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June 3, 2020

Ms. Lisa Felice  
Executive Secretary  
Michigan Public Service Commission  
7109 West Saginaw Highway  
Post Office Box 30221  
Lansing, MI 48909

**RE: MPSC Case No. U-20833 – In the matter of the application of Consumers Energy Company for approval of power purchase agreements.**

Dear Ms. Felice:

Enclosed for electronic filing in the above-captioned case, please find **Consumers Energy Company's Application and Testimony, Affidavit, and Exhibits of Company witness Keith G. Troyer**. This is a paperless filing and is therefore being filed only in PDF. Also included is a Proof of Service showing service upon the parties.

Sincerely,

Robert W. Beach

cc: Parties per Attachment 1 to the Proof of Service

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for approval of power purchase )  
agreements. )  
\_\_\_\_\_)

Case No. U-20833

**APPLICATION**

Consumers Energy Company (“Consumers Energy” or the “Company”) requests the Michigan Public Service Commission (“MPSC” or the “Commission”) to grant approval, pursuant to Section 6j of 1982 Public Act (“PA”) 304 (“Act 304”), MCL 460.6j, and other applicable law, of Power Purchase Agreements (“PPA”) with STS Hydropower, LLC (“STS”) for the output of the Cascade Hydro Plant (“Cascade Plant”) and Fallasburg Hydro Plant (“Fallasburg Plant”). In support of this request, Consumers Energy states as follows:

1. Consumers Energy is, among other things, engaged as a public utility in the business of generating, purchasing, distributing, and selling electric energy to approximately 1.8 million retail customers in the state of Michigan. The retail electric system of Consumers Energy is operated as a single utility system, within which uniform rates are charged.

2. Consumers Energy’s retail electric business is subject to the jurisdiction of the Commission pursuant to certain provisions of 1939 PA 3, as amended by various acts, including 1982 PA 304, 2000 PA 141, and 2016 PA 341, MCL 460.1 *et seq.*; 1909 PA 106, as amended, MCL 460.551 *et seq.*; 1909 PA 300, as amended, MCL 462.2 *et seq.*; and 2008 PA 286, MCL 460.4a *et seq.*

3. On July 1, 1985, the Company entered into a PPA with the Charter Township of Cascade for the output of the Cascade Plant. The PPA was assigned on October 22, 1986 to STS

Consultants, Ltd., later assigned to STS Hydropower Ltd on September 17, 1986; and later converted to STS Hydropower, LLC (referred to in this filing as “STS”) on March 9, 2018. The PPA’s initial term concluded on December 31, 2018 and continued for subsequent one-year terms thereafter unless either party issued a notice, a year in advance, electing to terminate the PPA at the expiration of the term. In accordance with the terms of the PPA, the Company issued a notice on December 15, 2017 of its election to terminate the existing PPA for the Cascade Plant on December 31, 2018.

4. On April 1, 1983, the Company entered into a PPA with STS Consultants LTD, for the output of the Fallasburg Plant. Similar to the Company’s PPA for the Cascade Plant, the counterparty for Fallasburg Plant PPA ultimately became STS Hydropower, LLC (referred to in this filing as “STS”). The PPA’s initial term concluded on December 31, 2017 and continued for subsequent one-year terms thereafter unless terminated by mutual consent or by either party giving the other at least one year’s written notice of its desire to terminate the PPA. In accordance with the terms of the PPA, the Company issued a notice on December 22, 2016 of its election to terminate the existing PPA for the Fallasburg Plant on December 31, 2017. Subsequent to the termination of the PPA, the parties continued negotiating a new agreement. The PPA termination was extended to May 31, 2019 by a Letter Agreement dated April 3, 2018. That letter agreement was approved by the Commission in its July 24, 2018 Order in Case No. U-20188.

5. On May 4, 2020, Consumers Energy and STS executed new PPAs for the output of the Cascade and Fallasburg Plants. See Exhibits A-1 (KGT-1) and A-2 (KGT-2). The provisions of the PPAs are very similar with a few minor exceptions included in the Other Contract Changes section in Part 1 of the PPA. The PPAs provide for the purchase of capacity from the plants based on the Zonal Resource Credits (“ZRCs”), the Midcontinent Independent System Operator, Inc.

(“MISO”) capacity commodity, calculated according to the methodology contained in MISO’s business practice manual in effect at the time of PPA execution. Payments for capacity are made on a monthly basis at a fixed rate (\$/ZRC-month). The PPAs provide for the purchase of energy from the plants based on a fixed rate (\$/MWh) as contained in Exhibit A of each PPA. The PPAs provide for twenty percent (20%) of the Renewable Energy Credits (“RECs”) to be transferred to the Company and bundled as Delivered Energy at no additional cost for use to meet the Company’s compliance obligations for renewable energy or supply the Company’s Voluntary Green Pricing programs. The PPAs also include a regulatory disallowance clause, a monthly administrative charge, and an early termination security provision. Additionally, while not a provision of the PPAs, it should be noted that both PPAs are subject to the Financial Compensation Mechanism approved in Case No. U-20165.

6. The new PPAs for the Cascade and Fallasburg Plants also include unique contract provisions. For the Cascade Plant the unique provisions include: (i) an energy rate which is fixed at a price of \$53.35/MWh for the term of the PPA; and (ii) a PPA term which starts on January 1, 2019 and ends on May 31, 2039. For the Fallasburg Plant, the unique provisions include: (i) an energy rate which is fixed at a price of \$54.00/MWh for the term of the PPA; and (ii) a PPA term which starts on June 1, 2019 and ends on May 31, 2039. The PPAs included in this filing are the result of negotiated rates that are permissible between a utility and a qualifying facility under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). See CFR 292.301(b).

7. The new PPAs for the output of the Cascade and Fallasburg Plants were negotiated in parallel between the Company and STS. Overall, the Company is expecting that the customers will realize a savings over the 20 year term of the PPAs of approximately \$950,000 compared to the cost of the expired PPAs. The new PPA for the Cascade Plant is expected to result in a

reduction of \$1,476,632 over the twenty-year contract term compared to the rates in the expired PPA. Exhibit A-3 (KGT-3) details the cost of the new PPA for the Cascade Plant compared to the expired PPA rates over the contract term. The new PPA for the Fallasburg Plant is expected to result in an increase of \$527,352 over the 20-year contract term compared to the rates in the expired PPA. Exhibit A-4 (KGT 4) details the cost of the new PPA for the Fallasburg Plant compared to the expired PPA rates over the contract term.

8. Beyond the above, the new PPAs are expected to provide several benefits to the parties, the Company's customers, and the communities surrounding the plants. These benefits include: (i) cost certainty for the Cascade and Fallasburg Plants for the terms ending May 31, 2039; (ii) an update to the capacity payment structure based on MISO's capacity commodity (ZRCs), instead of MWhs; and (iii) the Company will receive twenty percent (20%) of the RECs at no additional cost from the facilities which can be utilized to help the Company meet its renewable portfolio standard or provide supply to the Company's Voluntary Green Pricing Program.

9. In conjunction with this Application, the Company is filing testimony, exhibits, and an affidavit from Company witness Keith G. Troyer, Director of Electric Grid Integration Contracts and Settlements. The Company is also filing copies of the recently executed PPAs as Exhibits A-1 (KGT-1) and A-2 (KGT-2). The accompanying testimony and exhibits are an integral part of this Application and are incorporated by reference in this Application as if fully set forth herein. Consumers Energy is requesting Commission approval of the Company's recently executed PPAs with STS for the output of the Cascade and Fallasburg Plants pursuant to Section 6j of 1982 PA 304 and all other applicable law.

10. As set forth above, approval of the relief requested in this Application will not increase rates or charges for any customer beyond the levels which were previously approved by

the Commission because the new PPAs with STS for the output of the Cascade and Fallasburg Plants will provide customers with a net savings over the 20 year term of approximately \$950,000 compared to the cost of the expired PPAs. Consumers Energy therefore respectfully requests that the Commission approve the relief requested in this Application on an *ex parte* basis without the time and expense of a public hearing. Furthermore, *ex parte* approval of these PPAs is appropriate given the Commission's determination in Case No. U-18090 that "existing QFs with expiring contracts should have their contracts renewed at the full avoided cost rate, whether or not the company forecasts a capacity shortfall over the planning horizon." See MPSC Case No. U-18090, May 31, 2017 Order and Opinion, page 18. Should the Commission elect not to approve the Company's Application on an *ex parte* basis, the Company requests the Commission to initiate an expedited contested case proceeding.

WHEREFORE, Consumers Energy Company respectfully requests the Michigan Public Service Commission to grant the following relief:

(A) Grant approval of the three Power Purchase Agreements between Consumers Energy Company and with STS Hydropower, LLC for the output of the Cascade Hydro Plant and Fallasburg Hydro Plant, as provided in Exhibits A-1 (KGT-1) and A-2 (KGT-2), and specifically indicate that the Commission approves the recovery by Consumers Energy Company of all payments under these Power Purchase Agreements for the purposes of Section 6j of 1982 PA 304, MCL 460.6j, and all other applicable law;

(B) Determine that the relief requested herein should be granted *ex parte* without the time and expense of a public hearing;

(C) Should the Commission elect not to approve the Company's Application on an *ex parte* basis, initiate an expedited contested case proceeding; and

(D) Grant Consumers Energy such other and further relief as may be lawful and appropriate.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: June 3, 2020

By:

\_\_\_\_\_  
Jean-Francois Brossoit  
Senior Vice President of Transformation,  
Engineering, and Operations Support  
Consumers Energy Company

\_\_\_\_\_  
Robert W. Beach (P73112)  
Attorneys for Consumers Energy Company  
One Energy Plaza  
Jackson, Michigan 49201  
(517) 788-1846

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for approval of power purchase )  
agreements. )  
\_\_\_\_\_ )

Case No. U-20833

VERIFICATION

STATE OF MICHIGAN     )  
                                      ) SS  
COUNTY OF JACKSON    )

Jean-Francois Brossoit, being first duly sworn, deposes and says that he is the Senior Vice President of Transformation, Engineering, and Operations Support of Consumers Energy Company; that he has executed the foregoing Application for, and on behalf of, Consumers Energy Company; that he has read the foregoing Application and is familiar with the contents thereof; that the facts contained therein are true, to the best of his knowledge and belief; and that he is duly authorized to execute such Application on behalf of Consumers Energy Company.

\_\_\_\_\_  
Jean-Francois Brossoit  
Senior Vice President of Transformation,  
Engineering, and Operations Support  
Consumers Energy Company

Subscribed and sworn to before me this 3<sup>rd</sup> day of June, 2020.

\_\_\_\_\_  
Crystal L. Chacon, Notary Public  
State of Michigan, County of Ingham  
My Commission Expires: 05/25/24  
Acting in the County of Jackson



STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of                   )  
**CONSUMERS ENERGY COMPANY**                   )  
for approval of power purchase                   )  
agreements.                   )  
\_\_\_\_\_)

Case No. U-20833

**DIRECT TESTIMONY**  
  
**OF**  
  
**KEITH G. TROYER**  
  
**ON BEHALF OF**  
  
**CONSUMERS ENERGY COMPANY**

June 2020

KEITH G. TROYER  
DIRECT TESTIMONY

1   **Q.   Please state your name and business address.**

2   A.   My name is Keith G. Troyer, and my business address is 1945 West Parnall Road, Jackson,  
3       Michigan 49201.

4   **Q.   By whom are you employed?**

5   A.   I am employed by Consumers Energy Company (“Consumers Energy” or the “Company”).

6   **Q.   In what capacity are you employed?**

7   A.   I am the Director of Electric Grid Integration Contracts and Settlements in the Electric  
8       Supply Section of the Electric Grid Integration Department.

9       **QUALIFICATIONS**

10   **Q.   Please describe your educational background and work experience.**

11   A.   I received the degree of Bachelor of Science in Engineering with a specialty in Civil  
12       Engineering from Michigan State University in 2008. In 2015, I became a Registered  
13       Professional Engineer in the state of Michigan. In 2018, I received a Master of Business  
14       Administration (“MBA”) through Michigan State University’s Executive MBA Program.

15           In July 2009, I joined Consumers Energy as an Electric System Owner. In January  
16       2011, I accepted a position as an Engineer in the Transactions and Resource Planning  
17       Section of the Energy Supply Department. In that role, I was responsible for administration  
18       and coordination of the Company’s Experimental Advanced Renewable Program  
19       (“EARP”) – Solar, part of the Company’s Renewable Energy (“RE”) Plan. I was involved  
20       in the development and implementation of the EARP-Solar expansion in 2011. In June  
21       2013, I began taking on additional responsibilities associated with the RE Plan, including  
22       the calculation of the Transfer Price associated with RE and capacity and the tracking of  
23       RE Credits (“RECs”). In 2014, I was also responsible for supervision of the

KEITH G. TROYER  
DIRECT TESTIMONY

1 implementation of the EARP-Anaerobic Digestion pilot. In December 2016, I transitioned  
2 to a new role where my supervisory and direct responsibilities included administering  
3 Power Purchase Agreements (“PPAs”), issuing solicitations for energy and capacity, and  
4 managing the Company’s capacity position with Midcontinent Independent System  
5 Operator, Inc. (“MISO”). In 2019, I became the Director of Electric Grid Integration  
6 Contracts and Settlements.

7 **Q. What are your responsibilities as Director of Electric Grid Integration Contracts and**  
8 **Settlements?**

9 A. My responsibilities include oversight of the Company’s distribution agreements and PPAs,  
10 solicitations for energy and capacity, renewable energy compliance, distributed generation  
11 programs, and electric wholesale settlement activities.

12 **Q. Have you previously provided testimony before the Michigan Public Service**  
13 **Commission (“MPSC” or the “Commission”)?**

14 A. Yes. I provided testimony in:

- 15 • MPSC Case No. U-17095-R (direct), the Company’s 2013 Power Supply Cost  
16 Recovery (“PSCR”) Reconciliation Case, regarding 2013 RE Plan expenses  
17 recovered through PSCR;
- 18 • MPSC Case No. U-17631 (direct), the Company’s 2013 RE Reconciliation  
19 Case, regarding 2013 RE Plan expenses recovered through PSCR,  
20 RE compliance, and new renewable capacity compliance;
- 21 • MPSC Case No. U-17317-R (direct), the Company’s 2014 PSCR  
22 Reconciliation Case, regarding 2014 RE Plan expenses recovered through  
23 PSCR;
- 24 • MPSC Case No. U-17792 (direct and rebuttal), the 2015 biennial review of the  
25 Company’s RE Plan, regarding RE Plan expenses recovered through the PSCR,  
26 RE compliance, new renewable capacity compliance, and RE programs;
- 27 • MPSC Case No. U-17803 (direct), the Company’s 2014 Renewable Cost  
28 Reconciliation Case, regarding 2014 RE Plan expenses recovered through  
29 PSCR, RE compliance, and new renewable capacity compliance;

KEITH G. TROYER  
DIRECT TESTIMONY

- MPSC Case No. U-17678-R (direct), the Company's 2015 PSCR Reconciliation Case, regarding 2015 RE Plan expenses recovered through PSCR;
- MPSC Case No. U-17918 (rebuttal), the Company's 2016 PSCR Plan and five-year forecast, regarding the impacts of net electric metering on energy supply;
- MPSC Case No. U-18081 (direct and revised), the Company's 2015 Renewable Reconciliation case, regarding 2015 RE Plan expenses recovered through PSCR, RE compliance, and new renewable capacity compliance;
- MPSC Case No. U-18090 (direct, rebuttal, reopened rebuttal, and second reopened rebuttal, and affidavit), the Company's 2016 Public Utility Regulatory Policies Act of 1978 ("PURPA") case to establish a method and calculation for avoided costs;
- MPSC Case No. U-17918-R (direct), the Company's 2016 PSCR Reconciliation Case, regarding 2016 RE Plan expenses recovered through PSCR;
- MPSC Case No. U-18241 (direct), the Company's 2016 RE Cost Reconciliation Case, regarding 2016 RE Plan expenses recovered through PSCR;
- MPSC Case No. U-18402 (direct and rebuttal), the Company's 2018 PSCR Plan and five-year forecast, regarding long-term PPAs and capacity forecast;
- MPSC Case No. U-18231 (direct and rebuttal), the 2017 biennial review of the Company's RE Plan, regarding the Company's Request for Proposal process for new resources, the cost of new RE resources included in the RE Plan, and the risks that may drive performance to vary, associated with these topics;
- MPSC Case No. U-18351 (rebuttal), the Company's 2017 Application to comply with Section 61 of 2016 PA 342, regarding customer credits in voluntary RE programs and competitive solicitations;
- MPSC Case No. U-20165 (direct, rebuttal, and second rebuttal), the Company's 2018 Integrated Resource Plan ("IRP"), regarding long-term PPAs, proposed changes to the Company's PURPA avoided cost implementation, the Company's proposal to utilize competitive solicitations and the implementation of the Financial Compensation Mechanism ("FCM");
- MPSC Case No. U-20219 (direct and rebuttal), the Company's 2019 PSCR Plan and five-year forecast, regarding long term PPAs and MISO revenue and expenses;
- MPSC Case No. U-20202 (direct), the Company's 2018 PSCR Plan and five-year forecast, regarding long-term PPAs and capacity forecast;

KEITH G. TROYER  
DIRECT TESTIMONY

- MPSC Case No. U-20469 (affidavit), the Company’s Application requesting an Order Rescinding Avoided Cost Rates, regarding the Company’s avoided costs, obligations to enter new PPAs, and establishment of new avoided costs in the Company’s IRP;
- MPSC Case No. U-20496 (direct), the Company’s Application for approval of Amendments to the PPA with Viking Energy of Lincoln, LLC, Viking Energy of McBain, LLC, and Hillman Power Company;
- MPSC Case No. U-20604 (direct), the Company’s Application for approval of PPAs with Commonwealth Power Company and North American Natural Resources, Inc.;
- MPSC Case No. U-15805-S (affidavit), the Company’s Application for approval of a renewable energy purchase agreement with River Fork Solar, LLC;
- MPSC Case No. U-20525 (direct), the Company’s 2020 PSCR Plan and five-year forecast, regarding long-term PPAs and the treatment of MISO revenue and expenses;
- MPSC Case No. U-20697 (direct), the Company’s 2020 electric rate case, regarding PSCR expenses, transmission cost analysis, state reliability mechanism methodology, and IRP supply implementation activities; and
- MPSC Case No. U-20220 (direct), the Company’s 2019 PSCR Reconciliation Case, regarding purchased power supply costs and the allocation of costs to the renewable resource fund.

**PURPOSE OF DIRECT TESTIMONY**

**Q. What is the purpose of your direct testimony in this proceeding?**

A. My direct testimony will address: (i) the new PPA between the Company and STS Hydropower, LLC (“STS”) for the output of the Cascade Hydro Plant (“Cascade Plant”) and the new PPA between the Company and STS for the output of the Fallasburg Hydro Plant (“Fallasburg Plant”); and (ii) the Company’s evaluation of the cost and benefits of the PPAs.

KEITH G. TROYER  
DIRECT TESTIMONY

**Q. Are you sponsoring any exhibits?**

A. Yes. I am sponsoring the following exhibits:

Exhibit A-1 (KGT-1)      The Power Purchase Agreement Between  
Consumers Energy Company and STS Hydropower  
LLC, Cascade dated May 4, 2020;

Exhibit A-2 (KGT-2)      The Power Purchase Agreement Between  
Consumers Energy Company and STS Hydropower  
LLC, Fallasburg dated May 4, 2020;

Exhibit A-3 (KGT-3)      Comparison of the Forecast Cost of the New and Expired Cascade Hydro Plant PPAs; and

Exhibit A-4 (KGT-4)      Comparison of the Forecast Cost of the New and Expired Fallasburg Hydro Plant PPAs.

**Q. Were these exhibits created by you or under your supervision?**

A. Yes.

## ORIGINAL PPAs

**Q. Did the Company previously have a PPA with STS for the output of the Cascade Plant?**

A. Yes. On July 1, 1985, the Company entered into a PPA with the Charter Township of Cascade for the output of the Cascade Plant. The PPA was assigned on October 22, 1986 to STS Consultants, Ltd., later assigned to STS Hydropower Ltd on September 17, 1986; and later converted to STS Hydropower, LLC (referred to in this filing as “STS”) on March 9, 2018.

The PPA's initial term concluded on December 31, 2018 and continued for subsequent one-year terms thereafter unless either party issued a notice, a year in advance, electing to terminate the PPA at the expiration of the term. In accordance with the terms

KEITH G. TROYER  
DIRECT TESTIMONY

1 of the PPA, the Company issued a notice on December 15, 2017 of its election to terminate  
2 the existing PPA for the Cascade Plant on December 31, 2018.

3 **Q. Did the Company previously have a PPA with STS for the output of the Fallasburg**  
4 **Plant?**

5 A. Yes. On April 1, 1983, the Company entered into a PPA with STS Consultants LTD, for  
6 the output of the Fallasburg Plant. Similar to the Company's PPA for the Cascade Plant,  
7 the counterparty for Fallasburg Plant PPA ultimately became STS Hydropower, LLC  
8 (referred to in this filing as "STS").

9 The PPA's initial term concluded on December 31, 2017 and continued for  
10 subsequent one-year terms thereafter unless terminated by mutual consent or by either  
11 party giving the other at least one year's written notice of its desire to terminate the PPA.  
12 In accordance with the terms of the PPA, the Company issued a notice on December 22,  
13 2016 of its election to terminate the existing PPA for the Fallasburg Plant on December 31,  
14 2017. Subsequent to the termination of the PPA, the parties continued negotiating a new  
15 agreement. The PPA termination was extended to May 31, 2019 by a Letter Agreement  
16 dated April 3, 2018. That letter agreement was approved by the Commission in its July 24,  
17 2018 Order in Case No. U-20188.

18 **NEW PPAs**

19 **Q. Please explain Exhibit A-1 (KGT-1).**

20 A. Exhibit A-1 (KGT-1) is the PPA between Consumers Energy and STS executed on May 4,  
21 2020 for the output of the Cascade Plant.

KEITH G. TROYER  
DIRECT TESTIMONY

1   **Q.   Please explain Exhibit A-2 (KGT-2).**

2   A.   Exhibit A-2 (KGT-2) is the PPA between Consumers Energy and STS dated May 4, 2020  
3       for the output of the Fallasburg Plant.

4   **Q.   Please provide an overview of the provisions in the PPAs.**

5   A.   The provisions of the PPAs are very similar with a few minor exceptions included in the  
6       Other Contract Changes section in Part 1 of the PPA which will be addressed later in my  
7       direct testimony. The PPAs provide for the purchase of capacity from the plants based on  
8       the Zonal Resource Credits (“ZRCs”), the MISO capacity commodity, calculated according  
9       to the methodology contained in MISO’s business practice manual in effect at the time of  
10      PPA execution. Payments for capacity are made on a monthly basis at a fixed rate (\$/ZRC-  
11      month). The PPAs provide for the purchase of energy from the plants based on a fixed rate  
12      (\$/MWh) as contained in Exhibit A of each PPA. The PPAs provide for twenty percent  
13      (20%) of the RECs to be transferred to the Company and bundled as Delivered Energy at  
14      no additional cost for use to meet the Company’s compliance obligations for renewable  
15      energy or supply the Company’s Voluntary Green Pricing programs. The PPAs also include  
16      a regulatory disallowance clause, a monthly administrative charge, and an early termination  
17      security provision. Additionally, while not a provision of the PPAs, it should be noted that  
18      both PPAs are subject to the FCM approved in Case No. U-20165.

19   **Q.   Please explain any unique provisions to the PPA for the Cascade Plant.**

20   A.   As part of the negotiations that resulted in the PPA, included as Exhibit A-1 (KGT-1), the  
21      parties agreed to contract provisions specific to the Cascade Plant PPA. First, the energy  
22      rate is fixed at a price of \$53.35/MWh for the term of the PPA. Including the capacity rate,  
23      the total rate paid for the Cascade Plant PPA is expected to be \$63.08/MWh. See Exhibit



KEITH G. TROYER  
DIRECT TESTIMONY

1 A-3 (KGT-3). Second the term of the PPA starts on January 1, 2019 and ends on  
2 May 31, 2039.

3 **Q. Please explain any unique provisions to the PPA for the Fallasburg Plant.**

4 A. As part of the negotiations that resulted in the PPA, included as Exhibit A-2 (KGT-2), the  
5 parties agreed to contract provisions specific to the Fallasburg Plant PPA. First, the energy  
6 rate is fixed at a price of \$54.00/MWh for the term of the PPA. Including the capacity rate,  
7 the total rate paid for the Fallasburg Plant PPA is expected to be \$60.23/MWh. See Exhibit  
8 A-4 (KGT-4). Second, the term of the PPA starts on June 1, 2019 and ends on  
9 May 31, 2039.

10 **Q. Have you evaluated the cost of the PPAs?**

11 A. Yes, I have. The expired Cascade Plant PPA was paid based the energy payment rate, in  
12 mills per kilowatt-hour, based on the estimated average cost of Consumers Energy's "next  
13 generating unit" for "on-peak" and "off-peak" as was redetermined on a yearly basis. The  
14 capacity payment for expired Cascade Plant PPA was set at mills per kilowatt-hour of 42.5  
15 and 36.1 for "on-peak" and "off-peak"; respectively, for the term of the PPA. The expired  
16 Fallasburg Plant PPA was paid based the energy payment rate, in mills per kilowatt-hour,  
17 based on the estimated average cost of Consumers Energy's "next generating unit" for "on-  
18 peak" and "off-peak" as was redetermined on a yearly basis. The capacity payment for  
19 expired Fallasburg Plant PPA was set at mills per kilowatt-hour of 30.9 and 26.3 for on-  
20 peak and off-peak; respectively, for the term of the PPA.

21 The PPAs included in this filing are the result of negotiated rates that are  
22 permissible between a utility and a qualifying facility under PURPA. See CFR 292.301(b).  
23 The new PPA for the Cascade Plant is expected to result in a reduction of \$1,476,632 over

KEITH G. TROYER  
DIRECT TESTIMONY

the twenty-year contract term compared to the rates in the expired PPA. Exhibit A-3 (KGT-3) details the cost of the new PPA for the Cascade Plant compared to the expired PPA rates over the contract term. The new PPA for the Fallasburg Plant is expected to result in an increase of \$527,352 over the 20-year contract term compared to the rates in the expired PPA. Exhibit A-4 (KGT-4) details the cost of the new PPA for the Fallasburg Plant compared to the expired PPA rates over the contract term.

**Q. Will the new PPAs result in a reduction in costs compared to the expired PPAs for the Cascade Plant and Fallasburg Plant?**

A. Yes. The PPAs for the Cascade and Fallasburg Plants were negotiated in parallel between the Company and STS. Overall, the Company is expecting that the customers will realize a savings over the 20 year term of the PPAs of approximately \$950,000 compared to the cost of the expired PPAs.

**Q. What benefits can be realized with the PPAs?**

A. There are several benefits to the parties as well as the Company's customers:

1. The Company expects to see combined net cost reductions through the term of the new PPAs compared to rates in the expired PPAs. These savings will be passed along to customers through the PSCR process;
2. These PPAs provide cost certainty for the Cascade and Fallasburg Plants for the term of the PPAs ending May 31, 2039;
3. The PPAs update the capacity payment structure based on MISO's capacity commodity (ZRCs), instead of MWhs; and
4. The Company will receive twenty percent (20%) of the RECs at no additional cost from the facilities which can be utilized to help the Company meet its renewable portfolio standard or provide supply to the Company's Voluntary Green Pricing Program.

KEITH G. TROYER  
DIRECT TESTIMONY

1 **Q. Should the Commission consider any additional factors in its review of the new PPAs**  
2 **for the Cascade and Fallasburg Plants?**

3 A. Yes. The new PPAs are consistent with the Commission's determination in  
4 Case No. U-18090 that "existing QFs with expiring contracts should have their contracts  
5 renewed at the full avoided cost rate, whether or not the company forecasts a capacity  
6 shortfall over the planning horizon." See MPSC Case No. U-18090, May 31, 2017 Order  
7 and Opinion, page 18. Therefore, these new PPAs contain negotiated energy and capacity  
8 rates based on the status of the Cascade and Fallasburg Plants as existing qualifying  
9 facilities with expired contracts.

10 **Q. Does this complete your direct testimony?**

11 A. Yes, it does.

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for approval of power purchase )  
agreements. )  
\_\_\_\_\_ )

Case No. U-20833

**AFFIDAVIT OF KEITH G. TROYER**

Keith G. Troyer, being first duly sworn, deposes and says as follows:

1. I am the Director of Electric Grid Integration Contracts and Settlements in the Electric Supply Section of the Electric Grid Integration Department.
2. I am the witness who sponsors the accompanying testimony entitled Direct Testimony of Keith G. Troyer (the "Testimony").
3. The Testimony was prepared by me and under my direction and supervision.
4. If inquiries were made as to the facts in the Testimony, I would respond as set forth therein.
5. The Testimony is true and correct to the best of my knowledge, information, and belief.

\_\_\_\_\_  
Keith G. Troyer

Subscribed and sworn to before me this 3<sup>rd</sup> day of June, 2020.

\_\_\_\_\_  
Crystal L. Chacon, Notary Public  
State of Michigan, County of Ingham  
My Commission Expires: 05/25/24  
Acting in the County of Jackson

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of                     )  
**CONSUMERS ENERGY COMPANY**                     )  
for approval of power purchase                     )  
agreements.                     )  
\_\_\_\_\_)

Case No. U-20833

**EXHIBITS**  
  
**OF**  
  
**KEITH G. TROYER**  
  
**ON BEHALF OF**  
  
**CONSUMERS ENERGY COMPANY**

June 2020

STS - Cascade

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**CONSUMERS ENERGY COMPANY**

**AND**

**STS Hydropower, LLC**

for the output of the Cascade Hydro Plant

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**POWER PURCHASE AGREEMENT****PART I  
COVERSHEET**

This *Power Purchase Agreement* ("PPA") is made as of the following date June 4/2020. The PPA, together with the exhibits, schedules and any written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties shall be referred to as the "Agreement." The Parties to this PPA are the following:

Consumers Energy Company or ("Buyer")

STS Hydropower, LLC or ("Seller")**All Notices:** Consumers Energy CompanyStreet: 1945 W Parnall RoadCity: Jackson State: MI Zip: 49201Attn: EGI Contracts and SettlementsPhone: 517-788-7264Facsimile: N/AEmail: energypurchase@cmsenergy.com**All Notices:** STS Hydropower, c/o Eagle Creek Renewable EnergyStreet: 65 Madison Ave., Suite 500City: Morristown State: NJ Zip: 07960Attn: Power Sales/LegalPhone: 973-998-8400Facsimile: 973-998-8041Email: notices@eaglecreekre.com**Invoices:**Attn: Jenny RickardPhone: 517-788-0091Email: jenny.rickard@cmsenergy.com**Invoices:**Attn: Accounts ReceivablePhone: 413-307-0601Email: customers@eaglecreekre.com**Scheduling:**Attn: Real-Time OperationsPhone: 517-788-0091Email: N/A**Scheduling:**Attn: Power SalesPhone: 973-998-8409Email: powersales@eaglecreekre.com**Contract Characteristics**

Plant Name:	<u>Cascade Hydro Plant</u>
Plant Type:	<u>Run-of-River Hydroelectric</u>
Plant Nameplate Capacity (MW <sub>AC</sub> ):	<u>1.6</u>
Plant Location:	<u>Charter Township of Cascade, Michigan</u>
Contract Capacity (MW <sub>AC</sub> ):	<u>1.4</u>
Contract Capacity Target (ZRCs):	<u>0.5</u>
Expected Delivered Energy (MWh/yr):	<u>7,567</u>
Earnest Money Deposit:	<u>See Other Contract Changes</u>
Early Termination Security Amount:	<u>\$87,500.00</u>
	<u>X</u> Surety Bond
	<u>      </u> Letter of Credit
	<u>      </u> One-Time Escrow Payment
	<u>      </u> Monthly Escrow Payments
Expected Start Date:	<u>January 1, 2019</u>
Expected Termination Date:	<u>May 31, 2039</u>
Contract Term:	<u>      </u> 5 Year <u>      </u> 10 Year <u>      </u> 15 Year
	<u>X</u> 20 Year <u>      </u> Other (Years) < 20 Years

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Energy Purchase Price: See Exhibit A

Capacity Purchase Price: \$8,768.50/ZRC-month (\$105,222/ZRC-year)

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Other Contract Changes:

1. The definition of "Earnest Money Deposit" in Section 1, Definitions, is deleted.
2. The second paragraph of Subsection 2.1, Effective Date and Term, is deleted and replaced with the following:

"The Parties' performance under this Agreement shall commence on January 1, 2019, pending the MPSC's consideration of the submission described in the preceding paragraph. In the event the MPSC denies Buyer's request to approve this Agreement or any portion of the recovery requested in the application for approval of this Agreement, or the MPSC otherwise does not approve this Agreement as described herein within six (6) months of Buyer's request for approval, this Agreement shall be void ab initio with the exception of the following payment adjustment: Buyer shall calculate the difference between the amounts paid to Seller beginning January 1, 2019 and the actual wholesale market rate value for Delivered Energy and Resource Adequacy Capacity beginning January 1, 2019 (which shall be calculated for Delivered Energy as the Day Ahead Locational Marginal Price at the CONS.CETR load node and for Resource Adequacy Capacity as the Planning Resource Auction Clearing Price), and Seller shall refund to Buyer any positive difference and Buyer shall pay to Seller any negative difference. Once effective, unless terminated as provided in this Agreement, this Agreement shall continue for the number of years identified in Part I from the Start Date and continuing through the end of the MISO Planning Year not to exceed the initiation of the following planning year of MISO. Unless terminated, under no circumstances, shall the term of this Agreement expire prior to the end of a MISO planning period."

3. The first sentence of Subsection 2.2.1, Surety Bond, shall be deleted and replaced with the following:

"If Seller selects the Surety Bond form of payment security as identified in Part I, Seller shall provide a Surety Bond to Buyer in the amount of the Early Termination Security Amount by the date that is thirty (30) Days after the Effective Date."

4. The second sentence in Section 3, CAPACITY AND ENERGY TO BE SUPPLIED, shall



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be deleted and replaced with the following:

“The entitlement of Renewable Energy Credits and Environmental Attributes generated by Seller’s Plant shall be settled in accordance with Subsection 3.2, Emission Allowances/Environmental Attributes.”

5. Subsection 3.2, Emission Allowance/Environmental Attributes, is deleted and replaced with the following:

“Beginning with the Start Date and continuing for the term of this Agreement, twenty percent (20%) of the Renewable Energy Credits produced by the Seller’s Plant for the duration of this Agreement will be sold to Buyer and bundled with Delivered Energy. Seller shall accomplish delivery of RECs by transferring said RECs to Buyer’s account in the Michigan Renewable Energy Certification System within 120 days following the end of the Calendar Month in which the associated generation was produced by the Plant. All other emission allowances and Environmental Attributes, including, but not limited to, (i) all federal production tax credits, (ii) any and all state and federal investment tax credits which are generated by the Plant or attributed to the Plant or Delivered Energy, (iii) any and all ownership benefits accruing to the Seller pursuant to applicable state and federal tax laws and associated accounting rules that are established for the Plant, remain the property of the Seller.”

6. Subsection 4.2, Seller’s Obligation With Respect to Construction Start, is deleted and replaced with “{Reserved.}”

7. Subsection 4.3, Start Date, shall be deleted and replaced with the following:


- a. “The Start Date of this Agreement shall be January 1, 2019.”

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Terms and Conditions attached and all Exhibits are part of this Agreement. SELLER  
ACKNOWLEDGES HAVING READ SAID DEFINITIONS AND TERMS AND CONDITIONS AND  
AGREES TO SAID TERMS AND CONDITIONS.

Consumers Energy Company  
1945 W. Parnall Road  
Jackson, MI 49201

(Buyer)

By  \_\_\_\_\_  
90C29E668C0F402...

Printed Name: Keith G. Troyer

Title: Director of EGI Contracts & Settlements

Date: 5/4/2020 | 10:33 AM EDT

STS Hydropower, LLC

65 Madison Ave, Suite 500  
Morristown, NJ 07960

(Seller)

By: Martin Karpenski  
(Signature)

Printed Name: Martin Karpenski

Title: General Counsel

Date: April 24, 2020

Review and Approvals		
Contracts	Troy Smith 	4/28/2020
Risk		4/27/2020
Legal	 APPROVED TO FORM	4/27/20

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## Part II

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PART III  
TERMS AND CONDITIONS

This Power Purchase Agreement, herein called "Agreement", is made and entered into as of the date identified in Part I, between "Buyer" and "Seller", both identified in Part I. Buyer and Seller are herein sometimes referred to individually as "Party" and collectively as "Parties", where appropriate.

WITNESSETH:

WHEREAS, this Agreement has been prepared pursuant to the Public Utility Regulatory Policies Act of 1978 as amended and as implemented by the State of Michigan; and

WHEREAS, Buyer owns electric facilities and is engaged in the generation, purchase, distribution and sale of electric energy in the State of Michigan; and

WHEREAS, Seller owns and operates, or intends to build the generating plant identified in Part I; and

WHEREAS, Seller wishes to deliver and sell and Buyer is obligated to receive and purchase from the Plant, electric capacity and electric energy associated with such Plant in the quantities specified herein on and after the Start Date (as defined below).

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the Parties hereto agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings unless specifically stated otherwise in this Agreement:

"Affiliate" – Means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" – Defined in Part I.

"Bankrupt" – Means with respect to either Party, such Party (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition remains undismissed for a period of sixty (60)

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Days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

"Billing Month" – Means the Calendar Month. The first Billing Month with respect to capacity and energy shall commence with the Initial Operation Date and end on the last day of the Calendar Month in which the Initial Operation Date occurs.

"Business Day" – Means a Calendar Day other than Saturday, Sunday or a holiday observed by MISO.

"Buyer" – Means the party so specified in Part I.

"Calendar Day" or "Day" – Means a Calendar Day or Day and shall be the twenty-four (24) hour period beginning at 12:00 a.m. midnight Eastern Standard Time and ending at 11:59:59 p.m. Eastern Standard Time. The terms Day and Calendar Day may be used interchangeably and shall have the same meaning.

"Calendar Month" or "Month" – Means a Calendar Month or Month and shall begin on the first Day of a Month and end on the last Day of the Month. The terms Month and Calendar Month may be used interchangeably and shall have the same meaning.

"Calendar Year" or "Year" – Means a Calendar Year or Year and shall be the twelve (12) Month period beginning January 1 and ending the next subsequent December 31. The terms Year and Calendar Year may be used interchangeably and shall have the same meaning.

"Capacity Purchase Price" – Means the \$/ZRC-month as identified in Part I.

"Contract Capacity" – Means the amount of MW<sub>AC</sub> identified in Part I.

"Contract Capacity Target" – Means quantity of ZRCs identified in Part I.

"CPNode" – Has the meaning ascribed to such terms in the MISO Rules.

"Compensated Curtailment" – Means a curtailment of energy from Seller's Plant for which Seller is entitled to payment for Lost Production, and which excludes Uncompensated Curtailments.

"Contract Term" – Means the period of time specified in Part I.

"Defaulting Party" – Defined in Section 9, Events of Default.

"Delivered Energy" – Means the electric energy produced by the Plant and delivered by Seller at the Point of Delivery as such amount of electric energy delivered is determined on an hourly basis pursuant to Section 5, Metering, but not to exceed Contract Capacity during any hour.

"Early Termination Security Amount" – Means the amount as prescribed in Part I in U.S. dollars.

"Earnest Money Deposit" – Defined in Subsection 4.3, Start Date.

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"Effective Date" – Defined in Subsection 2.1, Effective Date and Term.

"Emergency or Emergencies" – A condition or conditions on the Buyer's distribution system which in the Buyer's sole reasonable judgment either has, or is likely to, result in significant imminent disruption of service to Seller, or imminent endangerment to life or property.

"Energy Purchase Price" – Means the \$/MWh price as selected and defined in Part I.

"Environmental Attribute(s)" – Means an instrument used to represent the environmental benefits associated with a fixed amount of electricity generation; excluding Renewable Energy Credits for the purpose of the Agreement. Environmental Attributes represent the general environmental benefits of renewable generation such as air pollution avoidance. The exact quantity of the environmental benefit (e.g. pounds of emission reductions of a given pollutant) may not be indicated by an Environmental Attribute, though it can be quantified separately in pollution trading markets and through engineering estimates. The Environmental Attribute represents all environmental benefits, whether or not trading markets for such pollutants or benefits exist.

"Escrow Account" – Means an account used to retain the monthly or one-time payment as selected in Part I, and described in Subsection 2.2 Payment Security.

"Event of Default" – Defined in Section 9, Events of Default.

"Exempt Operational Periods" – Those periods described in 18 CFR § 292.304(f) as in effect as of the date of this Agreement, wherein Buyer has notified Seller in a timely manner to cease delivery of electric energy hereunder during a specified period in which Seller would otherwise have electric energy available for delivery but, due to operational circumstances, purchases from Seller would in Buyer's reasonable judgment result in costs greater than those that would result if Buyer generated an equivalent amount of energy through its own facilities. Exempt Operational Periods are applicable to this Agreement only if energy rate option 1: Actual MISO Day Ahead LMP is selected as identified in Part 1 and described in Exhibit A.

"Expected Start Date" – Means the date in Part 1 as the expected start date.

"Federal Funds Effective Rate" - Means, for any Day, the interest rate per annum equal to the rate published as the Federal Funds Effective Rate by the Federal Reserve Bank in its release H.15 (519) (or, if such Day is not a Business Day, for the preceding Business Day).

"Force Majeure" – Defined in Subsection 11.1, Definition, of Section 11, Force Majeure.

"Incidental Energy" – Means both i) any electric energy delivered hourly in excess of Delivered Energy, and ii) Test Energy, as such amount of electric energy delivered is determined on an hourly basis pursuant to Section 5, Metering.

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"Incidental Energy Price" – Means the real-time LMP for the Buyer's load CPNode for the hour that Incidental Energy is delivered.

"Initial Operation Date" – Defined in Subsection 4.3, Start Date.

"Interconnection Agreement" – Means the agreement between Seller and the applicable electric system owner and/or operator which describes the terms and conditions regarding the connection of Seller's Plant to such electric system owner and/or operator.

"Interest Rate" – Means the Federal Funds Effective Rate.

"Joint Banking Day" – Means a Calendar Day on which the banks used by both Parties for financial settlement hereunder are open for business.

"Late Payment Interest Rate" – Means the lesser of (a) the per annum rate of interest equal to the prime lending rate as may be from time to time published in The Wall Street Journal under Money Rates on such Day (or if not published on such Day on the most recent preceding Day on which published), plus two (2%) percent or (b) the maximum rate permitted by applicable law.

"Letter of Credit" – Means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a credit rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, in a form reasonably acceptable to Buyer, with such changes to the terms in that form as the issuing bank may require and as may be acceptable to the beneficiary thereof.

"Locational Marginal Price" or "LMP" – Has the meaning ascribed to such term in the MISO Rules.

"Lost Production" means for any applicable period the quantity, if any, of Delivered Energy Seller could have produced and delivered to Buyer at the Point of Delivery during such period but that was not produced and delivered as a result of a Compensated Curtailment.

"Lost Production Damages" means the amount of compensation, if any, Seller is entitled to receive as a result of a Compensated Curtailment, calculated as follows:

$$LPD = LP * EPP$$

Where "LPD" means the Lost Production Damages in respect to any applicable Calendar Month (expressed in dollars);

"LP" means the aggregate quantity of Lost Production during such Month (expressed in MWh) and

"EPP" means the Energy Purchase Price applicable during such Month (expressed in \$/MWh).

"MISO" – Means the Midcontinent Independent System Operator, Inc. including any



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successor thereto.

“MISO Rules” – Means the Open Access Transmission, Energy and Operating Reserve Markets Tariff, including all schedules or attachments thereto, of MISO, as amended from time to time, including any successor tariff or rate schedule approved by the Federal Energy Regulatory Commission, together with any applicable MISO Business Practice Manual as amended from time to time.

“Monthly Escrow Payment” – Defined in Section 2.2.4, Monthly Escrow Payment.

“MPSC” – Defined in Section 2.1, Effective Date and Term..

“NERC” – Means the North American Electric Reliability Corporation, including any successor thereto.

“Non-Defaulting Party” – Defined in Section 10.1, Early Termination.

“Off-Peak Hours” – Means all hours that are not On-Peak Hours.

“On-Peak Hours” – Means the hours associated with the On-Peak period as defined by MISO.

“Outside Start Date” – Defined in Section 4.3, Start Date.

“Planning Resource Auction” – Has the meaning ascribed to such term in the MISO Rules

“Planning Resource Auction Clearing Price” – Has the meaning ascribed to such term in the MISO Rules, as pertaining to the Buyer’s CONS.CETR load node.

“Planning Year” – Has the meaning ascribed to such term in the MISO Rules.

“Plant” – Means the generating facility identified in Part I, including, but not limited to: generating equipment, including auxiliary and back-up transformers; electric delivery facilities; fuel handling equipment; administrative structures; and such other necessary and related facilities, equipment and structures associated with the generation of electricity.

“Plant Nameplate Capacity”– Means the potential output capacity of the Plant in MW<sub>AC</sub> as specified in Part I.

“Point of Delivery” – Means the location at which Seller shall deliver electric energy from the Plant to the applicable electric distribution system owner and/or operator as established in the Interconnection Agreement.

“Prudent Utility Practices” – Means the practices generally followed by the electric utility industry, as changed from time to time, which generally include, but are not limited to, engineering, operating, safety, reliability, equipment, and adherence to applicable industry codes, standards, regulations and laws.

“Reliability Authority” – Means MISO, International Transmission Company, Michigan Electric Transmission Company, NERC, ReliabilityFirst Corporation, and any successor

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entity to the foregoing entities, and any other regional reliability council and any other regional transmission organization, in each case having jurisdiction over either or both of the Parties, the Plant, or MISO's transmission system, whether acting under express or delegated authority.

"Renewable Energy Credit(s)" or "REC(s)" – Has the meaning specified in Act MCL460.1033.

"Resource Adequacy Capacity" – Means the Unforced Capacity value for the Plant for each Planning Year as determined by MISO under the MISO Rules on an annual basis and converted to ZRCs by Buyer.

"Seller" – Means the party so specified in Part I.

"Start Date" – Defined in Subsection 4.3, Start Date.

"Statement" – Defined in Subsection 8.1, Billing Procedure.

"Surety Bond" – means a bond that is issued by a surety or insurance company with, in either case, a credit rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated either by both S&P or Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, in a form reasonably acceptable to Buyer.

"System Access Charge" – Defined in Section 8.4.

"Test Energy" – Means electric energy delivered to Buyer prior to Start Date as Incidental Energy in accordance with Subsection 4.4, Test Energy.

"Uncompensated Curtailment" – Defined in Section 6.7, Emergencies and Exempt Operational Periods.

"Unforced Capacity" - Has the meaning ascribed to such term in the MISO Rules.

"Zonal Resource Credits" or "ZRCs" – Has the meaning ascribed to such term in the MISO Rules at the time the contract is executed.

## 2. GENERAL PROVISIONS

### 2.1 Effective Date and Term

This Agreement shall be effective upon execution by both Parties ("Effective Date"); provided, however that the Parties' rights and obligations under this Agreement shall be contingent upon the approval of this Agreement by the Michigan Public Service Commission ("MPSC"). Within thirty (30) days of the Effective Date, Buyer shall submit this Agreement to the MPSC for approval of the capacity and energy payments set out herein for the purposes of Michigan Public Act 304 of 1982, as amended ("Act 304"), Michigan Public Act 81 of 1987, as amended ("Act 81"), and all other applicable law. The foregoing submission shall specifically request MPSC approval of cost recovery of all payments set forth in this Agreement, as well as approval of the portion of such payments that is recovered as a booked cost of purchased

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and net interchanged power pursuant to 1982 Public Act 304, as amended.

In the event the MPSC denies Buyer's request to approve this Agreement or any portion of the recovery requested in the application for approval of this Agreement, or the MPSC otherwise does not approve this Agreement as described herein within six (6) months of Buyer's request for approval, this Agreement shall be void ab initio. Once effective, unless terminated as provided in this Agreement, this Agreement shall continue for the number of years identified in Part I from the Start Date and continuing through the end of the MISO Planning Year not to exceed the initiation of the following planning year of MISO. Unless terminated, under no circumstances, shall the term of this Agreement expire prior to the end of a MISO planning period.

Buyer may also seek financial recovery available to Buyer under MCL 460.6s or MCL 460.6t. MPSC disapproval of Buyer's request for financial recovery available to Buyer under MCL 460.6s or MCL 460.6t shall not render this Agreement void ab initio or otherwise affect this Agreement.

## 2.2 Payment Security.

Seller shall provide and maintain, as described herein, the Early Termination Security Amount specified in Part I for compliance with its payment obligations, for the term of the Agreement. Such Early Termination Security Amount shall be provided via one of the forms provided for in this Subsection 2.2. As detailed in Exhibit C, a portion of the Early Termination Security Amount in the Escrow Account will be returned to Seller beginning with the first month of the Planning Year that occurs one year after three fifths (3/5ths) of the contract term has concluded. Any portion of the Early Termination Security Amount, including accumulated interest above the Early Termination Security Amount, remaining upon expiration or termination of this Agreement, after deduction for any payment obligations still owing to Buyer, shall be returned to Seller by Buyer within sixty (60) Days of such expiration or termination. The Early Termination Security Amount is intended to safeguard Buyer against undue financial risk associated with loss of Seller-provided capacity during the Contract Term of the Agreement as indicated in Part 1. Notwithstanding the aforementioned referenced safeguard for financial risk associated with loss of capacity provided by Seller, Seller shall also be responsible for other damages it may cause to Buyer unrelated to financial risk associated with loss of capacity provided by Seller.

### 2.2.1 Surety Bond

If Seller selects the Surety Bond form of payment security as identified in Part I, Seller shall provide a Surety Bond to Buyer in the amount of the Early Termination Security Amount by the date that is thirty (30) Days after the Start Date. All Surety

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Bonds provided in accordance with this Agreement shall be subject to the following provisions:

Unless otherwise agreed to in writing by the Parties, each Surety Bond shall be maintained for the benefit of Buyer. Seller shall (i) if necessary to maintain a Surety Bond throughout the term of this Agreement, renew or cause the renewal of each outstanding Surety Bond on a timely basis as provided in the relevant Surety Bond, ii) if the institution that issued an outstanding Surety Bond has indicated its intent not to renew such Surety Bond, provide either a substitute Surety Bond, a Letter of Credit in accordance with Subsection 2.2.2 below, or cash in accordance with Subsection 2.2.3 below, in each case at least twenty (20) Business Days prior to the expiration of the outstanding Surety Bond, iii) replace a Surety Bond in full in the event such Surety Bond is drawn upon to satisfy the provisions of Subsection 6.1 herein, and (iv) if an institution issuing a Surety Bond shall fail to honor Buyer's properly documented request to draw on an outstanding Surety Bond, provide cash within one (1) Business Day after such refusal.

#### 2.2.2 Letters of Credit

If Seller selects the Letter of Credit form of payment security as identified in Part I, Seller shall provide a Letter of Credit to Buyer in the amount of the Early Termination Security Amount by the date that is thirty (30) Days after the Start Date. All Letters of Credit provided in accordance with this Agreement shall be subject to the following provisions:

Unless otherwise agreed to in writing by the Parties, each Letter of Credit shall be maintained for the benefit of Buyer. Seller shall (i) if necessary to maintain a Letter of Credit throughout the term of this Agreement, renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, ii) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit, a Surety Bond in accordance with Subsection 2.2.1 above, or cash in accordance with Subsection 2.2.3 below, in each case at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit, iii) replace a Letter of Credit in full in the event such Letter of Credit is drawn upon to satisfy the provisions of Subsection 7.1, Capacity Payment, and (iv) if a bank issuing a Letter of Credit shall fail to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, provide cash within one (1) Business Day after such refusal.

#### 2.2.3 One-Time Escrow Payment

If Seller selects the One-Time Escrow Payment form of payment security as identified in Part I, Seller shall provide a cash payment to Buyer in the amount of the Early Termination Security Amount within thirty (30) days of Start Date. Buyer shall establish an Escrow Account with the administrative costs incurred by that account to be borne by the account

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with the cash payment provided by Seller. In the event the funds in the Escrow Account are drawn upon to satisfy the provisions of Subsection 7.1, Capacity Payment, Seller shall provide Buyer with a cash payment in an amount sufficient to restore the amount of funds in the Escrow Account to the amount prior to the draw within two (2) Business Days of the draw. Interest on cash provided in accordance with this Subsection 2.2.3 shall accrue at a rate per annum equal to the Interest Rate.

#### 2.2.4 Monthly Escrow Payment

If Seller selects the Monthly Escrow Payment form of payment security, Buyer will retain during each Billing Month a portion of capacity charges equal to the monthly payment determined in Exhibit C. In the event the funds in the Escrow Account are drawn upon to satisfy the provisions of Subsection 7.1, Capacity Payment, Seller shall provide Buyer with a cash payment in an amount sufficient to restore the amount of funds in the Escrow Account to the amount prior to the draw within two (2) Business Days of the draw. Interest on cash provided in accordance with this Subsection 2.2.4 shall accrue at a rate per annum equal to the Interest Rate.

#### 2.3 "Qualifying Facility" Status and Seller's Warranty

Seller hereby represents to Buyer that the Plant has or will achieve qualifying status by the Start Date as a "cogeneration facility" or a "small power production facility" under 18 CFR §§ 292.201-292.207.

Seller will use commercially reasonable efforts to ensure that the Plant will maintain its status as a "Qualifying Facility" under the Public Utility Regulatory Policies Act of 1978, Public Law 95-617, 92 Stat 3117 and the implementing Federal Regulations promulgated thereunder as such are amended to the Effective Date of this Agreement and appear at 18 CFR §§ 292.101 through 292.602, throughout the term of this Agreement. In the event Seller fails to maintain such "Qualifying Facility" status, Buyer shall have the option of terminating this Agreement by giving Seller one hundred eighty (180) Days written notice.

### 3. CAPACITY AND ENERGY TO BE SUPPLIED

Subject to the terms and conditions of this Agreement, beginning with the Start Date and continuing until the termination of this Agreement, Seller agrees to sell and supply to Buyer, and Buyer agrees to accept and purchase from Seller, all Resource Adequacy Capacity and Delivered Energy that Seller supplies and/or delivers to Buyer under this Agreement. Renewable Energy Credits and Environmental Attributes generated by Seller's Plant will be owned by Seller and are not subject to this Agreement. Compensation for such Resource Adequacy Capacity and Delivered Energy shall be paid in accordance with Section 7, Compensation.

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Seller shall accomplish delivery of Resource Adequacy Capacity hereunder by (i) cooperating with Buyer, as provided in Subsection 6.3, Capacity Data, so that Buyer can obtain and submit the appropriate capacity data for the Plant to MISO and (ii) delivery of electric energy from the Plant in the form of Delivered Energy. Buyer shall accomplish receipt of Resource Adequacy Capacity by (i) ensuring that the Plant's capacity data is appropriately represented in MISO's Module E capacity tracking system, or any successor system ("MECT"), and converting the Unforced Capacity value determined from such data to ZRCs or MW/day, and (ii) acknowledging receipt of the Capacity in Module E. At Buyer's sole discretion, Seller's Plant may be aggregated with like technologies to determine the ZRC or MW/day value. In the event Seller's facility is aggregated with other like technologies for the purpose of awarding ZRCs or MW/day, Seller will receive the ZRC or MW/day value pro-rata, on a percentage basis, for its contribution to the aggregated facilities. Failure by Buyer to receive Resource Adequacy Capacity after Seller's delivery of such capacity has been affected shall not excuse Buyer's obligation to pay for such capacity.

### 3.1 Permits and Laws

Seller shall secure all licenses and permits required by law, regulation or ordinance, including, but not limited to, those pertaining to the generation of electric energy, the sale of capacity. Seller shall maintain all such licenses and permits throughout the term of this Agreement. In addition, Seller shall comply with all applicable ordinances, laws, orders, rules and regulations, including, but not limited to, those pertaining to the above licenses and permits made by any governmental authority or public regulatory body. At any time during the term of this Agreement, Buyer may request that Seller provide copies of any such licenses and permits, and Seller shall so provide them within five (5) Business Days.

### 3.2 Emission Allowances/Environmental Attributes

All emission allowances and Environmental Attributes, including, but not limited to, (i) all federal production tax credits, (ii) any and all state and federal investment tax credits which are generated by the Plant or attributed to the Plant or Delivered Energy, (iii) any and all ownership benefits accruing to the Seller pursuant to applicable state and federal tax laws and associated accounting rules that are established for the Plant, and (iv) all Environmental Attributes remain the property of the Seller.

## 4. PLANT CONSTRUCTION AND START DATE

### 4.1 Seller's Responsibility

Seller shall have sole responsibility for the planning, design, procurement, construction, start-up, testing, and licensing of the Plant subject to: (1) meeting all appropriate electrical and other applicable codes and regulations required by federal, state, municipal, or any



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other governmental agencies; and (2) obtaining all necessary authorizations and permits.

#### 4.2 Seller's Obligation With Respect to Construction Start

Seller shall provide Buyer with written confirmation of the construction start date and written confirmation from the contractor that work on the Plant construction has begun. After the construction start date and until the Start Date, Seller shall submit to Buyer, prior to the tenth (10th) Business Day of each Month, construction progress reports in a form satisfactory to Buyer. Unless due to delays caused solely by Buyer, if the construction start date fails to occur on or before 90 days after the Expected Start Date, Buyer may, at its option, terminate this Agreement by giving Seller written notice within thirty (30) Business Days after such Date, unless Seller has commenced construction prior to the issuance by Buyer of such notice.

#### 4.3 Start Date

The Start Date of this Agreement will be the date identified by Seller to Buyer in writing pursuant to this Subsection 4.3 which is on or after the Expected Start Date after which Seller has provided Buyer proof that all of the following conditions precedent have been satisfied:

- (i) Seller has obtained all necessary licenses, permits, certificates and approvals in accordance with Subsection 3.1, Permits and Laws;
- (ii) Seller has executed an Interconnection Agreement and received written authorization to operate Seller's Plant in parallel with applicable electric distribution or transmission system;
- (iii) The Plant is a Qualifying Facility, in accordance with Subsection 2.3, "Qualifying Facility" Status and Seller's Warranty.
- (iv) Seller has arranged for electric service at the Plant including having paid any and all fees as defined in the Consumers Energy Company's rate book or other applicable tariff if the Plant is connected to Buyer's system.
- (v) Seller is capable of commencing delivery of energy from Seller's Plant to Buyer.

Within five (5) Business Days of Seller having notified Buyer that all of the above conditions precedent have been satisfied, Buyer shall provide written notice to Seller either (i) that Buyer agrees that the conditions precedent have been satisfied, or (ii) that Buyer disagrees that the conditions precedent have been satisfied, in which case Buyer shall identify with specificity any claimed deficiencies. Following receipt of notice from Buyer that it agrees that the conditions precedent have been satisfied, Seller may declare to Buyer orally an Initial Operation Date (such date to be no earlier than the date upon which all of the above conditions precedent have been satisfied) to provide for testing Plant equipment prior to the Start Date in accordance with Subsection 4.4, Test Energy, and shall provide written confirmation of such date to Buyer within ten (10) Days. Upon completion of Plant testing, Seller shall notify Buyer orally of the Start

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Date (such date to be no earlier than the date upon which written confirmation of such oral notice is provided) and shall provide written confirmation of such date to Buyer within ten (10) Days. If Seller elects not to declare an Initial Operation Date, Seller shall notify Buyer orally of the Start Date (such date to be no earlier than the date upon which all of the above conditions precedent have been satisfied, the Expected Start Date, and the date upon which written confirmation of such oral notice is provided) and shall provide written confirmation of such date to Buyer within ten (10) Days. Unless due to delays caused solely by Buyer, if the Start Date fails to occur within two-hundred forty (240) days after the Expected Start Date (the "Outside Start Date") (which shall not be subject to extension by Force Majeure pursuant to Section 11, Force Majeure), Buyer shall have the right to terminate this Agreement upon written notice to Seller, to be effective as of the date specified in such notice, and shall have the right to retain the Earnest Money Deposit as provided for in this subsection as its sole damages caused by Seller's failure to place the Plant in service by the Outside Start Date and to deliver energy and capacity to Buyer pursuant to this Agreement.

To ensure that the Seller will perform all of its obligations under this Agreement and that the Plant will be complete and ready to operate no later than two-hundred forty (240) days after the Expected Start Date, Seller shall either pay Buyer an earnest money cash deposit or Seller shall provide to Buyer an unconditional and irrevocable direct pay letter of credit in Buyer's name, in an amount equal to Five Thousand Dollars (\$5,000.00) per megawatt times Contract Capacity identified in Part I (the 'Earnest Money Deposit'), on or before the date that is thirty (30) Days after the Effective Date. Seller shall earn interest on the cash Earnest Money Deposit it provides to Buyer from and including the date of deposit to but excluding the date such cash is returned at a rate per annum equal to the Interest Rate. If the Seller fails to provide such Earnest Money Deposit by the date specified herein, then this Agreement shall be rendered void ab initio.

If the MPSC fails to approve this Agreement or associated recovery requested pursuant to Section 2.1 Effective Date and Term (other than financial recovery available to Buyer under MCL 460.6s or MCL 460.6t), or if the MPSC's approval of the Agreement is rescinded as a result of a final appeal of the MPSC's order approving this Agreement, then this Agreement shall be rendered void ab initio and either the cash Earnest Money Deposit and any accumulated interest thereon, or the letter of credit, will be returned or released to Seller, whichever is applicable.

In the Start Date occurs within the time period specified in this subsection, either the entire cash Earnest Money Deposit and any accumulated interest, or the letter of credit,



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will be returned or released to Seller, as applicable, by Buyer within sixty (60) Days of said Start Date.

#### 4.4 Test Energy

At least seven (7) Days prior to the delivery of Test Energy, Seller shall provide Buyer with a projection of the Plant's expected electric energy output during a test period to be purchased by Buyer as Test Energy. Both twenty-four (24) hours and one (1) hour prior to the start of a test period, Seller shall provide Buyer with verbal confirmation of the Plant's expected electric energy output during such test period. During such test period, Seller shall orally notify Buyer of any unanticipated changes to the Plant's expected electric energy output.

### 5. METERING

All electric energy associated with Delivered Energy or Incidental Energy that is delivered by Seller to the applicable electric distribution system owner and/or operator shall be metered at the billing meter installation(s) provided pursuant to the Interconnection Agreement and shall be separately metered from electric energy generated by generating facilities other than the Plant. Hourly Interval registering meters are required for each generating unit served. To determine the amount of electric energy delivered, the metered values shall be adjusted for transformer losses and line losses, if applicable, between the metering location and the Point of Delivery.

### 6. OPERATION OF PLANT

#### 6.1 Seller's Operating Obligations

Seller shall operate and maintain the Plant in accordance with Prudent Utility Practices and MISO (or any successor thereto) standards and tariff requirements which apply to generating units such as Seller's Plant.

Seller shall, promptly inform Buyer as to changes in the operating status of the Plant, including, but not limited to, Plant outages pursuant to Subsection 6.2, Outages of Generating Equipment.

#### 6.2 Outages of Generating Equipment

Seller shall promptly provide to Buyer all material information relating to Plant outages and significant derates of Plant generating capacity which would affect Seller's ability to deliver electric energy from the Plant to the Point of Delivery. Such material information shall be sufficient for Buyer to determine and verify the severity and extent of such outages and derates, including at a minimum, the date and time when the outage or derate began, the cause of the outage or derate, and the anticipated date and time the outage or derate will end.

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Seller shall promptly provide to Buyer an oral report of any outages of Plant electric generating capacity as a result of (1) Seller's compliance with the provisions of Subsection 3.1, Permits and Laws, (2) interruptions or other distribution system limitations from the Plant to the Point of Delivery which would restrict the flow of Delivered Energy, or (3) any other circumstance or event that would prevent electric energy from being delivered from the Plant to the Point of Delivery, and their anticipated duration.

Seller shall confirm its schedule of generating capacity outages planned by Seller for a Calendar Year with Buyer in writing by August 1st of the prior Calendar Year. At least seven (7) Days prior to any scheduled outage and/or planned outage, Seller shall confirm with Buyer the expected start date of such outage and the expected completion date of such outage. Seller shall notify Buyer of any subsequent changes to the outage. As soon as practicable, any oral notifications shall be confirmed in writing.

#### 6.3 Capacity Data

Seller shall comply with all requirements established by (a) any regulatory agency and/or (b) any electric power reliability organization (including, but not limited to, MISO, ReliabilityFirst Corporation, or NERC), that has jurisdiction over Buyer to enable the Buyer to receive the Plant's Resource Adequacy Capacity from MISO. Seller shall submit, if necessary, applicable data to Buyer by the dates established by the Parties, but in no event shall any such dates be later than one (1) week prior to the deadlines established by MISO for such data.

#### 6.4 Communications

Seller shall cooperate with Buyer to enable Buyer to monitor, in real time, all electric energy generated by the Plant. If, after the start date of this agreement, any new real-time meter and related communications equipment is required to enable such monitoring by Buyer, Buyer shall pay for such equipment. If the applicable distribution system owner or operator requires a release by Seller or permission from Seller to disclose such real-time information or to install real-time meter and related communications equipment, Seller shall provide such release or grant such permission.

#### 6.5 Contract Termination Requirements

If required by the MISO Rules, Seller shall inform Buyer via written notice if Seller plans, upon expiration of this Agreement, to (i) register the Plant with MISO or (ii) mothball or retire the Plant. Such notice shall be provided by Seller to Buyer on or before the end of October in the year prior to the termination of this Agreement, or within twenty (20) Days of any notice provided in accordance with Section 10, Early Termination After Start Date. The Parties shall cooperate with each other to undertake the activities necessary to register, mothball, or retire the Plant in accordance with the MISO Rules. Seller shall indemnify Buyer against any

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costs, charges or penalties imposed on Buyer as a result of Seller's failure to comply or cooperate with Buyer to comply with the MISO Rules as described in this Subsection 6.5.

#### 6.6 New Regulations

In the event that the United States government, including, but not limited to the Environmental Protection Agency, and/or any other governmental entity, implements regulations during the term of this Agreement and such regulations make continued operation of the Plant materially and substantially uneconomical such that continued operation is no longer feasible, prudent and/or sustainable, Seller shall provide twelve (12) months' written notice to Buyer of such fact, and provide sufficient supporting information to evaluate this claim (unless twelve (12) months' notice is not commercially and/or legally feasible under the circumstances, in which case Seller shall provide such notice as is commercially and/or legally feasible under the circumstances). This Agreement will terminate at the time specified in such notice and neither Party shall have any further obligations hereunder except for those obligations which survive such termination, including, but not limited to, the indemnity provided in Subsection 6.5.

#### 6.7 Emergencies and Exempt Operational Periods

Buyer shall not be obligated to accept electric energy or make payments based on electric energy delivered pursuant to Section 7, Compensation, for any electric energy which Seller may have available at the Plant during any of the following events which in each case shall be deemed to constitute an Uncompensated Curtailment: (i) Emergencies after Buyer has given Seller timely notice of such Emergencies; (ii) events of Force Majeure, (iii) Exempt Operational Periods, or (iv) Seller's scheduled outages of the Plant. Notwithstanding the above, should Buyer fail to receive verification of its determination of an Exempt Operational Period from the MPSC as described in 18 CFR § 292.304(f)(4), if applicable, then such determination shall be deemed to be a Compensated Curtailment and Buyer shall be obligated to make such payments for all electric energy which Seller had available at the Plant, whether or not delivery of such electric energy was suspended due to Buyer's notification to Seller under 18 CFR § 292.304(f)(4).

### 7. COMPENSATION

#### 7.1 Capacity Payment

Commencing with the first Billing Month after the Start Date and continuing for the term of this Agreement, Buyer shall pay Seller the Capacity Purchase Price, as indicated in Part 1, for Resource Adequacy Capacity up to the Contract Capacity for the applicable Billing Month. Such payments shall be made on a monthly basis pursuant to Subsection 8.1, Billing Procedure. If the MISO Planning Resource Auction Clearing Price is used for the capacity

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payment, the Planning Resource Auction Clearing Price shall be the rate of compensation on a \$/ZRC-month basis for capacity during the months in which the Planning Resource Auction Clearing Price applies.

The method for determining the amount of ZRCs deemed to be awarded to Seller in any Planning Year shall be the method determined by MISO at the date identified in Part I of this Agreement. In the event MISO's method for determining the amount of ZRCs at the date identified in Part I of this Agreement uses a class average due to lack of actual data, actual data shall be used in subsequent Planning Years once sufficient actual data exists to satisfy MISO's criteria.

Seller shall receive a monthly capacity payment based on the Capacity Purchase Price as indicated in Part I multiplied by the amount of ZRCs awarded to the facility as described herein for the applicable MISO-established resource planning period. The current resource planning period is the Planning Year which runs from June 1st of each year through May 31st of the following year. Payments shall be reduced by (1) any applicable monthly interconnection cost owed by Seller to Buyer, and (2) the Monthly Escrow Payment identified in Part I, if applicable. The Capacity Purchase Price identified in Part I, will be applicable for the term of this Agreement.

In the event that Resource Adequacy Capacity for any Planning Year during the term of this Agreement fails to be greater than or equal to Contract Capacity Target, including but not limited to such failure that results from an early termination of this Agreement in accordance with the first paragraph under Section 10, Early Termination After Start Date, Seller shall pay Buyer as liquidated damages for such failure, by the May 1<sup>st</sup> immediately preceding the Planning Year for which the failure occurred, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Capacity Purchase Price from the Planning Resource Auction Clearing Price for such Planning Year and multiplying such result by the difference obtained by subtracting Resource Adequacy Capacity from Contract Capacity Target. For example, if the Resource Adequacy Capacity for a Planning Year was 0.4 ZRCs, the Contract Capacity Target is 0.6 ZRCs, Purchase Price was \$150,000/ZRC- Year, and the Auction Clearing Price was \$175,000/ZRC-Year, then Seller would owe Buyer an amount equal to \$5,000.00 (i.e., [ $\$175,000/\text{ZRC-Year} - \$150,000/\text{ZRC-Year}$ ] x [0.6 ZRCs – 0.4 ZRCs]). In the event that Seller fails to make the foregoing payment by the date set forth above, to satisfy Seller's payment obligation under this paragraph, Buyer shall have the right to (i) draw upon the Letter of Credit, Surety Bond and/or funds in the Escrow Account established in accordance with Subsection 2.2, Payment Security, and/or (ii) to offset the foregoing payment

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against Buyer's payment and obligations.

## 7.2 Energy Payment

Commencing with the Start Date and continuing for the term of this Agreement, Buyer shall pay Seller the Energy Purchase Price identified in Part I for Delivered Energy for the applicable Billing Month. Such payments shall be made on a monthly basis, pursuant to Subsection 8.1, Billing Procedure.

Seller shall receive a monthly energy payment equal to the Energy Purchase Price as indicated in Part I multiplied by the Delivered Energy for the applicable Billing Month. The Energy Purchase Price, as selected by the Seller and described in Exhibit A, will be applicable for the term of the contract.

In the event the delivery of energy is curtailed due to a reason that qualifies as a Compensated Curtailment, and such curtailment results in Lost Production, Seller shall be entitled to Lost Production Damages on a monthly basis as its sole and exclusive remedy and Buyer's sole and exclusive liability. Seller shall provide to Buyer relevant data and supporting documentation so that Buyer can verify the calculation of Lost Production. Lost Production must be calculated using data from the SCADA System and based on actual measurements during the applicable time as recorded by the Plant's measurement instrumentation. Buyer is not obligated to arrange alternative transmission services during any such event. Seller is not entitled to compensation for Lost Production if Energy is curtailed due to any reason that qualifies as an Uncompensated Curtailment.

## 7.3 Incidental Energy and Test Energy Payment

Commencing with the Initial Operation Date and continuing for the term of this Agreement, Buyer shall pay Seller, for each hour that the Incidental Energy Price is a positive value, the product of such Incidental Energy Price and the Incidental Energy delivered for each such hour. Commencing with the Initial Operation Date and continuing for the term of this Agreement, Seller shall pay Buyer, for each hour that the Incidental Energy Price is a negative value, the product of such Incidental Energy Price and the Incidental Energy delivered for each such hour. The Monthly net amount due shall be paid by the Party who owes it.

## 7.4 Regulatory Disallowance

If the MPSC has ruled in an order that Buyer will not be permitted complete recovery from its customers of the capacity and energy charges to be paid pursuant to Section 7, Compensation, then Buyer shall have the right to require that the charges to be paid by Buyer under Section 7 be adjusted to the charges which the MPSC indicates Buyer can recover from its customers. Any such adjustment shall be effective no earlier than the date of such MPSC order. Pending appellate review of such order and final determination of the charges that may be

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recovered by Buyer pursuant to this Agreement, the amounts not paid to the Seller due to any such adjustment shall be placed by Buyer in an interest-bearing separate account with the administrative costs incurred by that account to be borne by the account. The balance in the separate account, less administrative costs, shall be paid to the appropriate Party upon the completion of appellate review which establishes the charges that Buyer will be permitted to recover from its customers. Future capacity and energy charges to be paid by Buyer shall be no greater than will be recoverable from Buyer's customers pursuant to such final appellate determination.

Seller shall refund to Buyer any portions of the capacity and energy charges paid by Buyer to Seller under this Agreement which Buyer is not permitted, for any reason, to recover from its customers through its electric rates, or at Buyer's sole option, Buyer shall offset said amounts against amounts owed Seller by Buyer as provided in Section 9, Billing.

Buyer shall not seek a Disallowance Order and shall use goodfaith, commercially reasonable efforts to oppose any proposal to disallow costs included in the Agreement. Nothing in the Agreement shall constitute a waiver of any rights Seller may have to appeal or collaterally challenge a Disallowance Order as a violation of Seller's rights or as otherwise unlawful.

Notwithstanding the foregoing, Seller shall have the right to terminate this Agreement without further liability at any time following a Disallowance Order up to sixty (60) Days following final resolution of any appeal of or collateral challenge to such order by giving Buyer thirty (30) days' notice of such termination.

The provisions of this Subsection 7.4 shall govern over any conflicting provisions of this Agreement.

## 8. BILLING

### 8.1 Billing Procedure

As soon as practicable after the end of each Billing Month, but in no event later than the twenty-eighth (28<sup>th</sup>) Day of the Month following the Billing Month, Buyer shall submit to Seller a statement ("Statement") which shall identify any amounts owed by Buyer or Seller pursuant to Section 7, Compensation, and Subsection 9.3, Administrative Charge, during such Billing Month. Such Statement shall use metered data obtained in accordance with Section 5, Metering. At least three (3) Days prior to the payment due date, the Parties will review the final billing data and confirm the final amount owed by Buyer or Seller, as applicable. If necessary, Buyer shall submit a revised Statement to Seller.

The net amount due shall be paid by the owing Party via electronic funds



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transfer of said amount by the last Joint Banking Day of the Calendar Month following the Billing Month. Any amounts not paid when due shall bear interest until paid at the Late Payment Interest Rate. Notwithstanding the previous sentence, in no event will either Party be required to pay interest on any amounts owed to the other Party as a result of adjustments made pursuant to the following paragraph.

If metered data is unavailable, Buyer may render a Statement based on its best estimate of the amount owed by Buyer or Seller to meet the payment deadline in the second paragraph of this Subsection 8.1. Such a Statement shall indicate that it represents a best estimate of the amount owed. Such an estimate may utilize Seller's metered data, if available. If an estimate is used, an adjustment shall be made if necessary to the next Billing Month Statement issued after the date upon which actual data is determined to correct the prior Billing Month estimate.

## 8.2 Disputes

Seller may, in good faith, dispute the correctness of any Statement or any adjustment to a Statement, rendered under this Agreement and Buyer may adjust any Statement for any arithmetic or computational error within three hundred sixty-five (365) Days of the date the Statement, or adjustment to a Statement, was rendered. Any Statement dispute or Statement adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is fully resolved, including any associated appeals. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Late Payment Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments where Buyer pays Seller an amount greater than the Statement amount shall be returned within two (2) Business Days upon request or deducted by Buyer, including the date of such overpayment to but excluding the date repaid. Any dispute with respect to a Statement is waived unless the other Party is notified in accordance with this Subsection 9.2 within three hundred sixty-five (365) Days after the Statement is rendered or any specific adjustment to the Statement is made.

## 8.3 Administrative Charge

Seller is responsible for reimbursement of the administrative costs incurred by Buyer in administering this agreement in accordance with this Subsection 8.3. For all energy supplied by Seller, an administrative fee of \$1.00/MWh will apply. The above administrative charges may, all or in part, at the Buyers sole discretion, be offset against amounts owed Seller by Buyer, or charged under a separate billing, as provided in Subsection 8.1, Billing Procedure. The rates shown in Exhibit A reflect the Energy Purchase Price after the \$1.00/MWh administrative

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fee has been applied.

8.4 System Access Charge

Each Billing Month, Seller shall pay Buyer a System Access Charge equal to the System Access Charge according to the Buyer's electric rate book, but not in excess of \$50, assessed per generator meter. If both the generation delivered to the Buyer and the energy delivered to the Seller can be measured with a single meter, the System Access Charge will be waived.

9. EVENTS OF DEFAULT

An Event of Default shall mean, with respect to a Party ("Defaulting Party") the occurrence of any of the following:

- a. The failure to make, when due, any payment required pursuant to this agreement if such failure is not remedied within five (5) Business Days after written notice;
- b. Such Party becomes Bankrupt (whether voluntarily or involuntarily);
- c. Such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- d. The failure of Seller, after the year in which the Start Date occurs, to supply any Delivered Energy to the Buyer hereunder for any period of seven hundred thirty (730) consecutive Days;
- e. The making of a representation or warranty that is false or misleading in any material respect when made or when deemed or repeated that is not cured within the cure period identified by the affected Party, such period to be not less than ten (10) Business Days;
- f. The failure of a Party to perform or observe any material term or condition of the Agreement or the applicable tariffs which is not cured within thirty (30) Calendar Days of written notification thereof by the other Party, including, but not limited to:



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- (i) Failure of either Party to comply with the terms and conditions of this Agreement;
- (ii) An attempted assignment of the Agreement by Seller without Buyer's consent;
- (iii) Failure of Seller to provide Buyer commercially reasonable access rights to the Plant, or Seller's attempt to revoke or terminate such access rights;
- (iv) Failure of either Party to provide information or data to the other Party as required under this agreement;
- (v) Delivered Energy exceeding the Plant Nameplate Capacity MW<sub>AC</sub> as identified in Part 1;
- (vi) Material modification of the Plant equipment which changes the Plant's maximum electric output after the Start Date, without the prior written consent of Buyer, such consent not be unreasonably withheld

## 10. EARLY TERMINATION

### 10.1 Early Termination

If an Event of Default with respect to a Party (the "Defaulting Party") shall have occurred, the other Party (the "Non-Defaulting Party") shall have the right to terminate this Agreement upon thirty (30) Business Days' written notice to the Defaulting Party, as provided herein. In the event of the failure by the Defaulting Party to make timely payment due under this Agreement, the Non-Defaulting Party shall have the right, as an alternative or in addition to early termination, to recover from the Defaulting Party all amounts due, plus interest.

### 10.2 Early Termination Payment

Upon termination by Buyer pursuant to Section 2.3 or this Section 10, Seller shall owe Buyer the Early Termination Security Amount. As applicable, the Letter of Credit, Surety Bond and/or funds in the Escrow Account established in accordance with Subsection 2.2, Payment Security, shall be applied toward satisfying such amount. Within twenty (20) Days after Buyer has provided notice of termination to Seller pursuant to this Section 10, Buyer shall draw upon the Letter of Credit or Surety Bond or withdraw the funds in the Escrow Account and apply such funds toward the satisfaction of Seller's obligation to pay the Early Termination Security Amount. The provisions of this Section 10 regarding payments shall survive any termination of this Agreement by Buyer pursuant to this Section 10.

Buyer shall have no obligation to enter into any subsequent Power Purchase

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Agreement(s) with Seller until such time that any and all amounts owed to Buyer, including any applicable early termination payment, are paid. In any such subsequent Power Purchase Agreement, Seller shall not be entitled to a more favorable Capacity Purchase Price or Energy Purchase Price than would have been in effect during any remaining term of this Agreement. Either Party's obligation to make payments already due associated with deliveries received prior to the date of termination of the Agreement will survive any termination initiated under Subsection 2.3, "Qualifying Facility" Status and Seller's Warranty or Section 10, Early Termination.

## 11 FORCE MAJEURE

### 11.1 Definition

The term "Force Majeure" means acts or actions beyond the reasonable control of the affected Party, including without limitation, acts of God; flood, earthquake, storm or other natural calamity; war; insurrection; riot; curtailment (including any curtailment ordered by any Reliability Authority), order, regulation or restriction imposed by governmental authority; fire or explosion not caused by the Party claiming Force Majeure; transportation accidents or perils at sea; or other similar cause beyond the reasonable control but not due to negligence of the Party affected. Notwithstanding the foregoing, for purposes of this Agreement, the term "Force Majeure" shall not include: (1) shortages of supplies and shortages of fuel, other than shortages of fuel occurring in time of calamity which is preventing the Seller from obtaining fuel for its operations; (2) mechanical breakdown of equipment; and (3) strikes or labor disturbances of employees of the Party affected.

### 11.2 Obligations Under Force Majeure

Force Majeure shall apply to the following situations:

(a) If Seller is rendered wholly or partially unable by the occurrence of a Force Majeure event to supply Resource Adequacy Capacity and/or Delivered Energy, in accordance with Section 3, Capacity And Energy To Be Supplied, then, for the duration of the Force Majeure event, subject to the conditions below, Seller's obligations to supply Resource Adequacy Capacity and/or Delivered Energy to Buyer and Buyer's obligation to pay for Resource Adequacy Capacity and/or Delivered Energy pursuant to Section 7, Compensation, shall be limited to the amount of Resource Adequacy Capacity and/or Delivered Energy that Seller actually supplies.

(b) If Buyer is rendered unable by the occurrence of a Force Majeure event to receive Resource Adequacy Capacity and/or Delivered Energy supplied by Seller, then, for the duration of the Force Majeure event, subject to the conditions below, Buyer's obligation to pay Seller for Resource Adequacy Capacity, and/or Delivered Energy pursuant to Section 7,

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Compensation, and Seller's obligations to supply Resource Adequacy Capacity and/or Delivered Energy to Buyer shall be suspended to the extent that Buyer is unable to receive Resource Adequacy Capacity and/or Delivered Energy supplied by Seller.

The Party rendered wholly or partially unable to perform because of a Force Majeure event shall promptly give written notice to the other Party, including a description of such Force Majeure event, an estimate of the anticipated duration of such Force Majeure event, and the effect of the Force Majeure event on the Party's performance obligation. Unless performance has already resumed, the Party rendered wholly or partially unable to perform because of a Force Majeure event shall, within thirty (30) Days of the date upon which such notice of Force Majeure was provided, and at Monthly intervals thereafter, submit to the other Party an update of the Force Majeure event including a summary of the activities necessary for the Party to resume performance. Upon the conclusion of the Force Majeure event, the Party heretofore unable to perform shall resume performance of the obligation previously suspended and provide notice to the other Party of when the Force Majeure event ceased.

Notwithstanding any of the foregoing provisions, neither Party shall claim Force Majeure for more than a total of one hundred eighty (180) Days during any consecutive five (5) year period during the term of this Agreement; provided, however, that Seller may claim up to an additional one hundred eighty (180) Days of Force Majeure, during said five (5) year period, in the event of significant damage to Seller's Plant resulting from an event of Force Majeure.

#### 11.3 Continued Payment Obligation

Any Party's obligation to make payments already due under this Agreement shall not be suspended by Force Majeure.

### 12 INDEMNITY

Seller shall indemnify, defend and hold Buyer and its officers, agents and employees harmless from any and all liability, claims, demands, costs, judgments, loss or damage, including attorney fees, attributable to or resulting from the maintenance, possession or operation of the Plant, except those caused solely by the negligence or willful misconduct of Buyer. Without limiting the foregoing, Seller shall at Buyer's request, defend at Seller's expense any suit or proceeding brought against Buyer for any of the above-named reasons; provided that Buyer notifies Seller in writing of any such claim and promptly tenders to Seller the control and defense of any such claim with Seller's choice of counsel. Buyer shall cooperate with Seller, at Seller's expense, in defending such claim and Buyer may join in defense with counsel of its choice at its own expense. Buyer may not settle any such claim without Seller's prior written consent. Seller's indemnification shall not include damage and injuries occurring on Buyer's own system after the

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Point of Delivery, unless the damage to or injuries occurring on such system are caused by the negligence or willful misconduct of Seller.

Buyer shall indemnify, defend and hold the Seller, its officers, agents and employees harmless from any and all liability, claims, demands, costs, judgments, loss or damage, including attorney fees, resulting from damage or injuries occurring on Buyer's own system after the Point of Delivery, except those caused solely by the negligence or willful misconduct of Seller. Without limiting the foregoing, Buyer shall at Seller's request, defend at Buyer's expense any suit or proceeding brought against Seller for any of the above-named reasons; provided that Seller notifies Buyer in writing of any such claim and promptly tenders to Buyer the control and defense of any such claim with Buyer's choice of counsel. Seller shall cooperate with Buyer, at Buyer's expense, in defending such claim and Seller may join in defense with counsel of its choice at its own expense. Seller may not settle any such claim without Buyer's prior written consent.

### 13 ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall first be referred in writing to a senior representative of each Party for resolution. If the senior representatives are unable to resolve the dispute within thirty (30) Days after the date of the written notice of referral, the Parties shall submit to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (in doing so the Parties are not agreeing to use the American Arbitration Association).

The Parties shall endeavor to agree upon and appoint one person to act as sole arbitrator. The arbitration shall be conducted before a single competent and disinterested arbitrator in accordance with the Commercial Rules of the American Arbitration Association. Such arbitrator shall have professional experience in energy related transactions, shall not be, or have previously been, employed by either Party, nor have a direct or indirect interest in either Party or the subject matter of the arbitration.

Such arbitration shall be held at any mutually agreed upon location. The award of the arbitration shall be final and binding on the Parties, the Parties shall abide by the award and perform in accordance with the terms and conditions of the award, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction.

At all times, pending the resolution of any disagreement, the Parties shall continue to perform their obligations pursuant to this Agreement.

### 14 CHANGES IN LAW

In the event that there is a change in applicable law or regulation, including but not

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limited to laws and regulations of the State of Michigan, the Federal Energy Regulatory Commission or MISO, or in the event MISO ceases or modifies its operation or rules such that such modifications have a material effect on this Agreement or either Party's obligation hereunder, then Seller and Buyer shall amend this Agreement or enter into other agreements reasonable necessary to preserve and maintain the business agreement between the Parties described herein as of the Effective Date and the material terms and provisions of such relationship contemplated herein.

#### 15 SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties. This Agreement shall not be assigned by a Party without the other Party's prior written consent, which consent shall not be unreasonably withheld, but provided that (i) any assignee shall expressly assume assignor's obligations under this Agreement; and (ii) no such assignment shall impair any security given by Seller under this Agreement. Any attempted assignment or transfer without such consent shall be void and not merely voidable. Notwithstanding the foregoing, and provided that Seller is not relieved of liability hereunder, Seller shall not require Buyer's consent for assignment of this Agreement to an Affiliate of Seller provided that such Affiliate's creditworthiness (as determined by Buyer in Buyer's sole discretion) is equal to or higher than that of Seller.

If it is necessary for Seller to assign this Agreement in connection with any loan, lease or other financing arrangement for the Plant, Buyer shall enter into a collateral assignment of this Agreement with Seller and its lenders substantially in the form of Exhibit B hereto. Changes to the form of collateral assignment must be agreed to by Buyer in Buyer's sole discretion.

#### 16 GOVERNING LAW

This Agreement shall be deemed to be a Michigan contract and shall be construed in accordance with and governed by the laws of Michigan, without regard to principles of conflicts of law.

#### 17 HEADINGS

The various headings set forth in this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement.

#### 18 NOTICE TO PARTIES

Unless otherwise provided in this Agreement, any notice, consent or other communication required to be made under this Agreement shall be effective if it is in writing and

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delivered personally, by certified mail (postage prepaid and return receipt requested), reputable overnight delivery service, or other confirmable form of electronic delivery to the address set forth in Part I or to such other address as the receiving Party may designate in writing.

## 19 WAIVER

No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other Party, whether express or implied, shall not constitute a continuing waiver of, or consent to, or excuse any subsequent or different breach, nor in any way affect the validity of this Agreement or any part of it, or the right of any Party to thereafter enforce any provision of this Agreement.

## 20 NONSEVERABILITY

If any essential provision of this Agreement is declared invalid in whole or in part in a final, non-appealable order by a court or other tribunal of competent jurisdiction, then a Party adversely affected by such invalidation shall have the right to terminate this Agreement by giving the other Party thirty (30) days' notice of such termination. Concurrently with, and as a condition of, termination of this Agreement, the Parties shall enter into goodfaith negotiations to amend this Agreement to remedy the invalidated provision(s) or enter into a new agreement that reasonably preserves the rights, obligations and economic positions of the parties under this Agreement in light of the invalidated provision(s). If the parties cannot reach an agreement, they shall submit any disputed matters to the Michigan Public Service Commission for binding resolution. If any non-essential provision in this Agreement is held to be invalid or unenforceable, it shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity and enforceability of the remainder of the provision or provisions of this Agreement and without giving rise to any right of termination.

## 21 MISCELLANEOUS

### 21.1 No Third Party Beneficiaries

This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

### 21.2 Disclaimer of Joint Venture, Partnership and Agency

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership

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obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

### 21.3 Variable Interest Entity

Seller shall supply Buyer with any information necessary for Buyer to determine if Seller is a variable interest entity as defined under U.S. Generally Accepted Accounting Principles, and to determine if this Agreement is a lease under U.S. Generally Accepted Accounting Principles.

If it is determined that Seller is a variable interest entity and that Buyer will be required to include Seller in its consolidated financial statements or required to make certain disclosures, or that this Agreement is a lease, Buyer shall so notify Seller in writing. Within a time frame mutually agreed to by Buyer and Seller, Seller shall provide to Buyer written quarterly reports containing any and all financial data associated with Seller and the Plant associated with this Agreement or any other information that Buyer determines in its sole discretion is required to comply with the accounting treatment associated with these accounting standards or future applicable accounting standards. Such information may include, but shall not be limited to, nameplate capacity of the facility, megawatt-hours of electricity produced and used by the Plant, data supporting the economic life (both initial and remaining) of the Plant, the fair market value of the Plant, and any and all other costs (including costs of debt specific to the Plant) associated with Seller.

Further, if it is determined that Seller is a variable interest entity and that Buyer will be required to include Seller in its consolidated financial statements, Seller shall also provide the following on a quarterly basis:

(i) Quarterly financial statements prepared in accordance with generally accepted accounting principles;

(ii) Descriptions of the following obligations of Seller for the immediately preceding calendar quarter:

- (A) On-balance sheet obligations;
- (B) Purchase obligations;
- (C) Lease obligations and commitments;
- (D) Off-balance sheet commitments; and
- (E) Contingent obligations;
- (F) Total generating capacity;

(iii) All material contracts (or summaries if the original contracts are not immediately available) of Seller then in effect, together with any related agreements, if any,



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including, but not limited to:

- (A) Equity-related agreements;
  - (B) Debt and other borrowings;
  - (C) Material asset or stock acquisitions or dispositions;
  - (D) Documents under which guarantees or indemnities have been provided;
  - (E) Material supplier and customer contracts;
  - (F) Related-party contracts;
  - (G) Documents related to material hedging activities;
  - (H) Contingent obligations and financial commitments;
  - (I) Leasing arrangements and off-balance sheet obligations;  
and
  - (J) Management and outsourcing contracts.
- (iv) Business plans and financial projections.

## 22 ENTIRE AGREEMENT AND AMENDMENTS

This Agreement supersedes all previous representations, understandings, negotiations and agreements either written or oral between the Parties or their representatives and constitutes the entire agreement of the Parties concerning the subject matter of this Agreement. No amendments or changes to this Agreement shall be binding unless made in writing and duly executed by both Parties.

## 23 COUNTERPARTS AND ELECTRONIC DOCUMENTS

This Agreement may be executed and delivered in counterparts, including by a facsimile or an electronic transmission thereof, each of which shall be deemed an original. Any document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither Party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.



## EXHIBIT A

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ENERGY PURCHASE PRICE

Buyer will pay Seller for the following energy rate for Delivered Energy during the calendar year.

Year	Energy Rate (including ICE, line losses, and administrative fee) \$/MWh
2019	\$53.35
2020	\$53.35
2021	\$53.35
2022	\$53.35
2023	\$53.35
2024	\$53.35
2025	\$53.35
2026	\$53.35
2027	\$53.35
2028	\$53.35
2029	\$53.35
2030	\$53.35
2031	\$53.35
2032	\$53.35
2033	\$53.35
2034	\$53.35
2035	\$53.35
2036	\$53.35
2037	\$53.35
2038	\$53.35
2039	\$53.35

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EXHIBIT B  
Form of Collateral Assignment

COLLATERAL ASSIGNMENT OF  
POWER PURCHASE AGREEMENT

This ASSIGNMENT OF POWER PURCHASE AGREEMENT ("Assignment Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, among \_\_\_\_\_, a \_\_\_\_\_ (the "Borrower"), Consumers Energy Company, a Michigan corporation ("Consumers"), and \_\_\_\_\_, a \_\_\_\_\_, (the "Bank"). Borrower, Consumers and Bank are herein sometimes referred to individually as "Party" and collectively as "Parties" where appropriate.

WHEREAS, Consumers and Borrower entered into a Power Purchase Agreement dated \_\_\_\_\_, (the "PPA"), pursuant to which Consumers agreed to annually purchase electric capacity, and electric energy to be supplied by a \_\_\_\_\_ facility called the (the "Facility"); and

WHEREAS, it is a condition precedent to the making of loans pursuant to the Credit Agreement dated as of \_\_\_\_\_, by and among the Borrower and the Bank (the "Credit Agreement"), that the Borrower assign its rights under the PPA to the Bank; and

WHEREAS, such assignment requires the prior written consent of Consumers.

NOW, THEREFORE, the parties hereby agree as follows:

1. Assignment.

(a) As security for the due and punctual performance and payment of all of the Borrower's obligations under the Credit Agreement, the Borrower hereby assigns to the Bank all of the Borrower's right, title and interest in, to and under the PPA. Unless expressly provided otherwise in this Assignment Agreement, nothing in the Credit Agreement shall in any way amend, alter or otherwise affect any rights of Consumers under the PPA.

(b) The Bank may, with Consumers' prior written consent, further assign the Borrower's rights, title and interests under the PPA to another party who, pursuant to such assignment, shall obtain all of the Bank's rights, title and interest under the PPA. Notwithstanding any such further assignment and assumption of the obligations of the Borrower under the PPA by such party, the Bank shall remain liable for the obligations of the Borrower under the PPA which arose during the period in which the Bank assumed the Borrower's obligations under the PPA.

(c) Upon receipt of written notice from the Bank setting forth that (i) there exists a default under the Credit Agreement, (ii) the Bank desires to exercise its rights under this Assignment Agreement, and (iii) the Bank is assuming the obligations of Borrower under the PPA and requests Consumers to continue to perform its obligations under the PPA, Consumers shall continue to perform its obligations under such PPA and the Bank shall (a) pay Consumers for work performed or services or material provided after such request in accordance with the provisions of such PPA and (b) perform all other obligations of the Borrower under such PPA. Consumers and the Bank hereby agree that upon receipt of such written notice by Consumers the Bank may directly enforce the terms of such PPA against Consumers and that any action or proceeding to enforce the terms of the PPA may be taken by or against the Bank in its own name or in the name of the Borrower. Consumers and the Borrower each agree that unless and

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until Consumers receives such written notice from the Bank, the Bank shall not be deemed by virtue of the execution and delivery of this Assignment Agreement to have assumed any of the obligations of the Borrower under the PPA.

This Assignment Agreement shall not be deemed to release or to affect in any way the obligations of the Borrower or Consumers under any provisions of the PPA. No assumption of Borrower's obligations under the PPA by the Bank or any further assignee shall release Borrower from its obligations to Consumers under the PPA.

2. Delivery of Notices

Consumers agrees that it will notify the Bank of any termination or default under the PPA simultaneously with the giving of notice to Borrower pursuant to Sections 2, 4, and 10 of the PPA.

3. Payment.

Consumers and the Borrower agree that until receipt of written notice from the Bank that all obligations under the Credit Agreement have been fully satisfied; Consumers will make all payments due to the Borrower under the PPA directly to the following account at the Bank:

Bank Name \_\_\_\_\_  
Account No. \_\_\_\_\_  
Attention: \_\_\_\_\_  
Physical Address: \_\_\_\_\_  
City, State ZIP: \_\_\_\_\_

4. Successor and Assigns.

This Assignment Agreement shall bind and inure to the benefit of the parties to this Assignment Agreement and their respective successors and assigns.

5. Applicable Law.

The construction, performance and validity of this Assignment Agreement shall be governed by the laws of the State of Michigan (excluding the laws applicable to conflicts or choice of law). Each of the Bank, Consumers and the Borrower hereby submits to the exclusive jurisdiction of the United States District Court for the Eastern District, Southern Division of Michigan and of any Michigan State Court sitting in Jackson, Michigan for the purpose of all legal proceedings arising out of or relating to this Assignment Agreement or the transactions contemplated hereby. As of the date hereof, Consumers represents that the PPA is a legal, valid and binding obligation of Consumers.

6. Waiver.

Unless otherwise specifically provided by the terms of this Assignment Agreement, no delay or failure to exercise a right resulting from any breach of this Assignment Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting such waiver. If any representation, warranty or covenant contained in this Assignment Agreement is breached by any Party and thereafter waived by the other Parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Assignment Agreement.

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**7. Counterparts.**

This Assignment Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in multiple counterparts (including by facsimile transmission), each of which will be deemed an original and all of which shall constitute one and the same instrument. Any document generated by the Parties with respect to this Assignment Agreement, including this Assignment Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. None of the Parties hereto will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

**8. Notices.**

All written notices provided for in this Assignment Agreement shall be mailed by registered or certified mail, return receipt requested, or delivered by hand to the Borrower, Consumers and the Bank at the following addresses or such other address as may be designated in a written notice by the addressee:

**If to the Borrower:**

Borrower Name: \_\_\_\_\_  
Borrower Street Address: \_\_\_\_\_  
City, State ZIP Code: \_\_\_\_\_  
Attention: \_\_\_\_\_

**If to Consumers:**

Consumers Energy Company  
1945 West Parnall Road  
Jackson, MI 49201  
Attention: Keith G. Troyer, Director  
EGI Contracts and Settlements

**If to the Bank:**

Bank Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State ZIP: \_\_\_\_\_  
Attention: \_\_\_\_\_

All such notices shall be effective when delivered.

**9. Entire Agreement**

This Assignment Agreement shall completely and fully supersede all prior undertakings or agreements, both written and oral, between the Parties with respect to the assignment of the PPA in so far as the obligations and rights of the Borrower and Consumers are concerned.

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IN WITNESS WHEREOF, this Assignment Agreement has been executed on behalf of the undersigned Parties by their respective representatives thereunto duly authorized as of the date first above written.

Borrower Name \_\_\_\_\_

By: \_\_\_\_\_  
(Name)Its: \_\_\_\_\_  
(Title)

CONSUMERS ENERGY COMPANY

By: \_\_\_\_\_  
(Name)Its: \_\_\_\_\_  
(Title)

Bank Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Name)Its: \_\_\_\_\_  
(Title)

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EXHIBIT C  
Monthly Escrow Payment

Beginning with the Billing Month in which the Start Date occurs, Buyer will retain during each Billing Month a portion of capacity compensation until the Escrow Account equals or exceeds the Early Termination Security Amount identified in Part 1. Interest on the Monthly Escrow Payments shall accrue at the Interest Rate. Buyer will continue to retain such funds to achieve and maintain a security for continued performance. The amount retained each month shall be determined in accordance with the following formula:

Monthly Escrow Payment (\$) = \$1,200 x ZRC-month

All Monthly Escrow Payments and accumulated interest shall be retained in the Escrow Account until the Early Termination Security Amount is reached (the "Full Funding"). Once the Escrow Account has Full Funding, Buyer will not retain any portion of the monthly capacity payment; however, accumulated interest will continue to be held in the Escrow Account.

Escrow amounts will be held by Buyer from Start Date through the first Billing Month of the Planning Year that begins one year after 60% of the Contract Term has been completed (the "Refund Period"), at which point Seller will no longer be obligated to continue making Monthly Escrow Payments. The balance in the Escrow Account will be disbursed to the Seller over the remaining term of the Agreement. Beginning with the first Billing Month of the Refund Period, Buyer will pay Seller the Monthly Escrow Payment in each successive Billing Month. Any amounts, including accumulated interest, remaining in the Escrow Account after termination of this Agreement shall be paid by Buyer to Seller on the final Billing Month settlement of the Agreement.

Upon termination pursuant to Section 10 of the Agreement after the Start Date, Buyer shall retain all remaining funds in the Escrow Account to the extent necessary to satisfy Seller's obligation to pay the Early Termination Security Amount.

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**POWER PURCHASE AGREEMENT**

**BETWEEN**

**CONSUMERS ENERGY COMPANY**

**AND**

**STS Hydropower, LLC**

for the output of the Fallasburg Hydro Plant

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**POWER PURCHASE AGREEMENT****PART I  
COVERSHEET**

This *Power Purchase Agreement* ("PPA") is made as of the following date: 6/1/2020. The PPA, together with the exhibits, schedules and any written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties shall be referred to as the "Agreement." The Parties to this PPA are the following:

Consumers Energy Company or ("Buyer")

STS Hydropower, LLC or ("Seller")**All Notices:** Consumers Energy CompanyStreet: 1945 W Parnall RoadCity: Jackson State: MI Zip: 49201Attn: EGI Contracts and SettlementsPhone: 517-788-7264Facsimile: N/AEmail: energypurchase@cmsenergy.com**All Notices:** STS Hydropower, c/o Eagle Creek Renewable EnergyStreet: 65 Madison Ave., Suite 500City: Morristown State: NJ Zip: 07960Attn: Power Sales/LegalPhone: 973-998-8400Facsimile: 973-998-8041Email: notices@eaglecreekre.com**Invoices:**Attn: Jenny RickardPhone: 517-788-0091Email: jenny.rickard@cmsenergy.com**Invoices:**Attn: Accounts ReceivablePhone: 413-307-0601Email: customers@eaglecreekre.com**Scheduling:**Attn: Real-Time OperationsPhone: 517-788-0091Email: N/A**Scheduling:**Attn: Power SalesPhone: 973-998-8409Email: powersales@eaglecreekre.com**Contract Characteristics**

Plant Name:	<u>Fallasburg Hydro Plant</u>
Plant Type:	<u>Run-of-River Hydroelectric</u>
Plant Nameplate Capacity (MW <sub>AC</sub> ):	<u>0.85</u>
Plant Location:	<u>Lowell, Michigan</u>
Contract Capacity (MW <sub>AC</sub> ):	<u>0.85</u>
Contract Capacity Target (ZRCs):	<u>0.3</u>
Expected Delivered Energy (MWh/yr):	<u>5.069</u>
Earnest Money Deposit:	<u>See Other Contract Changes</u>
Early Termination Security Amount:	<u>\$50,000</u>
	<input checked="" type="checkbox"/> Surety Bond
	<input type="checkbox"/> Letter of Credit
	<input type="checkbox"/> One-Time Escrow Payment
	<input type="checkbox"/> Monthly Escrow Payments
Expected Start Date:	<u>June 1, 2019</u>
Expected Termination Date:	<u>May 31, 2039</u>
Contract Term:	<input type="checkbox"/> 5 Year <input type="checkbox"/> 10 Year <input type="checkbox"/> 15 Year
	<input checked="" type="checkbox"/> 20 Year <input type="checkbox"/> Other (Years) < 20 Years



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Energy Purchase Price: See Exhibit A

Capacity Purchase Price: \$8,768.50/ZRC-month (\$105,222/ZRC-year)

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Other Contract Changes:

1. The definition of "Earnest Money Deposit" in Section 1, Definitions, is deleted.
2. The second paragraph of Subsection 2.1, Effective Date and Term, is deleted and replaced with the following:

"The Parties' performance under this Agreement shall commence on June 1, 2019, pending the MPSC's consideration of the submission described in the preceding paragraph. In the event the MPSC denies Buyer's request to approve this Agreement or any portion of the recovery requested in the application for approval of this Agreement, or the MPSC otherwise does not approve this Agreement as described herein within six (6) months of Buyer's request for approval, this Agreement shall be void ab initio with the exception of the following payment adjustment: Buyer shall calculate the difference between the amounts paid to Seller beginning June 1, 2019 and the actual wholesale market rate value for Delivered Energy and Resource Adequacy Capacity beginning June 1, 2019 (which shall be calculated for Delivered Energy as the Day Ahead Locational Marginal Price at the CONS.CETR load node and for Resource Adequacy Capacity as the Planning Resource Auction Clearing Price), and Seller shall refund to Buyer any positive difference and Buyer shall pay to Seller any negative difference. Once effective, unless terminated as provided in this Agreement, this Agreement shall continue for the number of years identified in Part I from the Start Date and continuing through the end of the MISO Planning Year not to exceed the initiation of the following planning year of MISO. Unless terminated, under no circumstances, shall the term of this Agreement expire prior to the end of a MISO planning period."

3. The first sentence of Subsection 2.2.1, Surety Bond, shall be deleted and replaced with the following:

"If Seller selects the Surety Bond form of payment security as identified in Part I, Seller shall provide a Surety Bond to Buyer in the amount of the Early Termination Security Amount by the date that is thirty (30) Days after the Effective Date."

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4. The second sentence in Section 3, CAPACITY AND ENERGY TO BE SUPPLIED, shall be deleted and replaced with the following:

“The entitlement of Renewable Energy Credits and Environmental Attributes generated by Seller’s Plant shall be settled in accordance with Subsection 3.2, Emission Allowances/Environmental Attributes.”

5. Subsection 3.2, Emission Allowance/Environmental Attributes, is deleted and replaced with the following:

“Beginning with the Start Date and continuing for the term of this Agreement, twenty percent (20%) of the Renewable Energy Credits produced by the Seller’s Plant for the duration of this Agreement will be sold to Buyer and bundled with Delivered Energy. Seller shall accomplish delivery of RECs by transferring said RECs to Buyer’s account in the Michigan Renewable Energy Certification System within 120 days following the end of the Calendar Month in which the associated generation was produced by the Plant. All other emission allowances and Environmental Attributes, including, but not limited to, (i) all federal production tax credits, (ii) any and all state and federal investment tax credits which are generated by the Plant or attributed to the Plant or Delivered Energy, (iii) any and all ownership benefits accruing to the Seller pursuant to applicable state and federal tax laws and associated accounting rules that are established for the Plant, remain the property of the Seller.”

6. Subsection 4.2, Seller’s Obligation With Respect to Construction Start, is deleted and replaced with “{Reserved.}”

7. Subsection 4.3, Start Date, shall be deleted and replaced with the following:

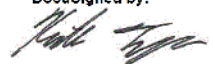
- a. “The Start Date of this Agreement shall be June 1, 2019.”

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Terms and Conditions attached and all Exhibits are part of this Agreement. SELLER  
ACKNOWLEDGES HAVING READ SAID DEFINITIONS AND TERMS AND CONDITIONS AND  
AGREES TO SAID TERMS AND CONDITIONS.

Consumers Energy Company  
1945 W. Parnall Road  
Jackson, MI 49201

(Buyer)

DocuSigned by:  
B  \_\_\_\_\_  
90C29E668C0F402...  
(Signature)

Printed Name: Keith G. TroyerTitle: Director of EGI Contracts & SettlementsDate: 5/4/2020 | 10:47 AM EDT

STS Hydropower, LLC  
65 Madison Ave, Suite 500  
Morristown, NJ 07960

(Seller)

By: Martin Karpenski  
(Signature)

Printed Name: Martin KarpenskiTitle: General CounselDate: April 24, 2020

Review and Approvals		
Contracts	Troy Smith 	4/28/2020
Risk		4/27/2020
Legal	 APPROVED AS TO FORM	4/27/20

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## Part II

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PART III  
TERMS AND CONDITIONS

This Power Purchase Agreement, herein called "Agreement", is made and entered into as of the date identified in Part I, between "Buyer" and "Seller", both identified in Part I. Buyer and Seller are herein sometimes referred to individually as "Party" and collectively as "Parties", where appropriate.

WITNESSETH:

WHEREAS, this Agreement has been prepared pursuant to the Public Utility Regulatory Policies Act of 1978 as amended and as implemented by the State of Michigan; and

WHEREAS, Buyer owns electric facilities and is engaged in the generation, purchase, distribution and sale of electric energy in the State of Michigan; and

WHEREAS, Seller owns and operates, or intends to build the generating plant identified in Part I; and

WHEREAS, Seller wishes to deliver and sell and Buyer is obligated to receive and purchase from the Plant, electric capacity and electric energy associated with such Plant in the quantities specified herein on and after the Start Date (as defined below).

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the Parties hereto agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings unless specifically stated otherwise in this Agreement:

"Affiliate" – Means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" – Defined in Part I.

"Bankrupt" – Means with respect to either Party, such Party (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition remains undismissed for a period of sixty (60)

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Days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

"Billing Month" – Means the Calendar Month. The first Billing Month with respect to capacity and energy shall commence with the Initial Operation Date and end on the last day of the Calendar Month in which the Initial Operation Date occurs.

"Business Day" – Means a Calendar Day other than Saturday, Sunday or a holiday observed by MISO.

"Buyer" – Means the party so specified in Part I.

"Calendar Day" or "Day" – Means a Calendar Day or Day and shall be the twenty-four (24) hour period beginning at 12:00 a.m. midnight Eastern Standard Time and ending at 11:59:59 p.m. Eastern Standard Time. The terms Day and Calendar Day may be used interchangeably and shall have the same meaning.

"Calendar Month" or "Month" – Means a Calendar Month or Month and shall begin on the first Day of a Month and end on the last Day of the Month. The terms Month and Calendar Month may be used interchangeably and shall have the same meaning.

"Calendar Year" or "Year" – Means a Calendar Year or Year and shall be the twelve (12) Month period beginning January 1 and ending the next subsequent December 31. The terms Year and Calendar Year may be used interchangeably and shall have the same meaning.

"Capacity Purchase Price" – Means the \$/ZRC-month as identified in Part I.

"Contract Capacity" – Means the amount of MW<sub>AC</sub> identified in Part I.

"Contract Capacity Target" – Means quantity of ZRCs identified in Part I.

"CPNode" – Has the meaning ascribed to such terms in the MISO Rules.

"Compensated Curtailment" – Means a curtailment of energy from Seller's Plant for which Seller is entitled to payment for Lost Production, and which excludes Uncompensated Curtailments.

"Contract Term" – Means the period of time specified in Part I.

"Defaulting Party" – Defined in Section 9, Events of Default.

"Delivered Energy" – Means the electric energy produced by the Plant and delivered by Seller at the Point of Delivery as such amount of electric energy delivered is determined on an hourly basis pursuant to Section 5, Metering, but not to exceed Contract Capacity during any hour.

"Early Termination Security Amount" – Means the amount as prescribed in Part I in U.S. dollars.

"Earnest Money Deposit" – Defined in Subsection 4.3, Start Date.

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"Effective Date" – Defined in Subsection 2.1, Effective Date and Term.

"Emergency or Emergencies" – A condition or conditions on the Buyer's distribution system which in the Buyer's sole reasonable judgment either has, or is likely to, result in significant imminent disruption of service to Seller, or imminent endangerment to life or property.

"Energy Purchase Price" – Means the \$/MWh price as selected and defined in Part I.

"Environmental Attribute(s)" – Means an instrument used to represent the environmental benefits associated with a fixed amount of electricity generation; excluding Renewable Energy Credits for the purpose of the Agreement. Environmental Attributes represent the general environmental benefits of renewable generation such as air pollution avoidance. The exact quantity of the environmental benefit (e.g. pounds of emission reductions of a given pollutant) may not be indicated by an Environmental Attribute, though it can be quantified separately in pollution trading markets and through engineering estimates. The Environmental Attribute represents all environmental benefits, whether or not trading markets for such pollutants or benefits exist.

"Escrow Account" – Means an account used to retain the monthly or one-time payment as selected in Part I, and described in Subsection 2.2 Payment Security.

"Event of Default" – Defined in Section 9, Events of Default.

"Exempt Operational Periods" – Those periods described in 18 CFR § 292.304(f) as in effect as of the date of this Agreement, wherein Buyer has notified Seller in a timely manner to cease delivery of electric energy hereunder during a specified period in which Seller would otherwise have electric energy available for delivery but, due to operational circumstances, purchases from Seller would in Buyer's reasonable judgment result in costs greater than those that would result if Buyer generated an equivalent amount of energy through its own facilities. Exempt Operational Periods are applicable to this Agreement only if energy rate option 1: Actual MISO Day Ahead LMP is selected as identified in Part 1 and described in Exhibit A.

"Expected Start Date" – Means the date in Part 1 as the expected start date.

"Federal Funds Effective Rate" - Means, for any Day, the interest rate per annum equal to the rate published as the Federal Funds Effective Rate by the Federal Reserve Bank in its release H.15 (519) (or, if such Day is not a Business Day, for the preceding Business Day).

"Force Majeure" – Defined in Subsection 11.1, Definition, of Section 11, Force Majeure.

"Incidental Energy" – Means both i) any electric energy delivered hourly in excess of Delivered Energy, and ii) Test Energy, as such amount of electric energy delivered is determined on an hourly basis pursuant to Section 5, Metering.



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"Incidental Energy Price" – Means the real-time LMP for the Buyer's load CPNode for the hour that Incidental Energy is delivered.

"Initial Operation Date" – Defined in Subsection 4.3, Start Date.

"Interconnection Agreement" – Means the agreement between Seller and the applicable electric system owner and/or operator which describes the terms and conditions regarding the connection of Seller's Plant to such electric system owner and/or operator.

"Interest Rate" – Means the Federal Funds Effective Rate.

"Joint Banking Day" – Means a Calendar Day on which the banks used by both Parties for financial settlement hereunder are open for business.

"Late Payment Interest Rate" – Means the lesser of (a) the per annum rate of interest equal to the prime lending rate as may be from time to time published in The Wall Street Journal under Money Rates on such Day (or if not published on such Day on the most recent preceding Day on which published), plus two (2%) percent or (b) the maximum rate permitted by applicable law.

"Letter of Credit" – Means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a credit rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, in a form reasonably acceptable to Buyer, with such changes to the terms in that form as the issuing bank may require and as may be acceptable to the beneficiary thereof.

"Locational Marginal Price" or "LMP" – Has the meaning ascribed to such term in the MISO Rules.

"Lost Production" means for any applicable period the quantity, if any, of Delivered Energy Seller could have produced and delivered to Buyer at the Point of Delivery during such period but that was not produced and delivered as a result of a Compensated Curtailment.

"Lost Production Damages" means the amount of compensation, if any, Seller is entitled to receive as a result of a Compensated Curtailment, calculated as follows:

$$LPD = LP * EPP$$

Where "LPD" means the Lost Production Damages in respect to any applicable Calendar Month (expressed in dollars);

"LP" means the aggregate quantity of Lost Production during such Month (expressed in MWh) and

"EPP" means the Energy Purchase Price applicable during such Month (expressed in \$/MWh).

"MISO" – Means the Midcontinent Independent System Operator, Inc. including any

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successor thereto.

"MISO Rules" – Means the Open Access Transmission, Energy and Operating Reserve Markets Tariff, including all schedules or attachments thereto, of MISO, as amended from time to time, including any successor tariff or rate schedule approved by the Federal Energy Regulatory Commission, together with any applicable MISO Business Practice Manual as amended from time to time.

"Monthly Escrow Payment" – Defined in Section 2.2.4, Monthly Escrow Payment.

"MPSC" – Defined in Section 2.1, Effective Date and Term.

"NERC" – Means the North American Electric Reliability Corporation, including any successor thereto.

"Non-Defaulting Party" – Defined in Section 10.1, Early Termination.

"Off-Peak Hours" – Means all hours that are not On-Peak Hours.

"On-Peak Hours" – Means the hours associated with the On-Peak period as defined by MISO.

"Outside Start Date" – Defined in Section 4.3, Start Date.

"Planning Resource Auction" – Has the meaning ascribed to such term in the MISO Rules

"Planning Resource Auction Clearing Price" – Has the meaning ascribed to such term in the MISO Rules, as pertaining to the Buyer's CONS.CETR load node.

"Planning Year" – Has the meaning ascribed to such term in the MISO Rules.

"Plant" – Means the generating facility identified in Part I, including, but not limited to: generating equipment, including auxiliary and back-up transformers; electric delivery facilities; fuel handling equipment; administrative structures; and such other necessary and related facilities, equipment and structures associated with the generation of electricity.

"Plant Nameplate Capacity" – Means the potential output capacity of the Plant in MW<sub>AC</sub> as specified in Part I.

"Point of Delivery" – Means the location at which Seller shall deliver electric energy from the Plant to the applicable electric distribution system owner and/or operator as established in the Interconnection Agreement.

"Prudent Utility Practices" – Means the practices generally followed by the electric utility industry, as changed from time to time, which generally include, but are not limited to, engineering, operating, safety, reliability, equipment, and adherence to applicable industry codes, standards, regulations and laws.

"Reliability Authority" – Means MISO, International Transmission Company, Michigan Electric Transmission Company, NERC, ReliabilityFirst Corporation, and any successor

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entity to the foregoing entities, and any other regional reliability council and any other regional transmission organization, in each case having jurisdiction over either or both of the Parties, the Plant, or MISO's transmission system, whether acting under express or delegated authority.

"Renewable Energy Credit(s)" or "REC(s)" – Has the meaning specified in Act MCL460.1033.

"Resource Adequacy Capacity" – Means the Unforced Capacity value for the Plant for each Planning Year as determined by MISO under the MISO Rules on an annual basis and converted to ZRCs by Buyer.

"Seller" – Means the party so specified in Part I.

"Start Date" – Defined in Subsection 4.3, Start Date.

"Statement" – Defined in Subsection 8.1, Billing Procedure.

"Surety Bond" – means a bond that is issued by a surety or insurance company with, in either case, a credit rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated either by both S&P or Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, in a form reasonably acceptable to Buyer.

"System Access Charge" – Defined in Section 8.4.

"Test Energy" – Means electric energy delivered to Buyer prior to Start Date as Incidental Energy in accordance with Subsection 4.4, Test Energy.

"Uncompensated Curtailment" – Defined in Section 6.7, Emergencies and Exempt Operational Periods.

"Unforced Capacity" - Has the meaning ascribed to such term in the MISO Rules.

"Zonal Resource Credits" or "ZRCs" – Has the meaning ascribed to such term in the MISO Rules at the time the contract is executed.

## 2. GENERAL PROVISIONS

### 2.1 Effective Date and Term

This Agreement shall be effective upon execution by both Parties ("Effective Date"); provided, however that the Parties' rights and obligations under this Agreement shall be contingent upon the approval of this Agreement by the Michigan Public Service Commission ("MPSC"). Within thirty (30) days of the Effective Date, Buyer shall submit this Agreement to the MPSC for approval of the capacity and energy payments set out herein for the purposes of Michigan Public Act 304 of 1982, as amended ("Act 304"), Michigan Public Act 81 of 1987, as amended ("Act 81"), and all other applicable law. The foregoing submission shall specifically request MPSC approval of cost recovery of all payments set forth in this Agreement, as well as approval of the portion of such payments that is recovered as a booked cost of purchased and net interchanged

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power pursuant to 1982 Public Act 304, as amended.

In the event the MPSC denies Buyer's request to approve this Agreement or any portion of the recovery requested in the application for approval of this Agreement, or the MPSC otherwise does not approve this Agreement as described herein within six (6) months of Buyer's request for approval, this Agreement shall be void ab initio. Once effective, unless terminated as provided in this Agreement, this Agreement shall continue for the number of years identified in Part I from the Start Date and continuing through the end of the MISO Planning Year not to exceed the initiation of the following planning year of MISO. Unless terminated, under no circumstances, shall the term of this Agreement expire prior to the end of a MISO planning period.

Buyer may also seek financial recovery available to Buyer under MCL 460.6s or MCL 460.6t. MPSC disapproval of Buyer's request for financial recovery available to Buyer under MCL 460.6s or MCL 460.6t shall not render this Agreement void ab initio or otherwise affect this Agreement.

## 2.2 Payment Security.

Seller shall provide and maintain, as described herein, the Early Termination Security Amount specified in Part I for compliance with its payment obligations, for the term of the Agreement. Such Early Termination Security Amount shall be provided via one of the forms provided for in this Subsection 2.2. As detailed in Exhibit C, a portion of the Early Termination Security Amount in the Escrow Account will be returned to Seller beginning with the first month of the Planning Year that occurs one year after three fifths (3/5ths) of the contract term has concluded. Any portion of the Early Termination Security Amount, including accumulated interest above the Early Termination Security Amount, remaining upon expiration or termination of this Agreement, after deduction for any payment obligations still owing to Buyer, shall be returned to Seller by Buyer within sixty (60) Days of such expiration or termination. The Early Termination Security Amount is intended to safeguard Buyer against undue financial risk associated with loss of Seller-provided capacity during the Contract Term of the Agreement as indicated in Part 1. Notwithstanding the aforementioned referenced safeguard for financial risk associated with loss of capacity provided by Seller, Seller shall also be responsible for other damages it may cause to Buyer unrelated to financial risk associated with loss of capacity provided by Seller.

### 2.2.1 Surety Bond

If Seller selects the Surety Bond form of payment security as identified in Part I, Seller shall provide a Surety Bond to Buyer in the amount of the Early Termination Security Amount by the date that is thirty (30) Days after the Start Date. All Surety Bonds provided in accordance with this Agreement shall be subject to the following provisions:

Unless otherwise agreed to in writing by the Parties, each Surety

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Bond shall be maintained for the benefit of Buyer. Seller shall (i) if necessary to maintain a Surety Bond throughout the term of this Agreement, renew or cause the renewal of each outstanding Surety Bond on a timely basis as provided in the relevant Surety Bond, ii) if the institution that issued an outstanding Surety Bond has indicated its intent not to renew such Surety Bond, provide either a substitute Surety Bond, a Letter of Credit in accordance with Subsection 2.2.2 below, or cash in accordance with Subsection 2.2.3 below, in each case at least twenty (20) Business Days prior to the expiration of the outstanding Surety Bond, iii) replace a Surety Bond in full in the event such Surety Bond is drawn upon to satisfy the provisions of Subsection 6.1 herein, and (iv) if an institution issuing a Surety Bond shall fail to honor Buyer's properly documented request to draw on an outstanding Surety Bond, provide cash within one (1) Business Day after such refusal.

#### 2.2.2 Letters of Credit

If Seller selects the Letter of Credit form of payment security as identified in Part I, Seller shall provide a Letter of Credit to Buyer in the amount of the Early Termination Security Amount by the date that is thirty (30) Days after the Start Date. All Letters of Credit provided in accordance with this Agreement shall be subject to the following provisions:

Unless otherwise agreed to in writing by the Parties, each Letter of Credit shall be maintained for the benefit of Buyer. Seller shall (i) if necessary to maintain a Letter of Credit throughout the term of this Agreement, renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, ii) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit, a Surety Bond in accordance with Subsection 2.2.1 above, or cash in accordance with Subsection 2.2.3 below, in each case at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit, iii) replace a Letter of Credit in full in the event such Letter of Credit is drawn upon to satisfy the provisions of Subsection 7.1, Capacity Payment, and (iv) if a bank issuing a Letter of Credit shall fail to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, provide cash within one (1) Business Day after such refusal.

#### 2.2.3 One-Time Escrow Payment

If Seller selects the One-Time Escrow Payment form of payment security as identified in Part I, Seller shall provide a cash payment to Buyer in the amount of the Early Termination Security Amount within thirty (30) days of Start Date. Buyer shall establish an Escrow Account with the administrative costs incurred by that account to be borne by the account with the cash payment provided by Seller. In the event the funds in the Escrow Account are drawn upon to satisfy the provisions of Subsection 7.1, Capacity Payment, Seller shall provide Buyer with a cash payment in an amount sufficient to restore the amount of funds in the Escrow

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Account to the amount prior to the draw within two (2) Business Days of the draw. Interest on cash provided in accordance with this Subsection 2.2.3 shall accrue at a rate per annum equal to the Interest Rate.

#### 2.2.4 Monthly Escrow Payment

If Seller selects the Monthly Escrow Payment form of payment security, Buyer will retain during each Billing Month a portion of capacity charges equal to the monthly payment determined in Exhibit C. In the event the funds in the Escrow Account are drawn upon to satisfy the provisions of Subsection 7.1, Capacity Payment, Seller shall provide Buyer with a cash payment in an amount sufficient to restore the amount of funds in the Escrow Account to the amount prior to the draw within two (2) Business Days of the draw. Interest on cash provided in accordance with this Subsection 2.2.4 shall accrue at a rate per annum equal to the Interest Rate.

#### 2.3 "Qualifying Facility" Status and Seller's Warranty

Seller hereby represents to Buyer that the Plant has or will achieve qualifying status by the Start Date as a "cogeneration facility" or a "small power production facility" under 18 CFR §§ 292.201-292.207.

Seller will use commercially reasonable efforts to ensure that the Plant will maintain its status as a "Qualifying Facility" under the Public Utility Regulatory Policies Act of 1978, Public Law 95-617, 92 Stat 3117 and the implementing Federal Regulations promulgated thereunder as such are amended to the Effective Date of this Agreement and appear at 18 CFR §§ 292.101 through 292.602, throughout the term of this Agreement. In the event Seller fails to maintain such "Qualifying Facility" status, Buyer shall have the option of terminating this Agreement by giving Seller one hundred eighty (180) Days written notice.

### 3. CAPACITY AND ENERGY TO BE SUPPLIED

Subject to the terms and conditions of this Agreement, beginning with the Start Date and continuing until the termination of this Agreement, Seller agrees to sell and supply to Buyer, and Buyer agrees to accept and purchase from Seller, all Resource Adequacy Capacity and Delivered Energy that Seller supplies and/or delivers to Buyer under this Agreement. Renewable Energy Credits and Environmental Attributes generated by Seller's Plant will be owned by Seller and are not subject to this Agreement. Compensation for such Resource Adequacy Capacity and Delivered Energy shall be paid in accordance with Section 7, Compensation.

Seller shall accomplish delivery of Resource Adequacy Capacity hereunder by (i) cooperating with Buyer, as provided in Subsection 6.3, Capacity Data, so that Buyer can obtain and submit the appropriate capacity data for the Plant to MISO and (ii) delivery of electric energy



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from the Plant in the form of Delivered Energy. Buyer shall accomplish receipt of Resource Adequacy Capacity by (i) ensuring that the Plant's capacity data is appropriately represented in MISO's Module E capacity tracking system, or any successor system ("MECT"), and converting the Unforced Capacity value determined from such data to ZRCs or MW/day, and (ii) acknowledging receipt of the Capacity in Module E. At Buyer's sole discretion, Seller's Plant may be aggregated with like technologies to determine the ZRC or MW/day value. In the event Seller's facility is aggregated with other like technologies for the purpose of awarding ZRCs or MW/day, Seller will receive the ZRC or MW/day value pro-rata, on a percentage basis, for its contribution to the aggregated facilities. Failure by Buyer to receive Resource Adequacy Capacity after Seller's delivery of such capacity has been affected shall not excuse Buyer's obligation to pay for such capacity.

### 3.1 Permits and Laws

Seller shall secure all licenses and permits required by law, regulation or ordinance, including, but not limited to, those pertaining to the generation of electric energy, the sale of capacity. Seller shall maintain all such licenses and permits throughout the term of this Agreement. In addition, Seller shall comply with all applicable ordinances, laws, orders, rules and regulations, including, but not limited to, those pertaining to the above licenses and permits made by any governmental authority or public regulatory body. At any time during the term of this Agreement, Buyer may request that Seller provide copies of any such licenses and permits, and Seller shall so provide them within five (5) Business Days.

### 3.2 Emission Allowances/Environmental Attributes

All emission allowances and Environmental Attributes, including, but not limited to, (i) all federal production tax credits, (ii) any and all state and federal investment tax credits which are generated by the Plant or attributed to the Plant or Delivered Energy, (iii) any and all ownership benefits accruing to the Seller pursuant to applicable state and federal tax laws and associated accounting rules that are established for the Plant, and (iv) all Environmental Attributes remain the property of the Seller.

## 4. PLANT CONSTRUCTION AND START DATE

### 4.1 Seller's Responsibility

Seller shall have sole responsibility for the planning, design, procurement, construction, start-up, testing, and licensing of the Plant subject to: (1) meeting all appropriate electrical and other applicable codes and regulations required by federal, state, municipal, or any other governmental agencies; and (2) obtaining all necessary authorizations and permits.

### 4.2 Seller's Obligation With Respect to Construction Start

Seller shall provide Buyer with written confirmation of the construction start date and written

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confirmation from the contractor that work on the Plant construction has begun. After the construction start date and until the Start Date, Seller shall submit to Buyer, prior to the tenth (10th) Business Day of each Month, construction progress reports in a form satisfactory to Buyer. Unless due to delays caused solely by Buyer, if the construction start date fails to occur on or before 90 days after the Expected Start Date, Buyer may, at its option, terminate this Agreement by giving Seller written notice within thirty (30) Business Days after such Date, unless Seller has commenced construction prior to the issuance by Buyer of such notice.

#### 4.3 Start Date

The Start Date of this Agreement will be the date identified by Seller to Buyer in writing pursuant to this Subsection 4.3 which is on or after the Expected Start Date after which Seller has provided Buyer proof that all of the following conditions precedent have been satisfied:

- (i) Seller has obtained all necessary licenses, permits, certificates and approvals in accordance with Subsection 3.1, Permits and Laws;
- (ii) Seller has executed an Interconnection Agreement and received written authorization to operate Seller's Plant in parallel with applicable electric distribution or transmission system;
- (iii) The Plant is a Qualifying Facility, in accordance with Subsection 2.3, "Qualifying Facility" Status and Seller's Warranty.
- (iv) Seller has arranged for electric service at the Plant including having paid any and all fees as defined in the Consumers Energy Company's rate book or other applicable tariff if the Plant is connected to Buyer's system.
- (v) Seller is capable of commencing delivery of energy from Seller's Plant to Buyer.

Within five (5) Business Days of Seller having notified Buyer that all of the above conditions precedent have been satisfied, Buyer shall provide written notice to Seller either (i) that Buyer agrees that the conditions precedent have been satisfied, or (ii) that Buyer disagrees that the conditions precedent have been satisfied, in which case Buyer shall identify with specificity any claimed deficiencies. Following receipt of notice from Buyer that it agrees that the conditions precedent have been satisfied, Seller may declare to Buyer orally an Initial Operation Date (such date to be no earlier than the date upon which all of the above conditions precedent have been satisfied) to provide for testing Plant equipment prior to the Start Date in accordance with Subsection 4.4, Test Energy, and shall provide written confirmation of such date to Buyer within ten (10) Days. Upon completion of Plant testing, Seller shall notify Buyer orally of the Start Date (such date to be no earlier than the date upon which written confirmation of such oral notice is provided) and shall provide written confirmation of such date to Buyer within ten (10) Days. If Seller elects not to declare an Initial Operation Date, Seller shall notify Buyer orally of the Start Date (such date to



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be no earlier than the date upon which all of the above conditions precedent have been satisfied, the Expected Start Date, and the date upon which written confirmation of such oral notice is provided) and shall provide written confirmation of such date to Buyer within ten (10) Days. Unless due to delays caused solely by Buyer, if the Start Date fails to occur within two-hundred forty (240) days after the Expected Start Date (the "Outside Start Date") (which shall not be subject to extension by Force Majeure pursuant to Section 11, Force Majeure), Buyer shall have the right to terminate this Agreement upon written notice to Seller, to be effective as of the date specified in such notice, and shall have the right to retain the Earnest Money Deposit as provided for in this subsection as its sole damages caused by Seller's failure to place the Plant in service by the Outside Start Date and to deliver energy and capacity to Buyer pursuant to this Agreement.

To ensure that the Seller will perform all of its obligations under this Agreement and that the Plant will be complete and ready to operate no later than two-hundred forty (240) days after the Expected Start Date, Seller shall either pay Buyer an earnest money cash deposit or Seller shall provide to Buyer an unconditional and irrevocable direct pay letter of credit in Buyer's name, in an amount equal to Five Thousand Dollars (\$5,000.00) per megawatt times Contract Capacity identified in Part I (the 'Earnest Money Deposit'), on or before the date that is thirty (30) Days after the Effective Date. Seller shall earn interest on the cash Earnest Money Deposit it provides to Buyer from and including the date of deposit to but excluding the date such cash is returned at a rate per annum equal to the Interest Rate. If the Seller fails to provide such Earnest Money Deposit by the date specified herein, then this Agreement shall be rendered void ab initio.

If the MPSC fails to approve this Agreement or associated recovery requested pursuant to Section 2.1 Effective Date and Term (other than financial recovery available to Buyer under MCL 460.6s or MCL 460.6t), or if the MPSC's approval of the Agreement is rescinded as a result of a final appeal of the MPSC's order approving this Agreement, then this Agreement shall be rendered void ab initio and either the cash Earnest Money Deposit and any accumulated interest thereon, or the letter of credit, will be returned or released to Seller, whichever is applicable.

In the Start Date occurs within the time period specified in this subsection, either the entire cash Earnest Money Deposit and any accumulated interest, or the letter of credit, will be returned or released to Seller, as applicable, by Buyer within sixty (60) Days of said Start Date.

#### 4.4 Test Energy

At least seven (7) Days prior to the delivery of Test Energy, Seller shall provide Buyer with a projection of the Plant's expected electric energy output during a test period to be purchased by Buyer as Test Energy. Both twenty-four (24) hours and one (1) hour prior to the start of a test period, Seller shall provide Buyer with verbal confirmation of the Plant's expected

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electric energy output during such test period. During such test period, Seller shall orally notify Buyer of any unanticipated changes to the Plant's expected electric energy output.

5. METERING

All electric energy associated with Delivered Energy or Incidental Energy that is delivered by Seller to the applicable electric distribution system owner and/or operator shall be metered at the billing meter installation(s) provided pursuant to the Interconnection Agreement and shall be separately metered from electric energy generated by generating facilities other than the Plant. Hourly Interval registering meters are required for each generating unit served. To determine the amount of electric energy delivered, the metered values shall be adjusted for transformer losses and line losses, if applicable, between the metering location and the Point of Delivery.

6. OPERATION OF PLANT

6.1 Seller's Operating Obligations

Seller shall operate and maintain the Plant in accordance with Prudent Utility Practices and MISO (or any successor thereto) standards and tariff requirements which apply to generating units such as Seller's Plant.

Seller shall, promptly inform Buyer as to changes in the operating status of the Plant, including, but not limited to, Plant outages pursuant to Subsection 6.2, Outages of Generating Equipment.

6.2 Outages of Generating Equipment

Seller shall promptly provide to Buyer all material information relating to Plant outages and significant derates of Plant generating capacity which would affect Seller's ability to deliver electric energy from the Plant to the Point of Delivery. Such material information shall be sufficient for Buyer to determine and verify the severity and extent of such outages and derates, including at a minimum, the date and time when the outage or derate began, the cause of the outage or derate, and the anticipated date and time the outage or derate will end.

Seller shall promptly provide to Buyer an oral report of any outages of Plant electric generating capacity as a result of (1) Seller's compliance with the provisions of Subsection 3.1, Permits and Laws, (2) interruptions or other distribution system limitations from the Plant to the Point of Delivery which would restrict the flow of Delivered Energy, or (3) any other circumstance or event that would prevent electric energy from being delivered from the Plant to the Point of Delivery, and their anticipated duration.

Seller shall confirm its schedule of generating capacity outages planned by Seller for a Calendar Year with Buyer in writing by August 1st of the prior Calendar Year. At least

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seven (7) Days prior to any scheduled outage and/or planned outage, Seller shall confirm with Buyer the expected start date of such outage and the expected completion date of such outage. Seller shall notify Buyer of any subsequent changes to the outage. As soon as practicable, any oral notifications shall be confirmed in writing.

### 6.3 Capacity Data

Seller shall comply with all requirements established by (a) any regulatory agency and/or (b) any electric power reliability organization (including, but not limited to, MISO, ReliabilityFirst Corporation, or NERC), that has jurisdiction over Buyer to enable the Buyer to receive the Plant's Resource Adequacy Capacity from MISO. Seller shall submit, if necessary, applicable data to Buyer by the dates established by the Parties, but in no event shall any such dates be later than one (1) week prior to the deadlines established by MISO for such data.

### 6.4 Communications

Seller shall cooperate with Buyer to enable Buyer to monitor, in real time, all electric energy generated by the Plant. If, after the start date of this agreement, any new real-time meter and related communications equipment is required to enable such monitoring by Buyer, Buyer shall pay for such equipment. If the applicable distribution system owner or operator requires a release by Seller or permission from Seller to disclose such real-time information or to install real-time meter and related communications equipment, Seller shall provide such release or grant such permission.

### 6.5 Contract Termination Requirements

If required by the MISO Rules, Seller shall inform Buyer via written notice if Seller plans, upon expiration of this Agreement, to (i) register the Plant with MISO or (ii) mothball or retire the Plant. Such notice shall be provided by Seller to Buyer on or before the end of October in the year prior to the termination of this Agreement, or within twenty (20) Days of any notice provided in accordance with Section 10, Early Termination After Start Date. The Parties shall cooperate with each other to undertake the activities necessary to register, mothball, or retire the Plant in accordance with the MISO Rules. Seller shall indemnify Buyer against any costs, charges or penalties imposed on Buyer as a result of Seller's failure to comply or cooperate with Buyer to comply with the MISO Rules as described in this Subsection 6.5.

### 6.6 New Regulations

In the event that the United States government, including, but not limited to the Environmental Protection Agency, and/or any other governmental entity, implements regulations during the term of this Agreement and such regulations make continued operation of the Plant materially and substantially uneconomical such that continued operation is no longer feasible, prudent and/or sustainable, Seller shall provide twelve (12) months' written notice to

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Buyer of such fact, and provide sufficient supporting information to evaluate this claim (unless twelve (12) months' notice is not commercially and/or legally feasible under the circumstances, in which case Seller shall provide such notice as is commercially and/or legally feasible under the circumstances). This Agreement will terminate at the time specified in such notice and neither Party shall have any further obligations hereunder except for those obligations which survive such termination, including, but not limited to, the indemnity provided in Subsection 6.5.

#### 6.7 Emergencies and Exempt Operational Periods

Buyer shall not be obligated to accept electric energy or make payments based on electric energy delivered pursuant to Section 7, Compensation, for any electric energy which Seller may have available at the Plant during any of the following events which in each case shall be deemed to constitute an Uncompensated Curtailment: (i) Emergencies after Buyer has given Seller timely notice of such Emergencies; (ii) events of Force Majeure, (iii) Exempt Operational Periods, or (iv) Seller's scheduled outages of the Plant. Notwithstanding the above, should Buyer fail to receive verification of its determination of an Exempt Operational Period from the MPSC as described in 18 CFR § 292.304(f)(4), if applicable, then such determination shall be deemed to be a Compensated Curtailment and Buyer shall be obligated to make such payments for all electric energy which Seller had available at the Plant, whether or not delivery of such electric energy was suspended due to Buyer's notification to Seller under 18 CFR § 292.304(f)(4).

### 7. COMPENSATION

#### 7.1 Capacity Payment

Commencing with the first Billing Month after the Start Date and continuing for the term of this Agreement, Buyer shall pay Seller the Capacity Purchase Price, as indicated in Part 1, for Resource Adequacy Capacity up to the Contract Capacity for the applicable Billing Month. Such payments shall be made on a monthly basis pursuant to Subsection 8.1, Billing Procedure. If the MISO Planning Resource Auction Clearing Price is used for the capacity payment, the Planning Resource Auction Clearing Price shall be the rate of compensation on a \$/ZRC-month basis for capacity during the months in which the Planning Resource Auction Clearing Price applies.

The method for determining the amount of ZRCs deemed to be awarded to Seller in any Planning Year shall be the method determined by MISO at the date identified in Part I of this Agreement. In the event MISO's method for determining the amount of ZRCs at the date identified in Part I of this Agreement uses a class average due to lack of actual data, actual data shall be used in subsequent Planning Years once sufficient actual data exists to satisfy MISO's criteria.

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Seller shall receive a monthly capacity payment based on the Capacity Purchase Price as indicated in Part I multiplied by the amount of ZRCs awarded to the facility as described herein for the applicable MISO-established resource planning period. The current resource planning period is the Planning Year which runs from June 1st of each year through May 31st of the following year. Payments shall be reduced by (1) any applicable monthly interconnection cost owed by Seller to Buyer, and (2) the Monthly Escrow Payment identified in Part I, if applicable. The Capacity Purchase Price identified in Part I, will be applicable for the term of this Agreement.

In the event that Resource Adequacy Capacity for any Planning Year during the term of this Agreement fails to be greater than or equal to Contract Capacity Target, including but not limited to such failure that results from an early termination of this Agreement in accordance with the first paragraph under Section 10, Early Termination After Start Date, Seller shall pay Buyer as liquidated damages for such failure, by the May 1<sup>st</sup> immediately preceding the Planning Year for which the failure occurred, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Capacity Purchase Price from the Planning Resource Auction Clearing Price for such Planning Year and multiplying such result by the difference obtained by subtracting Resource Adequacy Capacity from Contract Capacity Target. For example, if the Resource Adequacy Capacity for a Planning Year was 0.4 ZRCs, the Contract Capacity Target is 0.6 ZRCs, Purchase Price was \$150,000/ZRC- Year, and the Auction Clearing Price was \$175,000/ZRC-Year, then Seller would owe Buyer an amount equal to \$5,000.00 (i.e.,  $[\$175,000/\text{ZRC-Year} - \$150,000/\text{ZRC-Year}] \times [0.6 \text{ ZRCs} - 0.4 \text{ ZRCs}]$ ). In the event that Seller fails to make the foregoing payment by the date set forth above, to satisfy Seller's payment obligation under this paragraph, Buyer shall have the right to (i) draw upon the Letter of Credit, Surety Bond and/or funds in the Escrow Account established in accordance with Subsection 2.2, Payment Security, and/or (ii) to offset the foregoing payment against Buyer's payment and obligations.

## 7.2 Energy Payment

Commencing with the Start Date and continuing for the term of this Agreement, Buyer shall pay Seller the Energy Purchase Price identified in Part I for Delivered Energy for the applicable Billing Month. Such payments shall be made on a monthly basis, pursuant to Subsection 8.1, Billing Procedure.

Seller shall receive a monthly energy payment equal to the Energy Purchase Price as indicated in Part I multiplied by the Delivered Energy for the applicable Billing Month. The Energy Purchase Price, as selected by the Seller and described in Exhibit A, will be applicable for the term of the contract.

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In the event the delivery of energy is curtailed due to a reason that qualifies as a Compensated Curtailment, and such curtailment results in Lost Production, Seller shall be entitled to Lost Production Damages on a monthly basis as its sole and exclusive remedy and Buyer's sole and exclusive liability. Seller shall provide to Buyer relevant data and supporting documentation so that Buyer can verify the calculation of Lost Production. Lost Production must be calculated using data from the SCADA System and based on actual measurements during the applicable time as recorded by the Plant's measurement instrumentation. Buyer is not obligated to arrange alternative transmission services during any such event. Seller is not entitled to compensation for Lost Production if Energy is curtailed due to any reason that qualifies as an Uncompensated Curtailment.

### 7.3 Incidental Energy and Test Energy Payment

Commencing with the Initial Operation Date and continuing for the term of this Agreement, Buyer shall pay Seller, for each hour that the Incidental Energy Price is a positive value, the product of such Incidental Energy Price and the Incidental Energy delivered for each such hour. Commencing with the Initial Operation Date and continuing for the term of this Agreement, Seller shall pay Buyer, for each hour that the Incidental Energy Price is a negative value, the product of such Incidental Energy Price and the Incidental Energy delivered for each such hour. The Monthly net amount due shall be paid by the Party who owes it.

### 7.4 Regulatory Disallowance

If the MPSC has ruled in an order that Buyer will not be permitted complete recovery from its customers of the capacity and energy charges to be paid pursuant to Section 7, Compensation, then Buyer shall have the right to require that the charges to be paid by Buyer under Section 7 be adjusted to the charges which the MPSC indicates Buyer can recover from its customers. Any such adjustment shall be effective no earlier than the date of such MPSC order. Pending appellate review of such order and final determination of the charges that may be recovered by Buyer pursuant to this Agreement, the amounts not paid to the Seller due to any such adjustment shall be placed by Buyer in an interest-bearing separate account with the administrative costs incurred by that account to be borne by the account. The balance in the separate account, less administrative costs, shall be paid to the appropriate Party upon the completion of appellate review which establishes the charges that Buyer will be permitted to recover from its customers. Future capacity and energy charges to be paid by Buyer shall be no greater than will be recoverable from Buyer's customers pursuant to such final appellate determination.

Seller shall refund to Buyer any portions of the capacity and energy charges paid by Buyer to Seller under this Agreement which Buyer is not permitted, for any reason, to recover from its customers through its electric rates, or at Buyer's sole option, Buyer shall offset said amounts



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against amounts owed Seller by Buyer as provided in Section 9, Billing.

Buyer shall not seek a Disallowance Order and shall use goodfaith, commercially reasonable efforts to oppose any proposal to disallow costs included in the Agreement. Nothing in the Agreement shall constitute a waiver of any rights Seller may have to appeal or collaterally challenge a Disallowance Order as a violation of Seller's rights or as otherwise unlawful.

Notwithstanding the foregoing, Seller shall have the right to terminate this Agreement without further liability at any time following a Disallowance Order up to sixty (60) Days following final resolution of any appeal of or collateral challenge to such order by giving Buyer thirty (30) days' notice of such termination.

The provisions of this Subsection 7.4 shall govern over any conflicting provisions of this Agreement.

## 8. BILLING

### 8.1 Billing Procedure

As soon as practicable after the end of each Billing Month, but in no event later than the twenty-eighth (28<sup>th</sup>) Day of the Month following the Billing Month, Buyer shall submit to Seller a statement ("Statement") which shall identify any amounts owed by Buyer or Seller pursuant to Section 7, Compensation, and Subsection 9.3, Administrative Charge, during such Billing Month. Such Statement shall use metered data obtained in accordance with Section 5, Metering. At least three (3) Days prior to the payment due date, the Parties will review the final billing data and confirm the final amount owed by Buyer or Seller, as applicable. If necessary, Buyer shall submit a revised Statement to Seller.

The net amount due shall be paid by the owing Party via electronic funds transfer of said amount by the last Joint Banking Day of the Calendar Month following the Billing Month. Any amounts not paid when due shall bear interest until paid at the Late Payment Interest Rate. Notwithstanding the previous sentence, in no event will either Party be required to pay interest on any amounts owed to the other Party as a result of adjustments made pursuant to the following paragraph.

If metered data is unavailable, Buyer may render a Statement based on its best estimate of the amount owed by Buyer or Seller to meet the payment deadline in the second paragraph of this Subsection 8.1. Such a Statement shall indicate that it represents a best estimate of the amount owed. Such an estimate may utilize Seller's metered data, if available. If an estimate is used, an adjustment shall be made if necessary to the next Billing Month Statement issued after the date upon which actual data is determined to correct the prior Billing Month estimate.

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## 8.2 Disputes

Seller may, in good faith, dispute the correctness of any Statement or any adjustment to a Statement, rendered under this Agreement and Buyer may adjust any Statement for any arithmetic or computational error within three hundred sixty-five (365) Days of the date the Statement, or adjustment to a Statement, was rendered. Any Statement dispute or Statement adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is fully resolved, including any associated appeals. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Late Payment Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments where Buyer pays Seller an amount greater than the Statement amount shall be returned within two (2) Business Days upon request or deducted by Buyer, including the date of such overpayment to but excluding the date repaid. Any dispute with respect to a Statement is waived unless the other Party is notified in accordance with this Subsection 9.2 within three hundred sixty-five (365) Days after the Statement is rendered or any specific adjustment to the Statement is made.

## 8.3 Administrative Charge

Seller is responsible for reimbursement of the administrative costs incurred by Buyer in administering this agreement in accordance with this Subsection 8.3. For all energy supplied by Seller, an administrative fee of \$1.00/MWh will apply. The above administrative charges may, all or in part, at the Buyers sole discretion, be offset against amounts owed Seller by Buyer, or charged under a separate billing, as provided in Subsection 8.1, Billing Procedure. The rates shown in Exhibit A reflect the Energy Purchase Price after the \$1.00/MWh administrative fee has been applied.

## 8.4 System Access Charge

Each Billing Month, Seller shall pay Buyer a System Access Charge equal to the System Access Charge according to the Buyer's electric rate book, but not in excess of \$50, assessed per generator meter. If both the generation delivered to the Buyer and the energy delivered to the Seller can be measured with a single meter, the System Access Charge will be waived.

## 9. EVENTS OF DEFAULT

An Event of Default shall mean, with respect to a Party ("Defaulting Party") the occurrence of any of the following:

- a. The failure to make, when due, any payment required pursuant to this



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agreement if such failure is not remedied within five (5) Business Days after written notice;

- b. Such Party becomes Bankrupt (whether voluntarily or involuntarily);
- c. Such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- d. The failure of Seller, after the year in which the Start Date occurs, to supply any Delivered Energy to the Buyer hereunder for any period of seven hundred thirty (730) consecutive Days;
- e. The making of a representation or warranty that is false or misleading in any material respect when made or when deemed or repeated that is not cured within the cure period identified by the affected Party, such period to be not less than ten (10) Business Days;
- f. The failure of a Party to perform or observe any material term or condition of the Agreement or the applicable tariffs which is not cured within thirty (30) Calendar Days of written notification thereof by the other Party, including, but not limited to:
  - (i) Failure of either Party to comply with the terms and conditions of this Agreement;
  - (ii) An attempted assignment of the Agreement by Seller without Buyer's consent;
  - (iii) Failure of Seller to provide Buyer commercially reasonable access rights to the Plant, or Seller's attempt to revoke or terminate such access rights;
  - (iv) Failure of either Party to provide information or data to the other Party as required under this agreement;
  - (v) Delivered Energy exceeding the Plant Nameplate Capacity  $MW_{AC}$  as identified in Part 1;
  - (vi) Material modification of the Plant equipment which changes the Plant's maximum electric output after the Start Date, without the prior written consent of Buyer, such consent not be unreasonably withheld

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## 10. EARLY TERMINATION

### 10.1 Early Termination

If an Event of Default with respect to a Party (the "Defaulting Party") shall have occurred, the other Party (the "Non-Defaulting Party") shall have the right to terminate this Agreement upon thirty (30) Business Days' written notice to the Defaulting Party, as provided herein. In the event of the failure by the Defaulting Party to make timely payment due under this Agreement, the Non-Defaulting Party shall have the right, as an alternative or in addition to early termination, to recover from the Defaulting Party all amounts due, plus interest.

### 10.2 Early Termination Payment

Upon termination by Buyer pursuant to Section 2.3 or this Section 10, Seller shall owe Buyer the Early Termination Security Amount. As applicable, the Letter of Credit, Surety Bond and/or funds in the Escrow Account established in accordance with Subsection 2.2, Payment Security, shall be applied toward satisfying such amount. Within twenty (20) Days after Buyer has provided notice of termination to Seller pursuant to this Section 10, Buyer shall draw upon the Letter of Credit or Surety Bond or withdraw the funds in the Escrow Account and apply such funds toward the satisfaction of Seller's obligation to pay the Early Termination Security Amount. The provisions of this Section 10 regarding payments shall survive any termination of this Agreement by Buyer pursuant to this Section 10.

Buyer shall have no obligation to enter into any subsequent Power Purchase Agreement(s) with Seller until such time that any and all amounts owed to Buyer, including any applicable early termination payment, are paid. In any such subsequent Power Purchase Agreement, Seller shall not be entitled to a more favorable Capacity Purchase Price or Energy Purchase Price than would have been in effect during any remaining term of this Agreement, Either Party's obligation to make payments already due associated with deliveries received prior to the date of termination of the Agreement will survive any termination initiated under Subsection 2.3, "Qualifying Facility" Status and Seller's Warranty or Section 10, Early Termination.

## 11 FORCE MAJEURE

### 11.1 Definition

The term "Force Majeure" means acts or actions beyond the reasonable control of the affected Party, including without limitation, acts of God; flood, earthquake, storm or other natural calamity; war; insurrection; riot; curtailment (including any curtailment ordered by any Reliability Authority), order, regulation or restriction imposed by governmental authority; fire or explosion not caused by the Party claiming Force Majeure; transportation accidents or perils at

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sea; or other similar cause beyond the reasonable control but not due to negligence of the Party affected. Notwithstanding the foregoing, for purposes of this Agreement, the term "Force Majeure" shall not include: (1) shortages of supplies and shortages of fuel, other than shortages of fuel occurring in time of calamity which is preventing the Seller from obtaining fuel for its operations; (2) mechanical breakdown of equipment; and (3) strikes or labor disturbances of employees of the Party affected.

#### 11.2 Obligations Under Force Majeure

Force Majeure shall apply to the following situations:

(a) If Seller is rendered wholly or partially unable by the occurrence of a Force Majeure event to supply Resource Adequacy Capacity and/or Delivered Energy, in accordance with Section 3, Capacity And Energy To Be Supplied, then, for the duration of the Force Majeure event, subject to the conditions below, Seller's obligations to supply Resource Adequacy Capacity and/or Delivered Energy to Buyer and Buyer's obligation to pay for Resource Adequacy Capacity and/or Delivered Energy pursuant to Section 7, Compensation, shall be limited to the amount of Resource Adequacy Capacity and/or Delivered Energy that Seller actually supplies.

(b) If Buyer is rendered unable by the occurrence of a Force Majeure event to receive Resource Adequacy Capacity and/or Delivered Energy supplied by Seller, then, for the duration of the Force Majeure event, subject to the conditions below, Buyer's obligation to pay Seller for Resource Adequacy Capacity, and/or Delivered Energy pursuant to Section 7, Compensation, and Seller's obligations to supply Resource Adequacy Capacity and/or Delivered Energy to Buyer shall be suspended to the extent that Buyer is unable to receive Resource Adequacy Capacity and/or Delivered Energy supplied by Seller.

The Party rendered wholly or partially unable to perform because of a Force Majeure event shall promptly give written notice to the other Party, including a description of such Force Majeure event, an estimate of the anticipated duration of such Force Majeure event, and the effect of the Force Majeure event on the Party's performance obligation. Unless performance has already resumed, the Party rendered wholly or partially unable to perform because of a Force Majeure event shall, within thirty (30) Days of the date upon which such notice of Force Majeure was provided, and at Monthly intervals thereafter, submit to the other Party an update of the Force Majeure event including a summary of the activities necessary for the Party to resume performance. Upon the conclusion of the Force Majeure event, the Party heretofore unable to perform shall resume performance of the obligation previously suspended and provide notice to the other Party of when the Force Majeure event ceased.

Notwithstanding any of the foregoing provisions, neither Party shall claim

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Force Majeure for more than a total of one hundred eighty (180) Days during any consecutive five (5) year period during the term of this Agreement; provided, however, that Seller may claim up to an additional one hundred eighty (180) Days of Force Majeure, during said five (5) year period, in the event of significant damage to Seller's Plant resulting from an event of Force Majeure.

#### 11.3 Continued Payment Obligation

Any Party's obligation to make payments already due under this Agreement shall not be suspended by Force Majeure.

### 12 INDEMNITY

Seller shall indemnify, defend and hold Buyer and its officers, agents and employees harmless from any and all liability, claims, demands, costs, judgments, loss or damage, including attorney fees, attributable to or resulting from the maintenance, possession or operation of the Plant, except those caused solely by the negligence or willful misconduct of Buyer. Without limiting the foregoing, Seller shall at Buyer's request, defend at Seller's expense any suit or proceeding brought against Buyer for any of the above-named reasons; provided that Buyer notifies Seller in writing of any such claim and promptly tenders to Seller the control and defense of any such claim with Seller's choice of counsel. Buyer shall cooperate with Seller, at Seller's expense, in defending such claim and Buyer may join in defense with counsel of its choice at its own expense. Buyer may not settle any such claim without Seller's prior written consent. Seller's indemnification shall not include damage and injuries occurring on Buyer's own system after the Point of Delivery, unless the damage to or injuries occurring on such system are caused by the negligence or willful misconduct of Seller.

Buyer shall indemnify, defend and hold the Seller, its officers, agents and employees harmless from any and all liability, claims, demands, costs, judgments, loss or damage, including attorney fees, resulting from damage or injuries occurring on Buyer's own system after the Point of Delivery, except those caused solely by the negligence or willful misconduct of Seller. Without limiting the foregoing, Buyer shall at Seller's request, defend at Buyer's expense any suit or proceeding brought against Seller for any of the above-named reasons; provided that Seller notifies Buyer in writing of any such claim and promptly tenders to Buyer the control and defense of any such claim with Buyer's choice of counsel. Seller shall cooperate with Buyer, at Buyer's expense, in defending such claim and Seller may join in defense with counsel of its choice at its own expense. Seller may not settle any such claim without Buyer's prior written consent.

### 13 ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach

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thereof, shall first be referred in writing to a senior representative of each Party for resolution. If the senior representatives are unable to resolve the dispute within thirty (30) Days after the date of the written notice of referral, the Parties shall submit to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (in doing so the Parties are not agreeing to use the American Arbitration Association).

The Parties shall endeavor to agree upon and appoint one person to act as sole arbitrator. The arbitration shall be conducted before a single competent and disinterested arbitrator in accordance with the Commercial Rules of the American Arbitration Association. Such arbitrator shall have professional experience in energy related transactions, shall not be, or have previously been, employed by either Party, nor have a direct or indirect interest in either Party or the subject matter of the arbitration.

Such arbitration shall be held at any mutually agreed upon location. The award of the arbitration shall be final and binding on the Parties, the Parties shall abide by the award and perform in accordance with the terms and conditions of the award, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction.

At all times, pending the resolution of any disagreement, the Parties shall continue to perform their obligations pursuant to this Agreement.

#### 14 CHANGES IN LAW

In the event that there is a change in applicable law or regulation, including but not limited to laws and regulations of the State of Michigan, the Federal Energy Regulatory Commission or MISO, or in the event MISO ceases or modifies its operation or rules such that such modifications have a material effect on this Agreement or either Party's obligation hereunder, then Seller and Buyer shall amend this Agreement or enter into other agreements reasonable necessary to preserve and maintain the business agreement between the Parties described herein as of the Effective Date and the material terms and provisions of such relationship contemplated herein.

#### 15 SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties. This Agreement shall not be assigned by a Party without the other Party's prior written consent, which consent shall not be unreasonably withheld, but provided that (i) any assignee shall expressly assume assignor's obligations under this Agreement; and (ii) no such assignment shall impair any security given by Seller under this Agreement. Any attempted assignment or transfer without such consent shall be void and not merely voidable. Notwithstanding the foregoing, and provided that Seller is not relieved of liability hereunder, Seller

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shall not require Buyer's consent for assignment of this Agreement to an Affiliate of Seller provided that such Affiliate's creditworthiness (as determined by Buyer in Buyer's sole discretion) is equal to or higher than that of Seller.

If it is necessary for Seller to assign this Agreement in connection with any loan, lease or other financing arrangement for the Plant, Buyer shall enter into a collateral assignment of this Agreement with Seller and its lenders substantially in the form of Exhibit B hereto. Changes to the form of collateral assignment must be agreed to by Buyer in Buyer's sole discretion.

16 GOVERNING LAW

This Agreement shall be deemed to be a Michigan contract and shall be construed in accordance with and governed by the laws of Michigan, without regard to principles of conflicts of law.

17 HEADINGS

The various headings set forth in this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement.

18 NOTICE TO PARTIES

Unless otherwise provided in this Agreement, any notice, consent or other communication required to be made under this Agreement shall be effective if it is in writing and delivered personally, by certified mail (postage prepaid and return receipt requested), reputable overnight delivery service, or other confirmable form of electronic delivery to the address set forth in Part I or to such other address as the receiving Party may designate in writing.

19 WAIVER

No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other Party, whether express or implied, shall not constitute a continuing waiver of, or consent to, or excuse any subsequent or different breach, nor in any way affect the validity of this Agreement or any part of it, or the right of any Party to thereafter enforce any provision of this Agreement.

20 NONSEVERABILITY

If any essential provision of this Agreement is declared invalid in whole or in part in a final, non-appealable order by a court or other tribunal of competent jurisdiction, then a Party

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adversely affected by such invalidation shall have the right to terminate this Agreement by giving the other Party thirty (30) days' notice of such termination. Concurrently with, and as a condition of, termination of this Agreement, the Parties shall enter into goodfaith negotiations to amend this Agreement to remedy the invalidated provision(s) or enter into a new agreement that reasonably preserves the rights, obligations and economic positions of the parties under this Agreement in light of the invalidated provision(s). If the parties cannot reach an agreement, they shall submit any disputed matters to the Michigan Public Service Commission for binding resolution. If any non-essential provision in this Agreement is held to be invalid or unenforceable, it shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity and enforceability of the remainder of the provision or provisions of this Agreement and without giving rise to any right of termination.

## 21 MISCELLANEOUS

### 21.1 No Third Party Beneficiaries

This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

### 21.2 Disclaimer of Joint Venture, Partnership and Agency

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

### 21.3 Variable Interest Entity

Seller shall supply Buyer with any information necessary for Buyer to determine if Seller is a variable interest entity as defined under U.S. Generally Accepted Accounting Principles, and to determine if this Agreement is a lease under U.S. Generally Accepted Accounting Principles.

If it is determined that Seller is a variable interest entity and that Buyer will be required to include Seller in its consolidated financial statements or required to make certain disclosures, or that this Agreement is a lease, Buyer shall so notify Seller in writing. Within a time frame mutually agreed to by Buyer and Seller, Seller shall provide to Buyer written quarterly reports containing any and all financial data associated with Seller and the Plant associated with this Agreement or any other information that Buyer determines in its sole discretion is required to comply with the accounting treatment associated with these accounting standards or future



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applicable accounting standards. Such information may include, but shall not be limited to, nameplate capacity of the facility, megawatt-hours of electricity produced and used by the Plant, data supporting the economic life (both initial and remaining) of the Plant, the fair market value of the Plant, and any and all other costs (including costs of debt specific to the Plant) associated with Seller.

Further, if it is determined that Seller is a variable interest entity and that Buyer will be required to include Seller in its consolidated financial statements, Seller shall also provide the following on a quarterly basis:

(i) Quarterly financial statements prepared in accordance with generally accepted accounting principles;

(ii) Descriptions of the following obligations of Seller for the immediately preceding calendar quarter:

- (A) On-balance sheet obligations;
- (B) Purchase obligations;
- (C) Lease obligations and commitments;
- (D) Off-balance sheet commitments; and
- (E) Contingent obligations;
- (F) Total generating capacity;

(iii) All material contracts (or summaries if the original contracts are not immediately available) of Seller then in effect, together with any related agreements, if any, including, but not limited to:

- (A) Equity-related agreements;
- (B) Debt and other borrowings;
- (C) Material asset or stock acquisitions or dispositions;
- (D) Documents under which guarantees or indemnities have been provided;
- (E) Material supplier and customer contracts;
- (F) Related-party contracts;
- (G) Documents related to material hedging activities;
- (H) Contingent obligations and financial commitments;
- (I) Leasing arrangements and off-balance sheet obligations; and
- (J) Management and outsourcing contracts.

(iv) Business plans and financial projections.



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## 22 ENTIRE AGREEMENT AND AMENDMENTS

This Agreement supersedes all previous representations, understandings, negotiations and agreements either written or oral between the Parties or their representatives and constitutes the entire agreement of the Parties concerning the subject matter of this Agreement. No amendments or changes to this Agreement shall be binding unless made in writing and duly executed by both Parties.

## 23 COUNTERPARTS AND ELECTRONIC DOCUMENTS

This Agreement may be executed and delivered in counterparts, including by a facsimile or an electronic transmission thereof, each of which shall be deemed an original. Any document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither Party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

## Exhibit A

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## ENERGY PURCHASE PRICE

Buyer will pay Seller for the following energy rate for Delivered Energy during the calendar year.

Year	Energy Rate (including ICE, line losses, and administrative fee) \$/MWh
2019	\$54.00
2020	\$54.00
2021	\$54.00
2022	\$54.00
2023	\$54.00
2024	\$54.00
2025	\$54.00
2026	\$54.00
2027	\$54.00
2028	\$54.00
2029	\$54.00
2030	\$54.00
2031	\$54.00
2032	\$54.00
2033	\$54.00
2034	\$54.00
2035	\$54.00
2036	\$54.00
2037	\$54.00
2038	\$54.00
2039	\$54.00

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EXHIBIT B  
Form of Collateral Assignment

COLLATERAL ASSIGNMENT OF  
POWER PURCHASE AGREEMENT

This ASSIGNMENT OF POWER PURCHASE AGREEMENT ("Assignment Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, among \_\_\_\_\_, a \_\_\_\_\_ (the "Borrower"), Consumers Energy Company, a Michigan corporation ("Consumers"), and \_\_\_\_\_, a \_\_\_\_\_, (the "Bank"). Borrower, Consumers and Bank are herein sometimes referred to individually as "Party" and collectively as "Parties" where appropriate.

WHEREAS, Consumers and Borrower entered into a Power Purchase Agreement dated \_\_\_\_\_, \_\_\_\_\_ (the "PPA"), pursuant to which Consumers agreed to annually purchase electric capacity, and electric energy to be supplied by a \_\_\_\_\_ facility called the (the "Facility"); and

WHEREAS, it is a condition precedent to the making of loans pursuant to the Credit Agreement dated as of \_\_\_\_\_, \_\_\_\_\_ by and among the Borrower and the Bank (the "Credit Agreement"), that the Borrower assign its rights under the PPA to the Bank; and

WHEREAS, such assignment requires the prior written consent of Consumers.

NOW, THEREFORE, the parties hereby agree as follows:

1. Assignment.

(a) As security for the due and punctual performance and payment of all of the Borrower's obligations under the Credit Agreement, the Borrower hereby assigns to the Bank all of the Borrower's right, title and interest in, to and under the PPA. Unless expressly provided otherwise in this Assignment Agreement, nothing in the Credit Agreement shall in any way amend, alter or otherwise affect any rights of Consumers under the PPA.

(b) The Bank may, with Consumers' prior written consent, further assign the Borrower's rights, title and interests under the PPA to another party who, pursuant to such assignment, shall obtain all of the Bank's rights, title and interest under the PPA. Notwithstanding any such further assignment and assumption of the obligations of the Borrower under the PPA by such party, the Bank shall remain liable for the obligations of the Borrower under the PPA which arose during the period in which the Bank assumed the Borrower's obligations under the PPA.

(c) Upon receipt of written notice from the Bank setting forth that (i) there exists a default under the Credit Agreement, (ii) the Bank desires to exercise its rights under this Assignment Agreement, and (iii) the Bank is assuming the obligations of Borrower under the PPA and requests Consumers to continue to perform its obligations under the PPA, Consumers shall continue to perform its obligations under such PPA and the Bank shall (a) pay Consumers for work performed or services or material provided after such request in accordance with the provisions of such PPA and (b) perform all other obligations of the Borrower under such PPA. Consumers and the Bank hereby agree that upon receipt of such written notice by Consumers the Bank may directly enforce the terms of such PPA against Consumers and that any action or proceeding to enforce the terms of the PPA may be taken by or against the Bank in its own name or in the name of the Borrower. Consumers and the Borrower each agree that unless and

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until Consumers receives such written notice from the Bank, the Bank shall not be deemed by virtue of the execution and delivery of this Assignment Agreement to have assumed any of the obligations of the Borrower under the PPA.

This Assignment Agreement shall not be deemed to release or to affect in any way the obligations of the Borrower or Consumers under any provisions of the PPA. No assumption of Borrower's obligations under the PPA by the Bank or any further assignee shall release Borrower from its obligations to Consumers under the PPA.

2. Delivery of Notices

Consumers agrees that it will notify the Bank of any termination or default under the PPA simultaneously with the giving of notice to Borrower pursuant to Sections 2, 4, and 10 of the PPA.

3. Payment.

Consumers and the Borrower agree that until receipt of written notice from the Bank that all obligations under the Credit Agreement have been fully satisfied; Consumers will make all payments due to the Borrower under the PPA directly to the following account at the Bank:

Bank Name \_\_\_\_\_  
Account No. \_\_\_\_\_  
Attention: \_\_\_\_\_  
Physical Address: \_\_\_\_\_  
City, State ZIP: \_\_\_\_\_

4. Successor and Assigns.

This Assignment Agreement shall bind and inure to the benefit of the parties to this Assignment Agreement and their respective successors and assigns.

5. Applicable Law.

The construction, performance and validity of this Assignment Agreement shall be governed by the laws of the State of Michigan (excluding the laws applicable to conflicts or choice of law). Each of the Bank, Consumers and the Borrower hereby submits to the exclusive jurisdiction of the United States District Court for the Eastern District, Southern Division of Michigan and of any Michigan State Court sitting in Jackson, Michigan for the purpose of all legal proceedings arising out of or relating to this Assignment Agreement or the transactions contemplated hereby. As of the date hereof, Consumers represents that the PPA is a legal, valid and binding obligation of Consumers.

6. Waiver.

Unless otherwise specifically provided by the terms of this Assignment Agreement, no delay or failure to exercise a right resulting from any breach of this Assignment Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting such waiver. If any representation, warranty or covenant contained in this Assignment Agreement is breached by any Party and thereafter waived by the other Parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Assignment Agreement.

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**7. Counterparts.**

This Assignment Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in multiple counterparts (including by facsimile transmission), each of which will be deemed an original and all of which shall constitute one and the same instrument. Any document generated by the Parties with respect to this Assignment Agreement, including this Assignment Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. None of the Parties hereto will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

**8. Notices.**

All written notices provided for in this Assignment Agreement shall be mailed by registered or certified mail, return receipt requested, or delivered by hand to the Borrower, Consumers and the Bank at the following addresses or such other address as may be designated in a written notice by the addressee:

**If to the Borrower:**

Borrower Name: \_\_\_\_\_  
Borrower Street Address: \_\_\_\_\_  
City, State ZIP Code: \_\_\_\_\_  
Attention: \_\_\_\_\_

**If to Consumers:**

Consumers Energy Company  
1945 West Parnall Road  
Jackson, MI 49201  
Attention: Keith G. Troyer, Director  
EGI Contracts and Settlements

**If to the Bank:**

Bank Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State ZIP: \_\_\_\_\_  
Attention: \_\_\_\_\_

All such notices shall be effective when delivered.

**9. Entire Agreement**

This Assignment Agreement shall completely and fully supersede all prior undertakings or agreements, both written and oral, between the Parties with respect to the assignment of the PPA in so far as the obligations and rights of the Borrower and Consumers are concerned.

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IN WITNESS WHEREOF, this Assignment Agreement has been executed on behalf of the undersigned Parties by their respective representatives thereunto duly authorized as of the date first above written.

Borrower Name \_\_\_\_\_

By: \_\_\_\_\_  
(Name)Its: \_\_\_\_\_  
(Title)

CONSUMERS ENERGY COMPANY

By: \_\_\_\_\_  
(Name)Its: \_\_\_\_\_  
(Title)

Bank Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Name)Its: \_\_\_\_\_  
(Title)

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EXHIBIT C  
Monthly Escrow Payment

Beginning with the Billing Month in which the Start Date occurs, Buyer will retain during each Billing Month a portion of capacity compensation until the Escrow Account equals or exceeds the Early Termination Security Amount identified in Part 1. Interest on the Monthly Escrow Payments shall accrue at the Interest Rate. Buyer will continue to retain such funds to achieve and maintain a security for continued performance. The amount retained each month shall be determined in accordance with the following formula:

Monthly Escrow Payment (\$) = \$1,200 x ZRC-month

All Monthly Escrow Payments and accumulated interest shall be retained in the Escrow Account until the Early Termination Security Amount is reached (the "Full Funding"). Once the Escrow Account has Full Funding, Buyer will not retain any portion of the monthly capacity payment; however, accumulated interest will continue to be held in the Escrow Account.

Escrow amounts will be held by Buyer from Start Date through the first Billing Month of the Planning Year that begins one year after 60% of the Contract Term has been completed (the "Refund Period"), at which point Seller will no longer be obligated to continue making Monthly Escrow Payments. The balance in the Escrow Account will be disbursed to the Seller over the remaining term of the Agreement. Beginning with the first Billing Month of the Refund Period, Buyer will pay Seller the Monthly Escrow Payment in each successive Billing Month. Any amounts, including accumulated interest, remaining in the Escrow Account after termination of this Agreement shall be paid by Buyer to Seller on the final Billing Month settlement of the Agreement.

Upon termination pursuant to Section 10 of the Agreement after the Start Date, Buyer shall retain all remaining funds in the Escrow Account to the extent necessary to satisfy Seller's obligation to pay the Early Termination Security Amount.

**MICHIGAN PUBLIC SERVICE COMMISSION**

Consumers Energy Company

Comparison of the Forecast Cost of the New and Expired STS - CascadePPAs

Case No.: U-20833

Exhibit No.: A-3 (KGT-3)

Page: 1 of 1

Witness: KGTroyer

Date: June 2020

Line	(a)	(b)	(c)	(d)	(e)	(f) (b * d) + (c * e * # of months)	(g)	(h)	(i) (b * g) + (c * h * # of months)	(j) (f) - (i)
Formula	Year	Generation MWh	Capacity ZRC	New PPA Energy Rate (\$/MWh)	New PPA Capacity Rate (\$/ZRC-Month)	New PPA Total Cost \$	Expired PPA Energy Rate <sup>1</sup> (\$/MWh)	Expired PPA Capacity Rate <sup>1</sup> (\$/ZRC-Month)	Expired PPA Total Cost \$	New PPA Total Cost less Expired PPA Total Cost \$
1	2019	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
2	2020	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
3	2021	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
4	2022	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
5	2023	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
6	2024	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
7	2025	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
8	2026	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
9	2027	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
10	2028	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
11	2029	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
12	2030	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
13	2031	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
14	2032	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
15	2033	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
16	2034	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
17	2035	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
18	2036	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
19	2037	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
20	2038	7,567	0.7	53.35	8,768.50	477,355	31.28	37,260.00	549,680	(72,325)
21	2039 <sup>2</sup>	3,153	0.7	53.35	8,768.50	198,902	31.28	37,260.00	229,036	(30,134)
22	<b>Total</b>	<b>154,493</b>				<b>9,745,999</b>			<b>11,222,631</b>	<b>(1,476,632)</b>

Average New PPA Rate \$ 63.08

Notes:

1 - Source: MPSC Case No. U-20202

2 - Contract Term includes 5 months in 2039



**MICHIGAN PUBLIC SERVICE COMMISSION**

Consumers Energy Company

Comparison of the Forecast Cost of the New and Expired STS - FallasburgPPAs

Case No.: U-20833

Exhibit No.: A-4 (KGT-4)

Page: 1 of 1

Witness: KGTroyer

Date: June 2020

Line	(a)	(b)	(c)	(d)	(e)	(f) (b * d) + (c * e * # of months)	(g)	(h)	(i) (b * g) + (c * h * # of months)	(j) (f) - (i)
Formula	Year	Generation MWh	Capacity ZRC	New PPA Energy Rate (\$/MWh)	New PPA Capacity Rate (\$/ZRC-Month)	New PPA Total Cost \$	Expired PPA Energy Rate <sup>3</sup> (\$/MWh)	Expired PPA Capacity Rate <sup>3</sup> (\$/ZRC-Month)	Expired PPA Total Cost \$	New PPA Total Cost less Expired PPA Total Cost \$
1	2019 <sup>1</sup>	2,957	0.3	54.00	8,768.50	178,092	31.29	33,421.11	162,709	15,383
2	2020	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
3	2021	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
4	2022	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
5	2023	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
6	2024	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
7	2025	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
8	2026	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
9	2027	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
10	2028	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
11	2029	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
12	2030	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
13	2031	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
14	2032	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
15	2033	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
16	2034	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
17	2035	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
18	2036	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
19	2037	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
20	2038	5,069	0.3	54.00	8,768.50	305,293	31.29	33,421.11	278,925	26,368
21	2039 <sup>2</sup>	2,112	0.3	54.00	8,768.50	127,201	31.29	33,421.11	116,216	10,985
22	<b>Total</b>	<b>101,380</b>				<b>6,105,852</b>			<b>5,578,500</b>	<b>527,352</b>

Average New PPA Rate \$ 60.23

Notes:

1 - Contract Term includes 7 months in 2019

2 - Contract Term includes 5 months in 2039

3 - Source: MPSC Case No. U-20202

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for approval of power purchase )  
agreements. )  
\_\_\_\_\_ )

Case No. U-20833

**PROOF OF SERVICE**

STATE OF MICHIGAN )  
 ) SS  
COUNTY OF JACKSON )

Crystal L. Chacon, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on June 3, 2020, she served an electronic copy of **Consumers Energy Company's Application and Testimony, Affidavit, and Exhibits A-1 (KGT-1) through A-4 (KGT-4) of Company witness Keith G. Troyer** upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein.

\_\_\_\_\_  
Crystal L. Chacon

Subscribed and sworn to before me this 3<sup>rd</sup> day of June, 2020.

\_\_\_\_\_  
Melissa K. Harris, Notary Public  
State of Michigan, County of Jackson  
My Commission Expires: 06/11/20  
Acting in the County of Jackson

**ATTACHMENT 1 TO CASE NO. U-20833**

**Counsel for the Michigan Public  
Service Commission Staff**

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