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APR 10 2013

PUBLIC SERVICE  
COMMISSION

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April 10, 2013

**HAND DELIVERED**

Jeff R. Derouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602-0615

Mark R. Overstreet  
(502) 209-1219  
(502) 223-4387 FAX  
moverstreet@stites.com

RE: Application of Kentucky Power Company For Approvals Related To Renewable Energy Purchase Agreement, Case No. 2013-00144

Dear Mr. Derouen:

Enclosed please find and accept for filing the original and ten copies of Kentucky Power Company's Application for approvals related to the Renewable Energy Purchase Agreement For Biomass Energy Resources Between ecoPower Generation-Hazard LLC and Kentucky Power Company.

Also enclosed are an original and ten copies of the Company's petition for confidential treatment of portions of the agreement.

Copies of the redacted Application and the petition are being delivered by overnight delivery on counsel for Kentucky Industrial Utility Customers, Inc. and the Office of the Attorney General.

Very truly yours,

  
Mark R. Overstreet

MRO

Enclosures

cc: Jennifer B. Hans  
Dennis G. Howard II  
Lawrence W. Cook  
Michael L. Kurtz

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In The Matter Of:

The Application Of Kentucky Power Company For: )  
(1) The Approval Of The Terms And Conditions Of The )  
Renewable Energy Purchase Agreement For Biomass )  
Energy Resources Between The Company And )  
ecoPower Generation-Hazard LLC; (2) Authorization )  
To Enter Into The Agreement; (3) The Grant Of Certain )  
Declaratory Relief; And (4) The Grant Of All )  
Other Required Approvals and Relief )

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COMMISSION**

Case No. 2013-00 144

Petition For Confidential Treatment

Kentucky Power Company moves the Public Service Commission of Kentucky pursuant to 807 KAR 5:001, Section 13(2), for an Order granting confidential treatment to the identified portions of the Renewable Energy Purchase Agreement for Biomass Energy Resources Between ecoPower Generation- Hazard LLC and Kentucky Power Company (“REPA”). Pursuant to 807 KAR 5:001, Section 13, Kentucky Power is filing under seal those pages of the REPA containing confidential terms and conditions with the confidential portions highlighted. Ten redacted copies also are being filed. Kentucky Power will notify the Commission when it determines the information for which confidential treatment is sought is no longer confidential.

A. The Statutory Standard And The REPA.

KRS 61.878(1)(c)(1) excludes from the public disclosure requirements of the Open Records Act:

Upon and after July 15, 1992, records confidentially disclosed to an agency or required to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.

This exception applies to those portions of the REPA for which Kentucky Power is seeking confidential treatment.

The REPA is the result of extended arms-length negotiations between two unaffiliated entities for the purchase by Kentucky Power of renewable energy resources. In negotiating renewable energy purchase power agreements, AEPSC and KPCo seek to obtain the lowest reasonable cost for the Company's customers upon the most advantageous terms. Suppliers, on the other hand, are interested in obtaining the highest price possible for their commodity.

In the course of the negotiations that resulted in the REPA each side made concessions to the other concerning the terms of the REPA. These concessions were based upon the particulars of the transaction, or in response to concessions received. Many of the REPA's terms thus are unique to this particular transaction and represent the results of this *quid pro quo* process.

The market for renewable energy purchase power agreements is extremely competitive. There are multiple sellers of renewable energy seeking the highest prices for their capacity and energy. Likewise, with the advent of renewable portfolio standards in many states, the push for fuel diversity, and increased interest in renewable energy products, Kentucky Power and its affiliates face strong and growing competition for the most advantageous agreements. The price and certain other terms of such agreements typically are the terms most vigorously negotiated by suppliers and purchasers.

B. The Identified Information is Generally Recognized As Confidential A Proprietary and Public Disclosure Of It Will Result In An Unfair Commercial Advantage for Kentucky Power's Competitors.

The identified information required to be disclosed by Kentucky Power in response to the data requests at issue is highly confidential. Dissemination of the information for which

confidential treatment is being requested is restricted by Kentucky Power, AEP, and AEPSC. The Company, AEP and AEPSC take all reasonable measures to prevent its disclosure to the public as well as persons within the Company who do not have a need for the information. The information is not disclosed to persons outside Kentucky Power, AEP or AEPSC. Within those organizations, the information is available only upon a confidential need-to-know basis that does not extend beyond those employees with a legitimate business need to know and act upon the identified information.

KPCo and its affiliates may negotiate similar contracts with other suppliers in the future. If the prices and terms included in the Wind PPA became publicly known or available, parties with which KPCo and its affiliates may negotiate could use this knowledge to the detriment of KPCo, its customers, and affiliates. Knowledge of these terms by other potential suppliers would establish certain benchmarks in future negotiations, thereby potentially increasing costs incurred by customers of KPCo and its affiliates. In other words, other suppliers would insist on the same or better terms as those negotiated in this purchase agreement.

Knowledge of the REPA provisions by potential power supply competitors also could enable suppliers to gain an unfair advantage in future competitive situations. For example, the Confidential Information could be used by other purchasers competing for such contracts to “cherry-pick” the most favorable contracts, thereby depriving Kentucky Power of the ability to obtain the most advantageous prices for its customers. In addition, the mere existence of certain terms, without regard to their specific provisions telegraphs the Company’s willingness in at least one instance to include certain contract provisions, and could be used by suppliers to seek similar provisions in any future purchased power agreement. As a result, in a limited number of

instances, the public disclosure of article headings and table of contents entries, which would reveal the existence of a particular provision, can disadvantage the Company.

In sum, making the results of negotiations available to the suppliers with which the Company is negotiating, or may negotiate in the future, compromises the ability of AEPSC and KPCo to obtain the lowest reasonable cost for its customers on the most favorable terms. As such, their disclosure will result in unfair commercial advantage to the Company's competitors.

The confidential information should be kept confidential for the term of the REPA. Prior disclosure will adversely affect the Company's ability to negotiate future purchased power agreements.

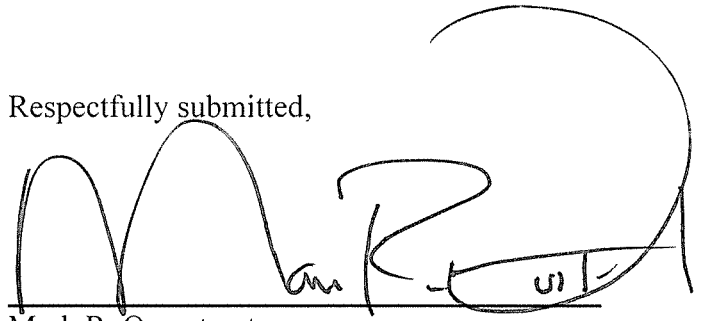
C. The Identified Information Is Required To Be Disclosed To An Agency.

The identified information is by the terms of the Data Requests and Commission practice required to be disclosed to the Commission. The Commission is a "public agency" as that term is defined at KRS 61.870(1). Any filing should be subject to a confidentiality order and any party requesting such information should be required to enter into an appropriate confidentiality agreement.

Wherefore, Kentucky Power Company respectfully requests the Commission to enter an Order:

1. According confidential status to and withholding from public inspection the identified information; and
2. Granting Kentucky Power all further relief to which it may be entitled.

Respectfully submitted,



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COUNSEL FOR KENTUCKY POWER  
COMPANY

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served as indicated below upon:

Michael L. Kurtz  
Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202

**By Overnight Delivery**

Jennifer Black Hans  
Dennis G. Howard II  
Lawrence W. Cook  
Kentucky Attorney General's Office  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601-8204

**By Overnight Delivery**

on this the 10<sup>th</sup> day of April, 2013.



Mark R. Overstreet

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In The Matter Of:

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Renewable Energy Purchase Agreement For Biomass )  
Energy Resources Between The Company And )  
EcoPower Generation-Hazard LLC; (2) Authorization )  
To Enter Into The Agreement; (3) The Grant Of Certain )  
Declaratory Relief; And (4) The Grant Of All )  
Other Required Approvals and Relief )

Case No. 2013-00 144

VERIFIED APPLICATION

Kentucky Power Company (“Kentucky Power” or the “Company”) moves the Public Service Commission of Kentucky (“Commission”) for an Order pursuant to KRS 278.300, 807 KAR 5:001, Section 14, and 807 KAR 5:001, Section 17: (i) approving the terms and conditions of the Renewable Energy Purchase Agreement For Biomass Energy Resources (“REPA”) between Kentucky Power and EcoPower Generation-Hazard LLC (“EcoPower”); (ii) approving and authorizing Kentucky Power to enter into the REPA; (iii) declaring that the concurrent recovery by means of a monthly rider or surcharge to Kentucky Power’s rates of all costs associated with the REPA is appropriate;<sup>1</sup> and (iv) granting all other required relief or approvals.

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<sup>1</sup> 807 KAR 5:001, Section 18 authorizes applications for declaratory orders. The regulation appears to be directed principally to stand-alone requests for declaratory relief, and thus provides for an expedited briefing of any such application. For example, absent a contrary Order from the Commission, any response to the request for declaratory relief would be due 21 days after the request is filed. 807 KAR 5:001, Section 18(4). Where, as here, the request for declaratory relief is coupled with an application for other substantive relief that typically involves a longer procedural schedule, the declaratory relief may be better handled in conformity with any procedural schedule that is entered in connection with the Company’s request for the other substantive relief (in this case KRS 278.300). To the extent the Commission determines to the contrary, Kentucky Power also requests a deviation, pursuant to 807 KAR 5:001, Section 21, from the schedule established by 807 KAR 5:001, Section 18 for applications for declaratory orders.

In support thereof Kentucky Power states:

### **Introduction**

1. In connection with its plan to chart a course to energy and capacity self-sufficiency and to meet the evolving burdens of environmental regulations, Kentucky Power has a unique opportunity to satisfy a portion of its needs by procuring energy and capacity from Kentucky-based biomass-fueled generation. Specifically, Kentucky Power has entered into, subject to further action by the Commission, the EcoPower REPA for 58.5 MW (net) of energy and capacity from biomass. The EcoPower REPA is associated with a facility to be located in the Company's service territory, will help diversify Kentucky Power's fuel use and generation portfolio, and should foster local economic development. Finally, the REPA is consistent with Strategy Two of Governor Beshear's November 2008 "Intelligent Choices For Kentucky's Future" Energy Plan. The EcoPower REPA is a reasonably necessary and appropriate way for Kentucky Power to diversify its fuel base and meet its customers' needs.

### **Applicant**

2. Kentucky Power is an electric utility organized as a corporation under the laws of the Commonwealth of Kentucky in 1919. A certified copy of Kentucky Power's Articles of Incorporation and all amendments thereto was attached to the Joint Application in Case No. 99-149<sup>2</sup> as Exhibit 1. The post office address of Kentucky Power is 101A Enterprise Drive, P.O. 5190, Frankfort, Kentucky 40602-5190. Kentucky Power is engaged in the generation, purchase, transmission, distribution, and sale of electric power. Kentucky Power serves approximately 173,000 customers in the following 20 counties of eastern Kentucky: Boyd, Breathitt, Carter,

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<sup>2</sup>*In the Matter of: The Joint Application Of Kentucky Power Company, American Electric Power Company, Inc. And Central And South West Corporation Regarding A Proposed Merger*, P.S.C. Case No. 99-149.



Clay, Elliott, Floyd, Greenup, Johnson, Knott, Lawrence, Leslie, Letcher, Lewis, Magoffin, Martin, Morgan, Owsley, Perry, Pike and Rowan. Kentucky Power also supplies electric power at wholesale to other utilities and municipalities in Kentucky for resale. Kentucky Power is a utility as that term is defined at KRS 278.010. For purposes of this proceeding the electronic mail addresses of Kentucky Power are set forth in paragraph 53 of this Application.

3. Kentucky Power is a direct, wholly-owned subsidiary of American Electric Power Company, Inc. (“AEP.”) AEP is a multi-state public utility holding company whose operating companies provide electric utility service to customers in parts of eleven states – Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia. AEP is not a party to this proceeding.

**Non-Party Entities**

4. EcoPower Generation-Hazard LLC (“EcoPower”) is a limited liability company organized under the laws of the Commonwealth of Kentucky, with its principal office located at 1265 Manchester Road, Lexington, Kentucky. Eco Power is a wholly owned subsidiary of EcoPower Generation LLC. By order dated May 18, 2010, EcoPower was authorized by the Kentucky State Board on Generation and Electric Transmission Siting to construct the nominal 58.5 MW (net) biomass power generating facility (“EcoPower facility”) and the associated 69 kV non-regulated transmission line in Perry County, Kentucky. EcoPower is the counterparty to the REPA for which Kentucky Power seeks approval in this application.

**APPLICATION FOR APPROVAL  
PURSUANT TO KRS 278.300 OF THE REPA**

(a) The Transaction And Relief Requested.

5. On March 15, 2013, Kentucky Power entered into a 20-year REPA with EcoPower for the purchase by Kentucky Power of the entire capacity value (MW), electrical output (MWh), ancillary services, and environmental attributes of the EcoPower facility to be located in the Coal Fields Regional Industrial Park in Perry County, Kentucky. The REPA is subject to approval by this Commission, and Kentucky Power has the right under the agreement to terminate the REPA if it is not approved by the Commission. A summary of terms and conditions of the REPA is provided in the testimony of Company Witness Godfrey. The public and confidential versions of the REPA are attached as Exhibit JFG-1 (Public) and Exhibit JFG-1 (Confidential) to Company Witness Godfrey's testimony.

6. By this Application, Kentucky Power is seeking only those approvals required under Article 6.1(A) of the REPA to consummate the transaction. The transaction remains subject to other conditions precedent and subsequent.

(b) The EcoPower Facility.

7. The EcoPower facility will be located approximately ten miles northwest of Hazard, Kentucky on 125 acres of a reclaimed coal mine. The EcoPower facility, as described in its application to the Kentucky State Board on Electric Generation and Transmission Siting in Case No. 2009-00530, will consist of one fluidized bed boiler and steam turbine generator, an air cooled condenser, material handling systems, ancillary equipment, several buildings, and a 1.54 mile 69 kV transmission line.

8. The boiler and steam turbine generator will produce a nominal 58.5 MW (net) electrical output. The EcoPower facility will use atmospheric fluidized bed combustion technology, and will be fueled with biomass, including sawdust, bark, wood chips, tip wood, and low-quality logs

(c) Significant Contract Terms.

9. Beginning on the Commercial Operation Date, as defined in the REPA, Kentucky Power is obligated to purchase and pay for, at the Contract Rate, as defined in the REPA, all renewable energy generated by the EcoPower facility up to 62.5 MW at the meter bar in any hour.

10. Kentucky Power's obligations under the REPA are expressly contingent upon Kentucky Power's receipt of a final and non-appealable "Commission Approval Order," as that term is defined in the REPA, by October 15, 2013. The REPA also will terminate automatically, subject to a limited cure provision, if the Company is ever denied full recovery of its costs in retail rates.

11. The Contract Price paid by Kentucky Power under the REPA will escalate by a fixed percentage each year during the term of the agreement. In the first year of the REPA, Kentucky Power estimates, based upon 2012 jurisdictional revenues, that the Company's revenue requirement would increase by approximately seven percent. In addition, and although the Company believes it has taken reasonable steps to limit the risk, the REPA could also result in an increase in the Company's cost of capital depending on regulatory treatment and other factors. If the EcoPower facility qualifies for the Section 45 Production Tax Credit the Contract Price will be adjusted downward.

12. The REPA provides that Kentucky Power is to receive all current and future environmental attributes of the EcoPower facility, including the associated Renewable Energy Certificates (“REC”). RECs are tradable, non-tangible, energy commodities in the United States that represent proof that one MWh of electricity was generated from an eligible renewable energy resource.

13. Subject to the termination provisions of the agreement, the term of the REPA is 20 years.

14. Under the REPA, EcoPower is required to establish and maintain a Seller Performance Fund to secure its financial obligations to Kentucky Power under the REPA.

(d) Senate Bill 46

15. The 2013 Regular Session of the Kentucky General Assembly enacted Senate Bill 46. Senate Bill 46 was signed into law by Governor Beshear on March 5, 2013. As provided in Section 2 of the act, Senate Bill 46 became effective upon its approval by the Governor.

16. Senate Bill 46 empowers the Commission to “allow recovery of costs which are not recovered in the existing rates of a utility for the purchase of electric power from a biomass energy facility that has received a certificate from the Kentucky State Board on Electric Generation and Transmission Siting ...” upon the determination by the Commission that the full costs of the purchase power agreement over the full term of the agreement are fair, just and reasonable. Any such approval by the Commission of a biomass purchase power agreement is valid for the entire initial term of the agreement.

(e) The REPA Satisfies The Requirements Of KRS 278.300

(i) The Role of Renewable Generation.

17. AEP has included reasonably priced renewable generation within the supply side options it considers in planning for the future capacity and energy needs of its operating companies. In its 2009 Integrated Resource Plan, for example, Kentucky Power assumed that AEP would seek to acquire by the close of 2012 renewable resources equal to at least seven percent of AEP's energy sales.

18. Driving these goals in part have been increasing governmental mandates, including the imposition in jurisdictions other than Kentucky of Renewable Portfolio Standards ("RPS") for electric generation.

19. Even those states, such as Kentucky, that have yet to adopt a RPS are promoting the increased use of renewable fuels. For example, on November 20, 2008, Governor Steve Beshear announced his comprehensive energy plan, entitled, *Intelligent Energy Choices for Kentucky's Future*. Among the seven strategies included in the plan was an increase in Kentucky's renewable energy generation to 1000 MW by 2025. <http://www.governor.ky.gov/NR/rdonlyres/32B6DCAF-57F5-49DC-B9F3-4E889746CBB0/0/20081120energyFactSheet.pdf>. Strategy 2 under the Governor's Plan notes that Kentucky "has great potential for producing energy from woody biomass," such as will be used at the EcoPower facility.

20. Similarly, in the 2009 General Assembly, House Majority Leader, Representative Adkins, introduced HB 537. The bill would have established a Renewable Energy and Efficiency Standard for Kentucky. Among the requirements that would have been imposed by

the standard was an increase in Kentucky's renewable generation to 1000 MW by 2025. <http://www.lrc.ky.gov/record/09RS/HB537/bill.doc> The bill was not enacted. HB 3 and HB 428, which were introduced in the 2010 General Assembly, likewise would have established renewable or clean energy standards. In particular, HB 3 would have required renewable energy to be generated within the Commonwealth. The bills were not enacted.

21. Most recently, the 2013 Kentucky General Assembly recognized the importance of Kentucky-based biomass energy facilities through enactment of Senate Bill 46, which prescribes certainty in the ratemaking treatment accorded purchase power agreements ("PPAs") for the purchase of electric power from such facilities. In addition, Section 2 of Senate Bill 46 prescribes that the bill was to become effective immediately in accordance with Section 55 of the Kentucky Constitution upon its approval by the Governor in light of the "vital importance for the Commonwealth to incent [biomass energy] businesses to advance the goal of energy independence and new jobs...."

- (ii) The Financial Obligations Assumed By Kentucky Power Under The REPA Are For A Lawful Object Within Kentucky Power's Corporate Purposes.

22. Kentucky Power is a corporation organized under the laws of the Commonwealth of Kentucky. It is regulated by the Commission and, pursuant to Kentucky's Certified Territory Statutes, KRS 278.016-278.018, possesses the exclusive right and obligation to provide retail electric service within its certified territory in parts of 20 counties in Kentucky.

23. The financial obligations assumed by Kentucky Power under the REPA are in connection with a long-term contract for the purchase of capacity and energy to meet Kentucky Power's obligation, as an electric utility providing service within its certified territory within the

Commonwealth of Kentucky, to provide adequate, efficient and reasonable service to its Kentucky customers. KRS 278.030. As such, the REPA, and Kentucky Power's financial obligations under the REPA, are for a lawful object within the Company's corporate purpose.

- (iii) The Financial Obligations Assumed By Kentucky Power Under the REPA Are Necessary And Appropriate For, And Consistent With, The Provision Of Electric Service By Kentucky Power In Its Certified Territory.

24. The EcoPower facility will diversify Kentucky Power's fuel use and generation. The EcoPower facility will be located in the Company's service territory and is expected to generate approximately 230 construction jobs over the two-year construction period. The Company is informed that the facility is expected to provide jobs for an estimated 30 full time employees and approximately 225 timber and trucking related jobs. In addition, the facility is likely to foster local economic development.

25. As a result, the financial obligations assumed by Kentucky Power under the REPA are necessary and appropriate for, and consistent with, Kentucky Power's provision of electric service.

- (iv) The Financial Obligations Assumed By Kentucky Power Under The REPA Will Not Impair Its Ability To Provide Adequate, Efficient and Reasonable Electric Service In The Commonwealth Of Kentucky.

26. Under the terms of the REPA, Kentucky Power may terminate the agreement if it is unable at any time during the term of the REPA to recover all of the jurisdictional costs associated with the REPA. Thus, the financial obligations associated with the REPA will be recovered through the Company's rates and will not impair Kentucky Power's ability to provide electric service.

- (v) The Financial Obligations Assumed By Kentucky Power Under The REPA Are Reasonably Necessary And Appropriate For The Provision Of Electric Service By The Company.

27. Given the implementation by 29 states and the District of Columbia of RPS, the implementation by eight additional states of renewable portfolio goals,<sup>3</sup> legislative efforts in the United States Congress and the Kentucky General Assembly to enact such standards, and the inclusion by Governor Beshear of renewable goals in his comprehensive energy plan, it is increasingly likely that within the 20-year term of the REPA Kentucky Power will be subject to RPS or other limitations on its use of coal-fired generation to meet its capacity and energy needs. It thus is reasonably necessary and appropriate for Kentucky Power to begin to acquire Kentucky-based renewable energy resources such as those available through the REPA.

28. Based upon these considerations, the financial obligations associated with the REPA are reasonably necessary and appropriate for the provision of electric service by Kentucky Power.

- (f) Regulatory Requirements – 807 KAR 5:001, Section 17.

29. A general description of Kentucky Power's property and its field of operation, together with the statement of its original cost and its cost to Kentucky Power, is attached as **EXHIBIT 1**. [807 KAR 5:001, Section 17(1)(a).]

30. Kentucky Power will not issue any stock or bonds as a part of entering into the EcoPower REPA. Under existing Commission authority the REPA constitutes an evidence of indebtedness. [807 KAR 5:001, Section 17(1)(b).]

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<sup>3</sup> <http://www.eia.gov/todayinenergy/detail.cfm?id=4850> .



31. Kentucky Power is entering into the EcoPower REPA as a necessary and appropriate method of diversifying its generation base and meeting its customers' needs. The EcoPower REPA is described in more detail above. [807 KAR 5:001, Section 17(1)(c).]

32. Kentucky Power is not acquiring any property, but instead entering into the EcoPower REPA. The REPA provides that Kentucky Power will, after the effective date of the agreement, purchase all renewable energy from the EcoPower facility and receive all RECs associated with that energy. A copy of the EcoPower REPA is filed with this Application as Exhibit JFG-1 (Confidential) and Exhibit JFG-1 (Public) to the testimony of Company Witness Godfrey. [807 KAR 5:001, Section 17(1)(d).]

33. Kentucky Power is not proposing to discharge or refund obligations as part of this application. [807 KAR 5:001, Section 17(1)(e).]

34. The required financial exhibits are described below in Paragraphs 37-43. [807 KAR 5:001, Section 17(2)(a).]

35. There are no outstanding trust deeds or mortgages relating to Kentucky Power or its property. [807 KAR 5:001, Section 17(2)(b).]

36. The information required by 807 KAR 5:001, Section 17(2)(c) is attached as **Exhibit** JFG-4 to the testimony of Company Witness Godfrey.

(g) Regulatory Requirements – 807 KAR 5:001, Section 12 (Financial Exhibit).<sup>4</sup>

37. Kentucky Power has the following stock authorized, issued and outstanding:

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<sup>4</sup> 807 KAR 5:001, Section 17(2)(a).

(a) Common Stock: 2,000,000,000 shares authorized and 1,009,000 shares outstanding. [807 KAR 5:001, Section 12(1), (2)]; and

(b) Kentucky Power has no authorized preferred stock. [807 KAR 5:001, Section 12(3).]

38. There are no mortgages encumbering Kentucky Power's property. [807 KAR 5:001, Section 12(4).]

39. The bonds identified in EXHIBIT 2 to this Application constitute the Company's authorized and issued bonds. [807 KAR 5:001, Section 12(5).]

40. The note identified in EXHIBIT 2 to this Application constitutes the Company's existing note. [807 KAR 5:001, Section 12(6).]

41. Kentucky Power has no other indebtedness outstanding. [807 KAR 5:001, Section 12(7).]

42. During the past five years Kentucky Power paid the dividends identified in EXHIBIT 2 to this Application. [807 KAR 5:001, Section 12(8).]

43. A detailed income statement and a detailed balance sheet for Kentucky Power for the twelve month period ending February 28, 2013 are attached as EXHIBIT 3 and EXHIBIT 4 respectively. [807 KAR 5:001, Section 12(9).]

### Application for Declaratory Order

44. Paragraph 6.1(A) of the REPA provides that Kentucky Power may terminate the REPA if the Company has not received a “Commission Approval Order” by October 15, 2013. The REPA further defines the term “Commission Approval Order” as a final, non-appealable order from this Commission that, *inter alia*, “declares that concurrent recovery of costs associated with this REPA through Kentucky retail rates via a monthly rider or a monthly surcharge to base rates is appropriate....”

45. The declaratory order provided for by paragraph 6.1(A) is required because credit rating agencies treat PPAs such as the REPA as fixed, debt-like financial obligations that represent substitutes for capital investments by the utility. As such, PPA obligations, in the form of capacity payments, may be incorporated in credit rating agencies’ assessment of the utility’s creditworthiness. This is done by imputing a portion of the net present value of the stream of capacity payments as a debt obligation of the utility for purposes of evaluating the utility’s credit statistics. Where, as under the EcoPower REPA, there is not a separate capacity charge, the rating agencies indicate they use an implied capacity payment in their evaluation.

46. The portion of the net present value of the capacity payments, whether stated or implied, that are imputed as a debt obligation is calculated by the credit rating agencies based on their assessment of the “risk factors” associated with the utility’s ability to recover the payments.

47. The Company understands that a regulatory mechanism that provides for concurrent and full recovery through a rider or surcharge of the payments made under the REPA, coupled with the protections afforded by Senate Bill 46, will limit the “risk factors” assigned the

REPA by credit rating agencies, and hence the percentage of the net present value of Kentucky Power's implied capacity payments under the REPA that will be imputed to the Company as debt by the agencies. As such, it is in the interest of Kentucky Power's customers, EcoPower, and the Company itself to obtain the earliest possible declaration from this Commission that a rider or surcharge to base rates that permits the Company to recover concurrently its full payments under the REPA is appropriate.

48. In response to the methodology employed by credit rating agencies in evaluating PPAs, Kentucky Power included as part of the EcoPower REPA certain provisions designed to minimize to the extent possible the "risk factors" employed by credit rating agencies in evaluating the REPA. These include both the right under paragraph 6.1(A) to terminate the REPA if the Company does not receive the declaratory order sought in this application, and the further right under paragraphs 6.1(B), 6.1(C), and 6.1(D), and the definition of "Cost Recovery Order," to terminate the REPA, subject to limited cure provisions, if the Company is ever denied full concurrent recovery of its costs under the REPA by means of a rider or surcharge to base rates.

49. As recognized by the Kentucky Supreme Court in *Kentucky Public Service Commission v. Commonwealth ex rel. Conway*, 324 S.W.3d 373 (Ky. 2010), the Commission is empowered by its plenary ratemaking authority to establish a rider or surcharge to base rates so long as the resulting rates are fair, just and reasonable.

50. The Company anticipates seeking approval of the rider or surcharge to base rates under Senate Bill 46 and all other applicable Commission authority as part of its next base rate

case. Kentucky Power further anticipates that the rider or surcharge rates will not become effective until 2017 when the EcoPower facility first becomes operational.

### **Requested Date For Final Order**

51. Kentucky Power requests that the Commission issue an order granting the requested relief no later than September 9, 2013. The issuance of an order by September 9, 2013 is a necessary predicate for there to be a final and non-appealable order issued on or before October 15, 2013 as required by paragraph 6.1(A) of the REPA.

### **Exhibits And Testimony**

52. The exhibits and testimony listed in the Appendix to this Application are attached to and made a part of this Application.

### **Communications**

53. The Applicant respectfully requests that communications in this matter be addressed to:

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R. Benjamin Crittenden  
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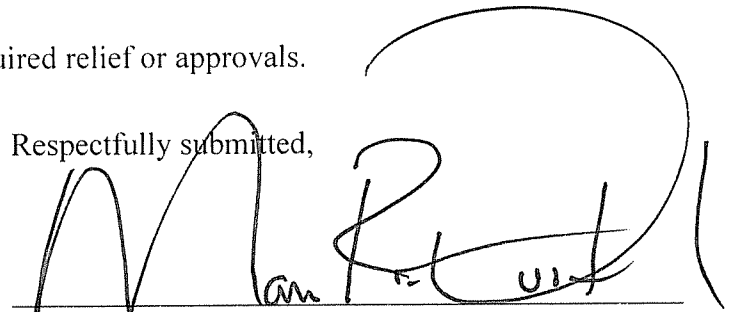
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ON BEHALF OF KENTUCKY POWER

**WHEREFORE**, Kentucky Power Company requests that the Commission issue an Order pursuant to KRS 278.300 and all other applicable provisions:

- (a) approving the terms and conditions of the REPA between Kentucky Power and EcoPower;
- (b) approving and authorizing Kentucky Power to enter into the REPA;
- (c) declaring that the concurrent recovery by means of a monthly rider or surcharge to Kentucky Power's rates of all costs associated with the REPA is appropriate; and
- (d) granting all other required relief or approvals.

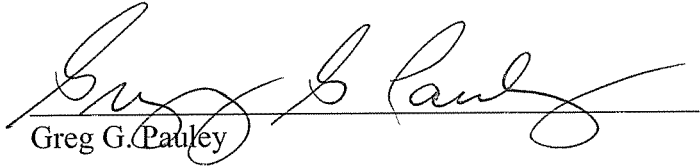
Respectfully submitted,



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VERIFICATION

I, Greg G. Pauley, President and Chief Operating Officer of Kentucky Power Company, after being duly sworn, state that the facts contained in this Application are true and accurate to the best of my knowledge.

  
\_\_\_\_\_  
Greg G. Pauley

COMMONWEALTH OF KENTUCKY    )  
  )  
COUNTY OF FRANKLIN            )

Subscribed and sworn to before me by Greg G. Pauley on this the 10<sup>th</sup> day of April, 2013.

  
\_\_\_\_\_  
Notary Public State at Large

My Commission Expires:

January 23, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served as indicated below upon:

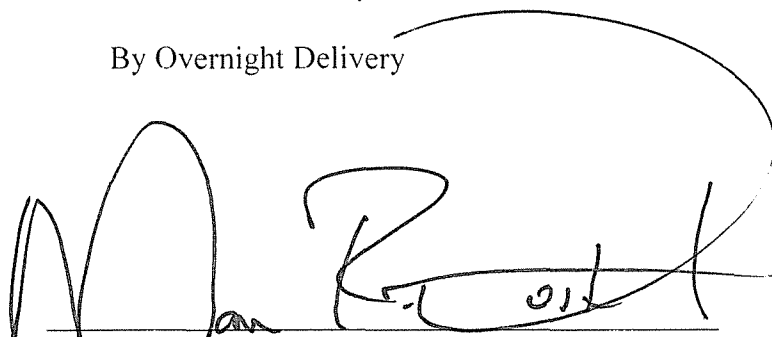
Michael L. Kurtz  
Jody Kyler Cohn  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202

By Overnight Delivery

Jennifer Black Hans  
Dennis G. Howard II  
Lawrence W. Cook  
Kentucky Attorney General's Office  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601-8204

By Overnight Delivery

on this the 10<sup>th</sup> day of April, 2013.

A large, stylized handwritten signature in black ink, appearing to read 'Mark R. Overstreet', is written over a horizontal line. The signature is highly cursive and includes a large loop at the end.

Mark R. Overstreet



## APPENDIX

### TESTIMONY

<u>Witness</u>	<u>Subject Matter</u>
Greg G. Pauley	An overview of this Application and the REPA.
Jay F. Godfrey	Describes the proposed REPA between Kentucky Power and EcoPower.
Ranie K. Wohnhas	Provides an overview of the estimated customer rate impact of the proposed REPA, the company's plans for seeking recovery of the costs associated with the REPA, and an overview of the treatment of Purchase Power Agreement by credit rating agencies.

### LIST OF EXHIBITS

- EXHIBIT 1: General description of Kentucky Power's property, the Company's field of operation, and cost information (Paragraph 29 of the Application).
- EXHIBIT 2: Information regarding bonds, note, and dividends paid (Paragraphs 39, 40, and 42 of the Application).
- EXHIBIT 3: Detailed income statement of Kentucky Power for the twelve-month period ended February 28, 2013 (Paragraph 43 of the Application).
- EXHIBIT 4: Detailed balance sheet of Kentucky Power for the twelve-month period ended February 28, 2013 (Paragraph 43 of the Application).

Applicant's property in Kentucky includes the 1,060 megawatt Big Sandy Plant generating station located in Lawrence County, constructed in conformity with certificates of public convenience and necessity issued by this Commission; transmission lines and all appurtenant facilities; distribution lines; transmission and distribution stations and equipment; office buildings and equipment; storerooms for operation and maintenance materials; data processing equipment; metering equipment; communication equipment and motor vehicles. The total original cost of Applicant's property is \$1,817,774,283 as of February 28, 2013, which includes \$5,329,170 of capital leases. The total original cost also includes \$52,784,264 of real property located in Kentucky, consisting of \$21,277,936 of land and \$31,506,328 of land rights.

Bonds Authorized & Outstanding

<u>Issuing Company</u>	<u>Bond</u>	<u>Issuance Date</u>	<u>Maturity</u>	<u>Amount</u>	<u>Coupon</u>	<u>Annual Interest</u>	<u>Secured/Unsecured</u>
Kentucky Power	Senior Note, Series A	06/18/2009	06/18/2021	\$40,000,000	7.250%	\$2,900,000	Unsecured
Kentucky Power	Senior Note, Series B	06/18/2009	06/18/2029	\$30,000,000	8.030%	\$2,409,000	Unsecured
Kentucky Power	Senior Note, Series C	06/18/2009	06/18/2039	\$60,000,000	8.130%	\$4,878,000	Unsecured
Kentucky Power	Senior Note, Series D	06/13/2003	12/01/2032	\$75,000,000	5.625%	\$4,218,750	Unsecured
Kentucky Power	Senior Note, Series E	09/11/2007	09/15/2017	\$325,000,000	6.000%	\$19,500,000	Unsecured

Notes Outstanding

<u>Issuing Company</u>	<u>Bond</u>	<u>Issuance Date</u>	<u>Maturity</u>	<u>Amount</u>	<u>Coupon</u>	<u>Annual Interest</u>	<u>Secured/Unsecured</u>
Kentucky Power	Notes Payable to AEP	02/05/2004	06/01/2015	\$20,000,000	5.250%	\$1,050,000	Unsecured

Dividends (2,000,000 Authorized; 1,009,000 Outstanding)

<u>Year</u>	<u>Amount</u>	<u>Total Shares Outstanding</u>	<u>Rate</u>
2012	\$32,000,000	1,009,000	\$31.72
2011	\$28,000,000	1,009,000	\$27.75
2010	\$21,000,000	1,009,000	\$20.61
2009	\$19,500,000	1,009,000	\$19.33
2008	\$14,000,000	1,009,000	\$13.88

Kentucky Power Company, Inc.  
Statement of Income  
Twelve Months Ending February 28, 2013

	12 Months Ending February 28, 2013
<b>REVENUES</b>	
Revenue - Retail Sales	498,534,782
Revenue - Transmission	7,914,004
Revenue - Sales for Resale	109,520,641
Revenue - Other Operating	14,350,895
Provision for Rate Refund	(1,635,430)
Revenue - Power Sales	311,347
<b>TOTAL OPERATING REVENUES</b>	<b>628,996,239</b>
<b>FUEL EXPENSES</b>	
Total Fuel for Electric Generation	109,136,963
Total Purchased Power	238,983,958
<b>GROSS MARGIN</b>	<b>280,875,318</b>
<b>OPERATING EXPENSES</b>	
Operational Expenses	59,136,541
Maintenance Expenses	43,411,067
Total Maintenance and Operational Expenses	102,547,608
Depreciation and Amortization	55,238,890
Taxes Other Than Income Taxes	12,270,932
<b>TOTAL OPERATING EXPENSES</b>	<b>170,057,430</b>
<b>OPERATING INCOME</b>	<b>110,817,888</b>
<b>NON-OPERATING INCOME / (EXPENSES)</b>	
Total Interest & Dividend Income	191,448
Interest & Dividend Carrying Charge	91,137
AFUDC	1,299,668
Total Interest Charges	(35,806,897)
<b>INCOME BEFORE INCOME TAXES</b>	<b>76,593,244</b>
<b>INCOME TAXES</b>	
Federal Income Taxes	20,924,040
State Income Taxes	2,050,228
<b>TOTAL INCOME TAXES</b>	<b>22,974,268</b>
<b>NET INCOME</b>	<b>53,618,976</b>

Kentucky Power Company, Inc.  
Balance Sheet  
As of February 28, 2013

	As of February 28, 2013
<b>ASSETS</b>	
Cash and Cash Equivalents	1,338,992
Accounts Receivable	19,378,673
Fuel, Materials and Supplies	81,385,556
Risk Management Contracts - Current	5,411,965
Margin Deposits	1,836,777
Prepayments and Other Current Assets	4,308,763
<b>TOTAL CURRENT ASSETS</b>	<b>113,660,726</b>
Electric Production	560,363,894
Electric Transmission	490,771,562
Electric Distribution	661,487,169
General Property, Plant and Equipment	63,945,918
Construction Work-in-Progress	41,175,740
<b>TOTAL PROPERTY, PLANT and EQUIPMENT</b>	<b>1,817,744,283</b>
Less: Accumulated Depreciation and Amortization	(609,677,017)
<b>NET PROPERTY, PLANT and EQUIPMENT</b>	<b>1,208,067,266</b>
Net Regulatory Assets	212,733,836
Long-Term Risk Management Assets	5,702,034
Other Non Current Assets	46,405,969
<b>TOTAL OTHER NON-CURRENT ASSETS</b>	<b>264,841,839</b>
<b>TOTAL ASSETS</b>	<b>1,586,569,831</b>
<b>LIABILITIES</b>	
Accounts Payable	43,104,215
Advances from Affiliates	7,643,550
Risk Management Liabilities	2,978,293
Accrued Taxes	9,386,650
Accrued Interest	12,409,136
Deposits - Customer and Collateral	23,695,675
Over-Recovered Fuel Costs - Current	5,196,081
Other Current Liabilities	22,562,858
<b>TOTAL CURRENT LIABILITIES</b>	<b>126,976,458</b>
Long-Term Debt - Affiliated	20,000,000
Long-Term Debt - Non Affiliated	530,000,000
Long-Term Debt - Premiums and Discounts Unamort	(750,263)
Long-Term Risk Management Liabilities	3,136,872
Deferred Income Taxes	357,636,437
Deferred Investment Tax Credits	317,424
Regulatory Liabilities and Deferred Credits	25,312,030
Asset Retirement Obligation	3,957,782
Employee Benefits and Pension Obligations	31,372,495
Other Non-Current Liabilities	4,554,302
<b>TOTAL NON-CURRENT LIABILITIES</b>	<b>975,537,079</b>
<b>TOTAL LIABILITIES</b>	<b>1,102,513,537</b>
<b>COMMON SHAREHOLDERS' EQUITY</b>	
Common Stock	50,450,000
Paid In Capital	238,750,000
Retained Earnings	195,154,206
Accumulated Other Comprehensive Income (Loss)	(297,912)
<b>TOTAL SHAREHOLDERS' EQUITY</b>	<b>484,056,294</b>
<b>TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY</b>	<b>1,586,569,831</b>

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:

The Application Of Kentucky Power Company For: )  
(1) The Approval Of The Terms And Conditions Of The )  
Renewable Energy Purchase Agreement For Biomass )  
Energy Resources Between The Company And ) Case No. 2013-00\_\_\_\_\_  
ecoPower Generation-Hazard LLC; (2) Authorization )  
To Enter Into The Agreement; (3) The Grant Of Certain )  
Declaratory Relief; And (4) The Grant Of All )  
Other Required Approvals and Relief )

**TESTIMONY OF**

**JAY F. GODFREY**

**ON BEHALF OF KENTUCKY POWER COMPANY**

**DIRECT TESTIMONY OF  
JAY F. GODFREY, ON BEHALF OF  
KENTUCKY POWER COMPANY  
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY**

**CASE NO. 2013- \_\_\_\_\_**

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III. Purpose of Testimony .....	4
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V. Proposed ecoPower Transaction .....	5
VI. Renewable Energy Purchase Agreement .....	10

**DIRECT TESTIMONY OF  
JAY F. GODFREY, ON BEHALF OF  
KENTUCKY POWER COMPANY  
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY**

**I. INTRODUCTION**

1 **Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

2 A. My name is Jay F. Godfrey. I am employed as Managing Director – Renewable  
3 Energy for American Electric Power Service Corporation (“AEPSC”), a wholly  
4 owned subsidiary of American Electric Power, Inc (“AEP”). AEPSC supplies  
5 engineering, financing, accounting, commercial and similar planning and advisory  
6 services to AEP’s six regulated integrated electric operating companies, including  
7 Kentucky Power Company (“Kentucky Power” or the “Company”). My business  
8 address is 155 West Nationwide Boulevard, Columbus, Ohio 43215.

9

**II. BACKGROUND**

**Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND  
BUSINESS EXPERIENCE.**

10 A. I earned a Bachelor’s degree in Business Administration from California State  
11 University - Chico in 1985 and a Master’s degree in Business Administration  
12 from National University in 1990. In 2006, I completed the AEP Strategic  
13 Leadership Program at The Ohio State University Fisher School of Business.  
14 I have over seventeen years of commercial and financial management experience  
15 in the renewable energy industry. Prior to joining AEPSC’s wind energy group in  
16 2002, I worked for seven years (1995 – 2002) in various project finance and wind  
17 project development roles in Europe and the U.S. for Enron Wind Corporation



1 (“EWC”), since acquired by General Electric (“GE”), which operates today as GE  
2 Energy. Other business management experience includes serving as the Financial  
3 Controller for two publicly held companies in non-energy related fields, and  
4 holding other management positions.

5 Since joining AEPSC, I have been involved in the asset management and project  
6 financing of AEP’s two owned wind projects which total 311 megawatts (“MW”),  
7 development efforts for potential green-field projects, and the procurement and  
8 management of AEP’s wind and solar renewable energy purchase agreements  
9 which now total approximately 1,993 MW. My experience includes negotiating  
10 wind, biomass, landfill gas and solar energy power purchase and sales  
11 agreements, wind system operations and maintenance agreements, real estate  
12 agreements related to renewable energy projects, equipment purchase agreements,  
13 and project loan documents. I also have experience evaluating the impact of  
14 various financial parameters on renewable project investment returns. I serve on  
15 the Board of Directors of the American Wind Energy Association (“AWEA”), the  
16 Washington D.C. based trade association for the wind industry, and currently  
17 serve as chair to the AWEA Utility Working Group which advises that same  
18 Board. I also serve on the Renewable Energy Council of the Electric Power  
19 Research Institute (“EPRI”), an independent, non-profit company performing  
20 research, development and demonstration in the electricity sector for the benefit  
21 of the public.

22 **Q. WHAT ARE YOUR RESPONSIBILITIES AS MANAGING DIRECTOR-**  
23 **RENEWABLE ENERGY?**

1 A. As Managing Director – Renewable Energy, I am responsible for managing  
2 AEP’s portfolio of Renewable Energy Power Purchase Agreements (“REPAs”). I  
3 direct the team that negotiates and finalizes the REPAs with the prospective  
4 counterparties. In addition, I am responsible for the acquisition of potential new  
5 renewable energy project development opportunities within AEP’s service  
6 territory.

7 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION**  
8 **OR ANY OTHER COMMISSIONS?**

9 A. Yes, I presented testimony and testified on behalf of Kentucky Power Company  
10 in Case Number 2009-00545 before the Kentucky Public Service Commission  
11 (“Commission”). I have presented testimony or testified on behalf of Indiana  
12 Michigan Power Company before the Indiana Utility Regulatory Commission, the  
13 Indiana State Regulatory Flexibility Committee and the Michigan Public Service  
14 Commission. I have presented testimony or testified on behalf of Appalachian  
15 Power Company before the Virginia State Corporation Commission. I have  
16 presented testimony or testified on behalf of Ohio Power Company and the former  
17 Columbus Southern Power Company before the Public Utilities Commission of  
18 Ohio. I have presented testimony or testified on behalf of Public Service  
19 Company of Oklahoma before the Corporation Commission of the State of  
20 Oklahoma. Finally, I have presented testimony or testified before the Public  
21 Utility Commission of Texas and the Louisiana Public Services Commission on  
22 behalf of Southwestern Electric Power Company.

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**III. PURPOSE OF TESTIMONY**

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

A. The purpose of my testimony is to describe the REPA between Kentucky Power and ecoPower Generation-Hazard LLC (“ecoPower”).

**Q. ARE YOU SPONSORING ANY EXHIBITS IN THIS PROCEEDING?**

A. Yes. I am sponsoring the following exhibits:  
Exhibit JFG –1 (Public) Renewable Energy Purchase Agreement with ecoPower  
Exhibit JFG–1 (Confidential) Renewable Energy Purchase Agreement with ecoPower  
Exhibit JFG –2 (Public) AEP REPAs – Regulated Operating Companies only  
Exhibit JFG –3 (Public) Major Project Milestones  
Exhibit JFG – 4 (Public) Detailed Site Map

**IV. AEP RENEWABLE ENERGY EXPERIENCE**

**Q. DOES AEP HAVE EXPERIENCE ENTERING INTO LONG-TERM RENEWABLE ENERGY PURCHASE AGREEMENTS?**

A. Yes. AEP affiliates have entered into twenty-five (25) long-term wind REPAs, one (1) long-term hydro REPA, and one (1) long-term solar REPA to serve customers of five of its regulated electric operating companies. Please see Exhibit JFG-2 for a complete listing of AEP REPAs.

**Q. DOES AEP HAVE EXPERIENCE IN OWNING AND OPERATING RENEWABLE FACILITIES?**

A. Yes. AEP Operating Companies own and operate sixteen hydro facilities located in Indiana, Michigan, Ohio, Virginia and West Virginia totaling 284 megawatts

1 (“MW”). AEP also owns and operates the 586 MW Smith Mountain pumped  
 2 storage facility located in Virginia.

3 Additionally, AEP Energy Partners, a non-regulated AEP subsidiary, is an  
 4 owner/operator of two wind facilities located in the ERCOT region of Texas,  
 5 totaling 311 MW.

6 **Q. WOULD YOU PLEASE SUMMARIZE AEP’S EXISTING RENEWABLE  
 7 GENERATION RESOURCES?**

8 A. AEP currently owns or has long-term REPAs for a total of 2,846 MW of  
 9 renewable generation, as shown in Table 1.

TABLE 1:

AEP Affiliate	Owned Assets	REPAs	Total
AEP Regulated Integrated Operating Companies	284 MW	2,074 MW	2,358 MW
AEP Energy Partners	311 MW	177 MW	488 MW
Totals	<b>595 MW</b>	<b>2,251 MW</b>	<b>2,846 MW</b>

10 **V. PROPOSED ECOPOWER TRANSACTION**

11 **Q. PLEASE DESCRIBE THE PROPOSED TRANSACTION.**

12 A. Subject to certain conditions precedent, including approval by the Commission,  
 13 the Company has entered into a 20 year REPA with ecoPower under which the  
 14 Company will purchase the output from a proposed nominal 58.5 MW (net)  
 15 biomass power generation facility (“Project” or “Facility”) to be developed,  
 16 constructed and operated by ecoPower.

17 **Q. PLEASE DESCRIBE THE PROPOSED PROJECT.**

1 A. The proposed Project is a nominal 58.5 MW (net) biomass-fired power generation  
2 project to be located near Hazard, Kentucky, at the Coal Fields Regional  
3 Industrial Park, a reclaimed surface mine with existing industrial infrastructure.  
4 The Project will employ a fluidized bed boiler, a steam turbine generator, an air-  
5 cooled condenser and will be interconnected to Kentucky Power's system at the  
6 69 kV Engle substation.

7 **Q. WHAT IS THE PROJECT'S CURRENT DEVELOPMENT STATUS?**

8 A. ecoPower has been performing preliminary Project engineering and cost studies  
9 since June 2010. Significant project development activities as described by  
10 ecoPower are as follows:

11 ○ AIR PERMIT: The Project received an air permit in June 2010; however,  
12 modifications were necessary due to a delay in the projected commercial  
13 operation date. Modifications to the initial air permit were filed with the  
14 Kentucky Division of Air Quality on December 21, 2012. Approval of the  
15 revised permit application was received from the Kentucky Division of Air  
16 Quality on March 7, 2013.

17 ○ INTERCONNECTION: The proposed Project will interconnect at the  
18 Company's Engle substation located approximately 1.4 miles from the  
19 Facility. An initial PJM study (now expired) showed no overloads requiring  
20 mitigation due to the Project's potential interconnection. ecoPower has  
21 recently re-filed an interconnection request with PJM and received a  
22 completed Feasibility Study from PJM on March 19, 2013. The following  
23 are estimated completion dates of the remaining PJM studies:

- 1                   ◦ System Impact Study Agreement executed by 4/18/2013
- 2                   ◦ System Impact Study Completion – Q3-2013 (est.)
- 3                   ◦ Interconnection Services Agreement executed – Q4-2013 (est.)
- 4                   ◦ EPC ACTIVITIES: ecoPower Hazard, working with Stone and Webster /
- 5                   Shaw Power, has developed an engineering, procurement and construction
- 6                   (EPC) proposal for the Project.
- 7                   ◦ SITING: The Project has received approval from The Kentucky State Board
- 8                   on Electric Generation and Transmission Siting (Case No. 2009-00530)

9   **Q.   WHAT IS THE PROJECT'S SCHEDULE IN ORDER TO ACHIEVE**  
10 **FULL COMMERCIAL OPERATION?**

11   A.   Please see attached Exhibit JFG- 3 Major Project Milestones.

12       FUEL

13   **Q.   HOW IS BIOMASS DEFINED IN THE REPA?**

14   A.   "Biomass" is defined in the REPA to mean untreated organic material derived  
15       from plants or animals and available on a renewable basis, including: agricultural  
16       crops, crop by-products and residues; wood and paper manufacturing waste,  
17       including by-products of the wood manufacturing or pulping process, such as  
18       bark, wood chips, and sawdust; forestry waste and residues; other vegetation  
19       waste, including landscape or right-of-way trimmings; algae; food waste; animal  
20       wastes and by-products (including fats, oils, greases and manure); and  
21       biodegradable solid waste.

22   **Q.   WHAT FORMS OF BIOMASS ARE PLANNED TO BE USED AT THE**  
23 **FACILITY? HOW WILL IT BE TRANSPORTED TO THE FACILITY?**

1 A. The Project plans to use low grade wood, timber harvest residuals and mill  
2 residuals primarily from eastern Kentucky. This fuel will be transported to the  
3 Facility via trucks.

4 **Q. HOW MUCH BIOMASS WILL THE FACILITY USE?**

5 A. On an annual basis, ecoPower has forecasted that the Project will use  
6 approximately 550,000 tons.

7 **Q. WILL OTHER FUELS BE USED AT THE PROJECT?**

8 A. Yes. ecoPower plans to use propane at the Facility for unit start-up, shut-down,  
9 and stabilization of the combustion process.

10 **Q. ARE THERE LIMITS ON THE AREAS FROM WHICH THE BIOMASS**  
11 **MAY BE OBTAINED?**

12 A. Yes. The REPA specifically states that in no case shall any Biomass fuel come  
13 from lands owned, managed or controlled by the Federal government, from the  
14 National Wilderness Preservation System, Wilderness Study Areas, Inventoried  
15 Roadless Areas, old growth stands, late successional stands, National Landscape  
16 Conservation System lands, National Monuments, National Conservation Areas,  
17 State Parks, Designated Primitive Areas, or Wild and Scenic Rivers corridors,  
18 except, in each case, for dead, severely damaged, or badly infested trees.  
19 However, Biomass may include materials that are byproducts of preventive  
20 treatments (e.g., trees, wood) that are removed from forests to reduce hazardous  
21 fuels, to reduce or contain disease or insect infestation, or to restore ecosystem  
22 health; would not otherwise be used for higher value products; and are harvested

1 from National Forest System land or public lands in accordance with public laws,  
2 land management plans, and requirements for old-growth maintenance.

3 **Q. PLEASE DESCRIBE THE PROJECT'S FUEL SUPPLY PLAN?**

4 A. Within a 55-mile radius of the Project, ecoPower estimates that there are more  
5 than 400,000 tons of mill residuals produced annually and over 67 million tons of  
6 standing low-grade wood with a growth rate of over 1 million tons annually.  
7 Within a one-hour trucking radius, ecoPower estimates that the Project has access  
8 to a sustainable fuel supply.

9 ENVIRONMENTAL

10 **Q. OTHER THAN THE AIR PERMIT, WHAT OTHER ENVIRONMENTAL**  
11 **PERMITS ARE REQUIRED?**

12 A. Both a Construction Stormwater Discharge Permit and an Operating Stormwater  
13 Discharge Permit will be required. Applications for these permits will be  
14 submitted by ecoPower upon completion of required engineering. The  
15 Construction Stormwater Permit must be submitted prior to the start of  
16 construction and is the responsibility of the EPC contractor. The Operating  
17 Stormwater Permit application is dependent on final engineering development and  
18 must be submitted at least 180 days prior to the startup of the Facility.

19 **Q. WHAT POLLUTION CONTROL EQUIPMENT DOES ECOPOWER**  
20 **PLAN TO INSTALL ON THE PROJECT?**

21 A. The Project plans to use a sodium based sorbent injection system, a baghouse, and  
22 ammonia injected selective catalytic reduction technology (SCR).

23 SELLER (TEAM)



1 Q. WHAT EXPERIENCE DOES THE ECOPOWER MANAGEMENT TEAM  
2 HAVE WITH RESPECT TO PROJECT DEVELOPMENT?

3 A. The ecoPower Hazard Project Team members bring over 275 combined years of  
4 experience to the development of projects. Team members have senior  
5 management experience in developing and financing power generation facilities,  
6 operating forest products companies, and managing wood supplies for companies  
7 in the forest industry in eastern Kentucky.

8 Q. WHO WILL OPERATE THE PROJECT? WHAT EXPERIENCE DO  
9 THEY HAVE IN OPERATING A BIOMASS GENERATION FACILITY?

10 A. According to ecoPower, they are in advanced discussions with Greenleaf Power  
11 LLC (“Greenleaf”) regarding the joint development of the Project including the  
12 financing, construction, operation, and ownership of the Project. Greenleaf is a  
13 Sacramento, CA based company that is focused primarily on the biomass  
14 generation sector. Greenleaf has purchased and operates three biomass power  
15 plants totaling over 100 MW, employing over 100 people. Greenleaf is also  
16 backed by Denham Capital, a leading global energy-focused private equity firm  
17 with over \$7 billion of invested capital in the energy, industrial and mining  
18 industries.

19

20 VI. RENEWABLE ENERGY PURCHASE AGREEMENT

21 OVERVIEW

22 Q. PLEASE DESCRIBE THE AGREEMENT.

1 A. The ecoPower REPA is for 100% of the output from the Project. The REPA  
2 entitles the Company to the energy, capacity, environmental attributes (including  
3 renewable energy credits or “RECs”), and all other ancillary services available  
4 from the Project – in total “Renewable Energy Products”. The Term of the REPA  
5 is for twenty (20) years with an initial around-the-clock Contract Price (\$/MWh),  
6 and annual escalation, as identified in Exhibit JFG-1 (Confidential Version).

7 **Q. WHAT IS A RENEWABLE ENERGY CERTIFICATE (REC)?**

8 A. Renewable energy generators, such as the proposed ecoPower biomass generation  
9 facility, produce energy, capacity and RECs. The RECs represent one (1)  
10 megawatt hour (MWh) of generation sourced from a qualifying renewable energy  
11 resource. RECs have differing market values dependent on the location (state &  
12 RTO) and type of generation resource (solar RECs are frequently worth more due  
13 to individual state requirements). These RECs can be sold, banked or retired.  
14 Selling any of the RECs results in the inability of the Company to claim that  
15 specific amount of renewable generation in its portfolio. Similar to SOx and NOx  
16 emission allowances, RECs can be retired by an electric supplier for credit as if it  
17 actually used that proportion of renewable energy in its portfolio mix. In some  
18 circumstances, RECs may also be banked for a specific period of time, thus  
19 deferring the decision on sale or retirement.

20 **Q. WHAT WILL THE COMPANY DO WITH THE RECS PRODUCED BY**  
21 **THE PROJECT?**

22 A. It is the Company’s intention to initially “bank” the RECs. However, absent any  
23 near-term state or federal renewable portfolio standard (“RPS”), the Company

1 may investigate the options of selling the RECs in the short-term in conjunction  
2 with the wishes of the Commission and credit any net proceeds to customers.

3 TERMS

4 **Q. WHAT CONDITIONS PRECEDENT ARE INCLUDED IN THE**  
5 **CONTRACT?**

6 A. The REPA contains certain conditions to the effectiveness of the REPA (Section  
7 6) and contains termination rights whereby the Company may terminate the  
8 REPA in the event those conditions are not met. For the Purchaser, provisions in  
9 Section 6.1 require pre-approval from the Commission of the REPA and  
10 approvals by the Commission and FERC of the Mitchell Unit transfer transaction  
11 KPSC Case No. 2012-00578 and FERC Docket No. EC13-28-000. Effectiveness  
12 of the REPA is further contingent on the Mitchell transaction actually being  
13 consummated. The REPA also contains a provision making ongoing  
14 effectiveness subject to the Company's receipt of a Cost Recovery Order  
15 satisfactory to the Company which amongst other items establishes a procedure  
16 for ongoing recovery of all costs related to the REPA. For the Seller, there are  
17 provisions in Section 6.2 of the REPA which condition the effectiveness of the  
18 Agreement on Seller's receipt of necessary permits by a date certain and in  
19 Section 11.2 on the completion of certain financial milestones.

20 **Q. WHAT IMPACT IS THERE ON THE COMPANY IF THERE IS A FUEL**  
21 **SUPPLY SHORTAGE?**

22 A. None. In accordance with the REPA, the Company only pays for the Renewable  
23 Energy Product (MWh) actually received from the Project at the Contract Rate.

1 In the event that a fuel supply shortage has a significant impact on either the  
2 production (MWh) or the PJM Capacity value (MW) from the Facility, ecoPower  
3 would be responsible for remedying such shortfalls (see JFG-1 – Section 7.2  
4 (Confidential)).

5 **Q. WHAT IMPACT IS THERE ON THE COMPANY IF THERE IS FUTURE**  
6 **LEGISLATION THAT REQUIRES BIOMASS GENERATION**  
7 **FACILITIES TO INSTALL ADDITIONAL POLLUTION CONTROL**  
8 **EQUIPMENT?**

9 A. If additional pollution control equipment is required, then it will be the  
10 responsibility of ecoPower to install, operate and maintain such equipment at their  
11 sole expense. The Contract Price associated with the REPA will not change as a  
12 result of any newly required pollution control equipment.

13 **COSTS**

14 **Q. IS THERE A CAPACITY PAYMENT ASSOCIATED WITH THE**  
15 **CONTRACT**

16 A. No, there is no specific capacity payment. The Contract Price is an all-inclusive  
17 price for the Renewable Energy Products. Payment is only made for Renewable  
18 Energy Products delivered to the Company. If the Project does not produce due  
19 to a Reliability Curtailment from the Transmission Operator, Facility forced  
20 outages, scheduled maintenance outages, fuel supply issues or other reasons, then  
21 the Company does not pay.

22 **Q. WHAT IMPACT IS THERE ON THE COMPANY AND ITS CUSTOMERS**  
23 **IF THERE ARE PROJECT COST OVERRUNS?**

- 1 A. None. The Project owner will be responsible for all cost overruns.
- 2 **Q. DOES THIS CONCLUDE YOUR VERIFIED DIRECT TESTIMONY?**
- 3 A. Yes, it does.

VERIFICATION

The undersigned, Jay F. Godfrey, being duly sworn, deposes and says he is the Managing Director for Renewable Energy, for American Electric Power Service Corporation and he has personal knowledge of the matters set forth in the forgoing testimony and the information contained therein is true and correct to the best of his information, knowledge and belief.

*Jay F. Godfrey*  
\_\_\_\_\_  
Jay F. Godfrey

STATE OF OHIO )  
 ) SS  
COUNTY OF FRANKLIN )

Subscribed and sworn to before me, a Notary Public in and before said County and State, by Jay F. Godfrey, this the 2nd day of April, 2013.



Sharon Hutchens  
Notary Public-State of Ohio  
My Commission Expires  
November 17, 2014

*Sharon Hutchens*  
\_\_\_\_\_  
Notary Public

My Commission Expires: 11-17-14

**RENEWABLE ENERGY PURCHASE AGREEMENT  
FOR  
BIOMASS ENERGY RESOURCES**

**BETWEEN**

**ECOPOWER GENERATION-HAZARD LLC**

**AND**

**KENTUCKY POWER COMPANY**

**March 15, 2013**

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EXHIBIT N FORM OF CONSENT AND AGREEMENT

RENEWABLE ENERGY PURCHASE AGREEMENT  
BETWEEN  
ECOPOWER GENERATION-HAZARD LLC  
AND  
KENTUCKY POWER COMPANY

This Renewable Energy Purchase Agreement (the "REPA") is made this 15th day of March 2013, by and between ecoPower Generation-Hazard LLC ("Seller"), a Kentucky limited liability company, with a principal place of business at 1256 Manchester Street, Lexington, Kentucky 40504, and Kentucky Power Company ("Purchaser"), a Kentucky corporation, with a principal place of business at c/o American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215-2355. Seller and Purchaser are hereinafter referred to individually as a "Party" and collectively as the "Parties".

INTRODUCTION

WHEREAS Seller desires to develop, design, construct, own or lease and operate a renewable electric generating facility with an expected total gross name plate capacity of approximately 66 MW, and which is further defined below as the "Facility";

WHEREAS Seller intends to locate the Facility in Perry County, Kentucky, and to interconnect the Facility with the Transmission Provider's System;

WHEREAS Seller desires to sell and deliver to Purchaser at the Point of Delivery all of the Facility's Renewable Energy Products, and Purchaser desires to buy the same from Seller; and

WHEREAS Purchaser has accepted Seller's offer to sell such Renewable Energy Products in accordance with the terms and conditions set forth in this REPA, subject to the timely receipt of all necessary regulatory and cost recovery approvals.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1  
DEFINITIONS AND RULES OF INTERPRETATION

1.1 Rules of Construction.

The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this REPA, whether in the singular or the plural or in the present or past tense. Other terms used in this REPA but not listed in this Article shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice. Words not otherwise defined herein that have well known and

generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

- (A) The masculine shall include the feminine and neuter.
- (B) References to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or exhibits of this REPA.
- (C) The Exhibits attached hereto are incorporated in and are intended to be a part of this REPA; provided, that in the event of a conflict between the terms of any Exhibit and the terms of Articles 1 through 20 of this REPA, the terms of Articles 1 through 20 of this REPA shall take precedence.
- (D) This REPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this REPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this REPA or any part hereof.
- (E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this REPA. Unless expressly provided otherwise in this REPA (e.g. references to sole discretion), (i) where the REPA requires the consent, approval, or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the REPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.
- (F) Each reference in this REPA to any agreement or document (including those set forth electronically on an internet web site) or a portion or provision thereof shall be construed as a reference to the relevant agreement or document as amended, supplemented or otherwise modified from time to time.
- (G) Each reference in this REPA to applicable laws and to terms defined in, and other provisions of, applicable laws (including those set forth electronically on an internet web site) shall be references to the same (or a successor to the same) as amended, supplemented or otherwise modified from time to time.
- (H) Each reference in this REPA to a Person includes its successors and permitted assigns and, in the case of a Governmental Authority, any Person or Persons succeeding, in whole or in part, to its functions and capacities.
- (I) In this REPA, the words "include," "includes" and "including" are to be construed as being at all times followed by the words "without limitation."

## 1.2 Interpretation with Interconnection Agreement.

The Parties recognize that Seller will enter into a separate Interconnection Agreement with the Interconnection Provider.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this REPA are not binding upon the Interconnection Provider.

(B) Notwithstanding any other provision in this REPA, nothing in the Interconnection Agreement shall alter or modify Seller's or Purchaser's rights, duties and obligations under this REPA. This REPA shall not be construed to create any rights between Seller and the Interconnection Provider.

(C) Seller expressly recognizes that, for purposes of this REPA, the Interconnection Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Purchaser or an Affiliate of Purchaser.

### 1.3 Interpretation of Arrangements for Electric Supply to the Facility.

(A) The Parties recognize that this REPA does not provide for the supply of any electric service by Purchaser to Seller or to the Facility and Seller must enter into separate arrangements for the supply of electric services to the Facility, including the supply of turbine unit start-up and shutdown house power and Energy.

(B) The Parties acknowledge and agree that the arrangements for the supply of electric services to the Facility shall be separate and free-standing arrangements and that the terms of this REPA are not binding upon the supplier of such electric services.

(C) Notwithstanding any other provision in this REPA, nothing in the arrangements for the supply of retail electric services to the Facility shall alter or modify Seller's or Purchaser's rights, duties and obligations under this REPA. This REPA shall not be construed to create any rights between Seller and the supplier of such retail electric services.

(D) Seller expressly recognizes that, for purposes of this REPA, the supplier of retail electric services to the Facility shall be deemed to be a separate entity and separate contracting party whether or not the arrangements for the supply of retail electric services to the Facility is entered into with Purchaser or an Affiliate of Purchaser.

### 1.4 Definitions.

The following terms shall have the meanings set forth below when used herein:

"Abandonment" means the relinquishment of all possession and control of the Facility by Seller for a period of sixty (60) consecutive days or more, other than a transfer permitted under this REPA.

"Adjusted Renewable Energy" means, with respect to any Contract Year, the sum of (i) the amount of Renewable Energy delivered to Purchaser during such Contract Year, plus (ii) the sum of the Excused Deliveries during such Contract Year.

"Affiliate" of any named person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. The term "control" (including the terms "controls", "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management of the policies of a person or entity, whether through ownership interest, by contract or otherwise.

"Ancillary Services" means regulation and frequency response services, energy imbalance services, automatic generating control, spinning reserve, non-spinning reserve, replacement reserve, reactive power, voltage support and any other services that support the transmission of capacity and energy or the reliable operation of the Transmission Provider's transmission system, all to the extent included as ancillary services in the Transmission Operator's open access transmission tariff, in each case, to the extent commonly sold or saleable and, in each case, to the extent that the assets comprising the Facility are Eligible to provide such services under normal operating conditions.

"Approval Applications" means, collectively, the Commission Approval Application and the FERC Approval Application.

"Approval Orders" means, collectively, the Commission Approval Order and the FERC Approval Order.

"Average Beneficial Environmental Interest Cost" means, for any Contract Year, the average cost over such Contract Year, expressed in \$/MWh, for Purchaser to purchase Comparable Renewable Energy Certificates in arms length, third party transactions with respect to such Contract Year, whether or not Purchaser actually purchases any such Comparable Renewable Energy Certificates, as further described in Exhibit I.



"Average Contract Rate" means, for any Contract Year, the weighted average Contract Rate (on a \$/MWh basis) payable under this REPA for such Contract Year, utilizing the percentage-weighting factors set forth on Exhibit I, and calculated as set forth on such Exhibit I.

"Back-Up Metering" shall have the meaning set forth in Section 5.4(C).



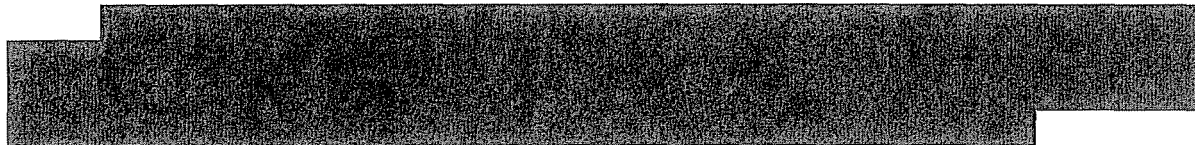
"Beneficial Environmental Interests" means all Non-Power Attributes associated in any way, directly or indirectly, with the Facility and all RECs associated with such Non-Power Attributes, excluding Renewable Energy Incentives and other federal, state or local tax credits, deductions and other tax benefits and financial incentives related to the ownership of the Facility or the sale to Purchaser of the output thereof. For the avoidance of doubt, Beneficial Environmental Interests do not include (a) any ash, fly ash or fuel by-products or other physical products (other than electricity) used, generated by, or disposed from the Facility and (b) emission reduction credits encumbered or used by or related to the Facility for compliance with local, state or federal operating and/or air quality permits.

"Biomass" means untreated organic material derived from plants or animals and available on a renewable basis, including: agricultural crops, crop by-products and residues; vegetative waste material (including wood waste and wood residues); paper manufacturing waste, including by-products of the wood manufacturing or pulping process, such as bark, wood chips, and sawdust; forestry waste and residues; other vegetation waste, including landscape or right-of-way trimmings; algae; food waste; animal wastes and by-products (including fats, oils, greases and manure); and biodegradable solid waste.

In addition, Biomass may include materials that are byproducts of preventive treatments (e.g., trees, wood) that are removed from forests to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health; would not otherwise be used for higher value products; and are harvested from National Forest System land or public lands in accordance with public laws, land management plans, and requirements for old-growth maintenance.

In no case shall any Biomass fuel come from lands owned, managed or controlled by the Federal government from the National Wilderness Preservation System, Wilderness Study Areas, Inventoried Roadless Areas, old growth stands, late successional stands, National Landscape Conservation System lands, National Monuments, National Conservation Areas, State Parks, Designated Primitive Areas, or Wild and Scenic Rivers corridors, except, in each case, for dead, severely damaged, or badly infested trees.

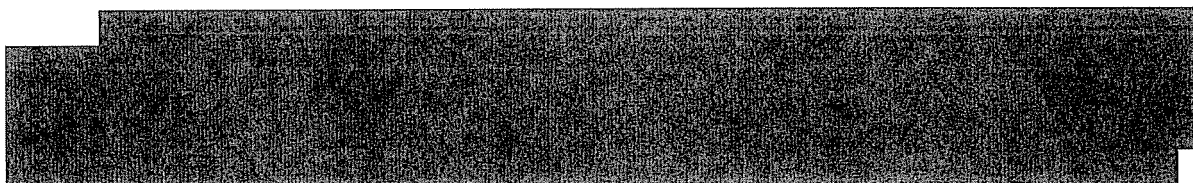
"Business Day" means any calendar day that is not a Saturday, a Sunday, or a NERC Holiday.



"Capacity" means the output level, expressed in MW, that the Facility, or the components of equipment thereof, is capable, as of a given moment, of continuously producing and making available at the Point of Delivery, taking into account the operating condition of the equipment at that time, the auxiliary loads and other relevant

factors. Capacity includes all installed capacity and unforced capacity attributed to the Facility by the Transmission Operator, any regional reliability organization, Governmental Authority, or that is commonly sold or saleable to third parties.

"Capacity Resource" shall have the meaning set forth in the OATT.



"Capacity Shortfall" means, for any Delivery Year, the positive difference, if any, between the Committed UCAP and the actual UCAP for the Facility, as determined by PJM for such Delivery Year.

"Capacity Shortfall Liquidated Damages" means, for any Delivery Year, the sum of (i) the Capacity Resource Deficiency Charge for such Delivery Year and (ii) all Other Compliance Charges for such Delivery Year.

"Cash" shall have the meaning set forth in Section 11.1(C)(2).

"Clock Hour" means sixty-minute increments commencing at the top of the hour on the clock (i.e., 12 o'clock)

"Close of the Business Day" means 5:00 PM EPT on a Business Day.

"Commercial Operation" means the period beginning on the Commercial Operation Date and continuing through the Term of this REPA.

"Commercial Operation Date" or "COD" means the date that Seller provides notification to Purchaser, pursuant to Section 4.7, of Seller's declaration that all of the Conditions specified in Section 4.7 have occurred or otherwise been satisfied.

"Commercial Operation Milestone" means the anticipated Commercial Operation Date for the Facility. The Commercial Operation Milestone is specified as no later than January 31, 2017; provided, however, that the Commercial Operation Milestone shall be extended on a day-for-day basis for any delay in achieving the Commercial Operation Milestone resulting from (i) any Force Majeure or (ii) any breach or default of, or any delays directly caused by, Purchaser hereunder.

"Commission" means the Kentucky Public Service Commission.

"Commission Approval Application" means an application for a Commission Approval Order from the Commission filed by Purchaser.

"Commission Approval Order" means a final, non-appealable order from the Commission, among other things, (i) approving the terms and conditions of this REPA

without modification, (ii) declaring that concurrent recovery of costs associated with this REPA through Kentucky retail rates via a monthly rider or monthly surcharge to Purchaser's base rates is appropriate (iii) approving and authorizing Purchaser to enter into this REPA and (iv) granting without modification or condition all approvals required to accomplish the Mitchell Transaction, which order is satisfactory to Purchaser in all respects in its sole discretion.

"Commissioned" means, with respect to the Facility, that the requirements of Section 4.7 have been satisfied.

"Committed Renewable Energy" shall have the meaning set forth in Section 7.2(A).



"Committed UCAP" shall have the meaning set forth in Section 7.2(D).

"Communications Equipment" means the communication circuits from the Facility to Purchaser for the purpose of telemetering, supervisory control and data acquisition and transmittal of real time data and voice communications as reasonably required by Purchaser.

"Comparable Renewable Energy Certificate" means any REC related to the Non-Power Attributes of a renewable energy generation facility newly constructed on and after August 30, 2007 that utilizes Biomass resources, wind power, landfill methane gas or other similar renewable resource, as reasonably designated by Purchaser, that is located in (i) Kentucky and interconnected to PJM and that is generated in the same year in which the Output Shortfall to which it is applicable occurs. Without limiting the generality of the foregoing definitions, Comparable Renewable Energy Certificates shall include certificates recognized by GATS as associated with the generation of biomass energy.

"Conditions" shall have the meaning set forth in Section 4.7.

"Consent and Agreement" means a Consent and Agreement in substantially the form of Exhibit N.

"Contract Administration Committee" means one representative each from Purchaser and Seller pursuant to Section 10.3.

"Contract Administration Procedures" means those procedures developed pursuant to Section 10.3.

"Contract Rate" means the applicable rate set forth in Exhibit C.

"Contract Year" means each full calendar year of the Term, whether such calendar year is comprised of 365 or 366 Days, commencing with the first calendar year subsequent to the year in which the Delivery Period commences, subject to the Proration Factor.

"Control Area" means the system of electrical generation, distribution, and transmission facilities within which generation is regulated in order to maintain interchange schedules with other such systems.

"Cost Recovery Approval Period" means the lesser of: (a) the expiration of ten (10) months from the filing of the Cost Recovery Request; or (b) forty (40) days after the service of a final, non-appealable order denying a Cost Recovery Order.

"Cost Recovery Request" means a request filed by Purchaser with the Commission for a Cost Recovery Order.

"Cost Recovery Order" means a final, non-appealable order from the Commission authorizing Purchaser to recover fully and concurrently all costs, rates, terms and conditions associated with this REPA through Kentucky retail rates via a monthly rider or monthly surcharge to base rates, which order is satisfactory to Purchaser in all respects in its sole discretion.

"Credit Rating" means, for any Person, the senior unsecured and non-credit-enhanced long term debt rating of such Person or, if such Person does not have a senior unsecured and non-credit-enhanced long term debt rating, the issuer rating of such Person.

"Creditworthy Bank" means a United States commercial bank or a foreign bank with a United States branch, which United States commercial bank or United States branch has at the applicable time a Credit Rating of (a) A- or better from Standard & Poor's Rating Services and (b) A3 or better from Moody's Investors Service, Inc.



"Day" means a calendar day.

"Delay Liquidated Damages" shall have the meaning set forth in Section 4.10.

"Delivery Period" means the period that commences at 0000 hours on the Commercial Operation Date and continues through the remainder of the Term.

"Delivery Year" means each period of June 1<sup>st</sup> through May 31<sup>st</sup> during the Delivery Period, subject to the Proration Factor.

"Dispute" shall have the meaning set forth in Section 13.9(A).

"Dispute Notice" shall have the meaning set forth in Section 13.9(A).

"Electric Metering Device(s)" means all meters, submeters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the Renewable Energy from the Facility.

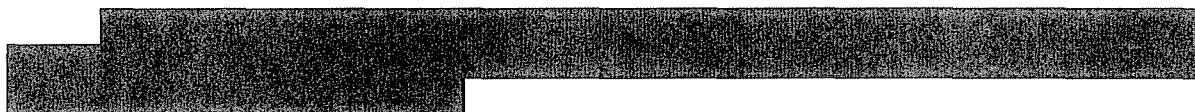
"Eligible" means technically capable of production based on the then-existing design of the Facility (including equipment and interconnection) and under the OATT.

"Emergency" means an emergency condition as defined under the Interconnection Agreement or the OATT.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in MWh.

"Environmental Contamination" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Site will not be available or usable for the purposes contemplated by this REPA.

"EPT" means Eastern Prevailing Time.



"Excused Event" means any (i) Reliability Curtailment (other than as a result of Seller's acts or omissions described in clauses (iii) and (iv) of the definition thereof), (ii) maintenance outage taken by Seller in accordance with any planned maintenance schedule complying with the provisions of Section 10.8 and (iii) Force Majeure event.

"Event of Default" shall have the meaning set forth in Article 12.

"Facility" means Seller's electric generating facility that uses Biomass exclusively (other than quantities of propane, natural gas and other fuels used for startup, shutdown and flame stabilization that individually or in the aggregate do not disqualify the RECS generated by the Facility under GATS or any of the other programs referred to in Section 10.9) to generate electricity and Seller's Interconnection Facilities, as identified and described in Article 3 and Exhibit B to this REPA, including all of the following, the purpose of which is to produce electricity and deliver such electricity to the Point of Delivery: Seller's equipment, buildings, all of the generation facilities, including boilers, generators, turbines, step-up transformers, output breakers, facilities necessary to connect to the Point of Delivery, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Renewable Energy subject to this REPA.

"Facility Capacity" means the Capacity capable of being generated from the Facility based on the aggregate nameplate rating of the boiler, turbine and the generator comprising the Facility, but shall not exceed 62.5 MW at any point during the Term.

"Facility Financing" means the obligations of Seller to any Facility Financier pursuant to the Financing Documents, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

"Facility Financing Representative" means, during any period when there is only one Facility Financier, the Facility Financier, and during any period when there is more than one Facility Financier, any trustee or agent on behalf of the Facility Financiers or such other single representative designated in writing by Seller.

"Facility Financiers" means, collectively, any lender(s) or any other financiers providing any Facility Financing.

"Failure to Extend Condition" shall have the meaning set forth in Section 11.1(C)(1).

"Failure to Replace Condition" shall have the meaning set forth in Section 11.1(D).

"Federal Funds Effective Rate" means the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H. 15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

"FERC" means the Federal Energy Regulatory Commission.

"FERC Approval Application" means an application for a FERC Approval Order from the FERC filed by Purchaser and certain of its Affiliates.

"FERC Approval Order" means a final, non-appealable order from the FERC granting without modification or condition, among other things, all approvals required to accomplish the Mitchell Transaction, which order is satisfactory to Purchaser and its Affiliates in all respects in their sole discretion.

"Financial Closing" means the date on which Seller closes the construction loan financing for the Facility with the Facility Financiers pursuant to the Financing Documents on terms and conditions satisfactory to Seller in its sole discretion, with funds thereunder being immediately available to Seller for drawdown.

"Financing Documents" means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, tax equity, construction or permanent debt financing for the

Facility, including any credit enhancement, credit support, working capital financing, letter of credit facilities, and all such documents or agreements related to any refinancing or replacement of any of the foregoing, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

"Force Majeure" shall have the meaning set forth in Article 14.

"Forced Outage" means any condition at the Facility that requires unplanned removal of the Facility, or some part thereof, from service, another outage state, or a reserve shutdown state. This type of outage results from, among other things, immediate mechanical, electrical or hydraulic control system trips and operator-initiated trips in response to Facility conditions or alarms.

"GATS" means the Generation Attribute Tracking System administered by PJM Environmental Information Services, Inc. ("PJM-EIS") and providing environmental and emissions attributes reporting and tracking services to its subscribers in support of renewable portfolio standards and other information disclosure requirements that may be implemented by Governmental Authorities. GATS tracks generation attributes and the ownership of the attributes as they are traded or used to meet standards of Governmental Authorities. GATS includes any successor tracking system or systems with the same or similar purpose administered by PJM-EIS.

"GATS Certificates" means certificates recognized by GATS and associated with the generation of electricity from the Facility.

"Good Utility Practice(s)" means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the biomass power generation industry, the Transmission Operator or NERC) that, at a particular time, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices are not intended to be the optimal practice, method or act to the exclusion of all others, but rather are intended to be any of the practices, methods or acts generally accepted for biomass power generation facilities similar to the Facility in the region in which the Facility is located during the relevant time period. With respect to the Facility, Good Utility Practice(s) includes taking commercially reasonable steps to ensure that:

(1) equipment, materials, resources, and supplies, including spare parts inventories, are available in commercially reasonable quantities to meet the Facility's needs;

(2) sufficient operating personnel are available to operate the Facility on a 24 hour basis in accordance with reasonable industry operating

practices for biomass power generation equipment and are adequately experienced and trained and licensed, as required under applicable law, to operate the Facility properly, efficiently, and in coordination with Purchaser and are capable of responding to reasonably foreseeable Emergency conditions whether caused by events on or off the Site;

(3) preventive, routine, and non-routine maintenance and repairs are performed on a basis that enables, to a commercially reasonable extent, reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(4) appropriate monitoring and testing are performed to determine that equipment is functioning in compliance with this REPA; and

(5) equipment is not operated in a reckless manner or in a manner unsafe to workers, the general public, or the interconnected system or in violation of applicable law.

"Governmental Authority" means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"Hazardous Materials" means any substance, material or particulate matter that is regulated by any Governmental Authority as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including protection of nonhuman forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.* (33 U.S.C. §1251); (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6901); (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (42 U.S.C. §9601); (ix) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.* (15 U.S.C. §2601); or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.* (7 U.S.C. §136).

"Indemnified Party" shall have the meaning set forth in Article 17.

"Indemnifying Party" shall have the meaning set forth in Article 17.

"Interconnection Agreement" means the separate generation interconnection agreement between Seller and the Interconnection Provider for interconnection of the



Facility to the Transmission Provider's System, as such agreement may be amended from time to time.

"Interconnection Facilities" means the facilities necessary to connect Transmission Provider's System to the Point of Delivery, including breakers, bus work, bus relays, and associated equipment installed by the Interconnection Provider for the direct purpose of interconnecting the Facility, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. Arrangements for the installation and operation of the Interconnection Facilities shall be governed by the Interconnection Agreement.

"Interconnection Provider" means the Transmission Operator or any Transmission Provider responsible for the operation of the Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Point of Delivery.

"Issuer" means (a) with respect to a Security Fund in the form of a letter of credit or Cash, a Creditworthy Bank, or (b) with respect to a Security Fund in the form of a payment guaranty, a Creditworthy Entity.

"Locational Marginal Price" or "LMP" means the hourly integrated market clearing marginal price for Energy, including losses and congestion, at the Point of Delivery.

"Mitchell Transaction" means the closing of a transaction whereby Purchaser acquires and assumes an undivided 50% interest in the Mitchell generating station located near Moundsville, West Virginia, along with related assets and liabilities.

"MW" means megawatt, an amount of power equal to 1,000 kilowatts or 1,000,000 watts.

"MWh" means megawatt-hour, an amount of power equal to 1,000 kilowatt-hours or 1,000,000 watt-hours.

"NERC" means the North American Electric Reliability Corporation.

"NERC Holiday" means every Day other than a Saturday or Sunday which the NERC declares to be a holiday for power scheduling purposes.

"Net Replacement Energy Cost" means, for any Contract Year, the positive difference, if any, between (i) the Replacement Energy Cost (on a \$/MWh basis) for such Contract Year and (ii) an amount equal to (a) the Contract Rate (on a \$/MWh basis) for such Contract Year minus (b) the Average Capacity Value (on a \$/MWh basis) for such Contract Year.

"Non-Power Attributes" means any characteristic of the Facility related to its benefits to the environment, including any avoided, reduced, displaced or off-set emissions of pollutants to the air, soil or water such as sulfur dioxides (SO<sub>x</sub>), nitrogen

oxides (NO<sub>x</sub>), carbon monoxide (CO), mercury (Hg), particulates, and any other pollutant that is now or may in the future be regulated under federal, state or local pollution control laws, regulations or ordinances or any voluntary rules, guidelines or programs; and further include any avoided emissions of carbon dioxide (CO<sub>2</sub>) and any other greenhouse gas (GHG) that contributes to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere. Non-Power Attributes do not include Renewable Energy Incentives and other federal, state or local tax credits, deductions and other tax benefits and financial incentives related to the ownership of the Facility or the sale to Purchaser of the output thereof.

"OATT" means the FERC filed Open Access Transmission Service Tariff of the Transmission Operator, as it may be amended and approved by FERC.

"Operating Records" means operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that the Seller uses or maintains for the operation of the Facility.

"Other Compliance Charges" means any Peak-Hour Period Availability Charges, Generation Resource Rating Test Failure Charges, Peak Season Maintenance Compliance Penalty Charges, Load Management Event Penalty Charges and Daily Load Management Test Failure Charges, as such charges are defined in the PJM Manuals and Agreements (including any such charges under Schedule 9-5 (Capacity Resource and Obligation Management Service) and Schedule 9-6 (Management Service Cost) of the OATT.

"Output Shortfall" means, for any Contract Year, the positive difference (expressed in MWh), if any, between (i) the Adjusted Renewable Energy for such Contract Year and (ii) the Committed Renewable Energy for such Contract Year, as further described on Exhibit I.

"Output Shortfall Liquidated Damages" means, for any Contract Year, liquidated damages in the amount equal to the product of (i) the Output Shortfall for such Contract Year and (ii) the Net Replacement Energy Cost.

"Output Shortfall Notice Date" shall have the meaning set forth in Section 12.1(F).

"Penalties" means penalties imposed by Governmental Authorities.

"Person" means an individual, corporation, limited liability company, voluntary association, joint stock company, business trust, partnership, Governmental Authority, or other entity.

"PJM" means PJM Interconnection, LLC.

"PJM Manuals and Agreements" means, collectively, (i) all instructions, rules, procedures and guidelines established by PJM, (ii) all documents and protocols issued by PJM and (iii) all agreements to which Seller, Purchaser or any Affiliates of Purchaser,

on the one hand, and PJM, on the other hand, are parties, either bilaterally or in concert with other entities, as may be in effect from time to time, in each case for the operation, planning, and accounting requirements of PJM and the PJM Interchange Energy Market, including the OATT.

"Point of Delivery" means the 69 kV point, as shown on Exhibit G, at which point the quantities of Renewable Energy and Ancillary Services delivered are recorded and measured by the Interconnection Provider's revenue meters.

"Pre-Delivery Period Renewable Energy Production" means all Renewable Energy Products which are produced by the Facility prior to the commencement of the Delivery Period.

"Production Tax Credits" or "PTCs" means tax credits applicable to electricity produced from certain renewable resources pursuant to 26 U.S.C. § 45, or any substantially equivalent tax credits applicable to Seller based on its ownership or operation of the Facility or on the production and sale of Renewable Energy to the Purchaser.

"Proration Factor" means, if the Contract Year or Delivery Year in which the Delivery Period commences or the Contract Year or Delivery Year in which this REPA is terminated or expires is less than a full calendar year, then, with respect to such Contract Year or Delivery Year, an amount equal to a fraction, the numerator of which is the number of Days falling within the Delivery Period in such Contract Year or Delivery Year, and the denominator of which is 365 or 366, as applicable to the calendar year that includes such Contract Year or Delivery Year.

"Qualified Operator" means a Person that has (i) substantial experience in operating and maintaining biomass electric generation facilities in the United States and (ii) met all applicable requirements under applicable law for operating and maintaining the Facility, including the requirements of the Transmission Operator. A Person will be deemed to have such substantial experience if it is a Person that has at least five (5) years of experience in operating and maintaining electric generation facilities in the United States.



"Renewable Energy" means the net electric Energy generated by the Facility exclusively from Biomass (other than quantities of propane, natural gas and other fuels used for startup, shutdown and flame stabilization that individually or in the aggregate do not disqualify the RECS generated by the Facility under GATS or any of the other programs referred to in Section 10.9) and delivered to the Point of Delivery as measured by the Electric Metering Devices installed pursuant to Section 5.4. Renewable Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement.

"Renewable Energy Certificate" or "REC" means any credit, certificate, allowance or similar right that is related to the Non-Power Attributes of the Facility, whether arising pursuant to law, regulation, certification, markets, trading, off-set, private transaction, renewable portfolio standards, voluntary programs or otherwise. Without limiting the generality of the foregoing definitions, RECs shall include GATS Certificates.

"Renewable Energy Incentive" means: (a) federal, state, and local tax credits or other tax incentives associated with the construction, ownership, or production of electricity from the Facility (including Production Tax Credits, credits under Sections 38 and 45 of the Internal Revenue Code as in effect from time to time during the Term and any grants paid in lieu thereof); (b) any federal, state, and local governmental or nongovernmental payments, grants or other negotiable attributes relating in any way to the Facility or the output thereof; and (c) any other form of incentive that is neither a Non-Power Attribute nor a Beneficial Environmental Interest that is available with respect to the Facility.

"Renewable Energy Products" means, collectively, the Renewable Energy and Ancillary Services produced by the Facility and all of the associated Capacity, RECs and other Beneficial Environmental Interests.

"REPA" means this Renewable Energy Purchase Agreement between Seller and Purchaser, including the Exhibits attached hereto.

"Replacement Energy Costs" means, for any Contract Year, Purchaser's average cost of replacement Renewable Energy, or Energy plus Comparable Renewable Energy Certificates, over such Contract Year, calculated in accordance with part (c) of Exhibit I.

"Resale Costs" means the greater of (i) zero and (ii) an amount equal to (a) the net payments that Purchaser would have made to Seller for Renewable Energy Products purchased under this REPA at the applicable Contract Rate, but which Purchaser failed to purchase, less (b) an amount equal the difference between (x) net amounts realized by Seller from the resale at the Point of Delivery of the Renewable Energy Products and (y) the cost of transmission of Energy incurred in connection with such resale, plus (c) directly associated transaction costs. Directly associated transactional costs may include any Penalties incurred by Seller as a result of the Purchaser's non-performance that are recoverable under Section 20.3.

"RFC" means the ReliabilityFirst Corporation, one of the eight regional reliability councils approved by the North American Electric Reliability Corporation (NERC).

"Scheduled Outage/Derating" means a planned interruption or reduction of the Facility's generation by Seller that both (i) has been coordinated in advance with Purchaser, with a mutually agreed start date and duration, and (ii) is required for inspection, or preventive or corrective maintenance.

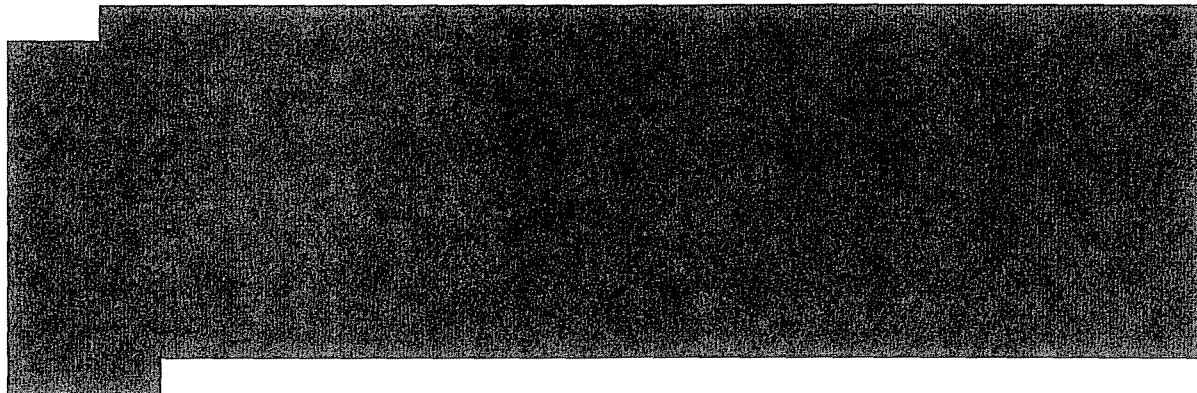
"Security Fund" means the fund that Seller is required to establish and maintain, pursuant to Section 11.1, as security for its performance under this REPA.

"Seller's Interconnection Facilities" means the equipment between the high side disconnect of the step-up transformer and the Point of Delivery, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's System at the Point of Delivery, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the high side of the step-up transformer it includes Seller's load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Site and is conceptually depicted in Exhibit B to this REPA.

"Site" means the parcel or parcels of real property on which the Facility will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in Section 3.2 and Exhibit B to this REPA.

"Tax" or "Taxes" shall have the meaning set forth in Section 20.2.

"Term" means the period of time during which this REPA shall remain in full force and effect, and which is further defined in Article 2.



"Transmission Operator" means PJM or any successor independent system operator, regional transmission operator or other transmission operator from time to time having authority to control the transmission Control Area to which the Facility is interconnected.

"Transmission Provider" means any Person or Persons that owns, operates or controls facilities used for the transmission of Energy from the Facility in interstate commerce.

"Transmission Provider's System" means the contiguously interconnected electric transmission facilities, including Interconnection Provider's Interconnection Facilities, over which the Transmission Provider has rights to provide for the bulk transmission of Capacity and Energy from the Point of Delivery.

"Unforced Capacity (UCAP)" means, with respect to any Delivery Year, the UCAP of the Facility as determined by PJM in accordance with the PJM Manuals and Agreements.

"Unrecovered Costs" shall have the meaning set forth in Section 6.1(D).

## ARTICLE 2 TERM AND TERMINATION

This REPA shall become effective as of the date of its execution, and shall remain in full force and effect until the date that is twenty (20) years after the day before the first day of the Delivery Period, subject to any early termination provisions set forth herein (the "Term"). Applicable provisions of this REPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for: final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this REPA, repayment of principal and interest associated with security funds, the indemnifications specified in this REPA, and the resolution of disputes between the Parties.

## ARTICLE 3 FACILITY DESCRIPTION

### 3.1 Summary Description.

Seller shall endeavor to construct, own, operate, and maintain the Facility, which shall consist of a fluidized bed boiler, a steam turbine generator and associated equipment having an approximate designed maximum gross output of 66 MW. Exhibit B to this REPA provides a detailed description of the Facility, including identification of the equipment and components, which make up the Facility. The aggregate nominal or "nameplate" MW rating of the equipment comprising the Facility will not exceed 66 MW at any time during the Term. Any additional boilers or turbine-generator sets installed on the Site shall not comprise the Facility or share the same Point of Delivery or revenue meter used in connection with this REPA.

### 3.2 Location.

The Facility shall be located on the Site and shall be identified as Seller's Facility. The Facility is located in Perry County, Kentucky. A scaled map that identifies the Site, the location of the Facility at the Site, the location of the Point of Delivery and the location of the important ancillary facilities and Interconnection Facilities, is included in Exhibit B to this REPA.

### 3.3 General Design of the Facility.

Seller shall construct the Facility in accordance with Good Utility Practice(s), the Interconnection Agreement and rules of the Transmission Operator, including the PJM Manuals and Agreements. During Commercial Operation, Seller shall maintain the Facility according to Good Utility Practice(s) and the Interconnection Agreement. In addition to the requirements of the Interconnection Agreement, the design of the Facility shall at all times include metering accuracy current transformers and voltage transformers located at the Point of Delivery (or some other point mutually agreed to by the Parties) as required to connect to the Electric Metering Devices.

## ARTICLE 4 COMMERCIAL OPERATION

### 4.1 Commercial Operation.

Subject to Section 4.10, the Facility shall achieve the Commercial Operation Date, and shall be fully capable of reliably producing the Renewable Energy Products to be provided under this REPA and delivering such Renewable Energy Products to Purchaser at the Point of Delivery, no later than the Commercial Operation Milestone.

### 4.2 [Intentionally Omitted].

### 4.3 Site Report.

Seller shall conduct a Phase I environmental investigation of the Site and shall provide Purchaser, on or before sixty (60) days after the execution of this REPA, with a copy of the draft report summarizing such investigation, together with any data or information generated pursuant to such investigation.

### 4.4 Facility Contracts.

Upon reasonable notice and request by Purchaser, Seller shall provide Purchaser with copies of major engineering drawings relating to the Facility. Information that is commercially sensitive, confidential or proprietary, as reasonably determined by Seller, may be redacted from the documents provided to Purchaser pursuant to this paragraph. All such information shall be treated as confidential information subject to Section 20.15 hereof.

#### 4.5 Progress Reports.

Commencing upon the execution of this REPA, Seller shall submit to Purchaser, within the first fifteen (15) Days of each calendar month until the Commercial Operation Date is achieved, reports regarding development and construction progress in a form reasonably satisfactory to Purchaser. These progress reports shall describe the status of the development and construction of the Facility as of the end of the preceding month, including (a) a description of the progress of development and construction, (b) an explanation of any material changes in the development and construction schedule and (c) an estimate of the Commercial Operation Date. Commencing upon the date that is two months prior to the earlier of (x) the Commercial Operation Milestone and (y) the estimated Commercial Operation Date, Seller will additionally advise Purchaser weekly on the status of Facility Commissioning until the Commercial Operation Date is achieved.

#### 4.6 Purchaser's Rights During Construction.

Purchaser shall have the right to monitor the construction, start-up and testing of the Facility, and Seller shall comply with all reasonable requests of Purchaser with respect to the monitoring of these events, provided, however, that Purchaser provides Seller reasonable advance written notice, shall not unreasonably interfere with or disrupt the activities of the Seller. Seller shall cooperate in such physical inspections of the Facility as may be reasonably requested by Purchaser during and after completion of construction. All persons visiting the Facility on behalf of Purchaser shall comply with all of Seller's applicable safety and health rules and requirements. Purchaser's technical review and inspection of the Facility shall not be construed as endorsing the design thereof nor as any warranty of safety, durability, or reliability of the Facility.

#### 4.7 Conditions to Commercial Operation.

Seller shall notify Purchaser when the Facility has achieved the Commercial Operation Date. Purchaser agrees to use commercially reasonable efforts to cooperate with Seller on Seller's completion of the Conditions in this Section 4.7. This notification is contingent upon Seller providing evidence reasonably acceptable to Purchaser of the satisfaction or occurrence of all of the conditions set forth in this Section 4.7 ("Conditions") and shall include a declaration by Seller to that effect. The Parties agree that review and approval of such Conditions may occur on an ongoing and incremental basis, pending resolution of any dispute, as such Conditions are satisfied. The Conditions are:

(A) Seller has successfully completed testing of the Facility, the protocols of which are set forth in the Facility's permits issued by Governmental Authorities, the Interconnection Agreement, Seller's engineering, procurement and construction ("EPC") agreement and manufacturers' warranties, for the commencement of commercial operations at the Facility; provided that the Parties acknowledge that the foregoing documents and agreements may require certain testing that will occur after the commencement of commercial operations at the Facility;



(B) an officer of Seller, familiar with the Facility, has provided a list of the Facility's boiler, turbine, and generator, showing the make, model, serial number and designed maximum output (nameplate capacity) of each;

(C) the Facility has achieved initial synchronization with the Transmission Provider's System;

(D) an independent professional engineer's certification has been obtained by Seller stating (i) that the Facility has been completed in all material respects (excepting punch list items that do not materially and adversely affect the ability of the Facility to operate as intended hereunder) in accordance with this REPA and (ii) the designed maximum gross output of the entire Facility, which total shall not exceed 66 MW;

(E) the interconnection of the Facility to the Transmission Provider's System has been completed in accordance with the Interconnection Agreement and has operated at a generation level acceptable to the Interconnection Provider in accordance with the operating requirements of the Interconnection Agreement;

(F) Seller has made all arrangements and executed all agreements required to deliver the Renewable Energy from the Facility to the Point of Delivery in accordance with the provisions of this REPA;

(G) [Intentionally Omitted];

(H) all arrangements for the supply of required electric services to the Facility, including the supply of turbine unit start-up and shutdown power and Energy, house power and maintenance power have been completed by Seller separate from this REPA, are in effect;

(I) the Security Fund meeting the requirements of Article 11 has been established;

(J) certificates of insurance evidencing the coverages required by Article 16 have been obtained and submitted to Purchaser;

(K) Seller has submitted to Purchaser a certificate of an officer of Seller familiar with the Facility after due inquiry stating that (i) all permits, consents, licenses, approvals, and authorizations required to be obtained by Seller from any Governmental Authority to construct and operate the Facility in compliance with applicable law and this REPA have been obtained and are in full force and effect, (ii) Seller is a PJM member, and (iii) Seller is in compliance with the terms and conditions of this REPA in all material respects;

(L) Seller has made all necessary filings and applications with Governmental Authorities for accreditation and participation in GATS and in any applicable federal certification program and state REC certification programs reasonably

designated by Purchaser (including Kentucky, Ohio, Illinois, Maryland, Pennsylvania and West Virginia), pursuant to Section 10.9;

(M) Seller shall have provided the following items to Purchaser at least ninety (90) days prior to Commercial Operation: (1) the boiler, turbine, and generator layout and the generator manufacturer's power curve; and (2) a non-binding, good faith 12 month x 24 hour forecast of net Energy production from the Facility; provided that the data set forth in the foregoing item (1) above shall be updated and re-submitted to the Purchaser no later than five (5) Business Days after the Commercial Operation Date;

(N) Seller shall have provided Purchaser with a copy of the final Phase I environmental report referred to in Section 4.3 and either (i) such report shall confirm that no conditions involving Environmental Contamination exist at or under the Site that would materially impact performance of Seller's obligations under this REPA or (ii) Seller shall provide to Purchaser prior to the Commercial Operation Date a remediation plan for removal of such Environmental Contamination; and

(O) Seller shall have established with PJM the node (virtual unit) described in Section 5.3(A).

#### 4.8 Pre-Delivery Period Renewable Energy Production.

Seller shall coordinate the production and delivery of Pre-Delivery Period Renewable Energy Production with the Transmission Operator and be responsible for all scheduling activities and shall be entitled to all credits and charges associated with the delivery of such Pre-Delivery Period Renewable Energy Production into PJM for Seller's account. Purchaser shall cooperate with Seller to facilitate Seller's testing of the Facility necessary to satisfy the Conditions set forth in Section 4.7 as applicable.

#### 4.9 QF Waiver.

For so long as this REPA is in effect, Seller waives, and agrees not to assert, the rights Seller may have against Purchaser to cause Purchaser to purchase or transmit energy or capacity pursuant to 18 C.F.R. section 292.303 or section 292.304 by virtue of the status of the Facility as a qualifying cogeneration facility as defined in the Public Utility Regulatory Policies Act of 1978, as amended.

#### 4.10 Delay Liquidated Damages.

If Seller fails to meet the Commercial Operation Milestone, Seller shall pay damages to Purchaser on account of such delay ("Delay Liquidated Damages") in the amount of [REDACTED], commencing on the Day after the Commercial Operation Milestone and ending on the earlier of (i) the date that the Commercial Operation Date is achieved and (ii) the date, if any, on which this REPA is terminated by Purchaser; provided that Seller's liability for Delay Liquidated Damages shall not exceed [REDACTED] in the aggregate. Each Party agrees and acknowledges that (i) the damages that Purchaser would incur due to a delay in the achievement of the Commercial Operation

Date by the Commercial Operation Milestone would be difficult or impossible to predict with certainty, (ii) the Delay Liquidated Damages contemplated by this provision are a fair and reasonable calculation of such damages, and (iii) the required payment by Seller of such Delay Liquidated Damages shall be Purchaser's sole remedy for such delay and the Facility's failure to achieve the Commercial Operation Date by the Commercial Operation Milestone. A delay in the Commercial Operation Date shall not be an Event of Default, except as provided in Section 12.1(E).

## ARTICLE 5 DELIVERY AND METERING

### 5.1 Seller's and Purchaser's Obligations.

Subject to, and in accordance with, the terms and conditions of this REPA, Purchaser does hereby agree to purchase and pay for all of the Facility's Renewable Energy Products, and Seller does hereby agree to sell and deliver, or cause to be delivered, all of the Facility's Renewable Energy Products during the Delivery Period. Purchaser shall have the exclusive right to purchase and receive all of the Renewable Energy Products during the Delivery Period, with the exception of Energy produced by Seller for its own use at the Facility for station power. Seller shall not offer, sell or make available any of the Facility's Renewable Energy Products or dispatch any of the Facility's Renewable Energy Products to or for the benefit of Seller (except for its own use at the Facility for station power) or any other Person during the Delivery Period, other than to Purchaser, except as specified in this REPA.

### 5.2 Required Operation.

Except to the extent the Facility is actually unavailable or limited (including in accordance with Good Utility Practice(s), due to curtailments under Section 7.4 and due to any scheduled or unscheduled maintenance), Seller shall operate the Facility to provide the Renewable Energy Products to Purchaser during the Delivery Period. Seller agrees that, notwithstanding anything herein to the contrary, Seller will not curtail or otherwise reduce deliveries of Renewable Energy Products in order to sell such Renewable Energy Products to other purchasers.

### 5.3 Delivery Arrangements.

(A) Prior to the Commercial Operation Date, Seller shall establish and shall maintain throughout the Term with PJM, a node (virtual unit) for purposes of identification of the Facility's Renewable Energy Products and the operating reserves and other charges and credits for which Seller is responsible under Section 5.6.

(B) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver the Renewable Energy and Pre-Delivery Period Renewable Energy Production from the Facility to Purchaser at the Point of Delivery. Purchaser shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to

receive the Renewable Energy at the Point of Delivery and deliver such Energy to points beyond the Point of Delivery.

(C) Seller shall be responsible for paying any and all transmission upgrade costs identified by the Transmission Operator as Seller's responsibility in order to designate the Facility as a Capacity Resource.

#### 5.4 Electric Metering Devices.

(A) Seller will comply with the terms and conditions of the Interconnection Agreement. The following provisions on Electric Metering Devices shall apply only to the extent they do not conflict with the performing Party's rights and obligations under the Interconnection Agreement or the OATT, as applicable.

(B) Seller shall provide Purchaser with reasonable advance notice of, and permit a representative of Purchaser to witness and verify, inspections and tests of the Electric Metering Devices, provided, however, that Purchaser shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. Upon request by Purchaser, Seller shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of Purchaser to inspect or witness the testing of any Electric Metering Device, provided, however, that Purchaser shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by Purchaser, unless upon such inspection or testing an Electric Metering Device is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by Seller. If requested by Purchaser in writing, Seller shall provide copies of any inspection or testing reports to Purchaser.

(C) Purchaser and Seller each may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering") in addition to the Electric Metering Devices. Each Party, at its own expense, shall inspect and test its Back-Up Metering upon installation and at least annually thereafter. Each Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, provided, however, that the observing Party shall not unreasonably interfere with or disrupt the activities of the testing Party and shall comply with all of the testing Party's safety standards. Upon request by a Party, the other Party shall perform additional inspections or tests of its Back-Up Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of such Back-Up Metering, provided, however, that the observing Party shall not unreasonably interfere with or disrupt the activities of the testing Party and shall comply with all of the testing Party's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the requesting Party, unless, upon such inspection or testing, the Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall

be borne by the testing Party. If requested by the requesting Party in writing, the testing Party shall provide copies of any inspection or testing reports to the requesting Party.

(D) If any Electric Metering Devices, or any Back-Up Metering, are found to be defective or inaccurate, they shall be adjusted, repaired, replaced, or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party's expense. The Party discovering such defect or inaccuracy shall promptly notify the other Party of such discovery.

#### 5.5 Adjustment for Inaccurate Meters.

(A) The following provisions on Adjustment for Inaccurate Meters shall apply only to the extent they do not conflict with the performing Party's rights and obligations under the Interconnection Agreement or the OATT, as applicable.

(B) If an Electric Metering Device, or Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device, or Back-Up Metering, is found upon testing to be inaccurate by more than one percent (1.0%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(C) In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use the Back-Up Metering, if installed, to determine the amount of such inaccuracy, provided, however, that the Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. If both Parties have installed Back-Up Metering, and the Back-Up Metering of both Parties is inaccurate by not more than one percent (1.0%) from the measurements made by the standard meter used in the test, the readings from the Back-Up Metering whose readings most closely conforms with the measurements made by the standard meter shall be used. In the event that neither Party has installed Back-Up Metering, or the Back-Up Metering is also found to be inaccurate by more than one percent (1.0%) from the measurement made by the standard meter used in the test, the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Renewable Energy from the Facility during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(D) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(E) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Purchaser, Purchaser shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Purchaser for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Purchaser to Seller; if the difference is a negative number, that difference shall be paid by Seller to Purchaser, or at the discretion of Purchaser, may take the form of an offset to payments due Seller by Purchaser (or by payment to Purchaser, if sufficient payments do not remain to offset). Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due, unless Purchaser elects payment via an offset.

#### 5.6 Scheduling Arrangements.

The node established pursuant to Section 5.3(A) shall represent the Facility's account or Seller's (or Seller's agent's) market participant account, which for avoidance of doubt will contain solely those charges and credits related to the Facility, and the Parties will effectuate delivery and receipt of Renewable Energy Products at the Point of Delivery as follows:

(A) Seller will offer the Renewable Energy of the Facility into PJM utilizing a day-ahead forecast. Purchaser will have the right to review and audit Seller's day-ahead PJM offers.

(B) Seller will make appropriate, unilateral entries in PJM's eSchedule system at day-ahead LMP in a quantity for each day equal to the actual amount of Renewable Energy produced by the Facility on that day (as reflected in PJM's eMeter system).

(C) Seller will be responsible for all imbalance costs, operating reserves, congestion charges, losses and all other PJM charges incurred by Seller (or Seller's agent) in connection therewith and receive all credits, associated with the net difference between the day-ahead and real-time LMP associated with the deviation between the day-ahead award and offer under Section 5.6(A) and the actual amount of Renewable Energy produced by the Facility (as reflected in PJM's eMeter system).

(D) Seller will be responsible for all imbalance costs, operating reserves, congestion costs, losses and all other PJM charges incurred by Seller (or Seller's agent) and receive all associated credits, arising from the failure by Seller to curtail deliveries as directed in connection with a Reliability Curtailment.

(E) To the extent either Party (or its agent) incurs costs or expenses which are the responsibility of the other Party under this Section 5.6, such costs or expenses shall be added to or shall be netted against the invoice for Renewable Energy.

(F) The parties will effectuate the delivery and receipt of Capacity from the Facility by timely making and confirming appropriate unit specific, bilateral transactions in PJM's eRPM system of "Unoffered Capacity" (*as defined in PJM Manual 18, PJM Capacity Market, Revision: 7, Effective: August 18, 2009*).

## ARTICLE 6 CONDITIONS PRECEDENT

### 6.1 Purchaser's Conditions Precedent.

(A) Purchaser and certain of its Affiliates filed the FERC Approval Application with the FERC prior to the date of this REPA. No later than thirty (30) Days after execution of this REPA, Purchaser shall file the Commission Approval Application with the Commission. The form of Purchaser's Approval Applications and the conduct by Purchaser of any proceedings, including any settlement or appeal, related to or arising from such Approval Applications shall be determined in the sole discretion of Purchaser. Neither Seller nor any of its Affiliates, employees or agents shall engage in discussions with the Commission or the FERC or any other party to any proceedings related to the Approval Applications, or otherwise participate in any meetings with the Commission or the FERC or any such other party, or intervene in any such proceedings, without Purchaser's consent. If the Commission fails to issue the Commission Approval Order by October 15, 2013 or the FERC fails to issue the FERC Approval Order by October 15, 2013, Purchaser, by notice to Seller delivered on or before November 15, 2013, may terminate this REPA, without any further financial or other obligation to Seller as a result of such termination except that Purchaser shall return the Security Fund to Seller; provided that, if Purchaser has not on or prior to November 15, 2013 provided notice to Seller of a termination of this REPA as a result of the failure to obtain either the Commission Approval Order or the FERC Approval Order, Purchaser shall be deemed to have waived its right to terminate this REPA for failure to achieve such condition precedent.

(B) Purchaser and Seller agree that Purchaser, from time to time, may file with the Commission as many Cost Recovery Requests during the Term of this REPA as Purchaser deems appropriate and that Purchaser's right to terminate this REPA in the event Purchaser fails to receive a Cost Recovery Order within the Cost Recovery Approval Period shall attach to each such Cost Recovery Request. For each Cost Recovery Request filed by Purchaser during the Term of this REPA, if Purchaser determines, despite commercially reasonable efforts, that there is no Cost Recovery Order within the Cost Recovery Approval Period, Purchaser by notice to Seller delivered on or prior to forty (40) Days after expiration of the Cost Recovery Approval Period, may terminate this REPA, without any further financial or other obligation to Seller as a result of such termination; provided that Purchaser shall return the balance of the Seller Security Fund to Seller. The form and timing of any of Purchaser's Cost Recovery Requests and the conduct by Purchaser of any proceedings, including any settlement or appeal, related to or arising from any such Cost Recovery Requests shall be determined in the sole discretion of Purchaser, and the foregoing shall not result in any waiver of Purchaser's rights under this REPA. Neither Seller nor any of its Affiliates,

employees or agents shall engage in discussions with the Commission or any other party to any proceedings related to a Cost Recovery Request, or otherwise participate in any meetings with the Commission or any such other party, or intervene in any such proceedings, without Purchaser's consent. As of the date when Purchaser executes this REPA, Purchaser anticipates, on a preliminary basis, submitting a Cost Recovery Request for this REPA under all applicable and beneficial statutory and regulatory Kentucky authority, including, without limitation, Senate Bill 46 as enacted by the Kentucky General Assembly in 2013, in connection with its next base rate filing, such that Purchaser may determine whether such Commission order issued in connection therewith qualifies as a Cost Recovery Order under the REPA.

(C) In the event at any time during the Term of this REPA there is an action or order, by the Commission or otherwise, that, in Purchaser's sole determination or judgment, invalidates, terminates, revokes, modifies or disallows or has the effect of disallowing concurrent recovery by Purchaser, either on a retroactive and/or on a prospective basis, of an amount that is greater than five percent 5% of all the costs, rates, terms, or conditions associated with a Cost Recovery Order, Purchaser shall not be obligated to purchase any Renewable Energy or Renewable Energy Products under this REPA from and after such action or order, by the Commission or otherwise. This REPA shall automatically terminate on the thirty-third (33rd) Day from such action or order, without any further financial or other obligation from Purchaser to Seller as a result of such termination; provided that, Purchaser shall remain liable to Seller for any amounts due under this REPA prior to such termination and Purchaser shall return the then balance of the Security Fund to Seller. The conduct by Purchaser of any proceedings, including any settlement or appeal, related to or arising from such Commission order, along with determinations or judgments of whether a Commission order disallows or has the effect of disallowing concurrent recovery by Purchaser of an amount under Section 6.1(C) shall be determined in the sole discretion of Purchaser.

(D) In the event at any time during the Term of this REPA there is an action or order, by the Commission or otherwise, that, in Purchaser's sole determination or judgment, invalidates, terminates, revokes, or modifies or disallows or has the effect of disallowing concurrent recovery by Purchaser, either on a retroactive and/or on a prospective basis, of an amount that is less than or equal to five percent 5% of all the costs, rates, terms, or conditions associated with a Cost Recovery Order (all such costs, rates, terms or conditions not recovered by Purchaser are referred to herein as the "Unrecovered Costs"), the Purchaser, will provide a notice of such Unrecovered Costs to Seller delivered within fifteen (15) Days of such action or service of any such order (herein, an "Unrecovered Cost Notice"), and Purchaser shall not be obligated to continue to purchase Renewable Energy Products from the date specified in such Unrecovered Cost Notice, unless and until a mutually acceptable amendment to this REPA addressing the Unrecovered Costs, as contemplated below, is signed by the Parties and the terms and conditions of the REPA amendment are authorized and approved by the Commission without modification, including authorizing Purchaser to enter into such amendment and continue to obtain concurrent recovery of costs associated with this REPA through Kentucky retail rates via a monthly rider or monthly surcharge to Purchaser's base rates. At Seller's sole option, Seller may submit to



Purchaser on or prior to the expiration of the thirty-six (36) Day period from such action or issuance of a Commission order, an unconditional, written, binding offer to indemnify Purchaser for all (but not less than all) of the Unrecovered Costs as follows: (i) in the case of any Unrecovered Costs that at such time have already been incurred by Purchaser, by netting the amount of such Unrecovered Costs against the immediately subsequent invoice issued by Seller following receipt of Purchaser's invoice for such Unrecovered Costs, and (ii) in the case of any such any Unrecovered Costs that will not be incurred by Purchaser until a later date, by netting the applicable amount of such later Unrecovered Costs against the immediately subsequent invoice issued by Seller following receipt of Purchaser's invoices for any such Unrecovered Costs. For the avoidance of doubt, Purchaser shall issue invoices for Unrecovered Costs to Seller in the ordinary course of its business as and when it actually incurs such Unrecovered Costs. If Seller submits an offer expressly complying with the terms of this Section 6.1(D) within such thirty-six (36) Day period and an amendment to this REPA satisfactory to Purchaser in all respects is executed by both Parties to memorialize the terms of such offer on or before the expiration of thirty-nine (39) Days from issuance of a Commission order pertaining to Unrecovered Costs, then Purchaser's right to terminate this REPA based on any such Commission order or action shall for such Commission order expire once the Commission approves the terms and conditions of the amendment without modification, and it authorizes Purchaser to enter into such amendment and continue to obtain concurrent recovery of costs associated with this REPA through Kentucky retail rates via a monthly rider or monthly surcharge to Purchaser's base rates. Absent such Commission approval of the foregoing, Purchaser may terminate this REPA upon notice to Seller. If Seller fails or elects not to submit an offer expressly complying with the terms of this Section 6.1(D) and/or an amendment to this REPA satisfactory to Purchaser in all respects is not executed by both Parties to memorialize the terms of such offer on or before the thirty-ninth (39th) Day from such action or issuance of the Commission order pertaining to Unrecovered Costs, this REPA shall terminate automatically upon the expiration of the period that is forty (40) Days from such action or issuance of the Commission order without any further action of either Party and without any further financial or other obligation from Purchaser to Seller as a result of such termination. Purchaser and Seller further agree that in the event the Parties amend the REPA pursuant to this provision, that Purchaser may submit more than one notice pertaining to Unrecovered Costs during the Term of this REPA and that Purchaser's right to terminate this REPA based on the provisions of this Section 6.1(D) shall attach to each such Commission order or action pertaining to Unrecovered Costs. The conduct by Purchaser of any proceedings, including any settlement or appeal, related to or arising from any Commission order that results in Unrecovered Costs, shall be determined in the sole discretion of Purchaser. Under Section 6.1(D), Purchaser's determination of, whether an action or order by the Commission or otherwise, disallows or has the effect of disallowing concurrent recovery of an amount that is equal to or less than five percent (5%) of all the costs, rates, terms or conditions of this REPA shall not be made arbitrarily.

(E) If the Mitchell Transaction shall not have occurred before January 1, 2014, Purchaser, by notice to Seller delivered on or before January 15, 2014

may terminate this REPA, without any further financial or other obligation to Seller as a result of such termination except that Purchaser shall return the Security Fund to Seller; provided that, if Purchaser has not on or prior to January 15, 2014 provided notice to Seller of a termination of this REPA as a result of the failure of the Mitchell transaction to occur, Purchaser shall be deemed to have waived its right to terminate this REPA for failure to achieve such condition precedent.

6.2 Seller's Conditions Precedent.

(A) Seller's obligation to deliver Renewable Energy under this REPA is made subject to the satisfaction or waiver of the following conditions precedent:

(1) execution of Seller's EPC agreement no later than the later of ninety (90) Days after (a) the issuance of the Approval Orders or (b) the Mitchell Transaction occurs; and

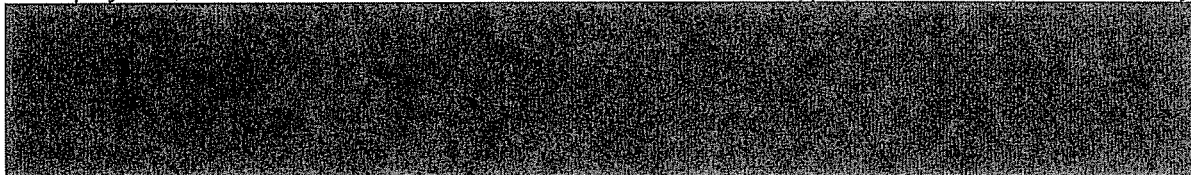
(2) receipt by Seller of all permits and authorizations from Governmental Authorities required for the commencement of construction no later than April 15, 2014.

(B) If either of the foregoing conditions precedent are not satisfied by the date specified for such condition precedent, Seller, by notice to Purchaser delivered no later than fourteen (14) Days after the date specified for each condition precedent may terminate this REPA, without any further financial or other obligation by Seller to Purchaser as a result of such termination and Purchaser shall return the Security Fund to Seller; provided that, if Seller has not provided notice to Purchaser of a termination of this REPA as a result of the failure to satisfy or waive a condition precedent by the required date, Seller shall be deemed to have waived its right to terminate this REPA for failure to achieve such condition precedent.

ARTICLE 7  
SALE AND PURCHASE OF RENEWABLE ENERGY

7.1 Sale and Purchase.

It is the specific intent of Seller and the Purchaser that Purchaser does not bear any risk associated with non-recovery of costs, rates or charges associated with this REPA through Kentucky retail rates via a monthly rider or monthly surcharge to Purchaser's base rates. Beginning on the Commercial Operation Date, Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to Purchaser, and Purchaser shall, subject to the Conditions Precedent set forth in Section 6.1, purchase and pay for, at the Contract Rate, all Renewable Energy generated by the Facility;



[REDACTED]

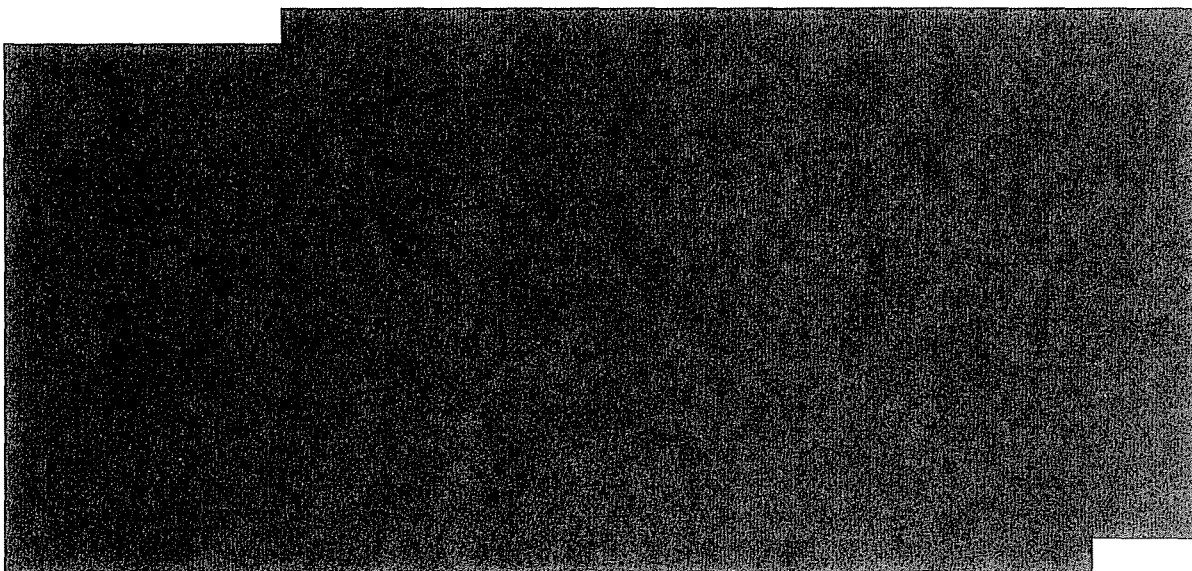
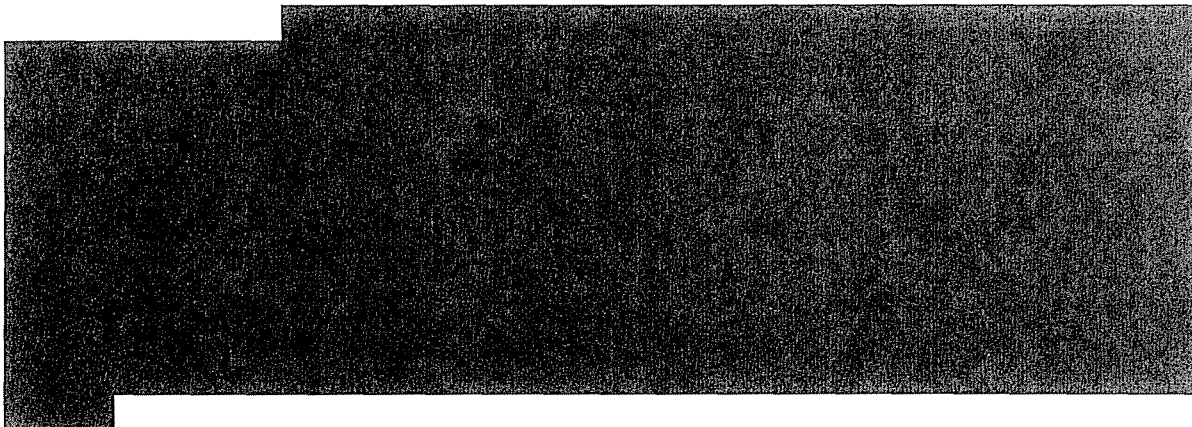
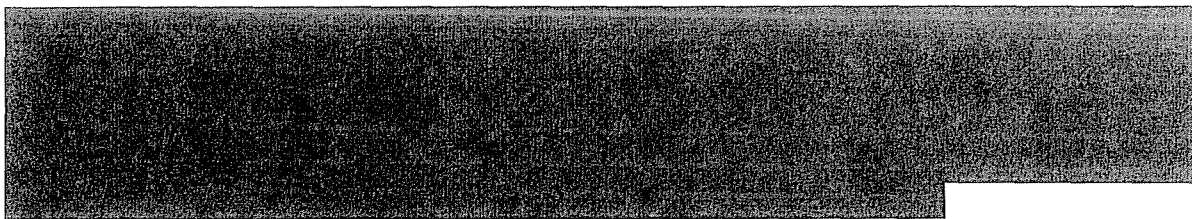
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7.3 Title and Risk of Loss.

As between the Parties, Seller shall be deemed to be in control of the Renewable Energy output from the Facility up to the Point of Delivery, and Purchaser shall be deemed to be in control of such Renewable Energy output from and after the Point of Delivery. Title and risk of loss related to the Renewable Energy delivered by Seller to Purchaser hereunder shall transfer from Seller to Purchaser at the Point of Delivery. Title and risk of loss of the Renewable Energy Certificates and any Comparable Renewable Energy Certificates shall pass from Seller to Purchaser as provided in the rules governing GATS.

#### 7.4 Curtailments.

Seller shall at all times during the Term comply, subject to the operational constraints of the Facility, with the directives of the Transmission Operator, the Transmission Provider and the Interconnection Provider given pursuant to the Interconnection Agreement. In addition, Purchaser shall have the right to notify Seller, by telephonic communication or other method as reasonably determined by Purchaser, of a Reliability Curtailment directed by the Transmission Operator, the Transmission Provider or the Interconnection Provider. In all cases of Reliability Curtailment, Seller shall reduce the net Energy delivered by the Facility at the Point of Delivery to the level directed by the Transmission Operator, the Transmission Provider or the Interconnection Provider, as applicable. If Purchaser receives any such directive of Reliability Curtailment, Purchaser shall promptly notify Seller of the maximum amount of Renewable Energy, if any, during such Reliability Curtailment that Seller may continue to deliver and Seller shall ensure that the amount of net Energy delivered by the Facility at the Point of Delivery does not exceed such amount. Except as provided in Section 7.1, no compensation shall be due from Purchaser to Seller as a result of any curtailment of the Facility's generation arising from any Reliability Curtailment directed by the Transmission Operator, the Transmission Provider or the Interconnection Provider.

#### 7.5 Renewable Energy Incentives.

(A) If, for any reason, Seller does not receive the Renewable Energy Incentives for any period, the cost of Renewable Energy Products delivered to Purchaser under this REPA shall not be affected, and the risk of not obtaining the Renewable Energy Incentives shall be borne solely by Seller.

(B) Seller shall be entitled to all Renewable Energy Incentives, and Purchaser acknowledges that Seller has the right to sell or transfer the Renewable Energy Incentives, at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to Purchaser hereunder. Other than as set forth in Section 7.1, Purchaser shall have no claim, right or interest in such Renewable Energy Incentives or in any amount that Seller realized from the sale of such incentives.

### ARTICLE 8 PAYMENT CALCULATIONS

#### 8.1 Payments at Contract Rate.

Commencing on the first day of the Delivery Period, Purchaser shall pay Seller for the Renewable Energy delivered to Purchaser by Seller to the Point of Delivery and for other Renewable Energy Products associated therewith at the Contract Rate set forth in Exhibit C.

## 8.2 No Payment Obligation.

For avoidance of doubt, Purchaser shall not be obligated to make any payment to Seller under Section 8.1 for any Energy which, regardless of reason or event of Force Majeure affecting either Party, (i) does not qualify as Renewable Energy, (ii) is not measured by the Electric Metering Device(s) installed pursuant to Section 5.4, as such measurement may be adjusted pursuant to Section 5.5, or (iii) is delivered to Purchaser at a location other than the Point of Delivery.

## ARTICLE 9 BILLING AND PAYMENT

### 9.1 Billing Invoices.

The monthly billing period shall be the calendar month. No later than ten (10) Business Days after the end of each calendar month, Seller shall provide to Purchaser, by first-class mail or electronically, an invoice for the amount due Seller by Purchaser for the services provided by Seller and purchased by Purchaser, under this REPA, during the previous calendar month billing period. Seller's invoice will show all billing parameters, Contract Rates and factors, and any other data reasonably pertinent to the calculation of monthly payments due to Seller. Seller's failure to timely provide Purchaser with the monthly invoice shall not waive Purchaser's responsibility for payment under the terms stated in Section 9.2 below, except as provided in Section 13.9(B).

### 9.2 Payments.

Unless otherwise specified herein, payments due under this REPA shall be due and payable on or before the later of (i) the twentieth (20th) Day of the month following the month to which such payment relates and (ii) the tenth (10th) Business Day following receipt of the billing invoice. Unless Seller directs Purchaser otherwise, all payments by Purchaser to Seller shall be made by electronic funds transfer. If the amount due is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated using an annual interest rate equal to the prime lending rate as may from time to time be 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 percent (2%). If the due date occurs on a Day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

### 9.3 Billing Disputes.

Purchaser may dispute invoiced amounts on or prior to the second (2<sup>nd</sup>) anniversary of the issuance of the invoice related to such invoiced amounts, but shall pay to Seller the undisputed portion of invoiced amounts on or before the invoice due date. To resolve any billing dispute, the Parties shall use the procedures set forth in Section 13.9. When the billing dispute is resolved, the Party owing shall pay the amount

owed within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with the provisions of Section 9.2 from the date such amount was originally due. Purchaser and Seller at any time may offset against any and all amounts that may be due and owed to the other Party under this REPA any amounts that are owed by such other Party to Purchaser or Seller, as applicable, pursuant to this REPA including damages and other payments. Undisputed and non-offset portions of amounts invoiced under this REPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.2.

## ARTICLE 10 OPERATIONS AND MAINTENANCE

### 10.1 Facility Operation.

Seller shall staff, control, and operate the Facility consistent at all times with Good Utility Practice(s) and the Contract Administration Procedures developed pursuant to Section 10.3. Personnel capable of starting, operating, and stopping the Facility shall be available, either at the Facility or capable of remotely starting, operating and stopping the Facility. In all cases, personnel capable of starting, operating, and stopping the Facility shall be continuously reachable by phone or pager. Seller shall maintain the Communications Equipment in good operating order at all times during the Term.

### 10.2 Outage and Performance Reporting.

(A) Seller shall comply with all NERC, RFC and the Transmission Operator generating unit outage and performance reporting requirements, as they may be revised from time to time, and as they apply to the Facility.

(B) When Forced Outages of twenty percent (20%) or greater of the Facility Capacity occur, Seller shall notify Purchaser of the existence, nature, and expected duration of the Forced Outage as soon as practical, but in no event later than (i) thirty (30) minutes after the Forced Outage occurs if it occurs during normal business hours or (ii) the beginning of normal business hours if such Forced Outage occurs outside of normal business hours. Seller shall thereafter inform Purchaser of changes in the expected duration of the Forced Outage unless relieved of this obligation by Purchaser for the duration of each Forced Outage.

(C) Seller shall provide Purchaser with prompt notice of any malfunction or other failure of the Communications Equipment.

### 10.3 Contract Administration Committee and Contract Administration Procedures.

(A) Purchaser and Seller shall each appoint one representative and one alternate representative to act in matters relating to the Parties' performance obligations under this REPA and to develop operating arrangements for the generation,

delivery and receipt of Renewable Energy hereunder. Such representatives shall constitute the Contract Administration Committee, and shall be as specified on Exhibit D. The Parties shall notify each other in writing of such appointments and any changes thereto. The Contract Administration Committee shall have no authority to modify the terms or conditions of this REPA.

(B) Prior to the Commercial Operation Date, the Contract Administration Committee shall develop mutually agreeable written Contract Administration Procedures which shall include, but not be limited to, method of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel list for applicable Purchaser and Seller operating centers; operations and maintenance scheduling and reporting; Renewable Energy reports; unit operations log; and such other matters as may be mutually agreed upon by the Parties.

#### 10.4 Access to Facility.

Appropriate representatives of Purchaser shall at all reasonable times, and with reasonable prior notice, have access to the Facility to read meters, to perform maintenance and service of Purchaser's equipment and to perform all inspections and operational reviews as may be reasonably appropriate to facilitate the performance of this REPA; provided that Purchaser does not interfere in any material respect with the operation of the Facility, and causes all persons visiting the Facility on its behalf to comply with all of Seller's applicable safety, health and similar rules and requirements.

#### 10.5 Reliability Standards.

Seller shall operate the Facility in a manner that complies in all material respects with all applicable national and regional reliability standards, including standards set by the Transmission Operator, RFC, NERC and the FERC, or any successor agencies setting reliability standards for the operation of generation facilities. To the extent that Seller does not operate the Facility in accordance with such standards that result in monetary penalties being assessed to Purchaser by the Transmission Operator, RFC, NERC, or the FERC, Seller shall reimburse Purchaser for its share of such monetary penalties.

#### 10.6 Beneficial Environmental Interests.

The Parties acknowledge that future or existing legislation or regulation may create value in the ownership, use or allocation of the Beneficial Environmental Interests of the Facility. Purchaser shall own or be entitled to claim all Beneficial Environmental Interests to the extent they may exist during the Term.

#### 10.7 Availability Forecast.

(A) On or prior to the tenth Business Day of each month commencing after the Commercial Operation Date, Seller will furnish Purchaser with a notice setting forth its good faith estimate of (i) the hourly availabilities of the Facility for such month and the next month and (ii) the expected average daily availability of the Facility for



each of the ten (10) months subsequent to such next month. With respect to the preceding clause (A)(i), if Seller later updates its availability estimates for such periods, it shall deliver to Purchaser a revised notice setting forth its then current good faith estimate of hourly availabilities of the Facility for the balance of such month and for the next month. Seller does not guarantee the accuracy of said notices and said notices are only intended to be its good faith estimate of the projected availability of the Facility at the time such notice is given.

(B) Seller shall furnish to Purchaser a notice substantially in the form attached hereto as Exhibit K (an "Availability Notice") at or before 9:00 a.m. EPT on the Business Day immediately prior to the first Day to which such Availability Notice shall relate that shall set forth the Facility Capacity that Seller anticipates will actually be available in each hour through the next Business Day and each subsequent Business Day to which such Availability Notice relates. Seller also shall furnish to Purchaser a revised Availability Notice promptly after the occurrence of any Force Majeure event, Forced Outage, unscheduled outage or other unplanned maintenance, derating, or other event that would reduce or interrupt Renewable Energy or Ancillary Services associated with the Facility Capacity or cause the controlling Availability Notice to be inaccurate or incomplete in any material respect, with a description of the circumstances thereof. Each such Availability Notice shall be effective until delivery of a subsequent Availability Notice. Seller does not guarantee the accuracy of said Availability Notices, and said Availability Notices are only intended to be its good faith estimate of the projected availability of the Facility at the time such notice is given.

#### 10.8 Planned Maintenance Schedule and Outages.

No later than (a) the Commercial Operation Date and (b) two months prior to each calendar year thereafter during the Term, Seller shall submit to Purchaser a schedule of planned maintenance substantially in the form of Exhibit H attached hereto for the following calendar year for the Facility, which schedule shall be updated by Seller by each March 31 and September 30 thereafter to cover the twelve month period following each such update. Each maintenance outage planned pursuant to any such schedule shall be (i) for durations of no less than 72 hours, (ii) scheduled with PJM in accordance with the PJM Manuals and Agreements, (iii) consistent with the requirements of Good Utility Practice and the Interconnection Agreement, and (iv) otherwise in accordance with this REPA. No planned maintenance of the Facility substation or any other portion of the Facility that would affect the availability of more than 10% of the Facility Capacity at any one time may be scheduled during the months of January, February, June, July, August or December during the Delivery Period; provided, however, that planned maintenance may be scheduled during such period to the extent (i) required by or necessary to preserve any equipment warranties or (ii) the failure to perform such planned maintenance is contrary to operation in accordance with Good Utility Practice(s). Such schedule, and each supplement thereto, shall indicate the planned commencement and completion dates for each planned maintenance during the period covered thereby, as well as the affected portion(s) of the Facility. If Purchaser desires to change the scheduled commencement or duration of planned maintenance, the Purchaser shall notify the Seller of the requested change and the

Seller shall use reasonable efforts to accommodate the requested change. At least one (1) week prior to any planned maintenance, Seller shall notify Purchaser via e-mail or telephonically of the expected commencement date of such planned maintenance, the affected portion(s) of the Facility during such planned maintenance and the expected completion date of such planned maintenance. As soon as practicable, all such telephonic notification shall be confirmed in writing.

#### 10.9 REC Certification.

(A) Seller shall be responsible for causing the GATS Certificates delivered under this REPA to meet all requirements for entry into GATS and as otherwise specified by PJM-EIS. Seller shall be responsible for registering and maintaining compliance during the duration of this REPA with GATS and the PJM-EIS and will be responsible for timely delivery as allowed by GATS and PJM-EIS. The Parties will effectuate the delivery and receipt of the GATS certificates by making and conforming appropriate entries into GATS and otherwise as specified by the PJM-EIS.

(B) Seller shall, at its own cost, take all actions necessary to register for and maintain participation in any applicable system or program established by the federal Governmental Authority or the States of Kentucky, Ohio, Indiana, Illinois, Maryland, Pennsylvania, New Jersey, Virginia or West Virginia or the District of Columbia, along with any other State(s) reasonably designated by Purchaser, to monitor, track, certify or trade RECs; provided that, for the avoidance of doubt, the ineligibility of the Facility for any system or program established by the federal Governmental Authority or any State designated by Purchaser to monitor, track, certify or trade RECs shall not be an Event of Default under this REPA except to the extent that such ineligibility is caused by Seller's breach of this REPA. To the extent necessary, Seller shall assign to Purchaser all rights, title and authority for Purchaser to register, own, hold and manage certificates that represent RECs in Purchaser's own name and to Purchaser's account, including any rights associated with any such renewable energy information or tracking system that may be established with regard to monitoring, tracking, certifying, or trading such RECs. Upon the request of Purchaser from time to time, at no cost to Purchaser, (i) Seller shall deliver or cause to be delivered to Purchaser such attestations/certifications of RECs as may be required to comply with any such certification system or program, and (ii) Seller shall provide full cooperation in connection with Purchaser's registration and certification of RECs. Purchaser shall assist Seller with the matters described in this subsection (B) to the extent reasonably requested by Seller during the Term.

#### 10.10 Public Statements/Other Use.

Without the written consent of Purchaser, Seller shall not (1) make any public statement or representation that is inconsistent with Purchaser's entitlement to the Renewable Energy Products (or any portion thereof), (2) use the Facility's Beneficial Environmental Interests to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable energy portfolio standard or other renewable energy mandate, or (3) advertise, market, sell, retire, convey or

otherwise transfer or seek to transfer the Facility's Beneficial Environmental Interests, which rights are expressly reserved to Purchaser during the Term of this REPA.

10.11 Real-Time Information.

Purchaser will have the option to require that Seller provide real-time data to Purchaser consistent with Purchaser's real-time data procedures and processes. Should Purchaser exercise this option and request such real-time data, Seller will use commercially reasonable efforts on and after such date to continuously transmit real-time data to Purchaser in compliance with Purchaser's real-time data procedures and processes. Purchaser and Seller shall each bear the cost of and responsibilities for their respective systems, equipment and communications links required for delivery and receipt of such real-time information. In the event that Seller fails to continuously transmit real-time data to Purchaser, and such real-time data transmission has not been restored within 2 Business Days after Purchaser notifies Seller of the failure thereof, Seller shall be responsible for all imbalance costs, operating reserves, and congestion costs under Section 5.6(C) and (D) until such time as the transmission of real-time data has been restored.

10.12 Web-Based Operational Reporting.

Purchaser may at its option make available to Seller on the Internet a web-based reporting system which will provide the Parties with the capability to generate and submit standardized reports for purposes of satisfying the requirements of the Parties contained in Sections 10.2, 10.7 and 10.8. Purchaser will develop user requirements for such reporting system in consultation with Seller.

10.13 Seller's Annual Report on Job Creation.

Seller shall prepare and deliver to Purchaser (and the Commission, if so requested by Purchaser), on or before March 1 of each calendar year during the Term, a report for the previous calendar year showing (i) the number of incremental full- and part-time Kentucky jobs (or full-time equivalents) associated with the construction and operation of the Facility, (ii) the employee class or level and title associated with each of such Kentucky jobs, (iii) the aggregate annual payroll for such Kentucky jobs, and (iv) a good faith estimate of the number of incremental full- and part-time Kentucky jobs (or full-time equivalents) associated with the collection, handling and transportation the Biomass fuel delivered to the Facility during such calendar year.


ARTICLE 11

SECURITY FOR PERFORMANCE; TERMINATION PRIOR TO FINANCIAL CLOSING

11.1 Seller Security Fund.

(A) Seller shall establish the Security Fund at the initial amount



 Seller shall thereafter maintain the Security Fund, if necessary, at such level throughout the Term; provided that if this REPA is terminated by Purchaser pursuant to Sections 6.1 or 11.2 or by Seller pursuant to Sections 6.2 or 11.2, Purchaser shall release the Security Fund to Seller within ten (10) Business Days of such termination.

(B) In addition to any other remedy available to it, Purchaser may, before or after termination of this REPA and so long as the Security Fund is required to be outstanding after termination of this REPA pursuant to Section 11.1(F), draw from the Security Fund to recover damages resulting from any breach by Seller of its obligations hereunder. Purchaser may, in its sole discretion, draw all or any part of such amounts due to it from any form of Security Fund, and from all such forms, and in any sequence Purchaser may select. Any failure to draw upon the Security Fund or other security for any damages or other amounts due to Purchaser shall not prejudice Purchaser's rights to recover such damages or amounts in any other manner.

(C) The Security Fund shall be maintained at Seller's expense, shall be issued by or deposited in an Issuer (as applicable), and shall be in the form of one or more of the following instruments. Seller may replace the form of the Security Fund at any time and from time to time upon reasonable prior notice to Purchaser, but the Security Fund must at all times be comprised of one or any combination of the following:

(1) An irrevocable standby letter of credit in substantially the form of Exhibit L from an Issuer that is a Creditworthy Bank. Such security must be issued for a minimum term of three hundred and sixty (360) Days. Seller shall cause the renewal or extension of the security for additional consecutive terms of three hundred and sixty (360) Days or more (or, if shorter, the remainder of the period described in Section 11.1(F)) no later than thirty (30) Days prior to each expiration date of the security. If the security is not renewed or extended as required herein (such condition, the "Failure to Extend Condition"), Purchaser shall have the right to draw immediately upon the letter of credit and be entitled to hold the amounts so drawn as security, provided Purchaser satisfies the conditions of Section 11.1(C)(2)(i). If Purchaser does not meet the conditions of Section 11.1(C)(2)(i), Purchaser will place the amounts so drawn in an interest bearing account or escrow in accordance with Section 11.1(C)(2)(ii), until and unless Seller provides a substitute form of such security meeting the requirements of this Section 11.1. Such amounts shall constitute part of the Security Fund pursuant to Section 11.1(C)(2) for all purposes of this REPA (including for the return of such Cash to Seller according to Section 11.1(F)).

(2) United States currency ("Cash") deposited with (i) Purchaser, provided that Purchaser satisfies the following conditions: (a) it is not a defaulting Party and (b) Purchaser is a Creditworthy Entity. In such event, Purchaser will pay interest to Seller on Cash held at the Federal Funds Effective Rate and may draw on the Cash only in the circumstances, and in the amounts, that a letter of credit in the form of Exhibit L could be drawn (except that the Failure to Extend Condition or

Failure to Replace Condition shall not apply as a valid reason for disbursement); or (ii) if, and only if, Purchaser does not meet the aforementioned conditions of Section 11.1(C)(2)(i), then the Cash shall be held with an Issuer that is a Creditworthy Bank, either: (a) in an account under which Purchaser is designated as beneficiary with sole authority to draft from the account or otherwise access the security only in the circumstances, and in the amounts, that a letter of credit in the form of Exhibit L could be drawn (except that the Failure to Extend Condition or Failure to Replace Condition shall not apply as a valid reason for disbursement); or (b) held by Issuer as escrow agent with instructions to pay claims made by Purchaser pursuant to this REPA, such instructions to allow drawing by Purchaser only in the circumstances, and in the amounts, that a letter of credit in the form of Exhibit L could be drawn (except that the Failure to Extend Condition or Failure to Replace Condition shall not apply as a valid reason for disbursement). Security held pursuant to Section 11.1(C)(2)(ii) shall be subject to the following: (x) include a requirement for prompt notice to Purchaser from Seller in the event that the sums held as security in the account or escrow do not at any time meet the required level for the Security Fund as set forth in this Section 11.1 and (y) funds held in the account or escrow may be deposited in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three months or less, with all investment income thereon to be taxable to, and to accrue for the benefit of, Seller. Seller grants to Purchaser a present and continuing first priority security interest in all Cash which has been transferred to Purchaser or held by Issuer. At such times as the balance of Cash held by Purchaser or by Issuer exceeds the amount of Seller's obligation to provide security hereunder, Purchaser shall remit to Seller on demand any excess in the account above Seller's obligations.

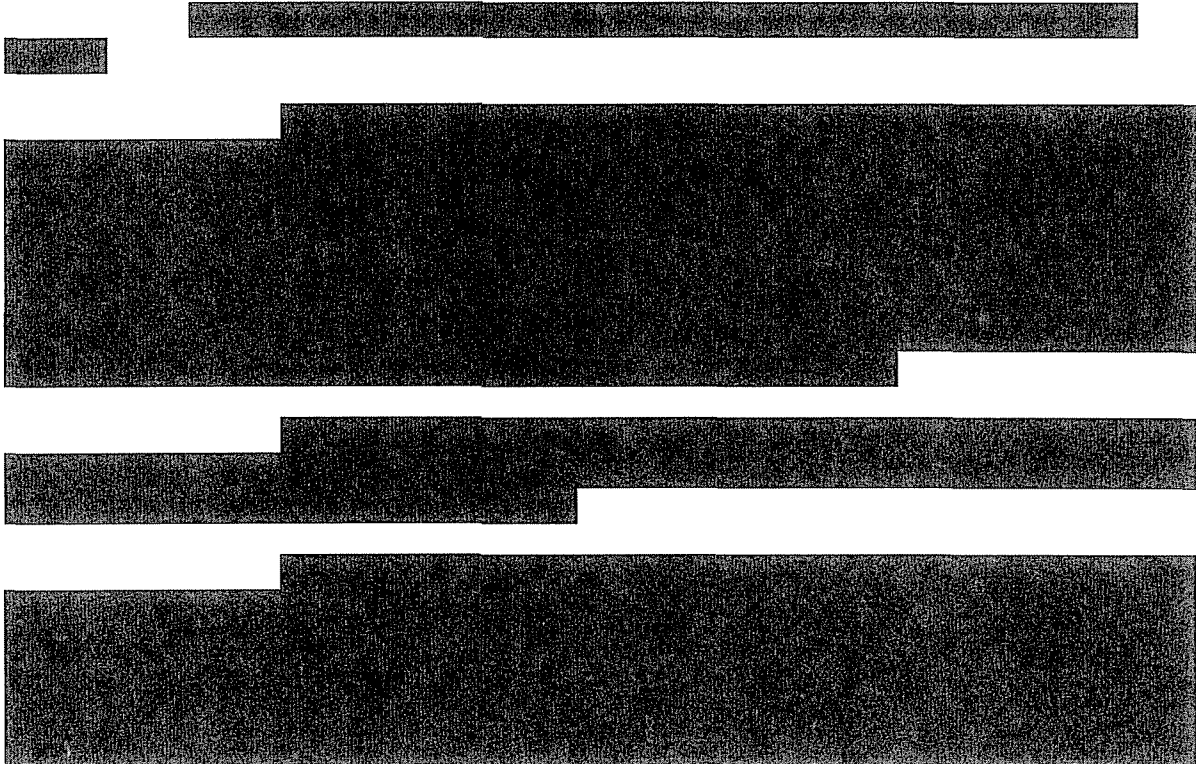
(3) A guaranty in substantially the form of Exhibit M from an Issuer that is a Creditworthy Entity.

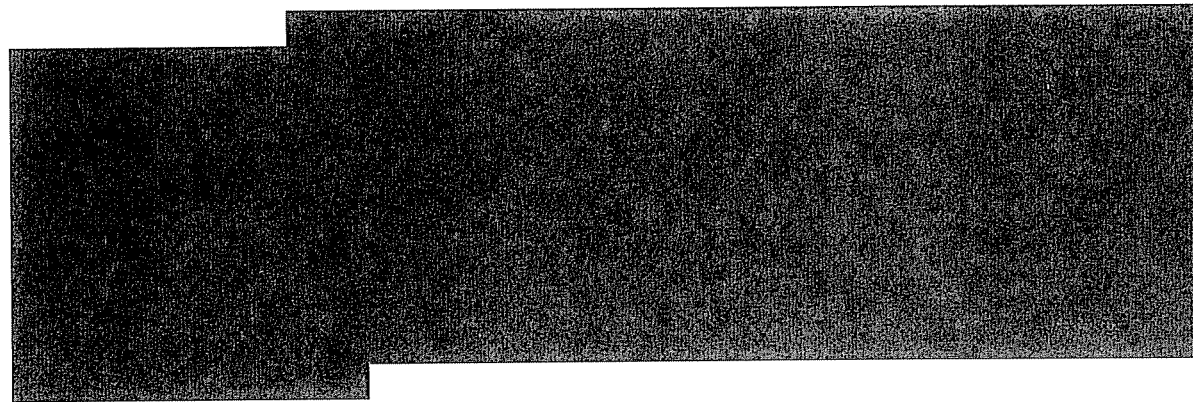
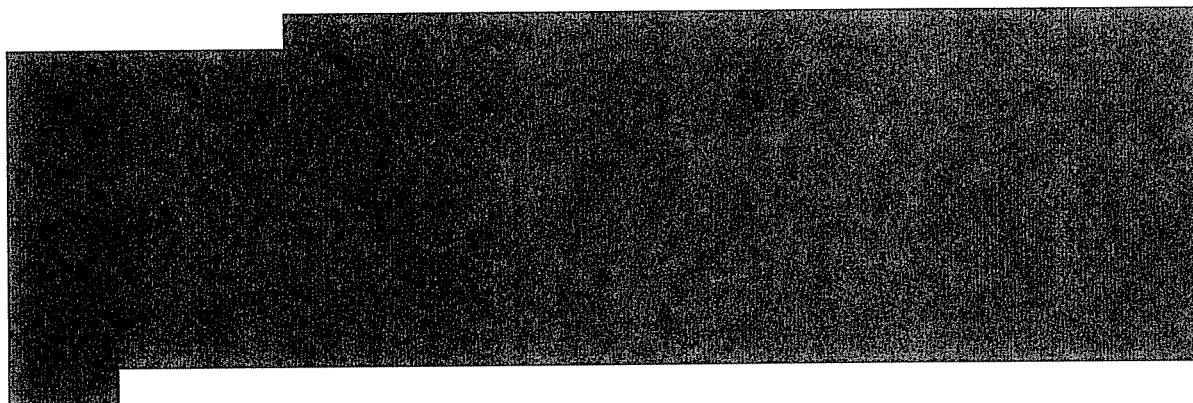
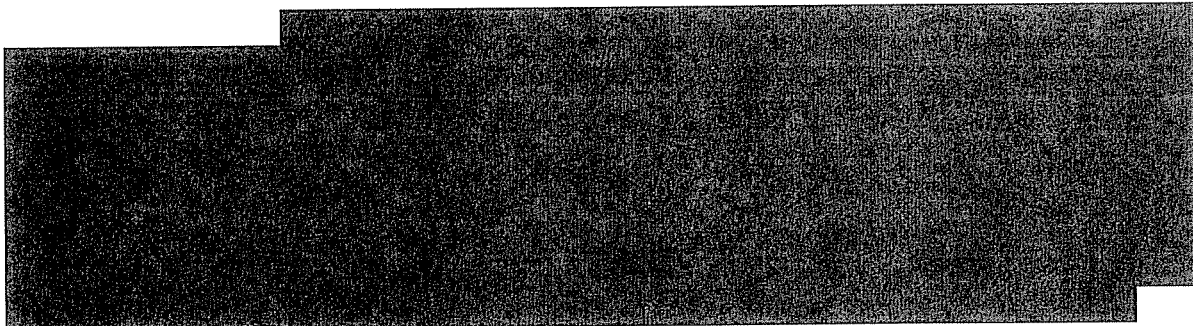
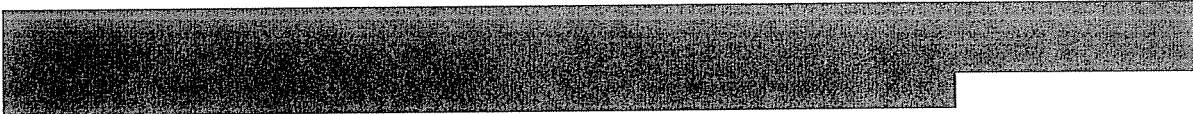
(D) If the Issuer of any Security Fund instrument ceases to be a Creditworthy Bank (in the case of a letter of credit Issuer or holder of Cash) or a Creditworthy Entity (in the case of an Issuer of a payment guaranty) or any Security Fund instrument ceases to be in full force and effect, then Seller shall be required to replace the affected Security Fund instrument with another Security Fund instrument meeting the criteria set forth in Section 11.1(C) no later than ten (10) Days after receiving notice from Purchaser that such replacement of the Security Fund instrument is required pursuant to this Section 11.1(D). If the Security Fund instrument is a letter of credit and is not replaced as required herein (such condition, the "Failure to Replace Condition"), Purchaser shall have the right to draw immediately upon the letter of credit and be entitled to hold the amounts so drawn as security, provided Purchaser satisfies the conditions of Section 11.1(C)(2)(i). If Purchaser does not meet the conditions of Section 11.1(C)(2)(i), Purchaser will place the amounts so drawn, in an interest bearing account or escrow in accordance with Section 11.1(C)(2)(ii), until and unless Seller provides a substitute form of such security meeting the requirements of this Section 11.1. Such amounts shall constitute part of the security pursuant to Section 11.1(C)(2) for all purposes of this REPA (including for the return of such Cash to Seller according to Section 11.1(F)).

(E) If any Security Fund instrument is replaced in accordance with Section 11.1(C) or 11.1(D), (i) if the Security Fund instrument replaced is Cash, Purchaser shall immediately return the Cash (including any interest earned thereon) to Seller, or (ii) if the Security Fund instrument being replaced is not Cash, the Issuer shall be deemed released from all obligations under such replaced Security Fund instrument, and Purchaser shall execute any documents reasonably requested by Seller or the Issuer thereof to confirm such release.

(F) On the later of (i) (x) at any time before the Commercial Operation Date, sixty (60) days after the termination or expiration of this REPA, or (y) at any time after the Commercial Operations Date, one hundred eighty (180) days after the termination or expiration of this REPA or (ii) the resolution of all then-pending disputes under this REPA, (a) if Cash is part of the Security Fund, Purchaser shall immediately return to Seller such Cash (together with any interest earned thereon), and (b) if a guaranty or letter of credit is part of the Security Fund, the Issuer(s) that provided or issued such Security Fund instrument shall be deemed released from all obligations under such Security Fund instrument, and Purchaser shall execute any documents reasonably requested by Seller or the Issuer thereof to confirm such release.

(G) In the event that Purchaser draws against the Security Fund provided and it is subsequently determined that Purchaser was not entitled to do so, then Purchaser shall repay such amount, dollar for dollar, to Seller, together with all reasonable costs and expenses incurred by Seller in connection with such drawing, plus interest thereon at the rate set forth in Section 9.2.





ARTICLE 12  
DEFAULT AND REMEDIES

12.1 Events of Default of Seller.

(A) Any of the following shall constitute an "Event of Default" of Seller upon its occurrence and no cure period shall be applicable:

- (1) Seller's dissolution or liquidation;

(2) Seller's assignment of this REPA or any of its rights hereunder for the benefit of creditors (except for an assignment to the Facility Financing Representative as security under the Financing Documents as permitted by this REPA);

(3) Seller's voluntary filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or Seller voluntarily taking advantage of any such law or act by answer or otherwise;

(4) The filing of a case in bankruptcy or any proceeding under any other insolvency law against Seller or the Issuer providing a guaranty pursuant to Section 11.1(C)(3) hereof as debtor, and such case or proceeding has not been dismissed within sixty (60) Days; or

(5) The sale by Seller to a third party, or diversion by Seller for any use, of Renewable Energy Products committed to Purchaser by Seller, except to the extent permitted by this REPA.

(B) Seller's failure to comply with its obligations under Section 11.1 shall constitute an Event of Default of Seller if not cured within ten (10) Days after the date of written notice from Purchaser to Seller and the Facility Financing Representative as provided for in Section 13.1;

(C) Seller's failure to make any payment (or to net any amount owed to Purchaser against Seller's invoice, including pursuant to section 6.1(D)) as required under this REPA (net of any other rights of offset that Seller may have pursuant to Section 9.3), shall constitute an Event of Default of Seller if not cured within ten (10) Days after the date of written notice from Purchaser to Seller and the Facility Financing Representative as provided for in Section 13.1:

(D) Any of the following shall constitute an Event of Default of Seller if not cured within thirty (30) Days after the date of written notice from Purchaser to Seller and the Facility Financing Representative as provided for in Section 13.1:

(1) Abandonment;

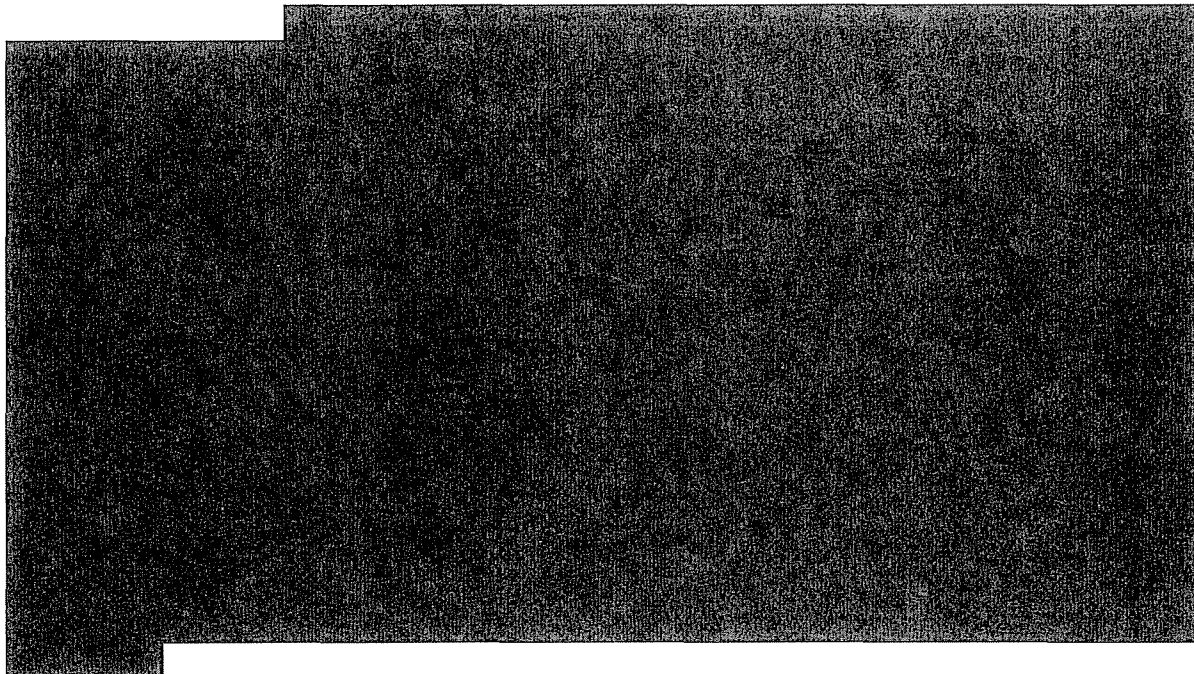
(2) Seller's failure to comply with any material obligation under this REPA, other than as expressly specified in this Article 12, which would result in a material adverse impact on Purchaser;

(3) Seller's assignment of this REPA, or Seller's sale or transfer of the Facility, except as permitted in accordance with Article 19; or

(4) Any representation or warranty made by Seller in this REPA shall prove to have been false in any material respect when made, except to the extent expressly limited to the time when made, if such false representation or warranty would reasonably be expected to result in a material adverse impact on Purchaser.



(E) Seller's failure to meet the Commercial Operation Milestone shall constitute an Event of Default of Seller if not cured within [REDACTED] after the date of written notice from Purchaser to Seller and the Facility Financing Representative as provided for in Section 13.1. Delay Liquidated Damages under Section 4.10 shall continue accruing until the occurrence of one of the following events: (i) the Commercial Operation Date is achieved, or (ii) this REPA is terminated.



#### 12.2 Facility Financiers' Right to Cure Default of Seller.

Seller shall provide Purchaser with a notice identifying the Facility Financing Representative and the Parties shall use commercially reasonable efforts to enter into a Consent and Agreement in substantially the form of Exhibit N attached hereto with such Facility Financing Representative. Following execution of a Consent and Agreement, Purchaser shall provide notice of any default of Seller under Section 12.1 to the Facility Financing Representative, and Purchaser will accept a cure to such Default of Seller performed by the Facility Financing Representative, in accordance with the terms of the applicable Consent and Agreement.

#### 12.3 Events of Default of Purchaser.

(A) Any of the following shall constitute an "Event of Default" of Purchaser upon its occurrence and no cure period shall be applicable:

- (1) Purchaser's dissolution or liquidation;
- (2) Purchaser's assignment of any of its rights hereunder for the benefit of creditors;

(3) Purchaser's voluntary filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any State, or Purchaser voluntarily taking advantage of any such law or act by answer or otherwise;

(4) The filing of a case in bankruptcy or any proceeding under any other insolvency law against Purchaser and such case or proceeding is not dismissed within sixty (60) Days; or

(5) Purchaser's assignment of this REPA, except as permitted in accordance with Article 19.

(B) Purchaser's failure to make any payment due hereunder (net of outstanding damages and any other rights of offset that Purchaser may have pursuant to this REPA) shall constitute an Event of Default of Purchaser if not cured within ten (10) Days after the date of written notice from Seller to Purchaser as provided for in Section 13.1.

(C) Purchaser's failure to comply with any material obligation under this REPA, other than as otherwise expressly specified in this Article 12, which would result in a material adverse impact on Seller, shall constitute an Event of Default of Purchaser if not cured within thirty (30) Days after the date of written notice from Seller to Purchaser as provided for in Section 13.1.

(D) Any representation or warranty made by Purchaser in this REPA shall prove to have been false in any material respect when made, except to the extent expressly limited to the time when made, or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller, and shall constitute an Event of Default of Purchaser if not cured within thirty (30) Days after the date of written notice from Seller to Purchaser as provided for in Section 13.1.

#### 12.4 Damages Prior to Termination.

For all breaches or Events of Default (other than those in respect of any delay of the Commercial Operation Date and any Output Shortfall, for which Sections 4.10 and 7.2 of this REPA provide a remedy that is stated to be an exclusive remedy of Purchaser), the non-breaching or non-defaulting Party shall be entitled to receive from the breaching or defaulting Party its actual, direct damages resulting from such breach or Event of Default.

#### 12.5 Termination.

Upon the occurrence of an Event of Default which has not been cured within the applicable cure period and is continuing, the non-defaulting Party shall have the right to declare, by giving notice to the defaulting Party (and, if the defaulting Party is Seller, to the Facility Financing Representative), a date no less than one (1) Day and no more than thirty (30) Days after the date of such notice upon which this REPA shall terminate.

Neither Party shall have the right to terminate this REPA except as provided for upon the occurrence of an Event of Default as described above or as otherwise may be explicitly provided for in this REPA. Except in the event of termination by Purchaser in the case of the Event of Default of Seller in Section 12.1(E), the non-defaulting Party shall be entitled to receive from the defaulting Party, all of the actual damages incurred by the non-defaulting Party as a result of such termination, including the Total Replacement Energy Costs or Resale Costs (if any) incurred by the non-defaulting Party as a result of the termination of this REPA. In the event of termination by Purchaser in the case of the Event of Default of Seller in Section 12.1(E), neither Party shall have any liability arising out of such termination, without prejudice to Seller's obligation to pay Delay Liquidated Damages in respect of the period prior to such termination.

#### 12.6 Specific Performance.

In addition to the other remedies specified in this Article 12, in the event that any breach of this REPA by a Party is not cured within the applicable cure period set forth herein, the other Party shall have the right to specific performance.

#### 12.7 Remedies Cumulative.

Subject to the exclusivity of Delay Liquidated Damages provided in Section 4.10, the Output Shortfall Liquidated Damages and Capacity Shortfall Liquidated Damages provided in Section 7.2 and the limitations on damages set forth in Sections 12.4 and 12.8, each right or remedy of the Parties provided for in this REPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this REPA, at law or in equity, and the exercise, or the beginning of the exercise, by a Party of any one or more or the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

#### 12.8 Waiver and Exclusion of Other Damages.

The Parties confirm that the express remedies and measures of damages provided in this REPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES BY STATUTE, IN TORT OR CONTRACT (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN); PROVIDED, THAT IF EITHER PARTY IS HELD LIABLE TO A THIRD PARTY FOR SUCH DAMAGES AND THE PARTY HELD LIABLE FOR SUCH DAMAGES IS ENTITLED TO INDEMNIFICATION THEREFORE FROM THE OTHER PARTY HERETO, THE INDEMNIFYING PARTY SHALL BE LIABLE FOR, AND OBLIGATED TO REIMBURSE THE INDEMNIFIED PARTY FOR, SUCH DAMAGES. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that

otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

#### 12.9 Payment of Damages.

Without limiting any other provisions of this Article 12 and at any time before or after termination of this REPA, the non-defaulting Party may send the other Party an invoice for such damages (including, if applicable, Delay Liquidated Damages, Output Shortfall Liquidated Damages and Capacity Shortfall Liquidated Damages) or other amounts as are due to the non-defaulting Party at such time from the defaulting Party under this REPA and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges. In the case of damages owed by Seller to Purchaser, Purchaser may, subject to the provisions of Section 11.1, withdraw funds from the Security Fund, as needed to provide payment for such invoice if the invoice is not paid by Seller on or before the tenth (10th) Business Day following the invoice due date.

#### 12.10 Duty to Mitigate.

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of the REPA.

### ARTICLE 13 CONTRACT ADMINISTRATION AND NOTICES

#### 13.1 Notices in Writing.

Notices required by this REPA shall be addressed to the other Party, including the other Party's representative on the Contract Administration Committee, at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this REPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed, postage prepaid, to the representative of said other Party. If mailed, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the Close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning Facility operations shall be exempt from this Section.

#### 13.2 Representative for Notices.

Each Party shall maintain a designated representative to receive notices. Such representative may, at the option of each Party, be the same person as that Party's representative or alternate representative on the Contract Administration Committee, or

a different person. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

### 13.3 Authority of Representatives.

The Parties' representatives designated above shall have authority to act for its respective principals in all technical matters relating to performance of this REPA and to attempt to resolve disputes or potential disputes. However, they, in their capacity as representatives, shall not have the authority to amend or modify any provision of this REPA.

### 13.4 Operating Records.

Seller and Purchaser shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this REPA, including such records as may be required by state or federal regulatory authorities and the Transmission Operator in the prescribed format.

### 13.5 Operating Log.

Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Facility with records of production for each Clock Hour; changes in operating status; Scheduled Outages/Deratings and Forced Outages for the purposes of proper administration of this REPA, including such records as may be required by state or federal regulatory authorities and the Transmission Operator in the prescribed format.

### 13.6 Billing and Payment Records.

To facilitate payment and verification, Seller and Purchaser shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records. All records of Seller pertaining to the operation of a Facility shall be maintained on the premises of the Facility or at the notice address listed in Exhibit D. For audit and verification purposes, Seller will grant Purchaser read-only access to the PJM eSuite accounts for the node associated with the PJM charges and credits for the Renewable Energy Products from the Facility Capacity.

### 13.7 Examination of Records.

Seller and Purchaser may examine the financial and Operating Records and data kept by the other Party relating to transactions under and administration of this REPA, at any time during the period the records are required to be maintained, upon request and during normal business hours.

### 13.8 Exhibits.

Either Party may change the information for their notice addresses in Exhibit D at any time upon written notice to but without the approval of the other Party. Exhibit C may only be changed in accordance with Section 20.4. Exhibit E may be changed in accordance with Section 16.2. All other Exhibits may only be modified by the mutual agreement of Seller and Purchaser.

### 13.9 Dispute Resolution.

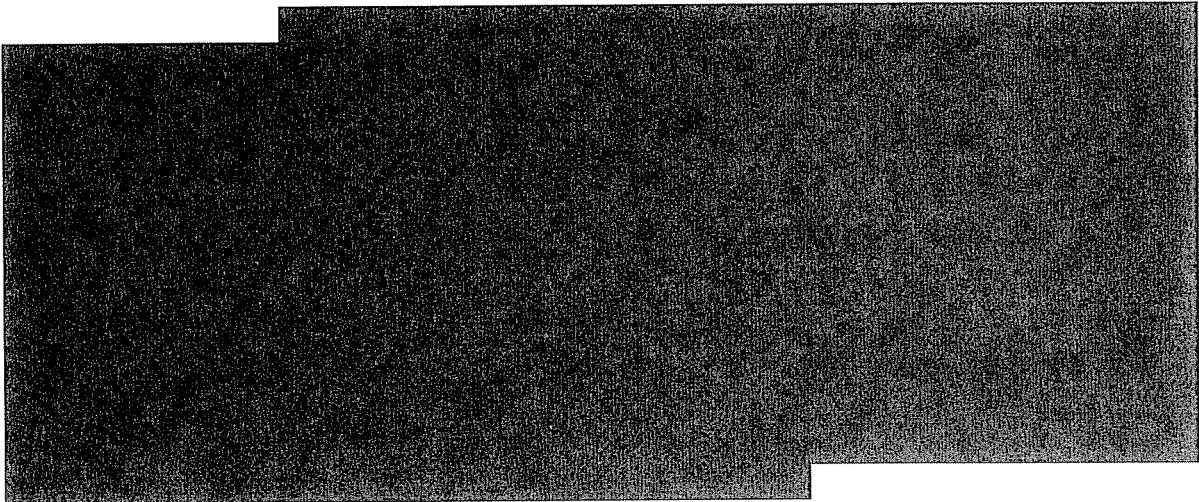
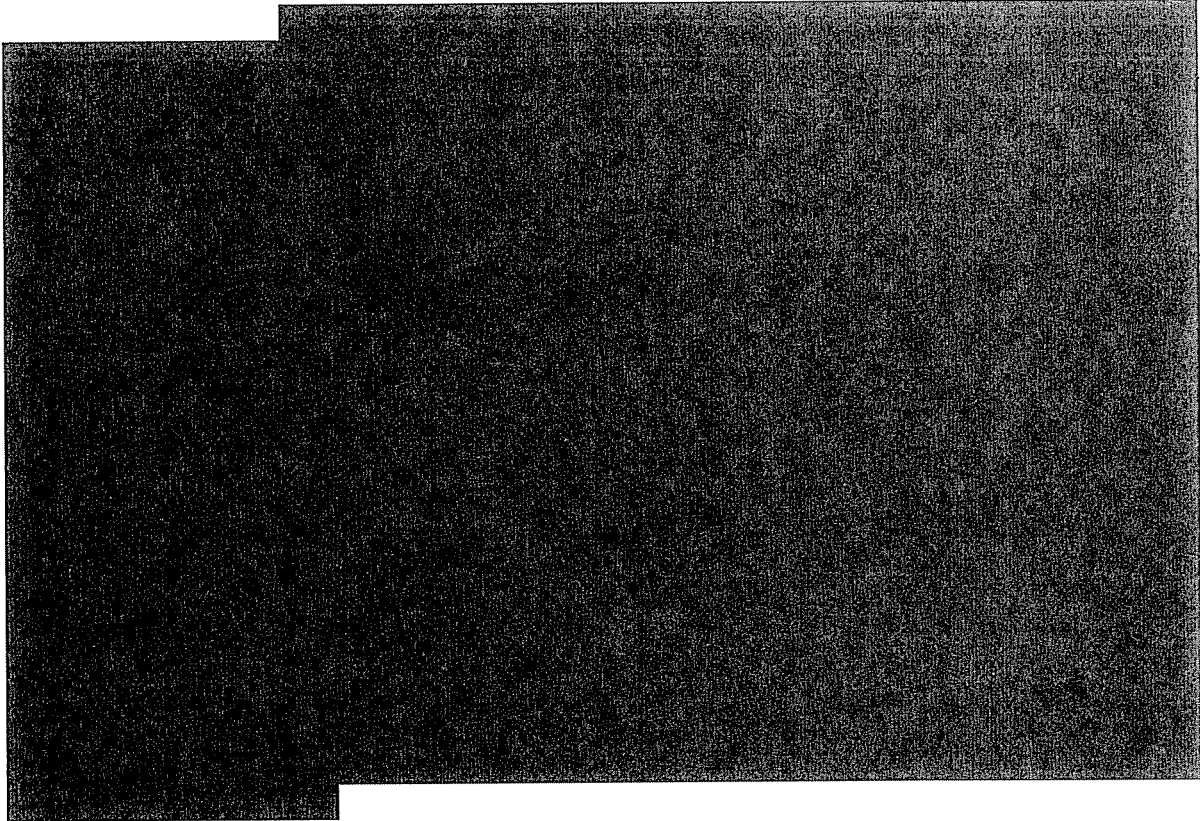
(A) In the event of any dispute, controversy or claim arising out of or relating to this REPA (a "Dispute"), within ten (10) Days following the delivered date of a written request by either Party (a "Dispute Notice"), (i) each Party shall appoint a representative (individually, a "Party Representative", together, the "Parties' Representatives"), and (ii) the Parties' Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the Parties' Representatives have not resolved the Dispute within thirty (30) Days after commencement of negotiations, within ten (10) Days following any request by either Party at any time thereafter, each Party Representative (I) shall independently prepare a written summary of the Dispute describing the issues and claims, (II) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (III) shall submit a copy of both summaries to a senior officer of the Party Representative's Party with authority to irrevocably bind the Party to a resolution of the Dispute. Within ten (10) Business Days after receipt of the Dispute summaries, the senior officers for both Parties shall negotiate in good faith to resolve the Dispute. If the Parties have not resolved the Dispute within fourteen (14) Days following receipt of the Dispute summaries by the senior officers, either Party may seek available legal and equitable remedies.

(B) Notwithstanding any provision in this REPA to the contrary, if no Dispute Notice has been issued within twenty-four (24) months following the occurrence of all events and the existence of all circumstances giving rise to the Dispute (regardless of the knowledge or potential knowledge of either Party of such events and circumstances), the Dispute and all claims related thereto shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon; provided, however, that the limitation set forth in this subsection (B) shall not apply to any Dispute Notices regarding claims for indemnification under this REPA for third party claims.

(C) Seller and Purchaser each hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this REPA or any course of conduct, course of dealing, statements (whether oral or written) or actions of Seller and Purchaser related hereto and expressly agree to have any disputes arising under or in connection with this REPA be adjudicated by a judge of the court having jurisdiction without a jury.

ARTICLE 14  
FORCE MAJEURE

14.1 Definition of Force Majeure.



#### 14.2 Applicability of Force Majeure.

(A) Other than as set forth in Section 14.3, neither Party shall be responsible or liable for any delay or failure in its performance under this REPA (other than the obligation to make payment of amounts due and payable under this REPA), nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

(1) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;

(2) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(3) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and

(4) when the non-performing Party is able to resume performance of its obligations under this REPA, that Party shall give the other Party prompt written notice to that effect.

(B) Except as otherwise expressly provided for in this REPA, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this REPA (including payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

#### 14.3 Limitations on Effect of Force Majeure.

In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this REPA beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure prevents the performance of a Party's obligations hereunder in any material respect and continues for an uninterrupted period of three hundred sixty-five (365) Days from its occurrence or inception, as noticed pursuant to Section 14.2(A), the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) Day period, terminate this REPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) Day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure.



ARTICLE 15  
REPRESENTATIONS, WARRANTIES AND COVENANTS

15.1 Seller's Representations, Warranties and Covenants.

Seller hereby represents and warrants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Kentucky. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its assets, and to execute, deliver, and perform its obligations under this REPA.

(B) The execution, delivery, and performance of its obligations under this REPA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Purchaser upon its request);

(2) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Seller or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this REPA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this REPA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this REPA) upon or with respect to any of the assets of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this REPA.

(C) This REPA is a valid and binding obligation of Seller.

(D) The execution and performance of this REPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to

which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Facility.

(E) To the best knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit F, or those which Seller anticipates will be obtained by Seller in the ordinary course of business, all permits, consents, approvals, licenses, authorizations, or other action required by any Governmental Authority to authorize Seller's execution, delivery and performance of this REPA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all applicable local, state, and federal laws, regulations, and ordinances, including applicable equal opportunity and affirmative action requirements and all applicable federal, state, and local environmental laws and regulations presently in effect or which may be enacted during the Term of this REPA.

(G) Seller shall disclose to Purchaser, the extent of, and as soon as it is known to Seller, any violation of any environmental laws or regulations arising out of the construction or operation of the Facility, or the presence of Environmental Contamination at the Facility or on the Site, alleged to exist by any Governmental Authority having jurisdiction over the Site, or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination.

#### 15.2 Purchaser's Representations, Warranties and Covenants.

Purchaser hereby represents and warrants as follows:

(A) Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Kentucky and is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Purchaser; and Purchaser has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this REPA.

(B) The execution, delivery, and performance of its obligations under this REPA by Purchaser have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Purchaser's Board of Directors, or shareholders, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Seller upon its request);

(2) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Purchaser or violate any provision in any corporate documents of Purchaser, the violation of which could have a material adverse effect on the ability of Purchaser to perform its obligations under this REPA;

(3) result in a breach or constitute a default under Purchaser's corporate charter or bylaws, or under any agreement relating to the management or affairs of Purchaser, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Purchaser is a party or by which Purchaser or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this REPA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this REPA) upon or with respect to any of the assets or properties of Purchaser now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations under this REPA.

(C) This REPA is a valid and binding obligation of Purchaser.

(D) The execution and performance of this REPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Purchaser is a party or any judgment, order, statute, or regulation that is applicable to Purchaser.

(E) To the best knowledge of Purchaser, and except for the conditions precedent described in Section 6.1, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Purchaser's execution, delivery and performance of this REPA, have been duly obtained and are in full force and effect.

## ARTICLE 16 INSURANCE

### 16.1 Evidence of Insurance.

Seller shall, promptly upon renewal of insurance each calendar year or partial calendar year beginning with the calendar year in which construction of the Facility commences and throughout the Term, provide Purchaser, at the insurance address listed in Exhibit D, with a copy of insurance certificates acceptable to Purchaser evidencing that insurance coverages for the Facility are in compliance with the specifications for insurance coverage set forth in Exhibit E to this REPA. Such certificates shall (a) name Purchaser as an additional insured (except workers' compensation); (b) provide a waiver of any rights of subrogation against Purchaser, its Affiliates and their officers, directors, agents, subcontractors, and employees; and (c) indicate that the Commercial General Liability policy has been endorsed as described above. Seller shall use commercially reasonable efforts to procure that the insurance policies required by this REPA provide that Purchaser shall receive thirty (30) Days prior written notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies (except that such notice shall be ten (10) Days for non-payment

of premiums); provided, however, that, if Seller is unable to require its insurers to provide such notices to Purchaser, Seller shall provide Purchaser, at the insurance address listed in Exhibit D; with any such notice of non-renewal or cancellation to any corresponding policy which Seller receives from any of its insurers as soon as practicable following Seller's receipt of such notice but in no event later than five (5) Business Days following Seller's receipt, if any, of the relevant notice. All policies shall be written with insurers that Purchaser, in its reasonable discretion, deems acceptable (such acceptance will not be unreasonably withheld, conditioned or delayed). All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by Purchaser. Seller's liability under this REPA is not limited to the amount of insurance coverage required herein.

#### 16.2 Term and Modification of Insurance.

All insurance required under this REPA shall be on an occurrence-basis and shall be in effect beginning in the calendar year in which construction of the Facility commences, throughout the Term, and for a period of two (2) years after the Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this REPA and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of two (2) years after the Term. If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide written notice to Purchaser, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and design. Upon receipt of such notice, Seller shall use commercially reasonable efforts to obtain other insurance that would provide comparable protection against the risk to be insured and Purchaser shall not unreasonably withhold its consent to modify or waive such requirement.

### ARTICLE 17 INDEMNITY

#### 17.1 Indemnity Obligations.

Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party (the "Indemnified Party") from and against all claims, demands, losses, liabilities, penalties and expenses (including reasonable attorneys' fees) for personal injury or death to persons and damage to the Indemnified Party's real property and tangible personal property or facilities or the property of any other person or entity to the extent arising out of, resulting from, or caused by an Event of Default under this REPA, violation of any applicable environmental laws, or by the negligent or tortious acts, errors, or omissions of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents; provided, however, that notwithstanding the foregoing, each Party shall be responsible for injury or death to such Party's employees, agents

and representatives on the Site or in connection with visits thereto or inspections thereof, except to the extent any such injury or death arises from the gross negligence or willful misconduct of the other Party. Nothing in this Section shall enlarge or relieve Seller or Purchaser of any liability to the other for any breach of this REPA. Subject to the foregoing and the next sentence, this indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Indemnified Party, but the Indemnifying Party's liability to pay damages to the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party's negligent or intentional acts, errors or omissions caused the damages. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

#### 17.2 Notification of Claims; Defense.

Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Party and reasonably satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs; provided further that the Indemnifying Party may settle the claim only if the compromise or settlement includes an unconditional release of the Indemnified Person from all liabilities other than the payment of any money that will be paid by the Indemnifying Party.

#### 17.3 Failure to Defend.

If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

#### 17.4 Net of Insurance Proceeds.

Except as otherwise provided in this Article, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by

the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 18  
LEGAL AND REGULATORY COMPLIANCE

18.1 Compliance with Laws.

Each Party shall at all times comply with all laws, ordinances, rules and regulations applicable to it except for any non-compliance which, individually or in the aggregate, could not reasonably be expected to have a material effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder. As applicable, each Party shall give all required notices, shall procure and maintain all permits, licenses, and inspections required by any Governmental Authority and necessary for performance of this REPA, and shall pay its respective charges and fees in connection therewith.

18.2 Cooperation.

Each Party shall cooperate with the other Party in providing such information as may be reasonably requested, to the extent permitted by applicable law and subject to such confidentiality and use limitations as the providing Party may reasonably require, to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation, including administrative proceedings before utility regulatory commissions.

18.3 Removal of Facility.

If and when required by law, Seller shall decommission the Facility, remove the Facility and remediate the Site as required by law upon permanent cessation of generation of Renewable Energy from the Facility.

ARTICLE 19  
ASSIGNMENT, SUBCONTRACTING, AND FINANCING

19.1 No Assignment Without Consent.

Except as permitted in this Article 19, neither Party shall assign this REPA or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided (i) at least thirty (30) Days prior notice of any such assignment shall be given to the other Party; (ii) any assignee shall expressly assume the assignor's obligations hereunder, unless otherwise agreed to by the other Party, and no assignment, whether or not consented to, shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform, unless the other Party agrees in writing in advance to waive the assignor's continuing obligations pursuant to this REPA; (iii) no such assignment shall impair any security given by Seller hereunder; and (iv) before the REPA is assigned by Seller, the assignee must first obtain such approvals as may be required by all applicable regulatory bodies.

For the avoidance of doubt, a merger of either Party with another Person shall not qualify as an assignment and shall not be subject to the restrictions set forth in this Section 19.1.

(A) Seller's consent shall not be required for Purchaser to assign this REPA to an Affiliate of Purchaser, provided that Purchaser provides assurances and executes documents reasonably required by Seller and the Facility Financiers regarding Purchaser's continued liability for all of Purchaser's obligations under this REPA in the event of any nonperformance on the part of such assignee and that such assignee is a Creditworthy Entity. In the event that the assignee has or obtains an investment grade senior unsecured debt rating equivalent to or better than the senior unsecured debt rating of Purchaser (but in no event worse than the equivalent of BBB), then Seller agrees to relieve Purchaser from its obligations under this REPA if Purchaser requests to be so relieved in a written notice provided to Seller.

(B) Seller shall have the right, without Purchaser's prior written consent, to assign this REPA (i) to a purchaser of all or substantially all of the assets of Seller; (ii) to an Affiliate of Seller; (iii) in connection with a merger of Seller with another Person or any other transaction resulting in a direct or indirect change of control of Seller, or (iv) for collateral purposes to the Facility Financing Representative or any Facility Financier provided that the Parties and the Facility Financing Representative have executed the applicable Consent and Agreement; and in any event provided that such purchaser, Affiliate or the Person surviving such merger, as applicable, (x) meets the requirements of this Section 19.1, (y) complies with the requirements of Section 11.1, and (z) either (a) is a Qualified Operator or (b) has engaged a Qualified Operator to operate and maintain the Facility.

19.2 [Intentionally Omitted.]

19.3 Accommodation of Facility Financiers.

To facilitate Seller's obtaining of financing with respect to the Facility, Purchaser shall make reasonable efforts to enter into the Consent and Agreement or another direct agreement with the Facility Financiers with substantially the same terms and conditions, and to provide such other certifications, representations or other documents as may be reasonably requested by Seller or the Facility Financing Representative; provided, that in responding to any such request, Purchaser shall have no obligation to enter into any agreement that materially adversely affects any of Purchaser's rights, benefits, risks or obligations under this REPA. Seller shall reimburse, or shall cause the Facility Financing Representative to reimburse, Purchaser for the incremental amount of reasonable direct expenses (including the reasonable fees and expenses of counsel) incurred by Purchaser in the preparation, negotiation, execution and delivery of the applicable Consent and Agreement and any other documents requested by Seller or the Facility Financiers, and provided by Purchaser, pursuant to this Section 19.3.

19.4 Notice of Facility Financier Action.

Within ten (10) Days following Seller's receipt of each written notice from the Facility Financiers of default, or Facility Financiers' intent to exercise any remedies, under the Financing Documents, Seller shall deliver a copy of such notice to Purchaser.

19.5 Transfer Without Consent is Null and Void.

Any sale, transfer, or assignment of any interest in the Facility or in this REPA made without fulfilling the requirements of the REPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

19.6 Subcontracting.

Seller may subcontract its duties or obligations under this REPA without the prior written consent of Purchaser, provided, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

ARTICLE 20  
MISCELLANEOUS

20.1 Waiver.

Subject to the provisions of Section 13.9(B), the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this REPA, or to take advantage of any of its rights there under, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

20.2 Taxes.

(A) Each Party shall use reasonable efforts to implement the provisions of and to administer this REPA in accordance with the intent of the Parties to minimize all Taxes, so long as neither Party is materially adversely affected by such efforts. Notwithstanding the foregoing, neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder.

(B) Seller shall pay or cause to be paid (and shall indemnify and hold Purchaser harmless from and against) all sales, use, excise, ad valorem, transfer and other similar taxes that are imposed by any taxing authority (individually, a "Tax" and collectively, "Taxes") on or with respect to the Facility or the sale of Renewable Energy Products incurred prior to the delivery of Renewable Energy Products to the Point of Delivery. Purchaser shall pay or cause to be paid (and shall indemnify and hold Seller harmless from and against) all Taxes on or with respect to the sale of Renewable Energy Products incurred upon and after the delivery of Renewable Energy Products to the Point of Delivery (other than ad valorem, franchise, income, or commercial activity taxes, and transactional taxes or fees imposed by law on the Seller that are related to the sale of Renewable Energy Products and are, therefore, the responsibility of the



Seller). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, the responsible Party shall promptly reimburse the other for such Taxes.

(C) In the event any of the sales of Renewable Energy Products hereunder are exempt or excluded from any particular Tax(es) payable by Purchaser, Purchaser shall provide Seller with all necessary documentation within thirty (30) days after the execution of this REPA to evidence such exemption or exclusion (or, with regard to any such Tax(es) enacted after the Effective Date, Purchaser shall provide Seller with such documentation before the date on which the enactment requires the delivery of documentation to Seller in order to effect an exclusion or exemption from such Tax(es)). In the event Purchaser does not provide such documentation, then Purchaser shall indemnify, defend and hold Seller harmless from any liability with respect to Tax(es) to which Purchaser is exempt or excluded.

### 20.3 Fines and Penalties.

(A) Seller shall pay when due all fees, fines, penalties or costs to the extent incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this REPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination.

(B) If fees, fines, penalties, or costs are claimed or assessed against either Party by any Governmental Authority due to noncompliance by the other Party with this REPA, any requirements of law with which compliance is required by this REPA, any permit or contractual obligation, or, if the work of the other Party or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to the other Party's noncompliance with any requirements of law with which compliance is required by this REPA, permit, or contractual obligation, penalized Party shall indemnify and hold other Party harmless against any and all reasonable losses, liabilities, damages, and claims suffered or incurred by other Party, including claims for indemnity or contribution made by third parties against other Party, except to the extent other Party recovers any such losses, liabilities or damages through other provisions of this REPA.

### 20.4 Rate Changes.

The terms and conditions and the rates for service specified in this REPA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this REPA shall not be subject to change by application of either Party pursuant to Section 205, 206 or 306 of the Federal Power Act.

Absent the agreement of all parties to the proposed change, the standard of review for changes to this REPA whether proposed by a Party, a non-party, or the

Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 128 S. Ct. 2733 (2008) (the "Mobile-Sierra doctrine"), or such other standard of review permissible to preserve the intent of the parties pursuant to this Section to uphold this REPA without modification.

#### 20.5 Disclaimer of Third Party Beneficiary Rights.

In executing this REPA, neither Party does, nor should it be construed to, extend its credit or financial support for the benefit of any third parties, including those lending money to or having other transactions with the other Party. Except with respect to the Consent and Agreement, nothing in this REPA 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 REPA.

#### 20.6 Relationship of the Parties.

(A) This REPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party nor to create any agency relationship between the Parties or impose any fiduciary responsibility on either Party or create any trust or trust obligations on 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 an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform its obligations under this REPA, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of Purchaser for any purpose; nor shall Seller represent to any person that he or she is or shall become a Purchaser employee.

#### 20.7 Equal Employment Opportunity Compliance Certification.

Seller acknowledges that as a government contractor Purchaser is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Purchaser. Seller shall comply with all applicable equal opportunity and affirmative action federal laws, executive orders, and regulations, including, if applicable, 41 C.F.R. §60-1.4(a)(1-7).

#### 20.8 Survival of Obligations.

Cancellation, expiration, or earlier termination of this REPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or

termination, prior to the term of the applicable statute of limitations, including warranties, remedies, or indemnities, which obligations shall survive for the period of the applicable statute(s) of limitation.

#### 20.9 Severability.

In the event any of the terms, covenants, or conditions of this REPA, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the REPA and their application not adversely affected thereby shall remain in force and effect; provided, however, that Purchaser and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this REPA with a view toward effecting the purposes of this REPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

#### 20.10 Complete Agreement; Amendments.

The terms and provisions contained in this REPA constitute the entire agreement between Purchaser and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Purchaser and Seller with respect to the sale of Renewable Energy Products from and associated with the Facility. This REPA may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto.

#### 20.11 Binding Effect.

This REPA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

#### 20.12 Headings.

Captions and headings used in this REPA are for ease of reference only and do not constitute a part of this REPA.

#### 20.13 Counterparts.

This REPA may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

#### 20.14 Governing Law.

The interpretation and performance of this REPA and each of its provisions shall be governed and construed in accordance with the laws of the State of New York, without regard to its conflicts of laws provisions.

#### 20.15 Confidentiality.

This REPA and any information provided by either Party to the other Party pursuant to this REPA and labeled "CONFIDENTIAL" or with words of similar meaning will be utilized by the receiving Party solely in connection with the purposes of this REPA and will not be disclosed by the receiving Party to any third party, except with the providing Party's consent, and upon request of the providing Party will be returned thereto, except that the receiving Party will not be obligated to return any such information contained in documents generated by the receiving Party that: (1) reflect or refer to confidential information provided by the disclosing Party; and (2) are stored electronically by the receiving Party. With respect to any such retained electronically stored confidential information, the receiving Party will continue to comply with the obligations of this Section 20.15. Notwithstanding anything herein to the contrary, the Parties acknowledge and agree that such confidential information may be disclosed to (i) the Interconnection Provider, the Transmission Operator, Affiliates or any other Person (including subcontractors, consultants, accountants, financial advisors, experts, legal counsel and other professional advisors to the Parties) as required for settlement and billing or otherwise to perform under or administer this REPA; and (ii) in case of Seller, to Facility Financiers or potential Facility Financiers, potential bidders and bidders for, and potential purchasers and purchasers of, direct or indirect ownership interests in the Facility (including direct or indirect interests in the equity interests of Seller). To the extent that such disclosures are necessary, the Parties also agree that they will in disclosing such information seek to preserve the confidentiality of such disclosures, by requiring a party receiving confidential information to be bound by the terms of this REPA applicable to such a confidential information. Without limiting the foregoing, this Section 20.15 will not prevent a Party from providing confidential information to any Governmental Authority formally or otherwise, as required in connection with any regulatory proceeding, as required for obtaining any regulator approval or making any regulatory filing, provided that each Party agrees to cooperate with the other to maintain the confidentiality of the provisions of this REPA by requesting confidential treatment with all filings to the extent appropriate and permitted by applicable law. This provision will not prevent either Party from providing any confidential information received from the other Party to any court or regulatory proceeding or in accordance with a proper discovery request or in response to the reasonable request or need of any Governmental Authority charged with regulating the disclosing Party's affairs or in accordance with the request of any applicable stock exchange, provided that, if feasible, the disclosing Party will give prior notice to the other Party of such disclosure and, if so requested by such other Party, will have used all reasonable efforts to oppose or resist the requested disclosure, as appropriate under the circumstances, or to otherwise make such disclosure pursuant to a protective order or other similar arrangement for confidentiality.

#### 20.16 Forward Contract.

The Parties acknowledge and agree that this REPA and the transactions contemplated by this REPA constitute a "forward contract" within the meaning of the

United States Bankruptcy Code and that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this REPA.

Seller:

ecoPower Generation-Hazard LLC

By:       /S/        
Gary T. Crawford  
Chief Executive Officer

Purchaser:

Kentucky Power Company

By:       /S/        
Robert P. Powers  
Vice President

**EXHIBIT A**  
**FACILITY MILESTONES**

Project Activity	Completion Date
Revised Air Permit	APRIL 30, 2013
Construction Start Date (LNTP)	MAY 23, 2013
PJM Interconnection Services Agreement	JANUARY 15, 2014
Financial Close	APRIL 15, 2014
Final Equipment Procurement (FNTP)	APRIL 15, 2014
Commercial Operation Milestone	JANUARY 31, 2017

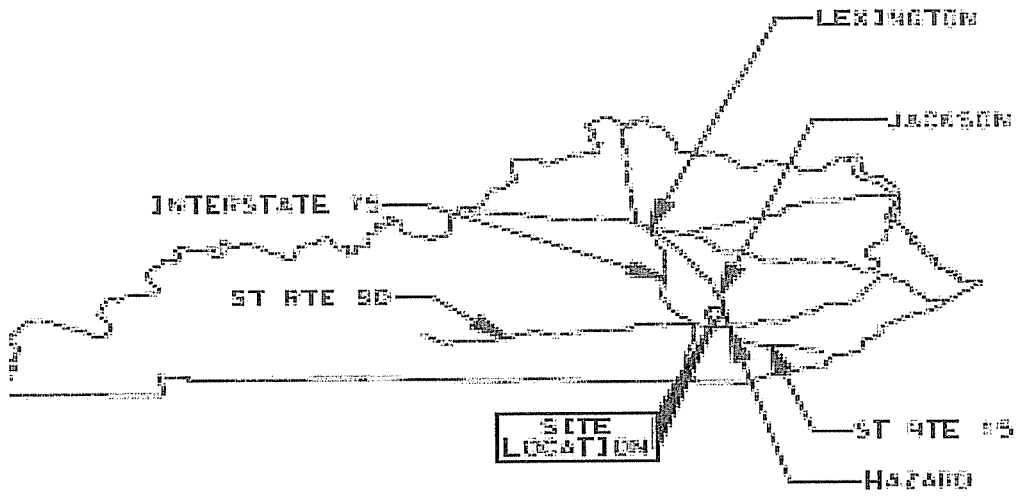
## EXHIBIT B

### FACILITY DESCRIPTION AND SITE MAPS

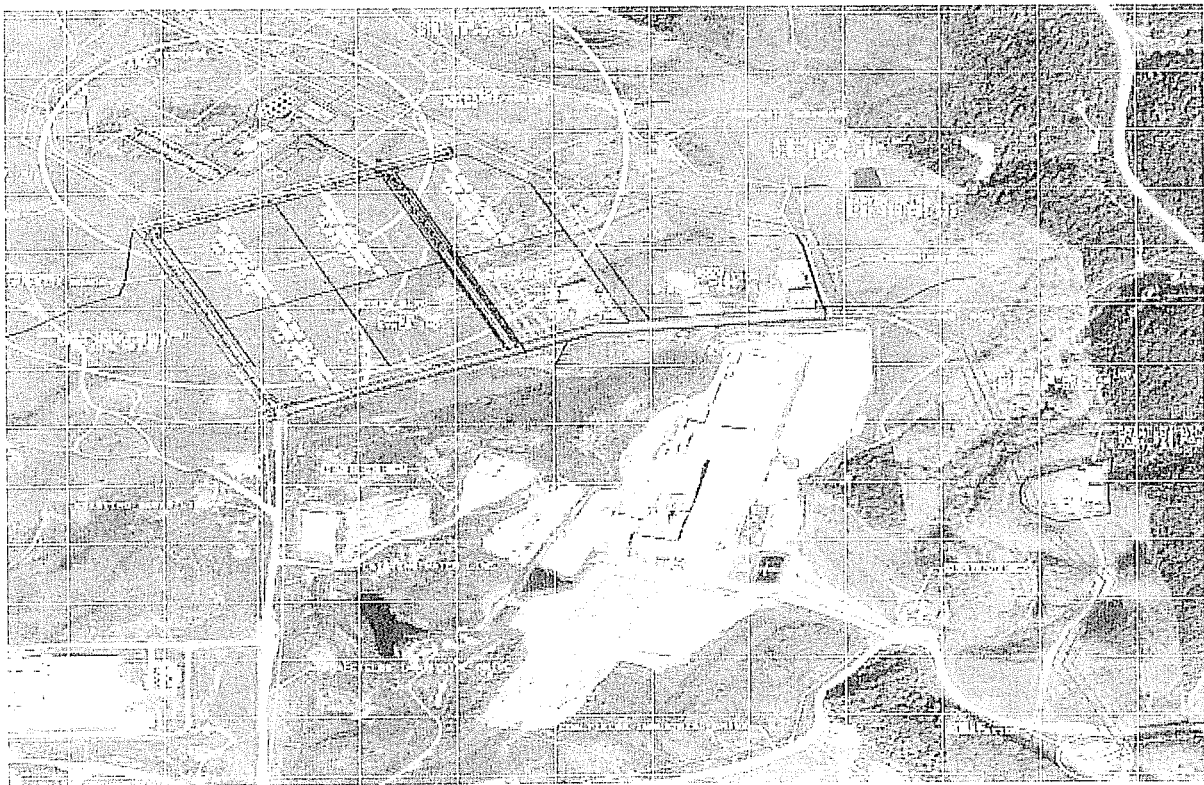
ecoPower Generation – Hazard, LLC (“ the Project”) will be a baseload woody biomass renewable electricity generating station to be located in the Coal Fields Industrial Park, approximately 10 miles north of Hazard, Kentucky. The Project will consist of one 66 MW nominal gross steam-turbine generator and a bubbling fluidized bed boiler. The Project will include the engineering, procurement, construction and commissioning of the new outdoor generating unit on a 125 acre mine spoil site in Perry County, Kentucky.

The new unit will include a biomass-fired boiler with all ancillaries; an air quality control system (AQCS) including a dry sorbent injection system (DSI) for sulfur oxide (SO<sub>x</sub>) and HCl removal, a fabric filter for particulate removal and selective catalytic reactor (SCR) for NO<sub>x</sub> reduction; a single casing, direct-connected, 3,600 RPM, single flow, condensing steam turbine-generator; and material handling systems for fuel and ash. The feedwater heating cycle will consist of three (3) stages with two closed low-pressure heaters, and one closed high-pressure heater. Cycle heat rejection will be accomplished using an air-cooled condenser with a deaerating condensate collection tank. Component cooling system heat rejection will be accomplished using an auxiliary wet cooling tower. Hazard municipal water supply will be used as the water source for process makeup. Biomass fuel in the form of whole logs and mill residuals will be procured by the Project. The project also will include a 69kV switchyard and approximate 1.5 mile transmission line to AEP’s Engle Substation.

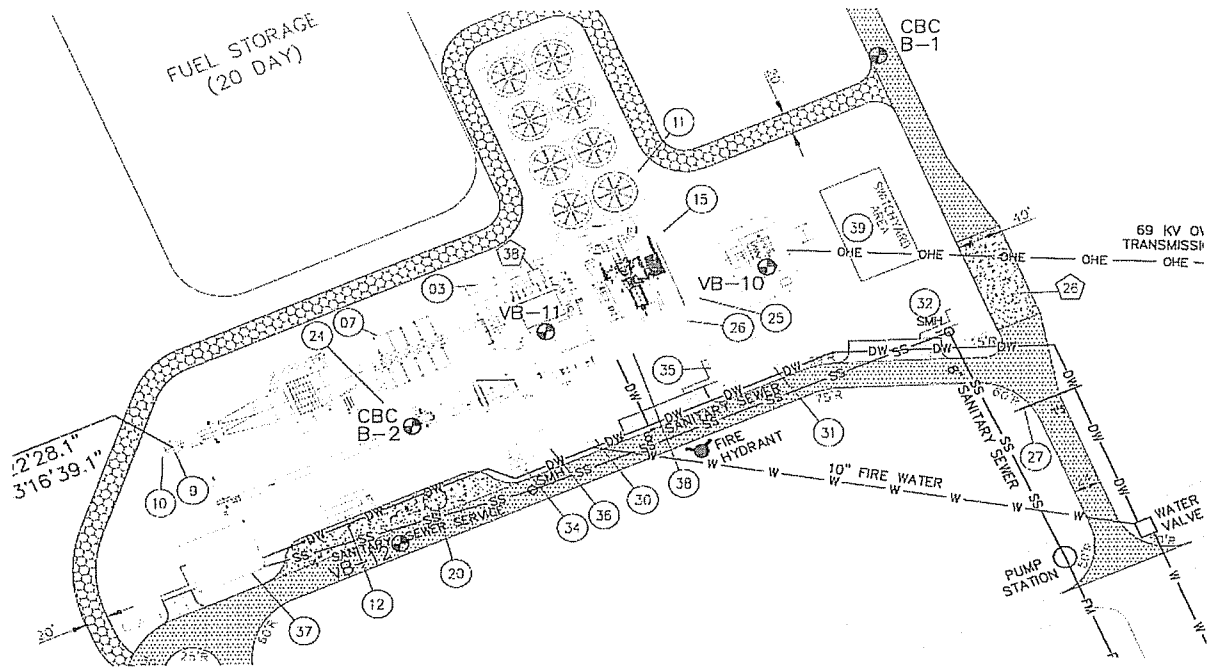




VICINITY MAP  
N.T.S



**Coal Fields Industrial Park**



**Plant General Arrangement**

EXHIBIT C  
CONTRACT RATE  
(\$ Per MWh)  
REDACTED IN ITS ENTIRETY

**EXHIBIT D**  
**NOTICE ADDRESSES**

<b>Purchaser</b>	<b>Seller</b>
<p><b>Notices and Insurance:</b></p> <p><b>Other than invoices:</b></p> <p>Kentucky Power Company c/o American Electric Power Service Corporation 155 West Nationwide Boulevard Columbus, OH 43215 Attn: Contract Administration Fax: (614) 583-1606</p> <p><u><b>with copies to:</b></u></p> <p>American Electric Power Service Corporation 155 West Nationwide Boulevard Columbus, OH 43215 Attn: Director, Credit Risk Department Fax: (614) 583-1604</p> <p><b>and</b></p> <p>Attn: Chief Counsel, CO&amp;L American Electric Power Service Corporation 155 West Nationwide Boulevard Columbus, OH 43215 Attn: Chief Counsel Fax: (614) 583-1603</p>	<p><b>Notices:</b></p> <p><b>Notices (other than operational notices):</b></p> <p>ecoPower Generation – Hazard, LLC 1256 Manchester Street Lexington, KY 40502 Attn: Gary T. Crawford Fax: (859) 252-6964</p> <p><u><b>with copies to:</b></u></p> <p>ecoPower Generation, LLC 1256 Manchester Street Lexington, KY 40504 Attn: Gary T. Crawford Fax: (859) 252-6964</p> <p><b>and</b></p> <p>Wyatt, Tarrant &amp; Combs, LLP Suite 2800 500 West Jefferson Street Louisville, KY 40202-2898 Attn: Patrick W. Mattingly Fax: (502) 589-0309</p>
<p><b>Contract Administration Committee Representative:</b> Jay Godfrey (614) 583-6162 jfgodfrey@aep.com</p> <p><b>Alternate:</b> To be designated in writing by Purchaser at or prior to the first meeting of the Contract Administration Committee</p>	<p><b>Contract Administration Committee Representative:</b> Gary T. Crawford (859) 685-1106 gcrawford@ecopg.com</p> <p><b>Alternate:</b> To be designated in writing by Purchaser at or prior to the first meeting of the Contract Administration Committee</p>

EXHIBIT E  
INSURANCE COVERAGE  
REDACTED IN ITS ENTIRETY

## EXHIBIT F

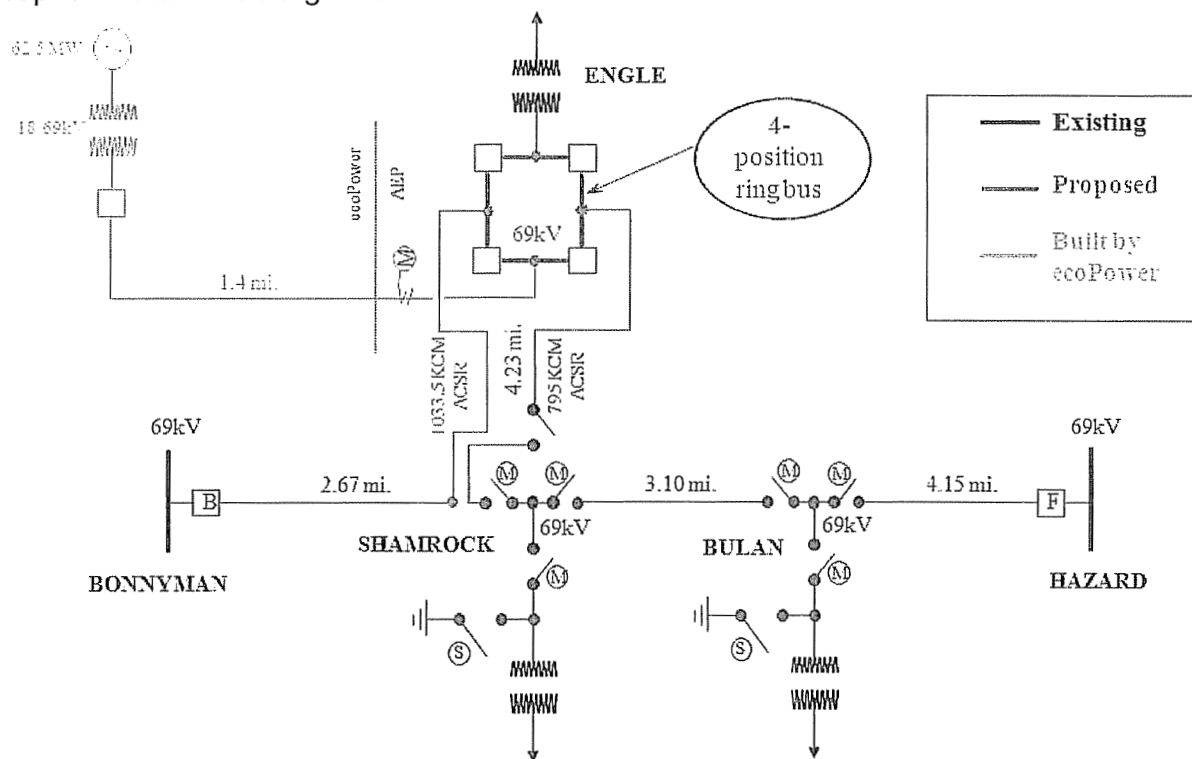
### SELLER'S REQUIRED PERMITS, CONSENTS APPROVALS, LICENSES AND AUTHORIZATIONS

<u>Agency</u>	<u>Description</u>	<u>Status</u>
KDOW	Operational Stormwater	December 2015
City of Hazard	Process Water Discharge	June 2014
KEEC	Cumulative Environmental Assessment	May 2013
KDAQ	Air Permit	April 2013
KDHBC	Building Permit	By EPC

## EXHIBIT G POINT OF DELIVERY

The point of delivery shall be the 69kV point at the Engle Substation of Kentucky Power Company located near the Coal Fields Industrial Park in Perry County, KY.

Proposed One Line Diagram:



**EXHIBIT H**  
**FORM OF PLANNED MAINTENANCE SCHEDULE**

<b>Activity</b>	<b>Duration, days</b>	<b>Start Date</b>	<b>End Date</b>



EXHIBIT I  
CALCULATION OF OUTPUT SHORTFALL LIQUIDATED DAMAGES  
REDACTED IN ITS ENTIRETY

**EXHIBIT J**  
**INTENTIONALLY OMITTED**

**EXHIBIT K**  
**FORM OF AVAILABILITY NOTICE**

Effective Date \_\_\_\_\_

Time \_\_\_\_\_

Hour	Available Capacity in MW
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
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EXHIBIT L  
FORM OF LETTER OF CREDIT  
REDACTED IN ITS ENTIRETY

EXHIBIT M  
FORM OF GUARANTY  
REDACTED IN ITS ENTIRETY

EXHIBIT N  
FORM OF CONSENT AND AGREEMENT  
REDACTED IN ITS ENTIRETY

**Wind and Solar Energy Power Purchase Agreements  
Regulated Operating Companies only**

Project	State	RTO	Online (expected)	MW	Developer	Major Equipment Manufacturer
<b>AEP Ohio</b>						
Fowler II	IN	PJM	2009	50	BP Wind Energy	GE
Fowler II	IN	PJM	2009	50	BP Wind Energy	GE
Wyandot Solar	OH	PJM	2010	10.1	Juwi / PSEG	First Solar
Timber Road	OH	PJM	1/2013	54.5	EDPR Renewables	Vestas
Timber Road	OH	PJM	1/2013	44.6	EDPR Renewables	Vestas
<b>AEP Ohio total =</b>				<b>209.1 MW</b>		
<b>Appalachian Power Company (APCO)</b>						
Camp Grove	IL	PJM	2008	75	Orion Energy Partners	GE
Fowler III	IN	PJM	2009	99	BP Wind Energy	Clipper/Vestas
Grand Ridge II	IL	PJM	2009	51	Invenergy LLC	GE
Grand Ridge III	IL	PJM	2009	49.5	Invenergy LLC	GE
Beech Ridge	WV	PJM	2010	100.5	Invenergy LLC	GE
<b>APCO total =</b>				<b>375 MW</b>		
<b>Indiana Michigan Power Company (I&amp;M)</b>						
Fowler I	IN	PJM	2009	100	BP / Dominion	Clipper/Vestas
Fowler II	IN	PJM	2009	50	BP Wind Energy	GE
Wildcat	IN	PJM	1/2013	100	E.ON C & R	GE
<b>I&amp;M total =</b>				<b>250 MW</b>		
<b>Public Service Company of Oklahoma (PSO)</b>						
Weatherford	OK	SPP	2005	147	NextEra	GE
Blue Canyon II	OK	SPP	2005	151.2	EDPR Renewables	Vestas
Sleeping Bear	OK	SPP	2008	94.5	Edison Mission	Suzlon
Blue Canyon V	OK	SPP	2009	99	EDPR Renewables	GE
Elk City	OK	SPP	2010	98.9	NextEra	Siemens
Minco	OK	SPP	2010	99.2	NextEra	GE
<b>PSO total =</b>				<b>689.8 MW</b>		
<b>Southwestern Electric Power (SWEPCO)</b>						
Majestic	TX	SPP	2009	79.5	NextEra	GE
Majestic II	TX	SPP	2012	79.6	NextEra	GE
Flat Ridge 2	KS	SPP	1/2013	31	BP Wind Energy	GE
Flat Ridge 2	KS	SPP	1/2013	77.8	BP Wind Energy	GE
Canadian Hills	OK	SPP	2012	100.5	Apex Wind	RePower
Canadian Hills	OK	SPP	2012	52.8	Apex Wind	Mitsubishi
Canadian Hills	OK	SPP	2012	48.0	Apex Wind	Mitsubishi
<b>SWEPCO total =</b>				<b>469.2 MW</b>		
<b>AEP TOTAL =</b>				<b>1,993.1 MW</b>		

## MAJOR PROJECT MILESTONES

### ecoPower Biomass Facility

Project Activity	Completion Date
Revised Air Permit	APRIL 30, 2013
Construction Start Date (LNTP)	MAY 23, 2013
PJM Interconnection Services Agreement	JANUARY 15, 2014
Financial Close	APRIL 15, 2014
Final Equipment Procurement (FNTP)	APRIL 15, 2014
Commercial Operation Date	JANUARY 31, 2017



COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:

The Application Of Kentucky Power Company For: )  
(1) The Approval Of The Terms And Conditions Of The )  
Renewable Energy Purchase Agreement For Biomass )  
Energy Resources Between The Company And ) Case No. 2013-00 \_\_\_\_\_  
ecoPower Generation-Hazard LLC; (2) Authorization )  
To Enter Into The Agreement; (3) The Grant Of Certain )  
Declaratory Relief; And (4) The Grant Of All )  
Other Required Approvals and Relief )

TESTIMONY OF

GREGORY G. PAULEY

ON BEHALF OF KENTUCKY POWER COMPANY

**DIRECT TESTIMONY OF  
GREGORY G. PAULEY, ON BEHALF OF  
KENTUCKY POWER COMPANY  
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY**

**CASE NO. 2013-\_\_\_\_\_**

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VI.	THE ECOPOWER NOMINAL 58.5 MW (NET) REPA.....	5

**TESTIMONY OF  
GREGORY G. PAULEY, ON BEHALF OF  
KENTUCKY POWER COMPANY  
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY**

**I. INTRODUCTION**

1  
2 **Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

3 **A.** My name is Gregory G. Pauley. My position is President and Chief Operating  
4 Officer (“COO”), Kentucky Power Company (“Kentucky Power” or the  
5 “Company.”) My business address is 101 A Enterprise Drive, Frankfort,  
6 Kentucky 40602.

**II. BACKGROUND**

7  
8 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**  
9 **BUSINESS EXPERIENCE.**

10 **A.** I received a Bachelor’s degree from Harding University in May 1973. I also  
11 graduated from management development programs at The Ohio State University  
12 and Virginia Polytechnic Institute and State University. I currently serve as  
13 President and COO of Kentucky Power and have held those positions with the  
14 Company since 2010. From 2006-2010 I was Director – Public Policy for  
15 American Electric Power Service Corporation (“AEPSC”) working on policy  
16 issues affecting the utility industry on a national level. Prior to that, I served as  
17 Kentucky Power’s Governmental/Environmental Affairs manager from 2001-  
18 2006. I have also held positions at other American Electric Power Company, Inc.  
19 (“AEP”) operating units in community affairs, manager of distribution services,  
20 human resources and accounting at various operations and generation facilities.

1 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?

2 A. Yes. I provided supplemental testimony and testified in Case No. 2011-00042, *In*  
3 *the Matter of: The Application of AEP Kentucky Transmission Company, Inc. For*  
4 *A Certificate Of Public Convenience And Necessity To Operate As A*  
5 *Transmission Only Public Utility*. I most recently provided written testimony in  
6 Case No. 2012-00578, which seeks approvals related to the transfer of a fifty  
7 percent interest in the Mitchell generating station to Kentucky Power.

8 III. PURPOSE OF TESTIMONY

9 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS  
10 PROCEEDING?

11 A. My testimony provides an overview of the testimony filed by the other Company  
12 witnesses in this case and describes the 58.5 (net) MW biomass Renewable  
13 Energy Purchase Agreement (“REPA”) between Kentucky Power and ecoPower  
14 Generation-Hazard, LLC (“ecoPower”).

15 IV. WITNESSES TESTIFYING IN SUPPORT OF KENTUCKY POWER’S  
16 APPLICATION

17 Q. IN ADDITION TO YOUR TESTIMONY WHAT PRE-FILED DIRECT  
18 TESTIMONY IS THE COMPANY FILING IN SUPPORT OF ITS  
19 APPLICATION?

20 A. In addition to my testimony, Kentucky Power presents the testimony of the  
21 following witnesses in support of this application:

<u>Witness</u>	<u>Subject Matter</u>
Jay F. Godfrey	Describes the REPA between Kentucky Power and ecoPower.
Ranie K. Wohnhas	Provides an overview of the rate impact of the REPA and the Company's plans for a future filing to establish a rate recovery mechanism to recover the costs associated with the REPA, and provides an overview of how credit rating agencies treat purchase power agreements.

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2

**V. MANAGEMENT OF KENTUCKY POWER**

3

**Q. WHAT ARE YOUR RESPONSIBILITIES AS PRESIDENT AND COO?**

4

A. I am responsible for the safe, efficient and profitable operation of Kentucky Power. Also included in my duties are the oversight of customer services, community affairs and economic development activities. I also guide public policies in the legislative, regulatory and administrative arenas, and administer all phases of the business. My responsibilities also include making recommendations to, and collaborating with, the executive management of Kentucky Power's parent company regarding major decisions affecting Kentucky Power.

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**Q. IN CARRYING OUT YOUR DUTIES FOR KENTUCKY POWER, HOW DO YOU COLLABORATE WITH AEP EXECUTIVE MANAGEMENT AND THE MANAGEMENT OF THE OTHER AEP EAST OPERATING COMPANIES?**

12

13

14

15

A. It is important to recognize that although I am the President and COO of Kentucky Power, the Company is a wholly-owned subsidiary of AEP. As a result, I am responsible to AEP for the operation and performance of Kentucky Power. In fulfilling my responsibilities, I work collaboratively with AEP executive management, the management of the other AEP East operating

16

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19

1 companies, including Charles R. Patton, President and COO of Appalachian  
2 Power Company (“APCo”), (collectively “AEP Management”), and AEPSC  
3 personnel to address those matters for which I have responsibility. I regularly  
4 meet with Robert P. Powers, Executive Vice President and COO of AEP, and  
5 have access to Nicholas K. Akins, President and Chief Executive Officer of AEP,  
6 when needed. This collaboration provides Kentucky Power access to valuable  
7 resources, but, as Mr. Akins has informed the Commission, I am in charge of the  
8 Company.

9 **Q. WHO MADE THE DECISIONS ON BEHALF OF KENTUCKY POWER**  
10 **THAT ARE THE SUBJECT OF THIS APPLICATION?**

11 A. In collaboration with AEP Management, I decided that the Company should enter  
12 into the ecoPower REPA.

13 **Q. PLEASE DESCRIBE THE COMPANY’S APPLICATION.**

14 A. The Company’s application describes the ecoPower REPA and requests the  
15 Commission issue an order, pursuant to KRS 278.300 and 807 KAR 5:001,  
16 Sections 14 and 17, (1) approving the terms and conditions of the REPA, (2)  
17 approving and authorizing the Company to enter into the REPA, (3) declaring that  
18 the concurrent recovery of all costs associated with the REPA via a monthly rider  
19 or surcharge is appropriate, and (4) granting all other relief or approvals  
20 necessary.

1           **VI.    THE ECOPOWER NOMINAL 58.5 MW (NET) REPA**

2   **Q.    PLEASE DESCRIBE THE PROPOSED ECOPOWER FACILITY THAT IS**  
3   **THE SUBJECT OF THE REPA FOR WHICH KENTUCKY POWER IS**  
4   **SEEKING APPROVAL.**

5   A.    The ecoPower facility is a proposed nominal 58.5 MW (net) biomass power  
6   generating facility to be located in the Coal Fields Regional Industrial Park, a  
7   reclaimed surface coal mine, in northern Perry County, near Hazard, Kentucky.  
8   The plant will be fueled using biomass.

9   **Q.    HOW WILL THE ECOPOWER FACILITY INTERCONNECT WITH**  
10   **KENTUCKY POWER'S TRANSMISSION SYSTEM?**

11   A.    The facility will interconnect at the Company's Engle Station by means of an  
12   approximately 1.5 mile 69 kV transmission line to be constructed and owned by  
13   ecoPower.

14   **Q.    IS THE ECOPOWER FACILITY CURRENTLY OPERATIONAL?**

15   A.    No. According to ecoPower, construction on the plant is expected to begin in  
16   2014, with a projected completion date in early 2017. With the exception of the  
17   construction stormwater and operating KPDES permits, it is the Company's  
18   understanding that ecoPower has obtained all necessary permits, including  
19   certificates from the Kentucky State Board on Electric Generation and  
20   Transmission Siting for the plant and transmission line.

21   **Q.    HAS THE REPA BEEN EXECUTED?**

22   A.    Yes, but the REPA is expressly made subject to review and approval by this  
23   Commission and contains termination rights whereby the Company may

1 terminate the REPA in the event the Commission fails to approve the REPA. A  
2 detailed discussion of the terms of the REPA, including the Company's  
3 termination rights, as described above, and in the event of other contingencies, is  
4 included in the testimony of Company Witness Godfrey. "Public" and  
5 "Confidential" copies of the REPA are attached as Exhibit JFG-1 to the testimony  
6 of Company Witness Godfrey.

7 **Q. IF THE COMMISSION APPROVES THE REPA WHAT WILL BE ITS**  
8 **TERMS?**

9 A. Generally, Kentucky Power will be obligated to purchase the entire output of the  
10 ecoPower Facility over a term of 20 years. Prices under the REPA are all-  
11 inclusive and are subject to a yearly percentage escalator. The REPA will  
12 terminate automatically, subject to limited cure provisions, if at any time during  
13 its term the Company is denied full recovery of its costs under the agreement.  
14 There is no separate capacity price under the REPA. As mentioned above,  
15 Company Witness Godfrey provides more details regarding the REPA, and  
16 Company Witness Wohnhas discusses its estimated impact on the Company's  
17 rates.

18 **Q. IS THE ECOPOWER REPA THE LEAST COST ALTERNATIVE TO**  
19 **SUPPLY THIS CAPACITY AND ENERGY?**

20 A. No. The Company recognizes that renewable energy resources may not be the  
21 least cost alternative to supply this capacity and energy to Kentucky Power. This  
22 was confirmed as recently as June 28, 2010 when the Commission rejected  
23 Kentucky Power's application in Case No. 2009-00545 for approval of an Illinois-



1 based wind power purchase agreement because there was no present need for  
2 additional generation and because it was not the least cost option. The ecoPower  
3 REPA presents a more compelling case.

4 First, at the time of the wind-power decision, the Company was able to access  
5 low-cost capacity through the Pool Agreement with other AEP-East operating  
6 companies. However, the members of the Pool have provided notice of their  
7 intention to terminate the Pool Agreement effective January 1, 2014. With the  
8 upcoming termination of the Pool Agreement, the Company will no longer have  
9 ready access to low-cost energy and capacity from the Pool. The REPA is a  
10 means by which the Company can meet a portion of its future energy needs and  
11 peak capacity obligations.

12 Second, unlike the wind agreement reviewed by the Commission in Case No.  
13 2009-00545, the ecoPower REPA is associated with a facility that will be located  
14 in the Company's service territory. According to ecoPower, the facility is  
15 expected to generate approximately 230 construction jobs over the two-year  
16 construction period and provide approximately 30 full-time jobs at the ecoPower  
17 facility. In addition, approximately 225 timber and trucking-related jobs are  
18 anticipated to be generated in the local eastern Kentucky area. As a result, this  
19 project could also foster local economic development.

20 Finally, the REPA is consistent with Strategy Two of Governor Beshear's  
21 November 2008 "Intelligent Choices For Kentucky's Future" Energy Plan.  
22 Strategy Two calls for increasing the Commonwealth's generation of renewable  
23 energy to 1,000 MW by 2025. The plan identifies the woody biomass that would

1 fuel the ecoPower facility as having “great potential for producing renewable  
2 energy.” The REPA is a step towards fulfilling the goal set forth in Strategy Two  
3 in Governor Beshear’s plan and will help diversify Kentucky Power’s fuel use  
4 and generation portfolio.

5 **Q. SHOULD THE COMMISSION APPROVE THE REPA EVEN IF IT IS**  
6 **NOT THE LEAST COST ALTERNATIVE?**

7 A. Yes. This REPA is part of the Company’s effort to diversify its generation  
8 portfolio, address the Governor's goals relating to the expansion of renewable  
9 energy in the Commonwealth, and to be a partner in economic development  
10 within its service territory – a territory that includes some of the poorest counties  
11 in Eastern Kentucky. While the renewable energy generated from the ecoPower  
12 project is more costly than traditional forms of non-renewable electric generation  
13 (such as coal and natural gas), that price disparity is typical of renewable energy  
14 generation.

15 In light of the benefits provided under the REPA through increased fuel diversity,  
16 the use of renewable energy generation, and economic development in the  
17 Company’s service territory, the ecoPower REPA is consistent with Kentucky  
18 Power’s status as a public utility, and the REPA is necessary for, and consistent  
19 with, proper performance by Kentucky Power of that service to the public. The  
20 agreement will not impair Kentucky Power’s ability to perform its service to the  
21 public, and is a reasonably necessary and appropriate means by which Kentucky  
22 Power may do so. Accordingly, I am recommending to the Commission that it be  
23 approved.

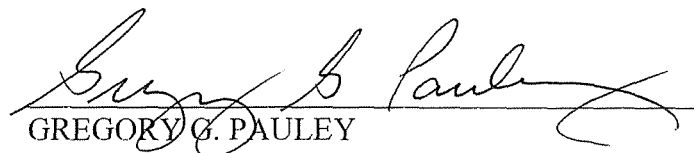
1 Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?

2 A. Yes.

3

**VERIFICATION**

The undersigned Gregory G. Pauley, being duly sworn, deposes and says he is the President and COO of Kentucky Power Company, that he has personal knowledge of the matters set forth in the forgoing testimony and the information contained therein is true and correct to the best of his information, knowledge and belief

  
\_\_\_\_\_  
GREGORY G. PAULEY

COMMONWEALTH OF KENTUCKY     )  
  ) SS  
COUNTY OF FRANKLIN                         )

Subscribed and sworn to before me, a Notary Public in and before said County and State, by Gregory G. Pauley, this the 10<sup>th</sup> day of April 2013.

  
\_\_\_\_\_  
Notary Public     481393

My Commission Expires: January 25, 2017

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In The Matter Of:

The Application Of Kentucky Power Company For: )  
(1) The Approval Of The Terms And Conditions Of The )  
Renewable Energy Purchase Agreement For Biomass )  
Energy Resources Between The Company And ) Case No. 2013-00 \_\_\_\_\_  
ecoPower Generation-Hazard LLC; (2) Authorization )  
To Enter Into The Agreement; (3) The Grant Of Certain )  
Declaratory Relief; And (4) The Grant Of All )  
Other Required Approvals and Relief )

**DIRECT TESTIMONY**  
**OF**  
**RANIE K. WOHNHAS**  
**ON BEHALF OF KENTUCKY POWER COMPANY**

**DIRECT TESTIMONY OF  
RANIE K. WOHNHAS, ON BEHALF OF  
KENTUCKY POWER COMPANY  
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY**

**CASE NO. 2013-00 \_\_\_\_**

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**DIRECT TESTIMONY OF  
RANIE K. WOHNHAS, ON BEHALF OF  
KENTUCKY POWER COMPANY  
BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY**

**I. INTRODUCTION**

1   **Q.   PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

2   A.   My name is Ranie K. Wohnhas. My position is Managing Director, Regulatory  
3       and Finance, Kentucky Power Company (“Kentucky Power” or “Company”).  
4       My business address is 101 A Enterprise Drive, Frankfort, Kentucky 40602.

**II. BACKGROUND**

5   **Q.   PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**  
6       **BUSINESS EXPERIENCE.**

7   A.   I earned a Bachelor of Science degree with a major in accounting from Franklin  
8       University, Columbus, Ohio in December 1981. I began work with Columbus  
9       Southern Power Company in 1978 working in various customer services and  
10      accounting positions. In 1983, I transferred to Kentucky Power working in  
11      accounting, rates and customer services. I became the Billing and Collections  
12      Manager in 1995 overseeing all billing and collection activity for the Company.  
13      In 1998, I transferred to Appalachian Power Company (“APCo”) working in  
14      rates. In 2001, I transferred to the American Electric Power (“AEP”) Service  
15      Corporation (“AEPSC”) working as a Senior Rate Consultant. In July 2004, I  
16      assumed the position of Manager, Business Operations Support with Kentucky  
17      Power and was promoted to Director in April 2006. I was promoted to my current

1 position as Managing Director, Regulatory and Finance effective September 1,  
2 2010.

3 **Q. WHAT ARE YOUR RESPONSIBILITIES AS MANAGING DIRECTOR,**  
4 **REGULATORY AND FINANCE?**

5 A. I am primarily responsible for managing the regulatory and financial strategy for  
6 Kentucky Power. This includes planning and executing rate filings for both  
7 federal and state regulatory agencies and certificate of public convenience and  
8 necessity (“CPCN”) filings before this Commission. I am also responsible for  
9 managing the Company’s financial operating plans including various capital and  
10 O&M operational budgets that interface with all other AEP organizations  
11 affecting the Company’s performance. As part of the financial strategy, I work  
12 with various AEPSC departments to ensure that adequate resources such as debt,  
13 equity and cash are available to build, operate, and maintain Kentucky Power’s  
14 electric system assets providing service to our retail and wholesale customers. In  
15 my role as Managing Director, Regulatory and Finance, I report directly to  
16 Gregory G. Pauley, President and Chief Operating Officer of Kentucky Power.

17 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

18 A. Yes. I have testified before this Commission in various fuel proceedings and  
19 provided written testimony in the last two base rate case filings (Case Nos. 2005-  
20 00341 and 2009-00459). I also provided written testimony and testified in the  
21 pending filing by AEP Kentucky Transmission Company, Inc. seeking public  
22 utility status (Case No. 2011-00042), and provided written testimony in support of  
23 the Company’s application for a CPCN to construct the proposed Bonnyman-Soft



1 Shell 138 kV transmission line and related facilities (Case No. 2011-00295). In  
2 addition, I provided written testimony and testified in Case No. 2011-00401,  
3 which included the Company's 2011 Environmental Compliance Plan, and  
4 request for approval of a CPCN for the construction and acquisition of related  
5 facilities. Most recently, I provided testimony in Case No. 2012-00226, which  
6 requested the withdrawal of Tariff RTP and approval of Rider RTP and Case No.  
7 2012-00578, which seeks approvals related to the transfer of a fifty percent  
8 interest in the Mitchell generating station to Kentucky Power.

### III. PURPOSE OF TESTIMONY

9 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS  
10 PROCEEDING?

11 A. I provide through my testimony a summary of the estimated cost of service  
12 impact of the proposed Renewable Energy Purchase Agreement For Biomass  
13 Energy Resources ("REPA") between Kentucky Power and ecoPower  
14 Generation-Hazard LLC ("ecoPower") as well as the Company's plans for  
15 seeking recovery of the costs associated with the REPA. In addition, I provide a  
16 brief overview of how credit rating agencies treat purchase power agreements  
17 ("PPAs") such as the REPA when evaluating utility credit statistics, as well as  
18 steps the Company took to minimize any adverse effect the REPA might have on  
19 the Company's credit statistics.

### IV. KENTUCKY POWER COST OF SERVICE IMPACTS

21 Q. HAS THE COMPANY ESTIMATED THE RELATIVE IMPACT ON THE  
22 COST OF SERVICE DUE TO THE ECOPOWER REPA?

1 A. Yes, the calculation of an estimated 7% increase in Kentucky Power's cost of  
2 service is shown in Exhibit RKW-1. This estimated increase is based upon  
3 Kentucky jurisdictional sales revenue for 2012. The actual percent increase will  
4 deviate from this estimate (up or down) based upon the Kentucky jurisdictional  
5 sales revenue in 2017, which is the current estimated date for commercial  
6 operation. This estimated cost of service increase does not account for any  
7 potential offset related to the Section 45 Production Tax Credits described in the  
8 testimony of Company Witness Godfrey.

9 **Q. WHEN DOES THE COMPANY ANTICIPATE SEEKING RECOVERY**  
10 **FOR THE COST OF THE REPA WITH ECOPOWER?**

11 A. The Company currently intends to seek approval of the REPA cost recovery  
12 mechanism in its next base rate case. Kentucky Power would nevertheless not  
13 begin recovering the costs until they are incurred. Based upon ecoPower's  
14 current projection, the facility will begin commercial operation in early 2017; the  
15 Company thus anticipates beginning the recovery of the costs associated with the  
16 REPA to coincide with the commercial operation date.

17 **Q. THROUGH WHAT MECHANISM DOES KENTUCKY POWER INTEND**  
18 **TO SEEK RECOVERY OF THE COST OF SERVICE RELATED TO THE**  
19 **REPA?**

20 A. Kentucky Power currently intends to seek approval of a monthly rider or  
21 surcharge to its base rates that would permit the concurrent recovery of the REPA  
22 costs. The specific formula for the rider will be presented for the Commission's  
23 review in the Company's next base rate case.

1           V.     TREATMENT OF PPAS BY CREDIT RATING AGENCIES

2  
3     **Q.   HOW ARE LONG-TERM PPAS EVALUATED BY CREDIT RATING**  
4     **AGENCIES IN ASSESSING A UTILITY’S CREDITWORTHINESS?**

5     A.   Credit rating agencies will evaluate PPAs to determine if additional debt should be  
6     included in their evaluation of the credit strength of a company.  These agencies  
7     may view PPAs, such as the ecoPower REPA, as creating fixed, debt-like, financial  
8     obligations that serve as substitutes for capital investments by the utility.  PPA  
9     obligations, in the form of capacity payments, are therefore evaluated by credit  
10    agencies as part of their review of a utility’s creditworthiness.  For example,  
11    Standard and Poor’s (“S&P”) will impute a portion of the net present value of the  
12    stream of capacity payments as a debt obligation in their evaluation of the utility’s  
13    credit statistics.  Where, as is the case with the ecoPower REPA, there is not a  
14    separate capacity charge, the rating agencies indicate they use an implied capacity  
15    payment in their evaluation.

16    **Q.   HOW DOES S&P CALCULATE THE DEBT TO BE IMPUTED TO A**  
17    **UTILITY AS A RESULT OF A PPA?**

18    A.   First, the net present value of capacity payments under the PPA is calculated by  
19    using the average cost of debt as the discount rate.  Next, the portion of the net  
20    present value of the capacity payments to be imputed as a debt obligation is  
21    calculated by multiply the calculated net present value of the capacity payments by  
22    a risk factor, typically ranging from 0% to 50%, that is assigned by the credit rating  
23    agency.

24    **Q.   HOW DOES S&P DETERMINE THE RISK FACTORS TO BE ASSIGNED?**

1 A. The manner in which S&P does so is discussed at pages 3-4 of Exhibit RKW-2. In  
2 essence, the stronger the cost recovery mechanism, the lower the risk factor, which  
3 in turn translates into a lower amount of imputed debt.

4 **Q. WHAT AMOUNT OF DEBT WILL BE IMPUTED TO KENTUCKY**  
5 **POWER AS A RESULT OF THE ECOPOWER REPA?**

6 A. Because Kentucky Power does not make the calculation, the amount of debt, if any,  
7 that might be imputed will not be known until there is a final order in this case and  
8 a cost recovery mechanism is established in the Company's next base rate case.  
9 Even then, the imputed debt, if any, should not affect Kentucky Power's credit  
10 statistics until the plant becomes operational and the Company starts making  
11 payments under the REPA.

12 **Q. DOES MOODY'S INVESTOR SERVICE ("MOODY'S") MAKE A SIMILAR**  
13 **ADJUSTMENT FOR PURCHASE POWER AGREEMENTS?**

14 A. Yes. Moody's also evaluates PPAs for debt imputation. With clear recovery  
15 mechanisms and the ability to pass through the cost of the purchasing the power to  
16 customers, Moody's will regard these costs as operating costs and not include a  
17 debt imputation.

18 **Q. DID KENTUCKY POWER TAKE ANY STEPS TO MINIMIZE THE**  
19 **EFFECT THE ECOPOWER REPA MIGHT HAVE ON ITS CREDIT**  
20 **STATISTICS?**

21 A. Yes. In response to the methodology employed by credit rating agencies in  
22 evaluating PPAs, Kentucky Power insisted that the ecoPower REPA include certain  
23 provisions designed to minimize, to the extent possible, the "risk factors" employed

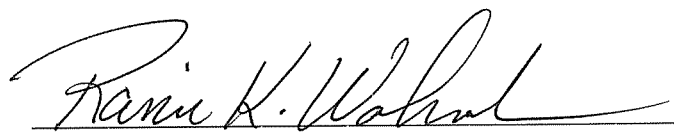
1 by credit rating agencies such as S&P in evaluating the REPA. Under Section  
2 6.1(A) of the REPA, the Company has the right to terminate the agreement if the  
3 Company does not receive the approvals, including a declaratory order regarding  
4 the cost recovery mechanism, sought in this application. In addition, Sections  
5 6.1(B), 6.1(C), and 6.1(D) of the REPA, as well as the definition of “Cost Recovery  
6 Order,” grant the Company the right to terminate the REPA, subject to limited cure  
7 provisions, if it is ever denied full concurrent recovery of its costs under the REPA  
8 by means of a rider or surcharge to base rates.

9 **Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?**

10 A. Yes.

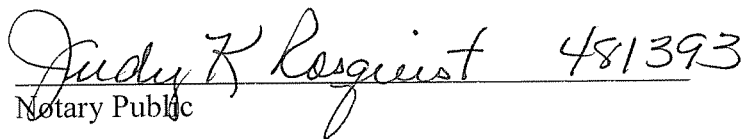
VERIFICATION

The undersigned, Ranie K. Wohnhas being duly sworn, deposes and says he is the Managing Director Regulatory and Finance for Kentucky Power Company, that he has personal knowledge of the matters set forth in the forgoing testimony and the information contained therein is true and correct to the best of his information, knowledge, and belief.

  
\_\_\_\_\_  
RANIE K. WOHNHAS

COMMONWEALTH OF KENTUCKY     )  
  ) SS  
COUNTY OF FRANKLIN             )

Subscribed and sworn to before me, a Notary Public in and before said County and State, by, Ranie K. Wohnhas, this the 10<sup>th</sup> day of April 2013.

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

My Commission Expires: January 23, 2017

Kentucky Power Company  
Estimated Year 1 Impact on Cost of Service  
ecoPower REPA

<u>Line</u>	<u>Description</u>	<u>Amount</u>
1	Estimated Purchase Power Costs (\$000)	50,661
2	Less:	
3	Avoided Fuel Costs (\$000)	12,780
4	Avoided Capacity Costs (\$000)	2,730
5	Incremental Rev. Req. (\$000)( L1 - L3 - L4)	35,151
6	KPCo Juris. Sales Revenue - 2012 (\$000)	501,037
7	Percent Increase (L5 / L6)	7.02%

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## Criteria | Corporates | Utilities: Standard & Poor's Methodology For Imputing Debt For U.S. Utilities' Power Purchase Agreements

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Criteria | Corporates | Utilities:

## Standard & Poor's Methodology For Imputing Debt For U.S. Utilities' Power Purchase Agreements

*(Editor's Note: This criteria article was originally published on May 7, 2007. We are republishing this article, last published on April 26, 2011, following our periodic review, completed on April 16, 2012.)*

For many years, Standard & Poor's Ratings Services has viewed power supply agreements (PPA) in the U.S. utility sector as creating fixed, debt-like, financial obligations that represent substitutes for debt-financed capital investments in generation capacity. In a sense, a utility that has entered into a PPA has contracted with a supplier to make the financial investment on its behalf. Consequently, PPA fixed obligations, in the form of capacity payments, merit inclusion in a utility's financial metrics as though they are part of a utility's permanent capital structure and are incorporated in our assessment of a utility's creditworthiness.

We adjust utilities' financial metrics, incorporating PPA fixed obligations, so that we can compare companies that finance and build generation capacity and those that purchase capacity to satisfy customer needs. The analytical goal of our financial adjustments for PPAs is to reflect fixed obligations in a way that depicts the credit exposure that is added by PPAs. That said, PPAs also benefit utilities that enter into contracts with suppliers because PPAs will typically shift various risks to the suppliers, such as construction risk and most of the operating risk. PPAs can also provide utilities with asset diversity that might not have been achievable through self-build. The principal risk borne by a utility that relies on PPAs is the recovery of the financial obligation in rates.

### The Mechanics Of PPA Debt Imputation

A starting point for calculating the debt to be imputed for PPA-related fixed obligations can be found among the "commitments and contingencies" in the notes to a utility's financial statements. We calculate a net present value (NPV) of the stream of the outstanding contracts' capacity payments reported in the financial statements as the foundation of our financial adjustments.

The notes to the financial statements enumerate capacity payments for the five years succeeding the annual report and a "thereafter" period. While we have access to proprietary forecasts that show the detail underlying the costs that are amalgamated beyond the five-year horizon, others, for purposes of calculating an NPV, can divide the amount reported as "thereafter" by the average of the capacity payments in the preceding five years to derive an approximate tenor of the amounts combined as the sum of the obligations beyond the fifth year.

In calculating debt equivalents, we also include new contracts that will commence during the forecast period. Such contracts aren't reflected in the notes to the financial statements, but relevant information regarding these contracts are provided to us on a confidential basis. If a contract has been executed but the energy will not flow until some later period, we won't impute debt for that contract until the year that energy deliveries begin under the contract if the

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contract represents incremental capacity. However, to the extent that the contract will simply replace an expiring contract, we will impute debt as though the future contract is a continuation of the existing contract.

We calculate the NPV of capacity payments using a discount rate equivalent to the company's average cost of debt, net of securitization debt. Once we arrive at the NPV, we apply a risk factor, as is discussed below, to reflect the benefits of regulatory or legislative cost recovery mechanisms.

Balance sheet debt is increased by the risk-factor-adjusted NPV of the stream of capacity payments. We derive an adjusted debt-to-capitalization ratio by adding the adjusted NPV to both the numerator and the denominator of that ratio.

We calculate an implied interest expense for the imputed debt by multiplying the same utility average cost of debt used as the discount rate in the NPV calculation by the amount of imputed debt. The adjusted FFO-to-interest expense ratio is calculated by adding the implied interest expense to both the numerator and denominator of the equation. We also add implied depreciation to the equation's numerator. We calculate the adjusted FFO-to-total-debt ratio by adding imputed debt to the equation's denominator and an implied depreciation expense to its numerator.

Our adjusted cash flow credit metrics include a depreciation expense adjustment to FFO. This adjustment represents a vehicle for capturing the ownership-like attributes of the contracted asset and tempers the effects of imputation on the cash flow ratios. We derive the depreciation expense adjustment by multiplying the relevant year's capacity payment obligation by the risk factor and then subtracting the implied PPA-related interest expense for that year from the product of the risk factor times the scheduled capacity payment.

## Risk Factors

The NPVs that Standard & Poor's calculates to adjust reported financial metrics to capture PPA capacity payments are multiplied by risk factors. These risk factors typically range between 0% to 50%, but can be as high as 100%. Risk factors are inversely related to the strength and availability of regulatory or legislative vehicles for the recovery of the capacity costs associated with power supply arrangements. The strongest recovery mechanisms translate into the smallest risk factors. A 100% risk factor would signify that all risk related to contractual obligations rests on the company with no mitigating regulatory or legislative support.

For example, an unregulated energy company that has entered into a tolling arrangement with a third-party supplier would be assigned a 100% risk factor. Conversely, a 0% risk factor indicates that the burden of the contractual payments rests solely with ratepayers. This type of arrangement is frequently found among regulated utilities that act as conduits for the delivery of a third party's electricity and essentially deliver power, collect charges, and remit revenues to the suppliers. These utilities have typically been directed to sell all their generation assets, are barred from developing new generation assets, and the power supplied to their customers is sourced through a state auction or third parties, leaving the utilities to act as intermediaries between retail customers and the electricity suppliers.

Intermediate degrees of recovery risk are presented by a number of regulatory and legislative mechanisms. For example, some regulators use a utility's rate case to establish base rates that provide for the recovery of the fixed costs

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created by PPAs. Although we see this type of mechanism as generally supportive of credit quality, the fact remains that the utility will need to litigate the right to recover costs and the prudence of PPA capacity payments in successive rate cases to ensure ongoing recovery of its fixed costs. For such a PPA, we employ a 50% risk factor. In cases where a regulator has established a power cost adjustment mechanism that recovers all prudent PPA costs, we employ a risk factor of 25% because the recovery hurdle is lower than it is for a utility that must litigate time and again its right to recover costs.

We recognize that there are certain jurisdictions that have true-up mechanisms that are more favorable and frequent than the review of base rates, but still don't amount to pure pass-through mechanisms. Some of these mechanisms are triggered when certain financial thresholds are met or after prescribed periods of time have passed. In these instances, in calculating adjusted ratios, we will employ a risk factor between the revised 25% risk factors for utilities with power cost adjustment mechanisms and 50%.

Finally, we view legislatively created cost recovery mechanisms as longer lasting and more resilient to change than regulatory cost recovery vehicles. Consequently, such mechanisms lead to risk factors between 0% and 15%, depending on the legislative provisions for cost recovery and the supply function borne by the utility. Legislative guarantees of complete and timely recovery of costs are particularly important to achieving the lowest risk factors.

### Illustration Of The PPA Adjustment Methodology

The calculations of the debt equivalents, implied interest expense, depreciation expense, and adjusted financial metrics, using risk factors, are illustrated in the following example:

<b>Example Of Power Purchase Agreement Adjustment</b>							
(\$000s)	Assumption	Year 1	Year 2	Year 3	Year 4	Year 5	Thereafter
Cash from operations	2,000,000						
Funds from operations	1,500,000						
Interest expense	444,000						
<b>Directly issued debt</b>							
Short term debt	600,000						
Long-term due within one year	300,000						
Long-term debt	6,500,000						
Shareholder's Equity	6,000,000						
Fixed capacity commitments	600,000	600,000	600,000	600,000	600,000	600,000	4,200,000*
<b>NPV of fixed capacity commitments</b>							
Using a 6.0% discount rate	5,030,306						
Application of an assumed 25% risk factor	1,257,577						
Implied interest expense <sup>1</sup>	75,455						
Implied depreciation expense	74,545						
<b>Unadjusted ratios</b>							
FFO to interest (x)	4.4						

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Example Of Power Purchase Agreement Adjustment (cont.)	
FFO to total Debt (%)	20.0
Debt to capitalization (%)	55.0
<b>Ratios adjusted for debt imputation</b>	
FFO to interest (x)§	4.0
FFO to total debt (%)**	18.0
Debt to capitalization (%)¶¶	59.0

\*Thereafter approximate years: 7. ¶¶The current year's implied interest is subtracted from the product of the risk factor multiplied by the current year's capacity payment. §Adds implied interest to the numerator and denominator and adds implied depreciation to FFO. \*\*Adds implied depreciation expense to FFO and implied debt to reported debt. ¶¶¶Adds implied debt to both the numerator and the denominator. FFO—Funds from operations. NPV—Net present value.

## Short-Term Contracts

Standard & Poor's has abandoned its historical practice of not imputing debt for contracts with terms of three years or less. However, we understand that there are some utilities that use short-term PPAs of approximately one year or less as gap fillers pending the construction of new capacity. To the extent that such short-term supply arrangements represent a nominal percentage of demand and serve the purposes described above, we will neither impute debt for such contracts nor provide evergreen treatment to such contracts.

## Evergreen Treatment

The NPV of the fixed obligations associated with a portfolio of short-term or intermediate-term contracts can lead to distortions in a utility's financial profile relative to the NPV of the fixed obligations of a utility with a portfolio of PPAs that is made up of longer-term commitments. Where there is the potential for such distortions, rating committees will consider evergreen treatment of existing PPA obligations as a scenario for inclusion in the rating analysis. Evergreen treatment extends the tenor of short- and intermediate-term contracts to reflect the long-term obligation of electric utilities to meet their customers' demand for electricity.

While we have concluded that there is a limited pool of utilities whose portfolios of existing and projected PPAs don't meaningfully correspond to long-term load serving obligations, we will nevertheless apply evergreen treatment in those cases where the portfolio of existing and projected PPAs is inconsistent with long-term load-serving obligations. A blanket application of evergreen treatment is not warranted.

To provide evergreen treatment, Standard & Poor's starts by looking at the tenor of outstanding PPAs. Others can look to the "commitments and contingencies" in the notes to a utility's financial statements to derive an approximate tenor of the contracts. If we conclude that the duration of PPAs is short relative to our targeted tenor, we would then add capacity payments until the targeted tenor is achieved. Based on our analysis of several companies, we have determined that the evergreen extension of the tenor of existing contracts and anticipated contracts should extend contracts to a common length of about 12 years.

The price for the capacity that we add will be derived from new peaker entry economics. We use empirical data to

establish the cost of developing new peaking capacity and reflect regional differences in our analysis. The cost of new capacity is translated into a dollars per kilowatt-year (kW-year) figure using a weighted average cost of capital for the utility and a proxy capital recovery period.

## **Analytical Treatment Of Contracts With All-In Energy Prices**

The pricing for some PPA contracts is stated as a single, all-in energy price. Standard & Poor's considers an implied capacity price that funds the recovery of the supplier's capital investment to be subsumed within the all-in energy price. Consequently, we use a proxy capacity charge, stated in \$/kW, to calculate an implied capacity payment associated with the PPA. The \$/kW figure is multiplied by the number of kilowatts under contract. In cases of resources such as wind power that exhibit very low capacity factors, we will adjust the kilowatts under contract to reflect the anticipated capacity factor that the resource is expected to achieve.

We derive the proxy cost of capacity using empirical data evidencing the cost of developing new peaking capacity. We will reflect regional differences in our analysis. The cost of new capacity is translated into a \$/kW figure using a weighted average cost of capital and a proxy capital recovery period. This number will be updated from time to time to reflect prevailing costs for the development and financing of the marginal unit, a combustion turbine.

## **Transmission Arrangements**

In recent years, some utilities have entered into long-term transmission contracts in lieu of building generation. In some cases, these contracts provide access to specific power plants, while other transmission arrangements provide access to competitive wholesale electricity markets. We have concluded that these types of transmission arrangements represent extensions of the power plants to which they are connected or the markets that they serve. Irrespective of whether these transmission lines are integral to the delivery of power from a specific plant or are conduits to wholesale markets, we view these arrangements as exhibiting very strong parallels to PPAs as a substitute for investment in power plants. Consequently, we will impute debt for the fixed costs associated with long-term transmission contracts.

## **PPAs Treated As Leases**

Several utilities have reported that their accountants dictate that certain PPAs need to be treated as leases for accounting purposes due to the tenor of the PPA or the residual value of the asset upon the PPA's expiration. We have consistently taken the position that companies should identify those capacity charges that are subject to operating lease treatment in the financial statements so that we can accord PPA treatment to those obligations, in lieu of lease treatment. That is, PPAs that receive operating lease treatment for accounting purposes won't be subject to a 100% risk factor for analytical purposes as though they were leases. Rather, the NPV of the stream of capacity payments associated with these PPAs will be reduced by the risk factor that is applied to the utility's other PPA commitments. PPAs that are treated as capital leases for accounting purposes will not receive PPA treatment because capital lease treatment indicates that the plant under contract economically "belongs" to the utility.

## Evaluating The Effect Of PPAs

Though history is on the side of full cost recovery, PPAs nevertheless add financial obligations that heighten financial risk. Yet, we apply risk factors that reduce debt imputation to recognize that utilities that rely on PPAs transfer significant risks to ratepayers and suppliers.

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