



Your Touchstone Energy® Cooperative 

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

In the Matter of:

**ELECTRONIC APPLICATION OF BIG RIVERS)
ELECTRIC CORPORATION FOR APPROVAL OF)
SOLAR POWER CONTRACTS)**

**Case No.
2020-00183**

APPLICATION

and

APPLICATION EXHIBITS

FILED: June 24, 2020

1 MW solar generation facility to be built in McCracken County, Kentucky
2 (“*McCracken Solar Contract*”) (collectively, the “*Solar Contracts*”). A copy of the
3 Henderson Solar Contract is attached to this Application as Exhibit 1. A copy of the
4 Meade Solar Contract is attached to this Application as Exhibit 2. A copy of the
5 McCracken Solar Contract is attached to this Application as Exhibit 3. In support
6 of its Application, Big Rivers states as follows:

7 **THE APPLICANT AND COUNTERPARTIES**

8 2. The Applicant, Big Rivers, is a rural electric cooperative corporation
9 organized pursuant to KRS Chapter 279. Its full name is Big Rivers Electric
10 Corporation. Big Rivers’ mailing address is P.O. Box 24, Henderson, Kentucky
11 42419-0024, and its street address is 201 Third Street, Henderson, Kentucky 42420.
12 Big Rivers’ address for electronic mail service is regulatory@bigrivers.com.

13 3. Big Rivers owns generating assets and purchases, transmits and sells
14 electricity at wholesale. Its principal purpose is to provide the wholesale electricity
15 requirement of its three distribution cooperative members: Jackson Purchase
16 Energy Corporation, Kenergy Corp., and Meade County Rural Electric Cooperative
17 Corporation (“*Meade County RECC*”) (collectively, the “*Members*”). The Members in
18 turn provide retail electric service to approximately 118,000 consumer/retail
19 members located in 22 western Kentucky counties: Ballard, Breckenridge,
20 Caldwell, Carlisle, Crittenden, Daviess, Graves, Grayson, Hancock, Hardin,
21 Henderson, Hopkins, Livingston, Lyon, Marshall, McCracken, Mclean, Meade,
22 Muhlenberg, Ohio, Union and Webster.

1 RECC and Nucor Corporation (“*Nucor*”),¹ which is pending Commission approval in
2 Case No. 2019-00365 (the “*Nucor Contract*”). Nucor is the largest steel producer in
3 the United States with facilities located throughout the country, including an
4 existing facility in Ghent, Kentucky (Nucor Steel Gallatin) served by East Kentucky
5 Power Cooperative, Inc. In January 2019, Nucor announced a \$1.35 billion, state-
6 of-the-art steel plate mill on the Buttermilk Falls Site in Brandenburg, Kentucky,
7 which will be served by Meade County RECC if the Commission approves the
8 proposed Nucor Contract.²

9 8. If the Nucor Contract is approved by the Commission, the new Nucor
10 facility will significantly bolster Kentucky’s economy, creating 400 direct jobs and
11 over 2,600 indirect jobs, and adding approximately \$189 million in annual labor
12 income, \$14.3 million in annual state and local tax revenues, and approximately
13 \$360 million in annual GDP.³

14 9. The assurance of the long-term competitive power pricing under the
15 Nucor Contract was a critical factor in Nucor’s decision to construct its new facility
16 at the Buttermilk Falls Site. And to ensure that the existing retail customers
17 served by Big Rivers’ Members benefit from the significant addition to Big Rivers’

¹ The Nucor Contract is Exhibit Berry-2 to the Direct Testimony of Robert W. Berry filed with Big Rivers’ Application in *In the Matter of: Joint Application of Big Rivers Electrical Corporation and Meade County Rural Electric Cooperative Corporation for Approval of Contracts for Electric Service with Nucor Corporation and Application of Big River’s Electric Corporation for Approval of Tariff*, Case No. 2019-00365.

² See *In the Matter of: Joint Application of Big Rivers Electrical Corporation and Meade County Rural Electric Cooperative Corporation for Approval of Contracts for Electric Service with Nucor Corporation and Application of Big River’s Electric Corporation for Approval of Tariff*, Case No. 2019-00365, Application at ¶ 19.

³ *Id.* at ¶ 20.

1 native load that the new Nucor facility will represent, Big Rivers will utilize the
2 Solar Contracts as a source of long-term, low cost power as a hedge of the prices
3 under the Nucor Contract.

4 10. Additionally, the Nucor Contract specifically requires [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]⁴ The Solar Contracts will enable Big Rivers
8 to fulfill this obligation.

9 11. The Solar Contracts will also add more diversity to Big Rivers’ power
10 supply portfolio. Currently, excluding the Coleman and Reid coal-fired generating
11 units that are currently idled and seven small solar demonstration projects that
12 total 120 kW, Big Rivers’ power supply portfolio consists of its 454 MW Robert D.
13 Green coal-fired generation station, its 417 MW D.B. Wilson coal-fired generation
14 station, its 65 MW Robert A. Reid gas combustion turbine, and a 178 MW allocation
15 of hydroelectric power from the Southeastern Power Administration (“SEPA”).
16 With the addition of the Solar Contracts, Big Rivers’ coal-fired generation will be
17 reduced from 78% of its portfolio to 63% of its portfolio.

18 12. Further diversifying its power supply portfolio is important to reduce
19 the risk of being heavily dependent on coal-fired generation, including the risk of
20 future environmental regulations applicable to coal-fired generation. It enhances
21 Big Rivers’ credit profile by reducing a risk factor often cited by the credit ratings

⁴ Direct Testimony of Robert W. Berry in Case No. 2019-00365.

1 agencies, and it supports Big Rivers’ economic development efforts by allowing Big
2 Rivers to market renewable power to economic development prospects.

3 13. For the reasons stated in this Application and the accompanying
4 testimony, Big Rivers seeks an Order from the Commission finding that Big Rivers’
5 obligations under the Solar Contracts do not constitute evidences of indebtedness
6 requiring the Commission’s approval under KRS 278.300, or alternatively,
7 approving the Solar Contracts as evidences of indebtedness. Further, Big Rivers
8 requests a finding from the Commission that the Solar Contracts do not require a
9 certificate of public convenience and necessity (“*CPCN*”) under KRS 278.020, or
10 alternatively, Big Rivers requests that the Commission grant Big Rivers a *CPCN*.

11 **REQUEST FOR PROPOSALS**

12 14. As fully discussed in the Direct Testimony of Mark J. Eacret,
13 Application Exhibit 4, Big Rivers began the competitive bidding process for solar
14 power consistent with Big Rivers’ obligations under the Nucor Contract in mid-
15 2019. With the assistance of the National Renewables Cooperative Organization
16 (“*NRCO*”), the Request for Proposals (“*RFP*”) was issued on June 3, 2019. Big
17 Rivers is a founding member *NRCO* and benefits from its membership through
18 access to renewable engineering information and studies. In addition to knowledge
19 of the renewable industry, *NRCO* also provides connections to various renewable
20 energy industry members and assists its members in originating and negotiating
21 renewable power purchase agreements (“*PPAs*”).

22 15. The *RFP* requested proposals for up to 150 MW of solar power with a
23 preference for locations within the Big Rivers footprint and flat pricing for twenty-

1 year terms. The RFP was sent to forty-five (45) developers, identified by NRCO as
2 active in the area, and developers who had contacted Big Rivers' staff, expressing
3 an interest in developing solar resources in Western Kentucky. Ultimately, fifteen
4 developers submitted a total of twenty-six individual project proposals. From those
5 twenty-six proposed projects, fifty-two distinct PPA offers were submitted. Big
6 Rivers carefully evaluated these options and determined that Geronimo's and CES's
7 proposals were the lowest cost flat price per kWh offers and were reasonable in
8 their other terms. Big Rivers began negotiations with Geronimo CES and reached
9 the final agreements reflected in the Solar Contracts on May 26, 2020, subject to the
10 approval sought by Big Rivers in this Application, approval from RUS, and other
11 conditions precedent. The proposed solar facilities will be located in Big Rivers'
12 footprint, fostering local economic development, and each facility is anticipated to
13 enter commercial operation in 2023. Under each of the Solar Contracts, the
14 counterparty will construct, own, and operate the facility. Big Rivers will pay the
15 Contract Price per MWh of energy delivered to Big Rivers' transmission system, but
16 Big Rivers will receive the entire capacity value (MW), electrical output (MWh),
17 ancillary services, and environmental attributes of the solar facilities, such as any
18 renewable energy or carbon credits. A summary of the terms and conditions of each
19 of the Solar Contracts is provided in the Direct Testimony of Mark J. Eacret.

20 **THE SOLAR FACILITIES**

21 16. The Henderson Solar facility is a 160 megawatt (MW) solar
22 development project, spanning up to 1,700 acres located near the town of Robards in
23 Henderson and Webster Counties, Kentucky. On June 16, 2020, the Kentucky

1 Department for Local Government and Governor Andy Beshear announced final
2 approval on the sale to Henderson Solar of the land to be used for the Henderson
3 Solar facility. Henderson Solar estimates that during construction, its project will
4 provide a \$175,000 impact to the community through local spending, will produce
5 \$200 million in capital infrastructure improvements, and will create approximately
6 150 construction jobs. Henderson Solar estimates that during the term of the
7 contract, its facility will provide 5 full-time jobs with an annual payroll of
8 approximately \$350,000.

9 17. The Meade Solar facility is a 40 megawatt (MW) solar development
10 project located near Flaherty, Kentucky, on approximately 400 acres in Meade
11 County. The McCracken Solar facility is a 60 megawatt (MW) solar development
12 project located near Kevil, Kentucky, on approximately 600 acres in McCracken
13 County and is anticipated to enter operations in 2023. CES projects that each of its
14 facilities will generate 150 jobs during construction. These entry level positions will
15 be accessible to a wide range of local workers. In addition, the projects will work
16 with local trades, typically electricians, earthmoving, landscaping and fencing.
17 Once operational, each solar farm will pay significant annual property taxes,
18 dramatically increasing the current taxes on the property.

19 **REQUEST FOR A FINDING THAT NO APPROVAL IS REQUIRED UNDER**
20 **KRS 278.300**

21 18. KRS 278.300(1) provides that “[n]o utility shall issue any securities or
22 evidences of indebtedness, or assume any obligation or liability in respect to the
23 securities or evidences of indebtedness of any other person until it has been

1 authorized so to do by order of the commission.” In Administrative Case No. 350,
2 wherein the Commission encouraged, but did not require utilities to file long-term
3 power purchase contracts for pre-approval, the Commission observed, “Contracts
4 may well require prior approval under KRS 278.300 if they constitute evidence of
5 indebtedness.”

6 19. Recently, the Commission found that the obligations under a 20-year
7 solar power purchase agreement entered into by Louisville Gas and Electric
8 Company and Kentucky Utilities (“*LG&E/KU*”) did not constitute evidences of
9 indebtedness requiring Commission approval under KRS 278.300.⁵ Similar to
10 *LG&E/KU*’s obligations under the agreement proposed in Case No. 2020-00016, *Big*
11 *Rivers*’ contractual obligation to pay under the Solar Contracts “is based upon the
12 actual receipt of output at a specified point of deliver and the payment amount is
13 determined by the amount of output delivered.”⁶ While *Big Rivers* receives the
14 entire output of the Solar facilities, including all capacity, energy, ancillary services,
15 and any environmental rights such as renewable energy or carbon credits for the
16 term of the contracts, *Big Rivers* only pays a fixed price per MWh based on the
17 amount of energy delivered to the *Big Rivers* transmission system. As fully
18 explained in the Direct Testimony of Mark Eacret, *Big Rivers* will not own,
19 construct, operate, maintain, or have any control over the solar generating facilities,

⁵ *In the Matter of: Electronic Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Approval of a Solar Power Contract and Two Renewable Power Agreements to Satisfy Customer Requests for a Renewable Energy Source Under Green Tariff Option #3*, Case No. 2020-00016, Order (May 8, 2020).

⁶ *Id* at 12.

1 and so, the Solar Contracts will not be capitalized or classified as a lease per
2 Generally Accepted Accounting Principles (GAAP). Big Rivers is not obligated to
3 pay for any of the operating and maintenance costs of the facilities, the costs of the
4 Solar Contracts will be treated as a purchase power expense and may be eligible for
5 recovery through Big Rivers' fuel adjustment clause in accordance with regulations.
6 Except where Big Rivers breaches its obligations under the contracts, if the
7 facilities do not generate energy due to forced outages, scheduled maintenance
8 outages, cloud cover, or other reasons, then Big Rivers has no payment obligation.
9 As such, Big Rivers requests a finding from the Commission that the Solar
10 Contracts are not evidences of indebtedness requiring approval under KRS 278.300.

11 **ALTERNATIVE REQUEST FOR APPROVAL OF THE SOLAR CONTRACTS**
12 **UNDER KRS 278.300**

13 20. Should the Commission find that the Solar Contracts constitute
14 evidences of indebtedness, the Commission should find that the Solar Contracts are
15 for a lawful object within the corporate purposes of Big Rivers; are necessary and
16 appropriate for, and are consistent with, the proper performance by Big Rivers of its
17 service to the public; and will not impair its ability to perform that service; and are
18 reasonably necessary and appropriate for such purpose.⁷

19 21. The financial obligations assumed by Big Rivers under the Solar
20 Contracts are in connection with long-term contracts for the purchase of capacity,
21 energy, and renewable attributes to meet Big Rivers' obligations to provide

⁷ See KRS 278.300.

1 competitive and reliable wholesale power to meet the needs of Big Rivers' Members
2 and cost-effective shared services desired by the Members. As such, the Solar
3 Contracts are for a lawful object within Big Rivers' corporate purpose.

4 22. The Solar Contracts will not result in excess capacity or an
5 unreasonable investment. The renewable solar energy available through the Solar
6 Contracts is needed to satisfy Big Rivers' obligations under the Nucor Contract.
7 Additionally, absent the Solar Contracts, if the Commission approves the Nucor
8 Contracts, from [REDACTED], Big Rivers will not have the capacity necessary
9 to meet the requirements of its native load and under the OMU and KyMEA
10 contacts. The Direct Testimony of Mark Eacret fully discusses Big Rivers' capacity
11 position.

12 23. The Solar Contracts are a cost-effective source of energy, and it is
13 reasonable for Big Rivers to enter into the agreements. As fully discussed in the
14 Direct Testimony of Mark Eacret, based on Big Rivers' economic analysis, the
15 purchase price for the solar energy compares favorably to fossil fuel-generated
16 energy over the 20-year term of the Solar Contracts. The net present value of the
17 benefit to our Members created by the Solar Contracts is between [REDACTED]
18 [REDACTED].⁸

19 24. Thus, the financial obligations assumed by Big Rivers under the Solar
20 Contracts are necessary and appropriate for, and consistent with, Big Rivers'
21 corporate purpose and will not impair its ability to provide its service to the public.

⁸ See Exhibit Eacret-15 to the Direct Testimony of Mark Eacret.

1 performed.¹³ As fully discussed in the Direct Testimony of Mark Eacret, resource
2 models clearly confirm that a solar PPA provides the least-cost option available to
3 Big Rivers to add capacity. After identifying a solar PPA as the preferred option,
4 Big Rivers designed and carried out the RFP process to ensure qualified and
5 competitive responses to obtain the best price for the solar purchase.

6 31. The Commission has long recognized that “least cost” is one of the
7 fundamental principles utilized when setting rates that are fair, just, and
8 reasonable.¹⁴ As discussed in the Direct Testimony of Mark Eacret, the resource
9 models performed evaluated the Solar Contracts under a number of scenarios, and
10 they confirm that the Solar Contracts are the least-cost option.

11 32. Considering the economic value to Big Rivers’ Members and the other
12 significant benefits of the Solar Contracts discussed above, there is a clear need for
13 the Solar Contracts and the purchase will not result in a wasteful duplication of
14 facilities. As such, the Commission should grant Big Rivers a CPCN for the Solar
15 Contracts should one be required.

16 **FILING REQUIREMENTS OF 807 KAR 5:001 SECTIONS 15 AND 18**

17 33. Pursuant to 807 KAR 5:001 Section 18, Big Rivers states as follows:

¹³ *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky*, Case No. 2005-00142, Order (Sept. 8, 2005).

¹⁴ *See Public Service Comm’n v. Continental Tel Co.*, 692 S.W. 2d 794, 799 (Ky. 1985) (“[One] of the important objectives considered by the commission, that is, providing the lowest possible cost to the ratepayers”).

- 1 a. A general description of Big Rivers' property and the field of its
2 operation, together with a statement of the original cost of the same
3 and the cost to Big Rivers are attached hereto as Exhibit 6.
- 4 b. Big Rivers will issue no stock or bonds in connection with the issuances
5 of indebtedness described in this Application.
- 6 c. No property is to be acquired, constructed, improved, or extended by
7 Big Rivers in connection with the Solar Contracts, nor has Big Rivers
8 entered into contracts for any of those purposes. Accordingly, there are
9 no projects for which Big Rivers has developed maps or plans relating
10 to the proposed evidences of indebtedness.
- 11 d. Big Rivers will not discharge or refund any obligations in connection
12 with the Solar Contracts.
- 13 e. A financial exhibit is attached hereto as Exhibit 7.
- 14 f. A copy of Big Rivers' Indenture dated July 1, 2009, is attached as
15 Exhibit 7 to the Application of Big Rivers Electric Corporation for
16 Approval to Issue Evidences of Indebtedness in Case No. 2009-00441.

17 34. In light of the nature of Big River's Application, and that Big Rivers
18 will not be constructing any facilities, the other filing requirements set forth in 807
19 KAR 5:001 Sections 15 and 18 are inapplicable. To the extent necessary, Big Rivers
20 requests permission, pursuant to 807 KAR 5:001 Section 22 and for good cause
21 shown, to deviate from the remaining filing requirements of 807 KAR 5:001 due to
22 their inapplicability.

1 **CONCLUSION**

2 WHEREFORE, Big Rivers respectfully requests that the Commission enter
3 an Order:

- 4 1. Finding that no approval is required under KRS 278.300 for the Solar
5 Contracts, or alternatively, approving the Solar Contracts as evidences
6 of indebtedness;
- 7 2. Finding that no CPCN is required for the Solar Contracts, or
8 alternatively, granting Big Rivers a CPCN for the Solar Contracts; and
- 9 3. Granting all other relief to which Big Rivers may be entitled.

10 On this 24th day of June, 2020.

11 Respectfully submitted,

12 /s/ *Tyson Kamuf*

13 _____
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29 *Corporation*

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF SOLAR POWER CONTRACTS
CASE NO. 2020-00183

VERIFICATION

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I, Paul G. Smith, Chief Financial Officer for Big Rivers Electric Corporation, hereby state that I have read the foregoing Application and that the statements contained therein are true and correct to the best of my knowledge and belief, on this the 22nd day of June, 2020.

Paul Smith

Paul G. Smith
Chief Financial Officer
Big Rivers Electric Corporation

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COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

SUBSCRIBED AND SWORN TO before me by Paul G. Smith on this the 22nd day of June, 2020.

Joy P. Parsley

Notary Public, Kentucky State at Large
My Commission Expires _____

19

Notary Public, Kentucky State-At-Large
My Commission Expires: July 10, 2022
ID: 604480



POWER PURCHASE AGREEMENT

(RENEWABLE ENERGY-SOLAR)

BETWEEN

HENDERSON SOLAR, LLC

AND

BIG RIVERS ELECTRIC CORPORATION

HENDERSON SOLAR PROJECT

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[Note: Parties will conform before Finalizing]

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**POWER PURCHASE AGREEMENT
(RENEWABLE ENERGY-SOLAR)**

THIS POWER PURCHASE AGREEMENT (RENEWABLE ENERGY-SOLAR) (“**Agreement**”), entered into this 20th day of May 2020 (the “**Effective Date**”), is between HENDERSON SOLAR, LLC, a Delaware limited liability company (“**Seller**”), and BIG RIVERS ELECTRIC CORPORATION, a Kentucky rural electric cooperative corporation (“**Buyer**”). Seller and Buyer are sometimes hereinafter referred to collectively as the “**Parties**” and individually as a “**Party**.”

WHEREAS, Seller intends to construct, own, operate and maintain a solar-powered generation facility for the generation of electric energy located in Henderson County, Kentucky with an expected nameplate capacity rating of up to 160 MW (AC) (the “**Facility**”).

WHEREAS, Seller expects that the Facility will deliver to Seller (on average) [REDACTED] per Contract Year of Net Output and associated Capacity Rights and RECs (as all such terms are hereinafter defined). Seller estimates that the Net Output, Capacity Rights and RECs will be delivered during each Contract Year according to the estimates of monthly output set forth in **Exhibit A**. Except as otherwise provided herein, such Net Output and associated Capacity Rights and RECs shall be sold by Seller exclusively to Buyer. Seller acknowledges that Buyer will include these amounts of Net Output and associated Capacity Rights and RECs in Buyer’s resource planning.

WHEREAS, Seller desires to sell and deliver to Buyer the Net Output and associated RECs, Ancillary Services and Capacity Rights (as all such terms are hereinafter defined), and Buyer desires to buy the same from Seller in accordance with the terms and conditions hereof.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, mutually agree as follows:

**SECTION 1
DEFINITIONS; RULES OF INTERPRETATION**

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein have the following meanings:

“**AAA**” is the American Arbitration Association.

“**Abandonment**” means (1) the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer permitted under this Agreement (including as a result of the Lender’s exercise of rights under Financing Documents), or (2) if after commencement of the construction, testing, and inspection of the Facility, and prior to the Commercial Operation Date, there is a complete cessation of the construction, testing, and inspection of the Facility for ninety (90) consecutive days by Seller and Seller’s contractors, but only if such relinquishment or cessation is not caused by or attributable to an Event of Default of, or request by, Buyer, or an event of Force Majeure.

“**AC**” means alternating current.

“**Administrator**” is defined in Section 20.3.

“**Affiliate**” means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with “control” meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities (if applicable) or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer, Affiliate does not include any member of its Board of Directors or any member of Buyer.

“**Agreement**” is defined in the Recitals.

“**Ancillary Services**” means any of the services identified by the System Operator or the Tariff as “Ancillary Services”. Ancillary Services does not include any cost recovery available to Seller from the Transmission Provider, Electric System Authority or other similar authority under a FERC-filed reactive power rate (and rights to such cost recovery shall remain with Seller).

“**As-Built Supplement**” is a supplement to be added to **Exhibit 6.1** that describes the Facility as actually built, pursuant to Section 6.1 and includes an American Land Title Association survey of the Premises and the MWP at the time of Commercial Operation.

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. PT. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent, or by whom the notice, payment or delivery is received, as the context requires.

“**Buyer**” is defined in the Recitals.

“**Buyer Indemnitees**” is defined in Section 12.1.1.

“**Buyer’s Cost to Cover**” means the positive difference, if any, between (a) the sum of (i) the mathematical average of the relevant DALMP prices over each day for which the determination is being made (the “**Average DALMP Price**”), plus (ii) (A) the price of replacement RECs or (B) if, after using commercially reasonable efforts to do so, Buyer is unable to replace RECs, the REC Price Component, minus (b) the Contract Price. If on a given day (or Contract Year in the case of calculating Output Shortfall) the difference between (a) and (b) referenced above is zero or negative, then Buyer’s Cost to Cover shall be zero dollars (\$0), and Seller shall have no obligation to pay any amount to Buyer on account of Section 6.12.2 or Section 11.2.1 with respect to such day (or Contract Year in the case of calculating Output Shortfall). For any days prior to the Commercial Operation Date, the Contract Price shall be utilized for purposes of clause (b). An Example illustrating the calculation of Buyer’s Cost to Cover under certain stated assumptions is set forth in **Exhibit D**.

“**Buyer’s Interest**” means one hundred percent (100%) of the Net Output, Ancillary Services, RECs and Capacity Rights from the Facility.

“Buyer’s System” means the electrical system owned, operated or maintained by Buyer at the Point of Delivery.

“Calculation Period” means each measured interval integrated into an hour during the Term.

“CAMD” means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity with jurisdiction over a program involving transferability of RECs.

“Capacity Rights” means any current or future defined characteristic, certificate, benefit, product, tag (but not RECs), credit, attribute, or accounting construct, including any of the same counted towards any current or future capacity, resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy. Capacity Rights do not include PTCs, ITCs, or any Tax Credits.

“Commercial Operation” means that not less than the Expected Nameplate Capacity Rating of the Facility is fully operational and reliable and the Facility is fully interconnected, integrated and synchronized with the System and Buyer’s System, as applicable, all of which shall be Seller’s responsibility to receive or obtain, and, without limiting Seller’s other obligations hereunder, which occurs when all of the following events (i) have occurred, and (ii) remain simultaneously true and accurate as of the date and moment on which Seller gives Buyer notice that Commercial Operation has occurred:

(1) Buyer has received a certificate addressed to Buyer from an officer of Seller familiar with the Facility certifying that (a) the Nameplate Capacity Rating of the Facility is at least ninety percent (90%) of the Expected Nameplate Capacity Rating; (b) the Facility is able to generate electric power reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof; (c) start-up testing of the Facility has been completed; (d) all Permits to construct or operate the Facility in compliance with all Requirements of Law and this Agreement have been obtained and are in full force and effect; (e) all conditions set forth in subsections (1) through (6) hereof have been met; (f) Seller is in compliance with the terms and conditions of this Agreement in all material respects; and (g) all Required Facility Documents and Financing Documents are in full force and effect and there are no defaults or events that, with the passing of time or the giving of notice, or both, would constitute a default thereunder.

(2) Seller has successfully completed all testing of the Facility that is required by the Financing Documents, Required Facility Documents, the Permits, the Generation Interconnection Agreement, Seller’s operating agreements, manufacturers’ warranties for the commencement of Commercial Operations at the Facility and all other Requirements of Law.

(3) Buyer has received a certificate addressed to Buyer from a Licensed Professional Engineer stating that, except with respect to the portion of the Nameplate Capacity Rating that remains to be completed pursuant to paragraph (1) above, (a) in

accordance with the Generation Interconnection Agreement, all required Interconnection Facilities have been constructed, (b) all required interconnection tests have been completed, (c) the Facility is physically interconnected with the System and Buyer's System, as applicable, in conformance with the Generation Interconnection Agreement and able to deliver energy consistent with the terms of this Agreement, (d) the Facility is fully integrated and synchronized with the System and Buyer's System, as applicable, and (e) the System Operator has designated the Facility as an Intermittent Resource.

(4) Seller has provided Buyer copies of the Required Facility Documents reasonably requested by Buyer prior to Seller's notice of Commercial Operation; *provided, however*, that Seller may redact or omit confidential or commercial terms from non-public Required Facility Documents.

(5) The Facility has demonstrated the reliability of its communications systems and communications with Buyer's system control center to the reasonable satisfaction of Buyer or Buyer's designee.

(6) Seller has provided the Credit Support required pursuant to Section 8.1.

"Commercial Operation Date" means the date that Commercial Operation is achieved for the Facility.

"Confidential Business Information" is defined in Section 23.1.

"Contract Interest Rate" means the lesser of (a) the highest rate permitted under Requirements of Law and (b) 200 basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. as its "prime rate". If a Citibank, N.A. prime rate is not available, the applicable prime rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest is being paid.

"Contract Price" means the applicable price, expressed in \$/MWh, stated in Section 5.1.

"Contract Year" means a twelve (12) month period commencing at 00:00 hours on January 1 and ending on 24:00 hours on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the last day of the Term.

"Controlling Interest" means more than fifty percent (50%) of outstanding ownership interest, or the power to vote such percentage of ownership interest.

"Costs" means, with respect to the non-defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses (including costs incurred in connection with transmission services that would otherwise not have been incurred hereunder) reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement, and all reasonable

attorneys' fees and expenses incurred by the non-defaulting Party in connection with this Agreement.

"Covered Facility" is defined in Section 11.9.

"Covered Facility Right of First Offer" is defined in Section 11.9.

"Credit Rating" of any person or entity means the lowest rating assigned to such person or entity's long-term debt or deposit obligations (unenhanced by third-party support) by Fitch, Standard & Poor's and Moody's. If such person or entity has no outstanding long-term debt or deposit obligations, or if no rating is assigned to such obligations, "Credit Rating" shall mean the lowest general corporate credit rating or long-term issuer rating assigned to such person or entity by Fitch, Standard & Poor's or Moody's.

"Credit Support" means the credit support to be provided by Seller pursuant to Section 8.

"Curtailed Energy" shall be the number of MWh represented by the Potential Energy that is curtailed based on Buyer's instruction to curtail output or that is not dispatched by the Transmission Provider or is otherwise curtailed by the Transmission Provider based upon Buyer's offer(s) submitted to the Transmission Provider, or lack thereof (as further described in Section 4.4.2), less the Net Output actually delivered during the period of curtailment.

"DALMP" is Day-Ahead LMP as that term is used in the Tariff.

"Delay Damages" means the damages payable by Seller under the circumstances and subject to the limits described in Sections 2.3(a) and 2.4, and for any given day are [REDACTED]

[REDACTED] An Example illustrating the calculation of Delay Damages under certain stated assumptions is set forth in **Exhibit B**.

"Dispatchable Intermittent Resource" is defined in the Tariff.

"DPP Phase II" means Phase II of the Definitive Planning Phase (as defined in Attachment X to the Tariff).

"EEV" means Emerald Energy Venture, LLC, a Delaware limited liability company together with its subsidiaries and Affiliates.

"Effective Date" is defined in the preamble.

"Electric System Authority" means each of NERC, MISO, the GIS, a System Operator, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the geographic area in which the Facility is located.

"Emissions Reduction Credit" is any credit, allowance or instrument issued or issuable by a Governmental Authority under regulations of the Environmental Protection Agency under the Clean Air Act.

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water, which are deemed of value by Buyer. Environmental Attributes include: (a) any avoided emissions of pollutants to the air, soil, or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), and other pollutants; (b) all Emissions Reduction Credits; (c) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gases (GHGs) that have been determined by any Governmental Authority or the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (d) any cryptocurrency, blockchain, and similar or related matters, items commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with anything produced by Facility Output. Environmental Attributes do not include (i) PTCs, ITCs, or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) matters designated by Buyer as sources of liability, or (iii) any adverse health, safety, wildlife or environmental impacts.

“Environmental Attribute Reporting Rights” means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser’s discretion, and includes reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

“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, or to present a material risk that as a consequence of the application of federal, state or local laws and regulations that (a) the Premises will not be available or usable for the purposes contemplated by this Agreement or (b) the potential resulting liabilities could impair Seller’s ability to meet its obligations hereunder.

“Event of Default” is defined in Section 11.1.

“EWG” means an “exempt wholesale generator,” as defined under PUHCA.

“Example” means an example of certain calculations to be made hereunder. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example.

“Expansion Energy” is defined in Section 20.5.1.

“Expected Energy” means ██████████ of Net Output during the first Contract Year, measured at the Point of Delivery; ██████████ of Net Output during the second Contract Year, measured at the Point of Delivery; and thereafter, Expected Energy will be the annual generation predicted by the Solar Performance Modeling Program multiplied by the measured plane of array irradiance derived from the same satellite data source used in the Solar Performance Modeling Program divided by the Solar Performance Modeling Program’s expected plane of array irradiance, taking into account an annual degradation factor of 0.5% per Contract Year. Seller

estimates that the Net Output will be delivered during each calendar year according to the estimates of monthly output set forth in **Exhibit A**. Seller acknowledges that Buyer will include Buyer's Interest in Buyer's resource planning. Buyer acknowledges that solar exposure is a variable resource and that the Facility's actual annual output of Net Output and RECs in the ordinary course of any given Contract Year will be subject to variation caused by differences in the solar exposure at the Facility from Contract Year to Contract Year; provided, however, that nothing in this sentence affects or reduces Seller's obligations hereunder.

"Expected Nameplate Capacity Rating" means 160 MW (AC), the expected maximum instantaneous generation capacity of the Facility.

"Facility" is defined in the Recitals and is more fully described in attached **Exhibit 6.1** and includes the photovoltaic power generating equipment, including panels, arrays, tracking system, and inverters, and all other equipment, devices, associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of electric energy by Seller to Buyer and required to interconnect with the System and Buyer's System, as applicable.

"Facility Revenue Meter" means all metering equipment installed or to be installed at the Generating Facility pursuant to this GIA at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

"FASB" means the Financial Accounting Standards Board.

"FERC" means the Federal Energy Regulatory Commission.

"FIN 46R" means the FASB revised Interpretation No. 46(R), Consolidation of Variable Interest Entities.

"Final System Impact Study" has the meaning given to it in Attachment X to the Tariff.

"Financing" means any of the following by Seller's financing parties: (a) lending money, extending credit, purchasing notes or providing loan guarantees (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for the construction, interim or permanent financing or refinancing of the Facility; (ii) for working capital or other ordinary business requirements of the Facility (including the maintenance, repair, replacement or improvement of the Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; or (iv) for any capital improvement or replacement related to the Facility; or (b) participating as an tax equity investor with respect to the Facility.

"Financing Documents" is defined in the Lender Consent and, for purposes of this Agreement, includes the documents associated with any tax equity financing and 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, construction or permanent debt financing for the Facility, including any credit enhancement, credit support, working capital financing, or refinancing documents, 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.

“Fitch” means Fitch Ratings, Inc.

“Force Majeure” is defined in Section 14.1.

“Forced Outage” means NERC Event Types U1, U2 and U3, as set forth in attached Exhibit C, and specifically excludes any Maintenance Outage or Planned Outage.

“Gains” means, with respect to a non-defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner. Gains shall be measured with respect to the Expected Energy over the remainder of the Term (ignoring any early termination of this Agreement).

“GATS” means the Generation Attribute Tracking System.

“Generation Information System” or **“GIS”** means M-RETS, a state or regional registry, or other present or future applicable system for accounting for and transferring RECs with respect to generation from the Facility.

“Generation Interconnection Agreement” means the agreement to be entered into separately between Seller and Interconnection Provider concerning the Interconnection Facilities. **“Generation Interconnection Agreement”** may include, at the option of Seller, any conditional or provisional interconnection agreement with Transmission Provider (as contemplated and described in the Tariff) or any agreement with the Transmission Provider where the Transmission Provider may limit the operational output of the Facility.

“Generator Operator” means the entity that operates generating facility(ies) and performs the functions of supplying energy and interconnected operations services.

“GIS Certificate” means the certificate representing all or any part of the REC created and accounted for by the GIS.

“GIS Operating Procedures” means the operating rules and requirements adopted by the GIS.

“Government” is defined in Section 20.3.

“Governmental Authority” means any supranational, federal or state authority or other political subdivision thereof, having jurisdiction over Seller, Buyer, the Facility, or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“Guaranteed Commercial Operation Date” means the date that is [REDACTED] after the Scheduled Commercial Operation Date.

“Hazardous Materials” means any substance, material, gas, 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 non-human forms of life, land, water, groundwater, and air, including any material or substance that is (a) 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; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.*; (g) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; (h) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*; (i) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; or (j) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*

“ICCP” means the Inter-Control Center Communications Protocol.

“Interconnection Facilities” means all the facilities installed, or to be installed, for the purpose of interconnecting the Facility to the System and Buyer’s System, as applicable, including electrical transmission lines, line upgrades, transformers, capacitor banks, inductor banks, and associated equipment, substations, relay and switching equipment, and safety equipment.

“Interconnection Provider” means Big Rivers Electric Corporation.

“Intermittent Resource” is defined in the Tariff.

“Inverter” means the equipment installed at the Facility to convert direct current from the Solar Panels to alternating current, as described in **Exhibit 6.1**.

“Investment Grade” means a Credit Rating of (a) Baa3 or higher by Moody’s, Inc. and/or (b) BBB- or higher by Standard & Poor’s or Fitch.

“ITCs” means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code.

“Lender” means any entity other than a Seller Affiliate lending money or extending credit (including any financing lease, monetization of tax benefits, transaction with a Tax Investor (as defined in the Lender Consent), backleverage financing or credit derivative arrangement) to Seller (a) for the construction, term or permanent financing or refinancing of the Facility; (b) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (c) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; or (d) for the purchase of the Facility and related rights from Seller.

“Lender Consent” means a Consent to Collateral Assignment in favor of one or more Lenders and in substantially the form of **Exhibit 8.4**.

“Liabilities” is defined in Section 12.1.1.

“Licensed Professional Engineer” means a person proposed by Seller and acceptable to Buyer in its reasonable judgment who (1) is licensed to practice engineering in the appropriate engineering discipline for the required certification being made, in the United States, and in all states for which the person is providing a certification, evaluation or opinion with respect to matters or Requirements of Law specific to such state, (2) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (3) has no economic relationship, association, or nexus with Seller or its Affiliates, other than, with the prior written consent of Buyer, services previously or currently being rendered to Seller or its Affiliates, and (4) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. The engineers and engineering firms listed on **Exhibit E** are acceptable to Buyer as “Licensed Professional Engineers”.

“Locational Marginal Price” or **“LMP”** means the 5-minute real-time Locational Marginal Price as defined by MISO at the Commercial Pricing Node at the Point of Delivery. Until such time as MISO defines a Commercial Pricing Node near the Facility, the Commercial Pricing Node nearest to the Point of Delivery will be utilized.

“Losses” means, with respect to a non-defaulting party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner. Losses shall be measured with respect to the Expected Energy over the remainder of the Term (ignoring any early termination of this Agreement).

“Maintenance Outage” means NERC Event Type MO, as set forth in attached **Exhibit C**, and includes any outage involving at least ten percent (10%) of the Facility’s Nameplate Capacity Rating that is not a Forced Outage or a Planned Outage.

“Market Participant” is defined in the Tariff.

“Maximum Delivery Rate” means the maximum hourly rate of delivery of Net Output in MWh from the Facility to the Point of Delivery, calculated on the basis of the Net Output delivered in an hour accruing at an average rate equivalent to the actual Nameplate Capacity Rating.

“Mediation Location” means Henderson, Kentucky.

“Mediation Notice” is defined in Section 24.2(a).

“Mediation Procedures” is defined in Section 24.2.

“Meter Data Management Agent” means an entity providing meter data to the MISO Meter Data Management System, as that term is used in the Tariff.

“MISO” means the Midcontinent Independent System Operator, Inc., or its successor.

“**MISO Rules**” means the policies, rules, guidelines, procedures, standards and criteria applicable to market participants in MISO, including the Tariff, the Operating Agreement, and the MISO manuals.

“**Moody’s**” means Moody’s Investors Services, Inc.

“**M-RETS**” means the Midwest Renewable Energy Tracking System.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**MWp**” means megawatt of direct current (DC) electric capacity.

“**Nameplate Capacity Rating**” means the maximum installed instantaneous generation capacity of the completed Facility, expressed in MW (AC), when operated in compliance with the Generation Interconnection Agreement and consistent with the recommended power factor and operating parameters provided by the manufacturer of the Solar Panels and Inverters, as set forth in a notice from Seller to Buyer delivered prior to the Commercial Operation Date. The Nameplate Capacity Rating of the Facility shall be at least equal to ninety percent (90%) of the Expected Nameplate Capacity Rating and shall not exceed 160 MW (AC).

“**NERC**” means the North American Electric Reliability Corporation.

“**Negative RTLMP Period**” means the period commencing with start of the first Calculation Period in which the RTLMP is zero or negative and ending with the start of the first Calculation Period in which the RTLMP is again positive.

“**Net Output**” means all energy produced by the Facility, exclusive of Station Use, and delivered at the Point of Delivery.

“**Network Upgrade Costs**” is defined in the Tariff and also includes costs and expenses payable to an affected System Operator and defined in and required under the Generation Interconnection Agreement.

“**Offered Assets**” is defined in Section 20.4.1.

“**Off-Peak Hours**” means all hours not classified as On-Peak Hours.

“**Ohio SREC**” means the Solar Renewable Energy Credit market, or successor program (provided the Facility meets the program eligibility criteria), recognized by the state of Ohio.

“**On-Peak Hours**” means the period of time between Hour-ending 0700 Eastern Prevailing Time through and including Hour-ending 2200 Hours Eastern Prevailing Time Monday through Friday excepting New Year’s, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day or if the holiday occurs on a Sunday, the Monday immediately following the holiday.

“**Output**” means all energy produced by the Facility.

“Output Guarantee” is defined in Section 6.12.1.

“Output Shortfall” is defined in and calculated pursuant to Section 6.12.2(b).

“Permits” means all of the permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the construction, ownership or operation of the Facility and occupancy of the Premises, including those specified in **Exhibit F**, and all amendments, modifications, supplements, general conditions and addenda thereto.

“Planned Outage” means NERC Event Type PO, as set forth in attached **Exhibit C**, and specifically excludes any Maintenance Outage or Forced Outage.

“Planning Resource Auction” or **“PRA”** means an annual auction that is conducted by the Transmission Provider to determine the Auction Clearing Price and the cleared Zonal Resource Credit offers for each Local Resource Zone and External Resource Zone for the applicable Planning Year, as such terms are defined in the MISO Tariff.

“Point of Delivery” means the point of interconnection between the Facility and the System and Buyer’s System, as applicable, as specified in the Generation Interconnection Agreement and as further described in **Exhibit 9.2**.

“Potential Energy” means the quantity of the energy that Seller is capable of delivering at the Point of Delivery and shall be calculated as the aggregate energy available for delivery at the Point of Delivery using the best-available data obtained through commercially reasonable methods; and shall be dependent upon measured insolation, power curves, Solar Panel availability, and derate(s) and transmission line losses, and any other adjustment (including, as applicable, adjustments based upon time of day) necessary to accurately reflect the Facility’s capability to produce and deliver energy to the Point of Delivery. Potential Energy does not include energy generated by the Facility but used for Station Use.

“Premises” means the real property on which the Facility is or will be located, as more fully described on **Exhibit 6.1**.

“Prevailing Time” or **“PT”** means Standard Time or Daylight Time, as applicable on the day in question at the Point of Delivery.

“Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the independent electric power generation industry for solar facilities of similar size and characteristics or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known or that should reasonably have been known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with law, regulation, permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

“PTCs” means production tax credits under Section 45 of the Internal Revenue Code.

“**PUHCA**” means the Public Utility Holding Company Act of 2005, as amended from time to time.

“**PURPA**” means the Public Utility Regulatory Policies Act of 1978, as amended from time to time.

“**QF**” means “qualifying facility” as that term is defined in 18 C.F.R. 292.101(b)(1).

“**Qualified Transferee**” means an U.S. domestic business entity that has a tangible net worth of at least three hundred million dollars (\$300,000,000) and at least three (3) years of experience operating a generating plant of similar technology and similar size to the Facility.

“**RE**” means the interconnection or reliability regional entity designated by NERC as responsible for enforcing electric reliability standards for the geographic area in which the Facility is located.

“**REC**” means (a) the Environmental Attributes associated with all Net Output, together with (b) the Environmental Attribute Reporting Rights associated with such energy and Environmental Attributes, however commercially transferred or traded under any of these or other product names, such as “Renewable Energy Credits,” “Renewable Energy Certificates,” “Green-e Certified”, GIS Certificates or otherwise. One (1) REC represents the Environmental Attributes made available by the generation of one (1) MWh of Net Output from the Facility.

“**REC Price Component**” means [REDACTED]; provided that Buyer may in its discretion replace such amount with such designated market price reports for RECs, effective as of the time specified by Buyer.

“**Reporting Month**” means each calendar month during the Term.

“**Required Facility Documents**” means all material Permits, authorizations, rights and agreements now or hereafter necessary for construction, ownership, operation, and maintenance of the Facility, the lawful operation of the Facility, and to deliver Net Output to Buyer in accordance with this Agreement and Requirements of Law, including those set forth in **Exhibit 3.2.6** and **Exhibit F**. Nothing set forth in **Exhibit 3.2.6** limits the obligations of Seller to obtain all Required Facility Documents, the Permits set forth in **Exhibit F** or as otherwise required hereunder. Required Facility Documents does not include any Financing Documents (other than collateral pledged under any Financing Document).

“**Requirements of Law**” means any applicable federal, state and local law, statute, regulation, rule, action, order, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

“**RTLMP**” is Real-Time LMP as that term is used in the Tariff.

“**SCADA**” means a remote supervisory control and data acquisition system to be provided by Seller, which includes all necessary components and contact points at the Facility.

“Scheduled Commercial Operation Date” means [REDACTED]

“Seller” is defined in the Recitals.

“Seller Indemnitees” is defined in Section 12.1.2.

“Seller Uncontrollable Minutes” means, for the Facility in any Contract Year, the total number of minutes during such Contract Year during which the Facility was unable to deliver Net Output to Buyer because Buyer failed to accept such delivery or due to one or more of the following events, each as recorded by Seller’s SCADA and indicated by Seller’s electronic fault log: (a) a Force Majeure event; (b) a curtailment in accordance with Section 4.4; (c) the System or Buyer’s System operating outside the voltage or frequency limits defined in the applicable operating manual for the Inverters installed at the Facility; or (d) a default by Buyer; provided, however, that if any of the events described above in items (a) through (d) occur simultaneously, then the relevant period of time shall only be counted once in order to prevent double counting. Seller Uncontrollable Minutes shall not include minutes when (i) the Facility or any portion thereof was unavailable solely due to Seller’s non-conformance with the Generation Interconnection Agreement or (ii) the Facility or any portion thereof was paused or withdrawn from use by Seller for reasons other than those covered in this definition.

“Seller’s Cost to Cover” means the positive difference, if any, between (a) the Contract Price per MWh specified in **Exhibit 5.1**, and (b) the net proceeds per MWh actually realized by Seller from the sale to a third party of Net Output and RECs not purchased by Buyer as required hereunder. If on any given day the difference between (a) and (b) referenced above is zero or negative, then Seller’s Cost to Cover shall be zero dollars (\$0) with respect to such day, and Buyer shall have no obligation to pay any amount to Seller on account of Section 11.2.2. For any days prior to the Commercial Operation Date, the Contract Price applicable in the first Contract Year shall be utilized for purposes of clause (a).

“Senior Lenders” means the Lenders providing construction financing for the Facility, or any term or permanent take-out financing of the costs of development and construction, as described in the definition of “Lenders”, other than Affiliates of Seller.

“Solar Array” means one or more Solar Panels connected to the same Inverter.

“Solar Panels” means the photovoltaic energy generating panels installed at the Facility as described in **Exhibit 6.1**.

“Solar Performance Modeling Program” means a commercially available computer modeling program that is generally accepted in the solar energy industry capable of modeling the Expected Energy and other similar outputs. Solar Performance Modeling Program includes, but is not limited to, the PVSYST program. Seller, at its cost, shall provide Buyer access to any Solar Performance Modeling Program selected by Seller in order for Buyer to fully analyze all modeling provided by Seller under this Agreement.

“Standard & Poor’s” means S&P Global Ratings, a division of S&P Global Inc.

“Station Use” means Facility Output used to operate the Facility or provide electric energy for any other activities occurring on the Premises or prior to the low side of the substation of the Interconnection Facilities.

“System” means the transmission facilities over which MISO has operational control.

“System Operator” means any entity, including Transmission Provider, that becomes responsible as system operator for, or directs the operation of, the System.

“Tariff” means the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff as amended and filed with FERC from time to time.

“Tax Credits” means any state, local or federal production tax credit, tax deduction, or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

“Tax Equity Financing” means a transaction or series of transactions involving one or more Tax Investors seeking a return that is enhanced by tax credits and/or tax depreciation including without limitation (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without “leverage”)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a solar project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Code, as amended (a pass-through lease), provided that in any case, such transaction or series of transactions does not result in the direct or indirect transfer, disposition or sale of any of the managing or controlling membership interests in Seller.

“Tax Investor” is defined in the Lender Consent.

“Term” is defined in Section 2.1.

“Termination Payment” means, with respect to the non-defaulting Party, as applicable, either (i) the sum of Losses plus Costs or (ii) the difference between Costs minus Gains, expressed in U.S. dollars. If the Termination Payment calculation does not demonstrate that the non-defaulting Party suffered a net loss, the Termination Payment shall be \$0. If the Termination Payment calculation does demonstrate that the non-defaulting Party suffered a net loss, a Termination Payment shall be due to the non-defaulting Party pursuant to Section 11.5.

“Test Energy” means any Net Output during the period between the Effective Date and the Commercial Operation Date, and all associated Ancillary Services, RECs and Capacity Rights.

“Transmission Provider” means MISO or any successor entity.

“Transmission Service” means transmission services pursuant to which the Transmission Provider transmits Output to the Point of Delivery, as applicable.

1.2 Rules of Interpretation.

1.2.1. General. Terms used in this Agreement but not specifically defined in this Section 1 shall have meanings as commonly used in the English language; provided that words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used in accordance with such recognized meanings. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity’s or index’s successors; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” means “including, without limitation” or “including, but not limited to”; (h) all references to a particular tariff, law or statute mean that tariff, law or statute as amended from time to time; and (i) the word “or” is not necessarily exclusive.

1.2.2. Terms Not to be Construed For or Against Either Party. Each term hereof shall be construed simply according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term hereof shall be construed against a Party on the ground that the Party is the author of that provision.

1.2.3. Headings. The headings used for the sections and articles hereof are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions hereof.

1.2.4. Examples. Example calculations and other examples set forth herein are for purposes of illustration only and are not intended to constitute a representation, warranty or covenant concerning the example itself or the matters assumed for purposes of such example. If there is a conflict between an example and the text hereof, the text shall control.

1.2.5. Consents and Agreements. Except as otherwise provided in this Agreement, whenever a consent, approval or other similar action is required of a Party in this Agreement, such Party shall not unreasonably condition, withhold or delay in granting or providing any such consent, approval or similar action.

1.2.6. Generation Interconnection Agreement.

(a) The Parties acknowledge and agree that the Generation Interconnection Agreement shall be a separate and free standing contract.

(b) Except as otherwise provided in this Agreement, nothing in the Generation Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties’ rights, duties, and obligations hereunder. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider.

SECTION 2 TERM; FACILITY DEVELOPMENT

2.1 Term. Subject to this Section 2.1, this Agreement shall become effective upon the Effective Date; provided, however, that the Parties shall be entitled to terminate this Agreement as described in this Section 2.1, and provided further, that notwithstanding any provision of this Agreement to the contrary, Buyer shall have no obligation to purchase any power under this Agreement until the later of (i) the date the Kentucky Public Service Commission approves this Agreement, and (ii) the date the Rural Utilities Service approves this Agreement. No later than thirty (30) days after the date of this Agreement, Buyer may apply for approval of this Agreement from the Kentucky Public Service Commission and/or the Rural Utilities Service. Each Party shall have the right to terminate this Agreement, without any further financial or other obligation by or to any Party as a result of such termination, by written notice to the other Party at any time between the 180th day and the 365th day following Buyer's application for such approvals, if prior to the date of such termination either or both of the Kentucky Public Service Commission and/or the Rural Utilities Service has not issued its respective approval. If either or both of the Kentucky Public Service Commission and/or the Rural Utilities Service has not issued its respective approval on or before the 365th day following Buyer's application for such approvals, this Agreement shall terminate without any further financial or other obligation by or to any Party as a result of such termination. The term of this Agreement shall commence on the Effective Date and, unless earlier terminated as provided herein, shall remain in effect until the twentieth (20th) anniversary of the Commercial Operation Date ("**Term**").

2.2 Milestones. Time is of the essence in the performance hereof, and Seller's completion of the Facility and delivery of Net Output, Capacity Rights and RECs by the Scheduled Commercial Operation Date is critically important. Therefore, Seller shall use its commercially reasonable efforts to achieve the milestones set forth in **Exhibit 2.2** on or before the corresponding respective times indicated; provided however, that Seller shall have no liability under this Agreement, and it shall not be an Event of Default hereunder, in the event Seller does not achieve any such milestone (other than the milestone for Commercial Operation) by the corresponding date.

2.3 Facility Construction and Delay Damages.

(a) If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay to Buyer Delay Damages for each day from and after the Scheduled Commercial Operation Date through the date that the Facility achieves Commercial Operation.

(b) If Commercial Operation is not achieved by the Guaranteed Commercial Operation Date, Buyer may terminate this Agreement pursuant to Section 11.

(c) Seller shall not sell any output of any Solar Array that causes the Nameplate Capacity Rating of the Facility to be in excess of the Expected Nameplate Capacity Rating, or any RECs, Ancillary Services or Capacity Rights associated with such output, to any person or entity other than Buyer, and Buyer may in its sole discretion, but is not required to, purchase any output of such Solar Array, or any RECs, Ancillary Services or Capacity Rights

associated with such output. If Buyer elects to purchase any such output, the Maximum Delivery Rate shall be increased to the extent of the output Buyer has elected to purchase.

2.4 Damages Calculation. Each Party agrees and acknowledges that (a) the damages that Buyer would incur due to Seller's delay in achieving Commercial Operation would be difficult or impossible to predict with certainty, and (b) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. Notwithstanding the foregoing, this Section 2.4 shall not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller's failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date. Any such termination damages shall be determined in accordance with Section 11.5.

2.5 Damages Invoicing. By the fifteenth (15th) day following the end of the calendar month in which the Delay Damages begin to accrue, and continuing on the fifteenth (15th) day of each calendar month during the period in which Delay Damages accrue (and the following months if applicable), Buyer shall deliver to Seller an invoice showing Buyer's computation of such damages and any amount due Buyer in respect thereof for the preceding calendar month. No later than ten (10) Business Days after receiving such an invoice and subject to Sections 10.3 and 10.4, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

2.6 Buyer's Right to Monitor. During the Term, Seller shall permit Buyer and its advisors and consultants to, upon Buyer's reasonable advance notice to Seller and during normal business hours:

(a) Review and discuss with Seller and its advisors and consultants monthly status reports on the progress of the acquisition, design, financing, engineering, construction and installation of the Facility. Between the Effective Date and thirty (30) days following the Commercial Operation Date, Seller shall, on or before the tenth (10th) Business Day of each calendar month, provide Buyer with a monthly status report for the preceding month.

(b) Monitor the status of the acquisition, land leasing, design, financing, engineering, construction and installation of the Facility and the performance of the contractors constructing the Facility.

(c) Monitor and receive monthly updates from Seller concerning (i) the progress of Seller's negotiation and execution of contracts for the acquisition, design, financing, engineering, construction and installation of the Facility, Premises, major equipment and warranties, and (ii) the contractors' performance and achievement of contract deliverables and all performance and other tests required to achieve Commercial Operation or contemplated by the warranty agreements between Seller and a manufacturer of the Facility's Solar Panels and Inverters and any other material items of Facility equipment that require testing for warranty agreements to be effective.

(d) Witness initial performance tests and other tests and review the results thereof. Seller shall provide Buyer with at least five Business Days prior notice of each such test, with the understanding that if the performance of such test is dependent on the presence of sufficient solar exposure or other variables beyond the control of Seller, the date of such test may be postponed if, on the date specified in the related notice, there is insufficient solar exposure or other circumstances beyond the control of Seller that prevent the performance of such test on the scheduled date.

(e) Perform such examinations, inspections, and quality surveillance as, in Buyer's reasonable judgment, are appropriate and advisable to determine that the Facility has been properly commissioned and Commercial Operation has been achieved.

(f) Except as otherwise provided in this Agreement, Seller does not herein grant Buyer the right to review, comment on or approve of the terms or conditions of any contract or negotiation between Seller and a third party, the terms and conditions of each such contract or negotiation being confidential and to be determined by Seller in its sole discretion. Conversely, nothing in this Agreement shall be construed to require Buyer to review, comment on, or approve of any contract between Seller and a third party.

(g) With respect to Buyer's right to monitor under this Section 2.6, (i) Buyer is under no obligation to exercise any of these monitoring rights, (ii) such monitoring shall occur subject to reasonable rules developed by Seller regarding Facility construction, access, health, safety, and environmental requirements, and (iii) Buyer shall have no liability to Seller for failing to advise it of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by Buyer with respect to the Facility or any contractor. Any review or monitoring of the Facility conducted by Buyer hereunder shall be performed in a manner that does not impede, hinder, postpone, or delay Seller or its contractors in their performance of the engineering, construction, design or testing of the Facility. Buyer shall maintain one or more designated representatives for purposes of the monitoring activities contemplated in this Section 2.6, which representatives shall have authority to act for Buyer in all technical matters under this Section 2.6 as authorized by Buyer, but not to amend or modify any provision hereof. Buyer's initial representatives and their contact information are listed in **Exhibit 2.6**. Buyer may, by written notice to Seller, change its representatives or their contact information.

2.7 Tax Credits. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive PTCs, ITCs, or other Tax Credits, or to or qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes, on account of rules respecting the Facility owner minimum interest in the Facility's risks, the relationship between Facility owner and Seller or otherwise. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Buyer's Interest, shall be effective regardless of whether the sale of Output or Net Output from the Facility is eligible for, or receives, PTCs, ITCs or other Tax Credits during the Term.

2.8 Commercial Operation. Seller shall provide written notice to Buyer stating when Seller believes that the Facility has achieved Commercial Operation and its Nameplate Capacity Rating accompanied by the certificates described in the definition of Commercial Operation.

Buyer shall have five (5) Business Days after receipt either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what Buyer reasonably believes has not been satisfied. If, within such five Business Day period, Buyer does not respond or notifies Seller confirming that the Facility has achieved Commercial Operation, the original date of receipt of Seller's written notice shall be the Commercial Operation Date. If Buyer notifies Seller within such five Business Day period that Buyer reasonably believes the Facility has not achieved Commercial Operation, Seller must address the concerns stated in Buyer's notice to the mutual satisfaction of both Parties, and Commercial Operation shall occur on the date of such satisfaction, as specified in a notice from Buyer to Seller.

SECTION 3 REPRESENTATIONS AND WARRANTIES

3.1 Mutual Representations and Warranties. Each Party represents, covenants, and warrants to the other that:

3.1.1. Organization. It is duly organized and validly existing under the laws of its State of organization.

3.1.2. Authority. It has the requisite power and authority to enter hereinto and to perform according to the terms hereof.

3.1.3. Corporate Actions. It has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated hereby.

3.1.4. No Contravention. The execution, delivery, performance and observance by it of its obligations hereunder do not (a) contravene any provision of, or constitute a default under, (i) any indenture, mortgage, security instrument or undertaking, or other material agreement to which it is a party or by which it is bound, (ii) any valid order of any court, or any regulatory agency or other body having authority to which it is subject, or (iii) any material Requirements of Law presently in effect having applicability to it, or (b) require the consent or approval of, or material filing or registration with, any Governmental Authority or other person except as provided herein.

3.1.5. Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of it, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies.

3.1.6. Eligible Contract Participant. It, and any guarantor of its obligations hereunder, is an "eligible contract participant" within the meaning of the Commodity Exchange Act.

3.2 Seller's Further Representations and Warranties. Seller further represents, covenants, and warrants to Buyer that:

3.2.1. Organization. Seller is a limited liability company duly organized and validly existing under the laws of Delaware.

3.2.2. Authority. Seller (i) has or will have prior to Commercial Operation all required regulatory authority to make wholesale sales from the Facility; (ii) has the power and authority to own and operate its businesses and properties, to own or lease and be present upon the property it occupies and to conduct the business in which it currently engaged; and (iii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

3.2.3. No Contravention. The execution, delivery, performance and observance by Seller of its obligations hereunder do not and will not:

(a) contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or any Affiliate of Seller;

(b) require the consent or approval of or material filing or registration with any Governmental Authority or other person other than such material consents and approvals which are set forth in **Exhibit 3.2.6** and expected to be obtained in due course;

(c) result in a breach of or constitute a default under any provision of any security issued by Seller or any Affiliate of Seller or any material agreement, instrument or undertaking to which either Seller or any Affiliate of Seller is a party or by which the property of Seller or any Affiliate of Seller is bound.

3.2.4. Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against Seller or any Affiliate with respect hereto and the transactions contemplated hereunder. To Seller's knowledge, no other investigation or proceeding is pending or threatened against Seller.

3.2.5. Accuracy of Information. To Seller's knowledge, no exhibit, contract, report or document furnished by Seller to Buyer in connection with this Agreement, or the negotiation or execution hereof contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

3.2.6. Required Facility Documents. All Required Facility Documents are listed in **Exhibit 3.2.6**. Pursuant to the Required Facility Documents, Seller holds as of the Effective Date, or will hold by the Commercial Operation Date, all rights and entitlements necessary to construct, own and operate the Facility and to deliver Buyer's Interest to Buyer in accordance with this Agreement. Seller shall notify Buyer of any material consent or approval that (a) Seller determines is required for the construction, ownership or operation of the Facility, and (b) is not already listed in **Exhibit 3.2.6**.

3.2.7. Delivery of Energy. On or before the Commercial Operation Date, Seller shall hold rights sufficient to enable Seller to deliver Net Output at the Expected Nameplate Capacity Rating from the Facility, on a firm basis, to the Point of Delivery pursuant to this Agreement throughout the Term.

3.2.8. Control of Premises. Seller has or will have all legal rights necessary for the Seller to enter upon and occupy the Premises for the purpose of constructing, operating and maintaining the Facility for the Term and Seller is not in material breach of any terms or conditions of such leases or other rights in real property for the Facility or Premise. All leases of real property required for the expected operation of the Facility or the performance of any obligations of Seller hereunder at the Premises are set forth and accurately described in **Exhibit 3.2.6**. Seller shall maintain all leases or other land grants necessary for the construction, operation and maintenance of the Facility as valid for the Term. Upon request by Buyer, Seller shall provide copies of the recorded memoranda of lease.

3.2.9. Certification as an Eligible Renewable Resource. The Facility will, not later than the Commercial Operation Date, be certified, and will at all times thereafter remain certified (subject to the applicable respective time limitations of participation in such programs), as an eligible renewable resource under the renewable portfolio or renewable energy standards of the Green-e Energy certification programs, and any successor programs, through tracking registries including GATS and M-RETS and any successor tracking registries. Provided that (i) the Facility remains eligible under the Ohio SREC program (or any successor program) and (ii) such program's requirements have not changed or the cost or expense of certification have not increased in any material respect following the Effective Date, then Seller shall have the Facility certified by the Commercial Operation Date as an eligible renewable resource under the renewable portfolio or renewable energy standards of the Ohio SREC certification program, and any successor programs. Following the Commercial Operation Date and throughout the remainder of the Term, Seller shall use commercially reasonable efforts to have the Facility remain certified as an eligible renewable resource under the renewable portfolio or renewable energy standards of the Ohio SREC certification program, and any successor programs, provided, however, that in the event such program's requirements change or the cost or expense of certification increase in any material respect following the Effective Date, then Seller shall not be in breach of this Agreement for the Facility's failure to be so certified under the Ohio SREC program or any successor program. Except as described in Section 4.5, Seller, at its cost, is responsible for obtaining and maintaining the Facility certifications and registrations required under this Section 3.2.9.

3.2.10. Green Guides. Seller has at all times been and will at all times be fully compliant with the requirements of the Federal Trade Commission's "Green Guides," 77 F.R. 62122, 16 C.F.R. Part 260, or any successor rule, in any communication concerning Net Output, the Facility or the RECs.

3.3 No Other Representations or Warranties. Each Party acknowledges that it has entered hereinto in reliance upon only the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter hereof.

3.4 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this Section 3 are made as of the Effective Date and deemed made continually throughout the Term. If at any time during the Term, any Party obtains actual knowledge of any event or information which causes any of the representations and warranties in this Section 3 to be materially untrue or misleading, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the

action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section 3 shall be given as soon as practicable after the occurrence of each such event.

SECTION 4 DELIVERIES OF NET OUTPUT, ANCILLARY SERVICES, CAPACITY RIGHTS AND RECS

4.1 Purchase and Sale. Except as otherwise expressly provided herein, commencing on the Commercial Operation Date and continuing through the Term, Seller shall sell and make available to Buyer, and Buyer shall purchase and receive, (a) the Net Output from the Facility at the Point of Delivery, and (b) all Ancillary Services, Capacity Rights and RECs associated with Net Output or otherwise resulting from the generation and delivery of energy by the Facility (which shall come from the Facility and from no other source); provided, however, that Buyer may at its sole option, but shall be under no obligation to, receive any Net Output above the Maximum Delivery Rate, or any Capacity Rights, Ancillary Services, or RECs associated with any Net Output above the Maximum Delivery Rate. In no event shall Buyer be obligated to purchase, receive or pay for Output (or RECs or Ancillary Services associated with Output) that is not delivered to the Point of Delivery. In addition, during the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to Buyer, and Buyer shall purchase and receive, Net Output, Ancillary Services, Capacity Rights, and associated RECs from the Facility at the Point of Delivery as Test Energy at the price specified in Section 5.1.1.

4.2 No Sales to Third Parties. During the Term, Seller shall not sell any Net Output, RECs, Ancillary Services or Capacity Rights from the Facility to any party other than Buyer; *provided, however,* that this restriction shall not apply with respect to Net Output or RECs during periods when Buyer is in default hereof because it has, without excuse, failed to accept or purchase such Net Output or RECs if required to hereunder.

4.3 Title and Risk of Loss of Net Output. Seller shall deliver Net Output, Ancillary Services, Capacity Rights and associated RECs free and clear of all liens, claims and encumbrances. Title to and risk of loss of Net Output shall transfer from Seller to Buyer upon its delivery to Buyer at the Point of Delivery. Seller shall be deemed to be in exclusive control of, and responsible for, any damage or injury caused by all Output up to and at the Point of Delivery. Buyer shall be deemed to be in exclusive control of, and responsible for, any damages or injury caused by, Net Output from the Point of Delivery. Delivery of Net Output to Buyer on any particular day shall be subject to the provisions of this Agreement.

4.4 Curtailement. The rights and obligations of the Parties with respect to curtailments of Net Output are as follows:

4.4.1. Curtailement During Negative RTLMP Period. During a Negative RTLMP Period, Seller shall either: (i) curtail deliveries of Net Output during any Calculation Period occurring within the Negative RTLMP Period; or (ii) continue to deliver Net Output to the Point of Delivery. If Seller continues to deliver Net Output to Buyer during a Negative RTLMP Period, then notwithstanding Section 5.1, Seller shall indemnify and hold Buyer harmless from all costs and expenses of such RTLMP, and the purchase price Buyer shall pay for all such Net Output

shall be an amount equal to ([REDACTED]

[REDACTED] No later than the tenth (10th) Business Day of the month following any month in which Seller delivered Net Output during a Negative RTLMP Period, Seller shall deliver to Buyer an invoice showing the amounts calculated pursuant to this section, and a description, in reasonable detail, of the calculation of the amounts. Buyer shall offset an amount equal to any undisputed amounts set forth in the invoice received from Seller, against the amounts owed by Buyer to Seller in the next billable month, provided that if the amount of such credit is greater than the amount payable by Buyer for such month, the excess portion of such credit shall be applied by Buyer to reduce the amount payable by Buyer hereunder in subsequent month(s).

4.4.2. Economic Curtailment. Buyer shall offer the Buyer's Interest of the Net Output into the Transmission Provider's energy market as the Market Participant. If, for any hour, the Transmission Provider causes or requires the Facility to curtail its delivery of Output to the Point of Delivery in such hour due to Buyer's sales price offer curve or Buyer's minimum price offer for such Renewable Energy (unless the sales price offer curve or minimum price were dictated by the Transmission Provider (provided that customary price clearing or setting shall not be deemed to be dictated by the Transmission Provider)), or due to Buyer's failure to offer, then the amount of such curtailment shall be compensable curtailment energy pursuant to this Section 4.4.2. In the event of such curtailment, the Parties shall determine the quantity of Potential Energy that would have been produced by the Facility and available for delivery had its generation not been so curtailed. Buyer shall pay to Seller for such Curtailment Energy an amount equal to all amounts that Seller would have received from Buyer under this Agreement had such Curtailment Energy actually been delivered to the Point of Delivery. For purposes of determining Curtailment Energy, the amount of Potential Energy at any given time shall be calculated using the best-available data and methods to determine an accurate representation of the amount of Output Seller could have delivered to the Point of Delivery given the then current available capability of the Facility during a curtailment. Nothing in this Section 4.4.2 would require Buyer to submit a Day Ahead offer for any hour at a price less than zero.

4.5 Transfer of Title to RECs; Renewable Portfolio Standard Certifications.

4.5.1. Title to the RECs shall pass from Seller to Buyer immediately upon the generation of the Output at the Facility that gives rise to such RECs. The Parties shall execute all additional documents and instruments reasonably requested by Buyer in order to further document the transfer of the RECs to Buyer or its designees. Without limiting the generality of the foregoing, Seller shall, on or before the tenth (10th) day of each month, deliver to Buyer a REC Attestation and Bill of Sale in the form attached as **Exhibit 4.5** for all RECs delivered to Buyer hereunder in the preceding month, along with any attestation that is then-current with the Center for Resource Solution's Green-e program and the Ohio SREC, and any successor programs. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of GIS relating to the Facility or RECs. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of GIS, except as described in Section 4.5.2 below. Seller, at its sole expense, shall use GIS as required pursuant to the GIS Operating Procedures to effectuate the transfer of GIS Certificates to Buyer, and shall transfer such GIS Certificates to Buyer in accordance with GIS reporting protocols and GIS Operating Procedures. Buyer shall be entitled to a refund of the REC Price Component for RECs associated

with any Net Output for which Certificates are not delivered, and Buyer shall transfer the affected corresponding RECs back to Seller.

4.5.2. Seller shall promptly provide Buyer copies of all documentation it submits to GIS. Further, in any program involving Environmental Attributes administered by CAMD or other Governmental Authority, upon notification by CAMD or other Governmental Authority that any transfers contemplated by this Agreement will not be recorded, Seller shall promptly take all reasonable actions necessary so that such transfers can be recorded. Seller shall not claim in any public communication nor report under any applicable program that any of the RECs purchased by Buyer hereunder belong to any person other than Buyer. Without limiting the generality of Buyer's ownership of the RECs, Buyer may report under such program that such Environmental Attributes purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD or other Governmental Authority to effectuate any transfers. Seller shall cause the Facility (i) to maintain its registration in good standing with the Center for Resource Solution's Green-e program and as an eligible renewable resource in the renewable portfolio standard or equivalent programs of the federal government and the states set forth in Section 3.2.9 throughout the Term and (ii) to qualify and register and maintain such qualification/registration with any equivalent programs created by any future legislation. Seller shall also cooperate in any registration of the Facility in the renewable portfolio standard or other equivalent program in all such further states and programs in which Buyer may request Seller to register or maintain registered the Facility, to the extent that such registrations and other requirements do not impose a material economic or administrative burden on Seller.

4.6 Capacity Rights.

4.6.1. Purchase and Sale of Capacity Rights. For and in consideration of Buyer's agreement to purchase from Seller the Net Output and RECs on the terms and conditions set forth herein, Seller transfers to Buyer, and Buyer accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Rights existing during the Term. Buyer's purchase of Capacity Rights in no way represents any purchase of equity or ownership rights of any kind in Seller or the Facility.

4.6.2. Representation Regarding Ownership of Capacity Rights. Seller represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any person or entity, the Capacity Rights, if any. During the Term, Seller shall not report to any person or entity that the Capacity Rights, if any, belong to anyone other than Buyer. Buyer may at its own risk and expense report to any person or entity that the Capacity Rights exclusively belong to it.

4.6.3. Further Assurances. At Buyer's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights, if any, to Buyer.

4.6.4. Capacity Accreditation. Buyer has or may in the future have certain planning, operating and reporting requirements with MISO or other Electric System Authority. Without assuming responsibility therefor, Seller shall maintain capacity accreditation with MISO or other Electric System Authority as required pursuant to the Generation Interconnection

Agreement and shall otherwise reasonably cooperate with Buyer (at Buyer's expense for third party costs) to obtain such capacity accreditation in accordance with the rules of any other Electric System Authority. All required testing shall be conducted in accordance with the applicable MISO or Electric System Authority rules.

4.6.5. Capacity Charges. MISO Planning Resource Auction benefits associated with the Capacity Rights shall exclusively and solely accrue to and be owned by Buyer, and Buyer shall be responsible for all costs, charges, fees or penalties associated with Buyer's scheduling and bidding in connection with the Capacity Rights imposed by MISO. Seller shall be responsible for all reasonable costs associated with transferring the Capacity Rights to Buyer. Seller shall reasonably cooperate with Buyer to obtain Buyer's benefits, including Buyer's scheduling and bidding of the Facility into each annual MISO Planning Resource Auction or incremental auctions for the Term. The Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights, if any, to Buyer. Buyer shall have the exclusive right to commit the Facility to the MISO Planning Resource Auction market or successor auctions, in a manner consistent with MISO Rules.

4.7 Ancillary Services. As System Operator allows or may allow in the future intermittent resources to bid into Ancillary Services markets operated by the System Operator, Seller shall install such meters and power electronics, and conduct all Facility testing in accordance with the applicable MISO and Electric System Authority rules so that Ancillary Services may be provided; provided that notwithstanding anything herein to the contrary, Seller shall not be obligated to make any additional capital expenditures or install additional equipment or modify the Facility as it is contemplated as of the Effective Date.

SECTION 5 CONTRACT PRICE; COSTS

5.1 Contract Price; Includes Net Output, RECs, Ancillary Services and Capacity Rights. Buyer shall pay Seller the prices provided for in this Section 5.1 for all deliveries of Buyer's Interest received by Buyer. The Contract Price provided for in Section 5.1.2 and the price for Test Energy provided for in Section 5.1.1 include the consideration to be paid by Buyer to Seller for all Net Output, RECs, Ancillary Services and Capacity Rights, and Seller shall not be entitled to any compensation over and above the Contract Price or the Test Energy price, as the case may be, for the RECs, Ancillary Services or Capacity Rights associated therewith.

5.1.1. Test Energy. Between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver to the Point of Delivery all Test Energy. Buyer shall pay Seller (a) for all Test Energy delivered at the Point of Delivery up to the Maximum Delivery Rate an amount per MWh equal to [REDACTED] provided, however, that Seller's right to receive payment for such Test Energy is subject to Buyer's right of offset under Section 10.2 for, among other things, payment by Seller of any Delay Damages owed to Buyer by Seller pursuant to Section 2.3. Seller will make reasonable efforts to provide Buyer with a day-ahead hourly schedule of Test Energy generated. To the extent Seller delivers and Buyer accepts Test Energy in excess of the Maximum Delivery Rate, the Contract Price per MWh shall be \$0.

5.1.2. Commercial Operation. For the period beginning on the Commercial Operation Date and thereafter during the Term, Seller shall sell and deliver to the Point of Delivery all Net Output. Buyer shall pay to Seller the Contract Price per MWh, as specified in **Exhibit 5.1**, for Net Output delivered to the Point of Delivery up to the Maximum Delivery Rate. To the extent Seller delivers and Buyer accepts Net Output in excess of the Maximum Delivery Rate, the Contract Price per MWh shall be \$0.

5.2 Costs and Charges; Network Upgrades.

5.2.1. Except as described herein, Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Output up to and at the Point of Delivery, including transmission costs, Transmission Service, transmission line losses and any operation and maintenance charges imposed pursuant to the Generation Interconnection Agreement. Buyer shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Output at and from the Point of Delivery, including transmission costs and transmission line losses and imbalance charges or penalties.

5.2.2. This PPA may be terminated by Buyer prior to Commercial Operation of the Facility, upon written notice to Seller of such termination, if the Network Upgrade Costs required to interconnect the Facility to the System, as described and reflected in any of the DPP Phase II, in the Final System Impact Study, or in the final form of Generation Interconnection Agreement (or, in each case, in documentation provided in connection therewith with respect to costs for upgrades to any Affected System (as defined in the Generation Interconnection Agreement)) when received by Seller or its Affiliate, exceed an amount equal to the greater of (i) \$10,000,000 in the aggregate or (ii) if applicable, \$10,000,000 in the aggregate plus the excess amount of Network Upgrade Costs Seller or Buyer agreed to bear in any prior notice delivered by Seller to Buyer, or Buyer to Seller, pursuant to this Section 5.2. Any notice of termination by Buyer under this Section 5.2.2 shall be given, if at all, on or before the date five (5) Business Days after Buyer's receipt from Seller of the **DPP Phase II, Final Facilities Study, or Generation Interconnection Agreement** (as applicable).

(a) Seller shall promptly, and in no event more than three (3) Business Days following Seller's receipt thereof, provide Buyer with written notice of the receipt of each of, and a copy of each of, the DPP Phase II, the Final System Impact Study, and the final form of Generation Interconnection Agreement.

(b) If Buyer timely gives a termination notice under Section 5.2.2 above, or in the event Buyer fails to provide a termination notice within the five (5) Business Day period described in Section 5.2.2 above (which failure shall be deemed to be equivalent to a notice of termination from Buyer), Seller shall have the right, but not the obligation:

(i) to notify Buyer in writing on or before the date that is five (5) Business Days following Seller's receipt of Buyer's termination notice that Seller agrees to bear and pay for that excess portion of the Network Upgrade Costs which triggered Buyer's termination right under this Section 5.2, and if Seller gives such notice, the applicable termination notice from Buyer shall be deemed withdrawn, Buyer's right to

effect such applicable termination shall be deemed irrevocably waived, and this PPA shall not terminate in respect of such termination notice.

(ii) In the event Seller does not provide such notice, then (A) this PPA shall terminate effective as of the expiration of such five (5) Business Day period and neither Party shall have any further liability or obligation hereunder (except for liabilities and obligations that, by their terms, survive any such termination), (B) Buyer shall return the Credit Support to Seller no later than five (5) Business Days following such termination, and (C) Seller shall return to Buyer any amounts previously paid by Buyer associated with Network Upgrade Costs pursuant to this PPA.

(c) In the event Buyer does not provide a termination notice pursuant to Section 5.2.2 above and instead provides Seller with written notice during such five (5) Business Day period set forth in Section 5.2.2 above that Buyer shall be responsible for and shall pay such potential excess Network Upgrade Costs that gave rise to such termination right, then the termination rights set forth in this Section 5.2 shall be of no further force or effect and this PPA shall continue in full force and effect thereafter.

(d) Notwithstanding anything to the contrary herein, the Parties agree that, with respect to final Network Upgrade Costs up to and including \$10,000,000, each of Buyer and Seller shall be responsible for fifty percent (50%) of such final Network Upgrade Costs for the Facility (i.e. each Party would be responsible for 50% of such final Network Upgrade Costs, up to a maximum of \$5,000,000).

(e) Provided this PPA has not been earlier terminated, Seller shall pay for the Network Upgrade Costs pursuant to the terms and conditions of the Generation Interconnection Agreement and Buyer agrees to reimburse Seller for its applicable portion and amount of Network Upgrade Costs Buyer has agreed to bear and pay for pursuant to this Section 5.2 no later than ten (10) Business Days following receipt of notice and reasonable evidence from Seller of Seller's payment thereof and receipt by Buyer of Seller's invoice for the applicable costs. The Parties acknowledge and agree that (i) Seller will be responsible for providing security required under Attachment X of the Tariff to proceed with the Facility's interconnection process thereunder, (ii) that such security may be used by the Transmission Provider to pay for such final Network Upgrade Costs, and (iii) the use by Transmission Provider of such security to pay for such final Network Upgrade Costs shall not affect Buyer's obligation to reimburse Seller for its applicable portion and amount of Network Upgrade Costs Buyer has agreed to bear and pay for pursuant to this Section 5.2.

5.3 Station Service.

5.3.1. The Parties recognize that this Agreement does not provide for the supply of any electric service by Buyer to Seller or to the Facility and Seller must enter into separate arrangements for the supply of electric services to the Facility. Seller acknowledges that it shall have no claims against Buyer under this Agreement with respect to the provision of station service.

5.3.2. 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 Agreement are not binding upon the supplier of such electric services.

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

5.3.4. Seller expressly recognizes that, for purposes of this Agreement, 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 Buyer or an Affiliate of Buyer.

5.4 Taxes. Seller shall pay or cause to be paid when due, or reimburse Buyer for, all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority up to and including the Point of Delivery, on the generation of Net Output, Capacity Rights, Ancillary Services or RECs or on the sale of Net Output, Capacity Rights, or RECs from Seller to Buyer hereunder, regardless of whether such taxes are imposed on Buyer or Seller under Requirements of Law. Buyer shall pay or cause to be paid when due, or reimburse Seller for, all such taxes levied at or beyond the Point of Delivery upon a purchaser (other than Buyer) of Net Output, Capacity Rights, Ancillary Services or RECs, regardless of whether such taxes are imposed on Buyer or Seller under Requirements of Law. If taxes are imposed or levied by a Governmental Authority on a Party in error or incorrectly, or on the wrong Party, the Parties shall work in good faith to cause such Governmental Authority to correct such error and levy or impose such taxes correctly. The Contract Price shall not be adjusted on the basis of any action of any Governmental Authority with respect to changes to or revocations of sales and use tax benefits, rebates, exception or give back.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof, and except as expressly described in Section 5.2, Seller shall be solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future Requirements of Law and the terms and conditions hereof, and (b) except as described in Section 5.4 above, all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or environmental impacts.

5.6 Rates Not Subject to Review. The rates for service specified herein shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the Parties. Neither Party shall petition FERC pursuant to the provisions of sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 *et seq.*) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the "public interest" application of the "just and reasonable"

standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Fed. Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish*, 554 U.S. 527, 128 S. Ct. 2733 (2008) and *NRG Power Mktg., LLC v. Maine Pub. Util. Comm'n*, 130 S. Ct. 503 (2010).

5.7 MISO Membership. Nothing in this Agreement shall be interpreted to require Buyer to remain a transmission owning member of MISO. If Buyer ceases to be a transmission owning member of MISO, or if Buyer otherwise desires for the Facility to be a generation resource in a regional transmission organization other than MISO, the Parties will use good-faith efforts to amend this Agreement to preserve, to the extent reasonably practicable, the economic benefits of the Agreement for both Parties

SECTION 6 OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide Buyer the As-Built Supplement. The As-Built Supplement shall be deemed effective and shall be added to **Exhibit 6.1** when it has been reviewed and approved by Buyer, acting reasonably. If the proposed As-Built Supplement does not, in any material respect, accurately describe the Facility as actually built or is otherwise defective as to form in any material respect, Buyer may, within fifteen (15) days after receiving the proposed As-Built Supplement, give Seller a notice describing what Buyer reasonably believes is inaccurate. If Buyer does not give Seller such a notice within the fifteen (15) day period, the As-Built Supplement shall be deemed approved. If Buyer provides a timely notice regarding inaccuracies, Seller shall in good faith cooperate with Buyer to revise the As-Built Supplement to address Buyer's concerns. Notwithstanding the foregoing, Buyer shall have no right to require Seller to relocate, modify or otherwise change in any respect any aspect of the Facility as actually built. Nothing in this Section 6.1, nor Buyer's approval of the As-Built Supplement, shall require Buyer to purchase, or pay more than \$0 per MWh for, any Net Output, or for Ancillary Services, Capacity Rights, or RECs associated with any Net Output, above the Maximum Delivery Rate.

6.2 Standard of Facility Operation.

6.2.1. General. Seller will act as the Generator Operator of the facility within MISO. At Seller's sole cost and expense (except as described in Section 5.2), Seller shall build, operate, maintain and repair the Facility and the Interconnection Facilities in accordance with (i) the applicable and mandatory standards, criteria and formal guidelines of FERC, any System Operator, and any other Electric System Authority and any successors to the functions thereof; (ii) the Permits and Required Facility Documents; (iii) the Generation Interconnection Agreement; (iv) all Requirements of Law; (v) the requirements hereof; and (vi) Prudent Electrical Practice. Seller acknowledges that it shall have no claims hereunder against Buyer with respect to any requirements imposed by or damages caused by (or allegedly caused by) the Interconnection Provider, the Transmission Provider, any provider of transmission services to the Point of Delivery, or any third party transmission system. Station service shall be the responsibility of Seller. Seller acknowledges that it shall have no claims against Buyer under this Agreement with respect to the provision of station service.

6.2.2. Qualified Operator. From and after the Commercial Operation Date, Seller shall itself operate the Facility or cause the Facility to be operated by an entity that has at least two years of experience in operation of solar energy facilities of comparable size to the Facility and approved by Buyer.

6.2.3. Fines and Penalties.

(a) Seller shall pay when due and assessed all fines, penalties, or legal costs incurred by Seller or for which Seller is legally responsible for noncompliance by Seller, its agents, employees, contractors or subcontractors, with respect to any provision hereof, any agreement, commitment, obligation or liability incurred in connection with this Agreement or the Facility or any Requirements of Law, except where such fines, penalties or legal costs are being contested in good faith by Seller, its agents or contractors through appropriate proceedings and Seller has (i) set aside and funded adequate reserves to cover such fines, penalties or legal costs in the event of an adverse determination, or (ii) posted security to Buyer or Seller's Senior Lenders adequate to ensure Seller's ability to cover such fines, penalties or legal costs in the event of an adverse determination.

(b) If fines, penalties, or legal costs are assessed against or incurred by Buyer on account of any action by any Governmental Authority due to noncompliance by Seller with any Requirements of Law or the provisions hereof, or if the performance of Seller is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any Requirements of Law, Seller shall indemnify and hold harmless Buyer against any and all losses, liabilities, damages, and claims suffered or incurred by Buyer as a result. Without limiting the generality of the foregoing, Seller shall reimburse Buyer for all fees, damages, or penalties, including Buyer's reasonable legal costs and attorney's fees, imposed on Buyer by any Governmental Authority or other person or to other utilities for violations of any Requirements of Law or to the extent caused by a default by Seller or a failure of performance by Seller hereunder.

6.3 Interconnection. Except as set forth in Section 5.2.2, Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at its Nameplate Capacity Rating at the Point of Delivery including the costs of any third party transmission system upgrades, or System or Buyer System upgrades beyond the Point of Delivery necessary to interconnect the Facility with the System and to allow the delivery of all Net Output and Ancillary Services to the Point of Delivery. Except as set forth in Section 5.2.2, Seller shall have no claims against Buyer under this Agreement with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Provider or Interconnection Provider, in connection with the Generation Interconnection Agreement or otherwise. Seller shall be solely responsible for, and shall defend, indemnify and hold Buyer harmless against, any Liabilities arising out of Seller's performance or failure to perform under the Generation Interconnection Agreement. Seller's failure to obtain, or perform under, or breach of, the Generation Interconnection Agreement, or its other contracts and obligations to, Transmission Provider or Interconnection Provider is not, by itself, an event of Force Majeure.

6.4 Coordination with System Operator. Seller shall be responsible for the coordination and synchronization of the Facility and the Interconnection Facilities with the System and Buyer's System. In the event there are unanticipated changes in FERC or Electric System

Authority rules sufficiently significant to change the benefits, risks and burdens held by the Parties, the Parties shall meet in good faith to adjust the terms of this Agreement to provide for the Parties the originally intended allocation of benefits, risks and burdens.

6.5 Outages.

Seller shall be responsible to enter all outages (Planned, Maintenance and Forced) into the MISO Control Room Operations Window Outage Scheduler (CROW).

6.5.1. Planned Outages. Except as otherwise provided herein, Seller shall not schedule a Planned Outage during day light hours (sunrise to sunset) of any portion of the months of November, December, January, February, June, July, and August, except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement in a situation in which the vendor is not otherwise able to perform the guarantee work at a time other than during one of the months specified above or is otherwise consistent with Prudent Electrical Practices. Commencing with the second Contract Year, Seller shall provide Buyer with an annual forecast of Planned Outages for each Contract Year at least one (1) month, but no more than three (3) months, before the first day of that Contract Year, and shall promptly update such schedule, and otherwise change it only, to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule any maintenance of Interconnection Facilities during such months without the prior written approval of Buyer.

6.5.2. Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Buyer of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins (or such shorter period in light of then-existing solar exposure conditions or if required pursuant to Prudent Electrical Practices). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Buyer; *provided, however*, that Seller shall take all reasonable measures and use commercially reasonable efforts consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during any portion of the months of November, December, January, February, June, July, and August. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the anticipated amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give Buyer notice of the Maintenance Outage as soon as practicable after Seller determines that the Maintenance Outage is necessary. Buyer shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no impact on Seller or the Facility. Seller shall notify Buyer of any subsequent changes in generation capacity available to Buyer as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures and exercise its reasonable efforts consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.5.3. Forced Outages. If Buyer is not notified automatically via the electronic communications systems described in Section 6.9, Seller shall promptly provide to Buyer a written

report of any Forced Outage of the Facility. This report shall include the amount of the generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. Seller shall promptly update the report as necessary to advise Buyer of changed circumstances. As soon as practicable, if the Forced Outage resulted in more than fifteen percent (15%) of the Nameplate Capacity Rating of the Facility being unavailable, the oral report shall be confirmed in writing by notice to Buyer. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.5.4. Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform Buyer, automatically via the electronic communications systems described in Section 6.9, via telephone to a number specified by Buyer or via email to an email specified by Buyer, of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than ten percent (10%) of the Nameplate Capacity Rating of the Facility.

6.5.5. Effect of Outages on Estimated Output. Seller represents and warrants that the estimated monthly Net Output set forth on **Exhibit A** takes into account the Planned Outages, Maintenance Outages, and Forced Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility, and that such outages are not expected to substantially reduce the Facility's average estimated monthly output as set forth in **Exhibit A**.

6.6 Scheduling.

6.6.1. Market Participant. Buyer shall act as the Market Participant and act as the Asset owner for the Facility and for the daily generation offers of the Facility into MISO markets, and shall have all applicable rights and obligations under the Tariff to offer the energy output of the Facility into the centralized markets operated by MISO, including, without limitation, the right to determine the offer price in its sole discretion.

6.6.2. Buyer shall make available to Seller, as requested, the hourly day-ahead award volumes of the Facility within three hours of those awards being posted by MISO the day prior to the operating day. Buyer shall receive all revenue associated with those sales into the day-ahead market.

6.6.3. Seller shall notify Buyer of the metered net generation from the Facility at the end of the following day. Buyer shall receive all real-time revenue associated with variances between the day-ahead award and net metered generation.

6.6.4. Actual metered net generation for any hour will serve as the basis for the calculation of the amount payable by Buyer to Seller for that hour.

6.6.5. Seller shall be responsible for payment of all uninstructed actual deviation or other deployment failure charges imposed under the MISO Tariff solely resulting from Seller's failure to operate the Facility in accordance with the scheduling of the Facility as directed by MISO; provided, that, for purposes of clarity, Seller shall not be responsible for (and Buyer shall be responsible for) any such charges that are related to or due to differences in expected

production as compared to actual production resulting from (i) lesser or greater solar irradiance, (ii) a Force Majeure event, and/or (iii) Planned Outages, Forced Outages and/or Maintenance Outages, except in the event of Seller's breach of this Agreement related to such Planned Outages, Forced Outages and/or Maintenance Outages.

6.6.6. Seller shall comply with all Electric System Authority and FERC market behavior rules and standards of conduct.

6.6.7. Transmission Services. Buyer shall be responsible for arranging and paying for all transmission services required to effectuate the taking of Net Output away from the Point of Delivery. Buyer may appoint any agent for purposes of scheduling delivery of Net Output and transmission away from the Point of Delivery.

6.6.8. Cooperation and Standards. With respect to any and all scheduling and outage requirements hereunder, (a) Seller shall cooperate with Buyer with respect to scheduling Net Output, and (b) each Party shall designate authorized representatives to communicate with regard to scheduling and related matters arising hereunder. Each Party shall comply with the applicable variable resource standards and criteria of any applicable Electric System Authority.

6.6.9. Breach of Generation Interconnection Agreement. If, for any reason, Buyer is deemed by a System Operator to be financially responsible for Seller's performance under the Generation Interconnection Agreement, then (a) Seller shall take all necessary steps such that Buyer is no longer responsible for Seller's performance under the Generation Interconnection Agreement, and (b) Seller shall defend, indemnify and hold Buyer harmless against any liability of Seller's under the Generation Interconnection Agreement or System Operator requirement.

6.7 Forecasting.

6.7.1. Long-Range Forecasts. For Buyer's planning purposes, Seller shall, by December 1 of each year during the Term (except for the last year of the Term), provide an annual update to the expected long-term monthly/diurnal mean net energy estimates (12 X 24 profile). Seller shall update the forecast for each month by notice to Buyer at least six Business Days before the first Business Day of such month.

6.7.2. Real-time Forecasts. Every hour, Seller shall deliver electronically to Buyer a rolling set of twelve 5-minute interval energy forecasts for the Facility in accordance with the MISO Rules. The submission of such forecasts shall be provided by a mutually agreeable method and in accordance with Prudent Electrical Practices. Seller may update such forecasts in accordance with MISO Rules. Seller shall provide real time meteorological data to MISO in accordance with MISO Rules.

6.7.3. Day-Ahead Forecasts and Updates. By such time as mutually agreed to by the Parties on the Business Day immediately preceding the day on which Net Output from the Facility is to be delivered, Seller shall provide Buyer with an hourly forecast of deliveries for each hour of the next one hundred sixty-eight (168) hours. Seller shall update a forecast any time information becomes available indicating a change in the forecast of generation of Net Output from the then-current forecast; provided however that Seller shall also provide to Buyer any forecasting updates it provides to the Transmission Provider as soon as they are provided to the

Transmission Provider. The Parties shall cooperate to implement and use automatic forecast updates. Seller shall communicate forecasts under this Section 6.7.3 in an efficient manner, including electronic mail or other such media as determined by Buyer (which, at Buyer's discretion, may be in lieu of or in addition to notice to Buyer). Buyer may, with the advance written consent of Seller and at Seller's expense, add forecasting services for Seller's Facility to Buyer's existing contract with a qualified solar-energy-production forecasting vendor, which contract and vendor may change during the term of this Agreement. Seller shall simultaneously provide to Buyer copies of any solar forecasts that Seller provides to the Transmission Provider or System Operator. Buyer may, at Seller's expense (provided that such expense shall not exceed \$15,000 annually), add forecasting services, including any real-time forecasting services and provision of real-time meteorological data required for compliance with applicable Electric System Authority procedures, protocol, rules and testing, for the Facility to a Buyer contract with a qualified solar-energy-production forecasting vendor, which contract and vendor may change during the term of this Agreement. The Parties agree that the forecasting obligations of Seller under this Section 6.7 may be met by a solar forecast service provider engaged by Buyer. Upon request by Buyer, Seller shall provide a 24 hour telephone number that Buyer may contact to determine the then-current status of the Facility. Buyer may at Buyer's cost and without the prior consent of Seller add the Facility to Buyer's qualified solar-energy-production forecasting vendor contract.

6.7.4. Basis of Forecasts. The forecasts called for by this Agreement shall be non-binding, good faith estimates only (and, as a result, are subject to risks, uncertainties and other factors that may cause the actual results to differ from such forecasts), but must meet the standards of the Transmission Provider, and shall be substantially in the form of **Exhibit 6.7.3** attached hereto (as such form may be updated by Buyer from time to time upon notice to Seller). Seller shall prepare such forecasts and updates by utilizing a solar exposure model or service that is (a) commercially available or proprietary to Seller or an Affiliate of Seller, and (b) comparable in accuracy to models or services commonly used in the solar energy industry, so long as such model or service is available at a commercially reasonable cost and is satisfactory to Buyer in the exercise of its reasonable discretion. On or prior to May 1 during each calendar year in the Term, Seller shall determine in good faith which such model or service to utilize after consultation with Buyer. In the event such model or service is not available at a commercially reasonable cost, Seller shall internally develop a forecasting process and present such process to Buyer for acceptance, which shall not be unreasonably withheld.

6.8 Limitations on Increase in Nameplate Capacity Rating and Other Facilities. Seller shall not increase the ability of the Facility to deliver Net Output in quantities in excess of the Maximum Delivery Rate without Buyer's consent, which consent Buyer may withhold for any reason in its sole discretion. Seller shall not construct any generating facilities on the Premises except for the Facility.

6.9 Electronic Communications.

6.9.1. Meteorological Data. Seller will provide to Buyer copies of all meteorological data as and to the extent required to be submitted to the System Operator, promptly after such data is submitted to the System Operator.

6.9.2. Telemetry. Seller shall provide telemetering equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Generation Interconnection Agreement and to Buyer on a real-time basis, and will operate such equipment when requested by Buyer to indicate:

- (a) instantaneous MW output at the Point of Delivery;
- (b) Net Output; and
- (c) the Facility's total instantaneous generation capacity.

Seller shall also transmit to Buyer the data described in **Exhibit 6.9.2** from the Facility that Seller receives on a real time basis, provided that such data is not already accessible to Buyer without cost in its normal course of operations. Seller shall provide such real time data to Buyer on the same basis on which Seller receives the data (*e.g.*, if Seller receives the data in four second intervals, Buyer shall also receive the data in four second intervals). Buyer shall have the right from time to time to require Seller to provide additional telemetering equipment and facilities to the extent necessary and reasonable, all at Buyer's sole cost and expense.

6.9.3. Transmission Provider Consent. Seller shall execute a consent, in the form required by Transmission Provider, to provide that Buyer can read the meter and receive any and all data from the Transmission Provider relating to transmission of Net Output or other matters relating to the Facility without the need for further consent from Seller.

6.9.4. Dedicated Communication Circuit. If Seller does not use ICCP communication as described in Section 6.9.6, Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between Buyer and the control center in the Facility's control room or such other communication equipment as the Parties may agree.

6.9.5. SCADA. Seller shall be responsible for purchasing, installing, repairing, and maintaining any and all communications equipment at the Seller-designated location on the Site as may be necessary to support dispatch and SCADA real-time data electronic transfer. Seller shall use commercially reasonable efforts to automatically control the real power output of the Facility to attempt to achieve the dispatch level communicated to Seller by MISO for each 5-minute interval security constrained economic dispatch (SCED) desired MW basepoint received through the MISO SCADA system.

6.9.6. ICCP Communication. If during the Term Seller establishes ICCP communication, Seller will use commercially reasonable efforts to provide Buyer, at Buyer's expense, real time electronic meter data via ICCP over the internet for the net MW flow from the Facility, updated every minute.

6.10 Reports and Records.

6.10.1. Monthly Reports. Within thirty (30) days after the end of each Reporting Month, Seller shall provide to Buyer a report in electronic format, which report shall include (a) summaries of the Facility's solar insolation and actual and predicted output data for the Reporting Month in intervals not to exceed one day, including information from the Facility's

computer monitoring system; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; (c) any supporting information that Buyer may from time to time reasonably request (including historical solar exposure data for the Facility); and (d) details regarding the availability of the Facility.

6.10.2. Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term commencing on the Commercial Operation Date. Seller shall provide Buyer with a copy of the electronic fault log within thirty (30) days after the end of the calendar month to which the fault log applies.

6.10.3. Other Information to be Provided to Buyer. Seller shall provide to Buyer the following information concerning the Facility:

(a) Upon the reasonable request of Buyer, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;

(b) A report summarizing the results of maintenance performed during each Maintenance Outage, Planned Outage, and any Forced Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance;

(c) Before Commercial Operation, a monthly progress report stating the percentage completion of the Facility and a brief summary of construction activity during the prior month;

(d) Before Commercial Operation, a monthly report containing a brief summary of construction activity contemplated for the next month;

(e) at any time from the Effective Date, one year's advance notice of the termination or expiration of any land leases pursuant to which the Facility or any equipment relating thereto is upon the Premises; provided that the foregoing does not authorize any early termination of any land lease. In the event Seller has less than one year's advance notice of such termination or expiration, Seller shall provide the notice contemplated by this Section to Buyer within fifteen (15) Business Days of Seller obtaining knowledge of the termination or expiration; and

(f) Such other information respecting the condition or operations of Seller or the Facility as Buyer may, from time to time, reasonably request.

6.10.4. Information to Governmental Authorities. Seller shall, promptly upon written request from Buyer, provide Buyer with all data collected by Seller related to the Facility reasonably required by Buyer or an Affiliate thereof for reports to, and information requests from, any Governmental Authority or Electric System Authority. Along with this information, Seller shall provide to Buyer copies of all submittals to Governmental Authorities or Electric System Authorities directed by Buyer and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller shall use reasonable efforts to provide this information to Buyer with sufficient advance notice to enable Buyer to review such information and meet any submission deadlines imposed by the requesting organization or entity.

6.10.5. Data Request. Seller shall, promptly upon written request from Buyer, provide Buyer with data reasonably required for information requests from any Governmental Authorities, state or federal agency intervener or any other party achieving intervenor status in any Buyer proceeding or other proceeding before any Governmental Authority. Seller shall use reasonable efforts to provide this information to Buyer sufficiently in advance to enable Buyer to review it and meet any submission deadlines.

6.10.6. Documents to Governmental Authorities. After sending or filing any material statement, application, and report or any document with any Governmental Authority or Electric System Authority relating to operation and maintenance of the Facility, Seller shall provide to Buyer a copy of the same.

6.10.7. Environmental Information. Seller shall, promptly upon written request from Buyer, provide Buyer with all data reasonably requested by Buyer relating to environmental information under the Required Facility Documents. Seller shall further provide Buyer with all material environmental impact mitigation measures it is taking in connection with the Facility's construction or operation, as well as copies of all agreements between Seller and federal, state or local environmental agencies. Seller shall disclose to Buyer, as soon as it is known to Seller, any material violation of any environmental laws or regulations arising out of the construction or operation of the Facility, and to the extent thereof, the presence of Environmental Contamination at the Facility or on the Premises, alleged to exist by any Governmental Authority having jurisdiction over the Premises, or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to any actual or alleged violation or presence of Environmental Contamination.

6.10.8. Operational Reports. Seller shall provide Buyer monthly operational reports in a form similar to the operational report form attached hereto as **Exhibit 6.10.8** and Seller shall, promptly upon written request from Buyer, provide Buyer with all operational data reasonably requested by Buyer with respect to the performance of the Facility and delivery of Buyer's Interest therefrom.

6.10.9. Notice of Material Adverse Events. Seller shall promptly notify Buyer of receipt of written notice or actual knowledge by Seller or its Affiliates of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided herein.

6.10.10. Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding before any court or Governmental Authority which would, if adversely determined, materially and adversely affect Seller, the Premises or the Facility, Seller shall promptly give notice to Buyer of the same. In addition, following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding against Seller before any court or Governmental Authority, Seller shall promptly give notice to Buyer of the same.

6.10.11. Additional Information. Seller shall provide to Buyer such other information respecting the condition or operations of Seller or the Facility as Buyer may, from time to time, reasonably request.

6.10.12. Job Tracking. Seller shall provide to Buyer data on how many jobs have been, or are being, created by the construction or operation of the Facility, the nature of such jobs, and the types of skill sets needed to fill such jobs; *provided, however*, that Seller shall not be obligated to provide such information to Buyer more than once per calendar year.

6.10.13. Confidential Treatment. The monthly reports and other information provided to Buyer under this Section 6.10 shall be treated as Confidential Business Information, subject to Buyer's rights to disclose such information pursuant to Sections 6.10.4, 6.10.5, 9.5, 23.3 and pursuant to any applicable Requirements of Law. Seller shall have the right to seek confidential treatment of any such information from the Governmental Authority entitled to receive such information.

6.11 Financial and Accounting Information. If Buyer or one of its Affiliates determines that, under FIN 46R, it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide sufficient financial and ownership information so that Buyer or its Affiliate may confirm whether a variable interest does exist under FIN 46R. If Buyer or its Affiliate determines that, under FIN 46R, it holds a variable interest in Seller, Seller hereby agrees to provide sufficient financial and other information to Buyer or its Affiliate so that Buyer may properly consolidate the entity in which it holds the variable interest or present the disclosures required by FIN 46R. Buyer shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with Buyer's requests for information under this Section 6.11.

6.12 Output Guaranty.

6.12.1. Output Guarantee. Beginning in the third Contract Year, Seller is obligated to deliver an average annual quantity of Net Output during each [REDACTED] Contract Year period which is equal to the Output Guarantee. For purposes of this Agreement, "**Output Guarantee**" for any [REDACTED] Contract Year period means (i) [REDACTED] of the average of the Expected Energy of the Facility for such [REDACTED] Contract Year period, less (ii) the average annual quantities of Output that were not delivered to the Point of Delivery (or accepted by Buyer) in such [REDACTED] Contract Year period during periods constituting Seller Uncontrollable Minutes (such quantity calculated on the basis of the Net Output capable of being delivered in an hour at an average rate equivalent to the annual estimated output from Exhibit A divided by 8760).

6.12.2. Liquidated Damages for Output Shortfall.

(a) If the annual average of the quantity of Net Output delivered by Seller to the Point of Delivery during any such two Contract Year period is equal to or greater than the Output Guarantee for such [REDACTED] Contract Year period, Seller's delivery obligation for Net Output for such [REDACTED] Contract Year period shall be deemed satisfied for such two Contract Year period.

(b) If the annual average of the quantity of Net Output delivered by Seller to the Point of Delivery during any [REDACTED] Contract Year period is less than the Output Guarantee for such [REDACTED] Contract Year period, Seller shall pay Buyer liquidated damages, if any, for the Output Shortfall. The “**Output Shortfall**” shall be expressed in MWh and calculated in accordance with the following formula:

$$\text{Output Shortfall} = \text{[REDACTED]}$$

less

Any quantities of Output that were not delivered to the Point of Delivery (or accepted by Buyer) in such [REDACTED] Contract Year period during periods constituting Seller Uncontrollable Minutes (such quantity calculated on the basis of the Net Output capable of being delivered in an hour at an average rate equivalent to the annual estimated output from **Exhibit A** divided by 8760),

less

The annual average Net Output for the [REDACTED] Contract Year period.

(c) If the product of the Output Shortfall calculation set forth in Section 6.12.2(b) is a positive number (**Exhibit 6.12**), Seller shall pay Buyer liquidated damages equal to [REDACTED]. If the product of the Output Shortfall calculation set forth in Section 6.12.2(b) is a negative number, Seller shall not be obligated to pay Buyer liquidated damages for such [REDACTED] Contract Year period.

(d) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to the Facility's failure to achieve the Output Guarantee would be difficult or impossible to predict with certainty and (ii) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages.

6.12.3. Annual Invoicing. On January 31 of each Contract Year, Buyer shall deliver to Seller an invoice showing Buyer’s computation of Net Output and Output Shortfall, if any, for the prior Contract Year and any amount due Buyer for liquidated damages pursuant to Section 6.12.2. In preparing such invoice, Buyer shall utilize the meter data provided to Buyer for the Contract Year in question, but may also rely on historical averages and such other information as may be available to Buyer at the time of invoice preparation, if the meter data for such Contract Year is then incomplete or otherwise not available. To the extent required, Buyer shall true up any such invoice as promptly as practicable following its receipt of actual results for the relevant Contract Year. Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice, and shall within thirty (30) days after receiving the invoice raise any objections regarding any disputed portion of the invoice. All disputes regarding such invoices shall be subject to Section 10.4. Objections not made by Seller within the thirty (30) day period shall be deemed waived.

6.13 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller shall provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, (c) in connection with the operation and maintenance of the Interconnection Facilities, (d) to provide tours of the Facility to customers and other guests of Buyer (not more than 12 times per year), (e) for purposes of implementing Sections 2.6 or 10.6, and (f) for other reasonable purposes at the reasonable request of Buyer. Buyer shall release Seller against and from any and all Liabilities resulting from actions or omissions by the Buyer Indemnitees in connection with their access to the Premises, except to the extent that such damages are caused or exacerbated by the intentional or negligent act or omission of any Seller Indemnitee.

6.14 Facility Images. Buyer shall be free to use any and all images from or of the Facility for promotional purposes. Upon Buyer's request and at Buyer's expense, Seller shall install imaging equipment at the Facility as Buyer may reasonably request, including video and or web-based imaging equipment subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety. Seller may only use images of the Facility for promotional purposes if such use conspicuously (a) complies with all best practices of the Center for Resource Solutions and requirements of its green-e energy program, (b) complies with Sections 3.2.9 and 4.5 hereof, and (c) states that Buyer is the purchaser of all Net Output and RECs.

SECTION 7 QUALIFYING FACILITY OR EXEMPT WHOLESALE GENERATOR STATUS

7.1 Seller's Election. Seller covenants that, during the Term and before delivering Net Output and associated RECs to Buyer hereunder, Seller shall, to the extent required to prevent Seller from being subject to, or not exempt from, regulation as an "electric utility" or "holding company" pursuant to PUHCA or otherwise (except to the extent that QFs and EWGs are subject to regulation pursuant to PUHCA), either (a) cause the Facility to be a QF, or (b) cause Seller to be an EWG.

7.2 QF Facility. If the Facility is a QF, Seller shall provide Buyer with copies of the appropriate certification (which may include a FERC self-certification) within ten (10) days of filing or receiving the certification. At any time during the Term, for cause, Buyer may require Seller to provide Buyer with a written legal opinion from an attorney in good standing with recognized expertise in FERC matters and who has no economic relationship, association or nexus with Seller or the Facility (other than an attorney-client relationship), stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data that Buyer may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF. During the Term, Seller shall, to the extent required to prevent Seller from being subject to, or not exempt from, regulation as an "electric utility" or "holding company" pursuant to PUHCA or otherwise, maintain its QF status, and shall not seek to change the Contract Price as a result of its status as a QF.

7.3 EWG. If Seller is an EWG, Seller shall provide Buyer with copies of Seller's applications to FERC for EWG status and for authority to sell Net Output hereunder before

Commercial Operation and within ten (10) days after filing such applications. During the Term, Seller shall maintain its EWG status (to the extent it is required by law to do so) and its authority to sell power hereunder.

SECTION 8 SECURITY AND CREDIT SUPPORT

8.1 Seller Credit Support. Seller shall provide Credit Support for its obligations under this Agreement as described in this Section 8 in the amount of (i) for the period commencing ninety (90) days following the Effective Date and ending on the Commercial Operation Date, the product of [REDACTED] per MW and the Expected Nameplate Capacity Rating and (ii) for the period commencing on the day immediately following the Commercial Operation Date and ending on the earlier of the expiration of the Term or the earlier termination of this Agreement in accordance with its terms, the product of [REDACTED] per MW and the Nameplate Capacity Rating.

8.2 Form of Credit Support. The Credit Support may be, at the option of Seller, in any of the following forms (or a combination thereof):

8.2.1. The Credit Support may be in the form of an irrevocable standby letter of credit in a form reasonably acceptable to Buyer, naming Buyer as the party entitled to demand payment and present draw requests thereunder that is issued by a U.S. commercial bank or a foreign bank with a U.S. branch having total assets of at least \$10 billion and a senior unsecured long term credit rating (unenhanced by third party support) equivalent to “A-” or better as determined by Standard & Poor’s or Fitch, and “A3” or better as determined by Moody’s.

8.2.2. The Credit Support may be in the form of U.S. currency deposited into an escrow account with a state- or federally-chartered commercial bank with net assets of at least \$1 billion. Such escrow account shall be governed by an escrow agreement in form mutually satisfactory to Seller, Buyer and the escrow agent, provided that (i) Buyer shall hold a first and exclusive perfected security interest in the funds in such escrow account, (ii) Buyer shall be permitted unilaterally to draw down any amount therein as described in this Section 8, regardless of any protest by Seller or any other party liable thereon (provided that nothing in the escrow agreement shall preclude any protest against Buyer by Seller, following any draw, that such draw did not comply with this Agreement), and (iii) Seller shall pay all fees and expenses of the escrow agent. All investment income on such escrow account shall be taxable to, and accrue for the benefit of, Seller. After the Commercial Operation Date, periodic sweeps by Seller for recovery of interest earned by the escrowed funds shall be allowed, and, at any time the balance in such escrow account exceeds the required amount of security, the escrow agent may remit any excess to Seller.

8.2.3. The Credit Support may consist of a guaranty in a form reasonably acceptable to Buyer, from a parent or other guarantor with an Investment Grade Credit Rating. If the Credit Rating of the such guarantor is (i) downgraded below Investment Grade, (ii) put on credit watch, or (iii) downgraded two levels in a 12 month period, then Buyer may require Seller to convert the guaranty to a Credit Support instrument meeting the criteria set forth in either subsection 8.2.1 or 8.2.2 above no later than ten (10) Business Days after notice from Buyer.

Seller may change the form of the Credit Support at any time and from time to time upon reasonable prior notice to Buyer, provided, however, that the Credit Support must at all times satisfy the requirements of this Section 8. Seller shall not be required to replenish the Credit Support following a draw thereon by Buyer.

8.3 Security is Not a Limit on Seller's Liability. The security contemplated by this Section 8: (a) constitutes security for, but is not a limitation of, Seller's obligations hereunder, and (b) shall not be Buyer's exclusive remedy for Seller's failure to perform in accordance with this Agreement; provided, however, that this Section 8.3 shall not limit or affect the Damage Caps described in Section 11.10.

8.4 Senior Lender Protective Provisions. Buyer agrees to enter into a consent to collateral assignment in substantially the form of the Lender Consent attached hereto as **Exhibit 8.4** for the benefit of the Senior Lenders, and to reasonably cooperate with the reasonable requests of such Senior Lenders in conjunction with any financing of the Facility; *provided, however,* that except as provided in the form of the Lender Consent, in no event shall Buyer be required to agree to any modification hereof; and provided further, however, that if and to the extent any Lenders request (a) changes to the form of the Lender Consent (or otherwise attempt to negotiate the form of consent), (b) any additional documents or assurances, or (c) any legal opinion from Buyer with regard hereto, then Seller shall reimburse Buyer for its reasonable out-of-pocket costs in making any such changes or providing any such additional documents or legal opinion, with such costs to be paid to Buyer at the closing of the financing as a condition to the effectiveness of Buyer's consents, documents and opinions. Seller will within five (5) Business Days of written demand reimburse Buyer all of Buyer's costs and expenses, including reasonable legal fees and costs of due diligence, incurred in connection with any action or exercise of rights or remedies by any of Senior Lenders against Seller, including any proceeding or foreclosure against Seller or this Agreement.

SECTION 9 METERING

9.1 Installation of Metering Equipment. Metering equipment shall be designed, furnished, installed, owned, inspected, tested, maintained and replaced as provided in the Generation Interconnection Agreement; *provided, however,* that Buyer shall be under no obligation, pursuant hereto, to bear any expense relating to such metering equipment.

9.2 Metering. Metering shall be performed at the location and in the manner specified in **Exhibit 9.2**, the Generation Interconnection Agreement and as necessary to perform Section 4.5 and Seller's other obligations hereunder. All quantities of Net Output purchased hereunder shall reflect the net amount of energy flowing into Buyer's System at the Point of Delivery.

9.3 Inspection, Testing, Repair and Replacement of Meters.

9.3.1. Meter Errors. Buyer may periodically inspect test, repair and replace the metering equipment provided for in the Generation Interconnection Agreement without Buyer assuming any obligations thereunder. If any of the inspections or tests disclose an error exceeding one-half of one percent (0.5%), either fast or slow, proper correction, based upon the inaccuracy

found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and Buyer arising out of such inaccuracy of metering equipment. Nothing in this Agreement shall give rise to Buyer having any obligations to Seller, or any other person or entity, pursuant to or under the Generation Interconnection Agreement.

9.3.2. Back-Up Meters. Seller shall own and maintain back-up metering equipment located at the Facility. Upon Buyer's reasonable request, Seller shall inspect and test the back-up meter(s). Buyer may have a representative present during any metering inspection or test.

9.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller shall bear all costs (including Buyer's costs) relating to all metering equipment installed to accommodate Seller's Facility.

9.5 Meter Data. Throughout the Term, Seller or a designated representative of Seller shall maintain, at Seller's sole cost and expense, its status at MISO as a Meter Data Management Agent. Upon written request by Buyer, Seller shall promptly request the Interconnection Provider or Transmission Provider in writing to provide any and all meter or other data associated with the Facility or Net Output directly to Buyer. Notwithstanding any other provision hereof, Buyer shall have the right to provide such data to any Electric System Authority.

9.6 GIS Metering. Buyer shall have the right upon notice to Seller to perform the Qualified Reporting Entity (as defined by the GIS) functions for the Facility to implement all necessary generation information communications in the GIS and report generation information to the GIS pursuant to a GIS-approved meter that is dedicated to the Facility and only the Facility.

SECTION 10 BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 Monthly Invoices. On or before the tenth (10th) Business Day following the end of each calendar month, Seller shall deliver to Buyer a proper invoice showing Seller's computation of Net Output delivered to Buyer during such month. When calculating the invoice, Seller shall provide computations showing the hourly Net Output that was delivered. Except as provided in Sections 10.2 and 10.4, if such invoice is delivered by Seller to Buyer, then Buyer shall send payment to Seller, on or before the later of the twentieth (20th) day following receipt of such invoice or the thirtieth (30th) day following the end of each month.

10.2 Offsets. Buyer may offset any payment due to Seller hereunder against amounts owing to Seller from Buyer pursuant hereto. Buyer's exercise of recoupment and set off rights shall not limit the other remedies available to Buyer hereunder, under such other agreements, or otherwise.

10.3 Interest on Late Payments. Any amounts that are not paid when due hereunder shall bear interest at the Contract Interest Rate from the date due until paid.

10.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Except with respect to invoices provided under Section 6.12.2, any such notice shall be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due or required to be refunded to the other Party, or if the Parties resolve the payment dispute, the amount due or to be refunded shall be paid within five (5) Business Days after such determination or resolution, along with interest at the Contract Interest Rate from the date due until the date paid.

10.5 Records. Each Party shall keep and maintain all records as may be necessary or useful in performing or verifying the accuracy of all relevant data, estimates or statements of charges submitted hereunder until the later of (i) a period of at least twenty-four (24) months after the date an invoice was received by a Party, or (ii) if there is a dispute relating to an invoice, the date that is twenty-four (24) months after the date on which such dispute is resolved.

10.6 Audit Rights. Each Party, through its authorized representatives, shall have the right, at its sole expense upon reasonable notice and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. Upon request, each Party shall provide to the other Party statements evidencing the quantities of Net Output delivered at the Point of Delivery. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the foregoing, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

SECTION 11 DEFAULTS AND REMEDIES

11.1 Defaults. The following events are defaults (each a "default" before the passing of applicable notice and cure periods, and an "**Event of Default**" thereafter) hereunder:

11.1.1. Defaults by Either Party.

(a) A Party fails to make a payment when due hereunder if the failure is not cured within ten (10) days after the non-defaulting Party gives the defaulting Party a notice of the default.

(b) A Party (i) makes an assignment for the benefit of its creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors,

or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (iii) becomes insolvent; or (iv) is unable to pay its debts when due.

(c) A Party breaches a representation or warranty made by it herein if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default.

(d) A Party otherwise fails to perform any material obligation hereunder for which an exclusive remedy is not provided hereunder and which is not addressed in any other Event of Default described in this Section 11.1, if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default, unless a shorter period is provided for such failure hereunder; and provided that, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (ii) the default is capable of being cured within the additional sixty (60) day period, and (iii) the defaulting Party provides the non-defaulting Party a remediation plan, the non-defaulting party approves such remediation plan, and the defaulting Party promptly commences and diligently commences the cure and pursues the remediation plan within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure pursuant to the remediation plan.

11.1.2. Defaults by Seller.

(a) Seller fails to post, increase, maintain or replenish any security as required under this Agreement and such failure is not cured within five (5) Business Days following the date upon which such failure occurred in violation of this Agreement.

(b) Seller fails to cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date.

(c) Seller's Abandonment of the Facility.

(d) Seller sells Output, RECs, Ancillary Services or Capacity Rights from the Facility to a party other than Buyer in breach hereof, or Seller makes a public statement or otherwise takes an action that any Governmental Authority or the Center for Resource Solutions determine is a retirement, double counting, double sale, double use or double claim of RECs, if Seller does not permanently cease such sale and compensate Buyer for the damages arising from the breach within ten (10) Business Days after Buyer gives Seller a notice of default.

(e) The Output Shortfall exceeds [REDACTED] of the Expected Energy in averaged over any [REDACTED] consecutive Contract Years.

(f) Seller defaults under any material agreement with any third party relating to the ownership, interconnection, operation, transmission from, maintenance or repair of the Facility, and fails to cure such default within the time required under such agreement, after the expiration of applicable notice, cure and waiver periods, resulting in the termination of such material agreement without a replacement or substitute thereof which would allow Seller to continue performance under and in compliance with this Agreement.

(g) Buyer receives notice of foreclosure of the Facility or any part thereof by a Lender, mechanic or materialman, or any other holder, of an unpaid lien or other charge or encumbrance, if the same has not been stayed, paid, or bonded around within ten days.

11.2 Remedies for Failure to Deliver/Receive Prior to Termination.

11.2.1. Remedy for Seller's Failure to Deliver. If Seller fails to deliver all or part of the Net Output and associated RECs required to be delivered under this Agreement, and such failure is not excused under the terms hereof or by Buyer's failure to perform, then Seller shall pay Buyer within five (5) Business Days after invoice receipt, an amount equal to (i) Buyer's Cost to Cover multiplied by the Net Output not delivered, (ii) additional transmission charges, if any, reasonably incurred by Buyer in moving replacement energy to the Point of Delivery or if not there, to such points in Buyer's control area as are determined by Buyer, and (iii) any additional cost or expense incurred as a result of Seller's failure to deliver, as determined by Buyer in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges). The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

11.2.2. Remedy for Buyer's Failure to Purchase. If Buyer fails to receive or purchase all or part of the Net Output required to be purchased under this Agreement, and such failure is not excused under the terms hereof or by Seller's failure to perform, then Buyer shall pay Seller, on the earlier of the date payment would otherwise be due in respect of the month in which the failure occurred or within five (5) Business Days after invoice receipt, an amount equal to Seller's Cost to Cover multiplied by the amount of Net Output not purchased. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation thereof.

11.2.3. Remedy for Seller's Failure to Sell and Deliver Ancillary Services or Capacity Rights. Seller shall be liable for Buyer's actual damages in the event Seller fails to sell or deliver all or any portion of the Ancillary Services or Capacity Rights to Buyer, or if Seller sells or delivers all or any portion of the Ancillary Services or Capacity Rights to a person other than Buyer.

11.3 Termination and Remedies. Upon the occurrence of, and during the continuation of, an Event of Default, the non-defaulting Party shall be entitled to all remedies available under this Agreement and at law or in equity, and may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the defaulting Party no less than one Business Day before such termination date; *provided, however*, that as a precondition to Seller's exercise of this termination right, Seller must also provide copies of such notice to the notice addresses set forth in Section 22 for Buyer with such copies addressed to the "President" and the "General Counsel" of Buyer. Such copies shall be sent by registered overnight delivery service or by certified or registered mail, return receipt requested and shall state prominently therein in type font no smaller than fourteen (14) point all-capital letters that "THIS IS A TERMINATION NOTICE UNDER A RENEWABLE PPA. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED," and shall state therein any amount purported to be owed and wiring instructions, or the nature of any non-payment default alleged. Seller shall not have any right to terminate this Agreement if the default that gave rise to the termination right is cured within the

five (5) Business Days of Buyer's receipt of such notice. Further, during the continuation of default by the other Party, and until it has recovered all damages incurred on account of such default by the other Party, without exercising its termination right, a party may offset its damages against any payment due the other Party. The rights contemplated by this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. In the event of a termination hereof:

(a) Each Party shall pay to the other all amounts due the other hereunder for all periods prior to termination, subject to offset by the non-defaulting Party against damages incurred by such Party.

(b) The amounts due pursuant to Section 11.3(a) shall be calculated and paid within thirty (30) days after the billing date for such charges and shall bear interest thereon at the Contract Interest Rate from the date of termination until the date paid. The foregoing does not extend the due date of, or provide an interest holiday for, any payments otherwise due hereunder.

(c) Except in circumstances in which a remedy provided for in this Agreement is described as a Party's sole or exclusive remedy before and after the effective date of termination, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement (including Section 24.6).

(d) Without limiting the generality of the foregoing, the provisions of Sections 4.5, 5.4, 6.2.3, 6.3, 6.6.5, 6.6.6, 10.2, 10.3, 10.4, 10.5, 11.4, 11.5, 11.6, 12, 20.3 and 23 shall survive the termination hereof.

11.4 Termination of Duty to Buy: Memorandum of Agreement. If this Agreement is terminated because of a default by Seller, neither Seller, nor any successor to Seller with respect to the ownership of the Facility (for whom Seller acts herein as agent), may thereafter require or seek to require Buyer to purchase Output from the Facility under PURPA (on account of its status as a QF), or any other Requirements of Law, for any periods that would have been within the Term had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require Buyer to do so. On or before the Effective Date, the Parties shall execute and Buyer shall record at its cost, in the appropriate real property records of the counties in which the Facility or Premises are situated, and of the U.S. Bureau of Land Management or other federal agency as applicable, a memorandum in the form of **Exhibit 11.4** to provide constructive notice to third parties of Seller's agreements under this Section 11.4.

11.5 Termination Damages. If this Agreement is terminated as a result of an Event of Default by one of the Parties, termination damages shall be determined. Termination damages are in addition to all other amounts owed under this Agreement. The Termination Payment shall be calculated by the non-defaulting Party within a reasonable period after termination of the Agreement. The Termination Payment owed pursuant to this Section shall be due within five (5) Business Days after the non-defaulting Party gives the defaulting Party notice of the amount due. The non-defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the defaulting Party for economic benefits accruing to the non-defaulting Party as a result of the defaulting Party's default. Buyer's rights with respect to a default by Seller under

Sections 11.1.1 and 11.1.2 are cumulative, such that the exercise of one or more rights shall not constitute a waiver of any other rights, with Seller remaining fully liable for any remaining deficiency.

11.6 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 hereof. "Commercially reasonable efforts" by Seller shall require Seller to (i) use commercially reasonable efforts to maximize the price for energy received by Seller from third parties, including entering into an enabling agreement with, or being affiliated with, one or more power marketers of nationally recognized standing to market such Net Output (and associated RECs) not purchased or accepted by Buyer, and (ii) offering to sell to Buyer (prior to selling to any third party) the RECs associated with such Net Output at the REC Price Component to the extent permitted by the Generation Interconnection Agreement and Requirements of Law.

11.7 Security. Buyer may, in addition to pursuing any and all other remedies available at law or in equity, proceed against any security held by Buyer in whatever form to reduce any amounts that Seller owes Buyer arising from such default.

11.8 Cumulative Remedies. The rights and remedies provided to Buyer hereunder are cumulative and not exclusive of any rights or remedies of Buyer.

11.9 Right of First Offer for Facility Output. In the event of any termination hereof by Buyer pursuant to Section 11.1.2, in addition to Buyer's rights under this Agreement, Buyer shall have a right of first offer (the "**Covered Facility Right of First Offer**") to, and Buyer shall have a right of first offer on all of, the output of any solar-powered generation facility (a "**Covered Facility**") that from time to time may be constructed by Seller or any Affiliate of Seller on the Premises, up to (but not to exceed) an amount equal to the Expected Energy at the Contract Price.

The Covered Facility Right of First Offer shall be exercisable by Buyer through the earlier of (i) the date thirty (30) months following the date of Buyer's notice of termination, and (ii) the last day of the original Term had this Agreement not been terminated by Buyer. Seller shall provide Buyer with no less than fifteen (15) days' (but no more than twelve (12) months') prior written notice of the anticipated commercial operation date for any Solar Panels or Inverters constituting part of a Covered Facility and not previously subject to Buyer's Covered Facility Right of First Offer. Buyer shall notify Seller within sixty (60) days as to whether Buyer elects to purchase the output of such portions of the Covered Facility. If Buyer elects to purchase the output of such portions of the Covered Facility, such output (along with associated RECs) shall be sold to Buyer for the Contract Price that would have applied to Net Output and associated RECs purchased by Buyer hereunder had this Agreement remained in effect, at the rates indicated in Exhibit 5.1 until the last day of the original Term had this Agreement not been terminated by Buyer. Buyer shall not have a Covered Facility Right of First Offer (a) with respect to the output of any portion of the Covered Facility that has been offered to Buyer pursuant to this Section 11.9 on an earlier occasion and not been accepted by Buyer, or (b) with respect to any output that would cause the total output purchased by Buyer pursuant to its Covered Facility Right of First Offer to exceed the amount of the Expected Energy.

11.10 Damage Limitations. Seller's aggregate financial liability to Buyer for losses, damages and all other amounts, other than indemnities, hereunder with respect to the period prior to the Commercial Operation Date, shall not exceed an amount equal to the Credit Support amount for such period as described in Section 8; provided, however, losses, damages and all other amounts payable by Seller arising out of any of the following events shall not be subject to such limitation and shall not be counted toward such limitation (i) damage to Buyer-owned facilities proximately caused by negligence, breach of this Agreement, or willful misconduct by Seller, its directors, officers, employees and agents; (ii) Seller's intentional misrepresentation or intentional misconduct in connection with this Agreement or the operation of the Facility; (iii) the sale or diversion by Seller to a third party of any Net Output, RECs, Ancillary Services or Capacity Rights, excluding any sales in mitigation of damages; (iv) Seller's failure to maintain insurance coverages in the types and amounts required by this Agreement; (v) any claim for indemnification under this Agreement in connection with third-party claims; or (vi) damages incurred by Buyer in connection with any bankruptcy or insolvency proceeding involving Seller, including Buyer's loss of the benefit of its bargain due to rejection or other termination of this Agreement in such proceeding.

SECTION 12 INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

12.1.1. Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 12.1.7, Seller shall release, indemnify and hold harmless Buyer, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "**Buyer Indemnitees**") against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorney's fees, both at trial and on appeal, whether or not suit is brought) (collectively, "**Liabilities**") actually or allegedly resulting from, or arising out of, or in any way connected with, the performance by Seller of its obligations hereunder, or relating to the Facility, for or on account of Environmental Contamination, or injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any person or entity, excepting only to the extent such Liabilities as may be caused by the negligence or willful misconduct of any person or entity within the Buyer Indemnitees. Seller shall be solely responsible for (and shall defend and hold Buyer harmless against) any damage that may occur as a direct result of Seller's breach of the Generation Interconnection Agreement.

12.1.2. Indemnity by Buyer. To the extent permitted by Requirements of Law and subject to Section 12.1.7, Buyer shall release, indemnify and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "**Seller Indemnitees**") against and from any and all Liabilities resulting from, or arising out of, or in any way connected with, the performance by Buyer of its obligations hereunder for or on account of (i) injury, bodily or otherwise, to, or death of, or (ii) for damage to, or destruction of property of, any person or entity within the Seller Indemnitees, excepting only to the extent such Liabilities as may be caused by the negligence or willful misconduct of any person or entity within the Seller Indemnitees.

12.1.3. Additional Cross Indemnity. Without limiting Sections 12.1.1 and 12.1.2, and subject to Section 12.1.7, Seller shall release, indemnify and hold harmless the Buyer Indemnitees from and against all Liabilities related to Net Output prior to its delivery by Seller at the Point of Delivery, and Buyer shall release, indemnify and hold harmless the Seller Indemnitees from and against all Liabilities related to Net Output once delivered to Buyer at the Point of Delivery as provided herein, except in each case to the extent such Liabilities are attributable to the negligence or willful misconduct or a breach of this Agreement by any member of the Buyer Indemnitees or the Seller Indemnitees, respectively, seeking indemnification hereunder.

12.1.4. 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 Section 12 may apply, the indemnified Party shall notify the indemnifying Party in writing of such fact. The indemnifying Party shall assume the defense thereof with counsel designated by such Party and 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.

12.1.5. Failure to Defend. If the indemnifying Party fails to assume the defense of a claim meriting indemnification, the indemnified Party may at the sole expense of the indemnifying Party, contest, settle, or pay such claim; provided however, 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.

12.1.6. No Dedication. Nothing herein shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party hereto. No undertaking by one Party to the other under any provision hereof shall constitute the dedication of Buyer's facilities or any portion thereof to Seller or to the public, nor affect the status of Buyer or Seller as an independent individual or entity.

12.1.7. Consequential Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, DELAY DAMAGES, BUYER AND SELLER COST TO COVER DAMAGES, SECTION 11.2.3 CAPACITY RIGHTS LOSS DAMAGES, INDEMNIFICATION FOR THIRD PARTY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, ARE NOT INTENDED BY THEM TO REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES.

SECTION 13 INSURANCE

13.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated not lower than “A-” by the A.M. Best Company the insurance coverage specified on **Exhibit 13** during the periods specified on **Exhibit 13**.

13.2 Certificates and Certified Copies of Policies. Seller shall provide Buyer with a certified “true and correct” copy of the insurance policies, provisions and endorsements contemplated by **Exhibit 13** within ten (10) days after the date by which such policies are required to be obtained (as set forth in **Exhibit 13**). The certificate (a) shall not include the legend “certificate is not evidence of coverage” or any statement with similar effect, (b) the insurer shall have a firm obligation to provide Buyer with thirty (30) days prior written notice of coverage modifications (not merely an obligation to “endeavor” or words of similar effect), and (c) shall be endorsed by a person who has authority to bind the insurer. If any coverage is written on a “claims-made” basis, the certification accompanying the policy shall conspicuously state that the policy is “claims made.”

SECTION 14 FORCE MAJEURE

14.1 Definition of Force Majeure. “**Force Majeure**” or “an event of Force Majeure” means an event that (a) is not reasonably anticipated as of the date hereof, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party’s negligence or failure to act, and (d) could not be overcome by the affected Party’s use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; fire; explosion; civil disturbance; epidemic; pandemic; sabotage; action or restraint by court order or public or government authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action), or any failure or loss of the Facility’s main generator step-up transformer (provided Seller has used Prudent Electrical Practices in connection therewith). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller’s ability to sell, or Buyer’s ability to purchase, Net Output, Ancillary Services, Capacity Rights, or RECs at a more advantageous price than is provided hereunder; (ii) the cost or availability or unavailability of fuel or motive force to operate the Facility; (iii) economic hardship, including lack of money; (iv) any breakdown or malfunction of Facility equipment (including any serial equipment defect) that is not directly caused by an independent event of Force Majeure; (v) the imposition upon a Party of costs or taxes allocated to such Party under Section 5; (vi) delay or failure of Seller to obtain or perform any Required Facility Document; (vii) curtailment or suspension of transmission or directive from the Transmission Provider or Interconnection Provider to curtail or suspend deliveries; (viii) a disconnection or interruption of interconnection service under the Generation Interconnection Agreement due to Seller’s breach thereof; (ix) maintenance upgrade or repair of any facilities or right of way corridors constituting part of or involving Interconnection Facilities, whether performed by or for Seller, or other third parties (except for repairs made necessary as a direct result of an event of Force Majeure); (x) Seller’s

failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to Transmission Provider or Interconnection Provider; (xi) any event attributable to the use of Interconnection Facilities for deliveries of Output to any party other than Buyer; or (xii) failure of Seller to take any action, or refrain from taking any action, in accordance with all applicable Permits, including any required environmental mitigation measures. Notwithstanding anything to the contrary herein, in no event will the increased cost of electricity, transmission, Solar Panels or tariffs or taxes thereupon, steel, labor, or transportation, or changes in taxes or tax laws, including the cessation or termination of any tax credits or tax rebates, constitute an event of Force Majeure.

14.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations hereunder because of an event of Force Majeure, both Parties shall be excused from the performance affected by the event of Force Majeure, provided that:

14.2.1. the Party affected by the Force Majeure, shall, within five (5) days after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

14.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure; and

14.2.3. the affected Party shall use diligent efforts to remedy its inability to perform.

14.3 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure shall be excused by the Force Majeure.

14.4 Strikes. Notwithstanding any other provision hereof, neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.5 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations hereunder for a period exceeding two hundred ten (210) consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the effects of the Force Majeure with all reasonable dispatch), then the Party not affected by the Force Majeure event, with respect to its obligations hereunder, may terminate this Agreement by giving ten (10) days prior notice to the other Party. Upon such termination, neither Party will have any liability to the other with respect to the period following the effective date of such termination; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising hereunder before the effective date of such termination.

SECTION 15 OBLIGATION TO NEGOTIATE

Upon the expiration of this Agreement at the end of its full Term on the twentieth (20th) anniversary of the Commercial Operation Date, or if terminated earlier pursuant to a default by

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Buyer, Buyer and Seller shall negotiate in good faith to enter into a transmission agreement whereby Buyer shall provide transmission service to Seller for the delivery of Output to the interconnection of Buyer's System with the System. Seller shall be solely responsible for all costs of such transmission service, including any system upgrades, line losses, transmission costs on Buyer's system and scheduling and transmission costs related to the System Operator. Seller shall indemnify and hold harmless Buyer against any and all losses, liabilities, damages, and claims suffered or incurred by Buyer as a result of Buyer providing such transmission services to Seller.

SECTION 16 CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Kentucky, excluding any choice of law rules that may direct the application of the laws of another jurisdiction. The Parties intend that this Agreement be a "forward contract" between two "forward contract merchants" within the meanings given such terms in the United States Bankruptcy Code; provided that neither Party shall be in breach of this Agreement if a court determines that is not the case.

SECTION 17 PARTIAL INVALIDITY

The Parties do not intend to violate any laws governing the subject matter hereof. If any of the terms hereof are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms hereof shall remain in effect. The Parties shall use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under applicable law, (b) give effect to the intent of the Parties in entering hereinto, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

SECTION 18 SEVERAL OBLIGATIONS; NON-WAIVER

18.1 Several Obligations. Nothing contained herein shall be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or liability on or between the Parties.

18.2 Non-Waiver. No waiver of any provision hereof shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is executed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions hereof shall not be construed as a waiver of any other failure, whether of a like kind or different nature.

SECTION 19 GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. During the Term, Seller shall maintain all material Permits required, as applicable, for the construction, operation, or ownership of the Facility.

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SECTION 20 SUCCESSORS AND ASSIGNS

20.1 Restriction on Assignments. Except as expressly provided in this Section 20, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

20.2 Assignment.

20.2.1. Binding Nature. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto.

20.2.2. Permitted Assignments. Notwithstanding Section 20.1, either Party may, without the need for consent from the other Party (but with notice to the other Party, including the names of the assignees), (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds therefrom in connection with any financing or other financial arrangements; (b) transfer or assign this Agreement to an Affiliate of such Party that is a Qualified Transferee; or (c) transfer or assign this Agreement to any party to whom a Controlling Interest in Seller has been sold, transferred or assigned, subject to the limitation in Section 20.2.3; provided, however, that Seller shall not transfer, sell, encumber or assign this Agreement or any interest herein to any Affiliate of Buyer without the prior written consent of Buyer. Except with respect to collateral assignments for financing purposes and also except as otherwise provided above in the immediately preceding sentence, in every assignment hereof, (i) the assignee must agree in writing to be bound by the terms and conditions hereof, and be a Qualified Transferee, and (ii) the assignor shall remain liable for its obligations hereunder. The Party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs of assignment. Notwithstanding anything to the contrary herein, no consent of Buyer nor any rights or obligations described in Section 20.4 shall be required in connection with any of the following transactions: (i) transfer or sale of Seller to EEV or EEV's Affiliates, (ii) any Tax Equity Financing, or (iii) a change of control of National Grid plc.

20.2.3. Controlling Interest in Seller. Except as described in the last sentence of Section 20.2.2, (i) no Controlling Interest in Seller may be sold, transferred or assigned (whether through a single transaction or a series of transactions over time) without Buyer's prior written approval, not to be unreasonably withheld, of the transferee with respect to such Controlling Interest, and (ii) without limiting the foregoing, any such sale, transfer, or assignment must be to a Qualified Transferee.

20.3 Assignment to RUS. The RUS is a lender to Buyer. Notwithstanding any other provision of this Agreement to the contrary, Buyer, without the approval of Seller, may assign, transfer, mortgage or pledge this Agreement to create a security interest for the benefit of the United States of America (the "**Government**"), acting through the Administrator of the RUS (the "**Administrator**"), and its other lenders. Thereafter, the Administrator or such other lenders, without the approval of Seller, may (a) cause this Agreement to be sold, assigned, transferred, or otherwise disposed of to a third party pursuant to the remedies with respect to such security interest or in lieu of the exercise of such remedies in connection with a debt settlement, or (b) if the Government first acquires this Agreement pursuant to 7 U.S.C § 907, sell, assign, transfer or

otherwise dispose of this Agreement to a third party; *provided*, that in either case at the time of such initial disposition (i) Buyer is in default of its obligations to the Government or such other lenders that are secured by such security interest and the Administrator or such other lender has given Seller notice of such default; and (ii) the Administrator or such other lender has given thirty (30) days' prior notice of its intention to sell, assign, transfer or otherwise dispose of this Agreement indicating the identity of the intended third party assignee or purchaser. No permitted sale, assignment, transfer, mortgage, pledge or other disposition under this Section 20.3 shall release or discharge Buyer from its obligations under this Agreement.

20.4 Right of First Offer of Sale of the Facility.

20.4.1. Offered Assets. If Seller intends to sell the Facility or any part of the Facility or to sell (individually or in the aggregate) a Controlling Interest in Seller or the Facility (the "**Offered Assets**"), it shall first offer the Offered Assets to Buyer. Seller's offer shall set forth the terms and conditions of the offer in writing and in reasonable detail. Seller shall promptly answer any questions that Buyer may have concerning the offered terms and conditions and shall meet with Buyer to discuss the offer. The provisions of this Agreement will bind any successor or transferee of Seller as if such successor or transferee were the Seller.

20.4.2. Buyer's Rejection of Offer; Revival of Offer. If Buyer does not accept the offered terms and conditions within sixty (60) days after receiving Seller's offer, Seller may (subject to Buyer's rights under Section 20.2) enter into an agreement to sell the Offered Assets to a third party on terms and conditions no more favorable in the aggregate to the third party than those offered to Buyer. If Seller wishes to enter into an agreement with a third party on terms more favorable to the third party than those previously offered to Buyer under this Section, Seller shall first offer the revised terms and conditions to Buyer under this Section 20.4.

20.4.3. Buyer's Acceptance of Offer. If Buyer accepts an offer made by Seller under this Section, the Parties shall within a further sixty (60) days enter into an acquisition agreement that incorporates the terms and conditions of Seller's offer.

SECTION 21 ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter hereof. No modification hereof shall be effective unless it is in writing and executed by both Parties.

SECTION 22 NOTICES

22.1 Addresses and Delivery Methods. All notices, requests, statements or payments shall be made to the addresses set out below. In addition, copies of a notice of termination of this Agreement under Section 11.3 shall contain the information required by Section 11.3 and shall be sent to the then-current President and General Counsel of Buyer. Notices required to be in writing shall be delivered by letter, electronic mail, facsimile or other documentary form. Notice by electronic mail, facsimile or hand delivery shall be deemed to have been given when received or

hand delivered. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt.

To Seller: Henderson Solar, LLC
c/o Geronimo Energy, LLC
8400 Normandale Lake Boulevard, Suite 1200
Bloomington, MN 55437
Attention: General Counsel
[REDACTED]
[REDACTED]

with a copy to: Fredrikson & Byron P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402
[REDACTED]
[REDACTED]
Fax: 612-492-7077
[REDACTED]

To Buyer: Robert W. Berry
President & CEO
Big Rivers Electric Corporation
201 Third Street, P.O. Box 24
Henderson, KY 42419-0024
[REDACTED]
Fax: 270-827-2558

with a copy to: Legal Department
Big Rivers Electric Corporation
201 Third Street, P.O. Box 24
Henderson, KY 42419-0024
regulatory@bigrivers.com
Fax: 270-827-2558

22.2 Changes of Address. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this Section.

22.3 Notices to Senior Lenders. The requirements concerning notice by Buyer to Senior Lenders, if any, are set forth in the Lender Consent, if any.

SECTION 23 CONFIDENTIALITY

23.1 Confidential Business Information. The following constitutes “**Confidential Business Information**,” whether oral or written: (a) the Parties’ proposals and negotiations concerning this Agreement, made or conducted prior to the Effective Date, (b) the terms hereof, (c) information provided under Section 6.10.1, (d) the actual charges billed to Buyer hereunder, (e) any information delivered by Buyer to Seller prior to the Effective Date relating to the market prices of energy or RECs and methodologies for their determination or estimation, (f) information provided by one Party to the other pursuant hereto, (g) all negotiations pursuant to Section 24.1

and (h) any of the foregoing delivered by an Affiliate of a Party or employee or agent thereof to the other Party or an Affiliate of that party or employee or agent thereof. Seller and Buyer each agree to hold such Confidential Business Information wholly confidential, except as provided herein. Such Confidential Business Information may only be used by the Parties for purposes related to the approval, administration or enforcement hereof and for no other purpose.

23.2 Duty to Maintain Confidentiality. Each Party agrees not to disclose Confidential Business Information to any other person (other than its members, Affiliates, counsel, auditors, consultants, lenders, prospective lenders, purchasers, prospective purchasers, contractors constructing or providing services to the Facility, employees, officers and directors who agree to be bound by the provisions of this Section), without the prior written consent of the other Party; *provided however*, that: (a) either Party may disclose Confidential Business Information, if and to the extent such disclosure is required: (i) by Requirements of Law, (ii) in order for Buyer to receive regulatory recovery of expenses related to this Agreement, (iii) pursuant to an order of a court or regulatory agency, or (iv) in order to enforce this Agreement or to seek approval hereof, and (b) notwithstanding any other provision hereof, Buyer may in its sole discretion disclose or otherwise use for any purpose in its sole discretion the Confidential Business Information described in Section 23.1(d) or 23.1(e).

23.3 Buyer Regulatory Compliance. The Parties acknowledge that Buyer is required by law or regulation to report certain information that could embody Confidential Business Information from time to time. Such reports may include models, filings, reports of Buyer's net power costs, general rate case filings, power cost adjustment mechanisms, FERC-required reporting such as those made on FERC Form 1, Form 12, or Form 714, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource planning reports, reports to entities such as NERC, MISO, RE, a GIS, RUS, or similar or successor organizations, forms, filings, or reports, the specific names of which may vary by jurisdiction, along with supporting documentation. Additionally, in regulatory proceedings in all state and federal jurisdictions in which it does business, Buyer will from time to time be required to produce Confidential Business Information. Notwithstanding any provision of this Agreement to the contrary, Buyer may use its business judgment in its compliance with all of the foregoing and the appropriate level of confidentiality it seeks for such disclosures, and Buyer may submit Confidential Business Information in regulatory proceedings or filings without notice to Seller.

23.4 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 23 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

23.5 News Releases and Publicity. Before Seller issues any news release or publicly distributed promotional material regarding the Facility, Seller shall first provide a copy thereof to Buyer for its review and approval. Any use of Buyer's name in such news release or promotional material requires Buyer's prior written consent. Seller may make such public statements, filings and provide other materials publicly in connection with obtaining Permits and other Required Facility Documents without being in violation of this Section 23.5, subject to Sections 3.2.9 and 4.5 hereof.

SECTION 24 DISPUTE RESOLUTION

24.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of, related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at least one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter if neither Party has requested that the dispute be mediated in accordance with Section 24.2 below. All negotiations pursuant to this clause are confidential.

24.2 Mediation. If the dispute is not resolved within thirty (30) days after the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may request that the matter be submitted to nonbinding mediation. If the other Party agrees, the mediation will be conducted in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (including Procedures for Large, Complex Construction Disputes) of the AAA, as amended and effective on July 1, 2015 (the “**Mediation Procedures**”), notwithstanding any Dollar amounts or Dollar limitations contained therein.

(a) The Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing (“**Mediation Notice**”) of such Party’s desire that the dispute be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party’s written agreement to such mediation.

(b) The mediation shall be conducted through, by and at the office of AAA located in the Mediation Location.

(c) The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable mediator. If the Parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA’s Arbitration Administrator shall send a list and resumes of three (3) available mediators to the Parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both Parties have failed to respond to the AAA’s Arbitration Administrator within five (5) days after receiving the list or because one or both Parties have failed to strike a name from the list or because both Parties strike the same name, the AAA’s Arbitration Administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 24.2(c), and such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

(d) The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the Dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 24.2(f). The costs of the mediation shall be borne equally by the Parties, provided that the Parties shall each bear their own expenses and attorney fees.

(e) All verbal and written communications between the Parties and issued or prepared in connection with this Section 24.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

(f) The initial mediation meeting between the Parties and the mediator shall be held within twenty (20) days after the Mediation Notice. Either Party may terminate the mediation process upon or after the earlier to occur of (A) the failure of the initial mediation meeting to occur within twenty (20) days after the date of the Mediation Notice, (B) the passage of thirty (30) days after the date of the Mediation Notice without the dispute having been resolved, or (C) such time as the mediator makes a finding that there is no possibility of resolution through mediation.

(g) All deadlines specified in this Section 24.2 may be extended by mutual agreement.

24.3 Place of Contract Formation: Choice of Forum. Seller and Buyer acknowledge and agree that this Agreement has been made and entered into as of the date first set forth above in the Mediation Location. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement shall be brought exclusively in the state and federal courts in or for Henderson County, Kentucky except for matters within the exclusive jurisdiction of a Governmental Authority. Except for matters within the exclusive jurisdiction of a different Governmental Authority, by execution and delivery hereof, each Party (a) accepts the exclusive jurisdiction of such courts and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such courts over each Party for the purpose of any proceeding related to this Agreement, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such courts arising out of such documents or actions, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such courts (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith, (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address as set forth herein and (e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

24.4 Settlement Discussions. No statements of position or offers of settlement made in the course of the dispute resolution process described in this Section may be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of

settlement be used in any manner against either Party in any such litigation. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

24.5 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING HEREINTO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

24.6 Specific Performance. Buyer shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, to enjoin any actual or threatened breach of any material obligation of Seller. The Parties agree that specific performance (including temporary and preliminary relief) and injunctive relief are proper in the event of any actual or threatened breach of any material obligation, and that any liability limits contained herein shall not operate to limit the exercise of Buyer's remedies in equity to cause Seller to perform its obligations hereunder. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense. Seller shall at all times during the Term, own, lease, control, hold in its own name or be signatory to (as the case may be) all assets and Required Facility Documents relating to the Facility to the extent necessary to prevent a material adverse effect on Buyer's right to specific performance or injunctive relief.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names as of the date first above written.

HENDERSON SOLAR, LLC

By: 
Name: Blake Nixon
Title: CEO

BIG RIVERS ELECTRIC CORPORATION


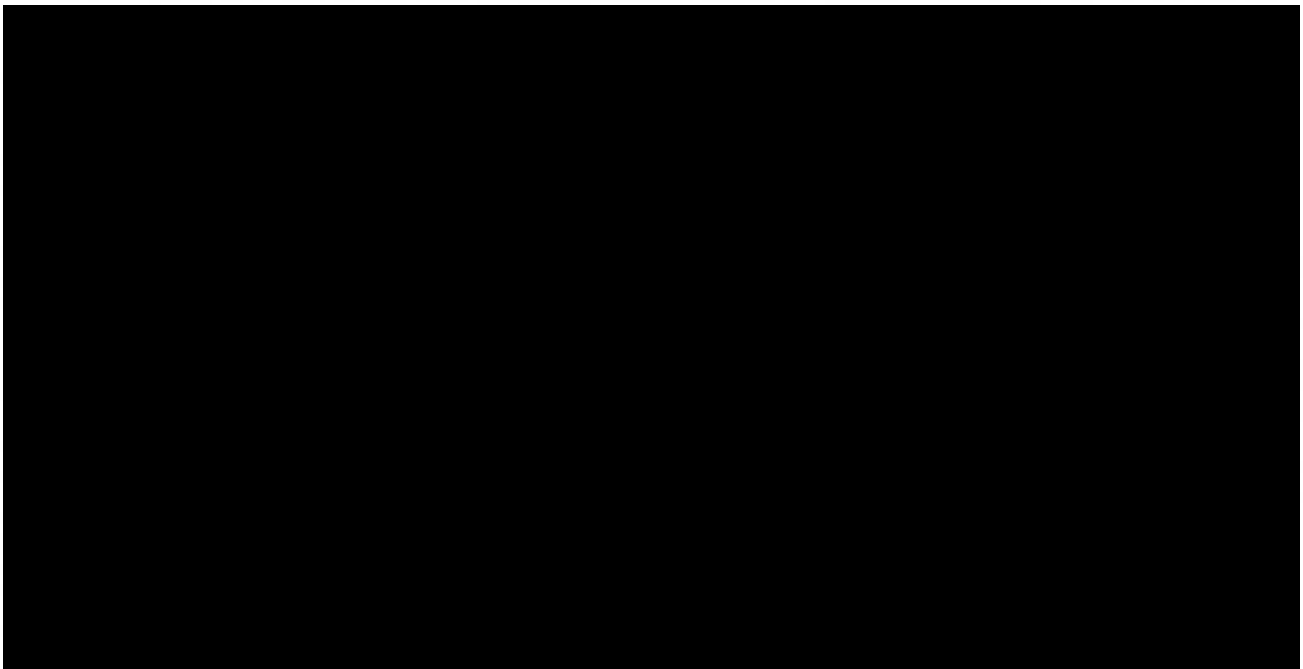
By: 
Name: Robert W. Berry
Title: President and CEO

EXHIBIT A

ESTIMATED OUTPUT

Seller to provide one (1) electronic and hard copy of the solar plant performance estimation report using PVSYST or a comparable solar performance modeling program including, at a minimum, estimated hourly MW generation output in MWh/h for the site and Facility. Upon Commercial Operations, Seller shall provide updated Exhibit A based on completed construction and Seller's designated Licensed Professional Engineer will provide certification as part of Commercial Operations that the estimated energy output included in this Exhibit A is correct as calculated using PVSYST or comparable solar performance modeling program.



All amounts are based on an estimate of the first full Contract Year, which shall be reduced by an annual degradation factor of **0.5%** per Contract Year.

EXHIBIT C

NERC EVENT TYPES

Event Type	Description of Outages
U1 ¹	<u>Unplanned (Forced) Outage—Immediate</u> – An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.
U2 ¹	<u>Unplanned (Forced) Outage—Delayed</u> – An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service.
U3 ¹	<u>Unplanned (Forced) Outage—Postponed</u> – An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service.
SF ¹	<u>Startup Failure</u> – An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs.
MO	<u>Maintenance Outage</u> – An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next planned outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.)
ME	<u>Maintenance Outage Extension</u> – An extension of a maintenance outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO.
PO	<u>Planned Outage</u> – An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year. (Boiler overhauls, turbine overhauls or inspections are typical planned outages.)
PE	<u>Planned Outage Extension</u> – An extension of a planned outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO.

¹ These event types are all contributors to the FOR & EFOR calculations in the reports section.

EXHIBIT D

EXAMPLE CALCULATION OF BUYER'S COST TO COVER

Buyer's Cost to Cover is calculated as follows:

(Average DALMP Price + [RECs replacement price or REC Price Component]) – Contract Price.

Example:

For a given Calculation Period, assume the following:

A. Average DALMP Price: [REDACTED]

B. Buyer, after using commercially reasonable efforts to do so, was unable to replace the RECs.

C. Contract Price then in effect: [REDACTED].

Buyer's Cost to Cover is therefore calculated as follows:

[REDACTED]

EXHIBIT E

APPROVED LICENSED PROFESSIONAL ENGINEERS

- ICF International, Inc.;
- Leidos Holdings Inc.;
- Black & Veatch Holding Company;
- John Wood Group PLC; and
- DNV GL AS.

EXHIBIT F

PERMITS

[Include without limitation all Federal Energy Regulatory Commission authorizations and determinations, all other federal findings and determinations, including any applicable provided by the Federal Aviation Administration, Bureau of Land Management and the U.S. Army Corp of Engineers, and all tribal, state and local siting, zoning, water rights and other permits. The foregoing list includes examples only and should in no way be considered exclusive or limiting.]

Required Permits

- Henderson County:
 - Site Plan Review and Approval
 - Building Permit
 - Electrical Permit
- Kentucky Electric Generation and Transmission Siting Board:
 - Merchant Electric Generation Facility Construction Certificate
 - Nonregulated Electric Transmission Line Construction Certificate
- Kentucky Energy and Environmental Cabinet
 - Cumulative Environmental Assessment
 - Right-of-Way Permit
- Federal Emergency Regulatory Commission
 - Exempt Wholesale Generator Certification
 - Qualifying Facilities Certification
 - Market Based Rate Authorization

Additional Permits/Approvals

- Henderson County:
 - Driveway Permit
 - Right-of-Way Permit
 - Floodplain Development Permit
- Kentucky Transportation Council
 - Encroachment Permit
 - Entrance Permit
 - Overweight/Oversize Permit
- Kentucky Department of Housing, Buildings, and Construction
 - Building Permit

- Electrical Permit
- Kentucky Department for Environmental Protection
 - Water Quality Certification
 - Kentucky Pollutant Discharge Elimination System Permit
 - State Floodplain Construction Permit
 - Air Quality Permit or Registration
 - Waste Permit
- Federal Aviation Administration
 - Determinations of No Hazard
- Federal Emergency Management Agency
 - Floodplain Development Permit
- U.S. Army Corp of Engineers
 - Wetland Delineation Approval
 - Jurisdictional Determination
 - Section 404 Permit

EXHIBIT 2.2

CONSTRUCTION MILESTONES

Detailed construction schedule submitted as separate attachment.

EXHIBIT 2.6

BUYER'S INITIAL DESIGNATED REPRESENTATIVES

1. Authorized Representatives.

Buyer: Russ Pogue
Manager of Member Relations
Big Rivers Electric Corporation
201 Third Street, P.O. Box 24
Henderson, KY 42419-0024

[REDACTED]
[REDACTED]
[REDACTED]

EXHIBIT 3.2.6

**REQUIRED FACILITY DOCUMENTS
(To be completed prior to the Commercial Operation Date)**

1. Obtained Required Facility Documents:

Licenses, Permits and Authorizations:

Including any of the same identified on Exhibit F.

Construction and Operations and Maintenance:

Land Rights:

2. To Be Obtained Required Facility Documents:

Licenses, Permits and Authorizations:

Including any of the same identified on Exhibit F.

Construction Agreements:

Generator Interconnection Agreement:

Operations and Maintenance Agreements:

[should also include easements, crossing agreements, subordination agreements (i.e., agricultural leases), estoppels, non-interference, or indemnity agreements; such further documents as internal review further requires.]

EXHIBIT 4.5

REC ATTESTATION AND BILL OF SALE

[_____] (“Seller”) hereby sells, transfers and delivers to Buyer the RECs (including all Environmental Attributes and Environmental Attribute Reporting Rights) associated with the generation and delivery of energy to Buyer under the Power Purchase Agreement (Renewable Energy-Solar) between Seller and Buyer dated [_____] (the “PPA”), as described below, in the amount of one REC for each megawatt hour generated. Defined terms used in this REC Attestation and Bill of Sale (as indicated by initial capitalization) shall have the meaning set forth in the PPA.

Facility name and location: _____ Fuel Type: Solar
Capacity (MW AC): _____ Operational Date: _____
Energy Admin. ID no.: _____

<u>Dates</u>	<u>MWh generated</u>
_____	_____

Seller further attests, warrants and represents, under penalty of perjury, as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to Buyer is its one and only sale of all or any part of the RECs referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated above pursuant to the PPA; and
- iv) to the best of Seller’s knowledge, each of the RECs associated with the generation of energy for delivery under the PPA have been generated and sold by the Facility.

This REC Attestation and Bill of Sale confirms, in accordance with the PPA, the transfer from Seller to Buyer all of Seller’s right, title and interest in and to the REC associated with the generation of the energy from the Facility under the PPA as set forth above.

Seller's Contact Person: [_____]

WITNESS MY HAND,

[SELLER],

a [_____] [_____]

By _____

Its _____

Date: _____

This Attestation may be disclosed by Seller and Buyer to others, including the Center for Resource Solutions, and the public utility commissions having jurisdiction over Buyer, to substantiate and verify the accuracy of Buyer's advertising and public communication claims, as well as in Buyer's advertising and other public communications.

EXHIBIT 5.1

CONTRACT PRICE

The Contract price is [REDACTED] throughout the Term.

EXHIBIT 6.1

**DESCRIPTION OF FACILITY AND PREMISES
(To be completed prior to the Commercial Operation Date)**

Seller's Facility consists of _____ panels rated at _____ watts AC manufactured by _____, _____, _____-inverters manufactured by _____, and _____ tracking system (if applicable) manufactured by _____. More specifically, the Facility includes:

Type (synchronous or inductive): Synchronous

A. Manufacturer's Nameplate Data:

Solar Panels

Manufacturer: _____
Model: _____
Power rating (Watts DC @ STC): _____
Number of Modules: _____
Number of Modules per string: _____
Module warranty (year 10) (% of new): _____
Module warranty (year 25) (% of new): _____

Inverters

Manufacturer: _____
Model: _____
Inverter Rating (AC, kW): _____ --
Number of Inverters: _____
Inverter Efficiency at Full Power Rating(%): _____
Inverter Capacity for Site (AC, kW): _____
Operation Voltage (Volts): _____
Maximum System Design Voltage - _____ (Volts)
Number of Phases: _____

Mounting

Fixed tilt or Single-axis Tracking? _____
Proposed Module orientation (landscape, portrait) _____
Tilt Angle (Degrees): _____
Azimuth (Degrees): _____
Pitch (Row Spacing) (Feet): _____
Row Width (Feet): _____
Row Length (Feet): _____
Max/min rotation (if tracking) (Degrees): _____
Ground Coverage Ratio: _____

Power Consumption requirements (for tracking) (kWhs/Day) _____

PV Array Characteristics:

Rated Output (kW): _____ Rated Output (kVA): _____

Rated Voltage (line to line): _____

Rated Current (A): Stator: Converter Supply Current: _____; Rotor: _____

Maximum kW Output: _____ kW Maximum kVA Output: _____ kVA

Transformation

Number of Step-up transformers: _____

Size of Step-up Transformers (kVA): _____

Low Side voltage of Step-up transformer (volts): _____

High Side voltage of Step up transformer (volts): _____

Total land required: _____ acres

Power factor requirements:

Rated Power Factor (PF) or reactive load (kVAR): _____ Leading to _____ Lagging

Manufacturer's Power Curve for the _____.

B. Seller's Estimate of Facility Annual Output Under Ideal (Maximum) or Worst (Minimum) Conditions

Maximum kW Output ("Maximum Facility Delivery Rate"): _____ kW AC

Maximum kVA Output: _____ kVA

Minimum kW Output: _____ kW Estimated kW Output: _____ kW AC

Maximum Generator Interconnection Agreement Delivery Rate: _____ [specify whether instantaneous or hour-averaged]

Nameplate Capacity Rating: _____ kW AC at _____ ° C

Station service requirements are described as follows: Estimated station service for tracking, lighting and other auxiliary energy requirements is estimated to be approximately _____ kWh annually.

C. PV Panel output degradation factor: _____ % per year _____

Description of Premises:

EXHIBIT 6.7.3

FORM OF FORECAST

Example to be developed prior to the Commercial Operation Date

EXHIBIT 6.9.2

OTHER REAL TIME DATA

Example to be developed prior to the Commercial Operation Date

EXHIBIT 6.10.8

FORM OF OPERATIONAL REPORT

Example to be developed prior to the Commercial Operation Date

EXHIBIT 6.12

EXAMPLE CALCULATION OF OUTPUT GUARANTY

Annual Expected Energy:

•	[REDACTED]	[REDACTED]
•	[REDACTED]	[REDACTED]
•	[REDACTED]	[REDACTED]
•	[REDACTED]	[REDACTED]
•	[REDACTED]	[REDACTED]

Annual Quantity of Net Output:

•	[REDACTED]
•	[REDACTED]
•	[REDACTED]
•	[REDACTED]

Output Guarantee*:

•	[REDACTED]
•	[REDACTED]
•	[REDACTED]

* Seller Uncontrollable Minutes in the above examples are assumed to be zero.

Average Net Output: (over two consecutive Contract Years)

•	[REDACTED]
•	[REDACTED]
•	[REDACTED]

[REDACTED]

The Buyer's Cost to Cover during the [REDACTED]

Seller pays Buyer liquidated damages for 'Year #3 & #4' period as follows:

•	[REDACTED]
•	[REDACTED]
•	[REDACTED]

EXHIBIT 8.4

FORM OF LENDER CONSENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 2020, is entered into by and among Buyer, a _____ (together with its permitted successors and assigns, “Buyer”), _____, in its capacity as [**Administrative Agent**] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, “Administrative Agent”), and _____, a _____ formed and existing under the laws of the State of _____ (together with its permitted successors and assigns, “Borrower”). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

- A. WHEREAS, Borrower intends to develop, construct, install, test, own, operate and use an approximately ___ MW solar-powered electric generating facility located _____, known as the _____ Project (the “Facility”).
- B. WHEREAS, In order to partially finance the development, construction, installation, testing, operation and use of the Facility, Borrower has entered into that certain [**Financing Agreement**] dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), among Borrower, the financial institutions from time to time parties thereto (collectively, the “Lenders”), and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.
- C. WHEREAS, Borrower anticipates that, prior to the completion of construction of the Facility, it will seek an additional investor (the “Tax Investor”) to make an investment in Borrower to provide additional funds to finance the operation and use of the Facility.
- D. WHEREAS, Buyer and Borrower have entered into that certain Power Purchase Agreement, dated as of _____ (collectively with all documents entered into in connection therewith that are listed on [Schedule A] attached hereto and incorporated herein by reference, as all are amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “PPA”).
- E. WHEREAS, pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the

PPA to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT

Buyer acknowledges the assignment referred to in Recital E above, consents to an assignment of the PPA pursuant thereto, and agrees with Administrative Agent as follows:

(A) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Borrower under the PPA, subject to applicable notice and cure periods provided in the PPA. Upon receipt of notice from Administrative Agent, Buyer agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the PPA and this Consent. Upon receipt of Administrative Agent's written instructions, Buyer agrees to make directly to Administrative Agent all payments to be made by Buyer to Borrower under the PPA from and after Buyer's receipt of such instructions, and Borrower consents to any such action.

(B) Buyer will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the PPA, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the PPA and in accordance with subparagraph 1(C) hereof, or (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the PPA, except as provided in the PPA.

(C) Buyer agrees to deliver duplicates or copies of all notices of default delivered by Buyer under or pursuant to the PPA to Administrative Agent in accordance with the notice provisions of this Consent. Buyer may deliver any such notices concurrently with delivery of the notice to Borrower under the PPA. Administrative Agent shall have the same period of time to cure the breach or default that Borrower is entitled to under the PPA if such default is the failure to pay amounts to Buyer which are due and payable by Borrower under the PPA, except that if Buyer does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the PPA, then as to Administrative Agent, the applicable cure period under the PPA shall begin on the date on which the notice is given to Administrative Agent. Buyer consents to the transfer of Borrower's interest under the PPA to the Lenders or Administrative Agent or their designees or assignees or any of them or a purchaser or grantee pursuant to the terms of the Financing Documents upon enforcement of such security at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, Buyer shall recognize the Lenders or Administrative Agent or their designees or assignees or any of them or other purchaser or grantee as the applicable party under the PPA (provided that such Lenders or Administrative Agent or their designees or assignees or purchaser or grantee assume the obligations of Borrower under the PPA, including satisfaction and compliance with all requirements of Article 8 of the PPA, and provided further that Buyer's rights with respect to the Facility are preserved in the event of any such transfer of Borrower's interest under the PPA).

(D) In the event Administrative Agent, the Lenders or their designees or assignees elect to perform Borrower's obligations under the PPA as provided in subparagraph 1(C) above, the recourse of Buyer against Administrative Agent, Lenders or their designees and assignees shall be limited to such parties' interests in the Facility, the credit support required under Article 8 of the PPA, and recourse against the assets of any party or entity that assumes the PPA or that enters into such new contract.

(E) In the event Administrative Agent, the Lenders or their designees or assignees succeed to Borrower's interest under the PPA, Administrative Agent, the Lenders or their designees or assignees shall cure any then-existing payment and performance defaults under the PPA, except any performance defaults of Borrower itself which by their nature are not susceptible of being cured and do not impair Buyer's rights under the PPA. Administrative Agent, the Lenders and their designees or assignees shall have the right to assign all or a pro rata interest in the PPA to a person or entity to whom Borrower's interest in the Facility is transferred, provided such transferee assumes the obligations of Borrower under the PPA. Upon such assignment, Administrative Agent and the Lenders and their designees or assignees (including their agents and employees, but excluding Seller) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

SECTION 2. REPRESENTATIONS AND WARRANTIES [Buyer shall have the right to qualify the factual information contained in this Section to ensure that such representation is a true statement as of the date of this Consent.]

Buyer, acting in its merchant function capacity (and therefore specifically excluding the knowledge of Buyer, acting in its transmission function capacity ("Buyer Transmission"), as to any of the matters stated below, and without imputation to Buyer of any knowledge whatsoever relating to the Buyer Transmission, whether as a result of information publicly posted to the open access same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:

(A) It (i) is a corporation duly formed and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby; and

(B) the execution, delivery and performance of this Consent and the PPA have been duly authorized by all necessary corporate action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made.

SECTION 3. NOTICES

All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent

registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to Buyer:

[]
[]
[]
Telephone No.: []
Telecopy No.: []
Attn: []

If to Administrative Agent:

[]
[]
[]
Telephone No.: []
Telecopy No.: []
Attn: []

If to Borrower:

[]
[]
[]
Telephone No.: []
Telecopy No.: []
Attn: []

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above. Further, the Tax Investor shall be entitled to receive notices from Buyer by providing written notice to Buyer of Tax Investor's address for notices. Buyer's failure to provide any notice to the Tax Investor shall not be a breach of this Consent.

SECTION 4. ASSIGNMENT, TERMINATION, AMENDMENT AND GOVERNING LAW

This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and the Tax Investor and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). Buyer agrees to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and executed by the parties hereto. This Consent shall be governed by the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).

SECTION 4.1 ASSIGNMENT TO RUS

Notwithstanding any other provision herein, Buyer, without the approval of Seller or Administrative Agent, may assign, transfer, mortgage or pledge the PPA and this Agreement to create a security interest for the benefit of the United States of America (the "Government"), acting through the Administrator of the RUS (the "Administrator"), and its other lenders. Thereafter, the Administrator or such other lenders, without the approval of Seller or Administrative Agent, may (1) cause this Agreement to be sold, assigned, transferred, or otherwise disposed of to a third party pursuant to the remedies with respect to such security interest or in lieu of the exercise of such remedies in connection with a debt settlement, or (2) if the Government first acquires the PPA and this Agreement pursuant to 7 U.S.C § 907, sell, assign, transfer or otherwise dispose of this Agreement to a third party; provided however, that in either case at the time of such initial disposition (a) Buyer is in default of its obligations to the Government or such other lenders that are secured by such security interest and the Administrator or such other lender has given Seller notice of such default; and (b) the Administrator or such other lender has given 30 days' prior notice of its intention to sell, assign, transfer or otherwise dispose of this Agreement indicating the identity of the intended third party assignee or purchaser. No permitted sale, assignment, transfer, mortgage, pledge or other disposition under this Section 4.1 shall release or discharge Buyer from its obligations under the PPA and this Agreement.

SECTION 5. COUNTERPARTS

This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

SECTION 6. SEVERABILITY

In case any provision of this Consent, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

SECTION 7. ACKNOWLEDGMENTS BY BORROWER

Borrower, by its execution hereof, acknowledges and agrees that notwithstanding any term to the contrary in the PPA, Buyer may perform as set forth herein and that neither the execution of this Consent, the performance by Buyer of any of the obligations of Buyer hereunder, the exercise of any of the rights of Buyer hereunder, or the acceptance by Buyer of performance of the PPA by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the PPA, (2) constitute a consent by Buyer to, or impute knowledge to Buyer of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) constitute a waiver by Buyer of any of its rights under the PPA. Borrower and Administrative Agent acknowledge hereby for the benefit of Buyer that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the PPA. Borrower shall have no rights against Buyer on account of this Consent.

SECTION 8. JURY TRIAL WAIVER

THE PARTIES EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

Buyer,
a _____

By: _____
Name: _____
Title: _____

_____,
a _____

By: _____
Name: _____
Title: _____

_____,
as Administrative Agent for the Lenders

By: _____
Name: _____
Title: _____

EXHIBIT 9.2

POINT OF DELIVERY/INTERCONNECTION FACILITIES/METERING SCHEMATIC

The Facility Metering and Interconnection Schematic is typically completed approximately six months prior to construction. Seller to provide to Buyer when complete based on project schedule.

EXHIBIT 11.4

[note amend to reflect subsequent revisions to final Agreement]

FORM OF MEMORANDUM OF POWER PURCHASE AGREEMENT

WHEN RECORDED, MAIL TO:

BUYER

[address]

Attn: _____

MEMORANDUM OF POWER PURCHASE AGREEMENT

THIS MEMORANDUM OF POWER PURCHASE AGREEMENT (“Memorandum”), dated as of _____, 2020, is made by and between _____, a _____ limited liability company (“Seller”), and BUYER, a _____ (“Buyer”). Seller and Buyer are sometimes hereinafter referred to collectively as the “Parties” and individually as a “Party”.

RECITALS

A. Seller and Buyer have entered into that certain Power Purchase Agreement on the ___ day of _____, 2020 (the “Agreement”), pursuant to which Seller has agreed to construct, own, operate and maintain a solar-powered generation facility for the generation of electric energy to be located in _____ (as more particularly defined in the Agreement, the “Facility”), and upon completion of said Facility, to sell to Buyer the electric energy and capacity to be produced by the Facility as well as all associated “RECs” (as that term is defined in the Agreement), all on the terms and conditions set forth in the Agreement. The real property on which the Facility is to be constructed (the “Premises”) is more particularly described in the attached Exhibit “A”.

B. Seller and Buyer desire to provide record notice of certain terms and conditions of the Agreement pertaining to the Parties’ respective rights and obligations under the Agreement in the event the Agreement is terminated due to a default by Seller.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth in the Agreement and this Memorandum, Seller and Buyer agree as follows:

TERMS

1. The Premises. Seller acknowledges and agrees that the real property comprising the Premises, and all improvements and fixtures to be constructed thereon, including without limitation, the Facility, is and will be owned by Seller and shall hereafter be held, sold, conveyed, transferred, assigned, subdivided, leased, rented, encumbered, occupied and used subject to and in accordance with the Agreement and this Memorandum.

Case No. 2020-00183
Application Exhibit 1

2. Covenants Running with the Land. The provisions of Section 11.4, 11.9, 20.4, and 20.5 of the Agreement are and shall be deemed to be covenants running with the land and shall be binding upon and inure to the benefit of Seller and Buyer and their respective successors and assigns, including without limitation any person acquiring or owning an interest in the Premises or the Facility, and their respective heirs, executors, successors, assigns, administrators, devisees and representatives.

3. Notice.

a. Termination for Default. If the Agreement is terminated due to a default by Seller, neither Seller nor any Affiliate of Seller, nor any successor to Seller with respect to the ownership of the Facility or Premises (for whom Seller acts herein as agent) may thereafter require or seek to require Buyer to purchase energy or capacity from the Facility or any facility constructed on the Premises under the Public Utility Regulatory Policy Act of 1978, as amended from time to time ("PURPA"), or any other "Requirements of Law" on account of its status as a "QF" or "qualifying facility" (as those terms are defined in the Agreement), for any periods that would have been within the "Term" (as defined in the Agreement), had the Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require Buyer to do so. Seller, pursuant to Section 11.4 of the Agreement, has, on behalf of itself and its successors, waived its rights to require Buyer to so purchase such energy from the Facility in the event of such termination. Terms not defined herein are defined in the Agreement.

b. Survival. The terms and provisions of Section 11.4 of the Agreement shall survive the termination of the Agreement.

4. Effect of Memorandum. This Memorandum, and the rights and obligations of the parties hereunder, are subject to all of the terms and conditions of the Agreement. The Agreement is hereby incorporated by reference as if fully set forth herein.

5. Counterparts. This Memorandum may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, and all of which shall together constitute one and the same instrument.

6. Further Information. Further information regarding the specific terms and conditions of the Agreement may be requested from Buyer at [address], Attn: [addressee]. Disclosure of any such information shall be subject to the terms and conditions of a written confidentially agreement acceptable to Buyer in its sole and absolute discretion.

IN WITNESS WHEREOF, Seller and Buyer have executed and acknowledged this Memorandum as of the day and year first above written.

a _____ limited liability company

BUYER,
a _____

By _____
Name _____
Title _____

By _____
Name _____
Title _____

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2020 by _____, the _____ of _____,
a _____ limited liability company.

NOTARY PUBLIC

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2020, by _____, the _____
of BUYER, a _____.

NOTARY PUBLIC

Exhibit "A"

Legal Description of the Premises

EXHIBIT 13

REQUIRED INSURANCE

From and after the delivery of full notice to proceed to the balance of plant contractor for the Facility and during the remainder of the Term of this Agreement:

1. Commercial general liability insurance against claims for personal injury (including bodily injury and death) and property damage with a limit of liability of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) general aggregate for combined bodily injury and property damage.
2. Excess/Umbrella liability insurance covering claims in excess of the underlying liability insurance described in paragraph 1, with a minimum ten million dollars (\$10,000,000) limit of liability per occurrence. The amounts of liability insurance described in paragraph 1 and this paragraph 2 may be satisfied by primary insurance or by any combination of primary and excess/umbrella insurance.
3. Workers' Compensation insurance to insure statutory liability for injury to Seller's employees in accordance with the Requirements of Law.

**POWER PURCHASE AGREEMENT
(RENEWABLE ENERGY-SOLAR)
BETWEEN
MEADE COUNTY SOLAR LLC
AND
BIG RIVERS ELECTRIC CORPORATION
with respect to
MEADE COUNTY SOLAR PROJECT**

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**POWER PURCHASE AGREEMENT
(RENEWABLE ENERGY-SOLAR)**

THIS POWER PURCHASE AGREEMENT (RENEWABLE ENERGY-SOLAR) (“**Agreement**”), entered into this [26th] day of May, 2020, is between MEADE COUNTY SOLAR LLC, a Delaware limited liability company (“**Seller**”), and BIG RIVERS ELECTRIC CORPORATION, a Kentucky rural electric cooperative corporation (“**Buyer**”). Seller and Buyer are sometimes hereinafter referred to collectively as the “**Parties**” and individually as a “**Party**.”

WHEREAS, Seller intends to construct, own, operate and maintain a solar-powered generation facility for the generation of electric energy located in Meade County, Kentucky with an Expected Nameplate Capacity Rating of 40 MW (AC) (the “**Facility**”).

WHEREAS, Seller expects that the Facility will deliver to Seller up to [REDACTED] of Net Output and associated Capacity Rights and RECs (as all such terms are hereinafter defined). Seller estimates that the Net Output, Capacity Rights and RECs will be delivered during each Contract Year according to the estimates of monthly Output set forth in Exhibit A. Except as otherwise provided herein, such Net Output and associated Capacity Rights and RECs shall be sold by Seller exclusively to Buyer. Seller acknowledges that Buyer will include these amounts of Net Output and associated Capacity Rights and RECs in Buyer’s resource planning.

WHEREAS, Seller desires to sell and deliver to Buyer the Net Output and associated RECs, Ancillary Services and Capacity Rights (as all such terms are hereinafter defined), and Buyer desires to buy the same from Seller in accordance with the terms and conditions hereof.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, mutually agree as follows:

**SECTION 1
DEFINITIONS; RULES OF INTERPRETATION**

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein have the following meanings:

“**AAA**” is the American Arbitration Association.

“**Abandonment**” means (1) the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer permitted under this Agreement (including as a result of the Lender’s exercise of rights under Financing Documents), or (2) if after the NTP Milestone and commencement of testing and inspection of the Facility, and prior to the Commercial Operation Date, there is a complete cessation of the construction, testing, and inspection of the Facility for ninety (90) consecutive days by Seller and Seller’s contractors, but only if such relinquishment or cessation is not caused by or attributable to an Event of Default of, or request by, Buyer, or an event of Force Majeure.

“AC” means alternating current.

“Additional Credit Support” is defined in Section 8.1.

“Administrator” is defined in Section 20.3.

“Affiliate” means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with “control” meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities (if applicable) or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer, Affiliate does not include any member of its Board of Directors or any member of Buyer.

“Agreement” is defined in the Recitals.

“Ancillary Services” means any of the services identified by the System Operator or the Tariff as “Ancillary Services”.

“As-Built Supplement” is a supplement to be added to **Exhibit 6.1** that describes the Facility as actually built, pursuant to Section 6.1 and includes an American Land Title Association survey of the Premises and the MWp at the time of Commercial Operation.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. PT.

“Buyer” is defined in the Recitals.

“Buyer CP Approval Date” means the later of the dates on which each of the conditions set forth in Section 2.9 has been satisfied or waived by Buyer in its discretion.

“Buyer Indemnities” is defined in Section 12.1.1.

“Buyer’s Cost to Cover” means the positive difference, if any, between (a) the sum of (i) the mathematical average of the relevant DALMP prices over each day for which the determination is being made (the “Average DALMP Price”), plus (ii) (A) the price of replacement RECs or (B) if, after using commercially reasonable efforts to do so, Buyer is unable to replace RECs, the REC Price Component, minus (b) the Contract Price. If on a given day (or Contract Year in the case of calculating Output Shortfall) the difference between (a) and (b) referenced above is zero or negative, then Buyer’s Cost to Cover shall be zero dollars (\$0), and Seller shall have no obligation to pay any amount to Buyer on account of Section 6.12.2 or Section 11.2.1 with respect to such day (or Contract Year in the case of calculating Output Shortfall). For any days prior to the Commercial Operation Date, the Contract Price shall be utilized for purposes of clause (b). An Example illustrating the calculation of Buyer’s Cost to Cover under certain stated assumptions is set forth in **Exhibit D**.

“Buyer’s Interest” means one hundred percent (100%) of the Net Output, Ancillary Services, RECs and Capacity Rights from the Facility.

“Buyer’s System” means the electrical system owned, operated or maintained by Buyer at the Point of Delivery.

“Calculation Period” means each measured interval integrated into an hour during the Term.

“CAMD” means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity with jurisdiction over a program involving transferability of RECs.

“Capacity Rights” means any current or future defined characteristic, certificate, benefit, product, tag (but not RECs), credit, attribute, or accounting construct, including any of the same counted towards any current or future capacity, resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy. Capacity Rights do not include PTCs, ITCs or any Tax Credits.

“Commercial Operation” means that not less than the Expected Nameplate Capacity Rating of the Facility is fully operational and reliable and the Facility is fully interconnected, integrated and synchronized with the System and Buyer’s System, as applicable, all of which shall be Seller’s responsibility to receive or obtain, and, without limiting Seller’s other obligations hereunder, which occurs when all of the following events (i) have occurred, and (ii) remain simultaneously true and accurate as of the date and moment on which Seller gives Buyer notice that Commercial Operation has occurred:

(1) Buyer has received a certificate addressed to Buyer from an officer of Seller familiar with the Facility certifying that (a) the Nameplate Capacity Rating of the Facility is at least the Expected Nameplate Capacity Rating; (b) the Facility is able to generate electric power reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof; (c) start-up testing of the Facility has been completed; (d) all Permits to construct or operate the Facility in compliance with all Requirements of Law and this Agreement have been obtained and are in full force and effect; (e) all conditions set forth in subsections (1) through (6) hereof have been met; (f) Seller is in compliance with the terms and conditions of this Agreement in all material respects; and (g) all Required Facility Documents and Financing Documents are in full force and effect and there are no defaults or events that, with the passing of time or the giving of notice, or both, would constitute a default thereunder.

(2) Seller has successfully completed all testing of the Facility that is required by the Financing Documents, Required Facility Documents, the Permits, the Generation Interconnection Agreement, Seller's operating agreements, manufacturers' warranties for the commencement of Commercial Operations at the Facility and all other Requirements of Law.

(3) Buyer has received a certificate addressed to Buyer from a Licensed Professional Engineer stating that, (a) in accordance with the Generation Interconnection Agreement, all required Interconnection Facilities have been constructed, (b) all required

interconnection tests have been completed, (c) the Facility is physically interconnected with the System and Buyer's System, as applicable, in conformance with the Generation Interconnection Agreement and able to deliver energy consistent with the terms of this Agreement, (d) the Facility is fully integrated and synchronized with the System and Buyer's System, as applicable, and (e) the System Operator has designated the Facility as an Intermittent Resource.

(4) Seller has provided Buyer: (a) an opinion from counsel acceptable to Buyer in the reasonable exercise of its discretion, stating that Seller has obtained or entered into all Required Facility Documents and (b) copies of any or all such requested Required Facility Documents; *provided, however*, that Seller may redact or omit confidential or commercial terms from non-public Required Facility Documents.

(5) The Facility has demonstrated the reliability of its communications systems and communications with Buyer's system control center to the reasonable satisfaction of Buyer or Buyer's designee.

(6) Seller has provided the Credit Support required as of such date pursuant to Section 8.1.

"Commercial Operation Date" means the date that Commercial Operation is achieved for the Facility.

"Confidential Business Information" is defined in Section 23.1.

"Contract Interest Rate" means the lesser of (a) the highest rate permitted under Requirements of Law and (b) 200 basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. as its "prime rate". If a Citibank, N.A. prime rate is not available, the applicable prime rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest is being paid.

"Contract Price" means the applicable price, expressed in \$/MWh, stated in Section 5.1.

"Contract Year" means a twelve (12) month period commencing at 00:00 hours on January 1 and ending on 24:00 hours on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the last day of the Term.

"Controlling Interest" means with respect to an entity, fifty percent (50%) or more of outstanding ownership interest, or the power to vote such percentage of ownership interest.

"Costs" means, with respect to the non-defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses (including costs incurred in connection with transmission services that would otherwise not have been incurred hereunder) reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement, and all reasonable

attorneys' fees and expenses incurred by the non-defaulting Party in connection with this Agreement.

“Credit Support” means (a) an irrevocable standby letter of credit in a form reasonably acceptable to Buyer, naming Buyer as the party entitled to demand payment and present draw requests thereunder that is issued by a U.S. commercial bank having total assets of at least \$10 billion and a senior unsecured long term credit rating (unenanced by third party support) equivalent to “A-” or better as determined by Standard & Poors and Fitch, and “A3” or better as determined by Moody’s, (b) cash collateral denominated in United States Dollars under a mutually agreeable third-party escrow or account control agreement, or (c) a performance or surety bond in a form reasonably acceptable to Buyer from a major U.S. commercial bank or surety company or the U.S. branch of a foreign bank or surety company with total assets of at least \$750,000,000 or greater, and such bank or surety company having a long term senior debt obligations of which are rated “BBB+” or better by Standard & Poor’s or Fitch, “Baa1” or better by Moody’s (or an equivalent rating from an equivalent rating agency as may be reasonably approved by Buyer).

“DALMP” is Day-Ahead LMP as that term is used in the Tariff.

“Delay Damages” means the damages payable by Seller under the circumstances and subject to the limits described in Sections 2.3(a) and 2.4, and for any given day are equal to [REDACTED]

[REDACTED] An Example illustrating the calculation of Delay Damages under certain stated assumptions is set forth in Exhibit B.

“Dispatchable Intermittent Resource” is defined in the MISO Tariff.

“Effective Date” means the latest of (i) the date the Kentucky Public Service Commission approves this Agreement and (ii) the date the Rural Utilities Service approves this Agreement.

“Electric System Authority” means each of NERC, MISO, the GIS, a System Operator, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the geographic area in which the Facility is located.

“Emissions Reduction Credit” is any credit, allowance or instrument issued or issuable by a Governmental Authority under regulations of the Environmental Protection Agency under the Clean Air Act.

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water, which are deemed of value by Buyer. Environmental Attributes include: (a) any avoided emissions of pollutants to the air, soil, or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; (b) all Emissions Reduction Credits; (c) any avoided emissions of carbon dioxide (CO2), methane (CH4), and other greenhouse gases (GHGs) that have been determined by any Governmental Authority or the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (d) any cryptocurrency, blockchain, and similar or related matters, items

commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with anything produced by Facility Output. Environmental Attributes do not include (i) PTCs, ITCs, or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) matters designated by Buyer as sources of liability, or (iii) any adverse health, safety, wildlife or environmental impacts.

“Environmental Attribute Reporting Rights” means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser’s discretion, and includes reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

“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, or to present a material risk that as a consequence of the application of federal, state or local laws and regulations that (a) the Premises will not be available or usable for the purposes contemplated by this Agreement or (b) the potential resulting liabilities could impair Seller’s ability to meet its obligations hereunder.

“Event of Default” is defined in Section 11.1.

“EWG” means an “exempt wholesale generator,” as defined under PUHCA.

“Example” means an example of certain calculations to be made hereunder. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example.

“Excused Delays” means (i) any event of Force Majeure, (ii) any delay in completion of the Interconnection Facilities by Interconnection Provider or Transmission Provider after [REDACTED] provided Seller has made commercially reasonable efforts to get the Interconnection Facilities completed by [REDACTED] or (iii) any delay in Interconnection Provider executing and delivering the Interconnection Agreement after [REDACTED]

“Expected Energy” means [REDACTED] of Net Output during the first Contract Year, measured at the Point of Delivery; [REDACTED] MWh of Net Output during the second Contract Year, measured at the Point of Delivery; and thereafter, Expected Energy will be the annual generation predicted by the Solar Performance Modeling Program multiplied by the measured global horizontal irradiance (GHI) divided by the Solar Performance Modeling Program’s expected GHI, taking into account an annual degradation factor of 0.5% per Contract Year. Seller estimates that the Net Output will be delivered during each calendar year according to the estimates of monthly Output set forth in **Exhibit A**. Seller acknowledges that Buyer will include Buyer’s Interest in Buyer’s resource planning. Buyer acknowledges that solar exposure is a variable resource and that the Facility’s actual annual Output of Net Output and RECs in the ordinary course of any given Contract Year will be subject to variation caused by differences in the solar exposure at the Facility from Contract Year to Contract Year; provided, however, that nothing in this sentence affects or reduces Seller’s obligations hereunder.

“Expected Nameplate Capacity Rating” means 40 MW (AC), the expected maximum instantaneous generation capacity of the Facility.

“Facility” is defined in the Recitals and is more fully described in attached **Exhibit 6.1** and includes the photovoltaic power generating equipment, including panels, arrays, tracking system, and Inverters, and all other equipment, devices, associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of electric energy by Seller to Buyer and required to interconnect with the System and Buyer’s System, as applicable.

“Facility Revenue Meter” means all metering equipment installed or to be installed at the Generating Facility pursuant to this GIA at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

“FASB” means the Financial Accounting Standards Board.

“FERC” means the Federal Energy Regulatory Commission.

“FIN 46R” means the FASB revised Interpretation No. 46(R), Consolidation of Variable Interest Entities.

“Financing Documents” is defined in the Lender Consent.

“Fitch” means Fitch Ratings, Inc.

“Force Majeure” is defined in Section 14.1.

“Forced Outage” means NERC Event Types U1, U2 and U3, as set forth in attached **Exhibit C**, and specifically excludes any Maintenance Outage or Planned Outage.

“Gains” means, with respect to a non-defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner. Gains shall be measured with respect to the Expected Energy over the remainder of the Term (ignoring any early termination of this Agreement).

“GATS” means the Generation Attribute Tracking System.

“Generation Information System” or **“GIS”** means M-RETS or its successor, or if notified by Buyer in writing, a replacement state or regional registry, or other present or future applicable system for accounting for and transferring RECs, in each case with respect to generation from the Facility.

“Generation Interconnection Agreement” means the agreement to be entered into separately between Seller and Interconnection Provider concerning the Interconnection Facilities.

“Generator Operator” means the entity that operates generating facility(ies) and performs the functions of supplying energy and interconnected operations services.

“GIS Certificate” means the certificate representing all or any part of the REC created and accounted for by the GIS.

“GIS Operating Procedures” means the operating rules and requirements adopted by the GIS.

“Government” is defined in Section 20.3.

“Governmental Authority” means any supranational, federal or state authority or other political subdivision thereof, having jurisdiction over Seller, Buyer, the Facility, or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“Guaranteed Commercial Operation Date” means the date that is [REDACTED] after the Scheduled Commercial Operation Date (as the Scheduled Commercial Operation Date may be extended from time to time in accordance with the terms herein).

“Hazardous Materials” means any substance, material, gas, 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 non-human forms of life, land, water, groundwater, and air, including any material or substance that is (a) 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; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.*; (g) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; (h) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*; (i) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; or (j) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*

“ICCP” means the Inter-Control Center Communications Protocol.

“Interconnection Facilities” means all the facilities installed, or to be installed, for the purpose of interconnecting the Facility to the System and Buyer’s System, as applicable, including electrical transmission lines, line upgrades, transformers, capacitor banks, inductor banks, and associated equipment, substations, relay and switching equipment, and safety equipment.

“Interconnection Provider” means Big Rivers Electric Corporation.

“Intermittent Resource” is defined in the MISO Tariff.

“Inverter” means the equipment installed at the Facility to convert direct current from the

Solar Panels to alternating current, as described in **Exhibit 6.1**.

“**ITCs**” means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code.

“**Lender**” means any entity other than a Seller Affiliate lending money or extending credit (including any financing lease, monetization of tax benefits, transaction with a Tax Investor (as defined in the Lender Consent), backleverage financing or credit derivative arrangement) to Seller (a) for the construction, term or permanent financing or refinancing of the Facility; (b) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (c) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; or (d) for the purchase of the Facility and related rights from Seller.

“**Lender Consent**” means a Consent to Collateral Assignment in favor of one or more Lenders and in substantially the form of **Exhibit 8.4** or such other form as is reasonably acceptable to Buyer.

“**Liabilities**” is defined in Section 12.1.1.

“**Licensed Professional Engineer**” means a person proposed by Seller and acceptable to Buyer in its reasonable judgment who (1) is licensed to practice engineering in the appropriate engineering discipline for the required certification being made, in the United States, and in all states for which the person is providing a certification, evaluation or opinion with respect to matters or Requirements of Law specific to such state, (2) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (3) has no economic relationship, association, or nexus with Seller or its Affiliates, other than, with the prior written consent of Buyer, services previously or currently being rendered to Seller or its Affiliates, and (4) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. The engineers and engineering firms listed on **Exhibit E** are acceptable to Buyer as “Licensed Professional Engineers” if they meet the requirements above.

“**Locational Marginal Price**” or “**LMP**” means the 5-minute real-time Locational Marginal Price as defined by MISO at the Commercial Pricing Node at the Point of Delivery. Until such time as MISO defines a Commercial Pricing Node near the Facility, the Commercial Pricing Node nearest to the Point of Delivery will be utilized.

“**Losses**” means, with respect to a non-defaulting party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner. Losses shall be measured with respect to the Expected Energy over the remainder of the Term (ignoring any early termination of this Agreement).

“**Maintenance Outage**” means NERC Event Type MO, as set forth in attached **Exhibit C**, and includes any outage involving at least ten percent (10%) of the Facility's Nameplate Capacity Rating that is not a Forced Outage or a Planned Outage.

“Market Participant” is defined in the Tariff.

“Maximum Delivery Rate” means the maximum hourly rate of delivery of Net Output in MWh from the Facility to the Point of Delivery, calculated on the basis of the Net Output delivered in an hour accruing at an average rate equivalent to the actual Nameplate Capacity Rating.

“Mediation Location” means Henderson, Kentucky.

“Mediation Notice” is defined in Section 24.2(a).

“Mediation Procedures” is defined in Section 24.2.

“Meter Data Management Agent” means an entity providing meter data to the MISO Meter Data Management System, as that term is used in the Tariff.

“MISO” means the Midcontinent Independent System Operator, Inc., or its successor.

“MISO Rules” means the policies, rules, guidelines, procedures, standards and criteria applicable to Market Participants in MISO, including the Tariff, the Operating Agreement, and the MISO manuals.

“Moody’s” means Moody’s Investors Services, Inc.

“M-RETS” means the Midwest Renewable Energy Tracking System.

“MW” means megawatt.

“MWh” means megawatt hour.

“MWp” means megawatt of direct current (DC) electric capacity.

“Nameplate Capacity Rating” means the maximum installed instantaneous generation capacity of the completed Facility, expressed in MW (AC), when operated in compliance with the Generation Interconnection Agreement and consistent with the recommended power factor and operating parameters provided by the manufacturer of the Solar Panels and Inverters, as set forth in a notice from Seller to Buyer delivered prior to the Commercial Operation Date. The Nameplate Capacity Rating of the Facility shall be at least equal to the Expected Nameplate Capacity Rating but shall not exceed 40 MW (AC).

“NERC” means the North American Electric Reliability Corporation.

“Negative RTLMP Period” means the period commencing with start of the first Calculation Period in which the RTLMP is zero or negative and ending with the start of the first Calculation Period in which the RTLMP is again positive.

“Net Output” means all energy produced by the Facility, exclusive of Station Use, and delivered at the Point of Delivery.

“NTP Milestone” means the earlier of (a) the date of issuance of a full notice to proceed

(or final notice to proceed with material construction activities) or similar notice or instructions issued under the principal construction contract in respect of the Facility pursuant to which the primary construction contractor is instructed or informed by Seller or its Affiliate that such contractor has authority to engage in and complete the activities needed to achieve “Substantial Completion” (or similar concept under the applicable construction contract) of the Facility, and (b) if applicable, the closing of the construction financing, whether debt and/or tax equity, in an amount sufficient to finance the construction costs for the Facility through the Commercial Operation Date has occurred and all conditions precedent to the first draw under such construction financing have been satisfied or waived by the Lenders.

“**NTP Target Date**” is defined in Section 2.3(a).

“**Offered Assets**” is defined in Section 20.4.1.

“**Ohio SREC**” means the Solar Renewable Energy Credit market, or successor program, recognized by the state of Ohio.

“**Output**” means all energy produced by the Facility.

“**Output Guarantee**” is defined in Section 6.12.1.

“**Output Shortfall**” is defined in and calculated pursuant to Section 6.12.2(b).

“**Permits**” means all of the permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the construction, ownership or operation of the Facility and occupancy of the Premises, including those specified in **Exhibit F**, and all amendments, modifications, supplements, general conditions and addenda thereto.

“**Planned Outage**” means NERC Event Type PO, as set forth in attached **Exhibit C**, and specifically excludes any Maintenance Outage or Forced Outage.

“**Planning Resource Auction**” or “**PRA**” means an annual auction that is conducted by the Transmission Provider to determine the Auction Clearing Price and the cleared Zonal Resource Credit offers for each Local Resource Zone and External Resource Zone for the applicable Planning Year, as such terms are defined in the MISO Tariff.

“**Point of Delivery**” means the point of interconnection between the Facility and the System and Buyer’s System, as applicable, as specified in the Generation Interconnection Agreement and as further described in **Exhibit 9.2**.

“**Post-COD Credit Support**” is defined in Section 8.1.

“**Premises**” means the real property on which the Facility is or will be located, as more fully described on **Exhibit 6.1**.

“**Prevailing Time**” or “**PT**” means Standard Time or Daylight Time, as applicable on the day in question at the Point of Delivery.

“Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the independent electric power generation industry for solar facilities of similar size and characteristics or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known or that should reasonably have been known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

“PTCs” means production Tax Credits under Section 45 of the Internal Revenue Code.

“PUHCA” means the Public Utility Holding Company Act of 2005, as amended from time to time.

“PURPA” means the Public Utility Regulatory Policies Act of 1978, as amended from time to time.

“QF” means “qualifying facility” as that term is defined in 18 C.F.R. 292.101(b)(1).

“Qualified Transferee” means (i) with respect to Seller, (1) an U.S. domestic business entity that itself and together with its Affiliates has a tangible net worth of at least three hundred million dollars (\$300,000,000) and (2) at least three (3) years of experience operating a generating plant of similar technology and similar size to the Facility, or (ii) with respect to Buyer, (1) is a utility and load serving entity or a provider of wholesale electric power and services in an amount no less than Buyer provides to its cooperative members as of the Effective Date, and (2) has a long-term credit rating or corporate or long-term senior unsecured debt rating (not supported by third party credit enhancements) of “Baa3” or higher by Moody’s, “BBB-” or higher by S&P, or “BBB-” or higher by Fitch Ratings Ltd. or its successor.

“RE” means the interconnection or reliability regional entity designated by NERC as responsible for enforcing electric reliability standards for the geographic area in which the Facility is located.

“REC” means (a) the Environmental Attributes associated with all Net Output, together with (b) the Environmental Attribute Reporting Rights associated with such energy and Environmental Attributes, however commercially transferred or traded under any of these or other product names, such as “Renewable Energy Credits,” “Renewable Energy Certificates,” “Green-e Certified”, GIS Certificates or otherwise. One (1) REC represents the Environmental Attributes made available by the generation of one (1) MWh of Net Output from the Facility.

“REC Price Component” means [REDACTED]; provided that upon the request of either Party no more than quarterly, such price will be amended to be the average market price of RECs with all the material characteristics of those sold hereunder, based on the average of three (3) broker quotes from brokers designated by the requesting Party that are not Affiliates of either Party that are reasonably acceptable to the other Party and that have at least three (3) years of experience acting as a broker in transactions for the purchase and sale of RECs with all the

material characteristics of those sold hereunder. The costs of such brokers shall be borne by the requesting Party.

“**Remedial Action Plan**” is defined in Section 2.3(a).

“**Reporting Month**” means each calendar month during the Term.

“**Required Facility Documents**” means all Permits, authorizations, rights and agreements now or hereafter necessary for construction, ownership, operation, and maintenance of the Facility, the lawful operation of the Facility, and to deliver Net Output to Buyer in accordance with this Agreement and Requirements of Law, including those set forth in **Exhibit 3.2.6** and **Exhibit F**. Nothing set forth in **Exhibit 3.2.6** limits the obligations of Seller to obtain all Required Facility Documents, the Permits set forth in **Exhibit F** or as otherwise required hereunder.

“**Requirements of Law**” means any applicable federal, state and local law, statute, regulation, rule, action, order, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

“**RTLMP**” is Real-Time LMP as that term is used in the Tariff.

“**SCADA**” means a remote supervisory control and data acquisition system to be provided by Seller, which includes all necessary components and contact points at the Facility.

“**Scheduled Commercial Operation Date**” means [REDACTED], provided such date shall be extended on a day-for-day basis for delays in achieving Commercial Operation by such date to the extent caused by Excused Delays.

“**Seller**” is defined in the Recitals.

“**Seller CP Approval Date**” means the later of the dates on which each of the conditions set forth in Section 2.10 has been satisfied or waived by Seller in its discretion.

“**Seller Indemnitees**” is defined in Section 12.1.2.

“**Seller Uncontrollable Minutes**” means, for the Facility in any Contract Year, the total number of minutes during such Contract Year during which the Facility was unable to deliver Net Output to Buyer because Buyer failed to accept such delivery or due to one or more of the following events, each as recorded by Seller's SCADA and indicated by Seller's electronic fault log: (a) a Force Majeure event; (b) to the extent not caused by Seller's actions, a curtailment in accordance with Section 4.4; (c) the System or Buyer's System operating outside the voltage or frequency limits defined in the applicable operating manual for the Inverters installed at the Facility; (d) a default by Buyer; or (e) any breach of contract or failure by the Transmission Provider or Interconnection Provider; provided, however, that if any of the events described above in items (a) through (e) occur simultaneously, then the relevant period of time shall only be counted once in order to prevent double counting. Seller Uncontrollable Minutes shall not include minutes when (i) the Facility or any portion thereof was unavailable solely due to Seller's non-conformance

with the Generation Interconnection Agreement or (ii) the Facility or any portion thereof was paused or withdrawn from use by Seller for reasons other than those covered in this definition.

“Seller’s Cost to Cover” means the positive difference, if any, between (a) the Contract Price per MWh specified in **Exhibit 5.1**, and (b) the net proceeds per MWh actually realized by Seller, if any, from the sale to a third party of Net Output and RECs not purchased by Buyer as required hereunder. If on any given day the difference between (a) and (b) referenced above is zero or negative, then Seller’s Cost to Cover shall be zero dollars (\$0) with respect to such day, and Buyer shall have no obligation to pay any amount to Seller on account of Section 11.2.2. For any days prior to the Commercial Operation Date, the Contract Price applicable in the first Contract Year shall be utilized for purposes of clause (a).

“Senior Lenders” means the Lenders providing construction financing for the Facility, or any term or permanent take-out financing of the costs of development and construction, as described in the definition of “Lenders”, other than Affiliates of Seller.

“Solar Array” means one or more Solar Panels connected to the same Inverter.

“Solar Integration Costs” is defined in Section 5.7.

“Solar Panels” means the photovoltaic energy generating panels installed at the Facility as described in **Exhibit 6.1**.

“Solar Performance Modeling Program” means a commercially available computer modeling program that is generally accepted in the solar energy industry capable of modeling the Expected Energy and other similar Outputs. Solar Performance Modeling Program includes, but is not limited to, the PVSYST program. Seller, at its cost, shall provide Buyer access to any Solar Performance Modeling Program selected by Seller in order for Buyer to fully analyze all modeling provided by Seller under this Agreement.

“Standard & Poor’s” means S&P Global Ratings, a division of S&P Global Inc.

“Station Use” means Facility Output used to operate the Facility or provide electric energy for any other activities occurring on the Premises or prior to the low side of the substation of the Interconnection Facilities.

“System” means the transmission facilities over which MISO has operational control.

“System Impact Studies” is defined in the MISO Tariff.

“System Operator” means any entity, including Transmission Provider, that becomes responsible as system operator for, or directs the operation of, the System.

“Tariff” means the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff as amended and filed with FERC from time to time.

“Tax Credits” means any state, local or federal production tax credit, tax deduction, or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

“Tax Equity Financing” means a transaction or series of transactions involving one or more Tax Investors seeking a return that is enhanced by tax credits and/or tax depreciation including without limitation (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without “leverage”)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a solar project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Code, as amended (a pass-through lease), provided that in any case, such transaction or series of transactions does not result in the direct or indirect transfer, disposition or sale of any of the managing or controlling membership interests in Seller.

“Tax Investor” is defined in the Lender Consent.

“Term” is defined in Section 2.1.

“Termination Payment” means, with respect to the non-defaulting Party, as applicable, either (i) the sum of Losses plus Costs or (ii) the difference between Costs minus Gains, as applicable, expressed in U.S. dollars. If the Termination Payment calculation does not demonstrate that the non-defaulting Party suffered a net loss, the Termination Payment shall be \$0. If the Termination Payment calculation does demonstrate that the non-defaulting Party suffered a net loss, a Termination Payment shall be due to the non-defaulting Party pursuant to Section 11.5.

“Test Energy” means any Net Output during the period between the Effective Date and the Commercial Operation Date, and all associated Ancillary Services, RECs and Capacity Rights.

“Transmission Provider” means MISO or any successor entity.

“Transmission Service” means transmission services pursuant to which the Transmission Provider transmits Output to the Point of Delivery, as applicable.

1.2 Rules of Interpretation.

1.2.1. General. Terms used in this Agreement but not specifically defined in this Section 1 shall have meanings as commonly used in the English language; provided that words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used in accordance with such recognized meanings. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity’s or index’s successors; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” means “including, without limitation” or “including, but not

limited to”; (h) all references to a particular tariff, law or statute mean that tariff, law or statute as amended from time to time; and (i) the word “or” is not necessarily exclusive.

1.2.2. Terms Not to be Construed For or Against Either Party. Each term hereof shall be construed simply according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term hereof shall be construed against a Party on the ground that the Party is the author of that provision.

1.2.3. Headings. The headings used for the sections and articles hereof are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions hereof.

1.2.4. Examples. Example calculations and other examples set forth herein are for purposes of illustration only and are not intended to constitute a representation, warranty or covenant concerning the example itself or the matters assumed for purposes of such example. If there is a conflict between an example and the text hereof, the text shall control.

1.2.5. Generation Interconnection Agreement.

(a) The Parties acknowledge and agree that the Generation Interconnection Agreement shall be a separate and free standing contract.

(b) Except as otherwise provided in this Agreement, nothing in the Generation Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties’ rights, duties, and obligations hereunder. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider.

SECTION 2 TERM; FACILITY DEVELOPMENT

2.1 Term. Subject to Section 2.9 and Section 2.10, this Agreement shall become effective upon the Effective Date and, unless earlier terminated as provided herein, shall remain in effect until the twentieth (20th) anniversary of the Commercial Operation Date (“**Term**”).

2.2 Milestones. Time is of the essence in the performance hereof, and Seller’s completion of the Facility and delivery of Net Output, Capacity Rights and RECs by the Scheduled Commercial Operation Date is critically important. Therefore, Seller shall use commercially reasonable efforts to achieve the milestones set forth in **Exhibit 2.2** at the times indicated; provided that, except as set forth in Section 2.3, Buyer shall not be entitled to any damages for failure to timely achieve any Milestone (other than the milestone for Commercial Operation) set forth on **Exhibit 2.2**.

2.3 Facility Construction and Delay Damages.

(a) If the NTP Milestone is not achieved on or before [REDACTED] (the “**NTP Target Date**”) as such date shall be extended on a day-for-day basis for Excused Delays, Seller shall submit to Buyer within twenty (20) days following such date a remedial action plan

demonstrating the measures that Seller has taken or will take in order to ensure that the NTP Milestone will occur no later than ninety (90) days following the NTP Target Date and that Commercial Operation will occur no later than the Guaranteed Commercial Operation Date (such plan, a “**Remedial Action Plan**”), provided that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet the Commercial Operation Date. If the NTP Milestone does not occur on or before the date that is ninety (90) following the NTP Target Date, until the date on which the NTP Milestone occurs, Buyer may terminate this Agreement upon notice to Seller. Upon any such termination, subject to Sections 11.9 and 12.1, neither Party shall have any further liability to the other Party (except for liabilities arising prior to such termination and liabilities arising out of a Party’s obligations to indemnify the other Party) and Buyer shall return any Credit Support previously provided by Seller to Buyer hereunder after subtracting the amount of any amounts due and owing by Seller hereunder prior to such termination.

(b) If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay to Buyer Delay Damages for each day from and after the Scheduled Commercial Operation Date through the date that the Facility achieves Commercial Operation.

(c) If Commercial Operation is not achieved by the Guaranteed Commercial Operation Date, Buyer may terminate this Agreement pursuant to Section 11.

(d) Any Solar Array that is partially complete on the Commercial Operation Date shall not be part of the Facility, and Seller shall not undertake to add any such Solar Array or output from any such Solar Array to the Facility without the prior written consent of Buyer. Seller shall not sell any output of such Solar Array, or any RECs, Ancillary Services or Capacity Rights associated with such output, to any person or entity other than Buyer, and Buyer may in its sole discretion, but is not required to, purchase any output of such Solar Array, or any RECs, Ancillary Services or Capacity Rights associated with such output. If Buyer elects to purchase any such output, the Maximum Delivery Rate shall be increased to the extent of the output Buyer has elected to purchase.

2.4 Damages Calculation. Each Party agrees and acknowledges that (a) the damages that Buyer would incur due to Seller’s delay in achieving Commercial Operation would be difficult or impossible to predict with certainty, and (b) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. Notwithstanding the foregoing, this Section 2.4 shall not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller’s failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date. Any such termination damages shall be determined in accordance with Section 11.5.

2.5 Damages Invoicing. By the fifteenth (15th) day following the end of the calendar month in which the Delay Damages begin to accrue, and continuing on the fifteenth (15th) day of each calendar month during the period in which Delay Damages accrue (and the following months if applicable), Buyer shall deliver to Seller an invoice showing Buyer’s computation of such damages and any amount due Buyer in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice and subject to Sections 10.3 and 10.4, Seller

shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

2.6 Buyer's Right to Monitor. During the Term, Seller shall permit Buyer and its advisors and consultants to:

(a) Review and discuss with Seller and its advisors and consultants monthly status reports on the progress of the acquisition, design, financing, engineering, construction and installation of the Facility. Between the Effective Date and thirty (30) days following the Commercial Operation Date, Seller shall, on or before the tenth (10th) day of each calendar month, provide Buyer with a monthly status report for the preceding month.

(b) Monitor the status of the acquisition, land leasing, design, financing, engineering, construction and installation of the Facility and the performance of the contractors constructing the Facility.

(c) Monitor and receive monthly updates from Seller concerning (i) the progress of Seller's negotiation and execution of contracts for the acquisition, design, financing, engineering, construction and installation of the Facility, Premises, major equipment and warranties, and (ii) the contractors' performance and achievement of contract deliverables and all performance and other tests required to achieve Commercial Operation or contemplated by the warranty agreements between Seller and a manufacturer of the Facility's Solar Panels and Inverters and any other material items of Facility equipment that require testing for warranty agreements to be effective.

(d) Witness initial performance tests and other material tests and review the results thereof. Seller will use commercially reasonable efforts to provide Buyer with at least five Business Days prior notice of each such test, with the understanding that if the performance of such test is dependent on the presence of sufficient solar exposure or other variables beyond the control of Seller, the date of such test may be postponed if, on the date specified in the related notice, there is insufficient solar exposure or other circumstances beyond the control of Seller that prevent the performance of such test on the scheduled date.

(e) Perform such examinations, inspections, and quality surveillance as, in Buyer's reasonable judgment, are appropriate and advisable to determine that the Facility has been properly commissioned and Commercial Operation has been achieved.

(f) Except as otherwise provided in this Agreement, Seller does not herein grant Buyer the right to review, comment on or approve of the terms or conditions of any contract or negotiation between Seller and a third party, the terms and conditions of each such contract or negotiation being confidential and to be determined by Seller in its sole discretion. Conversely, nothing in this Agreement shall be construed to require Buyer to review, comment on, or approve of any contract between Seller and a third party.

(g) With respect to Buyer's rights under this Section 2.6, (i) Buyer is under no obligation to exercise any of these monitoring rights, ii) such monitoring shall occur subject to reasonable rules developed by Seller regarding Facility construction, access, health,

safety, and environmental requirements, and (iii) Buyer shall have no liability to Seller for failing to advise it of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by Buyer with respect to the Facility or any contractor. Any review or monitoring of the Facility conducted by Buyer or its advisors or consultants hereunder shall be performed in a manner consistent with Seller's workplace health and safety requirements and in a manner that does not impede, hinder, postpone, or delay Seller or its contractors in their performance of the engineering, construction, design or testing of the Facility. Buyer shall maintain one or more designated representatives for purposes of the monitoring activities contemplated in this Section 2.6, which representatives shall have authority to act for Buyer in all technical matters under this Section 2.6 as authorized by Buyer, but not to amend or modify any provision hereof. Buyer's initial representatives and their contact information are listed in **Exhibit 2.6**. Buyer may, by written notice to Seller, change its representatives or their contact information.

2.7 Tax Credits. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive PTCs, ITCs, or other Tax Credits, or to or qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes, on account of rules respecting the Facility owner minimum interest in the Facility's risks, the relationship between Facility owner and Seller or otherwise. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Buyer's Interest, shall be effective regardless of whether the sale of Output or Net Output from the Facility is eligible for, or receives, PTCs, ITCs or other Tax Credits during the Term.

2.8 Commercial Operation. Seller shall provide written notice to Buyer stating when Seller believes that the Facility has achieved Commercial Operation and its Nameplate Capacity Rating accompanied by the certificates described in the definition of Commercial Operation. Buyer shall have five (5) Business Days after receipt either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what Buyer reasonably believes has not been satisfied. If, within such five-day period, Buyer does not respond or notifies Seller confirming that the Facility has achieved Commercial Operation, the original date of receipt of Seller's written notice shall be the Commercial Operation Date. If Buyer notifies Seller within such ten day period that Buyer believes the Facility has not achieved Commercial Operation, Seller must address the concerns stated in Buyer's notice to the mutual satisfaction of both Parties, and Commercial Operation shall occur on the date of such satisfaction, as specified in a notice from Buyer to Seller.

2.9 Buyer Conditions. Notwithstanding anything herein to the contrary, Buyer shall have the right to terminate this Agreement upon notice to Seller as follows:

- (a) Within ninety (90) days of Seller's receipt of the final System Impact Study for the Project if such study specifies the aggregate of the network upgrade costs for the Meade County project may exceed \$500,000; or
- (b) If Buyer delivers written notice on or before October 31, 2020 that the Kentucky Public Service Commission has failed to approve this Agreement; provided Buyer shall promptly and no later than thirty (30) days following the date hereof

properly file for approval by the Kentucky Public Service Commission and thereafter diligently pursue such approval; and

- (c) If Buyer delivers written notice on or before October 31, 2020 that the Rural Utilities Service has failed to approve this Agreement; provided Buyer shall promptly and no later than thirty (30) days following the date hereof properly file for approval by the Rural Utilities Service and thereafter diligently pursue such approval.

If Buyer delivers such a termination notice, neither Party shall have any further liability or obligation hereunder (except for liabilities arising prior to such termination and liabilities arising out of a Party's obligations to indemnify the other Party) and Buyer shall promptly return any Credit Support previously delivered by Seller.

2.10 Seller Conditions. Notwithstanding anything herein to the contrary, Seller shall have the right to terminate this Agreement upon notice to Buyer as follows:

[REDACTED]

[REDACTED]

[REDACTED]

- (d) After [REDACTED] if Buyer has not received approval of this Agreement from the Kentucky Public Service Commission or the Rural Utilities Service.

If Seller delivers such a termination notice, neither Party shall have any further liability or obligation hereunder (except for liabilities arising prior to such termination and liabilities arising out of a Party's obligations to indemnify the other Party) and Buyer shall promptly return any Credit Support previously delivered by Seller.

SECTION 3 REPRESENTATIONS AND WARRANTIES

3.1 Mutual Representations and Warranties. Each Party represents, covenants, and warrants to the other that:

3.1.1. Organization. It is duly organized and validly existing under the laws of its State of organization.

3.1.2. Authority. It has the requisite power and authority to enter hereinto and to perform according to the terms hereof.

3.1.3. Corporate Actions. It has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated hereby.

3.1.4. No Contravention. The execution, delivery, performance and observance by it of its obligations hereunder do not or will not when performed (a) contravene any provision of, or constitute a default under, (i) any indenture, mortgage, security instrument or undertaking, or other material agreement to which it is a party or by which it is bound, (ii) any valid order of any court, or any regulatory agency or other body having authority to which it is subject, or (iii) any material Requirements of Law presently in effect having applicability to it, or (b) require the consent or approval of, or material filing or registration with, any Governmental Authority or other person except as provided herein.

3.1.5. Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of it, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies.

3.1.6. Eligible Contract Participant. It, and any guarantor of its obligations hereunder, is an "eligible contract participant" within the meaning of the Commodity Exchange Act.

3.2 Seller's Further Representations and Warranties. Seller further represents, covenants, and warrants to Buyer that:

3.2.1. Organization. Seller is a corporation duly organized and validly existing under the laws of Delaware.

3.2.2. Authority. Seller (i) has all required regulatory authority to make wholesale sales from the Facility; (ii) has the power and authority to own and operate its businesses and properties, to own or lease and be present upon the property it occupies and to conduct the business in which it currently engaged; and (iii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

3.2.3. No Contravention. The execution, delivery, performance and observance by Seller of its obligations hereunder do not and will not:

(a) contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or any Affiliate of Seller;

(b) require the consent or approval of or material filing or registration with any Governmental Authority or other person other than such consents and approvals which are set forth in **Exhibit 3.2.6** and expected to be obtained in due course;

(c) result in a breach of or constitute a default under any provision of any security issued by Seller or any Affiliate of Seller or any material agreement, instrument or undertaking to which either Seller or any Affiliate of Seller is a party or by which the property of Seller or any Affiliate of Seller is bound.

3.2.4. Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against Seller or any Affiliate with respect hereto and the transactions contemplated hereunder. No other investigation or proceeding is pending or threatened against Seller or any Affiliate of Seller that would reasonably be expected to have a material adverse effect on Seller's obligations to perform hereunder.

3.2.5. Accuracy of Information. To Seller's knowledge, no exhibit, contract, report or document furnished by Seller to Buyer that contains factual information (excluding any projections) in connection with this Agreement, or the negotiation or execution hereof contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

3.2.6. Required Facility Documents. All Required Facility Documents are listed in **Exhibit 3.2.6**. Pursuant to the Required Facility Documents, Seller holds as of the Effective Date, or will hold by the Commercial Operation Date, all rights and entitlements necessary to construct, own and operate the Facility and to deliver Buyer's Interest to Buyer in accordance with this Agreement. No unusually burdensome conditions are expected by Seller to be placed upon, or created by, any of the Required Facility Documents and the anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises and all Requirements of Law. Seller shall notify Buyer of any material consent or approval that (a) Seller determines is required for the construction, ownership or operation of the Facility, and (b) is not already listed in **Exhibit 3.2.6**.

3.2.7. Delivery of Energy. On or before the Commercial Operation Date, Seller shall hold rights sufficient to enable Seller to deliver Net Output at the Expected Nameplate Capacity Rating from the Facility, on a firm basis, to the Point of Delivery pursuant to this Agreement throughout the Term.

3.2.8. Control of Premises. Seller has or will have prior to commencement of construction of the Facility all legal rights necessary for the Seller to enter upon and occupy the Premises for the purpose of constructing, operating and maintaining the Facility for the Term and Seller is not in material breach of any terms or conditions of such leases or other rights in real

property for the Facility or Premise. All leases of real property required for the operation of the Facility or the performance of any obligations of Seller hereunder are set forth and accurately described in **Exhibit 3.2.6** or will be added as contemplated by Section 3.2.6. During the Term, Seller shall maintain all leases or other land grants necessary for the construction, operation and maintenance of the Facility. Upon request by Buyer, Seller shall provide copies of the recorded memoranda of lease.

3.2.9. Certification as an Eligible Renewable Resource. The Facility will be certified by the Commercial Operation Date, and will at all times thereafter remain certified, as an eligible renewable resource under the renewable portfolio or renewable energy standards of the Ohio SREC and Green-e Energy certification programs, and any successor programs, through tracking registries including GATS and M-RETS and any successor tracking registries. Seller, at its cost, is responsible for obtaining and maintaining the Facility certifications and registrations required under this Agreement.

3.2.10. Green Guides. Seller has at all times been and will at all times be fully compliant with the requirements of the Federal Trade Commission's "Green Guides," 77 F.R. 62122, 16 C.F.R. Part 260, or any successor rule, in any communication concerning Net Output, the Facility or the RECs.

3.3 No Other Representations or Warranties. Each Party acknowledges that it has entered hereinto in reliance upon only the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter hereof.

3.4 Continuing Nature of Representations and Warranties: Notice. The representations and warranties set forth in this Section 3 are made as of the Effective Date and deemed made continually throughout the Term. If at any time during the Term, any Party obtains actual knowledge of any event or information which causes any of the representations and warranties in this Section 3 to be materially untrue or misleading, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section 3 shall be given as soon as practicable after the occurrence of each such event.

SECTION 4

DELIVERIES OF NET OUTPUT, ANCILLARY SERVICES, CAPACITY RIGHTS AND RECS

4.1 Purchase and Sale. Except as otherwise expressly provided herein, commencing on the Commercial Operation Date and continuing through the Term, Seller shall sell and make available to Buyer, and Buyer shall purchase and receive, (a) the Net Output from the Facility at the Point of Delivery, and (b) all Ancillary Services, Capacity Rights and RECs associated with Net Output or otherwise resulting from the generation and delivery of energy by the Facility (which shall come from the Facility and from no other source); provided, however, that Buyer may at its sole option, but shall be under no obligation to, receive any Net Output above the Maximum Delivery Rate, or any Capacity Rights, Ancillary Services, or RECs associated with any Net

Output above the Maximum Delivery Rate. In no event shall Buyer be obligated to purchase, receive or pay for Output (or RECs or Ancillary Services associated with Output) that is not delivered to the Point of Delivery. In addition, during the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to Buyer, and Buyer shall purchase and receive, Net Output, Ancillary Services, Capacity Rights, and associated RECs from the Facility at the Point of Delivery as Test Energy at the price specified in Section 5.1.1.

4.2 No Sales to Third Parties. During the Term, Seller shall not sell any Net Output, RECs, Ancillary Services or Capacity Rights from the Facility to any party other than Buyer; *provided, however*, that this restriction shall not apply with respect to Net Output or RECs during periods when Buyer is in default hereof because it has, without excuse, failed to accept or purchase such Net Output or RECs if required to hereunder.

4.3 Title and Risk of Loss of Net Output. Seller shall deliver Net Output, Ancillary Services, Capacity Rights and associated RECs hereunder free and clear of all liens, claims and encumbrances. Title to and risk of loss of Net Output shall transfer from Seller to Buyer upon its delivery to Buyer at the Point of Delivery. Seller shall be deemed to be in exclusive control of, and responsible for, any damage or injury caused by all Output up to and at the Point of Delivery. Buyer shall be deemed to be in exclusive control of, and responsible for, any damages or injury caused by, Net Output from the Point of Delivery. Delivery of Net Output to Buyer on any particular day shall be subject to the provisions of this Agreement.

4.4 Curtailment. The rights and obligations of the Parties with respect to curtailments of Net Output are as follows:

4.4.1. Curtailment During Negative RTLMP Period. During a Negative RTLMP Period, Seller shall either: (i) curtail deliveries of Net Output during any Calculation Period occurring within the Negative RTLMP Period; or (ii) continue to deliver Net Output to the Point of Delivery. If Seller continues to deliver Net Output to Buyer during a Negative RTLMP Period, then notwithstanding Section 5.1, Seller shall indemnify and hold Buyer harmless from all direct costs and expenses of such RTLMP (other than the actual cost of any such RTLMP offset and accounted for pursuant to this sentence), and the purchase price Buyer shall pay for all such Net Output shall be an amount equal to [REDACTED]

[REDACTED] No later than the tenth (10th) Day of the month following any month in which Seller delivered Net Output during a Negative RTLMP Period, Seller shall deliver to Buyer an invoice showing the amounts calculated pursuant to this Section, and a description, in reasonable detail, of the calculation of the amounts. Buyer shall offset an amount equal to any undisputed amounts set forth in the invoice received from Seller, against the amounts owed by Buyer to Seller in the next billable month, provided that if the amount of such credit is greater than the amount payable by Buyer for such month, the excess portion of such credit shall be applied by Buyer to reduce the amount payable by Buyer hereunder in subsequent month(s).

4.4.2. Curtailment for Failure to Schedule Output or Obtain Transmission after Point of Delivery. If the Facility is curtailed or not dispatched as a result of Buyer's failure to either (i) schedule the Net Output at a price greater than \$0/MWh so as to result in acceptance or dispatch of the Facility or (ii) obtain sufficient transmission rights from and after the Point of

Delivery, in each case, such curtailed Net Output shall be considered delivered energy from Seller for purposes of the Output Guarantee and Buyer shall pay Seller an amount equal to the Contract Price multiplied by the estimated amount of energy that could have been produced and delivered but was not actually produced due to such curtailment or failure to dispatch. The Parties shall estimate the expected amount of such curtailed energy that would have been generated but for such curtailment, in a commercially reasonable manner, consistent with Prudent Electrical Practices, based on measured solar irradiance for each hour during the economic curtailment period.

4.5 Transfer of Title to RECs; Renewable Portfolio Standard Certifications.

4.5.1. Title to the RECs shall pass from Seller to Buyer immediately upon the generation of the Output at the Facility that gives rise to such RECs. The Parties shall execute all additional documents and instruments reasonably requested by Buyer in order to further document the transfer of the RECs to Buyer or its designees. Without limiting the generality of the foregoing, Seller shall, on or before the thirtieth (30th) day of each month, deliver to Buyer a REC Attestation and Bill of Sale in the form attached as **Exhibit 4.5** for all RECs delivered to Buyer hereunder in the preceding month, along with any attestation that is then-current with the Center for Resource Solution's Green-e program and the Ohio SREC, and any successor programs. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of GIS relating to the Facility or RECs. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of GIS. Seller, at its sole expense, shall use GIS as required pursuant to the GIS Operating Procedures to effectuate the transfer of GIS Certificates to Buyer, and shall transfer such GIS Certificates to Buyer in accordance with GIS reporting protocols and GIS Operating Procedures. Buyer shall be entitled to a refund of the REC Price Component for RECs associated with any Net Output for which Certificates are not delivered.

Seller shall promptly provide Buyer copies of all documentation it submits to GIS. Further, in any program involving Environmental Attributes administered by CAMD or other Governmental Authority, upon notification by CAMD or other Governmental Authority that any transfers contemplated by this Agreement will not be recorded, Seller shall promptly take all reasonable actions necessary so that such transfers can be recorded. Seller shall not claim in any public communication nor report under any applicable program that any of the RECs purchased by Buyer hereunder belong to any person other than Buyer. Without limiting the generality of Buyer's ownership of the RECs, Buyer may report under such program that such Environmental Attributes purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD or other Governmental Authority to effectuate any transfers. Seller shall cause the Facility (i) to maintain its registration in good standing with the Center for Resource Solution's Green-e program and as an eligible renewable resource in the renewable portfolio standard or equivalent programs of the federal government and the states set forth in Section 3.2.9 throughout the Term and (ii) to qualify and register and maintain such qualification/registration with any equivalent programs created by any future legislation. Seller shall also cooperate in any registration of the Facility in the renewable portfolio standard or other equivalent program in all such further states and programs in which Buyer may request Seller to register or maintain registered the Facility, to the extent that such registrations and other requirements do not impose a material economic or administrative burden on Seller.

4.6 Capacity Rights.

4.6.1. Purchase and Sale of Capacity Rights. For and in consideration of Buyer's agreement to purchase from Seller the Net Output and RECs on the terms and conditions set forth herein, Seller transfers to Buyer, and Buyer accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Rights, if any, existing during the Term. Buyer's purchase of Capacity Rights in no way represents any purchase of equity or ownership rights of any kind in Seller or the Facility.

4.6.2. Representation Regarding Ownership of Capacity Rights. Seller represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any person or entity, the Capacity Rights, if any. During the Term, Seller shall not report to any person or entity that the Capacity Rights, if any, belong to anyone other than Buyer. Buyer may at its own risk and expense report to any person or entity that the Capacity Rights exclusively belong to it.

4.6.3. Further Assurances. At Buyer's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights, if any, to Buyer.

4.6.4. Capacity Accreditation. Buyer has or may in the future have certain planning, operating and reporting requirements with MISO or other Electric System Authority. Without assuming responsibility therefor, Seller shall maintain capacity accreditation with MISO or other Electric System Authority as required pursuant to the Generation Interconnection Agreement and shall otherwise reasonably cooperate with Buyer (at Buyer's expense for direct third party costs) to obtain such capacity accreditation in accordance with the rules of any other Electric System Authority; provided that nothing in this Section 4.6 shall obligate Seller to make any capital expenditures or install additional equipment or modify the Facility as it is contemplated as of the Effective Date. All required testing shall be conducted in accordance with the applicable MISO or Electric System Authority rules.

4.6.5. Capacity Charges. MISO Planning Resource Auction benefits associated with the Capacity Rights shall exclusively and solely accrue to and be owned by Buyer, and Buyer shall be responsible for all costs, charges, fees or penalties associated with Buyer's scheduling and bidding in connection with the Capacity Rights imposed by MISO. Seller shall be responsible for all reasonable costs associated with transferring the Capacity Rights to Buyer. Seller shall reasonably cooperate with Buyer to obtain Buyer's benefits, including Buyer's scheduling and bidding of the Facility into each annual MISO Planning Resource Auction or incremental auctions for the Term. The Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights, if any, to Buyer. Buyer shall have the exclusive right to commit the Facility to the MISO Planning Resource Auction market or successor auctions, in a manner consistent with MISO Rules.

4.6.6. Capacity Guaranty. Seller shall ensure that the Capacity Rights sold to Buyer under this Agreement provide Buyer with Zonal Resource Credits, to the extent available in MISO, consistent with the Facility's Nameplate Capacity Rating as determined by MISO for

each MISO Planning Resource Auction year after the Commercial Operation Date, or equivalent capacity rights under other Electric System Authority rules applicable to the Facility.

4.7 Ancillary Services. As System Operator allows or may allow in the future Intermittent Resources to bid into Ancillary Services markets operated by the System Operator, Seller shall install such meters and power electronics, and conduct all Facility testing in accordance with the applicable MISO and Electric System Authority rules so that Ancillary Services may be provided; provided that notwithstanding anything herein to the contrary, Seller shall not be obligated to (a) make any additional capital expenditures or install additional equipment or modify the Facility as it is contemplated as of the Effective Date, or (b) modify its operation of the Facility.

SECTION 5 CONTRACT PRICE; COSTS

5.1 Contract Price: Includes Net Output, RECs, Ancillary Services and Capacity Rights. Buyer shall pay Seller the prices provided for in this Section 5.1 for all deliveries of Buyer's Interest received by Buyer. The Contract Price provided for in Section 5.1.2 and the price for Test Energy provided for in Section 5.1.1 include the consideration to be paid by Buyer to Seller for all Net Output, RECs, Ancillary Services and Capacity Rights, and Seller shall not be entitled to any compensation over and above the Contract Price or the Test Energy price, as the case may be, for the RECs, Ancillary Services or Capacity Rights associated therewith.

5.1.1. Test Energy. Between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver to the Point of Delivery all Test Energy. Buyer shall pay Seller (a) for all Test Energy delivered at the Point of Delivery up to the Maximum Delivery Rate an amount per MWh equal to [REDACTED]; *provided, however,* that Seller's right to receive payment for such Test Energy is subject to Buyer's right of offset under Section 10.2 for, among other things, payment by Seller of any Delay Damages owed to Buyer by Seller pursuant to Section 2.3. Seller will make reasonable efforts to provide Buyer with a day-ahead hourly schedule of Test Energy generated. To the extent Seller delivers and Buyer accepts Test Energy in excess of the Maximum Delivery Rate, the Contract Price per MWh shall be \$0.

5.1.2. Commercial Operation. For the period beginning on the Commercial Operation Date and thereafter during the Term, Seller shall sell and deliver to the Point of Delivery all Net Output. Buyer shall pay to Seller the Contract Price per MWh, as specified in **Exhibit 5.1**, for Net Output delivered to the Point of Delivery up to the Maximum Delivery Rate. To the extent Seller delivers and Buyer accepts Net Output in excess of the Maximum Delivery Rate, the Contract Price per MWh shall be \$0.

5.2 Costs and Charges. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Output up to and at the Point of Delivery, including transmission costs, Transmission Service, transmission line losses and any operation and maintenance charges imposed pursuant to the Generation Interconnection Agreement. Buyer shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Output at and from the Point of Delivery, including transmission costs and transmission line losses and imbalance charges or penalties. Without

limiting the generality of the foregoing, Seller, in accordance with the Generation Interconnection Agreement, shall bear all costs associated with the construction of or modifications to any Interconnection Facilities, or the System, Buyer's System (including system upgrades), or any third party transmission system (including system upgrades) caused by or related to (a) the interconnection of the Facility with the System or Buyer's System and (b) any modification of the Facility or increase in generating capacity of the Facility.

5.3 Station Service.

5.3.1. The Parties recognize that this Agreement does not provide for the supply of any electric service by Buyer to Seller or to the Facility and Seller must enter into separate arrangements for the supply of electric services to the Facility. Seller acknowledges that it shall have no claims against Buyer under this Agreement with respect to the provision of station service.

5.3.2. 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 Agreement are not binding upon the supplier of such electric services.

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

5.3.4. Seller expressly recognizes that, for purposes of this Agreement, 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 Buyer or an Affiliate of Buyer.

5.4 Taxes. Seller shall pay or cause to be paid when due, or reimburse Buyer for, all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority up to and including the Point of Delivery, on the generation of Net Output, Capacity Rights, Ancillary Services or RECs or on the sale of Net Output, Capacity Rights, or RECs from Seller to Buyer hereunder, regardless of whether such taxes are imposed on Buyer or Seller under Requirements of Law. Buyer shall pay or cause to be paid when due, or reimburse Seller for, all such taxes levied at or beyond the Point of Delivery upon a purchaser (other than Buyer) of Net Output, Capacity Rights, Ancillary Services or RECs, regardless of whether such taxes are imposed on Buyer or Seller under Requirements of Law. If taxes are imposed or levied by a Governmental Authority on a Party in error or incorrectly, or on the wrong Party, the Parties shall work in good faith to cause such Governmental Authority to correct such error and levy or impose such taxes correctly. The Contract Price shall not be adjusted on the basis of any action of any Governmental Authority with respect to changes to or revocations of sales and use tax benefits, rebates, exception or give back.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof, Seller shall be solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future Requirements of Law and the terms and conditions hereof, and (b) all taxes and charges (however characterized) now existing or

hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or environmental impacts.

5.6 Rates Not Subject to Review. The rates for service specified herein shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the Parties. Neither Party shall petition FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 *et seq.*) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Fed. Power Comm’n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish*, 554 U.S. 527, 128 S. Ct. 2733 (2008) and *NRG Power Mktg., LLC v. Maine Pub. Util. Comm’n*, 130 S. Ct. 503 (2010).

5.7 Solar Integration Costs.

[REDACTED]

Buyer and Seller shall work together in good faith and each use commercially reasonable efforts to minimize the Solar Integration Costs.

SECTION 6 OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide Buyer the As-Built Supplement. The As-Built Supplement shall be deemed effective and shall be added to **Exhibit 6.1** when it has been reviewed and approved by Buyer (such approval not to be unreasonably withheld). If the proposed As-Built Supplement does not accurately describe the Facility as actually built or is otherwise defective as to form in any material respect, Buyer may within fifteen days after receiving the proposed As-Built Supplement give Seller a notice describing what Buyer wishes to correct. If Buyer does not give Seller such a notice within the fifteen (15) day period, the As-Built Supplement shall be deemed approved. If Buyer provides a timely notice requiring reasonable corrections, Seller shall in good faith cooperate with Buyer to revise the As-Built Supplement to address Buyer’s concerns. Notwithstanding the foregoing, Buyer shall have no right to require Seller to relocate, modify or otherwise change in any respect any aspect of the Facility as actually built. Nothing in this Section 6.1, nor Buyer’s approval of the As-Built Supplement, shall require Buyer to purchase, or pay more than \$0 per MWh for, any Net

Output, or for Ancillary Services, Capacity Rights, or RECs associated with any Net Output, above the Maximum Delivery Rate.

6.2 Standard of Facility Operation.

6.2.1. General. Seller will act as the Generator Operator of the Facility within MISO. At Seller's sole cost and expense, Seller shall build, operate, maintain and repair the Facility and the Interconnection Facilities in accordance with (i) the applicable and mandatory standards, criteria and formal guidelines of FERC, any System Operator, and any other Electric System Authority and any successors to the functions thereof; (ii) the Permits and Required Facility Documents; (iii) the Generation Interconnection Agreement; (iv) all Requirements of Law; (v) the requirements hereof; and (vi) Prudent Electrical Practice. Seller acknowledges that it shall have no claims hereunder against Buyer with respect to any requirements imposed by or damages caused by (or allegedly caused by) the Interconnection Provider, the Transmission Provider, any provider of Transmission Services to the Point of Delivery, or any third party transmission system. Station service shall be the responsibility of Seller. Seller acknowledges that it shall have no claims against Buyer under this Agreement with respect to the provision of station service.

6.2.2. Qualified Operator. From and after the Commercial Operation Date, Seller shall itself operate the Facility or cause the Facility to be operated by (a) an entity that collectively with its Affiliates has at least three years of experience in operation of solar energy facilities of comparable size to the Facility and which collectively operates solar energy facilities with a nameplate capacity of not less than 300 MW in the aggregate, or (b) an entity that is otherwise reasonably acceptable to Buyer.

6.2.3. Fines and Penalties.

(a) Seller shall pay when due, and in no event later than thirty (30) days of assessment, all fines, penalties, or legal costs incurred by Seller or for which Seller is legally responsible for noncompliance by Seller, its agents, employees, contractors or subcontractors, with respect to any provision hereof, any agreement, commitment, obligation or liability incurred in connection with this Agreement or the Facility or any Requirements of Law, except where such fines, penalties or legal costs are being contested in good faith by Seller, its agents, employees, contractors or subcontractors through appropriate proceedings and Seller has (i) set aside and funded adequate reserves to cover such fines, penalties or legal costs in the event of an adverse determination, or (ii) posted security to Buyer or Seller's Senior Lenders adequate to ensure Seller's ability to cover such fines, penalties or legal costs in the event of an adverse determination.

(b) If fines, penalties, or legal costs are assessed against or incurred by Buyer on account of any action by any Governmental Authority due to noncompliance by Seller with any Requirements of Law or the provisions hereof, or if the performance of Seller is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any Requirements of Law, Seller shall indemnify and hold harmless Buyer against any and all losses, liabilities, damages, and claims suffered or incurred by Buyer as a result. Without limiting the generality of the foregoing, Seller shall reimburse Buyer for all fees, damages, or penalties, including Buyer's legal costs and attorney's fees, imposed on Buyer by any Governmental

Authority or other person or to other utilities for violations of any Requirements of Law or to the extent caused by a default by Seller or a failure of performance by Seller hereunder.

6.3 Interconnection. Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at its Nameplate Capacity Rating at the Point of Delivery including the costs of any third party transmission system upgrades, or System or Buyer System upgrades beyond the Point of Delivery necessary to interconnect the Facility with the System and to allow the delivery of all Net Output and Ancillary Services to the Point of Delivery. Seller shall have no claims against Buyer under this Agreement with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Provider or Interconnection Provider, in connection with the Generation Interconnection Agreement or otherwise. Seller shall be solely responsible for, and shall defend, indemnify and hold Buyer (solely in its capacity as Buyer under this Agreement and not its capacity as Interconnection Provider or Transmission Provider, if applicable) harmless against, any Liabilities arising out of Seller's performance or failure to perform under the Generation Interconnection Agreement; provided nothing in this sentence shall expand Seller's indemnification obligations with respect to Interconnection Provider under the Generation Interconnection Agreement. Seller's failure to perform under, or breach of, the Generation Interconnection Agreement, or its other contracts and obligations to, Transmission Provider or Interconnection Provider is not an event of Force Majeure.

6.4 Coordination with System Operator. Seller shall be responsible for the coordination and synchronization of the Facility and the Interconnection Facilities with the System and Buyer's System. In the event there are unanticipated changes in FERC or Electric System Authority rules sufficiently significant to change the benefits, risks and burdens held by the Parties, the Parties shall meet in good faith to work to adjust the terms of this Agreement to provide for the Parties the originally intended allocation of benefits, risks and burdens.

6.5 Outages.

Seller shall be responsible to enter all outages (Planned, Maintenance and Forced) into the MISO Control Room Operations Window Outage Scheduler (CROW).

6.5.1. Planned Outages. Except as otherwise provided herein, Seller shall not schedule a Planned Outage during day light hours (sunrise to sunset) of any portion of the months of November, December, January, February, June, July, and August, except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement in a situation in which the vendor is not otherwise able to perform the guarantee work at a time other than during one of the months specified above. Commencing with the second Contract Year, Seller shall provide Buyer with an annual forecast of Planned Outages for each Contract Year at least one (1) month, but no more than three (3) months, before the first day of that Contract Year, and shall promptly update such schedule, and otherwise change it only, to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule any maintenance of Interconnection Facilities during such months without the prior written approval of Buyer, which approval may be withheld by Buyer in its sole discretion.

6.5.2. Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Buyer of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins (or such shorter period to which Buyer may reasonably consent in light of then-existing solar exposure conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Buyer; *provided, however,* that Seller shall take all reasonable measures and use best efforts consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during any portion of the months of November, December, January, February, June, July, and August. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give Buyer notice of the Maintenance Outage as soon as practicable after Seller determines that the Maintenance Outage is necessary. Buyer shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no substantial impact on Seller. Seller shall notify Buyer of any subsequent changes in generation capacity available to Buyer as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.5.3. Forced Outages. Seller shall promptly provide to Buyer an oral report, via telephone to a number specified by Buyer, of any Forced Outage of the Facility. This report shall include the amount of the generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. Seller shall promptly update the report as necessary to advise Buyer of changed circumstances. As soon as practicable, if the Forced Outage resulted in more than fifteen percent (15%) of the Nameplate Capacity Rating of the Facility being unavailable, the oral report shall be confirmed in writing by notice to Buyer. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.5.4. Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform Buyer, via telephone to a number specified by Buyer, of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than ten percent (10%) of the Nameplate Capacity Rating of the Facility.

6.5.5. Effect of Outages on Estimated Output. Seller represents and warrants that the estimated monthly Net Output set forth on **Exhibit A** takes into account the Planned Outages, Maintenance Outages, and Forced Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility, and that such outages are not expected to substantially reduce the Facility's average estimated monthly output as set forth in **Exhibit A**.

6.6 Scheduling.

6.6.1. Market Participant. Buyer shall act as the Market Participant and act as the Asset owner for the Facility and for the daily generation offers of the Facility into MISO markets, and shall have all applicable rights and obligations under the Tariff to offer the energy Output of the Facility into the centralized markets operated by MISO, including, without limitation, the right to determine the offer price in its sole discretion.

6.6.2. Buyer shall make available to Seller, as requested, the hourly day-ahead award volumes of the Facility within two hours of those awards being posted by MISO the day prior to the operating day. Buyer shall receive all revenue associated with those sales into the day-ahead market.

6.6.3. Seller shall notify Buyer of the metered net generation from the Facility at the end of the following day. Buyer shall receive all real-time revenue associated with variances between the day-ahead award and net metered generation.

6.6.4. Actual metered net generation for any hour will serve as the basis for the calculation of the Energy Charge for that hour.

6.6.5. Seller shall be responsible for payment of all uninstructed actual deviation or other deployment failure charges imposed under the MISO Tariff resulting from the operation of (or failure to operate) of the Facility in accordance with the scheduling of the Facility, Buyer shall have no responsibility for any MISO market penalties, charges, or other costs resulting from Seller's failure to abide by MISO market dispatch instructions and/or signals, rules, standards, and protocols.

6.6.6. Seller shall comply with all Electric System Authority and FERC market behavior rules and standards of conduct.

6.6.7. Transmission Services. Buyer shall be responsible for arranging and paying for all transmission services required to effectuate the taking of Net Output away from the Point of Delivery. Buyer may appoint any agent for purposes of scheduling delivery of Net Output and transmission away from the Point of Delivery.

6.6.8. Cooperation and Standards. With respect to any and all scheduling and outage requirements hereunder, (a) Seller shall cooperate with Buyer with respect to scheduling Net Output, and (b) each Party shall designate authorized representatives to communicate with regard to scheduling and related matters arising hereunder. Each Party shall comply with the applicable variable resource standards and criteria of any applicable Electric System Authority.

6.6.9. Breach of Generation Interconnection Agreement. If, for any reason, Buyer is deemed by a System Operator to be financially responsible for Seller's performance under the Generation Interconnection Agreement, then (a) Seller shall take all necessary steps such that Buyer is no longer responsible for Seller's performance under the Generation Interconnection Agreement, and (b) Seller shall defend, indemnify and hold Buyer harmless against any liability of Seller's under the Generation Interconnection Agreement or System Operator requirement.

6.7 Forecasting.

6.7.1. Long-Range Forecasts. For Buyer's planning purposes, Seller shall, by December 1 of each year during the Term (except for the last year of the Term), provide an annual update to the expected long-term monthly/diurnal mean net energy estimates (12 X 24 profile). This forecast shall include an expected range of uncertainty based on historical operating experience. Seller shall update the forecast for each month by notice to Buyer at least six (6) Business Days before the first Business Day of such month.

6.7.2. Real-time Forecasts. Every five (5) minutes, Seller shall deliver electronically to Buyer a rolling set of twelve 5-minute interval energy forecasts for the Facility in accordance with the MISO Rules. The submission of such forecasts shall be provided by a mutually agreeable method and in accordance with Prudent Utility Practice. Seller may update such forecasts in accordance with MISO Rules. Seller shall provide real time meteorological data to MISO in accordance with MISO Rules.

6.7.3. Day-Ahead Forecasts and Updates. By such time as mutually agreed to by the Parties, but in no case later than one hour prior to the offer deadline in the Tariff, on the Business Day immediately preceding the day on which Net Output from the Facility is to be delivered, Seller shall provide Buyer with an hourly forecast of deliveries for each hour of the next one hundred sixty-eight (168) hours. Seller shall update a forecast any time information becomes available indicating a change in the forecast of generation of Net Output from the then-current forecast; provided however that Seller shall also provide to Buyer any forecasting updates it provides to the Transmission Provider as soon as they are provided to the Transmission Provider. The Parties shall cooperate to implement and use automatic forecast updates. Seller shall communicate forecasts under this Section 6.7.3 in an efficient manner, including electronic mail or other such media as determined by Buyer (which, at Buyer's discretion, may be in lieu of or in addition to notice to Buyer). Buyer may, with the advance written consent of Seller and at Seller's reasonable expense, add forecasting services for Seller's Facility to Buyer's existing contract with a qualified solar-energy-production forecasting vendor, which contract and vendor may change during the term of this Agreement. Seller shall simultaneously provide to Buyer copies of any solar forecasts that Seller provides to the Transmission Provider or System Operator. Buyer may, at Seller's reasonable expense, add forecasting services, including any real-time forecasting services and provision of real-time meteorological data required for compliance with applicable Electric System Authority procedures, protocol, rules and testing, for the Facility to a Buyer contract with a qualified solar-energy-production forecasting vendor, which contract and vendor may change during the term of this Agreement. The Parties agree that the forecasting obligations of Seller under this Section 6.7 may be met by a solar forecast service provider engaged by Buyer. Upon request by Buyer, Seller shall provide a 24 hour telephone number that Buyer may contact to determine the then-current status of the Facility. Buyer may at Buyer's cost and without the prior consent of Seller add the Facility to Buyer's qualified solar-energy-production forecasting vendor contract.

6.7.4. Basis of Forecasts. The forecasts called for by this Agreement shall be non-binding, good faith estimates only, but must meet the standards of the Transmission Provider, and shall be substantially in the form of **Exhibit 6.7.3** attached hereto (as such form may be updated by Buyer from time to time upon notice to Seller). Seller shall prepare such forecasts and updates by utilizing a solar exposure model or service that is (a) commercially available or proprietary to Seller or an Affiliate of Seller, and (b) comparable in accuracy to models or services

commonly used in the solar energy industry, so long as such model or service is available at a commercially reasonable cost and is satisfactory to Buyer in the exercise of its reasonable discretion. On or prior to May 1 during each calendar year in the Term, Seller shall determine in good faith which such model or service to utilize after consultation with Buyer. In the event such model or service is not available at a commercially reasonable cost, Seller shall internally develop a forecasting process and present such process to Buyer for acceptance, which shall not be unreasonably withheld.

6.8 Limitations on Increase in Nameplate Capacity Rating and Other Facilities. Seller shall not increase the ability of the Facility to deliver Net Output in quantities in excess of the Maximum Delivery Rate without Buyer's consent, which consent Buyer may withhold for any reason in its sole discretion. Seller shall not construct any generating facilities on the Premises except for the Facility.

6.9 Electronic Communications.

6.9.1. Meteorological Data. Seller will provide to Buyer copies of all meteorological data as and to the extent required to be submitted to the System Operator, promptly after such data is submitted to the System Operator.

6.9.2. Telemetry. Seller shall provide telemetry equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Generation Interconnection Agreement and to Buyer on a real-time basis, and will operate such equipment when requested by Buyer to indicate:

- (a) instantaneous MW Output at the Point of Delivery;
- (b) Net Output; and
- (c) the Facility's total instantaneous generation capacity.

Seller shall also transmit to Buyer any other material data from the Facility that Seller receives on a real time basis, and that is not already accessible to Buyer without cost in its normal course of operations, including meteorological data, solar exposure data and Output data. Seller shall provide such real time data to Buyer on the same basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Buyer shall also receive the data in four second intervals). Buyer shall have the right from time to time to require Seller, at Buyer's cost, to provide additional telemetry equipment and facilities to the extent necessary and reasonable.

6.9.3. Transmission Provider Consent. Seller shall execute a consent, in the form reasonably required by Transmission Provider, to provide that Buyer can read the meter and receive any and all data from the Transmission Provider relating to transmission of Net Output or other matters relating to the Facility without the need for further consent from Seller.

6.9.4. Dedicated Communication Circuit. Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between Buyer and the control center in the Facility's control room or such other communication equipment as the Parties may agree.

6.9.5. SCADA. Seller shall be responsible for purchasing, installing, repairing, and maintaining any and all communications equipment at the Seller-designated location on the Site as may be necessary to support dispatch and SCADA real-time data electronic transfer. Seller shall use commercially reasonable efforts to automatically control the real power Output of the Facility to attempt to achieve the dispatch level communicated to Seller by MISO for each 5-minute interval security constrained economic dispatch (SCED) desired MW basepoint received through the MISO SCADA system.

6.9.6. ICCP Communication. If during the Term Seller establishes ICCP communication, Seller will use commercially reasonable efforts to provide Buyer, at Seller's expense, real time electronic meter data via ICCP over the internet for the net MW flow from the Facility, updated every minute.

6.10 Reports and Records.

6.10.1. Monthly Reports. Within thirty (30) days after the end of each Reporting Month, Seller shall provide to Buyer a report in electronic format, which report shall include (a) summaries of the Facility's solar insolation and actual and predicted Output data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility's computer monitoring system; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that Buyer may from time to time reasonably request (including historical solar exposure data for the Facility).

6.10.2. Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term commencing on the Commercial Operation Date. Seller shall provide Buyer with a copy of the electronic fault log within thirty (30) days after the end of the calendar month to which the fault log applies.

6.10.3. Other Information to be Provided to Buyer. Seller shall provide to Buyer the following information concerning the Facility:

(a) Upon the request of Buyer, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;

(b) A report summarizing the results of maintenance performed during each Maintenance Outage, Planned Outage, and any Forced Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance;

(c) Following commencement of construction of the Facility until Commercial Operation, a monthly progress report stating the percentage completion of the Facility and a brief summary of construction activity during the prior month and construction activity contemplated for the next month; and

(d) From and after the Commercial Operation Date, a monthly report detailing the availability of the Facility;

(e) At any time from the Effective Date, one year's advance notice of the termination or expiration of any agreement, including leases, pursuant to which the Facility or any equipment relating thereto is upon the Premises; provided that the foregoing does not authorize any early termination of any land lease; and provided, further, that in the event Seller has less than one year's advance notice of such termination or expiration, Seller shall provide the notice contemplated by this Section to Buyer within fifteen (15) Business Days of Seller obtaining knowledge of the termination or expiration.; and

(f) Such other information respecting the condition or operations of Seller or the Facility as Buyer may, from time to time, reasonably request.

6.10.4. Information to Governmental Authorities. Seller shall, promptly upon written request from Buyer, provide Buyer with all data collected by Seller related to the Facility reasonably required by Buyer or an Affiliate thereof for reports to, and information requests from, any Governmental Authority or Electric System Authority. Along with this information, Seller shall provide to Buyer copies of all submittals to Governmental Authorities or Electric System Authorities directed by Buyer and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller shall use commercially reasonable efforts to provide this information to Buyer with sufficient advance notice to enable Buyer to review such information and meet any submission deadlines imposed by the requesting organization or entity.

6.10.5. Data Request. Seller shall, promptly upon written request from Buyer, provide Buyer with data reasonably required for information requests from any Governmental Authorities, state or federal agency intervenor or any other party achieving intervenor status in any Buyer proceeding or other proceeding before any Governmental Authority. Seller shall use commercially reasonable efforts to provide this information to Buyer sufficiently in advance to enable Buyer to review it and meet any submission deadlines.

6.10.6. Documents to Governmental Authorities. After sending or filing any statement, application, and report or any document with any Governmental Authority or Electric System Authority relating to operation and maintenance of the Facility, Seller shall promptly provide to Buyer a copy of the same.

6.10.7. Environmental Information. Seller shall, promptly upon written request from Buyer, provide Buyer with all data reasonably requested by Buyer relating to environmental information under the Required Facility Documents. Seller shall further provide Buyer with all environmental impact mitigation measures it is taking in connection with the Facility's construction or operation, as well as copies of all agreements between Seller and federal, state or local environmental agencies to the extent not subject to confidentiality restrictions. Seller shall disclose to Buyer, as soon as it is known to Seller, any material violation of any environmental laws or regulations arising out of the construction or operation of the Facility, and the extent thereof, or the presence of Environmental Contamination at the Facility or on the Premises, alleged to exist by any Governmental Authority having jurisdiction over the Premises, or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to any actual or alleged violation or presence of Environmental Contamination.

6.10.8. Operational Reports. Seller shall provide Buyer monthly operational reports in a form and substance acceptable to Buyer and Seller shall, promptly upon written request from Buyer, provide Buyer with all operational data requested by Buyer with respect to the performance of the Facility and delivery of Buyer's Interest therefrom.

6.10.9. Notice of Material Adverse Events. Seller shall promptly notify Buyer of receipt of written notice or actual knowledge by Seller or its Affiliates of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided herein.

6.10.10. Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding before any court or Governmental Authority which would, if adversely determined, materially and adversely affect Seller, the Premises or the Facility, Seller shall promptly give notice to Buyer of the same. In addition, following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding against Seller before any court or Governmental Authority, Seller shall promptly give notice to Buyer of the same.

6.10.11. Additional Information. Seller shall provide to Buyer such other information respecting the condition or operations of Seller or the Facility as Buyer may, from time to time, reasonably request.

6.10.12. Job Tracking. Seller shall provide to Buyer data on how many jobs have been, or are being, created by the construction or operation of the Facility, the nature of such jobs, and the types of skill sets needed to fill such jobs; *provided, however*, that Seller shall not be obligated to provide such information to Buyer more than once per calendar year.

6.10.13. Confidential Treatment. The reports and other information provided to Buyer under this Section 6.10 shall be treated as Confidential Business Information, subject to Buyer's rights to disclose such information pursuant to Sections 6.10.4, 6.10.5, 9.5, 23.3 and pursuant to any applicable Requirements of Law. Buyer shall use reasonable efforts to provide advance notice of any anticipated disclosure required by Requirement so Law and Seller shall have the right to seek confidential treatment of any such information from the Governmental Authority entitled to receive such information.

6.11 Financial and Accounting Information. If Buyer or one of its Affiliates determines that, under FIN 46R, it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide sufficient financial and ownership information so that Buyer or its Affiliate may confirm whether a variable interest does exist under FIN 46R. If Buyer or its Affiliate determines that, under FIN 46R, it holds a variable interest in Seller, Seller hereby agrees to provide sufficient financial and other information to Buyer or its Affiliate so that Buyer may properly consolidate the entity in which it holds the variable interest or present the disclosures required by FIN 46R. Buyer shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with Buyer's requests for information under this Section 6.11.

6.12 Output Guaranty.

6.12.1. Output Guarantee. Beginning in the third Contract Year, Seller is obligated to deliver an average annual quantity of Net Output during each [REDACTED] Contract Year period which is equal to the Output Guarantee. For purposes of this Agreement, “**Output Guarantee**” for any [REDACTED] Contract Year period means (i) [REDACTED] of the average of the Expected Energy of the Facility for such [REDACTED] Contract Year period, less (ii) the average annual quantities of Output that were not delivered to the Point of Delivery (or accepted by Buyer) in such [REDACTED] Contract Year period during periods constituting Seller Uncontrollable Minutes (such quantity calculated on the basis of the Net Output capable of being delivered in an hour at an average rate equivalent to the annual estimated Output from **Exhibit A** divided by 8760).

6.12.2. Liquidated Damages for Output Shortfall.

(a) If the annual average of the quantity of Net Output delivered by Seller to the Point of Delivery during any such [REDACTED] Contract Year period is equal to or greater than the Output Guarantee for such [REDACTED] Contract Year period, Seller’s delivery obligation for Net Output for such [REDACTED] Contract Year period shall be deemed satisfied for such [REDACTED] Contract Year period.

(b) If the annual average of the quantity of Net Output delivered by Seller to the Point of Delivery during any [REDACTED] Contract Year period is less than the Output Guarantee for such [REDACTED] Contract Year period, Seller shall pay Buyer liquidated damages, if any, for the Output Shortfall. The “**Output Shortfall**” shall be expressed in MWh and calculated in accordance with the following formula:

Output Shortfall = [REDACTED]
[REDACTED]

less

Any quantities of Output that were not delivered to the Point of Delivery (or accepted by Buyer) in such [REDACTED] Contract Year period during periods constituting Seller Uncontrollable Minutes (such quantity calculated on the basis of the Net Output capable of being delivered in an hour at an average rate equivalent to the annual estimated Output from **Exhibit A** divided by 8760),

less

The annual average Net Output for the [REDACTED] Contract Year period.

(c) If the product of the Output Shortfall calculation set forth in Section 6.12.2(b) is a positive number (an example of such calculation is attached as **Exhibit 6.12**), Seller shall pay Buyer liquidated damages equal to [REDACTED]

If the product of the Output Shortfall calculation set forth in Section 6.12.2(b) is a negative number, Seller shall not be obligated to pay Buyer liquidated damages for such [REDACTED] Contract Year period.

(d) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to the Facility's failure to achieve the Output Guarantee would be difficult or impossible to predict with certainty and (ii) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages.

6.12.3. Annual Invoicing. On or before February 15 of each Contract Year beginning after the third Contract Year, Seller shall deliver to Buyer an invoice showing Seller's computation of Net Output and Output Shortfall, if any, for the prior [REDACTED] Contract Year period and any amount due Buyer for liquidated damages pursuant to Section 6.12.2. In preparing such invoice, Seller shall utilize the meter data provided to Seller for the Contract Years in question, but may also rely on historical averages and such other information as may be available to Seller at the time of invoice preparation, if the meter data for such Contract Years is then incomplete or otherwise not available. To the extent required, Seller shall true up any such invoice as promptly as practicable following its receipt of actual results for the relevant Contract Years. Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice, and Buyer shall, within thirty (30) days after receiving the invoice, raise any objections regarding any disputed portion of the invoice. All disputes regarding such invoices shall be subject to Section 10.4. Objections not made by Buyer within the thirty (30) day period shall be deemed waived.

6.13 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller shall provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, (c) in connection with the operation and maintenance of the Interconnection Facilities, (d) during normal business hours to provide tours of the Facility to customers and other guests of Buyer (not more than 12 times per site per year) and Seller will use commercially reasonable efforts to accommodate other reasonable requests of Buyer in connection with such tours, (e) for purposes of implementing Sections 2.6 or 10.6, and (f) for other reasonable purposes at the reasonable request of Buyer. Buyer shall indemnify and hold harmless Seller from and against any and all Liabilities resulting from actions or omissions by the Buyer Indemnitees and Buyer's customers and guests in connection with their access to the Premises, except to the extent that such damages are caused or exacerbated by the intentional or negligent act or omission of any Seller Indemnitee.

6.14 Facility Images. Buyer shall be free to use any and all images from or of the Facility for promotional purposes. Seller may only use images of the Facility for promotional purposes if such use (a) complies with all best practices of the Center for Resource Solutions and requirements of its green-e energy program, and (b) complies with Sections 3.2.9 and 4.5 hereof, and (c) when the Facility is named in connection with the use of such image, states that Buyer is the purchaser of all Net Output and RECs.

**SECTION 7
QUALIFYING FACILITY OR
EXEMPT WHOLESALE GENERATOR STATUS**

7.1 Seller's Election. Seller covenants that, during the Term and before delivering Net Output and associated RECs to Buyer hereunder, Seller shall, to the extent required to prevent Seller from being subject to, or not exempt from, regulation as an "electric utility" or "holding company" pursuant to PUHCA or otherwise (except to the extent that QFs and EWGs are subject to regulation pursuant to PUHCA), either (a) cause the Facility to be a QF, or (b) cause Seller to be an EWG.

7.2 QF Facility. If the Facility is a QF, Seller shall provide Buyer with copies of the appropriate certification (which may include a FERC self-certification) within ten (10) days of filing or receiving the certification. At any time during the Term, for cause, Buyer may require Seller to provide Buyer with a written legal opinion from an attorney in good standing with recognized expertise in FERC matters and who has no economic relationship, association or nexus with Seller or the Facility (other than an attorney-client relationship), stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data that Buyer may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF. During the Term, Seller shall, to the extent required to prevent Seller from being subject to, or not exempt from, regulation as an "electric utility" or "holding company" pursuant to PUHCA or otherwise, maintain its QF status, and shall not seek to change the Contract Price as a result of its status as a QF.

7.3 EWG. If Seller is an EWG, Seller shall provide Buyer with copies of Seller's applications to FERC for EWG status and for authority to sell Net Output hereunder before Commercial Operation and within ten (10) days after filing such applications. During the Term, Seller shall maintain its EWG status (to the extent it is required by law to do so) and its authority to sell power hereunder.

**SECTION 8
SECURITY AND CREDIT SUPPORT**

8.1 Seller Credit Support. Seller shall provide Credit Support for its obligations under this Agreement in the amount of (i) [REDACTED] per kW of Expected Nameplate Capacity Rating of the Facility (the "**Initial Credit Support**") no later than thirty (30) days after the latter of [REDACTED]
[REDACTED] per kW of Expected Nameplate Capacity Rating of the Facility (the "**Additional Credit Support**") no later than ten (10) days following [REDACTED]; and (iii) [REDACTED] per kW of Nameplate Capacity Rating of the Facility (the "**Post-COD Credit Support**") no later than ten (10) days following the Commercial Operation Date.

8.2 Replacement and Return of Credit Support. Seller shall have the right to, at any time and from time to time, request replacement of any or all of the Credit Support required hereunder and provided by it (the "**Outstanding Credit Support**") with one or more alternative

forms of Credit Support, whereupon Buyer shall cooperate with Seller in obtaining the concurrent release, termination, or return (as many as may be applicable) of the Credit Support in favor of or held by Buyer. Without limitation of the foregoing, Buyer shall return to Seller all original Credit Support documents, and all amendment, extension, and other related documents, within thirty (30) days of the termination of this Agreement or the termination, cancellation, or replacement thereof; provided Buyer may retain such amounts as Buyer in good faith determines are Buyer's damages hereunder, if any, and provided that in the event of a termination for default, Buyer shall have sixty (60) days from the termination to determine its damages. Buyer shall return to Seller (i) the Initial Credit Support upon receipt of the Additional Credit Support, and (ii) the Additional Credit Support upon receipt of the Post-COD Credit Support.

8.3 Financial Statements. If requested by Buyer from time to time, Seller shall, within thirty (30) days provide Buyer with copies of its, and its guarantor's, if applicable, most recent annual and quarterly financial statements.

8.4 Security is Not a Limit on Seller's Liability. The security contemplated by this Section 8: (a) constitutes security for, but is not a limitation of, Seller's obligations hereunder, and (b) shall not be Buyer's exclusive remedy for Seller's failure to perform in accordance with this Agreement.

8.5 Senior Lender Protective Provisions. Buyer agrees to enter into a consent to collateral assignment in substantially the form of the Lender Consent attached hereto as **Exhibit 8.4** or such other form reasonably acceptable to Buyer for the benefit of the Senior Lenders, and to reasonably cooperate with the reasonable requests of such Senior Lenders in conjunction with any financing of the Facility; *provided, however*, that except as provided in the form of the Lender Consent, in no event shall Buyer be required to agree to any modification hereof; and provided further, however, that if and to the extent any Lenders request (a) changes to the form of the Lender Consent (or otherwise attempt to negotiate the form of consent), (b) any additional documents or assurances, or (c) any legal opinion from Buyer with regard hereto, then Seller shall reimburse Buyer for its reasonable out-of-pocket costs in making any such changes or providing any such additional documents or legal opinion, with such costs to be paid to Buyer at the closing of the financing as a condition to the effectiveness of Buyer's consents, documents and opinions. Seller will within five (5) Business Days of written demand reimburse Buyer all Buyer's costs and expenses, including legal fees and costs of due diligence, incurred in connection with any action or exercise of rights or remedies by any of Senior Lenders against Seller, including any proceeding or foreclosure against Seller or this Agreement.

SECTION 9 METERING

9.1 Installation of Metering Equipment. Metering equipment shall be designed, furnished, installed, owned, inspected, tested, maintained and replaced as provided in the Generation Interconnection Agreement; *provided, however*, that Buyer shall be under no obligation, pursuant hereto, to bear any expense relating to such metering equipment. Seller will dedicate the Facility Revenue Meter solely to the Facility. Seller covenants that Exhibit 9.2 accurately sets forth the configuration of the metering and interconnection of the Facility, and that Exhibit 9.2 has been reviewed and accepted as accurate by the Licensed Professional Engineer

identified on Exhibit 9.2, as acknowledged by a letter from such Licensed Professional Engineer to Buyer. Seller will within ten days of becoming aware of any inaccuracy on Exhibit 9.2 at any time notify Seller and provide a revised Exhibit 9.2 that has been reviewed and accepted as accurate by the Licensed Professional Engineer identified on the revised Exhibit 9.2, as acknowledged by a letter from such Licensed Professional Engineer to Buyer.

9.2 Metering. Metering shall be performed at the location and in the manner specified in Exhibit 9.2, the Generation Interconnection Agreement and as necessary to perform Section 4.5 and Seller's other obligations hereunder. All quantities of Net Output purchased hereunder shall reflect the net amount of energy flowing into Buyer's System at the Point of Delivery.

9.3 Inspection, Testing, Repair and Replacement of Meters.

9.3.1. Meter Errors. Buyer may periodically inspect test, repair and replace the metering equipment provided for in the Generation Interconnection Agreement without Buyer assuming any obligations thereunder. If any of the inspections or tests disclose an error exceeding one-half of one percent (0.5%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and Buyer arising out of such inaccuracy of metering equipment. Nothing in this Agreement shall give rise to Buyer having any obligations to Seller, or any other person or entity, pursuant to or under the Generation Interconnection Agreement.

9.3.2. Back-Up Meters. Seller shall own and maintain back-up metering equipment located at the Facility. Upon Buyer's reasonable request, Seller shall inspect and test the back-up meter(s). Buyer may have a representative present during any metering inspection or test.

9.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller shall bear all costs (including Buyer's costs) relating to all metering equipment installed to accommodate Seller's Facility.

9.5 Meter Data. Throughout the Term, Seller shall maintain, at Seller's sole cost and expense, its status at MISO as a Meter Data Management Agent. Upon written request by Buyer, Seller shall promptly request the Interconnection Provider or Transmission Provider in writing to provide any and all meter or other data associated with the Facility or Net Output directly to Buyer. Notwithstanding any other provision hereof, Buyer shall have the right to provide such data to any Electric System Authority.

9.6 GIS Metering. Buyer shall have the right upon notice to Seller to perform the Qualified Reporting Entity (as defined by the GIS) functions for the Facility to implement all

necessary generation information communications in the GIS and report generation information to the GIS pursuant to a GIS-approved meter that is dedicated to the Facility and only the Facility.

SECTION 10 BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 Monthly Invoices. On or before the twentieth (20th) day following the end of each calendar month, Seller shall deliver to Buyer a proper invoice showing Seller's computation of Net Output delivered to Buyer during such month. When calculating the invoice, Seller shall provide the hourly Net Output. Except as provided in Sections 10.2 and 10.4, if such invoice is delivered by Seller to Buyer, then Buyer shall send payment to Seller, on or before the later of the twentieth (20th) day following receipt of such invoice or the thirtieth (30th) day following the end of such month.

10.2 Offsets. A Party may offset any payment due hereunder against amounts owing from the other Party to such Party pursuant hereto or any other agreement between the Parties. A Party's exercise of recoupment and set off rights shall not limit the other remedies available to such Party hereunder, under such other agreements, or otherwise.

10.3 Interest on Late Payments. Any amounts that are not paid when due hereunder shall bear interest at the Contract Interest Rate from the date due until paid.

10.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Except with respect to invoices provided under Section 6.12.2, any such notice shall be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due or required to be refunded to the other Party, or if the Parties resolve the payment dispute, the amount due or to be refunded shall be paid within five (5) days after such determination or resolution, along with interest at the Contract Interest Rate from the date due until the date paid.

10.5 Records. Each Party shall keep and maintain all records as may be necessary or useful in performing or verifying the accuracy of all relevant data, estimates or statements of charges submitted hereunder until the later of (i) a period of at least twenty-four (24) months after the date an invoice was received by a Party, or (ii) if there is a dispute relating to an invoice, the date that is twenty-four (24) months after the date on which such dispute is resolved.

10.6 Audit Rights. Each Party, through its authorized representatives, shall have the right, at its sole expense upon reasonable notice and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. Upon request, each Party shall provide to the other Party statements evidencing the quantities of Net Output delivered at the Point of Delivery. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding

the foregoing, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

SECTION 11 DEFAULTS AND REMEDIES

11.1 Defaults. The following events are defaults (each a “default” before the passing of applicable notice and cure periods, and an “**Event of Default**” thereafter) hereunder:

11.1.1. Defaults by Either Party.

(a) A Party fails to make a payment when due hereunder if the failure is not cured within ten (10) days after the non-defaulting Party gives the defaulting Party a notice of the default.

(b) A Party (i) makes an assignment for the benefit of its creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (iii) becomes insolvent; or (iv) is unable to pay its debts when due.

(c) A Party breaches a representation or warranty made by it herein if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default; and provided that, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (ii) the default is capable of being cured within the additional sixty (60) day period, and (iii) the defaulting Party provides the non-defaulting Party a remediation plan which the non-defaulting Party approves (such approval not to be unreasonably withheld), and the defaulting Party promptly commences and diligently commences the cure and pursues the remediation plan within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure pursuant to the remediation plan.

(d) A Party otherwise fails to perform any material obligation hereunder for which an exclusive remedy is not provided hereunder and which is not addressed in any other Event of Default described in this Section 11.1, if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default, unless a shorter period is provided for such failure hereunder; and provided that, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (ii) the default is capable of being cured within the additional sixty (60) day period, and (iii) the defaulting Party provides the non-defaulting Party a remediation plan which the non-defaulting Party approves (such approval not to be unreasonably withheld), and the defaulting Party promptly commences and diligently commences the cure and pursues the remediation plan within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure pursuant to the remediation plan.

11.1.2. Defaults by Seller.

(a) Seller fails to post, increase, maintain or replenish any security as required under this Agreement and such failure continues five (5) days after Seller receives written notice thereof from Buyer.

(b) Seller fails to cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date.

(c) Seller's Abandonment of the Facility.

(d) Seller sells Output, RECs, Ancillary Services or Capacity Rights from the Facility to a party other than Buyer in breach hereof, or Seller makes a public statement or otherwise takes an action that any Governmental Authority or the Center for Resource Solutions determine is a retirement, double counting, double sale, double use or double claim of RECs, if Seller does not permanently cease such sale and compensate Buyer for the damages arising from the breach within ten (10) days after Buyer gives Seller a notice of default.

(e) The Output Shortfall exceeds [REDACTED] of the Expected Energy averaged over any [REDACTED] consecutive Contract Years.

(f) Seller defaults under any material agreement with any third party relating to the ownership, interconnection, operation, transmission from, maintenance or repair of the Facility, and fails to cure such default within the time required under such agreement, after the expiration of applicable notice, cure and waiver periods, resulting in the termination of such material agreement without a replacement or substitute thereof obtained within the earlier of (i) sixty (60) days following such termination and (ii) the needed timeliness to allow Seller to continue performance under and in compliance with this Agreement.

(g) Buyer receives notice of foreclosure of the Facility or any part thereof by a Lender, mechanic or materialman, or any other holder, of an unpaid lien or other charge or encumbrance, if the same has not been stayed, paid, or bonded around within ten (10) days.

(h) After the Commercial Operation Date, Seller fails to maintain any Required Facility Documents, Permits, land rights, interconnection rights or other material rights necessary to own or operate the Facility, and such Required Facility Documents, Permits, land rights, interconnection rights or other material rights necessary to own or operate the Facility have not been replaced within the earlier of (i) sixty (60) days following such termination and (ii) the expiration of applicable notice, cure and waiver periods.

11.2 Remedies for Failure to Deliver/Receive Prior to Termination.

11.2.1. Remedy for Seller's Failure to Deliver. If Seller fails to deliver all or part of the Net Output and associated RECs required to be delivered under this Agreement, and such failure is not excused under the terms hereof or by Buyer's failure to perform, then Seller shall pay Buyer within five (5) Business Days after invoice receipt, an amount equal to (i) Buyer's Cost to Cover multiplied by the Net Output not delivered, (ii) additional transmission charges, if any,

reasonably incurred by Buyer in moving replacement energy to the Point of Delivery or if not there, to such points in Buyer's control area as are determined by Buyer, and (iii) any additional reasonable and direct cost or expense incurred as a result of Seller's failure to deliver (but not including any penalties, ratcheted demand or similar charges). The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

11.2.2. Remedy for Buyer's Failure to Purchase. If Buyer fails to receive or purchase all or part of the Net Output required to be purchased under this Agreement, and such failure is not excused under the terms hereof or by Seller's failure to perform, then Buyer shall pay Seller, on the earlier of the date payment would otherwise be due in respect of the month in which the failure occurred or within five (5) Business Days after invoice receipt, an amount equal to (i) Seller's Cost to Cover multiplied by the amount of Net Output not purchased, and (ii) any additional reasonable and direct cost or expense incurred as a result of Buyer's failure to receive or purchase. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation thereof.

11.2.3. Remedy for Seller's Failure to Sell and Deliver Ancillary Services or Capacity Rights. Seller shall be liable for Buyer's actual damages in the event Seller fails to sell or deliver all or any portion of the Ancillary Services or Capacity Rights to Buyer as required hereunder, or if Seller sells or delivers all or any portion of the Ancillary Services or Capacity Rights to a person other than Buyer.

11.3 Termination and Remedies. Upon the occurrence of, and during the continuation of, an Event of Default, the non-defaulting Party shall be entitled to all remedies available under this Agreement and at law or in equity, and may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the defaulting Party no less than one Business Day before such termination date; *provided, however*, that as a precondition to Seller's exercise of this termination right, Seller must also provide copies of such notice to the notice addresses set forth in Section 22 for Buyer with such copies addressed to the "President" and the "General Counsel" of Buyer. Such copies shall be sent by registered overnight delivery service or by certified or registered mail, return receipt requested and shall state prominently therein in type font no smaller than fourteen (14) point all-capital letters that "THIS IS A TERMINATION NOTICE UNDER A RENEWABLE PPA. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED," and shall state therein any amount purported to be owed and wiring instructions, or the nature of any non-payment default alleged. Seller shall not have any right to terminate this Agreement if the default that gave rise to the termination right is cured within the five (5) Business Days of Buyer's receipt of such notice. Further, during the continuation of default by the other Party, and until it has recovered all damages incurred on account of such default by the other Party, without exercising its termination right, a party may offset its damages against any payment due the other Party. The rights contemplated by this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. In the event of a termination hereof:

(a) Each Party shall pay to the other all amounts due the other hereunder for all periods prior to termination, subject to offset by the non-defaulting Party against damages incurred by such Party.

(b) The amounts due pursuant to Section 11.3(a) shall be calculated and paid within thirty (30) days after the billing date for such charges and shall bear interest thereon at the Contract Interest Rate from the date of termination until the date paid. The foregoing does not extend the due date of, or provide an interest holiday for, any payments otherwise due hereunder.

(c) Except in circumstances in which a remedy provided for in this Agreement is described as a Party's sole or exclusive remedy before and after the effective date of termination, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement (including Section 24.6).

(d) Without limiting the generality of the foregoing, the provisions of Sections 4.5, 5.4, 5.7, 6.2.3, 6.3, 6.6.5, 6.6.6, 10.2, 10.3, 10.4, 10.5, 11.4, 11.5, 11.6, 12, 20.3 and 23 shall survive the termination hereof.

11.4 Termination of Duty to Buy; Memorandum of Agreement. If this Agreement is terminated because of a default by Seller, neither Seller, nor any successor to Seller with respect to the ownership of the Facility (for whom Seller acts herein as agent), may thereafter require or seek to require Buyer to purchase Output from the Facility under PURPA (on account of its status as a QF), or any other Requirements of Law, for any periods that would have been within the Term had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require Buyer to do so. On or before the Effective Date, the Parties shall execute and Buyer shall record at its cost, in the appropriate real property records of the counties in which the Facility or Premises are situated, and of the U.S. Bureau of Land Management or other federal agency, as applicable, a memorandum in the form of Exhibit 11.4 to provide constructive notice to third parties of Seller's agreements under this Section 11.4.

11.5 Termination Damages. If this Agreement is terminated as a result of an Event of Default by one of the Parties, termination damages shall be determined. Termination damages are in addition to all other amounts owed under this Agreement. The Termination Payment shall be calculated by the non-defaulting Party within a reasonable period after termination of the Agreement. The Termination Payment owed pursuant to this Section shall be due within five (5) Business Days after the non-defaulting Party gives the defaulting Party notice of the amount due. The non-defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the defaulting Party for economic benefits accruing to the non-defaulting Party as a result of the defaulting Party's default. A Party's rights with respect to a default by the other Party under Sections 11.1.1 and 11.1.2, as applicable, are cumulative, such that the exercise of one or more rights shall not constitute a waiver of any other rights, with the other Party remaining fully liable for any remaining deficiency.

11.6 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 hereof. "Commercially reasonable efforts" by Seller shall require Seller to (i) use commercially reasonable efforts to maximize the price for energy received by Seller from third parties, including entering into an enabling agreement with, or being affiliated with, one or more power marketers of nationally recognized standing to market such Net Output (and associated RECs) not purchased or accepted by Buyer,

and (ii) if Seller is the defaulting Party, prior to selling to a third party such RECs unbundled from the Net Output, offer to sell to Buyer such RECs at the REC Price Component to the extent permitted by the Generation Interconnection Agreement and Requirements of Law.

11.7 Security. Buyer may, in addition to pursuing any and all other remedies available at law or in equity, proceed against any security held by Buyer in whatever form to reduce any amounts that Seller owes Buyer arising from such default.

11.8 Cumulative Remedies. The rights and remedies provided to each Party hereunder are cumulative and not exclusive of any rights or remedies of such Party.

11.9 Right of First Offer for Facility Output. In the event of any termination hereof by Buyer pursuant to Section 11.1.2, in addition to Buyer's rights under this Agreement, Buyer shall have a right of first offer (the "Covered Facility Right of First Offer") to, and Buyer shall have a right of first offer on all of the output of any solar-powered generation facility (a "Covered Facility") that from time to time may be constructed by Seller or any Affiliate of Seller on the Premises, up to (but not to exceed) an amount equal to the Expected Energy at the Contract Price.

The Covered Facility Right of First Offer shall be exercisable by Buyer through the earlier of (i) the fifth (5th) anniversary date of Buyer's notice of termination, and (ii) the last day of the original Term had this Agreement not been terminated by Buyer. Seller shall provide Buyer with no less than fifteen (15) days' (but no more than twelve (12) months') prior written notice of the anticipated commercial operation date for any Solar Panels or Inverters constituting part of a Covered Facility and not previously subject to Buyer's Covered Facility Right of First Offer. Buyer shall notify Seller within sixty (60) days as to whether Buyer elects to purchase the output of such portions of the Covered Facility. If Buyer elects to purchase the output of such portions of the Covered Facility, such output (along with associated RECs) shall be sold to Buyer for the Contract Price that would have applied to Net Output and associated RECs purchased by Buyer hereunder had this Agreement remained in effect, at the rates indicated in Exhibit 5.1 until the last day of the original Term had this Agreement not been terminated by Buyer. Buyer shall not have a Covered Facility Right of First Offer (a) with respect to the output of any portion of the Covered Facility that has been offered to Buyer pursuant to this Section 11.9 on an earlier occasion and not been accepted by Buyer, or (b) with respect to any output that would cause the total output purchased by Buyer pursuant to its Covered Facility Right of First Offer to exceed the amount of the Expected Energy.

SECTION 12 INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

12.1.1. Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 12.1.7, Seller shall release, indemnify and hold harmless Buyer, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "**Buyer Indemnitees**") against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including reasonable legal costs and attorney's fees, both at trial and on appeal, whether or not

suit is brought) (collectively, “**Liabilities**”) resulting from, or arising out of, or in any way connected with, the performance by Seller of its obligations hereunder, or relating to the Facility, for or on account of (i) Environmental Contamination caused by Seller, or (ii) injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any person or entity, excepting only to the extent such Liabilities as may be caused by the negligence or willful misconduct of any person or entity within the Buyer Indemnitees. Nothing in this Section 12.1.1 will limit the indemnity obligations of Seller set forth in Section 6.3.

12.1.2. Indemnity by Buyer. To the extent permitted by Requirements of Law and subject to Section 12.1.7, Buyer shall release, indemnify and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “**Seller Indemnitees**”) against and from any and all Liabilities resulting from, or arising out of, or in any way connected with, the performance by Buyer of its obligations hereunder for or on account of (i) Environmental Contamination caused by Buyer, or (ii) injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any person or entity, excepting only to the extent such Liabilities as may be caused by the negligence or willful misconduct of any person or entity within the Seller Indemnitees.

12.1.3. Additional Cross Indemnity. Without limiting Sections 12.1.1 and 12.1.2, and subject to Section 12.1.7, Seller shall release, indemnify and hold harmless the Buyer Indemnitees from and against all Liabilities related to Net Output prior to its delivery by Seller at the Point of Delivery, and Buyer shall release, indemnify and hold harmless the Seller Indemnitees from and against all Liabilities related to Net Output once delivered to Buyer at the Point of Delivery as provided herein, except in each case to the extent such Liabilities are attributable to the negligence or willful misconduct or a breach of this Agreement by any member of the Buyer Indemnitees or the Seller Indemnitees, respectively, seeking indemnification hereunder.

12.1.4. 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 Section 12 may apply, the indemnified Party shall notify the indemnifying Party in writing of such fact. The indemnifying Party shall assume the defense thereof with counsel designated by such Party and 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.

12.1.5. Failure to Defend. If the indemnifying Party fails to assume the defense of a claim meriting indemnification, the indemnified Party may at the sole expense of the indemnifying Party, contest, settle, or pay such claim; *provided however*, 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.

12.1.6. No Dedication. Nothing herein shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party hereto. No

undertaking by one Party to the other under any provision hereof shall constitute the dedication of Buyer's facilities or any portion thereof to Seller or to the public, nor affect the status of Buyer or Seller as an independent individual or entity.

12.1.7. Consequential Damages. **NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, DELAY DAMAGES, BUYER AND SELLER COST TO COVER DAMAGES, SECTION 11.2.3 CAPACITY RIGHTS LOSS DAMAGES, INDEMNIFICATION FOR THIRD PARTY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, ARE NOT INTENDED BY THEM TO REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES.**

SECTION 13 INSURANCE

13.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-" by the A.M. Best Company the insurance coverage specified on **Exhibit 13** during the periods specified on **Exhibit 13**.

13.2 Certificates and Certified Copies of Policies. Seller shall provide Buyer with a certified "true and correct" copy of the insurance policies, provisions and endorsements contemplated by **Exhibit 13** within ten (10) days after the date by which such policies are required to be obtained (as set forth in **Exhibit 13**). The certificate (a) shall not include the legend "certificate is not evidence of coverage" or any statement with similar effect, (b) the insurer shall have a firm obligation to provide Buyer with thirty (30) days prior written notice of coverage modifications (not merely an obligation to "endeavor" or words of similar effect), and (c) shall be endorsed by a person who has authority to bind the insurer. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

SECTION 14 FORCE MAJEURE

14.1 Definition of Force Majeure. "**Force Majeure**" or "an event of Force Majeure" means an event that (a) is not reasonably anticipated as of the date hereof, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party's negligence or failure to act, and (d) could not be overcome by the affected Party's use of reasonable due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; fire; explosion; civil disturbance; sabotage; or action or restraint by court order or public or Governmental Authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent

reasonable, such court or government action). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller's ability to sell, or Buyer's ability to purchase, Net Output, Ancillary Services, Capacity Rights, or RECs at a more advantageous price than is provided hereunder; (ii) the cost or availability or unavailability of fuel or motive force to operate the Facility; (iii) economic hardship, including lack of money; (iv) any breakdown or malfunction of Facility equipment (including any serial equipment defect) that is not directly caused by an independent event of Force Majeure; (v) the imposition upon a Party of costs or taxes allocated to such Party under Section 5; (vi) delay or failure of Seller to perform under any Required Facility Document; (vii) any delay, alleged breach of contract, or failure by the Transmission Provider or Interconnection Provider; (viii) curtailment or suspension of transmission or directive from the Transmission Provider or Interconnection Provider to curtail or suspend deliveries; (ix) a disconnection or interruption of interconnection service under the Generation Interconnection Agreement as a result of Seller's acts or omissions; (x) maintenance upgrade or repair of any facilities or right of way corridors constituting part of or involving Interconnection Facilities, performed by or for Seller (except for repairs made necessary as a direct result of an event of Force Majeure); (xi) Seller's failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to Transmission Provider or Interconnection Provider; (xii) any event attributable to the use of Interconnection Facilities for deliveries of Output to any party other than Buyer; or (xiii) failure of Seller to take any action, or refrain from taking any action, in accordance with all applicable Permits, including any required environmental mitigation measures. Notwithstanding anything to the contrary herein, in no event will the increased cost of electricity, transmission, Solar Panels or tariffs or taxes thereupon, steel, labor, or transportation, or changes in taxes or tax laws, including the cessation or termination of any tax credits or tax rebates, constitute an event of Force Majeure.

14.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations hereunder because of an event of Force Majeure, both Parties shall be excused from the performance affected by the event of Force Majeure, provided that:

14.2.1. the Party affected by the Force Majeure, shall, within five (5) days after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

14.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure; and

14.2.3. the affected Party shall use diligent efforts to remedy its inability to perform.

14.3 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure, or with respect to payment obligations, shall be excused by the Force Majeure.

14.4 Strikes. Notwithstanding any other provision hereof, neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.5 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations hereunder for a period exceeding two hundred-seventy (270) consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the effects of the Force Majeure with all reasonable dispatch), then the Party not affected by the Force Majeure event, with respect to its obligations hereunder, may terminate this Agreement by giving ten (10) days prior notice to the other Party. Upon such termination, neither Party will have any liability to the other with respect to the period following the effective date of such termination; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising hereunder before the effective date of such termination.

SECTION 15 MISO MEMBERSHIP

Nothing in this Agreement shall be interpreted to require Buyer to remain a transmission owning member of MISO. If Buyer ceases to be a transmission owning member of MISO, or if Buyer otherwise desires for the Facility to be a generation resource in a regional transmission organization other than MISO, the Parties will amend this Agreement to preserve the economic benefits of the Agreement for both Parties.

SECTION 16 CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Kentucky, excluding any choice of law rules that may direct the application of the laws of another jurisdiction. The Parties intend that this Agreement be a "forward contract" between two "forward contract merchants" within the meanings given such terms in the United States Bankruptcy Code; provided that neither Party shall be in breach of this Agreement if a court determines that is not the case.

SECTION 17 PARTIAL INVALIDITY

The Parties do not intend to violate any laws governing the subject matter hereof. If any of the terms hereof are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms hereof shall remain in effect. The Parties shall use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under applicable law, (b) give effect to the intent of the Parties in entering hereinto, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

SECTION 18 SEVERAL OBLIGATIONS; NON-WAIVER

18.1 Several Obligations. Nothing contained herein shall be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or liability on or between the Parties.

18.2 Non-Waiver. No waiver of any provision hereof shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is executed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions hereof shall not be construed as a waiver of any other failure, whether of a like kind or different nature.

**SECTION 19
GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. During the Term, Seller shall maintain all Permits required, as applicable, for the construction, operation, or ownership of the Facility.

**SECTION 20
SUCCESSORS AND ASSIGNS**

20.1 Restriction on Assignments. Except as expressly provided in this Section 20, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

20.2 Assignment.

20.2.1. Binding Nature. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.

20.2.2. Permitted Assignments. Notwithstanding Section 20.1, either Party may, without the need for consent from the other Party (but with notice to the other Party, including the names of the assignees), (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds therefrom in connection with any financing or other financial arrangements; (b) transfer or assign this Agreement to an Affiliate of such Party that is a Qualified Transferee; or (c) transfer or assign this Agreement to any party to whom a Controlling Interest in Seller has been sold, transferred or assigned, subject to the limitation in Section 20.2.3; provided, however, that Seller shall not transfer, sell, encumber or assign this Agreement or any interest herein to any Affiliate of Buyer without the prior written consent of Buyer. Except with respect to collateral assignments for financing purposes and also except as otherwise provided above in the immediately preceding sentence, in every assignment hereof, (i) the assignee must agree in writing to be bound by the terms and conditions hereof, and be a Qualified Transferee, and (ii) the assignor shall remain liable for its obligations hereunder. The Party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs of assignment.

20.2.3. Controlling Interest in Seller. No Controlling Interest in Seller may be sold, transferred or assigned (whether through a single transaction or a series of transactions over time) without Buyer's prior written approval, not to be unreasonably withheld, of the transferee with respect to such Controlling Interest; provided that a sale, transfer or assignment of a Controlling Interest shall not require Buyer's prior written approval so long as such sale, transfer or assignment (1) does not result in Seller being owned, managed or controlled by a transferee that is not a Qualified Transferee, or (2) is pursuant to a Tax Equity Financing.

20.3 Assignment to RUS. The RUS is a lender to Buyer. Notwithstanding any other provision of this Agreement to the contrary, Buyer, without the approval of Seller, may assign, transfer, mortgage or pledge this Agreement to create a security interest for the benefit of the United States of America (the “**Government**”), acting through the Administrator of the RUS (the “**Administrator**”), and its other lenders. Thereafter, the Administrator or such other lenders, without the approval of Seller, may (a) cause this Agreement to be sold, assigned, transferred, or otherwise disposed of to a third party pursuant to the remedies with respect to such security interest or in lieu of the exercise of such remedies in connection with a debt settlement, or (b) if the Government first acquires this Agreement pursuant to 7 U.S.C § 907, sell, assign, transfer or otherwise dispose of this Agreement to a third party; *provided*, that in either case at the time of such initial disposition (i) Buyer is in default of its obligations to the Government or such other lenders that are secured by such security interest and the Administrator or such other lender has given Seller notice of such default; and (ii) the Administrator or such other lender has given thirty (30) days’ prior notice of its intention to sell, assign, transfer or otherwise dispose of this Agreement indicating the identity of the intended third party assignee or purchaser. No permitted sale, assignment, transfer, mortgage, pledge or other disposition under this Section 20.3 shall release or discharge Buyer from its obligations under this Agreement.

20.4 Right of First Offer of Sale of the Facility.

20.4.1. Offered Assets. If following the Commercial Operation Date Seller intends to sell the Facility or any part of the Facility or to sell (individually or in the aggregate) a Controlling Interest in Seller or the Facility (the “**Offered Assets**”), it shall first offer the Offered Assets to Buyer. Seller’s offer shall set forth the terms and conditions of the offer in writing and in reasonable detail. Seller shall promptly answer any questions that Buyer may have concerning the offered terms and conditions and shall meet with Buyer to discuss the offer. The provisions of this Agreement will bind any successor or transferee of Seller as if such successor or transferee were the Seller.

20.4.2. Buyer’s Rejection of Offer; Revival of Offer. If Buyer does not accept the offered terms and conditions within thirty (30) days after receiving Seller’s offer or after Buyer accepts the offered terms and conditions the Parties are unable, despite using commercially reasonable efforts, to execute a power purchase agreement, Seller may (subject to Buyer’s rights under Section 20.2) enter into an agreement to sell the Offered Assets to a third party on terms and conditions no more favorable in the aggregate to the third party than those offered to Buyer. If Seller wishes to enter into an agreement with a third party on terms more favorable to the third party than those previously offered to Buyer under this Section, Seller shall first offer the revised terms and conditions to Buyer under this Section 20.4.

20.4.3. Buyer’s Acceptance of Offer. If Buyer accepts an offer made by Seller under this Section, the Parties shall within a further sixty (60) days enter into an acquisition agreement that incorporates the terms and conditions of Seller’s offer.

SECTION 21
ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, proposals, representations, negotiations,

22.3 Notices to Senior Lenders. The requirements concerning notice by Buyer to Senior Lenders, if any, are set forth in the Lender Consent, if any.

SECTION 23 CONFIDENTIALITY

23.1 Confidential Business Information. The following constitutes “**Confidential Business Information**,” whether oral or written: (a) the Parties’ proposals and negotiations concerning this Agreement, made or conducted prior to the Effective Date, (b) the proprietary terms hereof, (c) information provided under Section 6.10.1, (d) the actual charges billed to Buyer hereunder, (e) any information delivered by Buyer to Seller prior to the Effective Date relating to the market prices of energy or RECs and methodologies for their determination or estimation, (f) information provided by one Party to the other pursuant hereto, (g) all negotiations pursuant to Section 24.1 and (h) any of the foregoing delivered by an Affiliate of a Party or employee or agent thereof to the other Party or an Affiliate of that party or employee or agent thereof; provided, however, that “Confidential Business Information” shall not include information that (i) is publicly available as of the date hereof, or becomes publicly available during the Term through no fault of the recipient Party; (ii) can be documented was independently developed by the recipient Party; and/or (iii) is disclosed to the recipient Party from an ultimate source other than the protected Party, without breach of this Agreement by the recipient Party. Seller and Buyer each agree to hold such Confidential Business Information wholly confidential, except as provided herein. Such Confidential Business Information may only be used by the Parties for purposes related to the approval, administration or enforcement hereof and for no other purpose.

23.2 Duty to Maintain Confidentiality. Each Party agrees not to disclose Confidential Business Information to any other person (other than its members, Affiliates, counsel, auditors, consultants, lenders, prospective lenders, purchasers, prospective purchasers, contractors constructing or providing services to the Facility, employees, officers and directors who agree to be bound by the provisions of this Section and provided the receiving Party remains liable for any breach of such confidentiality restrictions by such persons), without the prior written consent of the other Party; *provided however*, that: (a) either Party may disclose Confidential Business Information, if and to the extent such disclosure is required: (i) by Requirements of Law, (ii) in order for Buyer to receive regulatory recovery of expenses related to this Agreement, (iii) pursuant to an order of a court or regulatory agency, or (iv) in order to enforce this Agreement or to seek approval hereof, and (b) notwithstanding any other provision hereof, Buyer may in its sole discretion disclose or otherwise use for any purpose in its sole discretion the Confidential Business Information described in Section 23.1(d) or 23.1(e).

23.3 Buyer Regulatory Compliance. The Parties acknowledge that Buyer is required by law or regulation to report certain information that could embody Confidential Business Information from time to time. Such reports may include models, filings, reports of Buyer’s net power costs, general rate case filings, power cost adjustment mechanisms, FERC-required reporting such as those made on FERC Form 1, Form 12, or Form 714, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource planning reports, reports to entities such as NERC, MISO, RE, a GIS, RUS, or similar or successor organizations, forms, filings, or reports, the specific names of which may vary by jurisdiction, along with supporting documentation. Additionally, in regulatory proceedings in all state and

federal jurisdictions in which it does business, Buyer will from time to time be required to produce Confidential Business Information. Notwithstanding any provision of this Agreement to the contrary, Buyer may use its business judgment in its compliance with all of the foregoing and the appropriate level of confidentiality it seeks for such disclosures, and Buyer may submit Confidential Business Information in regulatory proceedings or filings without notice to Seller.

23.4 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 23 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

23.5 News Releases and Publicity. Before Seller issues any news release or publicly distributed promotional material regarding the Facility, Seller shall first provide a copy thereof to Buyer for its review and approval. Any use of Buyer's name in such news release or promotional material requires Buyer's prior written consent. Seller may make such public statements, filings and provide other materials publicly in connection with obtaining Permits and other Required Facility Documents, subject to Seller's compliance in all respects with Sections 3.2.9 and 4.5 hereof.

SECTION 24 DISPUTE RESOLUTION

24.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of, related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at least one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter if neither Party has requested that the dispute be mediated or both Parties do not agree to mediate the dispute in accordance with Section 24.2 below. All negotiations pursuant to this clause are confidential.

24.2 Mediation. If the dispute is not resolved within thirty (30) days after the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may request that the matter be submitted to nonbinding mediation. If the other Party agrees to mediate the matter in writing, the Parties shall participate in mediation which will be conducted in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (including Procedures for Large, Complex Construction Disputes) of the AAA, as amended and effective on July 1, 2015 (the "**Mediation Procedures**"), notwithstanding any Dollar amounts or Dollar limitations contained therein.

(a) Following the other Party's agreement to mediate, if applicable, the Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing ("**Mediation Notice**") of such Party's desire that the dispute

be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party's written agreement to such mediation.

(b) The mediation shall be conducted through, by and at the office of AAA located in the Mediation Location.

(c) The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable mediator. If the Parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA's Arbitration Administrator shall send a list and resumes of three (3) available mediators to the Parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both Parties have failed to respond to the AAA's Arbitration Administrator within five (5) days after receiving the list or because one or both Parties have failed to strike a name from the list or because both Parties strike the same name, the AAA's Arbitration Administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 24.2(c), and such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

(d) The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the Dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 24.2(f). The costs of the mediation shall be borne equally by the Parties, provided that the Parties shall each bear their own expenses and attorney fees.

(e) All verbal and written communications between the Parties and issued or prepared in connection with this Section 24.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

(f) The initial mediation meeting between the Parties and the mediator shall be held within twenty (20) days after the Mediation Notice. Either Party may terminate the mediation process upon or after the earlier to occur of (A) the failure of the initial mediation meeting to occur within twenty (20) days after the date of the Mediation Notice, (B) the passage of thirty (30) days after the date of the Mediation Notice without the dispute having been resolved, or (C) such time as the mediator makes a finding that there is no possibility of resolution through mediation.

(g) All deadlines specified in this Section 24.2 may be extended by mutual agreement.

24.3 Place of Contract Formation; Choice of Forum. Seller and Buyer acknowledge and agree that this Agreement has been made and entered into as of the date first set forth above in the Mediation Location. Each Party irrevocably consents and agrees that any legal action or

proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement shall be brought exclusively in the state and federal courts in or for Henderson County, Kentucky except for matters within the exclusive jurisdiction of a Governmental Authority. Except for matters within the exclusive jurisdiction of a different Governmental Authority, by execution and delivery hereof, each Party (a) accepts the exclusive jurisdiction of such courts and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such courts over each Party for the purpose of any proceeding related to this Agreement, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such courts arising out of such documents or actions, and (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such courts (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith.

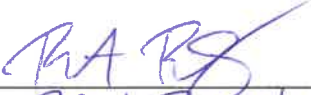
24.4 Settlement Discussions. No statements of position or offers of settlement made in the course of the dispute resolution process described in this Section may be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

24.5 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING HEREINTO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names as of the date first above written.

MEADE COUNTY SOLAR LLC

By: 
Name: Brent Beerley
Title: Manager

BIG RIVERS ELECTRIC CORPORATION


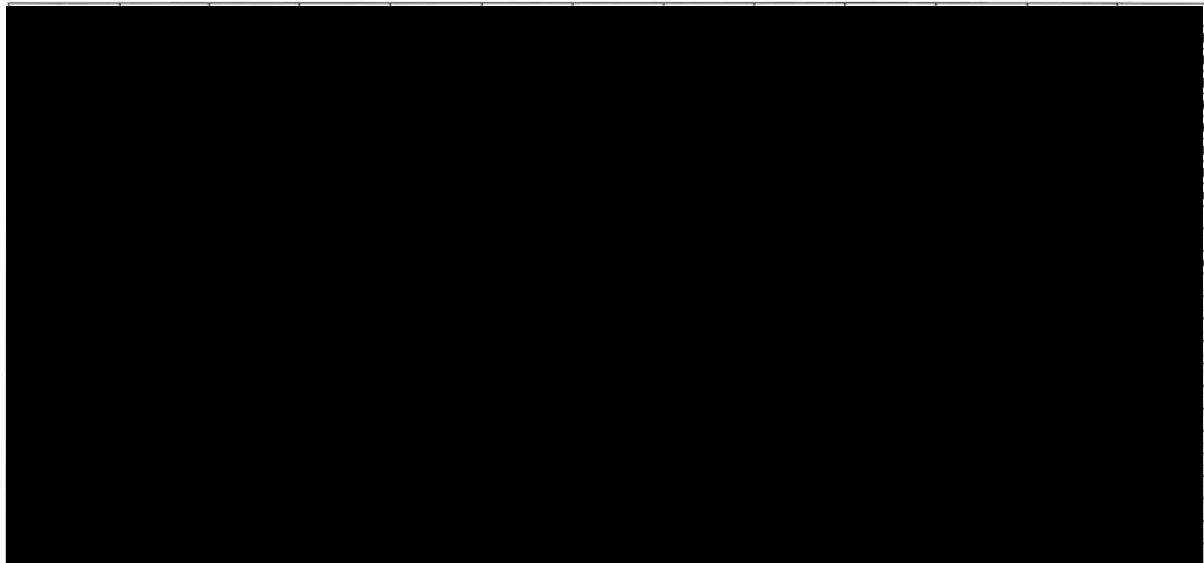
By: 
Name: Robert W. Berry
Title: President and CEO

EXHIBIT A
ESTIMATED OUTPUT

Seller to provide one (1) electronic and hard copy of the solar plant performance estimation report for the Meade County solar-generation projects using PVSYST or a comparable Solar Performance Modeling Program including, at a minimum, estimated hourly MW generation Output in MWh/h for the site and Facility. Upon Commercial Operations, Seller shall provide an updated Exhibit A based on completed construction and Seller's designated Licensed Professional Engineer will provide certification as part of Commercial Operations that the estimated energy Output included in this Exhibit A is correct as calculated using PVSYST or comparable Solar Performance Modeling Program.



Expected Energy (Year 1) = [REDACTED]

All amounts are based on an estimate of the first full Contract Year, which shall be reduced by an annual degradation factor of 0.5% per Contract Year.

EXHIBIT C

NERC EVENT TYPES

Event Type	Description of Outages
U1 ¹	<u>Unplanned (Forced) Outage—Immediate</u> – An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.
U2 ¹	<u>Unplanned (Forced) Outage—Delayed</u> – An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service.
U3 ¹	<u>Unplanned (Forced) Outage—Postponed</u> – An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service.
SF ¹	<u>Startup Failure</u> – An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs.
MO	<u>Maintenance Outage</u> – An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next Planned Outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.)
ME	<u>Maintenance Outage Extension</u> – An extension of a Maintenance Outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO.
PO	<u>Planned Outage</u> – An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year. (Boiler overhauls, turbine overhauls or inspections are typical Planned Outages.)
PE	<u>Planned Outage Extension</u> – An extension of a Planned Outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO.

¹ These event types are all contributors to the FOR & EFOR calculations in the reports section.

EXHIBIT D

EXAMPLE CALCULATION OF BUYER'S COST TO COVER

Buyer's Cost to Cover is calculated as follows:

(Average Relevant DALMP Price + [RECs replacement price or REC Price Component]) – Contract Price.

Example:

For a given Calculation Period, assume the following:

- A. Average Relevant DALMP Price: [REDACTED]
- B. Buyer, after using commercially reasonable efforts to do so, was unable to replace the RECs.
- C. Contract Price then in effect: [REDACTED].

Buyer's Cost to Cover is therefore calculated as follows:

[REDACTED]

EXHIBIT E

APPROVED LICENSED PROFESSIONAL ENGINEERS

- ICF International, Inc.;
- Leidos Holdings Inc.;
- Black & Veatch Holding Company;
- John Wood Group PLC; and
- DNV GL AS.

EXHIBIT F

PERMITS

FERC Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility

FAA Determination of No Hazard to Air Navigation, or “Do Not Exceed Notice Criteria” result from FAA Notice Criteria Tool

Nationwide Permit under Section 404(e) of the Clean Water Act, issued by the U.S. Army Corps of Engineers

Construction Certificate approved by the Kentucky State Board on Electric Generation and Transmission Siting

KPDES Construction General Permit issued by the Kentucky Division of Water

Approval of Proposed Construction in the 100-year Floodplain by the Kentucky Division of Water Floodplain Management Section

Encroachment Permits issued by the Kentucky Department for Highways

County Conditional Use Permit, or equivalent, for the Project on the Project Site

County Electrical or Building Permit, or equivalent, for the Project

Crossing Agreements or Encroachment Agreements, or equivalent, for any utility crossings

EXHIBIT 2.2

CONSTRUCTION MILESTONES

1. On or before [REDACTED] Seller shall have provided Buyer with evidence of compliance with the insurance coverage requirements in accordance with Section 13.
2. On or before [REDACTED] Seller shall demonstrate that it has site control of the Premises.
3. On or before [REDACTED], Seller shall have entered into a system impact study agreement with the Transmission Provider.
4. On or before [REDACTED] Seller shall have achieved closing on financing for the Facility or provided Buyer with proof of financial capability to construct the Facility.
5. On or before [REDACTED] Seller shall have entered into one or more binding contracts for the purchase by Seller all of the equipment necessary for the Facility.
6. On or before [REDACTED] Seller shall have submitted applications for any required water supply and wastewater discharge Permits.
7. On or before [REDACTED], Seller shall have executed the Generation Interconnection Agreement.
8. Seller shall have provided Buyer with Credit Support on or before the deadlines required by Section 8.
9. On or before [REDACTED] Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformation facilities.
10. On or before [REDACTED], the step-up transformer and all other power electronics shall have been delivered to, and installed at, the Premises.
11. On or before [REDACTED], Seller shall have constructed Seller's Interconnection Facilities and such facilities shall be capable of being energized.
12. On or before [REDACTED], start-up testing of the Facility shall have commenced.
13. On or before [REDACTED], the Facility shall have been certified as an eligible renewable resource under the renewable portfolio or renewable energy standards of Kentucky and Ohio.
14. On or before [REDACTED], Seller shall have registered the Facility with the Center for Resource Solution's Green-e program and the Ohio SREC program.
15. Seller shall cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date.

EXHIBIT 2.6

BUYER'S INITIAL DESIGNATED REPRESENTATIVES

1. Authorized Representatives.

Buyer: Russ Pogue
Manager of Member Relations
Big Rivers Electric Corporation
201 Third Street, P.O. Box 24
Henderson, KY 42419-0024

[REDACTED]
[REDACTED]
[REDACTED]

EXHIBIT 3.2.6

REQUIRED FACILITY DOCUMENTS

1. Obtained Required Facility Documents:

Licenses, Permits and Authorizations:

None

Construction and Operations and Maintenance:

None

Land Rights:

[Site Control Agreements and/or Leases executed as of the Effective Date]

2. To Be Obtained Required Facility Documents:

Licenses, Permits and Authorizations:

FERC Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility

FAA Determination of No Hazard to Air Navigation, or "Do Not Exceed Notice Criteria" result from FAA Notice Criteria Tool

Construction Certificate approved by the Kentucky State Board on Electric Generation and Transmission Siting

KPDES Construction General Permit issued by the Kentucky Division of Water

Approval of Proposed Construction in the 100-year Floodplain by the Kentucky Division of Water Floodplain Management Section

Encroachment Permits issued by the Kentucky Department for Highways

County Conditional Use Permit, or equivalent, for the Project on the Project Site

County Electrical or Building Permit, or equivalent, for the Project

Crossing Agreements or Encroachment Agreements, or equivalent, for any utility crossings

Construction Agreements:

Generator Interconnection Agreement

Engineering, Procurement, and Construction (EPC) Agreement

Operations and Maintenance Agreements:

Leases

Easements

Crossing Agreements or Encroachment Agreements, or equivalent, for any utility crossings

Estoppels

Subordination and Non-Disturbance Agreements (if applicable)

Operations and Maintenance Agreement (if applicable)

Asset Management Agreement (if applicable)

EXHIBIT 4.5

REC ATTESTATION AND BILL OF SALE

[] (“Seller”) hereby sells, transfers and delivers to Buyer the RECs (including all Environmental Attributes and Environmental Attribute Reporting Rights) associated with the generation and delivery of energy to Buyer under the Power Purchase Agreement (Renewable Energy-Solar) between Seller and Buyer dated [] (the “PPA”), as described below, in the amount of one REC for each megawatt hour generated. Defined terms used in this REC Attestation and Bill of Sale (as indicated by initial capitalization) shall have the meaning set forth in the PPA.

Facility name and location: _____ Fuel Type: Solar
Capacity (MW AC): _____ Operational Date: _____
Energy Admin. ID no.: _____

<u>Dates</u>	<u>MWh generated</u>
_____	_____

Seller further attests, warrants and represents, under penalty of perjury, as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to Buyer is its one and only sale of all or any part of the RECs referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated above pursuant to the PPA; and
- iv) to the best of Seller’s knowledge, each of the RECs associated with the generation of energy for delivery under the PPA have been generated and sold by the Facility.

This REC Attestation and Bill of Sale confirms, in accordance with the PPA, the transfer from Seller to Buyer all of Seller’s right, title and interest in and to the REC associated with the generation of the energy from the Facility under the PPA as set forth above.

Seller's Contact Person: [_____]

WITNESS MY HAND,

[SELLER],

a [_____] [_____]

By _____

Its _____

Date: _____

This Attestation may be disclosed by Seller and Buyer to others, including the Center for Resource Solutions, and the public utility commissions having jurisdiction over Buyer, to substantiate and verify the accuracy of Buyer's advertising and public communication claims, as well as in Buyer's advertising and other public communications.

EXHIBIT 5.1

CONTRACT PRICE

The Contract Price is [REDACTED] throughout the Term; provided the Contract Price shall be adjusted as follows:

- The Contract Price assumes [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

EXHIBIT 6.1

DESCRIPTION OF FACILITY AND PREMISES

The Seller's Facility consists of a 40 MW (AC) solar-powered generation project located in Meade County, Kentucky.

Seller's Facility consists of [REDACTED]
[REDACTED]
[REDACTED] More specifically, the Facility includes:

Type (synchronous or inductive): [REDACTED]

A. Manufacturer's Nameplate Data:

Solar Panels

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Inverters

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mounting

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

PV Array Characteristics:

[REDACTED]

Transformation

[REDACTED]

Total land required: [REDACTED]

Power factor requirements:

[REDACTED]

B. Seller's Estimate of Facility Annual Output Under Ideal (Maximum) or Worst (Minimum) Conditions

Maximum kW Output ("Maximum Facility Delivery Rate"): [REDACTED]
Maximum kVA Output: [REDACTED]
Minimum kW Output: 0 kW Estimated kW Output: [REDACTED]
Maximum Generator Interconnection Agreement Delivery Rate: [REDACTED]

Nameplate Capacity Rating: 40,000 kW AC at -40 to 85° C

Station service requirements are described as follows: Estimated station service for tracking, lighting and other auxiliary energy requirements is estimated to be approximately [REDACTED]

C. PV Panel output degradation factor: 0.5 % per year.

Description of Premises:

[REDACTED]

[REDACTED]

EXHIBIT 6.7.3

FORM OF FORECAST

[Example to be developed]

EXHIBIT 6.12

EXAMPLE CALCULATION OF OUTPUT GUARANTY

Annual Expected Energy:

Annual Quantity of Net Output:

.	
.	
.	
.	

Output Guarantee*:

.	
.	

* Seller Uncontrollable Minutes in the above examples are assumed to be zero.

Average Net Output: (Contract Years)

[Redacted]

The Buyer's Cost to Cover during [Redacted]

Seller pays Buyer liquidated damages for 'Year #3 & #4' period as follows:

EXHIBIT 8.4

FORM OF LENDER CONSENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 2020, is entered into by and among Buyer, a _____ (together with its permitted successors and assigns, “Buyer”), _____, in its capacity as [Administrative Agent] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, “Administrative Agent”), and _____, a _____ formed and existing under the laws of the State of _____ (together with its permitted successors and assigns, “Borrower”). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

- A. WHEREAS, Borrower intends to develop, construct, install, test, own, operate and use an approximately ___ MW solar-powered electric generating facility located _____, known as the _____ Project (the “Facility”).
- B. WHEREAS, In order to partially finance the development, construction, installation, testing, operation and use of the Facility, Borrower has entered into that certain [Financing Agreement,] dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), among Borrower, the financial institutions from time to time parties thereto (collectively, the “Lenders”), and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.
- C. WHEREAS, Borrower anticipates that, prior to the completion of construction of the Facility, it will seek an additional investor (the “Tax Investor”) to make an investment in Borrower to provide additional funds to finance the operation and use of the Facility.
- D. WHEREAS, Buyer and Borrower have entered into that certain Power Purchase Agreement, dated as of _____ (collectively with all documents entered into in connection therewith that are listed on [Schedule A] attached hereto and incorporated herein by reference, as all are amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “PPA”).
- E. WHEREAS, pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the PPA to Administrative Agent for the benefit of itself, the Lenders and each other

entity or person providing collateral security under the Financing Documents.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT

Buyer acknowledges the assignment referred to in Recital E above, consents to an assignment of the PPA pursuant thereto, and agrees with Administrative Agent as follows:

(A) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Borrower under the PPA, subject to applicable notice and cure periods provided in the PPA. Upon receipt of notice from Administrative Agent, Buyer agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the PPA and this Consent. Upon receipt of Administrative Agent's written instructions, Buyer agrees to make directly to Administrative Agent all payments to be made by Buyer to Borrower under the PPA from and after Buyer's receipt of such instructions, and Borrower consents to any such action.

(B) Buyer will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the PPA, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the PPA and in accordance with subparagraph 1(C) hereof, or (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the PPA, except as provided in the PPA.

(C) Buyer agrees to deliver duplicates or copies of all notices of default delivered by Buyer under or pursuant to the PPA to Administrative Agent in accordance with the notice provisions of this Consent. Buyer may deliver any such notices concurrently with delivery of the notice to Borrower under the PPA. Administrative Agent shall have the same period of time to cure the breach or default that Borrower is entitled to under the PPA if such default is the failure to pay amounts to Buyer which are due and payable by Borrower under the PPA, except that if Buyer does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the PPA, then as to Administrative Agent, the applicable cure period under the PPA shall begin on the date on which the notice is given to Administrative Agent. Buyer consents to the transfer of Borrower's interest under the PPA to the Lenders or Administrative Agent or their designees or assignees or any of them or a purchaser or grantee pursuant to the terms of the Financing Documents upon enforcement of such security at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, Buyer shall recognize the Lenders or Administrative Agent or their designees or assignees or any of them or other purchaser or grantee as the applicable party under the PPA (provided that such Lenders or Administrative Agent or their designees or assignees or purchaser or grantee assume the obligations of Borrower under the PPA, including satisfaction and compliance with all requirements of Article 8 of the PPA, and provided further that Buyer's rights with respect to the Facility are preserved in the event of any such transfer of Borrower's interest under the PPA).

(D) In the event Administrative Agent, the Lenders or their designees or assignees elect to perform Borrower's obligations under the PPA as provided in subparagraph 1(C) above, the recourse of Buyer against Administrative Agent, Lenders or their designees and assignees shall be limited to such parties' interests in the Facility, the Credit Support required under Article 8 of the PPA, and recourse against the assets of any party or entity that assumes the PPA or that enters into such new contract.

(E) In the event Administrative Agent, the Lenders or their designees or assignees succeed to Borrower's interest under the PPA, Administrative Agent, the Lenders or their designees or assignees shall cure any then-existing payment and performance defaults under the PPA, except any performance defaults of Borrower itself which by their nature are not susceptible of being cured and do not impair Buyer's rights under the PPA. Administrative Agent, the Lenders and their designees or assignees shall have the right to assign all or a pro rata interest in the PPA to a person or entity to whom Borrower's interest in the Facility is transferred, provided such transferee assumes the obligations of Borrower under the PPA. Upon such assignment, Administrative Agent and the Lenders and their designees or assignees (including their agents and employees, but excluding Seller) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

SECTION 2. REPRESENTATIONS AND WARRANTIES [Buyer shall have the right to qualify the factual information contained in this Section to ensure that such representation is a true statement as of the date of this Consent.]

Buyer, acting in its merchant function capacity (and therefore specifically excluding the knowledge of Buyer, acting in its transmission function capacity ("Buyer Transmission"), as to any of the matters stated below, and without imputation to Buyer of any knowledge whatsoever relating to the Buyer Transmission, whether as a result of information publicly posted to the open access same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:

(A) It (i) is a corporation duly formed and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby; and

(B) the execution, delivery and performance of this Consent and the PPA have been duly authorized by all necessary corporate action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made.

SECTION 3. NOTICES

All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and

(c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to Buyer:

[_____
[_____
[_____
Telephone No.: [_____
Telecopy No.: [_____
Attn: [_____]

If to Administrative Agent:

[_____
[_____
[_____
Telephone No.: [_____
Telecopy No.: [_____
Attn: [_____]

If to Borrower:

[_____
[_____
[_____
Telephone No.: [_____
Telecopy No.: [_____
Attn: [_____]

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above. Further, the Tax Investor shall be entitled to receive notices from Buyer by providing written notice to Buyer of Tax Investor's address for notices. Buyer's failure to provide any notice to the Tax Investor shall not be a breach of this Consent.

SECTION 4. ASSIGNMENT, TERMINATION, AMENDMENT AND GOVERNING LAW

This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and the Tax Investor and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). Buyer agrees to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and executed by the parties hereto. This Consent shall be governed by the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).

SECTION 4.1 ASSIGNMENT TO RUS

Notwithstanding any other provision herein, Buyer, without the approval of Seller or Administrative Agent, may assign, transfer, mortgage or pledge the PPA and this Agreement to create a security interest for the benefit of the United States of America (the "Government"), acting through the Administrator of the RUS (the "Administrator"), and its other lenders. [Hereafter, the Administrator or such other lenders, without the approval of Seller or Administrative Agent, may (1) cause this Agreement to be sold, assigned, transferred, or otherwise disposed of to a third party pursuant to the remedies with respect to such security interest or in lieu of the exercise of such remedies in connection with a debt settlement, or (2) if the Government first acquires the PPA and this Agreement pursuant to 7 U.S.C § 907, sell, assign, transfer or otherwise dispose of this Agreement to a third party; provided however, that in either case at the time of such initial disposition (a) Buyer is in default of its obligations to the Government or such other lenders that are secured by such security interest and the Administrator or such other lender has given Seller notice of such default; and (b) the Administrator or such other lender has given 30 days' prior notice of its intention to sell, assign, transfer or otherwise dispose of this Agreement indicating the identity of the intended third party assignee or purchaser. No permitted sale, assignment, transfer, mortgage, pledge or other disposition under this Section 4.1 shall release or discharge Buyer from its obligations under the PPA and this Agreement.]

SECTION 5. COUNTERPARTS

This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

SECTION 6. SEVERABILITY

In case any provision of this Consent, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

SECTION 7. ACKNOWLEDGMENTS BY BORROWER.

Borrower, by its execution hereof, acknowledges and agrees that notwithstanding any term to the contrary in the PPA, Buyer may perform as set forth herein and that neither the execution of this Consent, the performance by Buyer of any of the obligations of Buyer hereunder, the exercise of any of the rights of Buyer hereunder, or the acceptance by Buyer of performance of the PPA by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the PPA, (2) constitute a consent by Buyer to, or impute knowledge to Buyer of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) constitute a waiver by Buyer of any of its rights under the PPA. Borrower and Administrative Agent acknowledge hereby for the benefit of Buyer that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the PPA. Borrower shall have no rights against Buyer on account of this Consent.

SECTION 8. JURY TRIAL WAIVER

THE PARTIES EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

Buyer,
a _____

By: _____
Name: _____
Title: _____

_____,
a _____

By: _____
Name: _____
Title: _____

_____,
as Administrative Agent for the Lenders

By: _____
Name: _____
Title: _____

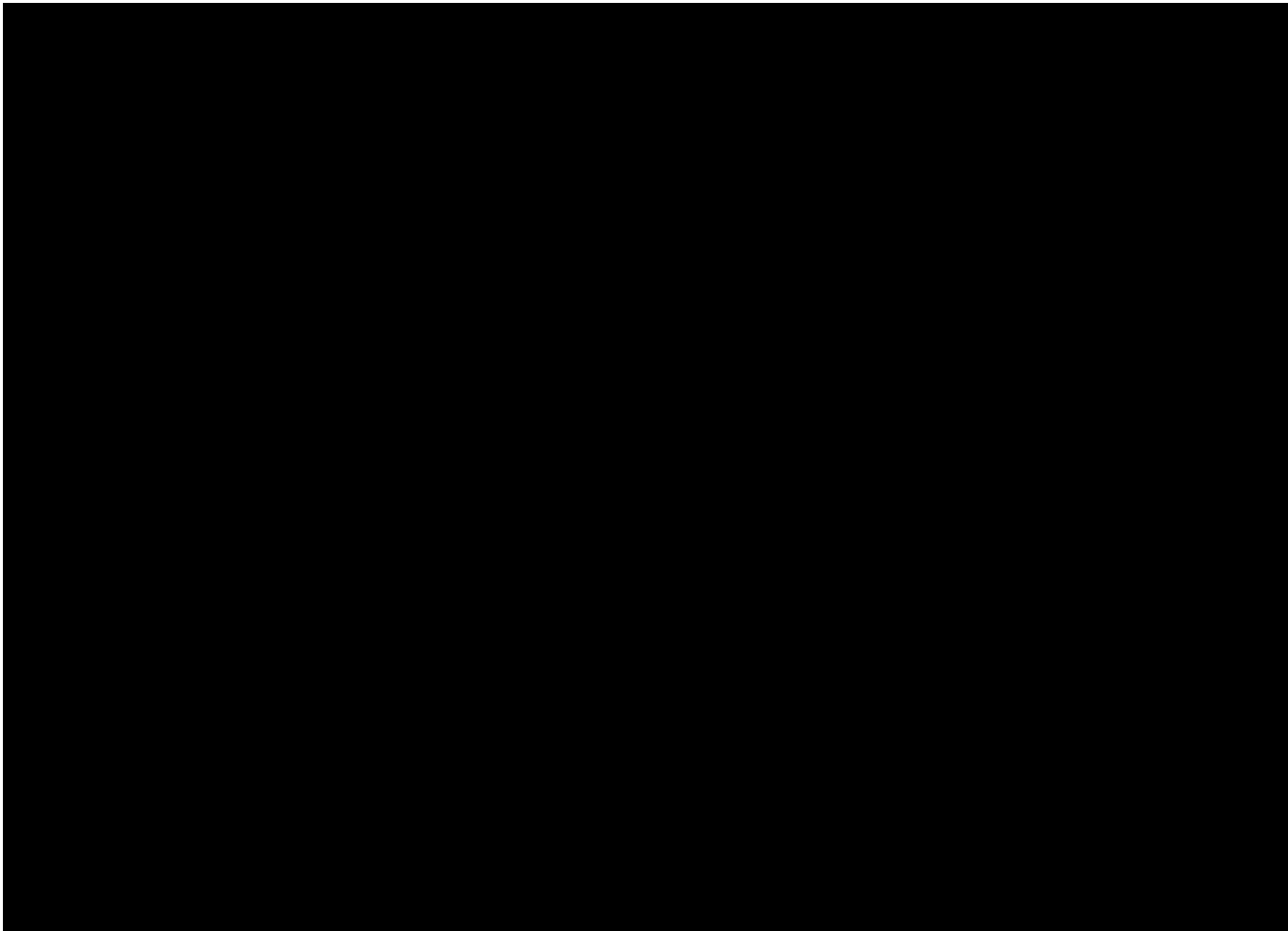


Exhibit 9.2 - 1

EXHIBIT 11.4

[note amend to reflect subsequent revisions to final Agreement]

FORM OF MEMORANDUM OF POWER PURCHASE AGREEMENT

WHEN RECORDED, MAIL TO:

BUYER

[address]

Attn: _____

MEMORANDUM OF POWER PURCHASE AGREEMENT

THIS MEMORANDUM OF POWER PURCHASE AGREEMENT (“Memorandum”), dated as of _____, 2020, is made by and between _____, a _____ limited liability company (“Seller”), and BUYER, a _____ (“Buyer”). Seller and Buyer are sometimes hereinafter referred to collectively as the “Parties” and individually as a “Party”.

RECITALS

A. Seller and Buyer have entered into that certain Power Purchase Agreement on the ____ day of _____, 2020 (the “Agreement”), pursuant to which Seller has agreed to construct, own, operate and maintain a solar-powered generation facility for the generation of electric energy to be located in _____ (as more particularly defined in the Agreement, the “Facility”), and upon completion of said Facility, to sell to Buyer the electric energy and capacity to be produced by the Facility as well as all associated “RECs” (as that term is defined in the Agreement), all on the terms and conditions set forth in the Agreement. The real property on which the Facility is to be constructed (the “Premises”) is more particularly described in the attached Exhibit “A”.

B. Seller and Buyer desire to provide record notice of certain terms and conditions of the Agreement pertaining to the Parties’ respective rights and obligations under the Agreement in the event the Agreement is terminated due to a default by Seller.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth in the Agreement and this Memorandum, Seller and Buyer agree as follows:

TERMS

1. The Premises. Seller acknowledges and agrees that the [leasehold interest in the] real property comprising the Premises, and all improvements and fixtures to be constructed thereon, including without limitation, the Facility, is and will be owned by Seller and shall

hereafter be held, sold, conveyed, transferred, assigned, subdivided, leased, rented, encumbered, occupied and used subject to and in accordance with the Agreement and this Memorandum.

2. Covenants Running with the Land. The provisions of Section 11.4, 11.9, and 20.4 of the Agreement are and shall be deemed to be covenants running with the land and shall be binding upon and inure to the benefit of Seller and Buyer and their respective successors and assigns, including without limitation any person acquiring or owning an interest in the Premises or the Facility, and their respective heirs, executors, successors, assigns, administrators, devisees and representatives.¹

3. Notice.

a. Termination for Default. If the Agreement is terminated due to a default by Seller, neither Seller nor any Affiliate of Seller, nor any successor to Seller with respect to the ownership of the Facility or Premises (for whom Seller acts herein as agent) may thereafter require or seek to require Buyer to purchase energy or capacity from the Facility or any facility constructed on the Premises under the Public Utility Regulatory Policy Act of 1978, as amended from time to time ("PURPA"), or any other "Requirements of Law" on account of its status as a "QF" or "qualifying facility" (as those terms are defined in the Agreement), for any periods that would have been within the "Term" (as defined in the Agreement), had the Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require Buyer to do so. Seller, pursuant to Section 11.4 of the Agreement, has, on behalf of itself and its successors, waived its rights to require Buyer to so purchase such energy from the Facility in the event of such termination. Terms not defined herein are defined in the Agreement.

b. Survival. The terms and provisions of Section 11.4 of the Agreement shall survive the termination of the Agreement.

5. Effect of Memorandum. This Memorandum, and the rights and obligations of the parties hereunder, are subject to all of the terms and conditions of the Agreement. The Agreement is hereby incorporated by reference as if fully set forth herein.

6. Counterparts. This Memorandum may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, and all of which shall together constitute one and the same instrument.

7. Further Information. Further information regarding the specific terms and conditions of the Agreement may be requested from Buyer at [address], Attn: [addressee]. Disclosure of any such information shall be subject to the terms and conditions of a written confidentially agreement acceptable to Buyer in its sole and absolute discretion.

¹ Parties to consider including specifics here to ensure Memorandum is effective to put third parties on notice of rights to avoid third parties requesting full PPA given lack of information in this form of Memorandum. Alternatively, Seller requests that Buyer agree to use commercially reasonable efforts to redact Contract Price, estimated output and credit support details if requests for copies made prior to Kentucky PSC approval.

IN WITNESS WHEREOF, Seller and Buyer have executed and acknowledged this Memorandum as of the day and year first above written.

_____,
a _____ limited liability company

BUYER,
a _____

By _____
Name _____
Title _____

By _____
Name _____
Title _____

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by _____, the _____ of _____, a _____ limited liability company.

NOTARY PUBLIC

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, the _____ of BUYER, a _____.

NOTARY PUBLIC

Exhibit "A"

Legal Description of the Premises

EXHIBIT 13

REQUIRED INSURANCE

From and after the delivery of full notice to proceed to the balance of plant contractor for the Facility and during the remainder of the Term of this Agreement:

1. Commercial general liability insurance against claims for personal injury (including bodily injury and death) and property damage with a limit of liability of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) general aggregate for combined bodily injury and property damage.
2. Excess/Umbrella liability insurance covering claims in excess of the underlying liability insurance described in paragraph 1, with a minimum ten million dollars (\$10,000,000) limit of liability per occurrence. The amounts of liability insurance described in paragraph 1 and this paragraph 2 may be satisfied by primary insurance or by any combination of primary and excess/umbrella insurance.
3. Workers' Compensation insurance to insure statutory liability for injury to Seller's employees in accordance with the Requirements of Law.

POWER PURCHASE AGREEMENT
(RENEWABLE ENERGY-SOLAR)
BETWEEN
MCCRACKEN COUNTY SOLAR LLC
AND
BIG RIVERS ELECTRIC CORPORATION
with respect to
MCCRACKEN COUNTY SOLAR PROJECT

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**POWER PURCHASE AGREEMENT
(RENEWABLE ENERGY-SOLAR)**

THIS POWER PURCHASE AGREEMENT (RENEWABLE ENERGY-SOLAR) (“Agreement”), entered into this 26th day of May, 2020, is between MCCRACKEN COUNTY SOLAR LLC, a Delaware limited liability company (“Seller”), and BIG RIVERS ELECTRIC CORPORATION, a Kentucky rural electric cooperative corporation (“Buyer”). Seller and Buyer are sometimes hereinafter referred to collectively as the “Parties” and individually as a “Party.”

WHEREAS, Seller intends to construct, own, operate and maintain a solar-powered generation facility for the generation of electric energy located in McCracken County, Kentucky with an Expected Nameplate Capacity Rating of 60 MW (AC) (the “Facility”).

WHEREAS, Seller expects that the Facility will deliver to Seller up to [REDACTED] per Contract Year of Net Output and associated Capacity Rights and RECs (as all such terms are hereinafter defined). Seller estimates that the Net Output, Capacity Rights and RECs will be delivered during each Contract Year according to the estimates of monthly Output set forth in Exhibit A. Except as otherwise provided herein, such Net Output and associated Capacity Rights and RECs shall be sold by Seller exclusively to Buyer. Seller acknowledges that Buyer will include these amounts of Net Output and associated Capacity Rights and RECs in Buyer’s resource planning.

WHEREAS, Seller desires to sell and deliver to Buyer the Net Output and associated RECs, Ancillary Services and Capacity Rights (as all such terms are hereinafter defined), and Buyer desires to buy the same from Seller in accordance with the terms and conditions hereof.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, mutually agree as follows:

**SECTION 1
DEFINITIONS; RULES OF INTERPRETATION**

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein have the following meanings:

“AAA” is the American Arbitration Association.

“Abandonment” means (1) the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer permitted under this Agreement (including as a result of the Lender’s exercise of rights under Financing Documents), or (2) if after the NTP Milestone and commencement of testing and inspection of the Facility, and prior to the Commercial Operation Date, there is a complete cessation of the construction, testing, and inspection of the Facility for ninety (90) consecutive days by Seller and Seller’s contractors, but only if such relinquishment or cessation is not caused by or attributable to an Event of Default of, or request by, Buyer, or an event of Force Majeure.

“AC” means alternating current.

“Additional Credit Support” is defined in Section 8.1.

“Administrator” is defined in Section 20.3.

“Affiliate” means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with “control” meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities (if applicable) or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer, Affiliate does not include any member of its Board of Directors or any member of Buyer.

“Agreement” is defined in the Recitals.

“Ancillary Services” means any of the services identified by the System Operator or the Tariff as “Ancillary Services”.

“As-Built Supplement” is a supplement to be added to Exhibit 6.1 that describes the Facility as actually built, pursuant to Section 6.1 and includes an American Land Title Association survey of the Premises and the MWp at the time of Commercial Operation.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. PT.

“Buyer” is defined in the Recitals.

“Buyer CP Approval Date” means the later of the dates on which each of the conditions set forth in Section 2.9 has been satisfied or waived by Buyer in its discretion.

“Buyer Indemnites” is defined in Section 12.1.1.

“Buyer’s Cost to Cover” means the positive difference, if any, between (a) the sum of (i) the mathematical average of the relevant DALMP prices over each day for which the determination is being made (the “Average DALMP Price”), plus (ii) (A) the price of replacement RECs or (B) if, after using commercially reasonable efforts to do so, Buyer is unable to replace RECs, the REC Price Component, minus (b) the Contract Price. If on a given day (or Contract Year in the case of calculating Output Shortfall) the difference between (a) and (b) referenced above is zero or negative, then Buyer’s Cost to Cover shall be zero dollars (\$0), and Seller shall have no obligation to pay any amount to Buyer on account of Section 6.12.2 or Section 11.2.1 with respect to such day (or Contract Year in the case of calculating Output Shortfall). For any days prior to the Commercial Operation Date, the Contract Price shall be utilized for purposes of clause (b). An Example illustrating the calculation of Buyer’s Cost to Cover under certain stated assumptions is set forth in Exhibit D.

“Buyer’s Interest” means one hundred percent (100%) of the Net Output, Ancillary Services, RECs and Capacity Rights from the Facility.

“Buyer’s System” means the electrical system owned, operated or maintained by Buyer at the Point of Delivery.

“Calculation Period” means each measured interval integrated into an hour during the Term.

“CAMD” means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity with jurisdiction over a program involving transferability of RECs.

“Capacity Rights” means any current or future defined characteristic, certificate, benefit, product, tag (but not RECs), credit, attribute, or accounting construct, including any of the same counted towards any current or future capacity, resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy. Capacity Rights do not include PTCs, ITCs or any Tax Credits.

“Commercial Operation” means that not less than the Expected Nameplate Capacity Rating of the Facility is fully operational and reliable and the Facility is fully interconnected, integrated and synchronized with the System and Buyer’s System, as applicable, all of which shall be Seller’s responsibility to receive or obtain, and, without limiting Seller’s other obligations hereunder, which occurs when all of the following events (i) have occurred, and (ii) remain simultaneously true and accurate as of the date and moment on which Seller gives Buyer notice that Commercial Operation has occurred:

(1) Buyer has received a certificate addressed to Buyer from an officer of Seller familiar with the Facility certifying that (a) the Nameplate Capacity Rating of the Facility is at least the Expected Nameplate Capacity Rating; (b) the Facility is able to generate electric power reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof; (c) start-up testing of the Facility has been completed; (d) all Permits to construct or operate the Facility in compliance with all Requirements of Law and this Agreement have been obtained and are in full force and effect; (e) all conditions set forth in subsections (1) through (6) hereof have been met; (f) Seller is in compliance with the terms and conditions of this Agreement in all material respects; and (g) all Required Facility Documents and Financing Documents are in full force and effect and there are no defaults or events that, with the passing of time or the giving of notice, or both, would constitute a default thereunder.

(2) Seller has successfully completed all testing of the Facility that is required by the Financing Documents, Required Facility Documents, the Permits, the Generation Interconnection Agreement, Seller's operating agreements, manufacturers' warranties for the commencement of Commercial Operations at the Facility and all other Requirements of Law.

(3) Buyer has received a certificate addressed to Buyer from a Licensed Professional Engineer stating that, (a) in accordance with the Generation Interconnection Agreement, all required Interconnection Facilities have been constructed, (b) all required

interconnection tests have been completed, (c) the Facility is physically interconnected with the System and Buyer's System, as applicable, in conformance with the Generation Interconnection Agreement and able to deliver energy consistent with the terms of this Agreement, (d) the Facility is fully integrated and synchronized with the System and Buyer's System, as applicable, and (e) the System Operator has designated the Facility as an Intermittent Resource.

(4) Seller has provided Buyer: (a) an opinion from counsel acceptable to Buyer in the reasonable exercise of its discretion, stating that Seller has obtained or entered into all Required Facility Documents and (b) copies of any or all such requested Required Facility Documents; *provided, however*, that Seller may redact or omit confidential or commercial terms from non-public Required Facility Documents.

(5) The Facility has demonstrated the reliability of its communications systems and communications with Buyer's system control center to the reasonable satisfaction of Buyer or Buyer's designee.

(6) Seller has provided the Credit Support required as of such date pursuant to Section 8.1.

"Commercial Operation Date" means the date that Commercial Operation is achieved for the Facility.

"Confidential Business Information" is defined in Section 23.1.

"Contract Interest Rate" means the lesser of (a) the highest rate permitted under Requirements of Law and (b) 200 basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. as its "prime rate". If a Citibank, N.A. prime rate is not available, the applicable prime rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest is being paid.

"Contract Price" means the applicable price, expressed in \$/MWh, stated in Section 5.1.

"Contract Year" means a twelve (12) month period commencing at 00:00 hours on January 1 and ending on 24:00 hours on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the last day of the Term.

"Controlling Interest" means with respect to an entity, fifty percent (50%) or more of outstanding ownership interest, or the power to vote such percentage of ownership interest.

"Costs" means, with respect to the non-defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses (including costs incurred in connection with transmission services that would otherwise not have been incurred hereunder) reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement, and all reasonable

attorneys' fees and expenses incurred by the non-defaulting Party in connection with this Agreement.

“Credit Support” means (a) an irrevocable standby letter of credit in a form reasonably acceptable to Buyer, naming Buyer as the party entitled to demand payment and present draw requests thereunder that is issued by a U.S. commercial bank having total assets of at least \$10 billion and a senior unsecured long term credit rating (unenhanced by third party support) equivalent to “A-” or better as determined by Standard & Poors and Fitch, and “A3” or better as determined by Moody’s, (b) cash collateral denominated in United States Dollars under a mutually agreeable third-party escrow or account control agreement, or (c) a performance or surety bond in a form reasonably acceptable to Buyer from a major U.S. commercial bank or surety company or the U.S. branch of a foreign bank or surety company with total assets of at least \$750,000,000 or greater, and such bank or surety company having a long term senior debt obligations of which are rated “BBB+” or better by Standard & Poor’s or Fitch, “Baa1” or better by Moody’s (or an equivalent rating from an equivalent rating agency as may be reasonably approved by Buyer).

“DALMP” is Day-Ahead LMP as that term is used in the Tariff.

“Delay Damages” means the damages payable by Seller under the circumstances and subject to the limits described in Sections 2.3(a) and 2.4, and for any given day are equal [REDACTED]

[REDACTED] An Example illustrating the calculation of Delay Damages under certain stated assumptions is set forth in Exhibit B.

“Dispatchable Intermittent Resource” is defined in the MISO Tariff.

“Effective Date” means the latest of (i) the date the Kentucky Public Service Commission approves this Agreement and (ii) the date the Rural Utilities Service approves this Agreement.

“Electric System Authority” means each of NERC, MISO, the GIS, a System Operator, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the geographic area in which the Facility is located.

“Emissions Reduction Credit” is any credit, allowance or instrument issued or issuable by a Governmental Authority under regulations of the Environmental Protection Agency under the Clean Air Act.

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water, which are deemed of value by Buyer. Environmental Attributes include: (a) any avoided emissions of pollutants to the air, soil, or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), and other pollutants; (b) all Emissions Reduction Credits; (c) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gases (GHGs) that have been determined by any Governmental Authority or the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (d) any cryptocurrency, blockchain, and similar or related matters, items

commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with anything produced by Facility Output. Environmental Attributes do not include (i) PTCs, ITCs, or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) matters designated by Buyer as sources of liability, or (iii) any adverse health, safety, wildlife or environmental impacts.

“Environmental Attribute Reporting Rights” means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser’s discretion, and includes reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

“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, or to present a material risk that as a consequence of the application of federal, state or local laws and regulations that (a) the Premises will not be available or usable for the purposes contemplated by this Agreement or (b) the potential resulting liabilities could impair Seller’s ability to meet its obligations hereunder.

“Event of Default” is defined in Section 11.1.

“EWG” means an “exempt wholesale generator,” as defined under PUHCA.

“Example” means an example of certain calculations to be made hereunder. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example.

“Excused Delays” means (i) any event of Force Majeure, (ii) any delay in completion of the Interconnection Facilities by Interconnection Provider or Transmission Provider after [REDACTED], provided Seller has made commercially reasonable efforts to get the Interconnection Facilities completed by [REDACTED] or (iii) any delay in Interconnection Provider executing and delivering the Interconnection Agreement after [REDACTED]

“Expected Energy” means [REDACTED] of Net Output during the first Contract Year, measured at the Point of Delivery; [REDACTED] of Net Output during the second Contract Year, measured at the Point of Delivery; and thereafter, Expected Energy will be the annual generation predicted by the Solar Performance Modeling Program multiplied by the measured global horizontal irradiance (GHI) divided by the Solar Performance Modeling Program’s expected GHI, taking into account an annual degradation factor of 0.5% per Contract Year. Seller estimates that the Net Output will be delivered during each calendar year according to the estimates of monthly Output set forth in Exhibit A. Seller acknowledges that Buyer will include Buyer’s Interest in Buyer’s resource planning. Buyer acknowledges that solar exposure is a variable resource and that the Facility’s actual annual Output of Net Output and RECs in the ordinary course of any given Contract Year will be subject to variation caused by differences in the solar exposure at the Facility from Contract Year to Contract Year; provided, however, that nothing in this sentence affects or reduces Seller’s obligations hereunder.

“Expected Nameplate Capacity Rating” means 60 MW (AC), the expected maximum instantaneous generation capacity of the Facility.

“Facility” is defined in the Recitals and is more fully described in attached **Exhibit 6.1** and includes the photovoltaic power generating equipment, including panels, arrays, tracking system, and Inverters, and all other equipment, devices, associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of electric energy by Seller to Buyer and required to interconnect with the System and Buyer’s System, as applicable.

“Facility Revenue Meter” means all metering equipment installed or to be installed at the Generating Facility pursuant to this GIA at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

“FASB” means the Financial Accounting Standards Board.

“FERC” means the Federal Energy Regulatory Commission.

“FIN 46R” means the FASB revised Interpretation No. 46(R), Consolidation of Variable Interest Entities.

“Financing Documents” is defined in the Lender Consent.

“Fitch” means Fitch Ratings, Inc.

“Force Majeure” is defined in Section 14.1.

“Forced Outage” means NERC Event Types U1, U2 and U3, as set forth in attached **Exhibit C**, and specifically excludes any Maintenance Outage or Planned Outage.

“Gains” means, with respect to a non-defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner. Gains shall be measured with respect to the Expected Energy over the remainder of the Term (ignoring any early termination of this Agreement).

“GATS” means the Generation Attribute Tracking System.

“Generation Information System” or **“GIS”** means M-RETS or its successor, or if notified by Buyer in writing, a replacement state or regional registry, or other present or future applicable system for accounting for and transferring RECs, in each case with respect to generation from the Facility.

“Generation Interconnection Agreement” means the agreement to be entered into separately between Seller and Interconnection Provider concerning the Interconnection Facilities.

“Generator Operator” means the entity that operates generating facility(ies) and performs the functions of supplying energy and interconnected operations services.

“GIS Certificate” means the certificate representing all or any part of the REC created and accounted for by the GIS.

“GIS Operating Procedures” means the operating rules and requirements adopted by the GIS.

“Government” is defined in Section 20.3.

“Governmental Authority” means any supranational, federal or state authority or other political subdivision thereof, having jurisdiction over Seller, Buyer, the Facility, or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“Guaranteed Commercial Operation Date” means the date that is [REDACTED] after the Scheduled Commercial Operation Date (as the Scheduled Commercial Operation Date may be extended from time to time in accordance with the terms herein).

“Hazardous Materials” means any substance, material, gas, 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 non-human forms of life, land, water, groundwater, and air, including any material or substance that is (a) 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; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.*; (g) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; (h) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*; (i) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; or (j) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*

“ICCP” means the Inter-Control Center Communications Protocol.

“Interconnection Facilities” means all the facilities installed, or to be installed, for the purpose of interconnecting the Facility to the System and Buyer’s System, as applicable, including electrical transmission lines, line upgrades, transformers, capacitor banks, inductor banks, and associated equipment, substations, relay and switching equipment, and safety equipment.

“Interconnection Provider” means Big Rivers Electric Corporation.

“Intermittent Resource” is defined in the MISO Tariff.

“Inverter” means the equipment installed at the Facility to convert direct current from the

Solar Panels to alternating current, as described in **Exhibit 6.1**.

“**ITCs**” means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code.

“**Lender**” means any entity other than a Seller Affiliate lending money or extending credit (including any financing lease, monetization of tax benefits, transaction with a Tax Investor (as defined in the Lender Consent), backleverage financing or credit derivative arrangement) to Seller (a) for the construction, term or permanent financing or refinancing of the Facility; (b) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (c) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; or (d) for the purchase of the Facility and related rights from Seller.

“**Lender Consent**” means a Consent to Collateral Assignment in favor of one or more Lenders and in substantially the form of **Exhibit 8.4** or such other form as is reasonably acceptable to Buyer.

“**Liabilities**” is defined in Section 12.1.1.

“**Licensed Professional Engineer**” means a person proposed by Seller and acceptable to Buyer in its reasonable judgment who (1) is licensed to practice engineering in the appropriate engineering discipline for the required certification being made, in the United States, and in all states for which the person is providing a certification, evaluation or opinion with respect to matters or Requirements of Law specific to such state, (2) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (3) has no economic relationship, association, or nexus with Seller or its Affiliates, other than, with the prior written consent of Buyer, services previously or currently being rendered to Seller or its Affiliates, and (4) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. The engineers and engineering firms listed on **Exhibit E** are acceptable to Buyer as “Licensed Professional Engineers” if they meet the requirements above.

“**Locational Marginal Price**” or “**LMP**” means the 5-minute real-time Locational Marginal Price as defined by MISO at the Commercial Pricing Node at the Point of Delivery. Until such time as MISO defines a Commercial Pricing Node near the Facility, the Commercial Pricing Node nearest to the Point of Delivery will be utilized.

“**Losses**” means, with respect to a non-defaulting party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner. Losses shall be measured with respect to the Expected Energy over the remainder of the Term (ignoring any early termination of this Agreement).

“**Maintenance Outage**” means NERC Event Type MO, as set forth in attached **Exhibit C**, and includes any outage involving at least ten percent (10%) of the Facility's Nameplate Capacity Rating that is not a Forced Outage or a Planned Outage.

“Market Participant” is defined in the Tariff.

“Maximum Delivery Rate” means the maximum hourly rate of delivery of Net Output in MWh from the Facility to the Point of Delivery, calculated on the basis of the Net Output delivered in an hour accruing at an average rate equivalent to the actual Nameplate Capacity Rating.

“Mediation Location” means Henderson, Kentucky.

“Mediation Notice” is defined in Section 24.2(a).

“Mediation Procedures” is defined in Section 24.2.

“Meter Data Management Agent” means an entity providing meter data to the MISO Meter Data Management System, as that term is used in the Tariff.

“MISO” means the Midcontinent Independent System Operator, Inc., or its successor.

“MISO Rules” means the policies, rules, guidelines, procedures, standards and criteria applicable to Market Participants in MISO, including the Tariff, the Operating Agreement, and the MISO manuals.

“Moody’s” means Moody’s Investors Services, Inc.

“M-RETS” means the Midwest Renewable Energy Tracking System.

“MW” means megawatt.

“MWh” means megawatt hour.

“MWp” means megawatt of direct current (DC) electric capacity.

“Nameplate Capacity Rating” means the maximum installed instantaneous generation capacity of the completed Facility, expressed in MW (AC), when operated in compliance with the Generation Interconnection Agreement and consistent with the recommended power factor and operating parameters provided by the manufacturer of the Solar Panels and Inverters, as set forth in a notice from Seller to Buyer delivered prior to the Commercial Operation Date. The Nameplate Capacity Rating of the Facility shall be at least equal to the Expected Nameplate Capacity Rating but shall not exceed 60 MW (AC).

“NERC” means the North American Electric Reliability Corporation.

“Negative RTLMP Period” means the period commencing with start of the first Calculation Period in which the RTLMP is zero or negative and ending with the start of the first Calculation Period in which the RTLMP is again positive.

“Net Output” means all energy produced by the Facility, exclusive of Station Use, and delivered at the Point of Delivery.

“NTP Milestone” means the earlier of (a) the date of issuance of a full notice to proceed

(or final notice to proceed with material construction activities) or similar notice or instructions issued under the principal construction contract in respect of the Facility pursuant to which the primary construction contractor is instructed or informed by Seller or its Affiliate that such contractor has authority to engage in and complete the activities needed to achieve “Substantial Completion” (or similar concept under the applicable construction contract) of the Facility, and (b) if applicable, the closing of the construction financing, whether debt and/or tax equity, in an amount sufficient to finance the construction costs for the Facility through the Commercial Operation Date has occurred and all conditions precedent to the first draw under such construction financing have been satisfied or waived by the Lenders.

“**NTP Target Date**” is defined in Section 2.3(a).

“**Offered Assets**” is defined in Section 20.4.1.

“**Ohio SREC**” means the Solar Renewable Energy Credit market, or successor program, recognized by the state of Ohio.

“**Output**” means all energy produced by the Facility.

“**Output Guarantee**” is defined in Section 6.12.1.

“**Output Shortfall**” is defined in and calculated pursuant to Section 6.12.2(b).

“**Permits**” means all of the permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the construction, ownership or operation of the Facility and occupancy of the Premises, including those specified in **Exhibit F**, and all amendments, modifications, supplements, general conditions and addenda thereto.

“**Planned Outage**” means NERC Event Type PO, as set forth in attached **Exhibit C**, and specifically excludes any Maintenance Outage or Forced Outage.

“**Planning Resource Auction**” or “**PRA**” means an annual auction that is conducted by the Transmission Provider to determine the Auction Clearing Price and the cleared Zonal Resource Credit offers for each Local Resource Zone and External Resource Zone for the applicable Planning Year, as such terms are defined in the MISO Tariff.

“**Point of Delivery**” means the point of interconnection between the Facility and the System and Buyer’s System, as applicable, as specified in the Generation Interconnection Agreement and as further described in **Exhibit 9.2**.

“**Post-COD Credit Support**” is defined in Section 8.1.

“**Premises**” means the real property on which the Facility is or will be located, as more fully described on **Exhibit 6.1**.

“**Prevailing Time**” or “**PT**” means Standard Time or Daylight Time, as applicable on the day in question at the Point of Delivery.

“Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the independent electric power generation industry for solar facilities of similar size and characteristics or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known or that should reasonably have been known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

“PTCs” means production Tax Credits under Section 45 of the Internal Revenue Code.

“PUHCA” means the Public Utility Holding Company Act of 2005, as amended from time to time.

“PURPA” means the Public Utility Regulatory Policies Act of 1978, as amended from time to time.

“QF” means “qualifying facility” as that term is defined in 18 C.F.R. 292.101(b)(1).

“Qualified Transferee” means (i) with respect to Seller, (1) an U.S. domestic business entity that itself and together with its Affiliates has a tangible net worth of at least three hundred million dollars (\$300,000,000) and (2) at least three (3) years of experience operating a generating plant of similar technology and similar size to the Facility, or (ii) with respect to Buyer, (1) is a utility and load serving entity or a provider of wholesale electric power and services in an amount no less than Buyer provides to its cooperative members as of the Effective Date, and (2) has a long-term credit rating or corporate or long-term senior unsecured debt rating (not supported by third party credit enhancements) of “Baa3” or higher by Moody’s, “BBB-” or higher by S&P, or “BBB-” or higher by Fitch Ratings Ltd. or its successor.

“RE” means the interconnection or reliability regional entity designated by NERC as responsible for enforcing electric reliability standards for the geographic area in which the Facility is located.

“REC” means (a) the Environmental Attributes associated with all Net Output, together with (b) the Environmental Attribute Reporting Rights associated with such energy and Environmental Attributes, however commercially transferred or traded under any of these or other product names, such as “Renewable Energy Credits,” “Renewable Energy Certificates,” “Green-e Certified”, GIS Certificates or otherwise. One (1) REC represents the Environmental Attributes made available by the generation of one (1) MWh of Net Output from the Facility.

“REC Price Component” means [REDACTED] provided that upon the request of either Party no more than quarterly, such price will be amended to be the average market price of RECs with all the material characteristics of those sold hereunder, based on the average of three (3) broker quotes from brokers designated by the requesting Party that are not Affiliates of either Party that are reasonably acceptable to the other Party and that have at least three (3) years of experience acting as a broker in transactions for the purchase and sale of RECs with all the

material characteristics of those sold hereunder. The costs of such brokers shall be borne by the requesting Party.

“Remedial Action Plan” is defined in Section 2.3(a).

“Reporting Month” means each calendar month during the Term.

“Required Facility Documents” means all Permits, authorizations, rights and agreements now or hereafter necessary for construction, ownership, operation, and maintenance of the Facility, the lawful operation of the Facility, and to deliver Net Output to Buyer in accordance with this Agreement and Requirements of Law; including those set forth in **Exhibit 3.2.6** and **Exhibit F**. Nothing set forth in **Exhibit 3.2.6** limits the obligations of Seller to obtain all Required Facility Documents, the Permits set forth in **Exhibit F** or as otherwise required hereunder.

“Requirements of Law” means any applicable federal, state and local law, statute, regulation, rule, action, order, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

“RTLMP” is Real-Time LMP as that term is used in the Tariff.

“SCADA” means a remote supervisory control and data acquisition system to be provided by Seller, which includes all necessary components and contact points at the Facility.

“Scheduled Commercial Operation Date” means [REDACTED], provided such date shall be extended on a day-for-day basis for delays in achieving Commercial Operation by such date to the extent caused by Excused Delays.

“Seller” is defined in the Recitals.

“Seller CP Approval Date” means the later of the dates on which each of the conditions set forth in Section 2.10 has been satisfied or waived by Seller in its discretion.

“Seller Indemnitees” is defined in Section 12.1.2.

“Seller Uncontrollable Minutes” means, for the Facility in any Contract Year, the total number of minutes during such Contract Year during which the Facility was unable to deliver Net Output to Buyer because Buyer failed to accept such delivery or due to one or more of the following events, each as recorded by Seller's SCADA and indicated by Seller's electronic fault log: (a) a Force Majeure event; (b) to the extent not caused by Seller's actions, a curtailment in accordance with Section 4.4; (c) the System or Buyer's System operating outside the voltage or frequency limits defined in the applicable operating manual for the Inverters installed at the Facility; (d) a default by Buyer; or (e) any breach of contract or failure by the Transmission Provider or Interconnection Provider; provided, however, that if any of the events described above in items (a) through (e) occur simultaneously, then the relevant period of time shall only be counted once in order to prevent double counting. Seller Uncontrollable Minutes shall not include minutes when (i) the Facility or any portion thereof was unavailable solely due to Seller's non-conformance

with the Generation Interconnection Agreement or (ii) the Facility or any portion thereof was paused or withdrawn from use by Seller for reasons other than those covered in this definition.

“Seller’s Cost to Cover” means the positive difference, if any, between (a) the Contract Price per MWh specified in Exhibit 5.1, and (b) the net proceeds per MWh actually realized by Seller, if any, from the sale to a third party of Net Output and RECs not purchased by Buyer as required hereunder. If on any given day the difference between (a) and (b) referenced above is zero or negative, then Seller’s Cost to Cover shall be zero dollars (\$0) with respect to such day, and Buyer shall have no obligation to pay any amount to Seller on account of Section 11.2.2. For any days prior to the Commercial Operation Date, the Contract Price applicable in the first Contract Year shall be utilized for purposes of clause (a).

“Senior Lenders” means the Lenders providing construction financing for the Facility, or any term or permanent take-out financing of the costs of development and construction, as described in the definition of “Lenders”, other than Affiliates of Seller.

“Solar Array” means one or more Solar Panels connected to the same Inverter.

“Solar Integration Costs” is defined in Section 5.7.

“Solar Panels” means the photovoltaic energy generating panels installed at the Facility as described in Exhibit 6.1.

“Solar Performance Modeling Program” means a commercially available computer modeling program that is generally accepted in the solar energy industry capable of modeling the Expected Energy and other similar Outputs. Solar Performance Modeling Program includes, but is not limited to, the PVSYST program. Seller, at its cost, shall provide Buyer access to any Solar Performance Modeling Program selected by Seller in order for Buyer to fully analyze all modeling provided by Seller under this Agreement.

“Standard & Poor’s” means S&P Global Ratings, a division of S&P Global Inc.

“Station Use” means Facility Output used to operate the Facility or provide electric energy for any other activities occurring on the Premises or prior to the low side of the substation of the Interconnection Facilities.

“System” means the transmission facilities over which MISO has operational control.

“System Impact Studies” is defined in the MISO Tariff.

“System Operator” means any entity, including Transmission Provider, that becomes responsible as system operator for, or directs the operation of, the System.

“Tariff” means the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff as amended and filed with FERC from time to time.

“Tax Credits” means any state, local or federal production tax credit, tax deduction, or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

“Tax Equity Financing” means a transaction or series of transactions involving one or more Tax Investors seeking a return that is enhanced by tax credits and/or tax depreciation including without limitation (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without “leverage”)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a solar project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Code, as amended (a pass-through lease), provided that in any case, such transaction or series of transactions does not result in the direct or indirect transfer, disposition or sale of any of the managing or controlling membership interests in Seller.

“Tax Investor” is defined in the Lender Consent.

“Term” is defined in Section 2.1.

“Termination Payment” means, with respect to the non-defaulting Party, as applicable, either (i) the sum of Losses plus Costs or (ii) the difference between Costs minus Gains, as applicable, expressed in U.S. dollars. If the Termination Payment calculation does not demonstrate that the non-defaulting Party suffered a net loss, the Termination Payment shall be \$0. If the Termination Payment calculation does demonstrate that the non-defaulting Party suffered a net loss, a Termination Payment shall be due to the non-defaulting Party pursuant to Section 11.5.

“Test Energy” means any Net Output during the period between the Effective Date and the Commercial Operation Date, and all associated Ancillary Services, RECs and Capacity Rights.

“Transmission Provider” means MISO or any successor entity.

“Transmission Service” means transmission services pursuant to which the Transmission Provider transmits Output to the Point of Delivery, as applicable.

1.2 Rules of Interpretation.

1.2.1. General. Terms used in this Agreement but not specifically defined in this Section 1 shall have meanings as commonly used in the English language; provided that words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used in accordance with such recognized meanings. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity’s or index’s successors; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” means “including, without limitation” or “including, but not

limited to”; (h) all references to a particular tariff, law or statute mean that tariff, law or statute as amended from time to time; and (i) the word “or” is not necessarily exclusive.

1.2.2. Terms Not to be Construed For or Against Either Party. Each term hereof shall be construed simply according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term hereof shall be construed against a Party on the ground that the Party is the author of that provision.

1.2.3. Headings. The headings used for the sections and articles hereof are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions hereof.

1.2.4. Examples. Example calculations and other examples set forth herein are for purposes of illustration only and are not intended to constitute a representation, warranty or covenant concerning the example itself or the matters assumed for purposes of such example. If there is a conflict between an example and the text hereof, the text shall control.

1.2.5. Generation Interconnection Agreement.

(a) The Parties acknowledge and agree that the Generation Interconnection Agreement shall be a separate and free standing contract.

(b) Except as otherwise provided in this Agreement, nothing in the Generation Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties’ rights, duties, and obligations hereunder. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider.

SECTION 2 TERM; FACILITY DEVELOPMENT

2.1 Term. Subject to Section 2.9 and Section 2.10, this Agreement shall become effective upon the Effective Date and, unless earlier terminated as provided herein, shall remain in effect until the twentieth (20th) anniversary of the Commercial Operation Date (“**Term**”).

2.2 Milestones. Time is of the essence in the performance hereof, and Seller’s completion of the Facility and delivery of Net Output, Capacity Rights and RECs by the Scheduled Commercial Operation Date is critically important. Therefore, Seller shall use commercially reasonable efforts to achieve the milestones set forth in **Exhibit 2.2** at the times indicated; provided that, except as set forth in Section 2.3, Buyer shall not be entitled to any damages for failure to timely achieve any Milestone (other than the milestone for Commercial Operation) set forth on **Exhibit 2.2**.

2.3 Facility Construction and Delay Damages.

(a) If the NTP Milestone is not achieved on or before [REDACTED] (the “**NTP Target Date**”) as such date shall be extended on a day-for-day basis for Excused Delays, Seller shall submit to Buyer within twenty (20) days following such date a remedial action plan

demonstrating the measures that Seller has taken or will take in order to ensure that the NTP Milestone will occur no later than ninety (90) days following the NTP Target Date and that Commercial Operation will occur no later than the Guaranteed Commercial Operation Date (such plan, a “**Remedial Action Plan**”), provided that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet the Commercial Operation Date. If the NTP Milestone does not occur on or before the date that is ninety (90) following the NTP Target Date, until the date on which the NTP Milestone occurs, Buyer may terminate this Agreement upon notice to Seller. Upon any such termination, subject to Sections 11.9 and 12.1, neither Party shall have any further liability to the other Party (except for liabilities arising prior to such termination and liabilities arising out of a Party’s obligations to indemnify the other Party) and Buyer shall return any Credit Support previously provided by Seller to Buyer hereunder after subtracting the amount of any amounts due and owing by Seller hereunder prior to such termination.

(b) If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay to Buyer Delay Damages for each day from and after the Scheduled Commercial Operation Date through the date that the Facility achieves Commercial Operation.

(c) If Commercial Operation is not achieved by the Guaranteed Commercial Operation Date, Buyer may terminate this Agreement pursuant to Section 11.

(d) Any Solar Array that is partially complete on the Commercial Operation Date shall not be part of the Facility, and Seller shall not undertake to add any such Solar Array or output from any such Solar Array to the Facility without the prior written consent of Buyer. Seller shall not sell any output of such Solar Array, or any RECs, Ancillary Services or Capacity Rights associated with such output, to any person or entity other than Buyer, and Buyer may in its sole discretion, but is not required to, purchase any output of such Solar Array, or any RECs, Ancillary Services or Capacity Rights associated with such output. If Buyer elects to purchase any such output, the Maximum Delivery Rate shall be increased to the extent of the output Buyer has elected to purchase.

2.4 Damages Calculation. Each Party agrees and acknowledges that (a) the damages that Buyer would incur due to Seller’s delay in achieving Commercial Operation would be difficult or impossible to predict with certainty, and (b) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. Notwithstanding the foregoing, this Section 2.4 shall not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller’s failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date. Any such termination damages shall be determined in accordance with Section 11.5.

2.5 Damages Invoicing. By the fifteenth (15th) day following the end of the calendar month in which the Delay Damages begin to accrue, and continuing on the fifteenth (15th) day of each calendar month during the period in which Delay Damages accrue (and the following months if applicable), Buyer shall deliver to Seller an invoice showing Buyer’s computation of such damages and any amount due Buyer in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice and subject to Sections 10.3 and 10.4, Seller

shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

2.6 Buyer's Right to Monitor. During the Term, Seller shall permit Buyer and its advisors and consultants to:

(a) Review and discuss with Seller and its advisors and consultants monthly status reports on the progress of the acquisition, design, financing, engineering, construction and installation of the Facility. Between the Effective Date and thirty (30) days following the Commercial Operation Date, Seller shall, on or before the tenth (10th) day of each calendar month, provide Buyer with a monthly status report for the preceding month.

(b) Monitor the status of the acquisition, land leasing, design, financing, engineering, construction and installation of the Facility and the performance of the contractors constructing the Facility.

(c) Monitor and receive monthly updates from Seller concerning (i) the progress of Seller's negotiation and execution of contracts for the acquisition, design, financing, engineering, construction and installation of the Facility, Premises, major equipment and warranties, and (ii) the contractors' performance and achievement of contract deliverables and all performance and other tests required to achieve Commercial Operation or contemplated by the warranty agreements between Seller and a manufacturer of the Facility's Solar Panels and Inverters and any other material items of Facility equipment that require testing for warranty agreements to be effective.

(d) Witness initial performance tests and other material tests and review the results thereof. Seller will use commercially reasonable efforts to provide Buyer with at least five Business Days prior notice of each such test, with the understanding that if the performance of such test is dependent on the presence of sufficient solar exposure or other variables beyond the control of Seller, the date of such test may be postponed if, on the date specified in the related notice, there is insufficient solar exposure or other circumstances beyond the control of Seller that prevent the performance of such test on the scheduled date.

(e) Perform such examinations, inspections, and quality surveillance as, in Buyer's reasonable judgment, are appropriate and advisable to determine that the Facility has been properly commissioned and Commercial Operation has been achieved.

(f) Except as otherwise provided in this Agreement, Seller does not herein grant Buyer the right to review, comment on or approve of the terms or conditions of any contract or negotiation between Seller and a third party, the terms and conditions of each such contract or negotiation being confidential and to be determined by Seller in its sole discretion. Conversely, nothing in this Agreement shall be construed to require Buyer to review, comment on, or approve of any contract between Seller and a third party.

(g) With respect to Buyer's rights under this Section 2.6, (i) Buyer is under no obligation to exercise any of these monitoring rights, ii) such monitoring shall occur subject to reasonable rules developed by Seller regarding Facility construction, access, health,

safety, and environmental requirements, and (iii) Buyer shall have no liability to Seller for failing to advise it of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by Buyer with respect to the Facility or any contractor. Any review or monitoring of the Facility conducted by Buyer or its advisors or consultants hereunder shall be performed in a manner consistent with Seller's workplace health and safety requirements and in a manner that does not impede, hinder, postpone, or delay Seller or its contractors in their performance of the engineering, construction, design or testing of the Facility. Buyer shall maintain one or more designated representatives for purposes of the monitoring activities contemplated in this Section 2.6, which representatives shall have authority to act for Buyer in all technical matters under this Section 2.6 as authorized by Buyer, but not to amend or modify any provision hereof. Buyer's initial representatives and their contact information are listed in **Exhibit 2.6**. Buyer may, by written notice to Seller, change its representatives or their contact information.

2.7 Tax Credits. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive PTCs, ITCs, or other Tax Credits, or to or qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes, on account of rules respecting the Facility owner minimum interest in the Facility's risks, the relationship between Facility owner and Seller or otherwise. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Buyer's Interest, shall be effective regardless of whether the sale of Output or Net Output from the Facility is eligible for, or receives, PTCs, ITCs or other Tax Credits during the Term.

2.8 Commercial Operation. Seller shall provide written notice to Buyer stating when Seller believes that the Facility has achieved Commercial Operation and its Nameplate Capacity Rating accompanied by the certificates described in the definition of Commercial Operation. Buyer shall have five (5) Business Days after receipt either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what Buyer reasonably believes has not been satisfied. If, within such five-day period, Buyer does not respond or notifies Seller confirming that the Facility has achieved Commercial Operation, the original date of receipt of Seller's written notice shall be the Commercial Operation Date. If Buyer notifies Seller within such ten day period that Buyer believes the Facility has not achieved Commercial Operation, Seller must address the concerns stated in Buyer's notice to the mutual satisfaction of both Parties, and Commercial Operation shall occur on the date of such satisfaction, as specified in a notice from Buyer to Seller.

2.9 Buyer Conditions. Notwithstanding anything herein to the contrary, Buyer shall have the right to terminate this Agreement upon notice to Seller as follows:

- (a) Within ninety (90) days of Seller's receipt of the final System Impact Study for the Project if such study specifies the aggregate of the network upgrade costs for the McCracken County project may exceed \$500,000; or
- (b) If Buyer delivers written notice on or before October 31, 2020 that the Kentucky Public Service Commission has failed to approve this Agreement; provided Buyer shall promptly and no later than thirty (30) days following the date hereof

properly file for approval by the Kentucky Public Service Commission and thereafter diligently pursue such approval; and

- (c) If Buyer delivers written notice on or before October 31, 2020 that the Rural Utilities Service has failed to approve this Agreement; provided Buyer shall promptly and no later than thirty (30) days following the date hereof properly file for approval by the Rural Utilities Service and thereafter diligently pursue such approval.

If Buyer delivers such a termination notice, neither Party shall have any further liability or obligation hereunder (except for liabilities arising prior to such termination and liabilities arising out of a Party's obligations to indemnify the other Party) and Buyer shall promptly return any Credit Support previously delivered by Seller.

2.10 Seller Conditions. Notwithstanding anything herein to the contrary, Seller shall have the right to terminate this Agreement upon notice to Buyer as follows:

[REDACTED]

[REDACTED]

[REDACTED]

- (d) After [REDACTED] if Buyer has not received approval of this Agreement from the Kentucky Public Service Commission or the Rural Utilities Service.

If Seller delivers such a termination notice, neither Party shall have any further liability or obligation hereunder (except for liabilities arising prior to such termination and liabilities arising out of a Party's obligations to indemnify the other Party) and Buyer shall promptly return any Credit Support previously delivered by Seller.

**SECTION 3
REPRESENTATIONS AND WARRANTIES**

3.1 Mutual Representations and Warranties. Each Party represents, covenants, and warrants to the other that:

3.1.1. Organization. It is duly organized and validly existing under the laws of its State of organization.

3.1.2. Authority. It has the requisite power and authority to enter hereinto and to perform according to the terms hereof.

3.1.3. Corporate Actions. It has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated hereby.

3.1.4. No Contravention. The execution, delivery, performance and observance by it of its obligations hereunder do not or will not when performed (a) contravene any provision of, or constitute a default under, (i) any indenture, mortgage, security instrument or undertaking, or other material agreement to which it is a party or by which it is bound, (ii) any valid order of any court, or any regulatory agency or other body having authority to which it is subject, or (iii) any material Requirements of Law presently in effect having applicability to it, or (b) require the consent or approval of, or material filing or registration with, any Governmental Authority or other person except as provided herein.

3.1.5. Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of it, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies.

3.1.6. Eligible Contract Participant. It, and any guarantor of its obligations hereunder, is an "eligible contract participant" within the meaning of the Commodity Exchange Act.

3.2 Seller's Further Representations and Warranties. Seller further represents, covenants, and warrants to Buyer that:

3.2.1. Organization. Seller is a corporation duly organized and validly existing under the laws of Delaware.

3.2.2. Authority. Seller (i) has all required regulatory authority to make wholesale sales from the Facility; (ii) has the power and authority to own and operate its businesses and properties, to own or lease and be present upon the property it occupies and to conduct the business in which it currently engaged; and (iii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

3.2.3. No Contravention. The execution, delivery, performance and observance by Seller of its obligations hereunder do not and will not:

(a) contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or any Affiliate of Seller;

(b) require the consent or approval of or material filing or registration with any Governmental Authority or other person other than such consents and approvals which are set forth in **Exhibit 3.2.6** and expected to be obtained in due course;

(c) result in a breach of or constitute a default under any provision of any security issued by Seller or any Affiliate of Seller or any material agreement, instrument or undertaking to which either Seller or any Affiliate of Seller is a party or by which the property of Seller or any Affiliate of Seller is bound.

3.2.4. Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against Seller or any Affiliate with respect hereto and the transactions contemplated hereunder. No other investigation or proceeding is pending or threatened against Seller or any Affiliate of Seller that would reasonably be expected to have a material adverse effect on Seller's obligations to perform hereunder.

3.2.5. Accuracy of Information. To Seller's knowledge, no exhibit, contract, report or document furnished by Seller to Buyer that contains factual information (excluding any projections) in connection with this Agreement, or the negotiation or execution hereof contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

3.2.6. Required Facility Documents. All Required Facility Documents are listed in **Exhibit 3.2.6**. Pursuant to the Required Facility Documents, Seller holds as of the Effective Date, or will hold by the Commercial Operation Date, all rights and entitlements necessary to construct, own and operate the Facility and to deliver Buyer's Interest to Buyer in accordance with this Agreement. No unusually burdensome conditions are expected by Seller to be placed upon, or created by, any of the Required Facility Documents and the anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises and all Requirements of Law. Seller shall notify Buyer of any material consent or approval that (a) Seller determines is required for the construction, ownership or operation of the Facility, and (b) is not already listed in **Exhibit 3.2.6**.

3.2.7. Delivery of Energy. On or before the Commercial Operation Date, Seller shall hold rights sufficient to enable Seller to deliver Net Output at the Expected Nameplate Capacity Rating from the Facility, on a firm basis, to the Point of Delivery pursuant to this Agreement throughout the Term.

3.2.8. Control of Premises. Seller has or will have prior to commencement of construction of the Facility all legal rights necessary for the Seller to enter upon and occupy the Premises for the purpose of constructing, operating and maintaining the Facility for the Term and Seller is not in material breach of any terms or conditions of such leases or other rights in real

property for the Facility or Premise. All leases of real property required for the operation of the Facility or the performance of any obligations of Seller hereunder are set forth and accurately described in **Exhibit 3.2.6** or will be added as contemplated by Section **3.2.6**. During the Term, Seller shall maintain all leases or other land grants necessary for the construction, operation and maintenance of the Facility. Upon request by Buyer, Seller shall provide copies of the recorded memoranda of lease.

3.2.9. Certification as an Eligible Renewable Resource. The Facility will be certified by the Commercial Operation Date, and will at all times thereafter remain certified, as an eligible renewable resource under the renewable portfolio or renewable energy standards of the Ohio SREC and Green-e Energy certification programs, and any successor programs, through tracking registries including GATS and M-RETS and any successor tracking registries. Seller, at its cost, is responsible for obtaining and maintaining the Facility certifications and registrations required under this Agreement.

3.2.10. Green Guides. Seller has at all times been and will at all times be fully compliant with the requirements of the Federal Trade Commission's "Green Guides," 77 F.R. 62122, 16 C.F.R. Part 260, or any successor rule, in any communication concerning Net Output, the Facility or the RECs.

3.3 No Other Representations or Warranties. Each Party acknowledges that it has entered hereinto in reliance upon only the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter hereof.

3.4 Continuing Nature of Representations and Warranties: Notice. The representations and warranties set forth in this Section 3 are made as of the Effective Date and deemed made continually throughout the Term. If at any time during the Term, any Party obtains actual knowledge of any event or information which causes any of the representations and warranties in this Section 3 to be materially untrue or misleading, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section 3 shall be given as soon as practicable after the occurrence of each such event.

SECTION 4 DELIVERIES OF NET OUTPUT, ANCILLARY SERVICES, CAPACITY RIGHTS AND RECS

4.1 Purchase and Sale. Except as otherwise expressly provided herein, commencing on the Commercial Operation Date and continuing through the Term, Seller shall sell and make available to Buyer, and Buyer shall purchase and receive, (a) the Net Output from the Facility at the Point of Delivery, and (b) all Ancillary Services, Capacity Rights and RECs associated with Net Output or otherwise resulting from the generation and delivery of energy by the Facility (which shall come from the Facility and from no other source); provided, however, that Buyer may at its sole option, but shall be under no obligation to, receive any Net Output above the Maximum Delivery Rate, or any Capacity Rights, Ancillary Services, or RECs associated with any Net

Output above the Maximum Delivery Rate. In no event shall Buyer be obligated to purchase, receive or pay for Output (or RECs or Ancillary Services associated with Output) that is not delivered to the Point of Delivery. In addition, during the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to Buyer, and Buyer shall purchase and receive, Net Output, Ancillary Services, Capacity Rights, and associated RECs from the Facility at the Point of Delivery as Test Energy at the price specified in Section 5.1.1.

4.2 No Sales to Third Parties. During the Term, Seller shall not sell any Net Output, RECs, Ancillary Services or Capacity Rights from the Facility to any party other than Buyer; *provided, however*, that this restriction shall not apply with respect to Net Output or RECs during periods when Buyer is in default hereof because it has, without excuse, failed to accept or purchase such Net Output or RECs if required to hereunder.

4.3 Title and Risk of Loss of Net Output. Seller shall deliver Net Output, Ancillary Services, Capacity Rights and associated RECs hereunder free and clear of all liens, claims and encumbrances. Title to and risk of loss of Net Output shall transfer from Seller to Buyer upon its delivery to Buyer at the Point of Delivery. Seller shall be deemed to be in exclusive control of, and responsible for, any damage or injury caused by all Output up to and at the Point of Delivery. Buyer shall be deemed to be in exclusive control of, and responsible for, any damages or injury caused by, Net Output from the Point of Delivery. Delivery of Net Output to Buyer on any particular day shall be subject to the provisions of this Agreement.

4.4 Curtailement. The rights and obligations of the Parties with respect to curtailments of Net Output are as follows:

4.4.1. Curtailement During Negative RTLMP Period. During a Negative RTLMP Period, Seller shall either: (i) curtail deliveries of Net Output during any Calculation Period occurring within the Negative RTLMP Period; or (ii) continue to deliver Net Output to the Point of Delivery. If Seller continues to deliver Net Output to Buyer during a Negative RTLMP Period, then notwithstanding Section 5.1, Seller shall indemnify and hold Buyer harmless from all direct costs and expenses of such RTLMP (other than the actual cost of any such RTLMP offset and accounted for pursuant to this sentence), and the purchase price Buyer shall pay for all such Net Output shall be an amount equal to [REDACTED]

[REDACTED] No later than the tenth (10th) Day of the month following any month in which Seller delivered Net Output during a Negative RTLMP Period, Seller shall deliver to Buyer an invoice showing the amounts calculated pursuant to this Section, and a description, in reasonable detail, of the calculation of the amounts. Buyer shall offset an amount equal to any undisputed amounts set forth in the invoice received from Seller, against the amounts owed by Buyer to Seller in the next billable month, provided that if the amount of such credit is greater than the amount payable by Buyer for such month, the excess portion of such credit shall be applied by Buyer to reduce the amount payable by Buyer hereunder in subsequent month(s).

4.4.2. Curtailement for Failure to Schedule Output or Obtain Transmission after Point of Delivery. If the Facility is curtailed or not dispatched as a result of Buyer's failure to either (i) schedule the Net Output at a price greater than \$0/MWh so as to result in acceptance or dispatch of the Facility or (ii) obtain sufficient transmission rights from and after the Point of

Delivery, in each case, such curtailed Net Output shall be considered delivered energy from Seller for purposes of the Output Guarantee and Buyer shall pay Seller an amount equal to the Contract Price multiplied by the estimated amount of energy that could have been produced and delivered but was not actually produced due to such curtailment or failure to dispatch. The Parties shall estimate the expected amount of such curtailed energy that would have been generated but for such curtailment, in a commercially reasonable manner, consistent with Prudent Electrical Practices, based on measured solar irradiance for each hour during the economic curtailment period.

4.5 Transfer of Title to RECs; Renewable Portfolio Standard Certifications.

4.5.1. Title to the RECs shall pass from Seller to Buyer immediately upon the generation of the Output at the Facility that gives rise to such RECs. The Parties shall execute all additional documents and instruments reasonably requested by Buyer in order to further document the transfer of the RECs to Buyer or its designees. Without limiting the generality of the foregoing, Seller shall, on or before the thirtieth (30th) day of each month, deliver to Buyer a REC Attestation and Bill of Sale in the form attached as **Exhibit 4.5** for all RECs delivered to Buyer hereunder in the preceding month, along with any attestation that is then-current with the Center for Resource Solution's Green-e program and the Ohio SREC, and any successor programs. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of GIS relating to the Facility or RECs. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of GIS. Seller, at its sole expense, shall use GIS as required pursuant to the GIS Operating Procedures to effectuate the transfer of GIS Certificates to Buyer, and shall transfer such GIS Certificates to Buyer in accordance with GIS reporting protocols and GIS Operating Procedures. Buyer shall be entitled to a refund of the REC Price Component for RECs associated with any Net Output for which Certificates are not delivered.

Seller shall promptly provide Buyer copies of all documentation it submits to GIS. Further, in any program involving Environmental Attributes administered by CAMD or other Governmental Authority, upon notification by CAMD or other Governmental Authority that any transfers contemplated by this Agreement will not be recorded, Seller shall promptly take all reasonable actions necessary so that such transfers can be recorded. Seller shall not claim in any public communication nor report under any applicable program that any of the RECs purchased by Buyer hereunder belong to any person other than Buyer. Without limiting the generality of Buyer's ownership of the RECs, Buyer may report under such program that such Environmental Attributes purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD or other Governmental Authority to effectuate any transfers. Seller shall cause the Facility (i) to maintain its registration in good standing with the Center for Resource Solution's Green-e program and as an eligible renewable resource in the renewable portfolio standard or equivalent programs of the federal government and the states set forth in Section 3.2.9 throughout the Term and (ii) to qualify and register and maintain such qualification/registration with any equivalent programs created by any future legislation. Seller shall also cooperate in any registration of the Facility in the renewable portfolio standard or other equivalent program in all such further states and programs in which Buyer may request Seller to register or maintain registered the Facility, to the extent that such registrations and other requirements do not impose a material economic or administrative burden on Seller.

4.6 Capacity Rights.

4.6.1. Purchase and Sale of Capacity Rights. For and in consideration of Buyer's agreement to purchase from Seller the Net Output and RECs on the terms and conditions set forth herein, Seller transfers to Buyer, and Buyer accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Rights, if any, existing during the Term. Buyer's purchase of Capacity Rights in no way represents any purchase of equity or ownership rights of any kind in Seller or the Facility.

4.6.2. Representation Regarding Ownership of Capacity Rights. Seller represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any person or entity, the Capacity Rights, if any. During the Term, Seller shall not report to any person or entity that the Capacity Rights, if any, belong to anyone other than Buyer. Buyer may at its own risk and expense report to any person or entity that the Capacity Rights exclusively belong to it.

4.6.3. Further Assurances. At Buyer's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights, if any, to Buyer.

4.6.4. Capacity Accreditation. Buyer has or may in the future have certain planning, operating and reporting requirements with MISO or other Electric System Authority. Without assuming responsibility therefor, Seller shall maintain capacity accreditation with MISO or other Electric System Authority as required pursuant to the Generation Interconnection Agreement and shall otherwise reasonably cooperate with Buyer (at Buyer's expense for direct third party costs) to obtain such capacity accreditation in accordance with the rules of any other Electric System Authority; provided that nothing in this Section 4.6 shall obligate Seller to make any capital expenditures or install additional equipment or modify the Facility as it is contemplated as of the Effective Date. All required testing shall be conducted in accordance with the applicable MISO or Electric System Authority rules.

4.6.5. Capacity Charges. MISO Planning Resource Auction benefits associated with the Capacity Rights shall exclusively and solely accrue to and be owned by Buyer, and Buyer shall be responsible for all costs, charges, fees or penalties associated with Buyer's scheduling and bidding in connection with the Capacity Rights imposed by MISO. Seller shall be responsible for all reasonable costs associated with transferring the Capacity Rights to Buyer. Seller shall reasonably cooperate with Buyer to obtain Buyer's benefits, including Buyer's scheduling and bidding of the Facility into each annual MISO Planning Resource Auction or incremental auctions for the Term. The Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights, if any, to Buyer. Buyer shall have the exclusive right to commit the Facility to the MISO Planning Resource Auction market or successor auctions, in a manner consistent with MISO Rules.

4.6.6. Capacity Guaranty. Seller shall ensure that the Capacity Rights sold to Buyer under this Agreement provide Buyer with Zonal Resource Credits, to the extent available in MISO, consistent with the Facility's Nameplate Capacity Rating as determined by MISO for

each MISO Planning Resource Auction year after the Commercial Operation Date, or equivalent capacity rights under other Electric System Authority rules applicable to the Facility.

4.7 Ancillary Services. As System Operator allows or may allow in the future Intermittent Resources to bid into Ancillary Services markets operated by the System Operator, Seller shall install such meters and power electronics, and conduct all Facility testing in accordance with the applicable MISO and Electric System Authority rules so that Ancillary Services may be provided; provided that notwithstanding anything herein to the contrary, Seller shall not be obligated to (a) make any additional capital expenditures or install additional equipment or modify the Facility as it is contemplated as of the Effective Date, or (b) modify its operation of the Facility.

SECTION 5 CONTRACT PRICE; COSTS

5.1 Contract Price; Includes Net Output, RECs, Ancillary Services and Capacity Rights. Buyer shall pay Seller the prices provided for in this Section 5.1 for all deliveries of Buyer's Interest received by Buyer. The Contract Price provided for in Section 5.1.2 and the price for Test Energy provided for in Section 5.1.1 include the consideration to be paid by Buyer to Seller for all Net Output, RECs, Ancillary Services and Capacity Rights, and Seller shall not be entitled to any compensation over and above the Contract Price or the Test Energy price, as the case may be, for the RECs, Ancillary Services or Capacity Rights associated therewith.

5.1.1. Test Energy. Between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver to the Point of Delivery all Test Energy. Buyer shall pay Seller (a) for all Test Energy delivered at the Point of Delivery up to the Maximum Delivery Rate an amount per MWh equal to [REDACTED] *provided, however,* that Seller's right to receive payment for such Test Energy is subject to Buyer's right of offset under Section 10.2 for, among other things, payment by Seller of any Delay Damages owed to Buyer by Seller pursuant to Section 2.3. Seller will make reasonable efforts to provide Buyer with a day-ahead hourly schedule of Test Energy generated. To the extent Seller delivers and Buyer accepts Test Energy in excess of the Maximum Delivery Rate, the Contract Price per MWh shall be \$0.

5.1.2. Commercial Operation. For the period beginning on the Commercial Operation Date and thereafter during the Term, Seller shall sell and deliver to the Point of Delivery all Net Output. Buyer shall pay to Seller the Contract Price per MWh, as specified in **Exhibit 5.1**, for Net Output delivered to the Point of Delivery up to the Maximum Delivery Rate. To the extent Seller delivers and Buyer accepts Net Output in excess of the Maximum Delivery Rate, the Contract Price per MWh shall be \$0.

5.2 Costs and Charges. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Output up to and at the Point of Delivery, including transmission costs, Transmission Service, transmission line losses and any operation and maintenance charges imposed pursuant to the Generation Interconnection Agreement. Buyer shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Output at and from the Point of Delivery, including transmission costs and transmission line losses and imbalance charges or penalties. Without

limiting the generality of the foregoing, Seller, in accordance with the Generation Interconnection Agreement, shall bear all costs associated with the construction of or modifications to any Interconnection Facilities, or the System, Buyer's System (including system upgrades), or any third party transmission system (including system upgrades) caused by or related to (a) the interconnection of the Facility with the System or Buyer's System and (b) any modification of the Facility or increase in generating capacity of the Facility.

5.3 Station Service.

5.3.1. The Parties recognize that this Agreement does not provide for the supply of any electric service by Buyer to Seller or to the Facility and Seller must enter into separate arrangements for the supply of electric services to the Facility. Seller acknowledges that it shall have no claims against Buyer under this Agreement with respect to the provision of station service.

5.3.2. 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 Agreement are not binding upon the supplier of such electric services.

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

5.3.4. Seller expressly recognizes that, for purposes of this Agreement, 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 Buyer or an Affiliate of Buyer.

5.4 Taxes. Seller shall pay or cause to be paid when due, or reimburse Buyer for, all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority up to and including the Point of Delivery, on the generation of Net Output, Capacity Rights, Ancillary Services or RECs or on the sale of Net Output, Capacity Rights, or RECs from Seller to Buyer hereunder, regardless of whether such taxes are imposed on Buyer or Seller under Requirements of Law. Buyer shall pay or cause to be paid when due, or reimburse Seller for, all such taxes levied at or beyond the Point of Delivery upon a purchaser (other than Buyer) of Net Output, Capacity Rights, Ancillary Services or RECs, regardless of whether such taxes are imposed on Buyer or Seller under Requirements of Law. If taxes are imposed or levied by a Governmental Authority on a Party in error or incorrectly, or on the wrong Party, the Parties shall work in good faith to cause such Governmental Authority to correct such error and levy or impose such taxes correctly. The Contract Price shall not be adjusted on the basis of any action of any Governmental Authority with respect to changes to or revocations of sales and use tax benefits, rebates, exception or give back.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof, Seller shall be solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future Requirements of Law and the terms and conditions hereof, and (b) all taxes and charges (however characterized) now existing or

hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or environmental impacts.

5.6 Rates Not Subject to Review. The rates for service specified herein shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the Parties. Neither Party shall petition FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 *et seq.*) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Fed. Power Comm’n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish*, 554 U.S. 527, 128 S. Ct. 2733 (2008) and *NRG Power Mktg., LLC v. Maine Pub. Util. Comm’n*, 130 S. Ct. 503 (2010).

5.7 Solar Integration Costs. [REDACTED]

**SECTION 6
OPERATION AND CONTROL**

6.1 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide Buyer the As-Built Supplement. The As-Built Supplement shall be deemed effective and shall be added to **Exhibit 6.1** when it has been reviewed and approved by Buyer (such approval not to be unreasonably withheld). If the proposed As-Built Supplement does not accurately describe the Facility as actually built or is otherwise defective as to form in any material respect, Buyer may within fifteen days after receiving the proposed As-Built Supplement give Seller a notice describing what Buyer wishes to correct. If Buyer does not give Seller such a notice within the fifteen (15) day period, the As-Built Supplement shall be deemed approved. If Buyer provides a timely notice requiring reasonable corrections, Seller shall in good faith cooperate with Buyer to revise the As-Built Supplement to address Buyer’s concerns. Notwithstanding the foregoing, Buyer shall have no right to require Seller to relocate, modify or otherwise change in any respect any aspect of the Facility as actually built. Nothing in this Section 6.1, nor Buyer’s approval of the As-Built Supplement, shall require Buyer to purchase, or pay more than \$0 per MWh for, any Net

Output, or for Ancillary Services, Capacity Rights, or RECs associated with any Net Output, above the Maximum Delivery Rate.

6.2 Standard of Facility Operation.

6.2.1. General. Seller will act as the Generator Operator of the Facility within MISO. At Seller's sole cost and expense, Seller shall build, operate, maintain and repair the Facility and the Interconnection Facilities in accordance with (i) the applicable and mandatory standards, criteria and formal guidelines of FERC, any System Operator, and any other Electric System Authority and any successors to the functions thereof; (ii) the Permits and Required Facility Documents; (iii) the Generation Interconnection Agreement; (iv) all Requirements of Law; (v) the requirements hereof; and (vi) Prudent Electrical Practice. Seller acknowledges that it shall have no claims hereunder against Buyer with respect to any requirements imposed by or damages caused by (or allegedly caused by) the Interconnection Provider, the Transmission Provider, any provider of Transmission Services to the Point of Delivery, or any third party transmission system. Station service shall be the responsibility of Seller. Seller acknowledges that it shall have no claims against Buyer under this Agreement with respect to the provision of station service.

6.2.2. Qualified Operator. From and after the Commercial Operation Date, Seller shall itself operate the Facility or cause the Facility to be operated by (a) an entity that collectively with its Affiliates has at least three years of experience in operation of solar energy facilities of comparable size to the Facility and which collectively operates solar energy facilities with a nameplate capacity of not less than 300 MW in the aggregate, or (b) an entity that is otherwise reasonably acceptable to Buyer.

6.2.3. Fines and Penalties.

(a) Seller shall pay when due, and in no event later than thirty (30) days of assessment, all fines, penalties, or legal costs incurred by Seller or for which Seller is legally responsible for noncompliance by Seller, its agents, employees, contractors or subcontractors, with respect to any provision hereof, any agreement, commitment, obligation or liability incurred in connection with this Agreement or the Facility or any Requirements of Law, except where such fines, penalties or legal costs are being contested in good faith by Seller, its agents, employees, contractors or subcontractors through appropriate proceedings and Seller has (i) set aside and funded adequate reserves to cover such fines, penalties or legal costs in the event of an adverse determination, or (ii) posted security to Buyer or Seller's Senior Lenders adequate to ensure Seller's ability to cover such fines, penalties or legal costs in the event of an adverse determination.

(b) If fines, penalties, or legal costs are assessed against or incurred by Buyer on account of any action by any Governmental Authority due to noncompliance by Seller with any Requirements of Law or the provisions hereof, or if the performance of Seller is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any Requirements of Law, Seller shall indemnify and hold harmless Buyer against any and all losses, liabilities, damages, and claims suffered or incurred by Buyer as a result. Without limiting the generality of the foregoing, Seller shall reimburse Buyer for all fees, damages, or penalties, including Buyer's legal costs and attorney's fees, imposed on Buyer by any Governmental

Authority or other person or to other utilities for violations of any Requirements of Law or to the extent caused by a default by Seller or a failure of performance by Seller hereunder.

6.3 Interconnection. Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at its Nameplate Capacity Rating at the Point of Delivery including the costs of any third party transmission system upgrades, or System or Buyer System upgrades beyond the Point of Delivery necessary to interconnect the Facility with the System and to allow the delivery of all Net Output and Ancillary Services to the Point of Delivery. Seller shall have no claims against Buyer under this Agreement with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Provider or Interconnection Provider, in connection with the Generation Interconnection Agreement or otherwise. Seller shall be solely responsible for, and shall defend, indemnify and hold Buyer (solely in its capacity as Buyer under this Agreement and not its capacity as Interconnection Provider or Transmission Provider, if applicable) harmless against, any Liabilities arising out of Seller's performance or failure to perform under the Generation Interconnection Agreement; provided nothing in this sentence shall expand Seller's indemnification obligations with respect to Interconnection Provider under the Generation Interconnection Agreement. Seller's failure to perform under, or breach of, the Generation Interconnection Agreement, or its other contracts and obligations to, Transmission Provider or Interconnection Provider is not an event of Force Majeure.

6.4 Coordination with System Operator. Seller shall be responsible for the coordination and synchronization of the Facility and the Interconnection Facilities with the System and Buyer's System. In the event there are unanticipated changes in FERC or Electric System Authority rules sufficiently significant to change the benefits, risks and burdens held by the Parties, the Parties shall meet in good faith to work to adjust the terms of this Agreement to provide for the Parties the originally intended allocation of benefits, risks and burdens.

6.5 Outages.

Seller shall be responsible to enter all outages (Planned, Maintenance and Forced) into the MISO Control Room Operations Window Outage Scheduler (CROW).

6.5.1. Planned Outages. Except as otherwise provided herein, Seller shall not schedule a Planned Outage during day light hours (sunrise to sunset) of any portion of the months of November, December, January, February, June, July, and August, except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement in a situation in which the vendor is not otherwise able to perform the guarantee work at a time other than during one of the months specified above. Commencing with the second Contract Year, Seller shall provide Buyer with an annual forecast of Planned Outages for each Contract Year at least one (1) month, but no more than three (3) months, before the first day of that Contract Year, and shall promptly update such schedule, and otherwise change it only, to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule any maintenance of Interconnection Facilities during such months without the prior written approval of Buyer, which approval may be withheld by Buyer in its sole discretion.

6.5.2. Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Buyer of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins (or such shorter period to which Buyer may reasonably consent in light of then-existing solar exposure conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Buyer; *provided, however,* that Seller shall take all reasonable measures and use best efforts consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during any portion of the months of November, December, January, February, June, July, and August. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give Buyer notice of the Maintenance Outage as soon as practicable after Seller determines that the Maintenance Outage is necessary. Buyer shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no substantial impact on Seller. Seller shall notify Buyer of any subsequent changes in generation capacity available to Buyer as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.5.3. Forced Outages. Seller shall promptly provide to Buyer an oral report, via telephone to a number specified by Buyer, of any Forced Outage of the Facility. This report shall include the amount of the generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. Seller shall promptly update the report as necessary to advise Buyer of changed circumstances. As soon as practicable, if the Forced Outage resulted in more than fifteen percent (15%) of the Nameplate Capacity Rating of the Facility being unavailable, the oral report shall be confirmed in writing by notice to Buyer. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.5.4. Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform Buyer, via telephone to a number specified by Buyer, of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than ten percent (10%) of the Nameplate Capacity Rating of the Facility.

6.5.5. Effect of Outages on Estimated Output. Seller represents and warrants that the estimated monthly Net Output set forth on **Exhibit A** takes into account the Planned Outages, Maintenance Outages, and Forced Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility, and that such outages are not expected to substantially reduce the Facility's average estimated monthly output as set forth in **Exhibit A**.

6.6 Scheduling.

6.6.1. Market Participant. Buyer shall act as the Market Participant and act as the Asset owner for the Facility and for the daily generation offers of the Facility into MISO markets, and shall have all applicable rights and obligations under the Tariff to offer the energy Output of the Facility into the centralized markets operated by MISO, including, without limitation, the right to determine the offer price in its sole discretion.

6.6.2. Buyer shall make available to Seller, as requested, the hourly day-ahead award volumes of the Facility within two hours of those awards being posted by MISO the day prior to the operating day. Buyer shall receive all revenue associated with those sales into the day-ahead market.

6.6.3. Seller shall notify Buyer of the metered net generation from the Facility at the end of the following day. Buyer shall receive all real-time revenue associated with variances between the day-ahead award and net metered generation.

6.6.4. Actual metered net generation for any hour will serve as the basis for the calculation of the Energy Charge for that hour.

6.6.5. Seller shall be responsible for payment of all uninstructed actual deviation or other deployment failure charges imposed under the MISO Tariff resulting from the operation of (or failure to operate) of the Facility in accordance with the scheduling of the Facility, Buyer shall have no responsibility for any MISO market penalties, charges, or other costs resulting from Seller's failure to abide by MISO market dispatch instructions and/or signals, rules, standards, and protocols.

6.6.6. Seller shall comply with all Electric System Authority and FERC market behavior rules and standards of conduct.

6.6.7. Transmission Services. Buyer shall be responsible for arranging and paying for all transmission services required to effectuate the taking of Net Output away from the Point of Delivery. Buyer may appoint any agent for purposes of scheduling delivery of Net Output and transmission away from the Point of Delivery.

6.6.8. Cooperation and Standards. With respect to any and all scheduling and outage requirements hereunder, (a) Seller shall cooperate with Buyer with respect to scheduling Net Output, and (b) each Party shall designate authorized representatives to communicate with regard to scheduling and related matters arising hereunder. Each Party shall comply with the applicable variable resource standards and criteria of any applicable Electric System Authority.

6.6.9. Breach of Generation Interconnection Agreement. If, for any reason, Buyer is deemed by a System Operator to be financially responsible for Seller's performance under the Generation Interconnection Agreement, then (a) Seller shall take all necessary steps such that Buyer is no longer responsible for Seller's performance under the Generation Interconnection Agreement, and (b) Seller shall defend, indemnify and hold Buyer harmless against any liability of Seller's under the Generation Interconnection Agreement or System Operator requirement.

6.7 Forecasting.

6.7.1. Long-Range Forecasts. For Buyer's planning purposes, Seller shall, by December 1 of each year during the Term (except for the last year of the Term), provide an annual update to the expected long-term monthly/diurnal mean net energy estimates (12 X 24 profile). This forecast shall include an expected range of uncertainty based on historical operating experience. Seller shall update the forecast for each month by notice to Buyer at least six (6) Business Days before the first Business Day of such month.

6.7.2. Real-time Forecasts. Every five (5) minutes, Seller shall deliver electronically to Buyer a rolling set of twelve 5-minute interval energy forecasts for the Facility in accordance with the MISO Rules. The submission of such forecasts shall be provided by a mutually agreeable method and in accordance with Prudent Utility Practice. Seller may update such forecasts in accordance with MISO Rules. Seller shall provide real time meteorological data to MISO in accordance with MISO Rules.

6.7.3. Day-Ahead Forecasts and Updates. By such time as mutually agreed to by the Parties, but in no case later than one hour prior to the offer deadline in the Tariff, on the Business Day immediately preceding the day on which Net Output from the Facility is to be delivered, Seller shall provide Buyer with an hourly forecast of deliveries for each hour of the next one hundred sixty-eight (168) hours. Seller shall update a forecast any time information becomes available indicating a change in the forecast of generation of Net Output from the then-current forecast; provided however that Seller shall also provide to Buyer any forecasting updates it provides to the Transmission Provider as soon as they are provided to the Transmission Provider. The Parties shall cooperate to implement and use automatic forecast updates. Seller shall communicate forecasts under this Section 6.7.3 in an efficient manner, including electronic mail or other such media as determined by Buyer (which, at Buyer's discretion, may be in lieu of or in addition to notice to Buyer). Buyer may, with the advance written consent of Seller and at Seller's reasonable expense, add forecasting services for Seller's Facility to Buyer's existing contract with a qualified solar-energy-production forecasting vendor, which contract and vendor may change during the term of this Agreement. Seller shall simultaneously provide to Buyer copies of any solar forecasts that Seller provides to the Transmission Provider or System Operator. Buyer may, at Seller's reasonable expense, add forecasting services, including any real-time forecasting services and provision of real-time meteorological data required for compliance with applicable Electric System Authority procedures, protocol, rules and testing, for the Facility to a Buyer contract with a qualified solar-energy-production forecasting vendor, which contract and vendor may change during the term of this Agreement. The Parties agree that the forecasting obligations of Seller under this Section 6.7 may be met by a solar forecast service provider engaged by Buyer. Upon request by Buyer, Seller shall provide a 24 hour telephone number that Buyer may contact to determine the then-current status of the Facility. Buyer may at Buyer's cost and without the prior consent of Seller add the Facility to Buyer's qualified solar-energy-production forecasting vendor contract.

6.7.4. Basis of Forecasts. The forecasts called for by this Agreement shall be non-binding, good faith estimates only, but must meet the standards of the Transmission Provider, and shall be substantially in the form of **Exhibit 6.7.3** attached hereto (as such form may be updated by Buyer from time to time upon notice to Seller). Seller shall prepare such forecasts and updates by utilizing a solar exposure model or service that is (a) commercially available or proprietary to Seller or an Affiliate of Seller, and (b) comparable in accuracy to models or services

commonly used in the solar energy industry, so long as such model or service is available at a commercially reasonable cost and is satisfactory to Buyer in the exercise of its reasonable discretion. On or prior to May 1 during each calendar year in the Term, Seller shall determine in good faith which such model or service to utilize after consultation with Buyer. In the event such model or service is not available at a commercially reasonable cost, Seller shall internally develop a forecasting process and present such process to Buyer for acceptance, which shall not be unreasonably withheld.

6.8 Limitations on Increase in Nameplate Capacity Rating and Other Facilities. Seller shall not increase the ability of the Facility to deliver Net Output in quantities in excess of the Maximum Delivery Rate without Buyer's consent, which consent Buyer may withhold for any reason in its sole discretion. Seller shall not construct any generating facilities on the Premises except for the Facility.

6.9 Electronic Communications.

6.9.1. Meteorological Data. Seller will provide to Buyer copies of all meteorological data as and to the extent required to be submitted to the System Operator, promptly after such data is submitted to the System Operator.

6.9.2. Telemetrying. Seller shall provide telemetrying equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Generation Interconnection Agreement and to Buyer on a real-time basis, and will operate such equipment when requested by Buyer to indicate:

- (a) instantaneous MW Output at the Point of Delivery;
- (b) Net Output; and
- (c) the Facility's total instantaneous generation capacity.

Seller shall also transmit to Buyer any other material data from the Facility that Seller receives on a real time basis, and that is not already accessible to Buyer without cost in its normal course of operations, including meteorological data, solar exposure data and Output data. Seller shall provide such real time data to Buyer on the same basis on which Seller receives the data (*e.g.*, if Seller receives the data in four second intervals, Buyer shall also receive the data in four second intervals). Buyer shall have the right from time to time to require Seller, at Buyer's cost, to provide additional telemetrying equipment and facilities to the extent necessary and reasonable.

6.9.3. Transmission Provider Consent. Seller shall execute a consent, in the form reasonably required by Transmission Provider, to provide that Buyer can read the meter and receive any and all data from the Transmission Provider relating to transmission of Net Output or other matters relating to the Facility without the need for further consent from Seller.

6.9.4. Dedicated Communication Circuit. Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between Buyer and the control center in the Facility's control room or such other communication equipment as the Parties may agree.

6.9.5. SCADA. Seller shall be responsible for purchasing, installing, repairing, and maintaining any and all communications equipment at the Seller-designated location on the Site as may be necessary to support dispatch and SCADA real-time data electronic transfer. Seller shall use commercially reasonable efforts to automatically control the real power Output of the Facility to attempt to achieve the dispatch level communicated to Seller by MISO for each 5-minute interval security constrained economic dispatch (SCED) desired MW basepoint received through the MISO SCADA system.

6.9.6. ICCP Communication. If during the Term Seller establishes ICCP communication, Seller will use commercially reasonable efforts to provide Buyer, at Seller's expense, real time electronic meter data via ICCP over the internet for the net MW flow from the Facility, updated every minute.

6.10 Reports and Records.

6.10.1. Monthly Reports. Within thirty (30) days after the end of each Reporting Month, Seller shall provide to Buyer a report in electronic format, which report shall include (a) summaries of the Facility's solar insolation and actual and predicted Output data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility's computer monitoring system; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that Buyer may from time to time reasonably request (including historical solar exposure data for the Facility).

6.10.2. Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term commencing on the Commercial Operation Date. Seller shall provide Buyer with a copy of the electronic fault log within thirty (30) days after the end of the calendar month to which the fault log applies.

6.10.3. Other Information to be Provided to Buyer. Seller shall provide to Buyer the following information concerning the Facility:

(a) Upon the request of Buyer, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;

(b) A report summarizing the results of maintenance performed during each Maintenance Outage, Planned Outage, and any Forced Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance;

(c) Following commencement of construction of the Facility until Commercial Operation, a monthly progress report stating the percentage completion of the Facility and a brief summary of construction activity during the prior month and construction activity contemplated for the next month; and

(d) From and after the Commercial Operation Date, a monthly report detailing the availability of the Facility;

(e) At any time from the Effective Date, one year's advance notice of the termination or expiration of any agreement, including leases, pursuant to which the Facility or any equipment relating thereto is upon the Premises; provided that the foregoing does not authorize any early termination of any land lease; and provided, further, that in the event Seller has less than one year's advance notice of such termination or expiration, Seller shall provide the notice contemplated by this Section to Buyer within fifteen (15) Business Days of Seller obtaining knowledge of the termination or expiration.; and

(f) Such other information respecting the condition or operations of Seller or the Facility as Buyer may, from time to time, reasonably request.

6.10.4. Information to Governmental Authorities. Seller shall, promptly upon written request from Buyer, provide Buyer with all data collected by Seller related to the Facility reasonably required by Buyer or an Affiliate thereof for reports to, and information requests from, any Governmental Authority or Electric System Authority. Along with this information, Seller shall provide to Buyer copies of all submittals to Governmental Authorities or Electric System Authorities directed by Buyer and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller shall use commercially reasonable efforts to provide this information to Buyer with sufficient advance notice to enable Buyer to review such information and meet any submission deadlines imposed by the requesting organization or entity.

6.10.5. Data Request. Seller shall, promptly upon written request from Buyer, provide Buyer with data reasonably required for information requests from any Governmental Authorities, state or federal agency intervener or any other party achieving intervenor status in any Buyer proceeding or other proceeding before any Governmental Authority. Seller shall use commercially reasonable efforts to provide this information to Buyer sufficiently in advance to enable Buyer to review it and meet any submission deadlines.

6.10.6. Documents to Governmental Authorities. After sending or filing any statement, application, and report or any document with any Governmental Authority or Electric System Authority relating to operation and maintenance of the Facility, Seller shall promptly provide to Buyer a copy of the same.

6.10.7. Environmental Information. Seller shall, promptly upon written request from Buyer, provide Buyer with all data reasonably requested by Buyer relating to environmental information under the Required Facility Documents. Seller shall further provide Buyer with all environmental impact mitigation measures it is taking in connection with the Facility's construction or operation, as well as copies of all agreements between Seller and federal, state or local environmental agencies to the extent not subject to confidentiality restrictions. Seller shall disclose to Buyer, as soon as it is known to Seller, any material violation of any environmental laws or regulations arising out of the construction or operation of the Facility, and the extent thereof, or the presence of Environmental Contamination at the Facility or on the Premises, alleged to exist by any Governmental Authority having jurisdiction over the Premises, or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to any actual or alleged violation or presence of Environmental Contamination.

6.10.8. Operational Reports. Seller shall provide Buyer monthly operational reports in a form and substance acceptable to Buyer and Seller shall, promptly upon written request from Buyer, provide Buyer with all operational data requested by Buyer with respect to the performance of the Facility and delivery of Buyer's Interest therefrom.

6.10.9. Notice of Material Adverse Events. Seller shall promptly notify Buyer of receipt of written notice or actual knowledge by Seller or its Affiliates of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided herein.

6.10.10. Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding before any court or Governmental Authority which would, if adversely determined, materially and adversely affect Seller, the Premises or the Facility, Seller shall promptly give notice to Buyer of the same. In addition, following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding against Seller before any court or Governmental Authority, Seller shall promptly give notice to Buyer of the same.

6.10.11. Additional Information. Seller shall provide to Buyer such other information respecting the condition or operations of Seller or the Facility as Buyer may, from time to time, reasonably request.

6.10.12. Job Tracking. Seller shall provide to Buyer data on how many jobs have been, or are being, created by the construction or operation of the Facility, the nature of such jobs, and the types of skill sets needed to fill such jobs; *provided, however*, that Seller shall not be obligated to provide such information to Buyer more than once per calendar year.

6.10.13. Confidential Treatment. The reports and other information provided to Buyer under this Section 6.10 shall be treated as Confidential Business Information, subject to Buyer's rights to disclose such information pursuant to Sections 6.10.4, 6.10.5, 9.5, 23.3 and pursuant to any applicable Requirements of Law. Buyer shall use reasonable efforts to provide advance notice of any anticipated disclosure required by Requirement so Law and Seller shall have the right to seek confidential treatment of any such information from the Governmental Authority entitled to receive such information.

6.11 Financial and Accounting Information. If Buyer or one of its Affiliates determines that, under FIN 46R, it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide sufficient financial and ownership information so that Buyer or its Affiliate may confirm whether a variable interest does exist under FIN 46R. If Buyer or its Affiliate determines that, under FIN 46R, it holds a variable interest in Seller, Seller hereby agrees to provide sufficient financial and other information to Buyer or its Affiliate so that Buyer may properly consolidate the entity in which it holds the variable interest or present the disclosures required by FIN 46R. Buyer shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with Buyer's requests for information under this Section 6.11.

6.12 Output Guaranty.

6.12.1. Output Guarantee. Beginning in the third Contract Year, Seller is obligated to deliver an average annual quantity of Net Output during each [REDACTED] Contract Year period which is equal to the Output Guarantee. For purposes of this Agreement, “**Output Guarantee**” for any [REDACTED] Contract Year period means (i) [REDACTED] of the average of the Expected Energy of the Facility for such [REDACTED] Contract Year period, less (ii) the average annual quantities of Output that were not delivered to the Point of Delivery (or accepted by Buyer) in such [REDACTED] Contract Year period during periods constituting Seller Uncontrollable Minutes (such quantity calculated on the basis of the Net Output capable of being delivered in an hour at an average rate equivalent to the annual estimated Output from **Exhibit A** divided by 8760).

6.12.2. Liquidated Damages for Output Shortfall.

(a) If the annual average of the quantity of Net Output delivered by Seller to the Point of Delivery during any such [REDACTED] Contract Year period is equal to or greater than the Output Guarantee for such [REDACTED] Contract Year period, Seller’s delivery obligation for Net Output for such [REDACTED] Contract Year period shall be deemed satisfied for such [REDACTED] Contract Year period.

(b) If the annual average of the quantity of Net Output delivered by Seller to the Point of Delivery during any [REDACTED] Contract Year period is less than the Output Guarantee for such [REDACTED] Contract Year period, Seller shall pay Buyer liquidated damages, if any, for the Output Shortfall. The “**Output Shortfall**” shall be expressed in MWh and calculated in accordance with the following formula:

$$\text{Output Shortfall} = \text{[REDACTED]}$$

less

Any quantities of Output that were not delivered to the Point of Delivery (or accepted by Buyer) in such [REDACTED] Contract Year period during periods constituting Seller Uncontrollable Minutes (such quantity calculated on the basis of the Net Output capable of being delivered in an hour at an average rate equivalent to the annual estimated Output from **Exhibit A** divided by 8760),

less

The annual average Net Output for the [REDACTED] Contract Year period.

(c) If the product of the Output Shortfall calculation set forth in Section 6.12.2(b) is a positive number (an example of such calculation is attached as **Exhibit 6.12**), Seller shall pay Buyer liquidated damages equal to [REDACTED]

If the product of the Output Shortfall calculation set forth in Section 6.12.2(b) is a negative number, Seller shall not be obligated to pay Buyer liquidated damages for such [REDACTED] Contract Year period.

(d) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to the Facility's failure to achieve the Output Guarantee would be difficult or impossible to predict with certainty and (ii) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages.

6.12.3. Annual Invoicing. On or before February 15 of each Contract Year beginning after the third Contract Year, Seller shall deliver to Buyer an invoice showing Seller's computation of Net Output and Output Shortfall, if any, for the prior [REDACTED] Contract Year period and any amount due Buyer for liquidated damages pursuant to Section 6.12.2. In preparing such invoice, Seller shall utilize the meter data provided to Seller for the Contract Years in question, but may also rely on historical averages and such other information as may be available to Seller at the time of invoice preparation, if the meter data for such Contract Years is then incomplete or otherwise not available. To the extent required, Seller shall true up any such invoice as promptly as practicable following its receipt of actual results for the relevant Contract Years. Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice, and Buyer shall, within thirty (30) days after receiving the invoice, raise any objections regarding any disputed portion of the invoice. All disputes regarding such invoices shall be subject to Section 10.4. Objections not made by Buyer within the thirty (30) day period shall be deemed waived.

6.13 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller shall provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, (c) in connection with the operation and maintenance of the Interconnection Facilities, (d) during normal business hours to provide tours of the Facility to customers and other guests of Buyer (not more than 12 times per site per year) and Seller will use commercially reasonable efforts to accommodate other reasonable requests of Buyer in connection with such tours, (e) for purposes of implementing Sections 2.6 or 10.6, and (f) for other reasonable purposes at the reasonable request of Buyer. Buyer shall indemnify and hold harmless Seller from and against any and all Liabilities resulting from actions or omissions by the Buyer Indemnitees and Buyer's customers and guests in connection with their access to the Premises, except to the extent that such damages are caused or exacerbated by the intentional or negligent act or omission of any Seller Indemnitee.

6.14 Facility Images. Buyer shall be free to use any and all images from or of the Facility for promotional purposes. Seller may only use images of the Facility for promotional purposes if such use (a) complies with all best practices of the Center for Resource Solutions and requirements of its green-e energy program, and (b) complies with Sections 3.2.9 and 4.5 hereof, and (c) when the Facility is named in connection with the use of such image, states that Buyer is the purchaser of all Net Output and RECs.

**SECTION 7
QUALIFYING FACILITY OR
EXEMPT WHOLESALE GENERATOR STATUS**

7.1 Seller's Election. Seller covenants that, during the Term and before delivering Net Output and associated RECs to Buyer hereunder, Seller shall, to the extent required to prevent Seller from being subject to, or not exempt from, regulation as an "electric utility" or "holding company" pursuant to PUHCA or otherwise (except to the extent that QFs and EWGs are subject to regulation pursuant to PUHCA), either (a) cause the Facility to be a QF, or (b) cause Seller to be an EWG.

7.2 QF Facility. If the Facility is a QF, Seller shall provide Buyer with copies of the appropriate certification (which may include a FERC self-certification) within ten (10) days of filing or receiving the certification. At any time during the Term, for cause, Buyer may require Seller to provide Buyer with a written legal opinion from an attorney in good standing with recognized expertise in FERC matters and who has no economic relationship, association or nexus with Seller or the Facility (other than an attorney-client relationship), stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data that Buyer may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF. During the Term, Seller shall, to the extent required to prevent Seller from being subject to, or not exempt from, regulation as an "electric utility" or "holding company" pursuant to PUHCA or otherwise, maintain its QF status, and shall not seek to change the Contract Price as a result of its status as a QF.

7.3 EWG. If Seller is an EWG, Seller shall provide Buyer with copies of Seller's applications to FERC for EWG status and for authority to sell Net Output hereunder before Commercial Operation and within ten (10) days after filing such applications. During the Term, Seller shall maintain its EWG status (to the extent it is required by law to do so) and its authority to sell power hereunder.

**SECTION 8
SECURITY AND CREDIT SUPPORT**

8.1 Seller Credit Support. Seller shall provide Credit Support for its obligations under this Agreement in the amount of [REDACTED] of Expected Nameplate Capacity Rating of the Facility (the "**Initial Credit Support**") no later than thirty (30) days after the latter of [REDACTED]
[REDACTED] per kW of Expected Nameplate Capacity Rating of the Facility (the "**Additional Credit Support**") no later than ten (10) days following the Seller CP Approval Date; and [REDACTED] per kW of Nameplate Capacity Rating of the Facility (the "**Post-COD Credit Support**") no later than ten (10) days following the Commercial Operation Date.

8.2 Replacement and Return of Credit Support. Seller shall have the right to, at any time and from time to time, request replacement of any or all of the Credit Support required hereunder and provided by it (the "**Outstanding Credit Support**") with one or more alternative

forms of Credit Support, whereupon Buyer shall cooperate with Seller in obtaining the concurrent release, termination, or return (as many as may be applicable) of the Credit Support in favor of or held by Buyer. Without limitation of the foregoing, Buyer shall return to Seller all original Credit Support documents, and all amendment, extension, and other related documents, within thirty (30) days of the termination of this Agreement or the termination, cancellation, or replacement thereof; provided Buyer may retain such amounts as Buyer in good faith determines are Buyer's damages hereunder, if any, and provided that in the event of a termination for default, Buyer shall have sixty (60) days from the termination to determine its damages. Buyer shall return to Seller (i) the Initial Credit Support upon receipt of the Additional Credit Support, and (ii) the Additional Credit Support upon receipt of the Post-COD Credit Support.

8.3 Financial Statements. If requested by Buyer from time to time, Seller shall, within thirty (30) days provide Buyer with copies of its, and its guarantor's, if applicable, most recent annual and quarterly financial statements.

8.4 Security is Not a Limit on Seller's Liability. The security contemplated by this Section 8: (a) constitutes security for, but is not a limitation of, Seller's obligations hereunder, and (b) shall not be Buyer's exclusive remedy for Seller's failure to perform in accordance with this Agreement.

8.5 Senior Lender Protective Provisions. Buyer agrees to enter into a consent to collateral assignment in substantially the form of the Lender Consent attached hereto as **Exhibit 8.4** or such other form reasonably acceptable to Buyer for the benefit of the Senior Lenders, and to reasonably cooperate with the reasonable requests of such Senior Lenders in conjunction with any financing of the Facility; *provided, however*, that except as provided in the form of the Lender Consent, in no event shall Buyer be required to agree to any modification hereof; and provided further, however, that if and to the extent any Lenders request (a) changes to the form of the Lender Consent (or otherwise attempt to negotiate the form of consent), (b) any additional documents or assurances, or (c) any legal opinion from Buyer with regard hereto, then Seller shall reimburse Buyer for its reasonable out-of-pocket costs in making any such changes or providing any such additional documents or legal opinion, with such costs to be paid to Buyer at the closing of the financing as a condition to the effectiveness of Buyer's consents, documents and opinions. Seller will within five (5) Business Days of written demand reimburse Buyer all Buyer's costs and expenses, including legal fees and costs of due diligence, incurred in connection with any action or exercise of rights or remedies by any of Senior Lenders against Seller, including any proceeding or foreclosure against Seller or this Agreement.

SECTION 9 METERING

9.1 Installation of Metering Equipment. Metering equipment shall be designed, furnished, installed, owned, inspected, tested, maintained and replaced as provided in the Generation Interconnection Agreement; *provided, however*, that Buyer shall be under no obligation, pursuant hereto, to bear any expense relating to such metering equipment. Seller will dedicate the Facility Revenue Meter solely to the Facility. Seller covenants that Exhibit 9.2 accurately sets forth the configuration of the metering and interconnection of the Facility, and that Exhibit 9.2 has been reviewed and accepted as accurate by the Licensed Professional Engineer

identified on Exhibit 9.2, as acknowledged by a letter from such Licensed Professional Engineer to Buyer. Seller will within ten days of becoming aware of any inaccuracy on Exhibit 9.2 at any time notify Seller and provide a revised Exhibit 9.2 that has been reviewed and accepted as accurate by the Licensed Professional Engineer identified on the revised Exhibit 9.2, as acknowledged by a letter from such Licensed Professional Engineer to Buyer.

9.2 Metering. Metering shall be performed at the location and in the manner specified in **Exhibit 9.2**, the Generation Interconnection Agreement and as necessary to perform Section 4.5 and Seller's other obligations hereunder. All quantities of Net Output purchased hereunder shall reflect the net amount of energy flowing into Buyer's System at the Point of Delivery.

9.3 Inspection, Testing, Repair and Replacement of Meters.

9.3.1. Meter Errors. Buyer may periodically inspect test, repair and replace the metering equipment provided for in the Generation Interconnection Agreement without Buyer assuming any obligations thereunder. If any of the inspections or tests disclose an error exceeding one-half of one percent (0.5%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and Buyer arising out of such inaccuracy of metering equipment. Nothing in this Agreement shall give rise to Buyer having any obligations to Seller, or any other person or entity, pursuant to or under the Generation Interconnection Agreement.

9.3.2. Back-Up Meters. Seller shall own and maintain back-up metering equipment located at the Facility. Upon Buyer's reasonable request, Seller shall inspect and test the back-up meter(s). Buyer may have a representative present during any metering inspection or test.

9.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller shall bear all costs (including Buyer's costs) relating to all metering equipment installed to accommodate Seller's Facility.

9.5 Meter Data. Throughout the Term, Seller shall maintain, at Seller's sole cost and expense, its status at MISO as a Meter Data Management Agent. Upon written request by Buyer, Seller shall promptly request the Interconnection Provider or Transmission Provider in writing to provide any and all meter or other data associated with the Facility or Net Output directly to Buyer. Notwithstanding any other provision hereof, Buyer shall have the right to provide such data to any Electric System Authority.

9.6 GIS Metering. Buyer shall have the right upon notice to Seller to perform the Qualified Reporting Entity (as defined by the GIS) functions for the Facility to implement all

necessary generation information communications in the GIS and report generation information to the GIS pursuant to a GIS-approved meter that is dedicated to the Facility and only the Facility.

SECTION 10 BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 Monthly Invoices. On or before the twentieth (20th) day following the end of each calendar month, Seller shall deliver to Buyer a proper invoice showing Seller's computation of Net Output delivered to Buyer during such month. When calculating the invoice, Seller shall provide the hourly Net Output. Except as provided in Sections 10.2 and 10.4, if such invoice is delivered by Seller to Buyer, then Buyer shall send payment to Seller, on or before the later of the twentieth (20th) day following receipt of such invoice or the thirtieth (30th) day following the end of such month.

10.2 Offsets. A Party may offset any payment due hereunder against amounts owing from the other Party to such Party pursuant hereto or any other agreement between the Parties. A Party's exercise of recoupment and set off rights shall not limit the other remedies available to such Party hereunder, under such other agreements, or otherwise.

10.3 Interest on Late Payments. Any amounts that are not paid when due hereunder shall bear interest at the Contract Interest Rate from the date due until paid.

10.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Except with respect to invoices provided under Section 6.12.2, any such notice shall be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due or required to be refunded to the other Party, or if the Parties resolve the payment dispute, the amount due or to be refunded shall be paid within five (5) days after such determination or resolution, along with interest at the Contract Interest Rate from the date due until the date paid.

10.5 Records. Each Party shall keep and maintain all records as may be necessary or useful in performing or verifying the accuracy of all relevant data, estimates or statements of charges submitted hereunder until the later of (i) a period of at least twenty-four (24) months after the date an invoice was received by a Party, or (ii) if there is a dispute relating to an invoice, the date that is twenty-four (24) months after the date on which such dispute is resolved.

10.6 Audit Rights. Each Party, through its authorized representatives, shall have the right, at its sole expense upon reasonable notice and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. Upon request, each Party shall provide to the other Party statements evidencing the quantities of Net Output delivered at the Point of Delivery. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding

the foregoing, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

SECTION 11 DEFAULTS AND REMEDIES

11.1 Defaults. The following events are defaults (each a “default” before the passing of applicable notice and cure periods, and an “**Event of Default**” thereafter) hereunder:

11.1.1. Defaults by Either Party.

(a) A Party fails to make a payment when due hereunder if the failure is not cured within ten (10) days after the non-defaulting Party gives the defaulting Party a notice of the default.

(b) A Party (i) makes an assignment for the benefit of its creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (iii) becomes insolvent; or (iv) is unable to pay its debts when due.

(c) A Party breaches a representation or warranty made by it herein if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default; and provided that, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (ii) the default is capable of being cured within the additional sixty (60) day period, and (iii) the defaulting Party provides the non-defaulting Party a remediation plan which the non-defaulting Party approves (such approval not to be unreasonably withheld), and the defaulting Party promptly commences and diligently commences the cure and pursues the remediation plan within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure pursuant to the remediation plan.

(d) A Party otherwise fails to perform any material obligation hereunder for which an exclusive remedy is not provided hereunder and which is not addressed in any other Event of Default described in this Section 11.1, if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default, unless a shorter period is provided for such failure hereunder; and provided that, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (ii) the default is capable of being cured within the additional sixty (60) day period, and (iii) the defaulting Party provides the non-defaulting Party a remediation plan which the non-defaulting Party approves (such approval not to be unreasonably withheld), and the defaulting Party promptly commences and diligently commences the cure and pursues the remediation plan within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure pursuant to the remediation plan.

11.1.2. Defaults by Seller.

(a) Seller fails to post, increase, maintain or replenish any security as required under this Agreement and such failure continues five (5) days after Seller receives written notice thereof from Buyer.

(b) Seller fails to cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date.

(c) Seller's Abandonment of the Facility.

(d) Seller sells Output, RECs, Ancillary Services or Capacity Rights from the Facility to a party other than Buyer in breach hereof, or Seller makes a public statement or otherwise takes an action that any Governmental Authority or the Center for Resource Solutions determine is a retirement, double counting, double sale, double use or double claim of RECs, if Seller does not permanently cease such sale and compensate Buyer for the damages arising from the breach within ten (10) days after Buyer gives Seller a notice of default.

(e) The Output Shortfall exceeds [REDACTED] of the Expected Energy averaged over any [REDACTED] consecutive Contract Years.

(f) Seller defaults under any material agreement with any third party relating to the ownership, interconnection, operation, transmission from, maintenance or repair of the Facility, and fails to cure such default within the time required under such agreement, after the expiration of applicable notice, cure and waiver periods, resulting in the termination of such material agreement without a replacement or substitute thereof obtained within the earlier of (i) sixty (60) days following such termination and (ii) the needed timeliness to allow Seller to continue performance under and in compliance with this Agreement.

(g) Buyer receives notice of foreclosure of the Facility or any part thereof by a Lender, mechanic or materialman, or any other holder, of an unpaid lien or other charge or encumbrance, if the same has not been stayed, paid, or bonded around within ten (10) days.

(h) After the Commercial Operation Date, Seller fails to maintain any Required Facility Documents, Permits, land rights, interconnection rights or other material rights necessary to own or operate the Facility, and such Required Facility Documents, Permits, land rights, interconnection rights or other material rights necessary to own or operate the Facility have not been replaced within the earlier of (i) sixty (60) days following such termination and (ii) the expiration of applicable notice, cure and waiver periods.

11.2 Remedies for Failure to Deliver/Receive Prior to Termination.

11.2.1. Remedy for Seller's Failure to Deliver. If Seller fails to deliver all or part of the Net Output and associated RECs required to be delivered under this Agreement, and such failure is not excused under the terms hereof or by Buyer's failure to perform, then Seller shall pay Buyer within five (5) Business Days after invoice receipt, an amount equal to (i) Buyer's Cost to Cover multiplied by the Net Output not delivered, (ii) additional transmission charges, if any,

reasonably incurred by Buyer in moving replacement energy to the Point of Delivery or if not there, to such points in Buyer's control area as are determined by Buyer, and (iii) any additional reasonable and direct cost or expense incurred as a result of Seller's failure to deliver (but not including any penalties, ratcheted demand or similar charges). The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

11.2.2. Remedy for Buyer's Failure to Purchase. If Buyer fails to receive or purchase all or part of the Net Output required to be purchased under this Agreement, and such failure is not excused under the terms hereof or by Seller's failure to perform, then Buyer shall pay Seller, on the earlier of the date payment would otherwise be due in respect of the month in which the failure occurred or within five (5) Business Days after invoice receipt, an amount equal to (i) Seller's Cost to Cover multiplied by the amount of Net Output not purchased, and (ii) any additional reasonable and direct cost or expense incurred as a result of Buyer's failure to receive or purchase. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation thereof.

11.2.3. Remedy for Seller's Failure to Sell and Deliver Ancillary Services or Capacity Rights. Seller shall be liable for Buyer's actual damages in the event Seller fails to sell or deliver all or any portion of the Ancillary Services or Capacity Rights to Buyer as required hereunder, or if Seller sells or delivers all or any portion of the Ancillary Services or Capacity Rights to a person other than Buyer.

11.3 Termination and Remedies. Upon the occurrence of, and during the continuation of, an Event of Default, the non-defaulting Party shall be entitled to all remedies available under this Agreement and at law or in equity, and may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the defaulting Party no less than one Business Day before such termination date; *provided, however,* that as a precondition to Seller's exercise of this termination right, Seller must also provide copies of such notice to the notice addresses set forth in Section 22 for Buyer with such copies addressed to the "President" and the "General Counsel" of Buyer. Such copies shall be sent by registered overnight delivery service or by certified or registered mail, return receipt requested and shall state prominently therein in type font no smaller than fourteen (14) point all-capital letters that "THIS IS A TERMINATION NOTICE UNDER A RENEWABLE PPA. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED," and shall state therein any amount purported to be owed and wiring instructions, or the nature of any non-payment default alleged. Seller shall not have any right to terminate this Agreement if the default that gave rise to the termination right is cured within the five (5) Business Days of Buyer's receipt of such notice. Further, during the continuation of default by the other Party, and until it has recovered all damages incurred on account of such default by the other Party, without exercising its termination right, a party may offset its damages against any payment due the other Party. The rights contemplated by this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. In the event of a termination hereof:

(a) Each Party shall pay to the other all amounts due the other hereunder for all periods prior to termination, subject to offset by the non-defaulting Party against damages incurred by such Party.

(b) The amounts due pursuant to Section 11.3(a) shall be calculated and paid within thirty (30) days after the billing date for such charges and shall bear interest thereon at the Contract Interest Rate from the date of termination until the date paid. The foregoing does not extend the due date of, or provide an interest holiday for, any payments otherwise due hereunder.

(c) Except in circumstances in which a remedy provided for in this Agreement is described as a Party's sole or exclusive remedy before and after the effective date of termination, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement (including Section 24.6).

(d) Without limiting the generality of the foregoing, the provisions of Sections 4.5, 5.4, 5.7, 6.2.3, 6.3, 6.6.5, 6.6.6, 10.2, 10.3, 10.4, 10.5, 11.4, 11.5, 11.6, 12, 20.3 and 23 shall survive the termination hereof.

11.4 Termination of Duty to Buy: Memorandum of Agreement. If this Agreement is terminated because of a default by Seller, neither Seller, nor any successor to Seller with respect to the ownership of the Facility (for whom Seller acts herein as agent), may thereafter require or seek to require Buyer to purchase Output from the Facility under PURPA (on account of its status as a QF), or any other Requirements of Law, for any periods that would have been within the Term had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require Buyer to do so. On or before the Effective Date, the Parties shall execute and Buyer shall record at its cost, in the appropriate real property records of the counties in which the Facility or Premises are situated, and of the U.S. Bureau of Land Management or other federal agency, as applicable, a memorandum in the form of Exhibit 11.4 to provide constructive notice to third parties of Seller's agreements under this Section 11.4.

11.5 Termination Damages. If this Agreement is terminated as a result of an Event of Default by one of the Parties, termination damages shall be determined. Termination damages are in addition to all other amounts owed under this Agreement. The Termination Payment shall be calculated by the non-defaulting Party within a reasonable period after termination of the Agreement. The Termination Payment owed pursuant to this Section shall be due within five (5) Business Days after the non-defaulting Party gives the defaulting Party notice of the amount due. The non-defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the defaulting Party for economic benefits accruing to the non-defaulting Party as a result of the defaulting Party's default. A Party's rights with respect to a default by the other Party under Sections 11.1.1 and 11.1.2, as applicable, are cumulative, such that the exercise of one or more rights shall not constitute a waiver of any other rights, with the other Party remaining fully liable for any remaining deficiency.

11.6 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 hereof. "Commercially reasonable efforts" by Seller shall require Seller to (i) use commercially reasonable efforts to maximize the price for energy received by Seller from third parties, including entering into an enabling agreement with, or being affiliated with, one or more power marketers of nationally recognized standing to market such Net Output (and associated RECs) not purchased or accepted by Buyer,

and (ii) if Seller is the defaulting Party, prior to selling to a third party such RECs unbundled from the Net Output, offer to sell to Buyer such RECs at the REC Price Component to the extent permitted by the Generation Interconnection Agreement and Requirements of Law.

11.7 Security. Buyer may, in addition to pursuing any and all other remedies available at law or in equity, proceed against any security held by Buyer in whatever form to reduce any amounts that Seller owes Buyer arising from such default.

11.8 Cumulative Remedies. The rights and remedies provided to each Party hereunder are cumulative and not exclusive of any rights or remedies of such Party.

11.9 Right of First Offer for Facility Output. In the event of any termination hereof by Buyer pursuant to Section 11.1.2, in addition to Buyer's rights under this Agreement, Buyer shall have a right of first offer (the "Covered Facility Right of First Offer") to, and Buyer shall have a right of first offer on all of the output of any solar-powered generation facility (a "Covered Facility") that from time to time may be constructed by Seller or any Affiliate of Seller on the Premises, up to (but not to exceed) an amount equal to the Expected Energy at the Contract Price.

The Covered Facility Right of First Offer shall be exercisable by Buyer through the earlier of (i) the fifth (5th) anniversary date of Buyer's notice of termination, and (ii) the last day of the original Term had this Agreement not been terminated by Buyer. Seller shall provide Buyer with no less than fifteen (15) days' (but no more than twelve (12) months') prior written notice of the anticipated commercial operation date for any Solar Panels or Inverters constituting part of a Covered Facility and not previously subject to Buyer's Covered Facility Right of First Offer. Buyer shall notify Seller within sixty (60) days as to whether Buyer elects to purchase the output of such portions of the Covered Facility. If Buyer elects to purchase the output of such portions of the Covered Facility, such output (along with associated RECs) shall be sold to Buyer for the Contract Price that would have applied to Net Output and associated RECs purchased by Buyer hereunder had this Agreement remained in effect, at the rates indicated in Exhibit 5.1 until the last day of the original Term had this Agreement not been terminated by Buyer. Buyer shall not have a Covered Facility Right of First Offer (a) with respect to the output of any portion of the Covered Facility that has been offered to Buyer pursuant to this Section 11.9 on an earlier occasion and not been accepted by Buyer, or (b) with respect to any output that would cause the total output purchased by Buyer pursuant to its Covered Facility Right of First Offer to exceed the amount of the Expected Energy.

SECTION 12 INDEMNIFICATION AND LIABILITY

12.1 Indemnities.

12.1.1. Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 12.1.7, Seller shall release, indemnify and hold harmless Buyer, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "**Buyer Indemnitees**") against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including reasonable legal costs and attorney's fees, both at trial and on appeal, whether or not

suit is brought) (collectively, “**Liabilities**”) resulting from, or arising out of, or in any way connected with, the performance by Seller of its obligations hereunder, or relating to the Facility, for or on account of (i) Environmental Contamination caused by Seller, or (ii) injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any person or entity, excepting only to the extent such Liabilities as may be caused by the negligence or willful misconduct of any person or entity within the Buyer Indemnitees. Nothing in this Section 12.1.1 will limit the indemnity obligations of Seller set forth in Section 6.3.

12.1.2. Indemnity by Buyer. To the extent permitted by Requirements of Law and subject to Section 12.1.7, Buyer shall release, indemnify and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “**Seller Indemnitees**”) against and from any and all Liabilities resulting from, or arising out of, or in any way connected with, the performance by Buyer of its obligations hereunder for or on account of (i) Environmental Contamination caused by Buyer, or (ii) injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any person or entity, excepting only to the extent such Liabilities as may be caused by the negligence or willful misconduct of any person or entity within the Seller Indemnitees.

12.1.3. Additional Cross Indemnity. Without limiting Sections 12.1.1 and 12.1.2, and subject to Section 12.1.7, Seller shall release, indemnify and hold harmless the Buyer Indemnitees from and against all Liabilities related to Net Output prior to its delivery by Seller at the Point of Delivery, and Buyer shall release, indemnify and hold harmless the Seller Indemnitees from and against all Liabilities related to Net Output once delivered to Buyer at the Point of Delivery as provided herein, except in each case to the extent such Liabilities are attributable to the negligence or willful misconduct or a breach of this Agreement by any member of the Buyer Indemnitees or the Seller Indemnitees, respectively, seeking indemnification hereunder.

12.1.4. 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 Section 12 may apply, the indemnified Party shall notify the indemnifying Party in writing of such fact. The indemnifying Party shall assume the defense thereof with counsel designated by such Party and 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.

12.1.5. Failure to Defend. If the indemnifying Party fails to assume the defense of a claim meriting indemnification, the indemnified Party may at the sole expense of the indemnifying Party, contest, settle, or pay such claim; *provided however*, 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.

12.1.6. No Dedication. Nothing herein shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party hereto. No

undertaking by one Party to the other under any provision hereof shall constitute the dedication of Buyer's facilities or any portion thereof to Seller or to the public, nor affect the status of Buyer or Seller as an independent individual or entity.

12.1.7. Consequential Damages. **NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, DELAY DAMAGES, BUYER AND SELLER COST TO COVER DAMAGES, SECTION 11.2.3 CAPACITY RIGHTS LOSS DAMAGES, INDEMNIFICATION FOR THIRD PARTY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, ARE NOT INTENDED BY THEM TO REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES.**

SECTION 13 INSURANCE

13.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-" by the A.M. Best Company the insurance coverage specified on **Exhibit 13** during the periods specified on **Exhibit 13**.

13.2 Certificates and Certified Copies of Policies. Seller shall provide Buyer with a certified "true and correct" copy of the insurance policies, provisions and endorsements contemplated by **Exhibit 13** within ten (10) days after the date by which such policies are required to be obtained (as set forth in **Exhibit 13**). The certificate (a) shall not include the legend "certificate is not evidence of coverage" or any statement with similar effect, (b) the insurer shall have a firm obligation to provide Buyer with thirty (30) days prior written notice of coverage modifications (not merely an obligation to "endeavor" or words of similar effect), and (c) shall be endorsed by a person who has authority to bind the insurer. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

SECTION 14 FORCE MAJEURE

14.1 Definition of Force Majeure. "**Force Majeure**" or "an event of Force Majeure" means an event that (a) is not reasonably anticipated as of the date hereof, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party's negligence or failure to act, and (d) could not be overcome by the affected Party's use of reasonable due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; fire; explosion; civil disturbance; sabotage; or action or restraint by court order or public or Governmental Authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent

reasonable, such court or government action). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller's ability to sell, or Buyer's ability to purchase, Net Output, Ancillary Services, Capacity Rights, or RECs at a more advantageous price than is provided hereunder; (ii) the cost or availability or unavailability of fuel or motive force to operate the Facility; (iii) economic hardship, including lack of money; (iv) any breakdown or malfunction of Facility equipment (including any serial equipment defect) that is not directly caused by an independent event of Force Majeure; (v) the imposition upon a Party of costs or taxes allocated to such Party under Section 5; (vi) delay or failure of Seller to perform under any Required Facility Document; (vii) any delay, alleged breach of contract, or failure by the Transmission Provider or Interconnection Provider; (viii) curtailment or suspension of transmission or directive from the Transmission Provider or Interconnection Provider to curtail or suspend deliveries; (ix) a disconnection or interruption of interconnection service under the Generation Interconnection Agreement as a result of Seller's acts or omissions; (x) maintenance upgrade or repair of any facilities or right of way corridors constituting part of or involving Interconnection Facilities, performed by or for Seller (except for repairs made necessary as a direct result of an event of Force Majeure); (xi) Seller's failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to Transmission Provider or Interconnection Provider; (xii) any event attributable to the use of Interconnection Facilities for deliveries of Output to any party other than Buyer; or (xiii) failure of Seller to take any action, or refrain from taking any action, in accordance with all applicable Permits, including any required environmental mitigation measures. Notwithstanding anything to the contrary herein, in no event will the increased cost of electricity, transmission, Solar Panels or tariffs or taxes thereupon, steel, labor, or transportation, or changes in taxes or tax laws, including the cessation or termination of any tax credits or tax rebates, constitute an event of Force Majeure.

14.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations hereunder because of an event of Force Majeure, both Parties shall be excused from the performance affected by the event of Force Majeure, provided that:

14.2.1. the Party affected by the Force Majeure, shall, within five (5) days after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

14.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure; and

14.2.3. the affected Party shall use diligent efforts to remedy its inability to perform.

14.3 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure, or with respect to payment obligations, shall be excused by the Force Majeure.

14.4 Strikes. Notwithstanding any other provision hereof, neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.5 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations hereunder for a period exceeding two hundred-seventy (270) consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the effects of the Force Majeure with all reasonable dispatch), then the Party not affected by the Force Majeure event, with respect to its obligations hereunder, may terminate this Agreement by giving ten (10) days prior notice to the other Party. Upon such termination, neither Party will have any liability to the other with respect to the period following the effective date of such termination; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising hereunder before the effective date of such termination.

SECTION 15 MISO MEMBERSHIP

Nothing in this Agreement shall be interpreted to require Buyer to remain a transmission owning member of MISO. If Buyer ceases to be a transmission owning member of MISO, or if Buyer otherwise desires for the Facility to be a generation resource in a regional transmission organization other than MISO, the Parties will amend this Agreement to preserve the economic benefits of the Agreement for both Parties.

SECTION 16 CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Kentucky, excluding any choice of law rules that may direct the application of the laws of another jurisdiction. The Parties intend that this Agreement be a "forward contract" between two "forward contract merchants" within the meanings given such terms in the United States Bankruptcy Code; provided that neither Party shall be in breach of this Agreement if a court determines that is not the case.

SECTION 17 PARTIAL INVALIDITY

The Parties do not intend to violate any laws governing the subject matter hereof. If any of the terms hereof are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms hereof shall remain in effect. The Parties shall use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under applicable law, (b) give effect to the intent of the Parties in entering hereinto, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

SECTION 18 SEVERAL OBLIGATIONS; NON-WAIVER

18.1 Several Obligations. Nothing contained herein shall be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or liability on or between the Parties.

18.2 Non-Waiver. No waiver of any provision hereof shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is executed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions hereof shall not be construed as a waiver of any other failure, whether of a like kind or different nature.

SECTION 19 GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. During the Term, Seller shall maintain all Permits required, as applicable, for the construction, operation, or ownership of the Facility.

SECTION 20 SUCCESSORS AND ASSIGNS

20.1 Restriction on Assignments. Except as expressly provided in this Section 20, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

20.2 Assignment.

20.2.1. Binding Nature. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.

20.2.2. Permitted Assignments. Notwithstanding Section 20.1, either Party may, without the need for consent from the other Party (but with notice to the other Party, including the names of the assignees), (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds therefrom in connection with any financing or other financial arrangements; (b) transfer or assign this Agreement to an Affiliate of such Party that is a Qualified Transferee; or (c) transfer or assign this Agreement to any party to whom a Controlling Interest in Seller has been sold, transferred or assigned, subject to the limitation in Section 20.2.3; provided, however, that Seller shall not transfer, sell, encumber or assign this Agreement or any interest herein to any Affiliate of Buyer without the prior written consent of Buyer. Except with respect to collateral assignments for financing purposes and also except as otherwise provided above in the immediately preceding sentence, in every assignment hereof, (i) the assignee must agree in writing to be bound by the terms and conditions hereof, and be a Qualified Transferee, and (ii) the assignor shall remain liable for its obligations hereunder. The Party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs of assignment.

20.2.3. Controlling Interest in Seller. No Controlling Interest in Seller may be sold, transferred or assigned (whether through a single transaction or a series of transactions over time) without Buyer's prior written approval, not to be unreasonably withheld, of the transferee with respect to such Controlling Interest; provided that a sale, transfer or assignment of a Controlling Interest shall not require Buyer's prior written approval so long as such sale, transfer or assignment (1) does not result in Seller being owned, managed or controlled by a transferee that is not a Qualified Transferee, or (2) is pursuant to a Tax Equity Financing.

20.3 Assignment to RUS. The RUS is a lender to Buyer. Notwithstanding any other provision of this Agreement to the contrary, Buyer, without the approval of Seller, may assign, transfer, mortgage or pledge this Agreement to create a security interest for the benefit of the United States of America (the “**Government**”), acting through the Administrator of the RUS (the “**Administrator**”), and its other lenders. Thereafter, the Administrator or such other lenders, without the approval of Seller, may (a) cause this Agreement to be sold, assigned, transferred, or otherwise disposed of to a third party pursuant to the remedies with respect to such security interest or in lieu of the exercise of such remedies in connection with a debt settlement, or (b) if the Government first acquires this Agreement pursuant to 7 U.S.C § 907, sell, assign, transfer or otherwise dispose of this Agreement to a third party; *provided*, that in either case at the time of such initial disposition (i) Buyer is in default of its obligations to the Government or such other lenders that are secured by such security interest and the Administrator or such other lender has given Seller notice of such default; and (ii) the Administrator or such other lender has given thirty (30) days’ prior notice of its intention to sell, assign, transfer or otherwise dispose of this Agreement indicating the identity of the intended third party assignee or purchaser. No permitted sale, assignment, transfer, mortgage, pledge or other disposition under this Section 20.3 shall release or discharge Buyer from its obligations under this Agreement.

20.4 Right of First Offer of Sale of the Facility.

20.4.1. Offered Assets. If following the Commercial Operation Date Seller intends to sell the Facility or any part of the Facility or to sell (individually or in the aggregate) a Controlling Interest in Seller or the Facility (the “**Offered Assets**”), it shall first offer the Offered Assets to Buyer. Seller’s offer shall set forth the terms and conditions of the offer in writing and in reasonable detail. Seller shall promptly answer any questions that Buyer may have concerning the offered terms and conditions and shall meet with Buyer to discuss the offer. The provisions of this Agreement will bind any successor or transferee of Seller as if such successor or transferee were the Seller.

20.4.2. Buyer’s Rejection of Offer; Revival of Offer. If Buyer does not accept the offered terms and conditions within thirty (30) days after receiving Seller’s offer or after Buyer accepts the offered terms and conditions the Parties are unable, despite using commercially reasonable efforts, to execute a power purchase agreement, Seller may (subject to Buyer’s rights under Section 20.2) enter into an agreement to sell the Offered Assets to a third party on terms and conditions no more favorable in the aggregate to the third party than those offered to Buyer. If Seller wishes to enter into an agreement with a third party on terms more favorable to the third party than those previously offered to Buyer under this Section, Seller shall first offer the revised terms and conditions to Buyer under this Section 20.4.

20.4.3. Buyer’s Acceptance of Offer. If Buyer accepts an offer made by Seller under this Section, the Parties shall within a further sixty (60) days enter into an acquisition agreement that incorporates the terms and conditions of Seller’s offer.

SECTION 21
ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, proposals, representations, negotiations,

discussions or letters, whether oral or in writing, regarding the subject matter hereof. No modification hereof shall be effective unless it is in writing and executed by both Parties.

**SECTION 22
NOTICES**

22.1 Addresses and Delivery Methods. All notices, requests, statements or payments shall be made to the addresses set out below. In addition, copies of a notice of termination of this Agreement under Section 11.3 shall contain the information required by Section 11.3 and shall be sent to the then-current President and General Counsel of Buyer. Notices required to be in writing shall be delivered by letter, electronic mail, or facsimile; provided if notice is delivered by electronic mail or facsimile, the notifying Party shall also place in the mail a copy of such notice within one (1) Business Day. Notice by electronic mail, facsimile or hand delivery shall be deemed to have been given when received or hand delivered; provided automatic replies shall not constitute notice for electronic mail and the burden of proving receipt of electronic mail by the receiving Party shall be on the notifying Party. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt.

To Seller: Community Energy Solar, LLC
[Redacted]
[Redacted]
[Redacted]
[Redacted]

To Buyer: Robert W. Berry
President & CEO
Big Rivers Electric Corporation
201 Third Street, P.O. Box 24
Henderson, KY 42419-0024
[Redacted]
Fax: 270-827-2558

with a copy to: Legal Department
Big Rivers Electric Corporation
201 Third Street, P.O. Box 24
Henderson, KY 42419-0024
Email: regulatory@bigrivers.com
Fax: 270-827-2558

22.2 Changes of Address. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this Section.

22.3 Notices to Senior Lenders. The requirements concerning notice by Buyer to Senior Lenders, if any, are set forth in the Lender Consent, if any.

SECTION 23 CONFIDENTIALITY

23.1 Confidential Business Information. The following constitutes “**Confidential Business Information**,” whether oral or written: (a) the Parties’ proposals and negotiations concerning this Agreement, made or conducted prior to the Effective Date, (b) the proprietary terms hereof, (c) information provided under Section 6.10.1, (d) the actual charges billed to Buyer hereunder, (e) any information delivered by Buyer to Seller prior to the Effective Date relating to the market prices of energy or RECs and methodologies for their determination or estimation, (f) information provided by one Party to the other pursuant hereto, (g) all negotiations pursuant to Section 24.1 and (h) any of the foregoing delivered by an Affiliate of a Party or employee or agent thereof to the other Party or an Affiliate of that party or employee or agent thereof; provided, however, that “Confidential Business Information” shall not include information that (i) is publicly available as of the date hereof, or becomes publicly available during the Term through no fault of the recipient Party; (ii) can be documented was independently developed by the recipient Party; and/or (iii) is disclosed to the recipient Party from an ultimate source other than the protected Party, without breach of this Agreement by the recipient Party. Seller and Buyer each agree to hold such Confidential Business Information wholly confidential, except as provided herein. Such Confidential Business Information may only be used by the Parties for purposes related to the approval, administration or enforcement hereof and for no other purpose.

23.2 Duty to Maintain Confidentiality. Each Party agrees not to disclose Confidential Business Information to any other person (other than its members, Affiliates, counsel, auditors, consultants, lenders, prospective lenders, purchasers, prospective purchasers, contractors constructing or providing services to the Facility, employees, officers and directors who agree to be bound by the provisions of this Section and provided the receiving Party remains liable for any breach of such confidentiality restrictions by such persons), without the prior written consent of the other Party; *provided however*, that: (a) either Party may disclose Confidential Business Information, if and to the extent such disclosure is required: (i) by Requirements of Law, (ii) in order for Buyer to receive regulatory recovery of expenses related to this Agreement, (iii) pursuant to an order of a court or regulatory agency, or (iv) in order to enforce this Agreement or to seek approval hereof, and (b) notwithstanding any other provision hereof, Buyer may in its sole discretion disclose or otherwise use for any purpose in its sole discretion the Confidential Business Information described in Section 23.1(d) or 23.1(e).

23.3 Buyer Regulatory Compliance. The Parties acknowledge that Buyer is required by law or regulation to report certain information that could embody Confidential Business Information from time to time. Such reports may include models, filings, reports of Buyer’s net power costs, general rate case filings, power cost adjustment mechanisms, FERC-required reporting such as those made on FERC Form 1, Form 12, or Form 714, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource planning reports, reports to entities such as NERC, MISO, RE, a GIS, RUS, or similar or successor organizations, forms, filings, or reports, the specific names of which may vary by jurisdiction, along with supporting documentation. Additionally, in regulatory proceedings in all state and

federal jurisdictions in which it does business, Buyer will from time to time be required to produce Confidential Business Information. Notwithstanding any provision of this Agreement to the contrary, Buyer may use its business judgment in its compliance with all of the foregoing and the appropriate level of confidentiality it seeks for such disclosures, and Buyer may submit Confidential Business Information in regulatory proceedings or filings without notice to Seller.

23.4 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 23 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

23.5 News Releases and Publicity. Before Seller issues any news release or publicly distributed promotional material regarding the Facility, Seller shall first provide a copy thereof to Buyer for its review and approval. Any use of Buyer's name in such news release or promotional material requires Buyer's prior written consent. Seller may make such public statements, filings and provide other materials publicly in connection with obtaining Permits and other Required Facility Documents, subject to Seller's compliance in all respects with Sections 3.2.9 and 4.5 hereof.

SECTION 24 DISPUTE RESOLUTION

24.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of, related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at least one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter if neither Party has requested that the dispute be mediated or both Parties do not agree to mediate the dispute in accordance with Section 24.2 below. All negotiations pursuant to this clause are confidential.

24.2 Mediation. If the dispute is not resolved within thirty (30) days after the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may request that the matter be submitted to nonbinding mediation. If the other Party agrees to mediate the matter in writing, the Parties shall participate in mediation which will be conducted in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (including Procedures for Large, Complex Construction Disputes) of the AAA, as amended and effective on July 1, 2015 (the "**Mediation Procedures**"), notwithstanding any Dollar amounts or Dollar limitations contained therein.

(a) Following the other Party's agreement to mediate, if applicable, the Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing ("**Mediation Notice**") of such Party's desire that the dispute

be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party's written agreement to such mediation.

(b) The mediation shall be conducted through, by and at the office of AAA located in the Mediation Location.

(c) The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable mediator. If the Parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA's Arbitration Administrator shall send a list and resumes of three (3) available mediators to the Parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both Parties have failed to respond to the AAA's Arbitration Administrator within five (5) days after receiving the list or because one or both Parties have failed to strike a name from the list or because both Parties strike the same name, the AAA's Arbitration Administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 24.2(c), and such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

(d) The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the Dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 24.2(f). The costs of the mediation shall be borne equally by the Parties, provided that the Parties shall each bear their own expenses and attorney fees.

(e) All verbal and written communications between the Parties and issued or prepared in connection with this Section 24.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

(f) The initial mediation meeting between the Parties and the mediator shall be held within twenty (20) days after the Mediation Notice. Either Party may terminate the mediation process upon or after the earlier to occur of (A) the failure of the initial mediation meeting to occur within twenty (20) days after the date of the Mediation Notice, (B) the passage of thirty (30) days after the date of the Mediation Notice without the dispute having been resolved, or (C) such time as the mediator makes a finding that there is no possibility of resolution through mediation.

(g) All deadlines specified in this Section 24.2 may be extended by mutual agreement.

24.3 Place of Contract Formation; Choice of Forum. Seller and Buyer acknowledge and agree that this Agreement has been made and entered into as of the date first set forth above in the Mediation Location. Each Party irrevocably consents and agrees that any legal action or

proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement shall be brought exclusively in the state and federal courts in or for Henderson County, Kentucky except for matters within the exclusive jurisdiction of a Governmental Authority. Except for matters within the exclusive jurisdiction of a different Governmental Authority, by execution and delivery hereof, each Party (a) accepts the exclusive jurisdiction of such courts and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such courts over each Party for the purpose of any proceeding related to this Agreement, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such courts arising out of such documents or actions, and (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such courts (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith.

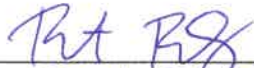
24.4 Settlement Discussions. No statements of position or offers of settlement made in the course of the dispute resolution process described in this Section may be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

24.5 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING HEREINTO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names as of the date first above written.

MCCRACKEN COUNTY SOLAR LLC

By: 
Name: Brent Beerley
Title: Manager

BIG RIVERS ELECTRIC CORPORATION

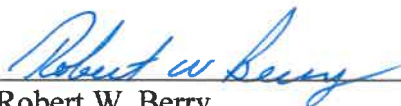
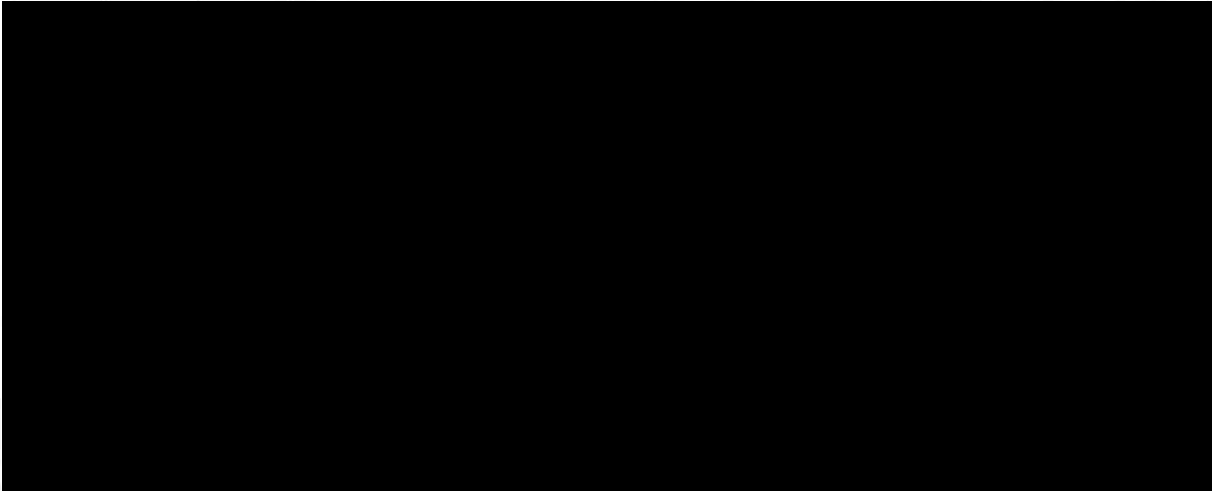
By: 
Name: Robert W. Berry
Title: President and CEO

EXHIBIT A
ESTIMATED OUTPUT

Seller to provide one (1) electronic and hard copy of the solar plant performance estimation report for the McCracken County solar-generation projects using PVSYST or a comparable Solar Performance Modeling Program including, at a minimum, estimated hourly MW generation Output in MWh/h for the site and Facility. Upon Commercial Operations, Seller shall provide an updated Exhibit A based on completed construction and Seller's designated Licensed Professional Engineer will provide certification as part of Commercial Operations that the estimated energy Output included in this Exhibit A is correct as calculated using PVSYST or comparable Solar Performance Modeling Program.



Expected Energy (Year 1) = [REDACTED]

All amounts are based on an estimate of the first full Contract Year, which shall be reduced by an annual degradation factor of 0.5% per Contract Year.

EXHIBIT C

NERC EVENT TYPES

Event Type	Description of Outages
U1 ¹	<u>Unplanned (Forced) Outage—Immediate</u> – An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.
U2 ¹	<u>Unplanned (Forced) Outage—Delayed</u> – An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service.
U3 ¹	<u>Unplanned (Forced) Outage—Postponed</u> – An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service.
SF ¹	<u>Startup Failure</u> – An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs.
MO	<u>Maintenance Outage</u> – An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next Planned Outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.)
ME	<u>Maintenance Outage Extension</u> – An extension of a Maintenance Outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO.
PO	<u>Planned Outage</u> – An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year. (Boiler overhauls, turbine overhauls or inspections are typical Planned Outages.)
PE	<u>Planned Outage Extension</u> – An extension of a Planned Outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO.

¹ These event types are all contributors to the FOR & EFOR calculations in the reports section.

EXHIBIT D

EXAMPLE CALCULATION OF BUYER'S COST TO COVER

Buyer's Cost to Cover is calculated as follows:

(Average Relevant DALMP Price + [RECs replacement price or REC Price Component]) – Contract Price.

Example:

For a given Calculation Period, assume the following:

- A. Average Relevant DALMP Price: [REDACTED]
- B. Buyer, after using commercially reasonable efforts to do so, was unable to replace the RECs.
- C. Contract Price then in effect: [REDACTED]

Buyer's Cost to Cover is therefore calculated as follows:

[REDACTED]

EXHIBIT E

APPROVED LICENSED PROFESSIONAL ENGINEERS

- ICF International, Inc.;
- Leidos Holdings Inc.;
- Black & Veatch Holding Company;
- John Wood Group PLC; and
- DNV GL AS.

EXHIBIT F

PERMITS

FERC Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility

FAA Determination of No Hazard to Air Navigation, or “Do Not Exceed Notice Criteria” result from FAA Notice Criteria Tool

Nationwide Permit under Section 404(e) of the Clean Water Act, issued by the U.S. Army Corps of Engineers

Construction Certificate approved by the Kentucky State Board on Electric Generation and Transmission Siting

KPDES Construction General Permit issued by the Kentucky Division of Water

Approval of Proposed Construction in the 100-year Floodplain by the Kentucky Division of Water Floodplain Management Section

Encroachment Permits issued by the Kentucky Department for Highways

County Conditional Use Permit, or equivalent, for the Project on the Project Site

County Electrical or Building Permit, or equivalent, for the Project

Crossing Agreements or Encroachment Agreements, or equivalent, for any utility crossings

EXHIBIT 2.2

CONSTRUCTION MILESTONES

1. On or before [REDACTED], Seller shall have provided Buyer with evidence of compliance with the insurance coverage requirements in accordance with Section 13.
2. On or before [REDACTED] Seller shall demonstrate that it has site control of the Premises.
3. On or before [REDACTED] Seller shall have entered into a system impact study agreement with the Transmission Provider.
4. On or before [REDACTED], Seller shall have achieved closing on financing for the Facility or provided Buyer with proof of financial capability to construct the Facility.
5. On or before [REDACTED], Seller shall have entered into one or more binding contracts for the purchase by Seller all of the equipment necessary for the Facility.
6. On or before [REDACTED] Seller shall have submitted applications for any required water supply and wastewater discharge Permits.
7. On or before [REDACTED], Seller shall have executed the Generation Interconnection Agreement.
8. Seller shall have provided Buyer with Credit Support on or before the deadlines required by Section 8.
9. On or before [REDACTED], Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformation facilities.
10. On or before [REDACTED], the step-up transformer and all other power electronics shall have been delivered to, and installed at, the Premises.
11. On or before [REDACTED] Seller shall have constructed Seller's Interconnection Facilities and such facilities shall be capable of being energized.
12. On or before [REDACTED], start-up testing of the Facility shall have commenced.
13. On or before [REDACTED], the Facility shall have been certified as an eligible renewable resource under the renewable portfolio or renewable energy standards of Kentucky and Ohio.
14. On or before [REDACTED] Seller shall have registered the Facility with the Center for Resource Solution's Green-e program and the Ohio SREC program.

15. Seller shall cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date.

EXHIBIT 2.6

BUYER'S INITIAL DESIGNATED REPRESENTATIVES

1. Authorized Representatives.

Buyer: Russ Pogue
Manager of Member Relations
Big Rivers Electric Corporation
201 Third Street, P.O. Box 24
Henderson, KY 42419-0024
Office: 270 844 6159

[REDACTED]
[REDACTED]

EXHIBIT 3.2.6

REQUIRED FACILITY DOCUMENTS

1. Obtained Required Facility Documents:

Licenses, Permits and Authorizations:

None

Construction and Operations and Maintenance:

None

Land Rights:

[Site Control Agreements and/or Leases executed as of the Effective Date]

2. To Be Obtained Required Facility Documents:

Licenses, Permits and Authorizations:

FERC Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility

FAA Determination of No Hazard to Air Navigation, or "Do Not Exceed Notice Criteria" result from FAA Notice Criteria Tool

Construction Certificate approved by the Kentucky State Board on Electric Generation and Transmission Siting

KPDES Construction General Permit issued by the Kentucky Division of Water

Approval of Proposed Construction in the 100-year Floodplain by the Kentucky Division of Water Floodplain Management Section

Encroachment Permits issued by the Kentucky Department for Highways

County Conditional Use Permit, or equivalent, for the Project on the Project Site

County Electrical or Building Permit, or equivalent, for the Project

Crossing Agreements or Encroachment Agreements, or equivalent, for any utility

crossings

Construction Agreements:

Generator Interconnection Agreement

Engineering, Procurement, and Construction (EPC) Agreement

Operations and Maintenance Agreements:

Leases

Easements

Crossing Agreements or Encroachment Agreements, or equivalent, for any utility crossings

Estoppels

Subordination and Non-Disturbance Agreements (if applicable)

Operations and Maintenance Agreement (if applicable)

Asset Management Agreement (if applicable)

EXHIBIT 4.5

REC ATTESTATION AND BILL OF SALE

[] (“Seller”) hereby sells, transfers and delivers to Buyer the RECs (including all Environmental Attributes and Environmental Attribute Reporting Rights) associated with the generation and delivery of energy to Buyer under the Power Purchase Agreement (Renewable Energy-Solar) between Seller and Buyer dated [] (the “PPA”), as described below, in the amount of one REC for each megawatt hour generated. Defined terms used in this REC Attestation and Bill of Sale (as indicated by initial capitalization) shall have the meaning set forth in the PPA.

Facility name and location: _____ Fuel Type: Solar
Capacity (MW AC): _____ Operational Date: _____
Energy Admin. ID no.: _____

<u>Dates</u>	<u>MWh generated</u>
_____	_____

Seller further attests, warrants and represents, under penalty of perjury, as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to Buyer is its one and only sale of all or any part of the RECs referenced herein;
- iii) the Facility generated and delivered to the grid the energy in the amount indicated above pursuant to the PPA; and
- iv) to the best of Seller’s knowledge, each of the RECs associated with the generation of energy for delivery under the PPA have been generated and sold by the Facility.

This REC Attestation and Bill of Sale confirms, in accordance with the PPA, the transfer from Seller to Buyer all of Seller’s right, title and interest in and to the REC associated with the generation of the energy from the Facility under the PPA as set forth above.

Seller's Contact Person: [_____]

WITNESS MY HAND,

[SELLER],

a [_____] [_____]

By _____

Its _____

Date: _____

This Attestation may be disclosed by Seller and Buyer to others, including the Center for Resource Solutions, and the public utility commissions having jurisdiction over Buyer, to substantiate and verify the accuracy of Buyer's advertising and public communication claims, as well as in Buyer's advertising and other public communications.

EXHIBIT 5.1

CONTRACT PRICE

The Contract Price is [REDACTED] throughout the Term; provided the Contract Price shall be adjusted as follows:

- The Contract Price assumes [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

EXHIBIT 6.1

DESCRIPTION OF FACILITY AND PREMISES

The Seller's Facility consists of a 60 MW (AC) solar-powered generation project located in McCracken County, Kentucky.

Seller's Facility consists [REDACTED]

[REDACTED] More specifically, the Facility includes:

Type (synchronous or inductive): [REDACTED]

A. Manufacturer's Nameplate Data:

Solar Panels

[REDACTED]

Inverters

[REDACTED]

Mounting

[REDACTED]

[REDACTED]

PV Array Characteristics:

[REDACTED]

Transformation

[REDACTED]

Total land required: [REDACTED]

Power factor requirements:

Rated Power Factor (PF) or reactive load (kVAR): Settable

Manufacturer's Power Curve for the TMEIC Solar Ware Ninja - PVU-L0840GR

B. Seller's Estimate of Facility Annual Output Under Ideal (Maximum) or Worst (Minimum) Conditions

Maximum kW Output ("Maximum Facility Delivery Rate"): [REDACTED]

Maximum kVA Output: [REDACTED]

Minimum kW Output: 0 kW Estimated kW Output: [REDACTED]

Maximum Generator Interconnection Agreement Delivery Rate: [REDACTED]

Nameplate Capacity Rating: 60,000 kW AC at -40 to 85° C

Station service requirements are described as follows: Estimated station service for tracking, lighting and other auxiliary energy requirements is estimated to be approximately [REDACTED] annually.

C. PV Panel output degradation factor: 0.5 % per year.

Description of Premises:

[REDACTED]

[REDACTED]

EXHIBIT 6.7.3

FORM OF FORECAST

[Example to be developed]

EXHIBIT 6.12

EXAMPLE CALCULATION OF OUTPUT GUARANTY

Annual Expected Energy:

.	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]

Annual Quantity of Net Output:

.	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]

Output Guarantee*:

.	[REDACTED]
.	[REDACTED]
.	[REDACTED]

* Seller Uncontrollable Minutes in the above examples are assumed to be zero.

Average Net Output: (over [REDACTED] Contract Years)

.	[REDACTED]
.	[REDACTED]
.	[REDACTED]

[REDACTED]

The Buyer's Cost to Cover during the [REDACTED]

Seller pays Buyer liquidated damages for 'Year #3 & #4' period as follows:

.	[REDACTED]
.	[REDACTED]
.	[REDACTED]

EXHIBIT 8.4

FORM OF LENDER CONSENT

This CONSENT AND AGREEMENT (this "Consent"), dated as of _____, 2020, is entered into by and among Buyer, a _____ (together with its permitted successors and assigns, "Buyer"), _____, in its capacity as [**Administrative Agent**] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, "Administrative Agent"), and _____, a _____ formed and existing under the laws of the State of _____ (together with its permitted successors and assigns, "Borrower"). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

- A. WHEREAS, Borrower intends to develop, construct, install, test, own, operate and use an approximately ___ MW solar-powered electric generating facility located _____, known as the _____ Project (the "Facility").
- B. WHEREAS, In order to partially finance the development, construction, installation, testing, operation and use of the Facility, Borrower has entered into that certain [**Financing Agreement**] dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), among Borrower, the financial institutions from time to time parties thereto (collectively, the "Lenders"), and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.
- C. WHEREAS, Borrower anticipates that, prior to the completion of construction of the Facility, it will seek an additional investor (the "Tax Investor") to make an investment in Borrower to provide additional funds to finance the operation and use of the Facility.
- D. WHEREAS, Buyer and Borrower have entered into that certain Power Purchase Agreement, dated as of _____ (collectively with all documents entered into in connection therewith that are listed on [Schedule A] attached hereto and incorporated herein by reference, as all are amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "PPA").
- E. WHEREAS, pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement"), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the "Financing Documents"), all of its right, title and interest in, to and under the PPA to Administrative Agent for the benefit of itself, the Lenders and each other

entity or person providing collateral security under the Financing Documents.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT

Buyer acknowledges the assignment referred to in Recital E above, consents to an assignment of the PPA pursuant thereto, and agrees with Administrative Agent as follows:

(A) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Borrower under the PPA, subject to applicable notice and cure periods provided in the PPA. Upon receipt of notice from Administrative Agent, Buyer agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the PPA and this Consent. Upon receipt of Administrative Agent's written instructions, Buyer agrees to make directly to Administrative Agent all payments to be made by Buyer to Borrower under the PPA from and after Buyer's receipt of such instructions, and Borrower consents to any such action.

(B) Buyer will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the PPA, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the PPA and in accordance with subparagraph 1(C) hereof, or (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the PPA, except as provided in the PPA.

(C) Buyer agrees to deliver duplicates or copies of all notices of default delivered by Buyer under or pursuant to the PPA to Administrative Agent in accordance with the notice provisions of this Consent. Buyer may deliver any such notices concurrently with delivery of the notice to Borrower under the PPA. Administrative Agent shall have the same period of time to cure the breach or default that Borrower is entitled to under the PPA if such default is the failure to pay amounts to Buyer which are due and payable by Borrower under the PPA, except that if Buyer does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the PPA, then as to Administrative Agent, the applicable cure period under the PPA shall begin on the date on which the notice is given to Administrative Agent. Buyer consents to the transfer of Borrower's interest under the PPA to the Lenders or Administrative Agent or their designees or assignees or any of them or a purchaser or grantee pursuant to the terms of the Financing Documents upon enforcement of such security at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, Buyer shall recognize the Lenders or Administrative Agent or their designees or assignees or any of them or other purchaser or grantee as the applicable party under the PPA (provided that such Lenders or Administrative Agent or their designees or assignees or purchaser or grantee assume the obligations of Borrower under the PPA, including satisfaction and compliance with all requirements of Article 8 of the PPA, and provided further that Buyer's rights with respect to the Facility are preserved in the event of any such transfer of Borrower's interest under the PPA).

(D) In the event Administrative Agent, the Lenders or their designees or assignees elect to perform Borrower's obligations under the PPA as provided in subparagraph 1(C) above, the recourse of Buyer against Administrative Agent, Lenders or their designees and assignees shall be limited to such parties' interests in the Facility, the Credit Support required under Article 8 of the PPA, and recourse against the assets of any party or entity that assumes the PPA or that enters into such new contract.

(E) In the event Administrative Agent, the Lenders or their designees or assignees succeed to Borrower's interest under the PPA, Administrative Agent, the Lenders or their designees or assignees shall cure any then-existing payment and performance defaults under the PPA, except any performance defaults of Borrower itself which by their nature are not susceptible of being cured and do not impair Buyer's rights under the PPA. Administrative Agent, the Lenders and their designees or assignees shall have the right to assign all or a pro rata interest in the PPA to a person or entity to whom Borrower's interest in the Facility is transferred, provided such transferee assumes the obligations of Borrower under the PPA. Upon such assignment, Administrative Agent and the Lenders and their designees or assignees (including their agents and employees, but excluding Seller) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

SECTION 2. REPRESENTATIONS AND WARRANTIES [Buyer shall have the right to qualify the factual information contained in this Section to ensure that such representation is a true statement as of the date of this Consent.]

Buyer, acting in its merchant function capacity (and therefore specifically excluding the knowledge of Buyer, acting in its transmission function capacity ("Buyer Transmission"), as to any of the matters stated below, and without imputation to Buyer of any knowledge whatsoever relating to the Buyer Transmission, whether as a result of information publicly posted to the open access same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:

(A) It (i) is a corporation duly formed and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby; and

(B) the execution, delivery and performance of this Consent and the PPA have been duly authorized by all necessary corporate action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made.

SECTION 3. NOTICES

All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and

(c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to Buyer:

[_____
[_____
[_____
Telephone No.: [_____
Telecopy No.: [_____
Attn: [_____]

If to Administrative Agent:

[_____
[_____
[_____
Telephone No.: [_____
Telecopy No.: [_____
Attn: [_____]

If to Borrower:

[_____
[_____
[_____
Telephone No.: [_____
Telecopy No.: [_____
Attn: [_____]

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above. Further, the Tax Investor shall be entitled to receive notices from Buyer by providing written notice to Buyer of Tax Investor's address for notices. Buyer's failure to provide any notice to the Tax Investor shall not be a breach of this Consent.

SECTION 4. ASSIGNMENT, TERMINATION, AMENDMENT AND GOVERNING LAW

This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and the Tax Investor and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). Buyer agrees to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and executed by the parties hereto. This Consent shall be governed by the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).

SECTION 4.1 ASSIGNMENT TO RUS

Notwithstanding any other provision herein, Buyer, without the approval of Seller or Administrative Agent, may assign, transfer, mortgage or pledge the PPA and this Agreement to create a security interest for the benefit of the United States of America (the "Government"), acting through the Administrator of the RUS (the "Administrator"), and its other lenders. [Hereafter, the Administrator or such other lenders, without the approval of Seller or Administrative Agent, may (1) cause this Agreement to be sold, assigned, transferred, or otherwise disposed of to a third party pursuant to the remedies with respect to such security interest or in lieu of the exercise of such remedies in connection with a debt settlement, or (2) if the Government first acquires the PPA and this Agreement pursuant to 7 U.S.C § 907, sell, assign, transfer or otherwise dispose of this Agreement to a third party; provided however, that in either case at the time of such initial disposition (a) Buyer is in default of its obligations to the Government or such other lenders that are secured by such security interest and the Administrator or such other lender has given Seller notice of such default; and (b) the Administrator or such other lender has given 30 days' prior notice of its intention to sell, assign, transfer or otherwise dispose of this Agreement indicating the identity of the intended third party assignee or purchaser. No permitted sale, assignment, transfer, mortgage, pledge or other disposition under this Section 4.1 shall release or discharge Buyer from its obligations under the PPA and this Agreement.]

SECTION 5. COUNTERPARTS

This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

SECTION 6. SEVERABILITY

In case any provision of this Consent, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

SECTION 7. ACKNOWLEDGMENTS BY BORROWER.

Borrower, by its execution hereof, acknowledges and agrees that notwithstanding any term to the contrary in the PPA, Buyer may perform as set forth herein and that neither the execution of this Consent, the performance by Buyer of any of the obligations of Buyer hereunder, the exercise of any of the rights of Buyer hereunder, or the acceptance by Buyer of performance of the PPA by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the PPA, (2) constitute a consent by Buyer to, or impute knowledge to Buyer of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) constitute a waiver by Buyer of any of its rights under the PPA. Borrower and Administrative Agent acknowledge hereby for the benefit of Buyer that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the PPA. Borrower shall have no rights against Buyer on account of this Consent.

SECTION 8. JURY TRIAL WAIVER

THE PARTIES EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

Buyer,
a _____

By: _____
Name: _____
Title: _____

_____,
a _____

By: _____
Name: _____
Title: _____

_____,
as Administrative Agent for the Lenders

By: _____
Name: _____
Title: _____

EXHIBIT 9.2

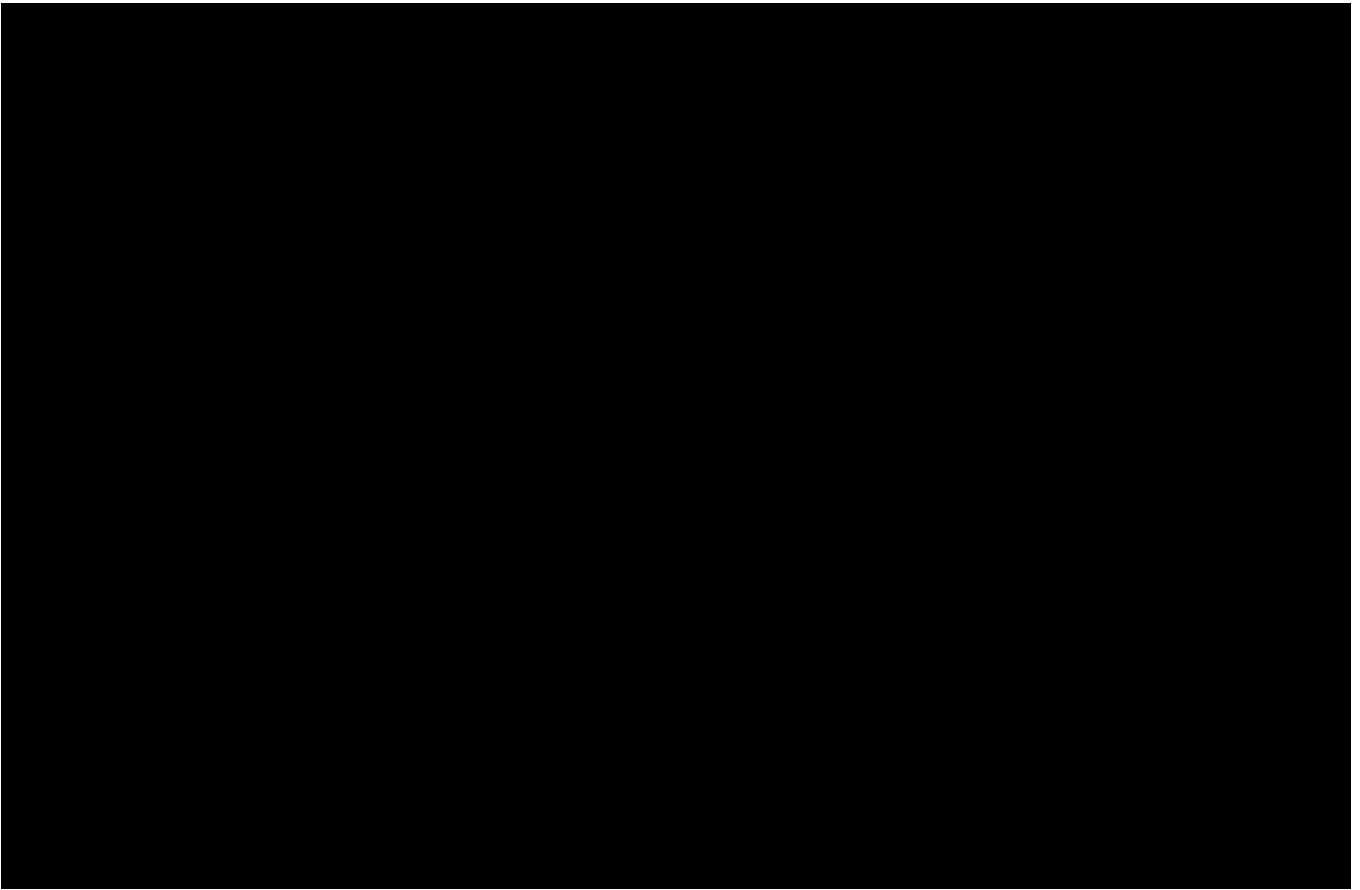


Exhibit 9.2 - 1

EXHIBIT 11.4

[note amend to reflect subsequent revisions to final Agreement]

FORM OF MEMORANDUM OF POWER PURCHASE AGREEMENT

WHEN RECORDED, MAIL TO:

BUYER

[address]

Attn: _____

MEMORANDUM OF POWER PURCHASE AGREEMENT

THIS MEMORANDUM OF POWER PURCHASE AGREEMENT (“Memorandum”), dated as of _____, 2020, is made by and between _____, a _____ limited liability company (“Seller”), and BUYER, a _____ (“Buyer”). Seller and Buyer are sometimes hereinafter referred to collectively as the “Parties” and individually as a “Party”.

RECITALS

A. Seller and Buyer have entered into that certain Power Purchase Agreement on the ___ day of _____, 2020 (the “Agreement”), pursuant to which Seller has agreed to construct, own, operate and maintain a solar-powered generation facility for the generation of electric energy to be located in _____ (as more particularly defined in the Agreement, the “Facility”), and upon completion of said Facility, to sell to Buyer the electric energy and capacity to be produced by the Facility as well as all associated “RECs” (as that term is defined in the Agreement), all on the terms and conditions set forth in the Agreement. The real property on which the Facility is to be constructed (the “Premises”) is more particularly described in the attached Exhibit “A”.

B. Seller and Buyer desire to provide record notice of certain terms and conditions of the Agreement pertaining to the Parties’ respective rights and obligations under the Agreement in the event the Agreement is terminated due to a default by Seller.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth in the Agreement and this Memorandum, Seller and Buyer agree as follows:

TERMS

1. The Premises. Seller acknowledges and agrees that the [leasehold interest in the] real property comprising the Premises, and all improvements and fixtures to be constructed thereon, including without limitation, the Facility, is and will be owned by Seller and shall hereafter be held, sold, conveyed, transferred, assigned, subdivided, leased, rented, encumbered, occupied and used subject to and in accordance with the Agreement and this Memorandum.

2. Covenants Running with the Land. The provisions of Section 11.4, 11.9, and 20.4 of the Agreement are and shall be deemed to be covenants running with the land and shall be binding upon and inure to the benefit of Seller and Buyer and their respective successors and assigns, including without limitation any person acquiring or owning an interest in the Premises or the Facility, and their respective heirs, executors, successors, assigns, administrators, devisees and representatives.¹

3. Notice.

a. Termination for Default. If the Agreement is terminated due to a default by Seller, neither Seller nor any Affiliate of Seller, nor any successor to Seller with respect to the ownership of the Facility or Premises (for whom Seller acts herein as agent) may thereafter require or seek to require Buyer to purchase energy or capacity from the Facility or any facility constructed on the Premises under the Public Utility Regulatory Policy Act of 1978, as amended from time to time ("PURPA"), or any other "Requirements of Law" on account of its status as a "QF" or "qualifying facility" (as those terms are defined in the Agreement), for any periods that would have been within the "Term" (as defined in the Agreement), had the Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require Buyer to do so. Seller, pursuant to Section 11.4 of the Agreement, has, on behalf of itself and its successors, waived its rights to require Buyer to so purchase such energy from the Facility in the event of such termination. Terms not defined herein are defined in the Agreement.

b. Survival. The terms and provisions of Section 11.4 of the Agreement shall survive the termination of the Agreement.

5. Effect of Memorandum. This Memorandum, and the rights and obligations of the parties hereunder, are subject to all of the terms and conditions of the Agreement. The Agreement is hereby incorporated by reference as if fully set forth herein.

6. Counterparts. This Memorandum may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, and all of which shall together constitute one and the same instrument.

7. Further Information. Further information regarding the specific terms and conditions of the Agreement may be requested from Buyer at [address], Attn: [addressee]. Disclosure of any such information shall be subject to the terms and conditions of a written confidentially agreement acceptable to Buyer in its sole and absolute discretion.

IN WITNESS WHEREOF, Seller and Buyer have executed and acknowledged this Memorandum as of the day and year first above written.

¹ Parties to consider including specifics here to ensure Memorandum is effective to put third parties on notice of rights to avoid third parties requesting full PPA given lack of information in this form of Memorandum. Alternatively, Seller requests that Buyer agree to use commercially reasonable efforts to redact Contract Price, estimated output and credit support details if requests for copies made prior to Kentucky PSC approval.

_____,
a _____ limited liability company

BUYER,
a _____

By _____
Name _____
Title _____

By _____
Name _____
Title _____

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2020 by _____, the _____ of _____,
a _____ limited liability company.

NOTARY PUBLIC

STATE OF _____)
: ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2020, by _____, the _____
of BUYER, a _____.

NOTARY PUBLIC

Exhibit "A"

Legal Description of the Premises

EXHIBIT 13

REQUIRED INSURANCE

From and after the delivery of full notice to proceed to the balance of plant contractor for the Facility and during the remainder of the Term of this Agreement:

1. Commercial general liability insurance against claims for personal injury (including bodily injury and death) and property damage with a limit of liability of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) general aggregate for combined bodily injury and property damage.
2. Excess/Umbrella liability insurance covering claims in excess of the underlying liability insurance described in paragraph 1, with a minimum ten million dollars (\$10,000,000) limit of liability per occurrence. The amounts of liability insurance described in paragraph 1 and this paragraph 2 may be satisfied by primary insurance or by any combination of primary and excess/umbrella insurance.
3. Workers' Compensation insurance to insure statutory liability for injury to Seller's employees in accordance with the Requirements of Law.



Your Touchstone Energy® Cooperative 

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

In the Matter of:

ELECTRONIC APPLICATION OF)	
BIG RIVERS ELECTRIC CORPORATION)	Case No.
FOR APPROVAL OF SOLAR POWER)	2020-00183
CONTRACTS)	

DIRECT TESTIMONY

OF

**MARK EACRET
VICE PRESIDENT ENERGY SERVICES**

ON BEHALF OF

BIG RIVERS ELECTRIC CORPORATION

FILED: June 24, 2020

**DIRECT TESTIMONY
OF
MARK EACRET**

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1 contract management, interface with the MISO Independent Market
2 Monitor, and performing a variety of official roles within the MISO structure.

3
4 **Q. Briefly describe your education and work experience.**

5 A. I graduated from Indiana University–Purdue University in Indianapolis with
6 a Bachelor of Science in Accounting and from Indiana University with a
7 Master of Business Administration with a concentration in Finance. I was
8 employed by CINergy and its predecessor companies from 1980 to 1991 in the
9 accounting function and, beginning in 1991, in the wholesale power function
10 managing the analytical support for the company's wholesale marketing and
11 trading functions. From 1999 through 2013, I worked with Ameren Corp
12 where initially my team and I provided analytical support to the company's
13 marketing and trading functions. In 2007, I assumed the additional
14 responsibility of Controller for Ameren's merchant generation operation,
15 Ameren Energy Resources (“AER”). In 2011, I became AER’s Controller and
16 Vice President of Business Services. Following Ameren’s 2013 sale of its
17 merchant generation function, I moved to Sunflower Electric Power
18 Corporation (“Sunflower”) in January 2014, as the Senior Manager of Market
19 Operations and Power Contracts. At Sunflower, I was part of the team that
20 transitioned Sunflower into the Southwest Power Pool’s (“SPP”) Integrated
21 Market. I assumed my current position with Big Rivers in April 2015.

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Q. Have you previously testified before this Commission?

A. Yes. I testified on behalf of Big Rivers in Case No. 2019-00269.¹ I sponsored responses to information requests in Case No. 2016-00278,² Case No. 2017-00384,³ and Case No. 2020-00064.⁴ I have also offered direct testimony in Fuel Adjustment Clause reviews, including Case No. 2019-00007.⁵ My professional experience is summarized in Exhibit Eacret-1.

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

A. The purpose of my testimony is to describe the process through which Big Rivers elected to issue a Request for Proposals (“RFP”) for solar power purchase agreements (“PPAs”) and chose the successful respondents. I also describe Big Rivers’ economic analysis of the PPAs and the benefits the PPAs provide to Big Rivers and its Members.

¹ *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards*, Case No. 2019-00269.
² *In the Matter of: Application of Big Rivers Electric Corporation for a Declaratory Order*, Case No. 2016-00278.
³ *In the Matter of: 2017 Integrated Resource Plan of Big Rivers Electric Corporation*, Case No. 2017-00384.
⁴ *In the Matter of: Electronic Application of Big Rivers Electric Corporation for Approval to Modify Its MRS Tariff, Cease Deferring Depreciation Expenses, Establish Regulatory Assets, Amortize Regulatory Assets, and Other Appropriate Relief*, Case No. 2020-00064.
⁵ *In the Matter of: Electronic Examination of The Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from November 1, 216 Through October 31, 2018*, Case No. 2019-0007.

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Q. Will you be sponsoring any exhibits?

A. Yes. I am sponsoring the following exhibits:

- Exhibit Eacret-1: Professional Summary
- Exhibit Eacret-2: The Request for Proposals (RFP) which Big Rivers issued on June 3, 2019
- Exhibit Eacret-3: Complete list of RFP responses
- Exhibit Eacret-4: NRCO Notes from July 23 Meeting
- Exhibit Eacret-5: Position Summary
- Exhibit Eacret-6: Henderson (“*Unbridled Solar*”) Area Map
- Exhibit Eacret-7: Henderson Solar Milestones
- Exhibit Eacret-8: Geronimo Economic Impact Flyer
- Exhibit Eacret-9: Newspaper Article regarding Sale of Property to Henderson Solar
- Exhibit Eacret-10: Meade Solar Aerial Map
- Exhibit Eacret-11: McCracken Solar Aerial Map
- Exhibit Eacret-12: Plexos Modeling Assumptions
- Exhibit Eacret-13: Forward Curve Development
- Exhibit Eacret-14: ELCC Document
- Exhibit Eacret-15: Economic Benefit Calculation

1 **II. OVERVIEW**

2

3 **Q. Briefly describe the contracts for which Big Rivers is seeking**
4 **approval.**

5 A. Big Rivers has entered into three power purchase agreements to purchase the
6 output of three solar facilities for twenty years (the “*Solar Contracts*”). The
7 first is an agreement with Henderson Solar, LLC to purchase the entire 160
8 MW output from a facility to be located on the Henderson/Webster County
9 line just south of Henderson, Kentucky. The second is an agreement with
10 Meade County Solar, LLC to purchase the entire 40 MW output from a
11 facility to be located in Meade County, Kentucky. The third is an agreement
12 with McCracken County Solar, LLC to purchase the entire 60 MW output
13 from a facility to be located in McCracken County, Kentucky. In all three
14 cases, Big Rivers will receive all of the energy, capacity, renewable energy
15 certificates, and ancillary services produced by the facilities whose
16 cumulative output totals 260 MW.

17 **Q. What prompted Big Rivers’ Request for Proposals for solar**
18 **generation options?**

19 A. As fully discussed in the Direct Testimony of Robert W. Berry in Case No
20 2019-00365, [REDACTED]

21 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]⁶

To comply with the Nucor agreement, Big Rivers issued an RFP on June 3, 2019 (Exhibit Eacret-2) to start the competitive bidding process for a solar PPA. The RFP requested a start date between December of 2022 and December of 2025 to roughly align with the projected start date of the Nucor contract. The twenty-year term requested [REDACTED], as well as the full-requirements contracts with our Members, which expire on December 31, 2043.

Q. How will Big Rivers utilize the solar PPAs in relation to the Nucor contract?

A. [REDACTED], the 260 MW solar purchase would serve as a hedge of approximately [REDACTED] of the energy and [REDACTED] of the capacity required to serve Nucor [REDACTED].

[REDACTED]

[REDACTED].

⁶ See *In the Matter of: Joint Application of Big Rivers Electrical Corporation and Meade County Rural Electric Cooperative Corporation for Approval of Contracts for Electric Service with Nucor Corporation and Application of Big River's Electric Corporation for Approval of Tariff* Case No. 2019-00365. Application Testimony of Robert W. Berry at 5-6.

1 **III. REQUEST FOR PROPOSALS PROCESS**

2

3 **Q. Please describe Big Rivers' RFP.**

4 A. The National Renewables Cooperative Organization (“NRCO”) issued Big
5 Rivers’ RFP June 3, 2019. The RFP requested proposals for up to 150 MW
6 with a preference for locations within the Big Rivers’ footprint and flat
7 pricing for twenty-year terms. Big Rivers would receive all attributes of the
8 solar projects, including energy, capacity, ancillary services, and
9 environmental attributes. The RFP requested firm 12x24 generation shapes,
10 with commercial operation dates between December 31, 2022, and December
11 31, 2025. The RFP requested that respondents provide detailed information
12 on development status and site description, the capacity and energy profile,
13 technical description and data, operations and maintenance, pricing
14 methodology and information, transmission and interconnection, financing
15 and credit arrangements, references, and the project team. Responses were
16 due by June 28, 2019.

17

18 **Q. Please explain the role NRCO played in Big Rivers' RFP process.**

19

20 A. NRCO is headquartered in Carmel, Indiana, and works on behalf of its 23
21 member-owner cooperatives, including Big Rivers. In addition to sharing its
22 extensive knowledge of the renewable industry and the evolving technologies,
23 NRCO assists its members in originating and negotiating renewable power

1 purchase agreements. Since 2010, NRCO's members have secured over 2 GW
2 of solar and wind generation through competitive requests for proposals
3 across the U.S.

4 Big Rivers is a founding member of the NRCO and benefits from this
5 membership through access to renewable project information and studies.
6 For example, each year NRCO receives several hundred utility-scale wind
7 and solar proposals from renewable developers and meets with its members
8 to review the market information.

9
10 **Q. How was the RFP distributed?**

11 **A.** The 2019 Solar Energy Supply Request for Proposals was distributed to
12 potential developers on behalf of Big Rivers Electric by NRCO on June 3,
13 2019, with a proposal due date of June 28, 2019. The RFP was sent out with
14 a draft of the Big Rivers RFP Non-Disclosure Agreement and a Solar RFP
15 project Spreadsheet. The documents were disseminated via email to a list of
16 forty-five solar developers identified by NRCO as active in the area and
17 developers who had contacted Big Rivers' staff expressing interest in
18 developing solar resources in Western Kentucky.

19

1 Q. **Please describe the response Big Rivers received to the RFP.**

2 A. Of the forty-five (45) firms, thirty-nine (39) expressed initial interest and of
3 those, fifteen (15) developers submitted a total of twenty-six (26) individual
4 project proposals. Within the scope of the twenty-six (26) sites proposed,
5 there were fifty-two (52) distinct PPA offers, thirty-six (36) of which were
6 located in Kentucky. See Exhibit Eacret-3 for a complete list of responses.

7
8 Q. **Please describe the process that was used to evaluate the responses.**

9 A. The initial evaluation to reduce the overall list of proposed projects to an
10 extended shortlist was completed July 23, 2019. See Exhibit Eacret-4, which
11 presents notes from the July 23 meeting and the rationale used to create the
12 first short list of fourteen projects from eight developers, which represented
13 twenty-four unique PPA offers.

14 Additional questions were sent to the short list RFP participants on
15 August 6th seeking clarification or further detail for individual proposals.

16 The focus of the questions included:

- 17 • PPA term
- 18 • Network upgrade cost
- 19 • Interconnection agreement and modeling
- 20 • Location on the transmission grid
- 21 • Output guarantee
- 22 • ITC safe harbor
- 23 • Developer business model
- 24 • Equipment selection
- 25 • Project construction schedule

- 1 • Site control
- 2 • Development history
- 3 • Capacity flexibility
- 4 • Local taxes

5
6 During this time, ACES' transmission group provided analysis
7 examining hourly MISO local marginal price ("*LMP*") congestion between the
8 short-listed solar projects and the BREC.BREC load node. Given the very
9 close proximity of all but one of the short-listed offers to Big Rivers' load
10 region and transmission system, the model results returned very little basis
11 spread between the projects and BREC.BREC, and were in line with
12 expectations.

13 Based on the responses from the short-list developers and the ACES
14 transmission modeling results, the short-list was reduced to three developers:

- 15 • Community Energy Solar ("*CES*")
- 16 • Geronimo Energy ("*Geronimo*")
- 17 • [REDACTED]

18
19 Most of the projects that were removed from consideration were at the
20 high end of the price range in the initial short list or raised their price after
21 their initial proposal. A few were non-responsive to our second round of
22 questions, frequently regarding network upgrade or interconnection costs.

23 CES and Geronimo were selected to proceed to PPA development and
24 [REDACTED] was asked to provide a redline version of the PPA, but was kept in

1 consideration in the event negotiations with the other two developers were
2 not successful.

3
4 **Q. Did Big Rivers conduct meetings with any of the screened bidders?**

5 A. Yes. NRCO staff met with several of the developers on behalf of Big Rivers,
6 and phone inquiries about the RFP were numerous and passed on to NRCO
7 staff for follow up. The only physical meetings, which took place during the
8 RFP process, were with the two final developers during the latter part of PPA
9 negotiations.

10 Big Rivers' staff and in house counsel, along with NRCO staff NRCO's
11 attorney met at the Big Rivers office on the following dates:

12	CES	January 27, 2020
13	Geronimo	January 28, 2020.

14
15 **Q. Were there any significant changes to the proposals that arose**
16 **during contract negotiation?**

17 A. Yes, the original Geronimo proposal was for purchase of 100 MW. During
18 negotiation, Big Rivers found that Geronimo intended to build a larger 160
19 MW facility and offer the output for sale to others. Big Rivers had multiple
20 concerns with Geronimo contracting with an unknown counterparty in
21 connection with the same solar facility, so we negotiated a lower price and
22 exclusivity in exchange for increasing the size of our purchase.

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Q. Is there anything unique about the Community Energy Solar proposal?

A. CES proposes to provide two smaller sites connected at a sub-transmission level at the cost of one large site connected at the transmission level. This provides several benefits to the transmission system. Interconnection at sub-transmission level reduces line and transformer losses and reduces exposure to congestion-related system upgrades. It spreads the economic benefits (property taxes and employment) across Member territories and diversifies LMP basis risk. Additionally, geographic risk (cloud cover) is diversified and the approach establishes a presence across the Big Rivers footprint.

IV. DECISION TO PURCHASE ADDITIONAL SOLAR ENERGY

Q. [REDACTED], how did Big Rivers choose 260 MW as the aggregate size of the purchase?

A. Our base analysis shows that the value of the energy, capacity, and renewable energy certificates received under these power purchase agreements is higher than the fixed purchase price. This is supported by the resource planning models, which will simply continue to select the solar projects [at the fixed contract price] regardless of the scenarios, because the

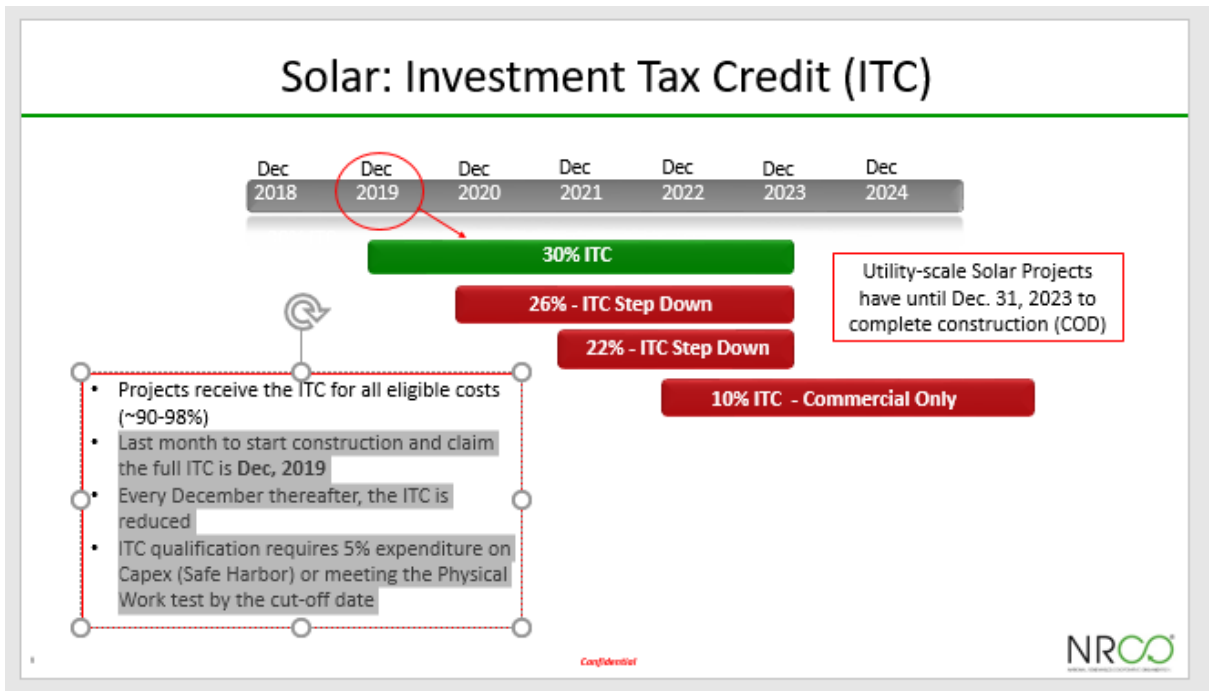
1 benefits will continue to reduce our Members' costs. The resource planning
2 models are more fully discussed below.

3 In addition, the long-term Big Rivers strategy is to move towards a
4 balanced supply portfolio. Only a few years ago, the Big Rivers generation
5 fleet was nearly 90% coal on a capacity basis and more than that on an
6 energy basis. This large position in coal created a huge exposure for our
7 Members to environmental regulation. The constant change in these
8 regulations complicated management of our business.

9 The retirement of our Coleman Generating Station, Reid Unit 1, and
10 the exit from our power purchase agreement with Henderson Municipal
11 Power and Light, create an opportunity for Big Rivers to build a more
12 balanced portfolio. The addition of 260 MW of solar to a portfolio that
13 already includes coal, natural gas, and hydro moves us in that direction
14 without over-exposing us to the risks associated with any one generation
15 type.

16 An additional consideration is the current status of the Investment
17 Tax Credit ("*ITC*") on solar. As shown below, the last month to start
18 construction and claim the full ITC was December 2019. Every December
19 thereafter, the ITC is reduced. Utility scale projects must be completed by
20 December 31, 2023. ITC qualification requires 5% expenditure on Capex
21 (Safe Harbor) or meeting the Physical Work test by the cut-off date. Both

1 Geronimo and CES will be in commercial operation before December 31,
2 2023, and meet the Safe Harbor test.



3
4 While the U.S. government could always choose to extend the deadline,
5 absent such an extension, the annual reduction in the ITC will put upward
6 pressure on solar prices, which puts a premium on acting now rather than
7 later.

8 From a capacity perspective, assuming approval of the Nucor contract
9 and excluding the solar PPAs, Big Rivers will be short from [REDACTED]
10 [REDACTED]. When Big Rivers' power sales contract with Owensboro Municipal
11 Utilities ("OMU") expires, Big Rivers will be long by about [REDACTED]
12 [REDACTED] when Big Rivers' power
13 sales contract with KyMEA contract expires. That length depends on no

1 renewal of the OMU or KyMEA contracts and no significant growth in
2 Member load after Nucor. It also assumes strong performance and no
3 retirement of either Wilson or the Green units. See Exhibit Eacret-5 for a
4 presentation of the Big Rivers position through 2032. The Big Rivers
5 Integrated Resource Plan, which will be filed with the Commission in
6 September of 2020, will provide a more detailed analysis of Big Rivers' supply
7 and demand and alternatives.

8 From a capacity perspective, the solar PPAs would add only about 150
9 zonal resource credits ("ZRCs") in 2029 under the current MISO Business
10 Practice Manual ("BPM") and only 68 MW under MISO's proposed Effective
11 Load Carrying Capability ("ELCC") approach. Either of those two figures are
12 reduced [REDACTED]
13 [REDACTED]. Given the uncertainty of our post-2029 position, these are
14 reasonable levels of length.

15 From an energy perspective, the output of the solar facilities becomes
16 economic energy the cost of which, when reduced by the value of capacity and
17 environmental attributes, is very attractive. Again, assuming Commission
18 approval of the Nucor contract, Big Rivers' Member load will be
19 approximately 4.2M MWh. The solar PPAs will provide a little under
20 600,000 MWh of energy. This energy will complement our existing fleet, not
21 duplicate it.

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Q. Why limit the aggregate size of the solar purchase to 260 MW?

A. There were two factors placing limits on the size of our solar purchase. First, in testimony before Congress, John Bear, the Chief Executive Officer of MISO, noted the following:

In anticipation of continued change, MISO is working to identify and understand the impact of increased reliance on renewables. Already, we have learned that renewable penetration of 30% would challenge our ability to maintain the planning reserve margin and operate the system within acceptable voltage and thermal limits. Maintaining reliability at the 40% renewable level becomes significantly more complex.⁷

The total Big Rivers load in 2024, when the three proposed solar facilities will be in commercial operation, is projected to be 876 MW (assuming Commission approval of the Nucor contract). Thirty percent of that figure is 263 MW. If improvements in generation or transmission technology in the future facilitate additional economic renewable generation on the grid, Big Rivers can evaluate it at that time.

Second, the long-term Big Rivers strategy is to move towards a balanced supply portfolio. The addition of 260 MW of solar to a portfolio that already includes coal, natural gas, and hydro moves us in that direction

⁷ See Testimony of John Bear Chief Executive Officer MISO (October 30, 2019) at : https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Written%20Testimony_30Oct2019_JBear.pdf

1 without over-exposing us to the risks associated with any one generation
2 type.

3
4 **V. THE SOLAR CONTRACTS**

5 **A. Henderson Solar Contract**

6 **Q. Who is Geronimo Energy, LLC?**

7 **A.** Geronimo Energy, LLC, a National Grid company, is a leading North
8 American renewable energy development company based in Minneapolis,
9 Minnesota, with satellite offices located throughout multiple states in the
10 regions where it develops, constructs, and operates. As a farmer-friendly and
11 community driven company, Geronimo develops projects for corporations and
12 utilities that seek to repower America's grid by reigniting local economies and
13 reinvesting in a sustainable future. Geronimo has developed over 2,400
14 megawatts of wind and solar projects that are either operational or currently
15 under construction, resulting in an investment of over \$4 billion in critical
16 energy infrastructure and the revitalization of rural economies. Geronimo
17 has a vast development pipeline of wind and solar projects in various stages
18 of development throughout the United States. Henderson Solar, LLC is a
19 wholly owned subsidiary of Geronimo Energy, LLC.

1 **Q. Briefly summarize the significant terms of the Henderson Solar**
2 **contract.**

3 A. Under the terms of the Henderson Solar contract, Big Rivers will purchase all
4 of the output of a 160 MW facility at a [REDACTED]. Big Rivers
5 will be responsible for 50% of network upgrade costs, which are expected to
6 be less than one million dollars total. The output will include capacity,
7 energy, ancillary services, and any environmental rights such as renewable
8 energy or carbon credits. The commercial operation date is expected to be
9 before [REDACTED]. Henderson Solar, LLC will be required to provide
10 appropriate credit support. Energy output is expected to be about [REDACTED]
11 [REDACTED]
12 [REDACTED] and performance is guaranteed at [REDACTED] of the average expected
13 output over a [REDACTED] period. Big Rivers will act as the Market Participant
14 within MISO system.

15
16 **Q. What conditions precedent are included in the contract?**

17 A. Among other conditions precedent, the contract is contingent upon approval
18 from the Rural Utilities Service and the Kentucky Public Service Commission
19 (Section 2.1).

20

1 **Q. Is there a take-or-pay provision in each of the Henderson Solar**
2 **Contract and if so, please describe the provision(s).**

3 A. No. Big Rivers' contractual obligation to pay is based upon the actual receipt
4 of output at a specified point of delivery and the payment amount is
5 determined by the amount of output delivered.

6
7 **Q. Is there a capacity payment associated with the contracts?**

8 A. No. There is no capacity payment. The Contract Price is an all-inclusive
9 energy-only price for the solar energy products. Payment is only made for
10 energy delivered to Big Rivers. If the facility does not produce due to forced
11 outages, scheduled maintenance outages, cloud cover, or other reasons, then
12 Big Rivers does not pay.

13
14 **Q. Does the PPA create any operation or maintenance obligations for**
15 **Big Rivers?**

16 A. None in regards to the Solar Facility itself. Big Rivers will serve as Market
17 Participant.

18

1 **Q. What obligations will Big Rivers have as Market Participant?**

2 A. Big Rivers will offer the energy from the facility into the MISO market each
3 day and shadow-settle expected MISO energy, capacity, and ancillary
4 services revenues.
5

6 **Q. Where is the location of the proposed solar facility, including the
7 number of approximate acres to be used?**

8 A. The Henderson Solar facility, which has been named Unbridled Solar project,
9 is located on 1,700 acres on the Henderson/Webster County line. See Exhibit
10 Eacret-6 for a map with the precise location.
11

12 **Q. Will the Henderson Solar Facility be a Kenergy customer?**

13 A. Yes, the facility will be a Kenergy customer for power which cannot be
14 produced on site, such as lighting.
15

16 **Q. Describe the proposed solar facility and how the energy will be
17 transmitted via the existing transmission infrastructure.**

18 A. The Unbridled Solar project will be located near Robards, Kentucky, on a
19 1,700 acre site and will produce 160 MW(ac). [REDACTED]

20 [REDACTED]

21 [REDACTED]

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Q. Please describe the construction plans and timeline for the solar facility.

A. A construction timeline is provided as Exhibit Eacret-7.

Q. Are there any expected benefits to the Henderson/Webster County area for this project?

A. Per Geronimo, during development, the Unbridled Solar Facility represents an investment of approximately \$250 million and will create 150 construction and related service jobs. During this period, Geronimo expects to spend approximately \$100,000 on sponsorships, marketing, travel, meals, legal fees, office, county records, local engineering, and environmental consulting services. During operation, Geronimo expects five full-time jobs, a \$32,000 annual contribution to a local education fund, and about \$160,000 annually in tax revenues. Almost seventy-five percent of those tax revenues will go to local schools. See Exhibit Eacret-8 for a Geronimo flier on local benefits.

Additionally, Governor Beshear approved a land purchase required by the project on June 16, 2020. The sale improved the marketability of a Henderson County economic development site and provided funds for the local economic development board to make improvements to the remainder of

1 the site, to make it even more attractive to future economic development
2 candidates (see Exhibit Eacret-9).

3
4 **Q. Who will own the solar facilities?**

5 **A.** The facility will be built, owned, and operated by Henderson Solar, LLC.

6 **B. Community Energy Contracts**

7 **i. Meade County Solar Contract and McCracken County**
8 **Solar Contract**

9 **Q. Who is Community Energy Solar?**

10 **A.** Community Energy Solar has developed and financed 2,000 MW of renewable
11 energy projects across the country, including 1,300 MW of solar power. CES
12 combines power marketing and development expertise to build renewable
13 generation economically and at scale and has been a leading renewable
14 energy developer for 20 years, developing many of the first and largest wind
15 and solar projects in the United States. CES is headquartered in Radnor,
16 Pennsylvania, with offices in Boulder, Colorado, and Chapel Hill, North
17 Carolina. Meade County Solar, LLC and McCracken County Solar, LLC are
18 wholly owned subsidiaries of CES. For more information about CES, please
19 visit <https://www.communityenergyinc.com>.

1 **Q. Briefly summarize the significant terms of the CES contracts.**

2 A. Under the terms of the Meade County Solar Contract, Big Rivers will
3 purchase all of the output of a 40 MW facility. Big Rivers will pay [REDACTED]
4 [REDACTED]. Big Rivers will be responsible for any interconnection
5 costs above \$300,000. The output will include capacity, energy, ancillary
6 services, and any environmental rights such as renewable energy certificates
7 or carbon credits. The commercial operation date is expected to be around
8 [REDACTED]. CES will be required to provide appropriate credit support.
9 Energy output is expected to be about [REDACTED]
10 [REDACTED]. Performance is
11 guaranteed at [REDACTED] of the average expected output over a [REDACTED] period.
12 Big Rivers will act as the Market Participant within MISO.

13 Under the terms of the McCracken County Solar Contract, Big Rivers
14 will purchase all of the output of a 60 MW facility. Big Rivers will pay [REDACTED]
15 [REDACTED]. Big Rivers will be responsible for any interconnection
16 costs above \$300,000. The output will include capacity, energy, ancillary
17 services, and any environmental rights such as renewable energy certificates
18 or carbon credits. The commercial operation date is expected to be around
19 [REDACTED]. CES will be required to provide appropriate credit support.
20 Energy output is expected to be about [REDACTED]
21 [REDACTED], and performance is

1 guaranteed at [REDACTED] of the average expected output over a [REDACTED] period.
2 Big Rivers will act as the Market Participant within MISO.
3

4 **Q. Will the CES facilities be Jackson Purchase Energy and Meade
5 County RECC customers?**

6 A. Yes, the CES facilities will be customers of Jackson Purchase Energy and
7 Meade County RECC for power which cannot be produced on site, such as
8 lighting.
9

10 **Q. What conditions precedent are included in the CES contracts?**

11 A. Among other conditions precedent, the contracts are contingent upon
12 approval from the Rural Utilities Service and the Kentucky Public Service
13 Commission (Section 2.1).
14

15 **Q. Is there a take-or-pay provision in each of the CES contracts?**

16 A. No, Big Rivers' contractual obligation to pay is based upon the actual receipt
17 of output at a specified point of delivery, and the payment amount is
18 determined by the amount of output delivered.
19

1 **Q. Is there a capacity payment associated with the contracts?**

2 A. No, there is no capacity payment. The Contract Price is an all-inclusive
3 energy-only price for the solar energy products. Payment is only made for
4 energy delivered to Big Rivers. If the facility does not produce due to forced
5 outages, scheduled maintenance outages, cloud cover, or other reasons, then
6 Big Rivers does not pay.

7
8 **Q. Do the CES contracts create any operation or maintenance**
9 **obligations for Big Rivers?**

10 A. None in regards to the solar facilities themselves. Big Rivers will serve as
11 the MISO Market Participant and Asset Owner.

12
13 **Q. What obligations will Big Rivers have as Market Participant and**
14 **Asset Owner?**

15 A. Big Rivers will offer the energy from the facility into the MISO market each
16 day and shadow-settle expected MISO energy, capacity, and ancillary
17 services revenues.

18

1 **Q. Where are the locations of the proposed solar facilities, including the**
2 **number of approximate acres to be used?**

3 A. The Meade County facility will be located on approximately 400 acres in
4 Meade County, Kentucky. The McCracken County facility will be located on
5 approximately 600 acres in McCracken County, Kentucky. See Exhibits
6 Eacret-10 and Eacret-11 for maps with the precise locations.

7
8 **Q. Describe the proposed solar facilities and how the energy will be**
9 **transmitted via the existing transmission infrastructure.**

10 A. Each of the proposed facilities will interconnect with existing Big Rivers sub-
11 transmission facilities at the following locations.

12 • The McCracken County site will be located near Kevil, Kentucky, on
13 600 acres. The facility will produce 60 MW(ac) and interconnect to the
14 Shell 69kV line using a pole-mounted switch.

15 • Meade County site will be located near Flaherty, Kentucky, on 400
16 acres, generate 40 MW(ac), and interconnect at one of two following
17 potential points:

18 ○ Flaherty Tap – Flaherty 69kV line with a pole-mounted switch

19 ○ Custer – Flaherty Tap 69kV line with a pole-mounted switch.

20

1 **Q. Please describe the construction plans and timeline for the solar**
2 **facilities.**

3 A. See Exhibit 2.2 of the Power Purchase Agreements for the project milestones.
4

5 **Q. Are there any expected benefits to Meade/McCracken County areas**
6 **from these projects?**

7 A. Yes. According to CES, during construction each project will generate about
8 150 jobs. These will be mostly no-previous-experience type jobs, which means
9 they will be accessible to a wide range of workers. The local flood of workers
10 during construction will buy food, gas, and sundries from local businesses.
11 The projects will also subcontract with local trades, typically electricians,
12 earthmoving, landscaping, and fencing.

13 Once operational, each solar farm will pay significant property taxes
14 starting at between \$100,000 and \$150,000 per year. By comparison, the
15 taxes currently paid on the proposed solar farm sites amounts to less than
16 \$5,000 per year. Unlike new taxes for residential development, this increase
17 in taxes will not be offset by new expenses related to schools, water, sewer,
18 etc.

19

1 **Q. Who will own the solar facilities?**

2 A. The solar facilities will be built, owned, and operated by Community Energy
3 Solar's subsidiaries Meade County Solar, LLC and McCracken County Solar,
4 LLC.

5
6 **VI. RESOURCE PLANNING MODELS**

7

8 **Q. What resource planning models did Big Rivers use to evaluate the**
9 **solar PPAs?**

10 A. Big Rivers utilized our in-house production cost model, PLEXOS 8.2 R01. Big
11 Rivers' optimal amount of solar capacity addition was determined using the
12 LT Plan (long-term capacity expansion planning optimization model). The
13 LT Plan model uses advanced algorithms that analyze possible portfolio
14 options based on the inputs and constraints and provide the optimal quantity
15 and timing of solar additions. The LT Plan objective was to minimize the net
16 present value ("*NPV*") of the capital and production cost formulated as a
17 mixed-integer problem. The optimum option selected is the least-cost option
18 for that unique input and constraint parameter.

19

1 **Q. What was the purpose of running the resource planning models as**
2 **part of Big Rivers' analysis?**

3 A. The model was run to validate the results that we were seeing in our
4 separate economic analysis.

5
6 **Q. What were the model results?**

7 A. For reasons described above, Big Rivers limited the amount of purchased
8 solar that the model could choose to 300 MW. In the base case, the model
9 chose [REDACTED]
10 [REDACTED]. If the 300 MW limit were removed from the base case, the model
11 keeps choosing solar until the maximum reserve margin is reached, then
12 adds more solar when it can for load growth. See Exhibit Eacret-12 for a
13 description of the modeling assumptions, constraints, and scenarios used.

14
15

16 **VII. BENEFITS TO BIG RIVERS' MEMBERS**

17 **(Economic Analysis)**

18
19

20 **Q. Please describe the economic value of the solar transactions.**

21 A. Under the terms of the agreements, Big Rivers receives the net energy output
22 of the facilities, capacity rights, ancillary services, and environmental
23 attributes. Environmental attributes means any and all claims, credits,
24 benefits, emissions reductions, offsets, and allowances, howsoever entitled,

1 resulting from the avoidance of the emission of any gas, chemical, or other
2 substance to the air, soil or water, which are deemed of value by Buyer. This
3 includes renewable energy certificates and carbon credits, should a market
4 for carbon credits develop.

5 While Big Rivers is entitled to any ancillary services revenues
6 produced by the facilities, we do not expect those revenues to be significant
7 and have assumed them to be zero in our analysis.

8 Big Rivers will treat the net energy output of the facility as a purchase
9 of economic energy. The energy price paid will be adjusted by the MISO
10 revenues received for that energy along with proceeds from capacity rights,
11 ancillary services, and environmental attributes. Therefore, the value to our
12 Members can be calculated as:

13 Avoided MISO Purchases + Capacity Revenues + Ancillary
14 Services Revenues + Revenues from Environmental Attributes –
15 PPA Expenses

16 Paul Smith discuss the income statement and fuel adjustment clause
17 implications of the PPAs in his direct testimony.
18

19
20 **Q. Please describe how avoided MISO purchases were estimated.**

21 A. Every five minutes, across MISO, thousands of locational marginal prices
22 (LMP's) are calculated. This represents the price that a load will pay or a
23 generator will receive at a specific location in MISO. The MISO purchases

1 that Big Rivers avoids will be the product of the LMP at Big Rivers load
2 output of the solar facility.

3 To estimate the LMP at Big Rivers load during the hours when the
4 solar facility is generating, Big Rivers started with a twenty-year Indiana
5 Hub (“*IndyHub*”) forward curve. *IndyHub* represents an average of LMP’s
6 across central Indiana and is the most liquid trading point within MISO. See
7 Exhibit Eacret-13 for a description of how the twenty-year forward curve is
8 developed.

9 The forward prices assume a fixed quantity in all hours for an entire
10 year. However, the solar facility obviously will generate a quantity that
11 varies hourly and seasonally, during on-peak hours only and weighted toward
12 the middle of the day and the summer months. See Exhibit A in each Solar
13 Contract for a generation profile. To calculate a load-weighted price, Big
14 Rivers created an adjustment factor by taking historical (2017-2019) hourly
15 *IndyHub* LMPs and weighting them by the generation profiles for each PPA.
16 Using this approach, the *IndyHub* around-the-clock forward price were
17 increased by 11.8% for Henderson Solar, 9.0% for CES McCracken County,
18 and 8.8% for CES Meade County.

19 The *IndyHub* LMP must also be adjusted for the differences between
20 LMP’s in Central Indiana and Western Kentucky (basis). To do so, Big
21 Rivers compared *IndyHub* prices for 2017-2019 to the LMP that Big Rivers

1 paid for its load over the same period and created an adjustment factor. That
2 factor reduces the IndyHub price by -5%.

3 The total avoided MISO purchases for each year were then calculated
4 by multiplying the IndyHub forward price, after load weighting and basis
5 adjustment, by annual generation from the Exhibit A generation profiles.

6 Note that Geronimo (Henderson Solar) estimates that annual generation will
7 degrade by approximately .4% and Community Energy Solar estimates
8 annual degradation of .5%.

9
10 **Q. Please describe how capacity revenues were estimated.**

11 A. In MISO, Zonal Resource Credits (ZRCs) are the unit of measure for capacity.
12 See my response in Case No. 2019-00269 to Item 21 of the Commission Staff's
13 First Request for Information for a more detailed definition of ZRCs.
14 According to the current MISO Business Practices Manual (BPM): 4.2.3.5.1,
15 Solar Capacity Credit Solar photovoltaic (PV) resources will have their
16 annual UCAP value determined based on the 3 year historical average output
17 (with curtailments added to the actual output) of the resource for hours
18 ending 15, 16, and 17 EST for the most recent Summer months (June, July,
19 and August). Market Participants will need to supply this historical data to
20 MISO by October 31 of each year in order to have their UCAP value
21 determined. Market Participants will use the template found on the MISO

1 website (Planning > Resource Adequacy (Module E) > Planning Resource
2 Auction) to submit the 3 year historical average output data. Solar PV
3 resources that are new, upgraded or returning from extended outages shall
4 submit all operating data for the prior Summer with a minimum of 30
5 consecutive days, in order to have their capacity registered with MISO.
6 Resources with less than 30 days of metered values would receive the class
7 average of 50% for its Initial Planning Year. Refer to Appendix V of the BPM
8 for additional examples.

9 Based upon this approach, the quantity of ZRCs for each of the PPAs
10 will be 50% of nameplate for the first planning year and then the projected
11 generation for hours 15-17 for the months of June through August thereafter.
12 Based upon the generation profiles in Exhibit A of each contract, that would
13 be [REDACTED]

14 [REDACTED].
15 The quantity of ZRCs is then multiplied by the MISO capacity forward
16 curve for each year. The bilateral capacity forward market in MISO is very
17 thin and information on long-term capacity sales is hard to obtain. In April
18 of 2019, while working on an economic development project, Big Rivers
19 received an offer of [REDACTED]

20 [REDACTED]. In September of 2019, Big Rivers received an offer for
21 [REDACTED].

1 Additionally, based upon newspaper accounts, Paducah Power System
2 (“PPS”) made a ten-year sale of capacity to the Kentucky Municipal Power
3 Agency (“KyMEA”) in 2017 for \$3.70/kw-month (approximately \$5.08 per
4 MWh). KyMEA issued a Request for Proposals and received dozens of
5 responses before awarding the contract to PPS. Historically, over the ten
6 MISO planning years from 2014-2023, Big Rivers has sold 2,379 MW-years of
7 capacity to fourteen different counterparties across at least five states at a
8 weighted average price of \$2.21/kw-month. For its evaluation, Big Rivers
9 used \$2.00/kw-month and then a sensitivity at \$1.00/kw-month.

10
11 **Q. Beyond the uncertainty around the forward curve, is there any other**
12 **risk in that calculation?**

13 A. Yes, MISO is examining a concept called Effective Load Carrying Capability
14 (“ELCC”) for determining the ZRC value assigned to renewable resources.
15 Under that approach, the quantity of ZRC’s credited to the facilities under
16 the PPA would be reduced by about 50%. See Exhibit Eacret-14. As another
17 sensitivity, Big Rivers calculated the value of the capacity associated with the
18 solar facilities using the ELCC approach.

1 **Q. Please describe what a Renewable Energy Certificate is and how its**
2 **value was determined for your calculation of Member value from the**
3 **solar PPAs**

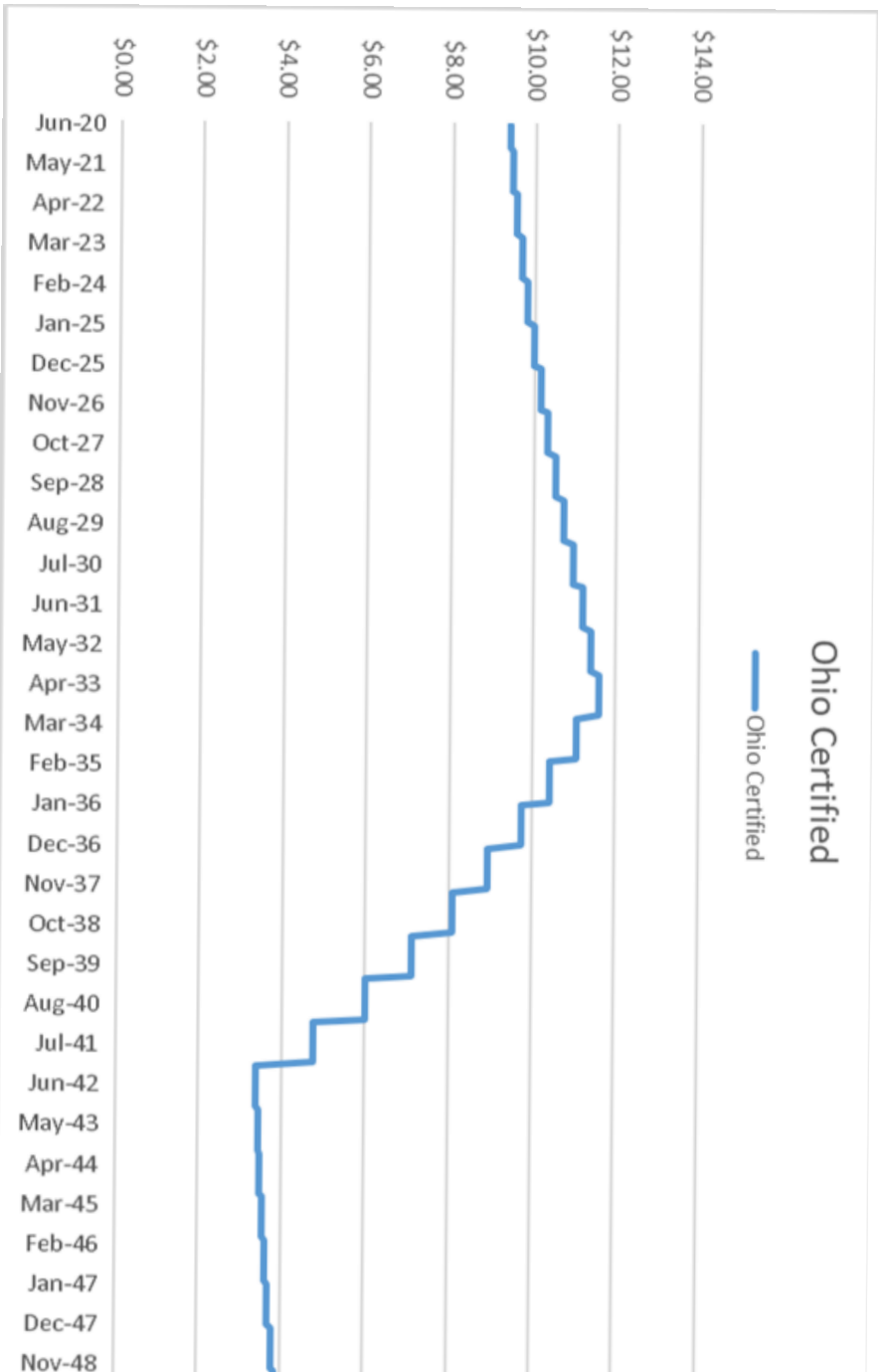
4 A. A Renewable energy Certificate (“*REC*”) is a certificate corresponding to the
5 environmental attributes of energy produced from renewable sources such as
6 wind or solar. RECs were created as a means to track progress towards and
7 compliance with states’ Renewable Portfolio Standards (“*RPS*”).

8 Renewable Energy Certificates are one of two primary outputs
9 from generation of new power from renewable sources. Renewable power
10 generation creates actual power in the form of electricity, and environmental
11 attributes in the form of RECs. The RECs are sold as a commodity into the
12 marketplace. While RECs are not actually a measure of power, each REC
13 represents one megawatt hour (MWh) of renewable energy generated. For
14 each REC purchased, the purchaser is able to claim the equivalent MWh of
15 energy reduction as an offset to their conventional energy use. Because RECs
16 provide an additional revenue stream to renewable energy projects, they are
17 essentially a subsidy meant to allow renewable resources to compete
18 economically with non-renewable resources.

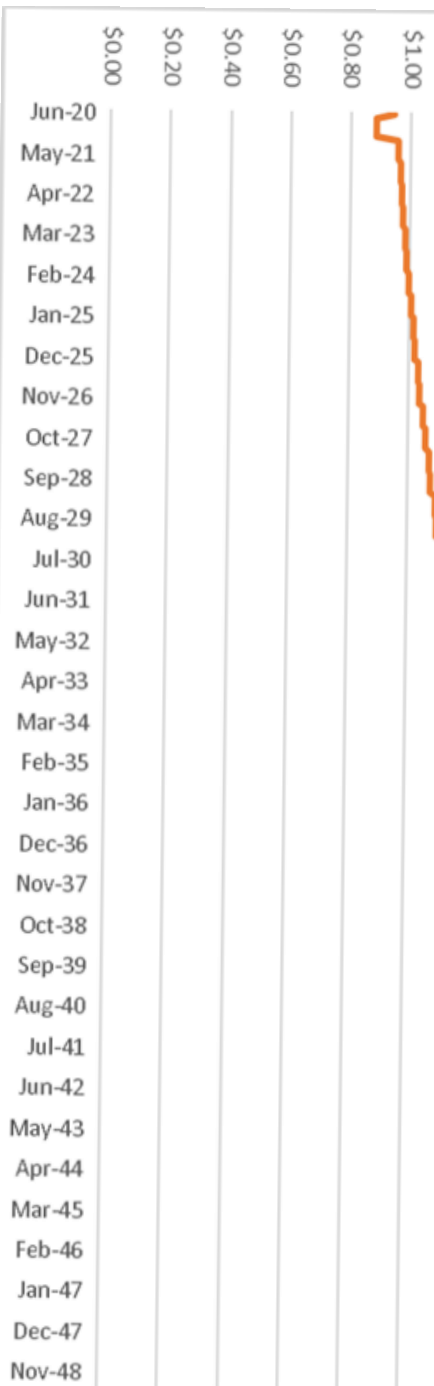
19

5 current markets for which the RFCs are eligible. Below are forward
6 curves for both the Ohio and Green-e markets.

7



8
9



1
2
3 Because there is such a disparity in the two markets, Big Rivers w
4 create a high and low scenario.

5
6 **Q. Did Big Rivers include any value for carbon credits in its a**
7 **A.** No, not for this analysis. However, any value assigned to carbon c
8 would simply add to the value created for our Members.

9
10 **Q. How are costs and benefits of the Solar PPAs allocated to**
11 **?**

12 **A.**
13

14

1 **Q. What was the conclusion of this economic analysis?**

2 A. The net present value of the benefit to our Members created by these solar
3 contracts is between [REDACTED]. See Exhibit Eacret-15 for
4 the calculations.

5
6 **Q. Describe some of the additional benefits to the Members of Big
7 Rivers from the solar PPAs.**

8 A. Beyond the quantitative economic value, there are several other drivers of
9 Member value. Other benefits include a response to the demand for
10 renewable resources from economic development candidates, an answer to
11 the Environmental Social Governance approach now being raised by the
12 credit rating agencies (as more fully discussed in the Direct Testimony of
13 Paul Smith at Page 6), the diversification of our solar portfolio over multiple
14 sites across our footprint and multiple operators, and additional hedging of
15 our [REDACTED].

16
17 **Q. Are economic development candidates requesting renewable
18 resources?**

19 A. Yes. The Commission is aware of this and noted in its order in Case No.
20 2020-00016, "...the Commission agrees that renewable energy resources

1 should be available for corporations with sustainability goals as one of the
2 economic development tools that convey that Kentucky is open for business.”

3 Big Rivers has seen the demand for renewable energy rising. Over the
4 past three years, Big Rivers has made proposals to approximately 50
5 economic development candidates. During the first half of that period, there
6 were no specific requests for renewable energy sources. During the second
7 half of the period, about 25% of all economic development candidates made
8 some sort of request for or inquiry about renewable energy availability.

9
10 **Q. Do the solar PPAs add diversity to the Big Rivers supply portfolio?**

11 A. Yes, the solar PPAs add portfolio diversity in several ways. A “utility scale”
12 solar project, generally 100 MW or greater, is required for the best prices. By
13 increasing the size of our solar commitment, Big Rivers was able to use two
14 different developers. While each developer is required to provide credit
15 support for its commitment, using multiple developers spreads our
16 construction, operation, and credit risk. It also provides some geographic
17 (cloud cover) diversity. The solar facilities will be spread over the entire Big
18 Rivers footprint, with almost two hundred miles separating the Meade and
19 McCracken County facilities.

1 **Q. Do the solar PPAs provide any price hedging benefits?**

2 A. Yes, Big Rivers has [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]. Big Rivers can
6 rely upon its existing generating assets to supply these loads, but the
7 opportunity presented by these low-cost solar contracts allows Big Rivers to
8 realize higher value for our Members.

9
10 **Q. If approval were denied for the PPAs, how would this affect the**
11 **Nucor project?**

12 A. [REDACTED]
13 [REDACTED]
14 [REDACTED] The
15 solar contracts are also intended to reduce the risk to Big Rivers' Members by
16 hedging the price risk of the energy delivered to Nucor [REDACTED]
17 [REDACTED]. While elimination of that hedge would not affect the Nucor project, it
18 adds a risk to the Big Rivers Members.

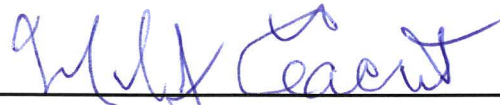
19
20 **Q. Does this conclude your testimony?**

21 A. Yes.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF SOLAR POWER CONTRACTS
CASE NO. 2020-00183

VERIFICATION

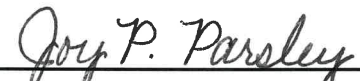
I, Mark J. Eacret, verify, state, and affirm that I prepared or supervised the preparation of the Direct Testimony filed with this Verification, and that Direct Testimony is true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry



Mark J. Eacret

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

22nd SUBSCRIBED AND SWORN TO before me by Mark J. Eacret on this the
_____ day of June, 2020.



Notary Public, Kentucky State at Large
My Commission Expires _____

Notary Public, Kentucky State-At-Large
My Commission Expires: July 10, 2022
ID: 604480

Professional Summary

Mark J. Eacret
Vice President Energy Services
Big Rivers Electric Corp
201 Third St
Henderson, Kentucky 42420
(270) 844-6126

Professional Experience

Big Rivers Electric Corporation

Vice President Energy Services – 2015 to present

Sunflower Electric Power Corporation – 2014

Senior Manager of Market Operations and Power Contracts

Ameren Energy Resources

Vice President of Business Services and Controller 2011-2013

Controller 2007-2011

Manager of Pricing and Analysis 1999-2007

Cinergy Corporation

Various Wholesale Power Analytical Positions 1991-1999

Various Accounting Positions of increasing responsibility 1980-1991

Education

Master of Business Administration with a concentration in Finance

Indiana University-Bloomington

Bachelor Degree (Accounting Major)

Indiana University – Indianapolis

National Renewables Cooperative Organization Solar RFP on behalf of Big Rivers Electric Corporation

Request for Proposals Solar Energy Supply – June 2019

Introduction

National Renewables Cooperative Organization (“NRCO”) is headquartered in Carmel, Indiana and works on behalf of its 22 member-owner cooperatives, including Big Rivers Electric Corporation (“Big Rivers”), to facilitate the transaction for and acquisition of renewable generation assets. NRCO facilitates the procurement of renewable resources to assist NRCO members in meeting their renewable energy needs, to diversify their energy resource portfolios, and in some cases, gain operational experience with these generation technologies.

Big Rivers Electric Corporation is a member-owned, not-for-profit, generation and transmission cooperative (G&T) headquartered in Henderson, Kentucky. Big Rivers provides wholesale electric power and services to three distribution cooperative members across 22 counties in western Kentucky.

Big Rivers’ member cooperatives include Jackson Purchase Energy Corporation, Kenergy Corp., and Meade County Rural Electric Cooperative Corporation. The three member-owners of Big Rivers serve more than 116,000 members. For more information visit www.bigrivers.com.

Purpose and Background

NRCO, on behalf of Big Rivers, is requesting proposals for the supply of up to 125 MWac of MISO-connected Solar Photovoltaic (PV) power.

Proposals must be in the form of a power purchase agreement (PPA). *Offers of outright ownership of new facilities, sales of existing facilities, PPA ownership/renewal options or other arrangements will not be reviewed under this RFP.*

Big Rivers’ intent is that responses to this solicitation will be the basis for future contract negotiations, which if successful, would lead to a commitment by the Bidder and Big Rivers to enter into a binding contract. The contract will be subject to approval by Big Rivers’ Board of Directors, the Kentucky Public Service Commission (“KPSC”) and the Rural Utilities Service (“RUS”).

Big Rivers reserves the right to modify any capacity and/or energy requirements at any time during the solicitation and evaluation process as conditions warrant. While Big River’s intentions are to award a contract(s) as a result of this RFP, Big Rivers also reserves the right to not select any of the proposals or to select more than one proposal.

Product Description

Big Rivers will receive all attributes from the solar project: energy, MISO (Midcontinent Independent System Operator) capacity, ancillaries and all environmental attributes (renewable energy credits, green tags, greenhouse gas, carbon credits etc.).

Capacity

The following project capacities will be considered:

- An aggregation of smaller distributed solar projects, provided the projects' combined capacity is 50 MWac (or more)
- 50 MWac
- 75 MWac
- 100 MWac
- 125 MWac
- 150 MWac

Tenor

The following PPA term will be considered:

- 20 years
- 25 years

Big Rivers' preferred tenor is 20 years.

Point of Delivery

Big Rivers' preference is MISO solar projects that are sited within the State of Kentucky's border. Big Rivers' load node (MISO) is BREC.BREC.

Big Rivers' preferences are (in order):

- Projects that directly interconnect with Big Rivers' system
- Proposals that provide energy delivered to Big Rivers' system
- Busbar delivery outside of Big Rivers' system

COD Date

Big Rivers' preference is for the commercial operation date (COD) of the project to start December 2022, but will accept projects with a COD up to December 2025.

Scheduling

Big Rivers is open to offers with a variety of scheduling approaches at the busbar or hub: real-time or day-ahead firm hourly shape, and a firm 12x24 schedule based on the solar project's average hourly production; however, Big Rivers' preference is a firm 12x24 schedule.

Pricing Information

Prices shall be quoted in U.S. dollars in "\$/MWh" units. Big Rivers' preference is for the flat (i.e. 'fixed') PPA pricing offers.

Prices should be complete and all inclusive.

Proposals must state clearly whether the PPA offer price is inclusive/exclusive of network upgrade and transmission interconnection costs and note the MISO interconnection queue status.

Environmental Credits

Big Rivers will retain all current and future environmental attributes associated with Bidder's long-term PPA including but not limited to renewable energy credits, green tags, greenhouse gas or carbon credits, and any other emissions attributes.

Financial Stability and Performance Guarantees

Financial stability of the Bidder and the demonstrated ability to fulfill its contractual obligations are of utmost importance to Big Rivers and will be an integral part of the bid evaluation process. Big Rivers requires secure and reliable physical delivery of the capacity and associated energy corresponding to all Proposals.

For transactions that involve the contracting of new facilities to Big Rivers, successful Bidders shall secure, upon contract award, performance bond(s) to provide financial guarantee that the project will meet the schedule and proposed performance. The Bidder should discuss in detail the type and amount of proposed credit enhancements or other means proposed to guarantee performance under any contract that might result from this RFP.

The Bidder must provide sufficient evidence of financial and operational capability to provide the services outlined in the Proposal during the contract term. The Bidder shall provide audited financial statements and annual reports from the previous three years in order to demonstrate financial viability. The financial and operational viability of any third parties relied upon by the Bidder for providing service to Big Rivers must also be demonstrated. The Bidder, its parent, and any other guarantor of services under the Bidder's proposal, must provide audited financial statements from the three previous years in order to demonstrate financial viability. If the Bidder or the Bidder's guarantor has a credit rating, the most recent ratings reports must also be provided. Finally, the Bidder must provide references for any current and/or prior power supply agreements to wholesale customers.

Bidders will have to satisfy Big Rivers' and its lenders' financial security requirements, including bonding on construction contracts. Equipment must meet all current electrical codes and environmental regulations including those specific to compliance with the environmental protection requirements of all applicable state and federal laws, rules and orders. Big Rivers may also require financial security arrangements for PPAs, or other instrument to secure performance under the PPA.

Other Terms and Conditions

Each proposal must comply with all applicable federal and state laws. All permits, licenses, fees, emissions allowances, and environmental requirements are the responsibility of the Bidder for the entire term of each proposal. If a resource is not in service as of the date the proposal is submitted, a detailed milestone schedule describing major project activities, including a permitting schedule, leading up to the commencement date for commercial service must be provided.

Proposal Content

Big Rivers requires that all Proposals submitted pursuant to this RFP contain, at a minimum, the information requested on the **Bidder Response Forms** included in this RFP as Attachment II ('Big Rivers RFP.xls'). Big Rivers further requires that Bidders submitting Proposals for the construction of new generation facilities include sufficient detail to allow Big Rivers to make a determination regarding whether or not the proposed power supply will economically and reliably meet Big Rivers' renewable energy supply requirements. Big Rivers will review and may utilize any information that is submitted by a Bidder, which is not specifically requested on the Bidder Response Form. Big Rivers also reserves the right to request additional information from Bidders during the proposal evaluation process.

Proposal Submittal

One electronic copy of each Proposal is due at NRCO no later than 5:00 p.m. Eastern Daylight Savings Time on June 28, 2019. Proposals may be submitted by mail, e-mail or hand delivery. All proposals will be the property of Big Rivers and will not be returned. Big Rivers may reject proposals submitted after the deadline.

Proposals should be directed to NRCO as follows:

Electronically: An upload to a Sharefile site is preferred. NRCO will provide a link to submit the proposal.

If U.S. Mail, Express or Courier:

Michael Loenen, Senior Renewables Developer
NRCO
4140 W 99th Street
Carmel, IN 46032



Tentative RFP Schedule*

- RFP Release Date – May 31, 2019
- Initial Proposals Due Date – June 28, 2019
- Select Short Listed Proposal(s) – July 22, 2019
- Big Rivers' notifies and submits draft PPA to Short List Bidder(s) for review – July 22, 2019
- Execute Definitive Project Agreements – October 18, 2019

** Big Rivers will make a concerted effort to maintain the tentative schedule but reserves the right to revise the schedule to accommodate changing circumstances.*

Project Agreements

Short list Bidders and any subsequent negotiations between Big Rivers and a Bidder are not intended, nor shall it be construed, to be that of partners, agents or joint ventures for one another. Selection of Bidders to the short list and/or subsequent negotiations do not, absent a formal, written agreement, create any contract, implicit or otherwise, between NRCO or Big Rivers and the Bidder, nor is the selection process, including negotiations, a guarantee of contract between NRCO or Big Rivers and the Bidder.

Collusion

By submitting a proposal to NRCO under this RFP, Bidder certifies that it has not divulged, discussed or compared its proposal with other Bidders and has not colluded whatsoever with any other Bidder or party with respect to this proposal.

Bid Evaluation Criteria

Bidders to this solicitation should provide all relevant financial and operational information necessary to allow Big Rivers to conduct a thorough analysis of their Proposal. Proposals will be analyzed over a range of scenarios defined by price and non-price variables.

Over the past year domestic steel producers have begun to introduce non-coated self-weathering steel pilings and racking products (e.g. Corten, Castrip) that eliminate the use of galvanized coatings, thereby reducing the environmental impact of the solar project. Big Rivers requests that Bidders consider offering:

- Proposals employing the traditional galvanized steel piling and racking, and
- Proposals utilizing non-coated self-weathering steel pilings and racking

The principal criteria to be used in evaluating proposals will include:

- Total delivered cost of power
- Project's environmental attributes
- Energy benefits of the proposed power supply inclusive of congestion and losses
- Certainty of outside funding sources (i.e. tax credits or government subsidies)
- Availability / reliability of resource and associated guarantees
- Financial viability of the Bidder, including its parent or any other guarantor of services
- Demonstrated experience of the Bidder in successful execution and completion of similar projects

- Project location, viability and timing
- Environmental impacts of the proposed resource
- Any indirect impact the project may have on Big Rivers' future environmental compliance obligations
- Life of plant evaluation for new proposed resources
- Term of contract
- Transmission Charges / Costs (including potential O&M Costs and Direct Assignment Facilities Costs)
- Cost of control area services (ancillary services)
- Legal, engineering and other costs required to implement the proposed service(s)
- Forecasting capability

Each of these factors is important to the successful integration of a new renewable energy supply resource with Big Rivers' existing resources. Big Rivers reserves the right to consider any other factors that it deems to be relevant to its renewable energy supply needs.

Bid Evaluation Process

The process utilized to evaluate proposals will be as follows:

- Determine if the proposals are responsive to and compliant with the RFP
- Evaluate qualifying proposals from a technical and commercial viewpoint
- Evaluate qualifying proposals from an economic viewpoint
- Develop a short list for negotiations, if determined to be in the best interests of Big Rivers

Big Rivers may conduct scenario and sensitivity analyses of proposals to evaluate risks and strategic value. The results of these analyses may be considered in Big Rivers' evaluation of proposals, including the selection of proposal(s) for the short list, if applicable.

Inquiries and Other Communications

For information and inquiries relating to the RFP, please direct all inquiries to Michael Loenen at NRCO.

In order to facilitate a clear and timely response to critical inquiries, all Bidders are encouraged to submit questions via e-mail. Questions, responses to specific questions and general information, clarifications etc. will be distributed via e-mail, without Bidder identification or attribution, to all prospective Bidders.

Confidentiality and Disclosure

Big Rivers requires Bidders to sign the Non-Disclosure Agreement and return it with their Proposal. Once received, NRCO and Big Rivers will execute the agreement and return a copy to the Bidder.

Acceptance and Rejection of Proposals

Big Rivers reserves the right, without qualification and in its sole discretion, to select or reject any or all Proposals and to waive any formality, technicality, requirement, or irregularity in the Proposals received; to decline to enter into any agreement with any Bidder in its sole and absolute discretion; and to terminate this RFP in whole or in part at any time. Big Rivers further reserves the right without qualification and in its sole discretion to accept Proposals other than the lowest cost Proposal, and to consider other alternatives outside of this Request for Proposal in its sole discretion to satisfy its renewable capacity and energy objectives. Bidders who submit Proposals do so without recourse against Big Rivers, Big Rivers' members, NRCO or NRCO's members for either rejection or failure to execute an agreement for purchase of capacity, energy and/or environmental attributes for any reason. Bidders should recognize that factors other than cost will be considered during the Proposal evaluation process.

Costs

Each Proposal will be prepared at the sole cost and expense of the Bidder and with the express understanding that the Bidder has no claims whatsoever for reimbursement from NRCO or Big Rivers. Bidder shall bear all costs and expenses of any response to Big Rivers in connection with its proposal, including providing additional information and the Bidder's own expenses in negotiating and reviewing any documentation.

Solicitation Fee

The cost of conducting evaluation is a business expense to be borne by all Bidders in a fair and equitable manner. To that end, a nonrefundable bid fee of \$4,000 per Bidder will be required.

NRCO shall not reimburse any Bidder for any costs incurred in the preparation or submission of a Proposal and/or in negotiating an agreement as a result of a Proposal. A check for certified funds covering all Proposals submitted must be included with any proposal package(s) sent to NRCO and should be made payable to: NRCO. Bid fees may also be paid by electronic funds transfer as long as the deposit is executed by the proposal due date. Electronic funds transfer instructions will be communicated to bidders upon request. Proposals that do not include the bid fee will not be accepted by NRCO. Payment instructions will be included as an attachment to the RFP.

Damages

None of Big Rivers, Big Rivers' member cooperatives, NRCO, NRCO's members nor any director, officer, employee, agent or representative of any of them ("Agents"), shall be liable for any costs incurred by Bidders in responding to this RFP, or for any damages arising out of or relating to any modification or withdrawal of this RFP, Big Rivers' rejection of any proposal, Bidder's reliance upon any communication received from Big Rivers, NRCO or NRCO's members, failure to enter into an agreement, or for any other reason relating to or arising out of this RFP. In no event will Big Rivers, Big Rivers' member Cooperatives, NRCO, or NRCO's members or any of their Agents be liable for any damages incurred by any party relying upon any action or statement by Big Rivers, Big Rivers' member cooperatives, NRCO, NRCO's members or any of their Agents in connection with this RFP.

Tax Credits

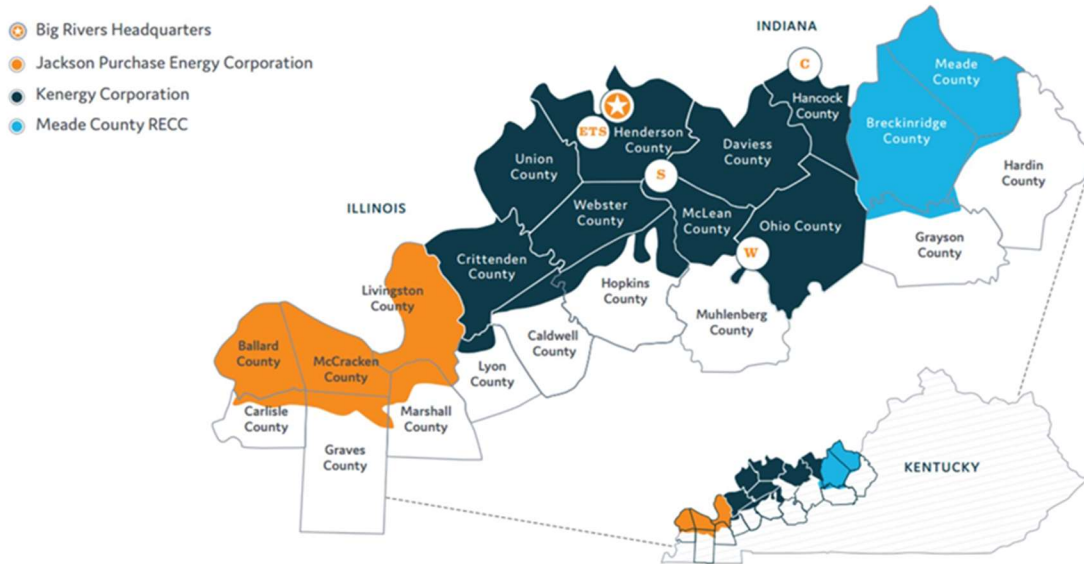
Bidders shall bear all risks, financial and otherwise, associated with the Bidder's or the proposed facility's eligibility to receive production or investment tax credits or qualify for accelerated depreciation. The obligations of the Bidder to perform under any executed agreement shall be effective and binding regardless of whether the sale of energy from the Bidder's facility under such agreement is eligible for, or receives, favorable tax treatment during the term of the agreement.

Big Rivers' Board of Directors, Creditor and Regulatory Approvals

Any contract(s) awarded as a result of this RFP or subsequent negotiations shall be subject to all necessary approvals, including Big Rivers' Board of Directors, the KPSC, and RUS.

Attachment I

Big Rivers Member Territory



Attachment II

NRCO 2018 Solar Energy RFP Bidder Proposal Content

- Part 1 - Bidder Contact Information
- Part 2 - Firm Offer
- Part 3 - Executive Summary
- Part 4 - Development Status and Site Description
- Part 5 - Capacity and Energy Profile
- Part 6 - Technical Description and Data by Resource Type
- Part 7 - Operations & Maintenance
- Part 8 - Description of Pricing Methodology
- Part 9 - Pricing Information
- Part 10 - Transmission and Interconnection
- Part 11 - Financing and Credit Arrangements
- Part 12 - References
- Part 13 - Project Team

Part 1

Bidder Contact Information
Corporate Name:
Corporate Address:
Parent's Corporate Name:
Parent's Corporate Address:
Legally Authorized Representative
Name:
Title:
Phone:
Fax:
E-mail:
Signature:
Primary Contact:
Name:
Title:
Phone:
Fax:
E-mail:
Signature:

Part 2 Firm Offer

The undersigned submits this proposal as a firm offer and hereby gives assurance that the proposal will remain open, and not be revocable before September 1, 2019.

It is anticipated that the bid evaluation and contract execution process could extend three months or longer. Accordingly, short-listed Bidders may refresh their firm offer upon notification by NRCO and Big Rivers.

Name of Bidding Company: _____

Authorized Signature: _____

Date Proposal Submitted: _____

Part 3

Executive Summary

Please provide a one-page summary of the Proposal labeled 'Part 3', including the following:

- Location
- In-service date
- Capacity and energy to be supplied
- Point of delivery
- Generation technology (including panels, racking systems, inverters, interconnection equipment)
- Use of Nucor Steel (if any) in EPC design

Part 4

Development and Siting Status

Bidders shall provide a thorough description of the development status of its proposed project on a separate sheet labeled as 'Part 4'. Information provided should include status of the following:

- Site, zoning and construction permitting: Include the size of project (acres), percentage of the site under control and any zoning restrictions that would impact development or use of facility
- Environmental assessments and studies
- Emissions and environmental permitting
- Regulatory and governmental approvals
- Engineering and design activities
- Resource acquisitions (i.e., land, equipment such as solar panels, racking systems, inverters, interconnection equipment etc.)
- Construction status and evidence of ability to construct and fulfill all contractual requirements; and project schedule and milestones, including construction start through commercial operation date.

Part 5

Energy Profile

Please provide forecasted solar production data in the attached Excel spreadsheet ("*Big Rivers Solar RFP.xls*") by filling in the tables in the '12by24' and '8760' worksheets. The 8760 hourly energy profile should be representative of the expected long-term behavior of the project and therefore be consistent with the 12x24 matrix. A copy of the PVSyst or similar report should also be included.

Part 6

Technical Description and Data Needed

Bidders shall complete this section to provide assurance to NRCO that the project will be able to meet its projected production estimates for the duration of the project life. Please provide responses on a separate page labeled 'Part 6':

Solar Energy Resources

Please describe the proposed solar generation equipment specifications including brand, model, nameplate ratings, size, and capabilities, the performance history of modules, inverters, and tracking equipment (if used), and all UL and IEEE equipment compliance information. Provide a guaranteed minimum output performance level on an annual basis and detail the design of the specific proposed solar generation system including array configuration, overall system efficiency and total energy output. Please also include a general plot plan showing site location, equipment positions, pertinent meteorological data, annual solar energy production, average capacity factor, proposed solar generator power curve data, and droop response for solar generation.

Part 7

Operations & Maintenance

Please describe the operations and maintenance plan for the facility. Address general maintenance schedules, availability goals, unscheduled maintenance response times and any other relevant information.

Part 8

Description of Pricing Methodology

Please describe the pricing mechanism for the Proposal on a separate page labeled 'Part 8'. NRCO and Big Rivers are interested in the methodology used by all Bidders to ensure pricing includes all applicable charges. Big Rivers preference is that all Proposals include an all-in \$/MWh price. Examples of items to discuss are demand (if applicable) charges versus energy charges. If there is a separate demand component, describe the methodology for calculating the kW-month billing demand determinant. Note if the offer pricing is dependent upon certain subsidies, credits (e.g. 100% Investment Tax Credit qualification) or network upgrade cost assumptions.

**Part 9
Pricing Information**

Identify all pricing information related to the Proposal in a table labeled 'Part 9'. Please include a table similar to the one below.

Project Name	
Project Location	
Project Capacity: {MWdc}	
Project Capacity: {MWac}	
Term: {years}	
Fixed ('Flat') Offer Price: {\$/MWh}	
Project COD	
PPA Offer Delivery Point	

In addition, please complete requested entries in the *"Big Rivers Solar RFP.xlsx"*.

**Part 10
Transmission and Interconnection**

In 'Part 10', provide the point of interconnection (location) and the generator interconnection request number and queue position, if applicable, on the respective transmission provider's generator interconnection queue. The Bidder shall define all expected costs associated with the interconnection of the project to the transmission system. The Bidder shall define all expected costs of upgrades to the transmission system(s) as a result of the interconnection of the project. Associated O&M cost on facilities upstream of the delivery point will not be applicable.

All proposals will need to demonstrate firm interconnection rights or substantial progress and likelihood of success for obtaining those rights.

**Part 11
Financing and Credit Arrangements**

If the Bidder is rated by S&P, Moody's, or Fitch, please provide latest credit report from each applicable rating agency. If the Bidder is not rated, please provide credit ratings for the parent

company and/or any other guarantor. Also, please describe any new financing required to fund additional transmission or generation facilities. Please describe any financing arrangements that have been made prior to submitting the Proposal. Describe proposed financing arrangements, including sources of funding, contingencies, and interest during construction.

Part 12 References

In a document labeled 'Part 12', please list client references who may be contacted and for whom services have been rendered in the past 24 months. Include names, titles, address, phone numbers and e-mail addresses.

Part 13 Project Team Information

In a document labeled 'Part 13,' please include the following:

- Company profile, including office location, age of company, average number of employees over the past five years, and any ownership interests
- Description of the company's pertinent experience for all power projects, projects of similar technology, and projects located in the same state as proposed for this project. The Bidder should designate if the experience is in:
 - Development
 - Construction
 - Ownership
 - Operation and maintenance of the projects
- Statement of any current litigation or arbitration proceedings regarding any power or capacity supply matter involving the company and any of its subsidiaries, off-balance sheet companies in which it has an interest, directors, or officers. If there is any current litigation, provide a discussion of the current litigation or arbitration, including the style of the case, the case number, and the jurisdiction of the dispute.
- A company organizational chart, as well as biographies and qualifications of key staff

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS
ELECTRIC CORPORATION FOR APPROVAL
OF SOLAR POWER CONTRACTS

) Case No. 2020-00183
)

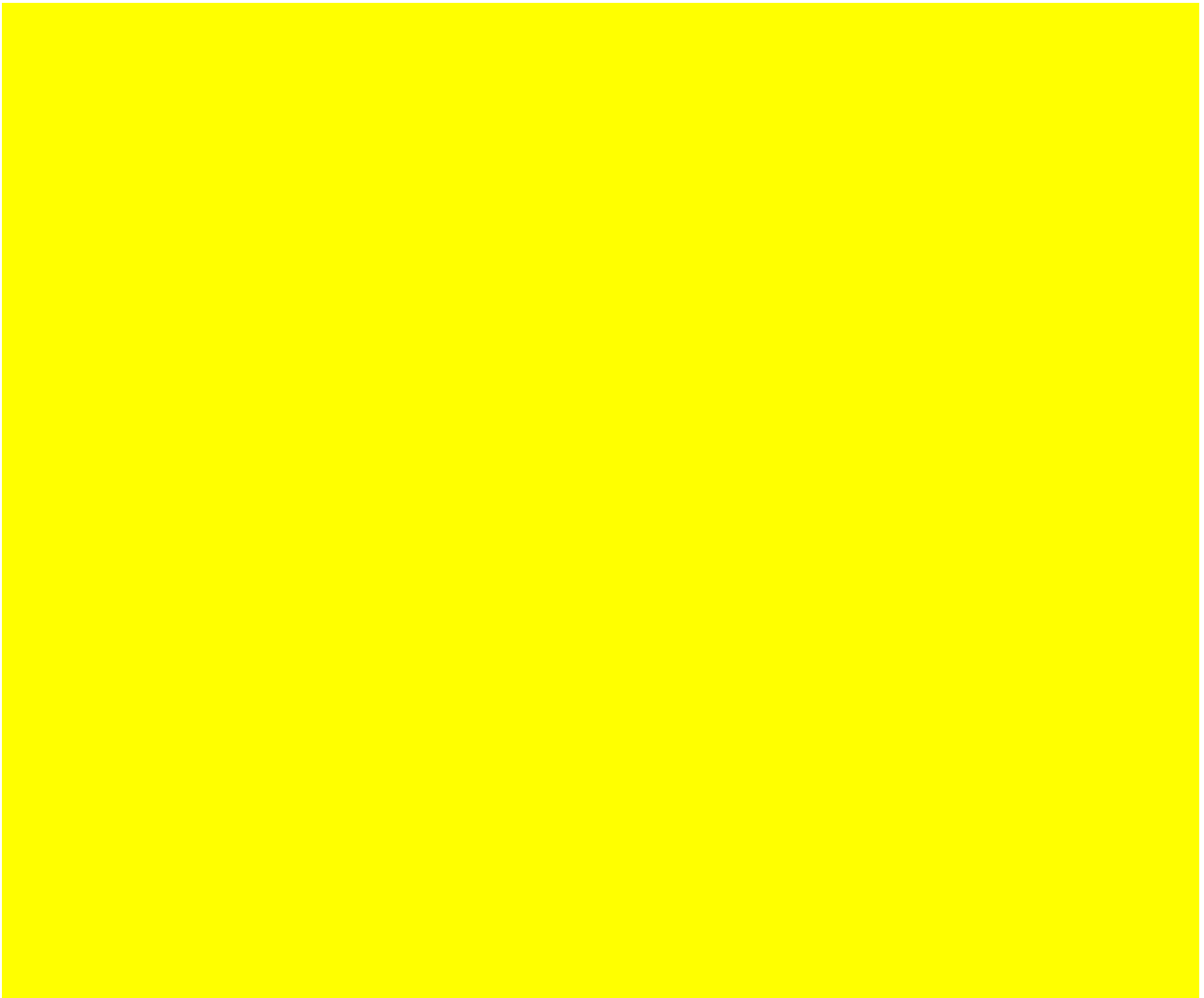
CONFIDENTIAL EXHIBIT

APPLICATION

FILED: June 24, 2020

EXHIBIT EACRET - 3

SUBMITTED UNDER MOTION FOR CONFIDENTIAL TREATMENT



In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS
ELECTRIC CORPORATION FOR APPROVAL
OF SOLAR POWER CONTRACTS

) Case No. 2020-00183
)

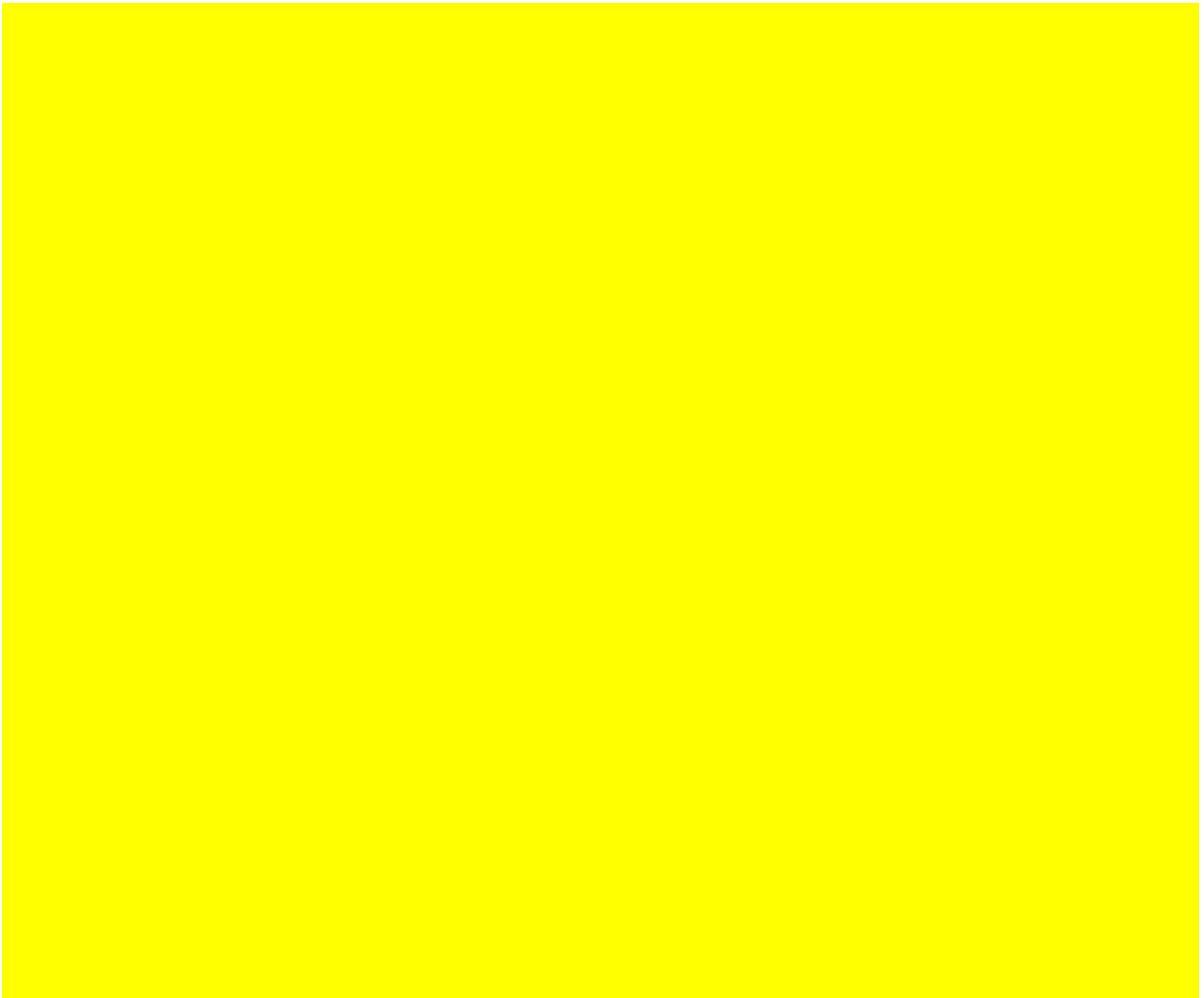
CONFIDENTIAL EXHIBIT

APPLICATION

FILED: June 24, 2020

EXHIBIT EACRET - 4

SUBMITTED UNDER MOTION FOR CONFIDENTIAL TREATMENT



In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS
ELECTRIC CORPORATION FOR APPROVAL
OF SOLAR POWER CONTRACTS

) Case No. 2020-00183
)

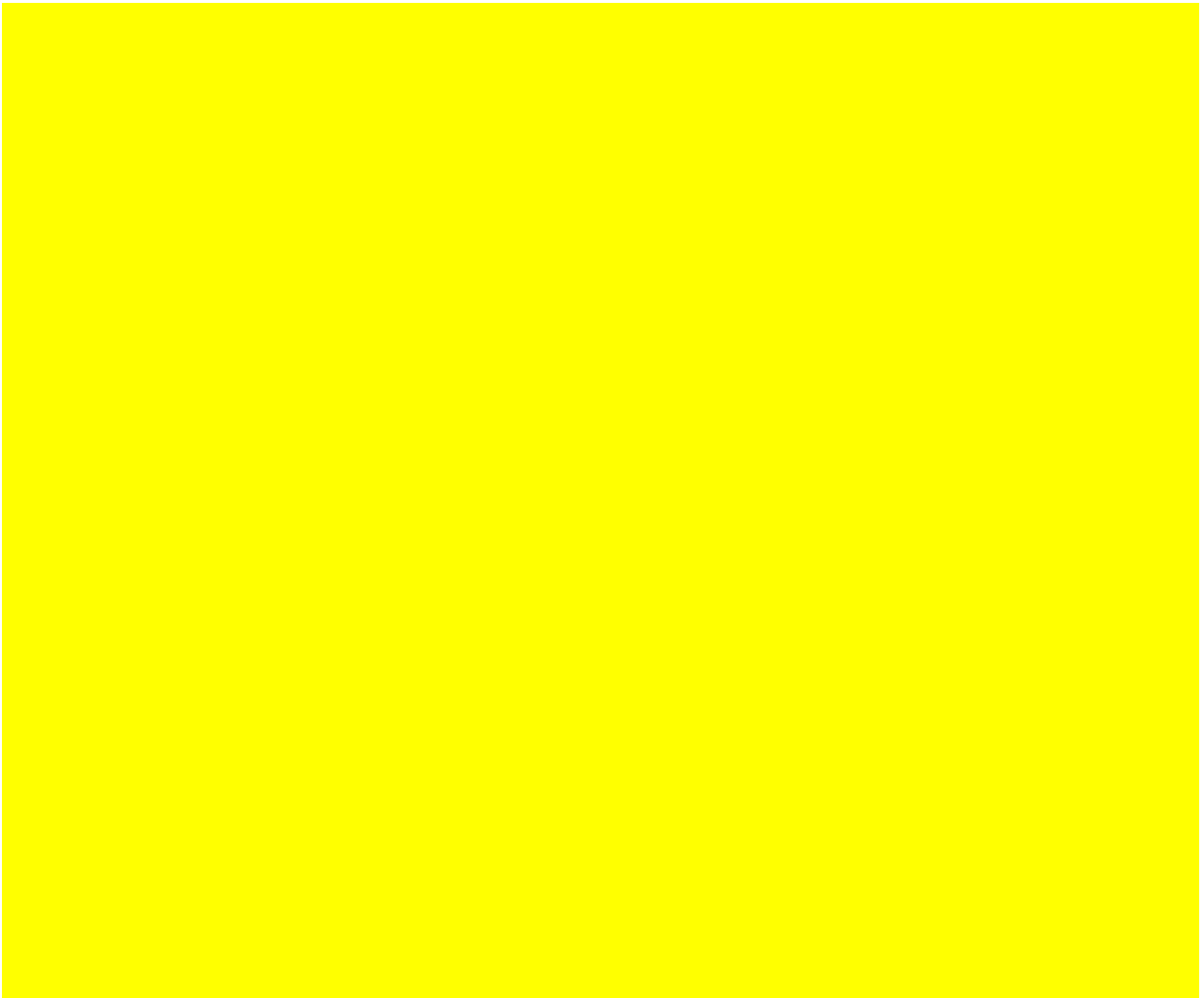
CONFIDENTIAL EXHIBIT

APPLICATION

FILED: June 24, 2020

EXHIBIT EACRET - 5

SUBMITTED UNDER MOTION FOR CONFIDENTIAL TREATMENT



In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS
ELECTRIC CORPORATION FOR APPROVAL) Case No. 2020-00183
OF SOLAR POWER CONTRACTS)

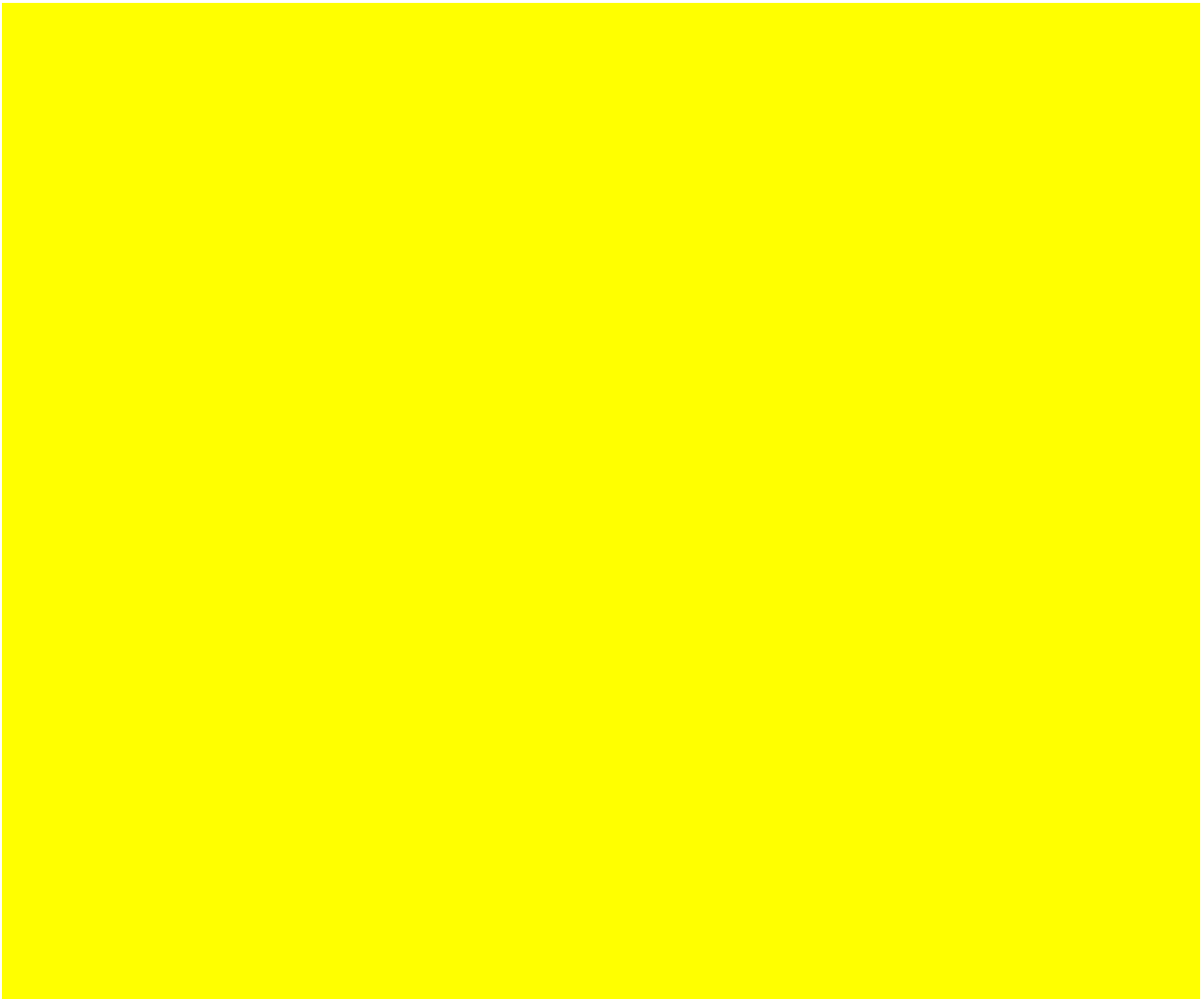
CONFIDENTIAL EXHIBIT

APPLICATION

FILED: June 24, 2020

EXHIBIT EACRET - 6

SUBMITTED UNDER MOTION FOR CONFIDENTIAL TREATMENT



In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS
ELECTRIC CORPORATION FOR APPROVAL
OF SOLAR POWER CONTRACTS

) Case No. 2020-00183
)

CONFIDENTIAL EXHIBIT

APPLICATION

FILED: June 24, 2020

EXHIBIT EACRET - 7

SUBMITTED UNDER MOTION FOR CONFIDENTIAL TREATMENT



Economic Impact

for 160 MW (Solar Array)



During Development:

(assumes a five year development period)

~\$100,000
on sponsorships, marketing, travel, meals, legal fees, office, county records, local engineering, and environmental consulting services

During Construction:

Capital Infrastructure Investment roughly **\$250 million**

~150 construction and related services jobs

Economic impact diversity across Kentucky, including induced jobs

Millions of Dollars estimated funds spent toward local spending



During Operation: ~\$7.6 Million Direct Impact Over 25 Years

Producing home-grown, clean, renewable energy in Kentucky.



5 Full-time Jobs
(\$7 million in wages over 20 years, \$350,000 annually)

~\$640,000 Over 20 Years
(~\$32,000 annually)

Education Fund

~\$4 million Over 25 Years*
(~\$160,000 annually)

Tax Revenue distribution projections:

School Districts	Local Counties
\$2.3 million over 20 years, or \$116,800 per year	\$480,000 over 20 years, or \$24,000 per year

State \$384,000 over 20 years, or \$19,200 per year

*Calculations based on National Renewable Energy Laboratory (NREL) JEDI Model, EPA Greenhouse Gas Equivalencies calculator and current STATE tax for solar facilities. Subject to change.

Beshear Approves Land Purchase For Henderson Co. Solar Farm

By RACHEL COLLINS · JUN 16, 2020

[Tweet](#)[Share](#)[Google+](#)[Email](#)



Credit Ray Ok / WIKIMEDIA COMMONS

The Kentucky Department for Local Government (DLG) with Gov. Andy Beshear announced on June 16 final approval on the sale of 418 acres of Henderson County land to Henderson Solar in the 4 Star Industrial Park. A press release issued by the DLG states the land will be used to make Henderson Solar’s 1,700-acre solar facility viable.

“Today is a first step toward building a more modern and resilient economy,” Beshear said in a statement. “Thanks to Henderson Solar, we will see a more diverse energy profile, new tax revenue and good jobs in Henderson and the surrounding area.”

DLG Commissioner Dennis Keene said the approval of the purchase agreement opens the door to more investment in the area: “This project will not only generate new dollars for the local community, but it adds a new industry in the industrial park, which will generate benefits and growth for years to come.”

Construction of the solar facility is set to begin in 2022, with energy production slated for the end of 2023. The project is expected to create five full-time jobs, more than 100 construction jobs and generate millions of dollars in tax revenue over the next two decades.

“This is a momentous day in the history of 4 Star, and it is truly a win-win deal,” Henderson County Judge-Executive Brad Schneider said in a statement. “The company gained the acreage it needed to generate the power required to make its solar farm viable. The 4 Star board now has the financial resources to make significant improvements to the park.”

Doug Bell, chairman of the 4 Star Board of Directors, said the project is a great opportunity for the Industrial Park.

“This is an exciting day for not only 4 Star Park, but for our region in general,” said Bell in a statement. “We are excited to have this company as a part of our park. With this

partnership, our board will now have the financial capacity to further enhance the park. These enhancements, such as a shell or spec building, will give us a competitive advantage when attracting new industry to our area.”

In addition to creating jobs, the solar farm will allow electric cooperative Big Rivers Electric Corp. to purchase solar energy from the plant, offsetting carbon emissions equivalent to taking approximately 55,000 cars off the road.

In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS
ELECTRIC CORPORATION FOR APPROVAL) Case No. 2020-00183
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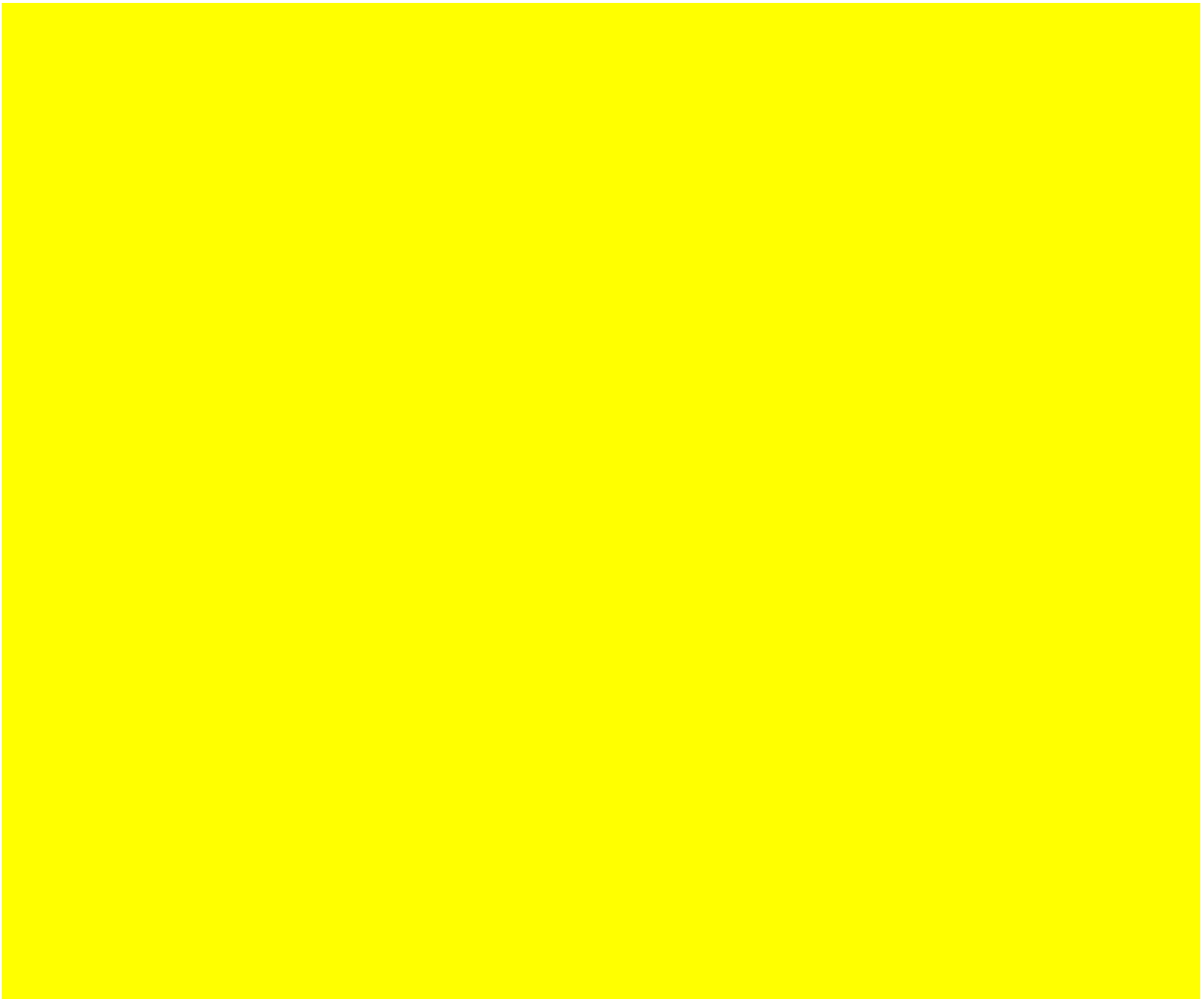
CONFIDENTIAL EXHIBIT

APPLICATION

FILED: June 24, 2020

EXHIBIT EACRET - 10

SUBMITTED UNDER MOTION FOR CONFIDENTIAL TREATMENT



In the Matter of:

ELECTRONIC APPLICATION OF BIG RIVERS
ELECTRIC CORPORATION FOR APPROVAL) Case No. 2020-00183
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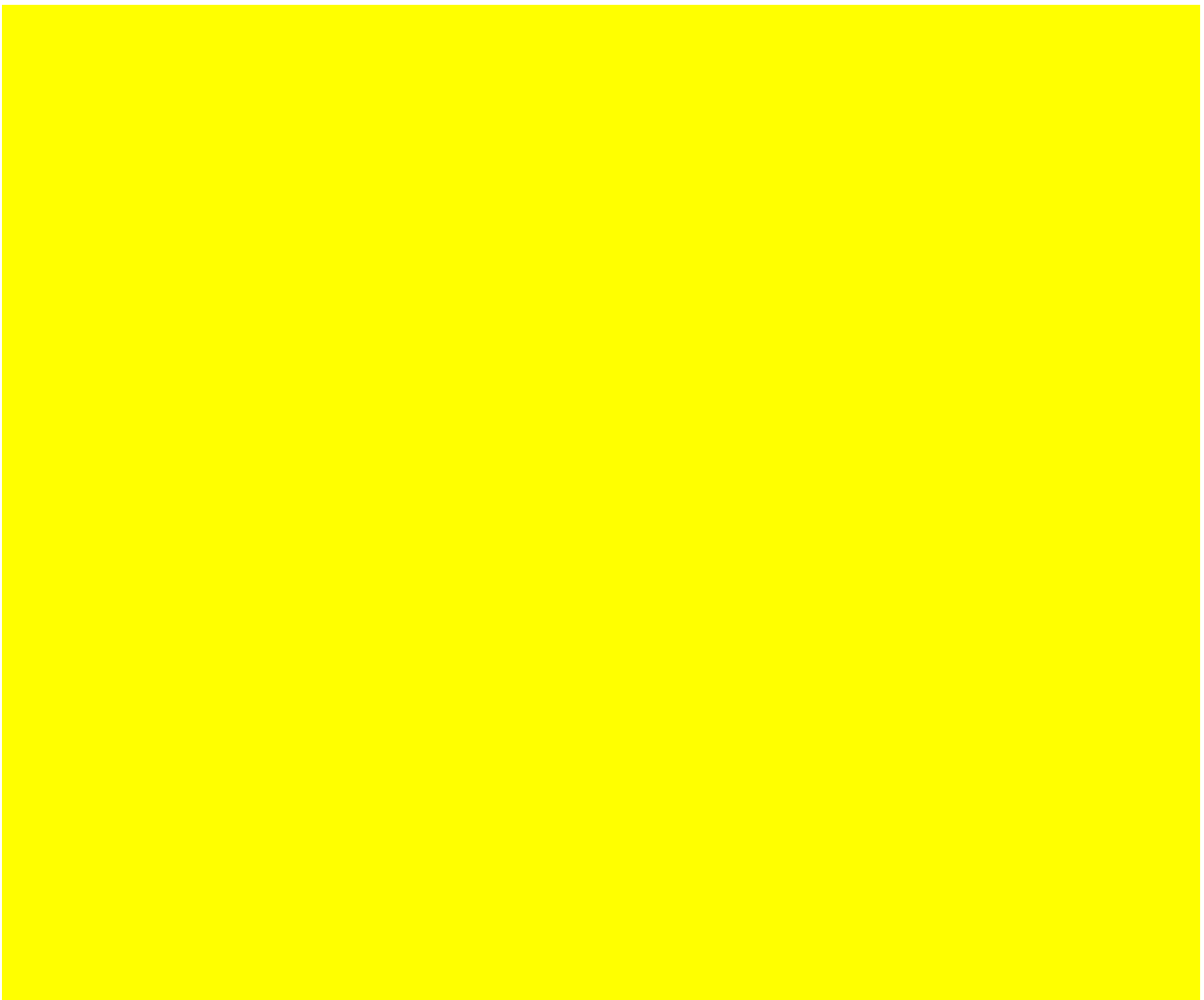
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APPLICATION

FILED: June 24, 2020

EXHIBIT EACRET - 11

SUBMITTED UNDER MOTION FOR CONFIDENTIAL TREATMENT



In the Matter of:

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ELECTRIC CORPORATION FOR APPROVAL) Case No. 2020-00183
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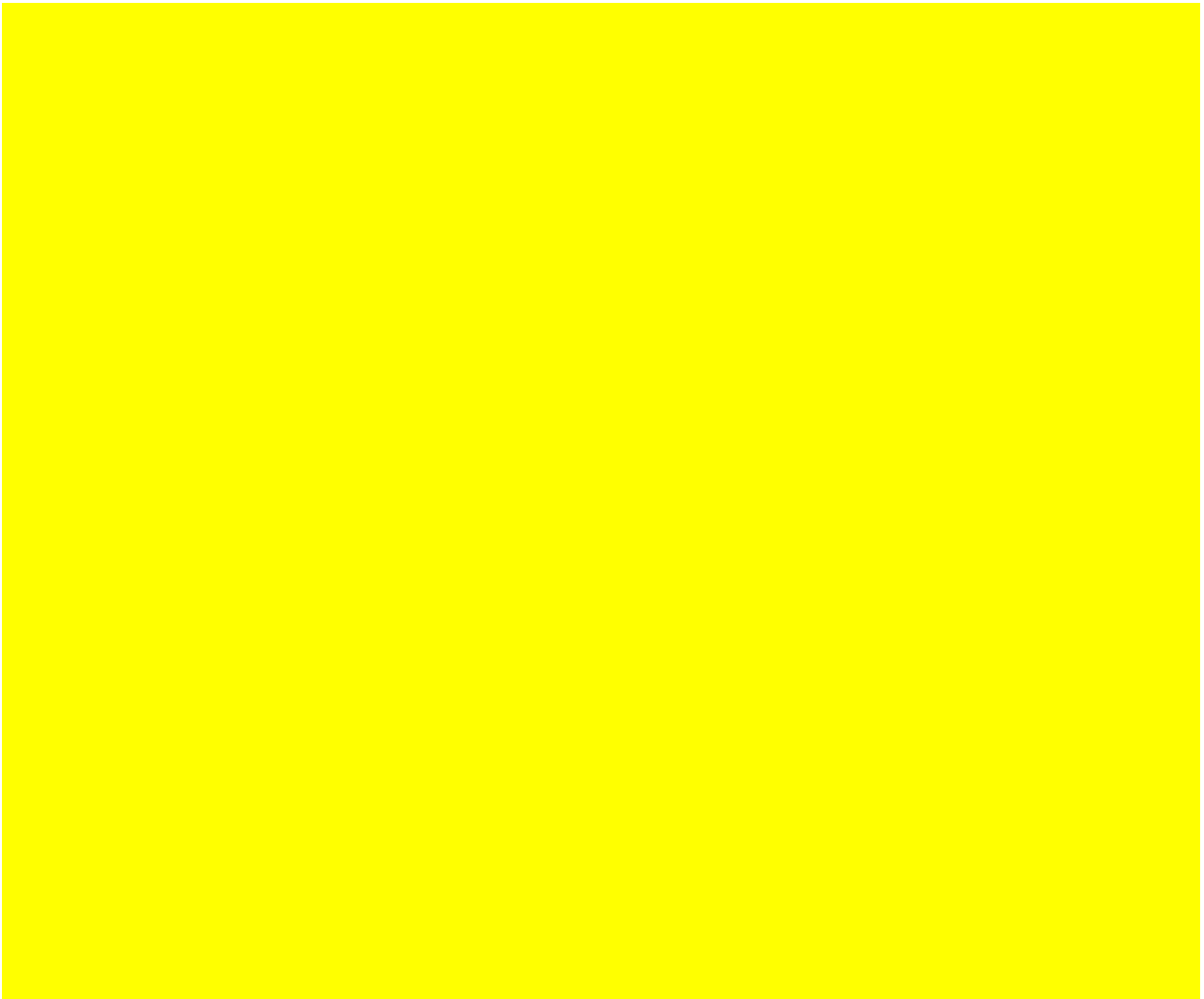
CONFIDENTIAL EXHIBIT

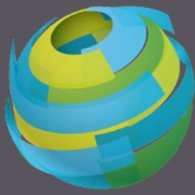
APPLICATION

FILED: June 24, 2020

EXHIBIT EACRET - 12

SUBMITTED UNDER MOTION FOR CONFIDENTIAL TREATMENT





Forward Curve Methodology

The following excerpt is taken from ACES' Mark to Market and Forward Curve Methodology and Documentation. It describes how forward price curves are created for the mark-to-market and credit exposure calculations. The document is reviewed and approved by ACES' Risk Management Committee on a monthly basis and is posted in its entirety on the web portal for client reference.

Energy Forward Price Curve System

ACES produces forward energy price curves using its in-house designed proprietary system. The system produces all the forward power curves listed in section **Error! Reference source not found.**, **Error! Reference source not found.**. The following sections describe the individual data components that are used, and how they are combined to ultimately create the forward energy price curves.

Energy Forward Price Curve Content – Near Term Data

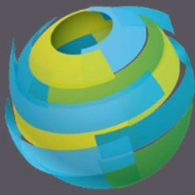
The near term part of the forward price curves is comprised of data that is either quoted directly from the market or is derived and modeled from market sources. The next few paragraphs describe the types of data that make up this market sourced component of the energy forward price curves.

Broker quotes are price quotes for energy products of varying tenor and granularity that come from market participating brokers including Amerex, ICAP and ICE. The price quotes may be from actual transactions or indicative bids or offers and are considered the best source of market pricing information available.

Heat rate modeled data is created by Portfolio Valuation to extend broker quotes into the future. The heat rate from the last year of available market quotes may be projected flat, escalated at inflation, or escalated at the growth rate of IHS Markit heat rates and applied to the NYMEX Natural Gas futures prices to produce the projected power prices. This projection provides consistency between the power and gas forward curves as they remain connected by the heat rate.

Forward price curves for some of the illiquid locations are estimated using the basis prices from the Transmission group's Ventyx PROMOD model as noted in section **Error! Reference source not found.**, **Error! Reference source not found.**. The Transmission group simulates unit dispatch and path congestion, creating basis differential prices from the hubs to illiquid locations. Where available, Portfolio Valuation applies these basis estimates to the liquid hub forward quotes to calculate the price at the illiquid location.

Other illiquid location curves may be produced using FEA @ENERGY Forward Curve as noted in section **Error! Reference source not found.**, **Error! Reference source not found.**. FEA @ENERGY Forward Curve is a suite of price behavior analysis tools that is used to create forward price curve data. The models use spot data to measure price behavior parameters, and these parameters are used to project the curves into the future. In addition, the tools allow for customized drift rates and indicative forward input data to allow for more accurate projections. Spot data is sourced from RTO LMPs and sources such as ICE, depending on the market. Other input data is sourced from brokers, basis measurements from liquid markets from transmission, and heat rate modeled data. Drift rates are calculated based on market data and modeled data.



The remaining illiquid curves as noted in section **Error! Reference source not found. Error! Reference source not found.** are calculated using the basis differential from the latest IHS Markit data. The IHS Markit basis value is applied to the liquid quote to calculate the illiquid price values.

The last year of the near term market sourced data described in the preceding paragraphs is escalated at the inflation rate through the blending period to be used in the calculation described below on page 2.

Energy Forward Price Curve Content – Long Term Data

Portfolio Valuation employs long term modeled data from the North American Power, Gas, Coal, and Renewables product of IHS Markit (IHSM) to value transactions that extend beyond the availability of market sourced data. The IHSM product is described in detail in **Error! Reference source not found. Error! Reference source not found.**. The model is a fundamental supply and demand projection integrated with the analysis and modeling of the natural gas, coal, and oil markets; all of which are based on IHSM’s global upstream supply research, macroeconomic assumptions, and analysis of key trends. IHSM provides comprehensive documentation of the model which is updated on a semi-annual basis.

The IHSM data is supplied for approximately 20 years forward. The last IHSM prices are escalated at inflation through 2050 to cover the longest tenored ACES client transactions.

Blending Methodology

A weighted average calculation smooths the transition from near term market sourced data to long term IHS Markit modeled data across a blending period of overlapping data from the two streams. The blending period is ten years long, spanning the years 2034-2043. The market sourced data typically has to be escalated at inflation to fill out the length of the blending period. The weighted average is calculated using the following formula.

$$\text{weighted average} = s_m * b_y + w_m * (1 - b_y)$$

Where:

s_m = market sourced data for month m, m=1 to 120.

b_y = Blending coefficient for year y, y = 1 to 10.

w_m = Modeled value for month m, m=1 to 120.

The blending coefficients (the b_y variable in the formula above) used to transition between market sourced data and long term IHS Markit data are constructed in a logarithmic format. The calculation method allows the values to be subjective. This provides flexibility which is helpful for different applications. The general form is as follows:

$$\text{blending coefficient}_p = \frac{\ln[1 + A(N - p + 1)]}{\ln[1 + A(N + 1)]}$$

Where:

A = Adjustment constant

N = Number of blending periods

p = blending period, 1...N

Regarding the flexibility mentioned above, it is worth noting that an adjustment constant of .0001 or less

causes the blending coefficients to equal a linear interpolation.¹ Anything above that produces the desired blending form where the primary (market sourced) blend coefficient decreases at an increasing rate.

The blending weights used in the construction of the power and all other forward curves are calculated using 10 blending periods (for the 10-year blending window) and an adjustment constant of 0.1 resulting in the following parameters.

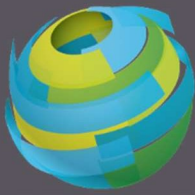
Blending Coefficients

Blending Year	Blending Coefficient
1	0.934
2	0.865
3	0.792
4	0.715
5	0.633
6	0.546
7	0.454
8	0.354
9	0.246
10	0.128

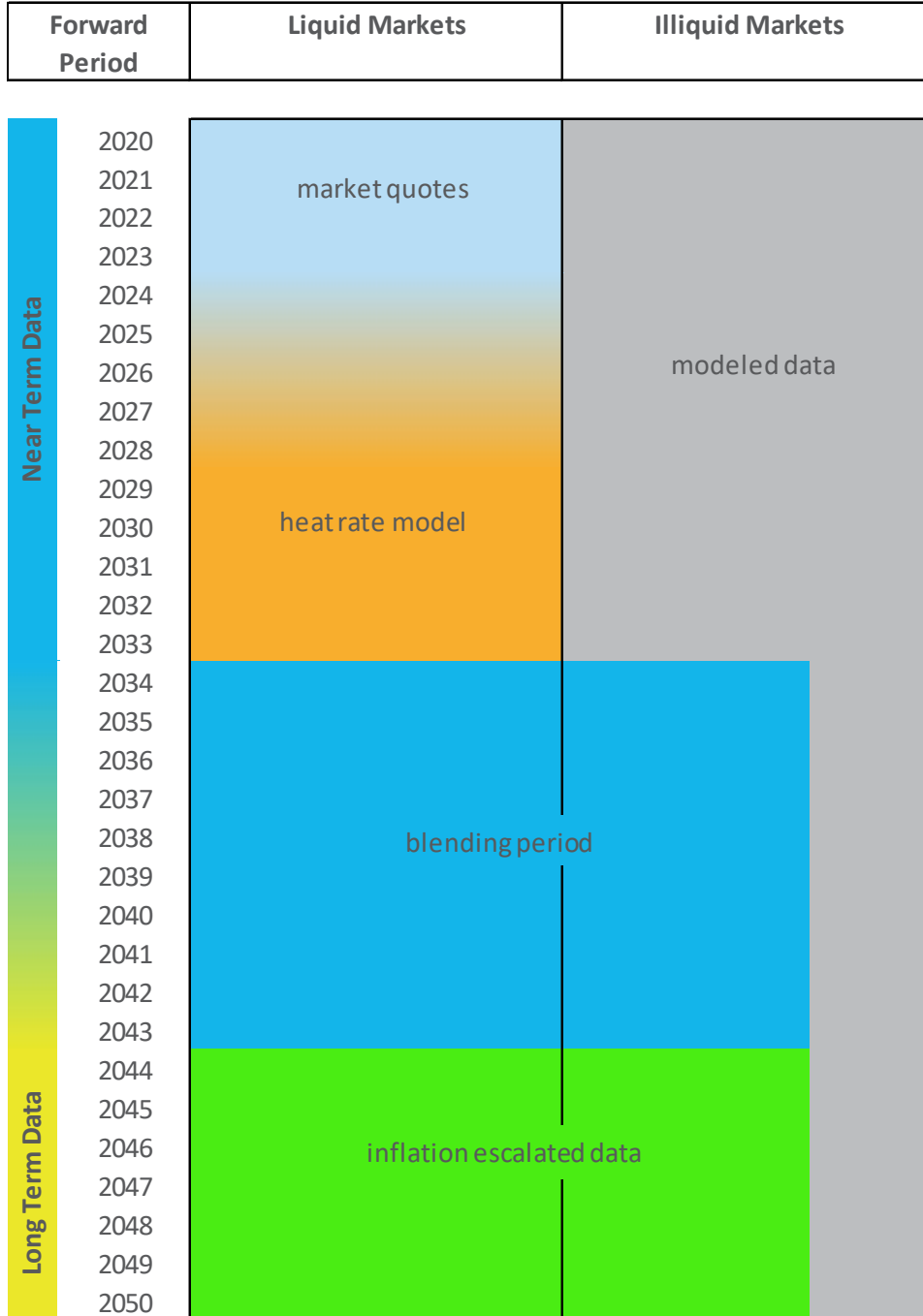
Energy Forward Price Curve Process

A proprietary process creates the energy forward price curves. The process uses the data elements described in the preceding two sections. The visual “Map of Forward Curve Data Set” below is a representation of the process, showing where the data elements are included in the complete data set. The step-by-step summary that follows describes how each colored block in the map is populated, effectively how the forward curve is built.

¹ At three decimal places.



Map of Forward Curve Data Set



https://cdn.misoenergy.org/RIIA%20Assumptions%20Doc_v7429759.pdf

Source: IHS Markit North American Power Market Outlook November 2019

4.1.3 Capacity Contribution of Renewables

An ELCC function was developed for each renewable technology to inform retirement decisions. The ELCC curve of each technology was characterized using the results from each milestone and a polynomial fitting as shown in Figure 2.

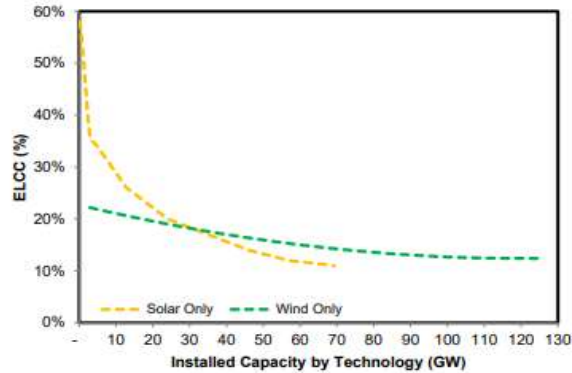


Figure 2 Wind and solar ELCC curves as a function of installed capacity

These graphs were approximated by the *siting- and fuel-mix specific* functions in Equation 1, where UCAP is unforced capacity and ICAP is installed capacity, in units of GW.

Equation 1 Approximate ELCC functions for wind and solar
 Wind $UCAP = 100 * (-0.03 \ln(ICAP) + 0.26)$, in percentage

Solar $UCAP = 100 * (-0.07 \ln(ICAP) + 0.42)$, in percentage

These functions were evaluated for each milestone for each region to determine the appropriate amount of retirements to select.

Year	MISO North	MISO South	MISO Total	Total GW	UCAP GW	MISO-wide ELCC %	MISO North ELCC %
2020	1,516.7	488.0	2,004.7	2.005	0.744	37.1%	39.1%
2021	2,136.3	776.7	2,913.0	2.913	1.005	34.5%	36.7%
2022	2,917.4	1,206.0	4,123.4	4.123	1.323	32.1%	34.5%
2023	3,753.0	1,729.5	5,482.5	5.482	1.650	30.1%	32.7%
2024	4,465.8	1,902.1	6,367.9	6.368	1.849	29.0%	31.5%
2025	5,181.0	2,099.9	7,280.9	7.281	2.046	28.1%	30.5%
2026	5,931.7	2,368.7	8,300.4	8.300	2.257	27.2%	29.5%
2027	6,793.5	2,686.8	9,480.3	9.480	2.489	26.3%	28.6%
2028	7,730.4	3,034.0	10,764.4	10.764	2.731	25.4%	27.7%
2029	8,753.4	3,381.5	12,135.0	12.135	2.976	24.5%	26.8%
2030	9,882.5	3,919.7	13,802.2	13.802	3.261	23.6%	26.0%
2031	11,072.7	4,457.8	15,530.5	15.531	3.541	22.8%	25.2%
2032	12,242.3	4,996.1	17,238.4	17.238	3.805	22.1%	24.5%
2033	13,445.0	5,535.6	18,980.6	18.981	4.061	21.4%	23.8%
2034	14,639.7	6,076.2	20,715.9	20.716	4.306	20.8%	23.2%
2035	15,962.8	6,767.6	22,730.4	22.730	4.577	20.1%	22.6%
2036	17,298.6	7,480.3	24,778.9	24.779	4.839	19.5%	22.0%
2037	18,659.7	8,241.6	26,901.3	26.901	5.099	19.0%	21.5%
2038	20,039.0	8,997.6	29,036.7	29.037	5.349	18.4%	21.0%
2039	21,482.0	9,758.7	31,240.8	31.241	5.595	17.9%	20.5%
2040	23,054.0	10,449.9	33,503.9	33.504	5.836	17.4%	20.0%
2041	24,783.7	11,246.3	36,029.9	36.030	6.092	16.9%	19.5%
2042	26,509.1	12,047.7	38,556.7	38.557	6.337	16.4%	19.1%
2043	28,244.5	12,854.2	41,098.7	41.099	6.571	16.0%	18.6%
2044	30,005.2	13,665.8	43,671.1	43.671	6.797	15.6%	18.2%
2045	31,826.5	14,497.6	46,324.0	46.324	7.018	15.2%	17.8%
2046	33,743.2	15,255.4	48,998.6	48.999	7.231	14.8%	17.4%
2047	35,687.5	16,123.5	51,811.0	51.811	7.444	14.4%	17.0%
2048	37,649.6	16,886.3	54,535.9	54.536	7.639	14.0%	16.6%
2049	39,653.9	17,651.5	57,305.3	57.305	7.829	13.7%	16.2%
2050	41,606.9	18,419.1	60,026.0	60.026	8.005	13.3%	15.9%

In the Matter of:

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ELECTRIC CORPORATION FOR APPROVAL) Case No. 2020-00183
OF SOLAR POWER CONTRACTS)

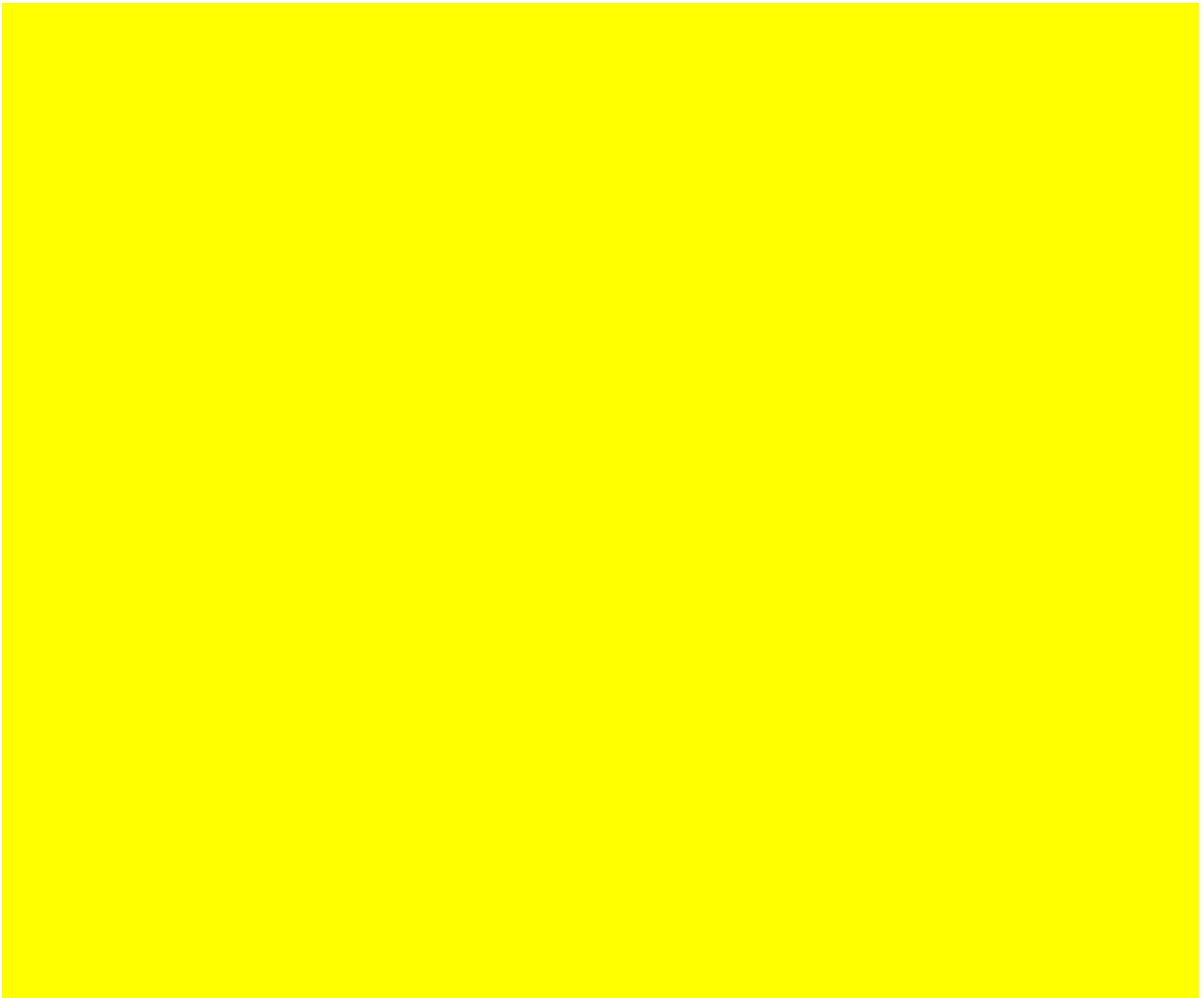
CONFIDENTIAL EXHIBIT

APPLICATION

FILED: June 24, 2020

EXHIBIT EACRET - 15

SUBMITTED UNDER MOTION FOR CONFIDENTIAL TREATMENT





Your Touchstone Energy® Cooperative 

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

In the Matter of:

ELECTRONIC APPLICATION OF)	Case No. 2020-00183
BIG RIVERS ELECTRIC CORPORATION)	
FOR APPROVAL SOLAR POWER CONTRACTS)	

DIRECT TESTIMONY

OF

**PAUL G. SMITH
CHIEF FINANCIAL OFFICER**

ON BEHALF OF

BIG RIVERS ELECTRIC CORPORATION

FILED: June 24, 2020

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**DIRECT TESTIMONY
OF
PAUL G. SMITH**

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1 Crowe, Chizek & Co. Beginning in 1987, I held various analyst and
2 managerial positions with Duke Energy Corporation and its predecessor
3 companies, in Budgets and Forecasts, Rates and Regulatory Affairs, Investor
4 Relations, and the International Business Unit. Beginning in 2001, I was
5 appointed to various executive level positions, including General Manager of
6 Budgets and Forecasts with responsibility for Cinergy Corp.'s financial
7 planning and analysis department, Vice President of Rates with
8 responsibility for all state and federal regulated rate matters, including
9 revenue requirements, cost of service and rate design for Duke Energy
10 Kentucky, Inc. and Duke Energy Ohio, Inc., and Vice President of Retail
11 Marketing with responsibility for all activities to launch a start-up
12 competitive retail energy business.

13 In 2012, I joined NextEra Energy Transmission, the competitive
14 transmission development subsidiary of NextEra Energy, Inc., as Senior
15 Director of Business Management. My responsibilities included managing all
16 financial activities for the competitive transmission business, including
17 accounting and financial reporting, budgeting and financial planning, and
18 corporate development analytics. In addition, I was responsible for the
19 compliance function and directing the preparation of state, Regional
20 Transmission Organization, and Federal Energy Regulatory Commission
21 (“FERC”) revenue requirement filings.

1 In 2018, I accepted the position of CFO at Big Rivers.
2

3 **Q. Please summarize your duties at Big Rivers.**

4 A. As CFO, I am responsible for all financial, regulatory, strategic planning and
5 risk management activities. Such activities include accounting and financial
6 reporting, payroll, budgets, finance, tax, rates and regulatory affairs, risk
7 management and strategic planning.
8

9 **Q. Have you previously testified before the Kentucky Public Service
10 Commission (“Commission”)?**

11 A. Yes, I testified on behalf of Big Rivers in Case No. 2020-00064 in which the
12 Company applied for approval to modify its Member Rate Stability
13 Mechanism and to establish, and amortize, certain regulatory assets. I also
14 testified in Case No. 2019-00435 in which the Company requested approval of
15 its 2020 Environmental Compliance Plan, and I submitted testimony in
16 support of the Joint Application filed by Big Rivers and Meade County Rural
17 Electric Cooperative Corporation in Case No. 2019-00365,¹ which is presently
18 pending before the Commission and involves a request for approval of
19 contracts to provide electric service to a new facility to be developed by Nucor

¹ *In the Matter of: Electronic Joint Application of Big Rivers Electric Corporation and Meade County Rural Electric Cooperative Corporation for (1) Approval of Contracts for Electric Service with Nucor Corporation; and (2) Approval of Tariff* (filed Sept. 26, 2019).

1 Corporation (“*Nucor*”) in Brandenburg, Meade County, Kentucky. I testified
2 in Case No. 2019-00269² in which the Company requested that the
3 Commission enforce the series of contracts between Big Rivers and the City
4 of Henderson and the City of Henderson Utility Commission (collectively,
5 “*HMP&L*”) related to the William L. Newman Station Two (“*Station Two*”)
6 generating plant and associated facilities, and in Case No. 2018-00146,³ in
7 which the Commission found, among other things, that various Station Two
8 contracts had terminated. Previously, I testified on behalf of Duke Energy
9 Kentucky, Inc., including in Case No. 2006-00172,⁴ in which Duke sought an
10 increase in rates, and in Case No. 2008-00495,⁵ in which Duke sought
11 approval of energy efficiency programs and an energy efficiency rider. I have
12 also testified before The Public Utilities Commission of Ohio, the Indiana
13 Utility Regulatory Commission, and FERC. My professional experience is
14 summarized in Exhibit Smith-1.
15

² *In the Matter of: Application of Big Rivers Electric Corporation for Enforcement of Rate and Service Standards* (filed July 31, 2019).

³ *In the Matter of: Notice of Termination of Contracts and Application of Big Rivers Electric Corporation for a Declaratory Order and for Authority to Establish a Regulatory Asset* (Ky. P.S.C. Aug. 29, 2018).

⁴ *An Adjustment of the Electric Rates of the Union Light, Heat and Power Company D/B/A Duke Energy Kentucky, Inc.* (Ky. P.S.C. Dec. 21, 2006).

⁵ *In the Matter of: Application of Duke Energy Kentucky, Inc. for Approval of Energy Efficiency Plan including an Energy Efficiency Rider and Portfolio of Energy Efficiency Programs* (Ky. P.S.C. Jan. 29, 2010).

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

2 A. The purpose of my testimony is to provide a discussion of the accounting and
3 credit ratings effects of the proposed Solar Contracts provided with Big
4 Rivers' Application accompanying this testimony.

5
6 **Q. Are you sponsoring any exhibits?**

7 A. Yes. I am sponsoring the following exhibit:
8 Exhibit Smith-1 Summary of Professional Experience

9
10 **II. IMPACTS OF THE SOLAR CONTRACTS**

11
12 **Q. What costs or financial obligations does Big Rivers anticipate**
13 **incurring as a result of the solar projects and how will they be**
14 **recovered?**

15 A. The Solar Contracts call for a fixed price for each MWh of output delivered to
16 the Big Rivers transmission system. Big Rivers will record the payment to
17 the generator(s) as a purchased power expense. The purchase will be treated
18 similar to existing power purchased from Southeastern Power Administration
19 (“SEPA”) as well as other market purchases. The payment to the generator
20 for the power delivered to Big Rivers will be eligible for recovery in
21 accordance with the Fuel Adjustment Clause regulations.

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Q. What impact, if any, will the Solar Contracts have on Big Rivers’ balance sheets or rate base?

A. The Solar Contracts represent power purchase agreements (“PPAs”). As more fully described by Mr. Eacret in his direct testimony, Big Rivers will pay a fixed price for each MWh of output delivered to the Big Rivers transmission system during the next twenty (20) years. Big Rivers will not own, construct, operate, maintain or have any control over the solar generating facilities, thus the Solar Contracts will not be capitalized or classified as a lease per U.S. generally accepted accounting principles (“GAAP”). Accordingly, the Solar Contracts will not be reflected as an asset, or a liability, on Big Rivers’ balance sheet.

Q. What potential impact may the Solar Contracts have on Big Rivers’ credit ratings?

A. Despite the Solar Contracts not being reflected as an asset, or debt, on Big Rivers’ balance sheet, the credit rating agencies could consider a portion of the payments made under these PPAs as a fixed charge when calculating various financial metrics. Moody’s Investor Service (“Moody’s”) has indicated that it would only count the fixed demand component of a PPA payment as debt. Because the payments under both the Geronimo and Community

1 Energy contracts are energy only (e.g. no demand charge), Moody's will not
2 impute debt or treat any portion of the payment as debt service. In
3 discussions with Standard and Poor's Financial Services ("*S&P*") and verified
4 with other cooperatives, we found that S&P will treat 25% to 50% of the Solar
5 Contract payments as a fixed charge. This imputed adjustment would still
6 leave Big Rivers' financial metrics at a level well above investment grade
7 thresholds.

8 Further, any impacts to S&P's calculation of coverage ratios would be
9 mitigated by the benefits the Solar Contracts provide to Big Rivers'
10 Environmental, Social, and Governance ("*ESG*") factors. Since its founding
11 in 1961, Big Rivers has owned, operated, and maintained a predominantly
12 coal-fired generating fleet. With access to low-cost and abundant Kentucky
13 coal, such generating assets provided Western Kentucky with low-cost
14 reliable electricity over the past 40+ years. However, over the past few
15 decades, environmental regulations have become more stringent thus eroding
16 the cost advantage of coal-fired generation.

17

1 **Q. What is Environmental, Social, Governance, and how does it affect**
2 **how the Big Rivers solar power purchase agreements will be viewed**
3 **by the credit rating agencies?**

4 A. ESG criteria are a set of standards for a company's operations that socially
5 conscious investors use to screen potential investments. Environmental
6 criteria consider how a company performs as a steward of nature. Social
7 criteria examine how it manages relationships with employees, suppliers,
8 customers, and the communities where it operates. Governance deals with a
9 company's leadership, executive pay, audits, internal controls, and
10 shareholder rights. The credit ratings agencies have begun to raise the
11 carbon implications of ESG in our discussions with them.

12 The credit rating agencies have focused on Big Rivers' coal-heavy
13 portfolio for some time. In the most recent credit report published by each of
14 the agencies, all within the last year, there is some reference to the negative
15 credit implications of Big Rivers' reliance upon coal. Our most recent credit
16 reports from each agency are available at bigrivers.com. Diversifying our
17 portfolio with the solar PPAs will be viewed positively from that perspective.

18
19 **Q. Does this conclude your testimony?**

20 A. Yes.

BIG RIVERS ELECTRIC CORPORATION
ELECTRONIC APPLICATION OF
BIG RIVERS ELECTRIC CORPORATION
FOR APPROVAL OF SOLAR POWER CONTRACTS
CASE NO. 2020-00183

VERIFICATION

I, Paul G. Smith, verify, state, and affirm that I prepared or supervised the preparation of the Direct Testimony filed with this Verification, and that Direct Testimony is true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry

Paul Smith

Paul G. Smith

COMMONWEALTH OF KENTUCKY)
COUNTY OF HENDERSON)

22nd SUBSCRIBED AND SWORN TO before me by Paul G. Smith on this the
day of June, 2020.

Joy P. Parsley

Notary Public, Kentucky State at Large

My Commission Expires _____

Notary Public, Kentucky State-At-Large
My Commission Expires: July 10, 2022
ID: 604480

Professional Summary

Paul G. Smith
Vice President and Chief Financial Officer
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42420
Phone: 270-844-6194

Professional Experience

Big Rivers Electric Corporation
Vice President and Chief Financial Officer — 2018 to present

NextEra Energy Transmission
Senior Director Business Management 2012-2018

Duke Energy
Vice President Retail Marketing 2010-2011
Vice President Rates 2006-2009
General Manager Budgets & Forecasts 2001-2005
Manager UK Distribution Price Control 1998-2000
Manager Revenue Requirements 1996-1997
Various Financial Positions of increasing responsibility 1987-1995

Crowe, Chizek & Co (CPA) 1984-1986

Touche, Ross & Co (CPA) 1982 - 1983

Education

Master of Business Administration
University of Chicago

Bachelor of Science Industrial Management (Computer Science Minor)
Purdue University

BIG RIVERS ELECTRIC CORPORATION'S
DESCRIPTION OF PROPERTY
As of March 31, 2020

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2
3 Big Rivers Electric Corporation (“Big Rivers” or the “Corporation”) is a
4 generation and transmission (“G&T”) cooperative headquartered in Henderson,
5 Kentucky. The Corporation meets the electric power needs of three member distribution
6 cooperatives, which, in turn, sell electricity to approximately 118,000 residential,
7 commercial, and industrial consumers in 22 western Kentucky counties.

- 8
9 1. Big Rivers’ utility plant-in-service, materials and supplies, and fuel inventory
10 as of March 31, 2020, consisted of intangible plant, electric power generating
11 plants, land right-of-ways, transmission stations and lines, land, buildings,
12 office furniture and equipment, transportation equipment, storage equipment,
13 tools, shop and garage equipment, laboratory equipment, power operated
14 equipment, communication equipment, materials and supplies inventory, and
15 fuel inventory. The original cost of these properties as of March 31, 2020,
16 was \$2,124,194,822.
- 17
18 2. As of March 31, 2020, Big Rivers’ intangible plant included organizational
19 and franchise costs of \$66,895.
- 20
21 3. Big Rivers owns and operates 1,444 megawatts (MW) of electric generating
22 capacity from four power stations: Kenneth C. Coleman (443 MW), Robert A.
23 Reid (130 MW), Robert D. Green (454 MW), and D.B. Wilson (417 MW).
24 As of March 31, 2020 the original cost of Big Rivers’ generation assets was
25 \$1,713,593,273 with a net book (i.e. depreciated) value of \$685,334,536.
- 26
27 a. The Kenneth C. Coleman Station is a multiple unit generation plant
28 consisting of three coal-fired units designed to burn Illinois Basin coal.
29 The units were commercialized in 1969, 1970, and 1972, respectively,
30 with a combined net output rating of 443 MW. As a result of the
31 Century Aluminum Hawesville smelter contract termination in 2013
32 and the Alcan Primary Products Corporation (now Century Aluminum
33

BIG RIVERS ELECTRIC CORPORATION'S
DESCRIPTION OF PROPERTY
As of March 31, 2020

1 Sebree) smelter contract termination in 2014, the three generating units
2 that make up the Coleman Station were idled in May 2014 and are
3 proposed to be retired in 2020
4

5 b. The Robert A. Reid Station is a multiple unit generation plant
6 consisting of one coal-fired unit ("Reid Unit 1") designed to burn
7 Illinois Basin coal and one combustion turbine unit ("Reid CT") with
8 the ability to burn either fuel oil or natural gas. The units were
9 commercialized in 1966 and 1976, respectively, with a combined net
10 output rating of 130 MW (65 MW per unit). Reid Unit 1 was idled in
11 April 2016 and is proposed to be retired in 2020.
12

13 c. The Robert D. Green facility is a multiple unit generation plant
14 consisting of two coal-fired units designed to burn Illinois Basin coal.
15 The units were commercialized in 1979 and 1981, respectively, with a
16 combined net output rating of 454 MW.
17

18 d. The D.B. Wilson Station is a single coal-fired unit designed to burn
19 Illinois Basin coal. The unit was commercialized in 1986 with a net
20 output rating of 417 MW.
21

22 4. Big Rivers has interconnections with six utilities: Southern Illinois Power
23 Cooperative, Louisville Gas & Electric, Kentucky Utilities, Vectren, Hoosier
24 Energy Cooperative, and the Tennessee Valley Authority. However, Big
25 Rivers currently cannot purchase power from the Tennessee Valley Authority.
26

27 5. Transmission Facilities, as of March 31, 2020, included land, right-of-ways,
28 station equipment, and lines costing \$294,473,324 with a net book
29 (depreciated) value of \$146,697,994. The miles of transmission line by size
30 are as follows: 851 miles of 69 kV, 14 miles of 138 kV, 366 miles of 161 kV,
31 and 68 miles of 345 kV. The substation capacity consists of 1,879,800 kVA
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BIG RIVERS ELECTRIC CORPORATION'S
DESCRIPTION OF PROPERTY
As of March 31, 2020

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generation plant step up transformation and 4,045,000 kVA transmission substation transformation.

6. Big Rivers owns general plant assets costing \$55,003,317 as of March 31, 2020, with a net book (depreciated) value of \$25,412,808. General plant assets consist of land, structures and improvements, office furniture and equipment, transportation equipment, storage equipment, tools, shop and garage equipment, laboratory equipment, power operated equipment, communication equipment, and other miscellaneous equipment used to provide service to member cooperatives.
7. As of March 31, 2020, Big Rivers had materials and supplies inventory of \$24,066,908 and fuel inventory of \$36,991,105.
8. Big Rivers' investment in construction work in progress as of March 31, 2020 was \$41,056,666.
9. As of March 31, 2020, Big Rivers did not own any non-utility property.

BIG RIVERS ELECTRIC CORPORATION
FINANCIAL EXHIBIT
As of March 31, 2020

1
2 Big Rivers states that:

- 3 a. No amounts or kinds of stock have been authorized.
4
5
6 b. No amounts or kinds of stock have been issued, and none are outstanding.
7
8
9 c. No amounts or kinds of preferred stock have been authorized, and none are
10 outstanding.
11
12
13 d. Effective with the close of the “Unwind” Transaction on July 16, 2009, all
14 previously existing mortgages were permanently extinguished with the Third
15 Restated Mortgage and Security Agreement (successor to the Restated Mortgage
16 and Security Agreement [the New RUS Mortgage] and Second Restated
17 Mortgage and Security Agreement) and replaced with Big Rivers’ Mortgage
18 Indenture (the “Indenture”). The Indenture secures on a *pro rata, pari passu* basis
19 all of the indebtedness owed by Big Rivers to its existing senior secured creditors
20 as well as future senior secured creditors. A principal feature of the Indenture is
21 the use of a lien and security interest in favor of an institutional trustee rather than
22 in favor of each individual creditor as mortgagee. The Indenture creates a lien
23 and security interest on most of Big Rivers’ real and personal property.

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29 Additional debt obligations can be secured under the Indenture on a *pari*
30 *passu* basis with Big Rivers’ existing senior secured creditors without obtaining
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BIG RIVERS ELECTRIC CORPORATION
FINANCIAL EXHIBIT
As of March 31, 2020

1 the existing senior secured creditors' approvals, provided such debt obligations
2 meet certain objective tests.

3
4 The Indenture, dated July 1, 2009, was made by and between Big Rivers
5 Electric Corporation, as Grantor, and U.S. Bank National Association, as Trustee.
6 As of March 31, 2020, the Indenture secured the following Obligations:

- 7
8 • RUS 2009 Promissory Note Series B, dated July 16, 2009, made by the
9 Company to the United States of America, in the amount at final maturity
10 of \$245,530,257, maturing on December 31, 2023. This is an Existing
11 Obligation under the Indenture.
12
- 13 • Big Rivers Electric Corporation First Mortgage Note, Series 2010A, dated
14 July 8, 2010, made by the Company to U.S. Bank Trust National
15 Association, as trustee, in an amount equal to the principal and interest
16 due on the \$83,300,000 County of Ohio, Kentucky, Pollution Control
17 Refunding Revenue Bonds, Series 2010A. This is an Additional
18 Obligation under the Indenture.
19
- 20 • Big Rivers Electric Corporation First Mortgage Note, Series 2012A, dated
21 July 24, 2012, made by the Company to CoBank, ACB, in the original
22 principal amount of \$235,000,000, maturing on June 30, 2032. This is an
23 Additional Obligation under the Indenture.
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- 25 • Big Rivers Electric Corporation First Mortgage Note, Series 2012B, dated
26 July 27, 2012, made by the Company to National Rural Utilities
27 Cooperative Finance Corporation, in the original principal amount of
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BIG RIVERS ELECTRIC CORPORATION
FINANCIAL EXHIBIT
As of March 31, 2020

1 \$302,000,000, maturing on May 31, 2032. This is an Additional
2 Obligation under the Indenture.

- 3
- 4 • Big Rivers Electric Corporation First Mortgage Notes, Series 2015A,
5 dated March 5, 2015, and amended September 19, 2017, made by the
6 Company to National Rural Utilities Cooperative Finance Corporation,
7 Regions Bank, KeyBank National Association, Fifth Third Bank, and
8 CoBank, ACB (collectively, the “Lenders”) in the aggregate principal
9 amount of \$100,000,000 to secure the loans made by the Lenders to Big
10 Rivers under the Senior Secured Credit Agreement, maturing on
11 September 19, 2020. This is an Additional Obligation under the
12 Indenture.

- 13
- 14 • Big Rivers Electric Corporation First Mortgage Notes, RUS 2018 W8 FFB
15 Loan, dated January 02, 2018, made by the Company through the United
16 States of America to the Federal Financing Bank, in the original aggregate
17 principal amount of \$25,630,000, maturing on January 3, 2033. This is an
18 Existing Obligation under the Indenture.

- 19
- 20 • Big Rivers Electric Corporation First Mortgage Notes, RUS 2018 X8 FFB
21 Loan, dated January 02, 2018, made by the Company through the United
22 States of America to the Federal Financing Bank, in the original aggregate
23 principal amount of \$17,965,000, maturing on December 31, 2043. This
24 is an Existing Obligation under the Indenture.

25 The Indenture provides that a maximum of \$3,000,000,000 of Additional
26 Obligations may be issued and secured. As noted above, the Big Rivers Electric
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BIG RIVERS ELECTRIC CORPORATION
FINANCIAL EXHIBIT
As of March 31, 2020

1 Corporation First Mortgage Notes, Series 2010A, 2012A, 2012B, and 2015A,
2 RUS 2018 W8 FFB Loan, RUS 2018 X8 FFB Loan are Additional Obligations
3 under the Indenture.
4

- 5
6 e. Big Rivers has financed certain pollution control facilities at its D.B. Wilson
7 Station with pollution control bonds issued by the County of Ohio, Kentucky.
8 Big Rivers Electric Corporation has one issue outstanding.
9

10 On June 30, 1983, the County of Ohio, Kentucky, issued \$58,800,000 of
11 Pollution Control Floating Rate Demand Bonds, Series 1983 (“Series 1983
12 Bonds”), with a stated maturity date of June 1, 2013. These bonds bore interest at
13 a variable rate and, prior to July 15, 1998, were supported by an irrevocable
14 standby letter of credit. On July 15, 1998 the standby letter of credit was replaced
15 by a liquidity facility issued by Credit Suisse First Boston (subsequently assigned
16 to Dexia Credit Local effective May 1, 2006) and municipal bond insurance and
17 security policies issued by Ambac Assurance Corporation. A Remarketing Agent
18 was responsible for determining the stated rate (Base Rate) of interest to be
19 applied to the Series 1983 Bonds necessary to remarket the bonds at par plus
20 accrued interest in a secondary market transaction. The Base Rate so determined
21 could not be less than 40 percent or more than 110 percent of a variable interest
22 index. This variable interest index was the weighted average per annum discount
23 rate for direct obligations of the United States with maturities of 13 weeks,
24 expressed as a bond equivalent on the basis of a 365 or 366 day year, as
25 appropriate, and applied on a daily basis, set on the latest auction date of such
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BIG RIVERS ELECTRIC CORPORATION
FINANCIAL EXHIBIT
As of March 31, 2020

1 obligations. The Base Rate could not exceed 13 percent and was subject to Big
2 Rivers' approval.

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4 If the Remarketing Agent was unable to remarket the Bonds, they were
5 tendered to the Liquidity Provider (Dexia Credit Local) under the terms of the
6 Standby Bond Purchase Agreement and became "Bank Bonds" with interest paid
7 at the "Bank Rate". The Bank Rate was the higher of (a) the base commercial
8 lending rate announced from time to time by the Liquidity Provider in effect on
9 such date, or (b) the rate quoted by the Liquidity Provider on such date to dealers
10 in the New York Federal funds market for the overnight offering of dollars by the
11 Liquidity Provider for deposit, plus one half of one percent. The Bank Rate
12 could not exceed the lesser of 18 percent per annum and the maximum rate of
13 interest permitted by applicable law.
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18 The Series 1983 Bonds were supported by two promissory notes
19 (AMBAC Municipal Bond Insurance Policy Series 1983 Note and Standby Bond
20 Purchase Agreement Note) from Big Rivers, which bore the same interest rate as
21 the bonds. Big Rivers' Indenture secured the promissory notes issued in support
22 of the Series 1983 Bonds equally and ratably with all other Obligations secured
23 under the Indenture.
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26 Big Rivers refunded the Series 1983 Bonds by purchase on May 31, 2013.
27
28 The interest paid on the Series 1983 Bonds during the fiscal year ending
29 December 31, 2013 (the last fiscal year during which the bonds were outstanding)
30 was \$955,500, and the effective interest rate of the bonds was 3.25%. No interest
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BIG RIVERS ELECTRIC CORPORATION
FINANCIAL EXHIBIT
As of March 31, 2020

1 was paid on the Series 1983 Bonds during the fiscal year ending December 31,
2 2016.

3
4 On June 8, 2010, the County of Ohio, Kentucky, Pollution Control
5 Refunding Revenue Bonds, Series 2010A (“Series 2010A Bonds”), with a
6 maturity date of July 15, 2031 were issued in the amount of \$83,300,000.
7
8 Proceeds from the Series 2010A Bonds were used to refund the Series 2001A
9 Bonds. The Series 2010A Bonds bear interest at a fixed rate of 6.00%.

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12 The Series 2010A Bonds are supported by a promissory note from Big
13 Rivers, which bears the same interest rate as the bonds. Big Rivers’ Indenture
14 secures the promissory note issued in support of the Series 2010A Bonds equally
15 and ratably with all other Obligations issued under the Indenture. The interest
16 paid on the Series 2010A Bonds during the fiscal year ending December 31, 2016,
17 was \$4,998,000.
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- 22 f. As of March 31, 2020, Big Rivers’ notes outstanding consisted of the RUS 2009
23 Promissory Note Series B (“RUS 2009 Series B Note”); Big Rivers Electric
24 Corporation First Mortgage Notes, Series 2010A, Series 2012A, Series 2012B,
25 Series 2015A, RUS 2018 W8 FFB Loan, RUS 2018 X8 FFB Loan ; and the
26 Capital Term Certificates Promissory Note dated July 27, 2012, (associated with
27 borrowings secured by Big Rivers Electric Corporation First Mortgage Notes,
28 Series 2012B).
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BIG RIVERS ELECTRIC CORPORATION
FINANCIAL EXHIBIT
As of March 31, 2020

1 The RUS 2009 Series B Note, dated July 16, 2009, was issued in favor of
2 the United States of America, acting through the United States Department of
3 Agriculture, Rural Utilities Services, (the “RUS”), in the original principal
4 amount of \$245,530,257, with a maturity date of December 31, 2023. The RUS
5 2009 Series B Note has no stated interest rate and an outstanding stated principal
6 balance of \$245,530,257 as of March 31, 2020. No interest amount is paid on this
7 note.
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10 Big Rivers Electric Corporation First Mortgage Note, Series 2010A
11 (associated with the Series 2010A Bonds), dated June 1, 2010, was issued in favor
12 of U.S. Bank National Association, as trustee, in the original principal amount of
13 \$83,300,000, with a maturity date of July 15, 2031. The First Mortgage Note,
14 Series 2010A, has a fixed interest rate of 6.00% and an outstanding principal
15 balance of \$83,300,000 as of March 31, 2020. The interest paid on the Series
16 2010A Bonds during the fiscal year ending December 31, 2019, was \$4,998,000.
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19 Big Rivers Electric Corporation First Mortgage Note, Series 2012A, dated
20 July 24, 2012, was issued in favor of CoBank, ACB, in the original principal
21 amount of \$235,000,000, with a maturity date of June 30, 2032. The First
22 Mortgage Note, Series 2012A, has a fixed interest rate of 4.30% and an
23 outstanding principal balance of \$ \$168,910,732 as of March 31, 2020. The
24 interest paid on the First Mortgage Note, Series 2012A during the fiscal year
25 ending December 31, 2019, was \$7,741,613.
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BIG RIVERS ELECTRIC CORPORATION
FINANCIAL EXHIBIT
As of March 31, 2020

1 Big Rivers Electric Corporation First Mortgage Note, Series 2012B, dated
2 July 27, 2012, was issued in favor of National Rural Utilities Cooperative Finance
3 Corporation, in the original principal amount of \$302,000,000, with a maturity
4 date of May 31, 2032. The First Mortgage Note, Series 2012B, bears serial
5 interest rate pricing, with interest rates ranging from 3.05% to 5.35%, and had an
6 outstanding principal balance of \$ \$211,423,549 as of March 31, 2020. The
7 interest paid on the First Mortgage Notes, Series 2012B during the fiscal year
8 ending December 31, 2019, was \$ \$10,056,712.

9 The Capital Term Certificates (CTCs) Promissory Note (the “Equity
10 Note” associated with the financing of the CTCs which Big Rivers was obligated
11 to purchase in connection with the borrowings secured by Big Rivers Electric
12 Corporation First Mortgage Note, Series 2012B), dated July 27, 2012, was issued
13 in favor of National Rural Utilities Cooperative Finance Corporation, in the
14 original principal amount of \$43,155,800, with a maturity date of May 31, 2032.
15 The Equity Note has a fixed interest rate of 5.35% and an outstanding principal
16 balance of \$ \$31,772,22 as of March 31, 2020. The interest paid on the Equity
17 Note, during the fiscal year ending December 31, 2019, was \$1,783,797.

18 Big Rivers Electric Corporation First Mortgage Notes, Series 2015A, dated
19 March 5, 2015, and amended September 19, 2017, (“Series 2015A Notes”) were
20 issued in connection with the 2015 Senior Secured Credit Agreement, dated
21 March 5, 2015, (“2015 Credit Agreement”) in favor of National Rural Utilities
22 Cooperative Finance Corporation, Regions Bank, KeyBank National Association,
23 Fifth Third Bank, and CoBank, ACB (collectively, the “Lenders), in the aggregate

BIG RIVERS ELECTRIC CORPORATION
FINANCIAL EXHIBIT
As of March 31, 2020

1 principal amount of \$100,000,000, with a maturity date of September 19,2020.

2 The interest rate applicable to loans under the 2015 Credit Agreement are
3 determined based on the type of loan selected (i.e. LIBO Loan or Alternate Base
4 Rate (ABR) Loan). For LIBO Loans, the applicable interest rate is equal to the
5 LIBOR Rate for such Interest Period plus the LIBO Applicable Margin, based on
6 the Secured Credit Rating of Big Rivers per the terms of the credit agreement.
7 For ABR loans, the applicable interest rate is equal to the Alternate Base Rate
8 plus the ABR Applicable Margin, as defined in the credit agreement. As of
9 March 31,2020, there were no loans outstanding under the 2015 Senior Secured
10 Credit Agreement. No interest was paid on the Series 2015A Notes during the
11 fiscal year ended December 31, 2019.
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16 Big Rivers Electric Corporation First Mortgage Note, RUS 2018 W8 FFB
17 Loan, dated January 02, 2018, was issued in favor of the Federal Financing Bank
18 and administered through the Rural Utilities Service, in the original principal
19 amount of \$25,630,000, with a maturity date of January 3, 2033. The First
20 Mortgage Note, RUS 2018 W8 FFB Loan, has a fixed stated interest rate of
21 2.703% with an effective interest rate of 2.828% and had an outstanding principal
22 balance of \$ \$25,630,000 as of March 31, 2020. The interest paid on the First
23 Mortgage Notes, RUS 2018 W8 FFB Loan, during the fiscal year ending
24 December 31, 2019, was \$ \$542,123.
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29 Big Rivers Electric Corporation First Mortgage Note, RUS 2018 X8 FFB
30 Loan, dated January 02, 2018, was issued in favor of the Federal Financing Bank
31 and administered through the Rural Utilities Service, in the original principal
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BIG RIVERS ELECTRIC CORPORATION
FINANCIAL EXHIBIT
As of March 31, 2020

1 amount of \$25,630,000, with a maturity date of January 3, 2033. The First
2 Mortgage Note, RUS 2018 W8 FFB Loan, has a fixed stated interest rate of
3 2.810% with an effective interest rate of 2.935% and had an outstanding principal
4 balance of \$ \$17,704,745 as of March 31, 2020. The interest paid on the First
5 Mortgage Notes, RUS 2018 X8 FFB Loan, during the fiscal year ending
6 December 31, 2019, was \$ \$527,273.
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12 g. The Company has no other indebtedness.
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15 h. No dividends have been paid.
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18 i. Big Rivers Electric Corporation's statement of operations and balance sheet for
19 the twelve months ending March 31, 2020, are attached hereto.
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