

January 12, 2024

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

**RE: Case No. U-21090 – In the Matter of the Application of Consumers Energy Company for Approval of an Integrated Resource Plan under MCL 460.6t, certain accounting approvals, and for other relief.**

Dear Ms. Felice:

Enclosed for electronic filing in the above-captioned case, please find **Consumers Energy Company's Application with Supporting Testimony, Affidavit, and Exhibits of Company witness Beth A. Skowronski**. This is a paperless filing and is therefore being filed only in PDF. I have included a Proof of Service showing electronic service upon the parties.

Sincerely,

Bret A. Totoraitis  
Phone: 517-788-0835  
Email: [bret.totoraitis@cmsenergy.com](mailto:bret.totoraitis@cmsenergy.com)

cc: Parties per Attachment 1 to the Proof of Service

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for Approval of an Integrated Resource Plan )  
under MCL 460.6t, certain accounting )  
approvals, and for other relief. )  
\_\_\_\_\_ )

Case No. U-21090

**APPLICATION**

Consumers Energy Company (“Consumers Energy” or the “Company”) requests the Michigan Public Service Commission (“MPSC” or the “Commission”) to grant approval, pursuant to Section 6j of 1982 Public Act (“PA”) 304, MCL 460.6j, and other applicable law, of its Power Purchase Agreement (“PPA”) with Tibbits Energy Storage, LLC (“Tibbits”) for the output of the Tibbits battery energy storage project. In support of this request, Consumers Energy states as follows:

1. Consumers Energy is, among other things, engaged as a public utility in the business of generating, purchasing, distributing, and selling electric energy to approximately 1.9 million retail customers in the state of Michigan. The retail electric system of Consumers Energy is operated as a single utility system, within which uniform rates are charged.

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

3. On June 30, 2021 the Company filed an Application in Case No. U-21090, requesting approval of the Company's Integrated Resource Plan ("IRP") pursuant to Section 6t of 2016 PA 341, MCL 460.6t, the Commission's June 7, 2019 Order in Case No. U-20165, and all other applicable orders and law. On April 20, 2022, the Company filed a settlement agreement in Case No. U-21090 ("Settlement Agreement"). In its June 23, 2022 Order, the Commission approved the Settlement Agreement which resolved all matters at issue in the Company's 2021 IRP. As part of the approved Settlement Agreement, the parties agreed that the Company shall issue a one-time competitive solicitation ("One-Time Request for Proposal ("RFP")) following the approval of the Settlement Agreement.

4. As detailed in the testimony which has been filed in support of this Application, in 2022, the Company implemented a One-Time RFP which complied with the requirements of the Company's approved Settlement Agreement. Specifically, the Company utilized an independent administrator, namely, Charles Rivers Associates ("CRA") and issued the One-Time RFP in accordance with the Settlement Agreement on September 29, 2022 consisting of two tranches. Tranche 1 of the One-Time RFP sought generators that were dispatchable, non-intermittent, and capable of providing MISO Zone 7 capacity. Tranche 2 of the One-Time RFP sought generators that were clean generation capable of providing MISO Zone 7 capacity. The One-Time RFP sought to acquire additional aggregate nameplate capacity for projects with commercial operation dates ("COD") on or before June 1, 2025, all located in the state of Michigan's Lower Peninsula.

5. CRA, as the independent administrator for the Company's One-Time RFP, supported stakeholders through RFP development, independently and without bias administered a fair and transparent solicitation, provided support to respondents, collected and scored proposals,

produced a recommendation for final award, and is providing regulatory support post-solicitation, as needed.

6. CRA first performed an initial screening for eligibility regarding proposal/project requirements and respondent participation requirements. After proposals were deemed eligible, CRA developed a recommendation. On March 14, 2023, the Company received the recommendation for final award for Tranche 2 of the One-Time RFP from CRA.

7. After receiving the recommendation from CRA for Tranche 2, the Company notified respondents, conducted due diligence reviews, and initiated PPA negotiations. The Company's process ultimately resulted in the selection of a 100 MW battery storage project, Tibbits. The proposal for the Tibbits project passed due diligence review and the Company fully executed a PPA effective on December 19, 2023 between Consumers Energy and Tibbits Energy Storage LLC for the output of the Tibbits project as provided at Exhibit A-1 (BAS-1) ("Tibbits PPA").

8. The Tibbits PPA is based on the Company's proposed template tolling PPA, as presented to potential respondents in the One-Time RFP with modifications agreed to between the parties through a series of negotiations. The Tibbits PPA provides for energy, capacity, Incentive Storage Renewable Energy Credits, and ancillary services to the Company in exchange for a Fixed Energy Payment of \$14.54/MWh based on availability, as contained in Exhibit E of the PPA. Furthermore, the term of the PPA is 20 years, with deliveries expected to commence by May 31, 2025 with an expected PPA termination date of May 31, 2045.

9. The Tibbits PPA also includes a regulatory disallowance clause, replacement products provision and exhibit, right of first refusal, and, while not a provision of the PPA, the

PPA is subject to the Financial Compensation Mechanism (“FCM”) approved as part of the Settlement Agreement.

10. The Tibbits PPA has an estimated cost to customers of \$366 million in PPA supplier payments and \$21 million in cost attributable to the FCM for the 20-year term. These costs will result in a total forecast cost of \$387 million. The PPA has a projected energy and capacity market value of \$378 million; Exhibit A-2 (BAS-2) details the forecast cost and total value of the PPA. Exhibit A-3 (BAS-3) shows the revenue requirement and value of the 37 MW 2021 IRP battery resource with a 95% capacity credit and 2025 COD.

11. Beyond the above, the Tibbits PPA is expected to provide the following benefits to the Company, the Company’s customers, and surrounding communities: (i) the PPA supports desired additional capacity needed in accordance with the Company’s IRP; (ii) the PPA was competitively bid ensuring low cost, economic pricing in accordance with the Settlement Agreement; (iii) the PPA price is fixed; and (iv) the Company is entitled to the storage incentive renewable energy credits produced by the facilities to support its Clean Energy Plan, as applicable.

12. In conjunction with this Application, the Company is filing testimony, exhibits, and an affidavit from Company witness Beth A. Skowronski, Manager of Electric Contract Strategy in the Electric Supply – Contracts and Settlements Department. As indicated above, the Company is filing a copy of the recently executed PPA as Exhibit A-1 (BAS-1). The accompanying testimony and exhibits are an integral part of this Application and are incorporated by reference in this Application as if fully set forth herein. Consumers Energy is requesting Commission approval of the Company’s Tibbits PPA for the output of the Tibbits project pursuant to Section 6j of 1982 PA 304, MCL 460.6j, and all other applicable law.

13. As explained above, and in the testimony filed in support of this Application, the Tibbits PPA was entered in a manner consistent with the requirements set forth in the Settlement Agreement in Case No. U-21090 and is at a cost which is consistent with the modeled battery storage resource costs in the Proposed Course of Action in the Company's IRP. Therefore, Consumers Energy respectfully requests that the Commission approve the relief requested in this Application on an *ex parte* basis without the time and expense of a public hearing.

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

(A) Grant approval of the Power Purchase Agreement between Consumers Energy Company and Tibbits Energy Storage, LLC for the output of the Tibbits project as provided in Exhibits A-1 (BAS-1), and specifically indicate that the Commission approves the recovery by Consumers Energy Company of all payments under the Power Purchase Agreement for the purposes of Section 6j of 1982 PA 304, MCL 460.6j, and all other applicable law;

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

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

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: January 12, 2024

By:   
\_\_\_\_\_  
Srikanth Maddipati  
Vice President of Electric Supply  
Consumers Energy Company



\_\_\_\_\_  
Bret A. Totoraitis (P72654)  
Attorney for Consumers Energy Company  
One Energy Plaza  
Jackson, Michigan 49201  
(517) 788-0835

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for Approval of an Integrated Resource Plan )  
under MCL 460.6t, certain accounting )  
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\_\_\_\_\_ )

Case No. U-21090

**VERIFICATION**

STATE OF MICHIGAN )  
 ) SS  
COUNTY OF JACKSON )

Srikanth Maddipati, being first duly sworn, deposes and says that he is the Vice President of Electric Supply of Consumers Energy Company; that he has executed the foregoing Application for, and on behalf of, Consumers Energy Company; that he has read the foregoing Application and is familiar with the contents thereof; that the facts contained therein are true, to the best of his knowledge and belief; and that he is duly authorized to execute such Application on behalf of Consumers Energy Company.

*Sri M.*

\_\_\_\_\_  
Srikanth Maddipati  
Vice President of Electric Supply  
Consumers Energy Company

Subscribed and sworn to before me this 12<sup>th</sup> day of January, 2024.

*Crystal L. Chacon*

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

STATE OF MICHIGAN

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Case No. U-21090

**DIRECT TESTIMONY**

**OF**

**BETH A. SKOWRONSKI**

**ON BEHALF OF**

**CONSUMERS ENERGY COMPANY**

January 2024

BETH A. SKOWRONSKI  
U-21090 DIRECT TESTIMONY

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

2 A. My name is Beth A. Skowronski and my business address is 1945 West Parnall Road,  
3 Jackson, Michigan 49201

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

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

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

8 A. I am the Manager of Contracts for the Electric Contract Strategy team in the Contracts  
9 and Settlements section of the Electric Supply Operations department.

10 **QUALIFICATIONS**

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

12 A. I received a Bachelor of Business Administration from Siena Heights University in 2013.  
13 I also hold a State of Michigan Real Estate Salesperson’s license. I started my career at  
14 Consumers Energy in 2006 in Customer Service in various roles with increasing  
15 responsibilities in Revenue Recovery, Real Estate, and Distribution Operations. In 2015,  
16 I accepted a position in Contracts and Settlements, where my direct responsibilities  
17 included administering Power Purchase Agreements (“PPAs”) and issuing solicitations  
18 for energy and capacity.

19 **Q. What are your responsibilities as Manager of Contracts in the Electric Supply  
20 Operations department?**

21 A. I started in my current role at Consumers Energy as the Manager of Contracts in the  
22 Electric Supply Operations department in December 2023. I am responsible for  
23 managing a team that is responsible for implementing the Company's Clean Energy Plan

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1 including: 1) the development of annual competitive solicitations for the procurement of  
2 wholesale electric generation; 2) negotiations and development of PPAs; and  
3 3) implementation and compliance with the Public Utility Regulatory Policies Act of  
4 1978 (“PURPA”).

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

7 A. Yes. I provided testimony in:

- 8 • MPSC Case No. U-20165 (direct), the Company’s multiple requests for approval  
9 of new solar PPAs and Build Transfer Agreements (“BTAs”) obtained through  
10 competitive solicitations;
- 11 • MPSC Case No. U-20165 (direct), the Company’s requests for approval to reset  
12 the Company’s PURPA avoided cost rates and for approval of new solar PPAs  
13 obtained through a competitive solicitation;
- 14 • MPSC Case No. U-20604 (direct), the Company’s request for approval of new  
15 PPAs based on the Company’s avoided costs;
- 16 • MPSC Case No. U-20604 (direct), the Company’s request for approval of  
17 amendments to PPAs;
- 18 • MPSC Case No. U-20833 (direct), the Company’s request for approval of new  
19 PPAs based on the Company’s PURPA full avoided cost rates; and
- 20 • MPSC Case No. U-18425 (direct), the Company’s request for approval of new  
21 PPAs based on the Company’s PURPA full avoided cost rates.

22 **PURPOSE OF TESTIMONY**

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

24 A. My direct testimony will address the new PPA between the Company and Tibbits Energy  
25 Storage, LLC (“Tibbits”) in accordance with the Company’s 2021 Settlement Agreement  
26 in Case No. U-21090. The Company seeks approval of the PPA and all payments made  
27 to Tibbits pursuant to Section 6j of 1982 Public Act (“PA”) 304 (“Act 304”), MCL 460.6j,  
28 and other applicable law, as it was reasonably and prudently selected in accordance with

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1 the parameters as established in the Company's 2021 Integrated Resource Plan ("IRP")  
2 Settlement Agreement approved in Case No. U-20165.

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

4 A. Yes. I am sponsoring the following exhibits:

5 Exhibit A-1 (BAS-1) Power Purchase Agreement dated December 19,  
6 2023 between Consumers Energy Company and  
7 Tibbits Energy Storage LLC; and

8 Exhibit A-2 (BAS-2) Forecast Cost and Market Value of Power Purchase  
9 Agreement with Tibbits Energy Storage LLC; and

10 Exhibit A-3 (BAS-3) Revenue Requirement and Market Value of 2021  
11 IRP 37 MW Battery Storage Cost; and

12 Exhibit A-4 (BAS-4) Charles River Associates, Inc. ("CRA") Tranche 2  
13 Recommendation Letter.

14  
15 **Q. Were these exhibits created by you or under your supervision?**

16 A. Exhibits A-2 (BAS-2) and A-3 (BAS-3) were created by me or under my supervision.  
17 Exhibits A-1 (BAS-1) and A-4 (BAS-4) were extracted from Consumers Energy's  
18 records kept in the ordinary course of business and are accurate copies of those records.

19 **2022 One-Time RFP**

20 **Q. Please provide an overview of the competitive solicitation process approved as part**  
21 **of the Company's 2021 Settlement Agreement in Case No. U-21090.**

22 A. On June 30, 2021 the Company filed an Application in Case No. U-21090, requesting  
23 approval of the Company's IRP pursuant to Section 6t of 2016 PA 341, MCL 460.6t, the  
24 Commission's June 7, 2019 Order in Case No. U-20165, and all other applicable orders  
25 and law. On April 20, 2022 the Company filed a settlement agreement in Case No.  
26 U-21090 ("Settlement Agreement"). In its June 23, 2022 Order, the Commission  
27 approved the Settlement Agreement which resolved all matters at issue in the Company's

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1 2021 IRP. As part of the approved Settlement Agreement, the parties agreed that the  
2 Company shall issue a one-time competitive solicitation (“One-Time Request for  
3 Proposal (“RFP”))” following the approval of the Settlement Agreement. The One-Time  
4 RFP process was a robust process which included stakeholder involvement, independent  
5 administration, and regulatory oversight and reviews. The Company’s One-Time RFP  
6 was also consistent with its previous IRP competitive solicitations.

7 **Q. Please describe the specific requirements of the One-Time RFP process.**

8 A. As noted above, in accordance with the approved Settlement Agreement, the Company  
9 was required to issue the One-Time RFP following the approval of the Settlement  
10 Agreement. Furthermore, in addition to following the competitive bidding procedures  
11 agreed to in the IRP Settlement Agreement in Case No. U-20165, the competitive bid  
12 process is required to: (i) utilize a public notice; (ii) provide the terms of the proposed  
13 contracts in the RFP; and (iii) be administered by an independent administrator (“IA”)<sup>1</sup>.  
14 The Settlement Agreement further provides the following parameters of the One-Time  
15 RFP:

16 “a. The One-Time Solicitation will seek projects which will  
17 provide the Company capacity credit in the MISO [Midcontinent  
18 Independent System Operator, Inc] Zone 7 starting in the 2025  
19 Planning Year;

20 b. The One-Time Solicitation will include two all source  
21 tranches:

22 i. The first tranche will seek up to 500 ZRCs [zonal  
23 resource credits] of capacity and associated energy and renewable  
24 energy credits (“RECs”), if applicable, from PPAs [power  
25 purchase agreements] with terms up to 10 years. This tranche will  
26 seek dispatchable, nonintermittent generation capable of  
27 dispatching up or down in every hour of the year in response to  
28 wholesale energy market signals, providing capacity which meets

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<sup>1</sup> The term “Independent Administrator” has been used to describe the independent third-party that is responsible to support the annual solar solicitations as defined in the Commission’s September 9,2021 Order in Case No. U-20852.

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1 the Local Clearing Requirement of MISO Zone 7; and

2 ii. The second tranche will seek up to 200 ZRCs of  
3 capacity and associated energy and RECs, if applicable, secured  
4 from unaffiliated third parties via PPAs or other third-party  
5 agreements that do not result in Company ownership with terms up  
6 to 25 years, at the discretion of the bidder. This tranche will seek  
7 intermittent resources and dispatchable, nonintermittent clean  
8 capacity resources (including battery storage resources), providing  
9 capacity which meets the Local Clearing Requirement of MISO  
10 Zone 7. This tranche will furthermore take into consideration the  
11 ability of the offered capacity to meet the Local Clearing  
12 Requirement of MISO Zone 7 for the duration of the contract  
13 length. Prior to the issuance of the second tranche portion of the  
14 One-Time Solicitation, the Company shall hold a stakeholder  
15 meeting including parties to this case and energy storage  
16 developers to discuss methods to improve RFPs [requests for  
17 proposals] and response to solicitations with respect to stand-alone  
18 storage projects and hybrid-storage projects.”

19 **Q. Please provide an overview of the One-Time RFP.**

20 A. In order to ensure effective oversight and administration of the One-Time RFP, consistent  
21 with the Competitive Procurement Guidelines for Rate-Regulated Electric Utilities per  
22 Commission Order in Case No. U-20852, described in more detail below, the Company  
23 retained an IA, Charles River Associates, (“CRA”), as an independent third-party to  
24 design the solicitation, administer bidding, and evaluate bids prior to selection. On  
25 September 29, 2022, CRA issued the 2022 One-Time RFP to satisfy potential capacity  
26 and energy needs by acquiring up to 700 Zonal Resource Credits (“ZRCs”) for Planning  
27 Year 2025. The One-Time RFP consisted of two tranches. As detailed above, Tranche 1  
28 of the One-Time RFP sought generators that were dispatchable, non-intermittent, and  
29 capable of providing the Midcontinent Independent System Operator, Inc. (“MISO”)   
30 Zone 7 capacity. As detailed above, Tranche 2 of the One-Time RFP sought generators  
31 that were clean generation capable of providing MISO Zone 7 capacity. CRA and  
32 Consumers Energy developed an extensive marketing list, and CRA notified parties that

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1 may have had an interest in the RFP through the RFP's email account. CRA also created  
2 a website where any interested party could learn about the RFP process, access relevant  
3 documents, and submit questions. Prospective bidders were required to provide Notice of  
4 Intent by October 21, 2022, in addition to a Bilateral Confidentiality Agreement and Pre-  
5 Qualification Application due on November 11, 2022. Final bid proposals were due on  
6 December 2, 2022.

7 **Q. Did the Company's One-Time RFP in 2022 follow the guidelines and requirements**  
8 **of the IRP Settlement Agreement in Case No. U-21090?**

9 A. Yes. In accordance with the Commission Order in Case No. U-21090, the Company  
10 utilized an IA, CRA, to support the Company's One-Time RFP. Furthermore, prior to the  
11 issuance of the One-Time RFP, CRA and Consumers Energy hosted a publicly accessible  
12 pre-bid webinar for all interested parties, held remotely on August 30, 2022, to provide  
13 an overview of the solicitation process. On September 29, 2022, CRA issued the One-  
14 Time RFP. On October 13, 2022, after issuance of the One-Time RFP, CRA and  
15 Consumers Energy hosted a publicly accessible pre-bid webinar for all interested parties.  
16 During the pre-bid webinar, Consumers Energy and CRA reviewed pertinent details  
17 regarding Consumers Energy's One-Time RFP and discussed various participation  
18 requirements. While some questions were fielded during the pre-bid webinar, additional  
19 questions were submitted and added to a central Questions and Answers log.

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1 **Q. Did the Company follow the guidelines and requirements of the Competitive**  
2 **Procurement Guidelines for Rate-Regulated Electric Utilities in Case No. U-20852 in**  
3 **conducting the One-Time RFP?**

4 A. Yes. On September 29, 2022, CRA issued the One-Time RFP in adherence with the  
5 guidelines and requirements of the Competitive Procurement Guidelines for Rate-  
6 Regulated Electric Utilities in Case No. U-20852. The Company adhered to the  
7 guidelines including, but not limited to, procuring through competitive procurement,  
8 oversight and independence of the competitive procurement process, open and non-  
9 discriminatory treatment, minimum RFP requirements, specification of evaluation  
10 criteria, and all other guidelines set forth. As stated previously, the Company utilized  
11 CRA as its IA for the One-Time RFP. The Company held its pre-bid webinar on  
12 August 30, 2022. On September 29, 2022, CRA issued the One-Time competitive  
13 solicitation, meeting the 30-day requirement. Consumers Energy coordinated with Staff  
14 and stakeholders in the development of the RFP by releasing a draft prior to the pre-bid  
15 webinar on August 19, 2022, meeting the 10-day requirement. The IA assisted the  
16 Company in the development of the One-Time RFP, administered bidding, and evaluated  
17 bids prior to the Company's selection in accordance with the evaluation criteria. The  
18 minimum RFP requirements that were established were consistent with the requirements  
19 set forth in the IRP Settlement Agreement in Case No. U-21090.

20 **Q. Please explain CRA's participation in the One-Time RFP.**

21 A. CRA, as the IA for the Company's 2022 One-Time RFP, was involved in all primary  
22 facets throughout the RFP process. CRA supported the Company through RFP  
23 development, administered a fair and transparent solicitation independently and without

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1 bias, provided support to respondents, collected and evaluated proposals, and produced a  
2 recommendation on assets to advance for further due diligence.

3 **Q. Which Tranche resulted in the PPA being presented for approval in this filing?**

4 A. The Tibbits PPA is a result of Tranche 2 of the One-Time RFP.

5 **Q. Please explain the activities performed by CRA on the proposals submitted in the**  
6 **One-Time RFP.**

7 A. After the proposals were received, CRA as the IA:

8 1. Reviewed all proposals and screened the responses to ensure  
9 they conformed with all response requirements;

10 2. Conducted follow-up conference calls with representatives of  
11 each company submitting a conforming proposal to clarify asset-  
12 specific issues with the information provided;

13 3. Evaluated all conforming proposals according to the pre-  
14 specified criteria as outlined in the RFP documents;

15 4. Managed bidder communication and outreach; and

16 5. Confirmed the winning proposals and the short list of assets to  
17 include for recommendation for advancement by the Company to  
18 the due diligence and definitive agreement phase of the RFP.

19 **Q. Please explain the selections of proposals in Tranche 2 of the One-Time RFP.**

20 A. On March 14, 2023, the Company received a recommendation from CRA on assets to  
21 advance for further due diligence by the Company. The Company followed CRA's  
22 recommendation. The final awards included Tibbits, a battery storage project offering  
23 95 ZRCs. The recommendation further noted that, the developer "proposed two projects  
24 that were identical based on technology, development status and pricing, however, were  
25 located on separate sites. Both proposals had the same total score. CRA selected one of

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1 these projects for the purposes of this recommendation, however, either can be  
2 recommended for selection under the rules established under the RFP.” The Company  
3 engaged in due diligence activities and commenced negotiations with all of the projects  
4 recommended for final award by CRA, including the Tibbits project.

5 **Q. Please explain the award selections for PPAs in Tranche 2 of the One-Time RFP.**

6 A. On March 14, 2023, the Company received the final recommendation for Tranche 2 from  
7 CRA. The Company followed the recommendation and engaged in negotiations with the  
8 respondents.

9 **Q. Did the Tibbits project pass due diligence and did the Company reach definitive**  
10 **agreements?**

11 A. Yes. The Tibbits project passed due diligence and the PPA was executed and effective on  
12 December 19, 2023. The Company is still actively negotiating the additional projects  
13 recommended.

14 **Q. Please explain why the Tibbits PPA represents a high-quality option for the**  
15 **Company.**

16 A. The Tibbits PPA is a cost competitive project. The Tibbits PPA represents the Company’s  
17 first PPA with a battery storage resource. Economic costs and benefits to customers  
18 include energy, capacity, and ancillary service market commodities and are assessed  
19 under three metrics. Those include i) the cost to value (“CVR”) ratio, and ii) the levelized  
20 net cost of capacity (“LNCC”). The first metric has been provided in prior PPA filings  
21 with the MPSC, and so for consistency, the Company is providing the CVR. The LNCC  
22 is a new metric the Company utilized to reflect the benefits storage resources provide,  
23 specifically, that more of a storage resource’s value may be provided through its ability to

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1 provide *capacity*, and less so in its ability to provide *energy*. An LNCC metric quantifies  
2 the economics of the project relative to the capacity delivered. The Tibbits PPA  
3 demonstrated a favorable option based on both metrics when compared to the 2021 IRP  
4 37 MW battery storage costs, shown in Exhibit A-3 (BAS-3).

5 **Q. Please explain Exhibit A-3 (BAS-3).**

6 A. Exhibit A-3 (BAS-3) is the revenue requirement and market value of a 2021 IRP 37 MW  
7 battery storage resource. Costs associated with the 2021 IRP 37 MW battery storage  
8 proxy (“battery proxy”) include generation delivered (storage discharge), column (b) and  
9 capacity delivered, column (c) of the exhibit. Costs of the resource are represented as a  
10 total revenue requirement in column (d). The revenue requirement for the battery proxy  
11 resource includes capital or build costs and operating and maintenance costs, including  
12 storage charging costs. The battery proxy resource was presented and discussed in detail  
13 in the 2021 IRP, MPSC Case No. U-21090.

14 The value of the battery proxy includes energy, capacity, and ancillary service  
15 market values. The energy value is the revenue customers will receive for generation  
16 sold to MISO when the battery is discharged. A projection of the energy values is  
17 presented in Exhibit A-3 (BAS-3), column (f). The capacity value is the implicit value of  
18 the ZRCs of capacity delivered that would be expected. Column (h) of Exhibit A-3  
19 (BAS-3) provides these values, based on a projection that represents 75% of the cost of  
20 new entry as published by MISO and filed with the FERC.<sup>2</sup> The last value stream,  
21 column (i) in Exhibit A-3 (BAS-3), represents revenues customers would receive for  
22 products delivered in MISO’s ancillary services market (“ASM”).

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<sup>2</sup> The battery proxy unit capacity value corresponds to planning year 2020 CONE, consistent with assumptions from the 2021 IRP filing.

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1 **Q. Please explain Exhibit A-2 (BAS-2) and discuss the costs and market values**  
2 **expected from the Tibbits PPA.**

3 A. Exhibit A-2 (BAS-2) is the forecasted cost and market value of the PPA between  
4 Consumers Energy and Tibbits effective December 19, 2023, for the output of 100 MW  
5 from Tibbits Energy Storage. Costs associated with the 20-year Tibbits PPA include a  
6 fixed energy payment based on availability, shown in Exhibit A-2 (BAS-2), column (f),  
7 as well as payment for the cost of charging the battery including station power needs.  
8 A projection of the storage charging payments are included in Exhibit A-2 (BAS-2),  
9 column (g). Finally, this PPA is subject to the Company's financial compensation  
10 mechanism ("FCM") approved in Case No. U-21090, which allows the Company to  
11 recover a financial incentive equal to the product of the annual PPA payments multiplied  
12 by the Company's after-tax weighted average cost of capital based on its total capital  
13 structure. In this case, the annual PPA payments consist of both the fixed energy payment  
14 and the storage charging costs. The FCM forecast shown in column (i) of the exhibit  
15 utilizes the Available Energy (MWh) in column (c) as the basis for establishing the  
16 applicable FCM cap since the PPA payments are based on available energy rather than  
17 delivered energy. Total PPA costs are shown in Exhibit A-2 (BAS-2), column (j). The  
18 Company will book the Fixed Energy Payment as a purchased power capacity expense  
19 and the charging energy as a variable energy purchased power expense.

20 The value of the PPA includes energy, capacity, and ASM values. The energy  
21 value is the revenue customers will receive for generation sold to MISO when the battery  
22 is discharged. A projection of the revenues is presented in column (l). The capacity  
23 value is the implicit value of the ZRCs of capacity delivered under the PPA that will be

BETH A. SKOWRONSKI  
U-21090 DIRECT TESTIMONY

1 used to meet the Company's planning reserve margin requirements in MISO's planning  
2 resource auction. Column (n) provides these values, based on a projection that represents  
3 75% of the cost of new entry as published by MISO and filed with the FERC.<sup>3</sup> The last  
4 value stream represents revenues customers would receive for products delivered in  
5 MISO's ASM. These could include frequency regulation, spinning reserves, and  
6 supplemental reserves. While MISO has been operating this market since 2009, various  
7 and recent market changes make it difficult to project these revenues for storage assets.  
8 This exhibit includes the projections as provided by CRA; however, due to the higher  
9 levels of uncertainty associated with these revenues, the Company did not include it in  
10 the calculation of LNCC, described below. The ASM revenue *is* included in the cost to  
11 value ratio metric. By considering one metric that includes the ASM revenues and one  
12 that did not, the Company was able to make decisions with customer economic benefits  
13 in mind under both outlooks.

14 **Q. Please describe the new metric discussed, LNCC.**

15 A. The LNCC is calculated as the net present value of the total revenue requirement or PPA  
16 payments over the life of the project, less the net present value of the total energy  
17 revenues earned over its life.<sup>4</sup> This difference is then divided by the net present value of  
18 the ZRCs of capacity projected over the life of the asset. This metric is preferred for  
19 battery storage since a battery storage resource does not *produce* power, it *stores* power,  
20 and as such, quantifying the economic benefits relative to energy delivered through the  
21 use of an energy-based metric may not be as applicable in decision making. However,

---

<sup>3</sup> The Tibbits PPA capacity value corresponds to planning year 2023 CONE, consistent with assumptions from the RFP.

<sup>4</sup> As mentioned previously, due to the higher level of uncertainty of the revenues projected for ASM value, those revenues were not included in the calculation of the LNCC.

BETH A. SKOWRONSKI  
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1 the energy delivered is important and beneficial to customers. So, by reducing cost of the  
2 PPA by the energy revenues delivered, the value of energy is accounted for in the metric.  
3 That is, the energy delivered can “buy down” the project cost. By denominating the  
4 economic costs and benefits relative to the ZRC of capacity, we recognize the value of  
5 both energy and capacity in a single metric.

6 **Q. Please provide an overview of the provisions in the Tibbits PPA.**

7 A. The PPA is based on the Company’s proposed template tolling PPA, as presented to  
8 potential respondents in the One-Time RFP with modifications agreed to between the  
9 parties through a series of negotiations. The PPA provides for energy, capacity, Incentive  
10 Storage Renewable Energy Credits, and ancillary services to the Company in exchange  
11 for a Fixed Energy Payment of \$14.54/MWh based on availability, as contained in  
12 Exhibit E of the PPA. Furthermore, the term of the PPA is 20 years, with deliveries  
13 expected to commence by May 31, 2025 with an expected PPA termination date of  
14 May 31, 2045.

15 The PPA also includes a regulatory disallowance clause, replacement products  
16 provision and exhibit, right of first refusal, and, while not a provision of the PPA, the PPA  
17 is subject to the FCM approved as part of the IRP Settlement Agreement in Case No.  
18 U-21090.

19 **Q. Please explain the Replacement Project provision.**

20 A. Section 2.3 of the PPA provides that at any time following the Effective Date but prior to  
21 the later of (i) the Project receiving MPSC approval, or (ii) the Construction Start Date  
22 deadline, Seller may in its sole discretion provide notice to Buyer that it has elected to  
23 replace the Plant in Part I with the replacement project(s) identified in the completed

BETH A. SKOWRONSKI  
U-21090 DIRECT TESTIMONY

1 Exhibit K, Replacement Project Agreement. Upon delivery of such notice to Buyer and  
2 Buyer's written acceptance, this Agreement will automatically be amended in accordance  
3 with Exhibit K without the need for any further action by either Party.

4 The replacement project must meet the following criteria:

- 5 (a) is consistent with the Plant Type identified in Part I of the PPA;
- 6 (b) is located in MISO Zone 7 or a Border External Resource as  
7 defined by MISO that would be eligible for Zone 7 Local  
8 Clearing Requirement as defined by MISO; and
- 9 (c) is owned by Seller or an Affiliate of Seller.

10 This provision provides flexibility for the developer to meet its obligations of the PPA,  
11 while also providing certainty for on time delivery of Planning Year 2025 capacity to  
12 customers.

13 **Q. Please explain the PPA Right of First Refusal provision.**

14 A. The Right of First Refusal provision gives the Company the right to elect to purchase all  
15 or substantially all of the plant if Seller intends to accept a written offer to sell all or  
16 majority of interest in Seller's company, to any third party. There was no additional cost  
17 to the Company, or its customers, to include this provision in the PPA. The Company  
18 was able to negotiate this provision without increasing economic cost while increasing  
19 customer value by including this future optionality.

20 **Q. Why is the market value of the Tibbits PPA an important consideration in the  
21 evaluation of new battery storage assets?**

22 A. The *cost* of a new supply asset is only part of the rate impact to the Company's  
23 customers. The Company must also consider the offsetting value of the asset. The  
24 consideration of both cost and value can be achieved through a variety of calculations.

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1 **Q. How does the modeled cost and value of new battery storage resources in the**  
2 **Company's 2021 IRP compare to the cost and value of the new Tibbits PPA?**

3 A. The resource costs for a 37 MW battery storage facility with an asset life of 20 years,  
4 capacity credit of 90%, and a 2025 commercial operation date ("COD"), incorporated  
5 into the Company's approved Proposed Course of Action ("PCA") in the 2021 IRP, the  
6 battery proxy, had an LNCC of \$150,845.67/ZRC as shown in Exhibit A-3 (BAS-3). The  
7 battery storage costs for the Tibbits PPA, a 100 MW battery storage facility with an asset  
8 life of 20 years, capacity credit of 95% and a 2025 COD, has an LNCC of  
9 \$136,380/ZRC, as shown in Exhibit A-2 (BAS-2) demonstrating with the most applicable  
10 metric (LNCC), that the Tibbits PPA is more economic than the 2021 IRP battery storage  
11 resource. As previously discussed, it is important to consider both the cost and projected  
12 value of new resources. The LNCC considers total cost and energy revenues. The  
13 Company also utilizes the CVR metric that includes consideration for capacity value. The  
14 forecast revenue requirements of the battery proxy of \$150.5 million divided by the  
15 forecast value of \$127 million results in a cost-to-value ratio of 1.186 or 118.6%. In  
16 summary, the cost-to-value ratio of the Tibbits PPA (102.3%) is lower than the cost-to-  
17 value ratio of the 2021 IRP solar resource, demonstrating that the Tibbits PPA is more  
18 economic than the 2021 IRP battery proxy included in the Company's approved IRP  
19 using this alternative metric.

20 **Q. What benefits can be realized with the new Tibbits PPA?**

21 A. The new Tibbits PPA will provide the following benefits to the Company, the Company's  
22 customers, and the surrounding communities:

- 23 1. The PPA supports desired additional capacity needed in accordance  
24 with the Company's IRP PCA;

BETH A. SKOWRONSKI  
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- 1                   2. The PPA was competitively bid ensuring low cost, economic pricing in  
2                   accordance with the Company's IRP Settlement Agreement in Case  
3                   No. U-21090;
- 4                   3. The energy and capacity prices in the PPA are fixed for the term of the  
5                   agreement; and
- 6                   4. The Company will receive the storage incentive renewable energy  
7                   credits produced by the facility to support its Clean Energy Plan.

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

9   **A.    Yes, it does.**

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for Approval of an Integrated Resource Plan )  
under MCL 460.6t, certain accounting )  
approvals, and for other relief. )  
\_\_\_\_\_ )

Case No. U-21090

**AFFIDAVIT OF BETH A. SKOWRONSKI**

Beth A Skowronski, being first duly sworn, deposes and says as follows:

1. I am Manager of the Electric Contract Strategy team in the Electric Supply – Contracts and Settlements Department.
2. I am the witness who sponsors the accompanying testimony entitled Direct Testimony of Beth A. Skowronski (the “Testimony”).
3. The Testimony was prepared by me and under my direction and supervision.
4. If inquiries were made as to the facts in the Testimony, I would respond as set forth therein.
5. The Testimony is true and correct to the best of my knowledge, information, and belief.

*Beth Skowronski*

\_\_\_\_\_  
Beth A. Skowronski

Subscribed and sworn to before me this 12<sup>th</sup> day of January 2024.

*Crystal L. Chacon*

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

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for Approval of an Integrated Resource Plan )  
under MCL 460.6t, certain accounting )  
approvals, and for other relief. )  
\_\_\_\_\_ )

Case No. U-21090

**EXHIBITS**

**OF**

**BETH A. SKOWRONSKI**

**ON BEHALF OF**

**CONSUMERS ENERGY COMPANY**

January 2024

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**POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**CONSUMERS ENERGY COMPANY**  
**AND**  
**TIBBITS ENERGY STORAGE LLC**

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**PART I**  
**COVERSHEET**

This *Power Purchase Agreement*, is made as of the following date: 12/19/2023.  
This *Power Purchase Agreement*, together with the exhibits, schedules and any written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties shall be referred to as the "Agreement." The Parties to this *Agreement* are the following:

Consumers Energy Company ("Buyer")

Name: Tibbits Energy Storage LLC ("Seller")

**All Notices: Consumers Energy Company**

Street: 1945 W Parnall Road  
City: Jackson State: MI Zip: 49201  
Attn: Manager, Supply Contracts  
Phone: N/Z  
Email : energypurchase@cmsenergy.com

**All Notices: Tibbits Energy Storage LLC**

Street: 1108 Lavaca St., Suite 110-349  
City: Austin State: TX Zip: 78701  
Attn: Legal  
Phone 512-375-4052  
Email: gc@jupiterpower.io

**Invoices:**

Attn: Manager, MISO Settlements  
Phone: N/A  
Email:  
POBoxPPASettlements@cmsenergy.com

**Invoices:**

Attn: Accounting  
Phone: 512-809-1348  
Email: ap@jupiterpower.io

**Scheduling:**

Attn: Real-Time Operations  
Phone: 517-788-1117  
Email: N/A

**Scheduling:**

Attn: Settlements  
Phone: 512-986-2402  
Email: settlements@jupiterpower.io

**Contract Characteristics**

Plant Name:	<u>Tibbits I</u>
Plant Type:	<u>Battery Energy Storage System</u>
Storage Technology:	<u>Electrochemical Battery</u>
Expected Installed Capacity (MW <sub>AC</sub> ):	<u>100</u>
Point of Delivery:	<u>Between breakers 14M9 and 14W8 of the Lukesport 138kV Substation</u>
Plant Location:	<u>Coldwater, MI</u>
Maximum Available Energy (MWh):	<u>876,000</u>
Target Contract Capacity (MW <sub>AC</sub> ):	<u>100</u>
Earnest Money Deposit:	<u>\$ 6,000,000</u>
Form of Earnest Money Deposit:	<u>X</u> Letter of Credit

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	_____Interest Bearing Account
Early Termination Security Amount:	<u>See Exhibit A</u>
Target COD:	<u>May 31, 2025</u>
Early COD:	<u>April 1, 2025</u>
Expected Termination Date:	<u>May 31, 2045</u>
Contract Term:	<u>20 Years</u>
Fixed Energy Price:	<u>See Exhibit E</u>

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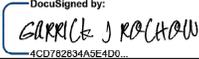
Other Contract Changes:

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Terms and Conditions attached and all Exhibits are part of this Agreement. BUYER AND SELLER EACH ACKNOWLEDGE HAVING READ SAID DEFINITIONS AND TERMS AND CONDITIONS AND AGREE TO SAID TERMS AND CONDITIONS.

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

Tibbits Energy Storage LLC  
1108 Lavaca St., Suite 110-349  
Austin, TX 78701  
(Seller)

By:   
\_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Printed Name: GARRICK J ROCHOW

Printed Name: \_\_\_\_\_

Title: President and CEO

Title: \_\_\_\_\_

Date: 12/15/2023 | 1:02 PM EST

Date: \_\_\_\_\_

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Terms and Conditions attached and all Exhibits are part of this Agreement. BUYER AND SELLER EACH ACKNOWLEDGE HAVING READ SAID DEFINITIONS AND TERMS AND CONDITIONS AND AGREE TO SAID TERMS AND CONDITIONS.

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

Tibbits Energy Storage LLC  
1108 Lavaca St., Suite 110-349  
Austin, TX 78701  
(Seller)

By: \_\_\_\_\_  
(Signature)

DocuSigned by:  
  
By: \_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_

Printed Name: Andrew Bowman

Title: \_\_\_\_\_

Title: President

Date: \_\_\_\_\_

Date: 12/15/2023

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POWER PURCHASE AGREEMENT  
BETWEEN  
CONSUMERS ENERGY COMPANY  
AND  
TIBBITS ENERGY STORAGE LLC  
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POWER PURCHASE AGREEMENT  
BETWEEN  
CONSUMERS ENERGY COMPANY  
AND  
TIBBITS ENERGY STORAGE LLC

PART III  
TERMS AND CONDITIONS

This Agreement is made and entered into as of the Effective Date (defined below), between “Buyer” and “Seller”, both identified in Part I. Buyer and Seller are herein sometimes referred to individually as “Party” and collectively as “Parties” where appropriate.

WITNESSETH:

WHEREAS, this Agreement has been prepared pursuant to MCLA 460.1 and all other applicable law; and

WHEREAS, Buyer anticipates that Seller shall make the Plant available to Buyer for Buyer’s utilization under this Agreement pursuant to the Buyer’s Integrated Resource Plan as approved in MPSC Case No. U-21090; and

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

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

WHEREAS, Seller wishes to deliver, and Buyer wishes to receive, under this Agreement all of the electric capacity, electric energy, RECs (defined below) and all other emission allowances and/or environmental attributes from and associated with the Plant (defined below) as specified herein on and after its Commercial Operation Date (defined below) for the term of this Agreement.

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

1. DEFINITIONS

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

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“Act 295” – Means Michigan Public Act 295 of 2008 (as amended, and inclusive of Michigan Public Act 235 of 2023, but in all other respects, as in effect on the Effective Date of this Agreement).

“Act 304” – Means Michigan Public Act 304 of 1982 (as amended and as in effect on the Effective Date of this Agreement).

“Act 341” – Means Michigan Public Act 341 of 2016 (as amended and as in effect on the Effective Date of this Agreement).

“Act 342” – Means Michigan Public Act 342 of 2016 (as amended and as in effect on the Effective Date of this Agreement).

“Actual Availability” Means, for any Planning Year in which Buyer has made payments, (X) the sum of (i) Available Energy and (ii) for each hour in such Planning Year, the product of (a) the electric charge or discharge Capacity lost or prevented due to or arising out of an event of Force Majeure, and (b) one (1) hour; divided by (Y) the product of Contract Capacity and the number of hours in the Planning Year.

“Administrative Committee” – The committee established pursuant to Section 11, Administrative Committee.

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

“Agreement” – Is defined in Part I.

“Annual Availability Report” – Is defined in Subsection 7.1, Energy Payment.

“Annual Storage Throughput Limit” – Means the product of (a) the Seasonally Tested Capacity of the Facility multiplied by four (4), and (b) three hundred sixty five (365).

“Approval Date” – Is defined in Subsection 2.1, Effective Date and Term.

“Availability Damage Payment” – Is defined in Subsection 7.1, Energy Payment.

“Availability Shortfall MWhs” – Means with respect to a Planning Year, the positive amount of MWhs, if any, equal to (i) the total Available Energy over the Planning Year, *multiplied by*

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(ii) the applicable Availability Standard *divided by* Actual Availability, *minus* (iii) the total Available Energy over the Planning Year.

“Availability Standard” – Is defined in Subsection 7.1, Energy Payment.

“Available Capacity” – Means the sum of (x) the Capacity of the Plant, rounded to the next lower hundreds of kilowatts, that the Plant is electrically capable of providing for charge or discharge of electric energy for receipt from, or delivery to, the Point of Delivery, after deducting the electric charge or discharge Capacity lost due to (i) planned, unplanned, or forced outages of the Plant, and (ii) planned, unplanned or forced derates of the Plant, including outages and derates resulting in shortages of charging energy supplied by Buyer, and (y) the electric charge or discharge Capacity lost or prevented due to or arising out of the operating practices.

“Available Energy” – Means, for all hours in any applicable time period, electric energy equal to the Contract Capacity or Available Capacity, whichever is less, during each hour and multiplied by one hour for each such hour, summed over all hours.

“Bankrupt” – Means with respect to either Party, such Party (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition remains undismissed for a period of sixty (60) Days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) in a writing or other documentation demonstrates that it is generally unable to pay its debts as they fall due.

“Billing Month” – Means the Calendar Month during which Product was delivered. The first Billing Month with respect to Available Energy, Delivered Energy and Delivered RECs shall commence with the Commercial Operation Date and end on the last day of the Calendar Month in which the Commercial Operation Date occurs.

“Business Day” – Means a Calendar Day other than Saturday, Sunday or a Holiday.

“Buyer” – Means the Party so specified in Part I.

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

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“Calendar Month” or “Month” – Means the 28, 29, 30, or 31 Day period (as applicable) that begins on the first Day of a calendar month and ends on the last Day of the calendar month. The terms Month and Calendar Month may be used interchangeably and shall have the same meaning.

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

“Capacity” – Means the instantaneous rate, measured in alternating current MW at the Point of Delivery, at which energy can be charged, discharged, delivered, received or transferred from the Plant to the Point of Delivery, as measured by the Capacity Test.

“Capacity Test” – Means a capacity test that is (1) at least one (1) continuous hour, with data averaged over the test period, and (2) conducted at the discharge rate that would be expected if the electric storage resource were dispatched for four (4) continuous hours.

“Commercial Operation Date” – Means the date established pursuant to Subsection 5.3, Commercial Operation Date.

“Commissioned” – Means, with respect to any portion of the Plant, that such portion has been installed and that Seller has taken all action necessary to enable said portion of the Plant to commence extended and automated operation to discharge energy to the Point of Delivery.

“Construction Start Date” – Is defined in Subsection 5.2, Seller’s Obligation With Respect to Construction Start.

“Contract Capacity” – Means the Capacity of the Plant that is utilized to supply this Agreement and will be determined as follows: (i) on the Commercial Operation Date, the Contract Capacity shall mean the Capacity of the Plant that has been Commissioned, and (ii) thereafter, to the extent additional Capacity of the Plant is Commissioned at any time within ninety (90) days after the Commercial Operation Date, the Contract Capacity shall be increased by such additional Commissioned amount; provided that in no event may the Contract Capacity exceed the Target Contract Capacity.

“Contract Costs” – Means Seller’s fees, legal expenses and other transaction costs and expenses incurred by Seller in entering into an arrangement that replaces this Agreement and are incurred in connection with the termination of this Agreement.

“Contract Term” – Means the period of time specified in Part I, subject to the provisions in Subsection 2.1, Effective Date and Term, regarding any additional days required to complete a Planning Period.

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

“Defaulting Party” – Is defined in Section 8, Events of Default.

“Delay Damages” – Defined in Subsection 5.3, Commercial Operation Date.

“Delivered Energy” – Means the energy, expressed in MWh, Dispatched by Buyer and discharged from the Plant and delivered by Seller to the Point of Delivery, as such amount of electric energy delivered is determined on an hourly basis pursuant to Section 4, Metering, but not to exceed Contract Capacity during any hour.

“Delivered RECs” – Means any and all RECs granted to the Plant pursuant to Act 295, as amended, associated with Delivered Energy, including, without limitation, any Michigan incentive RECs, as such RECs are delivered to Buyer via the receipt by Buyer of such RECs in Buyer’s MIRECS account.

“Disallowance Order” – Is defined in Subsection 7.4, Regulatory Disallowance.

“Dispatch” – means the right of Buyer, in accordance with the operating practices, to schedule and instruct (either itself or through the MISO) Seller to implement the charge or discharge level and/or storage aspects of the Plant or any of the Plant’s individual generating or storage units in order to commence, increase, decrease or cease the delivery of electrical energy including ancillary services to the Point of Delivery, or receipt of electrical energy at the Point of Delivery, as determined solely by Buyer subject to the operating practices.

“Diverse Suppliers” – Shall have the meaning given to it in Section 22.3, Diverse and Michigan-Based Suppliers.

“Early COD” – Is the date identified in Part I.

“Early Termination Payment” – Defined in Subsection 10.2, Early Termination Payment.

“Early Termination Security” – Defined in Subsection 2.2, Security for Performance.

“Early Termination Security Amount” – Means the amount shown on the Early Termination Security Amount Schedule set forth in Exhibit A.

“Earnest Money Deposit” – Defined in Subsection 5.3, Commercial Operation Date.

“Effective Date” – Is defined in Subsection 2.1, Effective Date and Term.

“Eligible Contract Participant” – Is defined in Section 24, Eligible Contract Participant; Service Contract.

“Emergencies” – Means a condition or conditions on the transmission and/or distribution system which in the transmission or distribution system owner and/or operator’s sole reasonable judgment either has, or is likely to, result in significant imminent disruption of service to Seller, or imminent endangerment to life or property.

“Energy Resource Interconnection Service” – Has the meaning ascribed to such term in the MISO Rules.

“Environmental Attribute(s)” – Means an environmental benefit that is capable of being measured, verified or calculated associated with a fixed amount of electricity production, usually from a specific generating or storage plant, and that is a separate product from the energy produced. Environmental Attributes represent the general environmental benefits of renewable or non-carbon emitting energy production such as air pollution avoidance. The exact quantity of the environmental benefit (e.g. pounds of emission reductions of a given pollutant) may not be indicated by an Environmental Attribute, though it may be quantified separately in pollution trading markets and through engineering estimates. An Environmental Attribute represents an environmental benefit, whether or not trading markets for such pollutants or benefits exist. For the avoidance of doubt, Environmental Attributes excludes (i) any local, state or federal depreciation deductions or, Federal Tax Benefits, other tax credits or cash grants providing a tax or cash benefit to Seller or its owners based on ownership of, or energy production from, any portion of the Plant that may be available to Seller or its owners with respect to the Plant under applicable laws, and (ii) depreciation and other tax benefits arising from ownership or operation of the Plant.

“Expected Installed Capacity” – Means the Installed Capacity which Seller, as of the Effective Date, expects to commission as of the Commercial Operation Date, as identified in Part I, and which may be updated by Seller by written notice to Buyer prior to or promptly following final commissioning.

“Event of Default” – Is defined in Section 8, Event of Default.

“Federal Funds Effective Rate” – Means, for any Day, the interest rate per annum equal to the rate published as the Federal Funds Effective Rate by the Federal Reserve Bank in its

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release H.15 (519) (or, if such Day is not a Business Day, for the preceding Business Day).

“Federal Tax Benefits” – Means: (i) production tax credits under Internal Revenue Code Section 45 or Section 45Y as amended, or (ii) investment tax credits under Internal Revenue Code Section 48 or Section 48E as amended.

“FERC” – Means the Federal Energy Regulatory Commission.

“Fixed Energy Price” – Means the price shown in \$/MWh of Available Energy, for the applicable Planning Year, on the Fixed Energy Price Schedule set forth in Exhibit E, as may be modified in accordance with Exhibit I.

“Force Majeure” – Is defined in Subsection 12.1, Definition, of Section 12, Force Majeure.

“Gains” – Defined in Subsection 10.2, Early Termination Payment.

“Holiday” – Means any holiday observed by MISO. As of the Effective Date of this Agreement, such holidays include New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, or if the Holiday occurs on a Sunday, the Monday immediately following the Holiday.

“Incidental Energy” – Means Test Energy, as such amount of electric energy delivered is determined on an hourly basis pursuant to Section 4, Metering.

“Incidental Energy Price” – Means, with respect to any Test Energy, (i) if the Plant is registered as a Load Modifying Resource (as such term is defined in the MISO Rules, or as otherwise defined by MISO) the real-time LMP for the Buyer’s load CPNode or (ii) if the Plant is registered with its own CPNode (as designated by MISO) the real-time LMP for the Plant’s CPNode for the hour that Incidental Energy is delivered.

“Initial Operation Date” – Means the date upon which Seller may declare to Buyer orally to provide for testing Plant equipment prior to the Commercial Operation Date but no earlier than the Early COD as identified in Part I. Such Initial Operation Date shall also be coordinated with the appropriate transmission and/or distribution owner/operator in accordance with the Interconnection Agreement.

“Installed Capacity” – Means the total nameplate capacity of the Plant, expressed in alternating current in MW<sub>AC</sub> equal to the aggregate capacity measured at the Facility’s inverters. Installed Capacity may change throughout the Contract Term. For avoidance of doubt, Installed

Capacity may differ from Expected Installed Capacity ( $MW_{AC}$ ) at the Point of Delivery as identified in Part I.

“Interconnection Agreement(s)” – Means the agreement(s) between Seller and the applicable electric transmission system or distribution system owner and/or operator which describes the terms and conditions regarding the connection of the Plant to such electric transmission or distribution system.

“Interconnection Delay” – Means any delay in the occurrence of the Commercial Operation Date that both (i) is unknown to Seller on the Effective Date and (ii) occurs due to causes outside of Seller’s control that is attributable or related to (a) the actions or inactions of the transmission owner, including, without limitation, delays in upgrades required by the Interconnection Agreement and/or multi-party construction agreement that the transmission owner is installing, or the Interconnection Facilities or the applicable electric transmission facilities beyond the Point of Delivery, (b) the actions or inactions of the affected transmission owner, including, without limitation, delays in affected upgrades required by the Interconnection Agreement, (c) delay by the market operator or transmission owner in completing actions necessary for the Seller to develop the Plant or to achieve the Commercial Operation Date, or (d) the actions or inactions by the transmission provider (MISO) including, without limitation, those related to testing, interconnection service management, transmission service management and unforeseen changes in the related process and commissioning that affect the ability of the of the Plant to interconnect to the transmission provider’s transmission system.

“Interconnection Facilities” – Means all the facilities installed for the purpose of interconnecting the Plant to the electric transmission or distribution system, including, but not limited to, all transformers and associated equipment, relay and switching equipment, and safety equipment.

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

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

“Letter of Credit” – Means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a credit rating of at least (a) “A-” by S&P and “A3” by Moody’s, if such entity is rated by both S&P and

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Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, in a form reasonably acceptable to Buyer, with such changes to the terms in that form as the issuing bank may require and as may be acceptable to the Buyer.

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

"Losses" – Defined in Subsection 10.2, Early Termination Payment.

"Market Participant" – Has the meaning ascribed to such term in the MISO Rules.

"MDMA" – Means the MISO Meter Data Management Agent, as such term is defined by MISO.

"MECT" - Defined in Section 3, Product To Be Supplied.

"MIRECS" – Means the Michigan Renewable Energy Certification System, including any successor thereto.

"MISO" – Means Midcontinent Independent System Operator, Inc. including any successor thereto and subdivisions thereof.

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

"MPSC" – Means the Michigan Public Service Commission.

"MPSC Approval Deadline" – Means the date established pursuant to Subsection 2.1, Effective Date and Term.

"MW" – Means a megawatt of alternating current electrical Capacity.

"MWh" – Means a megawatt-hour of alternating current electrical energy.

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

"NITSSR" – Is defined in Subsection 6.3, Capacity Data.

"Permitted Extensions" – Means, collectively, all extensions or delays due to (a) Force Majeure pursuant to Section 12, Force Majeure, (b) a breach of this Agreement by Buyer, (c)

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Interconnection Delays, and (d) if applicable, an extension to the MPSC Approval Deadline pursuant to Subsection 2.1, Effective Date and Term, but in no event shall such extensions from parts (a), (c) and (d) exceed one hundred eighty (180) Days in total.

“Permitting Event” – Means the adoption or taking effect of, or change to, any bill, law, regulation, ordinance, rule, tariff or requirement, including, without limitation, by any state, county, city or local governmental authority, that either (a) delays the issuance of any discretionary permit required for the Plant to perform any of its obligations hereunder, including, without limitation, the development, installation, construction or operation of the Plant, or (b) imposes restrictions on the Plant Site that restricts the usage of the Site or otherwise prevents, delays or impedes Seller from performing any of its obligations hereunder, including, without limitation, the development, installation, construction or operation of the Plant.

“Person” – Means an individual, a corporation, partnership, limited liability company, association, trust, unincorporated organization, or other legal entity or organization, or any federal, state or local governmental body, agency, commission or authority.

“Planning Period” – Means the applicable resource planning period utilized by MISO for capacity resource planning and/or assignment of Resource Adequacy Capacity to Seller’s Plant.

“Planning Year” – Means the 12 Month period beginning June 1 of a Year and ending on May 31 of the immediately following Year.

“Plant” or “Project” – Means the electric storage facility identified in Part I, having an initial expected nameplate Capacity that equals or exceeds the Target Contract Capacity and located at the Plant Site, which shall include, but not be limited to: storage equipment (and perhaps generating equipment), including auxiliary and back-up; electric delivery facilities; administrative structures; meteorological measurement stations; and such other necessary and related facilities, equipment and structures associated with the storage (and potentially generation) of electricity.

“Plant Site” – Means the site upon which the Plant will be located as identified in Part I and further described in Exhibit G. Such site shall be located in an electric service area of the state of Michigan serviced by MISO and be of sufficient area to include the Plant, and shall comply with all laws, regulations and/or requirements imposed by any law, governmental agency or authority. The Plant Site may include additional storage and/or generation facilities that are not associated with either the Plant or this Agreement.

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“Point of Delivery” – Means the location, as specified in Part I, at which Seller shall deliver energy from the Plant to MISO at the applicable electric transmission system or the electric distribution system as established in the Interconnection Agreement, which shall be the same point as the point of interconnection of the Plant as set forth therein.

“Product” – Means (a) all Delivered Energy produced by and associated with the Plant, (b) rights to all Available Energy that Buyer is entitled to associated with the Plant, (c) all Capacity and associated Resource Adequacy Capacity supplied by the Plant, (d) all applicable Environmental Attributes (including emission allowances and Delivered RECs) associated with the Plant, and (e) all available ancillary services associated with the Plant.

“Prudent Utility Practices” – Means the practices generally followed by the electric utility industry with respect to storage (and, if applicable, generation) facilities similar to the Plant as changed from time to time, which generally include, but are not limited to, engineering, operating, safety, reliability, equipment, and adherence to applicable industry codes, standards, regulations and laws. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy storage (and, if applicable, generation) industry in the Midwestern United States.

“Re-Dispatch” – Is defined in Subsection 6.1, Seller’s Operating Obligations.

“Reliability Authority” – Means MISO, International Transmission Company, Michigan Electric Transmission Company, NERC, ReliabilityFirst Corporation, and any successor entity to the foregoing entities, and any other regional reliability council and any other regional transmission organization, in each case having jurisdiction over either or both of the Parties, the Plant, or MISO’s transmission system, or the applicable electric distribution system whether acting under express or delegated authority.

“Renewable Energy Credit(s)” or “REC(s)” – Has the meaning specified for the term “Renewable energy credit” in MCL 460.1011(c) including incentive renewable energy credits as applicable to MCL 460.1039 (2)(c) or otherwise, and as may be amended in the future.

“Replacement Product” means products and services provided from another project with similar characteristics as the Project (including the same charging and discharging capacity) that satisfies all of the requirements of the definition of “Product” hereunder and (a) includes replacement ZRCs for the duration that such Replacement Product is supplied by Seller, without any

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adverse impact on capacity accreditation for the Plant, (b) includes the ability to access the MISO energy market for charge and discharge, and (c) includes storage RECs and incentive RECs with MIRECS for the duration that such Replacement Product is supplied by Seller.

“Resource Adequacy Capacity” – Means the Seasonal Adjusted Capacity value for the Plant for each Planning Period as determined by MISO under the MISO Rules as converted to ZRCs by Buyer.

“Seasonal Adjusted Capacity” – Has the meaning ascribed to such term in the MISO Rules.

“Seasonally Tested Capacity” – Means the power capacity of the Facility, measured in alternating current MW, as determined in accordance with testing procedures to be agreed as part of the operating practices.

“Seller” – Means the party so specified in Part I.

“Seller’s Company” – Means the direct equity interests in Seller.

“Statement” – Is defined in Subsection 9.1, Billing Procedure.

“Storage Services” – Is defined in Section 3, Product to be Supplied.

“Surety Bond” – Means a bond that is issued by a surety or insurance company with, in either case, a credit rating of at least (a) “A-” by S&P and “A3” by Moody’s, if such entity is rated either by both S&P or Moody’s or (b) “A-” by S&P or “A3” by Moody’s, if such entity is rated by either S&P or Moody’s but not both, substantially in the form of Exhibit J hereto.

“Target COD” – Is defined in Part I, as may be extended as provided herein (including extensions for Permitted Extensions).

“Target Contract Capacity” – Means the total amount of capacity expressed in MW as identified in Part I.

“Termination Deadline COD” – Means the Day that is one hundred-eighty (180) Days after the Target COD.

“Test Energy” – Means that energy which is dispatched by the Plant prior to the Commercial Operation Date, delivered from Seller at the Point of Delivery, which is necessary in order to perform all testing of the Plant or otherwise dispatched by the Plant and delivered to the Point of Delivery prior to the Commercial Operation Date.

“Throughput” – Means the amount of energy (measured in MWh) discharged by the Plant.

“Tier II Spend” – Shall have the meaning given to it in Section 22.3, Diverse and Michigan-Based Suppliers.

“Uncompensated Curtailment” – Defined in Section 6.6, Uncompensated Curtailments.

“ZRC(s)” – Has the meaning ascribed to such term in the MISO Rules.

## 2. GENERAL PROVISIONS

### 2.1. Effective Date and Term

This Agreement shall be effective as of the date specified in Part I (the “Effective Date”) upon execution by both Parties; provided, however that the Parties’ rights and obligations under this Agreement shall be contingent upon the approval of this Agreement by the MPSC. This Agreement shall be submitted by Buyer to the MPSC for approval of the payments set out herein for the purposes of Act 304, Act 295, Act 341, Act 342 and all other applicable law. The foregoing submission shall specifically request MPSC approval of cost recovery of all payments set forth in this Agreement, as well as approval of the portion of such payments that is recovered as a booked cost of purchased and net interchanged power pursuant to Act 304, and any financial recovery available to Buyer under MCL 460.6s or MCL 460.6t. Buyer shall (i) make such requests and file this Agreement with the MPSC no later than thirty (30) Days following the date this Agreement is executed by both Parties, and (ii) use good faith, commercially reasonable efforts to obtain the approvals described above, and Seller shall cooperate reasonably with Buyer’s efforts to make such requests and seek such approvals.

In the event that the MPSC does not approve this Agreement (the date of such approval, the “Approval Date”) as described herein within one-hundred eighty (180) Days following the date this Agreement is submitted to the MPSC for approval (“MPSC Approval Deadline”), then the MPSC Approval Deadline shall be extended on a Day-to-Day basis for a period of up to an additional one hundred eighty days (180) Days, *provided* that such extension of the MPSC Approval Deadline shall also extend the Target COD pursuant to Subsection 5.3, Commercial Operation Date, of this Agreement on a day-to-day basis until MPSC approval is received. In the event that (i) the MPSC does not approve this Agreement as described herein within one hundred eighty (180) Days following the date this Agreement is submitted to the MPSC for approval, or

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(ii) denies Buyer's application for MPSC approval as described herein, then, in each case, Seller or Buyer shall have a right to terminate this Agreement on a no-fault basis, by providing written notice to the other Party within one-hundred eighty (180) days following which neither party shall have any further liability hereunder, and Buyer shall promptly (but in any event no longer than thirty (30) Days) cancel and/or otherwise return to Seller or Seller's designee the full amount of any Earnest Money Deposit provided by Seller. Once effective, unless terminated as provided in this Agreement, this Agreement shall commence on the Commercial Operation Date and continue in effect for the amount of years identified in Part I, plus any additional days that may be necessary to complete a Planning Period (such number of years and days is herein called the "Contract Term").

## 2.2. Security for Performance

From and after thirty (30) Calendar Days after the Commercial Operation Date, Seller shall provide and maintain, as described herein, security in one of the forms described below for an amount equal to the Early Termination Security Amount specified in Exhibit A, Early Termination Security Amount Schedule (such security, the "Early Termination Security") for compliance with its obligations, during the term of the Agreement. Within five (5) Days after the Commercial Operation Date, Seller shall notify Buyer of the initial form of payment security that Seller has elected to use for the Early Termination Security. The Early Termination Security shall be provided via one of the forms and consistent with the timing provided for in this Subsection 2.2. Any portion of the Early Termination Security, including, without limitation, accumulated interest above the Early Termination Security Amount, remaining upon expiration or termination of this Agreement, after deduction for any payment obligations still owing to Buyer, shall be returned to Seller by Buyer within sixty (60) Days of such expiration or termination. Seller may change the form of such security at any time and from time to time upon reasonable prior notice to Buyer provided that (i) such security is at all times consistent with this Subsection 2.2 and (ii) Seller provides the replacement security instrument prior to terminating or withdrawing the then existing security instrument. In the event that (a) a replacement security is provided in accordance with the preceding sentence or (b) at any time, Buyer holds Early Termination Security in more than the amount then required to be provided by Seller hereunder (excluding accumulated interest in excess of the Early Termination Security Amount), then in each case, Buyer shall promptly return or release such prior and/or excess security to Seller and shall take such other action as Seller may reasonably request to evidence a return or release of such prior and/or excess security. The Early Termination Security Amount is intended to safeguard Buyer against undue financial risk, applicable to this Agreement, associated with the loss of Seller-provided Product during the term of this Agreement as a result of the termination of this

Agreement by Buyer. Notwithstanding the aforementioned referenced safeguard for financial risk associated with loss of Product provided by Seller, a Party shall also be responsible for other damages it may cause the other Party, such as those specified in Subsection 10.2, Early Termination Payment, and Section 27, Limitation of Liability.

2.2.1. Letters of Credit

If Seller selects the Letter of Credit as its form of providing Early Termination Security, such Letter of Credit shall be in a form reasonably acceptable to Buyer and Seller shall provide and maintain a Letter of Credit to Buyer, in the amount set forth in Exhibit A either (a) if selected as the initial Early Termination Security, within thirty (30) Days after the Commercial Operation Date or (b) if selected as replacement Early Termination Security, in accordance with Subsection 2.2. All Letters of Credit provided in accordance with this Agreement shall be subject to the following provisions:

Unless otherwise agreed in writing by the Parties, each Letter of Credit shall be maintained for the benefit of the Buyer. The Seller shall (i) if necessary to maintain a Letter of Credit throughout the term of this Agreement, renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (ii) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or a different form of security in accordance with Subsection 2.2, in each case at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit, and (iii) if a bank issuing a Letter of Credit shall fail to honor the Buyer's properly documented request to draw on an outstanding Letter of Credit, provide an alternative form of security instrument meeting the criteria set forth in Subsection 2.2 within two (2) Business Days after such refusal.

2.2.2. Interest Bearing Account

If Seller selects the one-time escrow payment as its form of Early Termination Security, Seller shall provide a cash payment to Buyer in the amount set forth in Exhibit A. Such cash shall be the property of Seller and held by Buyer as cash collateral for the performance of Seller's obligations hereunder. Buyer shall establish an interest-bearing account with the administrative costs incurred by that account to be borne by the account with the cash payment provided by Seller. Interest on cash provided in accordance with this Subsection 2.2.2 shall accrue at a rate per annum equal to the Federal Funds Effective Rate.

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### 2.2.3. Monthly Escrow Payment

If Seller selects the monthly escrow payment as its form of Early Termination Security, Buyer will retain during each Billing Month a portion of the energy payment equal to the monthly escrow payment determined in Exhibit F, which retained portion shall be the property of Seller and held by Buyer as cash collateral for the performance of Seller's obligations hereunder. Buyer shall establish an interest-bearing account with the administrative costs incurred by that account to be borne by the account with the monthly escrow payments provided by Seller. Interest on cash provided in accordance with this Subsection 2.2.3 shall accrue at a rate per annum equal to the Federal Funds Effective Rate.

### 2.2.4. Guaranty

If Seller selects the guaranty form of Early Termination Security, such guaranty shall be substantially in the form of Exhibit B hereto or such other form as is reasonably acceptable to Buyer, shall be from a guarantor with a credit rating of at least BBB- or Baa3, and shall be either (a) if Seller selects the guaranty as its initial form of Early Termination Security, provided by Seller within thirty (30) Days after the Commercial Operation Date or (b) if Seller selects the guaranty as replacement Early Termination Security, in accordance with Subsection 2.2. If the credit rating of the guarantor is downgraded below BBB- by S&P or below Baa3 by Moody's, then Seller shall be required to convert the guarantee provided to an alternative form of security instrument meeting the criteria set forth in Subsection 2.2 no later than thirty (30) Days after such downgrade.

### 2.2.5. Surety Bond

If Seller selects the Surety Bond as its form of Early Termination Security, Seller shall provide a Surety Bond to Buyer in the amount set forth in Exhibit A either (a) if selected as the initial form of Early Termination Security, by the date that is thirty (30) Days after the Commercial Operation Date or (b) if selected as replacement Early Termination Security, in accordance with Subsection 2.2. All Surety Bonds provided in accordance with this Agreement shall be subject to the following provisions:

Unless otherwise agreed to in writing by the Parties, each Surety Bond shall be maintained for the benefit of Buyer. Seller shall (i) if necessary to maintain a Surety Bond throughout the term of this Agreement, renew or cause the renewal of each outstanding Surety Bond on a timely basis as provided in the relevant Surety Bond, (ii) if the institution that issued an outstanding Surety Bond has indicated its intent not to renew such Surety Bond, provide a substitute

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Surety Bond or another form of security in accordance with Subsection 2.2 at least twenty (20) Business Days prior to the expiration of the outstanding Surety Bond, and (iii) if an institution issuing a Surety Bond shall fail to honor Buyer's properly documented request to draw on an outstanding Surety Bond, provide an alternative form of security instrument meeting the criteria set forth in Subsection 2.2 within two (2) Business Days after such refusal.

### 2.3. Replacement Project

At any time following the Effective Date but prior to the later of (i) the Project receiving MPSC approval, or (ii) the Construction Start Date deadline, Seller may in its sole discretion provide notice to Buyer that it has elected to replace the Plant in Part I with the replacement project(s) identified in the completed Exhibit K, Replacement Project Agreement. Upon delivery of such notice to Buyer and Buyer's written acceptance, this Agreement will automatically be amended in accordance with Exhibit K without the need for any further action by either Party.

The replacement project must meet the following criteria:

- (a) is consistent with the Plant Type identified in Part I;
- (b) is located in MISO Zone 7 or a Border External Resource as defined by MISO that would be eligible for Zone 7 Local Clearing Requirement as defined by MISO; and
- (c) is owned by Seller or an Affiliate of Seller.

Written notice should include, at a minimum, a completed Replacement Project Agreement attached as Exhibit K to this Agreement. Within thirty (10) Business Days of receiving such written notice, Buyer (acting reasonably) will respond in writing confirming or denying that the replacement project meets the criteria set forth above. Upon Buyer's confirmation that the replacement project meets the criteria set forth above, this Agreement will automatically be modified in accordance with Exhibit K, Replacement Project Agreement, without the need for any further action by either Party. If Buyer denies that the replacement project meets the criteria set forth above, the Agreement shall not be modified for the purposes set forth in this Subsection 2.3 For the avoidance of doubt, terms and conditions of the Agreement including but not limited to those related to Fixed Energy Price, Target Contract Capacity, Actual Availability, and the guarantees and remedies in Exhibit I, Value Added Criteria Guarantees, shall remain in full force and effect.

### 3. PRODUCT TO BE SUPPLIED

Subject to the terms and conditions of this Agreement, beginning on the Commercial

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Operation Date, and continuing until the termination of this Agreement, Seller agrees to sell and supply to Buyer, and Buyer agrees to accept and purchase from Seller, all Product that Seller supplies and/or delivers to Buyer under this Agreement. Compensation for such Product shall be paid in accordance with Section 7, Compensation.

Seller shall accomplish delivery of Delivered Energy hereunder by receiving and storing electric energy delivered by Buyer at the Point of Delivery identified in the Interconnection Agreement and re-delivering it to Buyer in accordance with Section 4, Metering (the "Storage Services"). Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver energy from the Plant to the Point of Delivery. Notwithstanding any other provision of this Agreement, Buyer shall be responsible for all MISO charges, costs and penalties related to or arising out of transmission services provided beyond the Point of Delivery. Buyer shall retain title to all Product throughout Seller's provision of Storage Services.

Seller's responsibility with respect to Available Energy shall include maintaining the Plant and notifying Buyer of changes in Available Capacity in accordance with Section 6.1, Seller's Operating Obligations. Seller shall use commercially reasonable efforts to cure any Plant derates, perform routine and unplanned maintenance, and provide timely notice to Buyer of any changes in the Plant's operating characteristics.

Subject to the terms and conditions of this Agreement, beginning on the Commercial Operation Date and continuing until the termination of this Agreement, Buyer agrees to provide fixed energy pricing to Seller for all Available Energy associated with the Plant. The provision of such fixed energy pricing shall be accomplished in accordance with Section 7, Compensation.

Seller shall accomplish delivery of any available Resource Adequacy Capacity hereunder by exercising commercially reasonable efforts to (i) cooperate with Buyer, as provided in Subsection 6.3, Capacity Data, so that Buyer can obtain and submit the appropriate capacity data for the Plant to MISO and (ii) deliver electric energy from the Plant in the form of Delivered Energy in accordance with Buyer's Dispatch instructions. Buyer shall accomplish receipt of Resource Adequacy Capacity by (i) ensuring that the Plant's capacity data is appropriately represented in MISO's Module E capacity tracking system, or any successor system ("MECT"), and converting the Seasonal Adjusted Capacity value determined from such data to ZRCs or MW/day, and (ii) acknowledging receipt of the Resource Adequacy Capacity in MECT. At Buyer's sole discretion, Seller's Plant may be aggregated with like technologies to determine the ZRC or MW/day

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value, provided that Seller shall not be required to expend material costs or incur material liabilities, or modify or augment the Facility, as a result of such aggregation. In the event Seller's facility is aggregated with other like technologies for the purpose of awarding ZRCs or MW/day, Seller will receive the ZRC or MW/day value pro-rata, on a percentage basis, for its contribution to the aggregated facilities. Failure by Buyer to receive Resource Adequacy Capacity after Seller's delivery of such Resource Adequacy Capacity has been completed shall not excuse Buyer's obligation to pay for Products hereunder and Seller will be deemed to have been delivered such Resource Adequacy Capacity for all purposes hereunder, including, without limitation, for determining compensated Capacity hereunder. Seller's exercise of commercially reasonable efforts to deliver any available Resource Adequacy Capacity shall satisfy Seller's obligation to deliver any items listed in clause (c) of the definition of Products. Title to all Resource Adequacy Capacity transfers to Buyer concurrently with the delivery of Resource Adequacy Capacity as described herein. Notwithstanding the remainder of this paragraph, if any Resource Adequacy Capacity is not ultimately awarded to Buyer, then title to such Resource Adequacy Capacity shall be deemed to have remained with Seller at all times regardless of any underlying Delivered Energy and/or Incidental Energy that was delivered to Buyer or any Available Energy associated with the Plant.

In the event the Plant cannot receive Network Resource Interconnection Service ("NRIS"), as defined by MISO, to qualify as a Capacity Resource, as defined by MISO, to receive capacity accreditation prior to the Commercial Operation Date, Buyer agrees to provide Network Integration Transmission Service Scheduling Rights, as defined by MISO, in conjunction with Seller providing to Buyer, or (if permitted by MISO) to MISO, the required deferral amount as determined by MISO in accordance with MISO Rules, subject to an aggregate cap on such deferral amount of five million dollars (\$5,000,000), via wire transfer or other MISO-approved form or other form permitted to be posted as security under Subsection 2.2, Security for Performance, as applicable, within fourteen (14) Days prior to the required deferral due date in accordance to MISO rules. In such an event Seller shall utilize Energy Resource Interconnection Service until the Project is able to receive NRIS status with MISO. Buyer shall return deferral collateral within 30 Days if returned by MISO. Seller shall continue to use commercially reasonable efforts to receive NRIS status with MISO as soon as practicable.

The Parties agree that Seller may satisfy this Agreement's conditions precedent to the Commercial Operation Date without regard to its ability to deliver Resource Adequacy Capacity from the Plant, and that Seller's inability to secure Network Resource Interconnection Service ("NRIS") status to qualify as a Capacity Resource, as defined by MISO, will not preclude Seller from

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satisfying any condition precedent to the Commercial Operation Date under this Agreement.

Seller shall use commercially reasonable efforts to accomplish delivery of any available RECs hereunder by providing the Product to the extent expressly required hereunder. Seller shall reasonably cooperate with Buyer in accordance with Subsection 3.2, Emission Allowances/Environmental Attributes, to permit Buyer to register the Plant with MIRECS following the Commercial Operation Date. Seller shall reasonably cooperate with Buyer to permit Buyer to utilize any storage capacity associated with the Plant to enable Buyer to receive any available additional storage incentive RECs, if applicable, with MIRECS following the Commercial Operation Date. Seller shall use commercially reasonable efforts to ensure that the Plant will maintain status as an “energy storage system” under Act 295, as amended, if applicable, as necessary to comply with this Agreement. Title to Environmental Attributes associated with the Delivered Energy transfers to Buyer concurrently with the delivery of the Delivered Energy at the Point of Delivery. If any Environmental Attributes arising from the Plant are not ultimately awarded to Buyer, then title to such Environmental Attributes shall be deemed to have remained with Seller at all times regardless of any underlying Delivered Energy and/or Incidental Energy that was delivered to Buyer. Notwithstanding anything in this Agreement to the contrary, in complying with or performing any of its obligations set forth in this paragraph, the foregoing paragraph, Subsection 3.2, Emission Allowances/Environmental Attributes or Subsection 3.3, Renewable Energy Registration, Seller shall not be required to (a) modify, improve or augment the Project, or (b) expend material costs or incur material liabilities.

In the event that the Product is unavailable for any period of time, Seller may at its option provide Replacement Product, and Buyer shall accept such Replacement Product during such period of time. Seller shall provide reasonable notice to Buyer prior to providing Replacement Product such that Buyer can administer necessary transactions with Seller, MISO, and MIRECS (if applicable) for Replacement Product. Seller shall be compensated for such Replacement Product hereunder as if such Replacement Product were the Product.

### 3.1. Permits and Laws

Seller shall be responsible to (i) secure all applicable licenses and permits required by law, regulation or ordinance as necessary to perform its obligations under this Agreement, including, but not limited to, those pertaining to the storage (and, if applicable, generation) of electric energy and the sale of electric capacity from the Plant and (ii) maintain all such licenses and permits necessary to perform its obligations under this Agreement throughout the term of this Agreement. In

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addition, Seller shall comply with all applicable ordinances, laws, orders, rules and regulations, including, but not limited to, those pertaining to the above applicable licenses and permits made by any governmental authority or public regulatory body having jurisdiction over Seller or Seller's Plant. At any time during the term of this Agreement, Buyer may request in writing that Seller provide copies of any such licenses and permits, and Seller shall so provide them within five (5) Business Days.

### 3.2. Emission Allowances/Environmental Attributes

All emission allowances and other Environmental Attributes, including any greenhouse gas emission reductions, at any time allocated to Seller's Plant and associated with Available Energy and/or Delivered Energy, shall from and after the delivery of such Available Energy and/or Delivered Energy, be the property of Buyer. Seller shall, at no cost to Seller, assign and/or execute any documents reasonably requested by Buyer that are necessary to either (i) transfer ownership of such products (to the extent owned by Seller; provided, however, that Seller shall take no action to circumvent Buyer's acquisition of such allowances pursuant to this Subsection 3.2), or (ii) designate Buyer as Seller's agent to acquire ownership of any and all emission allowances and/or other Environmental Attributes (such as Renewable Energy Credits) associated with Available Energy and/or Delivered Energy for Buyer up to the amount specified in this Subsection 3.2, in each case, to the extent not accomplished through delivery of Delivered RECs in accordance with Section 3. Notwithstanding the foregoing, all Federal Tax Benefits and other federal, state and local tax benefits shall remain the property of the Seller. The foregoing emission allowances and other Environmental Attributes may be used by Buyer to satisfy the requirements of Act 295 and any other applicable ordinances, laws, orders, rules or regulations pertaining to emission allowances and other Environmental Attributes (including, but not limited to, requirements for renewable energy production) made by any governmental authority or public regulatory body; provided that Seller has no obligation to ensure that any such emission allowances or other Environmental Attributes satisfy any ordinances, laws, orders, rules or regulations.

### 3.3. Renewable Energy Registration

Seller represents and warrants as of the Effective Date of this Agreement that the Plant from which Delivered RECs are to be purchased by Buyer hereunder will qualify as a "renewable energy resource", "renewable energy system" or an "energy storage system" as applicable, pursuant to Act 295 and Act 342, as amended. Buyer shall, to the extent such qualification requirements are still in effect under Michigan law and applicable to the Plant, (i)

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promptly after the Commercial Operation Date, register the Plant as such “renewable energy resource”, “renewable energy system”, or “energy storage system” in MIRECS and (ii) maintain such registration for the duration of this Agreement. Buyer shall be responsible for any costs associated with such registration (or modification thereof) for the term of this Agreement. Buyer may modify such registration as needed for the duration of this Agreement, so long as such modification does not adversely impact Seller’s ability to perform its obligations hereunder or reduce Seller’s payments hereunder.

Seller shall reasonably cooperate with Buyer, at Buyer’s reasonable request and expense, to certify the Plant as a renewable energy resource, storage energy resource, or energy storage system under any other renewable energy standard for which the Plant may qualify to permit Buyer to sell Delivered RECs which Buyer deems to be surplus to its requirements under Act 295 and Act 342. Seller shall cooperate with Buyer, at Buyer’s expense, to enable Buyer to obtain the benefits associated with Buyer’s Environmental Attributes for purposes other than renewable energy standards, including, but not limited to, new classes or types of Environmental Attributes created following the Effective Date.

4. METERING

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

Without limiting the rights of Seller in any other section of this Agreement, Seller shall provide Buyer six (6) months’ written notice prior to the expected initial operation of any additional storage unrelated to the Plant or generation facilities unrelated to the Plant at the Plant Site. For the avoidance of doubt, (i) Seller shall have the right to make any and all additions, replacements, repairs or modifications to the Plant at any time, in Seller’s sole discretion without Buyer’s consent, but shall provide at least 30 day’s notice, when reasonably possible and to the extent complying with such advanced notice requirement does not impact Seller’s ability to perform

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its obligations hereunder or deliver Product, prior to completion of any additions, replacements, repairs or modifications that increase or decrease the Plant's Capacity, and (ii) each of the Plant's capacity measured in MW<sub>DC</sub> and the Installed Capacity may exceed the Target Contract Capacity, *provided* that in no event shall Seller deliver more than the Target Contract Capacity to the Point of Delivery at any point in time. Any change in Contract Capacity (in MW<sub>ac</sub> measured at the Point of Delivery) associated with any and all additions, replacements, repairs or modifications to the Plant effected after the date that is ninety (90) Days after the Commercial Operation Date must be agreed to in writing by both parties.

5. CONSTRUCTION OF PLANT AND COMMERCIAL OPERATION DATE

5.1. Seller's Responsibility

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

Seller shall have sole responsibility for the acquisition of sufficient real property interests in the Plant Site to permit the construction and operation of the Plant for the expected duration of the Plant's operation at the Plant Site.

5.2. Seller's Obligation With Respect to Construction Start

Seller shall provide Buyer with written confirmation of the Construction Start Date and written confirmation from the contractor that work on the Plant construction has begun (which shall mean that the initial installation of the transformers and the substation at the construction site has occurred) (the "Construction Start Date"). After the Construction Start Date and until the Commercial Operation Date, Seller shall submit to Buyer, prior to the tenth (10<sup>th</sup>) Business Day of each Month, construction progress reports substantially in the form attached hereto as Exhibit H or otherwise in a similar form reasonably satisfactory to Buyer; provided that such construction progress reports are solely for informational purposes and do not expand or impact any other obligation of Seller under this Agreement, nor impart any additional obligation on Seller. If the Construction Start Date fails to occur on or before the Target COD (as may be adjusted with day-for-day extensions for established Permitted Extensions), Buyer may, at its option, terminate this Agreement by giving Seller written notice within thirty (30) Business Days after such date, unless

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Seller has commenced construction prior to the issuance by Buyer of such notice.

5.3. Commercial Operation Date

The Commercial Operation Date will be the first date on or after the Early COD as identified in Part I and on or before the Termination Deadline COD (subject to a day-for-day extension for Permitted Extensions), upon which all of the following conditions precedent have been satisfied:

- (a) Seller shall have provided to Buyer an officer's certificate from an officer of Seller stating that it has obtained all necessary and applicable licenses, permits, certificates and approvals required under Subsection 3.1, Permits and Laws;
- (b) Seller shall have provided proof reasonably acceptable to Buyer that it has an executed Interconnection Agreement for the Plant, and that Seller has been authorized under the terms of such agreement to begin parallel operation. A copy of notice from the applicable transmission owner or MISO granting permission to operate will be deemed to be acceptable proof for purposes of the foregoing;
- (c) Without limiting Seller's rights to Commission additional Capacity as set forth in clause (ii) of the definition of "Contract Capacity", Seller shall have provided proof reasonably acceptable to Buyer that at least 85% of Target Contract Capacity has been Commissioned. A certificate of the foregoing from an independent, licensed professional engineer will be deemed to be one form of acceptable proof for purposes of the foregoing;
- (d) Seller has confirmed to Buyer in writing that the Plant is capable of commencing delivery of energy; and
- (e) Seller and Buyer have established operating practices in accordance with Section 6.9, Operating Practices.

Seller shall request Buyer to confirm the Commercial Operation Date by providing Buyer with a written notice indicating that Seller believes the Plant has satisfied the above conditions as of a date specified in such notice. Buyer shall provide written notice to Seller within fifteen (15) Business Days of receipt of Seller's notice stating that either Seller has satisfied all of the above conditions precedent or providing reasonable reasons why Seller has not satisfied all of the above conditions precedent; provided that failure of Buyer to provide such notice within fifteen (15)

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Business Days shall be deemed to be Buyer's acceptance and agreement that such conditions have been satisfied.

Following execution of the Interconnection Agreement, but prior to the Commercial Operation Date, Seller may declare to Buyer orally an Initial Operation Date to provide for testing Plant equipment prior to the Commercial Operation Date in accordance with Subsection 5.4, Test Energy, and the Interconnection Agreement. Seller shall provide written confirmation of such Initial Operation Date to Buyer within ten (10) Days, or such earlier date as required under the applicable Interconnection Agreement or MISO Rules.

To ensure that the Seller will perform all of its obligations under this Agreement and that the Plant will be complete and ready to operate by the Termination Deadline COD, Seller shall provide Buyer either (i) an earnest money cash deposit, or (ii) an unconditional and irrevocable direct pay Letter of Credit in Buyer's name, in an amount equal to sixty thousand dollars (\$60,000.00) per MW times the Target Contract Capacity (the "Earnest Money Deposit"), on or before the date that is thirty (30) Days after the Approval Date through such time as the Early Termination Security is provided pursuant to Subsection 2.2. Seller shall earn interest on any Earnest Money Deposit it provides to Buyer in the form of a cash deposit from and including the date of such deposit to but excluding the date such cash is returned at a rate per annum equal to the Federal Funds Effective Rate. If the Seller fails to provide such Earnest Money Deposit within five (5) Business Days of the end of such 30-day period, Buyer shall have the right to terminate this Agreement by providing written notice to Seller of its election to terminate within sixty (60) Days following the Approval Date.

If the Commercial Operation Date fails to occur on or before the Target COD, as identified in Part I (which Target COD shall be subject to a day-for-day extension for Permitted Extensions), for each Day that Seller fails to reach a Commercial Operation Date after the Target COD (subject to Permitted Extensions), Seller shall pay Buyer an amount equal to the product of \$333.34 per MW times the Target Contract Capacity as identified in Part I, as liquidated damages ("Delay Damages") until the earlier to occur of (i) the Commercial Operation Date or the Termination Deadline COD, and (ii) the effective date of any termination of this Agreement. If Seller fails to pay Delay Damages within ten (10) Business Days of Seller's receipt of an invoice for such payment, Buyer may obtain Delay Damages by withdrawing cash from the cash deposit or drawing on the Letter of Credit, as applicable, provided by Seller as the Earnest Money Deposit. If Seller fails to achieve the Commercial Operation Date by the Termination Deadline COD, Buyer shall have the

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right to both (i) terminate this Agreement upon written notice to Seller, provided that such notice is given by Buyer prior to the Commercial Operation Date, to be effective as of the date specified in such notice and (ii) retain the Earnest Money Deposit (less any Delay Damages owed that were not deducted from the Earnest Money Deposit). Termination of this Agreement and retention of the Earnest Money Deposit as described in the preceding sentence shall be Buyer's sole and exclusive remedy pertaining solely to this Agreement for Seller's failure to achieve a timely Commercial Operation Date. Notwithstanding anything in this Agreement to the contrary, Seller's aggregate liability (excluding obligations of Seller under Section 13, Indemnity) solely under this Agreement prior to the occurrence of the Commercial Operation Date (including, without limitation with respect to an Event of Default set forth in Subsection 8, Events of Default, and with respect to payment of Delay Damages) may not exceed the amount of the Earnest Money Deposit.

Any portion of the Earnest Money Deposit, including, without limitation, accumulated interest above the Earnest Money Deposit, remaining upon expiration or termination of this Agreement, after deduction for any payment obligations still owing to Buyer, shall be returned to Seller by Buyer within thirty (30) Days of such expiration or termination or by such earlier date as is otherwise required hereunder. Seller may change the form of Earnest Money Deposit at any time and from time to time upon reasonable prior notice to Buyer provided that (i) such security constitutes an acceptable form of Earnest Money Deposit and (ii) Seller delivers to Buyer the replacement security instrument prior to terminating or withdrawing the then existing security instrument. If at any time the Earnest Money Deposit held by Buyer, excluding any accumulated interest for cash deposits, is in an amount more than the amount then required to be provided by Seller hereunder, whether due to Seller providing replacement security, a reduction to the Earnest Money Deposit or otherwise, Buyer shall promptly return such excess to Seller. If a cash deposit is used as the Earnest Money Deposit, Seller shall be entitled to receive from Buyer the balance of the cash Earnest Money Deposit, including, without limitation, any accumulated interest, less any Delay Damages as described in the preceding paragraph. If a Letter of Credit is used as the Earnest Money Deposit, Buyer will not draw against the Letter of Credit to recover liquidated damages for any Day that is on or after the Commercial Operation Date. Any remaining balance in the Earnest Money Deposit of any form, including, without limitation, any Letters of Credit associated therewith, will be returned or released to Seller, as applicable, by Buyer upon Seller's provision of Early Termination Security in accordance with Subsection 2.2, Security for Performance, provided that any provision of Early Termination Security will not impair Buyer's right to access the Earnest Money Deposit for purposes of collecting damages accrued or

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otherwise owed under this Subsection 5.3 related to the period prior to the Commercial Operation Date. Seller may, in its sole discretion, apply any balance remaining in the Earnest Money Deposit, including, without limitation, any Letters of Credit associated therewith, towards the Early Termination Security Amount then required under this Agreement, by providing Buyer with at least ten (10) Days' notice prior to the Commercial Operation Date.

5.4. Test Energy

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

6. OPERATION OF PLANT

6.1. Seller's Operating Obligations

Seller shall operate and maintain the Plant in accordance with Prudent Utility Practices, the Interconnection Agreement, and MISO (or any successor thereto) standards and MISO Rules which apply to storage (and, if applicable, generating) units such as Seller's Plant. Beginning the day before the Commercial Operation Date and continuing until the termination of this Agreement, at a frequency to be agreed in the operating practices, Seller shall declare Available Capacity of the Plant by providing notice to Buyer.

Seller shall promptly inform Buyer as to material changes in the operating status of the Plant, including, but not limited to, Plant outages pursuant to Subsection 6.2, Outages of Plant Equipment, and changes in Available Capacity. Seller shall cooperate with Buyer, at Buyer's request, to demonstrate that Available Capacity can be achieved, in accordance with the terms of the operating practices. Outage and derate information provided from Seller to Buyer in accordance with Subsection 6.2, Outages of Plant Equipment, may be used to determine or confirm Available Capacity regardless of whether or not Seller has communicated to Buyer changes in Available Capacity in accordance with the preceding paragraph.

Buyer shall provide Seller with the Plant's Dispatch instructions from MISO associated with the Plant's day-ahead award in the MISO energy market. Such day-ahead award

shall be provided as soon as reasonably practical, but no later than one hour prior to the start of the MISO operating day in which the day-ahead award applies, unless unforeseen technical difficulties outside of Buyer's control delay dispatch instructions (in which case Seller will not be required to comply with any delayed dispatch instructions, and the Facility shall be considered available). Buyer reserves the right to instruct Seller to dispatch the Plant in the real-time market above or below the previously provided Dispatch instruction for the operating day, subject to the operating practices ("Re-Dispatch"), and Seller is required to follow such Re-Dispatch instructions. Buyer is responsible for providing the Seller with updated Dispatch instructions in real-time needed to maintain the necessary state of charge to meet ancillary obligations or energy positions. In the event that the Plant returns to service from an outage earlier than expected such that Buyer was unable to offer the Plant into MISO's day-ahead market for any day or days, then Buyer will be entitled to instruct Seller to dispatch the plant in the Real Time market.

#### 6.2. Outages of Plant Equipment

Seller shall promptly (and at a frequency to be agreed in the operating practices) provide to Buyer all material information relating to Plant outages and derates of Plant storage Capacity which would materially affect Seller's ability to deliver electric energy from the Plant to the Point of Delivery. Such material information shall be sufficient for Buyer to reasonably determine and verify the severity and extent of such outages and derates, including at a minimum, the date and time when the outage or derate began, the cause of the outage or derate, and the anticipated date and time the outage or derate will end, if known or as estimated.

Seller shall provide to Buyer, as soon as reasonably possible thereafter, a written report of any outages of Plant electric storage Capacity as a result of (1) Seller's compliance with the provisions of Subsection 3.1, Permits and Laws, (2) interruptions or other transmission limitations from the Plant to the Point of Delivery which would materially restrict the flow of energy from the Plant to the Point of Delivery, or (3) any other circumstance or event that would prevent energy from the Plant from being delivered to the Point of Delivery, and their anticipated duration.

Seller shall plan and implement scheduled outages and/or planned outages of storage Capacity in accordance with the requirements of the most current MISO Rules and the Interconnection Agreement. Seller shall confirm with Buyer in writing its schedule of storage Capacity outages planned by Seller for a Calendar Year by August 1<sup>st</sup> (as such date may be amended by the written mutual agreement of the Parties from time to time) of the prior Calendar Year. Notwithstanding the forgoing, to maximize Resource Adequacy Capacity, Seller should provide

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planned outage schedule as soon as practical, to provide the best opportunity for an exemption status. At least three (3) weeks prior to any scheduled outage and/or planned outage, Seller shall confirm with Buyer the expected start date of such outage and the expected completion date of such outage. Seller shall notify Buyer of any subsequent changes to the outage. As soon as practicable, any oral notifications shall be confirmed in writing. If a modification is made that doesn't allow Buyer to maintain current exemption status per MISO's most recent Business Practices Manual, Seller shall use commercially reasonable efforts to work with Buyer to find an alternative schedule that will maintain the same exemption status that was previously in place before modification.

### 6.3. Capacity Data

Seller shall use its commercially reasonable efforts to maximize the amount of Resource Adequacy Capacity available from the Plant, including (i) ensuring that the Interconnection Agreement provides for a minimum of NRIS (defined in the MISO Rules) equal to the Target Contract Capacity, (ii) minimizing the amount of scheduled maintenance during such times as are applicable for the determination of the Plant's Resource Adequacy Capacity to the extent consistent with Prudent Utility Practices, and (iii) providing advanced notice to Buyer of outages in a manner that minimizes detrimental impacts to Resource Adequacy Capacity accreditation by MISO. Notwithstanding anything in this Agreement to the contrary, in performing its obligations set forth in this Subsection 6.3, Capacity Data, Seller shall not be required to modify, improve or augment the Project.

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

### 6.4. Obligations to MISO

Buyer shall be responsible for registering the Plant as a generation and/or storage resource with MISO. All MISO charges and payments associated with such registration are the responsibility and property, as applicable, of Buyer. Buyer, or its agent, shall serve as the

Market Participant and MDMA under MISO Rules, in connection with the Plant and this Agreement. Seller to cooperate with Buyer to enable Buyer to communicate outages to MISO in accordance with MISO Rules and Subsection 6.2, Outages of Plant Equipment.

6.5. Communications

Seller shall cooperate with Buyer to enable Buyer to monitor, in real time, all energy received charged or discharged by the Plant as well as the current charge level of the Plant. Seller shall only be responsible for expenses related to the installation and maintenance of such equipment that is necessary to be installed at the Plant Site as required (as of the Commercial Operation Date) by the Interconnection Agreement, MISO, Federal Energy Regulatory Commission, NERC, MPSC, ReliabilityFirst Corporation, or any other governmental or regulatory authority having jurisdiction over the Plant. If any additional real-time meter and related communications equipment is required to enable such monitoring by Buyer, Buyer shall pay for such equipment. If the applicable electric distribution or transmission system owner or operator requires a release by Seller or permission from Seller to disclose such real-time information or to install real-time meter and related communications equipment, Seller shall provide such release or grant such permission.

6.6. Uncompensated Curtailments

Buyer shall not be obligated to make payments based on electric energy available pursuant to Section 7, Compensation, for any electric energy to the extent not deliverable by the Plant as a result of any of the following events which in each case shall be deemed to constitute an Uncompensated Curtailment: (i) Emergencies that limit Seller's ability to deliver energy from the Plant, or the transmission or distribution owner's or transmission or distribution operator's ability to accept, energy from the Plant, (ii) events of Force Majeure directly impacting the Plant, (iii) planned or unplanned distribution or transmission system outages that limit Seller's ability to deliver, or the distribution or transmission operator's ability to accept, energy from the Plant or that limit the distribution or transmission operator's ability to distribute such energy to customers, (iv) planned or unplanned outages of the Plant, or (v) any other curtailment or order from any Reliability Authority, regulator, or other lawful authority with respect to which Seller is required to comply (whether received directly by Seller or communicated from Buyer to Seller) to cease or modify operation of Seller's Plant. Notwithstanding anything in this Agreement to the contrary, any curtailments or failure to deliver electric energy shall not constitute an Uncompensated Curtailment, and Seller shall be compensated for any such curtailments and

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electric energy by Buyer in accordance with Subsection 7.1, Energy Payment, to the extent resulting from or arising out of: (a) any instruction or order issued by Buyer on a discretionary or preferential basis, (b) any market, bidding, scheduling or offering activities in connection with the Plant or any Products, or (c) Seller's compliance with the operating practices to the extent that curtailment does not otherwise result from any of the circumstances described in foregoing clauses (i) through (v).

6.7. Contract Termination Requirements

If required by the MISO Rules or the Interconnection Agreement, Seller shall inform Buyer via written notice if Seller plans, upon expiration of this Agreement, to (i) register the Plant with MISO or (ii) mothball or retire the Plant. Such notice shall be provided by Seller to Buyer on or before the end of October in the year prior to the termination of this Agreement, or within twenty (20) Days of any notice provided in accordance with Section 10, Early Termination. The Parties shall cooperate with each other to undertake the activities necessary to register, mothball, or retire the Plant in accordance with the MISO Rules. Seller shall indemnify Buyer against any costs, charges or penalties imposed on Buyer as a result of Seller's failure to comply or to cooperate with Buyer to comply with the MISO Rules as described in this Subsection 6.7.

6.8. New Regulations

(a) Change in Regulation

In the event that the United States government, including, but not limited to, the Environmental Protection Agency, and/or any other governmental entity or other entity with jurisdiction, changes or implements laws, regulations or rules during the term of this Agreement and such regulations make continued operation of the Plant materially and substantially uneconomical such that continued operation is no longer feasible, prudent and/or sustainable and Seller wishes to terminate this Agreement as a result, Seller shall provide twelve (12) months' written notice to Buyer of such fact, and provide sufficient supporting information to evaluate this claim (unless twelve (12) months' notice is not commercially and/or legally feasible under the circumstances, in which case Seller shall provide such notice as is commercially and/or legally feasible under the circumstances). The Parties shall negotiate in

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good faith amendments to this Agreement, and any such amendments shall provide for an equal sharing of costs, expenses and liabilities that result from or arise out of such changes or implementation of laws, regulations or rules. If the Parties are unable to implement such amendments within such 12-month period, this Agreement shall terminate at the time specified in such notice and neither Party shall have any further obligations hereunder except for those obligations which survive such termination, including, but not limited to, the indemnity provided in Subsection 6.7, Contract Termination Requirements, and indemnities provided in Subsection 13, Indemnity. For the avoidance of doubt, this Subsection 6.8(a) does not govern Permitting Events, which are instead governed by Subsection 6.8(b) below.

(b) Permitting Event

Upon the occurrence of a Permitting Event, Seller shall have the right to provide notice to Buyer, and upon Seller's delivery of such notice to Buyer, the Parties shall have ninety (90) days to negotiate and mutually agree upon amendments to this Agreement. If the Parties are unable to agree on amendments to this Agreement within such ninety (90) days, Seller may elect to terminate this Agreement by written notice to Buyer. Within ten (10) days following any such termination, Buyer shall return the Earnest Money Deposit (if any) to Seller, and neither Party shall have any further obligation or liability under this Agreement.

6.9. Operating Practices

As a condition precedent to the Commercial Operation Date at the Plant Site and within 90 days from the Agreement receiving MPSC approval, Seller and Buyer shall develop and agree on a commercially reasonable basis upon written Plant operating practices in a manner that does not impede or delay Seller's achievement of the Commercial Operation Date. The operating practices will be based on the design of the Plant and the activities necessary to implement this Agreement. The operating practices are intended to be a guide on how to integrate the Plant's electric generation into the bulk electric system. Buyer shall specify the topics covered by such operating practices, which may include, but are not necessarily limited to, formulation of operating practices, delivery of energy, scheduling of deliveries, outage scheduling and coordination, operating characteristics, available capacity, metering, and accounting and billing procedures. The operating practices shall include procedures for determining (a) Seasonally Tested Capacity and (b) rebalancing, each of which procedures shall be mutually agreed on by the Parties. The Parties have also agreed (i) Buyer shall not be entitled to Dispatch the Throughput or the Plant in excess of the Annual Storage Throughput Limit in any twelve (12) month period, and (ii) to a response time of no

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less than one (1) second. For the avoidance of doubt, Buyer shall provide and deliver to Seller at the Point of Delivery, at Buyer's expense, all charging energy in accordance with Subsection 7.2, Station Power and Charging Energy, required by Seller in order for Seller to fulfill its obligations under this Agreement. Parties further agree to modify or amend the operating practices as needed to maximize the Resource Adequacy Capacity as described in Section 6.3, Capacity Data.

## 7. COMPENSATION

### 7.1. Energy Payment

Commencing with the Commercial Operation Date and continuing for the term of this Agreement, Buyer shall pay Seller the Fixed Energy Price, as shown in Exhibit E, for Available Energy for the applicable Billing Month. Payments shall be reduced by the monthly escrow payment in accordance with Subsection 2.2, Security for Performance, if applicable. Such payments shall be made on a Monthly basis, pursuant to Subsection 9.1, Billing Procedure.

Seller shall maintain an Actual Availability equal to or greater than (i) ninety percent (90%) for the first full Planning Year after the Commercial Operation Date and (ii) ninety percent (90%) for each Planning Year thereafter, during the Contract Term (with respect to any such Planning Year, as applicable, the "Availability Standard"). For any Planning Year during which Seller fails to achieve the Availability Standard, Seller will pay Buyer \$7.50 for each Availability Shortfall MWh (the "Availability Damage Payment"); provided, however, that in no event shall the Availability Damage Payment owed by Seller for any Planning Year exceed an amount equal to the Early Termination Security Amount for such Planning Year *divided by* 5.0, subject to Section 27, Limitation of Liability.

Within thirty (30) days of the conclusion of (a) the first full Planning Year, (b) each Planning Year thereafter and (c) the termination of this Agreement, Seller shall deliver to Buyer a calculation showing Seller's computation of the Actual Availability of the Plant for the previous Planning Year and the Availability Damage Payment, if any, due to Buyer (the "Annual Availability Report"). If an Availability Damage Payment is due from Seller, Seller will pay such Availability Damage Payment no later than twenty (30) days after providing the Annual Availability Report. The requirement to pay such Availability Damage Payment, shall survive any termination of this Agreement until the final Planning Year or partial Planning Year has been reconciled.

Seller's payment of the Availability Damage Payment is Buyer's sole and exclusive remedy and the sole liability of Seller to Buyer for Seller's failure to satisfy the Availability Standard for any given Planning Year.

7.2. Station Power and Charging Energy

Commencing with the Commercial Operation Date and continuing for the term of this Agreement, Buyer shall pay for all energy used by or delivered to the Plant, including, all station power reasonably necessary to operate the Plant, charging energy stored in the Plant and energy lost through the charging and discharging of the Plant. Seller shall invoice Buyer for the cost of consumption for such energy no earlier than ten (10) days following the end of each month, and Buyer shall pay such invoices within thirty (30) days of receipt, provided that Seller may, at its option, designate Buyer the direct payor or payee with respect to any such charging energy. If so designated, Buyer shall pay directly to MISO or other relevant authority for all such charging energy used by or delivered to the Plant. Notwithstanding the foregoing, Seller shall be responsible to pay for station power and lost energy prior to the Commercial Operation Date and after the termination of this Agreement in accordance with Subsection 2.1, Effective Date and Term. Seller shall reimburse Buyer for any such expenses in the event that Buyer is charged directly for said energy prior to the Commercial Operation Date or after the termination of this Agreement.

7.3. Incidental Energy and Test Energy Payment

Commencing on the Initial Operation Date and continuing until Commercial Operation Date, Buyer shall pay Seller the Incidental Energy Price for Incidental Energy delivered.

7.4. Regulatory Disallowance

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

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customers. Future capacity and energy charges to be paid by Buyer shall be no greater than will be recoverable from Buyer's customers pursuant to such final appellate determination.

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

Buyer shall not seek a Disallowance Order and shall use good faith, commercially reasonable efforts to oppose any proposal to disallow costs included in the Agreement. Nothing in the Agreement shall constitute a waiver of any rights Seller may have to appeal or collaterally challenge a Disallowance Order as a violation of Seller's rights or as otherwise unlawful, including, without limitation, any rights or benefits under MCL 460.6j(13)(b).

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

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

#### 8. EVENTS OF DEFAULT

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

(a) the failure to make, when due, any undisputed payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice, provided that such failure will not constitute an Event of Default if there is availability to draw on Seller's Letter of Credit;

(b) such Party becomes Bankrupt (whether voluntarily or involuntarily);

(c) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

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(d) The failure of Seller, after the year in which the Commercial Operation Date occurs, to supply any Delivered Energy to the Buyer hereunder for any period of seven hundred thirty (730) consecutive Days for reasons other than Buyer's action or inaction (such as a failure to dispatch the Plant or Force Majeure);

(e) The making of a representation or warranty that is false or misleading in any material respect when made or when deemed or repeated that is not cured within thirty (30) Calendar Days after written notice;

(f) The failure by Seller to achieve a Commercial Operation Date on or before the Termination Deadline COD (subject to a day-for-day extension for Permitted Extensions);

(h) Delivered Energy and Incidental Energy exceeding the Target Contract Capacity multiplied by one (1) hour during any one-hour period;

(i) The determination in a bankruptcy case of Seller, by the appropriate governmental, judicial, or other authority, that Seller is not a "forward contract merchant" within the meaning of the United States Bankruptcy Code; or

(j) The failure of a Party to perform, observe, or comply with any material term or condition of the Agreement (except to the extent constituting a separate Event of Default) which is not cured within thirty (30) Calendar Days of written notification thereof by the other Party, except that if such failure is not capable of being remedied within such period, then for such longer period as is reasonably needed to effect the remedy, not to exceed a total period of ninety (90) Days from the date of initial written notification by the other Party, on the condition that the failing Party diligently pursues such remedy including, but not limited to:

- (i) Failure of either Party to comply with the terms and conditions of this Agreement (except to the extent constituting a separate Event of Default);
- (ii) An attempted assignment of the Agreement by either Party if done so in violation of Section 16, Successors and Assigns; Right of First Refusal;
- (iii) Failure of Seller to provide Buyer commercially reasonable access rights to the Plant necessary for either Party to perform its obligations under this Agreement, or Seller's attempt to revoke or terminate such access rights;

- (iv) Failure of either Party to provide information or data to the other Party as required under this Agreement;

9. BILLING

9.1. Billing Procedure

As soon as practicable after the end of each Billing Month, but in no event later than the twenty-first (21st) Day of the Month following the Billing Month, Seller shall submit to Buyer a statement ("Statement") which shall identify any amounts owed by Buyer or Seller pursuant to Section 7, Compensation, during such Billing Month and any other amounts owed between the Parties with respect to such Billing Month. Such Statement shall use the best available data, including, but not limited to metered data obtained in accordance with Section 4, Metering. At least three (3) Days prior to the payment due date, the Parties will review the final billing data and confirm the final amount owed by Buyer or Seller, as applicable. If necessary, Seller shall submit a revised Statement to Buyer.

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

In the unlikely event that metering equipment data is unavailable or MISO and Seller's financial settlement for the Plant is performed using data estimated by MISO, Seller may render a Statement based on its best estimate (using MISO estimated data, if applicable) of the amount owed by Buyer or Seller in order to meet the payment deadline in the second paragraph of this Subsection 9.1. Such a Statement shall indicate that it represents a best estimate of the amount owed. Such an estimate may utilize Buyer's metered data, if available. If such an estimate is used, an adjustment shall be made, if necessary, to the next Billing Month Statement issued after the date upon which actual data is determined to correct the prior Billing Month estimate.

9.2. Disputes

Each Party may, in good faith, dispute the correctness of any Statement or any adjustment to a Statement, rendered under this Agreement and the other Party may adjust any Statement for any arithmetic or computational error within three hundred sixty-five (365) Days of the

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

## 10. EARLY TERMINATION

### 10.1. Early Termination

If an Event of Default with respect to a Party (the "Defaulting Party") shall have occurred, and not be cured pursuant to Section 8, Events of Default, (if applicable), the other Party (the "Non-Defaulting Party") shall have the right to terminate this Agreement upon thirty (30) Business Days written notice to the Defaulting Party, as provided herein. In the event of the failure by the Defaulting Party to make timely payment due under this Agreement, the Non-Defaulting Party shall have the right, as an alternative or in addition to early termination, to recover from the Defaulting Party all amounts due, plus interest equal to the lesser of (a) the sum of the Federal Funds Effective Rate plus two (2) percent, or (b) the maximum rate permitted by applicable Law.

### 10.2. Early Termination Payment

Upon termination by Buyer pursuant to this Section 10 (other than with respect to an Event of Default associated with Subsection 8(f), the exclusive remedy for which is set forth in Subsection 5.3), Seller shall owe Buyer the Early Termination Security Amount as liquidated damages. The Early Termination Security established in accordance with Subsection 2.2, Security for Performance, shall be applied toward satisfying such amount and within twenty (20) Days after Buyer has provided notice of termination to Seller pursuant to this Section 10, Buyer shall draw upon or withdraw the funds from, the applicable Early Termination Security and apply such funds toward the satisfaction of Seller's obligation to pay the Early Termination Security Amount. The provisions of this Section 10 regarding payments shall survive any termination of this Agreement pursuant to this Section 10.

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Upon termination by Seller pursuant to this Section 10, Buyer shall owe Seller an "Early Termination Payment" as direct damages equal to (a) an amount equal to the present value of the economic loss, if any (excluding Contract Costs), to Seller resulting from such termination for the remainder of the Contract Term, determined by Seller in a commercially reasonable manner (the "Losses"), minus (b) an amount equal to the present value of the economic benefit to Seller, if any, resulting from such termination for the remainder of the Contract Term, determined by Seller in a commercially reasonable manner (the "Gains"), plus (c) any amounts owed by Buyer to Seller arising prior to such termination, net of any amounts owed by Seller to Buyer arising prior to such termination. If Seller's Gains exceed its Losses, then clauses (a) and (b) shall each be deemed equal to zero dollars (\$0).

The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, such as termination by Seller pursuant to this Section 10, the obligor's liability shall be limited to direct, actual damages and such other remedies as are available at law or in equity.

Buyer shall have no obligation to enter into any subsequent Power Purchase Agreement(s) with Seller until such time that any and all amounts owed to Buyer, including any applicable early termination payment, are paid. Either Party's obligation to make payments already due associated with deliveries received prior to the date of termination of the Agreement will survive any termination initiated under Section 10, Early Termination.

### 10.3. Duty to Mitigate

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

## 11. ADMINISTRATIVE COMMITTEE

### 11.1. Purpose

From time to time various administrative and technical matters may arise in connection with the terms and conditions of this Agreement which will require the cooperation and consultation of the Parties and the exchange of information. As a means of providing for such cooperation, consultation and exchange, an Administrative Committee is hereby established with the functions described in Subsection 11.4 hereof. However, the Administrative Committee shall not (1)

have the authority to amend this Agreement or (2) diminish in any manner the authority or responsibility of either Party as set forth in the various sections of this Agreement.

#### 11.2. Membership

The Administrative Committee shall have two (2) members, with one designated by each Party. Within sixty (60) Days after the Effective Date, each Party shall designate its representative on the Administrative Committee and shall promptly give written notice thereof to the other Party. Thereafter, each Party shall promptly give written notice to the other Party of any change in the designation of its representative on the Administrative Committee. The Chairman of the Administrative Committee shall be the Buyer's representative. All actions taken by the Administrative Committee must be approved by both members.

#### 11.3. Meetings

The Administrative Committee shall meet on dates and at locations (or by conference call) to be mutually agreed upon by the representatives. Meetings may be attended by individuals other than the representatives of the Parties.

#### 11.4. Functions

The Administrative Committee shall have the following functions:

(a) Provide liaison between the Parties at the management level and exchange information with respect to significant matters of design, construction, operation, and maintenance of the Plant.

(b) Appoint ad hoc committees, the members of which need not be members of the Administrative Committee, as necessary to perform detailed work and conduct studies regarding matters requiring investigation.

(c) Review, discuss and attempt to resolve disputes arising under this Agreement.

#### 11.5. Expenses

Each Party shall be responsible for the salary and out-of-pocket expenses of its representative and its other attendees. All other expenses incurred in connection with the performance by the Administrative Committee of its functions shall be allocated and paid as determined by the Administrative Committee.

## 12. FORCE MAJEURE

### 12.1. Definition

Except as provided below in this Subsection 12.1, the term “Force Majeure” means acts or actions beyond the reasonable control of the affected Party, including without limitation, acts of God; flood; earthquake; storm or other natural calamity; labor disputes; third-party vandalism; war; insurrection; riot; blockades; embargos; epidemic (including, without limitation, the COVID-19 coronavirus pandemic); curtailment (including, without limitation, any curtailment ordered by any Reliability Authority), order, regulation, quarantine or restriction imposed by governmental authority; fire or explosion not caused by criminal acts by the Party claiming Force Majeure; transportation accidents or perils at sea; or other similar cause beyond the reasonable control but not due to negligence of the Party affected. Notwithstanding the foregoing, for purposes of this Agreement, the term “Force Majeure” shall not include: (1) shortages of supplies and shortage of fuel, other than shortages of supplies or shortages of fuel occurring in time of calamity which is preventing major users in the United States, including, without limitation, the Seller, from obtaining supplies or fuel, as applicable, for their operations; 2) mechanical breakdown of Seller’s equipment unless Seller demonstrates such breakdown was primarily due to an event of Force Majeure; and (3) strikes or labor disturbances of employees of the Party affected that are solely directed at the Party affected. The term “fuel” as used in this Subsection 12.1 shall be interpreted to include the source of fuel for the Plant, except to the extent the shortage of fuel was caused by an event of Force Majeure.

### 12.2. Obligations Under Force Majeure

Force Majeure shall apply to the following situations:

(a) If Seller is delayed or rendered wholly or partially unable by the occurrence of a Force Majeure event to charge, discharge, or otherwise deliver energy to the Point of Delivery or otherwise perform under this Agreement, then, in each case, for the duration of such Force Majeure event, subject to the conditions below and Seller’s obligations under Section 3, Product To Be Supplied, (i) Seller’s obligations to supply Product to Buyer, or to otherwise perform under this Agreement, and (ii) Buyer’s obligation to pay for Product pursuant to Section 7, Compensation, in each case, shall be limited to the amount of Product that Seller supplies and delivers.

(b) If Buyer is delayed or is rendered wholly or partially unable by the occurrence of a Force Majeure event to physically receive Product that is supplied or produced by

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Seller at the Point of Delivery , or otherwise perform under this Agreement, then, in each case for the duration of such Force Majeure event, subject to the conditions below, (i) Buyer's obligation to pay Seller for Product pursuant to Section 7, Compensation, or to otherwise perform under this Agreement, and (ii) Seller's obligations to supply and deliver Product to Buyer, in each case, shall be limited to the amount of Product that Buyer receives. Notwithstanding the above, the inability to pay for any Product shall not be deemed to be an event of Force Majeure hereunder.

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

Notwithstanding any of the foregoing provisions, if a Party has claimed Force Majeure that affects more than ten percent (10%) of any individual obligation for more than a total of one hundred eighty (180) Days during any consecutive five (5) year period occurring after the Commercial Operation Date during the term of this Agreement (provided, however, that Seller may claim up to an additional one hundred eighty (180) Days of Force Majeure, during said five (5) year period, in the event of significant damage to Seller's Plant resulting from an event of Force Majeure), the non-affected Party shall have a right to terminate this Agreement, without any further liability of either Party to the other (other than for obligations that arose prior to termination), upon written notice to the affected Party, given at any time while such Force Majeure continues after the 180<sup>th</sup> Day (or such later Day as may be applicable to a Force Majeure in which Seller is the affected Party in the event of significant damage to Seller's Plant resulting from an event of Force Majeure). However, if the affected Party has both (i) provided notice to the non-affected Party that it is able to resume performance of its obligations, and (ii) begins to resume performance of its obligations prior to delivery of written notice of the early termination from the non-affected Party, such notice of early termination from the non-affected Party shall be void.

### 12.3. Continued Payment Obligation

Any Party's obligation to make payments already due under this Agreement shall not be suspended by Force Majeure. For the avoidance of doubt, to the extent that Buyer is the party affected by a Force Majeure, Seller shall be permitted to sell all or part of the Product which Buyer is unable to receive due to the Force Majeure, to any other person in Seller's sole discretion, and Buyer shall not be obligated to compensate Seller for such sold Product.

### 13. INDEMNITY

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

Buyer shall indemnify, defend and hold the Seller, its officers, agents and employees harmless from any and all liability, claims, demands, costs, judgments, loss or damage, including reasonable attorney fees, for personal injury or death to natural persons and/or physical damage to tangible property of any Person, to the extent attributable to or resulting from damage or injuries occurring on Buyer's own system after the Point of Delivery, unless the damage or injuries on Buyer's system is/are caused by the sole negligence or willful misconduct of the Seller. Without limiting the foregoing, Buyer shall at Seller's request, defend at Buyer's expense any suit or proceeding brought against Seller for any of the above-named reasons; provided that Seller promptly notifies Buyer in writing of any such claim and promptly tenders to Buyer the control and defense of any such claim at Buyer's expense and with Buyer's choice of counsel. Seller shall cooperate with Buyer, at Buyer's

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expense, in defending or settling such claim and Seller may join in defense with counsel of its choice at its own expense. Seller may not settle any such claim without Buyer's prior written consent.

14. DISAGREEMENTS

14.1. Administrative Committee Procedure

If any disagreement arises on major matters pertaining to this Agreement, either Party may bring the disagreement to the Administrative Committee, which shall attempt to resolve the disagreement in a timely manner. If the Administrative Committee can resolve the disagreement, such resolution shall be reported, signed by both parties and shall be binding upon the Parties provided such resolution shall not alter or amend this Agreement. If the Administrative Committee cannot resolve the disagreement within a reasonable time, an officer of Buyer or an officer of Seller can, by written notice to the members of the Administrative Committee, withdraw the matter from consideration by the Administrative Committee and submit the same for resolution to the officer of Buyer and the officer of Seller. If these representatives of the Parties agree to a resolution of the matter, such resolution shall be reported in writing to, and shall be binding upon, the Parties; but if said representatives fail to resolve the matter within thirty (30) Days after its submission to them, then either Party may pursue any remedies available at law and equity.

14.2. Obligations to Continue

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

15. CHANGES CONCERNING APPLICABLE LAW

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

16. SUCCESSORS AND ASSIGNS; RIGHT OF FIRST REFUSAL

16.1. Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the successors and

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assigns of the respective Parties hereto. This Agreement shall not be assigned by a Party except as specified in this Section 16.1, Successors and Assigns, without the other Party's prior written consent, which consent shall not be unreasonably withheld, but provided that (i) except as stated under any collateral assignment by Seller, any assignee shall expressly assume in writing all of assignor's obligations hereunder in a form reasonably acceptable to the non-assigning party; (ii) no such assignment shall impair any security given by Seller hereunder; and (iii) Seller may assign all of its rights under this Agreement for collateral security purposes, provided that Buyer shall not be required to sign any financing document in connection with such collateral assignment other than as required pursuant to this Section 16.1. Any attempted assignment or transfer in violation of this Section 16 shall be void and not merely voidable.

If a lender or other financing party has requested that Buyer and Seller enter into a consent to collateral assignment of this Agreement to assign this Agreement in connection with any loan, lease or other financing arrangement for the Plant, Buyer will enter into a consent to collateral assignment substantially in the form of Exhibit C hereto or in such other form as is requested by such party and reasonably acceptable to Buyer. Buyer shall also promptly execute and deliver to Seller and its actual and potential (i) lenders, (ii) assignees, (iii) equity investors (including, without limitation, tax equity investors), (iv) purchasers of federal or state tax credits, and (v) other financing parties, in each case, any documentation reasonably requested by such parties, including, without limitation, reasonable estoppel certificates attesting to the existence and force and effect of this Agreement, in a form substantially as set forth in Exhibit D or otherwise reasonably acceptable to Seller, Buyer and such entities.

#### 16.2. Right of First Refusal

If Seller definitively decides to accept a bona fide written offer to sell the Plant or Seller's Company or any portion of the Plant to any third party (other than to a lender, or an Affiliate of Seller), then prior to accepting any such offer Seller shall, deliver to Buyer written notice of the material terms of such proposed sale, including, but not limited to, the purchase price, expected closing date, and any financial security required to be delivered. Within ten (10) Business Days after Buyer's receipt of said written notice, Buyer shall have the right to elect to purchase the Plant or Seller's Company or any portion of the Plant, identified in the written notice, subject to the terms materially set forth in the bona fide written offer by delivering written notice to Seller of Buyer's election to purchase. Buyer's failure to deliver written notice to Seller of its election to purchase, or

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Buyer's written declination of purchase, shall permit Seller to sell the Plant or Seller's Company or any portion of the Plant in accordance with the terms of the bona fide written offer at any time within one hundred twenty (120) Days after the end of the ten (10) Business Day period for Buyer to make an election. Buyer shall provide reasonable and customary cooperation with Seller in connection with such sale and any related acquisition financing. If Seller does not complete a sale within such one hundred twenty (120) Day period, it must submit a new bona fide written offer to Buyer in accordance with this Subsection 16.2, Right of First Refusal. Buyer's right of first refusal as outlined above shall be applicable to every instance in which Seller intends to accept a bona fide written offer during the entire term of the Agreement. For the avoidance of doubt, Buyer's failure to notify Seller of Buyer's election to purchase or Buyer's notice of declination to purchase in one instance shall not waive Buyer's right of first refusal in subsequent sales of the Plant or Seller's Company or any portion of the Plant.

If Buyer provides notice exercising its right to purchase, the Parties shall negotiate in good faith to enter into a purchase and sale agreement pursuant to which Buyer will purchase all or part of the Plant or Seller's Company, provided that such negotiations shall not exceed one-hundred twenty (120) Days. Said purchase and sale agreement will contain, as conditions precedent to the closing of the sale, approval of the transaction by the MPSC and FERC, as applicable. Within ten (10) Days after receipt of Buyer's timely notice to purchase, Seller shall provide Buyer with information or access to information as reasonably requested or necessary for Buyer's due diligence regarding the potential purchase of the Plant or Seller's Company. Information shall continue to be provided by Seller to Buyer as reasonably requested and in form and substance reasonably acceptable to Buyer, and shall include, but not be limited to, verification of calculations or information relative to the determination of the potential purchase price. Within sixty (60) Days after receipt of Buyer's timely notice to purchase, Seller shall provide a form of purchase and sale agreement for all or part of the Plant or Seller's Company, which shall form the basis of the Parties' negotiation of the terms and conditions of the potential purchase. The purchase and sale agreement shall provide customary representations and warranties made by both Parties. Buyer and Seller each agree that there is no obligation hereunder by either Party to buy or sell all or part of the Plant or Seller's Company until and unless Buyer and Seller mutually agree to the final, negotiated terms and conditions contained in definitive documents which are duly executed by each Party.

If the Parties agree on definitive documents, then upon satisfaction of all conditions precedent to closing, Seller shall assign to Buyer, and Buyer shall assume, pursuant to such definitive documents, all of Seller's right, title and interest in and to all property and agreements

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related to the ownership, operation and maintenance of the Plant (or applicable portion of the Plant). The closing shall be subject to obtaining any governmental, regulatory, and other required third-party consents and approvals for the transfer of the Plant and/or Seller's Company, in addition to satisfaction of other customary closing conditions.

If the Parties are unable to agree on definitive documents within such one-hundred twenty (120) day period, then Seller shall be permitted to sell the Plant or Seller's Company in accordance with the terms of the bona fide written offer at any time thereafter.

17. GOVERNING LAW; WAIVER OF JURY TRIAL

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

**WAIVER OF JURY TRIAL.** EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY REQUIREMENTS OF LAW ANY RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY CLAIM, CAUSE OF ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE IMPLEMENTATION OF THIS AGREEMENT.

18. HEADINGS

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

19. NOTICE TO PARTIES

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

20. WAIVER

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

21. NONSEVERABILITY

The following provisions of this Agreement are hereby declared to be essential provisions: (i) the mutual protections and obligations of the Parties' limitation of liability in accordance with Section 27, (ii) Seller's requirements to reach commercial operation, Buyer's right to retain earnest money and Buyer's right to retain liquidated damages in Subsection 5.3, and (iii) all rights conveyed to the Parties in accordance with Subsection 7.4. If any such essential provision of this Agreement is declared invalid in whole or in material part in a final, non-appealable order by a court or other tribunal of competent jurisdiction, then the Parties shall promptly enter into good faith negotiations to amend this Agreement to remedy the invalidated provision(s) in a manner that reasonably preserves the rights, obligations and economic positions of the Parties under this Agreement as if such provision(s) had not been invalidated. If the Parties cannot reach a mutual agreement through good faith negotiations to amend this Agreement in accordance with the preceding sentence within a period of ninety (90) days, the Party adversely affected by such invalidation shall have the right to terminate this Agreement by giving the other Party thirty (30) days' notice of such termination. Notwithstanding the remainder of this Section 21, the Parties agree that Buyer retains the right to determine, in its sole discretion, whether to accept any proposed or potential amendment that would affect in any way its rights to obtain relief in accordance with Subsection 7.4.

If any non-essential provision of this Agreement is held to be invalid or unenforceable, it shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity and enforceability of the remainder of the provision or provisions of this Agreement and without giving rise to any right of termination; provided, however, that Seller and Buyer shall negotiate in good faith to amend this Agreement to replace such invalid or unenforceable provision or provisions to give effect to the original intent of Seller and Buyer for the affected provision to the greatest extent permitted by applicable law.

## 22. MISCELLANEOUS

### 22.1. No Third-Party Beneficiaries

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

### 22.2. Disclaimer of Joint Venture, Partnership and Agency

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

### 22.3. Diverse and Michigan-Based Suppliers

Buyer is committed to the development of diverse businesses including minority-owned, women-owned, veteran-owned, disabled and LGBT business enterprises ("Diverse Suppliers") and to returning spend dollars to vendors in the state of Michigan. Buyer's expectation is that Seller will share in these goals and offer Diverse Suppliers and Michigan-based suppliers commercially reasonable opportunities to participate in any subcontracts awarded by Seller.

In addition, when Buyer has an annual spend that exceeds \$3 million with a counterparty like Seller, Buyer requires such counterparties to document their spend with Diverse Suppliers and Michigan-based suppliers ("Tier II Spend") associated with the execution of work. Buyer shall identify and advise Seller as to the format for such reporting, which Seller agrees to use commercially reasonable efforts to provide. Reporting may be for specific goods and services that directly support the fulfillment of Buyer's work (direct spend) or as a ratio of Seller's total sales and/or revenue to that associated with Buyer (indirect spend).

## 23. ENTIRE AGREEMENT AND AMENDMENTS

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

24. ELIGIBLE CONTRACT PARTICIPANT

The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are intended to be a “forward contract” within the meaning of the United States Bankruptcy Code. Each Party agrees, solely as to itself, that it is intended that it be a “forward contract merchant” within the meaning of the United States Bankruptcy Code. In the event that this transaction is deemed to be a financial hedge or similar arrangement with respect to Buyer’s obligation to pay Seller the Fixed Energy Price for Available Energy as provided in Sections 3 and 7, each Party represents to the other that it is, or at the Commercial Operation Date will be, an “Eligible Contract Participant” as defined in the Commodity Exchange Act, as amended, 7 U.S.C. Section 1(a)(18); provided, however, it is not the intent of the Parties that this Agreement be subject to such Act.

25. SERVICE CONTRACT

The Parties acknowledge and agree that this Agreement purports to be a “service contract” within the meaning of Section 7701(e) of the Internal Revenue Code, the Parties hereto intend it to be such, and this Agreement should be construed accordingly.

26. COUNTERPARTS AND ELECTRONIC DOCUMENTS

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

27. LIMITATION OF LIABILITY

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. EXCEPT FOR A PARTY’S INDEMNITY OBLIGATIONS OR AS OTHERWISE EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

## 28. REPRESENTATIONS

Each Party represents to the other Party that (a) it has taken all appropriate and necessary internal actions to authorize the execution, delivery and performance of this Agreement, (b) this Agreement has been duly executed by such Party, (c) except for MPSC approval of this Agreement as provided for in Subsection 2.1 and for other permits and authorizations to be obtained in the ordinary course by Seller, its Affiliates and/or contractors in the development, construction, commissioning and operation of the Plant (which shall be obtained in due course), it has obtained all consents, approvals and authorizations necessary for the valid execution, delivery and performance of this Agreement, and (d) this Agreement has been duly executed by and constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as limited by applicable bankruptcy and insolvency laws and the availability of equitable remedies.

## 29. CONFIDENTIALITY

Buyer agrees and acknowledges that in connection with this Agreement, Seller may, but only to the extent reasonably necessary, separately disclose commercially sensitive information to Buyer, including, without limitation, information with respect to outages, suppliers, technical specifications, construction progress, potential and actual onsite safety events, operational performance, test performance, and telemetered data ("Confidential Information"). Buyer agrees that it shall use commercially reasonable efforts to not disclose to another Person or publicly disseminate any Confidential Information without the prior written consent of Seller; *provided* that Buyer shall be permitted, without notice or Seller's written consent, to disclose Confidential Information to the extent (i) required by law, judicial or regulatory process, tariff rule, governmental agency requirement or request, or court order to disclose any Confidential Information, including in any proceedings before the Michigan Public Service Commission or Federal Energy Regulatory Commission, or (ii) necessary to receive full cost recovery of amounts paid to Seller, based on the reasonable judgement of Buyer.

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**Exhibit A Early Termination Security Amount Schedule**

The Early Termination Security amount will be: \$150,000 per expected ZRC-year for the Contract Term. Expected ZRC-years included in such calculation will be based on the average historical ZRC production, if applicable, or in the alternate the MISO class average capacity for similar technologies based on the Contract Capacity using the following equation.

$$\text{Early Termination Security Amount} = \$150,000 \times \text{MISO class average (\%)} \times \text{Contract Capacity (MW)}$$

In accordance with this methodology, the Early Termination Security amount is detailed in the following table.

<u>Planning Year</u> (Commencing on June 1 of the stated year)	<u>Amount</u>
2025	\$ 14,250,000
2026	\$ 14,250,000
2027	\$ 14,250,000
2028	\$ 14,250,000
2029	\$ 14,250,000
2030	\$ 14,250,000
2031	\$ 14,250,000
2032	\$ 14,250,000
2033	\$ 14,250,000
2034	\$ 14,250,000
2035	\$ 14,250,000
2036	\$ 14,250,000
2037	\$ 14,250,000
2038	\$ 14,250,000
2039	\$ 14,250,000
2040	\$ 14,250,000
2041	\$ 14,250,000
2042	\$ 14,250,000
2043	\$ 14,250,000
2044	\$ 14,250,000
2045	\$ 14,250,000
2046	\$ 14,250,000
2047	\$ 14,250,000
2048	\$ 14,250,000
2049	\$ 14,250,000
2050	\$ 14,250,000
2051	\$ 14,250,000
2052	\$ 14,250,000
2053	\$ 14,250,000
2054	\$ 14,250,000

Exhibit B Form of Guaranty

GUARANTY

This GUARANTY (this "Guaranty"), dated as of \_\_\_\_\_ 20\_\_, is made by \_\_\_\_\_, a \_\_\_\_\_ [corporation], whose principal offices are located at \_\_\_\_\_ ("Guarantor") to Consumers Energy Company, a Michigan corporation, whose principal offices are located at One Energy Plaza, Jackson, Michigan 49201 ("Counterparty").

WHEREAS, Tibbits Energy Storage LLC, a [ ] limited liability company, whose principal offices are located at 1108 Lavaca St., Suite 110-349, Austin, Texas 78701 ("Obligor"), has entered, or may enter, into that certain Power Purchase Agreement, dated as of \_\_\_\_\_, 2023, with Counterparty regarding [ ] (the "Agreement") (capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Agreement);

WHEREAS, as a condition precedent to Counterparty's obligations to affect the transactions contemplated in the Agreement, Counterparty is requiring Guarantor to execute and deliver this Guaranty in favor of Counterparty;

WHEREAS, Guarantor is the indirect parent company of Obligor and Guarantor is willing to guarantee certain of Obligor's obligations under the Agreement on the terms and subject to the conditions set forth below;

NOW, THEREFORE, in consideration of the premises and in order to induce Counterparty to enter into the Agreement, Guarantor hereby agrees as follows:

1. Guaranty.

(a) Guarantor hereby absolutely, irrevocably and unconditionally guarantees, subject to and in accordance with the terms and conditions of this Guaranty, the punctual payment and performance when due of all obligations of Obligor to the Counterparty now or hereafter existing under the Agreement (collectively, the "Guaranteed Obligations"), and agrees to pay any and all reasonable and documented costs incurred by Counterparty in enforcing or attempting to enforce any rights under this Guaranty. This is a guaranty of payment, not of collection. For purposes hereof, the phrase "when due" shall include when any such obligations of Obligor under the Agreement would be due or are required to be performed, whether at maturity, upon demand, by acceleration or otherwise, in accordance with the Agreement and subject always to any applicable notice and cure periods set forth in the Agreement, but without giving effect to any stay, injunction or similar action resulting from a bankruptcy or similar proceeding or any order of any event or governmental entity affecting Obligor, such

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maturity, demand or acceleration being deemed to have occurred upon, the taking effect of such stay, injunction or similar action.

(b) In the event Obligor shall fail to pay any amount owed to the Counterparty under the Agreement, Guarantor shall, upon written demand from Counterparty of such failure, pay or cause to be paid the amount owed within ten (10) business days of receipt of such written demand. In the event payment is not made in accordance with the foregoing sentence, the amount owed shall bear interest from the date of such demand until receipt of such payment at a rate per annum equal to the Prime Rate set forth in The Wall Street Journal's Money Rates table.

(c) Notwithstanding anything to the contrary herein, Guarantor's aggregate obligation to Counterparty hereunder is limited to [REDACTED] U.S Dollars (\$ [REDACTED]) (the "Maximum Guaranteed Amount") (it being understood for purposes of calculating the Maximum Guaranteed Amount of Guarantor hereunder that any payment by Guarantor either directly or indirectly to Counterparty, pursuant to a demand made upon Guarantor by Counterparty or otherwise made by Guarantor pursuant to its obligations under this Guaranty including any indemnification obligations, shall reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis, plus reasonable and documented costs and expenses incurred by Counterparty in enforcing this Guaranty). EXCEPT AS EXPRESSLY PAYABLE BY OBLIGOR PURSUANT TO THE AGREEMENT, IN NO EVENT SHALL GUARANTOR BE SUBJECT TO ANY CONSEQUENTIAL, EXEMPLARY, EQUITABLE, LOSS OF PROFITS PUNITIVE OR TORT DAMAGES.

(d) Guarantor agrees that the obligations of Guarantor under this Guaranty are independent of the obligations of Obligor under the Agreement, and a separate action or actions may be brought against Guarantor to enforce this Guaranty, irrespective of whether any action is brought against Obligor or whether Obligor is joined in any such action or actions. Subject to the above notice requirement, Counterparty shall have the right to proceed first and directly against Guarantor under this Guaranty without first proceeding against Obligor or exhausting any other remedies which it may have.

(e) If any amount paid by Obligor in respect of the Guaranteed Obligations is required to be repaid by Counterparty pursuant to a court order in any bankruptcy or similar legal proceeding, Guarantor's obligations hereunder shall be restored as if such payment by Obligor had never been made, and Guarantor, to the extent permitted by applicable law or order, waives the benefit of any statute of limitations affecting the enforceability of this provision of this Guaranty.

(f) This Guaranty shall terminate upon the earliest to occur of the following: (i) the date that all of the Guaranteed Obligations are indefeasibly discharged, (ii) the date that is [REDACTED] (as may be extended in Section 2.1 of the Agreement), and (iii) the date that is ten (10) days after receipt by Counterparty of written notice of termination of

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this Guaranty from Guarantor, provided that such written notice of Guarantor is conditioned upon the Guarantor's amendment or replacement of this Guaranty pursuant to the applicable terms of the Agreement. It is understood and agreed, however, that notwithstanding any such termination, this Guaranty shall continue in full force and effect with respect to all Guaranteed Obligations arising prior to such termination unless such Guaranteed Obligations are subsequently guaranteed by another guarantor as a result of an amendment or replacement of this Guaranty pursuant to the applicable terms of the Agreement as described above.

2. Obligations Unconditional. The obligations of Guarantor hereunder shall be absolute, irrevocable and unconditional. Notwithstanding anything herein to the contrary, without limiting Guarantor's own defenses and rights hereunder, Guarantor retains for itself all rights, defenses, setoffs, counterclaims and other defenses that are or would be available to Obligor arising from or in connection with the Agreement, the nature of Counterparty's claim or otherwise, including any limitation on damages payable thereunder; provided that Guarantor hereby expressly waives to the fullest extent permitted by law any defenses, now or in the future, based upon any of the following:

(a) the release or waiver, by operation of applicable law or order or by Counterparty, of (i) the performance or observance by Obligor of any express or implied agreement, covenant, term or condition relating to the Agreement to be performed or observed by Obligor, (ii) any other guarantor or obligor or any of the Guaranteed Obligations or (iii) any security for any Guaranteed Obligations;

(b) the extension of time for the payment or performance by Obligor of all or any portion of the Guaranteed Obligations or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Agreement;

(c) any failure, omission, delay or lack of diligence on the part of the Counterparty to enforce, assert or exercise any right, privilege, power or remedy conferred on the Counterparty pursuant to the terms hereof or of the Agreement, respectively, or any action on the part of Obligor granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, Obligor or any of the assets of Obligor;

(e) any invalidity or unenforceability of, or defect or deficiency in, the Agreement or any of the Guaranteed Obligations; and

(f) the settlement or compromise of any obligation guaranteed

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hereby or hereby incurred; and.

(g) any other defenses expressly waived by Guarantor in this Guaranty or by Obligor in the Agreement.

3. Waivers Guarantor hereby waives notice of acceptance of this Guaranty and of any liability to which it applies or may apply, presentment, demand for payment (except as provided in Section 1 hereunder), any right to require a proceeding first against Obligor or any other person before proceeding against Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands (except as provided in Section 1 hereunder), and hereby consents to any extension of time of payment of the obligations under the Agreement. Guarantor waives any defenses that it may have as a result of its failure to establish adequate means of obtaining from Obligor on a continuing basis financial and other information pertaining to Obligor's business and financial condition, or Guarantor's failure to be and now and hereinafter continue to be completely familiar with the business, operation and financial condition of Obligor and its assets. Guarantor hereby waives and relinquishes any duty on the part of Counterparty to disclose to Guarantor any matter, fact or thing relating to the business, operation or financial condition of Obligor and its assets now known or hereafter known by Counterparty during the term of this Agreement. Guarantor further waives notice of, and hereby consents to, any change in, amendment to, waiver of or consent to a deviation from, any of the terms and provisions of the Agreement or any renewal, extension, increase, acceleration or other alteration of any of the Guaranteed Obligations or the taking of any security for the Guaranteed Obligations or any release thereof.

4. Subrogation. Guarantor shall be subrogated to all rights of Counterparty against Obligor in respect of any amounts paid by Guarantor pursuant to this Guaranty, provided that Guarantor will not exercise any rights it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise, until all of the Guaranteed Obligations shall have been paid in full. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all the Guaranteed Obligations shall not have been paid in full, such amount shall be held in trust for the benefit of Counterparty and shall forthwith be paid to Counterparty to be applied to the Guaranteed Obligations. If (a) Guarantor shall perform and shall make payment to Counterparty of all or any part of the Guaranteed Obligations and (b) all the Guaranteed Obligations shall have been paid in full, Counterparty shall, at Guarantor's request, execute and deliver to Guarantor appropriate documents necessary to evidence the transfer by subrogation to Guarantor of any interest in the Guaranteed Obligations resulting from such payment by Guarantor.

5. Representations and Warranties. Guarantor hereby represents and warrants to Counterparty as follows:

(a) Guarantor is a [corporation] duly organized, validly existing and in good standing under the laws of \_\_\_\_\_. Guarantor is duly qualified to do business in, and is in good standing in, all other jurisdictions where the nature of its business or the nature of

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property owned or used by it make such qualification necessary.

(b) The execution and delivery by Guarantor of this Guaranty, and the performance by Guarantor of its obligations hereunder (i) are within Guarantor's [company] [corporate] powers, (ii) have been duly authorized by all necessary [company] [corporate] action and (iii) do not and will not (A) violate any provision of the charter or by-laws or other organizational documents of Guarantor, (B) violate any applicable law or order binding on or affecting Guarantor, or (C) result in a breach of, or constitute a default under, any indenture or loan or credit agreement or any other agreement, lease or instrument to which Guarantor is a party or by which it or its properties may be bound or affected.

(c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, debtor relief or similar laws affecting the rights of creditors generally and the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(d) Guarantor has established adequate means of obtaining financial and other information pertaining to the business, operations and condition (financial or otherwise) of Obligor and its properties on a continuing basis.

6. Amendments. No amendment or waiver of any provision of this Guaranty, and no consent to any departure by Guarantor herefrom, shall in any event be effective unless the same shall be in writing and signed by both Guarantor and Counterparty.

7. Assignment. Neither Guarantor nor the Counterparty may assign its rights, interests or obligations hereunder to any other person without the prior written consent of Guarantor or Counterparty, as the case may be; provided that Counterparty may transfer all or any portion of its rights, interests or obligations under this Guaranty without the consent of Guarantor to any permitted transferee of the Agreement.

8. Governing Law. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Michigan without regard to its principles of conflicts of laws.

9. Notices. Any notice required or permitted to be given hereunder shall be in writing and mailed via a nationally recognized overnight delivery service to the address as set forth in the first paragraph hereof. Notices that are sent via overnight delivery shall be deemed effective one (1) business day after being mailed.

10. Severability. The invalidity or unenforceability of any provision of this Guaranty shall not affect the remaining provisions that shall be liberally construed in order to carry out the intentions of Guarantor and Counterparty in respect of and including any provision which is invalid

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or unenforceable as nearly as possible.

11. Entire Agreement. This Guaranty constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

12. Miscellaneous. The provisions of this Guaranty will bind and benefit the successors and permitted assigns of Guarantor and Counterparty. The term "Obligor" means both Obligor and its successors and permitted assigns pursuant to the Agreement and the term "Counterparty" means Counterparty and its successors and permitted assigns.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed by its duly authorized officer as of the day first above written.

**[GUARANTOR COMPANY NAME]**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Exhibit C Form of Collateral Assignment

COLLATERAL ASSIGNMENT OF  
POWER PURCHASE AGREEMENT

This ASSIGNMENT OF POWER PURCHASE AGREEMENT (“Assignment Agreement”) is entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_, among [Counterparty], a [\_\_\_\_\_] [Legal Entity Type] (the “Borrower”), Consumers Energy Company, a Michigan corporation (“Consumers”), and [Lender Name], a [Legal Entity Type] (the “Bank”). Borrower, Consumers and Bank are herein sometimes referred to individually as “Party” and collectively as “Parties” where appropriate.

WHEREAS, Consumers and Borrower entered into a Power Purchase Agreement dated \_\_\_\_\_, 20\_\_ (the “REPA”), pursuant to which Consumers agreed to purchase Storage Services (as defined in the REPA) to be supplied by a battery energy storage facility called Tibbits (the “Facility”);

WHEREAS, Borrower and/or one or more of its affiliates has entered into that certain [Financing Agreement], dated as of \_\_\_\_\_ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”) with the financial institutions from time to time parties thereto as lenders and/or issuing banks, and the Bank as agent on behalf of such financial institutions, pursuant to which, among other things, such financial institutions have extended commitments to make loans and other financial accommodations to, and for the benefit of, the Borrower;

WHEREAS, pursuant to a [Security Agreement] between the Borrower and the Bank, dated as of \_\_\_\_\_ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), the Borrower has agreed, among other things, to assign, as collateral security for the obligations of the Borrower and/or one or more of its affiliates under the Credit Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the REPA to the Bank; and

WHEREAS, it is a condition precedent to the making of loans pursuant to the Credit Agreement that the Borrower and the other parties hereto execute this Assignment Agreement.

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

1. Assignment.

(a) As security for the due and punctual performance and payment of all of the Borrower’s obligations under the Credit Agreement, the Borrower hereby assigns to the Bank all

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of the Borrower's right, title and interest in, to and under the REPA, and Consumers hereby consents to such assignment. Unless expressly provided otherwise in this Assignment Agreement, nothing in the Credit Agreement shall in any way amend, alter or otherwise affect any rights of Consumers under the REPA.

(b) The Bank shall be entitled (but not obligated) to exercise all rights and to cure all defaults of the Borrower under the REPA, subject to applicable notice and cure periods provided in the REPA and as set forth herein. Upon receipt of written notice from the Bank, Consumers agrees to accept such exercise and cure by the Bank if timely made by the Bank under the REPA and this Assignment Agreement. The Bank and its designee(s) or assignee(s) shall then have the right to assign its interest in the REPA to a person or entity to whom the Borrower's interest in the Facility is transferred, provided that (i) such transferee assumes and can perform all of the then-outstanding obligations of the Borrower under the REPA, (ii) the transferee provides the credit support required under the REPA, and (iii) such transferee has at least two (2) years' experience operating facilities similar to the Facility or has contracted with an operations and maintenance provider having such experience. Upon such assignment, the Bank and its designee(s) or assignee(s) (including their agents and employees) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned. Notwithstanding any such further assignment and assumption of the obligations of the Borrower under the REPA by such party, the Bank shall remain liable for the obligations of the Borrower under the REPA which arose during the period in which the Bank assumed the Borrower's obligations under the REPA, except to the extent assumed by such transferee.

(c) Upon an event of default or breach by the Borrower in the performance of any of its obligations under the REPA, or upon the occurrence or non-occurrence of any event or condition under the REPA which would immediately or with the passage of any applicable grace period or the giving of notice enable Consumers to terminate the REPA (hereinafter, a "Default"), Consumers shall not terminate the REPA until it first gives written notice of such Default to the Bank and affords the Bank (i) fifteen (15) days, in the case of a Default for failure to pay amounts to Consumers which are due and payable under the REPA and (ii) forty-five (45) days, in the case of any Default not included in clause (i), the opportunity to cure such Default. Each of the periods in the foregoing clauses (i) and (ii) shall begin on the later of (A) the expiration of the Borrower's cure period under the REPA (if any) and (B) the date of the Bank's receipt of notice of such Default from Consumers. Consumers and the Borrower each agree that unless and until Consumers receives written notice from the Bank as set forth in Section 1(b) above, the Bank shall not be deemed by virtue of the execution and delivery of this Assignment Agreement to have assumed any of the obligations of the Borrower under the REPA.

(d) If (i) possession of the Facility is necessary to cure such Default or (y) if the Default can only be cured by the Borrower and is not curable by the Bank, such as the bankruptcy of the Borrower or the consolidation, amalgamation or merger of the Borrower into, or transfer of all or substantially all of its assets to, another entity which fails to assume the obligations of the Borrower under the REPA, and, in each such case, the Bank or its successor(s), assignee(s)

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and/or designee(s) declares an "Event of Default" under the Credit Agreement and notifies Consumers in writing that the Bank has commenced foreclosure or other legal proceedings necessary to take possession of the Facility, the Bank will be allowed a reasonable period to both commence (not to exceed thirty (30) days) and complete (not to exceed one hundred fifty (150) additional days) such proceedings, provided that, if the Default can only be cured by the Borrower and is not curable by the Bank as described above, the Bank shall be entitled to assume the rights and obligations of the Borrower under the REPA and provided such assumption occurs, Consumers shall not be entitled to terminate the REPA as a result of such Default. If the Bank or its successor(s), assignee(s) and/or designee(s) is prohibited by any court order or bankruptcy or insolvency proceedings of the Borrower from curing the Default or from commencing or prosecuting such proceedings, the foregoing time periods shall be extended by the period of such prohibition, provided that the Bank or its successor(s), assignee(s) and/or designee(s) is pursuing relief from such prohibition with due dispatch. Consumers shall recognize the Bank or its designee(s) or assignee(s) as the applicable party under the REPA provided that the Bank or its designee(s) or assignee(s) assume the obligations of the Borrower under the REPA; and provided further that the Bank or its designee(s) or assignee(s) has a creditworthiness or total credit support at least equal to that of the Borrower as of the date hereof or otherwise reasonably satisfactory to Consumers.

(e) In the event that the REPA is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, and if, within thirty (30) days after such rejection, the Bank shall so request, Consumers will negotiate with the Bank in good faith in an effort to execute and deliver to Bank a new power purchase agreement reasonably agreeable to Consumers and the Bank, which shall be on as reasonably similar terms and conditions as the original REPA for the remaining term of the original REPA before giving effect to such rejection, and which shall require the Bank to cure any defaults then existing under the original REPA.

(f) In the event the Bank or its designee(s) or assignee(s) elect(s) to succeed to the Borrower's interest under the REPA, or enter into a new power purchase agreement as provided in Section 1(e) above, the recourse of Consumers against the Bank or its designee(s) and assignee(s) shall be limited to such party or parties' interests in the Facility, the credit support provided or required under the REPA, and any remedies available to Consumers under the new power purchase agreement if entered into between Consumers and the Bank or its designee(s) or assignee(s) as provided in Section 1(e) above.

(g) This Assignment Agreement shall not be deemed to release or to affect in any way the obligations of the Borrower or Consumers under any provisions of the REPA, except as expressly set forth in this Assignment Agreement. No assumption of the Borrower's obligations under the REPA by the Bank or any further designee or assignee shall release the Borrower from its obligations to Consumers under the REPA.

2. Delivery of Notices

Consumers agrees that it will promptly notify the Bank of any termination or default under the REPA concurrently with providing such notice to the Borrower, or as soon as reasonably

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practicable thereafter.

3. Default and Cure

Subject to the remainder of this Assignment Agreement, there shall be no additional cure period allowed the Bank in the event of termination of the REPA by Consumers pursuant to Sections 5.3, and 10.1 thereof.

4. Payment.

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

\_\_\_\_\_  
Account No. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Successor and Assigns.

This Assignment Agreement shall bind and inure to the benefit of the Parties to this Assignment Agreement and their respective successors, transferees and assigns. No termination, amendment, or variation of any provisions of this Assignment Agreement shall be effective unless in writing and signed by the Parties hereto. No waiver of any provisions of this Assignment Agreement shall be effective unless in writing and signed by the Party waiving any of its rights hereunder. All rights of the Parties hereto shall terminate without the requirement for any writing upon the "[Discharge Date]" under the Credit Agreement, which the Borrower agrees to provide to each other Party promptly after the occurrence thereof.

6. Applicable Law.

The construction, performance and validity of this Assignment Agreement shall be governed by the laws of the State of Michigan (excluding the laws applicable to conflicts or choice of law). Each of the Bank, Consumers and the Borrower hereby submits to the non-exclusive jurisdiction of the United States District Court for the Eastern District, Southern Division of Michigan and any Michigan State Court sitting in Ingham County, Michigan for the purpose of all legal proceedings arising out of or relating to this Assignment Agreement or the transactions contemplated hereby. As of the date hereof, Consumers represents that the REPA is a legal, valid and binding obligation of Consumers. In the event any provision of this Assignment Agreement or the obligations of any of the Parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other Parties hereto, shall not in any way be affected or impaired thereby.

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7. Waiver.

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

8. Counterparts.

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

9. Notices.

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

If to the Borrower:

\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Consumers:

Consumers Energy Company  
Attention: Emily M. Walainis, Manager of Supply Contracts  
1945 West Parnall Road  
Jackson, MI 49201

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If to the Bank:

\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All such notices shall be effective when delivered.

10. Entire Agreement

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

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

\_\_\_\_\_  
(Borrower Name)

By: \_\_\_\_\_  
(Name)

Its: \_\_\_\_\_  
(Title)

CONSUMERS ENERGY COMPANY

By: \_\_\_\_\_  
(Name)

Its: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Bank Name)

By: \_\_\_\_\_  
(Name)

Its: \_\_\_\_\_  
(Title)

**Exhibit D Form of Estoppel Certificate**

ESTOPPEL CERTIFICATE

Pursuant to that certain Power Purchase Agreement, dated as of **[Date]**, entered into between Consumers Energy Company, a Michigan corporation (together with its successors and assigns, the "Contracting Party"), and \_\_\_\_\_, a [Michigan] limited liability company (the "Project Company"), the Contracting Party hereby delivers this Estoppel Certificate to \_\_\_\_\_ (the "Project Company"), \_\_\_\_\_ (the "Collateral Agent") and \_\_\_\_\_ (the "Equity Investor") and hereby confirms to the Project Company, the Collateral Agent and Equity Investor that:

(a) No default, or event that with notice and passage of time will become a default, by the Contracting Party nor, to its actual knowledge, the Project Company exists under that certain Power Purchase Agreement, dated as of **[Date]**, between the Contracting Party and the Project Company (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the "PPA");

(b) Contracting Party has not transferred, assigned or pledged any interest in the Power Purchase Agreement, and Contracting Party has not received any notice of, nor consented to, any previous transfer, assignment or pledge by the Project Company of all or any part of the Project Company's rights or obligations under the Agreement[, other than the collateral assignment of the right, title and interest of Project Company in the PPA made in favor of the collateral agent as described under.

(c) Contracting Party hereby consents to the transfer of the membership interests in Project Company to Equity Investor. Furthermore, Contracting Party hereby agrees that such transfer of the membership interests to Equity Investor shall not constitute a default by Project

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Company;

(d) As of the date hereof, (i) the PPA is in full force and effect and has not been amended, supplemented or modified, (ii) there are no disputes or legal proceedings between the Contracting Party and the Project Company and there are no proceedings pending or, to its actual knowledge, threatened against or affecting the Contracting Party in any court or by or before any governmental authority or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of the Contracting Party to perform its obligations under the PPA, (iii) to the Contracting Party's actual knowledge the Contracting Party is not aware of any event, act, circumstance or condition constituting an event of force majeure under the PPA, (iv) to the Contracting Party's actual knowledge the Project Company does not owe any indemnity or other payments to the Contracting Party and the Contracting Party has no existing counterclaims, offsets or defenses against the Project Company under the PPA, (v) the Contracting Party has not made any payments to the Project Company in respect of liquidated damage, warranty or indemnity claims, (vi) the Contracting Party has not transferred, pledged or assigned, in whole or in part, any of its right, title or interest in, to and under the PPA and (vii) to the Contracting Party's actual knowledge, the obligations of the Project Company under the PPA required to be performed on or before the date hereof have been properly performed or expressly waived in writing; and

(e) The Contracting Party is a Michigan corporation which is duly incorporated, validly existing and in good standing under the laws of Michigan and has all requisite power and authority to conduct, execute, deliver and perform its obligations under the PPA and this certificate, and the execution, delivery and performance by the Contracting Party of the PPA and this certificate have been duly authorized by all necessary company action on the part of the Contracting Party and do not require any approvals, filings with or consents of any entity or person which have not previously been obtained or made. There are no actions pending

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against the Contracting Party under the bankruptcy or any similar laws of the United States or any state.

(f) The "Commercial Operation Date" (as defined in the PPA) has occurred.

**IN WITNESS WHEREOF**, the Contracting Party has caused this certificate to be executed by its undersigned authorized officer as of **[Month]** \_\_, **[Year]**.

**CONSUMERS ENERGY COMPANY,**  
a Michigan corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**Exhibit E Fixed Energy Price Schedule**

Fixed Energy Price

The Fixed Energy Price for Available Energy shall be the rate as determined in the table below. Notwithstanding the foregoing, the Fixed Energy Price for Available Energy shall be reduced from the amounts shown in the following table, if applicable, in accordance with Exhibit I.

<u>Planning Year</u> (Commencing on June 1 of the stated year)	<u>Fixed Energy Price</u> \$/MWh
2025	14.54
2026	14.54
2027	14.54
2028	14.54
2029	14.54
2030	14.54
2031	14.54
2032	14.54
2033	14.54
2034	14.54
2035	14.54
2036	14.54
2037	14.54
2038	14.54
2039	14.54
2040	14.54
2041	14.54
2042	14.54
2043	14.54
2044	14.54
2045*	14.54
2046*	14.54

\*If applicable

Exhibit F Monthly Escrow Payment

Solely if Seller selects the monthly escrow payment as its form of Early Termination Security in accordance with Section 2.2 of the Agreement, then beginning with the Billing Month in which the Commercial Operation Date occurs, Buyer will retain during each Billing Month a portion of the energy compensation until the interest-bearing account equals or exceeds the Early Termination Security Amount identified in Exhibit A. Interest on the monthly escrow payments shall accrue at the Federal Funds Effective Rate. Buyer will continue to retain such funds to achieve and maintain a security for continued performance. The amount retained each month shall be determined in accordance with the following formula:

Monthly Escrow Payment (\$) = \$3.50/MWh x Available Energy

All monthly escrow payments and accumulated interest shall be retained in the interest-bearing account until the Early Termination Security Amount is reached (the "Full Funding"). Once the interest-bearing account has Full Funding, Buyer will not retain any portion of the monthly energy compensation; however, accumulated interest will continue to be held in the interest-bearing account.

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

Upon termination pursuant to Section 10 of the Agreement after the Commercial Operation Date, Buyer shall retain all remaining funds in the interest-bearing account to the extent necessary to satisfy Seller's obligation to pay the Early Termination Security Amount if such termination was due to a Seller Event of Default, otherwise Buyer shall return to Seller all funds in such account..

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Exhibit G Legal Description of Plant Site

The Plant Site shall be located on the following parcel of real property: Land in the Township of Coldwater, Branch County, MI, described as follows:

Parcel A: 070-011-300-005-00

Parcel B: 070-011-300-010-00

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### Exhibit H Form of Construction Report<sup>1</sup>

**Construction Report Date**

\_\_\_\_\_

**Project Name**

\_\_\_\_\_

**Developer/Owner**

\_\_\_\_\_

**Construction start date**

\_\_\_\_\_

**Projected COD**

\_\_\_\_\_

**PPA effective date**

\_\_\_\_\_

**Earnest Money Deposit Date**

\_\_\_\_\_

**Interconnection**

GIA Execution Date

\_\_\_\_\_

Facilities Construction Agreement

Execution Date

\_\_\_\_\_

**Metering Requirements**

Meter Type

\_\_\_\_\_

Meter Data Management Agent  
(Developer or Third Party, please  
provide company name):

\_\_\_\_\_

\_\_\_\_\_

**Environmental Permits**

Date Soil Erosion Permits Approved:

\_\_\_\_\_

Date Drain Agreements Approved (if  
Applicable):

\_\_\_\_\_

Date Road Use Agreement Approved  
(if Applicable):

\_\_\_\_\_

Date all Zoning Permits Final  
Approval:

\_\_\_\_\_

**Major Procurements Completed Dates**

Date Main Power Transformer

Contract Executed:

\_\_\_\_\_

Date Battery Procurement Contract  
Executed:

\_\_\_\_\_

\_\_\_\_\_

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% Complete of Panel Construction from Projected Commercial Operation Date (PCOD)

12 months to PCOD	_____
11 months to PCOD	_____
10 months to PCOD	_____
9 months to PCOD	_____
8 months to PCOD	_____
7 months to PCOD	_____
6 months to PCOD	_____
5 months to PCOD	_____
4 months to PCOD	_____
3 months to PCOD	_____
2 months to PCOD	_____
1 month to PCOD	_____
15 days to PCOD	_____

COD Process

Start of Construction Electrical Testing Date:	_____
Generation of First Test Energy Date(s):	_____
Projected Commercial Operation Date:	_____

### Exhibit I: Value Added Criteria Guarantees

Buyer represents that this Agreement was entered into as a result of a competitive solicitation administered in accordance with Buyer's Integrated Resource Plan. Seller acknowledges that the proposal submitted in the solicitation which resulted in the negotiation and execution of this Agreement contained certain guarantees regarding the Plant that Seller has, or will, demonstrate to Buyer as provided herein and resulted in Seller receiving a higher Fixed Energy Price under this Agreement because of such guarantees included in its proposal. Seller acknowledges that failure to meet any guarantees claimed in the proposal will result in a decrease to the Fixed Energy Price by \$0.675/MWh for each point awarded for such guarantees offered in the competitive solicitation as such monetary adjustment is identified in the applicable guarantee below. Such adjustments are cumulative to the extent that the applicable guarantees are not met.

Check and complete all guarantees that apply to the Plant and this Agreement:

#### Storage

1. Seller guarantees the storage facility and renewable generation facility making up the Plant identified in Part I are electrically interconnected and both of which will be used to supply Product in accordance with this agreement. Seller will provide proof of this guarantee to Buyer with reasonable documentation of such qualification at the Buyer's discretion. Failure to meet this criteria will result in a decrease in the Fixed Energy Price of \$1.35/MWh for the entire term of the Agreement.

2. Seller guarantees the storage facility making up the Plant identified in Part I is not connected to a renewable source but is capable of charging from the grid as a standalone electric storage facility. Seller will provide proof of this guarantee to Buyer with reasonable documentation of such qualification at the Buyer's discretion. Failure to meet this criteria will result in a decrease in the Fixed Energy Price of \$0.68/MWh for the entire term of the Agreement.

3. Seller guarantees the storage facility making up the Plant identified in Part I will be located within the Buyer's electric distribution service franchise territory. Seller will provide proof of this guarantee to Buyer with reasonable documentation of such qualification at the Buyer's discretion. Failure to meet this criteria will result in a decrease in the Fixed Energy Price of \$1.35/MWh for the entire term of the Agreement.

#### Land Use

1. Seller guarantees the Plant is, or will be, entirely located within a site classified as a brownfield or on a capped landfill development. Seller will provide proof of this guarantee to Buyer with reasonable documentation of such qualification at the Buyer's discretion. Failure to meet this criteria will result in a decrease in the Fixed Energy Price of \$1.01/MWh for the entire term of the Agreement.

2. Seller guarantees the Plant is, or will be, entirely located within a site classified as a grayfield development. Seller will provide proof of this guarantee to Buyer with reasonable documentation of such qualification at the Buyer's discretion. Failure to meet this criteria will result in a decrease in the Fixed Energy Price of \$1.01/MWh for the entire term of the Agreement.

3. Seller guarantees no portion of the Plant will be located on a site that hosts tillable farmland that has been utilized for commercial crop production in the last five (5) years. Seller will provide proof of this guarantee to Buyer with reasonable documentation of such qualification at the Buyer's discretion. Failure to meet this criteria will result in a decrease in the Fixed Energy Price of \$1.01/MWh for the entire term of the Agreement.

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\_\_\_ 4. Seller guarantees the site will contain a minimum of 25% pollinator vegetation for the entire term of the Agreement. Seller will provide proof of this guarantee to the Buyer with reasonable visual, documented, and/or inspection of confirmation at the Buyer's discretion. Failure to meet this criteria will result in a decrease in the Fixed Energy Price of \$1.01/MWh for the entire term of the Agreement.

**Carbon Intensity / Life Cycle Analysis**

\_\_\_ 1. Seller will complete an accredited life cycle analysis with carbon dioxide (CO<sub>2</sub>) equivalent to, or at a lower rate than, the China-based supply chain for polysilicon of 750 kgCO<sub>2</sub>e/kWp. Seller will provide proof of this guarantee to Buyer with reasonable documentation of such qualification at the Buyer's discretion. Failure to demonstrate meeting this criteria will result in a decrease in the Fixed Energy Price of \$0.68/MWh for the entire term of the Agreement.

\_\_\_ 2. Seller will complete an accredited life cycle analysis with carbon dioxide (CO<sub>2</sub>) equivalent to, or at a lower rate than, the French Tender midpoint of 550 kgCO<sub>2</sub>e/kWp. Seller will provide proof of this guarantee to Buyer with reasonable documentation of such qualification at the Buyer's discretion. Failure to demonstrate meeting this criteria will result in a decrease in the Fixed Energy Price of \$1.35/MWh for the entire term of the Agreement.

\_\_\_ 3. Seller will complete an accredited life cycle analysis with carbon dioxide (CO<sub>2</sub>) equivalent to, or at a lower rate than, the Ultra Low Carbon Alliance of 450 kgCO<sub>2</sub>e/kWp. Seller will provide proof of this guarantee to Buyer with reasonable documentation of such qualification at the Buyer's discretion. Failure to demonstrate meeting this criteria will result in a decrease in the Fixed Energy Price of \$2.03/MWh for the entire term of the Agreement.

**Located in Designated Low-Income Area**

\_\_\_ 1. Seller guarantees the project is 100% located within a county within Consumers Energy's service territory that has 40% or greater population that is at 200% of poverty as listed in the Low-Income Exhibit within the Company's 2022 One-Time RFP. Seller will provide proof of this guarantee to Buyer with reasonable documentation of the location of all Plant equipment for such qualification at the Buyer's discretion. Failure to demonstrate meeting this criteria will result in a decrease in the Fixed Energy Price of \$2.03/MWh for the entire term of the Agreement.

\_\_\_ 2. Seller guarantees the project is [ ] % located within a county within Consumers Energy's service territory that has 40% or greater population that is at 200% of poverty as listed in the Low-Income Exhibit within the Company's 2022 One-Time RFP. Seller will provide proof of this guarantee to Buyer with reasonable documentation of the location of all Plant equipment for such qualification at the Buyer's discretion. Failure to demonstrate meeting this criteria will result in a decrease in the Fixed Energy Price of \$1.01/MWh for the entire term of the Agreement.

**Diverse and Michigan Based Business**

\_\_\_ 1. Seller guarantees that it is and will remain licensed as a Michigan Based Business with the State of Michigan for the term of the Agreement. Seller will provide proof of this guarantee to Buyer with reasonable documentation of such qualification at the Buyer's discretion. Failure to demonstrate meeting this criteria will result in a decrease in the Fixed Energy Price of \$1.35/MWh for the entire term of the Agreement.

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\_\_\_ 2. Seller guarantees that either (i) Seller, (ii) the project developer, or (iii) the engineering, procurement, and construction contractor is a diverse supplier that meets one of the following criteria:

- a. Veteran-Owned Business Enterprise,
- b. Disabled Veteran-Owned Business Enterprise,
- c. Woman-Owned Business Enterprise,
- d. Disabled-Owned Business Enterprise,
- e. LGBT-Owned Business Enterprise, or
- f. Minority-Owned Business Enterprise consisting of one of the following:
  - a. African American
  - b. Asian
  - c. Asian-Indian
  - d. Asian-Pacific
  - e. Hispanic
  - f. Native American
  - g. Other

Seller will provide proof of this guarantee to Buyer with reasonable documentation of such qualification at the Buyer's discretion. Failure to demonstrate meeting this criteria will result in a decrease in the Fixed Energy Price of \$1.35/MWh for the entire term of the Agreement.

**Major Permits & Community Support**

\_\_\_ 1. Seller guarantees that it has received a Special Land Use Permit (or an equivalent issued by the zoning authority) for the construction and operation of the Plant. Seller will provide proof of this guarantee to Buyer with reasonable documentation of such qualification at the Buyer's discretion. Failure to demonstrate meeting this criteria will result in a decrease in the Fixed Energy Price of \$1.35/MWh for the entire term of the Agreement.

\_\_\_ 2. Seller guarantees that it has submitted an application for its Special Land Use Permit (or an equivalent issued by the zoning authority), and a public hearing has been scheduled pertaining to such permit for the construction and operation of the Plant. Seller will provide proof of this guarantee to Buyer with reasonable documentation of such qualification at the Buyer's discretion. Failure to demonstrate meeting this criteria will result in a decrease in the Fixed Energy Price of \$0.68/MWh for the entire term of the Agreement.

\_\_\_ 3. Although no Special Land Use Permit application has been submitted, or a public hearing has not been scheduled for any Special Land Use Permit application Seller has submitted, Seller guarantees that the development, construction, and operation of the Plant has documented local community support by local officials or representatives and that no strong opposition to the Plant has come forward publicly or to Seller directly. Seller will provide proof of this guarantee to Buyer with reasonable documentation of such qualification at the Buyer's discretion. Failure to demonstrate meeting this criteria will result in a decrease in the Fixed Energy Price of \$0.68/MWh for the entire term of the Agreement.

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### Exhibit J: Form of Surety Bond

BOND NUMBER: [ ]

#### **FINANCIAL AND PERFORMANCE GUARANTEE BOND**

KNOW ALL MEN BY THESE PRESENTS: That we, [ ] (hereinafter called the Principal), and [ ] with its principal office at [ ] located in the [ ], a corporation duly organized under the laws of the State of [ ] (hereinafter called the Surety) as Surety, are held and firmly bound unto [Consumers Energy Company] (hereinafter called the Obligee), as Obligee, in the sum of [Amount & 00/100 Dollars (\$XXX.00)] for the payment of which sum well and truly to be made, we the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

This Financial and Performance Guarantee Bond is being issued in connection with a [Power Purchase Agreement] between Principal and Obligee (referred to as the "Agreement") dated [ ].

Now therefore, the condition of this obligation is such that if the Principal shall well and truly keep all the terms and conditions as outlined in said Agreement, then this obligation shall be null and void; otherwise to remain in full force and effect.

Provided, however, this bond is executed by the Surety and accepted by the Obligee subject to the following conditions:

1. No assignment of this bond shall be effective without the written consent of the Surety.
2. This Bond shall be effective for a period of one (1) year with an effective date of [Month XX, 2023] and shall have an expiration date of [Month XX, 2024], except that if the Surety has not provided written notice to the Obligee at least sixty (60) days prior to such expiration date that this Bond will terminate on such expiration date, this Bond shall automatically renew for an additional one-year period. This obligation may be terminated by the Surety by sixty (60) days advance written notice ("Notice of Cancellation") to the Obligee, such Notice of Cancellation to be sent by registered mail to the address below. Such termination or cancellation shall not affect any liability incurred or accrued under this bond prior to the effective date of such termination or cancellation.

[Consumers Energy Company]  
[1945 W Parnall Road]  
[Jackson, MI 49201]

3. Should the Principal fails to provide a replacement bond or alternate financial assurance acceptable to the Obligee within sixty (60) days of the receipt by the Obligee of the Notice of Cancellation and as required in the Agreement, the Surety shall reinstate the bond. If the Surety fails to reinstate the bond, the Surety's obligation under

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EXHIBIT K  
Page 2 of 2

the bond shall arise if the Principal has failed to meet the applicable requirements identified within the Agreement.

4. Provided, however, it shall be a condition precedent to any right of recovery herein that, in the event of any breach of any payment obligation of Principal under the Agreement, a written notice of such breach shall be given as soon as reasonably possible by the Obligee to the Surety and the Surety will pay amounts due by Principal's obligation within five (5) Business Days (as defined below) after Surety's receipt of such statement. Business Days means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

[NAME]  
[ADDRESS]  
[ADDRESS]

5. Regardless of the number of years this Bond is in force, the aggregate liability of the Surety shall not be cumulative in amounts from period to period and shall in no event exceed the amount set forth above, or as amended by rider.

In witness whereof, said Principal and said Surety have caused this bond to be duly signed and their seals affixed this XX day of Month, 2023.

[ ]  
Principal

BY:

\_\_\_\_\_

BY:

[ ]

\_\_\_\_\_

DocuSign Envelope ID: DB971668-15E7-4785-900B-B7907D3855A7

EXHIBIT K  
Page 1 of 2

Exhibit K: Replacement Project Agreement

Seller proposes the following replacement project. Upon consent from the Buyer below, this replacement project replaces the Plant in Part I of the Agreement.

Details of the replacement project are as follows:

Plant Name: \_\_\_\_\_  
Plant Type: \_\_\_\_\_  
Expected Installed Capacity (MWac): \_\_\_\_\_  
Plant Location: \_\_\_\_\_  
Energy expected in first twelve months of production: \_\_\_\_\_  
Capacity factor: \_\_\_\_\_  
Expected Commercial Operation Date: \_\_\_\_\_  
Interconnection Queue Identifier: \_\_\_\_\_

Additionally, the below hereby replaces Exhibit G Legal Description of Plant Site in the Agreement:

The Plant Site shall be located on the following parcel of real property: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Details of an additional replacement project (if needed) are as follows:

Plant Name: \_\_\_\_\_  
Plant Type: \_\_\_\_\_  
Expected Installed Capacity (MWac): \_\_\_\_\_  
Plant Location: \_\_\_\_\_  
Energy expected in first twelve months of production: \_\_\_\_\_  
Capacity factor: \_\_\_\_\_  
Expected Commercial Operation Date: \_\_\_\_\_  
Interconnection Queue Identifier: \_\_\_\_\_

Additionally, the below hereby replaces Exhibit G Legal Description of Plant Site in the Agreement:

The Plant Site shall be located on the following parcel of real property: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Also, attached is the scorecard guarantees and remedies as shown in Exhibit I, Value Added Criteria Guarantees, that the replacement project(s) qualify for.

Seller requests that the replacement project(s) described above replace the Plant in Part I of the

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EXHIBIT K  
Page 2 of 2

Agreement.

Tibbits Energy Storage LLC

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ACCEPTED AND AGREED by Buyer:

Consumers Energy Company

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Line Formula	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h) (f) + (g)	(i)	(j) (h) + (i)	(k)	(l) (b) * (k)	(m)	(n) (d) * (m)	(o)	(p) (l) + (n) + (o)
	Year	Expected Generation (MWh)	Available Generation (MWh)	Capacity (ZRC-year)	Fixed Energy Payment Rate (\$/MWh)	Fixed Energy Payment (\$)	Storage Charging Payment (\$)	Energy and Fuel Payment (\$)	FCM <sup>1</sup> (\$)	Total Cost (including FCM) (\$)	Energy Value (\$/MWh)	Energy Value (\$)	Capacity Value <sup>2</sup> (\$/ZRC-Year)	Capacity Value (\$)	Ancillary Service Value (\$)	Total Value (\$)
1	2025	79,507	513,600	55.4	14.54	7,467,744	2,488,018	9,955,762	563,496.13	10,519,258	35.43	2,816,586	84,720	4,694,900	3,437,679	10,949,165
2	2026	135,320	876,000	95.0	14.54	12,737,040	4,375,850	17,112,890	968,589.58	18,081,480	36.28	4,908,954	86,499	8,217,417	3,437,679	16,564,050
3	2027	135,190	876,000	95.0	14.54	12,737,040	4,520,592	17,257,632	976,781.98	18,234,414	38.81	5,247,335	88,316	8,389,983	3,272,407	16,909,725
4	2028	135,061	878,400	95.0	14.54	12,771,936	4,560,739	17,332,675	981,029.43	18,313,705	38.59	5,211,692	90,170	8,566,172	3,115,301	16,893,166
5	2029	134,933	876,000	95.0	14.54	12,737,040	4,705,490	17,442,530	987,247.19	18,429,777	40.06	5,405,514	92,064	8,746,062	2,965,951	17,117,526
6	2030	134,798	876,000	95.0	14.54	12,737,040	4,824,686	17,561,726	993,993.67	18,555,719	40.75	5,493,530	93,997	8,929,729	2,766,669	17,189,929
7	2031	134,750	876,000	95.0	14.54	12,737,040	4,926,829	17,663,869	999,774.97	18,663,644	41.46	5,586,386	95,971	9,117,254	2,644,381	17,348,021
8	2032	134,591	878,400	95.0	14.54	12,771,936	5,055,180	17,827,116	1,009,014.79	18,836,131	42.86	5,768,189	97,986	9,308,716	2,566,236	17,643,141
9	2033	134,435	876,000	95.0	14.54	12,737,040	5,206,819	17,943,859	1,015,622.40	18,959,481	43.60	5,861,773	100,044	9,504,199	2,490,569	17,856,541
10	2034	134,280	876,000	95.0	14.54	12,737,040	5,293,010	18,030,050	1,020,500.83	19,050,551	44.99	6,040,865	102,145	9,703,787	2,417,297	18,161,949
11	2035	134,119	876,000	95.0	14.54	12,737,040	5,478,448	18,215,488	1,030,996.61	19,246,484	47.57	6,380,413	104,290	9,907,567	2,330,460	18,618,439
12	2036	133,659	878,400	95.0	14.54	12,771,936	5,644,152	18,416,088	1,042,350.59	19,458,439	48.11	6,430,339	106,480	10,115,626	2,256,967	18,802,931
13	2037	133,491	876,000	95.0	14.54	12,737,040	5,817,843	18,554,883	1,050,206.37	19,605,089	51.10	6,820,994	108,716	10,328,054	2,179,555	19,328,603
14	2038	133,325	876,000	95.0	14.54	12,737,040	5,919,338	18,656,378	1,055,951.01	19,712,329	51.93	6,923,036	110,999	10,544,943	2,105,088	19,573,067
15	2039	133,161	876,000	95.0	14.54	12,737,040	6,118,591	18,855,631	1,067,228.71	19,922,860	53.94	7,182,067	113,330	10,766,387	2,033,444	19,981,897
16	2040	132,985	878,400	95.0	14.54	12,771,936	6,407,449	19,179,385	1,085,553.21	20,264,938	56.17	7,469,872	115,710	10,992,481	1,952,556	20,414,909
17	2041	133,069	876,000	95.0	14.54	12,737,040	6,539,730	19,276,770	1,091,065.19	20,367,835	57.15	7,604,720	118,140	11,223,323	1,803,241	20,631,284
18	2042	133,003	876,000	95.0	14.54	12,737,040	6,667,225	19,404,265	1,098,281.41	20,502,547	58.96	7,842,235	120,621	11,459,013	1,643,887	20,945,135
19	2043	132,938	876,000	95.0	14.54	12,737,040	6,797,228	19,534,268	1,105,639.59	20,639,908	62.35	8,288,857	123,154	11,699,652	1,498,681	21,487,190
20	2044	132,873	878,400	95.0	14.54	12,771,936	6,929,789	19,701,725	1,115,117.66	20,816,843	63.06	8,378,420	125,740	11,945,345	1,366,361	21,690,126
21	2045	55,006	362,400	39.6	14.54	5,269,296	2,926,118	8,195,414	463,860.42	8,659,274	66.97	3,683,779	128,381	5,081,749	1,166,469	9,931,996
22	<b>Total</b>	<b>2,680,493</b>	<b>17,532,000</b>					<b>366,118,406</b>		<b>386,840,707</b>						<b>378,038,792</b>

23	<b>Cost-to-Value Ratio<sup>3</sup></b>															<b>102.3%</b>
24	<b>Levelized Net Cost of Capacity (\$/ZRC)<sup>4</sup></b>															<b>136,380</b>

Notes:  
1 Based on 5.66% WACC and \$63.25/MWh FCM Cap for Available Generation  
2 Capacity Value is based on 75% of CONE from PY 2023, escalated at 2%  
3 Calculated as the total cost (column j) divided by the energy and capacity value (column p)  
4 Calculated as the quantity of the NPV of the Total Cost (column j) minus the NPV of the Energy Value (column l), divided by the NPV of the Capacity (column d)

**MICHIGAN PUBLIC SERVICE COMMISSION**

Consumers Energy Company

Revenue Requirement and Market Value of 2021 IRP 37 MW Battery Storage Cost

Case No.: U-21090

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

Page: 1 of 1

Witness: BASKowronski

Date: January 2024

Line Formula	(a)	(b)	(c)	(d)	(e)	(f) (b * e)	(g)	(h) (c * g)	(i)	(j) (b * e)+(c * g) + (i)
	Year	Generation (MWh)	Capacity (ZRC-year)	Total Revenue Requirements (\$)	Energy Value (\$/MWh)	Energy Value (\$)	Capacity Value <sup>1</sup> (\$/ZRC-Year)	Capacity Value (\$)	Ancillary Service Value (\$)	Total Value (\$)
1	2025	43,698	35.5	<b>6,804,910</b>	31.18	1,362,455	76,337	2,713,620	1,286,380	<b>5,362,454</b>
2	2026	43,479	35.5	<b>6,819,651</b>	32.65	1,419,403	77,863	2,767,892	1,286,380	<b>5,473,675</b>
3	2027	46,562	35.5	<b>6,946,198</b>	33.95	1,580,693	79,421	2,823,250	1,224,535	<b>5,628,478</b>
4	2028	47,666	35.5	<b>6,972,735</b>	34.53	1,646,032	81,009	2,879,715	1,165,746	<b>5,691,492</b>
5	2029	47,319	35.5	<b>6,986,378</b>	35.39	1,674,556	82,629	2,937,309	1,109,859	<b>5,721,723</b>
6	2030	46,947	35.5	<b>6,987,841</b>	36.53	1,714,924	84,282	2,996,055	1,035,288	<b>5,746,267</b>
7	2031	46,853	35.5	<b>7,026,695</b>	36.69	1,718,834	85,967	3,055,976	989,527	<b>5,764,338</b>
8	2032	46,487	35.5	<b>7,065,628</b>	38.00	1,766,452	87,687	3,117,096	960,286	<b>5,843,833</b>
9	2033	47,055	35.5	<b>7,147,068</b>	39.55	1,861,013	89,441	3,179,438	931,971	<b>5,972,422</b>
10	2034	50,211	35.5	<b>7,308,582</b>	40.67	2,042,201	91,229	3,243,026	904,552	<b>6,189,780</b>
11	2035	52,557	35.5	<b>7,480,814</b>	41.28	2,169,431	93,054	3,307,887	872,058	<b>6,349,376</b>
12	2036	53,407	35.5	<b>7,593,673</b>	42.09	2,247,732	94,915	3,374,045	844,557	<b>6,466,334</b>
13	2037	54,548	35.5	<b>7,719,919</b>	43.32	2,363,061	96,813	3,441,526	815,590	<b>6,620,177</b>
14	2038	59,211	35.5	<b>7,975,407</b>	44.59	2,640,002	98,750	3,510,356	787,724	<b>6,938,082</b>
15	2039	62,264	35.5	<b>8,211,273</b>	46.84	2,916,268	100,725	3,580,563	760,915	<b>7,257,746</b>
16	2040	55,527	35.5	<b>8,084,718</b>	48.50	2,693,087	102,739	3,652,175	730,647	<b>7,075,908</b>
17	2041	55,227	35.5	<b>8,195,607</b>	49.47	2,732,101	104,794	3,725,218	674,773	<b>7,132,092</b>
18	2042	54,927	35.5	<b>8,306,720</b>	50.46	2,771,597	106,890	3,799,722	615,143	<b>7,186,462</b>
19	2043	54,626	35.5	<b>8,418,068</b>	51.47	2,811,581	109,028	3,875,717	560,806	<b>7,248,104</b>
20	2044	54,326	35.5	<b>8,529,661</b>	52.50	2,852,056	111,208	3,953,231	511,292	<b>7,316,579</b>
21	<b>Total</b>	<b>1,022,895</b>		<b>150,581,547</b>						<b>126,985,323</b>

22 **Cost-to-Value Ratio<sup>2</sup> 118.6%**

23 **Levelized Net Cost of Capacity (\$/ZRC)<sup>3</sup> 150,845.67**

Notes:

- 1 Based on U-21090 capacity value assumptions
- 2 Calculated as the total Revenue Requirement (column d) divided by the Total Value (column j)
- 3 Calculated as the quantity of the NPV of the Total Revenue Requirements (column d) minus the NPV of the Energy Value (column f), divided by the NPV of the Capacity in ZRC's (column c)



DELIVERED VIA EMAIL

CRA No. D43574-00

March 14, 2023

Emily M. Walainis  
Supply Contracts Manager  
Consumers Energy  
1 Energy Plaza  
Jackson, MI 49201

Deborah Moss  
Attorney  
Consumers Energy  
1730 Rhode Island Avenue, NW Suite 1007  
Washington, DC 20036

**Re: Consumers Energy's 2022 One-Time Solicitation For 700 ZRCs – CRA's Tranche 2  
Recommendation**

Dear Ms. Walainis and Ms. Moss:

In late 2022, Consumers Energy ("CEC" or "Consumers") retained CRA International d/b/a Charles River Associates, Inc. ("CRA") to assist in the design, administration and bid evaluation of a Request for Proposals ("RFP") process. This RFP was designed to solicit offers for Zonal Resource Credits (ZRCs) from capacity resources located within MISO LRZ7 in support of CEC's needs. The following Opinion Letter provides CRA's recommendation on the proposals to advance for final selection and contract negotiations.

CRA is an economics and management consulting firm, founded in 1964, and headquartered in Boston, Massachusetts. CRA has worked on behalf of a wide range of stakeholders in the design, management and execution of structured sales and procurement processes conducted both through formal auctions and RFPs. CRA clients in these engagements have included regulated utilities, government agencies, state and federal regulators as well as cooperatives and private corporations. CRA has directly managed or monitored structured processes that have resulted in over \$25 billion worth of transactions in the United States and abroad. CRA has worked with a broad set of utilities on resource planning and capacity strategy decisions. In addition, CRA has extensive experience in managing default service procurement processes for utilities in the Midwest and mid-Atlantic United States and currently manages the default service procurement processes for FirstEnergy's Ohio Utilities, FirstEnergy's Pennsylvania

Charles River Associates

March 14, 2023  
Page 2

Utilities, Duke Energy Ohio, Duquesne Light Company and AES Ohio. All such procurements have been reviewed and approved by the respective utility commissions or regulatory bodies with oversight over the processes. CRA advises energy sector clients on asset valuation for the purposes of acquisition and divestiture and senior members of CRA's team have testified as experts on sales and procurement process design before regulatory agencies and in civil litigation.

## TIMELINE FOR THE RFP PROCESS

The RFP was issued September 29, 2022. CRA and Consumers had developed an extensive marketing list and parties that may have had an interest in the RFP were notified by CRA through the RFP's email account. A website was also created where any interested party could learn about the RFP process, access relevant documents, and submit questions. Questions were received by CRA and anonymized before being forwarded to CEC for input and consultation on providing answers through an FAQ process. CRA conducted a bidder Information Session approximately 2 weeks after the launch, on October 13, 2022. Prospective bidders were required to provide a Notice of Intent by October 21, 2022, in addition to a Bilateral Confidentiality Agreement and Pre-Qualification Application due on November 11, 2022. Final bid proposals ("Proposals") were due on December 2, 2022.

## PROPOSAL REVIEW AND EVALUATION

After the Proposals were received, CRA as the RFP Manager:

1. Reviewed all Proposals and screened the responses to ensure they conformed with all response requirements specified in the RFP;
2. Sent, as necessary, clarifying questions via e-mail to the representatives of each company submitting a conforming Proposal to clarify specific issues with the proposal information provided;
3. Evaluated all conforming Proposals according to the pre-specified criteria as outlined in Appendix 'F' of the RFP document;
4. Managed bidder communication and outreach; and
5. Confirmed the winning Proposals and the short list of assets to include for advancement to Contract Negotiations.

CRA reviewed all Proposals that met pre-determined qualifying criteria set forth in the RFP documentation and evaluated each based on certain pre-specified evaluation criteria as described in the RFP.

Charles River Associates

March 14, 2023  
Page 3

Consumers was not directly involved in the evaluation of Proposals nor were they made aware of bidder identities as part of the RFP FAQ process. Upon receipt of bids, CEC was provided general information about the level of interest in the RFP, the MW of capacity offered by asset type and the general level of prices received. During the bid evaluation, CEC was provided anonymized information regarding the technological configurations, pricing, and economic model results. Because of CEC's limited involvement, CRA is issuing this Opinion Letter to provide a final overview and evaluation of the RFP and its execution and to confirm that the RFP were performed in a transparent, fair and nondiscriminatory manner.

## EVALUATION AND SCORING

As noted above, there were two (2) major components of proposal scoring. Weightings were as follows:

1. Economic Evaluation – 400 Points
2. Non-Economic Factors – 600 Points

The proposals were reviewed, and points were awarded consistent with the predetermined evaluation criteria. Proposals were rank ordered in accordance with the total number of points awarded for each scoring category. The top ranked proposals which met or exceeded the ZRC target, for all years commencing PY2025 (based on Summer accreditation), were then recommended for advancement to the Definitive Agreement phase of the process, as follows:

Table 1 - Recommended Selections

Bidder Name	Project Name	Project Type	ZRCs (Summer)	Econ. Points	Non-Econ. Score	Total Score	Rank
NextEra	Century Oaks Energy Storage	Storage (4 Hour)	190	376	350	726	2
Jupiter	Davenport	Storage (4 Hour)	95	348	370	718	3 <sup>1</sup>

---

<sup>1</sup> Jupiter proposed two projects that were identical based on technology, development status and pricing, however, were located on separate sites. Both proposals had the same total score. CRA selected one of these projects for the purposes of this recommendation, however, either can be recommended for selection under the rules established under the RFP.

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March 14, 2023  
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The recommendations above reflect the optimal combination of proposals that meet or exceeds the established targets and bounds as set forth under the RFP. As background, CRA originally had the top-ranked proposal recommended for selection. However, just prior to issuance of our recommendation, we received notice that the top ranked proposal was no longer valid due to a town ordinance/permitting issue. Because of this issue, the developer indicated it could no longer meet the stated in-service date or maintain the original price that was based upon the original in-service date. The bidder notified CRA that it was voluntarily withdrawing its proposal. Given that both the in-service date and pricing is no longer valid, CRA additionally assessed that this proposal would not pass the threshold evaluation criteria established under the RFP. Given the withdrawal of the top-ranked project, CRA proceeded to select proposals starting with the 2<sup>nd</sup> ranked proposal. Recognizing that the proposed ZRC accreditations will not align perfectly around the targeted selection for Tranche 2, CRA selected the projects that will meet the PY2025 target per the RFP rules. Accordingly, both the second and third ranked proposals were selected.

In addition to the above observations, CRA would like to caveat the economic results associated with the selected battery storage projects. While the battery projects were individually evaluated and selected, there may be market value implications associated with the selection of multiple storage projects within MISO Zone 7. Our concern is that the market value that an individual unit can achieve in isolation may be cannibalized by other like projects, which would in turn reduce the collective Value to Cost ratio.

## CONCLUSION

CRA recommends that CEC advance the shortlisted proposals through to the Definitive Agreement phase of the process. Process bidders were asked to hold bids firm for six (6) months from the proposal due date to facilitate the Definitive Agreement process and the associated due diligence. CRA's recommendations on advancement to the Definitive Agreement phase are subject to any potential resource constraints CEC may have with respect to initiating commercial negotiations with multiple counterparties in advance of that date. Through this Opinion Letter, CRA confirms that the process used to solicit and evaluate Proposals was executed consistent with the process as defined and envisioned by CEC and CRA at the outset. In CRA's opinion, the RFP was performed in a transparent, fair and nondiscriminatory manner and no bidder was given an undue advantage or preference in the RFP.

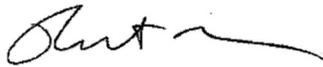
Charles River Associates

March 14, 2023  
Page 5

Please do not hesitate to contact me should you have any questions.

Sincerely,

Charles River Associates

A handwritten signature in black ink, appearing to read "Robert Lee", with a long horizontal flourish extending to the right.

Robert Lee  
Vice President

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for Approval of an Integrated Resource Plan )  
under MCL 460.6t, certain accounting )  
approvals, and for other relief. )  
\_\_\_\_\_ )

Case No. U-21090

**PROOF OF SERVICE**

STATE OF MICHIGAN )  
 ) SS  
COUNTY OF JACKSON )

Crystal L. Chacon, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on January 12, 2024, she served an electronic copy of **Consumers Energy Company’s Application with Supporting Testimony, Affidavit, and Exhibits of Company witness Beth A. Skowronski** upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein.

*Crystal L. Chacon*

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

Subscribed and sworn to before me this 12<sup>th</sup> day of January, 2024.

*Melissa K. Harris*

\_\_\_\_\_  
Melissa K. Harris, Notary Public  
State of Michigan, County of Jackson  
My Commission Expires: 06/11/2027  
Acting in the County of Hillsdale

**ATTACHMENT 1 TO CASE NO. U-21090**

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**ATTACHMENT 1 TO CASE NO. U-21090**

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**ATTACHMENT 1 TO CASE NO. U-21090**

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