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DTE Energy

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August 12, 2013

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 DTE Electric Company to fully comply with Public Acts 286 and 295 of 2008
MPSC Case No. U-16582-BTWF (Paperless E-File)

Dear Ms. Kunkle:

Attached for electronic filing in the above referenced matter is DTE Electric Company's Application for *ex parte* approval of Renewable Energy Contract and Related Relief along with the Affidavits of Charles L. Conlen and Rosemary Smalls-Tilford. Also attached is a Proof of Service.

Very truly yours,

George D. Schreibeis

Digitally signed by George D. Schreibeis
DN: cn=George D. Schreibeis, o=General Counsel, ou=DTE Energy, email=schreibeisgd@dteenergy.com, c=US
Date: 2013.08.12 13:22:46 -04'00'

G. Dennis Schreibeis

GDS/kbk
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 DTE Electric Company to fully comply with Public Acts 286 and 295 of 2008.	)	Case No. U-16582-BTWF

APPLICATION FOR EX PARTE APPROVAL OF RENEWABLE ENERGY CONTRACT, AND RELATED RELIEF

The DTE Electric Company ("DTE Electric" or the "Company") 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*.), the Michigan Administrative Procedures Act (MCL 24.201 *et seq*.) and other Michigan law including but not limited to MCL 460.1, *et seq*. and MCL 460.1001, *et seq.* DTE Electric requests the Michigan Public Service Commission's ("Commission") ex parte approval of the attached Long-term Non-firm Renewable Energy Credit and Renewable Power Purchase Agreement ("BTWF Renewable Energy Contract" or the "Contract") between DTE Electric and Big Turtle Wind Farm, LLC ("BTWF")[1] pursuant to 2008 PA 295 (MCL 460.1001 *et. seq*.); ex parte approval of the associated transfer prices, which are combined energy and capacity price projections, set forth in Case No. U-17302 Exhibit No. A-11, Schedule A1 for recovery under the Company's Power Supply Cost Recovery ("PSCR") process under MCL 460.6j; ex parte approval of the capacity charges, which are included in the transfer prices, set forth in Case No. U-17302 Exhibit No. A-11, Schedule A1 for purposes of

[1] The BTWF contract is a 20-year Power Purchase Agreement ("PPA") for DTE Electric's purchase from BTWF of 20 Megawatts ("MW") of wind-powered electric capacity, energy and associated renewable and environmental benefits, including Renewable Energy credits ("RECs") from the BTWF project. Neither BTWF nor any of its affiliates or subsidiaries are affiliated with DTE Electric or DTE Energy.

MCL 460.6j(13)(b); ex parte approval of the recovery of the remainder of costs associated with the Contract through DTE Electric's Revenue Recovery Mechanism as an Incremental Cost of Compliance with the Renewable Energy Standards under the Company's Amended Renewable Energy Plan pursuant to 2008 PA 295; ex parte assurance that the full costs of the Contract will be recovered through the combined application of the Transfer Price mechanism for PSCR recovery, application of the Revenue Recovery Mechanism surcharges under Act 295, and other mechanisms as determined by the Commission to recover these costs after the 20-year renewable energy plan period in accordance with MCL 460.1047(6); ex parte approval of the future recognition and recovery of imputed debt cost**,** subject to reconciliation; and ex parte approval of any additional approvals that the Commission may deem necessary under 2008 PA 295 or MCL 460.6j. In support of its request, DTE Electric states as follows:

1. DTE Electric is 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. DTE Electric 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 with more than 1,000,000 retail customers in Michigan now and on January 1, 2008, subject to the jurisdiction of the Commission.

2. DTE Electric presently serves its jurisdictional metered retail electric customers under rates and charges approved by the Commission.

3. On October 6, 2008, 2008 PA 295, the "clean, renewable, and efficient energy act" was enacted into law. This Application is filed in accordance with 2008 PA 295 (MCL 460.1001 et seq.) and the Commission's October 21, 2008, June 2, 2009, August 25, 2009, and September 14, 2010 Orders in Case No. U-15806-RPS, December 4, 2008 and December 23,

2008 Orders in Case No. U-15800, implementing 2008 PA 295, and December 20, 2011 and March 8, 2012 Orders in Case No. U-16582 regarding the biennial review and amendment of DTE Electric's Renewable Energy Plan.

4. The "clean, renewable, and efficient energy act" requires Commission approval of certain types of contracts entered into by electric providers, like DTE Electric, 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 "a contract to acquire renewable energy and the associated renewable energy credits from 1 or more renewable energy systems." (MCL 460.1011(c)). Renewable Energy means "electricity generated using a renewable energy system." (MCL 460.1011(a)). A Renewable Energy Credit ("REC") is "a credit granted pursuant to Section 41 that represents generated renewable energy." (MCL 460.1011(d)). A Renewable Energy System is "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 "Wind energy" (MCL 460.1011(i)*(iii)*).

5. Renewable Energy Contracts must be approved by the Commission pursuant to MCL 460.1033, which relevantly provides:

> "(1) Subject to subsections (2) and (3), an electric provider that had 1,000,000 or more retail customers in the state on January 1, 2008 shall obtain the renewable energy credits that are necessary to meet the renewable energy credit standard in 2015 and thereafter as follows:
>
> * * *
>
> "(b) At least 50% of the renewable energy credits shall be from renewable energy contracts that do not require transfer of ownership of the applicable renewable

> energy system to the electric provider or from contracts for the purchase of renewable energy credits without the associated renewable energy…"
>
> (3) "An electric provider shall submit a contract entered into pursuant to subsection (1) 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."

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 also stated that it intends to review and approve submitted contracts on an expedited basis (December 4, 2008 Temporary Order in MPSC Case No. U-15800, p. 16).

7. With this filing, DTE Electric is seeking the Commission's ex parte approval of the attached Contract, which is a 20-year Power Purchase Agreement ("PPA") for DTE Electric's purchase from BTWF of 20 Megawatts ("MW") of wind-powered electric capacity, energy and associated renewable and environmental benefits, including RECs from the BTWF project ("Project"). The Contract 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 or from contracts for the purchase of renewable energy credits without the associated

renewable energy." MCL 460.1033(1)(b). (See attached Affidavit of Charles L. Conlen, Director of Renewable Energy).

8. The Contract is the result of an unsolicited proposal submitted by BTWF. This proposal and the contract provide a unique opportunity for DTE Electric and the State of Michigan. BTWF has also contractually agreed that at least 50% of the total cost of the Project which includes materials, components, logistics, and labor will be sourced from Michigan. As a result of the BTWF's contractual commitment to maximize Michigan content the turbine supplier has ordered turbine towers from a Michigan based tower manufacturer for the entire BTWF and has also agreed to purchase additional turbine towers for a separate, unrelated wind development project. BTWF has also represented and warranted in the Contract that it and its affiliates are headquartered in Michigan and have no offices in the wind energy business outside of the state of Michigan. This unsolicited proposal also presents to DTE Electric the opportunity to provide Production Tax Credit ("PTC") benefits to DTE Electric customers through a project located in Huron County, Michigan, which is expected to start construction in 2013 and be in service by 2014. With the extension of the PTCs in the "American Taxpayer Relief Act of 2012", the recent Internal Revenue Service guidance allowing developers to qualify for PTCs by beginning "physical work of a significant nature" (e.g. excavation or pouring concrete), and the commitment from BTWF to source materials, components, logistics, and labor from Michigan suppliers DTE Electric believes that consistent with the requirements of MCL 460.1033(1)(a)(ii) and (1)(b), the Contract provides an opportunity to capture the benefits of the PTCs for its customers at highly competitive pricing and terms and other benefits to the State of Michigan that would not be available through a traditional RFP process. The Contract is expected to capture PTC benefits for DTE Electric customers by meeting the "start of

construction" requirement in 2013 with a commercial operation date ("COD") for the project expected by the end of 2014. (See attached Affidavit of Charles L. Conlen, Director of Renewable Energy).

9. A limited number of commercially sensitive terms and conditions in the Contract have been redacted to maintain confidentiality, consistent with past practice at the Commission. For example, the Commission determined in 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." Case No. U-11130, Order dated October 20, 1997 p. 13; *Accord*, Case No. U-11631, Order dated April 14, 1998; Case No. U-11804 Order dated December 21, 1998; Case No. U-11688 Order dated June 26, 1998; Case No. U-11661, Order dated June 26, 1998. In 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). More recently in 2009, the Commission approved a redacted DTE Electric Renewable Energy Contract (See MPSC Case No. U-15806 Order dated April 30, 2009, p. 11 *"The Commission understands the need…to keep commercially sensitive information confidential."* 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 DTE Electric and its customers, it is important to maintain the confidentiality of commercially sensitive information. DTE Electric has therefore redacted portions of the

Contract.[2] The original unredacted Contract is available for inspection by the Commission and its Staff at the Company's premises. (See attached Affidavit of Charles L. Conlen, Director of Renewable Energy).

11. The Contract is consistent with DTE Electric's Amended Renewable Energy Plan filed and approved by the Commission in Case No. U-16582, the Contract is consistent with the proposed Amended Renewable Energy Plan submitted by DTE Electric in Case No. U-17302, and is reasonable and prudent. Further, the Contract's estimated pricing of up to $53 per Megawatt hour ("MWh") net energy delivered is less than the lifecycle cost of DTE Electric's Amended Renewable Energy Plan which in Case No. U-16582 is $92 per MWh. The Contact reflects lower Incremental Costs of Compliance and lower overall costs of service to DTE Electric's customers than assumed in DTE Electric's Commission-approved 2008 PA 295 Amended Renewable Energy Plan in Case No. U-16582. Thus, the Contact is reasonable and prudent and consistent with the retail rate impact limits under MCL 460.1045, and approval of the Contract and DTE Electric's related requests for relief 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. (See attached Affidavits of Charles L. Conlen, Director of Renewable Energy, and Rosemary Smalls-Tilford, Regulatory Consultant Regulatory Affairs).

12. From a volume and timing perspective, the Contract is consistent with DTE Electric's Amended Renewable Energy Plan filed and approved by the Commission in Case No. U-16582 and the Contract is consistent with the proposed Amended Renewable Energy Plan submitted by DTE Electric in Case No. U-17302, both of which project the delivery of energy, capacity, and RECs through various means beginning in 2009 and ending in 2029. (See Exhibit

[2] DTE Electric reserves the right to redact different or additional terms and conditions in future contracts as circumstances and conditions warrant.

No. A-9 in Case No. U-16582 and Exhibit No. A-6 in Case No. U-17302 and the attached Affidavit of Charles L. Conlen, Director of Renewable Energy).

13. The Company also requests that the Commission approve the renewable energy transfer prices set forth in its June 3, 2013 Application for Biennial Review and Approval of its Amended Renewable Energy Plan set forth at Exhibit No. A-11, Schedule A1 for the energy and capacity associated with the Contract, for recovery under the Company's Power Supply Cost Recovery ("PSCR") process under MCL 460.6j. (See Case No. U-17302 Exhibit No. A-11, Schedule A1; See also MCL 460.1047(2)(b)(iv); MCL 460.1049(3)(c)). This request consistent with DTE Electric's June 3, 2013 filing of an application and supporting testimony and exhibits in Case No. U-17302, in which DTE Electric requested, inter alia, that the new transfer price schedule set forth on Exhibit A-11, Schedule A1 be approved by the Commission on an expeditious basis and, in any event, be applied as the pricing floor for all Renewable Energy Contracts, renewable engineering, procurement, and construction contracts, or contracts for Renewable Energy Systems that have been developed by third parties for transfer of ownership to an Electric Provider, and Electric Provider owned projects submitted by DTE Electric for Commission approval after June 3, 2013. As of the date of this filing regarding the Contract, the Commission has not acted on DTE Electric's transfer price request in Case No. U-17302.

Pursuant to Section 47(2)(b)(iv) of 2008 PA 295, the Commission is required to annually set a transfer price for renewable costs that will flow through the Company's PSCR process. The transfer price is a mechanism for estimating and allocating for recovery the reasonable and prudent costs of renewable capacity and energy between DTE Electric's PSCR process and the Revenue Recovery Mechanism surcharge under 2008 PA 295, whether these costs are associated with MCL 460.1033(1)(a) Renewable Energy Systems owned by the Electric Provider, or

Renewable Energy Systems that are built by third-parties and transferred to the Electric Provider under MCL 460.1033(1)(a), or MCL 460.1033(1)(b) Renewable Energy Contracts that do not require transfer of ownership of the applicable Renewable Energy System to the Electric Provider (as is the case in this filing). In the Commission's Order in Case No. U-15806-RPS issued on August 25, 2009, the Commission adopted the Staff's analysis regarding establishing a Transfer Price:

> "… at the time any PPA [Renewable Energy Contract under MCL 460.1033(1)(b)] is approved by the Commission, the schedule of transfer prices most recently approved shall become the floor price for PSCR recovery. For each contract year, if the most recently approved annual transfer price is higher than the schedule of transfer prices for a particular contract, then the most recently approved annual transfer price would be recovered via the PSCR process. However, in the event that the contract price [Renewable Energy Contract under MCL 460.1033(1)(b)] is less than the transfer price, the contract price [Renewable Energy Contract under MCL 460.1033(1)(b)] would be the recoverable PSCR cost. **This method would be applicable to renewable engineering, procurement, and construction contracts, or contracts for renewable energy systems that have been developed by third parties for transfer of ownership to an electric provider, provider owned projects [all under MCL 460.1033(1)(a)], and third party PPAs [Renewable Energy Contracts under MCL 460.1033(1)(b)]**." (August 25, 2009 Order in Case No. U-15806-RPS, p 11. Emphasis and statutory references added)

It is apparent that market conditions have evolved since the currently-approved transfer prices were established for DTE Electric.[3] Accordingly, transfer prices should be expeditiously revised, as DTE Electric has requested and supported in Case No. U-17302. DTE Electric believes that it would be appropriate and beneficial to its customers to use its proposed new transfer prices for the Contract. Therefore, in light of DTE Electric's pending request for new transfer prices, DTE Electric requests that the proposed new transfer prices be applied to the

[3] The Commission may take official notice of general, technical, or scientific facts within its specialized knowledge, experience and technical competence under R 460.17327, such as the fact that power prices have generally moderated since the existing Transfer Prices were established in 2009.

Contract, even though DTE Electric recognizes that the Commission has not yet acted on its request for new transfer prices in Case No. U-17302. [4]

Consistent with this analysis, DTE Electric proposes that the Commission establish transfer prices based on the Company's 2008 PA 295 Application for Biennial Review and Approval of its Amended Renewable Energy Plan Case No. U-17302 Exhibit No. A-11, Schedule A1, in a manner consistent with the Company's requests, final Commission Orders dated September 11, 2012, October 31, 2012, and May 17, 2013 approving contract filings in Case No. U-16582, the Commission's obligations, and the need for expeditious approval of the Contract. These forecasted prices set forth on Case No. U-17302 Exhibit No. No. A-11, Schedule A1, provide a schedule of renewable energy transfer prices that will remain in effect over the multi-year term of the Contract for purposes of recovery under the Company's PSCR process under MCL 460.6j. The Company also requests approval of the capacity charges, which are included in the transfer prices, set forth in Case No. U-17302 Exhibit No. A-11, Schedule A1 for the Contract for purposes of MCL 460.6j(13)(b), and any additional approvals that the Commission may deem necessary under MCL 460.6j.[5] While these transfer prices have not yet been approved by the Commission, DTE Electric believes that these transfer prices are a better estimate of the market than those currently approved transfer prices. (See Case No. U-15806-RPS Exhibit No. A-8 (JHB-4) Column (l); See also MCL 460.1047(2)(b)(iv); MCL 460.1049(3)(c)).

[4] DTE Electric reserves the right to address any additional contract filings on a case-by-case basis as circumstances and conditions warrant pending a decision by the Commission establishing new transfer prices in Case Nos. U-16656 and U-17302 or otherwise.

[5] 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."*

Under the proposed transfer prices, the total power production and purchased power cost of the Contract is reasonable and prudent, and consistent with the retail rate impact limits under MCL 460.1045 and the renewable energy system costs projected by the Company in DTE Electric's Amended Renewable Energy Plan filing in Case No. U-16582 as approved by the Commission in its December 20, 2011 Order and the proposed Amended Renewable Energy Plan submitted by DTE Electric in Case No. U-17302, and there will not be any increase in DTE Electric's charges for electric service resulting from the requested approvals and assurances. As such, approval of the Contract and DTE Electric's related requests, including the use of either current or proposed transfer prices, 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.*" (See attached Affidavits of Charles L. Conlen, Director of Renewable Energy, and Rosemary Smalls-Tilford, Regulatory Consultant Regulatory Affairs).

14. DTE Electric further requests that the Commission provide assurance that the full costs of the Contract will be recovered through the combined application of the Transfer Price mechanism for PSCR recovery, application of the Revenue Recovery Mechanism surcharges under 2008 PA 295 (See MCL 460.1011(l)), and other mechanisms as determined by the Commission to recover these costs after the 20-year renewable energy plan period in accordance with MCL 460.1047(6). Also, MCL 460.1047(1) relevantly provides:

> "Subject to the retail rate impact limits under section 45, an electric provider whose rates are regulated by the commission shall recover through its retail rates all of the electric provider's incremental costs of compliance during the 20-year period beginning when the electric provider's plan is approved by the commission and all reasonable and prudent ongoing costs of compliance during and after that period. The recovery shall include, but is not limited to, the electric provider's authorized rate of return on equity for costs approved under this section, which shall remain fixed at the rate of return and debt to equity ratio that was in effect in the electric provider's base rates when the electric provider's renewable energy plan was approved."

When DTE Electric's 2008 PA 295 Renewable Energy Plan was approved by the Commission in its June 2, 2009 and August 25, 2009 Orders in Case No. U-15806-RPS, DTE Electric's authorized rate of return on equity was 11.00%, with a capital structure comprised of approximately 51% debt and 49% equity (December 23, 2008 Opinion and Order in Case No. U-15244, p 23).

15. The Contract is consistent with DTE Electric's Amended Renewable Energy Plan approved by the Commission in its December 20, 2011 Order in Case No. U-16582, the proposed Amended Renewable Energy Plan submitted by DTE Electric in Case No. U-17302, and is reasonable and prudent under MCL 460.1037, which provides:

> "If, after the effective date of this act, an electric provider whose rates are regulated by the commission enters a renewable energy contract or a contract to purchase renewable energy credits without the associated renewable energy, the commission shall determine whether the contract provides reasonable and prudent terms and conditions and complies with the retail rate impact limits under section 45. In making this determination, the commission shall consider the contract price and term. If the contract is a renewable energy contract, the commission shall also consider at least all of the following:
>
> (a) The cost to the electric provider and its customers of the impacts of accounting treatment of debt and associated equity requirements imputed by credit rating agencies and lenders attributable to the renewable energy contract. The commission shall use standard rating agency, lender, and accounting practices for electric utilities in determining these costs, unless the impacts for the electric provider are known.
>
> (b) Subject to section 45, the life-cycle cost of the renewable energy contract to the electric provider and customers including costs, after expiration of the renewable energy contract, of maintaining the same renewable energy output in megawatt hours, whether by purchases from the marketplace, by extension or renewal of the renewable energy contract, or by the electric provider purchasing the renewable energy system and continuing its operation.
>
> (c) Electric provider and customer price and cost risks if the renewable energy systems supporting the renewable energy contract move from contracted pricing to market-based pricing after expiration of the renewable energy contract."

16. With regard to MCL 460.1037(b) and (c), the Contract term provides DTE Electric's customers with an adequate source of renewable energy for a reasonable time. Further, DTE Electric expects no material impact to the Company or its customers upon expiration of the Contract. Since the term of the Contract is of adequate length, further review of possible replacement costs is unnecessary. (See attached Affidavit of Charles L. Conlen, Director of Renewable Energy).

17. The Contract is consistent with DTE Electric's Amended Renewable Energy Plan filed and approved by the Commission in MPSC Case No. U-16582, and the proposed Amended Renewable Energy Plan submitted by DTE Electric in Case No. U-17302, and is reasonable and prudent under MCL 460.1037 and consistent with the retail rate impact limits under MCL 460.1045. (See attached Affidavits of Charles L. Conlen, Director of Renewable Energy, and Rosemary Smalls-Tilford, Regulatory Consultant Regulatory Affairs).

18. In light of the cumulative effect of the Contract in combination with Renewable Energy Contracts previously approved by the Commission, and since DTE Electric is the sole buyer of the Contract output, DTE Electric expects that rating agencies will view the Contract as similar to a fixed obligation and impute associated debt. Therefore, the Contract is consistent with the type of Renewable Energy Contracts for which Witness Gallagher developed net equity costs associated with imputed debt in the Company's Renewable Energy Plan filing in Case No. U-15806-RPS as approved by the Commission in its June 2, 2009 and August 25, 2009 Orders. At present, and as contemplated by MCL 460.1037, the exact impacts of the financing treatment of debt and associated equity requirements imputed by credit rating agencies and lenders to DTE Electric that will be attributable to the Contract are unknown. However, as explained in the accompanying Affidavit of Charles L. Conlen (and, again, consistent with the requirements of

MCL 460.1037) using standard rating agency and lender valuation accounting practices for electric utilities, the most likely net cost of equity due to debt imputed to DTE Electric is $10.4 million (See attached Affidavit of Charles L. Conlen, Director of Renewable Energy).

19. Furthermore, the Commission has made it clear that the time to consider the issue of imputed debt is when a contract is submitted to the Commission for approval (*See*, June 2, 2009 Order in Case No. U-15806-RPS, pp. 16, 22). DTE Electric therefore requests that the Commission approve the future recognition and recovery of the net cost of equity due to debt imputed to DTE Electric associated with approval of the Contract in the amount of $10.4 million, subject to reconciliation to actual imputed debt in future Renewable Cost Reconciliation proceedings and general rate cases.[6] Although DTE Electric is seeking approval of the future recognition and recovery of the net equity costs due to imputed debt concurrent with submitting the Contract for Commission approval, DTE Electric acknowledges that the impacts of the accounting treatment of debt and associated equity requirements imputed by credit rating agencies will occur over time. Therefore, DTE Electric will not recognize or book the net equity costs associated with imputed debt until the Company has actually incurred these costs and subject to review during annual Renewable Cost Reconciliation proceedings and general rate cases.[7] (See attached Affidavit of Charles L. Conlen, Director of Renewable Energy).

20. The approvals and assurances 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 Contract is consistent with the planned activities,

[6] In addition to the $10.4 million imputed debt effects of this Contract, there may be additional imputed debt effects of previous Act 295 contract approvals.

[7] In this filing, DTE Electric simply requests authority to recover the imputed debt expense when it does in fact occur because this is the time and place that the Commission designated for requesting that authority. (June 2, 2009 Order in Case No. U-15806, p 22).

expenses and Revenue Recovery Mechanism surcharges described in DTE Electric's Commission-approved Amended Renewable Energy Plan in Case No. U-16582 and the proposed Amended Renewable Energy Plan submitted by DTE Electric in Case No. U-17302, and therefore "*may be authorized and approved without notice or hearing.*" (MCL 460.6a(1)). Neither will there be any increase in DTE Electric's rates for electric service resulting from the requested approvals and assurances. (See attached Affidavits of Charles L. Conlen, Director of Renewable Energy and Rosemary Smalls-Tilford, Regulatory Consultant Regulatory Affairs). Thus, approval of this Application without notice or hearing is lawful and appropriate.

WHEREFORE, for the reasons stated above, DTE Electric respectfully requests that the Commission expeditiously issue an *ex parte* order in this case that:

(i) Consistent with 2008 PA 295, approves the attached Contract in its entirety and also approves the associated Transfer Price schedule set forth in Case No. U-17302 Exhibit No. A-11, Schedule A1 as the schedule of renewable energy transfer prices for the Contract for recovery under the Company's Power Supply Cost Recovery process under MCL 460.6j for the multi-year term of the Contract;

(ii) Determines that the Contract satisfies MCL 460.1037, complies with the retail rate limits under MCL 460.1045, and is reasonable and prudent;

(iii) Provides approval of the capacity charges, which are included in the transfer prices, set forth in Case No. U-17302 Exhibit No. A-11, Schedule A1 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) Provides approval of DTE Electric's future recognition and recovery of the imputed debt cost to DTE Electric associated with approval of the Contract in the

amount of $10.4 million, subject to reconciliation to actual imputed debt in future Renewable Cost Reconciliation proceedings and general rate cases.

(v) Provides approval of the recovery of the remainder of costs associated with the Contract through DTE Electric's Revenue Recovery Mechanism as an Incremental Cost of Compliance with the Renewable Energy Standards under the Company's Amended Renewable Energy Plan pursuant to 2008 PA 295, and otherwise provides assurance that the full costs of the Contract will be recovered through the combined application of the Company's transfer price mechanism, the Company's Revenue Recovery Mechanism surcharges and, subsequent to the end of the renewable energy plan period, appropriate ratemaking mechanisms in accordance with MCL 460.1047;

(vi) Determines that the Contract and related approvals and assurances will not result in an alteration or amendment in DTE Electric's rates or rate schedules, and will not result in an increase in the cost of service to DTE Electric's customers, and therefore may be authorized and approved without notice or hearing; and

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

Respectfully submitted,

DTE ELECTRIC COMPANY

George D. Schreibeis

Digitally signed by George D. Schreibeis
DN: cn=George D. Schreibeis, o=General Counsel, ou=DTE Energy, email=schreibeisgd@dteenergy.com, c=US
Date: 2013.08.12 13:18:55 -04'00'

Dated: August 12, 2013

By: _____

Michael J. Solo (P57092)
G. Dennis Schreibeis (P75099)
One Energy Plaza, 688 WCB
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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 **DTE Electric Company** to fully comply with Public Acts 286 and 295 of 2008.	))))))	Case No. U-16582-BTWF

AFFIDAVIT OF CHARLES L. CONLEN

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

Charles L. Conlen, being first duly sworn, deposes and says:

1. My title is Director, Renewable Energy. I graduated from the United States Merchant Marine Academy in 1990 with a Bachelor of Science, Marine Power Engineering Systems degree and earned a Masters of Business Administration (MBA) from the University of Michigan Ross School of Business in 2001. After graduating from the United States Merchant Marine Academy, I became a power engineer in the United States Merchant Marine. Over the course of approximately nine years, I designed, constructed and operated steam, diesel and combustion gas turbine power propulsion systems. I left that industry after earning and working as the United States Coast Guard professional designation of Chief Engineer. I then pursued my MBA at the University of Michigan Ross School of Business where I focused on strategy and finance. Upon earning my MBA, I worked as an investment banker for four years where I focused on capital markets and mergers and acquisitions in the industrial, power and financial institution industries. As an investment banker, I led over $10 billion in mergers, acquisition and divestiture activities, as well as led the raising of over $15 billion in debt, equity and hybrid

security transactions for clients. In 2005, I joined DTE Energy to lead strategy and merger and acquisition assignments. For a time, I led the commercial strategy and execution of DTE Electric Company's ("DTE Electric" or the "Company") filing for a Combined Operating License for the potential Enrico Fermi 3 nuclear power plant.

I also provided testimony in DTE Electric's Renewable Energy Plan proceeding, Case No. U-15806-RPS; the 2010 Renewable Energy Plan Cost Reconciliation, Case No. U-16357; the 2011 Renewable Energy Plan Cost Reconciliation, Case No. U-16656; the 2013 Amended Renewable Energy Plan proceeding, Case No. U-17302; and have been involved in many of the Company's 2008 PA 295 contract submittals and have a substantial understanding of the requirements for such submittals.

2. With this filing, DTE Electric is seeking the Michigan Public Service Commission's ("Commission") ex parte approval of the attached Long-Term Non-Firm Renewable Energy Credit and Renewable Power Purchase Agreement ("BTWF Renewable Energy Contract" or "Contract") between DTE Electric and Big Turtle Wind Farm, LLC ("BTWF") [1]. The Contract, which is a 20-year Power Purchase Agreement ("PPA") for DTE Electric's purchase from BTWF of 20 Megawatts ("MW") of wind-powered electric capacity, energy and associated renewable and environmental benefits, including RECs from the BTWF project ("Project"). The Contract 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

[1] The BTWF contract is a 20-year Power Purchase Agreement ("PPA") for DTE Electric's purchase from BTWF of 20 Megawatts ("MW") of wind-powered electric capacity, energy and associated renewable and environmental benefits, including Renewable Energy credits ("RECs") from the BTWF project. Neither BTWF nor any of its affiliates or subsidiaries are affiliated with DTE Electric or DTE Energy.

provider or from contracts for the purchase of renewable energy credits without the associated renewable energy" under MCL 460.1033(1)(b).

3. The Contract is the result of an unsolicited proposal submitted by BTWF. This proposal and the contract provide a unique opportunity for DTE Electric and the State of Michigan. BTWF has also contractually agreed that at least 50% of the total cost of the Project which includes materials, components, logistics, and labor will be sourced from Michigan. In the Company's experience Michigan spend is approximately 30% for such wind projects. As a result of the BTWF's contractual commitment to maximize Michigan content the turbine supplier has ordered turbine towers from a Michigan based tower manufacturer for the entire BTWF and has also agreed to purchase additional turbine towers for a separate, unrelated wind development project. BTWF has also represented and warranted in the Contract that it and its affiliates are headquartered in Michigan and have no offices in the wind energy business outside of the state of MichiganThis unsolicited proposal also presents to DTE Electric the opportunity to provide Production Tax Credit ("PTC") benefits to DTE Electric customers through a project located in Huron County, Michigan, which is expected to start construction in 2013 and be in service by 2014. With the extension of the PTCs in the "American Taxpayer Relief Act of 2012", the recent Internal Revenue Service guidance allowing developers to qualify for PTCs by beginning "physical work of a significant nature" (e.g. excavation or pouring concrete) and the commitment from BTWF to source materials, components, logistics, and labor from Michigan suppliers, DTE Electric believes that consistent with the requirements of MCL 460.1033(1)(a)(ii) and (1)(b), the Contract provides an opportunity to capture the benefits of the PTCs for its customers at highly competitive pricing, terms, and other benefits to the State of Michigan that would not be available through a traditional RFP process. The Contract is expected to capture

PTC benefits for DTE Electric customers by meeting the "start of construction" requirement in 2013 with a commercial operation date ("COD") for the project expected by the end of 2014.

4. A limited number of commercially sensitive terms and conditions in the Contract have been redacted to maintain confidentiality, consistent with past practice at the Commission. For example, the Commission determined in Case No. U-11130 that executed wholesale power purchase agreements contains 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." Case No. U-11130, Order dated October 20, 1997 p. 13; Accord, Case No. U-11631, Order dated April 14, 1998; Case No. U-11804 Order dated December 21, 1998; Case No. U-11688 Order dated June 26, 1998; Case No. U-11661, Order dated June 26, 1998. In 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). More recently in 2009, the Commission approved a redacted DTE Electric Renewable Energy Contract (See MPSC Case No. U-15806 Order dated April 30, 2009, p. 11 *"The Commission understands the need to keep commercially sensitive information confidential." 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 DTE Electric and its customers, it is important to maintain the confidentiality of commercially sensitive information. DTE Electric has therefore redacted portions of the

Contract.[2] The original unredacted Contract is available for inspection by the Commission and its Staff at the Company's premises.

5. The Contract is consistent with DTE Electric's Amended Renewable Energy Plan filed and approved by the Commission in Case No. U-16582 and the Contract is consistent with the proposed Amended Renewable Energy Plan submitted by DTE Electric in Case No. U-17302, and is reasonable and prudent. Further, the Contract's estimated pricing of up to $53 per Megawatt hour ("MWh") net energy delivered is less than the lifecycle cost of DTE Electric's Amended Renewable Energy Plan in Case No. U-16582 which is $92 per MWh. The Contract reflects lower Incremental Costs of Compliance and lower overall costs of service to DTE Electric's customers than assumed in DTE Electric's Commission-approved 2008 PA 295 Amended Renewable Energy Plan in Case No. U-16582. Thus, the Contract is reasonable and prudent and consistent with the retail rate impact limits under MCL 460.1045, and approval of the Contract and DTE Electric's related requests for relief 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.

6. From a volume and timing perspective, the Contract is consistent with DTE Electric's Amended Renewable Energy Plan filed and approved by the Commission in Case No. U-16582 and the Contract is consistent with the proposed Amended Renewable Energy Plan submitted by DTE Electric in Case No. U-17302, both of which project the delivery of energy, capacity, and RECs through various means beginning in 2009 and ending in 2029. (See Exhibit No. A-9 in Case No. U-16582 and Exhibit No. A-6 in Case No. U-17302)

[2] DTE Electric reserves the right to redact different or additional terms and conditions in future contracts as circumstances and conditions warrant.

7. Based on the facts and conclusions described above, I believe the total power production and purchased power cost of the Contact is reasonable and prudent and is consistent with the retail rate impact limits under MCL 460.1045. In light of DTE Electric's pending request for new transfer prices, which are combined energy and capacity price projections, set forth in Case No. U-17302 Exhibit A-11, Schedule A1, DTE Electric requests that the proposed new transfer prices be applied in a manner consistent with the Company's requests, the Commission's obligations, and the need for expeditious approval of the Contract, even though DTE Electric recognizes that the Commission has not yet acted on its request for new transfer prices. These forecasted prices set forth in Case No. U-17302 Exhibit A-11, Schedule A1, provide a schedule of renewable energy transfer prices that will remain in effect over the multi-year term of the Contract for purposes of recovery under the Company's Power Supply Cost Recovery ("PSCR") process under MCL 460.6j. The Company also requests approval of the capacity charges, which are included in the transfer prices, set forth in Case No. U-17302 Exhibit A-11, Schedule A1 for the Contract for purposes of MCL 460.6j(13)(b), and any additional approvals that the Commission may deem necessary under MCL 460.6j.

8. Recovery of the total power production and purchased power costs associated with the Contract are currently reflected in the proposed PSCR transfer prices set forth in Case No. U-17302 Exhibit A-11, Schedule A1 and the Revenue Recovery Mechanism Surcharges set forth in Exhibit A-24 (KDJ-5) in the Company's 2008 PA 295 Renewable Energy Plan filing in Case No. U-15806-RPS, as approved by the Commission in its June 2, 2009 and August 25, 2009 Orders, and re-approved in the Commission's December 20, 2011 Order in Case No. U-16582 and in the proposed Amended Renewable Energy Plan submitted by DTE Electric in Case No. U-17302.

9. With regard to MCL 460.1037(b) and (c), the Contract terms provide DTE Electric's customers with an adequate source of renewable energy for a reasonable time, and DTE Electric expects no material impact to the Company or its customers upon expiration of the Contract. Since the term of the Contract is of adequate length, further review of possible replacement costs is unnecessary, and DTE Electric expects no material impact to the Company or its customers.

10. The Contract is consistent with DTE Electric's Amended Renewable Energy Plan filed and approved by the Commission in MPSC Case No. U-16582, the proposed Amended Renewable Energy Plan submitted by DTE Electric in Case No. U-17302, and is reasonable and prudent under MCL 460.1037 and consistent with the retail rate impact limits under MCL 460.1045.

11. In light of the cumulative effect of the Contract in combination with Renewable Energy Contracts previously approved by the Commission, and since DTE Electric is the sole buyer of the Contract output, DTE Electric expects that rating agencies will view the Contract as similar to a fixed obligation and impute associated debt. Therefore, the Contract is consistent with the type of Renewable Energy Contracts for which Witness Gallagher developed net equity costs associated with imputed debt in the Company's Renewable Energy Plan filing in Case No. U-15806-RPS as approved by the Commission in its June 2, 2009 and August 25, 2009 Orders. At present, and as contemplated by MCL 460.1037, the exact impacts of the financing treatment of debt and associated equity requirements imputed by credit rating agencies and lenders to DTE Electric that will be attributable to the Contract are unknown. However, using standard rating agency and lender valuation accounting practices for electric utilities, the most likely net cost of equity due to debt imputed to DTE Electric is $10.4 million. To calculate the most likely net

cost of equity due to imputed debt, I followed the methodology for calculating imputed debt impacts as described in the testimony of J. P. Gallagher regarding imputed debt in Case No. U-15806-RPS and consistent with Standard & Poor's published methodology for calculating imputed debt. My calculation started with the forecasted cost of the Project, expressed first in dollars per kilowatt and then converted to dollars per megawatt. I then adjusted this cost by a factor that represents tax depreciation based on the present value of the 5-year Modified Accelerated Cost Recovery System ("MACRS") schedule. The depreciation adjusted capacity cost was then multiplied by the Contract capacity volume (20 MW) to arrive at the imputed investment. The imputed capitalized value represents the amount of cash that must be recovered over the 20-year life the Contract, with carrying costs assumed at BTWF's estimated weighted average cost of capital. Using these assumptions, the annual after-tax revenue required to service this imputed debt was calculated, and then grossed up to account for federal and state taxes to arrive at the amount of pre-tax revenue required to support the capacity purchase. Then, I calculated the present value of the future capacity purchases for each year which represents the imputed capitalized value of the capacity purchase in each of the 20 years of the Contract. This imputed capitalized value was then multiplied by a 25% risk factor to result in the expected imputed debt, consistent with the testimony of J. P. Gallagher regarding imputed debt in Case No. U-15806-RPS. The appropriate debt and equity factors for DTE Electric's authorized capital structure were used to apportion the imputed debt into debt and new equity. The cost of the new equity was calculated by multiplying the new equity amount by DTE Electric's pre-tax return on equity. It was assumed that the new equity infused would be used to reduce existing debt. Next, I calculated the interest expense saved by reducing existing debt. These interest savings were deducted from the cost of the new equity to calculate a net cost of equity due to imputed debt of

$10.4 million. Therefore, and in accordance with the Commission's June 2, 2009 Order in Case No. U-15806-RPS, pp. 16, 22, DTE Electric requests that the Commission approve the future recognition and recovery of the net cost of equity due to debt imputed to DTE Electric associated with approval of the Contract in the amount of $10.4 million, subject to reconciliation to actual imputed debt in future Renewable Cost Reconciliation proceedings and general rate cases.[3] Although DTE Electric is seeking approval of the future recognition and recovery of the net equity costs due to imputed debt concurrent with submitting the Contract for Commission approval, DTE Electric acknowledges that the impacts of the accounting treatment of debt and associated equity requirements imputed by credit rating agencies will occur over time. Therefore, DTE Electric will not recognize or book the net equity costs associated with imputed debt until the Company has actually incurred these costs and subject to review during annual Renewable Cost Reconciliation proceedings and general rate cases. In this filing, DTE Electric simply requests authority to recover the imputed debt expense when it does in fact occur because this is the time and place that the Commission designated for requesting that authority (June 2, 2009 Order in Case No. U-15806-RPS, pp. 16, 22).

12. Based on my experience, the above determinations, and the conclusions set forth in the accompanying Affidavit of Ms. Smalls-Tilford, I believe that Commission approval of the Contract will not cause alteration or amendment in DTE Electric rates or rate schedules nor will Commission approval of the Contract increase the cost of service to DTE Electric customers compared to DTE Electric's Commission-approved 2008 PA 295 Amended Renewable Energy Plan. The Contract is consistent with DTE Electric's 2008 PA 295 Amended Renewable Energy Plan filed and approved by the Commission in Case No. U-16582, and the contract is consistent

[3] In addition to the $10.4 million imputed debt effects of this Contract, there may be additional imputed debt effects of previous Act 295 contract approvals.

with the proposed Amended Renewable Energy Plan submitted by DTE Electric in Case No. U-17302, and is reasonable and prudent under MCL 460.1037 and consistent with the retail rate impact limits under MCL 460.1045.

13. The Company competes for renewable energy, advanced cleaner energy and related equipment, products and services. Maintaining the confidentiality of the specific terms and conditions involved in acquiring such renewable energy, advanced cleaner energy, and related equipment, products and services will help ensure that the suppliers submit bids and offer their best prices to DTE Electric and thereby help DTE Electric achieve the lowest reasonable cost for these items. Accordingly, maintaining the confidentiality of the various redacted provisions of the Contract, such as, but not limited to, specific pricing terms, shortfall payments and security amounts, will help the Company provide DTE Electric customers with lower cost renewable energy and advanced cleaner energy project alternatives consistent with 2008 PA 295.

14. Public disclosure of the redacted details in the Contract will hamper the Company's ability to provide the lowest reasonable renewable energy and advanced cleaner energy power supply cost to its retail electric customers. Therefore, I believe it is in DTE Electric's, as well as its customers', best interest for such competitively sensitive information to remain confidential and undisclosed. The original unredacted Contract is available for inspection by the Commission and its Staff at the Company's premises.

15. Based on my experience, because the Contract allows the Company an opportunity to capture the benefit of PTCs for its customers at highly competitive pricing and provides benefits to the State of Michigan which include sourcing materials, components, logistics, and labor from Michigan suppliers that would not otherwise be available through a traditional RFP process, and for the other reasons discussed above, I believe it is in DTE

Electric's, as well as its customers', best interest for the Commission to approve the Contact and grant the Company's related requests.

Further, Affiant sayeth not.

Charles L. Conlen

Digitally signed by Charles L. Conlen
DN: cn=Charles L. Conlen, o=Renewable Energy, ou=DTE Energy, email=conlenc@dteenergy.com, c=US
Date: 2013.08.12 13:19:30 -04'00'

Charles L. Conlen

Subscribed and sworn to before
me this 12th day of August, 2013.

Estella R. Branson

Digitally signed by Estella R. Branson
DN: cn=Estella R. Branson, o=Regulatory Affairs, ou=DTE Energy - Regulatory Affairs, email=bransone@dteenergy.com, c=US
Date: 2013.08.12 13:20:00 -04'00'

Estella R. Branson, Notary Public
Wayne County, Michigan
My Commission Expires: 10-26-2017
Acting in Wayne County

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 **DTE Electric Company** to fully comply with Public Acts 286 and 295 of 2008.	))))))	Case No. U-16582- BTWF

AFFIDAVIT OF ROSEMARY SMALLS-TILFORD

STATE OF MICHIGAN)
)ss.
COUNTY OF WAYNE)

Rosemary Smalls-Tilford, being first duly sworn, deposes and says:

1. I am a Regulatory Consultant in Regulatory Affairs for DTE Electric Company ("DTE Electric" or the "Company"). I have earned a Bachelor of Science Degree in Business Management from Central Connecticut State University and a Masters of Business Administration ("MBA") in Finance from Clark Atlanta University. Upon earning my MBA, I worked as a Plant Controller at Xerox Corporation for one year and then moved to Arkansas to work as a Strategic Planning and Finance Officer at First Commercial Corporation. Prior to joining DTE Electric, I worked for Bank One Capital Markets as a Capital Markets Associate. I have worked for DTE Electric for over 10 years in various regulatory-related areas.

2. As a Regulatory Consultant in Regulatory Affairs, I am responsible for coordinating and managing the various 2008 PA 295 ("Act 295") Renewable Energy matters before the Michigan Public Service Commission ("MPSC" or the "Commission") and coordinating the electric-related Federal Energy Regulatory Commission ("FERC") compliance activities. Subject matter includes the 21st Century Energy Plan, PAYS Collaborative initiative

(Pay as You Save), GreenCurrents, various Company Legislative initiatives, and renewable energy.

3. The Company also requests that the Commission approve the renewable energy transfer prices set forth in its June 3, 2013 Application for Biennial Review and Approval of its Amended Renewable Energy Plan set forth at Exhibit No. A-11, Schedule A1 for the energy and capacity associated with the Contract, for recovery under the Company's Power Supply Cost Recovery ("PSCR") process under MCL 460.6j. (See Case No. U-17302 Exhibit No. A-11, Schedule A1; See also MCL 460.1047(2)(b)(iv); MCL 460.1049(3)(c)). This request consistent with DTE Electric's June 3, 2013 filing of an application and supporting testimony and exhibits in Case No. U-17302, in which DTE Electric requested, inter alia, that the new transfer price schedule set forth on Exhibit A-11, Schedule A1 be approved by the Commission on an expeditious basis and, in any event, be applied as the pricing floor for all Renewable Energy Contracts, renewable engineering, procurement, and construction contracts, or contracts for Renewable Energy Systems that have been developed by third parties for transfer of ownership to an Electric Provider, and Electric Provider owned projects submitted by DTE Electric for Commission approval after June 3, 2013. The Company also requests approval of the capacity charges, which are included in the transfer prices, set forth in Case No. U-17302 Exhibit No. A-11, Schedule A1 for the Contract for purposes of MCL 460.6j(13)(b), and any additional approvals that the Commission may deem necessary under MCL 460.6j. As of the date of this filing regarding the Contract, the Commission has not acted on DTE Electric's transfer price request in Case No. U-17302.

4. Under the proposed transfer prices, the total power production and purchased power cost of the Contract, as discussed in the accompanying Affidavit of Mr. Conlen, are

reasonable and prudent, and consistent with the retail rate impact limits under MCL 460.1045 and the renewable energy system costs projected by the Company in DTE Electric's Amended Renewable Energy Plan filing in Case No. U-16582 as approved by the Commission in its December 20, 2011 Order and the proposed Amended Renewable Energy Plan submitted by DTE Electric in Case No. U-17302, and there will not be any increase in DTE Electric's charges for electric service resulting from the requested approvals and assurances. As such, approval of the Contract and DTE Electric's related requests, including the use the proposed transfer prices, 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. Recovery of the total power production and purchased power costs associated with the Contract is currently reflected in the PSCR transfer prices and the Revenue Recovery Mechanism Surcharges set forth in Exhibit No. A-24 (KDJ-5) in the Company's 2008 PA 295 Renewable Energy Plan filing in Case No. U-15806-RPS, as approved by the Commission in its June 2, 2009 and August 25, 2009 Orders, and re-approved in the Commission's December 20, 2011 Order in Case No. U-16582 and in the proposed Amended Renewable Energy Plan submitted by DTE Electric in Case No. U-17302.

6. Based on my experience, the above determinations, and the conclusions of Mr. Conlen, I believe that Commission approval of the Contract will not cause alteration or amendment in DTE Electric rates or rate schedules nor will Commission approval of the

Contract increase the cost of service to DTE Electric customers.

Further, Affiant sayeth not.

Rosemary Smalls-Tilford

Digitally signed by Rosemary Smalls-Tilford
DN: cn=Rosemary Smalls-Tilford, o=Regulatory Affairs, ou=DTE Energy, email=smalls-tilfordr@dteenergy.com, c=US
Date: 2013.08.12 13:20:29 -04'00'

ROSEMARY SMALLS-TILFORD

Subscribed and sworn to before
me this 12th day of August 2013.

Estella R. Branson

Digitally signed by Estella R. Branson
DN: cn=Estella R. Branson, o=Regulatory Affairs, ou=DTE Energy - Regulatory Affairs, email=bransone@dteenergy.com, c=US
Date: 2013.08.12 13:20:55 -04'00'

Estella R. Branson, Notary Public
Wayne County, Michigan
My Commission Expires: 10-26-2017
Acting in Wayne County

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

BETWEEN

DTE ELECTRIC COMPANY

AND

BIG TURTLE WIND FARM LLC

August 12, 2013

TABLE OF CONTENTS

EXHIBITS

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 August 12, 2013 (the "Effective Date") by and between DTE ELECTRIC COMPANY ("Buyer"), and Big Turtle Wind Farm 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 and the FERC;

WHEREAS, Supplier desires to build the Generating Facility, incorporating Michigan Content, which is located in Rubicon Township, Huron County, Michigan ("Site"), and which Supplier desires to designate as a Renewable Energy System with the MPSC in order to comply with the requirements of this Agreement;

WHEREAS, the Parties intend that the electricity and Renewable Energy Credits 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 thereof;

WHEREAS, the Parties intend that the nameplate capacity of the Generating Facility will comply with the requirements of the Clean, Renewable and Efficient Energy Act and satisfy a portion of Buyer's obligations for renewable energy capacity under the Clean, Renewable and Efficient Energy Act; and

WHEREAS, Supplier desires to sell to Buyer, the capacity and non-firm (subject to the requirements of this Agreement) 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:

1. DEFINITIONS

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

1.1 "Adjusted Delivered Amount" means the sum of the Delivered Amount for such Contract Year and the aggregate Deemed Delivered Amount for such Contract Year.

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 20.1 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 "Billing Period" has the meaning ascribed to that term in Section 8.1.1.

1.6 "Business Day" means any day other than Saturday, Sunday and any day that is a holiday observed by Buyer.

1.7 "Buyer" has the meaning ascribed to that term in the preamble of this Agreement and includes such Person's permitted successors and assigns.

1.8 "Buyer Curtailment" means any Energy curtailment as a result of the receipt of a curtailment notice from Buyer pursuant to Section 11.6 except for a curtailment resulting from (a) an Emergency declared by MISO, the Transmission Provider and/or the Control Area Operator or (b) a Force Majeure.

1.9 "Buyer's REC Account" means Buyer's Michigan Electric Service Provider Account and any successor thereto that is maintained for the purpose of tracking the production, sale, transfer, purchase and retirement of RECs by Buyer.

1.10 "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 31.3.

1.11 "Capacity" means the instantaneous rate at which Energy can be delivered, received or transferred measured in MW from the Generating Facility.

1.12 "CFTC" has the meaning ascribed to that term in Section 34.16.

1.13 "Change of Control" has the meaning ascribed to that term in Section 27.8.5.3.

1.14 "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 Compiled Laws, chapter MCL 460.1001 to 460.1195 the regulations promulgations there under inclusive, as such Laws may be amended or superseded.

1.15 "Commercial Operation" means that Supplier has certified to Buyer that all of the requirements set forth in Article 9 and Exhibits 9.1 and 9.2 have been satisfied.

1.16 "Commercial Operation Date" means the date on which Commercial Operation occurs.

1.17 "Commercial Operation Milestone" has the meaning ascribed to that term in Exhibit 9.2.

1.18 "Confidential Information" has the meaning ascribed to that term in Section 33.1.

1.19 "Construction Start Milestone" has the meaning ascribed to that term in Exhibit 9.2.

1.20 "Contract Representative" of a Party means the individual designated by that Party in Exhibit 8.1.4 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 34.1.

1.21 "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.

1.22 "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.

1.23 "Control Area Operator" means MISO or any other 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.

1.24 "Credit Rating" means two out of two credit ratings, and if only rated by one of the Relevant Rating Agencies, then one out of two credit ratings, for a Person then assigned by the Relevant Rating Agencies to the long-term, senior, unsecured debt not supported by third-party credit enhancement or deposit obligations and if no such ratings exists, then the issuer ratings for two out of two credit ratings, and if only rated by one of the Relevant Rating Agencies, then one out of two credit ratings, for such Person then assigned by the Relevant Rating Agencies.

1.25 "Cure Period" has the meaning ascribed to that term in Section 29.3.

1.26 "Day-Ahead Schedule" means the hourly amount in MW an asset is awarded by the market for the next day in accordance with MISO.

1.27 "Deemed Delivered Amount" means the quantity of Energy expressed in MWh as calculated in accordance with Exhibit 11.7, that would have been produced by the Generating Facility, delivered to the Delivery Point and purchased by Buyer during any period and includes the quantity of Energy that was not produced due to an Excused Event or Buyer Curtailment.

1.28 "Defaulting Party" has the meaning ascribed to that term in Section 29.1.

1.29 "Delivered Energy" means Energy delivered by Supplier and accepted by Buyer at the Delivery Point in accordance with the terms of this Agreement.

1.30 "Delivered Amount" means, with respect to any Contract Year that Energy is purchased by Buyer, the actual amount of Energy delivered by Supplier and accepted by Buyer at the Delivery Point during such Contract Year.

1.31 "Delivery Point" means the delivery point as defined by the GIA or other delivery point on the Transmission System set forth in Exhibit 3.1B or any other delivery point as may be mutually agreed upon by the Parties.

1.32 "Demand" has the meaning ascribed to that term in Section 23.4.

1.33 "Demanding Party" has the meaning ascribed to that term in Section 23.4.

1.34 "Derating" means a condition of the Generating Facility as a result of which it is unable to produce the forecasted Energy during an Hour.

1.35 "DTE Electric Company" means DTE Electric 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.

1.36 "Development Security" has the meaning ascribed to that term in Section 19.2.

1.37 "Disclosing Party" has the meaning ascribed to that term in Section 33.1.

1.38 "Dodd-Frank" has the meaning ascribed to that term in Section 34.16

1.39 "Effective Date" has the meaning ascribed to that term in the preamble of this Agreement.

1.40 "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 (a) reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property or (b) is reasonably likely to adversely affect, degrade or impair Transmission System reliability or transmission system reliability of other electric utilities.

1.41 "Energy" means three phase, 60 Hz electrical energy (measured in MWh) that is generated by the Generating Facility from and after the Operation Date (including Test Energy generated and delivered prior to the Commercial Operation Date).

1.42 "Energy Market" shall mean the Midwest ISO Real Time Energy Market as defined by MISO.

1.43 "Environmental Law" shall mean any federal, state, local or other law (including, without limitation, 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, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport and handling of Hazardous Substances.

1.44 "EPC Contract" has the meaning ascribed to that term in Exhibit 9.2.

1.45 "EPT" means Eastern Standard Time or Eastern Daylight Time, whichever is then prevailing.

1.46 "Event of Default" has the meaning ascribed to that term in Section 29.1.

1.47 "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.

1.48 "Excused Event" means (a) any Force Majeure; (b) any Emergency not caused by the fault or negligence of Supplier; or (c) the inability or failure of Buyer to accept Energy for any reason other than the fault or negligence of Supplier,

including as a result of any curtailment resulting from an Emergency declared by MISO, Transmission Provider or the Control Area Operator

1.49 "External Communications Interface" means the electronic connection point at which the Generating Facility's data is made available to Buyer.

1.50 "FERC" means the Federal Energy Regulatory Commission and any successor entity thereto.

1.51 "Financing" means funding provided by Supplier's Lenders in connection with any development, bridge, construction, permanent debt, lease or tax equity financing or refinancing of the Generating Facility, including any financing structured as a sale-leaseback transaction.

1.52 "First Full Contract Year" means the first Contract Year that is a full calendar year.

1.53 "Force Majeure" has the meaning ascribed to that term in Section 22.2.

1.54 "Forced Outage" means the removal from availability of a generating unit, transmission line, or other facility for emergency reasons or a condition in which the equipment is unavailable due to unanticipated failure resulting in a decrease to available Capacity.

1.55 "Frost Laws" has the meaning ascribed to that term in Section 22.3.5.

1.56 "Generating Facility" means Supplier's wind energy renewable generating facility, including any associated facilities and equipment required to deliver Energy to the Delivery Point, as further described in Exhibits 3.2 and 3.1B hereto.

1.57 "Generator" has the meaning set forth in the MISO Tariff.

1.58 "GIA" means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Supplier, the Transmission Provider and the Control Area Operator governing the terms and conditions of Supplier's interconnection with the Transmission System, including any description of the plan for interconnecting to the Transmission System.

1.59 "GIA Execution Milestone" has the meaning ascribed to that term in Exhibit 9.2.

1.60 "Good Faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

1.61 "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.

1.62 "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.

1.63 "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.

1.64 "Hour" means each hour from the Operation Date through the end of the Term.

1.65 "IEEE-SA" means the Institute of Electrical and Electronics Engineers Standards Association and any successor entity thereto.

1.66 "Indemnified Party" has the meaning ascribed to that term in Section 20.1.

1.67 "Indemnifying Party" has the meaning ascribed to that term in Section 20.1.

1.68 "Independent System Operator (ISO)" means an organization which coordinates controls and monitors the operation of the electrical power system.

1.69 "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 3.1B.

1.70 "Invoice" means the statements described in Section 8.1 setting forth the Energy delivered to the Delivery Point, if any, and the associated payment and any other payments due for the Billing Period.

1.71 "Inter-Control Center Communication Protocol (ICCP)" means a protocol used to facilitate data exchange over wide area networks (WANs) between the Generating Facility and Buyer's control centers.

1.72 "Law" means any federal, state, local or other law (including any Environmental Laws), common law, treaty, code, rule, ordinance, 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.

1.73 "Lead Operator" means a Person who has primary responsibility for operating and maintaining the Wind Turbines and their related facilities at an electricity generating facility that is substantially similar to the Generating Facility. For the avoidance of doubt, a Person does not qualify as a Lead Operator unless that Person or its employees performs the actual physical maintenance of the Wind Turbines and their related facilities.

1.74 "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 20.

1.75 "Market Participant" means any Person authorized by Buyer to act on Buyer's behalf or as its registered agent in MISO or its successor entity who meets the definition of "Market Participant" under MISO or its successor entity.

1.76 "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.

1.77 "Meter" means any of the physical or electronic metering devices, data processing equipment and apparatus associated with the meters owned by Supplier, 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 Buyer; and (b) the

computation of the payment due to Supplier from Buyer. Meters do not include any check meters Buyer may elect to install as contemplated by Section 10.1.

1.78 "Michigan Content" means materials and components of the Wind Turbines manufactured in the State of Michigan, including but not limited to Ventower wind turbine towers, logistics, and labor for the construction (including overhead and management) of the Generating Facility performed by residents of the State of Michigan.

1.79 "MISO" means the Midcontinent Independent System Operator, Inc. and any successor entity thereto, any Independent System Operator or any other wholesale market the Buyer may join.

1.80 "MISO Advance Schedule" means (a) a Day-Ahead Schedule, (b) a Notification Deadline or (c) the hourly amount in MW an asset is awarded by the market pursuant to any other advance scheduling period adopted by MISO from time to time.

1.81 "MISO Market Participant Fee" has the meaning ascribed to that term in Section 3.9.

1.82 "MISO Tariff" means the Open Access Transmission, Energy and Operating Reserve Markets Tariff for the Midcontinent Independent System Operator, Inc., including the rules, protocols, procedures and standards attached thereto, or any tariff of any successor Independent System Operator, any Independent System Operator or any other wholesale market the Buyer may join, as the same may be amended or modified from time-to-time and approved by FERC.

1.83 "Moody's" means Moody's Investor Services, Inc. and any successor entity thereto.

1.84 "MPSC" means the Michigan Public Service Commission and any successor entity thereto.

1.85 "MPSC Approval Date" means the date on which an order of the MPSC approving this Agreement in accordance with Section 18.3 is effective, final, and no longer subject to appeal.

1.86 "MW" means a megawatt of electrical capacity.

1.87 "MWh" means a megawatt hour of electrical energy.

1.88 "NERC" means the North American Electric Reliability Corporation and any successor entity thereto.

1.89 "Network Resource" means any designated Generation Resource, External Resource or portion thereof, that is owned or leased by a Network Customer, or whose output is under contract to a Network Customer (as defined in the MISO

Tariff), and that is designated under the Network Integration Transmission Service provisions of Module B in the MISO Tariff.

1.90 "Network Resource Interconnection Service" means the interconnection of a Generation Resource to the Transmission System in a manner that would allow it to qualify as a Network Resource without additional Network Upgrades

1.91 "Non-Defaulting Party" means the Party that is not the Defaulting Party.

1.92 "Notification Deadline" means the hourly amount in MW an asset offers to the market four (4) hours prior to each market hour in accordance with MISO.

1.93 "Operating Representative" means any of the individuals designated by a Party, as set forth in Exhibit 8.1.4, 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 34.1 herein.

1.94 "Operating Security" has the meaning ascribed to that term in Section 19.3.

1.95 "Operation Date" has the meaning ascribed to that term in Section 9.3.

1.96 "Operator" has the meaning ascribed to that term in Section 9.7.1.

1.97 "Party" means each Person set forth in the preamble of this Agreement and its permitted successor or assigns.

1.98 "Penalties" means any penalties, fines, damages, sanctions or charges, including imbalance charges and fines or penalties, whether now existing or that become effective in the future, attributable to this Agreement and actually imposed on Buyer pursuant to an order issued by any Governmental Authority, NERC, MISO, ISO, the Transmission Provider or the Control Area Operator or any successor of such entity.

1.99 "Person" means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.

1.100 "Planned Operation Date" means the date specified in Exhibit 9.2 as the date on which the Operation Date is expected to occur.

1.101 "Planned Outages" has the meaning ascribed to that term in Section 12.1.

1.102 "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.

1.103 "Product" means (a) all Energy (except Station Usage) and RECs produced by and/or associated with the Generating Facility; (b) all Capacity; and (c) all Renewable Energy Benefits.

1.104 "Product Rate" means the applicable rate set forth in Exhibit 4.1 of this Agreement under "Product Rate."

1.105 "Project Milestone" means each of the milestones listed in Exhibit 9.2 under the column "Project Milestone."

1.106 "Project Milestone Schedule" means the schedule of Project Milestones, completion dates and required documentation specified in Exhibit 9.2.

1.107 "QF" means a 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, and is certified in accordance with requirements of the FERC.

1.108 "Qualified Financial Institution" means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof or foreign bank with a U.S. branch office, with (a) a Credit Rating of at least (i) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (ii) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P and Moody's, but not both, and (b) having a capital and surplus of at least $1,000,000,000.

1.109 "REC Administrator" means the Person appointed to administer the development, registering, tracking, qualifying, recording and transferring of Renewable Energy Credits established pursuant to the Clean, Renewable and Efficient Energy Act, and any successor thereto.

1.110 [redacted]

1.111 "Receiving Party" has the meaning ascribed to that term in Section 33.1.

1.112 "Relevant Rating Agency" means S&P and Moody's.

1.113 "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 any Governmental Authority in any jurisdiction in connection with the Generating Facility; 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 the like or because the Generating Facility does not produce greenhouse gases, regulated emissions or other pollutants, whether any such attributes, reductions, 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 attribute, reduction, 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 attributes, reductions, credits, offsets, allowance or benefits attributable to Energy sold under this Agreement, and Energy consumed by the Generating Facility, such as Station Usage.

1.114 "Renewable Energy Credit" or "REC" means a credit granted pursuant to section 41 of the Clean, Renewable and Efficient Energy Act that represents generated renewable energy, including without limitation incentive RECs granted under sections 39(2)(a)-(e), as applicable, of the Clean, Renewable and Efficient Energy Act.

1.115 "Renewable Energy System" means, with respect to Michigan, a "renewable energy system" as defined in the Clean, Renewable and Efficient Energy Act.

1.116 "Rules" has the meaning ascribed to that term in Section 23.3.

1.117 "Schedule" or "Scheduling" means the actions of Supplier, Buyer and/or their designated Operating Representatives of notifying, requesting, and confirming to each other the amount of Energy to be delivered on any given day or days at any given hour at the Delivery Point.

1.118 "Site" has the meaning ascribed to that term in the second WHEREAS clause.

1.119 "S&P" means Standard and Poor's Ratings Group, a division of McGraw Hill, Inc. and any successor entity thereto.

1.120 "Standby Service" means the electric service supplied by Thumb Electric Cooperative.

1.121 "Station Usage" means all Energy consumed by the Generating Facility.

1.122 "Supervisory Control and Data Acquisition (SCADA)" means a computer system that can monitor and control power generation.

1.123 "Supplier" has the meaning ascribed to that term in the preamble of this Agreement and includes such Person's permitted successors and assigns.

1.124 "Supplier's Lenders" means any Persons other than an Affiliate of Supplier, and their permitted successors and assignees (but, for the avoidance of doubt, not any "designee" of Supplier's Lenders for purposes of Section 27), whose business it is in the ordinary course to provide financing for electricity generating facilities and who have agreed to provide Financing for the Generating Facility.

1.125 "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 30.3.

1.126 "Supply Amount" means with respect to any full Contract Year, the annual amount of Energy and RECs stated in Exhibit 3.1A, in each case unless [redacted] reduced pursuant to this Agreement. The Supply Amount is non-firm, subject to the requirements of this Agreement.

1.127 "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.

1.128 "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.

1.129 "Term" has the meaning ascribed to that term in Section 2.2.

1.130 "Test Energy" means any Energy delivered to Buyer at the Delivery Point, and purchased by Buyer, prior to the Commercial Operation Date.

1.131 "Transmission Provider" means International Transmission Company or any successor operator or owner of the Transmission System.

1.132 "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. As used in this Agreement, Transmission System shall also include Buyer's sub-transmission and distribution systems.

1.133 "Unit Capacity Framework (UCF)" means Buyer's online application for Supplier to record current and future available capacity of the Wind Turbines that comprise the Generating Facility for use in the MISO Advance Schedule, or a substantially similar application.

1.134 "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.

1.135 "Wind Turbines" means the wind turbine generators integrated into the Generating Facility.

2. TERM

2.1 Effective Date. This Agreement shall become effective on the Effective Date; provided, however that the Parties' obligations to sell, purchase, deliver, and take delivery of Product [redacted] shall not be effective until the MPSC Approval Date.

2.2 Term. Supplier's obligation to deliver Product [redacted] and Buyer's obligation to accept and pay for Product [redacted] 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 if the approval described in Section 18.3 is not received as contemplated thereby, Buyer has the right to terminate this Agreement and, if this Agreement is terminated, Buyer shall not be obligated to accept or pay for any Product [redacted]

3. SUPPLY SERVICE OBLIGATIONS

3.1 Energy; Test Energy; RECs. Subject to the other provisions of this Agreement, commencing on the Commercial Operation Date, Supplier shall supply and deliver Energy as provided in Exhibit 3.1A and Exhibit 3.1B to Buyer at the Delivery Point, [redacted]

Provided Supplier complies with the provisions of Section 9.3, Buyer shall accept delivery of all Test Energy produced by the Generating Facility which has been installed and interconnected in accordance with the GIA.

3.2 Dedication. All RECs and Capacity shall be dedicated exclusively to Buyer for the Term of this Agreement. Except upon the occurrence of an Event of Default by Buyer, Supplier shall not, without Buyer's prior written consent (which Buyer may withhold in its sole discretion), (a) sell, divert, grant, transfer, or assign RECs or Capacity to any Person other than Buyer; or (b) provide Buyer with electric energy, RECs, Capacity or Renewable Energy Benefits from any source other than the Generating Facility.

3.3 Buyer's Obligation and Delivery. [redacted] Buyer shall purchase and 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 and RECs and Capacity 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 not be obligated to purchase or accept delivery of Energy from the Generating Facility if (a) the Generating Facility does not qualify as a Renewable Energy System at the time the Energy is delivered; and (b) Buyer does not or will not receive the RECs and Renewable Energy Benefits associated with such Energy, as contemplated by this Agreement.

3.4 Excess Deliveries. [redacted] Buyer shall be obligated to purchase and pay for Energy produced by the Generating Facility in excess of the Supply Amount for such Contract Year at the Product Rate.

3.5 [redacted]

3.6 Adjustment to Supply Amount.

3.6.2. Increase of Supply Amount After Commercial Operation Date. [redacted] Supplier may increase the Supply Amount for the upcoming Contract Year by providing written notice of such increase to Buyer; provided that the increased Supply Amount for such Contract Year shall not be greater than one hundred and ten percent (110%) of the original Supply Amount for that Contract Year.

3.6.3. Decrease of Supply Amount After Commercial Operation Date. [redacted] Supplier may reduce the Supply Amount by providing written notice of such decrease for the upcoming Contract Year to Buyer, provided that the decreased Supply Amount for such Contract Year shall be no less than ninety percent (90%) of the original Supply Amount for that Contract Year. A decrease in the Supply Amount shall in no event be made to assist, accommodate or otherwise allow for the sale of Product, Energy, RECs, Capacity or Renewable Energy Benefits to third parties.

3.7 Title and Risk of Loss.

3.7.1 Energy, Capacity and Renewable Energy Benefits. Except with respect to RECs produced by or associated with the Generating Facility as set forth in Section 3.7.2 below [redacted] title to and risk of loss with respect to the Product shall pass from Supplier to Buyer at the Delivery Point. Until title passes, Supplier shall be deemed in exclusive control of such Product and shall be responsible for any damage or injury caused thereby. After title to such Product passes to Buyer, Buyer shall be deemed in exclusive control of such Product and shall be responsible for any damage or injury caused

thereby. Supplier shall deliver such Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

3.7.2 RECs. Title to and risk of loss with respect to each REC produced by the Generating Facility shall pass from Supplier to Buyer upon confirmation that such REC has been issued by the REC Administrator and has been deposited in Buyer's REC Account.

3.8 [Intentionally Deleted.]

3.9 MISO Market Participant. [redacted] the Parties agree that Buyer will be the MISO Market Participant and for acting in such capacity Supplier shall pay Buyer [redacted] ("MISO Market Participant Fee"). Supplier shall be the Generator operator.

4. PRICE OF PRODUCT

4.1 Product Payments. Subject to Article 6 [redacted] Buyer shall pay Supplier on a monthly basis the sum of the Product Rate multiplied by the Delivered Amount (as determined by data from monthly Meter readings). Buyer shall purchase all Test Energy delivered to the Delivery Point at the Product Rate. [redacted]

4.2 [redacted]

5. RENEWABLE ENERGY CREDITS/RENEWABLE ENERGY BENEFITS

5.1 Delivery of Renewable Energy Credits.

5.1.1 All RECs and any benefits derived therefrom 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 delivered to Buyer in accordance with this Agreement 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 REC Administrator, or a substitute applicable Governmental Authority, and to provide all production data and satisfy the reporting requirements of the REC Administrator or a substitute applicable Governmental Authority. Any and all fees, charges or expenses otherwise associated with registering, tracking, qualifying, and transferring RECs and Renewable Energy Benefits associated with this Agreement shall be for the account of Supplier.

5.1.2 Supplier and Buyer agree that all RECs to be delivered to Buyer in accordance with this Agreement shall be issued to Supplier and transferred to Buyer in accordance with this Article 5.

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 MWh 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. In accordance with Good Utility Practice, Supplier shall take or cause to be taken all actions and do or cause to be done all things necessary, proper or advisable or as 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 Renewable Energy Benefits to Buyer, without further compensation. Supplier shall timely execute all documents and shall timely take all actions necessary under applicable Law to qualify for all available Renewable Energy Benefits and to cause Renewable Energy Benefits to vest in and be delivered to Buyer.

6. TAX CREDITS

6.1 The Parties agree that the Product payments as provided for in Article 4 shall account for Tax Credits for which the Generating Facility is or becomes eligible during the Term of this Agreement.

6.2 [Intentionally Deleted.]

6.3 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.

7. RENEWABLE ENERGY STANDARD

7.1 The Parties agree that the Product [redacted] will be used by Buyer in meeting its obligations pursuant to the Clean, Renewable and Efficient Energy Act, and that Buyer may use the Product [redacted] RECs for any other purpose. Supplier shall cooperate with Buyer in all respects to assist Buyer to maximize compliance with all applicable provisions of the Clean, Renewable and Efficient Energy Act and to obtain any benefits available under the Clean, Renewable and Efficient `Energy Act and any other regulatory requirements. Supplier shall provide itemized statements for use of all Michigan Content attributable to the Generating Facility (including verification of the use of local workers) within thirty (30) days of the Commercial Operation Date, and all other information reasonably requested by Buyer or otherwise necessary to allow the MPSC and any other Governmental Authority to determine compliance with the applicable requirements.

8. INVOICING AND PAYMENTS

8.1 Invoices.

8.1.1 Invoicing and Payment. On or before the 10th day of each month, Supplier shall deliver to Buyer an Invoice calculated as set forth in Exhibit 8.1.1 for the prior month ("Billing Period") based upon Meter data available to Supplier.

8.1.2 [redacted]

8.1.3 [redacted]

8.1.4 Payment to Buyer. The Invoice referred to in Section 8.1.1 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.

8.1.5 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 8.1.5. Except as otherwise provided in Section 8.1.3, payment will be made on or before the later of

(a) the 20th day following the end of each month and (b) ten (10) days from receipt of Invoice by the applicable Party.

8.1.6 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.

8.1.6.1 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.

8.1.6.2 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.

8.1.6.3 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.

8.2 Overdue Amounts and Refunds. Overdue amounts which are undisputed 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(a)(2)(iii)(A), as such Law may be amended or superseded.

8.3 Parties Right to Net. Either Party shall have the right to net any undisputed amounts owed to the other Party under this Agreement.

8.4 Taxes. Buyer is responsible for any Taxes imposed on or associated with the Energy [redacted] after delivery or its receipt at the Delivery Point. Supplier is responsible for any Taxes imposed on or associated with the Energy [redacted] 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 20.

9. FACILITY CONSTRUCTION; OPERATIONS AND MODIFICATIONS

9.1 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 (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 by the later of (i) thirty (30) days after execution of the GIA and (ii) thirty (30) days after MPSC Approval Date, an update to Exhibit 3.1B 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. In addition, Supplier shall not alter, waive or modify any provision of Exhibit 9.1, "Performance Tests" without the prior written consent of Buyer.

9.2 Performance of Project Milestones. Supplier shall complete each Project Milestone set forth in Exhibit 9.2 on or before 1600 hours EPT on the date specified for each Project Milestone.

9.2.1 Completion of Project Milestones. Upon Supplier's completion of each Project Milestone, Supplier shall provide to Buyer in writing pursuant to Section 34.1 documentation as specified in Exhibit 9.2 and reasonably satisfactory to Buyer demonstrating such Project Milestone completion within thirty (30) days following such completion but no later than the date specified for each Project Milestone listed in Exhibit 9.2. Buyer shall acknowledge receipt of the documentation provided under this Section 9.2.1.

9.2.2 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) Business Days after becoming aware of this information.

9.3 Operation Date. Operation Date means the first date on which Wind Turbines for the Generating Facility are energized and operate in parallel with the Transmission System and deliver Test Energy to the Delivery Point. Fifteen (15) days prior to any synchronization to the Transmission System, Supplier shall provide written notice to Buyer's Contract Representative, as set forth on Exhibit

8.1.5, that Supplier is preparing to synchronize to the Transmission System and the date on which such synchronization will occur.

9.4 Commercial Operation Date. 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 GIA. 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 9.1. 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 9.1, 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.

9.5 Delay Damages.

9.5.1 In the event the Supplier fails to achieve Commercial Operation by the date specified in Exhibit 9.2, for each Day that the Supplier fails to achieve Commercial Operation thereafter, Supplier shall pay to Buyer, for each such Day of delay, liquidated damages equal to [redacted] Buyer shall invoice Supplier on a monthly basis for any such amounts under this Section 9.5 and Supplier shall pay such amounts invoiced within twenty (20) days of receipt of the invoice.

9.5.2 The provisions of this Section 9.5 are in addition to, and not in lieu of, any of Buyer's rights or remedies under Article 29.

9.5.3 The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 9.5 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.

9.6 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.

9.7 Operation and Maintenance.

9.7.1 At all times Supplier and its Affiliates or subsidiaries shall, in the aggregate, or if Supplier has contracted with an entity to operate and maintain the Generating Facility (an "Operator"), the Operator and its Affiliates shall, in the aggregate, (a) own and/or operate similar technology wind energy generating facilities with an aggregate operational capacity of at least twice the total MW of the Generating Facility; and (b) have at least three (3) years of experience in the operation and maintenance of substantially similar generating facility(ies) as the Lead Operator.

9.7.2 At all times Supplier shall operate, maintain and repair, or, if applicable, shall cause its Operator to operate, maintain and repair, the Generating Facility in accordance with Good Utility Practice and 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, or, if applicable, agrees to require its Operator, (y) to maintain records of all operations of the Generating Facility in accordance with Good Utility Practice; and (z) to follow such regulations, directions and procedures of 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 cause the Generating Facility to be operated consistent with MISO, NERC, Control Area Operator and Transmission Provider requirements.

9.8 Operation and Maintenance Agreement. If Supplier has contracted with a third party(ies) to operate and maintain the Generating Facility, Supplier must provide Buyer with a copy of such agreement(s), attached hereto as Exhibit 9.8, redacted of any pricing information, as soon as practicable after their execution, but in no event later than ninety (90) days prior to the Commercial Operation Date. Such agreements shall require such third party(ies) to operate and maintain the Generating Facility in accordance with the terms hereof. Contemporaneously with the provision of such agreement(s), Supplier shall also provide (a) evidence satisfactory to Buyer that Operator meets the standards of Section 9.7, (b) 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 and (c) Operator is creditworthy.

9.9 Ground Lease; Rights-of-way. Supplier either (a) owns the land on which the Generating Facility will be located; or (b) has entered into agreements with the owner(s) of the land on which the Generating Facility will be located that establish Supplier's exclusive right to operate and maintain the Generating Facility on such land for a period not ending before the expiration of the Term and shall evidence the existence of required rights-of-way and easements no later than sixty (60) days prior to commencement of Generating Facility construction. Copies of all such agreements identified in subsection (b) above are attached hereto as Exhibit 9.9.

9.10 Fossil Fuel. The Generating Facility shall not use any fossil fuel as an energy source to produce Energy.

10. REVENUE METERING REQUIREMENTS

10.1 Meters. Supplier shall, at Supplier's cost, provide, install, own, operate and maintain all Meters in accordance with Good Utility Practice. The Meters shall be used for quantity measurements under this Agreement and shall meet billing meter standards Mich. Admin. Code R 460.601a through R 460.656, or their successor(s), as established by the MPSC. Where applicable, separate metering of Station Usage may be required to accurately meter the Generating Facility load. Such separate metering shall be bi-directional and shall be capable of measuring and reading instantaneous, hourly real and reactive energy and capacity. Buyer may install a dedicated dial-up voice-grade circuit for Buyer to access the billing meter. Buyer, at its own expense, may install additional check meters.

10.2 Location. Meters shall be installed at a suitable indoor location as specified in Exhibit 3.1B, or as otherwise reasonably determined by Buyer to effectuate this Agreement.

10.3 Non-Interference. Neither Party shall undertake any action that may interfere with the operation of the Meters. A Party shall be liable for all costs, expense, and liability associated with any such interference with the Meters.

10.4 Meter Testing. Meters shall be tested at least once every calendar year by Supplier. Supplier shall provide Buyer with the results of such tests within thirty (30) days of their completion. Either Party may request a special test of Meters or check meters, but the requesting 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. Supplier's Operating Representative shall provide fifteen (15) days prior notice of

routine Meter testing to Buyer's Operating Representative. If Buyer has installed check meters in accordance with Section 10.1, Buyer shall test and calibrate each such meter at least once every calendar year. Buyer's Operating Representative shall provide fifteen (15) days prior written notice of routine check meter testing to Supplier'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.

10.5 Metering Accuracy. If the Meters are registering but their accuracy is outside the limits established in ANSI C12.1, Supplier 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) 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) days. If adjusted payments are required, payments shall be based upon the Parties' best estimate of the Delivered Amount and agreed upon within thirty (30) days of the date on which the inaccuracy was rectified. In such event, the Parties' adjusted 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 23.

10.6 Failed Meters. If the Meters fail to register, Buyer shall make payments to Supplier based upon Buyer'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) 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) 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 23.

11. EMERGENCY AND CURTAILMENT

11.1 Generation Requirements. 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. If Buyer is assessed Penalties due to Supplier's failure to comply with reduced or increased generation order, Supplier shall reimburse Buyer for any and all costs associated with such Penalties.

11.2 Notification. 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 Action. 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.

11.4 Planned Outage Coordination. 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 [redacted]

11.6 Buyer Curtailment. [redacted] Supplier shall curtail deliveries of Energy, in whole or in part and in any quantity and duration specified by Buyer, immediately upon notice through Buyer's SCADA system. Buyer shall pay Supplier for the quantity of Product associated with a Buyer Curtailment in accordance with the provisions of Section 11.7,

11.7 Buyer Curtailment Payment. Supplier shall be paid for Buyer Curtailments at the Product Rate, as applicable, as of the Buyer's curtailment notice, as if the Product were delivered to Buyer, as calculated in accordance with Exhibit 11.7.

11.8 Buyer Curtailment Confirmation. Supplier shall within three (3) Business Days provide Buyer with such information and data as Buyer may reasonably request to confirm to its reasonable satisfaction such Buyer Curtailments. During any such period of curtailment, Supplier shall not produce Energy (to the extent curtailed by Buyer) or sell Product to any third party.

12. PLANNED/FORCED OUTAGES

12.1 Schedule. 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 Exhibit 12.1, as it may be modified from time to time to reflect changes required by MISO. In addition, in the event of any Forced Outage, Supplier shall comply with Exhibit 12.1. In the event Buyer's Independent System Operator changes from MISO, Buyer shall update Exhibit 12.1 within thirty (30) days of such change.

13. DATA COMMUNICATION AND TECHNOLOGY REQUIREMENTS

13.1 Equipment. At least six (6) months prior to the Commercial Operation Date, Supplier shall, at its expense, install and maintain all necessary equipment to allow the Generating Facility to receive and respond to ICCP control signals sent by Buyer's SCADA system by the Commercial Operation Date. Supplier shall repair within two (2) days of receipt of notice from Buyer of any (i) inoperable telecommunications path; (ii) inoperable software; or (iii) faulty instrumentation.

13.2 Capacity Availability. [redacted] Supplier shall provide data at the External Communications Interface to Buyer that shows the Generating Facility availability with Capacity availability in real-time in conjunction with a Planned Outage schedule pursuant to Section 12.1 for each Wind Turbine of the Generating Facility under this Agreement. Notwithstanding the foregoing sentence, Supplier shall notify Buyer as soon as practicable after becoming aware of a change in Capacity availability or an expected change in Capacity availability. In this notification, Supplier shall provide: (a) the cause of the change in Capacity availability if known; (b) the magnitude of the change in Capacity availability; and (c) an estimate of the duration of the change in Capacity availability. Notwithstanding anything to the contrary in this Agreement, Buyer may provide MISO, Control Area Operator and/or ISO with such information regarding Capacity availability.

13.3 External Communications Interface. The External Communications Interface provided for data exchange between the Generating Facility and Buyer shall accommodate the protocol suites of DNP3 and MMS (defined in IEC 61850-8-1) as specified in IEC 61400-25-4 standard or its successor. The Generating Facility data provided at the External Communications Interface shall conform to the IEC 61400-25 standard, or its successor, for process, statistical, historical, control, and descriptive information. All data categorized as mandatory within the IEC 61400-25 standard, or its successor, shall be made available to Buyer at the External Communications Interface.

13.4 [redacted]

14. REPORTS; OPERATIONAL LOG

14.1 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.

14.2 Notification of Generating Facility Status. Supplier shall notify Buyer of the status of the Generating Facility as an EWG or QF and compliance with all applicable regulatory requirements for generating, selling and delivering Product,

[redacted] to Buyer, including applicable provisions of the Clean, Renewable and Efficient Energy Act, Federal Power Act and FERC regulations, no later than ninety (90) 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.

14.3 Notices of Change in Generating Facility. In addition to any consent required pursuant to Section 9.6, Supplier shall provide notice to Buyer as soon as practicable prior to any temporary or permanent change to the performance or operating characteristics 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.

14.4 Project Reports and Project Review Meetings.

14.4.1 Prior to the Commercial Operation Date. Supplier shall provide to Buyer in a monthly project report: 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 [redacted] 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 9.2.

14.4.2 Scheduled Operation Date; 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.

14.4.3 After Commercial Operation Date. After the Commercial Operation Date, Supplier shall provide to Buyer on January 15 and July 15 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 for the immediately preceding six month period ending on January 1 or July 1, as applicable. 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.

14.4.4 Operations Log. Supplier shall maintain an operations log, which shall include the Delivered Energy for each Hour, 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 at the Generating Facility 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.

14.4.5 Financial Information. Upon Buyer's written request, Supplier shall, within thirty (30) 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 costs of the engineering, procurement, construction and operation of the Generating Facility with its own equity, then Supplier shall, within thirty (30) 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 States as in effect from time to time.

14.4.6 Access to Additional Financial Information. The Parties agree that Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Supplier's financial information with its own. Buyer will require access to financial records and personnel to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Term:

14.4.6.1 Complete financial statements and notes to financial statements; and

14.4.6.2 Financial schedules underlying the financial statements, all within fifteen (15) days after the end of each fiscal quarter.

Any information provided to Buyer pursuant to this Section 14.4.6 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other similar entities for which Buyer has power purchase agreements. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties.

15. SCHEDULING

15.1 General; On Call. [redacted] Buyer, or Buyer's Market Participant, shall be responsible for the scheduling of all Energy produced by the Generating Facility during the Term. 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 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. [redacted]

15.2 Scheduling Notification. [redacted] Supplier shall provide to Buyer notices through UCF containing information including Supplier's Good Faith daily and hourly forecast of the Capacity, Planned Outages, Derating, other outages and similar changes that may affect the forecasted Energy during a Dispatch Hour. MISO currently requires a Day-Ahead Schedule and a Notification Deadline, and in the event MISO requires other notification schedules, they shall be provided by Supplier as and when required by MISO. Supplier shall provide its MISO Advance Schedule by no later than 8:00 a.m. EPT (in the case of a MISO Advance Schedule to be incorporated by Buyer into a Day-Ahead Schedule) and by no later than thirty (30) minutes prior to each Notification Deadline (in the case of the MISO Advance Schedule to be incorporated by Buyer into its hourly Energy forecasts for each Notification Deadline).

15.2.1 Supplier shall update its MISO Advance Schedule through the UCF and notify Buyer's Operating Representatives as soon as practicable, but not longer than 30 minutes after becoming aware of a Derating or an expected Derating. In this notification, the Supplier shall provide: (a) the cause of the Derating if known; (b) the magnitude of the Derating; and (c) an estimate of the duration of the Derating.

15.2.2 Supplier shall provide data at the External Communications Interface that shows Generating Facility availability in real time pursuant to Section 13.3. In the event that (i) the Actual Availability, as defined below, differs from the availability projected in a MISO Advance Schedule for the applicable periods as defined by MISO for assessing Penalties, (ii) the availability set forth in a MISO Advance Schedule, differs from the availability projected in another MISO Advance Schedule (e.g., the difference in availability between a Day-Ahead Schedule and a Notification Deadline) for the applicable periods as defined by MISO for assessing Penalties, or (iii) MISO promulgates

future Penalties or charges based upon the foregoing or other variances related to projected Wind Turbine availability, Supplier shall pay Buyer such portion of the Penalties that Buyer actually incurs and as set forth in Buyer's Invoice for such Penalties; provided, however, that in no event shall Supplier have any obligation to pay any liquidated damages in excess of the aggregate deviation charges assessed against Buyer by MISO with respect thereto.

15.2.2.1 "Actual Availability" for any hour shall be the total actual rated capacity of all of the Wind Turbines at the Generating Facility that are available to operate during any part of such hour, (i) increased by the rated capacity of any Wind Turbine which became unavailable for the entirety of such hour following the availability projected in a MISO Advance Schedule due to Force Majeure; and (ii) decreased by the rated capacity of any Wind Turbine which was not expected to be available when the availability projected in a MISO Advance Schedule was prepared, but which became available during such hour due to the termination of a Force Majeure following the availability projected in a MISO Advance Schedule.

15.2.3 The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 15.2 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. The Parties further acknowledge and agree that the amount payable by Supplier pursuant to this Section 15.2 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 future harm or loss estimated at the time of the Effective Date. Notwithstanding any provision to the contrary in this Agreement, the amounts payable pursuant to this Section 15.2 shall not limit Buyer's rights and remedies with respect to an Event of Default under Article 29.

15.3 Energy Market Charges. Except as provided in Section 15.2 [redacted] Buyer, or Buyer's Market Participant, shall be responsible for the Energy Market settlement of all Energy purchased by Buyer during the Term, including all costs associated therewith, as well as all charges associated with scheduling activities, including, without limitation, any imbalance charges that are not a result of Supplier's failure to deliver Energy [redacted] RECs per Section 3.1 or variances related to projected Wind Turbine availability as set forth in Section 15.2.2.

16. WHOLESALE MARKET REQUIREMENTS

16.1 Capacity. Buyer shall have all rights to the Capacity of the Generating Facility as further provided in Exhibit 16.1, as modified by Buyer from time to time.

16.2 Generator Availability Data System (GADS) Performance Data. Supplier shall collect performance and event data associated with the Generating Facility as further provided in Exhibit 16.1. Supplier shall report such data to Buyer by the end of each month for the previous month and to NERC as required.

17. COMPLIANCE

17.1 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, ISO, Transmission Provider and each Governmental Authority to ensure the safety of its employees and the public.

17.2 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.

18. APPROVALS

18.1 Condition Precedent. Unless Buyer waives its right to terminate this Agreement pursuant to Section 18.3, each Party's performance of its respective obligations under Articles 3, 4, 5, 7, 9, 11, 12, 13, 15, 25 and 32 and Section 8.1 of this Agreement is subject to the Parties obtaining their respective approvals described in Section 18.2 in form and substance satisfactory to Buyer.

18.2 MPSC Approval. Within one hundred (100) 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.

18.3 Failure to Obtain Approval; Conditions of Approval. If the MPSC fails to grant approval or acceptance of this Agreement pursuant to Section 18.2 in an order that is effective, final, and no longer subject to appeal, then Buyer shall have the right to terminate this Agreement upon fourteen (14) days written notice to Supplier. 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 within thirty (30) days of such MPSC approval or acceptance upon fourteen (14) days written notice to Supplier.

18.4 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.

18.5 Intervention. At the request of Buyer, Supplier shall (a) timely file a petition for leave 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.

19. CREDITWORTHINESS AND SECURITY

19.1 [Intentionally Deleted.]

19.2 Development Security.

19.2.1 Supplier shall provide to Buyer as security for the performance of Supplier's obligations hereunder a letter of credit from a Qualified Financial Institution in the form attached hereto as Exhibit 19.2Ain an amount equal to in an amount equal to the product of twenty-five percent (25%) of the product of the Product Rate multiplied by the Supply Amount (the "Development Security"). Buyer shall have the right to draw upon the Development Security, at Buyer's sole discretion, in the event Supplier fails to make any payments owing under this Agreement or to reimburse Buyer for costs or damages, including Delay Damages and Penalties, that Buyer has incurred as a result of Supplier's failure to perform its obligations under this Agreement.

19.2.2 Supplier shall post the Development Security by [redacted] Business Days after the [redacted].

19.2.3 [redacted]

19.2.4 In the event that no amounts are due and owing by Supplier to Buyer under this Agreement and Supplier has provided the Operating Security to Buyer, the Development Security shall be released to Supplier upon the earlier of (a) termination of this Agreement in accordance with its terms; and (b) on the fifteenth (15^{th}) Business Day after the Generating Facility achieves Commercial Operation. Upon the consent of Buyer, Supplier may apply and maintain the Development Security as a portion of Operating Security required to be provided by Supplier pursuant to Section 19.3.

19.3 Operating Security.

19.3.1 As a condition of Buyer's continuing obligation under this Agreement, Supplier shall provide to Buyer, as security for the performance of Supplier's obligations hereunder a letter of credit from a Qualified Financial Institution in the form attached hereto as Exhibit 19.2A; in an amount equal to [redacted] (the "Operating Security")]. Buyer shall have the right to draw upon the Operating Security, at Buyer's sole discretion, in the event Supplier fails to make any payments owing under this Agreement or to reimburse Buyer for costs or damages, including Penalties, that Buyer has incurred as a result of Supplier's failure to perform under this Agreement.

19.3.2 [redacted]

19.3.3 [redacted]

19.3.4 In the event that no amounts are due and owing by Supplier to Buyer under this Agreement, the Operating Security shall be released to Supplier upon the earlier of (a) termination of this Agreement in accordance with its terms; and (b) on the fifteenth (15th) Business Day after the expiration of the Term.

19.4 Letters of Credit. With respect to any letter of credit posted by Supplier as Development Security or Operating Security: (a) no later than thirty (30) days prior to the expiration date of any letter of credit, Supplier shall cause the letter of credit to be renewed or replaced with another letter of credit in an equal amount; (b) in addition to the conditions specified in Sections 19.2 and 19.3, Buyer shall have the right to draw on such letter of credit, at Buyer's sole discretion (i) if such letter of credit has not been renewed or replaced at least thirty (30) days prior to the date of its expiration or (ii) if the issuer is no longer a Qualified Financial Institution and Supplier has not caused a replacement letter of credit to be issued for the benefit of Buyer within five (5) Business Days of such issuer no longer qualifying as a Qualified Financial Institution.

19.5 Maintaining Security.

19.5.1 If at any time after the Effective Date of this Agreement, one out of two, Relevant Rating Agencies downgrades the Credit Rating of the issuer of a letter of credit so that it no longer qualifies as a Qualified Financial Institution, then Supplier shall (a) provide Buyer with written notice of such downgrade within one (1) Business Day of Supplier being notified of any such downgrade and (b) cause a replacement letter of credit satisfying the conditions of Section 19.4 to be issued in favor of Buyer within two (2) Business Days of such downgrade. Upon receipt by Buyer of any replacement letter of credit, Buyer shall return the letter of

credit no longer satisfying the requirements of this Agreement to the issuer. In the event such a downgrade also constitutes an Event of Default pursuant to Article 29, the requirements of this Article 19 are in addition to, and not in lieu of, the provisions of Article 29. Supplier shall take all necessary action and shall be in compliance with Section 19.2 and/or Section 19.3, as the case may be, within five (5) days of the downgrade.

19.6 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. Supplier shall not earn or be entitled to any interest on any security provided pursuant to this Article 19, including cash amounts deposited pursuant to Section 19.2 or 19.3.

20. INDEMNIFICATION

20.1 Indemnification for Losses. A Party to this Agreement (the "Indemnifying Party") shall indemnify, defend and hold harmless 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, and failure to maintain insurance at levels required by this Agreement, 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.

20.1.1 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.

20.1.2 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 20 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.

20.2 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.

20.3 Indemnification Procedures.

20.3.1 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) 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.

20.3.2 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:

20.3.2.1 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;

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

20.3.2.3 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.

20.3.3 Subject to Section 20.3.2, 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.

21. LIMITATION OF LIABILITY

21.1 Responsibility for Damages. Notwithstanding anything under Section 20.1 to the contrary and except where caused by Buyer's sole 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.

21.2 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, Delay Damages or payment made by either Party to satisfy Penalties or payments owing under Sections, 8.4, 9.5, 15.2.2 or 32.7 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 21.2. 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.

21.3 Survival. The provisions of this Article 21 shall survive any termination, cancellation, expiration, or suspension of this Agreement.

22. FORCE MAJEURE

22.1 Excuse. Subject to Section 22.4, 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.

22.2 "Force Majeure" means, subject to Section 22.3, 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 22.4:

22.2.1 Acts of God such as storms, hurricanes, floods, tornadoes, lightning, fires, explosions and earthquakes;

22.2.2 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;

22.2.3 War, riot, acts of a public enemy or other civil disturbance;

22.2.4 Strike, walkout, lockout or other significant labor dispute; or

22.2.5 Action or inaction of Transmission Provider but excluding any FERC approved amendments to Transmission Provider's FERC approved tariff.

22.3 Exclusions. None of the following shall constitute an event of Force Majeure:

22.3.1 Economic hardship of either Party;

22.3.2 The non-availability of the renewable resource to generate electricity from the Generating Facility;

22.3.3 A Party's failure to obtain any permit, license, consent, agreement or other approval from a Governmental Authority, except to the extent it is caused by an event that qualifies under Sections 22.2.3 or 22.2.4;

22.3.4 A Party's failure to meet a Project Milestone, except to the extent it is caused by an event that qualifies under Section 22.2; and

22.3.5 Any time period when "Frost Laws", which are seasonal weight restrictions on the road system throughout the State of Michigan and vary by county, are in effect for the county(ies) where the Generating Facility is located.

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

22.4.1 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;

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

22.4.3 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;

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

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

23. DISPUTE RESOLUTION

23.1 Disputes. Except as otherwise provided in this Agreement, in the event a dispute arises between or among the Parties regarding the application or interpretation of any provision of this Agreement, the Party alleging the dispute shall promptly notify the other Party the dispute in writing. If the Parties shall have failed to resolve the dispute within ten (10) days after delivery of such written notice, each Party shall, within five (5) days of receipt of a written demand from the other Party to do so, direct its Contract Representative to confer in good faith within five (5) days with the other Contract Representatives to resolve the dispute. Should the Parties be unable to resolve the dispute to their mutual satisfaction within fifteen (15) days, each Party shall have the right to pursue the resolution of such dispute in accordance with the provisions of Section 23.2.

23.2 Unless stated otherwise herein, all disputes shall be resolved in accordance with the dispute resolution procedures set forth in this Article 23. Notwithstanding the foregoing, (a) the Parties may at any time seek injunctive relief from a court of competent jurisdiction, and (b) nothing herein shall prevent a Party from defending or pursuing any claim in a court or other proceeding against a third party that has been initiated by such third party.

23.3 Agreement to Arbitrate Disputes. Any controversy, claim or dispute between or among the Parties arising out of or related to this Agreement or the breach thereof that cannot be settled amicably by the Parties that is submitted to binding arbitration shall be submitted for arbitration by a panel of three arbitrators in accordance with the provisions contained herein and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules"). Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The arbitrators shall determine all questions of fact and law relating to any controversy, claim, or dispute hereunder, including but not limited to whether or not any such controversy, claim, or dispute hereunder is subject to the arbitration provisions contained herein.

23.4 Commencement of Proceedings. Any Party desiring arbitration (the "Demanding Party") shall serve on the other Party, and the Office of the American Arbitration Association in Southfield, Michigan, in accordance with the Rules, its demand for arbitration (the "Demand"), accompanied by the name of the person chosen by the Demanding Party to serve as an arbitrator. The other Party shall choose a second

person to serve as an arbitrator, and the two persons so chosen shall select the third arbitrator. If the two persons chosen by the Parties cannot agree upon the third arbitrator within ten (10) days after the designation of the second person, the arbitrator shall be selected in accordance with the Rules. The arbitration proceedings provided hereunder are hereby declared to be self-executing, and it shall not be necessary to petition a court to compel arbitration.

23.5 Location. All arbitration proceedings shall be held in Detroit, Michigan.

23.6 Filing Deadlines. Notice of the Demand shall be filed in writing with the other Party to this Agreement and with the American Arbitration Association. The Demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

24. NATURE OF OBLIGATIONS

24.1 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.

24.2 No Public Dedication. By this Agreement, neither Party dedicates any part of its facilities nor the service provided under this Agreement to the public.

25. RIGHTS OF FIRST OFFER

25.1 Supplier (or any direct or indirect parent of Supplier) shall not sell or transfer the Generating Facility to a non-Affiliate third-party (other than pursuant to a Financing in which Supplier retains operational control of the Generating Facility and remains obligated under this Agreement), unless prior to such sale or transfer, Supplier provides written notice of such sale or transfer to Buyer. Upon Buyer's receipt of such notice, Buyer shall have the right to negotiate in Good Faith with Supplier for no more than ninety (90) 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) 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.

25.2 In the event that Buyer does not exercise its right to negotiate pursuant to Section 25.1, Supplier must comply with Article 27 in any assignment or delegation of Supplier's rights, interests or obligations herein to a purchaser of the Generating Facility.

25.3 In the event that Supplier does not execute an agreement, subject to receipt of appropriate regulatory approvals, to sell or transfer of the Generating Facility to any Person in accordance with this Article 25 within two hundred seventy (270) days of the date that Supplier provided Buyer with written notice pursuant to Section 25.1, Supplier (or any direct or indirect parent of Supplier) shall then only sell or transfer the Generating Facility after providing Buyer with written notice and the opportunity to negotiate again in accordance with Section 25.1.

25.4 In the event that this Agreement is terminated by Buyer due to an Event of Default by Supplier prior to the Commercial Operation Date, then for a period of two (2) years from the date of such termination ("Exclusivity Period"), neither Supplier, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Generating Facility to any third party, unless Supplier first offers, in writing, to sell to Buyer such Products from the Generating Facility on the same terms and conditions as this Agreement (the "First Offer") and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

25.4.1 If Buyer accepts the First Offer, Buyer shall notify Supplier within thirty (30) days of receipt of the First Offer subject to Buyer's management approval and MPSC approval ("Buyer's Notice"), and then the Parties shall have not more than ninety (90) days from the date of Buyer's Notice to enter into a new renewable energy credit and power purchase agreement, in substantially the same form as this Agreement, subject to MPSC approval, if necessary.

25.4.2 If Buyer rejects or fails to accept Supplier's First Offer within thirty (30) days of receipt of such offer, Supplier shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Generating Facility to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Supplier desires to enter into an obligation or agreement with a third party, Supplier shall deliver to Buyer a certificate of an authorized officer of Supplier (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Supplier with a lower rate of return than that offered in the First Offer to Buyer. If Supplier is unable to deliver such a certificate to Buyer, then Supplier may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Generating Facility without first offering to sell or otherwise transfer such Products to Buyer on such more favorable terms and conditions (the "Revised Offer"). If within thirty (30) days of receipt of Supplier's Revised Offer the Buyer rejects, or fails to accept by notice to Supplier, the Revised Offer, then Supplier will thereafter be free to sell or otherwise transfer, and to enter

into agreements to sell or otherwise transfer, such Products from the Generating Facility to any third party on such terms and conditions as set forth in the certificate.

26. [INTENTIONALLY DELETED]

27. ASSIGNMENT

27.1 Buyer Assignment. Buyer may assign this Agreement without Supplier's consent, if such assignment is made: (a) to any successor to Buyer, where such assignment does not occur by operation of law, provided such successor is a public utility regulated as to rates and service by the MPSC pursuant to applicable Law; (b) to a legally authorized governmental or quasi-governmental agency charged with providing retail electric service in Michigan; (c) as otherwise required by Law; or (d) to a wholly owned subsidiary of Buyer, where Buyer (unless consented to by Supplier) continues to be liable to perform all of Buyer's obligations under this Agreement in the event of any non-performance by such assignee, provided, that in the case of assignments pursuant to clauses (a), (b) or (c), such assignee has a Credit Rating of at least BBB- from S&P and Baa3 from Moody's.

27.2 Supplier Assignment. Supplier may perform any of the following, without relieving itself from liability hereunder, (a) subject to Section 27.8, transfer, pledge, encumber or assign this Agreement or the account, revenues or proceeds hereof, or any part of its ownership interest in the Generating Facility, in connection with any Financing of the Generating Facility; and (b) without Buyer's consent, transfer or assign this Agreement to any of its Affiliates in connection with a transfer of the Generating Facility to such Affiliate; provided that (i) Supplier provides at least ten (10) days' prior written notice to Buyer of any such transfer or assignment to such Affiliate; (ii) the creditworthiness of such Affiliate is equal to or superior to the creditworthiness of Supplier as of the Effective Date, as determined by Buyer in its reasonable discretion; (iii) such Affiliate owns and/or operates similar technology generating facilities with an aggregate operational capacity of at least twice the total MW of the Generating Facility; and has at least three (3) years experience in the operation and maintenance of substantially similar Generating Facility(ies)as the Lead Operator; and (iv) such Affiliate enters into an assignment and assumption agreement, in form and substance satisfactory to Buyer, pursuant to which such Affiliate assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.

27.3 Except as stated above, neither this Agreement nor any of the rights, interests and obligations hereunder shall be assigned by Supplier, including by operation of Law, without the prior written consent of Buyer, which consent shall not be unreasonably withheld. Any assignment of this Agreement in violation of the foregoing shall be, at the option of Buyer, void.

27.4 Liability after Assignment. A Party's assignment or transfer of rights or obligations pursuant to this Article 27 (other than Section 27.2) 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 that 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.

27.5 Transfers of Ownership. Subject to Article 25 and Section 27.2(a), 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.

27.6 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.

27.7 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.

27.8 Collateral Assignment by Supplier. If the Supplier intends to transfer, pledge, encumber or collaterally assign this Agreement to Supplier's Lenders in accordance with Section 27.2(a), Supplier shall provide written notice to Buyer of such potential transfer, pledge, encumbrance or assignment, including the address of Supplier's potential Lenders. As a condition of any financing or refinancing of the Generating Facility mentioned in the preceding sentence, Buyer, Supplier and Supplier's Lenders shall execute 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:

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

27.8.2 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;

27.8.3 Supplier's Lenders shall give notice to Buyer (concurrently with giving notice to Supplier) that an event of default has occurred and is continuing under the agreements for the Financing of the Generating Facility and that the Supplier's Lenders have elected to exercise rights and remedies pursuant to such Financing agreements; and

27.8.4 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) days, from the end of the Cure Period provided pursuant to Section 29.3, to effect a cure of such Event of Default; provided that if Supplier's Lenders (or their designee) are prohibited by any court order or bankruptcy or insolvency proceedings from curing the Event of Default or from commencing or prosecuting foreclosure proceedings, the additional time period described above shall be extended for the period of such prohibition so long as that Supplier's Lenders (or their designee) are diligently pursuing the removal or cessation of any such prohibition through commercially reasonable steps in the relevant court, bankruptcy or insolvency proceedings, but in no event shall such additional time period exceed 180 days.

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

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

27.8.5.2 If Supplier's Lenders (or their designee, as identified in writing to Buyer) 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 (or such designee) shall assume all of Supplier's obligations under this Agreement; provided that Supplier's Lenders (or such designee) 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 (or such designee) 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

27.8.5.3 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 (including the assumption of any monetary obligations of Supplier outstanding on the date of such sale or transfer), (b) all Events of Default shall be cured, (c) the transferee of the Generating Facility shall comply with the requirements of Section 27.5 and (d) 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.

Change of Control. Any direct or indirect change of control of Supplier (whether voluntary or by operation of law) (a "Change of Control") shall require the prior written consent of Buyer, which shall not be unreasonably withheld, provided that no Buyer approval of a Change in Control shall be required if, in Buyer's reasonable judgment, (i) any security that Supplier has provided to Buyer pursuant to Article 19 would remain in effect and unchanged after the Change in Control; (ii) Supplier's creditworthiness would not be adversely affected by the Change in Control; and (iii) Supplier will have the same, or improved, ability to operate and maintain the Generating Facility after the Change in Control.

"Change in Control" shall not include (i) Supplier's Lenders' exercise of their collateral interest in the Generating Facility, including foreclosure or other exercise of remedies, pursuant to the terms of a Financing; (ii) the sale of equity interests in Supplier to tax equity investors pursuant to the terms of a Financing; (iii) a transaction which creates one or more intermediate holding companies or that does not affect the ultimate upstream equity ownership of Supplier; or (iv) a sale, assignment, pledge or other transfer of any of the following: (a) all or substantially all of the

assets of Supplier's ultimate parent company, (b) a merger, consolidation, amalgamation, reorganization or similar transaction of a Person with or into Supplier's ultimate parent company, or (c) a sale, assignment, pledge or other transfer of all or substantially all of the shares or equity interests of Supplier's ultimate parent company.

28. TERMINATION AND SURVIVAL OF OBLIGATIONS

28.1 Termination. Other than a termination under Section 28.1.2 and subject to Section 28.2, neither Party shall owe any further obligation to the other Party and Buyer shall return the Development Security or Operating Security, as applicable, to Supplier upon a termination of this Agreement pursuant to any of the following:

28.1.1 Mutual Agreement. This Agreement may be terminated by written agreement of the Parties.

28.1.2 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 29.3 has expired.

28.1.3 Optional Termination. This Agreement may be terminated in accordance with Article 18 in the event the approvals contemplated thereby are not obtained or are granted with conditions that are not reasonably acceptable to either Party.

28.1.4 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.

28.2 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:

28.2.1 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;

28.2.2 Indemnity obligations contained in Article 20, which shall survive to the full extent of the statute of limitations period applicable to any third-party claim;

28.2.3 Limitation of liability provisions contained in Article 21;

28.2.4 For a period of one (1) year after the termination date, the right to submit a payment dispute pursuant to Article 23;

28.2.5 The resolution of any dispute submitted pursuant to Article 23 prior to, or resulting from, termination; or

28.2.6 The confidentiality provisions contained in Article 33.

29. DEFAULT AND REMEDIES

29.1 Events of Default. Except to the extent excused due to an event of Force Majeure in accordance with Article 22, 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:

29.1.1 failure to comply with any material obligations imposed upon it by this Agreement;

29.1.2 failure to make timely payments due under this Agreement;

29.1.3 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;

29.1.4 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 Clean, Renewable and Efficient Energy Act, as amended;

29.1.5 in the case of Supplier, its failure to install, operate, maintain or repair the Generating Facility in accordance with Good Utility Practice;

29.1.6 in the case of Supplier, its failure to meet any of the GIA Execution Milestone, the Construction Start Milestone or the Commercial Operation Milestone under the terms of Section 9.2.1 within six (6) months of the applicable date set forth in Exhibit 9.2 and according to the terms and conditions set forth in Exhibit 9.2;

29.1.7 in the case of Supplier, its failure to comply with the provisions of Article 19;

29.1.8 [redacted]

29.1.9 At the end of any two consecutive Contract Years, Supplier fails to provide Buyer with (a) the Adjusted Delivered Amount or [redacted] does not equal or exceed [redacted] of the total aggregate Supply Amount as required by Section 3.1 for such two Contract Year period;

29.1.10 in the case of Supplier, its failure to comply with the provisions of Article 27;

29.1.11 in the case of Supplier, its failure to comply with the provisions of Article 32;

29.1.12 either Party (a) becomes insolvent, 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;

29.1.13 in the case of Supplier, its breach of the representation and warranty regarding Michigan Content as provided in Section 30.13;

29.1.14 in the case of Supplier, its breach of the representation and warranty regarding Michigan headquarters as provided in Section 30.14.

29.2 [Intentionally Deleted.]

29.3 Cure Period. Upon the occurrence of an Event of Default, other than pursuant to Sections 29.1.12 and 29.2, the Defaulting Party shall be entitled to a period of ten (10) 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 29.1.6, with written notice from Supplier to Buyer, such Cure Period may be extended for an additional sixty (60) days if (a) Supplier can demonstrate to Buyer that such Event of Default was not capable of being cured within such ten (10) day period and such Event of Default is capable of being cured within an additional sixty (60) 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 either Section 19.2 or 19.3, and in an amount acceptable to Buyer in its sole discretion.

29.4 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 28.1, payment of damages, and drawing upon the Development Security and/or the Operating Security as provided in Article 19.

30. REPRESENTATIONS AND WARRANTIES OF SUPPLIER

The 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 [redacted] as applicable:

30.1 Organization. Supplier is a Michigan 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 an independent energy producer 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.

30.2 Authority Relative to this Agreement. Supplier has full authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated herein and has taken all necessary corporate actions necessary to authorize the execution, delivery and performance of this Agreement. 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.

30.3 Consents and Approvals; No Violation. Other than obtaining the Supplier's Required Regulatory Approvals as set out in Exhibit 30.3, 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.

30.4 Regulation as a Utility. Except as set forth in Exhibit 30.3, Supplier is not subject to regulation as a public utility or public service company (or similar designation) by any Governmental Authority.

30.5 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.

30.6 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.

30.7 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 set forth in Exhibit 4.1.

30.8 Permits, Authorizations, Licenses, Grants, etc. Supplier has applied or will apply for or has received the permits, authorizations, licenses and grants listed in Exhibits 30.3 and 30.8, and that no other permits, authorizations, licenses or grants, etc. are required by Supplier to construct and operate the Generating Facility and fulfill Supplier's obligations under this Agreement.

30.9 Related Agreements. Supplier has entered into or will enter into all necessary and material agreements as listed in Exhibit 30.9 related to Supplier's obligations under this Agreement.

30.10 Certification. The Generating Facility qualifies or will qualify 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.

30.11 Title. Upon achieving the Operation Date, Supplier shall own all Product and RECs and Capacity attributable to the Generating Facility and has the right to sell such Product and RECs and Capacity to Buyer. Supplier will convey good title to the Product and RECs and Capacity 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, REC or Capacity or prevent the subsequent transfer of any portion of such Product, REC or Capacity by Buyer to a third-party.

30.12 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.

30.13 Michigan Content. Michigan Content shall constitute not less than fifty percent (50%) of the total cost of all materials, equipment, labor for the construction (including overhead and management) of the Generating Facility and Supplier shall use best efforts to maximize Michigan Content for the Generating Facility.

30.14. Michigan Based. Supplier and its manager are headquartered in the State of Michigan and Supplier and its manager and/or their Affiliates have no other offices in the wind energy business outside of the State of Michigan.

31. 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:

31.1 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.

31.2 Authority Relative to this Agreement. Buyer has full corporate authority to execute and deliver this Agreement to which it is a Party and to consummate the transactions contemplated herein. The execution and delivery of this Agreement has been duly and validly authorized by Buyer and no other corporate proceedings 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.

31.3 Consents and Approvals; No Violation. Other than obtaining the Buyer's Required Regulatory Approvals as set out in Exhibit 31.3, 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.

31.4 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.

32. INSURANCE

32.1 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. General/commercial liability shall remain in full force and effect for a period of no less than three (3) years from the date of termination of this Agreement.

32.2 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:

32.2.1 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;

32.2.2 Stating that no reduction, cancellation or expiration of the policy shall be effective until ninety (90) 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

32.2.3 Naming Buyer as an additional insured on the general liability insurance policies of Supplier using additional insured endorsement satisfactory to Buyer; and

32.2.4 Waving insurer's rights of subrogation against Buyer.

32.3 Certificates of Insurance. Within thirty (30) days of the Effective Date, Supplier shall provide to Buyer, and shall continue to provide to Buyer within thirty (30) 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:

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

32.3.2 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

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

32.4 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.

32.5 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.

32.6 Supplier's Minimum Insurance Requirements.

32.6.1 Worker's Compensation. Worker's compensation insurance in accordance with statutory requirements including employer's liability insurance with limits of not less than one million dollars ($1,000,000) per accident or disease and include an endorsement providing insurance for obligations under the U.S. Longshoremen's and Harbor Worker's Compensation Act and the Jones Act where applicable.

32.6.2 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 least five million dollars ($5,000,000) per occurrence and at least five million dollars ($5,000,000) annual aggregate.

32.6.3 Automobile Liability. Automobile liability insurance including owned, non-owned and hired automobiles with combined bodily injury and property damage limits of at least two million dollars ($2,000,000) per occurrence and at least two million dollars ($2,000,000) aggregate.

32.6.4 Property Insurance. Property insurance covering the Generating Facility.

32.7 Failure to Comply. If Supplier fails to comply with the provisions of this Article 32, 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 32, in accordance with the indemnification provisions of Article 20.

32.8 Deductibles and Self-Insured Retention Provisions. Any deductible or self-insured retention provisions of insurance required under this Article 32 shall be for the sole account of Supplier.

33. CONFIDENTIALITY

33.1 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 33.3.

33.2 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:

33.2.1 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, third parties performing work related to this Agreement for such Receiving Party, 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, (v) 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 27) in each case after advising those agents of their obligations under this Article 33.

33.2.2 In the event that the Receiving Party is required by applicable Law to disclose any Confidential Information, including, but not limited to, as required by Section 34.16 below, 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:

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

33.2.2.2 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.

33.2.3 Section 33.2.2 shall only apply to information disclosed as contemplated by 33.2.1.

33.2.4 A Receiving Party shall not be deemed to have violated this Section 33.2 if its officers and employees have discussions or other interactions with staff members of the MPSC or other regulatory bodies in which information about the Generating Facility and this Agreement is disclosed. Any such person shall use commercially reasonable efforts to advise such staff members that information about the Generating Facility and this Agreement is confidential, but the Receiving Party shall not be in breach of this Agreement if such staff members subsequently disclose such information.

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

33.3.1 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 33;

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

33.3.3 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.

33.4 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 33, 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 33.

33.5 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, install signs on and near the Generating Facility, 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 33.5 to file this Agreement with the MPSC or FERC for approval as required by applicable Law.

34. MISCELLANEOUS

34.1 Notices.

34.1.1 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 8.1.4 or as modified from time to time by the receiving Party by notice to the other Party. Any changes to Exhibit 8.1.4 shall not constitute an amendment to this Agreement.

34.1.2 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.

34.1.3 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 34.1.

34.2 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.

34.3 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.

34.4 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.

34.5 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.

34.6 Discontinued or Modified Index. If any index utilized herein shall be discontinued or substantially modified, then such index will be modified to the most appropriate available index, with appropriate basis changes to take into account any changes in the location of measurement.

34.7 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 at such Party's Home Office to confirm the accuracy of such as they pertain to transactions under this Agreement including but not limited to verification of information contained in Invoices. 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 five (5) 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 33 to protect the confidentiality of the records.

34.8 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.

34.9 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.

34.10 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.

34.11 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.

34.12 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.

34.13 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.

34.14 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 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.

34.15 No Third-Party Beneficiaries. Except with respect to the rights of the Indemnified Party in Section 20.1 and Supplier's Lenders in Section 27.8, (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.

34.16 Dodd-Frank Reporting. Supplier and Buyer agree that this Agreement is subject to rules and regulations recently promulgated by the Commodity Futures Trading Commission ("CFTC") pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). The Parties hereby agree that this Agreement constitutes a trade option under CFTC regulation Section 32.3 and is a reportable transaction under Dodd-Frank. Each Party will report this transaction pursuant to CFTC regulation Part 32 and CFTC Letter No. 13-08 attached hereto as Exhibit 34.16(A). Each Party will use Form TO in reporting this transaction. Form TO and instructions are attached hereto as Exhibit 34.16(B). Any confidentiality obligations under this Agreement are hereby waived for the purpose of Dodd-Frank reporting obligations.

[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:

DTE ELECTRIC COMPANY

By: _____
Name: GERARD M. ANDERSON
Title: CHAIRMAN, PRESIDENT & CEO

SUPPLIER:

BIG TURTLE WIND FARM LLC

By: _____
Name:
Title:

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:

DTE ELECTRIC COMPANY

By: _____
Name:
Title:

SUPPLIER:

BIG TURTLE WIND FARM LLC

By: _____
Name: Richard N. Wilson, Jr.
Title: Vice President of Operations,
Heritage Sustainable Energy, LLC
The Manager

EXHIBIT 3.1A

ANNUAL SUPPLY AMOUNT

The annual Supply Amount shall be the Energy amounts [redacted] as specified in the attached table below.

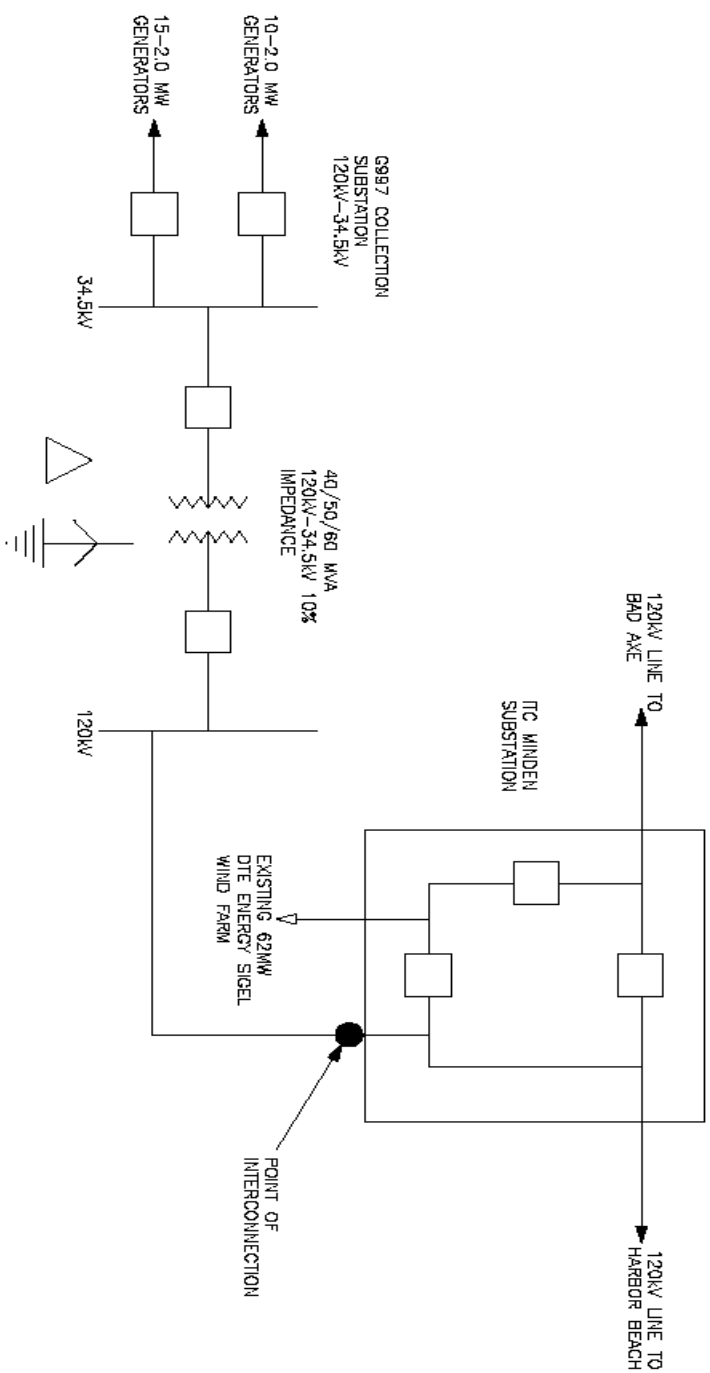
The table includes estimates of the expected monthly Delivered Amounts [redacted]

Month	MWh
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

EXHIBIT 3.1B

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 9.1, within [redacted] days after it executes the GIA, Supplier shall provide an update to Exhibit 3.1B.



G997 50MW WIND GENERATION FACILITY
ONE-LINE DIAGRAM, JULY 3, 2013

EXHIBIT 3.2

DESCRIPTION OF GENERATING FACILITY

1. Name of Facility: Big Turtle Wind Farm, LLC
   (a) Location: Huron County, Michigan
2. Owner: Big Turtle Wind Farm, LLC
3. Operator: Big Turtle Wind Farm, LLC
4. Equipment: Gamesa G114 wind turbines
   (a) Type of Facility: Wind Energy Generation
   (b) Capacity

   Total nominal nameplate capacity: 20 MW

   Total nominal net capacity: 19.75 MW

EXHIBIT 4.1

PRODUCT RATE

[redacted]

[redacted]

EXHIBIT 8.1.1

MONTHLY ENERGY INVOICE DETAIL

Supplier Letterhead

Generating Facility: Date:
Invoice Number:
Billing Period:
Payment Due Date:

Delivered Amount (MWh) (a) _____

Buyer Curtailment (MWh) (b) _____

Delivered Amount & Buyer Curtailment (MWh) (a + b) _____

Product Rate ($/MWh) (c) _____

Production Tax Credit Value ($/MWh) (d) _____

MISO Market Participant Fee ($/MWh) (e) _____

(A) Delivered Amount Cost ($) (a * c) _____

(B) Buyer Curtailment Amount Cost ($) b * (c + d) _____

(C) Penalties _____

(D) MISO Market Participant Fees ($) e * (a + b) _____

Invoice (A+B-C-D) _____

TOTAL INVOICE AMOUNT

Adjusted Delivered Amount (MWh) (a+b) _____

EXHIBIT 8.1.1

MONTHLY INVOICE DETAIL

Supplier's Letterhead

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	(s)	(t)	(u)	(v)	(w)	(x)	(y)	(z)
Period		Energy			Rates			Advance Schedule			Constraint Management Charge					Day-Ahead Deviation and Headroom Charge					Invoice Components				
Date	Hour Ending	Delivered Amount (MWh)	Buyer Curtailment (MWh)	Delivered Amount & Buyer Curtailment (MWh)	Product Rate ($/MWh)	Production Tax Credit Value ($/MWh)	MISO Market Participant Fee ($/MWh)	DA Available Capacity (MWh)	NDL Available Capacity (MWh)	RT Available Capacity (MWh)	CMC_NDL_DR_VOL (MWh)	CMC_RT_DR_VOL (MWh)	ATC_CMC_RATE ($/MWh)	Calculated CMC_DIST ($)	Pseudo Actual CMC_DIST ($)	DDC_NDL_CAP_VOL (MWh)	DDC_RT_DR_VOL (MWh)	MISO_DDC_RATE ($/MWh)	Calculated DDC_DIST ($)	Pseudo Actual DDC_DIST ($)	Liquidated Damage RSG ($)	Delivered Amount Cost ($)	Buyer Curtailment Cost ($)	MISO Market Participant Fees ($)	Total Invoice Amount ($)
				If c < 0 then 0 otherwise c + d							If j > i then 0 otherwise i - j	If k > j then 0 otherwise j - k		(l + m) * n		abs (i - j)	If k > j then 0 otherwise j - k		(q + r) * s		min (o , p) + min (t, u)	If c < 0 then 0 otherwise c * f	d * (f + g)	If e > 0 then e * h otherwise 0	w + x - v - y
Total																									

EXHIBIT 8.1.5

NOTICES, BILLING AND PAYMENT INSTRUCTIONS

Supplier:

Contact	Mailing Address	Phone	E-mail
Contract Representative:			
Rick Wilson, VP Operations	121 E. Front Street, Suite 200, Traverse City, MI 49684	231-935-3659	rick@rockmi.com
Operating Representative:			
Same	[Mailing & Physical Address if different]		
Operating Notifications:			
Prescheduling			
Real-Time	Same		
Monthly Checkout	Same		
Invoices:			
Name and/or Title	[Mailing & Physical Address if different]		

PAYMENT INSTRUCTIONS	
Payment Check:	
Pam Miller	
Title/Department	
Controller	
Address [inc. Mail/Suite #s]	121 E. Front Street, Suite 200, Traverse City, MI 49684
City, ST & Zip	
OR	
Payment Wire Transfer:	
Bank Name	
Bank Address	
Bank City, ST & Zip	
Account Name	
ABA	
Account Number	

Buyer:

DTE Electric Company

CONTRACT REPRESENTATIVES

Contact	Mailing Address	Phone	E-mail
General:			
Generation Optimization – Wholesale Power	414 South Main Street Suite 300 Ann Arbor, MI 48104	(734) 887-2087 (tel) (734) 887-4051 (fax)	merchants@dteenergy.com
Scheduling/Generation Dispatch/Emergencies (24x7):			
Generation Optimization – Wholesale Power	414 South Main Street Suite 300 Ann Arbor, MI 48104	(734) 887-4156 (tel) (734) 887-2010 (fax)	
Invoices:			
Generation Optimization – Settlements	414 South Main Street Suite 300 Ann Arbor, MI 48104	(734) 887-2172 (tel) (734) 887-4215 (tel) (734) 887-4051 (fax)	merchants@dteenergy.com
Legal Notices:			
General Counsel DTE Electric Company	One Energy Plaza Suite 688 WCB Detroit, MI 48226	(313) 235-8500 (fax)	

EXHIBIT 9.1

PERFORMANCE TESTS

1) Turbine Substantial Completion Certificate
2) Turbine Commissioning Certificate

EXHIBIT 9.2

PROJECT MILESTONE SCHEDULE

All time periods are in months after the MPSC Approval Date. For convenience of drafting, the abbreviation "AD" means "after the MPSC Approval Date." Any other timing is as otherwise described in specific items below. Buyer will update this Exhibit with actual dates after the MPSC Approval Date occurs.

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

A) Project Milestone: Supplier shall have executed the GIA (the "GIA Execution Milestone").

Completion Date: 8 months AD

Documentation: Supplier shall provide Buyer with a fully executed copy of the GIA.]

B) Project Milestone: Supplier shall have executed the Wind Turbine Supply Agreement.

Completion Date: 2 months 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: 8 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: 6 months 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 (the "Construction Start Milestone").

Completion Date: 6 months 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: 13 months AD

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 has installed all Data Communication and Technology equipment.

Completion Date: No later than six (6) months prior to the Planned Operation Date.

Documentation: Supplier shall provide Buyer with documentation that all necessary equipment has been delivered and installed at the Generating Facility.

H) Project Milestone: Supplier shall qualify as an EWG or 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.

I) Project Milestone: The Generating Facility achieves the Operation Date ("Planned Operation Date").

Completion Date: 16 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

J) Project Milestone: Supplier shall have installed Wind Turbines with a total installed capacity nameplate rating stated in Exhibit 3.2.

Completion Date: 18 months AD

Documentation: Supplier provides written notice to Buyer that the Generating Facility is comprised of a total of 10 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.

K) Project Milestone: The Generating Facility achieves the Commercial Operation Date (the "Commercial Operation Milestone").

Completion Date: 18 months AD

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

EXHIBIT 9.8

OPERATION AND MAINTENANCE AGREEMENT; OPERATOR GOOD STANDING CERTIFICATE

In accordance with Section 9.8, Supplier shall provide Exhibit 9.8 no later than ninety (90) days prior to the Commercial Operation Date.

EXHIBIT 9.9

GROUND LEASE; RIGHTS-OF-WAY

In accordance with Section 9.9, Supplier shall provide Exhibit 9.9 no later than sixty (60) days prior to commencement of on-site development activities at the Generating Facility.

EXHIBIT 11.7

DEEMED DELIVERED AMOUNT LOSS CALCULATION

[redacted] the Deemed Delivered Amount shall be determined by taking into account (y) 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 (z) 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 (y), as adjusted for electrical losses (including line losses) to the Delivery Point, array efficiency losses, blade degradation losses and control or parasitic load losses, using historical data compiled by Supplier and reasonably agreed or confirmed by Buyer.

EXHIBIT 12.1

PLANNED/FORCED OUTAGES

1. Within ninety (90) days prior to the Commercial Operation Date and updated on a daily basis thereafter, Supplier shall provide Buyer with a schedule of proposed Planned Outages for a minimum twenty-four (24) month rolling period. The proposed schedules will designate the hours and amount (in MW) 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.

2. [redacted] Buyer shall promptly submit Supplier's proposed Planned Outage schedule to MISO. If a conflict is found between planned generation schedules, MISO will request re-scheduling consistent with Good Utility Practice if study results indicate a documented reasonable expectation of an Emergency, or a documented reasonable expectation of any circumstances that compromise the reliability of the Transmission System. Supplier shall use commercially reasonable efforts to accomplish all Planned Outages in accordance with the approved schedule.

3. Regardless of any prior approval of a Planned Outage and unless required by Good Utility Practice, Supplier shall not start any Planned Outage at the Generating Facility without notifying Buyer's Operating Representative five (5) Business Days prior to the start of such Planned Outage.

4. Any Forced Outage shall be reported to Buyer as soon as practicable but in no event later than thirty (30) minutes from the commencement of the Forced Outage.

5. [redacted] for any Planned or Forced Outage, Supplier shall complete the Wind Turbine Outage Request, as modified from time to time, in UCF.

EXHIBIT 16.1

WHOLESALE MARKET REQUIREMENTS

1. Buyer shall have the right to use the Capacity as a Network Resource, as defined in the MISO Tariff, in meeting the requirements of Module E of the MISO Tariff.

2. Supplier shall take whatever actions are necessary to allow Buyer to get all allowable credit for the full Capacity of the Generating Facility in the MISO market or any other wholesale market in which the Buyer may participate. This includes obtaining Network Resource Interconnection Service.

3. Supplier shall perform annual generator testing of the Generating Facility to demonstrate capability as required per MISO.

EXHIBIT 19.2A

IRREVOCABLE STANDBY LETTER OF CREDIT NO.

Beneficiary:

Gentlemen:

At the request of and for the account [applicant], **Name of Bank** (the "Bank") hereby establish our Irrevocable Standby Letter of Credit in your favor in an amount not to exceed US Dollars $[figures] (United States Dollars [words]) effective [date] and expiring at our close of business on [expiry date].

Partial drawings are [permitted / not permitted] under this Letter of Credit. Funds under this Letter of Credit are available to the Beneficiary against a sight draft drawn on the Bank in the form of Exhibit A attached hereto, and accompanied by a certificate executed by the Beneficiary in the form of Exhibit B, the "Draw Certificate" attached hereto.

We hereby agree with the drawers, endorsers, and bona fide holders of documents drawn under and in compliance with the terms of this credit that such documents shall be duly honored on presentation and delivery of document(s) to our offices located at **Banks Address**.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.

This Letter of Credit is governed by ISP98 (the International Standby Practices), International Chamber of Commerce Publication No. 590.

NAME OF BANK

_____

Exhibit A

Draft

To: **Name of Bank**
Banks Address

At sight

Pay to the order of _____ Account No. ____with ABA ____, the sum of $____

Drawn under _____ Irrevocable Standby Letter of Credit No. dated

By:_____

Name: _____

Title: _____

Date: _____

Exhibit B

Draw Certificate

The undersigned, a duly authorized signatory of the undersigned Beneficiary hereby certifies to **Name of Bank**, with reference to Irrevocable Standby Credit No. issued by **Name of Bank** in favor of the Beneficiary, that:

The Beneficiary is entitled to make this drawing in the amount of $_____ under the Letter of Credit.

The Beneficiary is making a drawing under the Letter of Credit with respect to

The amount of the Sight Draft accompanying this Certificate is $_____.

By:_____

Name: _____

Title: _____

Date: _____

EXHIBIT 30.3

SUPPLIER'S REQUIRED REGULATORY APPROVALS

1. Renewable Energy System certification.
2. MPSC approval of this Agreement.
3. Control Area Operator Interconnect.
4. Certification as an EWG/QF
5. FERC authorization to sell power at market-based rates

EXHIBIT 30.8

SUPPLIER'S REQUIRED PERMITS FOR CONSTRUCTION AND OPERATION

Permit	Government Agency
Wind Energy Facility Site Plan Review	Huron County Planning Commission
Building Permit	Huron County Building and Zoning
Electrical Permits	Huron County Building and Zoning
Soil Erosion Permit	Huron County Building and Zoning
Driveway Permit / Right-of-Way Permit	Huron County Road Commission
Wetland/Floodplain Crossing (Part 301/303/31	MDEQ
Tall Structure Permit	MDOT
Determination of No Hazard to Air Navigation	FAA
Threatened and Endangered Species Consultation	FWS / MDNR
Migratory Bird / Eagle Consultation	FWS / MDNR
Pollution Incident Prevention Plan	MDEQ
Spill Prevention Control and Countermeasures Plan	EPA
PA116 Release and Easements	MDA / Huron County

EXHIBIT 30.9

SUPPLIER'S REQUIRED AGREEMENTS

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

EXHIBIT 31.3

BUYER'S REQUIRED REGULATORY APPROVALS

1. MPSC approval of this Agreement on the terms specified in Section 18.3, in one or more orders or decisions that are final and no longer subject to appeal.

EXHIBIT 34.16(A)

NO ACTION LETTER

U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5260
Facsimile: (202) 418-5527
www.cftc.gov

Division of Market Oversight

CFTC Letter No. 13-08
No-Action
April 5, 2013
Division of Market Oversight

Staff No-Action Relief from the Reporting Requirements of § 32.3(b)(1) of the Commission's Regulations, and Certain Recordkeeping Requirements of § 32.3(b), for End Users Eligible for the Trade Option Exemption

On April 27, 2012, the Commission published final commodity option rules and interim final rules ("IFR") incorporating a trade option exemption ("TOE"), subject to conditions, from most provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"),[1] the Commodity Exchange Act ("CEA"),[2] and the Commission's regulations ("Commodity Options Release").[3] The Commission requested comment in the Commodity Options Release on a number of questions in connection with the TOE.[4] In the Commodity Options Release, the Commission reiterated that commodity options are "statutorily defined as swaps" and thus "subject to the same rules applicable to any other swap."[5] However, the Commission added that "if the offeror, the offeree, and the characteristics of the option transaction meet the requirements of the trade option exemption, such option transactions will be exempt from the general Dodd-Frank regime, subject to specified ongoing conditions and compliance requirements discussed below, as applicable."[6] The Commission also advised interested parties that:

[1] Public Law 111-203, 124 Stat. 1376 (2010).

[2] 7 U.S.C. § 1 et seq.

[3] See Commodity Options, 77 FR 25320 (Apr. 27, 2012). The Commission's regulations are set forth in Chapter I of Title 17 of the Code of Federal Regulations. The TOE refers to 17 CFR § 32.3.

[4] The TOE comment period ended on June 26, 2012. The Commission has been reviewing the comments received in response to the TOE IFR request for comment. Additionally, the Commission issued related information collection notices. See Agency Information Collection Activities: Proposed Collection, Comment Request: Form TO, Annual Notice Filing for Counterparties to Unreported Trade Options, 77 FR 74647 (Dec. 17, 2012); Agency Information Collection Activities under OMB Review, 78 FR 11856 (Feb. 20, 2013). The Form TO comment periods closed on February 15, 2013 and March 22, 2013, respectively. The Commission has been reviewing the comments received in response to the information collection notices regarding Form TO, including as they relate generally to the TOE reporting requirements.

[5] Commodity Options Release, 77 FR at 25321, 25325.

[6] Id. at 25326.

> [t]he final rule and interpretations that result from the Product Definitions [proposed rulemaking] will address the determination of whether a commodity option or a transaction with optionality is subject to the swap definition in the first instance. If a commodity option or a transaction with optionality is excluded from the scope of the swap definition, as further defined by the Commission and the SEC, the final rule and/or interim final rule adopted herein are not applicable.[7]

On July 10, 2012, the Commission approved joint (with the SEC) final rules and interpretations further defining, among other terms, the term "swap" ("Final Swap Release").[8] In the preamble of the Final Swap Release, the Commission issued a request for comment stating that market participants may rely upon its interpretation regarding forwards with volumetric options,[9] but also "request[ing] public comment on all aspects of its interpretation regarding forwards with embedded volumetric options . . . ."[10]

The Division of Market Oversight ("DMO") previously issued a letter (the "August Letter") providing time-limited no-action relief relating to the TOE.[11] The August Letter stated that DMO would not recommend that the Commission commence an enforcement action against a market participant for failure to comply with any provision of Dodd-Frank, the CEA, or the Commission's regulations applicable to commodity options that are swaps if such market participant was in compliance with certain specified provisions of the TOE.

While the August Letter expired on December 31, 2012,[12] subsequently-issued staff no-action relief from certain swap reporting requirements has been effective for commodity options that otherwise would be subject to the TOE. However, the previously-issued relief from Part 45 reporting requirements for any market participant that is not a Swap Dealer ("SD") or Major

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[7] Id. at 25321 n.6.

[8] See Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Final Rule, 77 FR 48207 (August 13, 2012).

[9] The Commission stated in the Final Swap Release that "agreements, contracts, and transactions with embedded volumetric optionality may satisfy the forward exclusions from the swap and future delivery definitions under certain circumstances." Id. at 48238. If they do not, they may be options, and therefore swaps. If, however, such options satisfy the terms of the TOE, the persons described therein would be subject to the reduced compliance burden applicable under the TOE, and could be eligible for the no-action relief provided in this letter.

[10] Id. at 48241. The volumetric optionality comment period ended on October 12, 2012. The Commission has been considering the comments received in response to the volumetric optionality request for comment. Market participants may continue to rely upon the Commission's volumetric optionality interpretation set forth in the Final Swap Release. See id. at 48238.

[11] CFTC No-Action Letter No. 12-06 (Aug. 14, 2012), available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-06.pdf.

[12] The August Letter, by its terms, was to be "in effect through and including the earlier of (1) December 31, 2012 or (2) the effective date of any final action taken by the Commission as a result of comments received in response to the TOE IFR. In this context, 'final action' means a final rule, an interpretation or an order."

Swap Participant ("MSP") (collectively, a "Non-SD/MSP") is set to expire on April 10, 2013.[13] Therefore, Non-SDs/MSPs relying on the TOE, as applicable under the terms of the TOE, are required to comply with Part 45 reporting requirements under certain circumstances as of this expiration date.[14] Noting this deadline, various trade option end-users recently requested no-action relief with respect to Part 45 reporting requirements for certain trade options,[15] citing technical and logistical impediments preventing timely compliance. Separately, other trade option end-users have requested that the Commission clarify the scope of recordkeeping requirements under § 32.3(b).

After reviewing the requests for no-action relief and clarification, as well as the comments filed with respect to the TOE IFR, DMO believes that the following relief from certain reporting and recordkeeping provisions of the TOE IFR is warranted.

A. No-Action Relief for Non-SD/MSPs from Certain TOE Reporting Requirements

DMO will not recommend that the Commission commence an enforcement action against a Non-SD/MSP for violating § 32.2(b)[16] by offering to enter into, entering into, confirming the execution of, maintaining a position in, or otherwise conducting activity related to, any transaction in interstate commerce that is a commodity option transaction, notwithstanding that, in connection with such commodity option transaction, such Non-SD/MSP is not in compliance with Part 45 reporting requirements as set forth in § 32.3(b)(1).[17] This no-action position is contingent upon such Non-SD/MSP and the commodity option transaction itself complying with

[13] See CFTC No-Action Letter No. 12-41 (Dec. 5, 2012), available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-41.pdf.

[14] See § 32.3(b)(1).

[15] See Letter from the Commercial Energy Working Group (March 1, 2013); Letter from the American Gas Association (March 11, 2013). Specifically, these letters requested that the Commission either (1) promulgate a TOE final rule that permits all Non-SD/MSP counterparties to report trade options exclusively pursuant to Form TO, or, alternatively, (2) extend the compliance date for reporting trade options pursuant to Part 45 as set forth in § 32.3(b)(1) until April 10, 2014.

[16] § 32.2 provides, in relevant part, that:

> Subject to §§ 32.1, 32.4, and 32.5, which shall in any event apply to all commodity option transactions, it shall be unlawful for any person or group of persons to offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to any transaction in interstate commerce that is a commodity option transaction, unless:
>
> . . .
>
> (b) Such transaction is conducted pursuant to § 32.3.

[17] This no-action position does not apply with respect to a trade option where an SD or MSP is a counterparty and otherwise must report the trade option pursuant to Part 45 as set forth in §§ 32.3(b)(1) and 32.3(c)(4).

all other elements of the TOE (subject to any other applicable no-action relief in effect),[18] as well as the following additional conditions:

1) the Non-SD/MSP reporting the commodity option transaction on Form TO pursuant to § 32.3(b)(2);[19] and

2) the Non-SD/MSP notifying DMO through an email to TOreportingrelief@cftc.gov no later than 30 days after entering into trade options having an aggregate notional value in excess of $1 billion during any calendar year.[20]

B. No-Action Relief for Non-SD/MSPs from Certain TOE Recordkeeping Requirements

Section 32.3(b) provides that "[i]n connection with any commodity option transaction [eligible for the TOE], every counterparty shall comply with the swap data recordkeeping requirements of part 45 of this chapter, as otherwise applicable to any swap transaction . . . ." In discussing the TOE conditions, however, the Commission noted that "[t]hese conditions include a recordkeeping requirement for any trade option activity, i.e., the recordkeeping requirements of 17 CFR 45.2," and did not reference or discuss any other provision of Part 45 that contains recordkeeping requirements.[21] Therefore, DMO will not recommend that the Commission

[18] DMO stresses that, among other TOE provisions, Non-SD/MSPs that rely on this no-action position with respect to certain TOE reporting requirements are still subject to Part 45 recordkeeping requirements as set forth in § 32.3(b) (subject to any other applicable no-action relief in effect). This requires, among other things, that (1) Non-SD/MSPs "keep full, complete, and systematic records, together with all pertinent data and memoranda, with respect to each [trade option] in which they are a counterparty . . . ," and (2) all records required to be kept under Part 45 "shall be open to inspection upon request by any representative of the Commission." See §§ 45.2(b), 45.2(h).

[19] This condition requires compliance with § 32.3(b)(2) irrespective of whether the commodity option transaction involves a counterparty described in § 32.3(b)(1). In other words, even if one or both Non-SD/MSP counterparties to the trade option in question have become subject to Part 45 as the reporting counterparty for swaps other than the trade option itself during the twelve months prior to entering into the trade option, in order to comply with the terms of this no-action position, each Non-SD/MSP counterparty would have to "file with the Commission by March 1 of the following year an 'Annual Notice Filing for Counterparties to Unreported Trade Options' on Form TO, as set forth in Appendix A to [Part 32], to be completed and submitted in accordance with the instructions thereto and as further directed by the Commission." See § 32.3(b)(2).

[20] The notification required by this condition is in addition to annual reporting pursuant to Form TO as required by the first condition. For purposes of this condition, the aggregate notional value of trade options entered into should be calculated by multiplying (1) the maximum volume of the commodities that could be bought or sold pursuant to the trade options entered into by (2) the fair market value ("FMV") of each such maximum volume. If the FMV is not a fixed number in the trade option agreement and, instead, is to be determined pursuant to a reference price source that is not determinable at the time of the trade option's execution, the foregoing calculation should be based on the value of the reference price source at the time of execution. For example, if the FMV of oil that could be bought or sold pursuant to a trade option is to be determined pursuant to the price of a New York Mercantile Exchange oil futures contract that settles three months after the trade option is executed, the FMV should be determined using the market price of the oil futures contract at the time the trade option is executed (or as close to execution as is possible, acting in a commercially reasonable manner to contemporaneously determine such market price). Cf. Division of Swap Dealer and Intermediary Oversight Responds to FAQs About Swap Entities (discussing, among other things, the calculation of notional amounts for physical commodity swaps), available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/swapentities_faq_final.pdf.

[21] See Commodity Options Release, 77 FR at 25327.

commence an enforcement action against a Non-SD/MSP for violating § 32.2(b) by offering to enter into, entering into, confirming the execution of, maintaining a position in, or otherwise conducting activity related to, any transaction in interstate commerce that is a commodity option transaction, notwithstanding that, in connection with such commodity option transaction, such Non-SD/MSP complies with only the recordkeeping requirements set forth in § 45.2 of the Commission's Regulations for purposes of satisfying the § 32.3(b) recordkeeping requirement. This no-action position is contingent upon such Non-SD/MSP and the commodity option transaction itself complying with all other elements of the TOE (subject to any other applicable no-action relief in effect), as well as the following additional conditions:

1) if the Non-SD/MSP's counterparty to the trade option at issue is an SD or MSP, the Non-SD/MSP obtaining a legal entity identifier ("LEI") pursuant to § 45.6 and providing such LEI to the SD or MSP counterparty;[22] and

2) the Non-SD/MSP notifying DMO through an email to TOreportingrelief@cftc.gov no later than 30 days after entering into trade options having an aggregate notional value in excess of $1 billion during any calendar year.[23]

*****

The no-action relief provided herein contains a collection of information, as that term is defined in the Paperwork Reduction Act.[24] Therefore, a control number for the collection must be obtained from the Office of Management and Budget. In accordance with 44 U.S.C. § 3507(d) and 5 C.F.R. §§ 1320.8 and 1320.10, DMO will, by separate action, prepare an information collection request for review and approval by OMB.

The no-action positions contained herein are effective as of April 5, 2013, represent the views of DMO only, and do not bind the Commission or any other Division or Office of the Commission's staff. Further, this letter (and the relief contained herein) is based upon the representations made to DMO. Any different, changed, or omitted material facts or circumstances might render this letter void. As with all no-action letters, DMO retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

[22] An SD or MSP that otherwise would report the trade option at issue pursuant to § 32.3(b)(1) is required to identify its counterparty to the trade option by that counterparty's LEI in all recordkeeping as well as all swap data reporting. See, e.g., §§ 23.201, 23.204, 45.6.

[23] See supra note 20.

[24] 44 U.S.C. §§ 3501 et. seq.

If you have any questions regarding the content of this staff no-action letter, please contact Don Heitman at dheitman@cftc.gov or (202) 418-5041, David Aron at daron@cftc.gov or (202) 418-6621, or Graham McCall at gmccall@cftc.gov or (202) 418-6150.

Sincerely,

Richard A. Shilts
Acting Director
Division of Market Oversight

EXHIBIT 34.16(B)

**CFTC FORM TO
ANNUAL NOTICE FILING FOR COUNTERPARTIES TO UNREPORTED TRADE OPTIONS**

CFTC FORM TO

Annual Notice Filing for Counterparties to Unreported Trade Options[88]

NOTICE: Failure to file a report required by the Commodity Exchange Act ("CEA" or the "Act")[89] and the regulations thereunder,[90] or the filing of a report with the Commodity Futures Trading Commission ("CFTC" or "Commission") that includes a false, misleading or fraudulent statement or omits material facts that are required to be reported therein or are necessary to make the report not misleading, may (a) constitute a violation of section 6(c)(2) of the Act (7 USC 9, 15), section 9(a)(3) of the Act (7 USC 13(a)(3)), and/or section 1001 of Title 18, Crimes and Criminal Procedure (18 USC 1001) and (b) result in punishment by fine or imprisonment, or both.

PRIVACY ACT NOTICE

The Commission's authority for soliciting this information is granted in sections 4c(b) and 8 of the CEA and related regulations *(see, e.g., 17* CFR § 32.3(b)). The information solicited from entities and individuals engaged in activities covered by the CEA is required to be provided to the CFTC, and failure to comply may result in the imposition of criminal or administrative sanctions *(see, e.g.,* 7 U.S.C. §§ 9 and 13a-1, and/or 18 U.S.C. 1001). The information requested is most commonly used in the Commission's market and trade practice surveillance activities to provide information concerning the size and composition of the commodity derivatives markets. The requested information may be used by the Commission in the conduct of investigations and litigation and, in limited circumstances, may be made public on an aggregate basis in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies to meet responsibilities assigned to them by law. The information will be maintained in, and any additional disclosures will be made in accordance with, the CFTC System of Records Notices, available on www.cftc.gov.[91]

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[88] A trade option is generally a commodity option purchased by a commercial party that, upon exercise, results in the sale of a physical commodity for immediate (spot) or deferred (forward) shipment or delivery. See CFTC regulation 32.3(a) (17 CFR 32.3(a)) for more details. An unreported trade option is a trade option that is not required to be reported to a swap data repository by either counterparty pursuant to CFTC regulation 32.3(b)(1) and part 45 of the Commission's regulations (17 CFR 32.3(b)(1); 17 CFR part 45).

[89] 7 U.S.C. section 1, *et seq.*

[90] Unless otherwise noted, the rules and regulations referenced in this notice are found in chapter 1 of title 17 of the Code of Federal Regulations; 17 CFR Chapter 1 *et seq.*

[91] Note that, under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget.

GENERAL INSTRUCTIONS

Who Must File a Form TO — 17 CFR § 32.3(b)(2) requires every counterparty to an unreported trade option to submit an annual filing to the Commission for the purpose of providing notice that it has entered into one or more unreported trade options in the prior calendar year. As noted above, an unreported trade option is a trade option that is not required to be reported to a swap data repository by either counterparty pursuant to CFTC regulation 32.3(b)(1) and part 45 of the Commission's regulations.

When to file — Form TO is an annual filing requirement due to the Commission no later than March 1 for the prior calendar year. For example, if a market participant enters into one or more unreported trade options between January 1, 2013 and December 31, 2013, the market participant must submit a completed Form TO to the Commission on or before March 1, 2014.

Where to file — Generally, Form TO should be submitted via the CFTC's web based Form TO submission process at http://www.cftc.gov/, or as otherwise instructed by the Commission or its designee. If submission through the web-based Form TO is impossible, the reporting counterparty shall contact the Commission at [techsupport@cftc.gov] or 202-418-5000 for further instructions.

What to File — All reporting counterparties filing a Form TO must complete all questions.

Signature — Each Form TO submitted to the Commission must be signed or otherwise authenticated by either (1) the reporting counterparty submitting the form or (2) an individual that is duly authorized by the reporting counterparty to provide the information and representations contained in the form.

CFTC FORM TO

Name and Contact Information for Reporting Counterparty:

1. Reporting Counterparty
   Name and Address (including City, State, Country, Zip/Postal Code): Reporting Counterparty website (if any):
   Reporting Counterparty Unique Identifier (if any):

❑	Legal Entity Identifier "LEI" (if any)	
❑	National Futures Association ID Number (if any)	
❑	Other Party Identifier (Please Specify)	

2. Reporting Counterparty Contact Person[92]
   Name and Job Title and/or Relationship with Reporting Counterparty:
   Phone Number and Email Address:

Commodity Category Indication:

3. In the prior calendar year, the Reporting Counterparty entered into one or more unreported trade options in the following commodity categories:

Agricultural[93]	❑ YES ❑ NO
Metals[94]	❑ YES ❑ NO
Energy[95]	❑ YES ❑ NO
Other (Please Specify)	❑ YES ❑ NO

Approximate Size of Unreported Trade Options Exercised in the Prior Calendar Year:

4. Please indicate, by commodity category, the approximate total value (quantity received/delivered multiplied by price paid/received) of physical commodities that the reporting counterparty purchased and/or delivered in connection with the exercise of unreported trade options in the prior calendar year:[96]

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[92] This should be an individual able to answer specific questions about the reporting counterparty's unreported trade options activity if contacted by Commission staff.

[93] Agricultural commodity is defined in the Commission's regulations at 17 CFR 1.3(zz).

[94] Including, but not limited to, gold, silver, platinum, palladium, copper, aluminum, and rare earth metals.

[95] Including, but not limited to, petroleum products, natural gas, and electricity.

[96] For the purposes of answering this question, a reporting counterparty should not include the value of commodities that were the subject of trade options that remained open at the end of the prior calendar year or any trade options that expired unexercised during the prior calendar year.

Agricultural	□ None	□ Under $10M	□ $10M to $100M	□ Over $100M
Metals	□ None	□ Under $10M	□ $10M to $100M	□ Over $100M
Energy	□ None	□ Under $10M	□ $10M to $100M	□ Over $100M
Other	□ None	□ Under $10M	□ $10M to $100M	□ Over $100M

Signature/Authentication, Name, and Date

□ By checking this box and submitting this Form TO (or by clicking "submit," "send," or any other analogous transmission command if transmitting electronically), I certify that I am duly authorized by the reporting counterparty identified below to provide the information and representations submitted on this Form TO, and that the information and representations are true and correct.

Reporting Counterparty Authorized Representative (Name and Position):

_____ (Name)

_____ (Position)

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 DTE Electric Company to fully comply with Public Acts 286 and 295 of 2008	)))))	Case No. U-16582-BTWF (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 12th day of August, 2013, a copy of DTE Electric Company's Application for *ex parte* approval of Renewable Energy Contract and Related Relief along with the Affidavits of Charles L. Conlen and Rosemary Smalls-Tilford in the above captioned matter was served upon the persons on the attached service list via e-mail.

Estella R. Branson

Digitally signed by Estella R. Branson
DN: cn=Estella R. Branson, o=Regulatory Affairs, ou=DTE Energy - Regulatory Affairs, email=bransone@dteenergy.com, c=US
Date: 2013.08.12 13:22:18 -04'00'

Estella R. Branson

Subscribed and sworn to before
me this 12th day of August, 2013.

Marilyn Y. Oliver

Digitally signed by Marilyn Y. Oliver
DN: cn=Marilyn Y. Oliver, o=Regulatory Affairs, ou=DTE Energy, email=oliverm@dteenergy.com, c=US
Date: 2013.08.12 13:23:48 -04'00'

Marilyn Y. Oliver, Notary Public
Wayne County, Michigan
My Commission Expires: 3-26-2015
Acting in Wayne County

MPSC Case No. U-16582
August 12, 2013
Service List

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