, and (b) the Yearly REC Amount for each Contract Year shall increase in the same proportion as the increase of the Supply Amount for that Contract Year. Each increase to the Supply Amount and Yearly REC Amount under this Section 3.7.2 shall apply no sooner than the third Contract Year subsequent to the Contract Year in which Supplier provides written notice of such an increase, and shall not apply to the first or second Contract Years subsequent to the Contract Year in which Supplier provides written notice of such an increase.

3.7.3 Decrease of Supply Amount After Commercial Operation Date. On or before October 1 of each Contract Year, Supplier may decrease the Supply Amount and Yearly REC Amount by providing written notice of such decrease to Buyer, provided that (a) the decreased Supply Amount for each Contract Year shall be no less than ninety percent (90%) of the original Supply Amount for that Contract Year as of the Effective Date, as the Supply Amount may be modified pursuant to Section 3.7.1, and (b) the Yearly REC Amount for each Contract Year shall decrease in the same proportion as the decrease of the Supply Amount for that Contract Year. A decrease in the Supply Amount and Yearly REC Amount shall in no event be made to assist, accommodate, or otherwise allow for the sale of Product to third parties. Each decrease to the Supply Amount and Yearly REC Amount under this Section 3.7.3 shall apply no sooner than the third Contract Year subsequent to the Contract Year in which Supplier provides written notice of such a decrease, and shall not apply to the first or second Contract Years subsequent to the Contract Year in which Supplier provides written notice of such a decrease.

3.8 Title and Risk of Loss. Title to and risk of loss with respect to Energy shall pass from Supplier to Buyer at the Delivery Point. Until title passes, Supplier shall be deemed in exclusive control of the Energy and shall be responsible for any damage or injury caused thereby. After title to the Energy passes to Buyer, Buyer shall be deemed in exclusive control of the Energy and shall be responsible for any damage or injury caused thereby. Supplier shall deliver the Energy to Buyer free and clear of all liens, security interests, claims, and encumbrances or any interest therein or thereto by any Person.

3.9 Guaranteed Mechanical Availability. Supplier shall be obligated to achieve the Mechanical Availability Guaranty as set forth in Exhibit 19. Within thirty (30) calendar days following the end of each Contract Year, Supplier shall provide Buyer with written notice (and reasonable supporting documentation) certified by an officer of Supplier of the (a) Delivered Amount for such Contract Year; (b) Base Hours for each Wind Turbine for such Contract Year; (c) Operating Hours for each Wind Turbine for such Contract Year; (d) total number of hours that each Wind Turbine was not operational as a result of Force Majeure; and (e) total number of hours that each Wind Turbine was not operational as a result of an approved Planned Outage.

## **PRICE OF PRODUCT**

- 4.1 **Product Payments.** Supplier shall be paid for the Product based on the Delivered Amount of Energy as determined by data from monthly Meter readings, as follows:

4.1.1 Upon the Operation Date and prior to the Commercial Operation Date, all Product associated with Delivered Amounts of Energy from the Generating Facility shall be paid for by Buyer at the Product Rate.

## **RENEWABLE ENERGY CREDITS AND RENEWABLE ENERGY BENEFITS**

- 5.1 **Delivery of Renewable Energy Credits.**

5.1.1 All RECs and any benefits derived there from are exclusively dedicated to and vested in Buyer. Supplier shall deliver to Buyer all RECs derived from the production of Energy from the Generating Facility. Supplier shall timely prepare and execute all documents and shall take all actions necessary under applicable Law to cause the RECs to vest in Buyer, without further compensation, including, but not limited to, all actions necessary to register or certify the RECs or the Generating Facility with the applicable Governmental Authority, and to provide all production data and satisfy the reporting requirements of the applicable Governmental Authority.

5.1.2 Supplier and Buyer agree that all RECs awarded by the MPSC Administrator under this Agreement shall be issued in the name of Buyer.

5.1.3 On or before February 1 of each Contract Year, Supplier, as owner or operator of the Generating Facility, shall deliver to Buyer a written attestation for the prior Contract Year that the Energy represented in MWhs used to certify RECs (a) has not been and will not be sold or otherwise exchanged for compensation or used for credit in Michigan or any other state or jurisdiction and (b) has not been and will not be included within a blended energy product certified to include a fixed percentage of renewable energy in any other state or jurisdiction as prohibited under Michigan law.

- 5.2 **Renewable Energy Benefits.** All Renewable Energy Benefits shall be exclusively dedicated to and shall be vested in Buyer, and Supplier hereby transfers to Buyer all Renewable Energy Benefits. Supplier shall take or cause to be taken all commercially reasonable actions and do or cause to be done all things reasonably requested by Buyer to qualify for, and for Supplier or Buyer to receive, all available Renewable Energy Benefits and, if received by Supplier, to transfer such Renewable Energy Benefits to Buyer, without further compensation.

**TAX CREDITS**

- 6.1 The Parties agree that the Product payments as provided for in Article 4 account for Tax Credits in effect as of the Effective Date of this Agreement.
- 6.2 Supplier and Buyer agree that the Product Rate is not subject to adjustment or amendment if Supplier fails to receive any Tax Credits, or if such Tax Credits expire, are repealed, or otherwise cease to apply to Supplier or the Generating Facility in whole or in part, or Supplier or its investors are unable to benefit from such Tax Credits.

**RENEWABLE ENERGY STANDARD**

- 7.1 The Parties agree that the RECs will be used by Buyer in meeting its obligations pursuant to the Clean, Renewable and Efficient Energy Act. Supplier shall use commercially reasonable efforts to assist Buyer in Buyer's compliance with applicable requirements set forth in the Clean, Renewable and Efficient Energy Act, and shall provide information reasonably requested by Buyer or otherwise necessary to allow the MPSC to determine Buyer's compliance with such requirements.

**RIGHT OF FIRST OFFER**

- 8.1 If Supplier (or any direct or indirect parent of Supplier) intends to sell or transfer the Generating Facility to a non-Affiliate third-party, Supplier must provide written notice to Buyer of such intention. Upon Buyer's receipt of such notice, Buyer shall have the right to negotiate in Good Faith with Supplier for no more than sixty (60) calendar days, unless otherwise agreed to by Supplier, the terms of the sale or transfer of the Generating Facility to Buyer or its designee on an exclusive basis. If Buyer desires to enter into such negotiation, Buyer shall notify Supplier of such decision within fifteen (15) calendar days of receipt of Supplier's notice. Supplier will provide, in a timely manner, information regarding the Generating Facility which is reasonable or customary to allow Buyer to perform due diligence and to negotiate in Good Faith for the purchase of the Generating Facility.
- 8.2 In the event that Buyer does not exercise its right to negotiate pursuant to Section 8.1, Supplier must comply with Article 24 in any assignment or delegation of Supplier's rights, interests, or obligations herein to a purchaser of the Generating Facility.
- 8.3 In the event that Supplier does not execute an agreement, subject to receipt of appropriate regulatory approvals, to sell or transfer the Generating Facility to any non-Affiliate third-party in accordance with this Article 8 within three hundred sixty-five (365) calendar days of the date that Supplier provided Buyer with written notice pursuant to Section 8.1, Supplier (or any direct or indirect parent of Supplier) must again follow the procedures of this Article 8 if it intends to sell or transfer the Generating Facility to a non-Affiliate third-party.

## **METERING, INVOICING, AND PAYMENTS**

### **9.1 Metering.**

- 9.1.1 **Meters.** Buyer shall, at Buyer's expense, provide, install, own, operate and maintain all Meters in good operating condition. The Meters shall be used for quantity measurements under this Agreement. Such equipment shall be bi-directional and shall be capable of measuring and reading instantaneous, hourly real and reactive energy and capacity. The Meters shall also be used for, among other things, metering Station Usage of the Generating Facility. Supplier, at its expense, may install additional check meters. Supplier shall not install any check-metering equipment on Buyer-owned facilities.
- 9.1.2 **Location.** Meters shall be installed at the location specified in Exhibit 5, or as otherwise reasonably determined by Buyer to effectuate this Agreement.
- 9.1.3 **Non-Interference.** Supplier shall not undertake any action that may interfere with the operation of the Meters. Supplier shall be liable for all costs, expenses, and liabilities associated with any such interference with the Meters.
- 9.1.4 **Meter Testing.** Meters shall be tested at least once every calendar year by Buyer, at Buyer's expense. Either Party may request a special test of Meters or check meters, but the testing Party shall bear the cost of such testing unless there is an inaccuracy outside the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.1, latest version), in which case the Party whose meters were found to be inaccurate shall be responsible for the costs of the special testing. Meters installed pursuant to this Agreement shall be sealed and the seal broken only when the meters are to be adjusted, inspected, or tested. Authorized representatives of both Parties shall have the right to be present at all routine or special tests and to inspect any readings, testing, adjustment, or calibration of the Meters or check meters. Buyer's Operating Representative shall provide fifteen (15) calendar days prior notice of routine Meter testing to Supplier's Operating Representative. If Supplier has installed check meters in accordance with Section 9.1.1, Supplier shall test and calibrate each such meter at least once every calendar year. Supplier's Operating Representative shall provide fifteen (15) calendar days prior written notice of routine check meter testing to Buyer's Operating Representative. In the event of special Meter testing, the Parties' Operating Representatives shall notify each other in writing with as much advance notice as practicable.
- 9.1.5 **Metering Accuracy.** If the Meters are registering but their accuracy is outside the limits established in ANSI C12.1, Buyer shall repair and recalibrate or replace the Meters and Buyer shall adjust payments to Supplier for the Delivered Amount for the lesser of the period in which the inaccuracy existed and ninety (90) calendar days. If the period in

which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the Meters; provided, however, the adjustment period shall not exceed ninety (90) calendar days. If adjusted payments are required, Supplier shall render a statement describing the adjustments to Buyer within thirty (30) calendar days of the date on which the inaccuracy was rectified. Any payment adjustments due Supplier pursuant to this Section 9.1.5 shall accompany Supplier's statement.

- 9.1.6 Failed Meters. If the Meters fail to register, Buyer shall make payments to Supplier based upon Supplier's check metering; provided, however, that if the accuracy of the check meters is subsequently determined to be outside the limits established in ANSI C12.1, Buyer shall adjust the payments to Supplier for the Delivered Amount calculated using the check meters for the lesser of the period in which the inaccuracy existed and ninety (90) calendar days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the check meters; provided, however, the adjustment period shall not exceed ninety (90) calendar days. If no such metering is available, payments shall be based upon the Parties' best estimate of the Delivered Amount. In such event, the Parties' estimated payments shall be in full satisfaction of payments due hereunder. If the Parties cannot agree on a best estimate of the Delivered Amount, the dispute shall be resolved in accordance with Article 22.

## 9.2 Invoices.

- 9.2.1 Invoicing and Payment. On or before the 10<sup>th</sup> day of each month, Supplier shall send to Buyer an Invoice for the prior month (a "Billing Period"). The Invoice shall be calculated based upon Meter data available to Supplier and as set forth in Exhibit 2B.
- 9.2.2 Monthly Energy Invoice Calculation. Supplier shall calculate each monthly Invoice as set forth in Exhibit 2B.
- 9.2.3 Energy Replacement Costs and REC Replacement Costs Invoice Calculation. In addition to the requirements for monthly Invoices set forth in this Section 9.2, in the event of a (a) Shortfall, Buyer shall, within fifteen (15) Business Days after the end of the applicable Contract Year, send to Supplier an Invoice for Energy Replacement Costs, which shall include the calculations set forth in Exhibit 2D; and (b) REC Shortfall, Buyer shall, within fifteen (15) Business Days after the end of the applicable Contract Year, send to Supplier an Invoice for REC Replacement Costs, which shall include the calculations set forth in Exhibit 2C. For the purpose of this Section 9.2.3, the applicable Contract Year means (i) two Contract Years following a Shortfall and (ii) Supplier failed to achieve a Shortfall Makeup for such Shortfall.

### 9.3 Payments.

- 9.3.1 Payment to Buyer. The Invoice referred to in Section 9.2.1 above shall net any amounts owing to Buyer from amounts due to Supplier and shall indicate the net payment due Supplier or Buyer, as applicable. Supplier shall provide supporting data in reasonable detail to support its calculations of any amounts owing to Buyer. Any payment due to Buyer shall be credited to following Billing Periods and if no such Billing Periods remain, payment shall be made within thirty (30) calendar days of the date of the Invoice.
- 9.3.2 Method of Payment. Buyer and Supplier, as applicable, shall remit the payment of any undisputed amounts by wire transfer pursuant to the instructions stated on the Invoice, and if no instructions are stated on such Invoice, then in accordance with Exhibit 4. Payment will be made on or before the later of (a) twenty (20) calendar days following the end of each month and (b) ten (10) calendar days from receipt of Invoice by the applicable Party.
- 9.3.3 Examination and Correction of Invoices. As soon as practicable, either Party shall notify the other Party in writing of any alleged error in Supplier's Invoice.
- 9.3.3.1 If a Party notifies the other Party of an alleged error in Supplier's Invoice, the Parties agree to make Good Faith efforts to reconcile the billing and mutually agree on the appropriate remedy, if any.
- 9.3.3.2 If a correction is determined to be required, Supplier shall provide an adjusted Invoice to Buyer. If such correction results in an additional payment to Supplier, Buyer shall pay Supplier the amount of the adjusted Invoice within thirty (30) calendar days of the date of the receipt of adjusted Invoice. If such correction resulted in a refund owed to Buyer, Supplier shall pay Buyer the amount of the adjusted Invoice within thirty (30) calendar days of the date of the statement or, at Buyer's option, Buyer may net such amount against the subsequent monthly payment to Supplier.
- 9.3.3.3 If Supplier fails to provide Buyer with notice of any alleged error in Supplier's Invoice within twelve (12) months of Buyer's receipt of such Invoice, then Supplier shall be deemed to have waived all rights to object to such Invoice.
- 9.3.4 Overdue Amounts and Refunds. Overdue amounts and refunds of overpayments shall bear interest from and including, the due date or the date of overpayment, as the case may be, to the date of payment of such overdue amounts or refund at a rate calculated pursuant to 18 C.F.R. § 35.19a, as such Law may be amended or superseded.

- 9.3.5 Access to Books and Records. Supplier agrees to make available for inspection upon five (5) Business Days written notice from Buyer its books and records for the purpose of allowing Buyer to verify the information contained within the Invoices presented pursuant to this Article 9.
- 9.3.6 Parties Right to Net. Either Party shall have the right to net any undisputed amounts owed to the other Party under this Agreement.
- 9.3.7 Taxes. Buyer is responsible for any Taxes imposed on or associated with the Energy or its receipt at the Delivery Point. Supplier is responsible for any Taxes imposed on or associated with the Energy or its delivery to the Delivery Point. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any Tax. Each Party shall hold harmless the other Party from and against Taxes imposed on the other Party as a result of a Party's actions or inactions and that otherwise would not have occurred in the absence of this Agreement in accordance with Article 19.

## **FACILITY CONSTRUCTION, OPERATIONS, AND MODIFICATIONS**

- 10.1 Construction of Generating Facility. Supplier shall construct the Generating Facility in accordance with Good Utility Practice, in accordance with the Project Milestones, and to ensure that (a) Supplier is capable of meeting its supply obligations over the Term and (b) the Generating Facility is at all times in compliance with all requirements imposed on a Renewable Energy System as set forth in the Clean, Renewable and Efficient Energy Act. Supplier shall provide to Buyer in a form satisfactory to Buyer within thirty (30) calendar days after execution of the IOA, an update to Exhibit 5 which shall include a single line diagram of the Generating Facility, Interconnection Facilities, the Delivery Point, and the location of Meters, which location shall be reasonably acceptable to Buyer. At Buyer's request, Supplier shall provide Buyer with copies of the EPC Contract for the proposed Generating Facility and any documentation and drawings reasonably requested by Buyer, redacted of any pricing information.
- 10.2 Performance of Project Milestones. Supplier shall complete each Project Milestone set forth in Exhibit 6 on or before 1600 hours EPT on the date specified for each Project Milestone.
- 10.2.1 Completion of Project Milestones. Upon Supplier's completion of each Project Milestone, Supplier shall provide to Buyer in writing pursuant to Section 30.1 documentation as specified in Exhibit 6 and reasonably satisfactory to Buyer demonstrating such Project Milestone completion within thirty (30) calendar days following such completion but no later than the date specified for each Project Milestone listed in Exhibit 6. Buyer shall acknowledge receipt of the documentation

provided under this Section 10.2.1 and shall provide Supplier with written acceptance or denial of each Project Milestone within fifteen (15) calendar days of receipt of the documentation.

10.2.2 Progress Towards Completion. Supplier shall notify Buyer promptly (and in any event within ten (10) Business Days) following its becoming aware of information that leads to a reasonable conclusion that a Project Milestone will not be met, and shall convene a meeting with Buyer to discuss the situation not later than fifteen (15) calendar days after becoming aware of this information.

10.3 Commercial Operation. Supplier shall notify Buyer at least ten (10) Business Days prior to the commencement of any performance tests required by the EPC Contract and the IOA. Buyer shall have the right to be present at and witness each such test. Supplier shall notify Buyer at least ten (10) Business Days prior to the commencement of the performance tests required by Exhibit 7. Buyer shall be deemed to waive its right to be present at the performance tests if Buyer fails to appear at the scheduled time for the performance tests. Within five (5) Business Days of the successful completion of the performance tests pursuant to Exhibit 7, Supplier shall provide Buyer with a written certification that all of the requirements for Commercial Operation hereunder have been satisfied together with completed test summary data sheets and other relevant data derived from such tests demonstrating to Buyer's satisfaction that such tests have been successfully completed.

10.4 Delay Damages.

10.4.1 In the event the Supplier fails to achieve Commercial Operation by the date specified in Exhibit 6, for each calendar day that the Supplier fails to achieve Commercial Operation thereafter, Supplier shall pay

[REDACTED] Buyer shall invoice Supplier on a monthly basis for any such amounts under this Section 10.4 and Supplier shall pay such amounts invoiced within twenty (20) calendar days of receipt of the invoice.

10.4.2 The provisions of this Section 10.4 are in addition to, and not in lieu of, Buyer's right to terminate this Agreement under Article 25

[REDACTED]

10.4.3 The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 10.4 is an appropriate remedy and

that any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement.

- 10.5 Modification. Without the prior written consent of Buyer, which shall not be unreasonably withheld, Supplier shall not make any modification to the Generating Facility that might (a) expose Buyer to any additional liability or increase its obligations under this Agreement or (b) adversely affect Supplier's or Buyer's ability to perform its obligations under this Agreement or any Law or to any third-party. Any such modifications shall be conducted in accordance with Good Utility Practice and all applicable Laws and reliability criteria, as such may be amended from time to time. To the extent additions and modifications extend beyond the limits for a Planned Outage as set forth in Article 12 and interfere with the ability of the Generating Facility to cause or contribute to a Shortfall, Supplier shall pay Energy Replacement Costs and REC Replacement Costs to Buyer pursuant to Sections 3.5 and 3.6, respectively.
- 10.6 Operation and Maintenance. Supplier at all times shall install, operate, maintain, and repair the Generating Facility in accordance with Good Utility Practice to ensure (a) Supplier is capable of meeting its supply obligations over the Term, (b) the Generating Facility is at all times a Renewable Energy System, and (c) Supplier is at all times in compliance with all requirements of a renewable energy generator set forth in the Clean, Renewable and Efficient Energy Act. Supplier agrees to (x) maintain records of all operations of the Generating Facility in accordance with Good Utility Practice, and (y) follow such regulations, directions, and procedures of Buyer, the Control Area Operator, the Transmission Provider, MISO, NERC, and any applicable Governmental Authority to protect and prevent the Transmission System from experiencing any negative impacts resulting from the operation of the Generating Facility. In the event of an inconsistency, Buyer shall choose whose procedures shall govern. Each Party shall use all reasonable efforts to avoid any interference with the other's operations. Supplier shall cause the Energy of the Generating Facility to meet the Power Quality Standards at all times, and shall operate the Generating Facility consistent with MISO, NERC, Buyer, Control Area Operator, and Transmission Provider requirements.
- 10.7 Operation And Maintenance Agreement. No later than ninety (90) calendar days prior to the Commercial Operation Date, if Supplier is not the operator, Supplier shall provide a copy of the agreement between Supplier and the operator which requires the operator to operate the Generating Facility in accordance with the terms hereof, which shall be attached to this Agreement as Exhibit 15. Supplier shall also provide a certified copy of a certificate warranting that the operator is a corporation, limited liability company, or partnership in good standing with the State of Michigan, which shall be attached to this Agreement as part of Exhibit 15.
- 10.8 Ground Lease; Rights-of-way. If the land on which the Generating Facility is located is not owned by Supplier, no later than sixty (60) calendar days prior to commencement of Generating Facility construction, Supplier shall provide

a copy of the agreement with the owner of the land, attached as Exhibit 16, which establishes (a) the exclusive right of Supplier to construct and operate the Generating Facility on the land for a period not ending before the expiration of the Term and (b) the existence of required rights-of-way and easements.

- 10.9 Fossil Fuel. If the Generating Facility uses any fossil fuel as an energy source to produce Energy, Supplier shall not permit, without the express prior written consent of Buyer, fossil fuel to constitute more than one percent (1%) of the total input, as measured in British thermal units, used by the Generating Facility to produce Energy.
- 10.10 Right to Review. Buyer and Supplier each shall have the right to review during normal business hours copies of the relevant books and records of the other Party to confirm the accuracy of such as they pertain only to transactions under this Agreement. The review shall be consistent with standard business practices and shall follow reasonable notice to the other Party. Reasonable notice for a review of the previous month's records shall be a minimum of seven (7) Business Days. If a review is requested of other than the previous month's records, then notice of that request shall be provided with a minimum of fourteen (14) Business Days notice by the requesting Party. The notice shall specify the period to be covered by the review. The Party providing records can exercise its right under Article 29 to protect the confidentiality of the records.

### **EMERGENCY AND CURTAILMENT**

- 11.1 In the event of an Emergency, Buyer and Supplier shall promptly comply with any applicable requirements of any Governmental Authority, NERC, MISO, Control Area Operator, Transmission Provider, and any successor of any of them regarding the reduced or increased generation of the Generating Facility.
- 11.2 Each Party shall provide prompt oral and written notification to the other Party of any Emergency. If requested by the other Party, the Party declaring the Emergency shall provide a description in reasonable detail of the Emergency and any steps employed to cure it.
- 11.3 In the event of an Emergency, either Party may take reasonable and necessary action to prevent, avoid, or mitigate injury, danger, damage, or loss to its own equipment and facilities, or to expedite restoration of service; provided, however, that the Party taking such action shall give the other Party prior notice, if practicable, before taking any action. This Section 11.3 shall not be construed to supersede Sections 11.1 and 11.2.
- 11.4 In the event of an Emergency, if and when Buyer requests Supplier not to institute a Planned Outage of the Generating Facility, Supplier agrees to take all commercially reasonable steps to avoid instituting the Planned Outage until such time as the condition of the Emergency has passed.

- 11.5 In the event of an Emergency declared by Supplier, such that Supplier cannot deliver some or all of the Supply Amount to the Delivery Point, Supplier will pay Buyer's Energy Replacement Costs pursuant to Section 3.5 and REC Replacement Costs pursuant to Section 3.6, unless such Supplier declared Emergency qualifies as an event of Force Majeure in accordance with Article 21.
- 11.6 In the event of an Emergency, as a result of which Buyer is unable to receive some or all of the Energy at the Delivery Point or is unable to deliver some or all of the Energy to its customers, then Buyer shall have no payment liability in respect of such Energy that Buyer is unable to receive. The Supply Amount and Yearly REC Amount will be reduced accordingly in part or total, as applicable, during the period of any such Emergency.
- 11.7 Supplier shall curtail deliveries of Energy at any time, in whole or in part, in a quantity and for any duration specified by Buyer upon at least thirty (30) minutes prior notice (which may be given by e-mail or telephone) to Supplier. The quantity of Energy curtailed and any associated RECs shall equal a Deemed Delivered Amount for such period of curtailment. Supplier shall promptly provide Buyer with such information and data as Buyer may request to confirm to its satisfaction such Deemed Delivered Amount. Supplier shall be paid for such Deemed Delivered Amount at the Product Rate plus an amount equal to the value of the PTCs, if any, associated with such Deemed Delivered Amount that Supplier or any of its Affiliates were unable to utilize as a result of Buyer's curtailment notice, as if the Deemed Delivered Amount were delivered to Buyer. During any such period of curtailment, Supplier shall not produce Energy (to the extent curtailed by Buyer) or sell Product to any third-party. All Energy and any associated RECs curtailed in accordance with this Section 11.7 shall be considered Product delivered to Buyer for all purposes under this Agreement.

### **PLANNED OUTAGES**

- 12.1 Except in the event of an Emergency, Supplier shall schedule any (a) planned outage of the Generating Facility and (b) reduction of the capability of the Generating Facility to deliver the Supply Amount (any and all of (a) and (b) are referred to as "Planned Outages") in accordance with Sections 12.1.1, 12.1.2 and 12.1.3.
- 12.1.1 Within ninety (90) calendar days prior to the Commercial Operation Date and on or before October 1 of each Contract Year, Supplier shall provide Buyer with a schedule of proposed peak Planned Outages for the months of January, February, June, July, August, and December of the upcoming Contract Year and non-peak Planned Outages for the months of March, April, May, September, October, and November of the upcoming Contract Year. The proposed schedules for peak Planned Outages and non-peak Planned Outages will designate the days and amount (in MWs) in which the Generating Facility output will be reduced in whole or in part. Each proposed schedule shall include all applicable information, including the following: month,

day, and time of a Planned Outage, facilities impacted, duration of outage, purpose of outage, and other relevant information.

12.1.2 Buyer shall promptly review Supplier's proposed peak Planned Outage schedule and shall either require modifications or approve the proposed schedule within thirty (30) calendar days of Buyer's receipt of such schedule. No approval shall be required for non-peak Planned Outages. Supplier shall use commercially reasonable efforts to accomplish all Planned Outages in accordance with the approved schedule.

12.1.3 Regardless of any prior approval of a peak Planned Outage, Supplier shall not start any Planned Outage on the Generating Facility without notifying Buyer's Operating Representative five (5) Business Days prior to the start of such Planned Outage.

### **REPORTS AND OPERATIONS LOG**

13.1 Copies of Communications. Supplier shall promptly provide Buyer with copies of any orders, decrees, letters, or other written communications to or from any Governmental Authority asserting or indicating that Supplier or its Generating Facility is in violation of Laws that relate to Supplier or the operation or maintenance of the Generating Facility and could have an adverse effect on Buyer. Supplier shall keep Buyer apprised of the status of any such matters.

13.2 Notification of Generating Facility Status. Supplier shall notify Buyer of the status of the Generating Facility as an EWG, QF, or such other status no later than ninety (90) calendar days prior to the Operation Date. Supplier shall notify Buyer, as soon as practicable, of any changes in that status after the Operation Date of this Agreement.

13.3 Notices of Change in Generating Facility. In addition to any consent required pursuant to Section 10.4, Supplier shall provide notice to Buyer as soon as practicable prior to any temporary or permanent change to the performance, operating characteristics, or Wind Turbines of the Generating Facility. Such notice shall describe any changes, expected or otherwise, to the total capacity of the Generating Facility, the rate of production and delivery of Energy, interconnection and transmission issues, and such additional information as may be required by Buyer.

13.4 Project Reports and Project Review Meetings.

13.4.1 Prior to the Commercial Operation Date. Supplier shall provide to Buyer in a monthly project report the status in achieving Project Milestones, progress in obtaining any approvals or certificates in connection with achieving the Commercial Operation Date, and a discussion of any foreseeable disruptions or delays. The monthly project reports should be provided at the latest on the 15th day of every month for the previous month. The Parties shall conduct

meetings every six (6) months or more frequently if requested by Buyer to review this data and any information related to Supplier's status in achieving the Project Milestone activities listed in Exhibit 6.

- 13.4.2 Scheduled Operation Date and Commercial Operation Date. In addition to any other requirements for Commercial Operation under this Agreement, Supplier shall provide notice to Buyer of its scheduled Operation Date and Commercial Operation Date on the MPSC Approval Date, if any, and Supplier shall provide to Buyer in writing any adjustments to such scheduled dates as soon as possible, and shall coordinate with Buyer regarding the commencement of operation of the Generating Facility.
- 13.4.3 After Commercial Operation Date. After the Commercial Operation Date, Supplier shall provide to Buyer on January 1 and July 1 of each calendar year throughout the Term of this Agreement, in both electronic and hard copy format, a report which shall include all pertinent information in connection with Supplier's Generating Facility, which includes all reporting information maintained in the operational log. Each February during the Term, the Parties shall meet to conduct an annual review of the Generating Facility. Additional data and meetings may be required as necessitated by Generating Facility performance.
- 13.4.4 Operations Log. Supplier shall maintain an operations log, which shall include the Delivered Amount, unplanned maintenance outages and Planned Outages, circuit breaker trip operations, partial deratings of equipment, and any other significant event or information related to the operation of the Generating Facility. The operations log shall be available for inspection by Buyer upon reasonable advance request, and Supplier shall make the data that supports the log available on a real-time basis by remote access to Buyer, if Buyer acquires the necessary equipment and software license to process the data by remote access
- 13.4.5 Financial Information. Upon Buyer's written request, Supplier shall, within thirty (30) calendar days of such request, provide Buyer with (a) copies of Supplier's most recent financial statements required by Supplier's Lenders and (b) in the initial request by Buyer, the relevant provisions of Supplier's lending agreements setting forth the financial reporting obligations and, for any subsequent requests, any amendments thereto. In the event Supplier is funding one hundred percent (100%) of the engineering, procurement, construction, and operation of the Generating Facility with its own equity, then Supplier shall, within thirty (30) calendar days of a request for its most recent financial statements, provide Buyer with copies of such financial statements prepared in accordance with generally accepted accounting principles in the United State as in effect from time to time.

## **COMMUNICATIONS**

- 14.1 **On Call.** Supplier's Operating Representative shall be available to address and make decisions on all operational matters under this Agreement on a twenty-four (24) hour, seven (7) day per week basis. Supplier shall, at its expense, maintain and install a twenty-four (24) hour, seven (7) day per week communication link with Buyer's Operating Representative at Buyer's operations center and with Buyer's scheduling personnel, as listed on Exhibit 4, to maintain communications between personnel on site at the Generating Facility and Buyer's Operating Representative at Buyer's operations center, Buyer's schedulers, and the Control Area Operator at all times. Supplier shall provide at its expense:
- 14.1.1 For the purposes of telemetering, a telecommunications circuit from the Generating Facility to Buyer's operations center;
  - 14.1.2 Two (2) dedicated ringdown voice telephone lines for purposes of accessing Buyer's dial-up metering equipment and for communications with Buyer's operations center; and
  - 14.1.3 Equipment to transmit to and receive voice data, facsimiles, and email from Buyer and the Control Area Operator, including cellular telephones.

## **SCHEDULING SERVICES**

- 15.1 **Scheduling Services.** Buyer shall be responsible for offering the Generating Facility into the MISO energy market and will act as the generation owner of the Generating Facility in the MISO energy market. Buyer shall receive all revenue from MISO related to the operation of the Generating Facility and be responsible for all payments to MISO related to the operation of the Generating Facility.
- 15.2 **Scheduling Services Fee.** For providing the foregoing scheduling services, Supplier will pay Buyer \$1.00/MWh.

## **COMPLIANCE**

- 16.1 **Compliance with Laws.** Each Party shall comply with all relevant Laws and shall, at its sole expense, maintain in full force and effect all relevant permits, authorizations, licenses, and other authorizations material to the maintenance of its facilities and the performance of obligations under this Agreement. Each Party and its representatives shall comply with all relevant requirements of the Control Area Operator, Transmission Provider, and each Governmental Authority to ensure the safety of its employees and the public.
- 16.2 **Good Utility Practice.** Buyer and Supplier shall perform, or cause to be performed, their obligations under this Agreement in all material respects in accordance with Good Utility Practice.

## **APPROVALS**

- 17.1 Condition Precedent. Each Party's performance of its respective obligations under Articles 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15 and 28 of this Agreement is subject to the Parties obtaining their respective approvals described in Section 17.2 and Section 17.4 in form and substance reasonably satisfactory to Buyer and Supplier.
- 17.2 MPSC Approval. Within fourteen (14) calendar days following the Effective Date, Buyer shall submit this Agreement to the MPSC for approval consistent with the Clean, Renewable and Efficient Energy Act and any other applicable statutory requirements.
- 17.3 Failure to Obtain Approval; Conditions of Approval. If the MPSC fails to grant approval or acceptance of this Agreement Pursuant to Section 17.2, then Buyer shall have the right to terminate this Agreement upon written notice to Supplier within fourteen (14) calendar days of such MPSC disapproval. If the MPSC grants the approval or acceptance of this Agreement and the conditions of such approval or acceptance are not reasonably acceptable to Buyer, then Buyer shall have the right to terminate this Agreement upon written notice to Supplier within fourteen (14) calendar days of such MPSC approval or acceptance. If the MPSC grants the approval or acceptance of this Agreement and the conditions of such approval or acceptance are not reasonably acceptable to Supplier, then Supplier shall have the right to terminate this Agreement upon written notice to Buyer within fourteen (14) calendar days of such MPSC approval or acceptance. If the MPSC fails to grant approval or acceptance of this Agreement by April 30, 2009, Supplier shall have the right to terminate this Agreement upon written notice to Buyer on or before May 15, 2009.
- 17.4 Cooperation. Each Party agrees to notify the other Party of any significant developments in obtaining any approval in connection with achieving Commercial Operation, including MPSC approval. Each Party shall use reasonable efforts to obtain such required approvals and shall exercise due diligence and shall act in Good Faith to cooperate with and assist each other in acquiring each approval necessary to effectuate this Agreement.
- 17.5 Intervention. Supplier shall (a) timely file a petition to intervene in the MPSC proceeding related to the approval of this Agreement, (b) retain counsel to represent Supplier in such proceeding, and (c) actively support the regulatory approval process.

## **CREDITWORTHINESS AND SECURITY**

- 18.1 Credit Appraisal. Acceptance of this Agreement is contingent upon (i) Buyer's completion of a credit appraisal of Supplier and (ii) Buyer's determination, in its sole discretion, that Supplier is able to perform its obligations. To enable Buyer to conduct such credit appraisal, Supplier shall submit the information below to the extent such information is applicable to Supplier.

- 18.1.2 Supplier shall provide the latest audited fiscal and latest interim financial statements, prepared in accordance with generally accepted accounting principles;
- 18.1.3 Supplier shall confirm in writing that it is not operating under any chapter of the bankruptcy laws and is not subject to liquidation or debt reduction procedures under state laws, such as an assignment for the benefit of creditors, or any informal creditors' committee agreement;
- 18.1.4 Supplier shall confirm in writing that no significant collection lawsuits or judgments are outstanding which would seriously reflect upon the business entity's ability to remain solvent;
- 18.1.5 Supplier shall provide a statement of prospective Supplier's legal composition and ownership;
- 18.1.6 Supplier shall provide such other information be may be requested by Buyer; and
- 18.1.7 in the event Supplier cannot provide the information above, it shall, if applicable, provide that information for Supplier's parent company or guarantor.
- 18.2 Waiver of Buyer Security. Supplier hereby waives any and all rights it may have, including rights at Law and otherwise, to require Buyer to provide financial assurances or security (including, but not limited to, cash, letters of credit, bonds, or other collateral) in respect of its obligations under this Agreement.

18.3



## INDEMNIFICATION

- 19.1 Indemnification for Losses. A Party to this Agreement (the "Indemnifying Party") shall indemnify, defend and hold harmless, on an After Tax Basis, the other Party, its parent and Affiliates, and each of their officers, directors, employees, attorneys, agents, and successors and assigns (each an "Indemnified Party") from and against any and all Losses arising out of, relating to, or resulting from any third-party claims as a result of the Indemnifying Party's breach of, or the performance or non-performance of, its obligations under this Agreement (including Taxes, failure to maintain insurance at levels required by this Agreement, and penalties, fines, reasonable attorneys' fees, and costs incurred in connection with the Clean,

Renewable and Efficient Energy Act) or any other act or failure to act; provided, however, that no Party shall be indemnified hereunder for any Loss to the extent resulting from its own negligence, fraud, or willful misconduct.

19.1.1 In furtherance of the foregoing indemnification and not by way of limitation thereof, the Indemnifying Party hereby waives any defense it otherwise might have against the Indemnified Party under applicable workers' compensation laws.

19.1.2 In claims against any Indemnified Party by an agent of the Indemnifying Party, or anyone directly or indirectly employed by them or anyone for whose acts the Indemnifying Party may be liable, the indemnification obligation under this Article 19 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Indemnifying Party or a subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

19.2 No Negation of Existing Indemnities; Survival. Each Party's indemnity obligations under this Agreement shall not be construed to negate, abridge, or reduce other rights or obligations, which would otherwise exist at Law or in equity. The obligations contained herein shall survive any termination, cancellation, expiration, or suspension of this Agreement to the extent that any third-party claims are commenced during the applicable statute of limitations period.

19.3 Indemnification Procedures.

19.3.1 Any Indemnified Party seeking indemnification under this Agreement for any Loss shall give the Indemnifying Party notice of such Loss promptly, but in any event on or before thirty (30) calendar days after the Indemnified Party's actual knowledge of such claim or action. Such notice shall describe the Loss in reasonable detail, and shall indicate the amount (estimated if necessary) of the Loss that has been, or may be sustained by, the Indemnified Party. To the extent that the Indemnifying Party will have been actually and materially prejudiced as a result of the failure to provide such notice, the Indemnified Party shall bear all responsibility for any additional costs or expenses incurred by the Indemnifying Party as a result of such failure to provide notice.

19.3.2 In any action or proceeding brought against an Indemnified Party by reason of any claim indemnifiable hereunder, the Indemnifying Party may, at its sole option, elect to assume the defense at the Indemnifying Party's expense, and shall have the right to control the defense thereof and to determine the settlement or compromise of any such action or proceeding. Notwithstanding the foregoing, an Indemnified Party shall in all cases be entitled to control its own defense in any action if it:

19.3.2.1 May result in injunctions or other equitable remedies with respect to the Indemnified Party which would have a Material Adverse Effect on its business or operations;

19.3.2.2 May result in material liabilities which may not be fully indemnified hereunder; or

19.3.2.3 May have a Material Adverse Effect on the business or the financial condition of the Indemnified Party (including a Material Adverse Effect on the tax liabilities, earnings, ongoing business relationships, or regulation of the Indemnified Party) even if the Indemnifying Party pays all indemnification amounts in full.

19.3.3 Subject to Section 19.3.2, neither Party may settle or compromise any claim for which indemnification is sought under this Agreement without the prior written consent of the other Party; provided, however, said consent shall not be unreasonably withheld or delayed.

### **LIMITATION OF LIABILITY**

- 20.1 Responsibility for Damages. Notwithstanding anything under Section 19.1 to the contrary, and except where caused by Buyer's negligence or willful misconduct, Supplier shall be responsible for all physical damage to or destruction of the property, equipment, and/or facilities owned by it, and Supplier hereby releases Buyer from any reimbursement for such damage or destruction.
- 20.2 Limitation on Damages. To the fullest extent permitted by Law, and notwithstanding other provisions of this Agreement, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages, and lost business opportunities), exemplary, or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement. For purposes of clarification, Energy Replacement Costs, REC Replacement Costs, or payment made by either Party to satisfy payments owing under Sections 3.5, 3.6, 9.6, 10.4, or 28.6 shall not be considered special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages and lost business opportunities), exemplary, or punitive damages under this Section 20.2. In addition, this limitation on damages shall not apply with respect to claims brought by third parties for which a Party is entitled to indemnification under this Agreement.
- 20.3 Survival. The provisions of this Article 20 shall survive any termination, cancellation, expiration, or suspension of this Agreement.

**FORCE MAJEURE**

- 21.1 Excuse. Subject to Section 21.4, neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations, and shall be excused in the performance of its obligations under this Agreement (including any obligation to deliver or accept Product), if such delay or failure is due to an event of Force Majeure.
- 21.2 “Force Majeure” means, subject to Section 21.3, any of the following enumerated events that occur subsequent to the Effective Date and before the termination or expiration of the Term of this Agreement, and that delays or prevents a Party’s performance of its obligations under this Agreement, but only to the extent that (a) such event of Force Majeure is not attributable to fault or negligence on the part of that Party; (b) such event of Force Majeure is caused by factors beyond that Party’s reasonable control; (c) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate, or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate, or overcome such event or consequences; and (d) such Party has satisfied the requirements of Section 21.4:
- 21.2.1 Acts of God such as storms, hurricanes, floods, lightning, and earthquakes;
  - 21.2.2 Sabotage or destruction by a third-party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
  - 21.2.3 War, riot, acts of a public enemy, or other civil disturbance;
  - 21.2.4 Strike, walkout, lockout or other significant labor dispute;
  - 21.2.5 Action or inaction of a Governmental Authority (excluding any change in Law, including Renewable Energy Law); or
  - 21.2.6 Action or inaction of Transmission Provider, but excluding any FERC approved amendments to Transmission Provider’s FERC approved tariff.
- 21.3 Exclusions. None of the following shall constitute an event of Force Majeure:
- 21.3.1 Economic hardship of either Party;
  - 21.3.2 The non-availability of wind to generate electricity from the Generating Facility;
  - 21.3.3 A Party’s failure to obtain any permit, license, consent, agreement, or other approval from a Governmental Authority attributable to the fault or negligence of that Party, except to the extent it is caused by an event listed in Sections 21.2.3 or 21.2.4; and

21.3.4 A Party's failure to meet a Project Milestone, except to the extent it is caused by an event listed in Section 21.2.

21.4 Conditions. A Party may rely on a claim of Force Majeure to excuse its performance only to the extent that such Party:

21.4.1 Provides prompt notice of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;

21.4.2 Exercises all reasonable efforts to continue to perform its obligations under this Agreement;

21.4.3 Expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the event or condition being corrected or cured using commercially reasonable efforts; provided, however, that settlement of strikes or other labor disputes will be completely within the sole discretion of the Party affected by such strike or labor dispute;

21.4.4 Exercises all commercially reasonable efforts to mitigate or limit damages to the other Party; and

21.4.5 Provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

## DISPUTES

22.1 Dispute or Claim. Any cause of action, claim, or dispute which either Party may have against the other arising out of or relating to this Agreement, including the interpretation of the terms hereof or any Laws that affect this Agreement, or the transactions contemplated hereunder, or the breach, termination, or validity thereof ("Dispute") shall be submitted in writing to the other Party. The written submission of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and appropriate supporting documentation.

22.2 Good Faith Resolution. The Parties agree to cooperate in Good Faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligations under this Agreement.

22.3 Informal Negotiation. The Parties shall first attempt in Good Faith to resolve any Dispute through informal negotiations by the Operating Representatives or Contract Representatives and senior management of each Party.

22.4 Litigation. In the event the Parties are unable to resolve any Dispute pursuant to the foregoing, either may seek redress in a court of law or equity

subject to the exclusive jurisdiction in the federal or state courts located in Detroit, Michigan.

- 22.5 Recovery Costs. In the event any action is brought at law or in equity in court to enforce any provision of this Agreement, or for damages by reason of any alleged breach of this Agreement, then the prevailing Party will be entitled to recover from the other Party all costs of the suit, including court costs, the prevailing Party's reasonable attorneys' fees, and related costs and expenses of litigation.

### **NATURE OF OBLIGATIONS**

- 23.1 Relationship of the Parties. The provisions of this Agreement shall not be construed to create an association, trust, partnership, or joint venture; or impose a trust or partnership duty, obligation, or liability or agency relationship between the Parties.
- 23.2 No Public Dedication. By this Agreement, neither Party dedicates any part of its facilities nor the service provided under this Agreement to the public.

### **ASSIGNMENT**

- 24.1 Buyer Assignment. Buyer's obligations hereunder shall not be assigned by Buyer without the prior written consent of Supplier, which consent shall not be unreasonably withheld.
- 24.2 Supplier Assignment. Supplier's obligations hereunder shall not be assigned by Supplier without the prior written consent of Buyer, which consent shall not be unreasonably withheld.
- 24.3 Liability After Assignment. A Party's assignment or transfer of rights or obligations pursuant to this Article 24 of this Agreement shall relieve said Party from any liability and financial responsibility for the performance thereof arising after any such transfer or assignment, provided such transferee enters into an assignment and assumption agreement in form and substance satisfactory to the other Party, pursuant to which such transferee assumes all of the assigning or transferring Party's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.
- 24.4 Transfers of Ownership. Subject to Article 8, during the Term, Supplier shall not sell, transfer, assign, or otherwise dispose of its ownership interest in the Generating Facility to any third-party absent (a) a transfer of this Agreement to such third-party and (b) Supplier entering into an assignment and assumption agreement, in form and substance satisfactory to Buyer, with such third-party pursuant to which such third-party assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.
- 24.5 Assignee Obligations. Supplier shall procure and deliver to Buyer an undertaking, enforceable by Buyer, from each party possessing a security interest in the Generating Facility to the effect that, if such party forecloses

on its security interest, (a) it will assume Supplier's obligations under and otherwise be bound by the terms of this Agreement, and (b) it will not sell, transfer, or otherwise dispose of its interest in the Generating Facility to any third-party absent an agreement from such third-party to assume Supplier's obligations under and otherwise be bound by the terms of this Agreement.

24.6 Successors and Assigns. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

24.7 Collateral Assignment by Supplier. In the event that Supplier transfers, pledges, encumbers, or collaterally assigns this Agreement to Supplier's Lenders, Supplier shall provide written notice to Buyer of such transfer, pledge, encumbrance, or assignment, including the address of Supplier's Lenders. In connection with any financing or refinancing of the Generating Facility, Buyer shall negotiate in Good Faith with Supplier and Supplier's Lenders to agree upon a consent to collateral assignment of this Agreement, which consent to collateral assignment shall be in form and substance agreed to by Buyer, Supplier, and Supplier's Lenders, and shall include the following provisions:

24.7.1 The Parties shall not amend or modify this Agreement in any material respect without the prior written consent of the Supplier's Lenders;

24.7.2 Prior to exercising its right to terminate this Agreement as a result of an Event of Default by Supplier, Buyer shall give notice of such Event of Default by Supplier to the administrative agent of Supplier's Lenders, which Buyer has been provided written notice of;

24.7.3 Supplier's Lenders shall have the right, but not the obligation, to cure an Event of Default on behalf of Supplier in accordance with the provisions of this Agreement, provided that Supplier's Lenders shall be provided an additional forty-five (45) calendar days, from the end of the Cure Period provided pursuant to Section 25.2, to effect a cure of such Event of Default;

24.7.4 An agreement, enforceable by Buyer, from each of Supplier's Lenders that:

24.7.4.1 Supplier's Lenders shall receive prior notice of and the right to approve material amendments to the Agreement, which approval shall not be unreasonably withheld, delayed, or conditioned;

24.7.4.2 If Supplier's Lenders, directly or indirectly, take possession of, or title to, the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), then Supplier's Lenders shall assume all of Supplier's obligations under this Agreement, provided that Supplier's Lenders shall have no personal liability for any monetary obligations of Supplier under this Agreement which are due

and owing to Buyer as of the assumption date; provided, however, that prior to such assumption, if Buyer advises Supplier's Lenders that Buyer will require that Supplier's Lenders cure (or cause to be cured) any Supplier Event of Default hereunder existing as of the possession date (irrespective of when such Event of Default occurred) in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate the Agreement in respect of such Event of Default, then Supplier's Lenders, at their option and in their sole discretion, may elect to either: (i) cause such Event of Default to be cured or (ii) not assume this Agreement; and

- 24.7.4.3 If Supplier's Lenders elect to sell or transfer the Generating Facility (after directly or indirectly taking possession of, or title to, the Generating Facility), or if the sale of the Generating Facility occurs through the actions of Supplier's Lenders (including a foreclosure sale where a third-party is the buyer, or otherwise), then, as a condition of such sale or transfer, (a) Supplier's Lenders shall cause the buyer or transferee of the Generating Facility to assume all of Supplier's obligations arising under this Agreement and (b) the buyer or transferee of the Generating Facility shall (i) have creditworthiness that is equal to or superior to the creditworthiness of Supplier as of the Effective Date, as determined by Buyer in its reasonable discretion, and (ii) have experience in operating renewable energy generating facilities that is equivalent or superior to that of Supplier, or the operator of the Generating Facility if Supplier is not the operator, as determined by Buyer in its reasonable discretion.

## **DEFAULT AND REMEDIES**

- 25.1 Events of Default. Except to the extent excused due to an event of Force Majeure in accordance with Article 21, an event of default ("Event of Default") shall be deemed to have occurred with respect to a Party (the "Defaulting Party") upon the occurrence of one or more of the following events:
- 25.1.1 failure to comply with any material obligations imposed upon it by this Agreement;
  - 25.1.2 failure to make timely payments due under this Agreement;
  - 25.1.3 failure to comply with the material requirements of the Control Area Operator, Transmission Provider, Buyer, MISO, MPSC, FERC, and any successor thereto where following such directions is required hereunder;
  - 25.1.4 in the case of Supplier, its failure at any time to qualify the Generating Facility as a Renewable Energy System or itself as a

renewable energy producer or similar status under the Renewable Energy Law;

- 25.1.5 in the case of Supplier, its failure to install, operate, maintain, or repair the Generating Facility in accordance with Good Utility Practice;
- 25.1.6 in the case of Supplier, its failure to meet any of the Project Milestones under the terms of Section 10.2.1 within twelve (12) months of the date set forth in Exhibit 6 and according to the terms and conditions set forth in Exhibit 6;
- 25.1.7 in the case of Supplier, its failure to comply with the provisions of Article 18;
- 25.1.8 in the case of Supplier, its failure to comply with the provisions of Article 24;
- 25.1.9 in the case of Supplier, its failure to maintain the guaranteed Mechanical Availability Guaranty in accordance with Exhibit 19;
- 25.1.10 in the case of Supplier, its failure to comply with the provisions of Article 28; and
- 25.1.11 in the case of Supplier, if Supplier (a) becomes insolvent and files for or is forced into bankruptcy, (b) makes an assignment for the benefit of creditors, (c) is unable to pay its debts as they become due, or (d) is subject to a similar action or proceeding.

25.2 Cure Period. Upon the occurrence of an Event of Default, other than pursuant to Section 25.1.11, the Defaulting Party shall be entitled to a period of ten (10) calendar days from such occurrence (the "Cure Period") to cure such Event of Default during which time the duties and obligations of the Non-Defaulting Party under this Agreement are suspended; provided, however, that in the case of an Event of Default under Section 25.1.6, with written notice from Supplier to Buyer, such Cure Period may be extended for an additional sixty (60) calendar days if (a) Supplier can demonstrate to Buyer that such Event of Default was not capable of being cured within such ten (10) calendar day period and such Event of Default is capable of being cured within an additional sixty (60) calendar day period; (b) Supplier is diligently and continuously proceeding to cure such Event of Default; and (c) Supplier posts additional security in a form consistent with the provisions of Section 18.3, and in an amount acceptable to Buyer in its sole discretion, but in no event in excess of fifteen percent (15%) of the original amount of security posted, if any.

25.3 Remedies. If an Event of Default is not cured by the Defaulting Party during the Cure Period, the Non-Defaulting Party shall be entitled to all legal and equitable remedies that are not expressly prohibited by the terms of this Agreement, including termination of this Agreement as provided in Section 2.3 [REDACTED]

  
**REPRESENTATIONS AND WARRANTIES OF SUPPLIER**

Supplier represents and warrants the following to Buyer as of the date of achievement for each Project Milestone and the beginning of each Contract Year, as applicable:

- 26.1 Organization; Qualification. Supplier is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Michigan and has all requisite power and authority to own, lease, and/or operate its properties and to carry on its business as is now being conducted. Supplier is duly qualified or licensed to do business as a limited liability company and is in good standing in each jurisdiction in which the property owned, leased, or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.
- 26.2 Authority Relative to this Agreement. Supplier has full authority to execute, deliver, and perform this Agreement to which it is a Party and to consummate the transactions contemplated herein. Other than obtaining the Supplier's Required Regulatory Approvals as set out in Exhibit 10, no other proceedings or approvals on the part of Supplier are necessary to authorize this Agreement. This Agreement constitutes a legal, valid, and binding obligation of Supplier enforceable in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of rights generally.
- 26.3 Consents and Approvals; No Violation. Other than obtaining the Supplier's Required Regulatory Approvals as set out in Exhibit 10, the execution, delivery, and performance of this Agreement by Supplier shall not (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Supplier; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect; or (c) result in a default (or give rise to any right of termination, cancellation, or acceleration) under any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation to which Supplier or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation, or acceleration) as to which requisite waivers or consents have been obtained.
- 26.4 Regulation as a Utility. Except as set forth in Exhibit 10, Supplier is not subject to regulation as a public utility or public service company (or similar designation) by any Governmental Authority.

- 26.5 Availability of Funds. Supplier has, or will have, and shall maintain, sufficient funds available to it to perform all obligations under this Agreement and to consummate the obligations contemplated pursuant thereto.
- 26.6 Interconnection Process. Supplier has initiated with the Transmission Provider the process of obtaining the rights to interconnect the Generating Facility to the Transmission System in order to provide for the delivery of Energy to and at the Delivery Point.
- 26.7 Interconnection Cost Due Diligence. Supplier has conducted due diligence regarding the costs of all facilities necessary to interconnect the Generating Facility to the Delivery Point and all such costs are covered by the Product Rate.
- 26.8 Permits, Authorizations, Licenses, and Grants. Supplier has applied or will apply for or has received the permits, authorizations, licenses, and grants listed in Exhibits 10 and 11, and that no other permits, authorizations, licenses, or grants are required by Supplier to construct and operate the Generating Facility and fulfill Supplier's obligations under this Agreement.
- 26.9 Related Agreements. Supplier has entered into or will enter into all necessary and material agreements as listed in Exhibit 12 related to Supplier's obligations under this Agreement.
- 26.10 Certification. The Generating Facility qualifies as a Renewable Energy System and Supplier has been and is in compliance with all requirements set forth in the Clean, Renewable and Efficient Energy Act.
- 26.11 Title. Upon achieving the Operation Date, Supplier owns all Product attributable to the Generating Facility and has the right to sell such Product to Buyer. Supplier will convey good title to the Product to Buyer free and clear of any liens or other encumbrances or title defects, including any which would affect Buyer's ownership of any portion of such Product or prevent the subsequent transfer of any portion of such Product by Buyer to a third-party.
- 26.12 Generating Facility Site. Supplier either (a) owns the real property on which the Generating Facility is located, (b) has obtained the option to exclusively use and/or purchase the real property on which the Generating Facility will be located, or (c) has obtained the necessary rights to construct and operate the Generating Facility on such real property, throughout the Term.

## **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants the following to Supplier as of the date of achievement for each Project Milestone and the beginning of each Contract Year, as applicable:

- 27.1 Organization; Qualification. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan and

has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Buyer is duly qualified or licensed to do business as a corporation and is in good standing in each jurisdiction in which the property owned, leased, or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.

- 27.2 Authority Relative to this Agreement. Buyer has full corporate authority to execute, deliver, and perform this Agreement to which it is a Party and to consummate the transactions contemplated herein. Other than obtaining the Buyer's Required Regulatory Approvals as set out in Exhibit 9, no other proceedings or approvals on the part of Buyer are necessary to authorize this Agreement. This Agreement constitutes a legal, valid, and binding obligation of Buyer enforceable in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of rights generally.
- 27.3 Consents and Approvals; No Violation. Other than obtaining the Buyer's Required Regulatory Approvals as set out in Exhibit 9, the execution, delivery, and performance of this Agreement by Buyer shall not (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Buyer; (b) require any consent, approval, authorization, or permit of, or filing with or notification to, any Governmental Authority, except (i) where the failure to obtain such consent, approval, authorization, or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (ii) for those consents, authorizations, approvals, permits, filings, and notices which become applicable to Buyer as a result of specific regulatory status of Buyer (or any of its Affiliates) or as a result of any other facts that specifically relate to the business or activities in which Buyer (or any of its Affiliates) is or proposes to be engaged, which consents, approvals, authorizations, permits, filings, and notices have been obtained or made by Buyer; or (c) result in a default (or give rise to any right of termination, cancellation, or acceleration) under any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation, or acceleration) as to which requisite waivers or consents have been obtained.
- 27.4 Related Agreements. Buyer warrants that it has entered into or will enter into all necessary and material agreements related to Buyer's obligations under this Agreement.

## INSURANCE

- 28.1 General Requirements. Supplier shall maintain at all times, at its own expense, general/commercial liability, worker's compensation, and other forms of insurance relating to its property, operations, and facilities in the manner and amounts set forth herein from the Effective Date of this

Agreement. Supplier shall maintain coverage on all policies written on a “claims made” or “occurrence” basis. If converted to an occurrence form policy, the new policy shall be endorsed to provide coverage back to a retroactive date acceptable to Buyer.

28.2 Qualified Insurers. Every contract of insurance providing the coverage required herein shall be with an insurer or eligible surplus lines insurer qualified to do business in the State of Michigan and with the equivalent, on a continuous basis, of a “Best Rating” of “A” or better and shall include provisions or endorsements:

28.2.1 Stating that such insurance is primary insurance with respect to the interest of Buyer and that any insurance maintained by Buyer is excess and not contributory insurance required hereunder;

28.2.2 Stating that no reduction, cancellation, or expiration of the policy shall be effective until ninety (90) calendar days from the date notice thereof is actually received by Buyer, provided that upon Supplier’s receipt of any notice of reduction, cancellation, or expiration, Supplier shall immediately provide notice thereof to Buyer; and

28.2.3 Naming Buyer as an additional insured on the general liability insurance policies of Supplier as its interests may appear with respect to this Agreement.

28.3 Certificates of Insurance. Within thirty (30) calendar days of the Effective Date, Supplier shall provide to Buyer, and shall continue to provide to Buyer within thirty (30) calendar days of each anniversary of the Effective Date until the expiration of this Agreement, upon any change in coverage, or at the request of Buyer not to exceed once each year, properly executed and current certificates of insurance with respect to all insurance policies required to be maintained by Supplier under this Agreement. Certificates of insurance shall provide the following information:

28.3.1 The name of insurance company, policy number, and expiration date;

28.3.2 The coverage required and the limits on each, including the amount of deductibles or self-insured retentions, which shall be for the account of Supplier maintaining such policy; and

28.3.3 A statement indicating that Buyer shall receive at least ninety (90) calendar days prior notice of cancellation or expiration of a policy or of a reduction of liability limits with respect to a policy.

28.4 Certified Copies of Insurance Policies. At Buyer’s request, in addition to the foregoing certifications, Supplier shall deliver to Buyer a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company.

- 28.5 Inspection of Insurance Policies. Buyer shall have the right to inspect the original policies of insurance applicable to this Agreement at Supplier's place of business during regular business hours.
- 28.6 Supplier's Minimum Insurance Requirements.
- 28.6.1 Worker's Compensation. Worker's compensation insurance in accordance with statutory requirements including employer's liability insurance with limits of not less than [REDACTED] per occurrence and endorsement providing insurance for obligations under the U.S. Longshoremen's and Harbor Worker's Compensation Act and the Jones Act where applicable.
- 28.6.2 General Liability. General liability insurance including bodily injury, property damage, products/completed operations, contractual and personal injury liability with a combined single limit of at [REDACTED] per occurrence and at [REDACTED] annual aggregate.
- 28.6.3 Automobile Liability. Automobile liability insurance including owned, non-owned, and hired automobiles with combined bodily injury and property damage limits of at [REDACTED] per occurrence and at [REDACTED] aggregate.
- 28.7 Failure to Comply. If Supplier fails to comply with the provisions of this Article 28, Supplier shall save harmless and indemnify Buyer from any direct and indirect loss and liability, including attorneys' fees and other costs of litigation, resulting from the injury or death of any person or damage to any property if Buyer would have been protected had Supplier complied with the requirements of this Article 28, in accordance with the indemnification provisions of Article 19.

## CONFIDENTIALITY

- 29.1 Confidential Information. "Confidential Information" means information provided by one Party (the "Disclosing Party") to the other (the "Receiving Party") in connection with the negotiation or performance of this Agreement that is clearly labeled or designated by the Disclosing Party as "confidential" or "proprietary" or with words of like meaning or, if disclosed orally, clearly identified as confidential with that status confirmed promptly thereafter in writing, excluding, however, information described in Section 29.3.
- 29.2 Treatment of Confidential Information. The Receiving Party shall treat any Confidential Information with at least the same degree of care regarding its secrecy and confidentiality as the Receiving Party's similar information is treated within the Receiving Party's organization. The Receiving Party shall keep confidential and not disclose the Confidential Information of the Disclosing Party to third parties (except as stated hereinafter) nor use it for any purpose other than the performance under this Agreement, without the express prior written consent of the Disclosing Party. The Receiving Party

further agrees that it shall restrict disclosure of Confidential Information as follows:

29.2.1 Disclosure shall be restricted solely to (a) its agents as may be necessary to enforce the terms of this Agreement; (b) its Affiliates, shareholders, directors, officers, employees, advisors, lenders, and representatives as necessary; (c) any Governmental Authority in connection with seeking any required regulatory approval; (d) to the extent required by applicable Law, in the case of Buyer only, potential transferees of Energy or RECs obtained by Buyer; and (e) potential assignees of this Agreement (together with their agents, advisors, and representatives) as may be necessary in connection with any such assignment (which assignment or transfer shall be in compliance with Article 24), in each case after advising those agents of their obligations under this Article 29.

29.2.2 In the event that the Receiving Party is required by applicable Law to disclose any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt notice of such request or requirement to enable Disclosing Party to seek an appropriate protective order or other remedy and to consult with Disclosing Party with respect to Disclosing Party taking steps to resist or narrow the scope of such request or legal process. The Receiving Party agrees not to oppose any action by the Disclosing Party to obtain a protective order or other appropriate remedy. In the absence of such protective order, and provided that the Receiving Party is advised by its counsel that it is compelled to disclose the Confidential Information, the Receiving Party shall:

29.2.2.1 Furnish only that portion of the Confidential Information which the Receiving Party is advised by counsel is legally required; and

29.2.2.2 Use its commercially reasonable efforts, at the expense of the Disclosing Party, to ensure that all Confidential Information so disclosed will be accorded confidential treatment.

29.2.3 Section 29.2.2 shall only apply to information disclosed as contemplated by 29.2.1.

29.3 Excluded Information. Confidential Information shall be deemed not to include the following:

29.3.1 Information which is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party in breach of this Article 29;

29.3.2 Information which was available to the Receiving Party on a non-confidential basis prior to its disclosure by the Disclosing Party; and

29.3.3 Information which becomes available to the Receiving Party on a non-confidential basis from a Person other than the Disclosing Party or its representative who is not otherwise bound by a confidentiality agreement with Disclosing Party or its agent or is otherwise not under any obligation to Disclosing Party or its agent not to disclose such information to the Receiving Party and the Receiving Party, exercising reasonable due diligence, should have known of such obligation.

29.4 Injunctive Relief Due to Breach. The Parties agree that remedies at Law may be inadequate to protect each other in the event of a breach of this Article 29, and the Receiving Party hereby in advance agrees that the Disclosing Party shall be entitled to seek, without proof of actual damages, temporary, preliminary, and permanent injunctive relief from any Governmental Authority restraining the Receiving Party from committing or continuing any breach of this Article 29.

29.5 Public Statements. The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement or the transactions contemplated hereby and Supplier shall not issue any such public announcement, statement or other disclosure without having first received the written consent of Buyer, except as may be required by Law. Notwithstanding the foregoing, Supplier acknowledges and agrees that Buyer may advertise, issue brochures or make other announcements, publications or releases regarding this Agreement and the Generating Facility for educational, promotional or informational purposes. Supplier shall reasonably cooperate with Buyer regarding such activities, including providing Buyer with reasonable access to the Generating Facility and authorizing the use of pictures of the Generating Facility for such activities. It shall not be deemed a violation of this Section 29.5 to file this Agreement with the MPSC or FERC for approval as required by applicable Law.

## MISCELLANEOUS

30.1 Notices.

30.1.1 All notices hereunder shall, unless expressly specified otherwise, be in writing and shall be addressed, except as otherwise stated herein, to the Parties' Contract Representatives as set forth in Exhibit 4 or as modified from time to time by the receiving Party by notice to the other Party. Any changes to Exhibit 4 shall not constitute an amendment to this Agreement.

30.1.2 All notices or submittals required by this Agreement shall be sent either by hand-delivery, regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, overnight courier delivery, electronic mail, or facsimile transmission. Such notices or submittals will be effective upon receipt by the addressee, except that notices or submittals transmitted by electronic mail or facsimile transmission shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next

following Business Day) on which it is transmitted if transmitted before 1600 EPT, and if transmitted after that time, on the following Business Day; provided, however, that if any notice or submittal is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

30.1.3 All oral notifications required under this Agreement shall be made to the receiving Party's Operating Representative and shall promptly be followed by notice as provided in the other provisions of this Section 30.1.

30.2 Integration. This Agreement contains the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations, whether written or oral, by the Parties with respect to such subject matter.

30.3 Counterparts. This Agreement may be executed in two (2) counterparts, both of which shall be deemed an original and when taken together shall constitute one and the same instrument.

30.4 Interpretation. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The words "include", "includes", and "including" in this Agreement shall not be limiting and shall be deemed in all instances to be followed by the phrase "without limitation". References to Articles and Sections herein are cross-references to Articles and Sections, respectively, in this Agreement. Unless otherwise stated and where the context requires, words, including capitalized terms, importing the singular will include the plural and vice versa.

30.5 Headings. The headings or section titles contained in this Agreement are inserted solely for convenience and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner in the construction of this Agreement.

30.6 Discontinued or Modified Index. If the Average Monthly Michigan Hub Firm Price discontinues publishing or substantially modifies any index utilized herein, then the index used herein will be modified to the most appropriate available index, with appropriate basis changes to take into account any changes in the location of measurement.

30.7 Severability. If any term, provision, or condition of this Agreement is held to be invalid, void, or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision, or condition shall be deemed severed from this Agreement and all remaining terms, provisions, and conditions of

this Agreement shall continue in full force and effect. The Parties shall endeavor in Good Faith to replace such invalid, void, or unenforceable provisions with valid and enforceable provisions which achieve the purpose intended by the Parties to the greatest extent permitted by law.

- 30.8 Waivers; Remedies Cumulative. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing or course of performance between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.
- 30.9 Amendments. The Parties agree that if the Laws that govern this Agreement are amended or superseded such that a change in Law causes a Material Adverse Effect on either Party, the affected Party is entitled to provide written notice to the other requesting that the Parties convene and negotiate in Good Faith ways to amend this Agreement to mitigate the Material Adverse Effect. Otherwise, amendments to this Agreement shall be mutually agreed upon by the Parties, produced in writing, and shall be executed by an authorized representative of each Party. The Buyer may submit an amendment to the MPSC and FERC, as applicable, for filing, acceptance, or approval.
- 30.10 Time is of the Essence. Time is of the essence to this Agreement and in the performance of all of the covenants, obligations, and conditions hereof.
- 30.11 Choice of Law. This Agreement and the rights and obligations of the Parties shall be construed and governed by the Laws of the State of Michigan.
- 30.12 Further Assurances. The Parties hereto agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents, and information which a Party may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
- 30.13 Forward Contract. The Parties acknowledge and agree that this Agreement is a contract (other than a Commodity Contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two calendar days after the date the contract is entered into. “Commodity Contract” means (a) with respect to a futures commission merchant, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade; (b) with respect to a foreign futures commission merchant, foreign future; (c) with respect to a leverage transaction merchant, leverage transaction; (d) with

respect to a clearing organization, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization; or (e) with respect to a commodity options dealer, commodity option.

- 30.14 No Third-Party Beneficiaries. Except with respect to the rights of the Indemnified Party in Section 19.1 and Supplier's Lenders in Section 24.8, (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability, or standard of care to any third-party; (b) no third-party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder; and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third-party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representative on the date first stated above.

**BUYER:**

**THE DETROIT EDISON COMPANY**

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

**SUPPLIER:**

**HERITAGE STONEY CORNERS WIND  
FARM I, LLC**

By: \_\_\_\_\_  
Name: Martin G. Lagina  
Title: Manager

**EXHIBIT 1**

**DESCRIPTION OF GENERATING FACILITY**

1. Name of Facility: Heritage Stoney Corners Wind Farm I
  - (a) Location: In or around Richland Township, Michigan
2. Owner: Heritage Stoney Corners Wind Farm I, LLC
3. Operator: TBD
4. Equipment: Wind Turbines
  - (a) Type of Facility: Wind Generation
  - (b) Capacity
    - Total nominal nameplate capacity: 14 MW
    - Total nominal net capacity: 14 MW

**EXHIBIT 2A**

**PRODUCT RATE**

The Product Rate for the Term shall be: \$116 per MWh.

EXHIBIT 2BMONTHLY ENERGY INVOICE DETAIL

## Supplier Letterhead

Generating Facility:

Generating Facility ID:

Date:

Invoice:

Number:

Billing:

Period:

## CURRENT MONTHLY BILLING DATA

## INPUT

Total Adjusted Supply Amount	MWh	Pricing	\$/MWh
Monthly Supply Off-			
+ Peak Amount		Product Rate	
+ Monthly Planned On-			
- Peak Outages			
- Planned Outages		Average Monthly [ ] Non-	
		Firm Price	
- Force Majeure		Daily Off-Peak [ ] Non-Firm	
		Index	
Buyer Declared		Avg Monthly Buyer	
- Emergencies		Inc Cost of	
Total Adjusted Supply Amount	-	Generation	
Shortfall Trigger		Shortfall	
		Shortfall Amount	-

Delivered Amount

Max Off-Peak

Max On-Peak

Product

Total Delivered

-

CURRENT MONTHLY BILLING  
CALCULATIONS

Product

Shortfall Triggered

Replacement Cost

CURRENT MONTHLY INVOICE  
CALCULATION

Product Payments	Rates/MWh	Amounts
+ Product Rate		
+		
+		
Shortfall Replacement Cost		
- Total Product Payment		
Total Product Payment		

TOTAL AMOUNT DUE:

PAYMENT DUE NO LATER  
THAN:

EXHIBIT 2CREC REPLACEMENT INVOICE

## Buyer Letterhead

Generating Facility:

Generating Facility ID:

Date:  
 Invoice  
 Number:  
 Contract  
 Year:  
 Payment  
 Due Date:

## GROSS METERED DATA

	Hour s	Yearly REC Amount (MWh)
Contract Year Data		
Gross Generation Metered Data		
Yearly REC Amount		
Less Excused Adjustments:		
Force Majeure		
Buyer Declared		
Emergencies		
Yearly Adjusted REC		
Shortfall		

REC REPLACEMENT  
CALCULATION

REC Replacement Cost  
 Yearly Adjusted REC  
 Shortfall  
 TOTAL REPLACEMENT  
 COSTS

**EXHIBIT 2D****ENERGY REPLACEMENT INVOICE****Letterhead**

Generating Facility:

Generating Facility ID:

Date:

Invoice

Number:

Contract

Year:

Payment

Due Date:

**SHORTFALL CALCULATION**

Contract Year Data

MWh

Delivered Energy

Adjusted Delivered Energy

Supply Amount

Excused Adjustments:

Planned Outages

Force Majeure

Buyer Declared Emergencies

Total Adjusted Supply Amount

Shortfall Triggered

Total Replacement Shortfall Amount

**PRICING CALCULATION**

\$/MWh

Product Rate

Average Monthly [ ] Non-

Firm Price

Replacement Cost

**ENERGY REPLACEMENT COST  
CALCULATION**

Energy Replacement Cost

Energy Shortfall

**TOTAL REPLACEMENT COSTS**

\*The Energy Replacement Invoice is the first component of Exhibit 2D. Please see the following page for the second component.

**EXHIBIT 2D**

### ENERGY REPLACEMENT INVOICE DETAIL

## Supplier Letterhead

[illegible]

\*The Monthly Energy Invoice Detail is the second component of Exhibit 2D and is to be attached to the Monthly Energy Invoice. It is to detail the supply of Energy for each hour using the fields shown above.

**EXHIBIT 3**

**STANDBY SERVICE TARIFF**

Standby Service to be provided by Wolverine Power Cooperative.

**EXHIBIT 4****NOTICES, BILLING AND PAYMENT INSTRUCTIONS****Supplier:****[Supplier Name]**

Contact	Mailing Address	Phone	E-mail
---------	-----------------	-------	--------

Contract

Representative:

Name and/or Title

[Mailing & Physical Address  
if different]Operating  
Representative:

Name and/or Title

[Mailing & Physical Address  
if different]Operating  
Notifications:

Prescheduling

Real-Time

Monthly Checkout

Invoices:

Name and/or Title

[Mailing &amp; Physical Address if different]

**PAYMENT  
INSTRUCTIONS**

Payment Check:

Name and/or

Title/Department

Address [inc.

Mail/Suite #s]

City, ST &amp; Zip

**OR**

Payment Wire

Transfer:

Bank Name

Bank Address

Bank City, ST &amp; Zip

Account Name [usually Supplier  
Name/reference]  
ABA  
Account Number

**Buyer:****The Detroit Edison Company**

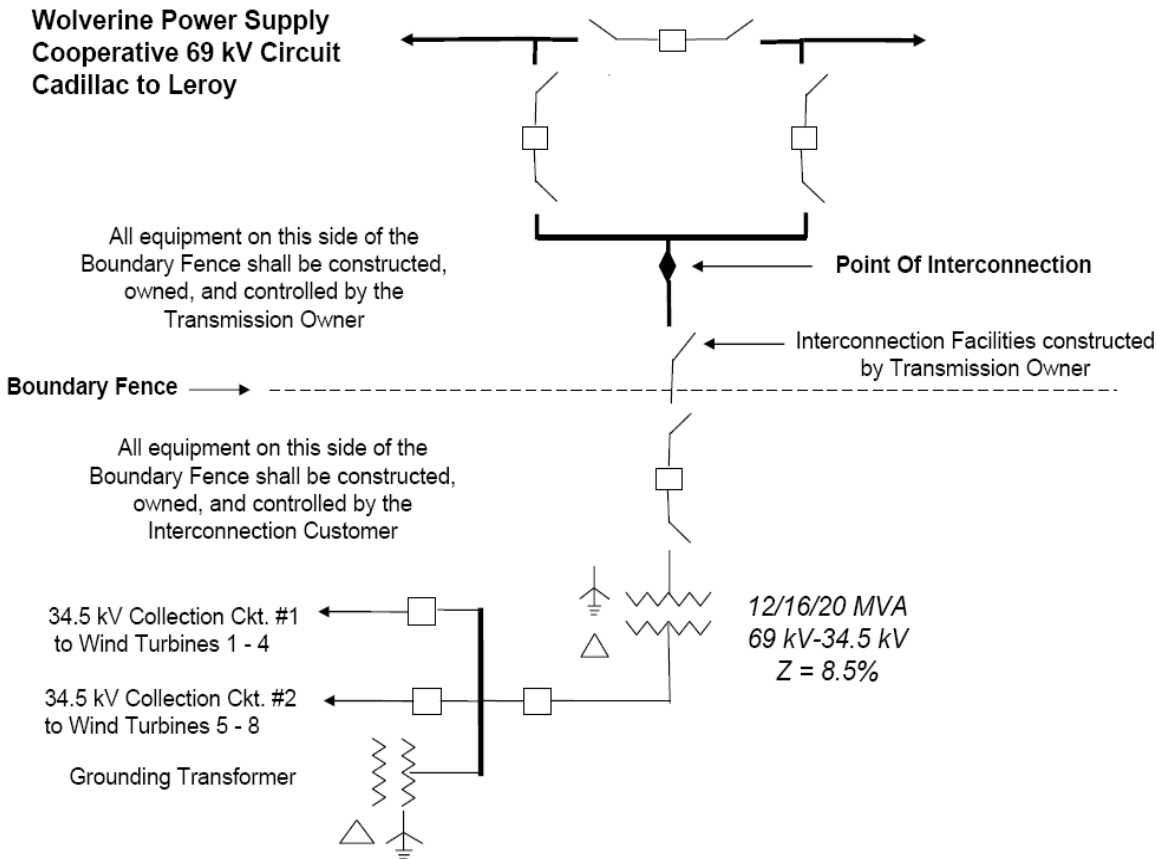
Contact	Mailing Address	Address:
<hr/>		
Contract Representative Manager, Contract Administration		Mailing
	Physical Delivery Address:	Physical
		Phone: E-mail:
Operating Representatives <u>Scheduling</u> Short-term Analysis Generation Dispatch		Address:
<u>Emergencies (including Force Majeure)</u> Grid Reliability Transmission Short-term Analysis		
<u>Metering</u>		Phone: E-mail: Fax:
<u>Invoices</u> Renewables Contracts Accountant		
		Fax:
<u>CC all invoices to</u>	Phone: E-mail	

**EXHIBIT 5**

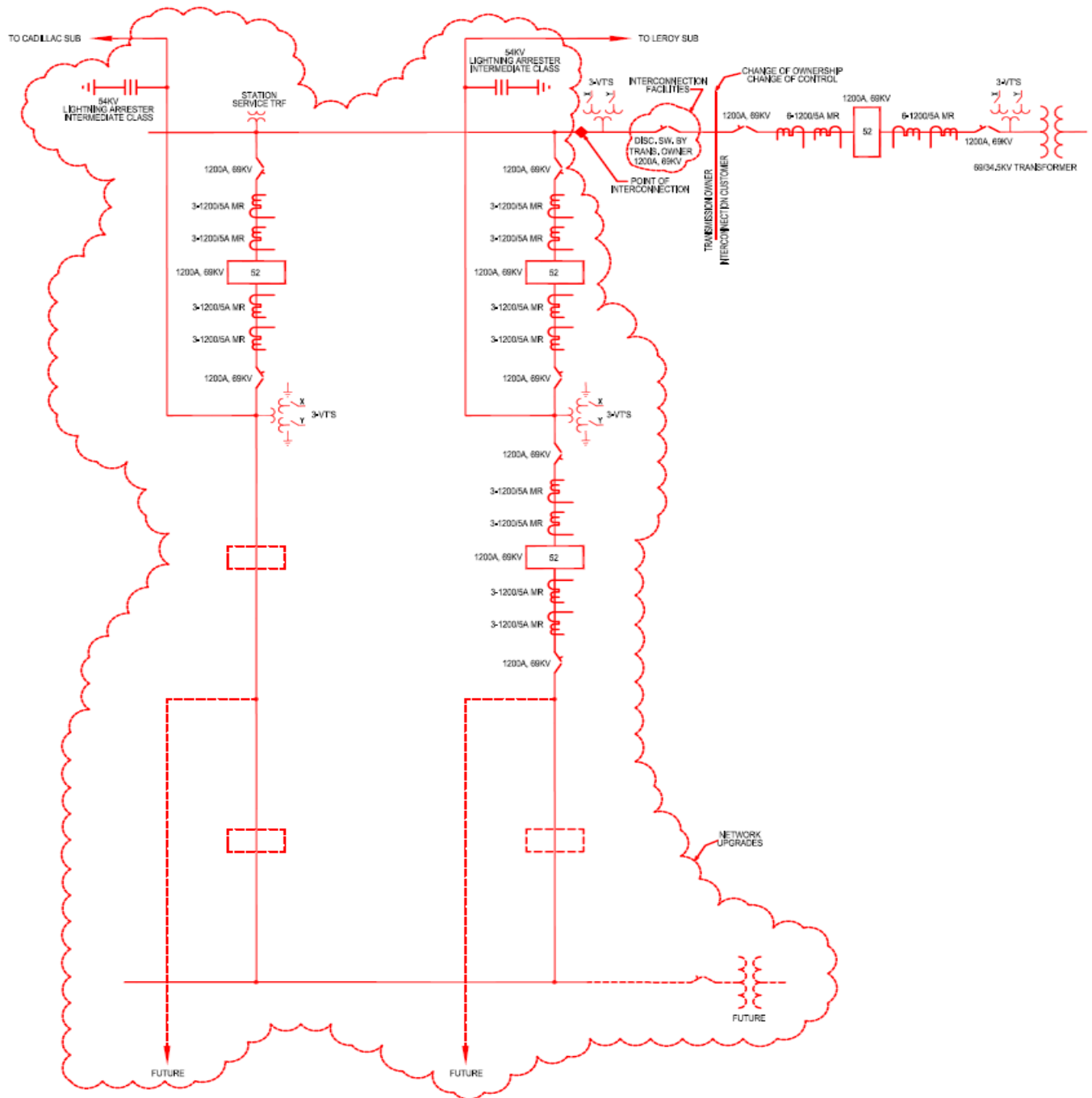
**ONE-LINE DIAGRAM OF GENERATING FACILITY  
AND  
INTERCONNECTION FACILITIES**

See attached one-line diagram of the Generating Facility, which indicates the Interconnection Facilities, the Delivery Point, ownership and the location of Meters, which location shall be reasonably satisfactory to Buyer. In accordance with Section 10.1, within thirty (30) calendar days after it executes or amends the IOA, Supplier shall provide an update to Exhibit 5.

INTERCONNECTION CUSTOMER ONE-LINE



**G566 Queue 38663 - 01**  
**69 kV Transmission Interconnect Concept**



**EXHIBIT 6****PROJECT MILESTONE SCHEDULE**

All time periods are in months after the MPSC Approval Date. As stated below for convenience of drafting after MPSC approval will be shown as “AD”. Any other timing is as otherwise described in specific items below. Buyer will update this Exhibit with actual dates after MPSC approval is received.

All milestones may be completed earlier than stated times, at the sole option of Supplier.

- A) Project Milestone: Supplier shall have executed the IOA.
- Completion Date: completed as of Effective Date
- Documentation: Supplier shall provide Buyer with a fully executed copy of the IOA.
- B) Project Milestone: Supplier shall have provided a copy of the Wind Turbine Supply Agreement.
- Completion Date: one month AD
- Documentation: Supplier shall provide Buyer with a fully executed redacted copy of the Wind Turbine Supply Agreement.
- C) Project Milestone: Supplier shall obtain all permits, licenses, easements and approvals to construct and operate the Generating Facility.
- Completion Date: two months AD.
- Documentation: Supplier shall provide Buyer with written documentation and decisions from the appropriate agencies indicating hearings during which approvals were granted and final written decisions from those agencies where the approval was made.
- D) Project Milestone: Supplier shall demonstrate to Buyer that it has closed on financing for the engineering, procurement and construction of the Generating Facility.
- Completion Date: one month AD.
- Documentation: Supplier shall provide Buyer with written documentation demonstrating that Supplier has closed on financing for the engineering, procurement and construction of the Generating Facility.

- E) Project Milestone: Notice to proceed has been issued to the construction contractor under the turnkey engineering, procurement and construction contract (the “EPC Contract”) for the Generating Facility and construction of the Generating Facility has commenced.

Completion Date: one month AD

Documentation: Supplier shall provide Buyer a copy of the executed Notice to Proceed acknowledged by the construction contractor and documentation from qualified professionals which indicates that physical work has begun on-site regarding the construction of the Generating Facility.

- F) Project Milestone: Supplier’s major equipment shall be delivered to Generating Facility’s construction site.

Completion Date: five months after Notice to Proceed has been issued to the construction contractor under the EPC Contract.

Documentation: Supplier shall provide Buyer with documentation, including a bill(s) of lading that the major equipment has been delivered to the Generating Facility’s construction site.

- G) Project Milestone: Supplier shall qualify as a QF or such similar status under applicable Law.

Completion Date: No later than thirty (30) calendar days prior to the Planned Operation Date.

Documentation: Supplier shall provide Buyer with documentation that it has filed for and obtained EWG, QF or such similar status under applicable Law and shall remain a QF or such similar status for the entire Term of this Agreement.

- H) Project Milestone: The Generating Facility achieves the Operation Date.

Completion Date: eight months AD

Documentation: Buyer’s Meters shall record Energy being delivered from the Generating Facility to Buyer and the Generating Facility provides written notice to Buyer that the Generating Facility satisfies the definition of Operation Date in the Agreement

- I) Project Milestone: Supplier shall have installed seven Wind Turbines with a total installed capacity nameplate rating stated in Exhibit 1.

Completion Date: seven months AD

Documentation: Supplier provides written notice to Buyer that the Generating Facility is comprised of a total of seven or more Wind Turbines, all of which are fully installed and operational at the Generating Facility site, and further satisfies the definition of the Generating Facility in the Agreement.

- J) Project Milestone: The Generating Facility achieves the Commercial Operation Date.

Completion Date: eight months AD

Documentation: Supplier provides written notice to Buyer that the Generating Facility satisfies the definition of the Commercial Operation Date in the Agreement.

**EXHIBIT 7**  
**PERFORMANCE TESTS**

**EXHIBIT 8**

**[RESERVED]**

**EXHIBIT 9**

**BUYER'S REQUIRED REGULATORY APPROVALS**

1. MPSC approval of this Agreement

**EXHIBIT 10**

**SUPPLIER'S REQUIRED REGULATORY APPROVALS**

1. Renewable Energy System certification.
2. MPSC approval of this Agreement.
3. MISO interconnect.

**EXHIBIT 11****SUPPLIER'S REQUIRED PERMITS FOR CONSTRUCTION AND OPERATION**

<b>Permit</b>	<b>Agency</b>
Tall Tower Permits	Federal Aviation Administration and Michigan Department of Transportation
Building Permits	Missaukee County

**EXHIBIT 12**

**SUPPLIER'S REQUIRED AGREEMENTS**

1. This Agreement
1. The IOA
2. Private Lease Agreement
3. EPC Contract
4. Operations and Maintenance Agreement
5. Wind Turbine Supply Agreement

EXHIBIT 13

SUPPLY AMOUNT

The Supply Amount shall be the Energy amounts as specified in the attached table below.

The Maximum Annual Amount shall be the maximum Energy amounts that Buyer must take per Contract Year.

<b>Annual Supply Amount</b>	<b>MWh</b>	<b>Maximum Annual Amount</b>
Contract Year 1 (pro rata if not January 1 COD)	██████	██████
Remaining Contract Years	██████	██████

|

EXHIBIT 14

[RESERVED]

**EXHIBIT 15**

**OPERATION AND MAINTENANCE AGREEMENT;  
OPERATOR GOOD STANDING CERTIFICATE**

In accordance with Section 10.7, Supplier shall provide Exhibit 15 no later than ninety (90) calendar days prior to the Commercial Operation Date.

**EXHIBIT 16**

**GROUND LEASE; RIGHTS-OF-WAY**

In accordance with Section 10.8, Supplier shall provide Exhibit 16 no later than sixty (60) calendar days prior to commencement of on-site development activities for the Generating Facility.

EXHIBIT 17

[RESERVED]

EXHIBIT 18

YEARLY REC AMOUNT

CONTRACT YEARS

Years	REC Amount
Contract Year 1 (pro rata if not January 1 COD)	
Remaining Contract Years	

**EXHIBIT 19****GUARANTEED MECHANICAL AVAILABILITY**

Supplier guarantees that (a) the Generating Facility shall achieve a mechanical availability guaranty (as defined below and hereinafter referred to as the “Mechanical Availability Guaranty”) of [REDACTED] the prior two (2) year period for [REDACTED] after the Generating Facility achieves Commercial Operation and (b) the Generating Facility shall achieve a Mechanical Availability Guaranty of [REDACTED] the prior two (2) year period for each Contract Year following [REDACTED] the Generating Facility achieves Commercial Operation throughout the remainder of the Term. In the event that for any Contract Year the Mechanical Availability Guaranty is less than the guaranteed level as set forth above, Supplier shall have the next Contract Year to cure the deficiency. In the event that for such next Contract Year the Mechanical Availability Guaranty remains below the guaranteed level, Supplier shall have six months from the end of such Contract Year to cure the deficiency. After the end of the foregoing six months, the Generating Facility shall enter a six-month test period during which Buyer may take reasonable steps to confirm that the Generating Facility meets the Mechanical Availability Guaranty. If after the six-month test period Buyer reasonably determines that the Generating Facility fails to meet the Mechanical Availability Guaranty, such occurrence shall be an Event of Default under this Agreement.

The term “Mechanical Availability Guaranty” shall be calculated, for any rolling two year period and for all Wind Turbines, as a percentage, in accordance with the following formula:

$$\text{Mechanical Availability Percentage} = 100 \times \frac{\text{total Operating Hours during the average of the two year period for all Wind Turbines}}{\text{total Base Hours during the average of the two year period for all Wind Turbines}}$$

where:

“Base Hours” means, for each Wind Turbine, the total number of hours in the period less any hours during such period that such Wind Turbine is not operational as a result of a Planned Outage approved by Buyer or an event of Force Majeure; and

“Operating Hours” means, for each Wind Turbine, the total number of hours in the period that such Wind Turbine is physically capable of producing Energy.

As an example, assume that:

- (a) the Generating Facility consists of one hundred (100) Wind Turbines,
- (b) the total Operating Hours during the first and second Contract Years for all one hundred (100) Wind Turbines was 1,620,000,
- (c) there were 36,000 hours during the first and second Contract Years that the Wind Turbines were not operational as a result of a Planned Outage approved by Buyer,
- (d) there were not any hours during the first and second Contract Years that the Wind Turbines were not operational as a result of an event of Force Majeure, and
- (e) the total number of hours during the first and second Contract Years was 17,520, then the Mechanical Availability Guaranty for the third Contract Year would be as follows:

$$\begin{array}{l} \text{Mechanical} \\ \text{Availability} \\ \text{Percentage} \end{array} = 100 \times \frac{1,620,000}{(17,520 \times 100 - 36,000)}$$

$$\begin{array}{l} \text{Mechanical} \\ \text{Availability} \\ \text{Percentage} \end{array} = 100 \times \frac{1,620,000}{1,716,100}$$

$$\begin{array}{l} \text{Mechanical} \\ \text{Availability} \\ \text{Percentage} \end{array} = 100 \times .9440$$

$$\begin{array}{l} \text{Mechanical} \\ \text{Availability} \\ \text{Percentage} \end{array} = 94\%$$

Michigan Public Service Commission  
The Detroit Edison Company  
2009 Forecasted Transfer Price For Use in  
PA 295 Activities for the Period 2009 - 2029

Case No.: U-15806 RPS  
Exhibit No.: A-8 (JHB-4)  
Page: 1 of 1  
Witness: J. Byron

line no.	(a) Year	(b) Annual Average Locational Marginal Cost (\$/MWh)	(c) Final Capacity Cost (\$/MW-Yr)	(d) Final Capacity Cost @ 100% Capacity Factor (\$/MWh)	(e) Landfill		(f) Anaerobic/Cellulosic Digester		(g) Solar		(h) Wind		(m) Blended Transfer Price (\$/MWh)
					Adjusted Capacity Payment (\$/MWh)	Total Transfer Price (\$/MWh)	Adjusted Capacity Payment (\$/MWh)	Total Transfer Price (\$/MWh)	Adjusted Capacity Payment (\$/MWh)	Total Transfer Price (\$/MWh)	Adjusted Capacity Payment (\$/MWh)	Total Transfer Price (\$/MWh)	
1													
2	2006 <sup>(1)</sup>	43.71	3,350										
3	2007 <sup>(1)</sup>	48.77	11,678										
4	2008 <sup>(1)</sup>	52.25	15,400										
5	2009	48.52	24,700	\$ 2.82	\$ 3.13	\$ 51.66	\$ 3.52	\$ 52.05	\$ 21.69	\$ 70.21	\$ 1.14	\$ 49.66	\$ 51.34
6	2010	54.39	30,000	\$ 3.42	\$ 3.81	\$ 58.20	\$ 4.28	\$ 58.67	\$ 26.34	\$ 80.73	\$ 1.38	\$ 55.77	\$ 57.84
7	2011	56.32	40,000	\$ 4.57	\$ 5.07	\$ 61.40	\$ 5.71	\$ 62.03	\$ 35.12	\$ 91.45	\$ 1.84	\$ 58.16	\$ 60.62
8	2012	71.73	60,000	\$ 6.83	\$ 7.59	\$ 79.32	\$ 8.54	\$ 80.27	\$ 52.54	\$ 124.27	\$ 2.75	\$ 74.49	\$ 77.49
9	2013	72.32	90,000	\$ 10.27	\$ 11.42	\$ 83.74	\$ 12.84	\$ 85.17	\$ 79.03	\$ 151.35	\$ 4.14	\$ 76.47	\$ 80.12
10	2014	73.05	125,000	\$ 14.27	\$ 15.85	\$ 88.90	\$ 17.84	\$ 90.88	\$ 109.76	\$ 182.81	\$ 5.75	\$ 78.80	\$ 82.97
11	2015	76.01	156,154	\$ 17.83	\$ 19.81	\$ 95.82	\$ 22.28	\$ 98.29	\$ 137.12	\$ 213.13	\$ 7.19	\$ 83.20	\$ 88.05
12	2016	78.06	162,831	\$ 18.54	\$ 20.60	\$ 98.65	\$ 23.17	\$ 101.23	\$ 142.59	\$ 220.65	\$ 7.47	\$ 85.53	\$ 90.61
13	2017	79.12	169,393	\$ 19.34	\$ 21.49	\$ 100.60	\$ 24.17	\$ 103.29	\$ 148.75	\$ 227.87	\$ 7.80	\$ 86.92	\$ 92.18
14	2018	81.20	176,047	\$ 20.10	\$ 22.33	\$ 103.53	\$ 25.12	\$ 106.32	\$ 154.59	\$ 235.79	\$ 8.10	\$ 89.30	\$ 93.86
15	2019	84.75	182,846	\$ 20.87	\$ 23.19	\$ 107.95	\$ 26.09	\$ 110.85	\$ 160.56	\$ 245.31	\$ 8.42	\$ 93.17	\$ 97.57
16	2020	88.04	189,960	\$ 21.63	\$ 24.03	\$ 112.07	\$ 27.03	\$ 115.07	\$ 166.35	\$ 254.39	\$ 8.72	\$ 96.76	\$ 100.97
17	2021	92.34	197,423	\$ 22.54	\$ 25.04	\$ 117.38	\$ 28.17	\$ 120.51	\$ 173.36	\$ 265.70	\$ 9.09	\$ 101.43	\$ 105.78
18	2022	96.36	205,164	\$ 23.42	\$ 26.02	\$ 122.38	\$ 29.28	\$ 125.63	\$ 180.16	\$ 276.51	\$ 9.44	\$ 105.80	\$ 110.33
19	2023	101.25	213,210	\$ 24.34	\$ 27.04	\$ 128.29	\$ 30.42	\$ 131.67	\$ 187.22	\$ 288.47	\$ 9.81	\$ 111.06	\$ 115.76
20	2024	106.78	221,470	\$ 25.21	\$ 28.01	\$ 134.80	\$ 31.52	\$ 138.30	\$ 193.95	\$ 300.73	\$ 10.17	\$ 116.95	\$ 121.69
21	2025	107.68	230,268	\$ 26.29	\$ 29.21	\$ 136.89	\$ 32.86	\$ 140.54	\$ 202.20	\$ 309.88	\$ 10.60	\$ 118.28	\$ 123.05
22	2026	111.74	239,304	\$ 27.32	\$ 30.35	\$ 142.09	\$ 34.15	\$ 145.89	\$ 210.14	\$ 321.88	\$ 11.02	\$ 122.76	\$ 127.66
23	2027	116.34	248,730	\$ 28.39	\$ 31.55	\$ 147.89	\$ 35.49	\$ 151.83	\$ 218.41	\$ 334.75	\$ 11.45	\$ 127.79	\$ 132.88
24	2028	124.68	258,620	\$ 29.44	\$ 32.71	\$ 157.39	\$ 36.80	\$ 161.48	\$ 226.48	\$ 351.16	\$ 11.87	\$ 136.55	\$ 141.88
25	2029	129.94	268,341	\$ 30.63	\$ 34.04	\$ 163.98	\$ 38.29	\$ 168.23	\$ 235.64	\$ 365.58	\$ 12.35	\$ 142.29	\$ 147.79
26													

Techonolgy	Capacity Factor %	On-Peak Capacity Credit %
Landfill	90%	100.0%
Anaerobic/Cellulosic Digester	80%	100.0%
Solar	13%	100.0%
Wind	31%	12.5%

(1) 2006-2008 Actual LMPs & Capacity Prices

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own	)	
motion, regarding the regulatory reviews,	)	
revisions, determinations, and/or approvals	)	Case No. U-15806-K
necessary for The Detroit Edison Company	)	
to fully comply with Public Acts 286 and	)	
<u>295 of 2008.</u>	)	

**AFFIDAVIT OF IRENE M. DIMITRY**

STATE OF MICHIGAN     )  
                                      )ss.  
COUNTY OF WAYNE     )

Irene M. Dimitry, being first duly sworn, deposes and says:

1. I am the Director of Renewable Energy for The Detroit Edison Company (“Detroit Edison” or “Company”), a position I have held for 10 months. I have earned a Bachelor of Arts in Business Administration from Wayne State University and a Masters of Business Administration from the University of Michigan. I have worked for Detroit Edison for over fourteen years in a number of positions with increasing leadership responsibilities, including: Business Planning, Service Center Operations, the President’s Staff organization, Customer Marketing, Customer Billing, and Enterprise Performance Management. Prior to my current position, I served as the Director of Strategy and Planning for Detroit Edison. In this role, I was responsible for Integrated Resource Planning, Customer Research, general rate case support and strategic initiatives related to the Company’s business plans. I have sponsored testimony in Michigan Public Service Commission (“MPSC”) Case No. U-15806-RPS.

2. As Director of Renewable Energy, I am responsible for planning and executing Detroit Edison's renewable energy activities consistent with 2008 PA 295.

3. The Detroit Edison/Heritage Renewable Energy Contract is consistent with Detroit Edison's Renewable Energy Plan filed in MPSC Case No. U-15806-RPS and is otherwise reasonable and prudent based upon, among other things, the following Detroit Edison/Heritage Renewable Energy Contract pricing information. The Detroit Edison/Heritage Renewable Energy Contract pricing of a net \$115.00 per Megawatt hour net energy delivered is less than the sum of the average proposed wind generation transfer price within Detroit Edison's Renewable Energy Plan of \$95.77 (average of column 1 of Exhibit No. A-8 (JHB-4) in Case No. U-15806-RPS) and the projected average cost of Renewable Energy Credits ("RECs") procured through Renewable Energy Contracts of \$31 (average price of line 5 in work paper WP JHB-7 in Case No. U-15806-RPS), which totals \$126.62 per megawatt hour. An additional comparison confirms that the Detroit Edison/Heritage Renewable Energy Contract is reasonable and prudent. For this additional comparison, I calculated the implied per MWh cost for Renewable Energy Contracts within Consumers Energy's Renewable Energy Plan to be \$166 per MWh, using data from column B of Exhibit A-20 (JSR-20) in Case No. U-15805 to represent the MWh volume of Renewable Energy Contracts and line 4 of Exhibit A-33 (TWS-1) in Case No. U-15805 to represent associated Renewable Energy Contract costs. From a volume and timing perspective, the Detroit Edison/Heritage Renewable Energy Contract is also consistent with Detroit Edison's Renewable Energy Plan, which projects the delivery of energy, capacity, and RECs through Renewable Energy Contracts beginning in 2010. See Exhibit No. A-10 (JHB-6), in Case No. U-15806-RPS.

4. This Detroit Edison/Heritage Renewable Energy Contract is an unsolicited proposal that provides opportunities that may not otherwise be available or commercially practical. Based on my immersion in Michigan-based renewable energy matters over the past two years, as well as the experience and insight of my staff, I believe that a wind farm that can be developed and commercially operational in Michigan by the end of 2009 is unique and provides opportunities that may not otherwise be available or commercially practical. In addition to the Heritage project's rapid deployment and reasonable cost, Heritage has also agreed to allow Detroit Edison personnel to observe activities at the wind farm, creating a valuable, low-risk, and timely learning experience related to the design, mobilization, construction, commissioning, and overall project management for a wind farm. Heritage has previously developed and currently operates a 5 MW wind farm near Cadillac, Michigan from which the Company already obtains renewable energy and RECs to support its GreenCurrents program. I believe that this unique, early learning experience will help Detroit Edison become more effective in managing its planned portfolio of Company-owned and contracted wind farms.

5. This Detroit Edison/Heritage agreement is a Renewable Energy Contract, as defined under MCL 460.1011(c), and will be counted toward the "[a]t least 50%" of Renewable Energy Contracts that do not require transfer of ownership of the applicable renewable energy system to the electric provider and from contracts for the purchase of RECs without the associated renewable energy under MCL 460.1033(1)(b). Heritage Stoney Corners Wind Farm I, LLC is not affiliated with Detroit Edison or DTE Energy.

6. The Company will routinely compete for renewable energy and advanced cleaner energy equipment, facility sites and related products and services. Maintaining the confidentiality of the specific terms and conditions involved in acquiring such equipment,

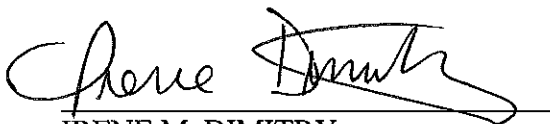
facilities sites and related products and services will help ensure that the suppliers offer their best prices to Detroit Edison and thereby help Detroit Edison achieve the lowest reasonable cost for these items.

7. Accordingly, maintaining the confidentiality of the various redacted provisions of the Detroit Edison/Heritage Renewable Energy Contract will help the Company provide Detroit Edison customers the lowest cost renewable energy and advanced cleaner energy project alternatives consistent with 2008 PA 295.


8. Public disclosure of the redacted details in the Detroit Edison/Heritage Renewable Energy Contract will hamper the Company's ability to provide the lowest reasonable renewable energy power supply cost to its retail electric customers. Therefore, I believe it is in The Detroit Edison Company's, as well as its customers', best interest for such competitively sensitive information to remain confidential and undisclosed.

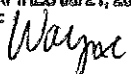
9. Based on my experience, I believe it is in The Detroit Edison Company's, as well as its customers' best interest for the Commission to grant the Company's request to approve the Detroit Edison/Heritage Renewable Energy Contract.

Further, Affiant sayeth not.

  
IRENE M. DIMITRY

Subscribed and sworn to before  
me this 27<sup>th</sup> day of March, 2009.

  
Notary Public

KARYN BETH TEAL  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF MACOMB  
MY COMMISSION EXPIRES Jul 21, 2011  
ACTING IN COUNTY OF 

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own	)	
motion, regarding the regulatory reviews,	)	
revisions, determinations, and/or approvals	)	Case No. U-15806-K
necessary for The Detroit Edison Company	)	
to fully comply with Public Acts 286 and	)	
<u>295 of 2008.</u>	)	

**AFFIDAVIT OF BARBARA J. TUCKFIELD**

STATE OF MICHIGAN        )  
                                      )ss.  
COUNTY OF WAYNE        )

Barbara J. Tuckfield, being first duly sworn, deposes and says:

1.       I am a Regulatory Accounting Expert in the Regulatory Accounting & Strategy Section of the Controllers Organization for The Detroit Edison Company (“Detroit Edison” or “Company”). I received a Bachelor of Arts Degree in Economics from the University of Michigan, a Bachelor of Science Degree in Accounting from Lawrence Technological University and a Master of Business Administration from Lawrence Technological University.       I sponsored testimony in the following Detroit Edison cases: U-15159 - Reconciliation and True-up of the Regulatory Asset Recovery Surcharge (“RARS”), U-15002-R - Reconciliation of the Pension Equalization Mechanism, U-14838 - Reconciliation of the Choice Incentive Mechanism and U-15806-RPS - Renewable Energy Plan.

2.       As a Regulatory Accounting Expert I provide forecasting and regulatory accounting support at Detroit Edison. I am responsible for the development and implementation of regulatory accounting policies and practices, as well as supporting regulatory filings. I analyze the accounting implications of new legislation and MPSC orders, and provide expert testimony

on accounting issues in various proceedings before the MPSC. I research and assist in establishing accounting policies and implementation. I also provide support for the Company's expert witnesses in various proceedings before the MPSC by preparing historical and projected financial statements as well as other financial analysis.

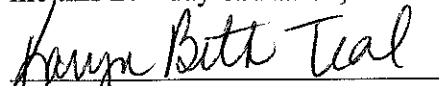
3. I am proposing that the Detroit Edison/Heritage Renewable Energy Contract be recorded as power production and purchased power expense. The accounting practice proposed meets generally accepted accounting principles. Each Power Purchase Agreement "PPA" must be evaluated to determine if it contains an embedded lease. EITF 01-8, "Determining Whether an Arrangement Contains a Lease," provides the accounting guidance for embedded leases. An embedded lease is defined as an agreement that conveys the right to use property, plant or equipment usually for a stated period of time. This Detroit Edison/Heritage Renewable Energy Contract PPA does not contain an embedded lease, and therefore would be recorded as power production and purchased power expense.

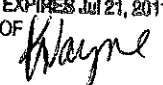
4. Based on my experience and the above determinations I believe that the subject contract is consistent with the unaffiliated 3<sup>rd</sup> party PPAs discussed and included in Detroit Edison's Renewable Energy Plan by Witness Gallagher and Witness Dimitry.

Further, Affiant sayeth not.

  
BARBARA J. TUCKFIELD

Subscribed and sworn to before  
me this 27<sup>th</sup> day of March, 2009.

  
Notary Public

KARYN BETH TEAL  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF MACOMB  
MY COMMISSION EXPIRES Jul 21, 2011  
ACTING IN COUNTY OF 

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own	)	
motion, regarding the regulatory reviews,	)	
revisions, determinations, and/or approvals	)	Case No. U-15806-K
necessary for The Detroit Edison Company	)	
to fully comply with Public Acts 286 and	)	
<u>295 of 2008.</u>	)	

**AFFIDAVIT OF KENNETH D. JOHNSTON**

STATE OF MICHIGAN        )  
                                      )ss.  
COUNTY OF WAYNE        )

Kenneth D. Johnston, being first duly sworn, deposes and says:

1.     I am a Regulatory Consultant in Regulatory Affairs for The Detroit Edison Company (“Detroit Edison” or “Company”). I have earned a Bachelor of Science Degree in Engineering from Lawrence Technological University and a Masters of Business Administration in Finance from the University of Michigan. In addition, I have completed advanced level mathematics and mechanical engineering courses at Lawrence Technological University. I have worked for Detroit Edison for over 25 years in various engineering-related, power/plant-related, customer-related, and regulatory-related areas.

2.     As a Regulatory Consultant in Regulatory Affairs, I am responsible for coordinating, managing and providing expert testimony on various rate matters before the Michigan Public Service Commission (MPSC) and the Federal Energy Regulatory Commission (FERC). Subject matter includes Electric Choice (implementation cost recovery, rates, tariff administration, transition charges, code of conduct, market priced power, and program participation), transmission & ancillary services (rates, billing, energy scheduling, energy

imbalance service), power supply cost recovery, energy efficiency, rates for industrial send-out steam, and wholesale-for-resale rates.

3. The recovery of the total power production and purchased power expense cost and the projected imputed debt cost of the Detroit Edison/Heritage Renewable Energy Contract is currently reflected in the PSCR transfer prices set forth in Exhibit No. A-8 (JHB-4) column (1) and the revenue recovery mechanism surcharges set forth in Exhibit No. A-24 (KDJ-5) in the Company's March 4, 2009 Renewable Energy Plan filing in Case No. U-15806-RPS. As indicated in the accompanying affidavit of Ms. Tuckfield, the Detroit Edison/Heritage Renewable Energy Contract is not an embedded lease and, therefore, this Renewable Energy Contract PPA is consistent with the type of PPA for which Witness Gallagher developed net equity costs associated with imputed debt in the Company's March 4, 2009 Renewable Energy Plan filing in Case No. U-15806-RPS. The total power production and purchased power cost of the Detroit Edison/Heritage Renewable Energy Contract, as discussed in the accompanying affidavit of Ms. Dimitry, is also consistent with the PPA costs projected by the Company in the Company's March 4, 2009 Renewable Energy Plan filing in Case No. U-15806-RPS. As such, approval of this contract will not result in *"an alteration or amendment in rates or rate schedules"* and *"will not result in an increase in the cost of service to customers."*

5. Based on my experience, the above determinations, and the conclusions of Ms. Dimitry and Ms. Tuckfield, I believe that there will be no alteration or amendment in Detroit Edison rates or rate schedules nor will Commission approval of the Detroit Edison/Heritage Renewable Energy Contract increase the cost of service to Detroit Edison customers.

Further, Affiant sayeth not.

Kenneth D. Johnston  
KENNETH D. JOHNSTON

Subscribed and sworn to before  
me this 27<sup>th</sup> day of March, 2009.

Karyn Beth Teal  
Notary Public

KARYN BETH TEAL  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF MACOMB  
MY COMMISSION EXPIRES Jul 21, 2011  
ACTING IN COUNTY OF

Wayne

**STATE OF MICHIGAN**  
**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

In the matter, on the Commission's own )  
motion, regarding the regulatory reviews, )  
revisions, determinations, and/or approvals )  
necessary for The Detroit Edison Company )  
to fully comply with Public Acts 286 and )  
295 of 2008. )  
\_\_\_\_\_ )

Case No. U-15806-K  
(Paperless e-file)

**PROOF OF SERVICE**

STATE OF MICHIGAN     )  
                                  ) ss.  
COUNTY OF WAYNE     )

Estella R. Branson, being duly sworn, deposes and says that on the 27<sup>th</sup> day of March, 2009, a copy of The Detroit Edison Company's Ex Parte Application for Approval of Renewable Energy Contract, redacted Detroit Edison/Heritage Renewable Energy Contract, Exhibit No. A-8 (JHB-4) from Case No. U-15806-RPS, Affidavit of Irene M. Dimitry, Affidavit of Barbara J. Tuckfield and Affidavit of Kenneth D. Johnston in the above captioned matter was served upon the persons on the attached service list via e-mail.

\_\_\_\_\_  
Estella R. Branson

Subscribed and sworn to before  
me this 27<sup>th</sup> day of March, 2009.

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

# **MPSC Case No. U-15806**

**March 13, 2009**

## **SERVICE LIST**

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