

EXECUTION VERSION

**AGREEMENT FOR THE PURCHASE AND SALE
OF FULL-REQUIREMENTS CAPACITY AND ENERGY**

BETWEEN

BIG RIVERS ELECTRIC CORPORATION

AND THE

CITY UTILITY COMMISSION OF THE CITY OF OWENSBORO, KENTUCKY

June 22, 2018

**KENTUCKY
PUBLIC SERVICE COMMISSION**

Gwen R. Pinson
Executive Director



EFFECTIVE

7/27/2018

PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

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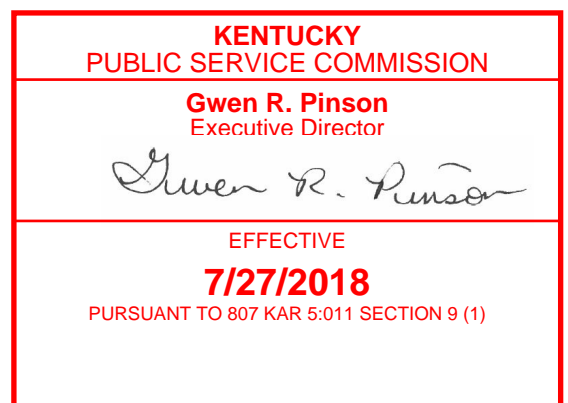
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**AGREEMENT FOR THE PURCHASE AND SALE
OF FULL-REQUIREMENTS CAPACITY AND ENERGY
BETWEEN BIG RIVERS ELECTRIC CORPORATION AND
THE CITY UTILITY COMMISSION OF THE CITY OF OWENSBORO, KENTUCKY**

This AGREEMENT FOR THE PURCHASE AND SALE OF FULL-REQUIREMENTS CAPACITY AND ENERGY (this “Agreement”) is made and entered into as of this 22nd day of June, 2018 (“Effective Date”), between **Big Rivers Electric Corporation**, a generation and transmission cooperative organized and existing under the laws of the Commonwealth of Kentucky (hereinafter referred to as “Seller”), and **THE CITY UTILITY COMMISSION OF THE CITY OF OWENSBORO KENTUCKY**, a Kentucky body politic and corporate organized under KRS 96.530, also known as and doing business as Owensboro Municipal Utilities (hereinafter referred to as “Buyer”).

WHEREAS, Seller is a generation and transmission cooperative engaged in, among other things, the sale of electric power at wholesale;

WHEREAS, Seller owns, operates, or has rights to several electric generating resources with a current total Installed Capacity of 1,889 megawatts, including [REDACTED] (the “Facility”); and

WHEREAS, Buyer wishes to purchase from Seller, and Seller wishes to sell to Buyer, full requirements electric energy and capacity, as set forth herein;

NOW THEREFORE, in consideration of the foregoing premises, the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. When used in this Agreement, including any exhibits hereto, the following terms, whether used in the singular or plural, shall have the following definitions. Capitalized terms that are not defined herein shall have the meanings assigned to them in the MISO Tariff.

“AAA” has the meaning set forth in Section 15.3(a).

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under the control with, such Person. For this purpose, “control” means the direct or indirect ownership of a majority of the outstanding capital stock or other equity interests having ordinary voting power, or otherwise having the power, directly or indirectly, to direct or cause the d policies of a Person.

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“Agreement” has the meaning set forth in the preamble.

“Bankruptcy Proceeding” means with respect to a Person, such Person (i) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due, (ii) makes a general assignment, arrangement or composition with or for the benefit of its creditors, (iii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and solely with respect to any such proceeding or petition that is instituted or presented by a party other than the Party with respect to which such petition or proceeding relates is not dismissed within sixty (60) days after the filing thereof, (iv) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger), (v) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets, (vi) causes or is subject to any event with respect to it which, under applicable Law, has an analogous effect to any of the events specified in clauses (i) through (v), or (vii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Business Day” means a day that is not a Saturday, a Sunday or a day on which banking institutions are not required to be open, or are authorized or required to close, in the Commonwealth of Kentucky.

“Buyer” has the meaning set forth in the preamble.

“Buyer Event of Default” has the meaning set forth in Section 11.2.

“Buyer Investment Grade Rating” means any rating of Buyer’s general credit, or of Buyer’s long-term bonds, of at least BBB- from Fitch, BBB- from S&P, or Baa3 from Moody’s.

“Capacity” means the ability of generating equipment to produce Energy, measured in megawatts.

“Claim Notice” has the meaning set forth in Section 12.4.

“Contract Term” has the meaning set forth in Section 2.1.

“Credit Rating” means with respect to an entity providing a Qualifying Letter of Credit, on the relevant date of determination, the respective ratings then assigned to such entity’s unsecured, senior long-term debt, or deposit obligations (not supported by third party credit enhancement) by a Ratings Agency. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligations by any Ratings Agency, then “Credit Rating” shall mean the general corporate credit rating or long-term issuer rating assigned by a Ratings Agency, as the case may be.

“Day-Ahead Schedule” has the meaning set forth in Section 5.1(b).

“Default Interest Rate” means, for any date, the lesser of Law or (ii) the Interest Rate plus an annual rate of 2% converted

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“Delivery Point” means the [REDACTED].

“Demand” has the meaning set forth in Section 15.3(a).

“Eastern Prevailing Time” means Eastern standard time or Eastern daylight time, as in effect and observed by MISO on a given day.

“Effective Date” has the meaning set forth in the preamble.

“Energy” means electricity (measured in kilowatt-hours or megawatt-hours, as the case may be).

“Facility” has the meaning set forth in the recitals.

“FERC” means the Federal Energy Regulatory Commission or its successor.

“Fitch” means Fitch Ratings, Inc. or its successor.

“Force Majeure” has the meaning set forth in Section 14.1.

“Full Requirements Service” means the energy management services and Capacity and Energy to be provided hereunder as set forth in Section 4.1.

“Hedge Entitlement” means, whether existing as of the Effective Date or in the future, any financial transmission rights, allocations, hedges, or other instruments available to holders of long term firm transmission service on the MISO transmission system that is intended to hedge, offset, or otherwise compensate the holder of such rights for the costs of congestion or other variable charges placed upon such transmission service. As of the Effective Date, Hedge Entitlements under the MISO Tariff include auction revenue rights, long term transmission rights, and financial transmission rights. Hedge Entitlement shall also include any MISO credits to Buyer for over collected losses between the Delivery Point and the Settlement Point. MISO refers to over collected losses as Real Time Distribution of Loss Amounts.

“Indemnitee” has the meaning set forth in Section 12.3.

“Indemnitor” has the meaning set forth in Section 12.3(a).

“Installed Capacity” means the installed Capacity described in the preamble and any subsequently acquired or operated electric generating resource by Seller, or right of Seller in other Capacity. Nothing in this Agreement shall be interpreted to prohibit Seller from acquiring, constructing, selling, idling, retiring, or otherwise adjusting Seller’s generating resources portfolio, so long as Seller maintains sufficient Capacity to be able to satisfy its obligations under Section 4.4(a).

“Interest Rate” means, for any date, the prime rate reported in *The Wall Street Journal*’s “Money Rates” column (or any similar column published in *The Wall Street Journal* in replacement thereof) for the immediately preceding Business Day. In the event *The Wall Street Journal* ceases to report the prime rate

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this Agreement shall be the prevailing prime rate (or base rate) charged by major banks in the United States of America.

“KPSC” means the Public Service Commission of Kentucky.

“KU/LGE Losses” means the physical losses on the KU/LGE System, per Schedule 11 “Loss Compensation Service” of the KU/LGE Tariff, between the delivery point for each resource delivered hereunder (or, in the case of MISO Export Energy, the Settlement Point) and the OMUA sink for Buyer’s Retail Load.

“KU/LGE System” means the transmission system owned and/or operated by Kentucky Utilities Company and Louisville Gas and Electric Company.

“KU/LGE Tariff” means the open-access transmission tariff that governs the use of the KU/LGE System.

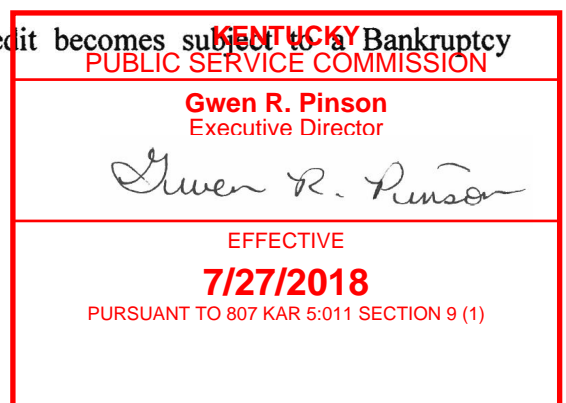
“kW” means kilowatt (a unit of Capacity).

“kWh” means kilowatt-hour (a unit of Energy).

“Law” means any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination by a court, regulatory agency or governmental authority of competent jurisdiction.

“Letter of Credit Default” means the occurrence of any of the following events with respect to any Qualifying Letter of Credit:

- (a) The issuer of the Qualifying Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P and “A3” by Moody’s and total assets of at least \$10,000,000,000 (Ten Billion Dollars);
- (b) The issuer of the Qualifying Letter of Credit fails to comply with or perform its obligations under the Qualifying Letter of Credit;
- (c) The issuer of the Qualifying Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Qualifying Letter of Credit;
- (d) The issuer of the Qualifying Letter of Credit fails to honor the beneficiary Party’s properly documented request to draw on such Qualifying Letter of Credit;
- (e) Such Qualifying Letter of Credit fails or ceases to be in full force and effect at any time; or
- (f) The issuer of the Qualifying Letter of Credit becomes subject to a Bankruptcy Proceeding;



provided that no Letter of Credit Default shall occur or be continuing in any event with respect to a Qualifying Letter of Credit after the time such Qualifying Letter of Credit is canceled or returned.

“Losses” means amounts incurred by an Indemnitee as a result of Third Party Claims, including reasonable attorneys’ fees and costs of investigation, litigation, damage, expenses, settlement and judgment.

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

“MISO Exports” has the meaning set forth in Section 4.1.

“MISO Export Energy” means, for any given period, the quantity of Energy actually delivered by MISO to LGEE for Buyer’s account in such period, as reflected on MISO’s market settlement statement to Buyer.

“MISO Tariff” means the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff, including all schedules or attachments thereto, as amended from time to time, or any successor tariff.

“Modification” has the meaning set forth in Section 15.4.

“Monthly Capacity Charge” means the charge, if any, applicable pursuant to Section 7.2.

“Monthly Energy Charge” has the meaning set forth in Section 7.1 and Exhibit A.

“Moody’s” means Moody’s Investor Services, Inc., or its successor.

“MW” means megawatt (one MW equals 1,000 kW).

“MWh” means megawatt-hour (one MWh equals 1,000 kWh).

“Operating Committee” has the meaning set forth in Section 5.6.

“Party” or “Parties” means one of Seller or Buyer, or both Seller and Buyer, or their permitted assigns and transferees, as the context requires.

“Person” means any natural person, corporation, partnership, limited liability company, firm, association, trust, governmental authority or any other entity, whether acting in an individual, fiduciary or other capacity.

“Proposal” has the meaning set forth in Section 15.4.

“Prudent Utility Practices” shall mean the practices, methods and acts including but not limited to the generally accepted practices, methods and acts engaged in or approved by the operators of similar electric generating facilities which at the time such practice, method or act is employed, and in the exercise of reasonable judgment in light of the circumstances, would be expected to accomplish the desired result in a workable and efficient manner. (a) applicable Laws and governmental requirements, (b) common

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safety and environmental protection, and (c) reasonably consistent with manufacturer's technical advisory recommendations. Prudent Utility Practices shall not require the use of the optimum practice, method or act, but only require the use of acceptable practices, methods or acts generally accepted in the independent power industry in the United States.

"Qualifying Letter of Credit" means an irrevocable standby letter of credit with an initial term of at least one year for the benefit of a Party, issued by a U.S. commercial bank, a U.S. branch of a foreign bank, the National Rural Utilities Cooperative Finance Corporation or CoBank ACB, with such bank having (a) a Credit Rating of at least "A-" from S&P and "A3" from Moody's, and (b) total assets (determined in accordance with generally accepted accounting principles) of at least \$10,000,000,000 (Ten Billion Dollars), and which letter of credit (i) is substantially in the form of Exhibit D or another form of letter of credit reasonably satisfactory to the beneficiary Party, (ii) permits automatic renewal of the relevant Qualifying Letter of Credit (which may be subject to an outside stated expiration date), and (iii) may be utilized by the beneficiary Party to satisfy all present and future payment obligations of the other Party under this Agreement when due.

"Ratings Agency" means S&P, Moody's, Fitch or any other rating agency agreed to by the Parties in writing.

"Resource Adequacy Program" means any resource adequacy requirement or other form of capacity demonstration obligation applicable in any balancing authority area where Buyer's load is located, pursuant to tariffs, regulatory requirements, or other binding criteria applicable to Buyer.

"Retail Load" means Buyer's own power requirements and the power requirements of its end use customers, as measured by the revenue-quality meters used to measure Buyer's load pursuant to the KU/LGE Tariff.

"RUS" means the Rural Utilities Service, an agency of the United States Department of Agriculture.

"Schedule" or **"Scheduling"** or **"Scheduled"** means Seller's schedules for deliveries of Energy and associated NERC Tags for the entire path from the source(s) for such Energy to the OMUA sink, in accordance with Section 5.1.

"Scheduling Day" means Monday through Friday, excluding holidays observed by MISO.


"Seller" has the meaning set forth in the preamble.

"Seller Event of Default" has the meaning set forth in Section 11.1.

"Seller Credit Rating" means any rating of Seller's general credit, or of Seller's long-term debt, from Fitch, S&P, or Moody's.

"SEPA" means the Southeastern Power Administration.

"SEPA Entitlement" means Buyer's Capacity and Energy

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“Service Commencement Date” means 00:00:00 Eastern Standard Time on June 1, 2020, or such earlier date as the Parties may agree upon as provided in Section 2.2.

“Service Month” means each calendar month starting with the Service Commencement Date and ending with the month in which this Agreement terminates.

“Settlement Point” means the [REDACTED].

“Solar Entitlement” has the meaning set forth in Section 4.1.

“S&P” means S&P Global Ratings, a business division of Standard & Poor’s Financial Services, LLC, or its successor.

“Tag” or “Tagging” means electronically communicating a request for, securing approval of, and recording an energy transaction. The request will include but not be limited to the transaction size, start and end time, and the source and sink.

“Third Party Claims” has the meaning set forth in Section 12.3(a).

“Transmission Provider(s)” means the Person or Persons transmitting Energy that is Scheduled by Seller hereunder to be delivered to Buyer.

ARTICLE II

TERM

Section 2.1. Initial Term. The term of this Agreement shall commence on the Effective Date, and shall continue in effect through December 31, 2026 (the “Contract Term”), unless earlier terminated or extended in accordance with the terms of this Agreement.

Section 2.2. Service Commencement. The Parties intend that the Full Requirements Service provided for by this Agreement will begin June 1, 2020. Buyer expects that all facility additions or upgrades that are required for firm transmission service to support the provision of Full Requirements Service, as described in Section 3.3, will be completed sometime in late 2019 or the first half of 2020. Buyer shall provide at least thirty (30) days’ written notice to Seller of the completion of such facility additions or upgrades and Buyer and Seller may choose to move the Service Commence Date forward under mutually agreeable terms. The Parties’ obligations regarding Full Requirements Service shall start on the Service Commencement Date and continue through the end of the Contract Term, unless the Agreement is terminated early in accordance with the terms of this Agreement.

Section 2.3. Extension of Term. [REDACTED]

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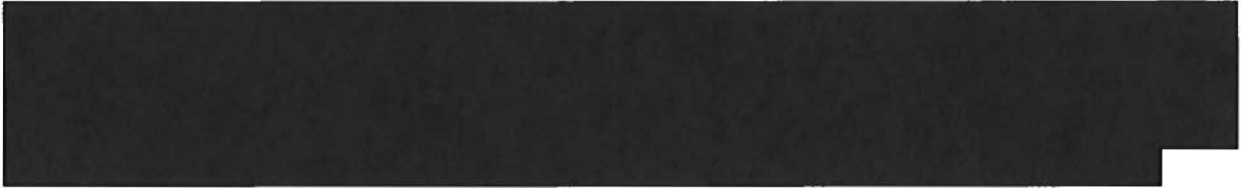
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ARTICLE III

CONTINGENCIES

Section 3.1. RUS Approval.

(a) The obligations of the Parties pertaining to Scheduling, delivery, sale, purchase, and payment for Full Requirements Service under this Agreement are conditioned on approval hereof by RUS. No later than thirty (30) days after the Effective Date, Seller shall make an appropriate submission to RUS seeking the authorization for Seller to enter into and perform all of its obligations under this Agreement. Seller shall use commercially reasonable efforts to secure RUS approval. Buyer shall (at Seller's expense) cooperate with and assist Seller in securing the necessary approval from RUS; provided that to the extent any information to be provided by Buyer to RUS is deemed confidential information by Buyer, Seller will request that RUS maintain the confidentiality of any information designated by Buyer as confidential.

(b) In the event RUS should require as a condition of approval of this Agreement any material modifications of this Agreement that are unacceptable to either Seller or Buyer, each in its reasonable discretion, Seller and Buyer shall, within sixty (60) days from receipt of notice of the condition, negotiate in good faith to modify this Agreement so as to secure RUS approval. Notwithstanding the foregoing, nothing in this Section 3.1 shall be construed to require either Seller or Buyer to consent to any modification of this Agreement or any other condition or requirement imposed by RUS. If the Parties cannot agree on amendments to this Agreement that will satisfy RUS, this Agreement shall be terminated, without penalty or any further obligation on the part of Seller or Buyer, by either Party providing written notice of such termination to the other Party on or before the earlier of (i) one hundred twenty (120) days from receipt of notice of the condition, and (ii) two hundred forty (240) days from the Effective Date.

(c) If the RUS has not provided its approval by two hundred forty (240) days from the Effective Date, this Agreement may be terminated by either Party providing notice to the other Party, without penalty or further obligation on the part of Seller or Buyer.

Section 3.2. KPSC Approval.

(a) The obligations of the Parties pertaining to Scheduling, delivery, sale, purchase, and payment for Full Requirements Service under this Agreement are conditioned on approval hereof by the KPSC. No later than thirty (30) days after the Effective Date, Seller shall make an appropriate submission to KPSC seeking the authorization for Seller to enter into and perform all of its obligations under this Agreement, and requesting application. Seller shall use commercially reasonable efforts to

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shall (at Seller's expense) cooperate with and assist Seller in securing the necessary approval from KPSC; provided that to the extent any information to be provided by Buyer to KPSC is deemed confidential information by Buyer, Seller will seek confidential treatment pursuant to the KPSC's regulations and Law of any information designated as confidential by Buyer. Buyer acknowledges that it will be required to intervene in the KPSC proceeding to protect the confidentiality of any information deemed confidential only by it.

(b) In the event KPSC should require as a condition of approval of this Agreement any material modifications of this Agreement that are unacceptable to either Seller or Buyer, each in its reasonable discretion, Seller and Buyer shall, within sixty (60) days from receipt of notice of the condition, negotiate in good faith to modify this Agreement so as to secure KPSC approval. Notwithstanding the foregoing, nothing in this Section 3.2 shall be construed to require either Seller or Buyer to consent to any modification of this Agreement or any other condition or requirement imposed by KPSC. If the Parties cannot agree on amendments to this Agreement that will satisfy KPSC, this Agreement shall be terminated, without penalty or any further obligation on the part of Seller or Buyer, by either Party providing written notice of such termination to the other Party on or before the earlier of (i) one hundred twenty (120) days from receipt of notice of the condition, and (ii) two hundred forty (240) days from the Effective Date.

(c) If the KPSC has not provided its approval by two hundred forty (240) days from the Effective Date, this Agreement may be terminated by either Party providing notice to the other Party, without penalty or further obligation on the part of Seller or Buyer.

Section 3.3. Transmission Contingency.

(a) The obligations of the Parties pertaining to Scheduling, delivery, sale, purchase, and payment for Full Requirements Service under this Agreement are conditioned on Buyer obtaining firm transmission service to support delivery of Energy to be Scheduled to Buyer hereunder. No later than sixty (60) days after the Effective Date, Buyer shall submit to the applicable transmission service providers (1) an application to include this Agreement as a new network resource under Buyer's agreement for network integration transmission service on the KU/LGE System, (2) an application for firm point-to-point transmission service on the MISO transmission system from the Delivery Point to the Settlement Point, and (3) a request for an additional interconnection to the KU/LGE System from Buyer's Elmer Smith Substation. Buyer shall use commercially reasonable efforts to obtain the transmission arrangements required by this Section 3.3.

(b) If Buyer has not been able to enter into binding agreements reasonably satisfactory to Buyer with respect to the transmission arrangements described in (a) above, then Buyer may terminate this Agreement by providing written notice to that effect to the Seller no later than February 28, 2019. Such termination shall be without penalty or further liability on the part of Seller or Buyer. If (i) one or more of Buyer's requests for firm transmission service cannot be granted in an amount sufficient to allow the entirety of Full Requirements Service to be delivered to Buyer without installation of transmission upgrades or new facilities and (ii) Buyer is willing to bear the costs of the needed upgrades or new facilities, Buyer may elect to limit the quantity of service to be provided hereunder in accordance with the applicable limitation(s) until such limitation(s) can be lifted by the installation of transmission upgrades or new facilities.

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If Buyer exercises this election, its notice of such election shall be provided no later than February 28, 2019, and the Parties shall promptly meet to agree upon appropriate operating protocols (or, if necessary, amendments to this Agreement) to effectuate the reduction in service to Buyer during the period of the applicable limitation(s). If one or more of Buyer's requests for firm transmission service cannot be granted in an amount sufficient to allow the entirety of Full Requirements Service to be delivered to Buyer without installation of transmission upgrades or new facilities for which Buyer is not willing to bear the costs, Buyer may elect to permanently limit the quantity of service to be provided hereunder in accordance with the applicable firm transmission service limitation(s). If Buyer exercises this election, its notice of such election, stating the manner in which the Full Requirements Service will be reduced, shall be provided no later than February 28, 2019, and the Parties shall promptly meet to agree upon appropriate operating protocols (or, if necessary, amendments to this Agreement) to effectuate the reduction in service to Buyer. Seller shall have no responsibility for costs of any upgrades or new facilities that may be needed to support the transmission requests Buyer makes pursuant to this Section 3.3(b), including the costs of studies, application fees, and construction.

Section 3.4. Deadline for Satisfaction or Waiver of Contingencies. The responsible Party for each contingency in this Article III will deliver written notice to the other Party by February 28, 2019, listing each contingency for which it is responsible and the extent to which the contingency has been satisfied, not satisfied, or not satisfied but waived. If all contingencies set forth in this Article III have not been satisfied or waived by the responsible party by February 28, 2019, this Agreement may be terminated by either Party providing notice to the other Party on or before March 29, 2019, without penalty or further obligation on the part of Seller or Buyer.

ARTICLE IV

FULL REQUIREMENTS SERVICE

Section 4.1. Nature of Full Requirements Service. Subject to and in accordance with the terms and conditions of this Agreement, during the period from the Service Commencement Date to the end of the Contract Term (including any extension thereof pursuant to Section 2.3), Seller shall provide Full Requirements Service. Full Requirements Service shall consist of Seller's energy management services and Seller's provision of Capacity and Energy from its Installed Capacity. Seller's energy management services shall include, as set forth in further detail in Article V, Scheduling and Tagging of deliveries of Energy to Buyer (sinking at its Retail Load) from its SEPA Entitlement and, as applicable, Capacity (not to exceed 36 MW) and associated Energy that is provided to Buyer from a solar generating facility pursuant to an agreement that Buyer has entered into and notified Seller of (Buyer's "Solar Entitlement"). In addition, and subject to Section 4.2, Seller shall provide, Schedule and Tag firm Energy and Capacity from Seller's Installed Capacity to the Delivery Point (with Tags sinking at Buyer's Retail Load) in amounts that will, together with the deliveries of Buyer's SEPA Entitlement and Solar Entitlement, match Buyer's Retail Load including KULGE Losses as closely as reasonably possible as it varies in real-time. Such Energy and Capacity provided pursuant to the preceding sentence is referred to herein as "MISO Exports." Seller shall be responsible for all energy imbalances incurred by Buyer under the KULGE

Retail Load and, where applicable, all generator imbalances incurred under the KU/LGE Tariff with respect to Buyer's SEPA Entitlement and Solar Entitlement and the MISO Exports.

Section 4.2. Maximum Hourly Demand. The maximum quantity of MISO Exports Seller is obligated to provide in any given hour at the pricing specified in Exhibit A shall be 285 MW. If Buyer's need for MISO Exports (*i.e.*, Buyer's Retail Load, net of any available SEPA Entitlement and/or Solar Entitlement) exceeds 285 MW in any hour, Seller will supply any excess above 285 MW at the higher of [REDACTED] (or, during any extension period, the then-applicable Energy price) or 110% of Seller's actual cost (including but not limited to MISO market costs and MISO energy costs) to provide such excess MISO Exports. If Buyer expects its need for MISO Exports to exceed 285 MW for any extended period during the Contract Term, it shall provide notice to Seller. In such event, the maximum MISO Exports under this Section 4.2 shall be adjusted to reflected Buyer's increased load, and Seller may, within thirty (30) days of receipt of Buyer's notice, propose a price at which Seller would provide an incremental amount of MISO Exports as needed to serve Buyer's increased load. If Seller has not proffered such a proposal or if Buyer declines Seller's proposal, Buyer shall have the right to acquire a supply of Energy (and, if applicable, Capacity) that will be incorporated into the Full Requirements Service hereunder in the same manner as Buyer's Solar Entitlement, in an amount not to exceed the increase in Buyer's Retail Load. If Buyer has not accepted Seller's proposal within thirty (30) days of its receipt of the proposal, Buyer shall be deemed to have declined Seller's proposal.

Section 4.3. Reliability of Service. [REDACTED]

Section 4.4. Designated Capacity for Resource Adequacy; Designated Network Resources.

(a) If at any time Buyer is subject to a Resource Adequacy Program that requires Buyer to identify specific generating resources underlying its firm power contracts, then

(i) Seller shall, upon the request of Buyer, identify Capacity from Seller's Installed Capacity (up to an amount equal to Buyer's projected annual peak hourly demand for the applicable year less any accredited Capacity attributable to Buyer's SEPA Entitlement and Solar Entitlement) that Buyer may designate as Capacity necessary to satisfy the requirements of such Resource Adequacy Program. Seller shall identify such Capacity, together with such supporting information regarding the characteristics of the resources that Buyer needs in connection with its designation of such Capacity pursuant to the terms of the Resource Adequacy Program, at least sixty (60) days prior to the deadline for Buyer's submission of such information in accordance with the Resource Adequacy Program. If at any time an entity implementing or enforcing such Resource Adequacy Program determines that such Capacity designation is not sufficient to satisfy Buyer's obligations under the Resource Ac its annual peak hourly demand (excluding plan

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reasonably possible the Parties shall undertake good faith negotiations to identify revised or additional Capacity designations that are sufficient to establish Buyer's compliance with the Resource Adequacy Program.

(ii) Buyer will remain responsible for any annual capacity requirements beyond the projected annual peak hourly demand (*i.e.*, planning reserves) necessary to meet the conditions of any Resource Adequacy Program to which Buyer may become subject.

(b) If at any time additional information regarding the resources supporting Seller's obligations under this Agreement is required by any Transmission Provider(s) in order for this Agreement to qualify as a designated network resource or is otherwise required in connection with the obligations of Buyer under an applicable transmission tariff, Seller shall (at Buyer's expense) reasonably cooperate with and assist Buyer in providing the required information; provided that to the extent any information to be provided by Seller to any Transmission Provider(s) is deemed confidential information by Seller, Seller's obligation to provide such information may be conditioned upon such Transmission Provider(s) agreeing to maintain its confidentiality pursuant to a confidentiality agreement.

Section 4.5. Title and Risk of Loss. Title to and risk of loss related to MISO Exports shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the MISO Exports free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to delivery at the Delivery Point.

ARTICLE V

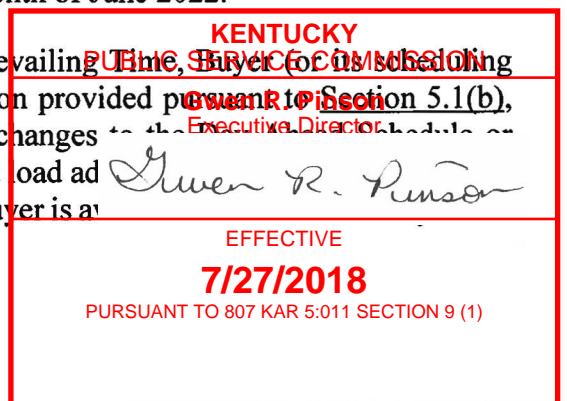
SCHEDULING; OPERATING COMMITTEE

Section 5.1. Load Forecasts; Day-Ahead Schedules.

(a) Seller shall be responsible for creating an hourly forecast of Buyer's Retail Load, including KU/LGE Losses, for each operating day.

(b) By no later than 08:00 Eastern Prevailing Time each Scheduling Day, Seller shall provide to Buyer by email or other reasonable means clearly identifying for each hour of the following operating day(s) (i) the Retail Load forecast, (ii) the quantities of Energy from Buyer's SEPA Entitlement and Solar Entitlement and the quantity of MISO Exports that Seller will Schedule and Tag for delivery to Buyer's Retail Load, which amounts shall in each hour equal in the aggregate the Retail Load forecast for that hour including KU/LGE Losses (the "Day-Ahead Schedule"). Notwithstanding the foregoing and/or any terms of the agreement for Buyer's Solar Entitlement, Seller shall have no obligation to Schedule the Solar Entitlement to serve Buyer's Retail Load under this Agreement prior to the Service Month of June 2022.

(c) By no later than 09:00 Eastern Prevailing Time, Buyer (or its scheduling agent) shall submit to Seller a response to the information provided pursuant to Section 5.1(b), which shall either (i) state that Buyer has no proposed changes to the Schedule or (ii) provide to Seller information regarding (1) significant load additions or changes to distribution facilities, or similar local changes of which Buyer is a



the forecast of Buyer's Retail Load and/or (2) a revised forecast of the hourly output available from the Solar Entitlement. Seller may use this information to adjust the Day-Ahead Schedule.

(d) In conformance with the Day-Ahead Schedule and all applicable deadlines established by NERC, MISO, the contract for Buyer's SEPA Entitlement, and the KU/LGE Tariff, Seller shall perform all day-ahead Scheduling and Tagging activities necessary for the delivery of Energy to Buyer's Retail Load from Buyer's SEPA Entitlement, Buyer's Solar Entitlement, and the MISO Exports.

(e) Absent Buyer's failure to provide the information specified in Section 5.1(c)(ii)(1), Seller shall be solely responsible for the accuracy of the forecasts of Buyer's Retail Load and any costs incurred as a result of deviations between the forecasts and actual Retail Load.

(f) Seller and Buyer may agree in writing to a different procedure for developing Day-Ahead Schedules at any time, and the Parties agree that the deadlines for exchanging information for the Day-Ahead Schedules shall be adjusted to match any changes in the day-ahead bid submission deadlines for applicable MISO markets and any applicable deadlines pursuant to the KU/LGE Tariff.

Section 5.2. Real-Time Schedule Adjustments. Buyer and Seller will coordinate their efforts to enable Seller (at its own cost) to receive, in real-time, ICCP telemetered data for (i) Buyer's Retail Load and, (ii) if applicable and available, the Solar Entitlement output. Seller shall use such data (and other data that may be made available through efforts of the Operating Committee) to update and make adjustments to the Day-Ahead Schedule in accordance with Prudent Utility Practices.

Section 5.3. MISO Provisions.

(a) Buyer shall be responsible for settling directly with MISO for all MISO Exports Energy, subject to reimbursement by Seller pursuant to Exhibit A.

(b) If Buyer receives from MISO an allocation of Hedge Entitlements between the Delivery Point and the Settlement Point that stem from the transmission service obtained by Buyer pursuant to Section 3.3(a) and would be in effect during any period on or after the Service Commencement Date, Buyer shall transfer those rights or allowances to Seller for its own use to manage congestion and losses with respect to the MISO Exports during the applicable period (not to exceed the end of the Contract Term). Effective as of the date of termination of this Agreement, Seller shall transfer all such Hedge Entitlements back to Buyer.

(c) Seller shall be responsible for payment of all uninstructed deviation or other deployment failure charges imposed under the MISO Tariff resulting from the operation of (or failure to operate) any Installed Capacity. 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.

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Section 5.4. SEPA Entitlement.

(a) In performing its energy management services with respect to the SEPA Entitlement, Seller shall comply with all applicable requirements of Buyer's agreement with SEPA, a copy of which has been provided to Seller. Buyer shall promptly provide to Seller a copy of any amendments made to such agreement.

(b) Buyer shall be responsible for settling directly with SEPA for the SEPA Entitlement, subject to reimbursement by Seller pursuant to Exhibit A.

Section 5.5. Solar Entitlement.

(a) In performing its energy management services with respect to the Solar Entitlement, Seller shall comply with all applicable requirements of Buyer's agreement with the seller of such entitlement, a copy of which will be provided to Seller (subject to any necessary redactions and/or commitment by Seller to comply with confidentiality requirements). Buyer shall promptly provide to Seller a copy of any amendments made to such agreement that would affect Seller's obligations hereunder.

(b) Buyer shall be responsible for settling with the seller of the Solar Entitlement for all Energy supplied from the Solar Entitlement.

Section 5.6. Operating Committee. The Parties shall form a committee to exchange information and coordinate with respect to matters relating to the performance of this Agreement ("Operating Committee"). Each Party shall appoint at least one representative to serve on the Operating Committee. The Parties shall notify each other in writing of such appointments and any changes thereto. The Operating Committee shall have no authority to modify the terms or conditions of this Agreement. Seller shall schedule meetings of the Operating Committee by mutual agreement of the representatives no less frequently than annually. Matters to be reviewed by the Operating Committee shall include, without limitation, the following:

(a) Establishing and maintaining operating procedures including those pertaining to information transfers between the Parties. This would include but not be limited to transmission service schedules, load forecasting, telemetry, and systems required to insure data transfer quality and requirements.

(b) Discussing system planning, operations plans, and procedures as required to maintain compliance with SERC and NERC requirements as they relate to the Parties' performance of this Agreement.

(c) Discussing and reviewing any transmission line outages or deratings on the Seller's system that could potentially affect Seller's performance of its obligations under the Agreement.

(d) Establishing the means by which Hedge Entitlements will be transferred from one Party to the other in accordance with Section 5.3(b).

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(e) Considering and possibly developing pseudo-tie or dynamic scheduling arrangements to support the provision of Full Requirements Service hereunder.

(f) Beginning in 2025, discussing and reviewing projections of the pricing caps for the extension of the Contract Term presented in Exhibit E.

Meetings of the Operating Committee may be conducted in person or by telephone, and each Party may elect to have one or more individuals attend any such meeting on behalf of the Party in addition to the Party's appointed representative. Within a reasonable time after the conclusion of each meeting of the Operating Committee, Seller shall provide a written summary or summaries of such meeting, including a description of issues discussed and decisions agreed upon by the Parties. The Parties intend that confidential information provided by a Party in conjunction with the activities of the Operating Committee will be subject to the Mutual Confidentiality Agreement attached to this Agreement as Exhibit G.

ARTICLE VI

FAILURE TO DELIVER OR RECEIVE

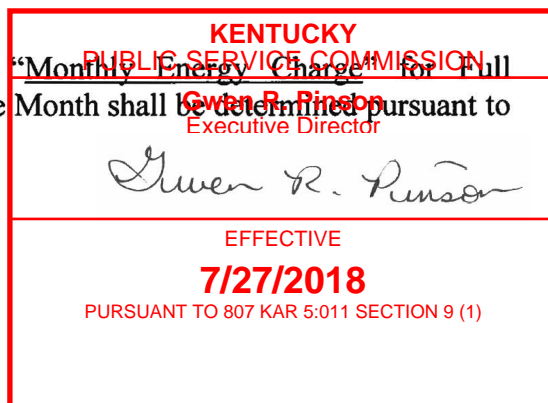
Section 6.1. Seller's Failure. Seller's obligations to provide Full Requirements Service, including selling and delivering MISO Exports, shall be excused only to the extent that, and for the period during which, such performance is prevented by Force Majeure or by the non-performance of Buyer. Seller's performance shall not be excused by full or partial unavailability of Seller's Installed Capacity, or any curtailment or interruption of transmission service supporting Seller's delivery of MISO Exports to the Delivery Point that was not caused by Force Majeure. If Seller is unable to deliver MISO Exports due to Force Majeure, it will exercise all commercially reasonable efforts to procure and deliver Energy to Buyer and Buyer shall pay Seller all costs incurred by Seller for the Energy. If Seller fails to deliver to Buyer all or part of the Full Requirements Service required by Buyer, and such failure is not excused, then Seller shall make Buyer whole for all costs Buyer incurs as a result of such performance failure that exceed the costs Buyer would have incurred hereunder if Seller had performed.

Section 6.2. Buyer's Failure. Buyer's obligation to receive Energy Scheduled by Seller for delivery to Buyer in conformance with this Agreement shall be excused only to the extent that, and for the period during which, such receipt is prevented by Force Majeure. In the event of any such failure to receive that is not excused by Force Majeure, then Buyer shall make Seller whole for its loss of revenues, net of any revenues Seller received from sale to others of the Energy not received by Buyer.

ARTICLE VII

CHARGES

Section 7.1. Monthly Energy Charge. The ~~Monthly Energy Charge~~ for Full Requirements Service provided by Seller in each Service Month shall be determined pursuant to Exhibit A.



Section 7.2. Monthly Capacity Charge.

In the event that the Contract Term is extended pursuant to Section 2.3, the Agreement will be amended to reflect any agreed-upon Monthly Capacity Charge.

ARTICLE VIII

BILLING AND PAYMENT

Section 8.1. Billing. Within five (5) Business Days following receipt by Buyer of the invoices for its SEPA Entitlement, MISO Exports, and network transmission service under the KU/LGE Tariff for a given Service Month, Buyer shall provide copies of such invoices to Seller. On or before the tenth (10th) Business Day following the receipt of all such Buyer invoices for a Service Month, Seller shall deliver to Buyer an invoice detailing the amounts owed by Buyer to Seller, the amounts owed by Seller to Buyer, and the net amount due from one Party to the other pursuant to Exhibit A for such Service Month. For any month in which damages for unexcused failure to deliver or receive apply pursuant to Section 6.1 or Section 6.2, the Party to which damages are due shall provide to the other documentation reasonably supporting the calculation of its damages as provided for in the relevant section.

Section 8.2. Payment. The Party owing the net amount shall make payment of the invoice within thirty (30) days after Buyer's receipt of the invoice by means of wire transfer of immediately available funds, or other acceptable method agreed to in writing by Seller and Buyer.

Section 8.3. Late Payments. If for any reason other than as permitted by and in accordance with Section 8.4 below, or as otherwise permitted by this Agreement, the Party owing a net payment under a given invoice pays less than the full amount of the invoice, interest on the unpaid amount shall accrue at the Default Interest Rate for each calendar day from the due date to the date paid.

Section 8.4. Disputes. If either Party in good faith disputes the amount of any invoice or any component thereof, it shall promptly notify the other Party of the disputed amount and the reason therefor. In the event of any such dispute, the Party owing a net payment shall pay the undisputed amount of such invoice. Any dispute with respect to the correctness of any invoice or any adjustment to an invoice rendered under this Agreement shall be barred if it was not raised within twenty four (24) months of the date of the invoice or adjustment to an invoice. Any disputes resulting from this Article VIII shall be settled in accordance with the provisions of Article XV. This Section 8.4 shall survive any termination of this Agreement for a period of two (2) years from the date on which the last invoice is rendered pursuant to this Agreement.

Section 8.5. Adjustments. Any adjustments to amounts invoiced and paid for a given Service Month (e.g., to reflect resolution of any dispute and/or billing corrections) shall be made on the next monthly invoice following the event giving rise to such adjustment. Each adjustment, to the extent allowed by Law, shall include interest accrued from the original payment date to the date of the adjustment, at the Interest Rate; provided, however, that adjustments arising from resettlement of charges by MISO in the normal course of business shall include (or be subject to) interest only as provided for under the MISO Tariff.

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Section 8.6. Audit. Each Party has the right, with reasonable prior notice and at its sole expense, to examine the records of the other Party during regular business hours to the extent reasonably necessary to verify the accuracy of any invoice, or any component thereof or calculations provided with or supporting such invoice, rendered pursuant to this Agreement. If any such examination reveals any inaccuracy in any invoice, or any component thereof or calculations provided with or supporting such invoice, the necessary adjustments in such invoice, component or calculations provided with or supporting such invoice, and the payments made pursuant thereto, shall be adjusted in the next invoice, provided that the challenging Party brought it to the attention of the other Party within twenty four (24) months after issuance of the inaccurate invoice. This Section 8.6 shall survive any termination of this Agreement for a period of two (2) years from the date on which the last invoice is rendered pursuant to this Agreement.

Section 8.7. Records. Seller shall develop, maintain and keep originals or copies of all accounting records, statistical information, and supporting documents relating to the performance of its obligations hereunder in accordance with the longest of the applicable record-retention requirements of the RUS, KPSC, MISO and all other regulatory bodies and taxing authorities having jurisdiction over Seller; provided that all such applicable accounting records shall be retained for at least two (2) years and so long thereafter as any dispute exists regarding such information or payments due under this Agreement. All such records shall be available for inspection by Buyer during regular business hours, and Buyer shall have the right (at Buyer's expense) to make copies thereof, subject to Buyer's obligations under the Mutual Confidentiality Agreement attached to this Agreement as Exhibit G.

ARTICLE IX

CREDITWORTHINESS

Section 9.1. Buyer's Obligations. Seller shall have no right to require Buyer to provide and/or maintain any form of security in favor of Seller in connection with the service provided under this Agreement during any period in which Buyer has a Buyer Investment Grade Rating. On or after March 31, 2019, for any period in which Buyer does not have a Buyer Investment Grade Rating, Seller may request that Buyer provide a Qualifying Letter of Credit or other credit support acceptable to Seller for the benefit of Seller in an amount equal to Seller's two (2) largest anticipated monthly invoices to Buyer for the then-current calendar year (or for 2020, if Seller's request is made prior to the Service Commencement Date), as reasonably calculated by Seller and stated in the written request for the Qualifying Letter of Credit, which amount shall in no event exceed [REDACTED]. Upon receipt of such written notice, Buyer shall have ten (10) Business Days to provide to Seller the Qualifying Letter of Credit or other credit support acceptable to Seller. In the event that Buyer fails to provide the Qualifying Letter of Credit or other form of credit support acceptable to Seller within the time period stated herein, such failure shall be a Letter of Credit Default under Section 11.2(f). If, subsequent to the provision of a Qualifying Letter of Credit or other credit support acceptable to Seller, Buyer has (or again has) a Buyer Investment Grade Rating, Buyer shall have the right to terminate the Qualifying Letter of Credit or other credit support, and such termination shall not be a Letter of Credit Default under Section 11.2(f).

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Section 9.2. Seller's Obligations. Buyer shall have no right to require Seller to provide and/or maintain any form of security in favor of Buyer in connection with the service provided under this Agreement during any period in which Seller has a Seller Credit Rating of at least BB from Fitch, BB from S&P, and Ba2 from Moody's. On or after March 31, 2019, for any period in which Seller does not have a Seller Credit Rating of at least BB from Fitch, BB from S&P, and Ba2 from Moody's, Buyer may request that Seller provide a Qualifying Letter of Credit or other credit support acceptable to Buyer for the benefit of Buyer in the amount of up to [REDACTED]. Upon receipt of such written notice, Seller shall have ten (10) Business Days to provide the Qualifying Letter of Credit to Buyer. In the event that Seller fails to provide the Qualifying Letter of Credit within the time period stated herein, such failure shall be a Letter of Credit Default under Section 11.1(f). If, subsequent to the provision of a Qualifying Letter of Credit, Seller has (or again has) a Seller Credit Rating of at least BB from Fitch, BB from S&P, and Ba2 from Moody's, Seller shall have the right to terminate the Qualifying Letter of Credit, and such termination shall not be a Letter of Credit Default under Section 11.1(f).

Section 9.3. No Margining. No collateral posting will be required for Buyer or Seller for margining on the mark-to-market value of this Agreement. Further, and notwithstanding anything herein to the contrary, Buyer and Seller each hereby irrevocably and unconditionally waives any rights it may have under applicable Law, other than Title 11 of the United States Code, to request "adequate assurances" or other performance assurance or security for the other Party's obligations hereunder other than as provided for in Section 9.1 and Section 9.2.

ARTICLE X

TRANSMISSION ARRANGEMENTS; MISO MARKET

Section 10.1. Transmission Service on the MISO Transmission System. As set forth in Section 3.3, Buyer will make application for point-to-point service under the MISO Tariff for service from the Delivery Point to the Settlement Point. Buyer will be the transmission customer for such point-to-point service and (as between the Parties) will be solely responsible for the costs of such transmission service. However, Seller shall act as Buyer's agent for purposes of Scheduling and Tagging the use of such service for Seller's deliveries of MISO Exports to Buyer (with the sink of Buyer's Retail Load). In addition, Seller shall be responsible for all generator-related MISO market charges related to the Facility or any Installed Capacity. Seller shall take all commercially reasonable actions as may be required by MISO to facilitate Buyer's receipt of MISO Exports at the Delivery Point and transmission thereof from the Delivery Point to the Buyer.

Section 10.2. Other Transmission Service. Buyer shall arrange and be responsible for the costs of network transmission service within the KU/LGE System and, if applicable, any service on other transmission systems necessary for delivery of Buyer's SEPA Entitlement and/or Solar Entitlement to the KU/LGE System. However, Seller shall act as Buyer's agent for purposes of Scheduling and Tagging the use of all such service for the provision of Full Requirements Service hereunder.

Section 10.3. MISO Market Changes. If (a) the MISO operation are changed to the extent that they would, in the rea

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materially change the economic bargain under this Agreement or the procedures specified herein for the provision of Full Requirements Service, or (b) for any reason, the MISO Tariff and/or MISO rules of market operation no longer apply to Seller, then the Parties agree to undertake in good faith negotiations to amend this Agreement to restore the economic bargain or to modify the procedures under this Agreement to comply with then-applicable tariff and market rules. The Parties recognize that a key element of the economic bargain for Buyer will be lost if the Settlement Point hereunder is not located within either MISO or the KU/LGE System (or any regional transmission organization encompassing that transmission system). If the Parties cannot agree on such an amendment within one hundred twenty (120) days after notice from one Party to the other of such changes, either Party may initiate dispute resolution in accordance with Section 15.4.

Section 10.4. Interconnection. At Buyer's option, the Parties will undertake commercially reasonable efforts to construct a physical interconnection that would connect Buyer's Retail Load directly to Seller's transmission facilities, as further described in item #4 in Exhibit B. In the event that such an interconnection is established, the Parties shall in good faith negotiate revisions to this Agreement to reflect such changed circumstances. If the Parties cannot agree on such an amendment at least 120 days prior to the energization of the interconnection, either Party may initiate dispute resolution in accordance with Section 15.4.

ARTICLE XI

DEFAULT AND REMEDIES

Section 11.1. Seller Event of Default. The following shall constitute events of default on the part of Seller ("Seller Event of Default"):

- (a) Seller fails to pay or credit any amount due to Buyer under this Agreement and such failure continues for five (5) days following receipt of written notice thereof from Buyer.
- (b) Seller becomes subject to a Bankruptcy Proceeding.
- (c) Any representation or warranty made by the Seller herein or required of Seller by this Agreement is false or misleading in any material respect when made.
- (d) Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity (i) fails to assume all the obligations of the Seller hereunder pursuant to an agreement reasonably satisfactory to Buyer, absent Buyer's consent permitting Seller to retain the Agreement pursuant to Section 13.2(b), or (ii) does not meet the creditworthiness requirements for Seller in Section 9.2.
- (e) Seller commits a breach of its material covenants or obligations under this Agreement not otherwise excused by Force Majeure, other than a payment default as set forth in Section 11.1(a), unless:

- (i) Seller commences and diligently provides delivery of written notice of such breach from Buy

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(ii) the breach is cured within ten (10) days of delivery of such written notice; provided, however, that if (A) such breach is not, by its nature, capable of being cured within such ten (10) day period, and (B) Seller is diligently and in good faith proceeding to attempt to cure such breach, Seller shall be allowed such additional time, which shall in no event exceed an additional twenty (20) days, as may reasonably be required to cure such breach.

(f) The occurrence of a Letter of Credit Default where such Letter of Credit Default is not cured within three (3) Business Days after its occurrence by Seller providing to Buyer a valid Qualifying Letter of Credit, provided that if the Letter of Credit Default is the result of the issuer of the Qualifying Letter of Credit failing to maintain the required Credit Rating and total assets, Seller shall be allowed such additional time, which shall in no event exceed an additional twenty (20) days, as may reasonably be required to cure such breach.

Section 11.2. Buyer Event of Default. The following shall constitute an event of default on the part of Buyer ("Buyer Event of Default"):

(a) Buyer fails to pay any amount due to Seller under this Agreement and such failure continues for five (5) days following receipt of written notice thereof from Seller.

(b) Buyer becomes subject to a Bankruptcy Proceeding.

(c) Any representation or warranty made by Buyer herein or required of Buyer by this Agreement is false or misleading in any material respect when made.

(d) Buyer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity (i) fails to assume all the obligations of Buyer under this Agreement by operation of Law or pursuant to an agreement reasonably satisfactory to the Seller, or (ii) does not meet the creditworthiness requirements for Buyer in Section 9.1.

(e) Buyer commits a breach of its material covenants or obligations under this Agreement not otherwise excused by Force Majeure, other than a payment default as set forth in Section 11.2(a), unless:

(i) Buyer commences and diligently proceeds to cure such breach upon delivery of written notice of such breach from Seller; and

(ii) the breach is cured within ten (10) days of delivery of such written notice; provided, however, that if (A) such breach is not, by its nature, capable of being cured within such ten (10) day period, and (B) Buyer is diligently and in good faith proceeding to attempt to cure such breach, Buyer shall be allowed such additional time, which shall in no event exceed an additional twenty (20) days, as may reasonably be required to cure such breach.

(f) The occurrence of a Letter of Credit Default where such Letter of Credit Default is not cured within three (3) Business Days after its occurrence by Seller providing to Buyer a valid Qualifying Letter of Credit, provided that if the Letter of Credit Default is the result of the issuer of the Qualifying Letter of Credit failing to maintain the required Credit Rating and total assets, Seller shall be allowed such additional time, which shall in no event exceed an additional twenty (20) days, as may reasonably be required to cure such breach.

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Executive Director



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Seller a valid Qualifying Letter of Credit, provided that if the Letter of Credit Default is the result of the issuer of the Qualifying Letter of Credit failing to maintain the required Credit Rating and total assets, Buyer shall be allowed such additional time, which shall in no event exceed an additional twenty (20) days, as may reasonably be required to cure such breach.

Section 11.3. Procedure and Remedies.

(a) Upon the occurrence and during the continuance of a Seller Event of Default, Buyer shall have the right, in its sole and absolute discretion, to do any or all of the following: (i) terminate this Agreement effective upon the provision of at least thirty (30) days' written notice to Seller (or upon such later date as may be specified in such notice); (ii) suspend performance during the notice period specified in the notice; and/or (iii) pursue any and all other remedies available at Law or in equity, subject to the dispute resolution procedures set forth in Article XV and the other limitations set forth in this Agreement.

(b) Upon the occurrence and during the continuance of a Buyer Event of Default, Seller shall have the right, in its sole and absolute discretion, to do any or all of the following: (i) terminate this Agreement, effective upon the provision of at least thirty (30) days' written notice to Buyer (or upon such later date as may be specified in such notice); (ii) if (and only if) the Buyer Event of Default occurs under Section 11.2(a), suspend performance during such notice period; and/or (iii) pursue any and all other remedies against Buyer available at Law or in equity, subject to the dispute resolution procedures set forth in Article XV and the other limitations set forth in this Agreement.

Section 11.4. Rights of Specific Performance. In addition to the remedies specified hereunder, upon the occurrence of a Seller Event of Default or a Buyer Event of Default, which does not arise from the failure to make a payment of money hereunder, the non-defaulting Party shall have a right to obtain equitable relief, including specific performance of the defaulting Party's non-monetary obligations hereunder.

ARTICLE XII

INDEMNIFICATION

Section 12.1. Indemnity by Seller. Subject to the terms and conditions set forth in this Article XII and except to the extent caused by the fraud, negligence or the willful misconduct or willful breach of any obligation under this Agreement of any Indemnitee, Seller shall indemnify and hold Buyer and its Affiliates, members, directors, officers, attorneys, employees, subcontractors, agents and assigns harmless for, from and against any and all Losses that any of them may sustain or suffer as a consequence of the breach of any covenant or agreement made or undertaken by Seller in this Agreement.

Section 12.2. Indemnity by Buyer. Subject to the terms and conditions set forth in this Article XII and except to the extent caused by the fraud, negligence or the willful misconduct or willful breach of any obligation under this Agreement of any Indemnitee, Buyer shall indemnify and hold Seller and its Affiliates, members, directors, officers, attorneys, employees, subcontractors, agents and assigns harmless for, from and against any and all Losses that any of them may sustain or suffer as a consequence of the breach of any covenant or agreement made or undertaken by Buyer in this Agreement.

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them may sustain or suffer as a consequence of the breach of any covenant or agreement made or undertaken by Buyer in this Agreement.

Section 12.3. Further Qualifications Respecting Indemnification. The right of a Person listed as being entitled to indemnification in Section 12.1 or Section 12.2 (an “Indemnitee”) to be indemnified hereunder shall be subject to the following further qualifications:

(a) Upon receipt of notice of any demand, assertion, claim, action or proceeding, judicial, governmental or otherwise, from any third party (such third party actions being collectively referred to herein as “Third Party Claims”), the Indemnitee shall give written notice thereof to the indemnifying Party (the “Indemnitor”) as soon as reasonably practicable, but not later than thirty (30) days after the date the Indemnitee obtains actual knowledge of the basis or alleged basis for the right of indemnity;

(b) In computing Losses, such amounts shall be computed net of any related recoveries to which the Indemnitee is entitled under insurance policies, or other related payments received from third parties, and net of any tax benefits actually received by the Indemnitee or for which it is eligible, taking into account the income tax treatment of such indemnification; and

(c) The Indemnitee shall use commercially reasonable efforts to mitigate all Losses for which indemnification may be available hereunder, including availing itself of any defenses, limitations, rights of contribution, claims against third parties and other rights at Law or equity. The Indemnitee’s commercially reasonable efforts shall include the reasonable expenditure of money to mitigate or otherwise reduce or eliminate any Loss for which indemnification would otherwise be due, such expenditures being included in indemnified Losses hereunder.

Section 12.4. Procedures Respecting Third Party Claims. In notifying the Indemnitor of any Third Party Claim (the “Claim Notice”), the Indemnitee shall provide the Indemnitor with a copy of such Third Party Claim or other documents received and shall otherwise make available to the Indemnitor all relevant information material to the defense of such claim and within the Indemnitee’s possession. The Indemnitor shall have the right, by written notice given to the Indemnitee within fifteen (15) days after the date of the Claim Notice, to assume and control the defense of the Third Party Claim that is the subject of such Claim Notice, including the employment of counsel selected by the Indemnitor after consultation with the Indemnitee, and the Indemnitor shall pay all expenses of, and the Indemnitee shall cooperate fully with the Indemnitor in connection with, the conduct of such defense. The Indemnitee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such Third Party Claim, but the fees and expenses of such counsel shall be borne by the Indemnitee unless the Indemnitor shall otherwise agree in writing; provided, however, if the named parties to any such proceeding (including any impleaded parties) include both the Indemnitee and the Indemnitor, the Indemnitor requires that the same counsel represent both the Indemnitee and the Indemnitor, and representation of both Parties by the same counsel would be inappropriate due to actual or potential differing interests between them, then the Indemnitee shall have the right to retain its own counsel. If the Indemnitor shall have failed to assume the defense of any Third Party Claim in accordance with the provisions among the Parties, the Indemnitee shall have the absolute right

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Third Party Claim, and, if and when it is finally determined that the Indemnitee is entitled to indemnification from the Indemnitor hereunder, the fees and expenses of the Indemnitee's counsel shall be borne by the Indemnitor; provided that the Indemnitor shall be entitled, at its expense, to participate in (but not control) such defense. The Indemnitor shall have the right to settle or compromise any such Third Party Claim for which it is providing indemnity so long as such settlement does not impose any obligations on the Indemnitee (except with respect to (a) obligations to pay money (which amounts, if payable by the Indemnitee, shall constitute Losses) and (b) providing releases of the third party). The Indemnitor shall be liable for any settlement effected by the Indemnitee without the Indemnitor's consent only if the Indemnitee has assumed the defense because the Indemnitor has failed or refused to do so.

ARTICLE XIII

ASSIGNMENT

Section 13.1. Assignment by Buyer.

(a) Buyer may, with prompt prior notice to but without the need for consent of Seller, assign all of its rights and obligations hereunder to any entity that (i) acquires all or substantially all of Buyer's business and/or assumes Buyer's obligations to serve the Retail Load, (ii) is of at least equal creditworthiness, and (iii) assumes in writing all of Buyer's obligations hereunder, which assumption shall be materially in the form attached as Exhibit F hereto or otherwise in form and substance reasonably acceptable to Seller.

(b) Unless Seller consents in writing to Buyer retaining this Agreement (which consent may be denied by Seller in its sole discretion), if Buyer transfers all or substantially all of its business to another party, Buyer shall assign all of its rights and obligations hereunder to the entity that acquires such business.

Section 13.2. Assignment by Seller.

(a) Notwithstanding any other provision of this Agreement to the contrary, and without any other action being required pursuant to this Agreement, Seller may, without the written consent of Buyer and without relieving itself from liability hereunder or committing a Seller Event of Default, assign, transfer, mortgage or pledge this Agreement to create a security interest for the benefit of the United States of America, acting through the RUS, or other secured party (directly or through an indenture trustee or other collateral agent; collectively, including such indenture trustee or other collateral agent, a "Secured Party"). Thereafter, a Secured Party, without the written consent of Buyer and without committing a Seller Event of Default, may (i) cause this Agreement (and all obligations hereunder) to be sold, assigned, transferred or otherwise disposed of to a third party pursuant to the terms governing such security interest, or (ii) if RUS first acquires this Agreement pursuant to 7 U.S.C. § 907 or if any other Secured Party otherwise first acquires this Agreement, sell, assign, transfer or otherwise dispose of this Agreement and all obligations hereunder) to a third party; provided, however, that in either case (A) Seller is in default of its obligations that are secured by such security interest and that the applicable Secured Party has given Buyer written notice of such default; and (B) the applicable Secured Party has given Buyer not less than thirty (30) days' prior written notice of its intention to do so.

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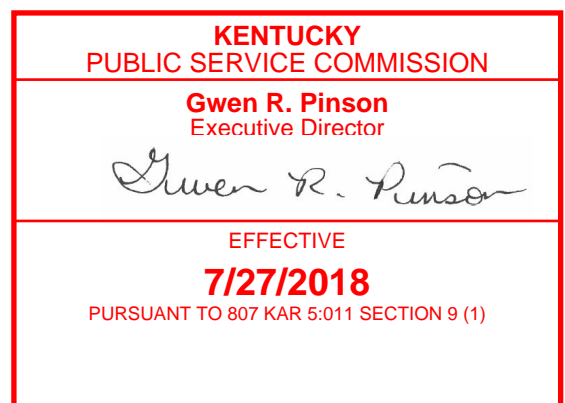
otherwise dispose of this Agreement (and all obligations hereunder) indicating the identity of the intended third-party assignee or purchaser.

(b) If Seller transfers all or substantially all of its business (including the Facility) to another Person whose creditworthiness meets the creditworthiness criteria of Section 9.2 of this Agreement and whose capability of performing this Agreement is at least equal to Seller's, then unless Buyer consents in writing to the Seller retaining this Agreement (which consent may be denied by Buyer in its sole discretion), Seller shall, with prompt prior notice to but without the need for consent of Buyer, assign this Agreement and all of Seller's rights and interest hereunder to the Person to which Seller's business is being transferred, and shall require such assignee to assume in writing all obligations of Seller, which assumption shall be materially in the form attached as Exhibit F hereto or otherwise in form and substance reasonably acceptable to Buyer.

Section 13.3. Other Assignments. Except as provided in Section 13.1 and Section 13.2, any proposed assignment by Buyer shall require the prior written consent of Seller, and any proposed assignment by Seller shall require the prior written consent of Buyer. In each case, consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that it shall be reasonable for Buyer to require as condition(s) to its consent to an assignment of this Agreement to a Person by Seller that (i) the Facility and Installed Capacity will be assigned and transferred to the same Person, (ii) such Person has sufficient Capacity resources to provide equivalent or greater support for the performance of Seller's obligations hereunder, and/or (iii) such Person has creditworthiness that meets the creditworthiness criteria of Section 9.2 of this Agreement. It shall be reasonable for Seller to require as condition to its consent to an assignment of this Agreement to a Person by Buyer that such Person meets the creditworthiness requirements of Section 9.1 of this Agreement.

Section 13.4. Notice. Except for any assignment under Section 13.2(a), irrespective of whether consent is required, notice of any proposed assignment shall be given to the other Party at least sixty (60) days prior to the date of the assignment. Any purported assignment made without complying with the requirements of this Article XIII shall be null and void.

Section 13.5. Effect of Assignment on Party Status. No assignment shall relieve the assignor of its obligations hereunder in the event the assignee fails to perform, unless the other Party agrees in writing in advance to waive the assignor's continuing obligations pursuant to this Agreement. To the extent an assignment occurs in accordance with the terms of this Article XIII other than Section 13.2(a), the assignee's creditworthiness meets the applicable creditworthiness criteria of Article IX of this Agreement and its ability to perform this Agreement is at least equal to that of the assignor, and the assignee expressly agrees in writing to assume all of the assignor's rights and obligations so assigned, the other Party shall release the assignor from any further liability in respect of the rights and obligations so assigned.



ARTICLE XIV

FORCE MAJEURE

Section 14.1. Force Majeure. The term “Force Majeure” shall mean causes beyond the reasonable control of, and without the fault or negligence (including failure to comply with Prudent Utility Practices) of, the Party claiming Force Majeure, including, but not limited to, acts of God; earthquake; storm; fire; lightning; epidemic; war; riot or civil disturbance; or sabotage. Notwithstanding the foregoing, under no circumstances shall Force Majeure include any of the following: (i) changes in market conditions that affect the cost of or demand for power; (ii) change in Law; (iii) any lack of profitability to a Party or other financial consideration of a Party; (iv) unavailability of the Facility or other Installed Capacity of Seller; (v) unavailability of transmission service to the Delivery Point from any specific source of supply; or (vi) unavailability of transmission service from the Delivery Point to Buyer’s load; provided, however, that any interruption or curtailment of transmission service that is caused by force majeure as defined in the tariff of the applicable Transmission Provider shall constitute Force Majeure hereunder.

Section 14.2. Effect on Performance.

(a) If a Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that Party shall be excused from whatever performance it is unable to perform due to the Force Majeure to the extent so affected, provided that:

(i) the Party affected by such Force Majeure, as soon as reasonably practical after the commencement of such effect, gives the other Party prompt oral notice, followed by a written notice within forty-eight (48) hours after such oral notice, fully describing the particulars of the occurrence;

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

(iii) the Party whose performance is affected by such Force Majeure uses its commercially reasonable efforts to overcome and remedy its inability to perform as soon as possible; and

(iv) the event of Force Majeure must not have been caused by or contributed to by any negligent or intentional act, error or omission of the affected Party or any of its Affiliates, and must not be caused by or contributed to by any failure to comply with any Law by the affected Party or any of its Affiliates, or by any breach or default of this Agreement by the affected Party or any of its Affiliates.

(b) Notwithstanding anything in this Article XIV to the contrary, no payment obligation arising under this Agreement prior to the date of an event of Force Majeure shall be excused by such event of Force Majeure.

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<p><i>Gwen R. Pearson</i></p>
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ARTICLE XV

DISPUTE RESOLUTION

Section 15.1. Attempts to Resolve Dispute. Except for matters within the exclusive jurisdiction of the KPSC or the FERC, any controversy between Seller and Buyer, arising out of or relating to this Agreement, or any breach hereof or default hereunder may be submitted to binding arbitration upon written agreement of the Parties as to the particular controversy, or otherwise may be resolved in a forum of competent jurisdiction as specified in Section 18.3; provided, however, that, except when a Party in good faith seeks injunctive relief because it claims that it is suffering or will suffer immediate and irreparable injury, loss or damage, neither Party shall seek to arbitrate or litigate a controversy between the Parties without the Party's most senior executive first attempting in good faith to resolve the dispute with the most senior executive of the other Party. Such executives shall decide, within ten (10) Business Days of a written notice of the dispute, the negotiation period during which they will attempt to resolve the dispute before a Party may initiate arbitration or litigation. If such executives fail for any reason to agree upon a negotiation period during which they will attempt to resolve the controversy, then the negotiation period shall end forty-five (45) days after the written notice of dispute.

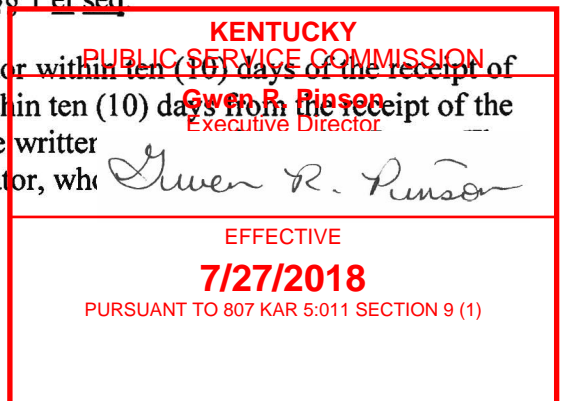
Section 15.2. Jurisdiction. Except for matters within the exclusive jurisdiction of the KPSC or the FERC, each of the Parties irrevocably waives, to the fullest extent permitted by Law, any objection it may now or hereafter have to the exclusive jurisdiction of the courts as specified in Section 18.3 or the laying of the venue of any such proceeding brought as specified in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Each of the Parties hereby consents to service of process by registered mail at its address set forth herein and agrees that its submission to jurisdiction and its consent to service of process by mail is made for the express benefit of the other Party.

Section 15.3. Voluntary Binding Arbitration. If, following failure of negotiations pursuant to Section 15.1, the Parties agree in writing to binding arbitration of a dispute, the following procedures will be used (absent agreement of the Parties to different procedures):

(a) The dispute shall be finally settled by binding arbitration before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect, except as modified herein. The Party seeking relief from the other Party shall prepare and submit a request for arbitration (the "Demand"), which will include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief. The Demand shall be accompanied by all relevant supporting documents.

(b) Arbitration shall be held in Owensboro, Kentucky. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq.

(c) Each Party shall select one arbitrator within ten (10) days of the receipt of the Demand, or if a Party fails to make such selection within ten (10) days from the receipt of the Demand, the AAA shall make such appointment upon the written request of the other Party. The two arbitrators thus appointed shall select the third arbitrator, who shall be the



panel. If the two arbitrators fail to agree on a third arbitrator within thirty (30) days of the selection of the second arbitrator, the AAA shall make such appointment. Neither the Parties nor the Party-appointed arbitrators shall be limited to selecting arbitrators (or mediators, if the Parties elect to undertake mediation) named on any list of arbitrators provided by AAA. All arbitrators shall be knowledgeable in the subject area of the dispute, and recently active by employment or otherwise in the subject area of the dispute. The third arbitrator shall be qualified under the standards of the AAA Commercial Arbitration Rules Section R-18(a).

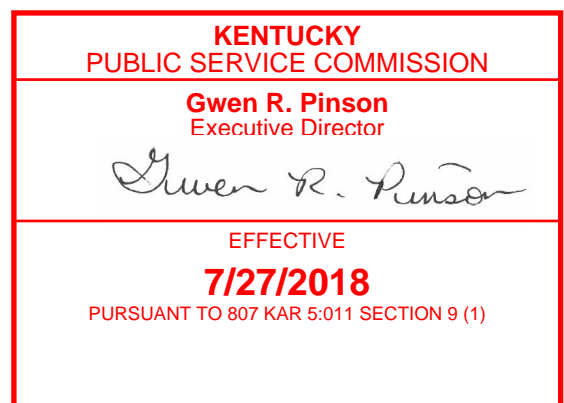
(d) The award shall be in writing (stating the award and the reasons therefor) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy regarding any claims, counterclaims, issues, or accountings presented to the arbitration panel. The arbitration panel shall be authorized in its discretion to grant pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction as specified in Section 18.3.

(e) This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

(f) Unless otherwise ordered by the arbitrators, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrators shall have no power to consider or award any form of damages barred by Section 18.1, or any other multiple or enhanced damages, whether statutory or common law.

(g) Each Party understands that, to the extent it agrees to binding arbitration pursuant to this section, it will not be able to bring a lawsuit concerning the affected dispute, except as necessary to enforce this Section 15.3, or an arbitration award, or as permitted by applicable Law.

Section 15.4. Binding Arbitration for Certain Disputes. Following failure of negotiations pursuant to Section 10.3 or Section 10.4, and if the dispute is not within the exclusive jurisdiction of the KPSC or the FERC, the aggrieved Party may require that the dispute be resolved by binding arbitration, which shall generally follow the procedures specified in Section 15.3, except as follows. Each Party shall submit to the arbitrators and exchange with each other thirty (30) days in advance of the hearing its proposed amendments to the Agreement (a "Proposal") together with its arguments and other materials to support its Proposal; (ii) a Party may modify its Proposal (a "Modification") and any Modification and support therefor shall be submitted to the arbitrators and to the opposing Party no later than ten (10) days before the arbitration hearing; (iii) the arbitrators shall only consider the most recent Modification submitted by a Party, and shall not consider any previous Proposal or Modification submitted by a Party; and (iv) in reaching their decision, the arbitrators shall be limited to selecting only one or the other of the Proposals (or Modifications, if applicable) submitted by the Parties.



ARTICLE XVI

REPRESENTATIONS AND WARRANTIES

Section 16.1. Mutual Representations. Each Party represents and warrants to the other Party that, as of the Effective Date, but with respect to Big Rivers, subject to the approvals described in Sections 3.1 and 3.2:

(a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization or incorporation;

(b) it has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;

(c) its execution and delivery of this Agreement and its performance of its obligations under this Agreement do not violate or conflict with any Law applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any court or other agency of government applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets;

(d) except as otherwise permitted herein, it has neither initiated nor received written notice of any action, proceeding or investigation pending, nor to its knowledge is any such action, proceeding or investigation threatened (or any basis therefor known to it) that questions the validity of this Agreement, or that would materially or adversely affect its rights or obligations as a Party;

(e) all authorizations of and exemptions, actions or approvals by, and all notices to or filings with, any governmental authority that are required to have been obtained or made by it at the time this representation is made with respect to this Agreement have been obtained or made and are in full force and effect, and all conditions of any such authorizations, exemptions, actions or approvals have been complied with; and

(f) subject to the approval of RUS and/or KPSC to the extent applicable, this Agreement constitutes the Party's legal, valid and binding obligation, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at Law).

Section 16.2. Exclusivity of Representations. The representations and warranties made by a Party in this Agreement are in lieu of and are exclusive of all other representations and warranties, including any implied warranties of merchantability, suitability or fitness for any particular purpose or any other implied warranty. Each Party hereby disclaims any such other or implied representations or warranties, notwithstanding the delivery of this Agreement by the Party or its directors, officers, employees, agents or representatives.

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Executive Director

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Section 16.3. Buyer Additional Representations. Buyer represents, warrants and agrees to and with Seller that except as otherwise provided herein, or as provided by applicable Law, with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of its status as a municipality or municipal entity under Law or similar grounds with respect to itself or its revenues or assets from (i) suit, (ii) jurisdiction of court (including a court located outside the jurisdiction of its organization), (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment.

Section 16.4. Opinions of Counsel. As a condition to the Effective Date, each Party shall provide to the other Party an opinion of counsel that the Party providing the opinion:

(a) is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization or incorporation;

(b) subject to receipt of necessary approvals of RUS and KPSC, has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;

(c) its execution and delivery of this Agreement and its performance of its obligations under this Agreement do not violate or conflict with any Law applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any court or other agency of government applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets; and

(d) this Agreement constitutes the Party's legal, valid and binding obligation, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at Law).

ARTICLE XVII

NOTICES

Except as otherwise specified in this Agreement, any notice, request, demand, statement or the payment provided for in this Agreement shall be in writing and shall be sufficiently given if (a) delivered by overnight mail, overnight courier or hand delivered against written receipt, or (b) transmitted and received by electronic transmission and confirmed by hard copy delivered by one of the methods specified in part (a); and in all cases addressed as set forth in Exhibit C or to such other address as may be designated by a Party from time to time by notice to the other Party in accordance with this Article XVII. Any such notice shall be effective upon delivery and receipt thereof.

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ARTICLE XVIII

MISCELLANEOUS

Section 18.1. No Consequential Damages. Except to the extent (a) awarded on a Third Party Claim (except a Third Party Claim brought by a distribution member of Seller that could have been asserted as claim for breach of this Agreement by Seller), or (b) arising out of fraud or criminal conduct, in the event of any breach of the obligations of a Party hereto, the breaching Party shall be liable hereunder solely for direct and actual damages and under no circumstances shall a Party be liable hereunder for any consequential (including, but not limited to, lost profits and business interruption), incidental, special, punitive, exemplary, indirect or other similar damages.

Section 18.2. Entire Agreement. This Agreement, including the exhibits hereto and all amendments hereto, contain the complete agreement between the Parties with respect to the matters contained herein and supersedes all other negotiations or agreements, whether written or oral, with respect to the subject matter hereof.

Section 18.3. Governing Law; Venue and Jurisdiction.

(a) This Agreement shall be governed by, construed, interpreted and applied in accordance with the laws of the Commonwealth of Kentucky, without giving effect to any principle regarding conflict of laws that would result in the application of the laws of any other jurisdiction.

(b) The Parties hereby irrevocably submit to the jurisdiction of the United States District Court for the Western District of Kentucky (or, if that court refuses jurisdiction, in the Daviess County, Kentucky Circuit Court) for the purposes of any cause of action arising out of or based upon this Agreement or relating to the subject matter hereof that is not subject to the exclusive jurisdiction of the KPSC or the FERC, or for the enforcement of any arbitration award hereunder.

Section 18.4. Non-Waiver. No delay or failure by a Party to exercise any of its rights, powers or remedies under this Agreement following any breach or default by the other Party shall be construed to be a waiver of any such breach or default, or any acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind on the part of a Party of any breach or default, or any waiver on the part of a Party of any provision or condition of this Agreement, shall be effective only if in writing and then only to the extent specifically set forth in such writing.

Section 18.5. Severability. If an arbitration panel, court or regulatory agency having jurisdiction over the Parties or over this Agreement determines that any of the provisions of this Agreement, or any part thereof, is invalid, void, illegal or unenforceable, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, will nevertheless remain in full force and effect if the legal substance of the transactions contemplated is not affected.

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Gwen R. Pinson
Executive Director
Gwen R. Pinson

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adverse to either Party. Upon any such determination of invalidity, the Parties shall, within ten (10) days of such determination, commence to negotiate in good faith new provisions to restore this Agreement as nearly as possible to its original intent and effect.

Section 18.6. Interpretation; Headings. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require. Unless otherwise expressly provided, the words “include,” “includes” and “including” do not limit the preceding words or terms and shall be deemed to be followed by the words “without limitation.” The headings herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

Section 18.7. No Partnership or Joint Venture. This Agreement does not establish and should not be construed as establishing any partnership or joint venture by and between the Parties, and neither of the Parties shall have any duties, obligations or liabilities arising under such a relationship.

Section 18.8. Confidentiality. Concurrently with the Effective Date hereof, the Parties have entered into the Confidentiality Agreement attached hereto as Exhibit G. The obligations of the Parties under that Confidentiality Agreement shall survive the expiration or termination of this Agreement.

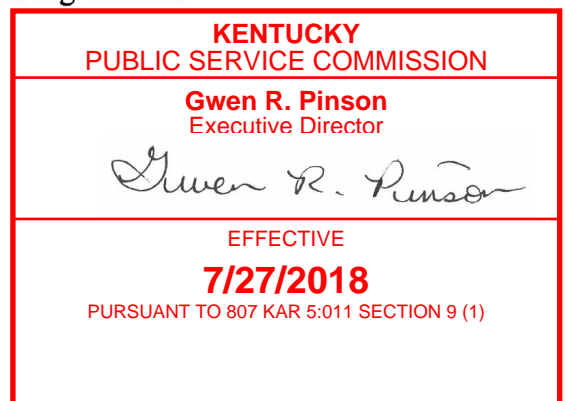
Section 18.9. No Third-Party Benefits. This Agreement shall not impart any rights enforceable by any third party (other than permitted successors or assignees bound by this Agreement). Nothing in this Agreement, express or implied, shall be construed to create any interest, beneficial or otherwise, for any third party.

Section 18.10. Amendment. Except as provided in Section 3.3(b) and Section 15.4, this Agreement may not be amended or modified except by a written instrument signed by Seller and Buyer that receives required review and approval by the KPSC and the RUS.

Section 18.11. Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary to effect the purpose and intent expressed in this Agreement.

Section 18.12. Counterparts; Electronic Copies. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any true and accurate electronic copies hereof or signature hereon shall, for all purposes, be deemed originals.

Section 18.13. Expenses. Each Party shall pay its own costs and expenses, including the fees and expenses of its agents, representatives, advisors, counsel and accountants, necessary for the negotiation, preparation, execution and delivery of this Agreement.

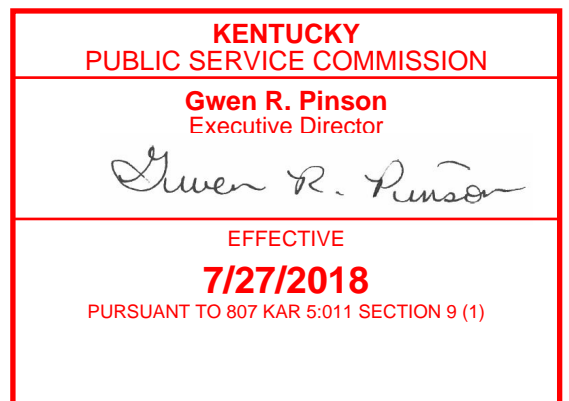


ARTICLE XIX

ADDITIONAL COOPERATION

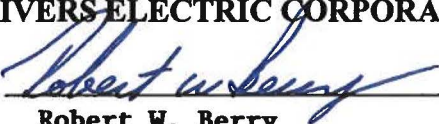
Section 19.1. Additional Cooperation and Obligations of Seller and Buyer. The additional obligations of the Parties set forth in Exhibit B are an integral part of this Agreement and incorporated herein by reference.

[Signatures appear on next page]



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

BIG RIVERS ELECTRIC CORPORATION

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

CITY UTILITY COMMISSION OF THE CITY OF OWENSBORO KENTUCKY

By: 
Name: **Jim Tony Fulkerson**
Title: **Chairman**

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Executive Director



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MONTHLY ENERGY CHARGE



[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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ADDITIONAL COOPERATION AND OBLIGATIONS OF SELLER AND BUYER

1. At Buyer's request, Seller agrees to purchase coal contracted by Buyer (not to exceed 200,000 tons), but with deliveries deferred beyond the December 31, 2018 contract termination date under Force Majeure provisions from Armstrong Coal Sales, LLC and KenAmerican Resources, at a mutually agreed upon price.
2. Except as prohibited by Seller's labor agreements, immediately upon the Effective Date, Seller agrees to post all employment opportunities with Buyer after they have been posted internally but before they have been published externally. Any employee of Buyer, (1) whose employment with Buyer will end with the retirement of the Elmer Smith Generating Station, (2) who is qualified for and (3) who is interested in employment with Seller in a posted position, will be given that position, subject to Seller's rules, policies, and standard hiring practices. Seller will continue this practice for the term of the Agreement, unless earlier directed by Buyer, in writing, to discontinue the practice. Seller will make commercially reasonable efforts to accommodate the hiring, for Seller positions that come available before the retirement of the Elmer Smith Generating Station, of eligible Buyer employees who would not become available until after the retirement of the Elmer Smith Generating Station.
3. To the extent necessary due to attrition in Buyer's workforce, Seller agrees to make operating personnel available to assist with activities at the Elmer Smith Generating Station after its retirement has been announced. Seller shall pay for their training, and Buyer would be responsible for their labor at the Elmer Smith Generating Station after such training.
4. Upon Buyer's request, Seller and Buyer will construct, and share equally in the cost of the construction of, facilities to physically interconnect their systems. Such facilities shall consist of (i) the new 161/138 kV Sorgho Substation connected to Seller's 138 kV Transmission Line 6-E, to be owned and operated by Seller, and (ii) an approximately four-mile 138 kV transmission line connecting the new substation to Buyer's existing Substation "M," which line shall be owned and operated by Seller. The new Sorgho Substation will include a 224 MVA 161/138 kV transformer and be expandable to provide 69 kV support to Seller's transmission system, as necessary. Buyer and Seller agree to share only in those costs necessary to establish the interconnection between the transmission systems of the Parties described herein. Each Party will be responsible for any costs on its system beyond the scope described above. It is estimated that approval, design, and construction will take approximately 18 to 24 months. Either Party may terminate this proposed construction

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shows that the Parties' aggregate costs will exceed \$10 million. Buyer will have three years from the Effective Date to exercise this option for construction of the substation and interconnection with Substation "M."

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ADDRESSES FOR NOTICE TO PARTIES

TO SELLER:

Robert Berry
President and CEO
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42420
Email: Bob.Berry@bigrivers.com

With copies to:

Mark Eacret
Vice President Energy Services
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42420
Email: Mark.Eacret@bigrivers.com

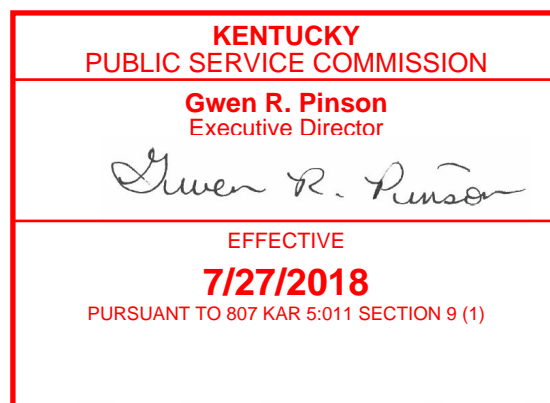
Tyson Kamuf
Corporate Attorney
Big Rivers Electric Corporation
201 Third Street
Henderson, KY 42420
Email: Tyson.Kamuf@bigrivers.com

TO BUYER:

Owensboro Municipal Utilities
c/o General Manager
Owensboro Municipal Utilities
2070 Tamarack Road
Owensboro, KY 42302
Email: FrizzellKD@omu.org

With copies to:

Kamuf Pace & Kamuf
Legal Counsel
221 W 2nd St
Owensboro, KY 42303
Attention: Patrick Pace
Email: PPace@kyandp.com



FORM OF QUALIFYING LETTER OF CREDIT

[Date]

[Issuing Bank Letterhead]

Irrevocable Standby Letter of Credit No. _____

Issue Date: _____, 20__

Initial Expiry Date: _____, 20__

Beneficiary:

Ladies and Gentlemen:

At the request of and based on instructions from our customer, [_____] a [_____] ("Account Party"), we hereby establish this Irrevocable Standby Letter of Credit ("Letter of Credit") in your favor as [Buyer/Seller] under the Power Purchase Agreement dated as of [_____] between Big Rivers Electric Corporation, as Seller, and The City of Owensboro Utility Commission of the City of Owensboro, Kentucky as Buyer (as heretofore or hereafter amended and/or restated at any relevant time the "PPA") for drawings up to a total of [_____] Dollars (US\$[_____]).

As used in this Letter of Credit: (a) each of "Dollars" and "US\$" mean lawful currency of the United States of America; (b) "ISP98" means the International Standby Practices, International Chamber of Commerce Publication No. 590; and (c) "Business Day" means a day that is not a Saturday, a Sunday or any other day on which banking institutions are not required to be open, or are authorized or required to close, in the State of our office location set forth below.

Drawings may be made by you from time to time by presentation of your certificate in the form of Appendix A hereto appropriately completed (a "Certificate") to us at our office in the United States located at:

[_____]
[_____]
[_____]
[_____]

Attn: [_____]

Telephone No: [_____]

Teletype No: [_____]

or at another office in the United States designated by us with at least fifteen (15) Business Days prior written notice to and received by you.

In the alternative, presentation of any Certificate may be transmitted to us (a) by telecopy to our teletype number set forth above; or (b) in another electronic permission which has been provided by us to you in our so: presentation is made by telecopy transmission or in another permitted electronic medium, you must: (a) provide telephone notice thereof to us at our telephone number set forth above prior to

Stamp area containing: KENTUCKY PUBLIC SERVICE COMMISSION, Gwen R. Pinson Executive Director, 7/27/2018, and PURSUANT TO 807 KAR 5:011 SECTION 9 (1)


or substantially simultaneously with such transmission; and (b) send the original Certificate by overnight courier to us at our office address set forth above. However, our receipt of such telephone notice or original Certificate will not be a condition to payment of the drawing described in the Certificate. Items delivered by telecopy transmission or in another permitted electronic medium will be the equivalent of originals of such items for purposes of this Letter of Credit.

We will honor each drawing made in compliance with this Letter of Credit by wire transfer of immediately available funds in the amount specified in the Certificate provided to us in connection with such drawing to the account specified in that Certificate. If any such drawing is presented by you on a Business Day at or before 12:00 noon local time at our address or telecopy number set forth above, such payment will be made not later than the close of business on the first Business Day after such presentation; drawings presented after 12:00 noon will be paid not later than close of business on the second Business Day after such presentation.

This Letter of Credit is effective immediately and will expire on the first to occur of the: (a) above Initial Expiry Date, subject to extension as described below (as so extended the "Expiry Date"); or (b) surrender by you to us of the original of this Letter of Credit, with any amendment(s) hereto, with your written consent to cancellation thereof (a "Cancellation Date"). The earliest to occur of the final extended Expiry Date or a Cancellation Date will be the "Termination Date." The Initial Expiry Date and each subsequent Expiry Date will be automatically extended for an additional consecutive period of one year unless we notify you in writing by nationally recognized overnight courier service, at least sixty (60) days prior to the then applicable Expiry Date, of our decision that the then applicable Expiry Date will not be automatically extended. Subject to the provisions herein, we authorize you to make drawings hereunder in an aggregate sum not in excess of the above amount from the date hereof through our close of business on the Termination Date. If this Letter of Credit expires during an interruption of business as described in Rule 3.14 of ISP98, we specifically agree to effect payment if this Letter of Credit is drawn against within thirty (30) days after the resumption of business.

Communications with respect to this Letter of Credit, including delivery of Certificates, shall, except as otherwise expressly provided above, be in writing and provided to you and us at our respective addresses and numbers set forth above by delivery in person or facsimile transmission at such address, as provided in this Letter of Credit, or as and in the medium otherwise permitted in writing by the recipient.

This Letter of Credit, except as otherwise expressly stated herein, is subject to ISP98, and as to matters not addressed by ISP98 the Laws of the [State/Commonwealth of _____], including the Uniform Commercial Code as in effect in such State, will control.

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Gwen R. Pinson Executive Director 
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This Letter of Credit sets forth in full our undertaking, which will not in any way be amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the preceding paragraph and appendices hereto, and any such reference will not incorporate herein by reference any document, instrument or agreement except as set forth above. Our obligations under this Letter of Credit are our individual obligations and not contingent on any reimbursement of us with respect thereto. Any drawing under this Letter of Credit will be paid from our general funds and not directly or indirectly from funds or collateral deposited with us or for our account by the Account Party or any other person or entity.

Very truly yours,

By
Authorized Signator

KENTUCKY PUBLIC SERVICE COMMISSION
Gwen R. Pinson Executive Director 
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Appendix A to Qualifying Letter of Credit

[Beneficiary Letterhead]

DRAWING CERTIFICATE
LETTER OF CREDIT NO. _____

_____, 20__

[_____]
[_____]
[_____]
[_____]

Attn: [_____]
Telephone No: [_____]
Telecopy No: [_____]

The undersigned authorized signator of _____, as [Buyer/Seller] ("Beneficiary"), hereby certifies to _____ Bank ("Issuing Bank"), with reference to Irrevocable Standby Letter of Credit No. _____ (the "Letter of Credit") issued by Issuing Bank and now in favor of Beneficiary (except as otherwise set forth herein, capitalized terms used and not defined herein have the meanings set forth in the Letter of Credit or, if not defined therein, in the PPA), that:

- 1. Beneficiary is making this drawing under the Letter of Credit in the amount of _____ Dollars (US\$ _____) (the "Drawing Amount").
- 2. The Drawing Amount does not exceed US\$[insert face amount of letter of credit] minus the amount of all payments of any previous drawings made under the Letter of Credit.
- 3. Beneficiary is entitled to make this drawing because [Check one]:

[] [Seller/Buyer] has failed to pay one or more amounts due and payable to one or more [Seller/Buyer] under the PPA ("Required Payments"), all applicable grace periods for the Required Payments have expired, and the sum of such unpaid Required Payments is not now less than the sum of (a) the Drawing Amount plus (b) any amounts that are being drawn from one or more other Qualifying Letters of Credit in respect of such Required Payments; or

[] The Letter of Credit is not now a Qualifying Letter of Credit and has not been replaced with a Qualifying Letter of Credit for a period of ten (10) consecutive Business Days (as defined in the PPA) after the Letter of Credit no longer constituted a Qualifying Letter of Credit; or

[] The now effective Expiry Date of the Letter of Credit is less than thirty (30) days after the date of this Certificate.

4. You are hereby directed to make payment of the requested Drawing Amount to _____ Bank, at _____ ABA No. _____ to _____ Account No. _____

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Gwen R. Pinson Executive Director
Re: Gwen R. Pinson
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IN WITNESS WHEREOF, Beneficiary has executed and delivered this Certificate.

[Beneficiary]

By: _____

Name: _____

Title: _____

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Executive Director



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**CALCULATION OF PRICE CAP(S) FOR EXTENSION OF TERM
UNDER ARTICLE II**

I. Procedure

The Capacity Price to be offered by Seller for the period of possible extension pursuant to Section 2.3 of this Agreement shall be capped by the amount computed in accordance with Sections I through III of this Exhibit E.

The Capacity Price will be computed in accordance with the following.

[REDACTED]

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[REDACTED]

II. Definitions

When used in this Exhibit E, the following capitalized terms shall have the meanings ascribed to them below.

[REDACTED]

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[REDACTED]

III. Capacity Price

[REDACTED]

IV. Energy Price

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

V. Account Numbers

The Parties understand and agree that the pricing for an extension to this Agreement is intended to be cost-based, whereby the projected costs of the Facility provide the basis for the charges to be assessed by Seller to Buyer. To aid the Parties in their determination of costs, references to specific account numbers have been made in this Exhibit E. The Parties have made commercially reasonable efforts to ensure the accuracy of the account numbers referenced hereunder. However, if at any time during the Term either Party determines that an account number referenced in this Exhibit E has been included in error or that an account number has been erroneously omitted, the Parties agree to properly amend this Exhibit E to correct such error.

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FORM OF INSTRUMENT OF ASSIGNMENT AND ASSUMPTION

This Instrument of Assignment and Assumption (this “Assignment”), dated as of [_____], 20[____] (the “Effective Date”), is entered into by and between [Assignor], a [_____] (“Assignor”), and [Assignee], a [_____] (“Assignee”).

WHEREAS, Assignor and [Buyer/Seller] are parties to that certain Agreement for the Purchase and Sale of Full-Requirements Capacity and Energy, dated as of [_____] (as amended through the date hereof, the “PPA”).

WHEREAS, in accordance with Section [_____] of the PPA, Assignor intends to assign to Assignee all of Assignor’s rights and interests under the PPA, and Assignee intends to assume all of Assignor’s obligations arising from and after the Effective Date, and the parties intend Assignor to be released from any further liability thereunder to the extent arising from and after the Effective Date.

WHEREAS, the parties hereto desire to execute and deliver this Assignment for the purpose of effecting the assignment and transfer by Assignor to Assignee, and the acceptance and assumption by Assignee, of the PPA and all rights, liabilities and obligations of “[Seller/Buyer]” (as defined in the PPA) thereunder.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee, intending to be legally bound, agree and covenant as follows:

1. Assignor hereby assigns and transfers to Assignee, and Assignee hereby accepts and assumes and agrees to perform the PPA, and all of Assignor’s rights, liabilities and obligations thereunder, to the extent arising from and after the Effective Date. Assignee hereby assumes and agrees to pay, discharge, perform and be responsible for all liabilities and obligations arising or accruing under or in respect of the PPA to the extent arising from and after the Effective Date.

2. Nothing in this Assignment, express or implied, is intended or shall be construed to confer upon or give to any Person, other than Assignor and Assignee, and their respective successors and assigns, any remedy or claim under or by reason of this Assignment or any term, covenant, condition, promise or agreement hereof, and all of the terms, covenants, conditions, promises and agreements contained in this Assignment shall be for the sole and exclusive benefit of Assignor and Assignee, and their respective successors and assigns.

3. This Assignment shall be governed by and construed and enforced in accordance with, and this Assignment and all matters arising out of or relating in any way whatsoever (whether in contract, tort or otherwise) to this Assignment shall be governed by, the laws of the Commonwealth of Kentucky.

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Gwen R. Penson

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4. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall, taken together, be considered one and the same agreement. Delivery of an executed signature page of this Assignment by facsimile or other electronic image scan transmission shall be effective as delivery of a manually executed counterpart of this Assignment.

5. Assignor and Assignee each agrees to provide a fully executed copy of this Assignment to Big Rivers Electric Corporation ("BREC") and to The City Utility Commission of the City of Owensboro Kentucky (OMU) if requested by either BREC or OMU.

IN WITNESS WHEREOF, the parties hereto have executed this Instrument of Assignment and Assumption as of the date first written above.

[signature blocks to be added]

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Executive Director



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MUTUAL CONFIDENTIALITY AGREEMENT

This Mutual Confidentiality Agreement ("**Agreement**") is made as of June 22, 2018 ("**Effective Date**") between **City Utility Commission of the City of Owensboro, Kentucky, doing business as Owensboro Municipal Utilities**, a Kentucky body politic and corporate, ("**OMU**"), and **Big Rivers Electric Corporation**, a Kentucky generation and transmission cooperative corporation ("**Company**"). OMU and Company are each a "**Party**" in this Agreement and both are referred to as "**Parties**".

WHEREAS, the Parties have entered into an "Agreement for the Purchase and Sale of Full Requirements Capacity and Energy Between Big Rivers Electric Corporation and the City Utility Commission of the City of Owensboro, Kentucky" dated June 22, 2018 (the "**PPA**");


WHEREAS, during the term of the PPA, the Parties may disclose to each other, orally, in writing, by inspection or otherwise, Confidential Information (as defined herein) necessary for the Parties to perform and administer the PPA, including but not limited to participating in the "Operating Committee" created in Article V of the PPA; and

WHEREAS, both Parties desire to establish and set forth their individual rights and obligations with respect to Confidential Information (as defined herein) that may be exchanged between them in connection with the performance and administration of the PPA.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

- 1. Disclosure of Confidential Information.** For purposes of this Agreement, an "**Affiliate**" is a person or entity directly or indirectly controlling, controlled by, or under common control with a Party, including a member. "**Representatives**" are a Party's or its Affiliate's directors, officers, employees, agents, advisors (including attorneys, accountants and financial advisors) and consultants. Either Party, when it or its Representatives disclose information to the other Party or its Representatives or when it or its Representatives otherwise give the other Party or its Representatives access to information, is sometimes referred to herein as a "**Disclosing Party**," and either Party, when receiving information from a Disclosing Party or its Representatives, is sometimes referred to herein as a "**Receiving Party**." Each Party shall be deemed to be a Receiving Party with respect to Confidential Information that is developed or created by the joint efforts of the Parties. Confidential Information requested by a Party for use solely by its consultant in advising that Party may be provided directly to that Party's consultant by the Disclosing Party and made subject to the consultant agreeing to accept, in writing, the terms and conditions of this Agreement. "**Confidential Information**" as used in this Agreement shall mean the information of or relating to a Disclosing Party of the PPA that is (i) normally kept confidential by the Disclosing Party, (ii) disclosed (whether orally or in writing) or made available to or observable by the Receiving Party or its

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Representatives in any form or media (whether tangible, digital, magnetic or otherwise) at any time after the Effective Date, and (iii) expressly designated by the Disclosing Party in writing as Confidential Information at the time of disclosure to the Receiving Party. Confidential Information does not include information that would otherwise constitute Confidential Information of a Disclosing Party to the extent that the Receiving Party can demonstrate (and bear the burden of proof) that:

- (a) the Confidential Information of the Disclosing Party is, at the time of disclosure, part of the public domain;
- (b) the Confidential Information of the Disclosing Party became part of the public domain, by publication or otherwise, except by breach of the provisions of this Agreement;
- (c) the Confidential Information of the Disclosing Party can be established by written evidence or digital or other electronic records to have been in the possession of the Receiving Party at the time of disclosure;
- (d) the Confidential Information of the Disclosing Party is received by the Receiving Party from a third party without similar restrictions and without breach of this Agreement; or
- (e) the Confidential Information of the Disclosing Party was developed by employees or agents of the Receiving Party independently of and without reliance upon any Confidential Information of the Disclosing Party and demonstrated by the written records thereof.

2. Treatment of Confidential Information.

(a) The Receiving Party shall hold the Disclosing Party's Confidential Information in trust and confidence and shall use reasonable care to preserve the confidential nature of Confidential Information of the Disclosing Party and in any event use at least the same degree of care as the Receiving Party uses in the protection of its own confidential and proprietary information. The Receiving Party shall not disclose Confidential Information to any third party other than its Representatives, and will disclose Confidential Information only to its Representatives as may be permitted by applicable law and who need to know the Confidential Information in connection with the performance and administration of the PPA, who are informed of its confidential nature and are directed to hold the Confidential Information in trust and confidence. The Receiving Party shall be fully responsible for any breach of this Agreement by any of its Representatives.

(b) In the event that a Receiving Party is requested or required by deposition, interrogatory, request for documents, subpoena, civil investigative demand, request under the Kentucky Open Records Act, or similar process to disclose any Confidential Information, the Receiving Party shall, if required by law, provide the Disclosing Party with prompt

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requirement prior to making such disclosure, (2) exercise its reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information, (3) at the request and expense of the Disclosing Party, cooperate with the Disclosing Party in any effort to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information or to resist or narrow the scope of such request or requirement, and (4) furnish only that portion of the Confidential Information which the Receiving Party is advised by legal counsel is legally required.


(c) Notwithstanding the foregoing provisions of this Section 2, a Receiving Party may disclose Confidential Information in connection with any application or other communication to a governmental authority or any related proceeding that may be required in connection with the PPA.

(d) Notwithstanding the foregoing provisions of this Section 2, if OMU receives a request under the Kentucky Open Records Act (KRS 61.870 et seq.) to disclose any Confidential Information, OMU shall, in addition to any other duty under this Agreement, notify the Company of such request within 24 hours of receipt of the request and at that time provide to the Company a copy of the request. OMU shall permit the Company to participate in OMU's analysis of the request, the determination of the appropriate response to the request, and any subsequent review or appeal of OMU's response to the request. OMU shall immediately, and no less than 24 hours before providing any response to the request, notify the Company of its final decision on a response to the Open Records Act request. If, in the absence of an express waiver under this Agreement, OMU is, in the opinion of OMU's legal counsel, required to disclose the Confidential Information in response to the Open Records Act request, OMU may disclose only such of the Confidential Information to the party requiring disclosure as, in the opinion of OMU's legal counsel, is required by applicable law, rule or regulation.

3. **Materials.** All materials containing Confidential Information furnished to the Receiving Party by the Disclosing Party in any form (whether tangible, digital, magnetic or otherwise) and any tangible, digital, magnetic or other machine-readable embodiments of the Disclosing Party's Confidential Information created by the Receiving Party shall remain the property of the Disclosing Party. Upon the expiration or termination of this Agreement and at the written request of the Disclosing Party, the Receiving Party shall return to the Disclosing Party or destroy all materials containing Confidential Information that were provided to the Receiving Party by the Disclosing Party within two years prior to the expiration or termination of this Agreement, and all copies thereof. Notwithstanding the foregoing requirements for a Receiving Party's return or destruction of a Disclosing Party's Confidential Information: (a) a Receiving Party's accounting, legal, financial and other advisors may retain copies of a Disclosing Party's Confidential Information and work product that includes such Confidential Information in accordance with policies and procedures implemented by such advisors in compliance with

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applicable law, regulation or professional standards; and (b) a Receiving Party shall not be required to return, erase or destroy (1) information that is commingled with other electronic records that are collected and maintained by the Receiving Party as an archived computer system backup in a separate secure facility as part of information technology backup procedures in accordance with security and/or disaster recovery procedures maintained in the normal course of business, (2) information that is included in a Receiving Party's disclosures to its (or an Affiliate's) board of directors or similar governing body or the record of deliberations of its (or an Affiliate's) board of directors or similar body in connection with the consideration of matters related to the performance or administration of the PPA and maintained with the Receiving Party's official records of such proceedings, (3) information that is incorporated into an agreement between the Parties, or (4) information in the possession of the Receiving Party or its Representatives if, in the opinion of legal counsel to the Receiving Party or its Representatives, such destruction would be unlawful or would violate any order, judgment, writ or decree to which the Receiving Party or its Representatives are subject to or by which they are bound. Notwithstanding the return or destruction of Confidential Information or the foregoing right to retain Confidential Information, the Receiving Party and its Representatives will continue to be bound by the obligations of confidentiality hereunder.

4. **No Representations or Warranties.** The Disclosing Party does not make any representations or warranties as to the accuracy or completeness of Confidential Information that the Disclosing Party or its Representatives may disclose or make available to the Receiving Party or its Representatives or the fitness of any such information for any particular purpose of the Receiving Party or any other person, except for such representations and warranties that may be included in the PPA.

5. **Term and Termination.**

(a) This Agreement shall terminate two years after the expiration or other termination of the PPA. If this Agreement is terminated prior to the expiration or other termination of the PPA, the Receiving Party's obligations under Sections 2 and 3 shall survive until the latter of (i) two years after the expiration or other termination of the PPA and (ii) the final return or destruction of materials containing Confidential Information by the Receiving Party pursuant to Section 3 of this Agreement.

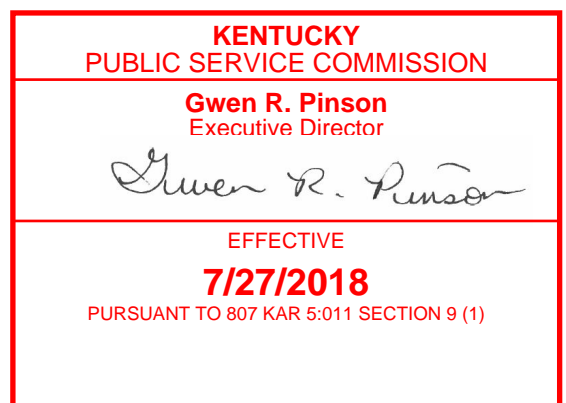
(b) Upon termination of this Agreement, the Receiving Party shall cease to use the Disclosing Party's Confidential Information and shall comply with Section 3 within sixty (60) days after receipt of a Disclosing Party's written request for return and/or destruction of materials and records that include the Disclosing Party's Confidential Information. Upon the request of the Disclosing Party, an officer of the Receiving Party shall certify that the Receiving Party has complied with its obligations in Section 3.

6. **Successors and Assigns.** Neither Party shall assign its rights or obligations arising under this Agreement without the other Party's prior written consent. This Agreement will be binding on the Disclosing Party's successors and assigns, and shall be assigned and transferred in connection with any assignment by a Party of its rights and obligations to the Receiving Party's successors and assigns, and shall be assigned and transferred in connection with any assignment by a Party of its rights and obligations to the Receiving Party's successors and assigns.

KENTUCKY
PUBLIC SERVICE COMMISSION
Gwen R. Penson
Executive Director
EFFECTIVE
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7. **General Provisions.**

- (a) This Agreement shall be governed by and construed in accordance with the laws of the United States and of the Commonwealth of Kentucky, without reference to its conflicts of laws provisions.
- (b) Any notice provided for or permitted under this Agreement will be treated as having been given when given as notice is required to be given in the PPA.
- (c) The Receiving Party agrees that breach of the provisions of this Agreement by the Receiving Party or its Representatives may cause the Disclosing Party irreparable damage for which recovery of money damages would be inadequate. The Disclosing Party will, therefore, be entitled to seek timely injunctive relief, without proof of actual damages, in any court of competent jurisdiction to protect the Disclosing Party's rights under this Agreement, in addition to all remedies available at law.
- (d) In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines in a final order, not subject to further appeal, that a Party or its Representatives has breached the provisions of this Agreement, the non-breaching Party shall be entitled to recover its costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such litigation.
- (e) This Agreement may be amended or supplemented only by a writing that is signed by duly authorized representatives of both Parties.
- (f) No term or provision hereof will be considered waived by either Party, and no breach excused by either Party, unless such waiver or consent is in writing signed on behalf of the Party against whom the waiver is asserted. No consent by either Party to, or waiver of, a breach by either Party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either Party.
- (g) If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force.
- (h) This Agreement constitutes the entire agreement between the Parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral.



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

City Utility Commission of the City of Owensboro, Kentucky

By: 

Printed Name: Jim Tony Fulkerson


Title: Chairman

Big Rivers Electric Corporation

By: 

Printed Name: Robert W. Berry

Title: President and CEO

KENTUCKY PUBLIC SERVICE COMMISSION
Gwen R. Pinson Executive Director 
EFFECTIVE 7/27/2018 PURSUANT TO 807 KAR 5:011 SECTION 9 (1)