



**PUBLIC SERVICE COMPANY
OF COLORADO**

OUR ENERGY FUTURE: DESTINATION 2030

**2021 ELECTRIC RESOURCE PLAN
AND CLEAN ENERGY PLAN**

**Volume 3.1 Dispatchable Resources RFP
CPUC Proceeding No. 21A-____E
March 31, 2021**

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TABLE OF CONTENTS

3.1 DISPATCHABLE RESOURCES RFP.....2
ATTACHMENT 3.1-1 DISPATCHABLE RESOURCES RFP DOCUMENT 2
ATTACHMENT 3.1-2 DISPATCHABLE RESOURCES RFP BID FORMS 2
ATTACHMENT 3.1-3 DISPATCHABLE RESOURCES MODEL PURCHASE AGREEMENT 2
ATTACHMENT 3.1-4 STAND-ALONE STORAGE MODEL PURCHASE AGREEMENT 2

3.1 DISPATCHABLE RESOURCES RFP

Attachment 3.1-1 Dispatchable Resources RFP Document

Public Service's 2021 ERP Dispatchable Resources RFP.

Attachment 3.1-2 Dispatchable Resources RFP Bid Forms

The Forms that are referenced in Appendix A of the 2021 ERP Dispatchable Resources RFP.

Attachment 3.1-3 Dispatchable Resources Model Purchase Agreement

The Model Dispatchable Resources PPA referenced in Appendix D of the 2021 ERP Dispatchable Resources RFP.

Attachment 3.1-4 Stand-Alone Storage Model Purchase Agreement

The Model Stand-Alone Storage Purchase Agreement referenced in Appendix D of the 2021 ERP Stand-Alone Storage RFP.

PUBLIC SERVICE COMPANY OF COLORADO

2022 All-Source Solicitation

Dispatchable Resources Request for Proposals



Date Issued To Be Determined (“TBD”)

Table of Contents

Public Service Company of Colorado

2022 Dispatchable Resources RFP

Section 1. Introduction	1
1.1 Regulatory Context	2
1.2 Resource Needs Assessment	3
1.3 Resources Sought through this RFP	4
1.4 RFP Project Manager and RFP Website	4
1.5 Section 123 Resources	4
Section 2. Eligible Project Information	5
2.1 Eligible Project Structures	5
2.2 Eligible Generation Resources	6
2.3 Pricing	6
2.4 Regulatory Approvals	7
2.5 Contract Lengths	7
2.6 RoFO / Purchase Option	7
2.7 Contract Accounting	7
Section 3. Delivery and Interconnection Information	8
3.1 General information	8
3.2 Electric Transmission Injection Capability	9
3.3 Transmission Corridor Preservation	9
Section 4. Proposal Content Requirements and Submission Procedure	10
4.1 Schedule Estimate	10
4.2 Minimum Requirements for Proposals	10
4.3 Proposal Content Requirements	11
4.4 Pre-Bid Conference	19
4.5 Notice of Intent to Respond (NOIR)	19
4.6 Proposal Submission Deadline	19
4.7 Information Policy	20
4.8 Bid Evaluation Fees	20
4.9 Clarification of Proposals	21
4.10 Confidentiality	21
4.11 Addenda to RFP	22
Section 5. Evaluation and Criteria	22
5.1 Evaluation Process	22
5.2 Independent Evaluator Report	27
5.3 Phase II Commission Evaluation	27

Appendices

Appendix A

Proposal Forms and Instructions

Appendix B

General Planning Assumptions

Appendix C

Transmission Costs

Appendix D

Model Dispatchable Power Purchase Agreement

Appendix E

All-Source Solicitation Timeline

Appendix F

Commission Confidentiality Order

Index of Appendix A Forms

Form A	Notice of Intent to Respond
Form B	Bid Certification
Form C	Bid Cover Sheet
Form D1A	Pricing for Thermals
Form D1B	Pricing for Storage
Form D2	Electrical Interconnection Cost Estimates
Form E	Construction Milestones
Form F1	Contract Capacity
Form F2	Facility Performance
Form F3	Heat Rates
Form F4	Heat Rate Degradation
Form F5	Technical Description Battery Energy Storage I
Form F6	Technical Description Battery Energy Storage II
Form F7	Section 123 Qualifications
Form G	Natural Gas and Backup Fuel Supply
Form H	Emission Rates
Form I	Interconnection Information Forms

Notice of Disclaimer

The information contained in this Request for Proposals ("RFP") for energy and capacity dappendixresources has been prepared solely to assist bidders in deciding whether or not to submit a proposal. Public Service Company of Colorado ("Public Service" or "Company") does not represent this information to be comprehensive or to contain all of the information that a respondent may need to consider in order to submit a proposal. None of the Company, its affiliates, or their respective employees, directors, officers, customers, agents and consultants makes, or will be deemed to have made, any current or future representation, promise or warranty, express or implied, as to the accuracy, reliability or completeness of the information contained herein, or in any document or information made available to a respondent, whether or not the aforementioned parties knew or should have known of any errors or omissions, or were responsible for their inclusion in, or omission from, this RFP.

The Company reserves the right to modify, supplement or withdraw this RFP at any time, whether due to changes in law or otherwise, and including by issuing one or more addenda to this RFP during this solicitation, which addenda shall become a part of this RFP. No part of this RFP and no part of any subsequent correspondence by the Company, its affiliates, or their respective employees, directors, officers, customers, agents or consultants shall be taken as providing legal, financial or other advice or as establishing a contract or contractual obligation. Contractual obligations on the part of the Company will arise only if and when definitive agreements have been approved and executed by the appropriate parties having the authority to approve and enter into such agreements. The Company reserves the right to request from a respondent (a.k.a., bidder) information that is not explicitly detailed in this document, obtain clarification from bidders concerning proposals, conduct contract development discussions with selected respondents, conduct discussions with members of the evaluation team and other support resources as described in this RFP and in compliance with all FERC Code of Conduct rules and provide data to and conduct discussions with the Independent Evaluator ("IE") as necessary for the IE to satisfy the IE's role as defined by the Colorado Public Utilities Commission ("CPUC" or "Commission") under rules 3612 and 3613 and Decision No. C17-0316.

The Company will, in its sole discretion and without limitation, evaluate proposals and proceed in the manner the Company deems appropriate, which may include deviation from the Company's expected evaluation process, the waiver of any requirements and the request for additional information. The Company reserves the right to reject any, all or portions of any proposal received for failure to meet any criteria set forth in this RFP or otherwise and to accept proposals other than the lowest cost proposal. The Company also may decline to enter into any agreement with any bidder, terminate negotiations with any bidder or abandon the RFP process in its entirety at any time, for any reason and without notice thereof. Respondents that submit proposals agree to do so without legal recourse against the Company, its affiliates, or their respective employees, directors, officers, customers, agents or consultants for rejection of their proposals or for failure to execute an agreement for any reason. The Company and its affiliates shall not be liable to any respondent or other party in law or equity for any reason whatsoever for any acts or omissions arising out of or in connection with this RFP. Except as otherwise provided in the rules and orders of the Public Utilities Commission of the state of Colorado, by submitting its proposal, each respondent waives any right to challenge any valuation by the Company of its proposal. By submitting its proposal, each respondent waives any right to challenge any determination of the Company to select or reject its proposal. Each respondent, in submitting its proposal, irrevocably agrees and acknowledges that it is making its proposal subject to and in agreement with the terms of this RFP.

Each respondent shall be liable for all of its costs incurred to prepare, submit, respond or negotiate its proposal and any resulting agreement and for any other activity related thereto, and the Company shall not be responsible for any of the respondent's costs.

Public Service Company of Colorado 2022 Dispatchable Resources RFP

Section 1. Introduction

Public Service Company of Colorado ("Public Service" or the "Company"), an operating company subsidiary of Xcel Energy Inc., is issuing this Request for Proposals ("RFP") as a component of Public Service's 2021 Electric Resource Plan. This RFP is one of three RFPs to be issued. These three requests for proposals are:

- 2022 Company Ownership RFP
- 2022 Dispatchable Resources RFP (this RFP)
- 2022 Renewable Resources RFP

Segmenting the Solicitation into these categories is driven by the contracting requirements for different generation technologies and ownership models. As a result, each RFP contains a model contract(s) or term sheet(s) that has/have been tailored to address certain issues associated with each technology or ownership structure.

Examples of the types of projects which would be applicable to each RFP are shown in Table 1 below. This non-comprehensive list is intended to provide guidance as respondents develop their proposals¹; more detailed information may be found in the specific RFP documents. Respondents who are uncertain as to which RFP would apply to their project should contact the RFP Project Manager (Section 1.4) for clarification.

Table 1 Example Resource Types for the Various RFPs

RFP Document	Resource Types	Commercial Structure
2022 Company Ownership RFP	<ul style="list-style-type: none"> • New or existing simple cycle gas turbines • New or existing solar, wind or stand-alone storage • New or existing solar with storage 	<ul style="list-style-type: none"> • Build-Own Transfer (BOT) • Existing Resource Sale • Company Self-Build
2022 Dispatchable Resources RFP	<ul style="list-style-type: none"> • Combined cycle gas turbines • Simple cycle gas turbines • Stand-alone Storage 	<ul style="list-style-type: none"> • PPA
2022 Renewable Resources RFP	<ul style="list-style-type: none"> • Biomass • Geothermal • Hydroelectric • Recycled Energy • Solar • Solar/wind with storage • Wind 	<ul style="list-style-type: none"> • PPA

¹ The terms "proposal" and "bid" are used interchangeably in this RFP document.

1.1 Regulatory Context

The CPUC's Resource Planning Rules ("RP Rules") establish a process that jurisdictional electric utilities must follow to determine the need for additional electric resources and to procure needed resources. Public Service filed its 2021 Electric Resource Plan ("ERP") on March 31st, 2021 in accordance with the RP Rules ("Phase I"). In its 2021 ERP, Public Service identified a need for future generation resources and presented the Commission with multiple portfolios of generic resources that could be used to meet that need. As part of its 2021 ERP, the Company proposed to solicit proposals through a competitive solicitation ("Phase II"). The CPUC heard arguments by multiple parties concerning Public Service's resource need and acquisition plans. The CPUC approved the issuance of this Solicitation as part of Public Service's 2021 ERP in Decision No. **TBD**.

The RP Rules 3612 and 3613 require that an Independent Evaluator ("IE") conduct a review of Public Service's evaluation of proposals received in response to the Solicitation. The Company will work cooperatively with the IE and shall provide the IE immediate and continuing access to all documents and data reviewed, used, or produced by the utility in this Solicitation and evaluation.

Additionally, the RP Rules require that Public Service: 1) make a communication to bidders concerning bid disclosure and bid model representation dispute resolution; 2) provide the Commission's order or orders specifying the form of nondisclosure agreement; and 3) require of bidders that they provide bidder contact and employment metric information.

Commission Required Communications

Bid Information Disclosure

Public Service notifies bidders that, upon completion of the competitive acquisition process begun with this RFP,² Public Service will post on its website the following information from all bids and utility proposals: bidder name; bid price and utility cost; generation technology type; size of project; contract duration or expected useful life of facility for utility proposals; and whether the proposed purchased power agreement includes an option for the utility to purchase the bid facility during or at the end of the contract term.

In addition Public Service notifies bidders that, pursuant to RP Rule 3614(b), a reasonable number of attorneys and a reasonable number of subject matter experts representing a party to the Company's 2021 ERP docket can, upon the execution of the appropriate non-disclosure agreement, request access to all Phase II information regarded by the Company as highly-confidential. The Company has claimed that bid information of any sort should be treated as highly-confidential, thus any bid information provided to the Company is subject to release to such individuals regardless of a bidder's claim of confidentiality.

Model Representation and Dispute Resolution

Public Service will, within 45 days of bid receipt, provide notice in writing by electronic mail to the bidder whether its bid is advanced to computer-based modeling to evaluate the cost or the ranking of the bid resource, and, if not advanced, the reasons why Public Service will not further evaluate

² Completion of the resource acquisition process is defined as the execution of all PPAs and/or asset purchase negotiations and certificate of public convenience and need approvals, if any, for the solicited resources.

the bid using computer-based modeling.³ With its notice Public Service will also provide bidders the modeling inputs and assumptions that reasonably relate to their bid resource or to the transmission of electricity from their proposed facility to Public Service; these inputs and assumptions may include, among other things, costs related to transmission interconnection, gas supply, and resource integration. Public Service will request that the bidder execute a highly confidential nondisclosure agreement prior to receiving the information. The form of the agreement is included as Appendix F.

For those bids advanced to computer-based modeling, within seven calendar days after receiving the modeling inputs and assumptions the bidder will notify Public Service in writing by electronic mail the specific details of any potential dispute regarding its bid's modeling inputs and assumptions. The bidder must attempt to resolve any dispute with Public Service. If the bidder and Public Service cannot resolve the dispute within three calendar days, Public Service will immediately notify the Commission with a filing in the 2021 ERP docket. If the bidder is not already a party to the 2021 ERP, the bidder will file a notice of intervention as of right pursuant to paragraph 1401(b) of the Commission's Rules of Practice and Procedure, within one business day of Public Service filing the notice of dispute to the Commission, for the limited purpose of resolving the disputed modeling inputs and assumptions.

An Administrative Law Judge ("ALJ") will expeditiously schedule a technical conference at which Public Service and the bidder shall present their dispute for resolution. The ALJ will enter an interim order determining whether corrections to the bid's modeling inputs and assumptions are necessary. If the ALJ determines that corrections to the bid's modeling inputs and assumptions are necessary, Public Service will, within three business days of the issuance of the ALJ's interim decision, provide the corrected information to both the bidder and the Independent Evaluator. In its 120-Day Bid Evaluation Report, Public Service will confirm, by performing additional modeling as necessary, that the bid resource is fairly and accurately represented.

Required Bidder Information

Public Service requires that each bidder in its Form C provide the contact name of the owner or developer designated to receive notice of whether the bid is advanced to computer-based modeling.

Public Service requires that bidders provide employment metric information for the bid to be eligible for this RFP. See the requirements for the Employment Metrics Narrative Topic.

1.2 Resource Needs Assessment

This RFP is part of a Solicitation process whose purpose is to acquire sufficient resources to meet the Company's forecasted electric demand (plus reserves) over the resource acquisition period ("RAP") of 2021 through 2030. Table 2 illustrates the general timing of resource need.⁴ The Company will update Table 2 prior to issuance of this RFP.

³ See exceptions discussed in Section 5.1, Step 4.

⁴ The Company will review bids for resources that propose to be operational before the Company shows a capacity need in Table 2.

Table 2. Resource Capacity Need by Year (Cumulative)

	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Capacity Need with announced retirements long/(short)	102	296	210	61	17	(203)	(672)	1,452	1,684	(1,747)

In any year, the Company may acquire more or fewer resources than is shown in Table 2 and the final level of resource need by year may change from that shown due to changed circumstances. While Table 2 shows an estimated capacity need for years beginning 2026, the Company will review bids for resources that become commercially operational prior to this period.

1.3 Resources Sought through this RFP

Through this Dispatchable Resources RFP, the Company seeks proposals from facilities that can respond to dispatch orders and provide generation during peak and non-peak load periods at rates up to the nameplate rating of the facility. Non-exclusive examples of potential eligible resources include gas-fired combustion turbines, gas-fired combined cycles, and standalone storage resources. Non-storage generation resources (e.g. combustion turbines) must provide bids with and without a minimum volume of onsite stored fuel to allow the generator to operate at full load for 72 consecutive hours. All resources offered through this RFP must achieve commercial operation no later than May 1st, 2030.

The resource amount that the Company may acquire from this RFP depends, among other things, on the quality of bids received in response to the Solicitation, on economic comparisons to other RFP responses and Company Ownership proposals, on updates to the Company’s forecasts, on regional transmission availability, and on changes to regulatory or legal requirements.

1.4 RFP Project Manager and RFP Website

The primary point of contact for all communications between the Company and potential bidders is the RFP Project Manager. This individual may be contacted at **TBD**.

All communications between potential bidders and the Company must be conducted through this email account. See Section 4.7 for more information.

The Public Service 2022 Solicitation website can be found at **TBD**.

1.5 Section 123 Resources

Colorado Revised Statutes (“C.R.S.”) 40-2-123(1)(a) states as follows:

“The commission shall give the fullest possible consideration to the cost-effective implementation of new clean energy and energy-efficient technologies in its consideration of generation acquisitions for electric utilities, bearing in mind the beneficial contributions such technologies make to Colorado's energy security,

economic prosperity, insulation from fuel price increases, and environmental protection”

These “new clean energy and energy-efficient technologies” are referred to as “Section 123 resources.”

The Commission clarified in Decision No. C13-0094 (“Decision”) that a Section 123 resource must be both *new* and *clean* pursuant to the statute. In its Decision the Commission further defined the terms “new” and “clean”:

A new project shall either: (1) incorporate one or more technologies, representing a substantial portion of its overall installed cost, that have not been regularly commercially demonstrated,⁵ up to the point in time that the resource is formally bid, or if not bid, acquired; or (2) be a project used to demonstrate the feasibility of a technology not before implemented in its proposed configuration.

A clean project must demonstrate that it would likely cause a decrease in greenhouse gas emissions (e.g., carbon dioxide) or significantly reduce other pollutants. A clean project may also result in reduced water usage.

Respondents to this RFP who believe their proposal meets the definition of a Section 123 resource should indicate in the Beneficial Contributions/Section 123 Resources Bid Narrative Topic why the respondent believes the resource qualifies as a Section 123 resource. Public Service will identify in its 30-Day Report to the Commission a listing of all bids that claim Section 123 status along with its opposition to any claimed Section 123 status and provide the Commission, under seal, a copy of the disputed bids. The Commission will determine whether the disputed bids qualify for further evaluation as a Section 123 resource.

Section 2. Eligible Project Information

2.1 Eligible Project Structures

Dispatchable RFP proposals will be for purchase of capacity and energy by the Company under a power purchase agreement (“PPA”) which is subject to the accounting considerations and the index pricing considerations discussed in later sections of this RFP. Model PPAs⁶ are provided in Appendix D.

Respondents interested in selling an existing asset or developing proposals that involve Company ownership of new generating facilities (referred to as Build-Own-Transfers or BOTs) are directed to the 2022 Company Ownership RFP for relevant information regarding opportunities to bid the Company projects as part of the 2022 All-Source Solicitation.

The Company will also consider acquiring wind and/or solar sites for Company self-build proposals to be submitted by the Company into the Company Ownership RFP. Respondents

⁵ The Commission’s Decision indicated its review of a Section 123 resource would consider the commercial demonstration both within the State of Colorado and elsewhere.

⁶ Model PPAs are sample agreements containing terms and conditions acceptable to the Company. The Company understands that respondents may desire to modify and supplement the Model PPA when submitting their proposals and anticipates negotiating with selected respondents in an effort to develop documents acceptable to both parties.

interested in selling wind and/or solar sites are encouraged to submit inquiries to the RFP Project Manager via email (see section 1.4) as soon as possible to initiate discussions with the Company's Corporate Development group re: key terms and conditions and allow as much time as possible for due diligence, assessment of any potential sites, and negotiation of a purchase and sale agreement prior to the bid submission deadline.

2.2 Eligible Generation Resources

For a project to be eligible under this RFP, it must: 1) have a nameplate electric rating greater than 100 kW; 2) be a non-intermittent, thermal generation resource or a standalone storage facility; and 3) meet all or a portion of the Company's resource needs during the RAP. A PPA proposal may be for a new yet to-be-built resource or an existing resource. The Company will not accept bids from coal-fired generation.

2.3 Pricing

Form D1A provides the pricing template for thermal generation and Form D1B provides the pricing template for storage PPA proposals. All pricing must be in terms of current year dollars, also referred to as escalated or nominal dollars. For example, a \$20 per megawatt-hour ("MWh") energy price proposal for 2023 means that in 2023 energy from the facility will be purchased at a rate of \$20/MWh.

Proposal pricing must include initial cost estimates for any new or upgraded interconnection facilities required for the electrical interconnection of the proposed project to the Public Service transmission system, and must include the cost of any dedicated radial transmission line(s) from the generation facility to the proposed point of interconnection. See Form D2.

The Company will pay any costs required to upgrade or reinforce the Public Service electric transmission system beyond the Point of Delivery, as a consequence of adding a respondent's project to the Public Service system. Respondents, however, will be responsible for procuring transmission service and any associated third-party transmission costs needed to deliver power from the project to the Point of Delivery on the Public Service transmission system. All pricing in respondents' proposals should reflect those costs (to the extent applicable) at the time of submittal.

The Company's preference is for fixed price proposals. However, respondents may take an appropriate exception on the applicable Form(s) and provide a second, alternative pricing schedule using a fixed price for the first contract year ("Base Year") that would be adjusted after the Base Year according to one or more known, published and widely recognized indices that are closely related to costs of operation in the proposed technology's industry. A respondent that wishes to propose such alternate pricing must submit one pricing form in nominal dollars for the entire term of the PPA and another pricing form tied to one or more designated indices meeting the requirements of the preceding sentence. The Company retains the right to select either of the respondent's pricing schemes. Respondents may not submit proposals with variable Base Year pricing.

2.4 Regulatory Approvals

At the completion of the evaluation process, pursuant to RP Rule 3613(d), the Company will file a report with the Commission at the completion of the evaluation process that describes the cost-effective resource plans that conform to the Commission's Phase I decision and other Commission decisions that impact the Phase II process. Upon Commission approval of Phase II of the Company's 2021 ERP, Company actions consistent with that approval are presumed prudent under RP Rule 3617(d). However, the Company reserves the right to: 1) inform the Commission that the Company could not reach agreement with the proponent of a selected resource; 2) request Commission approval of any agreements it enters into with successful respondents that vary in any material respect from the Model PPA; and 3) to terminate any agreement if the Company fails to receive Commission approval of submitted agreements.

2.5 Contract Lengths

Contract term lengths may be between one (1) and twenty-five (25) years, subject to the information provided in Section 2.7. The Company's objectives with respect to term lengths are to avoid the concurrent expiration of multiple contracts, and to avoid or minimize the adverse financial impact of imputed debt, finance lease, and variable interest entity-related obligations. See Section 2.7 for further information regarding such obligations.

2.6 RoFO / Purchase Option

The Model PPA includes a Right of First Offer ("ROFO") that, subject to specific conditions, may be exercised by the Company. In addition, while not required under the Model PPA, respondents, at their option, may offer the Company an end-of-term or other purchase option that specifies that the Company can purchase the facility (or the stock of the facility owner) for its appraised fair market value at a specified time or times during, or at the end of, the PPA term.

2.7 Contract Accounting

All contracts proposed to be entered into as a result of this RFP will be assessed by the Company for appropriate accounting and/or tax treatment. Respondents shall be required to supply promptly to the Company any and all information that the Company requires in order to make such assessments.

The Company has specific concerns regarding proposals received in response to this RFP that could result in either (i) a contract that must be accounted for by the Company as a finance lease or an operating lease pursuant to Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 842, or (ii) consolidation of the seller or assets owned by the seller onto the Company's balance sheet pursuant to the variable interest entity requirements of FASB ASC 810. The following shall therefore apply to any proposal submitted pursuant to this RFP:

- The Company is unwilling to be subject to any accounting or tax treatment that results from a PPA's finance lease or consolidated variable interest entity classification. As a result, respondents shall state in their proposal(s) (i) that the respondent has considered applicable accounting standards in regard to finance leases and variable interest entities, (ii) summarize any changes that the respondent proposes to the Model PPA in order to

attempt to address these issues, and (iii) to the respondent's knowledge and belief, the respondent's proposal should not result in such treatment as of the date of the proposal.

- As applicable, the Company will not execute a PPA without confirmation from the Company's external auditors that the PPA will not be classified as a finance lease, or a consolidated variable interest entity.

By submitting a proposal, each respondent agrees to make available to the Company at any point in the bid evaluation process any financial data associated with the respondent and its proposed project so the Company may independently verify the respondent's information in the above matters. Financial data may include, but shall not be limited to, data supporting the economic life (both initial and remaining) of the facility, the fair market value of the facility, the means by which the respondent intends to meet the security and performance requirements⁷ of the model PPA, and any and all other costs and financing plans (including debt specific to the asset being proposed) associated with the respondent's proposal. The Company may also use financial data contained in the respondent's financial statements (e.g. income statements, balance sheets, etc.) as may be necessary.

2.8 Hydrogen Capability Option

The Company encourages all thermal generation resource (e.g., natural gas-fired) proposals to provide an option for the resource to be capable of burning, at a minimum, 30 percent hydrogen (by volume), while meeting emission permit requirements. Any hydrogen option should be accompanied by a separate set of bid forms where appropriate as well as any unique bidder-proposed model PPA terms and conditions associated with the hydrogen option. If the base generation equipment is capable of burning hydrogen at a 30% volume minimum while meeting emission permits with no incremental requirements, that should be clearly noted in the proposal and no additional option is needed.

Section 3. Delivery and Interconnection Information

3.1 General information

Bids that propose to interconnect to the Company's transmission system and that do not have an existing Large Generator Interconnection Agreement ("LGIA"), Small Generator Interconnection Agreement ("SGIA"), or an existing interconnection queue position will be studied by Public Service to estimate electric interconnection and delivery requirements and costs. These procedures, and associated respondent responsibilities, are detailed in Appendix C.⁸

Bids that propose to interconnect to the Company's distribution system will be studied pursuant to CPUC rules 3667 or 3900 depending upon facility size.⁹

⁷ See Article 11 of the Model PPAs.

⁸ Note that the Company will apply the appropriate study procedure (i.e. LGIP or SGIP) during any formal interconnection study process.

⁹ The Company's "Safety, Interference and Interconnection Guidelines for Cogenerators, Small Power Producers and Customer-Owned Generation" is available at:
<http://www.xcelenergy.com/staticfiles/xcel/Regulatory/Transmission/CO-DG-Tech-Manual.pdf>

If the Company has received a certificate of public convenience and necessity to construct a transmission upgrade, the cost of the upgrade will not be included in the evaluation and costing of bids and/or bid portfolios that use those upgrades; provided, however, that sufficient transmission transfer capability exists on the transmission project specified in the CPCN after accounting for other generation projects.

For bids that: 1) utilize a transmission project for which a CPCN has been filed and is pending, or 2) utilize a Commission approved “bid-eligible planned transmission project” identified in the Phase I decision, transmission upgrade costs will not be included in the bids for purposes of determining advancement to computer-based modeling. In computer-based modeling, transmission upgrade costs will be included in the costing of the bids. At the completion of computer-based modeling, the total cost of the transmission upgrade will be included in any portfolio with a bid or bids that would utilize that transmission upgrade for portfolio costing and comparison purposes.

Existing generation resources from which the Company currently purchases capacity and energy will not be burdened with any incremental electrical transmission interconnection or network delivery costs provided that the Company currently has sufficient transmission capacity to deliver the entire generation to its load. For existing generation resources with inadequate transmission service, a projection of the purchase of sufficient transmission rights will be added to the bid for evaluation purposes.

3.2 Electric Transmission Injection Capability

Public Service performs transmission studies for Large Generator Interconnect Agreement (“LGIA”) requests. The LGIA requests are made to determine the feasibility, cost, time to construct, and injection capability for the transmission system interconnection of an electric generating resource. The Company posts the results of these studies on its OASIS website.¹⁰ The Company performs other transmission studies for purposes of transmission planning that determine like information.

The transmission system is interrelated and generation injection at one point on the system likely changes the injection capability at other points; e.g., incremental generation injections at Pawnee would decrease the generation injection capability at Missile Site and vice versa. The generation injection capability values provided below in Table 3 are approximations based on the stand-alone transmission studies performed for specific MW levels identified in LGIA requests. The generation injection capability values can change when Public Service performs additional specific resource and resource portfolio transmission studies whether for resource evaluation or an LGIA request.

Table 3. Transmission System Injection Capabilities

TBD

3.3 Transmission Corridor Preservation

¹⁰ Information regarding posted studies may be found on a public site:
http://www.rmao.com/public/wtpp/psco_studies.html.

The Company seeks to maintain transmission access into its existing and planned substations and switchyards to facilitate future interconnections to its system. The Company’s goal is to avoid situations in which planned generation or storage facilities physically surround stations and effectively preclude the development of transmission and radial generation tie lines into the station.

For bids located adjacent to PSCo existing and planned substations and switchyards, developers must agree to coordinate with PSCo to determine if the Company deems the station to be a key point of interconnection for future resources. If such determination is made, developers will be required to work with PSCo to identify transmission corridors of adequate size and location as part of their planned generation or storage facility layout. Agreeing to these terms is a threshold bid requirement; see Section 4.2 “Minimum Requirements for Proposals”.

Section 4. Proposal Content Requirements and Submission Procedure

4.1 Schedule Estimate

An indicative schedule for this RFP process is provided in Table 4.¹¹ A graphical timeline is provided in Appendix E.

Table 4. Solicitation Schedule

Activity	Date
RFP Issued	TBD
Pre-Bid Conference	TBD
Notice of Intent to Respond Due	TBD
Proposals Due	TBD
120-Day Report to Commission	TBD
Commission Phase II Decision	TBD

4.2 Minimum Requirements for Proposals

This section describes the minimum requirements that all proposals must satisfy to be eligible for consideration in this Solicitation. Unless the Company in its sole discretion elects otherwise, proposals that do not comply with these requirements will be deemed ineligible and will not be considered further. The Company reserves the right to reject any bid and all bids.

- Proposals must include all applicable content requirements described in Section 4.3, including clear and complete written descriptions of all information requested and completed forms.

¹¹ The Company reserves the right to adjust this schedule appropriately, including, but not limited to, for changes to the regulatory calendar.

- Proposals must clearly specify all pricing terms in accordance with Section 2.3.
- Proposals must clearly demonstrate compliance with all power delivery requirements listed in Appendix C, CPUC 3667, or CPUC 3900 as applicable.
- Cold weather winterization description. Any proposal offering new or existing thermal generation resources (e.g. natural gas-fired generation) must include information detailing the cold weather/winterization processes and equipment packages for the facility.
- On-site fuel option. Any proposal offering new or existing thermal generation resources (e.g. natural gas-fired generation) are required to provide pricing and performance characteristics both with and without an option for the storage of on-site fuel (e.g., fuel oil) of sufficient quantity to operate the resource at maximum output for a minimum of 72 consecutive hours. The on-site fuel option is to be accompanied by a separate set of bid forms where appropriate as well as any unique bidder-proposed model PPA terms and conditions associated with the option.
- Proposals must demonstrate an acceptable level of development and technology risk, as determined by the Company's evaluation team.
- Work with the Company on Transmission Corridor Preservation as detailed in Section 3.3.
- For non-Section 123 proposals, the respondent's project development team must demonstrate that it has successfully completed the development, construction and commissioning of at least one utility-scale and utility-grade project with technology similar to the proposed project.
- For new-build Section 123 proposals, the respondent's project development team must demonstrate that it has successfully completed the development, construction and commissioning of at least one utility-scale and utility-grade project.
- Respondents must demonstrate to the satisfaction of the Company that they can meet the security requirements contained in the Model PPA.
- Proposals must clearly demonstrate any financing requirements and an indicative financing structure (construction and permanent) for any proposed resources that will be delivered under the proposals. Respondents should include a description of how current financial markets are likely to impact the respondent's ability to access the debt and tax equity markets.
- Each respondent must present clear and sufficient proof that it has or can secure an adequate and confirmed supply of generation equipment sufficient (at a minimum) to meet the required proposal.
- Respondents must provide the required bid fee (described in Section 4.8 below) for each proposal submitted.

4.3 Proposal Content Requirements

This section outlines the content and format requirements for all proposals submitted in response to this RFP. Unless the Company in its sole discretion elects otherwise, proposals that do not include the information requested in this section will be ineligible for further evaluation, unless the information requested is not applicable or relevant to a given proposal. The Company reserves the right to conduct any further due diligence it considers necessary to fully understand and evaluate proposals.

Proposal Format

The first section of each proposal must contain an Executive Summary that provides an overview of the proposed generating resource characteristics, including any unique aspects or benefits. The second section of the proposal must include a completed set of applicable forms included in Appendix A. These forms will contain essential information about each proposal. A separate set of forms and related information must be submitted with each proposal. The third section of the proposal must include additional information presented in narrative form under specific topic headings.

A complete proposal will include the following components:

1. Executive Summary
2. Complete set of applicable forms
3. Form attachments (as necessary to elaborate on form information)
4. Narrative Topics Discussion
5. Requested maps and electronic data
6. Land rights contracts and all supporting documentation, i.e. ALTA survey, title commitments, etc.

The proposal forms and topic headings are listed below.

Proposal Forms

Form A	Notice of Intent to Respond
Form B	Bid Certification
Form C	Bid Cover Sheet
Form D1A	Pricing for Thermals
Form D1B	Pricing for Storage
Form D2	Electrical Interconnection Cost Estimates
Form E	Construction Milestones
Form F1	Contract Capacity
Form F2	Facility Performance
Form F3	Heat Rates
Form F4	Heat Rate Degradation
Form F5	Technical Description Battery Energy Storage I
Form F6	Technical Description Battery Energy Storage II
Form F7	Section 123 Qualifications
Form G	Natural Gas and Backup Fuel Supply
Form H	Emission Rates
Form I	Interconnection Information Forms

The individual forms in Appendix A include additional instructions for completion.

Narrative Topics

Narrative topics should be organized under the following headings (with reasonably equivalent information provided for proposals involving existing generation assets):

- Development Experience

- Financial Information
- Project Description and Development Schedule
- Equipment Description
- Real Property Acquisition Description and Plan
- Permitting Plan
- Transmission Plan
- Community/State Reaction Assessment
- Operations and Maintenance Plan
- Exceptions to Model PPA
- Beneficial Contributions/Section 123 Resources
- Employment Metrics

Development Experience. All proposals must describe the respondent's qualifications and experience in developing, constructing, commissioning and operating generation facilities similar to the proposed facility, including the experience, qualifications and safety record of key personnel who will manage development and an overview of utility scale and utility grade projects the respondent has developed during the last 5 years. If an EPC team is in place, the proposal should identify the members of the team; if such a group is not in place, the proposal must set forth the respondent's plan for assembling such team (including process and timing).

Financial Information. All proposals must provide detailed financial information about the proposed project. This information shall include two years of audited financial statements or the equivalent for respondents and other responsible parties (including any entities that would provide parent guaranties of the respondents' obligations), whether the project will be financed as a recourse or non-recourse project, the percentages of debt and equity financing, and the expected cost of debt. In addition, respondents shall provide a detailed plan for financing the proposed project during construction and operation including the financing commitments that the respondent has obtained. Proposals shall also explain in detail the plan for meeting the security requirements outlined in the Model PPA and must set forth the credit rating (if any) of any entities that would provide parent guaranties of the respondents' obligations. Proposals must include an organization chart showing the entities that own the respondent's organization and a description of the respondents' organization structure (including primary and secondary businesses). Detailed financial information about the bidder (e.g., 10-Ks or similar) should be provided in electronic format only.

Project Description and Development Schedule. All proposals for the construction of new generation facilities must set out a description of the proposed project, including a description and plans for the proposed site and rights of way, utilities services, equipment configuration, transmission and interconnection construction and procurement, supply of spare parts, opportunities for future expansion of the project, required permits, the nameplate capacity of the resource in MW, the respondent's key consultants (if known) for meteorological studies and permitting studies, and the respondent's construction contractors and prime subcontractors (if known). Such proposals must provide a detailed Gantt chart of project development activities developed using Microsoft Project or similar software (note that .pdf file-type is preferred for submittal) that includes (at a minimum) entering major equipment and construction subcontracts, target completion dates for financing, engineering, permitting, equipment procurement, construction, startup and commissioning, and guaranteed dates for substantial completion.

Proposals must describe the overall development strategy that will ensure that the project can be developed in time to meet the proposed commercial operation date. Respondents proposing Section 123 resource generation projects should describe the risks associated with deploying such new technology specifically as those risks impact the proposed commercial operation date and the first years of operation.

It is the Company's expectation that it will have first rights to all proposed projects submitted into the RFP for the period during the proposal review and approval process. Respondents must also provide any and all information which would restrict the respondent from providing the Company with exclusive rights to negotiate a PPA for the proposed project. Such restrictions could include, but are not limited to, prior active submission or participation in other RFPs, exclusivity rights granted to other parties, rights of first offer or refusal, purchase options, and active auctions for the project as applicable.

Equipment Description. At a minimum, proposals should indicate for all major equipment: 1) the name of the manufacturer and other vendors, 2) models, 3) key metrics and characteristics of the equipment, 4) performance history of the equipment, 5) contracting status, and 6) planned delivery dates. In addition, proposals should document any equipment included to ensure availability under cold weather conditions as described in Section 4.2.

Real Property Acquisition Description and Plan. Proposals must provide a description of the status of real property acquisition and land use permitting for the project that is sufficient for the Company to assess the completeness and sufficiency of the respondent's real property rights, including but not limited to:

- Copies of all of the land right contracts secured to date,
- The status of current site control necessary to build, operate, and maintain any radial transmission line dedicated principally to the project, and the form(s) of land right contract being utilized to secure the right-of-way, if applicable,
- The plan for acquiring any and all currently uncontrolled necessary real property rights for the project,
- Copy of title commitment(s) and ALTA Survey(s), if available,
- The plan for undertaking any necessary title curative work,
- Acreage of real property required for the project and a schedule for the completion of the real property acquisition process,
- A description of any subdivision or zoning modifications and all city, county, or state land use permits that will be required, such as conditional use, special use or other similar permits and approvals, which will be required for any phase of development, construction, or operations of the project, and
- A description of existing and planned land use in all directions surrounding the proposed site.

If the proposed site is adjacent to an existing or planned substation or switching station, the proposal must provide a preliminary site layout that indicates how access to the substation or switching station might be maintained for other transmission or radial generation tie lines after the proposed facility is built. For purposes of this Bid Narrative, adjacent includes a project which proposes a site directly across a road or similar barrier from the existing or planned substation or switching station.

Proposals must include a USGS-based map showing the location of the proposed site, and ESRI ArcGIS shapefiles or other industry standard format depicting the Project boundary and any radial transmission line necessary to interconnect the project. Shapefiles must be provided in Colorado NAD 83 State Plan coordinate system.

For bidder's providing copies of land rights contracts, please see specific submission instruction in section 4.6.

Permitting Plan. Proposals should include a complete list of permits required and secured for the project. If permits have not yet been secured, a schedule for submitting and obtaining the required permits must be provided.

Proposals must describe all air quality permits that will be required for the project. State whether any air permits have been secured, and if not, whether applications have been filed. Report on the status of any pending applications and any feedback from permitting agencies. Describe the expected time frame to obtain the necessary air permits after application submittal to the State.

Describe all other federal, state and local permits and approvals that will be required for the project, but not limited to:

- Federal environmental assessments under the National Environmental Policy Act ("EA/EIS"),
- Water supply,
- Wastewater discharge permits,
- Hazardous waste permits, and
- No-hazard permits/determinations from the Federal Aviation Administration.

Describe the current status of obtaining these permits and any feedback from permitting agencies.

Describe the water supply strategy for the project, including a description of water requirements, water supply source(s), discharge plans, new water pipeline requirements, and any work completed to date on the water supply plan.

Explain any expected restrictions/limitations on operations due to air and/or water permits.

If the proposed site does not currently have the appropriate zoning designation, provide any rezoning requirements, plans to obtain the rezoning, and any known issues as to rezoning.

For projects proposing to utilize an eligible energy resource¹², proposals must also provide written documentation evidencing that consultation has occurred with appropriate governmental agencies (for example, Colorado Parks and Wildlife or the U.S. Fish and Wildlife Service) responsible for reviewing potential project development impacts to state and federally listed wildlife species, as well as species and habitats of concern.

Transmission Plan. Provide a detailed description of the Point of Delivery to the Public Service electric system, including the location and voltage level of such point. All proposals should include a description of the respondent's plan to transmit power from the Project to the proposed Point of

¹² Eligible energy resources are defined in the Commission's rules, section 3652, "Definitions".

Delivery on the Public Service transmission system as described in Appendix C. The information should include a description and expected route of any radial transmission line dedicated principally to the Project if known, including a summary of the status of obtaining requisite easements and alternatives.

If any new FERC-regulated transmission or any upgrades to non-Public Service transmission will be required to deliver power from the Project to the proposed point of delivery ("New Transmission"), the proposal also should include a complete description of the required New Transmission including:

- The owner and developer of the New Transmission,
- The complete expected route for the New Transmission,
- The voltage and capacity of the New Transmission,
- The status of planning, permitting, financing and construction of the New Transmission, to the extent known to the respondent,
- The location of the interconnection of the Project into the New Transmission, and
- Whether the respondent's Project, if successful, would be sufficient for the New Transmission to be built without the participation of other power projects, and if not, what other projects would need to be built and in what time frame to allow the New Transmission to be built in time for the respondent to meet its scheduled in-service date.

For proposals that will require third-party transmission service(s) to deliver, on a firm transmission service basis, the capacity and energy to the Point of Delivery specified above, provide a detailed description of the interconnection, electric losses, transmission and ancillary service arrangements, by provider, that will be required, including:

- The identity of all third party providers,
- The location and voltage level of the interconnection point to the interconnection service provider's facilities,
- Any interconnection facilities that bidder owns or intends to construct and own,
- The specific services provided by each provider, and
- The line losses, point(s) of receipt and point(s) of delivery associated with each third party transmission service.

Provide documentation that the third party services discussed in the paragraph above will be available to bidder during the proposed contract term. This should include:

- Any associated transmission studies that directly examined delivery of the proposed energy to the point of delivery,
- Detailed information on any and all new transmission facilities and/or upgrades to existing facilities that will be required to deliver the proposed energy to the point of delivery, and,
- A detailed discussion of the schedule for siting, permitting, and construction of such new facilities and/or upgrades.

Attach a USGS-based map that shows the location of the interconnection point with the third-party and the generation facility.

Community/State Reaction Assessment. Each respondent must present a current assessment of, and a plan for continuing to monitor, local community and state reaction to the project, and a plan to work with the local community on project issues. Such plan might include the following

elements:

- A list of the references used to assess the community reaction, and the methodology used to draw conclusions,
- A list of key local contacts interviewed and their opinions,
- An assessment of the local community reaction at the time of the proposal,
- An action plan for working with the local community/state to successfully complete the project, and
- A description of the respondent's proposed conflict resolution methodology.

Operations and Maintenance Plan. Respondents shall summarize their operations and maintenance plans and labor arrangements for the generation facilities associated with their proposals. O&M plans for thermal generation facilities must include a description of cold weather/winterization processes and equipment packages for the proposed facility.

Exceptions to Model PPA. In support of the Company's efforts to complete project evaluation, and contract negotiations in a timely manner, respondents shall review and provide exceptions and/or comments to the Model PPA. To the extent that the validity of a respondent's proposal and/or the respondent's ability to execute a PPA is contingent upon material changes to the language in the Model PPA, respondents should specifically identify the terms in the Model PPA they propose to change and should summarize their proposed changes to such terms. To the extent that a respondent wishes to propose changes to the Model PPA that, if accepted by the Company, would reduce the respondent's proposed pricing the proposal should specifically identify such changes and the associated price reduction. To the extent practicable, respondents should develop exhibits, schedules, attachments and other supplemental documents required by the Model PPA.

Exceptions taken to model PPA terms must be clearly expressed such that the Company can reasonably understand the bidder's concerns. Statements containing language such as "To be discussed" do not provide the Company sufficient information to understand the bidder's concerns. Bidder's providing such comments will be required to more fully explain their concerns so that the Company can adequately conduct its due diligence activities.

Beneficial Contributions/Section 123 Resources. Respondents should indicate whether or not they believe their project meets the requirements of a Section 123 resource. Bidders claiming Section 123 status must complete Form F6. Regardless of claimed Section 123 status, **all bidders must provide information concerning the beneficial contributions of their proposed technology** including benefits associated with Colorado's 1) energy security, 2) economic prosperity, 3) environmental protection, and 4) insulation from fuel price increases.

This information is needed from **all bidders** in order to allow the Commission to consider whether certain benefits are common across proposals and whether certain benefits tie specifically to the implementation of a particular new and clean energy technology.

Employment Metrics. Respondents shall include descriptions of each best value employment metric ("BVEM") described below as it relates to the bid project.

Since the Company's last Electric Resource Plan proceeding, a change to §40-2-129, C.R.S. has been made from the utility previously being required to "request" best value employment metric ("BVEM") information to now the utility being required to "obtain and provide to the Commission" such information. The Company provides guidelines below for bidders on such when preparing responses to the 2022 All-Source Solicitation. The Company can and will disqualify bids that provide insufficient BVEM as part of their bid packages.

Best Value Employment Metrics - Information Guidelines

- (a) The availability of training programs, including training through apprenticeship programs registered with the United States Department of Labor, Office of Apprenticeship and Training. The utility or bidder shall provide, for example and as applicable, the following information for each craft the utility anticipates will work on the project:
 - (I) availability of training programs;
 - (II) the names of specific training programs available;
 - (III) the curriculum of the specific training programs;
 - (IV) the cost of worker training;
 - (V) the duration of the training programs;
 - (VI) the total number of hours of on-the-job training required;
 - (VII) the total number of classroom hours required;
 - (VIII) the licenses and certifications obtained, if any;
 - (IX) a copy of training program standards for each training program; and
 - (X) a statement whether the training programs are United States Department of Labor registered apprenticeship programs and are accredited to award college credits.

- (b) The employment of Colorado workers as compared to importation of out-of-state workers. The utility or bidder shall provide, for example and as applicable, the following information for each craft the utility anticipates will work on the project:
 - (I) estimated number of workers by job classification;
 - (II) estimated length of time of service, including total man hours, by job classification;
 - (III) percentage of Colorado workers by job classification; and
 - (IV) percentage of project man hours earned by Colorado workers by job classification.

- (c) Long-term career opportunities. The utility or bidder shall provide, for example and as applicable, the following information for each craft the utility anticipates will work on the project: job classifications, licenses, certifications and skills that will be applied and the long-term career opportunities for each job classification; and

- (d) Industry-standard wages, health care, and pension benefits. The utility or bidder shall provide, for example and as applicable, the following information for each craft the utility anticipates will work on the project:

- (I) range of wages by job classification;
- (II) healthcare benefits by job classification;
- (III) pension benefits by job classification;
- (IV) prevailing wages and fringe benefits (healthcare benefits, pension benefits and other compensation) based on industry standards and the current Colorado labor agreements by job classification; and
- (V) wages and fringe benefits (healthcare benefits, pension benefits and other compensation) by job classification.

4.4 Pre-Bid Conference

Time: **TBD**
Date: **TBD**
Location: **TBD**

Public Service will webcast the meeting and will provide means for remote, electronic participation by potential RFP respondents. Public Service will post information concerning webcast access and remote participation on the RFP website once confirmed¹³. Interested parties are encouraged to provide written questions to the Company's RFP Project Manager by email prior to the pre-bid meeting. A summary of the bid conference proceedings, including submitted questions and answers, and answers to any question remaining unanswered at the end of the meeting will be prepared by the Company and posted on the RFP website.

4.5 Notice of Intent to Respond (NOIR)

Respondents who intend to submit a proposal into the 2022 All-Source solicitation are strongly encouraged to also submit a non-binding Notice of Intent to Respond (NOIR), Form A in Appendix A. The Company requests that completed NOIR forms be emailed to the RFP Project Manager at the earliest date possible but no later than 4:00 P.M. Mountain Time on **TBD**. There is no fee required to submit a NOIR.

4.6 Proposal Submission Deadline

All proposals, including Company self-build proposals will be accepted until 4:00 P.M. Mountain Time on **TBD**. All proposals must be transmitted by express, certified or registered mail, or hand delivered to the following address:

TBD

Proposals received later than the submission deadline will be rejected and returned unopened, unless the Company determines, at its sole discretion, to consider such proposals. Two (2) bound hard copies of the proposal must be included in the submittal. In addition, respondents must

¹³ See Section 1.4 of this RFP for website information

submit two (2) electronic copies (USB flash drives) with completed forms in a Microsoft Office format.

Bidders that plan to submit copies of all land acquisition contracts, surveys, title commitments, etc., are encouraged to not include hard copies of these documents in their hard copy proposal submittal, but instead, include these files in the electronic copies. All files pertaining to land acquisition need to be organized and located in a separate folder in the electronic copies.

Proposals must be submitted in a sealed package with the following information shown on the package:

TBD

The respondent's company name and address must be clearly indicated on the package containing the proposal.

4.7 Information Policy

To obtain additional information about this RFP, potential respondents as well as all other parties may submit inquiries only to the RFP Project Manager via email at **TBD**. Potential respondents as well as all other parties should not attempt to acquire information through any other means including telephone calls to the Company. The Company will maintain a log of all email inquiries and coordinate the preparation of written responses. Once a response is prepared, the Company will forward the response to the inquiring party. Questions and responses, when germane, will be periodically posted to the RFP Web Site in a FAQ. The Company has established this information policy to ensure that all respondents have the same timely access and knowledge about the bidding and evaluation process.

All bidders as well as all parties in the resource plan proceeding other than the utility are restricted from initiating contact with the IE pursuant to Commission rule.

4.8 Bid Evaluation Fees

All respondents are required to pay to the Company a bid evaluation fee with each proposal submitted; bid fees are determined by the nameplate capacity of the bid according to Table 5 below. Public Service may deem proposals that do not satisfy the requirements for a single proposal as multiple proposals, each of which would require a separate bid evaluation fee. For example, a proposal that triggers electric interconnection studies for multiple points or levels of interconnection would be deemed separate proposals for each such point or level. In addition, proposals offering multiple commercial operation dates for the same project or facility will be viewed as multiple proposals. If the Company deems a respondent's proposal to be multiple proposals, the Company will notify the respondent and allow it to elect to pay the incremental bid fee or to revise its proposal to comply with the Company's requirements for a single proposal.

Notwithstanding the above, respondents who submit proposals for projects greater than 2 MW may also submit a proposal for the same project/facility in the 2022 Company Ownership RFP with no incremental bid fees. No additional bid fees are required when providing the mandatory on-site fuel storage proposal or the requested hydrogen option.

Checks should be made out to "Public Service Company of Colorado" and must be included with the proposal. Bid evaluation fees are non-refundable.

Table 5. Bid Fees

MW Range	Bid Fee
>0.1 to 1 MW	\$375
>1 to 2 MW	\$750
>2 to 5 MW	\$1,500
>5 to 10 MW	\$3,000
>10 MW	\$10,000

Any bidder(s) selected to begin negotiation of a Power Purchase Agreement shall be required to submit a Second Bid Fee of \$1/kW (e.g. 100 MW Project * \$1/kW = \$100,000) to the Company prior to commencement of negotiations. Upon execution of a Power Purchase Agreement the Second Bid Fee shall, at the option of the bidder, be either refunded to the bidder or applied to fulfill the bidder's obligations under Article 11 of the Power Purchase Agreement. However, if the bidder and the Company fail to execute a Power Purchase Agreement due to, in whole or in part, bidder's actions that do not reflect bidder's representations or commitments during the RFP bidding process, the Company shall have the right to retain the Second Bid Fee.

4.9 Clarification of Proposals

While evaluating proposals, the Company may request clarification or additional information about any item in the proposal. Such requests will be sent via email to respondents identified on Form C, by the RFP Project Manager, typically, and respondents are required to provide a written or electronic response back to the RFP Project Manager within five (5) business days, or the Company may deem the respondent to be non-responsive and either suspend or terminate evaluation of the proposal. Respondents are encouraged to provide an alternate point of contact to ensure a timely response to clarification questions.

4.10 Confidentiality

Respondents are allowed to identify any information in their proposals that respondents claim should be considered to be confidential or proprietary. Nonetheless, the Company reserves the right to release all proposals to its affiliates and to its and such affiliates' agents, advisors, consultants, and the IE for purposes of proposal evaluation. The Company will, to the extent required by law, advise each agent, advisor or consultant that receives such claimed confidential information of its obligations to protect such information. In addition, all information, regardless of its confidential or proprietary nature, will be subject to review by the Commission and other governmental authorities and courts with jurisdiction, and may be subject to legal discovery. It is not the Company's intent to enter into any separate confidentiality, non-disclosure, or similar agreements as a condition to receiving a respondent's proposal.

Notwithstanding the above paragraph and as indicated in Section 1.1, a reasonable number of attorneys and a reasonable number of subject matter experts representing a party to the Company's 2021 ERP docket can, upon the execution of the appropriate non-disclosure

agreement, request and receive access to all bid information provided to the Company in response to this RFP regardless of a bidder's claim of confidentiality or propriety. In addition, upon completion of the competitive acquisition process Public Service will post on its website and thereby make publicly available the following information from all bids and utility proposals: bidder name; bid price and utility cost; generation technology type; size of facility; contract duration or expected useful life of facility for utility proposals; and whether the proposed purchased power agreement includes an option for the utility to purchase the bid facility during or at the end of the contract term.

4.11 Addenda to RFP

Any additional responses required from respondents as a result of an Addendum to this RFP shall become part of each proposal. Respondents must list all submitted Addenda at the bottom of the Bid Certification Form (Form B).

Section 5. Evaluation and Criteria

The objective of the Company's Solicitation evaluation is to identify portfolios of proposals that meet the resource needs identified in the solicitation in a reliable and cost-effective manner, while achieving the resource goals of the Commission-approved ERP.

As described below, the evaluation process will include an assessment of both economic and non-economic criteria.

5.1 Evaluation Process

An evaluation team made up of various groups within Xcel Energy Services and the Company will evaluate proposals; however, the Company reserves the right to retain the services of outside experts to assist in the evaluation of proposals. The RFP Project Manager may contact respondents directly at any point during the evaluation process for the purposes of clarifying proposals. The Company will also cooperate with, and provide access to information provided by respondents to, the Independent Evaluator as required by RP Rule 3612. All bidders as well as all parties in the resource plan proceeding other than the utility are restricted from initiating contact with the IE.

Proposals will be evaluated using a multi-step process as follows:

Step 1 – Bid Eligibility Screening

Each proposal will be reviewed to ensure it meets the minimum requirements outlined in Section 4.2. The Company will notify each proposal respondent within 15 days of bid receipt as to the Company's bid eligibility evaluation.

Step 2 – Interconnection Assessment and Initial Economic Evaluation

While not entirely concurrent, the activities described in Steps 2.A., 2.B. and 2.C. below will overlap to some extent.

A. Electric Interconnection Cost Estimates

The Company will determine or verify electric interconnection cost estimates provided by bidders. If substantial differences occur, the Company will provide its cost estimates to the applicable bidders so that they can update their bid pricing, as they deem appropriate. Such bidders must submit final bid pricing back to the Company within 5 calendar days of the date the interconnection cost estimates are provided.

B. Transmission and Distribution Upgrade Schedule Assessment

Some or all of the proposals will also be evaluated to assess the general siting, permitting, and construction time requirements associated with Public Service transmission and/or distribution network upgrades, including network upgrades for interconnection and network upgrades for delivery, that may be needed for each proposal to:

- Interconnect the proposed generation with the Public Service transmission or distribution system,
- Deliver the entire proposed capacity and energy to the Company's customers, and/or
- Deliver the entire proposed capacity and energy from a third party transmission system to the Public Service electric system.

The impact of these analyses on a respondent's proposed schedule will be a factor in the evaluation of its proposal.

C. Initial Economic Screening

The primary purpose of the initial economic screening is to rank each bid by technology so that the most promising bids can be forwarded to the subject matter experts for their review as quickly as possible and to identify those bids likely to be moved forward for computer modeling of bid portfolios. The initial economic screening consists of calculating an "all-in" levelized cost of capacity ("LCC").

In addition to the costs provided in the bid, the Company will estimate incremental costs or benefits, as necessary, such as:

- Electrical interconnection costs and network upgrades not included in Form D1 pricing. These incremental capital costs are converted to a variable rate by assuming a levelized fixed charge rate of 0.08 and an annual capacity factor based on the type of resource proposed.
- Projects that propose to interconnect to the Public Service distribution system will be credited with an avoided line loss assumption in their LCC calculations.
- Estimates of the Company's cost to deliver fuel (e.g., natural gas) to a tolled facility.
- Bids for energy storage will be credited with renewable integration credits, as applicable.

LCCs for stand-alone storage bids include an annual representation of proposed variable O&M costs and renewable energy credits in addition to proposed capacity payment rates. Variable O&M payment rates and renewable energy credits will be converted to a \$/kW-mo metric by applying the annual throughput limit (MWh) proposed for the storage device. LCCs are converted to a generation capacity credit basis by dividing by the ELCC assigned to the project.

In addition to proposed capacity payment rates, LCCs for non-storage generation resources include a fixed cost representation of variable \$/MWh costs by assuming an annual capacity factor and an average annual heat rate with which to estimate fuel volumes and costs. Gas-fired, peaking resources (defined as units with base capacity heat rates over 8,000 Btu/kWh) will be screened with an assumption of a 5% annual capacity factor. Gas-fired, intermediate resources (defined as units with base capacity heat rates of 8,000 Btu/kWh or lower) will be screened with an assumption of a 40% annual capacity factor. The average annual heat rate utilized in the LCC calculations will be the base capacity heat rates (i.e., heat rates without supplemental capacity) supplied on Form F3.

Start charges for dispatchable generation resources are converted to a fixed cost by assuming a set number of hours that a unit will run at full output once started; full output is defined as the net capability of the unit without supplemental capacity (e.g., duct firing on a combined-cycle power plant). For peaking resources, the Company assumes a four (4) hour run time per unit per start. For intermediate resources, the Company assumes a twelve (12) hour run time per unit per start and that all combustion turbines are started.

To the extent a project proposes to wheel tolled capacity and energy across another utility's transmission system prior to delivery to the Company's system, estimated wheeling losses will be imposed against the full load heat rate which will effectively increase the variable cost component of the LCC. Such an adjustment is necessary since the heat rates are calculated at the generation unit (which resides on another utility's system), whereas the other components of the LCC are all based on capacity and energy delivered to the Company's system.

The Company will assume a 5% EFOR rating in its LCC estimates of capacity payments regardless of the EFOR rating provided on Form E2 or the calculation shown in the Monthly Capacity Payment section of Form D1. Bids for thermal generation resources will be screened both on primary (e.g., natural gas) and on on-site, secondary fuel sources (e.g., fuel oil).

Regardless of their LCC calculations all eligible bids from existing generators, all Company self-build projects, and any bid claiming Section 123 status that is unopposed by the Company or, if opposed by the Company but later qualified as Section 123 by the Commission, will be advanced to computer modeling of bid portfolios.

Step 3 – Non-Price Factor Analysis

The Company will assess the non-price characteristics of the proposals. Non-price factors that will be assessed include, as applicable and without limitation, the following:

- Financial strength of the respondent
- Financing plan, including ability to utilize tax advantages
- Development, construction and operation experience
- Generator technology, availability, and warranties
- Environmental permitting and compliance
- Land use permitting and zoning
- Other permitting
- Real property acquisition/site control progress and plan
- Project operational characteristics

- Scale of the project and whether or not it meets the Commission definition of an Eligible Energy Resource
- Community support for the project
- Transmission access plan feasibility and arrangements
- Transmission upgrade schedule assessment
- Construction and equipment supply plans and arrangements
- Project execution planning
- Accredibility of capacity to meet reliability needs
- Accounting assessment

Step 4 – Bidder Notification

Contingent upon the existence of sufficient bids passing through bid eligibility and due diligence screening, the Company shall pass forward to the computer modeling of bid portfolios a sufficient quantity of bids across the various resource types such that resource plans can be created that conform to the Commission’s Phase I decision.

Pursuant to rule 3613(a), within 45 days after bids are received the Company will email each bidder and indicate whether its bid has or has not been advanced to computer-based modeling of bid portfolios and provide each bidder the modeling inputs and assumptions that reasonably relate to that potential resource or to the transmission of electricity from that facility to the Company.¹⁴ For those bids not advanced to computer modeling, the Company will provide the reason(s) why the project will not be evaluated further.

Step 5 – Computer-Based Modeling of Bid Portfolios

The costs and operational characteristics of any Company self-build proposal and each remaining bid equal to or greater than 10 MW will be input into the Company’s EnCompass planning model.¹⁵ The EnCompass model will be used to construct portfolios of bids that meet the capacity and energy projections of the Public Service system, as well as the various objectives of the resource plan and Commission decisions. The EnCompass model simulates operation of proposals together with the Company’s existing resources (and to an extent, the regional power market), while keeping track of all associated fixed and variable costs of the Company’s entire system.

EnCompass will be utilized to develop portfolios that minimize the net present value of revenue requirements through 2055. The model will also be used to develop alternative resource portfolios that represent the costs and benefits from increasing amounts of renewable technologies and/or Section 123 resources. Portfolios will be developed in accordance with the scenario analysis directives of the Commission.

Studies have showed that the level of ELCC calculated for portfolios of resources can differ from the sum of the standalone ELCC values. This difference is impacted by the technology mix,

¹⁴ See Section 5.1 Step 5 for an exception to the notification policy for bids that are included in modeling after 45 days of bid receipt. See Section 5.1 Step 6 for an exception to the notification policy for bids smaller than 10 MW.

¹⁵ Depending upon the pool of proposed projects received, the Company may adjust the specific MW cutoff for various technologies instead of the 10 MW indicated here. Such an adjustment would be done in consultation with the Independent Evaluator.

location, and penetration of the various renewable generation and storage resources in the portfolio. As the initial creation of bid portfolios within EnCompass is conducted using standalone ELCC values, a “back end” portfolio ELCC review will be conducted to ensure that the selected portfolios meet forecasted load and planning reserve margins without significant capacity overbuild.

To the extent initial results indicate that all bids of a specific generation resource type (e.g., all wind bids) passed to computer modeling appear in the least-cost portfolio(s), additional bids utilizing that generation resource type will be included in subsequent model runs. This iterative process will be followed until no incremental bids employing that generation resource type are selected in the least-cost portfolio. Bidders whose projects are passed forward to computer modeling of bid portfolios after the 45 day mark will be notified of their project’s advancement pursuant to rule 3613(a).

Step 6 – Evaluation of Bids Between 100 kW and 10 MW

As indicated in Step 5, bids must generally have nameplate capacity ratings equal to 10 MW or greater to be included in the computer-based portfolio modeling step. In general, bids between 100 kW and 10 MW (“Small Bids”) will be evaluated after the computer-based portfolio modeling step.

At the conclusion of Step 5, the Company will review the least-cost portfolio from the base case run (i.e., not from a sensitivity case) and determine each generation type selected in the portfolio. For each generation type selected, the Company will determine the all-in levelized capacity cost of the most expensive bid. These all-in levelized capacity costs will set the price against which Small Bids with similar resource technologies will be compared. The Company will include in all portfolios presented to the Commission each Small Bid with an all-in levelized capacity cost less than the most expensive bid with similar technology selected in the least-cost portfolio.

A final check will be made to ensure that the inclusion of all cost-effective Small Bids does not provide excess capacity credit to the least-cost portfolio through the RAP to such an extent that it could replace another source(s) of capacity selected through the EnCompass modeling. If it does, two additional sets of ad hoc EnCompass runs will be conducted to determine which is most cost-effective: 1) include all cost-effective Small Bids in the final portfolio, or 2) include all cost-effective Small Bids and exclude the other resource(s) that could potentially be displaced. The final portfolio would be the least-cost of these two runs assuming that both runs meet all reliability metrics.

To the extent the least-cost portfolio does not include a certain generation type (e.g. biomass) but bids for that generation type were passed through to computer-based modeling and lower priced Small Bids exist, an ad hoc EnCompass run including these Small Bids would be conducted to see if the revenue requirements of the least-cost portfolio increases or decreases. If the revenue requirements decrease with the addition of the Small Bids, they would be included in the final portfolios.

For certain generation types (e.g. hydro or gas-fired micro-turbines), the Company would not typically expect to receive bids in excess of 10 MW. For such situations, the lowest all-in LCC proposals (up to a maximum of three per technology) would be advanced to computer modeling and portfolio development along with those bids \geq 10 MW in Step 5 above. To the extent the EnCompass model selected all three of the lowest all-in LCC proposals and other proposals for

the same technology were also received, then ad hoc EnCompass runs would be conducted to determine the cost-effectiveness of these other proposals.

Bidders whose Small Bid projects are passed forward to computer modeling of bid portfolios after the 45 day mark will be notified of their project's advancement pursuant to rule 3613(a).

Step 7 – Phase II Report to Commission

Pursuant to rule 3613(d), the Company will file a 120-day report to the Commission describing the cost-effective resource plans that conform to the Commission's Phase I decision and other Commission decisions that impact the Phase II process.

5.2 Independent Evaluator Report

Within 30 days following the Company's 120-day report filing, the IE will report to the Commission its analysis of whether the Company conducted a fair bid solicitation and bid evaluation process, with any deficiencies specifically reported.

5.3 Phase II Commission Evaluation

Within 90 days of the Company's filing of its 120-day report, the Commission will issue a written decision approving, conditioning, modifying, or rejecting the Company's preferred cost-effective plan. The Company is required to complete this RFP process within 18 months after the receipt of bids unless the Company can show good cause for a requested deadline extension.

Appendix A

Proposal Forms and Instructions

As discussed in Section 4, the completed forms, attachments and narrative topic discussions, will comprise a complete proposal, except that Form I need not be completed by a bidder who has already entered into a formal interconnection process for their project. The contents of each form and any special instructions for completing the forms are described below. These forms can be downloaded from the RFP web site in a format appropriate for respondent input.

If additional space is needed to elaborate on information requested on any form, please attach additional sheets with the heading "Form [___] – Additional Information."

If certain information is requested that does not apply to the proposal, the respondent must indicate that the information is not applicable. If appropriate, the respondent should explain why the information is not applicable.

In addition to submitting two (2) hard copies of the proposal, respondents must also include two (2) electronic copies (USB flash drives) with all completed Forms in executable format, i.e. not PDF. The Company will provide the IE with one electronic copy of the proposal and, at their request, one hard copy. The Company will provide the Commission Staff with electronic access to the proposals.

Appendix B

General Planning Assumptions

The following planning assumptions will underlie the evaluation of proposals received in response to the Company’s Solicitation. Note that the following is not a complete listing of all assumptions that will be applied in the evaluation process. Further note that the assumptions noted below represent “base case” assumptions. Sensitivity analyses will be performed in which certain of these assumptions are altered in accordance with Commission directives. To the extent any of these general planning assumptions are updated after release of this 2022 RFP, the updated values will be provided to the Commission and made available to all potential respondents and parties.

1. Capital Structure and Discount Rate

An after-tax weighted average cost of capital (“WACC”) of 6.53% is used as the discount rate for levelized cost calculations and the present value calculations of modeled costs. Table B-1 shows the capital structure and cost of capital.

Table B-1

Discount Rate and Capital Structure				
	Capital Structure	Allowed Return	Before Tax Electric WACC	After Tax Electric WACC
Long-Term Debt	42.72%	4.09%	1.75%	1.32%
Common Equity	55.61%	9.30%	5.17%	5.17%
Short-Term Debt	1.67%	3.33%	0.06%	0.04%
Total			6.97%	6.53%

2. Gas Price Forecasts

The annual average Base gas price and relevant Low and High price sensitivities are summarized in Table B-2.

Table B-2

Year	Base Price Forecast						Low Price Forecast					High Price Forecast				
	Fuel Price (\$/mmBTU)		Market Price (\$/MWh)				Fuel Price (\$/mmBTU)		Market Price (\$/MWh)			Fuel Price (\$/mmBTU)		Market Price (\$/MWh)		
	Generic Coal	CIG RM	4C On-Peak	4C Off-Peak	Midway On-Peak	Midway Off-Peak	CIG RM	Minn Hub On-Peak	Minn Hub Off-Peak	Midway On-Peak	Midway Off-Peak	CIG RM	Minn Hub On-Peak	Minn Hub Off-Peak	Midway On-Peak	Midway Off-Peak
2021	\$1.34	\$2.73	\$26.96	\$24.10	\$24.58	\$20.21	\$2.73	\$26.96	\$24.10	\$24.58	\$20.21	\$2.73	\$26.96	\$24.10	\$24.58	\$20.21
2022	\$1.36	\$2.41	\$24.09	\$21.86	\$21.56	\$17.92	\$2.41	\$24.09	\$21.86	\$21.56	\$17.92	\$2.41	\$24.09	\$21.86	\$21.56	\$17.92
2023	\$1.41	\$2.64	\$25.90	\$24.05	\$26.10	\$21.56	\$2.52	\$24.77	\$23.00	\$24.96	\$20.62	\$2.75	\$27.03	\$25.10	\$27.24	\$22.50
2024	\$1.41	\$2.73	\$25.84	\$24.35	\$26.15	\$21.81	\$2.57	\$24.28	\$22.88	\$24.57	\$20.49	\$2.90	\$27.44	\$25.86	\$27.77	\$23.16
2025	\$1.45	\$2.85	\$26.78	\$25.21	\$27.16	\$23.00	\$2.62	\$24.64	\$23.19	\$24.99	\$21.16	\$3.09	\$29.03	\$27.32	\$29.44	\$24.93
2026	\$1.49	\$2.93	\$28.79	\$27.56	\$28.20	\$24.80	\$2.66	\$26.14	\$25.03	\$25.60	\$22.52	\$3.22	\$31.62	\$30.27	\$30.97	\$27.24
2027	\$1.53	\$3.02	\$28.23	\$27.63	\$27.70	\$24.97	\$2.70	\$25.24	\$24.70	\$24.76	\$22.32	\$3.37	\$31.49	\$30.82	\$30.90	\$27.85
2028	\$1.57	\$3.12	\$28.05	\$28.62	\$28.22	\$26.51	\$2.75	\$24.66	\$25.16	\$24.81	\$23.31	\$3.54	\$31.79	\$32.44	\$31.99	\$30.05
2029	\$1.62	\$3.29	\$28.89	\$30.11	\$28.96	\$27.76	\$2.82	\$24.76	\$25.80	\$24.81	\$23.79	\$3.83	\$33.59	\$35.00	\$33.67	\$32.28
2030	\$1.65	\$3.46	\$29.02	\$31.63	\$30.12	\$29.83	\$2.89	\$24.26	\$26.45	\$25.18	\$24.95	\$4.12	\$34.54	\$37.65	\$35.85	\$35.51
2031	\$1.69	\$3.61	\$29.78	\$32.13	\$30.83	\$30.81	\$2.96	\$24.37	\$26.30	\$25.23	\$25.21	\$4.39	\$36.20	\$39.07	\$37.49	\$37.45
2032	\$1.73	\$3.69	\$30.90	\$33.12	\$30.68	\$31.03	\$2.99	\$25.03	\$26.83	\$24.85	\$25.13	\$4.53	\$37.96	\$40.69	\$37.69	\$38.12
2033	\$1.77	\$3.84	\$31.02	\$34.03	\$30.69	\$31.75	\$3.05	\$24.65	\$27.04	\$24.39	\$25.23	\$4.80	\$38.82	\$42.60	\$38.42	\$39.73
2034	\$1.81	\$3.97	\$31.24	\$34.67	\$30.52	\$32.25	\$3.10	\$24.39	\$27.07	\$23.83	\$25.18	\$5.06	\$39.78	\$44.15	\$38.87	\$41.07
2035	\$1.85	\$4.11	\$31.62	\$35.32	\$30.65	\$32.57	\$3.15	\$24.30	\$27.14	\$23.55	\$25.03	\$5.31	\$40.90	\$45.69	\$39.64	\$42.13
2036	\$1.92	\$4.25	\$32.37	\$36.36	\$30.83	\$33.72	\$3.21	\$24.45	\$27.46	\$23.29	\$25.47	\$5.59	\$42.58	\$47.82	\$40.55	\$44.35
2037	\$1.97	\$4.31	\$32.26	\$36.49	\$30.89	\$34.07	\$3.23	\$24.19	\$27.37	\$23.16	\$25.55	\$5.71	\$42.75	\$48.36	\$40.93	\$45.14
2038	\$2.02	\$4.45	\$32.47	\$36.95	\$31.01	\$34.42	\$3.29	\$23.96	\$27.26	\$22.88	\$25.40	\$5.99	\$43.71	\$49.74	\$41.75	\$46.34
2039	\$2.07	\$4.62	\$32.51	\$37.23	\$30.80	\$34.81	\$3.35	\$23.56	\$26.98	\$22.32	\$25.22	\$6.33	\$44.56	\$51.02	\$42.22	\$47.71
2040	\$2.11	\$4.79	\$32.72	\$37.91	\$31.18	\$35.93	\$3.41	\$23.27	\$26.96	\$22.18	\$25.56	\$6.69	\$45.67	\$52.90	\$43.51	\$50.14
2041	\$2.17	\$4.91	\$33.21	\$38.58	\$30.92	\$36.10	\$3.45	\$23.35	\$27.12	\$21.73	\$25.38	\$6.93	\$46.90	\$54.47	\$43.65	\$50.97
2042	\$2.23	\$5.11	\$33.46	\$38.94	\$31.34	\$36.72	\$3.52	\$23.07	\$26.84	\$21.60	\$25.31	\$7.35	\$48.17	\$56.05	\$45.11	\$52.85
2043	\$2.29	\$5.31	\$33.62	\$39.46	\$31.16	\$37.17	\$3.59	\$22.73	\$26.68	\$21.07	\$25.13	\$7.79	\$49.31	\$57.88	\$45.70	\$54.52
2044	\$2.35	\$5.52	\$34.58	\$40.56	\$32.16	\$37.98	\$3.66	\$22.95	\$26.92	\$21.34	\$25.20	\$8.24	\$51.66	\$60.60	\$48.05	\$56.74
2045	\$2.40	\$5.68	\$34.57	\$41.37	\$31.73	\$38.48	\$3.72	\$22.61	\$27.05	\$20.75	\$25.16	\$8.61	\$52.41	\$62.71	\$48.10	\$58.34
2046	\$2.46	\$5.86	\$35.06	\$41.88	\$32.02	\$38.81	\$3.77	\$22.58	\$26.97	\$20.62	\$24.99	\$9.02	\$53.97	\$64.45	\$49.29	\$59.74
2047	\$2.52	\$5.99	\$35.39	\$42.90	\$32.40	\$39.86	\$3.82	\$22.55	\$27.33	\$20.65	\$25.40	\$9.31	\$55.03	\$66.71	\$50.39	\$61.99
2048	\$2.58	\$6.17	\$35.81	\$43.26	\$32.53	\$40.55	\$3.87	\$22.49	\$27.17	\$20.43	\$25.46	\$9.73	\$56.50	\$68.26	\$51.32	\$63.97
2049	\$2.65	\$6.28	\$35.76	\$43.61	\$32.50	\$40.19	\$3.91	\$22.25	\$27.14	\$20.22	\$25.01	\$10.00	\$56.94	\$69.44	\$51.75	\$63.99
2050	\$2.72	\$6.42	\$36.59	\$44.99	\$32.66	\$40.71	\$3.95	\$22.52	\$27.69	\$20.10	\$25.05	\$10.33	\$58.89	\$72.40	\$52.56	\$65.51

*Coal prices are delivered prices, while gas and market prices are hub prices.

3. Firm Fuel Charges

A levelized charge of \$11.98/kW-yr is applied to all new generic gas fired resources to represent an estimate of the fixed costs associated with acquiring firm fuel supply to these generators either through firm gas supply or on-site fuel infrastructure. Bids will be evaluated with the Company's estimated firm gas supply costs for the bid and/or the bidder's proposed costs for on-site fuel; see Section 4.2.

4. Market Prices

Annual average values for the Four Corners and Midway market price locations are summarized in Table B-2 and have zero CO₂ cost assumptions.

5. Coal Price Forecasts

The simple average annual coal price forecast is summarized in Table B-2.

6. Planning Reserve Margin

The Company will utilize a Planning Reserve Margin of 18.0% applied to the 50th percentile demand forecast.

7. Surplus Capacity Credit

During portfolio creation, for each year in which the modeled portfolio includes firm generation capacity in excess of the planning reserve margin (i.e., the periods in which the Company is long capacity), surplus capacity will be credited at the equivalent cost of the generic CT for all twelve months of the year up to an excess of 200 MW. The value of the surplus capacity credit is shown below in Table B-3.

Table B-3

Surplus Capacity Credit	
Year	\$/kw-yr
2021	\$82.19
2022	\$83.56
2023	\$84.97
2024	\$86.40
2025	\$87.85
2026	\$89.34
2027	\$90.86
2028	\$92.41
2029	\$93.99
2030	\$95.60
2031	\$97.25
2032	\$98.92
2033	\$100.63
2034	\$102.37
2035	\$104.16
2036	\$105.97
2037	\$107.82
2038	\$109.71
2039	\$111.63
2040	\$113.60
2041	\$115.60
2042	\$117.65
2043	\$119.73
2044	\$121.86
2045	\$124.02
2046	\$126.24
2047	\$128.50
2048	\$130.80
2049	\$133.14
2050	\$135.54

8. CO₂ Price Forecasts

Base modeling assumptions are either a \$0/ton CO₂ proxy price or the Social Cost of Carbon (“SCC”). The SCC values are shown in Table B-4 below.

Table B-4

CO2 Costs (\$ per short ton)		
Year	\$0 CO2	SCC
2021	\$0.00	\$48.06
2022	\$0.00	\$50.19
2023	\$0.00	\$52.38
2024	\$0.00	\$54.64
2025	\$0.00	\$56.97
2026	\$0.00	\$59.38
2027	\$0.00	\$61.85
2028	\$0.00	\$64.40
2029	\$0.00	\$65.69
2030	\$0.00	\$68.37
2031	\$0.00	\$71.13
2032	\$0.00	\$73.98
2033	\$0.00	\$76.91
2034	\$0.00	\$79.93
2035	\$0.00	\$83.04
2036	\$0.00	\$86.24
2037	\$0.00	\$89.53
2038	\$0.00	\$92.93
2039	\$0.00	\$96.42
2040	\$0.00	\$100.01
2041	\$0.00	\$103.71
2042	\$0.00	\$105.79
2043	\$0.00	\$109.67
2044	\$0.00	\$113.67
2045	\$0.00	\$117.79
2046	\$0.00	\$122.02
2047	\$0.00	\$126.37
2048	\$0.00	\$130.85
2049	\$0.00	\$135.46
2050	\$0.00	\$140.20

9. Inflation / Construction Escalation Rates

The inflation rate used for construction (capital) costs, non-fuel variable O&M, fixed O&M and any other escalation factor related to general inflationary trends is 2.0% and will be applied throughout the entire planning period as a base assumption.

10. Demand Side Management Forecasts

Table B-5 reflects the Company’s forecasted demand response capacity with and without adjustment for the assumed Planning Reserve Margin.

Table B-5

Demand Response(MW)		
Year	Un-Adjusted For Reserve Margin	Adjusted For Reserve Margin
2021	527	622
2022	527	622
2023	561	669
2024	561	669
2025	561	662
2026	586	691
2027	586	691
2028	586	691
2029	586	691
2030	605	714
2031	605	714
2032	605	714
2033	605	714
2034	605	714
2035	605	714
2036	605	714
2037	605	714
2038	605	714
2039	605	714
2040	605	714
2041	605	714
2042	605	714
2043	605	714
2044	605	714
2045	605	714
2046	605	714
2047	605	714
2048	605	714
2049	605	714
2050	605	714

11. Transmission Network Upgrade Costs

See Section 3.

12. Transmission Interconnection Costs

See Section 3.

13. Generation Capacity Credit for Wind Resources

Wind resources existing at the start of 2023 receive 13.4% of nameplate capacity as generation capacity credit.

For initial portfolio selection purposes, individual, incremental wind generation resources will receive generation capacity credit consistent with Table B-6. ERZ-5 (50%) and ERZ-5 (44%) are the ELCCs determined for a 50% NCF and a 44% NCF wind generator in ERZ-5, respectively. ELCCs will be estimated using the best available meteorological information available for wind resource proposals not consistent with any ERZ shown in Table B-6. The Company will interpolate between Incremental MW as shown in Table B-6 to accommodate actual proposals.

Table B-6

Incremental MW	ERZ-1	ERZ-2	ERZ-3	ERZ-5 (50%)	ERZ-5 (44%)
250	15.9%	12.8%	33.6%	24.2%	17.6%
500	14.5%	12.1%	31.1%	22.6%	16.7%
1,000	12.3%	11.2%	26.9%	20.2%	15.1%
2,000	9.6%	9.9%	20.1%	16.5%	12.5%
3,000	8.1%	9.0%	15.4%	14.2%	10.8%

As the ELCC study documented the impact that generation technology, penetration, and geographic diversity has on portfolio ELCC, the actual ELCC afforded any particular bid in a final portfolio will likely differ from the values shown in Table B-6. Additionally, ELCC may be adjusted for resources that propose annual net capacity factors that materially differ from the 50% annual NCF assumed in the ELCC study. See Section 5.1 for further discussion of the process through which portfolio ELCC will be determined in modeling.

14. Generation Capacity Credit for Solar Resources

Utility solar resources existing at the start of 2023 receive 47.9% of MW_AC nameplate as generation capacity credit.

For initial portfolio selection purposes, individual, incremental utility solar generation resources will receive generation capacity credit consistent with the proposed nameplate capacity and solar zone as shown in Table B-7. ELCCs will be estimated using the best available meteorological information available for solar resource proposals not consistent with any resource zone shown in Table B-7. The Company will interpolate between Incremental MW as shown in Table B-7 to accommodate actual proposals.

Table B-7

Incremental MW	MTN	NFR	SE	SFR	SLV	WS
100	21.4%	33.5%	29.3%	15.4%	28.4%	36.3%
250	19.6%	31.7%	27.4%	14.5%	26.2%	32.8%
500	16.9%	29.0%	24.3%	12.8%	22.5%	28.6%
1,000	13.3%	23.9%	19.4%	10.5%	17.2%	22.6%
2,000	9.7%	16.8%	13.7%	8.1%	11.8%	15.4%
3,000	7.8%	12.5%	10.6%	6.8%	9.3%	11.4%

As the ELCC study documented the impact that generation technology, penetration, and geographic diversity has on portfolio ELCC, the actual ELCC afforded any particular bid in a final portfolio will likely differ from the values shown in Table B-7. ELCCs may be adjusted from the values in the table for resources that propose annual net capacity factors that materially differ from the assumed 30% annual NCF or for projects that are located distant from the metered resources used in the ELCC study. See Section 5.1 for further discussion of the process through which portfolio ELCC will be determined in modeling.

15. Generation Capacity Credit for Hydro and Storage Resources

Based on the Company’s most recent ELCC study: 1) existing hydro generation resources receive 55.4%, 2) the Company’s existing Cabin Creek pumped hydro facility receives 91.7%, and 3) the storage components of solar hybrid facilities existing at the start of 2023 receive 60.4% in generation capacity credit.

For initial portfolio selection purposes, incremental storage resources will receive generation capacity credit consistent with the proposed nameplate capacity and duration as shown in Table B-8. The Company will interpolate between Incremental MW and Duration values as shown in Table B-8 to accommodate actual proposals for initial portfolio selection purposes. These values will apply to both standalone storage proposals and the storage component of renewable hybrid proposals.

Table B-8

Incremental MW	2-Hour Duration	4-Hour Duration	8-Hour Duration
50	48.8%	68.1%	92.3%
100	45.9%	65.0%	90.4%
250	39.7%	58.8%	85.2%
500	32.8%	51.0%	75.1%
1,000	26.1%	39.9%	55.3%
2,000	20.0%	27.5%	35.2%
3,000	16.3%	21.3%	25.7%

As the ELCC study documented the impact that generation technology, penetration, and geographic diversity has on portfolio ELCC, the actual ELCC afforded any particular storage bid

in a final portfolio will likely differ from the values shown in Table B-8. See Section 5.1 for further discussion of the process through which portfolio ELCC will be determined in modeling.

16. Resource Acquisition Period

The Resource Acquisition Period extends through 2030. Resources must be in-service no later than May 1, 2030.

17. Planning Period

The planning period is from March 31, 2021 – June 1, 2055.

18. SO₂ Effluent Costs and Allocations

The Company will assign no effluent costs or allocations to SO₂.

19. NO_x Effluent Costs and Allocations

The Company will assign no effluent costs or allocations to NO_x.

20. Mercury Effluent Costs and Allocations

The Company will assign no effluent costs or allocations to mercury.

21. Spinning Reserve Requirement

The level of spinning reserve modeled is consistent with Northwest Power Pool requirements. The cost of spinning reserve is inherently embedded in the EnCompass model by assigning a spin requirement and the spinning capability for existing and proposed resources.

22. Emergency Energy Costs

Emergency Energy Costs are included in the EnCompass model if there are not enough resources available to meet energy requirements. In the model, the cost will be set at \$1M/MWh to ensure the model makes every effort to avoid emergency energy (which is synonymous with curtailed firm load). Emergency energy costs occur only in rare instances; however, it does appear in some plans in very small amounts. To ensure large swings in plan costs are not created by these small amounts, for purposes of determining portfolio net present value these \$1M/MWh costs will be replaced in post-processing with a value of \$2,000/MWh (\$2020) escalating at 2%.

23. Wind/Solar Integration Costs and Storage Integration Credits

Table B-9 provides the wind and solar integration costs for existing and generic wind and solar resources assumed in modeling. Incremental storage resources receive an integration cost credit applied to the storage device’s discharge MWh.

Table B-9

Year	Integration Costs (\$/MWh)				Integration Credit (\$/MWh)
	Existing Wind	Generic Wind	Existing Solar	Generic Solar	Storage
2021	\$1.84	\$2.47	\$0.30	\$0.50	\$2.98
2022	\$1.68	\$2.31	\$0.20	\$0.40	\$2.72
2023	\$1.80	\$2.43	\$0.27	\$0.47	\$2.90
2024	\$1.85	\$2.48	\$0.30	\$0.50	\$2.98
2025	\$1.91	\$2.54	\$0.34	\$0.54	\$3.07
2026	\$1.94	\$2.57	\$0.36	\$0.56	\$3.14
2027	\$1.99	\$2.62	\$0.39	\$0.59	\$3.21
2028	\$2.04	\$2.67	\$0.42	\$0.62	\$3.29
2029	\$2.13	\$2.76	\$0.47	\$0.67	\$3.43
2030	\$2.21	\$2.84	\$0.52	\$0.72	\$3.56
2031	\$2.29	\$2.92	\$0.57	\$0.77	\$3.68
2032	\$2.33	\$2.96	\$0.59	\$0.79	\$3.74
2033	\$2.40	\$3.03	\$0.63	\$0.83	\$3.86
2034	\$2.47	\$3.10	\$0.67	\$0.87	\$3.97
2035	\$2.53	\$3.16	\$0.71	\$0.91	\$4.07
2036	\$2.60	\$3.23	\$0.76	\$0.96	\$4.19
2037	\$2.64	\$3.27	\$0.78	\$0.98	\$4.24
2038	\$2.71	\$3.34	\$0.82	\$1.02	\$4.35
2039	\$2.79	\$3.42	\$0.87	\$1.07	\$4.49
2040	\$2.88	\$3.51	\$0.92	\$1.12	\$4.63
2041	\$2.94	\$3.57	\$0.96	\$1.16	\$4.72
2042	\$3.03	\$3.66	\$1.01	\$1.21	\$4.88
2043	\$3.14	\$3.77	\$1.08	\$1.28	\$5.04
2044	\$3.24	\$3.87	\$1.14	\$1.34	\$5.20
2045	\$3.32	\$3.95	\$1.19	\$1.39	\$5.34
2046	\$3.41	\$4.04	\$1.24	\$1.44	\$5.48
2047	\$3.47	\$4.10	\$1.28	\$1.48	\$5.58
2048	\$3.56	\$4.19	\$1.33	\$1.53	\$5.72
2049	\$3.62	\$4.25	\$1.37	\$1.57	\$5.82
2050	\$3.69	\$4.32	\$1.41	\$1.61	\$5.93

24. Owned Unit Modeled Operating Characteristics and Costs

Company-owned units are modeled based upon their tested operating characteristics and historical or projected costs. Below is a list of operating and cost inputs for each Company-owned resource:

- a. Maximum Capacity
- b. Minimum Capacity Rating
- c. Seasonal Deration
- d. Heat Rate Profiles
- e. Variable O&M
- f. Fixed O&M
- g. Maintenance Schedule
- h. Forced Outage Rate
- i. Emission rates for SO₂, NO_x, CO₂, Mercury and PM
- j. Contribution to spinning reserve
- k. Fuel prices
- l. Fuel delivery charges

25. Thermal PPA Operating Characteristics and Costs

Power Purchase Agreements (“PPA”) are modeled based upon their tested operating characteristics and contracted costs. Below is a list of operating and cost inputs for each thermal purchase power contract:

- a. Contract term
- b. Maximum Capacity
- c. Minimum Capacity Rating
- d. Seasonal Deration
- e. Heat Rate Profiles
- f. Energy Schedule
- g. Capacity Payments
- h. Energy Payments
- i. Maintenance Schedule
- j. Forced Outage Rate
- k. Emission rates for SO₂, NO_x, CO₂, Mercury and PM
- l. Contribution to spinning reserve
- m. Fuel prices
- n. Fuel delivery charges

26. Renewable Energy PPA Operating Characteristics and Costs

PPAs are modeled based upon their tested operating characteristics and contracted costs. Below is a list of operating and cost inputs for each renewable energy purchase power contract:

- a. Contract term
- b. Name Plate Capacity
- c. Accredited Capacity
- d. Annual Energy
- e. Hourly Patterns
- f. Capacity Payments

- g. Energy Payments
- h. Integration Costs
- i. Emission rates for SO₂, NO_x, CO₂, Mercury and PM if applicable

Integration and cycling costs will be updated as addressed elsewhere in this document.

27. Base Native Load Forecast

Base native load forecasts (peak annual demand and energy) with and without assumptions of incremental electric vehicle load (“EV”) are shown in Table B-10.

Table B-10

Demand and Energy Forecast				
Year	Demand (MW)		Energy (GWh)	
	Forecast with EV	Forecast without EV	Forecast with EV	Forecast without EV
2021	6,856	6,847	33,010	32,943
2022	6,973	6,962	32,929	32,793
2023	6,951	6,930	33,151	32,884
2024	6,978	6,944	33,766	33,328
2025	7,031	6,985	34,170	33,567
2026	6,906	6,847	33,737	32,968
2027	6,986	6,913	34,131	33,167
2028	7,063	6,972	34,685	33,470
2029	7,130	7,015	35,104	33,570
2030	7,219	7,075	35,627	33,690
2031	7,306	7,129	36,178	33,780
2032	7,413	7,201	36,895	34,016
2033	7,478	7,230	37,462	34,081
2034	7,558	7,273	38,118	34,216
2035	7,665	7,341	38,899	34,465
2036	7,774	7,412	39,805	34,833
2037	7,862	7,461	40,516	34,998
2038	7,963	7,523	41,313	35,243
2039	8,069	7,590	42,069	35,442
2040	8,159	7,639	42,823	35,622
2041	8,216	7,656	43,379	35,593
2042	8,285	7,685	44,002	35,643
2043	8,129	7,493	43,298	34,412
2044	8,195	7,523	43,969	34,573
2045	8,245	7,535	44,466	34,522
2046	8,313	7,562	45,091	34,559
2047	8,389	7,596	45,762	34,621
2048	8,461	7,628	46,520	34,798
2049	8,509	7,640	46,991	34,759
2050	8,576	7,701	47,645	35,242

28. Low Native Load Forecast

Low native load forecasts (peak annual demand and energy) with and without assumptions of incremental electric vehicle load are shown in Table B-11.

Table B-11

Demand and Energy Forecast				
Year	Demand (MW)		Energy (GWh)	
	Forecast with EV	Forecast without EV	Forecast with EV	Forecast without EV
2021	6,856	6,847	33,010	32,943
2022	6,973	6,962	32,745	32,608
2023	6,936	6,915	32,874	32,607
2024	6,944	6,910	33,341	32,903
2025	6,960	6,914	33,554	32,950
2026	6,799	6,740	32,965	32,196
2027	6,855	6,782	33,255	32,292
2028	6,896	6,804	33,652	32,437
2029	6,945	6,830	34,015	32,482
2030	7,012	6,868	34,470	32,533
2031	7,076	6,899	34,950	32,552
2032	7,148	6,936	35,535	32,657
2033	7,196	6,948	36,060	32,678
2034	7,251	6,965	36,635	32,734
2035	7,319	6,996	37,276	32,842
2036	7,379	7,017	37,980	33,007
2037	7,437	7,036	38,592	33,075
2038	7,500	7,060	39,249	33,180
2039	7,573	7,093	39,889	33,262
2040	7,631	7,112	40,537	33,335
2041	7,679	7,119	41,084	33,297
2042	7,731	7,131	41,668	33,309
2043	7,555	6,919	40,917	32,030
2044	7,593	6,922	41,485	32,089
2045	7,636	6,926	41,976	32,032
2046	7,686	6,936	42,561	32,029
2047	7,741	6,948	43,180	32,038
2048	7,783	6,949	43,824	32,101
2049	7,822	6,954	44,286	32,053
2050	7,869	6,996	44,883	32,486

29. High Load Forecast

High native load forecasts (peak annual demand and energy) with and without assumptions of incremental electric vehicle load are shown in Table B-12.

Table B-12

Demand and Energy Forecast				
Demand (MW)			Energy (GWh)	
Year	Forecast with EV	Forecast without EV	Forecast with EV	Forecast without EV
2021	6,875	6,856	33,188	33,010
2022	7,002	6,973	33,352	32,929
2023	6,996	6,951	33,819	33,151
2024	7,042	6,978	34,702	33,766
2025	7,120	7,031	35,452	34,170
2026	7,023	6,906	35,421	33,737
2027	7,133	6,986	36,234	34,131
2028	7,237	7,063	37,181	34,685
2029	7,328	7,130	37,951	35,104
2030	7,441	7,219	38,826	35,627
2031	7,558	7,306	39,883	36,178
2032	7,697	7,413	41,162	36,895
2033	7,798	7,478	42,351	37,462
2034	7,917	7,558	43,695	38,118
2035	8,067	7,665	45,238	38,899
2036	8,224	7,774	46,972	39,805
2037	8,363	7,862	48,575	40,516
2038	8,519	7,963	50,333	41,313
2039	8,686	8,069	52,122	42,069
2040	8,840	8,159	53,976	42,823
2041	8,962	5,659	54,858	43,379
2042	9,005	5,585	55,778	44,002
2043	8,855	5,422	55,382	43,298
2044	9,195	5,529	56,346	43,969
2045	9,419	5,639	57,071	44,466
2046	9,702	5,815	57,839	45,091
2047	9,795	5,794	58,623	45,762
2048	9,690	5,682	59,516	46,520
2049	9,882	5,751	60,181	46,991
2050	10,001	5,837	60,984	47,612

30. CO2 Tonnage Cap

Table B-13

CO2 Ton Cap		
Year	ERP	CEP
2021	-	-
2022	-	-
2023	-	-
2024	-	-
2025	-	-
2026	11,671,259	11,671,259
2027	11,671,259	11,671,259
2028	11,671,259	11,671,259
2029	11,671,259	11,671,259
2030	11,671,259	5,486,746
2031	11,224,864	5,349,577
2032	10,778,470	5,212,408
2033	10,332,076	5,075,240
2034	9,885,682	4,938,071
2035	9,439,287	4,800,902
2036	8,992,893	4,663,734
2037	8,546,499	4,526,565
2038	8,100,104	4,389,396
2039	7,653,710	4,252,228
2040	7,207,316	4,115,059
2041	6,486,584	3,703,553
2042	5,765,853	3,292,047
2043	5,045,121	2,880,541
2044	4,324,389	2,469,036
2045	3,603,658	2,057,530
2046	2,882,926	1,646,024
2047	2,162,195	1,234,518
2048	1,441,463	823,012
2049	720,732	411,506
2050	-	-

31. Market Purchases and Sales Carbon Rate

In order to estimate emissions rates associated with market purchases, the Company assumes an annual average carbon emissions pounds/MWh rate, as shown in Table B-14. For market sales, the carbon tons and costs are deducted from the Company's emissions using the annual average of the system's carbon intensity on a scenario-by-scenario and year-by-year basis in post-processing.

Table B-14

	Market Purchase CO2 Rate														
	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
lbs/MWh	450	450	450	450	450	450	450	450	450	450	450	450	450	450	450
	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050
lbs/MWh	450	450	450	450	450	405	360	315	270	225	180	135	90	45	0

32. Distributed Solar

Assumed levels of behind-the-meter solar and community solar gardens (MW_AC) in the Base Native Load Forecast are shown in Table B-15.

Table B-15

Distributed Solar (Nameplate MW)			
Year	Behind the Meter	Community Gardens	Total
2021	496	118	614
2022	561	185	747
2023	629	252	882
2024	686	319	1,005
2025	726	385	1,111
2026	769	451	1,220
2027	815	516	1,331
2028	872	582	1,454
2029	950	646	1,596
2030	1,046	711	1,757
2031	1,134	775	1,910
2032	1,211	839	2,050
2033	1,291	901	2,192
2034	1,374	961	2,335
2035	1,460	1,019	2,480
2036	1,549	1,079	2,628
2037	1,641	1,135	2,776
2038	1,735	1,184	2,919
2039	1,831	1,225	3,056
2040	1,928	1,268	3,196
2041	2,023	1,293	3,316
2042	2,114	1,293	3,407
2043	2,205	1,293	3,498
2044	2,297	1,293	3,590
2045	2,387	1,293	3,680
2046	2,473	1,293	3,766
2047	2,556	1,293	3,849
2048	2,636	1,293	3,929
2049	2,715	1,293	4,008
2050	2,791	1,293	4,084

Appendix C

Transmission Costs

C.1 Power Delivery Requirements

Proposals must specify delivery of capacity and energy to the Public Service system at a point of delivery within or at the boundary of the Public Service Balancing Authority Area and at a Public Service-owned transmission facility.

C.2 Proposals Requiring Third-Party Transmission Service

For proposals that will require third-party transmission service(s) for the delivery of capacity and energy to the bid-specified point of delivery on the Public Service system, respondents are responsible for any interconnection, electric losses, transmission and ancillary service arrangements required to deliver the proposed capacity and energy to the bid-specified point of delivery on a firm basis. Such proposals must identify all third-party interconnections, electric losses, transmission and ancillary service providers, components and costs, provide a complete description of those service arrangements and provide documentation that such service(s) will be available to a RFP respondent or the Company during the full term of service proposed. The cost of all such third-party services, for which an RFP respondent intends to seek compensation from the Company, must be included in the bid prices provided on the applicable forms. Respondents should recognize that wheeling and other costs associated with such services may adversely affect the cost-effectiveness of their proposals.

C.3 Interconnection Facilities and Costs

- a. **Generator Interconnection Facilities:** Termed “Interconnection Customer’s Interconnection Facilities” in the OATT, Generator Interconnection Facilities are all facilities and equipment, including the gen tie line, located between the Facility and the Point of Change of Ownership which is typically located at the delivery substation fence.

As discussed in Section 5.1 of this RFP, proposal-specific cost estimates of Generator Interconnection Facilities provided by bidders in Form D2 will be reviewed by the Company and, if required, the Company may request that the bidder provide additional information or update its cost estimates as needed. Such bidders must submit final bid pricing back to the Company within 0205 calendar days of the date the Generator Interconnection Facilities cost estimates are provided.

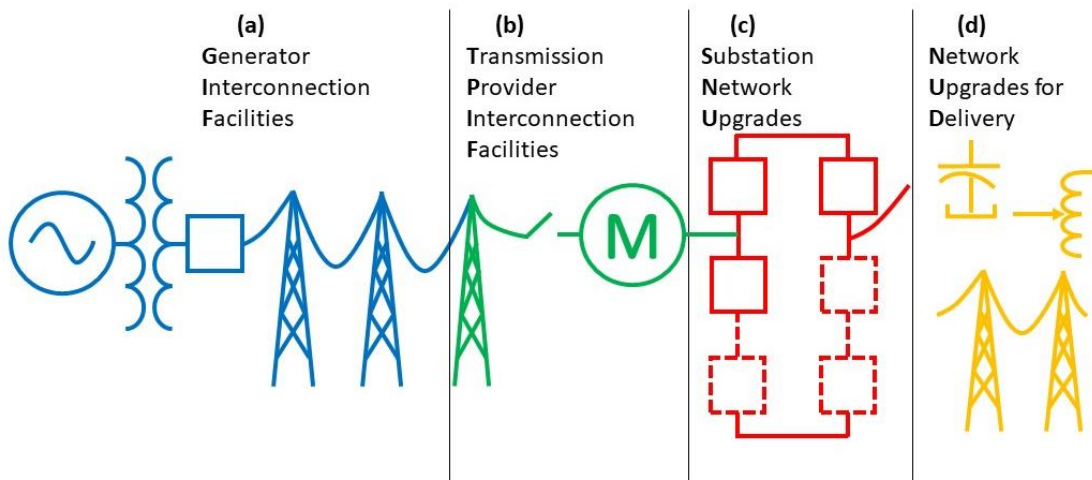
- b. **Transmission Provider Interconnection Facilities (“TPIF”):** Proposals that will require a new or upgraded electrical interconnection to the Public Service transmission system should include in their proposal pricing an estimated cost for TPIF. These are PSCo-required facilities that PSCo will own and the generator will fund. These facilities connect the Generator Interconnection Facilities to the delivery substation and facilitate the metering, relay and communications etc., between the two. Because these facilities are not considered a part of the transmission system, they are part of the cost of the generation project and must therefore be incorporated in the proposal pricing. The following table includes an estimated cost at each voltage level that should be considered if the TPIF cost has not been otherwise estimated for the project, e.g., in an interconnection study report from the Transmission Provider.

Table 3C.1 TPIF Estimated Cost

Voltage	Transmission Provider's Interconnection Facilities Estimated Cost
69 kV	\$720,000
115 kV	\$850,000
230 kV	\$1,400,000
345 kV	\$2,400,000

- c. Station Network Upgrades: These are either new switchyards or additions to existing switchyards or substations that are built to interconnect the generator to the PSCo transmission system. In addition, Substation Network Upgrades become a component of the integrated PSCo transmission system and are incorporated into the PSCo transmission tariff. Respondents are not required to provide cost estimates of Substation Network Upgrades.
- d. Network Upgrades for Delivery (not Interconnection Facilities, *per se*): These are upgrades to the PSCo transmission network that will be required for individual and groups of projects. These upgrades will be incorporated into the PSCo transmission tariff. Respondents are not required to provide cost estimates of Network Upgrades for Delivery.

Figure 3C.1 This illustration shows the components of each of the terms described in a-d above.



- e. If the bidder has an active LGIP request, the bidder should provide the LGIP or identifier(s) (the "queue position" listed as GI-20XX-XX) associated with its project in its proposal. If the project identified in the proposal was in the queue but has since withdrawn, the bidder should provide that queue position even though it is no longer active. Bidders are urged not to submit a generation interconnection request or transmission service request pursuant to the Xcel Energy Open Access Transmission Tariff ("OATT") to receive interconnection or transmission service cost estimates for purposes of responding to this RFP, as there will be insufficient time to have studies performed and completed prior to bid selection.

C.4 Application of the Xcel Energy OATT

The Company anticipates that all transmission usage rights associated with bids selected through this RFP will be "network" use rights held by the Company. Under FERC Order No. 888¹⁶ where the Company will hold the transmission service rights, the Company must provide non-discriminatory access to its transmission system and must designate network resources in the same manner as a similarly situated OATT customer. In addition, under FERC Order No. 2003 (August 2003), Order No. 2003-A (March 2004), Order No. 2003-B (January 2005)¹⁷, all new requests for interconnection of a large generator (larger than 20 MW) to the Public Service transmission system, including interconnection requests associated with this RFP, must be administered in a non-discriminatory manner in compliance with the LGIP contained in the Xcel Energy OATT. Likewise, under FERC Order No. 2006 (May 2005), Order No. 2006-A (November 2005), and Order No. 2006-B (July 2006)¹⁸, all new requests for interconnection of a small generator (less than 20 MW) to the Public Service transmission system, including interconnection requests associated with this RFP, must be administered in a non-discriminatory manner in compliance with the SGIP contained in the Xcel Energy OATT.

C.5 LGIP and SGIP Interconnection Studies

Given the short period of time available to evaluate bids, the Company's evaluation team, including the Company's Transmission Access group and Transmission Function will employ an abbreviated process for estimating the transmission Network Upgrades, associated costs and construction timeframes necessary to deliver power from proposed facilities to customer loads. In general, this abbreviated process will consist of four stages:

Stage 1 – The Transmission Access group will rely on existing LGIP or SGIP studies posted on the Public Service OASIS website to determine/verify bid-specific interconnection and delivery facilities and costs.

Stage 2 – The evaluation team will develop a number of portfolios of bids that will meet the Company's needs and the various Commission directives. The Transmission Access group will provide estimates of the Station Network Upgrades and Network Upgrades for Delivery (if known) required for each portfolio and provide that information to the Transmission Function.

Stage 3 – The Transmission Function will review the Transmission Access group's estimates of Station Network Upgrades and Network Upgrades for Delivery and modify as deemed

¹⁶ Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Transmitting Utilities, Order No. 888, F.E.R.C. Stats. & Regs. 31,036, (1996) ("Order No. 888"), order on reh'g, Order No. 888-A, F.E.R.C. Stats. & Regs. 31,048 (1997), order on reh'g, Order No. 888-B, 81 F.E.R.C. ¶ 61,248 (1997) ("Order No. 888-B"), order on reh'g, Order No. 888-C, 82 F.E.R.C. ¶61,046 (1998), *aff'd* New York, et al. v. FERC, 122 S.Ct. 1012 (2002).

¹⁷ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003); FERC Stats. & Regs. ¶ 31,146 (2003); *reh'g granted*, Order No. 2003-A, 106 FERC ¶ 61,220 (March 5, 2004), 69 Fed. Reg. 15932 (March 26, 2004); Order No. 2003-B, 109 FERC ¶ 61,287, 70 Fed. Reg. 264 (January 4, 2005).

¹⁸ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, 70 FR 34100 (Jun. 13, 2005), FERC Stats. & Regs. ¶ 31,180 (2005), (Order No. 2006), order on reh'g, Order No. 2006-A, 70 FR 71760 (Nov. 30, 2005), FERC Stats. & Regs. ¶ 31,196 (2005).

appropriate. The resulting cost information will be used to determine the bid's levelized energy cost in initial economic screening and will be included in the computer-based modeling in the event the bid is advanced to computer-based modeling.

Stage 4 – Final bid portfolios may also be entered into a Resource Solicitation Cluster as defined in the OATT. Bidders will be informed if their project is going to be represented in a Resource Solicitation Cluster and be required to provide the site control, monetary deposits and other information required under Attachment N of the OATT.

When the Resource Solicitation Cluster reaches the Facilities Study phase, the bidder will be individually responsible to comply with the OATT to bring the project through the balance of the LGIP process and execute an LGIA¹⁹.

C.6 Network Designation and Funding of Transmission System Upgrades For Interconnection

Network Resource Designation: As indicated above, the Company anticipates that it will declare each proposal selected through this RFP as a Network Resource of the Company, and that the Company will bear the cost of any network transmission service on the Public Service system (whether or not procured under the OATT) for a proposal that is selected and achieves commercial operation. Each selected proposal not requiring a new transmission interconnection (e.g., either a generator already connected to the Public Service transmission system or each off-system generator not connected to the Public Service transmission system) and each portfolio of bids requiring new or expanded generation interconnections will be evaluated as proposed designated Network Resources pursuant to Part III of the OATT.

Funding of Network Upgrades for Interconnection: For purposes of achieving an interconnection, the Company's LGIP provides for the option of the Transmission Provider funding the network upgrades or the interconnection customer (i.e., the respondent) to fund such upgrades and receive revenue credits based on future transmission services used by the interconnection customer or through some other refunding mechanism.

Public Service's policy as the transmission provider requires the respondent to provide financial security for the upgrades identified in the LGIP studies that are conducted in connection with this RFP. If the Company determines that certain infrastructure costs are to be funded by respondents, any financing arrangements will be negotiated as part of the LGIA.

¹⁹ Respondents that are not part of the Resource Solicitation Cluster, must work directly with the Transmission Provider to have their individual interconnection request processed through the OATT.

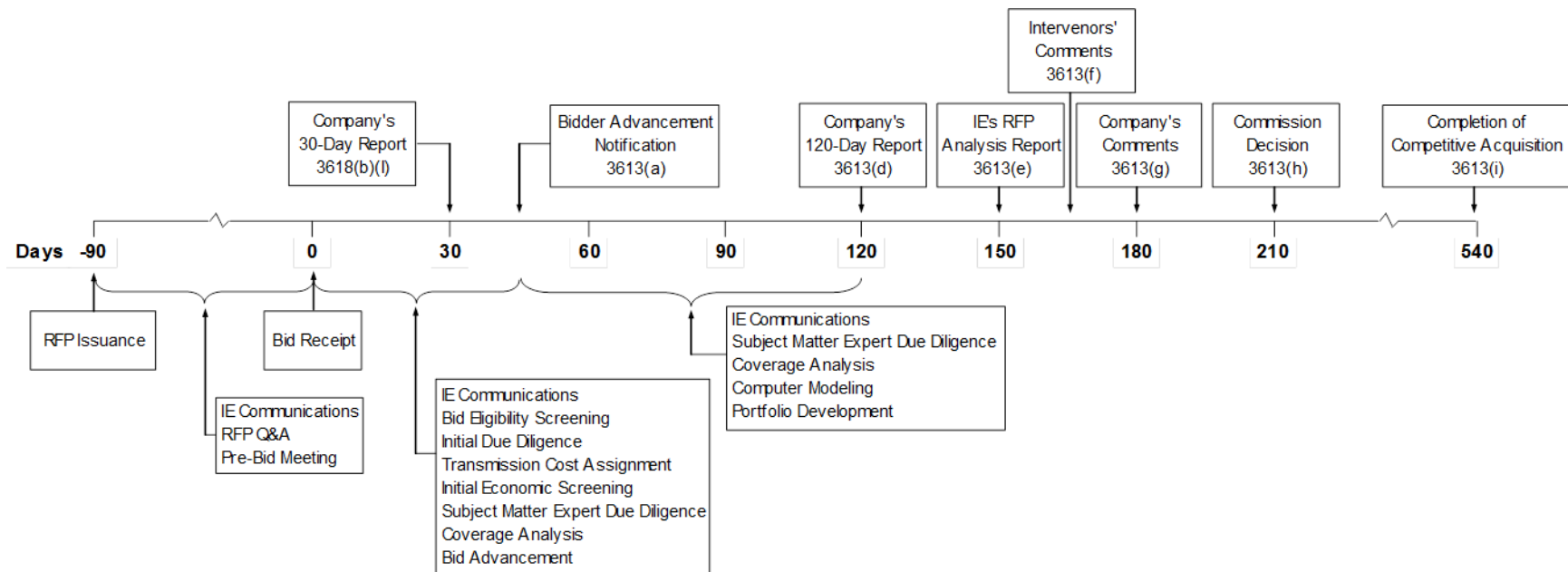
Appendix D

Model Dispatchable Resource Power Purchase Agreement

Model Stand-Alone Storage Power Purchase Agreement

Appendix E

All-Source Solicitation Timeline



Appendix F

Commission Confidentiality Order

BIDDER HIGHLY CONFIDENTIAL NONDISCLOSURE AGREEMENT

I, _____, state that I am employed by a bidder in Public Service Company of Colorado's 2022 All-Source Solicitation.

For purposes of this highly confidential nondisclosure agreement "Potential Resource" means the new or existing resource of the bidder by which I am employed.

For purposes of this highly confidential nondisclosure agreement "Highly Confidential Information" means highly confidential modeling inputs and assumptions that reasonably relate to the Potential Resource or to the transmission of electricity from that Potential Resource to Public Service.

I understand that I may obtain Highly Confidential Information for the sole purpose of assisting the bidder to identify modeling errors or omissions concerning its Potential Resource so that the modeling errors or omissions may be corrected before the competitive acquisition process is completed.

I hereby state that I have read the protective provisions relating to confidential information contained in 4 Code of Colorado Regulations 723-1-1100 through 1104. With respect to all Highly Confidential Information that may be provided to me, I agree to be bound by the terms of the protective provisions contained in 4 Code of Colorado Regulations 723-1-1100.

I hereby state that I will properly implement and maintain extraordinary confidentiality provisions for the Highly Confidential Information I receive.

I hereby state that the Highly Confidential Information I receive shall not be used or disclosed for any purpose other than assisting the bidder to identify modeling errors or omissions concerning its Potential Resource so that the modeling errors or omissions may be corrected before the 2022 All-Source Solicitation competitive acquisition process is completed.

I hereby state that I will not disclose or disseminate any Highly Confidential Information I receive to any third party other than to those who are specifically authorized to review such Highly Confidential Information and who have signed a highly confidential nondisclosure agreement. At the conclusion of the 2022 All-Source Solicitation competitive acquisition process, I agree to return all Highly Confidential Information to Public Service Company of Colorado.

Name

Title

Employer or Firm

Business Address

Bidder Represented

Date

Signature

Form A – Notice of Intent to Respond (NOIR)

PSCo All-Source 2022 Dispatchable RFP

Company Name
Street Address
City, State Zip
Company Representative Name & Title
Signature
Email
Phone Number
Project Name
Generation Technology (e.g., CT, wind, solar, storage)
Nameplate Capacity (MW)
Annual Capacity Factor (% Nameplate)
Summer Full Load Heat Rate (Btu/kWh)
Project Location (City, County, State)
Proposed Commercial Operation Date
PPA Contract Term (years)
Project Proposed as a Section 123 Resource (yes/no)
Notes (as appropriate)

Submit the NOIR by email to **TBD** by **TBD**.

Form B - Bid Certification

The bidder hereby certifies that all of the statements and representations made in this proposal are true to the best of the bidder's knowledge and belief, and agrees to be bound by the representations, terms, and conditions contained in the RFP including restrictions on the bidder's claim of confidentiality. The bidder accepts the Model PPA included in the RFP, except as specifically noted in writing. The bidder certifies that (i) the bidder has considered applicable accounting standards in regard to capital lease and variable interest entities, (ii) to the bidder's knowledge and belief, the bidder's proposal should not result in capital lease or VIE treatment to Public Service, and (iii) the bidder agrees to work with PSCo on Transmission Corridor Preservation as detailed in section 3.3 of the RFP document. The bidder acknowledges that the officer whose signature appears below is able to contractually commit the bidder for its proposal.

1) **Submitted By:**

(exact legal name of firm)

2) **Bidder:**

(if different than above)

3) **Signature of an Officer
of Bidder:**

4) **Name of Officer:**

5) **Title:**

6) **Date Signed:**

Form C - Bid Cover Sheet

1) Project / Facility Name

2) Project Location

City:

County:

State:

Latitude:

 °N

Longitude:

 °W

(Lat/Long decimal format and accurate to three decimal places)

Name:

Company:

Address:

Phone / Fax:

Email:

4) Alternate Contact

Name:

Company:

Address:

Phone / Fax:

Email:

5) Generation Technology

General description:

(including manufacturers and model numbers where applicable)

Generator is a Storage Facility:

 (drop down list to select)

Net Capability (kW):

 0 kW*

Capacity Availability Factor:

 0.0%

Storage Nameplate Capacity (kW):

 kW

Storage Duration of Nameplate Capacity (hours):

 hours

6) Fuel Type

Primary:

Secondary:

7) Proposed Commercial Operation Date (COD):

8) Proposed PPA Term (years):

 years

9) Point of Delivery At:

10) Point of Delivery Is On The:

 (drop down list to select)

11) Sale Type (if multiple apply, describe):

 (drop down list to select)

Other/Multiple Description:

12) Est. Useful Life of Facility at COD (years):

 years

13) Utility Providing Retail Service at Proposed Location:

*Unless noted otherwise--kW, kWh, MW, MWh refer to AC power and energy.

**Standard Test Conditions: 25 °C, 1 kW/m², AM 1.5.

Form D1A - Pricing for Thermals

Enter fixed payment rates (in \$/kW-mo), if any, proposed for each year of the PPA in the column labeled Capacity Price. Enter variable payment rates (e.g., energy, variable O&M, or tolling) (in \$/MWh), if any, proposed to be paid for each MWh of energy delivered to the point of delivery in the columns labeled Tolling Price. Enter the proposed cost (in \$ per turbine start), if any, to be paid for each requested turbine start successfully performed in the columns labeled Turbine Start Price.

All prices should be entered in nominal dollars. Prices may be fixed for the proposed term, escalate at a known rate, or escalate with an index that is clearly and closely tied to the item being escalated. Regardless, the first year's pricing must be fixed.

As a demonstration of your understanding of the impact of your proposed Net Capability and your estimate of the Capacity Availability Factor on the projected annual capacity payments pursuant to the Article 8 of the Model PPA, complete the Average Annual Capacity Payment section at the bottom of this form.

of Turbines: subject to Start Price for a complete facility start.
 (e.g., enter "2" for a 2x1 combined cycle).

Commercial Operating Year	Capacity Price (\$/kW-mo)	PRIMARY FUEL		SECONDARY FUEL	
		Tolling Pmt Rate (\$/MWh)	Turbine Start Price (\$/start)	Tolling Pmt Rate (\$/MWh)	Turbine Start Price (\$/start)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

Notes to Pricing:

Average Annual Capacity Payment

Complete the Average Annual Capacity Payment section below. The Capacity Availability Factor is defined as the rolling 12-month ratio of (Available Energy + Scheduled Maintenance Energy) to Period Energy; see Article 8 of the Model PPA for a complete definition. For the estimated Annual Capacity Payment calculation below, assume that the REA factor indicated in Article 8 is equal to 1.0. If the bidder expects the REA factor to be less than 1.0, indicate so in the Notes section above and fully explain in the Bid Narrative.

In its bid evaluation processes, the Company will estimate annual capacity payments as the product of the Net Capability as proposed by the bidder, the annual Capacity Price on Form D1, an REA equal to 1.0, and a CAF calculated as the average of the Winter and Summer Capacity (Base + Supplemental) from Form F1 times (1 - Expected Forced Outage Rate) divided by the bidder's Net Capability from Form F1. Note that the Company will utilize the Company's estimate of EFOR from the LEC tab for screening and not the bidder's EFOR provided on Form F2.

Net Capability (MW): <input style="width: 100px;" type="text"/> Capacity Price (\$/kW-mo): <input style="width: 100px;" type="text"/> Annual Capacity Payment (\$000s): \$ <input style="width: 100px;" type="text"/> -	Available Energy (MWh): <input style="width: 100px;" type="text"/> Schedule Maintenance Energy (MWh): <input style="width: 100px;" type="text"/> Period Energy (MWh): <input style="width: 100px;" type="text"/> Capacity Availability Factor: <input style="width: 100px;" type="text"/> -
---	--

Form D1B - Pricing for Storage

Enter fixed payment rates (in \$/kW-mo), if any, proposed for each year of the PPA in the column labeled Capacity Price. Enter variable payment rates (in \$/MWh), if any, proposed to be paid for each MWh of energy delivered to the point of delivery.

All prices should be entered in nominal dollars. Prices may be fixed for the proposed term, escalate at a known rate, or escalate with an index that is clearly and closely tied to the item being escalated. Regardless, the first year's pricing must be fixed

Commercial Operating Year	Battery Payment Rate (\$/MWh)	Capacity Payment Rate (\$/kW-mo)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

D1B_PricingStorage

Notes to Pricing:

Form D2 - Electrical Interconnection Cost Estimates

1) **Electric Interconnection Costs Included in Form C1 Pricing**

LGIP Identifier (or source of estimate if no LGIP):

Generator Interconnection Facilities (including Radial Lines) (\$):

PSCo-Owned, Generator-Funded Interconnection Facilities (\$):

Interconnection Cost Price Adjustment (\$/MWh)*:

**Change in Energy Payment Rate (\$/MWh) per \$100,000 change in estimated cost assumption.*

2) **3rd-Party Transmission Costs Included in Form C1 Pricing**

3rd-Party Transmission Provider:

Wheeling and Ancillary Charges

OATT Schedule 1 (\$/kW-mo):

OATT Schedule 2 (\$/kW-mo):

OATT Schedule 7 (\$/kW-mo):

--

3) **Electric Interconnection Costs Not Included in Form C1 Pricing**

LGIP Identifier (or source of estimate if no LGIP):

PSCo-Owned, PSCo-Funded Interconnection Facilities (\$):

Network Upgrades for Delivery (\$):

List, if known; else, Public Service will estimate and complete.

4) **Wheeling Losses**

Wheeling Losses:

If the facility is not located at the Point of Delivery (POD), provide an estimate of the wheeling losses between the facility and the POD.

--

Form E - Construction Milestones

Insert the proposed date for each milestone shown here as would be found on the detailed Development Schedule provided with the proposal. Milestones should be based on the requirements to achieve the proposed commercial operation date.

Construction Milestones (Date)	Outcome
	Seller and all required counterparties shall have executed such Construction Contracts as are needed to construct the Facility.
	Seller and the Transmission Authority shall have executed the Interconnection Agreement.
	Seller shall have achieved closing on financing for the Facility or provided Company with proof of financial capability to construct the Facility.
	Commencement of construction of the Facility.
	Procurement of Battery Units.
	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformation facilities.
	The Generating Units and step-up transformer shall have been delivered and installed at the Site.
	Seller has submitted to Company and obtained Company approval of serialized information for all Electric Metering Devices and Back-Up Metering.
	All fuel supply and transportation arrangements have been put in place, the fuel interconnection facilities have been constructed and are operational, and a copy of the executed natural gas interconnection facilities agreement has been provided to Company.
	Seller shall have constructed Seller's Interconnection Facilities and such facilities are capable of being energized.
	Seller has demonstrated to Company's reasonable satisfaction that all Electric Metering Devices and Back-Up Metering and communications equipment are functional and provide data integrity.
	Start-up testing of the Facility commences.
	Target COD.

(If a milestone is not applicable (i.e. storage specific), mark as n/a)

Form F1 - Contract Capacity

Provide estimated summer and winter Contract Capacities and Net Capability (in MW) that would be available to PSCo over the proposed contract term. The values should reflect the average summer and winter capacities during the commercial operating year at the Point of Delivery and must be net of all parasitic loads and house power requirements. Neither the summer or winter Contract Capacity should exceed the Net Capability.

If the proposal includes any supplemental capacity (whether from duct-firing, steam injection, or any other type), indicate the amounts available under summer and winter conditions. Note any limitations including, but not limited to, emission permitting limitations on the availability of such supplemental capacity. The Base and Supplemental Contract Capacity values should match the values provided on Form F3 for 100% summer and winter unit loadings.

Summer Contract Capacity should be based on an ambient temperature of 95 degrees Fahrenheit, 30% relative humidity, and altitude adjusted. Winter Contract Capacity should be based on an ambient temperature of 6 degrees Fahrenheit, 68% relative humidity, and altitude adjusted.

Commercial Operating Year	SUMMER CONTRACT CAPACITY		WINTER CONTRACT CAPACITY		Net Capability (MW)
	Base (MW)	Supplemental (MW)	Base (MW)	Supplemental (MW)	
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
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14					
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24					
25					

Notes to Contract Capacity:

Form F2 - Facility Performance

1) Outages

Annual Expected Forced Outage Rate (%):

Expected Average Annual Maintenance Requirements (days/year):

2) Manual Control

Lowest stable operating point on manual control (% of full load):

Highest stable operating point on manual control (% of full load):

Normal Up Ramp Rate on manual control (MW/min):

Normal Down Ramp Rate on manual control (MW/min):

Emergency Up Ramp Rate on manual control (MW/min):

Emergency Down Ramp Rate on manual control (MW/min):

3) Automatic Generation Control (leave blank if no AGC capability)

Lowest stable operating point on AGC (% of full load):

Highest stable operating point on AGC (% of full load):

Maximum Up Ramp Rate on AGC (MW/min):

Maximum Down Ramp Rate on AGC (MW/min):

4) Start Times (time to start unit, sync to grid, and reach minimum load)

Off-line for 6 hours (minutes):

Off-line for 8 hours (minutes):

Off-line for 12 hours (minutes):

Off-line for 3 days (minutes):

Maximum load achievable in 10 minutes (% of full load):

Maximum load achievable in 15 minutes (% of full load):

Maximum load achievable in 30 minutes (% of full load):

5) Minimum Up Time (min. time between generator breaker close and re-open) (minutes):

6) Minimum Down Time (min. time generator must be off-line before restarting) (minutes):

8) Consumptive Water Use (gallons/MWh at 100% annual average base capacity)

Notes to Facility Performance:

Form F3 - Heat Rates

For proposals involving tolling or other fuel-indexed arrangements, enter the average summer and winter heat rates at the unit loading levels indicated. Heat rates must be stated at the higher heating value (HHV), ambient air pressure of 14.7 psi at sea level adjusted to site elevation, and 95° F and 30% RH for summer conditions and 6° F and 68% RH for winter conditions.

Unit Loading	SUMMER		WINTER	
	Capacity (MW)	Heat Rate (Btu/kWh)	Capacity (MW)	Heat Rate (Btu/kWh)
Lowest stable operating point				
Lowest stable operating point on AGC				
25% of base capacity				
50% of base capacity				
75% of base capacity				
100% of base capacity				
100% of base capacity, plus 100% of supplemental capacity				

Notes to Heat Rates:

Form F5- Technical Description | Battery Energy Storage I

1) Battery Information

Manufacturer:

Battery Storage Chemistry:

2) Availability During Outage (hours):

(See section 8.4c Solar + Storage Model PPA for details)

3) Annual Throughput:

Annual Throughput Limit (MWh):

Excess Annual Throughput Limit (MWh):

Excess Throughput Charge (\$/MWh):

Annual Throughput Banking (MWh):

Annual Throughput Borrowing (MWh):

(If any, else leave blank. See section 8.5-6 Solar + Storage Model PPA for details)

4) Compliance Period:

(If any, else leave blank. See Solar + Storage Model PPA for details)

5) Meets the requirements of Exhibit I of the Model PPA:

(AGC PROTOCOLS; DISPATCH AND AVAILABILITY NOTICES; DATA COLLECTION; TECHNICAL SPECIFICATIONS)

6) Operational Limitations (Exhibit O in the Model PPA)

a. State of Charge

a.1 - YTD Upper Limit in 2nd 1/2 of Op Year (%):

a.2 - If a.1 Exceeds, Annual Average (%):

a.3 - Limitation Released When YTD Avg. Is Less Than (%):

b. Discharge

b.1 - Subsequent Discharge of Greater Than (MWh):

b.2 - No Additional Discharge Greater Than (MWh):

b.3 - Until Battery Idle Time Of (hours):

Notes to Energy Storage Projects:

Form F7 - Section 123 Qualifications

In Decision C13-0094, the Colorado Public Utilities Commission set out its criteria for a proposed project to qualify as a Section 123 resource. For those bids claiming Section 123 status, to meet the Commission's definitions of "New" indicate in Question 1 under Method 1 and/or Method 2 below the attributes of the proposed project for which Section 123 status is claimed. To meet the Commission's definition of "Clean" complete Question 2.

1) Qualification as New

Method 1

List the proposed technology or technologies that have not been regularly commercially demonstrated, within Colorado or elsewhere, for which Section 123 status is claimed:

Percent of the overall installed cost is represented by this technology or technologies (%):

Method 2

List the proposed technology that has not before been implemented in the proposed configuration:

2) Qualification as Clean

List the attributes of the proposed project that demonstrate that it would likely cause 1) a decrease in greenhouse gas emissions or significantly reduce other pollutants and/or 2) result in reduced water usage:

Form G - Natural Gas and Backup Fuel Supply

1) Natural Gas Supply:

Identify whether the proposal is for a tolling arrangement or an electric energy sale arrangement. For tolling bids, identify the pipeline to which the bidder plans to interconnect. For energy sale (non-tolling) bids in which bidder plans to acquire and manage the fuel supply, describe supply plan and identify all contracts that support the supply of firm gas transportation and firm supply to the proposed plant.

2) Natural Gas Interconnection:

Describe the gas interconnection facilities that have been included in the Form D1 bid price, including the size, length and location of the lateral interconnection and fuel delivery point. State the capital cost estimates included in the Form D1 pricing and the change in that pricing for a \$100,000 change in the capital cost estimate. Attach a USGS-based map showing the gas pipeline delivery point, the location of any lateral lines, compressors and meters.

Gas Interconnection Capital Costs Included in Form D1 Pricing (\$):

Impact on Form D1 Prices for a \$100k Change in Capital Cost Estimate (\$/kW-mo, levelized): \$/kW-mo

3) Natural Gas Pressure

Minimum Pressure Required at Gas Interconnection Point: psig

Maximum Pressure Required at Gas Interconnection Point: psig

Minimum Pressure Required at Plant Burner Tip: psig

Gas Delivery Pressure Guaranteed by the Interconnecting Pipeline at the Fuel Delivery Point: psig

4) Natural Gas Quantities

Indicate the maximum daily and hourly gas consumption at the proposed plant.

	Summer	Winter
Maximum Daily Consumption for Electrical Generation (MMBtu/day):	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>
Maximum Hourly Consumption for Electrical Generation (MMBtu/hour):	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>

Describe any ancillary equipment which may utilize fuel when the facility is off-line and describe who is responsible for the ancillary gas usage costs. Indicate the maximum ancillary volumes:

	Summer	Winter
Maximum Daily Consumption for Ancillaries (MMBtu/day):	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>
Maximum Hourly Consumption for Ancillaries (MMBtu/hour):	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>

5) Natural Gas Quality

Indicate if any of the following pipelines have unacceptable gas quality:
 (IF YES, INDICATE IN NOTES WHY)

(drop down list to select)

6) Secondary Fuel Supply:

If secondary, on-site fuel storage is proposed, describe the fuel type, including quality specifications, quantity, and maximum number of full-load run hours on secondary fuel.

Proposed Secondary Fuel, On-Site Storage Volume (gallons): gallons

Estimated, Net Capability Run Hours On Secondary Fuel (hours): hours

Notes to Gas Supply:

Form H - Emission Rates

Provide emission rate information for the proposed generator(s), including fuel requirements for base and supplemental capacity and/or freeze protection.

1) Emission Rates on Primary Fuel:

	Full Load on Base Capacity (lbs/MMBtu)	Full Load on Base and Supplemental Capacity (lbs/MMBtu)
Oxides of Sulfur:		
Oxides of Nitrogen:		
Carbon Dioxide:		
Carbon Monoxide		
Volatile Organic Compounds:		
Particulate Matter - PM10:		
Particulate Matter - PM2.5:		
Lead:		
Mercury:		
Maximum NO _x emission rate (in parts per million):		
Maximum CO emission rate (in parts per million):		
Maximum Permitted/Permittable Annual Capacity Factor: (% of Net Capability)		

2) Emission Rates on Secondary Fuel (if applicable):

	Full Load on Base Capacity (lbs/MMBtu)	Full Load on Base and Supplemental Capacity (lbs/MMBtu)
Oxides of Sulfur:		
Oxides of Nitrogen:		
Carbon Dioxide:		
Carbon Monoxide		
Volatile Organic Compounds:		
Particulate Matter - PM10:		
Particulate Matter - PM2.5:		
Lead:		
Mercury:		
Maximum NO _x emission rate (in parts per million):		
Maximum CO emission rate (in parts per million):		
Maximum Permitted/Permittable Annual Capacity Factor: (% of Net Capability)		

Notes to Emissions:

Public Service Company of Colorado

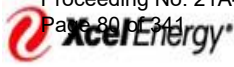
2022 All-Source Solicitation

Additional Appendix A Forms

<u>Form</u>	<u>Title</u>
<u>11</u>	Small Generator – Distribution Interconnection
<u>12</u>	Small Generator – Transmission Interconnection
<u>13</u>	Large Generator – Transmission Interconnection

Form I1

Small Generator Interconnection Information – Distribution Interconnection



SMALL GENERATOR INTERCONNECTION INFORMATION

This Form should be completed by those bidders proposing to interconnect to the Company's distribution system. This is not a formal request to interconnect.

OWNER/APPLICANT INFORMATION			
Company:			
Representative:	Phone Number:	FAX Number:	
Title:	Email Address:		
Mailing Address:			
PROPOSED LOCATION OF GENERATING PLANT AND PROPOSED INTERCONNECTION			
Address:			
PROJECT DESIGN / ENGINEERING			
Company:			
Representative:	Phone:	FAX Number:	
Mailing Address:	Email Address:		
ELECTRICAL CONTRACTOR			
Company:			
Representative:	Phone:	FAX Number:	
Mailing Address	Email Address:		
ESTIMATED LOAD INFORMATION			
The following information will be used to help properly design the Xcel-Customer interconnection. This information is not intended as a commitment or contract for billing purposes.			
Minimum anticipated load (generation not operating):		kVA:	Time:
Maximum anticipated load (generation not operating):		kVA:	Time:

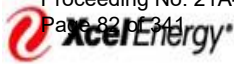
Existing Electric Service:

Capacity: _____ Amperes Voltage: _____ Volts
 Service Character: Single Phase Three Phase

Estimated In-Service Date: _____

Site Control Documentation: Documentation of site control must be submitted with the interconnection request as required by Code of Colorado Regulations, CCR 4 723-3, Rule 3667.

Site Control: Ownership of Site Option to Purchase Site Other – Specify _____



SMALL GENERATOR INTERCONNECTION INFORMATION

PRIME MOVER (Complete all applicable items)			
Unit Designation:		Type:	
Manufacturer:			
Serial Number:		Date of Manufacture:	
H.P. Rated:	H.P. Max:	Inertia Constant:	lb.-ft. ²
Energy Source (hydro, steam, wind, etc.):			
Additional Information:			
Type of Interconnected operation			
Long term Parallel operation:	Yes	No	
Closed momentary transition:	Yes	No	Transition Closed Time: seconds
Other (describe):			
TRANSFORMER (If applicable)			
Manufacturer:		kVA:	
Date of Manufacture:		Serial Number:	
High Voltage: V	Connection: <input type="checkbox"/> delta <input type="checkbox"/> wye	Neutral solidly grounded? Yes No	
Low Voltage: V	Connection: <input type="checkbox"/> delta <input type="checkbox"/> wye	Neutral solidly grounded? Yes No	
Transformer Impedance (Z):		% on	kVA base
Transformer Resistance (R):		% on	kVA base
Transformer Reactance (X):		% on	kVA base
Neutral Grounding Resistor (if applicable)	Yes	No	Resistance: Ohms
Additional Information:			
INVERTER DATA (If applicable)			
UL Pre-certified per UL 1741 and IEEE 929?	Yes	No	Certification Number:
Manufacturer:		Model:	
Rated Power Factor (%):	Rated Voltage (Volts):	V	Rated Current (Amperes): A
Inverter Type (ferroresonant, step, pulse-width modulation, etc.):			
Type of Commutation: <input type="checkbox"/> forced <input type="checkbox"/> line		Minimum Short Circuit Ratio required:	
Minimum voltage for successful commutation:			
Current Harmonic Distortion:	Maximum Individual Harmonic (%):		
	Maximum Total Harmonic Distortion (%):		
Voltage Harmonic Distortion:	Maximum Individual Harmonic (%):		
	Maximum Total Harmonic Distortion (%):		
Describe capability, if any, to adjust reactive output to provide voltage regulation:			
Additional Information:			
NOTE: Attach all available calculations, test reports, and oscillographic prints showing inverter output voltage and current waveforms.			

Form I2

Small Generator Interconnection Information – Transmission Interconnection

This Form should be completed by those bidders proposing to interconnect to the Company's transmission system. This is not a formal request to interconnect.

Attachment 2

**SMALL GENERATOR INTERCONNECTION REQUEST
(Application Form)**

Transmission Provider: _____

Designated Contact Person: _____

Address: _____

Telephone Number: _____

Fax: _____

E-Mail Address: _____

An Interconnection Request is considered complete when it provides all applicable and correct information required below. Per SGIP section 1.5, documentation of site control must be submitted with the Interconnection Request.

Preamble and Instructions

An Interconnection Customer who requests a Federal Energy Regulatory Commission jurisdictional interconnection must submit this Interconnection Request by hand delivery, mail, e-mail, or fax to the Transmission Provider.

Processing Fee or Deposit:

If the Interconnection Request is submitted under the Fast Track Process, the non-refundable processing fee is \$500.

If the Interconnection Request is submitted under the Study Process, whether a new submission or an Interconnection Request that did not pass the Fast Track Process, the Interconnection Customer shall submit to the Transmission Provider a deposit not to exceed \$1,000 towards the cost of the feasibility study.

Interconnection Customer Information

Legal Name of the Interconnection Customer (or, if an individual, individual's name)

Name:

Contact Person: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Facility Location (if different from above): _____

Telephone (Day): _____ Telephone (Evening): _____

Fax: _____ E-Mail Address: _____

Alternative Contact Information (if different from the Interconnection Customer)

Contact Name: _____

Title: _____

Address: _____

Telephone (Day): _____ Telephone (Evening): _____

Fax: _____ E-Mail Address: _____

Application is for: ___ New Small Generating Facility

___ Capacity addition to Existing Small Generating Facility

If capacity addition to existing facility, please describe: _____

Will the Small Generating Facility be used for any of the following?

Net Metering? Yes ___ No ___

To Supply Power to the Interconnection Customer? Yes ___ No ___

To Supply Power to Others? Yes ___ No ___

For installations at locations with existing electric service to which the proposed Small Generating Facility will interconnect, provide:

_____ (Local Electric Service Provider*)

_____ (Existing Account Number*)

[*To be provided by the Interconnection Customer if the local electric service provider is different from the Transmission Provider]

Contact Name: _____

Title: _____

Address: _____

Telephone (Day): _____ Telephone (Evening): _____

Fax: _____ E-Mail Address: _____

Requested Point of Interconnection: _____

Interconnection Customer's Requested In-Service Date: _____

Small Generating Facility Information

Data apply only to the Small Generating Facility, not the Interconnection Facilities.

Energy Source: ___ Solar ___ Wind ___ Hydro ___ Hydro Type (e.g. Run-of-River): ___
Diesel ___ Natural Gas ___ Fuel Oil ___ Other (state type) _____

Prime Mover: ___ Fuel Cell ___ Recip Engine ___ Gas Turb ___ Steam Turb
___ Microturbine ___ PV ___ Other

Type of Generator: ___ Synchronous ___ Induction ___ Inverter

Generator Nameplate Rating: ___ kW (Typical) Generator Nameplate kVAR: _____

Interconnection Customer or Customer-Site Load: _____ kW (if none, so state)

Typical Reactive Load (if known): _____

Maximum Physical Export Capability Requested: _____ kW

List components of the Small Generating Facility equipment package that are currently certified:

Equipment Type	Certifying Entity
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

Is the prime mover compatible with the certified protective relay package? ___ Yes ___ No

Generator (or solar collector)
Manufacturer, Model Name & Number: _____
Version Number: _____

Nameplate Output Power Rating in kW: (Summer) _____ (Winter) _____

Nameplate Output Power Rating in kVA: (Summer) _____ (Winter) _____

Individual Generator Power Factor
Rated Power Factor: Leading: _____ Lagging: _____

Total Number of Generators in wind farm to be interconnected pursuant to this

Interconnection Request: _____ Elevation: _____ ___Single phase ___Three phase

Inverter Manufacturer, Model Name & Number (if used): _____

List of adjustable set points for the protective equipment or software: _____

Note: A completed Power Systems Load Flow data sheet must be supplied with the Interconnection Request.

Small Generating Facility Characteristic Data (for inverter-based machines)

Max design fault contribution current: _____ Instantaneous or RMS ____?

Harmonics Characteristics: _____

Start-up requirements: _____

Small Generating Facility Characteristic Data (for rotating machines)

RPM Frequency: _____

(*) Neutral Grounding Resistor (If Applicable): _____

Synchronous Generators:

Direct Axis Synchronous Reactance, X_d : _____ P.U.

Direct Axis Transient Reactance, X'_d : _____ P.U.

Direct Axis Subtransient Reactance, X''_d : _____ P.U.

Negative Sequence Reactance, X_2 : _____ P.U.

Zero Sequence Reactance, X_0 : _____ P.U.

KVA Base: _____

Field Volts: _____

Field Amperes: _____

Induction Generators:

Motoring Power (kW): _____
 I_2^2t or K (Heating Time Constant): _____
Rotor Resistance, R_r : _____
Stator Resistance, R_s : _____
Stator Reactance, X_s : _____
Rotor Reactance, X_r : _____
Magnetizing Reactance, X_m : _____
Short Circuit Reactance, X_d'' : _____
Exciting Current: _____
Temperature Rise: _____
Frame Size: _____
Design Letter: _____
Reactive Power Required In Vars (No Load): _____
Reactive Power Required In Vars (Full Load): _____
Total Rotating Inertia, H: _____ Per Unit on kVA Base

Note: Please contact the Transmission Provider prior to submitting the Interconnection Request to determine if the specified information above is required.

Excitation and Governor System Data for Synchronous Generators Only

Provide appropriate IEEE model block diagram of excitation system, governor system and power system stabilizer (PSS) in accordance with the regional reliability council criteria. A PSS may be determined to be required by applicable studies. A copy of the manufacturer's block diagram may not be substituted.

Primary frequency response operating range for electric storage resources:

Minimum State of Charge: _____
Maximum State of Charge: _____

Interconnection Facilities Information

Will a transformer be used between the generator and the point of common coupling? ____ Yes
____ No

Will the transformer be provided by the Interconnection Customer? ____ Yes ____ No

Transformer Data (If Applicable, for Interconnection Customer-Owned Transformer):

Is the transformer: _____ single phase _____ three phase? Size: _____ kVA
Transformer Impedance: _____ % on _____ kVA Base

If Three Phase:

Transformer Primary: _____ Volts _____ Delta _____ Wye _____ Wye Grounded

Transformer Secondary: _____ Volts _____ Delta _____ Wye _____ Wye Grounded
Transformer Tertiary: _____ Volts _____ Delta _____ Wye _____ Wye Grounded

Transformer Fuse Data (If Applicable, for Interconnection Customer-Owned Fuse):

(Attach copy of fuse manufacturer's Minimum Melt and Total Clearing Time-Current Curves)

Manufacturer: _____ Type: _____ Size: _____ Speed: _____

Interconnecting Circuit Breaker (if applicable):

Manufacturer: _____ Type: _____

Load Rating (Amps): _____ Interrupting Rating (Amps): _____ Trip Speed (Cycles): _____

Interconnection Protective Relays (If Applicable):

If Microprocessor-Controlled:

List of Functions and Adjustable Setpoints for the protective equipment or software:

Setpoint Function	Minimum	Maximum
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____

If Discrete Components:

(Enclose Copy of any Proposed Time-Overcurrent Coordination Curves)

Manufacturer: _____ Type: _____ Style/Catalog No.: _____ Proposed Setting: _____

Manufacturer: _____ Type: _____ Style/Catalog No.: _____ Proposed Setting: _____

Manufacturer: _____ Type: _____ Style/Catalog No.: _____ Proposed Setting: _____

_____	_____	_____	_____
Manufacturer:	Type:	Style/Catalog No.:	Proposed Setting:
_____	_____	_____	_____
Manufacturer:	Type:	Style/Catalog No.:	Proposed Setting:
_____	_____	_____	_____

Current Transformer Data (If Applicable):

(Enclose Copy of Manufacturer's Excitation and Ratio Correction Curves)

Manufacturer: _____

Type: _____ Accuracy Class: _____ Proposed Ratio Connection: _____

Manufacturer: _____

Type: _____ Accuracy Class: _____ Proposed Ratio Connection: _____

Potential Transformer Data (If Applicable):

Manufacturer: _____

Type: _____ Accuracy Class: _____ Proposed Ratio Connection: _____

Manufacturer: _____

Type: _____ Accuracy Class: _____ Proposed Ratio Connection: _____

General Information

Enclose copy of site electrical one-line diagram showing the configuration of all Small Generating Facility equipment, current and potential circuits, and protection and control schemes. This one-line diagram must be signed and stamped by a licensed Professional Engineer if the Small Generating Facility is larger than 50 kW. Is One-Line Diagram Enclosed? ____ Yes ____ No

Enclose copy of any site documentation that indicates the precise physical location of the proposed Small Generating Facility (e.g., USGS topographic map or other diagram or documentation).

Proposed location of protective interface equipment on property (include address if different from the Interconnection Customer's address) _____

Enclose copy of any site documentation that describes and details the operation of the protection and control schemes. Is Available Documentation Enclosed? ____ Yes ____ No

Enclose copies of schematic drawings for all protection and control circuits, relay current circuits, relay potential circuits, and alarm/monitoring circuits (if applicable).

Are Schematic Drawings Enclosed? Yes No

Applicant Signature

I hereby certify that, to the best of my knowledge, all the information provided in this Interconnection Request is true and correct.

For Interconnection Customer: _____ Date: _____

Form I3

Large Generator Interconnection Information – Transmission Interconnection

This Form should be completed by those bidders proposing to interconnect to the Company's transmission system. This is not a formal request to interconnect.

**APPENDIX 1 to Revised LGIP
INTERCONNECTION REQUEST FOR A
LARGE GENERATING FACILITY**

1. The undersigned Interconnection Customer submits this request to interconnect its Large Generating Facility with Transmission Provider's Transmission System pursuant to a Tariff.
2. This Interconnection Request is for (check one):
 A proposed new Large Generating Facility.
 An increase in the generating capacity or a Material Modification of an existing Generating Facility.
 A Generating Facility proposed for inclusion in a resource solicitation process.
3. The type of interconnection service requested (check one):
 Energy Resource Interconnection Service
 Network Resource Interconnection Service
4. Interconnection Customer provides the following information:
 - a. Address or location or the proposed new Large Generating Facility site (to the extent known) or, in the case of an existing Generating Facility, the name and specific location of the existing Generating Facility;
 - b. Maximum summer at ____ degrees C and winter at ____ degrees C megawatt electrical output of the proposed new Large Generating Facility or the amount of megawatt increase in the generating capacity of an existing Generating Facility;
 - c. General description of the equipment configuration;
 - d. Commercial Operation Date (Day, Month, and Year);
 - e. Name, address, telephone number, and e-mail address of Interconnection Customer's contact person;
 - f. Approximate location of the proposed Point of Interconnection (optional);
 - g. Interconnection Customer Data (set forth in Attachment A)
 - h. Primary frequency response operating range for electric storage resources.
 - i. Requested capacity (in MW) of Interconnection Service (if lower than the Generating Facility Capacity).
5. Interconnection Customer provides applicable study deposit amount as specified in the Revised LGIP.

\$75,000 for requests of less than 50 MW; or
\$150,000 for requests of 50 MW and Greater, but less than 200 MW; or
\$250,000 for requests of 200 MW and greater
6. Interconnection Customer provides Readiness Milestone 1 (M1) as specified in the Revised LGIP.

M1 is satisfied by any one of the three options below (also described in 3.4.1.f of the Revised LGIP) at Interconnection Customer's option. M1 may also be satisfied by providing additional security described in Section 7.7.5 *in lieu* of providing one of the three options to demonstrate readiness.

- i. Executed term sheet (or comparable evidence) related to a contract, binding upon the parties to the contract, for sale of (i) the constructed Generating Facility, (ii) the Generating Facility's energy, or (iii) the Generating Facility's ancillary services if the Generating Facility is an electric storage resource; where the term of sale is not less than five (5) years;
 - ii. Reasonable evidence the project has been selected in a Resource Plan or Resource Solicitation Process; or
 - iii. Provisional Large Generator Interconnection Agreement accepted for filing with FERC. Such an agreement shall not be suspended and shall include a commitment to construct the Generating Facility.
7. Interconnection Customer provides security equal to one times the study deposit described in Section 3.1 of the Revised LGIP in the form of an irrevocable letter of credit or cash.
8. If requesting NRIS: Interconnection Customer provides the expected point of delivery to deliver within the Transmission Provider's Control Area or to an adjoining Control Area if the Generating Facility is not designated a Network Resource pursuant to Section 30.2 of the Tariff.
9. Interconnection Customer provides Evidence of Site Control as specified in the Revised LGIP and Transmission Provider's business practices posted on OASIS.
10. This Interconnection Request shall be submitted to the representative indicated below:

[To be completed by Transmission Provider]
11. Representative of Interconnection Customer to contact:

[To be completed by Interconnection Customer]
12. This Interconnection Request is submitted by:
Name of Interconnection Customer: _____
By (signature): _____
Name (type or print): _____
Title: _____

Date: _____

**Attachment A to Appendix 1
 Interconnection Request**

LARGE GENERATING FACILITY DATA

UNIT RATINGS

kVA _____ °F _____ Voltage _____
 Power Factor _____
 Speed (RPM) _____ Connection (e.g. Wye) _____
 Short Circuit Ratio _____ Frequency, Hertz _____
 Stator Amperes at Rated kVA _____ Field Volts _____
 Max Turbine MW _____ °F _____

Primary frequency response operating range for electric storage resources.

Minimum State of Charge: _____
Maximum State of Charge: _____

COMBINED TURBINE-GENERATOR-EXCITER INERTIA DATA

Inertia Constant, H = _____ kW sec/kVA
 Moment-of-Inertia, WR² = _____ lb. ft.²

REACTANCE DATA (PER UNIT-RATED KVA)

DIRECT AXIS QUADRATURE AXIS

Synchronous – saturated	X _{dv} _____	X _{qv} _____
Synchronous – unsaturated	X _{di} _____	X _{qi} _____
Transient – saturated	X' _{dv} _____	X' _{qv} _____
Transient – unsaturated	X' _{di} _____	X' _{qi} _____
Subtransient – saturated	X'' _{dv} _____	X'' _{qv} _____
Subtransient – unsaturated	X'' _{di} _____	X'' _{qi} _____
Negative Sequence – saturated	X _{2v} _____	
Negative Sequence – unsaturated	X _{2i} _____	
Zero Sequence – saturated	X _{0v} _____	
Zero Sequence – unsaturated	X _{0i} _____	

Leakage Reactance X_{lm} _____

Open Circuit	T'_{do} _____	T'_{qo} _____
Three-Phase Short Circuit Transient	T'_{d3} _____	T'_{q} _____
Line to Line Short Circuit Transient	T'_{d1} _____	
Short Circuit Subtransient	T''_d _____	T''_q _____
Open Circuit Subtransient	T'_{d2} _____	
Line to Neutral Short Circuit Transient	T''_{do} _____	T''_{qo} _____

**FIELD TIME CONSTANT DATA (SEC)
 ARMATURE TIME CONSTANT DATA (SEC)**

Three Phase Short Circuit	T_{a3} _____
Line to Line Short Circuit	T_{a2} _____
Line to Neutral Short Circuit	T_{a1} _____

NOTE: If requested information is not applicable, indicate by marking "N/A."

**MW CAPABILITY AND PLANT CONFIGURATION
 LARGE GENERATING FACILITY DATA**

ARMATURE WINDING RESISTANCE DATA (PER UNIT)

Positive	R_1 _____
Negative	R_2 _____
Zero	R_0 _____

Rotor Short Time Thermal Capacity $I_2^2t =$ _____
 Field Current at Rated kVA, Armature Voltage and PF = _____ amps
 Field Current at Rated kVA and Armature Voltage, 0 PF = _____ amps
 Three Phase Armature Winding Capacitance = _____ microfarad
 Field Winding Resistance = _____ ohms _____ °C
 Armature Winding Resistance (Per Phase) = _____ ohms _____ °C

CURVES

Provide Saturation, Vee, Reactive Capability, Capacity Temperature Correction curves.
 Designate normal and emergency Hydrogen Pressure operating range for multiple curves.

GENERATOR STEP-UP TRANSFORMER DATA RATINGS

Capacity Self-cooled/

Maximum Nameplate
_____/_____/_____kVA

Voltage Ratio(Generator Side/System side/Tertiary)
_____/_____/_____kV

Winding Connections (Low V/High V/Tertiary V (Delta or Wye))
_____/_____/_____

Fixed Taps Available _____

Present Tap Setting _____

If more than one transformer stage is used to deliver the output from the proposed Generating Facility to the Transmission System, please provide the information above for each transformer or transformer type.

IMPEDANCE

Positive
Z₁ (on self-cooled kVA rating) _____% _____X/R

Zero
Z₀ (on self-cooled kVA rating) _____% _____X/R

EXCITATION SYSTEM DATA

Identify appropriate IEEE model block diagram of excitation system and power system stabilizer (PSS) for computer representation in power system stability simulations and the corresponding excitation system and PSS constants for use in the model.

GOVERNOR SYSTEM DATA

Identify appropriate IEEE model block diagram of governor system for computer representation in power system stability simulations and the corresponding governor system constants for use in the model.

WIND AND OTHER NON-SYNCHRONOUS GENERATORS

Number of generators to be interconnected pursuant to this Interconnection Request:

Elevation: _____ Single Phase _____ Three Phase _____

Inverter manufacturer, model name, number, and version:

List of adjustable setpoints for the protective equipment or software:

Note: A completed General Electric Company Power Systems Load Flow (PSLF) data sheet or other compatible formats, such as IEEE and PTI power flow models, must be supplied with the Interconnection Request. If other data sheets are more appropriate to the proposed device, then they shall be provided and discussed at Scoping Meeting.

Project Information: Site Control and Adequacy

Total acres required to construct the Generating Facility: _____

Total acres under site control for the Generating Facility at the time of application:

Is Site Control required for Interconnection Facilities, i.e. transmission gen-tie or substation, to interconnect the Generating Facility? ___ Y ___ N

If yes, how many miles of gen-tie right-of-way are required? _____

What is the total number of acres required to build the gen-tie? _____

How many miles of gen-tie right-of-way are under Site Control at the time of this application?

List any local, state, or federal government permits required to construct the Generating Facility and any applicable Interconnection Facilities, i.e. transmission gen-tie:

INDUCTION GENERATORS

- (*) Field Volts: _____
- (*) Field Amperes: _____
- (*) Motoring Power (kW): _____
- (*) Neutral Grounding Resistor (If Applicable): _____
- (*) I_2^2t or K (Heating Time Constant): _____
- (*) Rotor Resistance: _____
- (*) Stator Resistance: _____
- (*) Stator Reactance: _____
- (*) Rotor Reactance: _____
- (*) Magnetizing Reactance: _____
- (*) Short Circuit Reactance: _____
- (*) Exciting Current: _____
- (*) Temperature Rise: _____
- (*) Frame Size: _____
- (*) Design Letter: _____
- (*) Reactive Power Required In Vars (No Load): _____
- (*) Reactive Power Required In Vars (Full Load): _____
- (*) Total Rotating Inertia, H: _____ Per Unit on KVA Base

Note: Please consult Transmission Provider prior to submitting the Interconnection Request to determine if the information designated by (*) is required.

POWER PURCHASE AGREEMENT

BETWEEN

PUBLIC SERVICE COMPANY OF COLORADO

AND

[REDACTED]



- [date] -

TABLE OF CONTENTS

	PAGE
Article 1 - Rules of Interpretation	1
1.1 Interpretation.....	1
1.2 Interpretation with Other Agreements	2
1.3 Good Faith and Fair Dealing.....	2
Article 2 – Term and Termination	2
Article 3 – Facility Description.....	3
3.1 Description.....	3
3.2 General Design of the Facility.....	3
Article 4 - Implementation	3
4.1 Project Development	3
4.2 Environmental Matters	4
4.3 Permits.....	5
4.4 Governmental Inspections	6
4.5 Commercial Operation	6
4.6 Pre-COD Testing	9
Article 5 - Delivery	9
5.1 Arrangements	9
5.2 Market Changes	10
5.3 Electric Metering Devices	10
5.4 Natural Gas Fuel.....	12
5.5 Fuel Oil	14
Article 6 – Conditions Precedent	15
6.1 PUC Approval	15
6.2 Other Company CPs.....	15
6.3 Seller CPs.....	15
6.4 Following a termination	16
Article 7 – Sale and Purchase	16
7.1 General Obligation	16
7.2 Dispatch.....	16
7.3 Permit Limitations	16
7.4 Environmental Attributes.....	17
7.5 Ancillary Services	18
Article 8 – Payment Calculations.....	19
8.1 Payment for Contract Capacity	19
8.2 Payment for Dispatchability	20
8.3 Payment for Energy	21
8.4 Heat Rate Adjustment.....	22
8.5 Payment for Turbine Starts	23

8.6	ESC Adjustments.....	24
	Article 9 – Billing and Payment.....	25
9.1	Billing	25
9.2	Payment.....	25
9.3	Billing Disputes.....	26
	Article 10 – Operations and Maintenance.....	26
10.1	Operation and Administration	26
10.2	Facility Maintenance	26
10.3	Forced Outages	26
10.4	Post-COD Testing.....	27
10.5	Forecasting	28
10.6	Books and Records	28
10.7	Access to Facility	29
10.8	Operating Committee and Operating Procedures.....	29
10.9	Availability Reporting: Gas.....	30
10.10	Availability on Fuel Oil.....	30
	Article 11 – Security for Performance	31
11.1	Security Fund.....	31
11.2	Replenishment.....	32
11.3	Form 32	
11.4	Replacement.....	33
11.5	Survival	34
11.6	Expenses.....	34
	Article 12 – Default and Remedies	34
12.1	Default by Seller: General.....	34
12.2	Default by Seller: Failure to Achieve COD.....	37
12.3	Default by Company	37
12.4	Limitations on Damages	39
12.5	Bankruptcy.....	40
12.6	Cumulative Remedies.....	40
12.7	Duty to Mitigate.....	40
	Article 13 – Dispute Resolution.....	40
13.1	Negotiation.....	40
13.2	Time Bar	41
13.3	No Termination Pending Dispute Resolution	41
13.4	Governing Law.....	42
13.5	Venue	42
13.6	Waiver of Jury Trial	42
	Article 14 – Force Majeure	42
14.1	Definition.....	42
14.2	Applicability of Force Majeure.....	43

14.3	Limitations on Effect of Force Majeure.....	43
	Article 15 – Representations and Warranties	44
	Article 16 - Insurance.....	46
16.1	Evidence of Insurance	46
16.2	Policy Requirements	46
16.3	No Implied Limitation	46
16.4	Term and Modification of Insurance.....	46
16.5	Application of Proceeds	47
	Article 17 - Indemnity.....	47
17.1	Indemnification: General	47
17.2	Indemnification: Environmental.....	47
17.3	Indemnification: House Power	47
17.4	Indemnification:Company Remote Start of Facility	47
17.5	Limitations.....	48
17.6	Procedures	48
17.7	Amounts Owed	48
	Article 18 – Lender Provisions	49
18.1	Accommodation of Facility Lender.....	49
18.2	Notices.....	49
	Article 19 - Assignment.....	50
19.1	Assignment by Seller	50
19.2	Assignment by Company	51
19.3	ROFO51	
19.4	PFT 52	
19.5	RESERVED	53
19.6	Memo of Option	53
	Article 20 - Miscellaneous.....	54
20.1	Notices.....	54
20.2	Taxes 54	
20.3	Applicable Laws.....	55
20.4	Change of Law.....	55
20.5	Fines and Penalties	56
20.6	Rate Changes.....	56
20.7	Certifications	56
20.8	Disclaimer of Third Party Beneficiaries	57
20.9	Relationship of the Parties	57
20.10	Survival of Obligations	57
20.11	Severability	57
20.12	Complete Agreement; Amendments.....	57
20.13	Waiver.....	58
20.14	Binding Effect.....	58

20.15 Headings.....	58
20.16 Counterparts	58
20.17 Press Release	58
20.18 Exhibits	58
20.19 Confidentiality	58
20.20 Accounting Treatment.....	59

Exhibits:

EXHIBIT A	DEFINITIONS	
EXHIBIT B	CONSTRUCTION MILESTONES	
EXHIBIT C	FACILITY DESCRIPTION AND SITE MAPS	
EXHIBIT D	NOTICES AND CONTACT INFORMATION	
EXHIBIT E	INSURANCE COVERAGE	
EXHIBIT F	NEEDED PERMITS	
EXHIBIT G	FORM OF LETTER OF CREDIT	
EXHIBIT H	FORM OF GUARANTY	
EXHIBIT I	OPERATING STANDARDS	
EXHIBIT J	CAPACITY TESTING	
EXHIBIT K	HEAT RATE TESTING	
EXHIBIT L	MAINTENANCE	
EXHIBIT M	PRICING	
EXHIBIT N	ESC ADJUSTMENTS	
EXHIBIT O	LENDER CONSENT PROVISIONS	
EXHIBIT P-1	RESERVED	
EXHIBIT P-2	FACILITY PURCHASE AND SALE AGREEMENT (“PSA”) PROVISIONS	
EXHIBIT P-3	MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT (“MIPSA”) PROVISIONS	
EXHIBIT Q	NATURAL GAS FUEL SPECIFICATIONS	
EXHIBIT R	FUEL OIL <i>[if applicable]</i>	
EXHIBIT S	METER AND COMMUNICATIONS REQUIREMENTS	

**POWER PURCHASE AGREEMENT
BETWEEN
PUBLIC SERVICE COMPANY OF COLORADO
AND
[REDACTED], LLC**

This Power Purchase Agreement (this “PPA”) is made as of this [REDACTED] day of [REDACTED], 20[REDACTED] (“Effective Date”), by and between (i) Public Service Company of Colorado, a [REDACTED] corporation with a principal place of business at 1800 Larimer Street, Denver, CO 80202 (“Company”), and (ii) [REDACTED], LLC, a [REDACTED] [limited liability company] with a principal place of business at [REDACTED] (“Seller”). Company and Seller are hereinafter referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS Seller desires to develop, design, construct, interconnect, own, operate and maintain the Facility as defined herein; and

WHEREAS Seller desires to sell and deliver, and Company desires to accept and receive, certain products and services, including but limited to the Contract Energy, Contract Capacity and Ancillary Services attributable to and/or delivered from the Facility to the Point of Delivery at the prices and on the terms and conditions set forth in this PPA.

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

Article 1 - Rules of Interpretation

1.1 Interpretation.

(A) Capitalized terms listed in this PPA shall have the meanings set forth in Exhibit A - Definitions or as otherwise defined in this PPA, whether in the singular or the plural or in the present or past tense. Words not otherwise defined in this PPA shall (i) have meanings as commonly used in the English language, (ii) be given their generally accepted meaning consistent with Good Utility Practice, and (iii) be given their well-known and generally accepted technical or trade meanings.

(B) The following rules of interpretation shall apply: (1) The masculine shall include the feminine and neuter; (2) references to “Articles,” “Sections” or “Exhibits” shall be to articles, sections, or exhibits of this PPA except as the context may otherwise require; (3) all Exhibits are incorporated into this PPA (*provided, however*, that in the event of a conflict with the terms of this PPA, the PPA shall control); and (4) use of the words “include” or “including” or similar words shall be interpreted as “include without limitation” or “including, without limitation.”

(C) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. None of the provisions hereof shall be construed

against one Party on the ground that such Party is the author of this PPA or any part hereof.

1.2 Interpretation with Other Agreements.

(A) This PPA does not provide authorization for Seller to interconnect the Facility or inject power into the Transmission Authority's System. Seller shall contract for interconnection services in accordance with the applicable Transmission Tariff. Seller acknowledges that the Interconnection Agreement is/will be a separate contract and that (i) this PPA is not binding on the Transmission Authority, (ii) this PPA does not create any rights between Seller and the Transmission Authority, and (iii) the Interconnection Agreement does not modify the Parties' rights and obligations under this PPA. The applicable Transmission Authority shall be deemed to be a separate and unaffiliated contracting party for purposes of this PPA, regardless whether such Transmission Authority is Company or an Affiliate of Company.

(B) This PPA does not provide for the supply of retail power for purposes of operating the Facility, including start-up, shut-down, oil heating, turbine adjustment, HVAC or any other purpose ("House Power"). Seller shall contract with the utility providing House Power to the Site (the "Local Provider") for the supply of House Power. Seller acknowledges that (i) Seller must obtain House Power independently, (ii) this PPA is not binding on the Local Provider, (iii) this PPA does not create any rights between Seller and the Local Provider, and (iv) Seller's contract for House Power does not affect the Parties' rights and obligations under this PPA. For purposes of this PPA, the Local Provider shall be deemed to be a separate and unaffiliated contracting party regardless whether the Local Provider is Company or an Affiliate of Company; *provided* that, if (and only if) the Local Provider is Company or an Affiliate of Company, Seller may obtain House Power by self-generating and netting such self-generation from the Contract Energy provided to Company unless prohibited by Applicable Law.

1.3 Good Faith and Fair Dealing. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (a) when this PPA specifically references the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) wherever this PPA specifically gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be Commercially Reasonable.

Article 2 - Term and Termination

This PPA shall become effective as of the date of its execution, and shall remain in full force and effect until 11:59 pm on [PS] the last Day of the calendar month during which occurs the [__th] anniversary of the Commercial Operation Date. (the "Scheduled Termination Date"), subject to early termination as provided in this PPA. Applicable provisions of this PPA shall continue in effect after termination to the extent necessary to (i) provide for final billings, payments and adjustments, (ii) enforce or complete the

duties, obligations or responsibilities of the Parties (including under Section 12.1(B)-(D), Section 12.2(C), Section 12.3(B)-(C), Article 13 and Article 17 below), and (iii) address any remedies or indemnifications arising prior to termination.

Article 3 - Facility Description

3.1 Description. Seller shall construct, interconnect, own, operate, and maintain the Facility, as further described in Exhibit C - Facility Description and Site Maps. A scaled map that identifies the Site, the location of the Facility, the Interconnection Point and Interconnection Facilities, the Point of Delivery, the Fuel Delivery Point, and other important facilities, is included in Exhibit C - Facility Description and Site Maps.

3.2 General Design of the Facility.

(A) Seller shall design, construct, operate and maintain the Facility according to Good Utility Practices and the Interconnection Agreement.

(B) The Facility shall include all equipment specified in Exhibit C - Facility Description and Site Maps and otherwise necessary to fulfill Seller's obligations under this PPA, including all equipment necessary (i) to meet the requirements of Exhibit I - Operating Standards, and (ii) to interconnect successfully with the Transmission Authority's System for the delivery of Contract Energy.

(C) The Net Capability of the Facility shall be [] MW.

Article 4 - Implementation

4.1 Project Development.

(A) Seller shall enter into and perform at its expense all contracts required for (i) the engineering, procurement, construction, acquisition, manufacture, delivery, installation and operation of the Facility, and (ii) the generation and delivery of Contract Energy (generally, the "Construction Contracts") with qualified and experienced contractors. Upon written request by Company, Seller shall provide copies of any or all Construction Contracts to Company. All Construction Contracts obtained by Company shall be deemed Confidential Information subject to Section 20.19 below.

(B) In its efforts to achieve COD, Seller shall use Commercially Reasonable Efforts to achieve the milestones set forth in Exhibit B – Construction Milestones and shall notify Company promptly following achievement of each such milestone.

(C) Prior to the Commercial Operation Date, Seller shall (i) submit monthly progress reports to Company in a form agreed by the Parties, advising Company of the current status of each Construction Milestone, any significant developments or delays (along with an action plan for making up delays), and Seller's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted

to the Facility Lender relating to status, progress and development of the Facility, and (iii) invite Company to participate in monthly meetings to discuss the progress reports, answer questions, and assess the schedule. Seller shall make all relevant counterparties under the Construction Contracts available to Company, upon request, in order to keep Company fully informed on the status of development. Each report delivered to Company under this paragraph (C) shall be deemed Confidential Information subject to Section 20.19

(D) Upon request, Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Site to verify compliance with this PPA, *provided, however,* that Company shall comply with all of Seller's applicable safety and health rules and requirements.

(E) Neither Company's review of Construction Contracts and Seller's reports, nor its discussions with Seller and its contractors, nor its monitoring of development and construction the Facility, shall be construed as endorsement by Company of the design, engineering, construction or testing thereof nor as any express or implied warranty as to the performance, safety, durability, or reliability of the Facility.

4.2 Environmental Matters.

(A) No later than sixty (60) Days following PUC Approval, Seller shall complete and provide to Company a comprehensive independent "Phase I" environmental site assessment of the Site that is conducted in compliance with ASTM E1527-13 or E2257-16, as applicable (including associated raw data, if requested by Company), which report shall have been prepared as of a reasonably proximate-time such that it reflects the then-current conditions of the site. Seller shall notify Company promptly (i) if (and to what extent) any Environmental Contamination on the Site will preclude or interfere with Seller's ability to perform its obligations under this PPA, and (ii) Seller's plan for remediation thereof that would allow Seller to perform this PPA as and when due. The Phase I report delivered to Company under this paragraph shall be deemed Confidential Information for purposes of Section 20.19.

(B) Throughout the Term, Seller promptly shall

1. disclose to Company and remediate, at Seller's sole cost and expense, any Environmental Contamination identified at the Site;
2. provide to Company copies of any further environmental assessments or investigations of the Site (including associated raw data, if requested by Company); and
3. disclose to Company the existence of any enforcement, legal, or regulatory action or proceeding relating to any alleged presence of Environmental Contamination and/or the alleged violation of any Applicable Law related to protection of human health, the environment, or natural resources, including protected species.

(C) For purposes hereof:

1. “Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Site will not be available or usable for the purposes contemplated by this PPA, and/or (iii) will preclude or interfere with Seller’s ability to perform its obligations under this PPA as and when due.

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

4.3 Permits.

(A) Seller shall obtain and pay for all Permits necessary under Applicable Law or advisable pursuant to Good Utility Practice for the construction, ownership, operation and maintenance of the Facility and the generation and delivery of the products and services required by this PPA. Seller shall keep Company informed as to the status of its permitting efforts and shall provide Company the opportunity to review and comment on major applications for draft and final Permits. Seller shall promptly inform Company of (i) any Permits which Seller is unable to obtain, that are delayed, limited, suspended, terminated or otherwise constrained, along with a statement of whether and to what extent this circumstance may limit or preclude Seller’s ability to perform under this PPA, and (ii) Seller’s plan to overcome such issue(s) to allow Seller to perform this PPA as and when due. Company shall have the right to inspect and obtain copies of all Permits held by Seller.

(B) Seller represents and warrants to Company that, except for those Permits identified in Exhibit F - Seller’s Needed Permits (each of which Seller anticipates will be obtained by Seller in the ordinary course of business not later than

the applicable date set forth in Exhibit F – Needed Permits), all Permits and other actions required or recommended by applicable Governmental Authorities to authorize Seller’s execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(C) Throughout the Term, Seller promptly shall disclose to Company the existence of any enforcement, legal, or regulatory action or proceeding relating to the alleged violation of any Permit held by Seller, which proceeding (if successful) could materially interfere with Seller’s performance of this PPA.

(D) For purposes hereof, “Permits” means all applicable construction, land use, air quality, emissions control, environmental, protected species, and other permits, licenses and approvals from any Governmental Authority for construction, ownership, operation and maintenance of the Facility and the generation and delivery of Contract Energy therefrom.

4.4 Governmental Inspections. Seller shall notify Company (i) sufficiently in advance of any known upcoming significant inspections by any Governmental Authority relating to the Facility, to allow Company the opportunity to attend, and (ii) promptly after any unscheduled or impromptu inspection with a description of the nature and outcome of such inspection.

4.5 Commercial Operation.

(A) Seller shall cause COD to occur no later than [_____, 20___] (the “Target COD”). Company shall not be obligated to accept and establish a Commercial Operation Date earlier than [_____, 20___] (**insert date that is 45 Days prior to Target COD**).

(B) Seller shall notify Company of the date on which Seller believes the Facility has achieved Commercial Operation (a “COD Notice”). A COD Notice shall include all necessary supporting documentation of the satisfaction or occurrence of all COD Conditions. Company shall have ten (10) Business Days to review a COD Notice and raise any Commercially Reasonable objection to Seller’s satisfaction of any of the COD Conditions, *provided, however,* that Seller’s COD Notice shall be deemed accepted by Company as of the date of delivery if Company fails to object within such time period. Seller may notify Company of completion of one or more COD Conditions on an individual and incremental basis prior to COD, *provided, however,* that Company shall in all cases have up to ten (10) Business Days to review and object to each such notice.

(C) For purposes hereof:

1. the “Commercial Operation Date” or “COD” means 12:01 am on the Day after which Seller’s COD Notice has been accepted by Company or deemed accepted by Company pursuant to Section 4.5(B); and

2. the “COD Conditions” are:

(a) an officer of Seller, authorized to bind Seller and who is familiar with the Facility, has confirmed in writing that (1) all necessary and material Permits have been obtained, are in full force and effect and the entity granting the Permit has not placed any temporary or conditional restrictions or limitations on the Facility or its operation, (2) Seller is in compliance with this PPA in all material respects, and (3) the Facility is available to commence normal operations in accordance with Seller's operating agreements, Construction Contracts, and applicable manufacturers' warranties;

(b) Seller has made all necessary arrangements to obtain and pay the Local Provider for House Power;

(c) Seller and the Transmission Authority have executed the Interconnection Agreement, and Seller has received no notice of breach thereof from the Transmission Authority;

(d) the Facility is interconnected to the Transmission Authority's System, and has been fully tested, achieved initial synchronization, and been successfully operated at a generation level acceptable to the Transmission Authority, without experiencing any abnormal or unsafe operating conditions on any interconnected system;

(e) the Facility meets all criteria for [Network/Energy] Resource Interconnection Service, under the Interconnection Agreement and the Transmission Tariff;

(f) the Facility is configured and available for operation in a manner to permit accreditation of the Facility as a Capacity Resource, in an amount substantially equal to its Net Capability;

(g) Seller has made all arrangements necessary to deliver Contract Energy during the Term;

(h) Seller has obtained and provided to Company an independent registered professional engineer's certification stating that the Facility has been completed in all material respects, except for "punch list" items that do not have a Material Adverse Effect on the ability of the Facility to operate for its intended purpose and are not required for the safe operation of the Facility or otherwise affect the Capacity, efficiency, reliability, operability, safety or mechanical or electrical integrity of the Facility;

(i) each Generating Unit has achieved at least two Successful Starts on natural gas [(and two Successful Starts on fuel oil) **if applicable**] [in each possible operating configuration **if applicable**], without experiencing any abnormal operating conditions;

(j) the Facility has generated continuously for a period not less than sixteen (16) consecutive hours, at an output level not less than 95% of Net Capability (adjusted for ambient conditions), without experiencing any abnormal operating conditions;

(k) Seller has demonstrated the functionality and reliability of the Facility's communications systems and AGC interface with Company's EMCC, the capability of the Facility to receive and respond to signals from Company's SCADA System, the accuracy of and Electric Metering Devices and their ability to communicate with the Company, all in accordance with Exhibit C – Facility Description and Site Maps, Exhibit I - Operating Standards and Exhibit S – Meter and Communications Requirements;

(l) the Facility has demonstrated its capability to meet the Expected Ramp Rates, and meets the Dispatchability Requirements set forth in Exhibit I - Operating Standards;

(m) all fuel supply, fuel storage and fuel delivery arrangements necessary to operate the Facility in compliance with this PPA have been completed, tested and are in effect, and a copy of the executed natural gas interconnection facilities agreement has been provided to Company; and,

(n) Seller has executed and delivered to Company all documents or instruments required under Article 16.

(D) Prior to COD, should Seller require Company's assistance in meeting the COD Conditions because the Transmission Authority considers Company to be the market participant for the Facility, Company shall use Commercially Reasonable Efforts to cooperate with and provide assistance to Seller, so long as Seller provides any security the Transmission Authority requires and reimburses Company for all expenses, including fees of counsel, Company may incur in providing such cooperation and assistance.

(E) In the event that the COD Conditions are satisfied with respect to one or more (but fewer than all) of the Generating Units planned for the Facility, Company at its option may issue a "Partial Completion Declaration" stating that COD has been achieved with respect to such Generating Units. In that case:

1. From and after the date of a Partial Completion Declaration, all of the rights and duties of the Parties under this PPA shall apply in respect of the Generating Units included in the Partial Completion Declaration, including payments for capacity and energy under Article 8 (which shall be prorated based upon the capacity of such Unit(s)), and the dispatch, accreditation and maintenance requirements of this PPA.

2. Liquidated Delay Damages, if any, shall be prorated for the Unit(s) not included in the Partial Completion Declaration.

3. In the event that the Generating Unit(s) not included in the Partial Completion Declaration fail to achieve the COD Conditions by the Target COD (which failure is not cured within the cure period set forth in Section 12.2 and/or in any Lender Consent), Company shall have the right and option, by notice to Seller, either (i) to declare an Event of Default and terminate this PPA entirely, as permitted

and with the consequences set forth in Section 12.2, or (ii) to terminate this PPA only as to the Generating Units that failed to achieve the COD Conditions, and collect prorated Termination LDs accordingly, in which case the balance of this PPA shall survive as to the Generating Units included in the Partial Completion Declaration.

(F) For purposes hereof, the first “Commercial Operation Year” shall mean the period starting at 12:01 a.m. on the Commercial Operation Date and ending at 11:59 pm on the last Day of the calendar month in which the first anniversary of COD occurs, and each successive “Commercial Operation Year” shall mean the 12-month period following the prior Commercial Operation Year.

4.6 Pre-COD Testing.

(A) Seller shall provide Company and Transmission Authority with the information necessary to have the Facility registered with the Transmission Authority for inclusion in any generation modeling maintained by the Transmission Authority, sufficiently in advance to allow the Facility to be registered in such model at least six months prior to generating any Pre-COD Test Energy. Company shall cooperate reasonably to assist in the registration of the Facility to allow generation of Pre-COD Test Energy.

(B) Seller shall coordinate the production and delivery of Pre-COD Test Energy with Company, upon such Commercially Reasonable prior notice as Company and the Transmission Authority may reasonably request. In particular, (i) upon request, Company shall procure and arrange delivery of natural gas fuel needed for pre-COD testing of the Facility, and (ii) Seller shall reimburse Company for all associated commodity, imbalance, demand charges, transportation and other ancillary costs incurred by Company in connection therewith.

(C) Seller shall invoice and Company shall purchase all Pre-COD Test Energy (whether generated from natural gas fuel or fuel oil *if applicable*) from Seller at the Test Energy Rate. For purposes hereof, “Pre-COD Test Energy” means energy generated by the Facility prior to COD, required to satisfy the COD Conditions.

Article 5 - Delivery

5.1 Arrangements.

(A) Seller shall be responsible for arranging, maintaining and paying the costs associated with the interconnection of the Facility to the Transmission Authority’s System. Seller shall comply with the Transmission Authority’s requirements for interconnection and shall comply with all requirements set forth in the applicable Transmission Tariff.

The Interconnection Agreement for the Facility shall provide for Network Resource Interconnection Service under the Transmission Tariff. Seller shall cooperate reasonably in any request by Company to assist in Company’s efforts to have the

Facility approved as a Network Resource or equivalent classification pursuant to the applicable Transmission Tariff, and Company's efforts to obtain Firm Network Interconnection Transmission Service under the Transmission Tariff.

(B) Seller hereby authorizes Company to contact, discuss and obtain information concerning the Facility and the Interconnection Facilities directly with/from the Transmission Authority. Promptly upon request by Company, Seller shall confirm such authorization in writing to the Transmission Authority and any applicable transmission owners, in such form as may be requested by Company or the Transmission Authority.

(C) To the extent required, Company shall arrange and be responsible for scheduling and transmission services beyond the Point of Delivery with respect to the output of the Facility. To the extent applicable, Company shall be the market participant with respect to the output of the Facility, as defined by the Transmission Authority.

(D) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver the Contract Energy. Company shall be responsible for all electrical losses, transmission and ancillary service arrangements and costs required to transmit and deliver Contract Energy beyond the Point of Delivery.

5.2 Market Changes.

(A) If at any time during the Term, the Transmission Authority changes or the facilities at the Point of Delivery cease to be subject to the Transmission Tariff, the Parties shall cooperate in good faith to facilitate the delivery of Contract Energy, at the least possible cost to the Parties, consistent with this PPA to the extent possible.

(B) If at any time during the Term, the Transmission Authority, the ERO or any other Governmental Authority with jurisdiction imposes an organized market or Company elects to join a regional transmission organization or participate in an organized market which changes the manner in which the Facility is scheduled and dispatched, the Parties shall cooperate in good faith to change their protocols for operation of the Facility accordingly, at the least possible cost to the Parties, consistent with this PPA to the extent possible.

5.3 Electric Metering Devices.

(A) All Electric Metering Devices used to measure energy shall be owned, installed, and maintained in accordance with the Interconnection Agreement, at no cost to Company. All Metering Devices shall meet the requirements of Exhibit S - Metering and Communications Devices.

1. Meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery in accordance with applicable manufacturers' parameters or as otherwise agreed by the Parties.

2. Seller shall arrange any necessary authorization to provide Company access to all Electric Metering Devices via electronic remote communications and via physical access for purposes related to this PPA, and shall provide Company the opportunity to be present at any time when such Electric Metering Devices are to be inspected, tested or adjusted.

(B) Either Party may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering"), *provided, however*, that the specifications, installation and testing of any such Back-Up Metering shall be consistent with the requirements for the Electric Metering Devices. Upon written request from the other Party, the installing Party shall test the Back-Up Metering. The actual cost of any such test shall be borne by the Party requesting the test, unless, upon such test, Back-Up Metering is inaccurate by more than one percent, in which case the cost of the retest shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(C) If an Electric Metering Device or Back-Up Metering fails to register, or if the measurement is inaccurate by more than one percent, an adjustment shall be made correcting all measurements as follows:

1. If the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering, if installed, to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering has been tested and maintained and adjusted for losses on the same basis as the Electric Metering Device. If Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one percent, the Parties shall use the best available information for the period of inaccuracy, adjusted for losses to the Point of Delivery in accordance with applicable manufacturers' parameters or as otherwise agreed by the Parties.

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

3. To the extent that an adjustment period covers a period of deliveries for which payment has already been made by Company, Company shall use the corrected measurements as determined in accordance with this Article 5 to re-compute the amount due for the period of the inaccuracy and shall subtract the previous payments made by Company for this period from such re-computed

amount. The net difference shall be reflected as an adjustment on the next regular invoice in accordance with Article 9.

5.4 Natural Gas Fuel.

(A) Seller shall be solely responsible for all natural gas interconnection, transportation, delivery and metering arrangements, and all associated costs, required to receive natural gas fuel to operate the Generating Unit(s). Seller shall, at its sole expense, construct, operate and maintain the pipelines, compressors, meters, heaters, filter/separation equipment, electronics, regulation equipment and other necessary equipment, of sufficient capacity and industrial specifications to receive, regulate, meter and transport natural gas fuel from the Fuel Delivery Point to the Generating Unit(s), to allow for full operation of the Generating Unit(s) on natural gas fuel over the Term. Seller shall be responsible for ensuring that the Upstream Pipeline designs and constructs the natural gas interconnection facilities and the upstream delivery system to be of sufficient size and capability to ensure the Facility receives natural gas fuel that meets the minimum pressure requirement needed to run the Facility at one hundred percent (100%) of Net Capability. If requested by Company, Seller shall install (at Company's cost) check metering, in connection with the natural gas custody transfer metering, on Seller's downstream natural gas facilities.

(B) Company may elect at its sole option to interconnect the Facility with one or more additional natural gas delivery systems at or near the Fuel Delivery Point identified in Exhibit C - Facility Description and Site Maps and to designate such additional interconnection(s) as an additional Fuel Delivery Point, *provided, however, that* (i) Company shall be responsible for installing and paying for all pipelines, valves, electronics, metering and other facilities, permits, contracts and construction costs required to establish such additional interconnection, up to Seller's fuel interconnection facilities; (ii) such additional interconnection will not interfere with the operation of the Facility, other than during the time necessary to physically connect the additional interconnecting facilities; and (iii) such additional interconnection will deliver Acceptable Natural Gas Fuel to the new Fuel Delivery Point. Seller shall grant Company or its designee an easement and access to the vicinity of the Fuel Delivery Point for the purpose of constructing and maintaining any such additional natural gas interconnection(s).

(C) Company shall procure and pay for all natural gas fuel for the generation of Contract Energy, from and after COD. Seller shall accept delivery of all natural gas fuel delivered to any Fuel Delivery Point for the purpose of generating the Contract Energy, *provided, however,* that Seller shall not be obligated to accept gas fuel that is not Acceptable Natural Gas Fuel if such nonconformance could reasonably be expected to have a Material Adverse Effect on the Facility ("Non-Conforming Gas"). Company shall have no liability to Seller for the delivery of Non-Conforming Gas to the Facility by any Upstream Pipeline, *provided* that Company shall provide reasonable assistance to Seller in making any consequent claim against the delivering Upstream Pipeline if Seller pays or reimburses Company for any associated legal fees and other out-of-pocket costs incurred by Company.

(D) Company may elect its sole option whether to obtain and utilize firm gas transportation service or non-firm gas transportation service for the delivery of natural gas fuel to the Fuel Delivery Point.

(E) Title to all natural gas fuel shall be retained by Company at and from the Fuel Delivery Point and/or storage tank(s), as applicable, to the burner tips of the Generating Units. As between the Parties, however, Seller shall be deemed to be in exclusive control and possession of all natural gas fuel from and after the Fuel Delivery Point until such fuel has been consumed in the Facility, so Seller shall bear the risk of loss of any fuel beyond the Fuel Delivery Point prior to its consumption in the Facility, and shall be responsible for any costs, damages, fines or penalties associated with leaks, spills, remediation, or other liabilities associated with such fuel. Seller shall promptly report and resolve any natural gas leaks or spills beyond the Fuel Delivery Point, at its sole expense, in accordance with Applicable Laws.

(F) If the Facility includes any natural gas-fired equipment that is not used for the direct conversion of natural gas fuel to electric energy (such as natural gas-fired auxiliary boiler(s), in-line heater(s) used to heat the natural gas fuel, or building heating equipment), Seller shall separately meter and supply, at Seller's expense, the natural gas fuel consumed by such equipment.

(G) Unless otherwise agreed by the Parties, Seller shall be the operator of the Fuel Delivery Point(s). Seller shall be responsible for all volume confirmations, allocations and balancing functions with the Upstream Pipeline, as well as gas regulation and maintenance and testing arrangements for all natural gas metering at such Fuel Delivery Point(s). Seller shall also be responsible for all natural gas physical flow activities, such as flow control, valve operation, and contacting the delivering pipeline to initiate gas flow to the Fuel Delivery Point.

(H) All natural gas custody transfer metering at the Fuel Delivery Point(s) shall be installed, maintained and tested in accordance with accepted natural gas industry standards and shall comply with the Upstream Pipeline's tariff requirements. Seller shall test the natural gas meter prior to COD and at least every two years thereafter (or at such more frequent intervals as may be required by the Upstream Pipeline), and shall provide written meter test results to Company within thirty (30) Days following completion. Company shall have the right to require additional tests at Company's expense. Seller shall provide Company with at least ten (10) Business Days advance notice of each test and a representative of Company shall be permitted to witness such tests, *provided, however, that* such Company representative shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. Seller shall provide copies of all test data and testing reports to Company. Disputes regarding the allocation of natural gas volumes and associated billings with the Upstream Pipeline, including meter reading adjustments for prior periods, shall be resolved in accordance with the Upstream Pipeline's tariff.

5.5 Fuel Oil. **[if applicable]**

(A) Seller shall install Fuel Oil Storage Facilities as part of the Facility, consistent with Exhibit R - Fuel Oil. Seller shall maintain and calibrate the fuel oil meter(s) from time to time in accordance with Good Utility Practices. As part of the Facility, Seller shall also purchase, store and have available on the Site all ancillary products necessary to operate the Facility on fuel oil to deliver the products and services required to be delivered to company under this PPA.

(B) Seller shall fill the fuel oil storage tank(s) at the Facility with Acceptable Fuel Oil prior to the Commercial Operation Date, in time to conduct required pre-COD testing, in such volumes as may be directed by Company and at a cost approved by Company in writing. After COD, Seller shall invoice and Company shall reimburse Seller for the costs incurred by Seller for such initial fill of the fuel oil storage tank(s), less the cost of fuel oil consumed by the Facility prior to the Commercial Operation Date.

(C) Following the initial fill of the fuel oil storage tank(s), Company shall arrange and pay for all subsequent fills of such tank(s), as and when desired by Company. Company shall afford Seller the opportunity to test Company's chosen fuel oil prior to its delivery into the fuel oil storage tank(s), and to reject any fuel oil that does not constitute Acceptable Fuel Oil.

(D) Seller shall be solely responsible for (i) maintenance of the fuel oil in the Fuel Oil Storage Facilities, and (ii) the removal and replacement of any degraded and unusable fuel oil, at its expense. Either Party, at its own expense, may conduct fuel oil tests to determine the extent of degradation, if any. Included in Exhibit R – Fuel Oil is the Fuel Oil Maintenance Plan for the Facility.

(E) Company shall, in its sole discretion, determine when and if the Generating Unit(s) shall be dispatched using fuel oil as the combustion fuel to generate Contract Energy, subject to the Fuel Oil Maintenance Plan and the emissions limitations in Seller's Permits.

(F) Title to fuel oil shall be retained by Company at and from the storage tank(s) to the burner tips of the Generating Units. As between the Parties, however, Seller shall be deemed to be in exclusive control and possession of all fuel oil from and after delivery in into the fuel oil storage tank(s) until such fuel has been consumed in the Facility, so Seller shall bear the risk of loss of fuel oil following its delivery into the oil storage tank(s) and shall be responsible for any costs, damages, fines or penalties associated with leaks, spills, remediation, or other liabilities associated with such fuel oil. Seller shall promptly report and resolve any fuel oil leaks or spills at its sole expense in accordance with Applicable Laws.

(G) At the end of the Term, (i) Seller shall pay to Company the then-current market value of the fuel oil in storage at the Facility, and (ii) such fuel oil shall be and become the property of Seller.

Article 6 - Conditions Precedent

6.1 PUC Approval.

(A) No later than forty-five (45) Days after the date of this PPA, Company may apply to the CPUC for PUC Approval. If Company fails to apply for PUC Approval within forty-five (45) Days following the Effective Date, Company shall be deemed to have waived its right to obtain PUC Approval and to terminate this PPA under this Section 6.1, and this PPA shall remain in full force and effect thereafter.

(B) If Company applies for PUC Approval, Company shall use Commercially Reasonable Efforts to obtain PUC Approval as soon as reasonably practicable, and Seller shall cooperate with such efforts.

(C) If Company applies for PUC Approval, Company shall have the right to terminate this PPA, without any further financial or other obligation to Seller as a result of such termination, by notice to Seller

1. at any time within thirty (30) Days following issuance of a written order by the PUC rejecting PUC Approval, or granting PUC Approval with conditions unacceptable to Company in its sole discretion;

2. at any time between the two hundred fiftieth (250th) and two hundred eightieth (280th) Day following Company's application for PUC Approval, if prior to the date of such termination the PUC has not issued a written order granting or rejecting PUC Approval;

3. at any time within thirty (30) Days following timely request for reconsideration (in whole or in any material part) by any third party with standing, of a written PUC order granting PUC Approval; and/or

4. at any time within thirty (30) Days following timely appeal by any third party with standing, of a written PUC order granting PUC Approval.

If Company is eligible but fails to terminate this PPA by the applicable date, Company shall be deemed to have waived its right to terminate this PPA for that reason, and this PPA shall remain in full force and effect thereafter.

(D) For purposes of this PPA, "PUC Approval" means a written order of the CPUC making an affirmative determination that all costs incurred under this PPA are recoverable from Company's retail customers pursuant to Applicable Law, subject only to the requirement that the PUC retains ongoing prudency review of Company's performance and administration of this PPA, as determined by Company in its sole discretion.

6.2 Other Company CPs. *[if any]*.

6.3 Seller CPs. *[if any - bid specific]*.

6.4 Following a termination pursuant to Section 6.1 [if applicable] or Section 6.3, the Company will return to Seller the initial Security Fund within five (5) Business Days of such termination.

Article 7 - Sale and Purchase

7.1 General Obligation.

(A) Beginning on the Commercial Operation Date, Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to Company, and Company shall receive and purchase at the Point of Delivery, the Contract Capacity, Contract Energy, Ancillary Services and other products and services required by this PPA. Seller shall not curtail or interrupt deliveries of Contract Energy to Company for economic reasons of any type. For purposes of this PPA:

1. the "Contract Capacity" shall mean all of the committed and uncommitted net generating capacity actually available at any time from the Facility at the Point of Delivery, following COD, not to exceed the Net Capability; and

2. the "Contract Energy" shall mean the energy generated by the Contract Capacity as dispatched by Company from time to time, delivered and adjusted for losses to the Point of Delivery, excluding any Post-COD Test Energy that is uneconomically dispatched by Company at Seller's request pursuant to Section 10.4(C).

(B) Seller shall not be entitled to deliver Contract Capacity and/or Contract Energy from any source other than the Facility.

(C) Seller shall not sell any Contracts Capacity, Contract Energy or any other products or services required under this PPA to any third party.

(D) Title and risk of loss of the products and services transacted by this PPA shall transfer from Seller to Company at the Point of Delivery.

7.2 Dispatch.

(A) EMCC shall control the Facility via AGC, including starts, shutdowns, ramping, and loading levels of the Generating Units associated with the Contract Capacity and Contract Energy, all in accordance with Good Utility Practices and Exhibit I – Operating Standards. Company shall not dispatch any portion of the Facility below Minimum Loading. For any Facility trip, Seller shall restart the Facility in coordination with EMCC in accordance with Good Utility Practices.

7.3 Permit Limitations.

(A) Neither Party shall take any action that would result in or materially contribute to a restriction under any Permit that would preclude or limit the generation or delivery of Contract Energy to Company.

(B) Seller covenants that Seller holds or prior to COD will obtain the necessary authority under Applicable Law to generate and deliver Contract Energy in amounts at least equal to the Planned Permitted Energy. Seller accepts the risk that its Permits or other Applicable Law will preclude or limit its legal authority to generate and deliver all of the Planned Permitted Energy, subject to Section 20.4(C).

(C) If and to the extent that Seller's Permits or Applicable Law precludes or limits generation and delivery below the Planned Permitted Energy, the "Permit Deficiency" for such year shall mean the deficiency (expressed in MWh) between the Planned Permitted Energy and the maximum amount of Contract Energy that was generated and delivered to Company (or could have been generated and delivered, under Seller's Permits) for such year.

(D) Upon request by Company from time to time, whether pre- or post-COD, Seller shall provide to Company such detailed data regarding emissions from the Facility, in one or more operating configurations, as Company may reasonably request.

(E) For purposes of this PPA, "Planned Permitted Energy" means [REDACTED] MWh per calendar year of Contract Energy authorized or expected to be authorized to be generated in accordance with Seller's Permits.

7.4 Environmental Attributes. The Parties acknowledge that existing and future Applicable Laws create significant value in the ownership, use and allocation of Environmental Attributes. To the full extent allowed by Applicable Law, Seller hereby assigns to Company (and Company shall own and be entitled to claim) all Environmental Attributes existing or created during the Term associated with the Facility and the Contract Capacity and the Contract Energy purchased by Company hereunder, at no additional charge to Company under this PPA.

(A) Seller hereby irrevocably assigns to Company all rights, title and authority for Company to register the Facility and own, hold and manage the Environmental Attributes associated with the Facility in Company's own name and to Company's account, including any rights associated with any energy information or tracking system that exists or may be established with regard to monitoring, registering, tracking, certifying, and/or trading such Environmental Attributes. Seller hereby authorizes Company to act as its agent for the purposes of registering the Facility and tracking, certifying, registering and reporting such Environmental Attributes. Seller grants to Company full authority to hold, use, sell and/or trade such Environmental Attributes for Company's own account in all applicable energy information or tracking systems. Upon the request of Company, at no cost to Company, (i) Seller shall deliver or cause to be delivered to Company appropriate attestations/certifications of such Environmental Attributes, and (ii) Seller shall cooperate with Company's tracking, registration, reporting and certification of such Environmental Attributes.

(B) For purposes hereof, "Environmental Attributes" includes but is not limited to existing and future, (i) environmental credits, benefits or attributes, (ii) emissions reductions, (iii) avoided emissions and reporting rights for avoided emissions

of pollutants to the air, soils or waters, such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), greenhouse gases (such as carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆)) that have been or may in the future be determined by the United Nations Intergovernmental Panel on Climate Change or by Applicable Law to contribute to the threat of climate change; (iv) avoidances (including emission rate credits), offsets, allowances and green tags, and (v) zero-emission electricity credits, that are attributable to the Facility during the Term and/or Contract Capacity and Contract Energy sold to Company under this PPA, recognized by Applicable Law, including any rights to compensation therefor.

7.5 Ancillary Services.

(A) During the Term, Seller shall make available to Company and Company shall own, all Ancillary Services associated with the Facility, including but not limited to the sole right to sell the Ancillary Services associated with the Facility and to retain all revenues therefrom. Seller shall use Commercially Reasonable Efforts to maximize the Ancillary Services available from the Facility.

(B) Any compensation Seller receives under the Interconnection Agreement or otherwise from third parties for Ancillary Services shall be provided to Company at no additional cost to Company under this PPA. To implement the foregoing, Seller shall credit Company, as a reduction to Seller's monthly invoice or other mutually-agreed mechanism, for any compensation that Seller receives from third parties for Ancillary Services; *provided*, that if a Governmental Authority or Transmission Authority implements new or revised requirements for generators to create, modify, or supply Ancillary Services, requiring Seller to install additional equipment after the Effective Date to meet such requirements, then Seller, after consultation with Company, shall, if requested to do so by Company, install any such additional equipment and shall be allowed to reduce the amount to be credited to Company for Ancillary Services by an amount sufficient to recover the cost of such additional equipment (up to the amount of any cap agreed to by the Parties for such work). Any cost not so recovered by Seller in any billing period shall be carried forward as a reduction of the amount of the credit in subsequent billing periods.

(C) For purposes hereof, "Ancillary Services" means any service associated, directly or indirectly, with the reliable generation and/or transmission of energy from the Facility from time to time, including but not limited to: operating reserves, ramp capability, reactive supply, reactive supply capability, voltage control, voltage control capability, and any rights to compensation for any of these services. "Ancillary Services" also includes any other identified as an "ancillary service" or "other ancillary service" in the Transmission Tariff. For the avoidance of doubt, "Ancillary Service" includes any service associated, directly or indirectly, with the reliable generation and/or transmission of energy from the Facility, regardless of whether the Facility, the Transmission Authority or the Company is deemed to be the service provider for the service.

Article 8 - Payment Calculations

8.1 Payment for Contract Capacity. Commencing on the Commercial Operation Date, Company shall pay Seller a monthly Capacity Payment for Contract Capacity, subject to Section 10.9 [and Section 10.10 **if applicable**], based upon the following formula:

Monthly Capacity Payment = NC × CP × CAF, where:

NC = Net Capability

CP = Capacity Price, from Exhibit M - Pricing

CAF (Capacity Availability Factor) = (AEG + SME) ÷ PE, where

AEG = Available Energy - Gas for any period, stated in Megawatt-hours (MWh), means the amount of Contract Energy that is available from the Facility for dispatch on natural gas fuel, regardless of the extent to which Company actually dispatches the Facility, during such period. For purposes of calculating AEG:

- The Facility shall be derated for Forced Outages (regardless of whether caused by Force Majeure) and ambient conditions. By way of example for the month of June, [year], if (I) the Facility is fully mechanically available, (II) no maintenance is scheduled for the month, but (III) due to summer conditions, the average Contract Capacity actually available from the Facility for the month is [redacted] MW, *then* CAF for such month shall be [redacted] MWh [AEG] ÷ [redacted] MWh [PE] = [redacted] %.
- Contract Capacity that is unavailable for dispatch by Company on natural gas fuel nevertheless shall be considered to be available for the purposes of determining Available Energy when (and only when):
 - (i) the Facility is disconnected from the Transmission Authority's System pursuant to the Interconnection Agreement, and the disconnection is not caused by actions of Seller or problems with the Facility;
 - (ii) the Contract Capacity and associated Contract Energy cannot be delivered by Seller or received by Company due to an Emergency or an event of Force Majeure affecting the Transmission Authority's System at or beyond the Point of Delivery;
 - (iii) Company fails or is unable to cause Acceptable Natural Gas Fuel to be delivered to the Fuel Delivery Point, for any reason;

- (iv) Company has contracted for non-firm transmission service, and the Contract Capacity and associated Contract Energy cannot be received at the Point of Delivery due to transmission constraints affecting the Transmission Authority's System; and/or
- (v) the Facility cannot operate because its emissions have exhausted the annual limits of its Permits but the Facility has generated the Planned Permitted Energy for such year.

By way of example only, the Contract Capacity shall be deemed unavailable for purposes of this Section 8.1:

- if, to the extent and for so long as the Facility is subject to a Forced Outage, including an outage caused by Force Majeure at the Site or prior to the Point of Delivery;
- if Company has contracted for firm transmission service, but the Contract Capacity and associated Contract Energy cannot be received by Company at the Point of Delivery due to transmission constraints affecting the Transmission Authority's System; and/or
- in a cumulative amount equal to the Permit Deficiency for each year, if any.

SME = Scheduled Maintenance Energy for any period, stated in MWh, means the amount of energy that is not available from the Facility for dispatch by Company on natural gas fuel during such period, due to Scheduled Outages/Deratings that meet the requirements for credited Scheduled Maintenance Energy under Exhibit L - Maintenance.

PE = Period Energy for any period, stated in MWh, means the product of the Net Capability and the total number of hours in such period.

For each of the first 11 monthly billing periods after the Commercial Operation Date, CAF shall be determined on a month-by-month basis, using data from the monthly billing period in question only. For all subsequent monthly billing periods, CAF shall be determined on a 12-month rolling-average basis, using data from the monthly billing period in question and the previous 11 monthly billing periods.

note: if the Facility is not fuel oil-capable, references to "gas" in this §8.1 can be deleted; "AEG" can become "AE"; etc.

8.2 Payment for Dispatchability. Commencing on the Commercial Operation Date, Company shall pay Seller a monthly Dispatchability Payment (prorated to reflect the actual number of Days of Commercial Operation in the first billing month) based on the following formula:

Dispatchability Payment = NC × DAF × \$0.25 per kW-month, where:

NC = Net Capability

DAF (Dispatch Availability Factor) = $RRAF \times (\text{Hours on-control} \div \text{Hours on-line})$,
where:

RRAF = Ramp Rate Availability Factor per the following table, calculated and subject to verification testing by Company as set forth in Exhibit I - Operating Standards:

Tested Contract Capacity Ramp Rate Performance (based upon the most recent ramp rate testing, per Exhibit I)	<u>RRAF</u>
• Actual Ramp Rate \geq 100% of the Expected Ramp Rate	1.0
• Actual Ramp Rate \geq 75% but $<$ 100% of the Expected Ramp Rate	0.75
• Actual Ramp Rate \geq 50% but $<$ 75% of the Expected Ramp Rate	0.50
• Actual Ramp Rate $<$ 50% of the Expected Ramp Rate	- 0 -

[Depending on the number, type of Generating Units, a bid may amend the foregoing table to reflect expected ramp rate performance for different Facility configurations (e.g. one Generating Unit dispatched, two Generating Units dispatched, etc.) and/or to reflect different expected increasing vs. decreasing ramp rates]

For the avoidance of doubt RRAF is always determined on a monthly basis, never on a rolling-average basis.

Hours on-control = the total number of hours during a referenced period when the Generating Unit(s) are receiving and responding to dispatch pulses transmitted from Company's EMCC in compliance with Exhibit I – Operating Standards. Any hour for which Company requests that the Contract Capacity be dispatched without AGC by Company will be counted as an Hour on-control, so that the ratio of (Hours on-control/Hours on-line) will be 1.0 for such hour.

Hours on-line = the total number of hours during a referenced period when the Generating Unit(s) are synchronized to Transmission Authority's System and available to generate Contract Energy.

For each of the first 11 monthly billing periods after the Commercial Operation Date, Hours on-control and Hours on-line shall be determined on a month-by-month basis, using data from the monthly billing period in question only. For all subsequent monthly billing periods, Hours on-control and Hours on-line shall be determined on a 12-month rolling-average basis, using data from the monthly billing period in question and the previous 11 monthly billing periods.

8.3 Payment for Energy. Commencing upon COD, Company shall pay Seller a monthly Tolling Payment for the Contract Energy that is dispatched by Company and delivered by Seller to Company during the billing month, per the following formula:

Tolling Payment = E x TP, where:

E = Contract Energy, stated in MWh, which is dispatched by Company [(on natural gas fuel and/or fuel oil) *if applicable*] and delivered by Seller to Company during the billing month; and

TP = Tolling Payment Rate from Exhibit M – Pricing.

8.4 Heat Rate Adjustment. Commencing upon COD, a “Heat Rate Adjustment” (HRA) shall be made to the Tolling Payments due to Seller for each billing month hereunder, based upon the Actual Heat Rate vs. the Predicted Net Heat Rate for the Facility with respect to that month, as follows:

(A) If the Actual Net Heat Rate for the Facility is greater than 102% of the Predicted Net Heat Rate, the Heat Rate Adjustment, for the billing month following the heat rate test until the billing month following the next heat rate test, shall reduce Tolling Payments to Seller per the following formula:

$$\text{HRA} = \text{Fuel Delivered} \times \text{Price of Fuel} \times (1 - (P/A)),$$

where for purposes of this Section 8.4:

“Fuel Delivered” is the amount of natural gas energy or fuel oil energy provided by Company and consumed by the Facility to produce the Contract Energy delivered by Seller to Company in the billing month, stated in MMBtu;

“Price of Fuel” means Company’s average total unit cost of the Fuel Delivered for the relevant billing month, stated in \$/MMBtu. The total cost of Fuel Delivered shall include Company’s Commodity Cost; any transportation, handling, storage and ancillary natural gas service costs incurred by Company associated with the Fuel Delivered; and all natural gas demand charges incurred by Company associated with the Fuel Delivered;

“Commodity Cost” means Company’s average actual commodity cost of the Fuel Delivered for the relevant billing month, stated in \$/MMBtu;

“P” is the Predicted Net Heat Rate for that month; and

“A” is the Actual Net Heat Rate for the Facility for that month.

(B) If the Actual Net Heat Rate for the Facility is less than 98% of the Predicted Net Heat Rate, the Heat Rate Adjustment, for the billing month following the heat rate test until the billing month following the next heat rate test, shall be used to increase Tolling Payments to Seller per the following formula:

$$\text{HRA} = \text{Fuel Delivered} \times \text{Commodity Cost} \times (1 - [(P \times 0.98)/A]) \times 0.50$$

(C) If the Actual Net Heat Rate for the Facility is equal to or less than 102% of the Predicted Net Heat Rate, and is equal to or greater than 98% of the Predicted Net Heat Rate, the Heat Rate Adjustment, for the billing month following the heat rate test until the billing month following the next heat rate test, shall be zero for such months.

(D) Seller shall provide Company with reasonable notice of any proposed software changes or any generation equipment tuning, adjustment, repair, replacement or refurbishment that may impact the heat rate performance of the Facility or the accuracy of the correction curves utilized to adjust the results of the most recent heat rate test ("Heat Rate Modifications").

1. Upon such notice of Heat Rate Modifications, Company may determine, in its sole discretion, whether such Heat Rate Modifications would require any or all of the following:

- a. amendment of this PPA,
- b. PUC Approval and/or
- c. performance of additional heat rate testing of the Facility, at Seller's sole expense, pursuant to Exhibit K – Heat Rate Testing.

2. Should Company determine, in its sole discretion, that either or both amendment of this PPA and/or PUC Approval is/are required, Seller shall be prohibited from making such Heat Rate Modifications until Company and Seller have entered into a written amendment of this PPA pursuant to Section 20.12 to incorporate any changes required as a result of the Heat Rate Modifications and, if required, Company obtains PUC Approval of such amendment of this PPA.

3. Should Company determine that additional heat rate testing is required, Seller shall conduct such testing pursuant to Exhibit K – Heat Rate Testing. Seller shall provide to Company any new correction curves and as a result of such testing which reflect the actual condition of the Facility equipment. In addition, for the purposes of determining the Heat Rate Adjustment pursuant to this Section 8 4, such revised Predicted Net Heat Rate shall apply retroactively from the date of completion of the Heat Rate Modifications that required the revision of the Predicted Net Heat Rate

8.5 Payment for Turbine Starts.

(A) Commencing on the Commercial Operation Date, Company shall pay Seller a monthly Turbine Start Payment per the following formula:

Turbine Start Payment = \$ × number of Successful Starts [in excess of ___ Successful Starts] [on natural gas or fuel oil *if applicable*] during the month [bid-specific]

(B) If a turbine start is initiated but fails to satisfy the criteria for a Successful Start as a result of: (i) the cancellation of the start by Company within the applicable time period, for a Successful Start, (ii) a request from Company, within one hour following the start, to shut down the Generating Unit, or (iii) an Emergency or event of Force Majeure beyond the Point of Delivery on the Transmission Authority's System, then the initiated turbine start shall nevertheless qualify as a Successful Start.

(C) Seller shall not be credited a Successful Start following a turbine trip where Company directs the Seller to restart the Unit after it has tripped out of service even if the restart would otherwise meet the qualifications for a Successful Start.

(D) For the avoidance of doubt, a Successful Start of all [three] Generating Units at the Facility will result in a Turbine Start Payment of \$____ × [3] = \$____. [~~delete this ¶D for single-Unit facilities; edit as needed for multi-Unit facilities~~]

8.6 ESC Adjustments.

(A) In connection with each ESC Event during the Term, an adjustment in the payment due to Seller from Company shall be made for the billing period during which the ESC Event occurs (an "ESC Adjustment"), based upon the availability of the Facility [on natural gas fuel and/or fuel oil *if applicable*] during the ESC Event as set forth in Exhibit N - ESC Adjustments. The ESC Adjustment, if any, shall be in addition to (not in lieu of) any adjustment to the Monthly Capacity Payment based upon the Available Energy from the Facility during that billing period under Section 8.1, any adjustment for inaccurate Reported Availability under Section 10.9 [, and any adjustment for fuel oil availability under Section 10.10 *if applicable*]. An ESC Adjustment may be positive or negative, as provided in Exhibit N - ESC Adjustments.

(B) The Parties shall take such steps as may be necessary from time to time to allow each of Seller and Company to receive prior notice of ESC Events and anticipated ESC Events.

(C) For purposes hereof, an "ESC Event" means any period of time during the Term as to which EMCC, NERC, the ERO or the Transmission Authority formally declares an elevated concern regarding system capacity, reliability or operating reserves with respect to the Transmission Authority's System or any directly interconnected transmission system. As of the Effective Date, ESC Events include elevated system conditions coded yellow, orange and red;

provided, however, that for purposes hereof, system conditions that do not involve a shortage or anticipated shortage of generation or transmission capacity (e.g. geomagnetic events) shall not be deemed ESC Events.

(D) In the event that, from time to time during the Term, the criteria and/or coding of ESC Events are changed by EMCC, the Transmission Authority or any applicable transmission owning utility with authority, the Parties shall amend this PPA to substitute for Exhibit N - ESC Adjustments appropriate covenants reflecting such

changed criteria and/or coding, in order to provide payments substantially equivalent to those contemplated by this Section 8.6.

Article 9 - Billing and Payment

9.1 Billing.

(A) The billing period under this PPA shall be the calendar month.

(B) As soon as practicable and in any event by the later of (i) twenty (20) Days after the end of the month, or (ii) ten (10) Days after receipt by Company of the monthly report required from Seller under Section 10.6(B), Company shall provide to Seller a statement containing Company's calculation of the amount due to Seller for such month, including the applicable billing parameters based upon Company's reading of the Electric Metering Devices consistent with Section 5.2.

(C) Within fifteen (15) Business Days following receipt of Company's billing statement, Seller shall submit an invoice to Company in a form and by a method to be determined by the Parties, showing the amount due Seller for the relevant month, specifying the products and services provided, billing meter register reads for relevant measurement quantities, total usage in KWH being billed, date and time at which accumulated and billed production was read by the Electric Metering Devices, all billing parameters, rates and factors, and any other data relevant to the calculation of payments due to Seller. Such invoice shall include an explanation of any items in dispute, as well as all supporting documentation upon which Seller relies.

9.2 Payment. All payments shall be remitted via check or electronic funds transfer, as designated by the owed Party, on or before the fifteenth (15th) Business Day following receipt of the invoice described in Section 9.1(C). Remittances received by mail will be considered to have been paid when due if the postmark indicates the payment was mailed on or before the fifteenth (15th) Business Day following receipt of the billing invoice.

(A) If a payment is late, a late payment charge shall be applied to the unpaid balance for the number of Days payment was late and shall be added to the next billing statement. Late payment charges shall include interest calculated using the prime rate of interest as published on the date of the invoice in *The Wall Street Journal* (or, if unavailable, an equivalent publication on or about that date).

(B) Company at any time may offset against amounts owed to Seller, any liquidated amounts, accrued damages and other payments, and undisputed billing errors and adjustments, which are owed by Seller to Company.

(C) Seller and Company may net their obligations to each other under this PPA, and payment of the net amount shall discharge all mutual undisputed obligations between the Parties.

9.3 Billing Disputes. Either Party may dispute invoiced amounts pursuant to Section 13.1, but shall pay to the other Party at least the portion of invoiced amounts that is not disputed, on or before the invoice due date. When the billing dispute is resolved, the owing Party shall pay the amount owed within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with Section 9.2(A).

Article 10 - Operations and Maintenance

10.1 Operation and Administration. Seller shall staff, control, and operate the Facility consistent with Good Utility Practices, Exhibit I – Operating Standards and this PPA. [**add one of the following [no ¶ break]** :

[**simple cycle facilities**]: Seller shall ensure that Company has the capability 24x7 of remotely starting and stopping all Generating Units at the Facility simultaneously, on natural gas [**if applicable** or fuel oil, as designated by Company] from a single signal from Company's EMCC pursuant to Exhibit I – Operating Standards. Personnel of Seller shall be available 24x7 via telephone or other electronic means with the ability to be physically present at the Site within 30 minutes after the Company remotely starts or attempts to remotely the Facility, or sooner to the extent required in accordance with Good Utility Practices.

[**combined cycle facilities**]: Seller shall ensure that personnel of Seller capable of starting, operating, and stopping all Generating Units simultaneously on natural gas [**if applicable** or fuel oil, as designated by Company] within ninety (90) minutes are physically present at the Facility 24x7 during Commercial Operation.

10.2 Facility Maintenance. Seller shall maintain the Facility in accordance with Good Utility Practices.

(A) Scheduled Outages/Deratings shall comply with the requirements of Exhibit L – Maintenance.

(B) Absent the prior written consent of Company, Seller: shall schedule no Outages/Deratings during the months of January, February, June, July, August, September and December.

10.3 Forced Outages and Reporting.

(A) When Forced Outages occur, Seller shall notify EMCC of the existence, nature, start time, and expected duration of the Forced Outage as soon as practicable, but in no event later than 30 minutes after the Forced Outage occurs. Thereafter Seller shall immediately inform EMCC of any changes in the expected duration of the Forced Outage except to the extent relieved of this obligation by EMCC with respect thereto.

(B) In addition to the foregoing notification, for any Forced Outage, shutdown or derating of the Facility, Seller shall conduct a root cause analysis and take corrective action to prevent reoccurrences as soon as practicable thereafter, at Seller's sole expense. Such corrective action includes weather protective modifications to the

Facility, additional operating or maintenance procedures and other appropriate preventative measures in accordance with Good Utility Practices. Seller shall diligently complete such analysis and corrective actions as soon as possible and provide to Company a written report containing such analysis and a summary of the corrective action taken or to be taken as soon as diligently possible.

(C) Seller shall develop and provide Company with a copy of its Facility cold weather policy. In the event of a Facility Forced Outage or Facility derate, Seller shall conduct a root cause analysis, take corrective actions as are reasonable under the circumstances to prevent reoccurrences and provide a copy of such analyses and corrective action to Company.

10.4 Post-COD Testing.

(A) Following the Commercial Operation Date Seller, at its sole expense, shall conduct capacity testing of the Facility as and when contemplated by Exhibit J - Capacity Testing, and heat rate testing of the Facility as and when contemplated by Exhibit K - Heat Rate Testing (each a “Post-COD Test” and collectively “Post-COD Testing”). The capacity test and the heat rate tests shall be conducted simultaneously. With Company’s prior written approval, which shall not be unreasonably withheld or delayed, Seller may, at its sole expense, retain a third party to conduct the testing required by this Section 10.4(A).

(B) Seller and Company shall cooperate and use Commercially Reasonable Efforts to conduct all Post-COD Testing of the Facility during periods when Company is otherwise dispatching the Facility hereunder. All energy generated in connection therewith shall be treated and purchased by Company as Contract Energy hereunder. Company shall pay for all natural gas used to conduct such tests.

(C) In the event Post-COD Testing occurs when Company is not otherwise dispatching the Facility, (i) Seller shall invoice and Company shall purchase all Post-COD Test Energy from Seller as Contract Energy, (ii) the Facility shall be deemed unavailable for purposes of Section 8.1, if and to the extent that such testing restricts Company’s ability to dispatch the Facility during such testing, and (iii) Seller shall reimburse Company for all fuel commodity costs and any associated fuel imbalance, transportation and other ancillary costs incurred by Company in connection therewith.

(D) Following the Commercial Operation Date Seller, at its sole expense, shall also conduct such other testing of the Facility as may be required by this PPA, Applicable Law (including any accreditation testing mandated by the ERO) and any testing required by Good Utility Practices. Seller shall pay for all natural gas [*if applicable*] and fuel oil] used to conduct such tests. Seller shall fulfill all reporting requirements arising from such testing.

(E) For purposes hereof, "Post-COD Test Energy" means energy generated by the Facility following COD, reasonably required to satisfy the Post-COD Testing of the Facility required by this PPA, not purchased by Company as Contract Energy under paragraph (B) above.

(F) Seller shall submit detailed written Post-COD Testing procedures to Company for review and approval not later than one hundred twenty (120) Days prior to the scheduled start of the first Post-COD Test. Company shall review and approve or disapprove the written performance test procedures, in writing, within sixty (60) Days of receipt. These Post-COD Test procedures as approved by the Company shall be used to conduct Post-COD Testing for the Term. Should Seller desire to materially, alter, change or modify the Company-approved Post-COD Test procedures, Seller shall submit such Post-COD Test procedures to Company for its review and approval no later than one hundred twenty (120) Days prior to the scheduled start of the Post-COD Test Seller desires to use such Post-COD Test procedures. Company shall review and approve or disapprove the written performance test procedures, in writing, within sixty (60) Days of receipt. Post-COD Test procedures shall include the following:

1. instrumentation, test connections, cycle isolation requirements, and any other equipment for the performance test and where they must be located in the system to obtain the necessary test data;
2. administrative procedures;
3. final correction curves and sample calculations, including all base condition corrections to be applied, in both manual and electronic spreadsheet formats. If a thermal model is generated, Company must have access to the model and software;
4. sample data sheets
5. marked-up piping and instrumentation diagrams that show the location of all test instrumentation prior to testing; and,
6. a complete set of test instrument calibration sheets, including those that may have already been provided to Company.

10.5 Forecasting. Seller shall provide such forecasts of available capacity as the EMCC, ERO or Transmission Authority may require from time to time. Seller concurrently shall provide to Company a copy of each such forecast. Seller shall provide Company a forecast of next Day availability and ambient adjusted minimum and maximums by 7:00 AM MPT the Day prior to each Day.

10.6 Books and Records.

(A) Seller shall maintain an accurate and up-to-date hourly operating log for the Facility, in electronic format, that identifies real-time operating information for each Generating Unit, including levels of capacity availability; energy production;

changes in operating status; Forced Outages; Scheduled Outages/Deratings; information required by Governmental Authorities in the prescribed format; and other information reasonably requested by Company.

(B) Seller shall deliver to Company information on Facility performance during each calendar month within five (5) Business Days after the end of the month. For each Generating Unit, and using definitions provided by (or consistent with) the NERC Generation Availability Data System (“GADS”) Manual, or any successor document, the data reported shall include planned and unplanned derated hours [with separate calculations for gas and fuel oil **if applicable**], average derated kW from Net Capability during the derated hours, scheduled maintenance hours, average derated kW during scheduled maintenance hours, the number of successful and unsuccessful turbine starts, hours on-control, hours on-line, and the monthly operating log of the Facility.

(C) Seller and Company shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including metering, billing and payment records, and such records as may be required by Governmental Authorities.

(D) Originals or copies of all Operating Records shall be maintained at the Site or such other Colorado location as may be specified by Seller from time to time. Company may examine and make copies of such Operating Records from time to time upon request, during normal business hours.

10.7 Access to Facility. Representatives of Company shall have access to the Facility from time to time, on Commercially Reasonable prior notice, to read meters, perform inspections and take such other actions as may be appropriate to facilitate Company’s performance of this PPA. While at the Facility, such representatives shall observe Seller’s standard safety precautions and shall conduct themselves in a manner that will not interfere with operation of the Facility.

10.8 Operating Committee and Operating Procedures.

(A) Company and Seller shall each appoint one representative and one alternate representative to act as the Operating Committee in matters relating to the Parties’ performance obligations under this PPA and to develop operating arrangements for the generation, delivery and receipt of the Contract Energy. The Parties’ initial representatives on the Operating Committee are set forth in Exhibit D – Notices and Contact Information.

(B) The Operating Committee may develop mutually agreeable written Operating Procedures consistent with the requirements of this PPA, to address matters such as day-to-day communications; key personnel; operations-center interface; metering, telemetering, telecommunications, and data acquisition procedures; operations and maintenance scheduling and reporting; reports; operations log; testing procedures; and such other matters as may be mutually agreed upon by the Parties.

(C) The Operating Committee shall review the requirements for AGC and Data Collection from time to time after the Effective Date and may agree on modifications thereto to the extent necessary or convenient for operation of the Facility in accordance with this PPA.

(D) The Operating Committee shall have authority to act in all technical and day-to-day operational matters relating to performance of this PPA and to attempt to resolve potential disputes, *provided, however*, that except as explicitly provided herein, the Operating Committee shall have no authority to amend or waive any provision of this PPA.

10.9 Availability Reporting: Gas.

(A) Seller shall provide accurate and timely updates to Company's EMCC on the current availability of the Contract Capacity on natural gas fuel ("Reported Availability: Gas"), adjusted for ambient conditions, via such electronic means as may be reasonably specified by Company. The amount of Contract Capacity available for any individual hour shall be integrated over the hour, on a prorated basis, to reflect any updates in Seller's Reported Availability: Gas made effective during such hour.

(B) Company may verify Seller's then-current Reported Availability: Gas at any time, without prior notice to Seller, by dispatching the Facility to the level of Reported Availability: gas (a "Availability Verification Test"). A "Gas Deficiency" shall be deemed to exist if (i) the tested availability on natural gas is less than 97% of the Reported Availability: Gas, or (ii) such tested availability is more than five (5) MW below the Reported Availability: Gas. Company shall notify Seller as soon as possible by telephone and thereafter in writing whenever Company identifies a Gas Deficiency that has or may have economic consequences under Section 10.9(C) below.

(C) For purposes of Section 8.1, (i) in the event of a Gas Deficiency, the Contract Capacity shall be derated by the amount of the Gas Deficiency, for the then-current hour and all subsequent hours, until Seller posts a revised Reported Availability: Gas, (ii) the occurrence of more than one Gas Deficiency in any billing month shall result in derating the Contract Capacity for that entire month (retroactive to the beginning of such month) to the lowest capacity level achieved in the Availability Verification Test(s) conducted during such month, and (iii) three or more Gas Deficiencies in any two consecutive billing months shall result in a fifteen percent (15%) reduction in the Capacity Price, applicable to the subsequent two billing months.

10.10 Availability on Fuel Oil. [if no fuel oil capability, delete §10.10 and remove references to gas in §10.9]

(A) Seller shall provide accurate and timely updates to Company's EMCC on the current availability of the Contract Capacity for dispatch on fuel oil ("Reported Availability: Fuel Oil"), via such electronic or other means. If operation is not available on fuel oil, Seller shall notify EMCC no later than 30 minutes after the change in status.

(B) If and for so long as the Facility is not fully available for dispatch on fuel oil, but Acceptable Natural Gas Fuel is available at the Fuel Point of Delivery for dispatch of the full Contract Capacity on natural gas, then for purposes of Section 8.1, the Contract Capacity shall be derated by two percent (2%) for the duration of the fuel oil outage.

(C) If and for so long as (1) the Facility is not fully available for dispatch on fuel oil, and (2) despite Commercially Reasonable Efforts by Company, Acceptable Natural Gas Fuel is unavailable at the Fuel Point of Delivery for full dispatch of the Facility on natural gas, *then* for purposes of Section 8.1, notwithstanding clause Section 8.1(iv) to the contrary, the Contract Capacity shall be derated to the level of actual availability on fuel oil for the duration of the fuel oil outage.

(D) If ever (1) Company dispatches the Facility on fuel oil to the then-current level of Reported Availability: Fuel Oil, and (2) the actual availability of the Facility on fuel oil is less than 97% of the most recent Reported Availability: Fuel Oil, *then* for purposes of Section 8.1, the Contract Capacity shall be derated to zero (0) for the entire Day of the dispatch.

Article 11 - Security for Performance

11.1 Security Fund.

(A) During the Term of this PPA, Seller shall fund and maintain security in favor of Company, at Seller's expense, to secure Seller's obligations to Company under this PPA (the "Security Fund"), in accordance with this Article 11.

(B) Seller shall establish and fund the initial Security Fund in the amount of *[insert \$150/kW multiplied by the number of kW of Net Capability]*, no later than thirty (30) Days following the date of the Effective Date. Within five (5) Business Days following COD, the amount of the Security Fund shall be reduced to *[insert \$100/kW multiplied by the number of kW of Net Capability]*.

(C) Company may draw from the Security Fund such amounts as are necessary to recover amounts owing to Company pursuant to this PPA, including any Liquidated Delay Damages, Actual Damages, liquidated damages for failure to achieve COD, and any amounts for which Company is entitled to indemnification under this PPA. Company may, in its sole discretion, draw all or any part of such amounts from any form of security to the extent available pursuant to this Article 11 and in any sequence Company may select. Company's failure or delay to draw any amount from the Security Fund in any instance shall not prejudice Company's rights to subsequently recover such amount from the Security Fund or in any other manner.

(D) Company shall notify Seller within five (5) Business Days following any draw on the Security Fund by Company, including the amount thereof and the basis therefor.

11.2 Replenishment. Seller shall replenish the Security Fund to the applicable levels set forth in Section 11.1(B) within fifteen (15) Business Days after Company makes a draw on the Security Fund; *provided*, such replenishment shall not exceed the amount remaining under the applicable Damage Cap (as provided in Section 12.4(A)). Notwithstanding the foregoing, within fifteen (15) Business Days after Company makes a draw on the Security Fund associated with the damages described in Section 12.4(B), Seller shall replenish all amounts drawn from the Security Fund.

11.3 Form.

(A) The Security Fund may be in the form of an irrevocable standby letter of credit substantially in the form of Exhibit G – Form of Letter of Credit (a “Letter of Credit”) from a financial institution acceptable to Company (“Issuer”).

1. The Issuer of the Letter of Credit shall have and maintain a Credit Rating equivalent to A- (or better) by Standard & Poors and A3 (or better) from Moodys. If such Credit Rating is A- or A3, the Issuer must not be on credit watch by any rating agency.

2. The Letter of Credit must be for a minimum term of three hundred sixty (360) Days. Seller shall give Company at least thirty (30) Days advance notice prior to any expiration or earlier termination of the Letter of Credit. Seller shall cause the renewal or extension of the Letter of Credit for additional consecutive terms of three hundred sixty (360) Days or more (or, if shorter, the remainder of the Term) more than thirty (30) Days prior to each expiration date of the security. If the Letter of Credit is not renewed or extended at least thirty (30) Days prior to its expiration date or otherwise is terminated early, Company shall have the right to draw immediately upon the Letter of Credit and to place the amounts so drawn, at Seller’s cost and with Seller’s funds, in an Escrow Account in accordance with paragraph (B) below, until and unless Seller provides a substitute form of security meeting the requirements of this Section 11.3.

(B) The Security Fund may be in the form of U.S. currency deposited into an escrow account with a state- or federally-chartered commercial bank with an office in the State of Colorado, with net assets of at least \$1 billion (the “Escrow Account”).

1. The Escrow Account shall be governed by an escrow and account control agreement in form mutually satisfactory to Seller, Company and the escrow agent, provided that (a) Company shall hold a first and exclusive perfected security interest in the funds in the Escrow Account, (b) Company shall be permitted unilaterally to draw down any amount therein, regardless of any protest by Seller or any other party liable thereon (*provided* that nothing in the Escrow Agreement shall preclude any protest against Company by Seller, following any draw, that such draw did not comply with this PPA), and (c) Seller shall pay all fees and expenses of the escrow agent.

2. Funds held in the Escrow Account may be invested as Seller may direct in any of the following:

- a money-market fund sponsored by the escrow agent;
- U.S. treasury obligations with a maturity of ninety (90) Days or less;
- commercial paper rated “A” or better, with a maturity of ninety (90) Days or less; and
- other liquid investment-grade investments with maturities of three months or less, approved by Company in advance (such approval not to be unreasonably withheld or delayed).

3. All investment income on the Escrow Account shall be taxable to, and accrue for the benefit of, Seller. After the Commercial Operation Date, periodic sweeps by Seller for recovery of interest earned by the escrowed funds shall be allowed, and if at any time the balance in the Escrow Account exceeds the required amount of security, the escrow agent may remit the excess to Seller.

(C) Following COD, the Security Fund may consist of a guaranty substantially in the form of Exhibit H – Form of Guaranty, from a parent or other guarantor (“Guarantor”) with a minimum tangible net worth of at least \$250,000,000 and an Investment Grade Credit Rating (and if such Credit Rating is exactly equivalent to BBB- (S&P) / Baa3 (Moody’s), the Guarantor must not be on credit watch by any rating agency). If the Credit Rating of the Guarantor is downgraded below Investment Grade, put on credit watch, or an event occurs that (in the reasonable determination of Company) portends a Material Adverse Effect in the creditworthiness of the Guarantor, then Company may require Seller to convert the guaranty to a Security Fund instrument meeting the criteria set forth in either paragraph (A) or paragraph (B) above no later than ten (10) Days after notice from Company.

(D) Company shall negotiate in good faith any needed escrow and account control agreement and, upon request by Seller, immaterial changes to Exhibit G – Form of Letter of Credit and/or Exhibit H – Form of Guaranty, provided that Seller shall pay or reimburse Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in connection therewith.

(E) Seller may change the form of the Security Fund at any time and from time to time upon Commercially Reasonable prior notice to Company, *provided, however*, that the Security Fund must at all times satisfy the requirements of this Article 11.

11.4 Replacement. In the event that the Security Fund ever fails to comply with the requirements of this Article 11 or Company determines in a commercially reasonable manner that an event has occurred or circumstances have developed that threaten to cause the Security Fund to fail to comply with the requirements of this Article 11 (e.g. a Guarantor is placed on negative credit watch by a rating agency), Seller shall

be required to replace the Security Fund with security in compliance with this Article 11 within five (5) Days following notice thereof from Company.

11.5 Survival. The Security Fund shall survive termination of this PPA to be available to pay any amounts owed to Company arising prior to or upon termination. Promptly following (i) the end of the Term and the completion of all of Seller's obligations under this PPA, or (ii) termination of this PPA for any reason prior to the Scheduled Termination Date, Company shall determine the amount, if any, owed by Seller for any obligations or damages arising out of this PPA. Company may draw such amount and shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller.

11.6 Expenses. Seller shall reimburse Company for its direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the preparation, negotiation, execution and/or release (including making a draw of funds) of the Security Fund under this Article 11.

Article 12 - Default and Remedies

12.1 Default by Seller: General.

(A) Events. Any of the following events shall constitute a default by Seller under this PPA. If no cure period is provided below, such default shall be deemed an Event of Default by Seller immediately upon its occurrence. If a cure period is provided below, such default shall mature into an Event of Default if not cured within the indicated cure period, subject to Section 13.3 below.

1. Seller's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for Seller or for all or substantially all of its assets, or its authorization of such application or consent; or the commencement of any proceedings seeking such appointment without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) Days from inception.

Cure Period: None.

2. Seller's authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction; or the institution of such proceedings against Seller without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) Days from inception or which result in adjudication of bankruptcy or insolvency within such time.

Cure Period: None.

3. Seller's assignment of this PPA or the Facility, or any Change of Control, not permitted by Section 19.1.

Cure Period: None.

4. Any representation or warranty by Seller in this PPA that has a Material Adverse Effect on Seller's ability to perform this PPA is proven to have been false in any material respect when made.

Cure Period: None.

5. Seller's failure to establish and, once established, maintain the Security Fund as and in the amounts required under Article 11.

Cure Period: Five (5) Business Days after Company provides notice of Seller's failure.

6. Seller's failure to obtain and maintain insurance in scope and amounts required under Article 16.

Cure Period: Five (5) Business Days after Company provides notice of Seller's failure.

7. Seller's failure to make any payment to Company as and when required by this PPA, including Liquidated Delay Damages, Actual Damages, and any required indemnification.

Cure Period: Ten (10) Business Days after Company provides notice that the amount is overdue.

8. Any representation or warranty by Seller in this PPA that has a Material Adverse Effect on Seller's ability to perform this PPA ceases to remain true in all material respects during the Term, other than due to a change of law.

Cure Period: Thirty (30) Days after Company provides notice of such breach.

9. The breach by Seller of the Interconnection Agreement, which breach (i) materially interferes with Seller's production and/or delivery of any product or service to be produced or delivered pursuant to this PPA or Company's ability to accept or receive such product or service, (ii) Company's ability to transmit Contract Energy beyond the Point of Delivery, and/or (iii) otherwise has a Material Adverse Effect on Company.

Cure Period: Thirty (30) Days from the breach or the cure period allowed by the Interconnection Agreement (whichever is longer).

10. Beginning with the second Commercial Operation Year, a failure of the Facility to achieve a CAF of at least 85% during any 12-consecutive month period, on a rolling average basis; *provided, however*, that to the extent such failure of performance is attributable to Force Majeure, the contribution of such Force Majeure shall be eliminated from the CAF calculation for the purposes of,

and only for the purposes of, establishing a default of Seller pursuant to this paragraph.

Cure: Seller shall be deemed to have cured this default if the Facility achieves a CAF for the following Commercial Operation Year (again with periods of Force Majeure excluded from the calculation) of 90% or more.

11. The failure by Seller to perform or observe any other material obligation to Company under this PPA, unexcused by Force Majeure (other than failure to achieve COD, which is addressed in Section 12.2 below).

Cure Period: Thirty (30) Days after Company provides notice thereof; *provided*, that if such default is not reasonably capable of cure within such 30-Day period, Seller shall have such additional period of time (not to exceed ninety (90) Days in any event) as is reasonably necessary for cure, so long as Seller initiates cure within such thirty (30)-Day period and diligently prosecutes the cure to conclusion thereafter.

(B) *Remedies for Default.* In connection with any default by Seller under this Section 12.1 (whether or not cured by Seller), Company may

1. Seek Actual Damages in such amounts and on such basis for the default as authorized by this PPA;
2. Offset against any payments due to Seller, any Actual Damages and other amounts due from Seller; and/or
3. Draw any Actual Damages and other amounts due from Seller, from the Security Fund.

(C) *Termination for Event of Default.* Upon and at any time following an Event of Default by Seller under this Section 12.1, in addition to its rights under Section 12.1(B) above, Company may terminate this PPA immediately upon notice to Seller, without penalty or further obligation to Seller. In connection with any such termination, Company may collect from Seller (subject to the Damage Cap) all Actual Damages arising from such Event of Default through the Scheduled Termination Date.

(D) *Specific Performance.* In addition to the other remedies specified herein, upon any Event of Default of Seller under this Section 12.1, Company may elect to treat this PPA as being in full force and effect and Company shall have the right to specific performance.

12.2 Default by Seller: Failure to Achieve COD.

(A) COD Delay. Seller shall be in default under this PPA if the Facility fails to achieve COD by the Target COD ("COD Delay"). Seller shall be liable to pay [insert \$250 per MW of Net Capability] per Day ("Liquidated Delay Damages") to Company as a liquidated damage and not a penalty, in lieu of Actual Damages, for any COD Delay. Except as provided in Section 12.2(C) below, the payment of Liquidated Delay Damages shall be Company's sole and exclusive remedy for a COD Delay. Liquidated Delay Damages shall begin to accrue on the Day after the Target COD (as it may be extended due to Force Majeure) until the first to occur of COD or termination of this PPA pursuant to Section 12.2(C) below.

(B) Cure. Seller shall have a cure period of forty-five (45) Days for its failure to achieve Commercial Operation by the Target COD, *provided, however*, that if during such period Seller provides a written opinion from a mutually-agreeable independent engineer that COD can reasonably be achieved within an additional forty-five (45) Day period, then Seller's cure period to achieve Commercial Operation shall be no more than ninety (90) Days after the Target COD. Seller's payment of accrued Liquidated Delay Damages shall be a condition to any such cure.

(C) Termination. Failure to cure a COD Delay within the applicable cure period set forth in Section 12.2(B) shall be an Event of Default by Seller. Upon such an Event of Default, Company may (i) terminate this PPA immediately upon notice to Seller, without penalty or further obligation to Seller except as to costs and balances incurred prior to the effective date of such termination, and (ii) in connection therewith, in addition to accrued Liquidated Delay Damages but in lieu of Actual Damages for the balance of the Term, collect from Seller liquidated damages therefor in the amount of [insert \$125/kW x Net Capability] ("Termination LDs").

12.3 Default by Company.

(A) Events. Any of the following events shall constitute a default by Company under this PPA. If no cure period is provided below, such default shall be deemed an Event of Default by Company immediately upon its occurrence. If a cure period is provided below, such default shall mature into an Event of Default if not cured within the indicated cure period, subject to Section 13.3 below.

1. Company's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for Company or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) Days from inception.

Cure Period: None.

2. Company's authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against Company without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) Days from inception or which result in adjudication of bankruptcy or insolvency within such time.

Cure Period: None.

3. Company's assignment of this PPA, not permitted by Section 19.2.

Cure Period: None.

4. Any representation or warranty by Company in this PPA that has a Material Adverse Effect on Company's ability to perform this PPA is proven to have been false in any material respect when made.

Cure Period: None.

5. Company's failure to make any payment to Seller as and when required by this PPA, including invoiced amounts, Actual Damages and any required indemnification.

Cure Period: Ten (10) Business Days after Seller provides notice that the amount is overdue.

6. Any representation or warranty by Company in this PPA that has a Material Adverse Effect on Company's ability to perform this PPA ceases to remain true during the Term, other than due to a change of law.

Cure Period: Thirty (30) Days after Seller provides notice of such breach.

7. The failure by Company to perform or observe any other material obligation to Seller under this PPA, unexcused by Force Majeure.

Cure Period: Thirty (30) Days after Seller provides notice thereof; *provided*, that if such default is not reasonably capable of cure within such 30-Day period, Company shall have such additional period of time (not to exceed ninety (90) Days in any event) as is reasonably necessary for cure, so long as Company initiates cure within such thirty (30)-Day period and diligently prosecutes the cure to conclusion thereafter.

(B) Remedies for Default. In connection with any default by Company (whether or not cured by Company), Seller may

1. Seek Actual Damages in such amounts and on such basis for the default as authorized by this PPA; and/or

2. Offset against any payments due to Company, any Actual Damages and other amounts due from Company.

(C) Termination for Event of Default. Upon an Event of Default by Company, in addition to its rights under Section 12.3(B) above, Seller may terminate this PPA immediately upon notice to Company, without penalty or further obligation to Company, and in connection therewith, collect from Company all Actual Damages arising from such Event of Default through the Scheduled Termination Date.

12.4 Limitations on Damages.

(A) Except as otherwise provided in Section 12.4(B), following COD Seller's aggregate financial liability to Company for Actual Damages shall not exceed [insert [\$100/kW x Net Capability] (the "Damage Cap"). If at any time following COD, Company incurs damages in excess of the Damage Cap that Seller does not pay when billed by Company, Company shall have the right to terminate this PPA upon notice to Seller, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(B) Actual Damages payable by Seller arising out of any of the following events shall not be subject to the Damage Cap and shall not be credited against the Damage Cap:

1. damage to Company-owned facilities proximately caused by negligence, breach of this PPA or misconduct by Seller, its directors, officers, employees and agents;

2. Seller's intentional misrepresentation or intentional misconduct in connection with this PPA or the operation of the Facility;

3. the sale or diversion by Seller to a third party of any Contract Capacity, Contract Energy or Ancillary Services from the Facility, excluding any sales in mitigation of damages;

4. Seller's failure (i) to maintain insurance coverages in the types and amounts required by this PPA or (ii) to apply any insurance proceeds as required by Section 16.4;

5. any indemnification claim under this PPA;

6. any Environmental Contamination caused or exacerbated by Seller; or

7. damages incurred by Company in connection with any bankruptcy or insolvency proceeding involving Seller, including Company's loss of the benefit of its bargain due to rejection or other termination of this PPA in such proceeding.

(C) The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to all direct damages proximately caused by such default ("Actual Damages") incurred by the non-defaulting Party, provided that if Seller is the defaulting Party, Actual Damages recoverable by Company hereunder may include Replacement Power Costs. **Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, special, treble, equitable or indirect damages, lost profits or other business interruption damages, regardless of whether the relevant cause of action arises from statute, tort or contract** (except to the extent expressly provided herein); *provided, however*, that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for all such damages.

(D) To the extent damages required to be paid hereunder are liquidated, the Parties acknowledge that actual damages would be substantial but difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.5 Bankruptcy. This PPA grants each Party the contractual right to "cause the liquidation, termination or acceleration" of the transactions within the meaning of Sections 556, 560 and 561 of the U.S. Bankruptcy Code, as they may be amended superseded or replaced from time to time. Upon a bankruptcy, a non-defaulting Party shall be entitled to exercise its rights and remedies under this PPA in accordance with the safe harbor provisions of the Bankruptcy Code set forth in, *inter alia*, §362(b)(6), §362(b)(17), §362(b)(27), §362(o), §546(e), §548(d)(2), §556, §560 and §561, as they may be amended, superseded or replaced from time to time.

12.6 Cumulative Remedies. Except as explicitly provided to the contrary in this PPA, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any other rights or remedies provided for herein

12.7 Duty to Mitigate. Each Party shall use Commercially Reasonable Efforts to mitigate any damages it may incur as a result of a default by the other Party under this PPA.

Article 13 - Dispute Resolution

13.1 Negotiation.

(A) In the event of any dispute arising under or associated with the Parties' performance of this PPA (a "Dispute"), within ten (10) Business Days following notice by either Party (a "Dispute Notice"), (i) each Party shall appoint a representative,

and (ii) the representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

(B) In the event the Parties' representatives cannot resolve the Dispute within thirty (30) Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to senior management. Within ten (10) Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within ten (10) Business Days after receipt of each Party's Dispute summaries, the designated senior managers for both Parties shall negotiate in good faith to resolve the Dispute. If such senior managers are unable to resolve the Dispute thereafter, either Party may seek available legal remedies, subject to Sections 13.3, and 19.3.

13.2 Time Bar. If no Dispute Notice has been issued within 18 months following the occurrence of events or circumstances giving rise to the Dispute (regardless of the actual knowledge of either Party of such events and circumstances), all claims related to such Dispute (including any allegations of billing errors) shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon.

13.3 No Termination Pending Dispute Resolution. Notwithstanding Section 12.1 or Section 12.3 to the contrary:

(A) An Event of Default shall not be deemed to have occurred (and hence neither Party may terminate this PPA) for failure by the other Party to pay any amount(s) allegedly due totaling less than \$100,000, if (1) such amount(s) are disputed in good faith, (2) the Party alleged to owe such amount(s) promptly commences and diligently pursues resolution of the Dispute pursuant to Section 13.1, and (3) the owed amount (if any) is paid within ten (10) Business Days after all dispute resolution mechanisms are completed with respect thereto.

(B) An Event of Default by Seller shall not be deemed to have occurred (and hence Company may not terminate this PPA) for failure by Seller to pay any amount(s) allegedly due totaling \$100,000 or more, if

1. such amount(s) are disputed by Seller in good faith;
2. Seller promptly commences and diligently pursues resolution of the Dispute pursuant to Section 13.1;
3. Seller either holds an Investment Grade Credit Rating, or posts cash collateral to secure its obligations (if any) with respect to the disputed amount(s), in an amount equal to the amount(s) in dispute, under a mutually agreeable third-party escrow and account control agreement, in addition to the Security Fund; and
4. the owed amount (if any) is paid by Seller within ten (10) Business Days after all dispute resolution mechanisms are completed with respect thereto.

(C) An Event of Default by Company shall not be deemed to have occurred (and hence Seller may not terminate this PPA) for failure by Company to pay any amount(s) allegedly due totaling \$100,000 or more, if

1. such amount(s) are disputed by Company in good faith;
2. Company promptly commences and diligently pursues resolution of the Dispute pursuant to Section 13.1;
3. Company either holds an Investment Grade Credit Rating, or posts cash collateral to secure its obligations (if any) with respect to the disputed amount(s), in an amount equal to the amount(s) in dispute, under a mutually agreeable third-party escrow agreement; and
4. the owed amount (if any) is paid by Company within ten (10) Business Days after all dispute resolution mechanisms are completed with respect thereto.

13.4 Governing Law. The interpretation and performance of this PPA, and all actions related hereto (whether sounding in contract, tort or otherwise), shall be governed and construed in accordance with the laws of the State of Colorado, exclusive of conflict of laws principles.

13.5 Venue. The Parties submit to the exclusive jurisdiction of the state courts of the State of Colorado for purposes of resolving any Dispute hereunder, except as provided in Section 19.3. Venue for any court proceedings shall lie exclusively in

the Colorado District Court for the City and County of Denver or, if jurisdictionally available, the U.S. District Court for the District of Colorado.

13.6 Waiver of Jury Trial. **Seller and Company each hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury** in respect of any litigation based hereon, or arising out of, under, or in connection with, this PPA or any course of conduct, course of dealing, statements (whether oral or written) or actions of Seller and Company related hereto and expressly agree to have any Disputes be adjudicated by a judge of the court having jurisdiction, without a jury, subject only to Section 19.3.

Article 14 - Force Majeure

14.1 Definition. For purposes hereof, "Force Majeure" means an event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) was not anticipated as of the Effective Date, (ii) is not within the control of or the result of the fault or negligence of the Party claiming excuse, and (iii) which by exercise of due diligence and foresight could not reasonably have been avoided. By way of example, only, "Force Majeure" includes any delay or failure by the Transmission authority to perform its obligations under the Interconnection Agreement. Force Majeure shall not include:

- a. inability, or excess cost, to procure any equipment necessary to perform this PPA;
- b. acts or omissions of a third party (including vendors and contractors to Seller), unless such acts or omissions are themselves excused by reason of Force Majeure;
- c. failure timely to apply for, or diligently pursue, the Permits set forth on Exhibit F –Needed Permits;
- d. a restriction in any Permit that precludes or limits the generation or delivery of Contract Energy below the Planned Permitted Energy;
- e. mechanical or equipment breakdown or inability to operate, attributable to circumstances occurring within design criteria and normal operating tolerances of similar equipment;
- f. Environmental Contamination at the Site;
- g. changes in market conditions;
- h. changes of law; or
- i. labor strikes, slowdowns, work stoppages, or other labor disruptions.

14.2 Applicability of Force Majeure. A Party shall be relieved of its obligations to perform this PPA and shall not be considered to be in default with respect to any obligation under this PPA if and to the extent such Party is prevented from fulfilling such obligation by Force Majeure, *provided, however*, that: (i) such Party gives prompt notice describing the circumstances and impact of the Force Majeure; (ii) the relief from its obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure; (iii) such Party proceeds with due diligence to overcome the Force Majeure and resumes performance of its obligations under this PPA as soon as practicable thereafter; and (iv) such Party provides notice upon conclusion of the Force Majeure.

14.3 Limitations on Effect of Force Majeure.

(A) Force Majeure shall only relieve a Party of such obligations as are actually precluded by the Force Majeure.

(B) In no event will the existence of Force Majeure extend this PPA beyond its stated Term.

(C) If, (i) prior to COD, Force Majeure affecting Seller continues for a period of ninety (90) consecutive Days or any one hundred fifty (150) non-consecutive Days or (ii) after COD Force Majeure affecting Seller continues for a period of one hundred eighty (180) consecutive Days or any two hundred seventy (270) non-consecutive Days in any three consecutive Commercial Operation Years, Company may, at any time following the end of such period, terminate this PPA upon notice to

Seller, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

Article 15 - Representations, Warranties and Covenants

(A) Each Party hereby represents and warrants to the other as follows, which representations and warranties shall be deemed to be repeated, if applicable, by each Party throughout the Term:

1. Such Party is a valid separate legal entity, duly organized, validly existing and in good standing under Applicable Law. It is qualified to do business in the State in which the Facility is located and each other jurisdiction where the failure to so qualify would have a Material Adverse Effect on the business or financial condition of the other Party. It has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

2. The Party's execution, delivery, and performance of all of its obligations under this PPA have been duly authorized by all necessary organizational action, and do not and will not:

a. require any consent or approval by any governing corporate or management body, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to the other Party upon its request);

b. violate any Applicable Law, the violation of which could have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA;

c. result in a breach or constitute a default under the representing Party's formation documents, bylaws or equivalent, or under any agreement relating to its management or affairs, any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which it is a party or by which it or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA; or

d. result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of the representing Party now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA.

3. This PPA is a valid and binding obligation of the representing Party.

4. The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the representing Party is a party or any judgment, order, or Applicable Law, applicable to it or its business.

5. Within the meaning of the U.S. Bankruptcy Code, (i) this PPA constitutes a "master netting agreement," (ii) all transactions pursuant to this PPA constitute "forward contracts" or a "swap agreement," (iii) the representing Party is a "forward contract merchant" and "master netting agreement participant," and (iv) all payments made or to be made pursuant to this PPA constitute "settlement payments."

6. Such Party is Such Party is (i) a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of this PPA, or the products and/or by products thereof; and (ii) entering into this PPA solely for purposes related to its business as such.

(B) Seller further hereby covenants to Company throughout the Term that Seller shall deliver to Company the products and services required by this PPA free

and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person

Article 16 - Insurance

16.1 Evidence of Insurance. No later than commencement of construction and thereafter at least five Days prior to each applicable expiration date, Seller shall provide Company with two copies of insurance certificates acceptable to Company evidencing that insurance coverages for the Facility are in force and in compliance with the specifications for insurance coverage set forth in Exhibit E – Insurance Coverage to this PPA. Such certificates shall

(A) name Company as an additional insured (except worker's compensation);

(B) provide that Company shall receive 30 Days prior written notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies (except that such notice may be 10 Days for non-payment of premiums);

(C) provide a waiver of any rights of subrogation against Company, its Affiliates and their officers, directors, agents, subcontractors, and employees; and

(D) indicate that the Commercial General Liability policy has been endorsed as described above.

16.2 Policy Requirements. All policies shall be written with insurers with an AM Best rating of at least A-VII or a Standard & Poor's rating of at least A. All policies shall be written on an occurrence basis, except as provided in Section 16.4. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by Company. Seller may satisfy its insurance requirements using any reasonable combination of primary and secondary coverage.

16.3 No Implied Limitation. Seller's liability under this PPA is not limited to the amount of insurance coverage required herein.

16.4 Term and Modification of Insurance.

(A) All insurance required under this PPA shall cover occurrences during the Term and for a period of two years after the Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this PPA and such insurance shall be maintained by Seller for a minimum of six years after the Term.

(B) Company shall have the right, at times deemed appropriate to Company during the Term, to request Seller to modify the insurance minimum limits specified in Exhibit E – Insurance Coverage in order to maintain Commercially Reasonable coverage amounts. Seller shall make Commercially Reasonable Efforts to comply with any such request.

(C) If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide notice to Company, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and capacity. Upon receipt of such notice, Seller shall use Commercially Reasonable Efforts to obtain other insurance that would provide comparable protection against the risk to be insured.

16.5 Application of Proceeds. Except to the extent otherwise required by the Financing Documents, Seller shall apply any casualty insurance proceeds to reconstruction of the Facility following any material casualty to the Facility that occurs more than eighteen (18) months prior to the Scheduled Termination Date.

Article 17 - Indemnity

17.1 Indemnification: General. Each Party (the "Indemnifying Party") shall indemnify, defend and hold the other Party (the "Indemnified Party") harmless from and against all claims, demands, lawsuits (including citizen suits), losses, liabilities, fines, penalties, and expenses (including attorneys' fees) (generally, Losses"), to the extent proximately caused by

- a default under this PPA by the Indemnifying Party;
- a violation or alleged violation of Applicable Laws by the Indemnifying Party; and
- the negligence, intentional acts and other misconduct of the directors, officers, employees, or agents of the Indemnifying Party.

17.2 Indemnification: Environmental. Seller shall indemnify, defend and hold Company harmless from and against all Losses arising out of any claim by any Governmental Authority or other third party alleging Environmental Contamination at the Site and/or illegal disposal of Hazardous Materials off-Site, regardless of merit and regardless of Seller's responsibility therefor.

17.3 Indemnification: House Power. If Seller obtains House Power from the Facility and/or a self-generation source other than the Facility, Seller shall: (i) provide evidence reasonably satisfactory to Company that it is permitted to do so under Applicable Law, and (ii) shall indemnify, defend and hold Company harmless from and against all claims, demands, lawsuits (including citizen suits), losses, liabilities, fines, penalties, and expenses (including attorneys' fees) that may result therefrom.

17.4 Indemnification: Company Remote Start of Facility. Should Company remotely start the Facility pursuant to Section 10.1, Seller shall indemnify, defend and hold Company harmless from and against all claims, demands, lawsuits (including citizen suits), losses, liabilities, fines, penalties, and expenses (including attorneys' fees) that may result therefrom.

17.5 Limitations.

(A) The foregoing indemnification obligations shall apply notwithstanding any contributory misconduct of the Indemnified Party, but the Indemnifying Party's liability to indemnify the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party's misconduct caused the damages.

(B) Neither Party shall be indemnified for Losses resulting from the sole negligence or willful misconduct of the directors, officers, employees, or agents of such Party.

(C) These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy. Nothing in this Section 17.1 shall enlarge or relieve Seller or Company of any liability to the other for any breach of this PPA.

17.6 Procedures.

(A) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall provide notice thereof to the Indemnifying Party; *provided* that a delay in providing such notice shall limit the obligations of the Indemnifying Party only to the extent that such delay actually prejudices the ability of the Indemnifying Party to contest the claim or defend the proceeding.

(B) The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however,* if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall reasonably conclude that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense.

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

17.7 Amounts Owed. In the event that a Party is obligated for indemnification under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual Losses net of any insurance proceeds received by the Indemnified Party following a Commercially Reasonable effort by the Indemnified Party to obtain such insurance proceeds.

Article 18 - Lender Provisions

18.1 Accommodation of Facility Lender.

(A) Company shall provide such consents to collateral assignment, certifications, representations, estoppels, information or other documents, as may be reasonably requested by Seller in connection with the financing of the Facility consistent with the terms set forth in Exhibit K – Lender Consent Provisions (generally, a “Lender Consent”), *provided, however*, that in providing a Lender Consent, Company shall have no obligation to

1. modify the terms of this PPA;
2. provide any consent or enter into any agreement that has a Material Adverse Effect on any of Company’s rights, benefits, risks, or obligations under this PPA;
3. transfer or release any property or property interests of Company;
4. release or subordinate (or cause the release or subordination) of any lien on any property of Company for the benefit of Seller or the Facility Lender; or
5. permit any lien to be placed on property of Company.

(B) Seller shall reimburse, or shall cause the Facility Lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of each Lender Consent and any documents requested by Seller or the Facility Lender pursuant to this Section 18.1.

18.2 Notices.

(A) Seller shall provide Company with a notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender. Following receipt of such notice, Company shall provide to the Facility Lender a copy of each notice of alleged default delivered to Seller under Section 12.1 or Section 12.2, and Company will accept a cure thereof performed by the Facility Lender, so long as the cure is accomplished within the applicable cure period set forth in this PPA or the relevant Lender Consent.

(B) Within 10 Days following Seller’s receipt of each notice of default or Facility Lender’s intent to exercise any remedies under the Financing Documents, Seller shall deliver a copy of such notice to Company.

Article 19 - Assignment

19.1 Assignment by Seller.

(A) Seller shall not sell, exchange or otherwise transfer the Facility or any material portion thereof to any third party, nor shall Seller undergo any Change of Control (whether voluntary or by operation of law), absent the prior written consent of Company, which shall not be unreasonably withheld or delayed. Company shall have no obligation to provide any consent under this Article 19 unless:

1. Seller has complied with Sections 19.3, and 19.4, if and as applicable;
2. Seller has provided to Company such information concerning the transferee's direct and indirect ownership as Company reasonably requests;
3. the transferee has substantial experience in the operation of power generation facilities akin to the Facility, either directly, through its affiliates or through an operator acceptable to Company;
4. the transferee (together with its parents and affiliates) possesses an Investment Grade Credit Rating or other creditworthiness satisfactory to Company;
5. Seller has provided to Company at least 30 days' prior notice of the transaction; and
6. Seller pays or reimburses Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the transaction.

(B) Any Change of Control or sale, transfer, or assignment of any interest in the Facility effected without fulfilling the requirements of this PPA shall be null, void and a breach of this PPA.

(C) Seller shall assign this PPA to any successor owner of the Facility, and shall cause such successor to assume all obligations of Seller (accrued and prospective) hereunder via a writing reasonably satisfactory to Company. Seller also may assign this PPA for collateral purposes to any Facility Lender, and may subcontract some or all of its duties under this PPA, upon notice to but without the consent of Company

(D) Except as permitted in this Section 19.1, Seller may not assign this PPA or any portion hereof. No assignment shall relieve Seller of its obligations under this PPA, nor impair any security posted by Seller unless such security is replaced in accordance with Article 11. Before this PPA is assigned by Seller, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

19.2 Assignment by Company.

(A) Company may assign this PPA to any Affiliate, or to any successor that provides retail electric service in all or substantially all of Company's service territory and is subject to rate and quality service regulation under the jurisdiction of the CPUC. Any other assignment of this PPA by Company shall require the prior written consent of Seller, not to be unreasonably withheld or delayed.

(B) If an assignee of Company possesses a Credit Rating equal to or better than Investment Grade or Company's Credit Rating as of the date of assignment (whichever is higher), Seller shall release Company from its obligations hereunder if so requested by Company. Except for the foregoing, no assignment shall relieve Company of its obligations under this PPA.

(C) Any assignee of Company shall assume all obligations of Company (accrued and prospective) hereunder via a writing reasonably satisfactory to Seller. Before this PPA is assigned by Company, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

19.3 Right of First Offer ("ROFO").

(A) At any time after the Commercial Operation Date,

- (1) if Seller proposes to sell the Facility to an unaffiliated third party, Seller shall first offer to sell the Facility to Company via notice to Company,
- (2) if Seller's parent proposes to sell a majority of any class of voting and/or non-voting equity interests in Seller (excluding interests owned by tax equity investors) to an unaffiliated third party, Seller shall cause its parent first to offer to sell such equity interests to Company via notice to Company, and
- (3) if Seller's parent owns no assets other than its equity interests in Seller and the parent of Seller's parent proposes to sell a majority of any class of voting and/or non-voting equity interests in Seller's parent (excluding interests owned by tax equity investors) to an unaffiliated third party, Seller shall cause its parent's parent first to offer to sell such equity interests to Company via notice to Company

(in each case, a "ROFO Notice") Any ROFO Notice shall describe the proposed transaction, including the minimum price, status of title to the Site, liabilities to be assumed and other terms which Seller or its relevant parent (as applicable) is willing to accept to proceed with the contemplated transaction. The contents of a ROFO Notice shall be deemed Confidential Information for purposes of Section 20.19 below.

(B) Following issuance of a ROFO Notice, Seller shall allow Company 60 Days to investigate the proposed transaction and conduct due diligence. Due diligence shall include such physical inspections, surveys and operating tests of the Facility and the Site, such reviews of Seller's contracts, books and records, and interviews of such personnel, as Company may reasonably request. All information obtained by Company from such investigations shall be deemed Confidential Information subject to Section 20.19 below. Within such 60-Day period, Company may elect to purchase the Facility or the relevant equity interests (as applicable) on substantially the same terms as set forth in the ROFO Notice. If Company fails to notify Seller of Company's election within such 60-Day period, Company shall be deemed to have rejected the transaction.

(C) If Company elects to purchase the Facility or the specified equity interests (as applicable), the Parties shall negotiate and execute a PSA. If Company elects to purchase the Facility the PSA shall include the price and other terms set forth in the ROFO Notice and such other terms as are set forth in Exhibit P-2 - Facility PSA Provisions. If Company elects to purchase the specified equity interests, the PSA shall include the price and other terms set forth in the ROFO Notice and such other terms as are set forth in EXHIBIT P-3 – MIPSAs Provisions. If Company rejects the transaction described in a ROFO Notice, Seller shall have the right to sell the Facility (or Seller's relevant parent shall have the right to sell the specified equity interests, as applicable) on terms not more favorable to Seller or its parent vs. the terms set forth in the ROFO Notice, at any time within the twelve-month period following issuance of the ROFO Notice. If Seller or its relevant parent fails to close a transaction on such terms within such 12-month period, any sale of the Facility or equity interests in Seller shall again be subject to this Section 19.3.

(D) If Company rejects the transaction described in a ROFO Notice, Seller shall have the right to sell the Facility (or Seller's relevant parent shall have the right to sell the specified equity interests, as applicable) on terms not more favorable to Seller or its parent vs. the terms set forth in the ROFO Notice, at any time within the twelve-month period following issuance of the ROFO Notice. If Seller or its relevant parent fails to close a transaction on such terms within such 12-month period, any sale of the Facility or equity interests in Seller shall again be subject to this Section 19.3.

(E) This Section 19.3 shall be specifically enforceable by Company, without bond and without the need to prove irreparable harm.

(F) Seller shall cooperate in all respects reasonably necessary for Company to exercise its ROFO rights and shall operate the Facility in the ordinary course of business following the date of issuance of a ROFO Notice.

19.4 PFT.

(A) Seller shall give Company at least 90 Days' prior notice (a "PFT Notice") of any Pending Facility Transaction that does not otherwise trigger Company's ROFO rights under Section 19.3, in order to provide Company with an opportunity to

discuss and negotiate with Seller the possible sale of the Facility to Company. Any PFT Notice shall include a fair summary of Seller's plans with respect to the Facility in connection with the proposed Pending Facility Transaction, to the extent then known by Seller. The contents of a PFT Notice shall be deemed Confidential Information for purposes of Section 20.19 below.

(B) Seller shall have no obligation to sell nor shall Company have any obligation to purchase the Facility, following any PFT Notice. Issuance of a PFT Notice shall not relieve Seller of its obligation to offer a ROFO to Company if and when applicable pursuant to Section 19.3. In the event that the transaction giving rise to the PFT Notice has not been completed within twelve months following a PFT Notice, Seller shall be required to resubmit a PFT Notice for such transaction.

(C) Any breach of this Section 19.4 shall entitle Company to liquidated damages from Seller in the amount of *[insert \$5 × number of kW of Net Capability]*.

(D) For purposes hereof, a "Pending Facility Transaction" or "PFT" means:

1. any Change of Control of Seller;
2. the issuance by Seller or any of its Affiliates of a request for proposals or the response by Seller or any of its Affiliates to a request for proposal or similar process (e.g., auction) for the purchase or sale to any unaffiliated third party of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility;
3. the transmission by Seller or any of its Affiliates of a draft letter of intent, memorandum of understanding, term sheet or similar document (or a revised version thereof) to an unaffiliated third party with respect to the sale of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility; or
4. the execution by Seller or any of its Affiliates of any letter of intent, memorandum of understanding, term sheet or similar document, whether or not legally binding, which contemplates the sale or lease to an unaffiliated third party of any equity interests in Seller or the Facility or any group(s) of assets or equity interests that includes the Facility;

provided, however, that a PFT does not include (i) any financing or refinancing of the Facility Debt, (ii) any transaction among Affiliates of Seller, and/or (iii) any transaction for which Seller offers ROFO rights to Company under Section 19.3.

19.5 RESERVED

19.6 Memo of Option. Within thirty (30) Days following PUC Approval, the Parties shall execute and record a Memorandum of Option, in form reasonably specified by Company memorializing its ROFO rights under Section 19.3.

Article 20 - Miscellaneous

20.1 Notices.

(A) Notices required by this PPA shall be addressed to the other Party at the addresses noted in Exhibit D - Notices, as either Party updates such addresses from time to time by notice to the other Party. A Notice shall be deemed to have been received as follows: (1) if it is delivered by email, when the recipient, by an email sent to the email address for the sender stated in Exhibit D – Notices or by a notice delivered by another method in accordance with this Section 20.1(A), acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this Section 20.1(A); and, (2) If it is delivered in writing. when receipt is acknowledged in writing by the counterparty (or absent such acknowledgement, when delivered via third-party messenger or via FedEx or other reputable overnight courier service). Any notice shall be deemed to have been received by the close of the Business Day on which it was delivered. Real-time or routine communications concerning Facility operations shall be exempt from this Section 20.1(A). The Parties recognize the need for accurate communications between them. Each Party consents to the recording of telephone conversations between their employees and representatives, related to the performance and administration of this PPA.

(B) The Parties recognize the need for accurate communications between them. Each Party consents to the recording of telephone conversations between their employees and representatives, related to the performance and administration of this PPA.

20.2 Taxes.

(A) Company shall purchase all Contract Energy on a wholesale basis, for resale to Company’s wholesale and retail customers. Company shall obtain and provide Seller with any certificates required by any Governmental Authority or otherwise reasonably requested by Seller to evidence that the deliveries of Contract Energy hereunder are sales for resale.

(B) Company shall be solely responsible for sales, use and value-added taxes imposed with respect to the purchase of fuel by Company for consumption by the Facility to produce the Contract Energy dispatched and received by Company hereunder.

(C) As between the Parties, Company shall be solely responsible for the payment of (1) any sales, use or equivalent taxes imposed by Governmental Authorities, whether now in existence or hereafter enacted, on the purchase of the products and services provided hereunder, and (2) any taxes imposed by Governmental Authorities, whether now in existence or hereafter enacted, on the transmission of the products and services provided hereunder beyond the Point of Delivery.

(D) Subject to Section 20.2(B) and (C) above and Section 20.4 below, Seller shall be solely responsible for any and all present and future taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Facility and the Site (including *ad valorem* taxes on the Facility and the Site), and any taxes imposed at or prior to the Point of Delivery with respect to the products and services to be sold and delivered to Company hereunder, whether calculated based upon cost, value, labor, capital, production, savings, green attributes or other parameters. Seller's prices under Article 8 are inclusive of such taxes and impositions during the Term, and Seller assumes the risk of changes in such taxes after the Effective Date.

(E) The Parties shall cooperate to minimize tax exposure, *provided, however,* that neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder.

20.3 Applicable Laws.

(A) Each Party shall comply with all Applicable Laws (including the Transmission Authority Tariff) in connection with its performance of this PPA, at its own expense, except for any non-compliance that (individually or in the aggregate) could not reasonably be expected to have a Material Adverse Effect on the other Party or on such Party's ability to perform this PPA.

(B) As applicable, each Party shall give all required notices, shall procure and maintain all Permits necessary for performance of this PPA, and shall pay its respective charges and fees in connection therewith.

(C) Each Party shall promptly disclose to the other Party, any violation of Applicable Laws arising out of performance of this PPA.

(D) Upon permanent cessation of generation from the Facility, Seller shall decommission and remove the Facility and remediate the Site as, if and when required by Applicable Laws.

(E) Seller acknowledges that as a government contractor Company is subject to Applicable Laws regarding equal employment opportunity and affirmative action, including 41 C.F.R. §60-1.4(a)(1-7). Such Applicable Laws may also be applicable to Seller as a subcontractor to Company. All such Applicable Laws shall be deemed to be incorporated herein as required by Applicable Law.

20.4 Change of Law.

(A) As between the Parties, Company shall be solely responsible for the payment of any taxes enacted by Governmental Authorities that are imposed based upon the quantity of CO₂ emissions from the Facility resulting from the production of Contract Energy during the Term.

(B) If Governmental Authorities enact any enforceable limits or other enforceable compliance obligations restricting CO₂ emissions, such limits or obligations are imposed on and restrict all or substantially all of Company's generation portfolio, and such limits or obligations can be mitigated by the acquisition or application by Company of allowances, credits and/or eligible offsets, then

1. Company shall dispatch the Facility in accordance with such limits and obligations; and
2. Company at its cost shall acquire, apply and manage such allowances, credits and/or offsets as necessary to mitigate or offset CO₂ emissions resulting from the production of Contract Energy during the Term;

provided that nothing in this Section 20.4(B) shall be construed to require Company to make or reimburse Seller for any capital expenditures with respect to the Facility.

(C) Except as specifically set forth in this Section 20.4 and elsewhere in this PPA, each Party assumes the risk of changes in Applicable Laws following the Effective Date, that affect such Party's costs of ownership and operation of its assets, and its performance of this PPA.

20.5 Fines and Penalties. Seller shall pay when due all fees, fines, penalties and costs incurred by Company, Seller and/or their agents, employees or contractors arising from noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination.

20.6 Rate Changes.

(A) The terms and conditions and the rates for service specified in this PPA shall remain in effect for the Term hereof. Neither Party shall seek (nor support any third party seeking) any prospective or retroactive change to the rates or terms of service under this PPA pursuant to §205, §206 or §306 of the Federal Power Act.

(B) The standard of review for changes to this PPA whether proposed by a Party, a non-party, or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (aka the "Mobile-Sierra doctrine"), as interpreted in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1*, 128 S. Ct. 2733 (2008).

20.7 Certifications. Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available personnel and records relating

to the Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation, including administrative proceedings before the CPUC.

20.8 Disclaimer of Third Party Beneficiaries. In executing this PPA, Company does not and does not intend to extend its credit or financial support for the benefit of any Facility Lender or any other third party transacting with Seller. Nothing in this PPA 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 PPA.

20.9 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties, nor to impose any partnership obligation or liability upon either Party. Except as specifically provided for in this PPA to the contrary, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

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

20.10 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations, including warranties, remedies, or indemnities, that by their nature should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.

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

20.12 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Company and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Company and Seller with respect to the

purchase, sale and delivery of Contract Capacity, Contract Energy and other products and services required by this PPA. Any amendment of this PPA, or any waiver of any provision hereof, shall be evidenced by a writing signed by the Party/ies to be bound thereby.

20.13 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

20.14 Binding Effect. This PPA is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, legal representatives, and assigns.

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

20.16 Counterparts and Electronic Signatures. This PPA may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument. A manually signed copy of this PPA, or a copy of this PPA signed with an electronic or digital signature, delivered by e-mail shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a Party until such Party has delivered or caused to be delivered a signed copy of this PPA.

20.17 Press Release. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size and nature of the Facility, the Term, and other relevant factual information about the relationship.

20.18 Exhibits. Either Party may change the information in Exhibit D – Notices and Contact Information at any time by notice without the approval of the other Party. All other Exhibits may be changed to the extent allowed by specific provisions of this PPA or with the mutual consent of both Parties.

20.19 Confidentiality.

(A) For purposes hereof, "Confidential Information" means

1. information specifically designated as Confidential Information in this PPA; and
2. written information delivered by one Party to the other from time to time during the Term, which information is labeled prominently as "Confidential," "Proprietary" or the like and specifically references this PPA.

provided, however, that "Confidential Information" shall not include information that

- (a) is publicly available as of the Effective Date, or becomes publicly available during the Term through no fault of the recipient Party;
- (b) can be documented was independently developed by the recipient Party; and/or
- (c) is disclosed to the recipient Party from an ultimate source other than the protected Party, without breach of this PPA by the recipient Party.

(B) The recipient Party shall (i) maintain the confidentiality of all Confidential Information of the protected Party, using the same degree of care used by the recipient Party to protect its own Confidential Information (and in any event not less than a reasonable degree of care), and (ii) shall use Confidential Information only in connection with its performance of this PPA. Confidential Information may be disclosed by the recipient Party to its agents, employees, directors, officers, consultants, auditors, lenders and equity investors, subject to their acceptance of the obligations of confidentiality imposed hereby and for whose violations of this Section 20.19 the recipient Party shall be responsible.

(C) In the event that Confidential Information is disclosed to the CPUC, its staff, parties, intervenors, participants or consumer counsel in any regulatory or administrative proceedings before the CPUC, the disclosing Party shall submit such Confidential information in accordance with the CPUC confidentiality rules and procedures, CPUC protective order or signed non-disclosure agreement. In the event that Confidential Information must otherwise be disclosed by Applicable Law (e.g. pursuant to subpoena or civil discovery), the Party required to make disclosure shall notify the protected Party sufficiently in advance to allow the protected Party a reasonable opportunity to obtain a protective order or seek other remedies, prior to disclosure by the recipient Party.

20.20 Accounting Treatment.

(A) If and when Company reasonably determines that Company must consolidate financial information of Seller into Company's financial statements under FASB ASC 810 or other accounting standard applicable to Company:

1. the Parties shall use Commercially Reasonable Efforts to amend this PPA and/or the Parties' protocols for operation of the Facility to avoid such treatment, at the least possible cost to the Parties, consistent with the intent of this PPA to the extent possible; or
2. if such avoidance is not reasonably feasible, Seller shall provide to Company from time to time upon request such quarterly and annual financial information as may be needed for Company to comply with such standard, in such format and within such time frames as Company may reasonably request.

(B) If and when Company reasonably determines that Company must treat this PPA as a "finance lease" under FASB ASC 842 or other accounting standard

applicable to Company, the Parties shall use Commercially Reasonable Efforts to amend this PPA and/or the Parties' protocols for operation of the Facility to avoid such treatment, at the least possible cost to the Parties, consistent with the intent of this PPA to the extent possible, if so requested by Company.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this PPA as of the date first set forth above.

Seller:

_____ **[LLC]**

By: _____
[name and title]

Company:

Public Service Company of Colorado

By: _____
[_____] as Vice President of Xcel
Energy Services, Inc., its authorized agent

EXHIBIT A

(to PPA)

DEFINITIONS

The following terms shall have the meanings set forth herein:

“Acceptable Fuel Oil” means fuel oil meeting the quality specifications set forth in Exhibit R – Fuel Oil to this PPA at the time that such fuel oil is delivered to Seller’s Fuel Oil Supply Facilities. *if applicable*

“Acceptable Natural Gas Fuel” means the least restrictive of any of the following:

(i) natural gas fuel procured from the Upstream Pipeline that complies with the tariff of the Upstream Pipeline (as such tariff may be amended from time to time) and the minimum delivery pressures in Exhibit Q – Natural Gas Fuel Specifications;

(ii) other natural gas fuel delivered to a Fuel Delivery Point, the actual quality of which meets or exceeds the natural gas quality specifications, requirements and minimum delivery pressures in Exhibit Q – Natural Gas Fuel Specifications; or

(iii) natural gas fuel that otherwise complies with the turbine manufacturer’s natural gas fuel quality specifications, requirements and delivery pressures of the manufacturer of the Facility’s combustion turbines, the minimum delivery pressures in Exhibit Q – Natural Gas Fuel Specifications, and that would not otherwise void such manufacturer’s warranties.

“Actual Damages” shall have the meaning set forth in Section 12.4(C).

“Actual Net Heat Rate” as of any date means the net heat rate for the Facility, stated in Btu/kWh HHV, adjusted to Reference Conditions, determined by the most recent heat rate test conducted in accordance with Exhibit K - Heat Rate Testing.

“Actual Ramp Rate” has the meaning set forth in Exhibit I – Operating Standards.

“Affiliate” of any designated person or entity means any person or entity that directly or indirectly controls, is under the control of, or is under common control with, the designated person or entity by the power to direct or cause the direction of the management of the policies of designated person or entity, whether through ownership interest, by contract or otherwise.

“AGC” or “Automatic Generation Control” means the equipment and capability of an electric generation facility automatically to adjust the generation quantity within the applicable Balancing Authority with the purpose of interchange balancing and specifically, the Facility’s capability of accepting an AGC Set-Point electronically, and the automatic adjustment and regulation of the Facility’s energy production via the SCADA System.

“AGC Set-Point” means the Company-generated analog or digital signal sent by the SCADA System to the Facility, representing the quantity of Contract Energy to be generated by the Facility. The AGC Set-Point is calculated by the EMCC AGC system and communicated electronically to the Facility via the SCADA System.

“Applicable Law” means all laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority that are applicable to a Party, the business of a Party or the Facility, now in effect or hereafter enacted, including amendments to or interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards and/or like actions.

“Arbitration Service” means Judicial Arbitration and Mediation Services, Inc. (aka JAMS).

“Availability Verification Test” shall have the meaning set forth in Section 10.9(B).

“Back-Up Metering” shall have the meaning set forth in Section 5.2(B).

“Balancing Authority” means the system of electrical generation, distribution and transmission facilities within which generation is regulated in order to maintain interchange schedules with other such systems.

“Btu” means British thermal unit.

“Business Day” means any Day that is not a Saturday, a Sunday, or a NERC recognized holiday.

“Capacity Resource” means the amount of net generating capacity associated with the Facility for which capacity credit may be obtained under applicable ERO or Transmission Authority planning reserve procedures and requirements, if any.

“Change of Control” means the occurrence of any one of the following events with respect to Seller or any direct or indirect owner of a majority of the ownership interests in Seller: (a) a transfer of a majority of the ownership interests in Seller or such owner; (b) any consolidation or merger of Seller or such owner in which Seller or such owner, as the case may be, is not the continuing or surviving entity; or (c) a sale or conveyance of any direct or indirect ownership interest in Seller following which [REDACTED] (“Ultimate Parent”) is no longer the direct or indirect owner of at least 50% of the ownership interests of Seller, *provided, however*, that a Change of Control shall not be deemed to have occurred as a result of

- (i) transactions exclusively among Affiliates of Seller,

- (ii) any exercise by the Facility Lender of its rights and remedies under the Financing Documents, *with respect to any Facility Debt secured only by the Facility, delete italicized material from PSCo version*
- (iii) a change of control of Ultimate Parent, or
- (iv) any change of economic and/or voting rights triggered in Seller's organizational documents arising from (a) a tax-equity financing of the Facility, or (b) a transaction in which interests in Seller or any direct or indirect owner are sold to or by a tax equity investor.

"COD Conditions" means all of the requirements that must be satisfied by Seller as a prerequisite to achieving Commercial Operation. The COD Conditions are set forth in Section 4.5(C)2.

"COD Delay" shall have the meaning set forth in Section 12.2(A).

"COD Notice" shall have the meaning set forth in Section 4.5(B).

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

"Commercial Operation Date" or "COD" shall have the meaning set forth in Section 4.5(C)1.

"Commercial Operation Year" shall have the meaning set forth in Section 4.5(E).

"Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any action to be taken or attempted by a Party under this PPA, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action at a reasonable cost; (b) is consistent with Good Utility Practices; and (c) takes into consideration the amount of advance notice required to take such action, the duration and type of action, and the competitive environment in which such action occurs.

"Company" shall have the meaning set forth in the introductory paragraph.

"Confidential Information" shall have the meaning set forth in Section 20.19(A).

"Construction Contracts" shall have the meaning set forth in Section 4.1(A).

"Construction Milestones" means the dates set forth in Exhibit B – Construction Milestones.

"Contract Capacity" shall have the meaning set forth in Section 7.1.

"Contract Energy" shall have the meaning set forth in Section 7.1.

“CPUC” means the Colorado Public Utilities Commission or any successor agency.

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

“Damage Cap” shall have the meaning set forth in Section 12.4(A).

“Day” means a calendar day.

“Dispute” shall have the meaning set forth in Section 13.1)A).

“Dispute Notice” shall have the meaning set forth in Section 13.1)A).

“Effective Date” shall have the meaning set forth in the introductory paragraph.

“Electric Metering Devices” means revenue quality meters, metering equipment and data processing equipment used to measure, record and transmit data with respect to the Contract Energy, including metering current transformers and metering voltage transformers. The Electric Metering Devices must be capable of storing five-minute revenue quality meter data for transmission to, and retrieval by, Company..

“Emergency” means any event or occurrence that results in the declaration of an Emergency Condition under and as defined in the Interconnection Agreement.

“Energy Markets Control Center” or “EMCC” means Company's merchant representatives responsible for dispatch of generating units, including the Facility.

“Energy Resource Interconnection Service” means the type of interconnection service which allows Seller to connect the Facility to the transmission or distribution system, as applicable, as an “Energy Resource” as defined by the Transmission Tariff, and be eligible to deliver the Facility’s output using the existing firm or non-firm capacity on the transmission system on an as-available basis. *if needed*

“Environmental Contamination” shall have the meaning set forth in Section 4.2.

“ERO” means the Electric Reliability Organization certified by FERC pursuant to Section 215 of the Federal Power Act or any successor organization. The certified ERO as of the Execution Date is

the Western Electricity Coordinating Council (WECC) and SPP RC West.

“ESC Adjustment” shall have the meaning set forth in Section 8.6.

“ESC Event” shall have the meaning set forth in Section 8.6.

“Escrow Account” shall have the meaning set forth in Section 11.3(B).

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

“Expected Ramp Rate” with respect to the regulating range of the Facility between Minimum Loading and maximum output means [] kW/minute (increasing) or [] kW/minute (decreasing), as applicable.

“Facility” means Seller’s electric generating facilities, associated balance of plant, parts, fixtures and equipment, and all equipment necessary to interconnect to the Transmission Authority’s System, all as further described in Exhibit C - Facility Description and Site Maps, including Seller’s rights to the Site and all of the following: buildings, turbines, generators, step-up transformers, output breakers, facilities necessary to connect to the Interconnection Point, protective and associated equipment, fuel interconnection facilities, [Fuel Oil Storage Facilities,] above-ground and underground piping, gas compression, heating and filter/separation equipment, control systems, improvements, and other tangible and intangible assets, contract rights, Permits, easements, rights of way, surface use agreements and other interests or rights in real estate, owned or used for construction, operation, maintenance, generation and delivery of the capacity and energy subject to this PPA.

“Facility Debt” means the obligations of Seller or its Affiliates to any lender or tax equity or other equity investor pursuant to the Financing Documents, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any fees or interest due with respect to any of the foregoing.

“Facility Lender” means, collectively, any lenders or tax equity or other equity investors providing Facility Debt, including any successors or assigns thereof.

“Federal Power Act” means the provisions of 16 U.S.C. §791(A) *et seq.* and amendments or supplements thereto.

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

“Financing Documents” means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, equity contribution agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction, back-leverage or permanent debt financing and/or tax equity financing for the Facility, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in

connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

“Forced Outage” means any condition at the Facility that requires the immediate and unplanned removal of the Facility, or any portion thereof, from service, another outage state, or a reserve shutdown state, resulting from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to abnormal Facility conditions or alarms.

“Fuel Delivery Point” means the natural gas delivery system point at which Company makes available and delivers to Seller the natural gas fuel consumed by the Facility to produce the Contract Energy dispatched by Company, as described in Section 5.4.

“Fuel Oil Storage Facilities” means Seller’s fuel oil storage tanks and related fuel oil pipelines, interconnection equipment, unloading facilities and metering equipment necessary to receive and store Acceptable Fuel Oil at the Facility and deliver such fuel oil for combustion within the Generating Units as described in Section 5.5. **[if applicable]**

“GADS” means the NERC Generation Availability Data System.

“Gas Deficiency” shall have the meaning set forth in Section 10.9(B).

“Generating Unit” means an individual turbine-generator set at the Facility. For example, a 2x1 combined cycle facility would have three Generating Units.

“Good Utility Practices” means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the electric power generation industry pertaining to facilities of the type, similar size and location to the Facility that, at a particular time, in the exercise of Commercially Reasonable judgment, in light of the facts that are known (or reasonably should have been known) at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, Permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices is not limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the applicable segment of the electric power generation industry in the relevant region, during the relevant period.

“Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; and/or any court or governmental tribunal. By way of example only, “Governmental Authorities” include, but are not limited to, NERC, the ERO, the Market Operator (if any), an applicable PUC, the Transmission Authority, FERC, and

successor organizations. For the avoidance of doubt, Company is not a Governmental Authority for purposes of this PPA.

“Guarantor” shall have the meaning set forth in Section 11.3(C).

“Heat Rate Adjustment” or “HRA” shall have the meaning set forth in Section 8.4.

“Heat Rate Modifications” shall have the meaning set forth in Section 8.4(D).

“Higher Heating Value” or “HHV” means the higher heating value stated on Exhibit K - Heat Rate Testing.

“House Power” shall have the meaning set forth in Section 1.2(B).

“Indemnified Party” shall have the meaning set forth in Section 17.1.

“Indemnifying Party” shall have the meaning set forth in Section 17.1.

“Interconnection Agreement” means the separate contract for interconnection of the Facility to the Transmission Authority’s System, as such agreement may be amended from time to time. For purposes of this PPA, the Interconnection Agreement shall be interpreted to include any third party facility construction agreement or other agreement required by the Transmission Authority to interconnect the Facility in accordance with the Transmission Tariff. For the avoidance of doubt, “Interconnection Agreement” may include a provisional Interconnection Agreement which is an interim agreement to accelerate the construction of Interconnection Facilities and may include provisions to limit the output of the Facility until additional transmission-related upgrades are installed and/or until study process required under the Transmission Tariff are completed.

“Interconnection Facilities” means those facilities designated in the Interconnection Agreement for the direct purpose of interconnecting the Facility at the Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities, whether owned by Seller, the Transmission Authority or another entity. This equipment is conceptually depicted in Exhibit C - Facility Description and Site Maps to this PPA.

“Interconnection Point” means the physical point within the operational authority of the Transmission Authority as specified in the Interconnection Agreement as project [REDACTED], at which electrical interconnection is made between the Facility and the Transmission Authority’s System in accordance with the Transmission Tariff and the Interconnection Agreement.

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

“Issuer of Credit” shall have the meaning set forth in Section 11.3(A).

“kW” means kilowatt, and “kWh” means kilowatt hour.

“Lender Consent” shall have the meaning set forth in Section 18.1(A).

“Letter of Credit” shall have the meaning set forth in Section 11.3(A).

“Liquidated Delay Damages” shall have the meaning set forth in Section 12.2(A).

“Local Provider” shall have the meaning set forth in Section 1.2(B).

“Losses” shall have the meaning set forth in Section 17.1.

“Maintenance Schedule” shall have the meaning set forth in Exhibit L - Maintenance.

“Market Operator” means the entity that instructs market participants and/or generators to regulate generation assets (including the Facility) within any energy market in which Company participates, based on price-based offer curves for the purpose of matching generation output to system load demand while maintaining bulk electric system reliability. If such entity is the Transmission Authority, then “Market Operator” shall mean such entity acting in its capacity as such. *n/a to PSCo*

“Material Adverse Effect” means any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results in operations or condition (financial or otherwise), prospects, or property of a Party, its business, or this PPA.

“Minimum Loading” means the minimum capacity of the Facility that can be scheduled for continuous operation consistent with Good Utility Practices, including equipment manufacturer's warranties and performance standards.

“MW” means megawatt or one thousand kW, and “MWh” means megawatt hours.

“NERC” means the North American Electric Reliability Council or any successor organization.

“Net Capability” or “NC” of the Facility shall have the meaning as set forth in Section 3.2(C).

“Non-Conforming Gas” shall have the meaning set forth in Section 5.4(C).

“Operating Committee” means one representative each from Company and Seller, pursuant to Section 10.8.

“Operating Procedures” means those procedures developed by the Operating Committee pursuant to Section 10.8, if any.

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

“Party” and “Parties” shall have the meanings set forth in the introductory paragraph.

“Pending Facility Transaction” or “PFT” shall have the meaning set forth in Section 19.4(D).

“Permit” shall have the meaning set forth in Section 4.3.

“Permit Deficiency” shall have the meaning set forth in Section 7.3.

“Permitted Lien” means any of the following: (i) liens for the benefit of a Lender, (ii) inchoate liens that arise by operation of law which are associated with obligations that are not yet due and payable; (iii) liens cured or removed within thirty (30) Days after their incurrence; (iv) easements, rights-of-way, licenses, minor imperfections in title, and other non-monetary liens incident to the ordinary course of business that, for all instances, do not materially detract from the value of the Facility; (v) liens incurred in the ordinary course of business in connection with worker’s compensation, unemployment insurance, social security and other employment related laws; (vi) liens, deposits or pledges to secure mandatory statutory obligations or performance of bids, tenders or agreements (including leases), or for similar purposes in the ordinary course of its business; (vii) liens disclosed in any title policy issued in favor of Seller or a Lender or any survey of the Site so long as such liens do not materially impair the construction or operation of the Facility; (viii) purchase money liens secured by the assets so purchased; and (ix) liens arising in connection with shared facilities arrangements for other projects for which Company is, was or is reasonably expected to be an off-taker and that do not materially impair the construction or operation of the Facility; and (x) other liens securing obligations with an aggregate value not exceeding \$1,000,000 so long as such liens do not create an imminent risk of a sale or transfer of the Site, the Facility or a material part thereof or interest therein.

“PFT Notice” shall have the meaning set forth in Section 19.4(A).

“Planned Permitted Energy” shall have the meaning set forth in Section 7.3(D).

“Point of Delivery” means the physical point within the operational authority of Transmission Authority at which Seller makes available and delivers to Company the Contract Energy. The Point of Delivery is specified in Exhibit C - Facility Description and Site Maps.

“Post-COD Test” and “Post-COD Testing” shall have the meanings as set forth in Section 10.4(A).

“Post-COD Test Energy” shall have the meaning set forth in Section 4.6.

“Pre-COD Test Energy” shall have the meaning set forth in Section 4.6.

“Predicted Net Heat Rate” means the predicted net heat rate for the Facility, stated in Btu/kWh, HHV, at Reference Conditions, with (as applicable) cooling of intake air and full supplemental fuel firing, and adjusted to reflect the turbine manufacturer’s estimated degradation in equipment performance over the period of Commercial Operation from new and clean equipment conditions as specified in Exhibit K - Heat Rate Testing. The initial Predicted Net Heat Rate shall be the lesser of (i) [] btu/kWh HHV or (ii) the Actual Net Heat Rate measured by the initial heat rate test of the Facility. **[if applicable]** The Predicted Net Heat Rate degradation adjustment, as specified in Exhibit K - Heat Rate Testing, shall be used to adjust such initial Predicted Net Heat Rate, and thereby establish the Predicted Net Heat Rate, over the Term.]

“PUC Approval” shall have the meaning set forth in Section 6.1(D).

“Reference Conditions” means the operating and ambient conditions used to establish the Predicted Net Heat Rate to provide a reference for adjustment in determining the Actual Net Heat Rate from heat rate testing pursuant to Exhibit K – Heat Rate Testing, and to provide a reference for adjustment in determining the Net Capacity for capacity testing purposes pursuant to Exhibit J – Capacity Testing.

- The Reference Conditions for the Facility shall include but not be limited to:
 - ambient temperature of ___ degrees Fahrenheit (°F), ___%
 - ambient relative humidity, and standard ambient pressure (14.696 psia at mean sea level) adjusted to the Site elevation of [] feet above mean sea level.
 - ***[insert applicable winter reference conditions]***
- Operating Reference Conditions for the Facility shall include but not be limited to the following design parameters for the Generating Units, where appropriate:
 - Fuel Composition: _____
 - Intake Pressure Drop: _____
 - Exhaust Pressure Drop: _____
 - Firing/Exhaust Temperature: _____
 - Use of Bleed Air: _____
 - Water or Steam Injections Rate: _____
 - Steam Turbine Exhaust Pressure: _____
 - Cooling Water Temperature: _____

- Generator Power Factor: _____
- Boiler Blowdown %: _____
- Fuel Temperature: _____
- Thermal Energy Export: _____
[For Combined Cycle]
- Main Steam Flow Rate: _____
- Duct Firing Flow Rate: _____

“Replacement Power Costs” for any period mean the costs incurred by Company to replace the Contract Capacity, Contract Energy and other products and services which Seller was required to provide under this PPA (but failed to so provide) during such period, less the sum of any payments from Company to Seller under this PPA that were eliminated with respect to such period as a result of such failure. Replacement Power Costs shall be determined on an hourly basis and shall equal the sum of the following for each hour where the following calculation achieves a positive number:

Hourly Replacement Power Costs = (A + B + C) – D, where

“A” = the product of (x) the number of MW of lost capacity, derived by subtracting the number of MW of capacity of the Facility that qualifies for capacity credit actually made available to Company from the amount of qualifying capacity associated with the entire Facility, and (y) the applicable market price for capacity made available to Company’s system, for such hour;

“B” = the price paid by Company for the MWh of energy purchased by Company to replace the Contract Energy that was not delivered under this PPA during such hour;

“C” = the actual cost of transmission, Ancillary Services, fuel and fuel transportation, other incremental costs, and any related penalties that could not be avoided or mitigated, and transaction charges to deliver reasonably available energy to Company in amounts equal to the number of MWh for which Replacement Power Costs are owed; and

“D” = the sum of all payments avoided by Company as a result of Seller’s breach, for such hour, including avoided payments under Article 8 and avoided fuel costs.

“Reported Availability: Fuel Oil” shall have the meaning set forth in Section 10.10(A). [if needed]

“Reported Availability: Gas” shall have the meaning set forth in Section 10.9(A).

“ROFO” means Right of First Offer.

“ROFO Notice” shall have the meanings set forth in Section 19.3(A).

“SCADA System” means supervisory control and data acquisition.

“Scheduled Outage/Derating” means a planned interruption/reduction of the Facility’s generation that (i) has been coordinated in advance with Company, per Exhibit L - Maintenance, (ii) is required for inspection, or preventive or corrective maintenance, and (iii) complies with the scheduling requirements of the applicable Transmission Authority.

“Scheduled Termination Date” shall have the meaning set forth in Article 2.

“Security Fund” shall have the meaning set forth in Section 11.1(A).

“Seller” shall have the meaning set forth in introductory paragraph.

“Site” means the parcel of real property on which the Facility will be located, including any easements, rights of way, surface use agreements and other interests or rights in real estate necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in Exhibit C - Facility Description and Site Maps to this PPA.

SME shall mean “Scheduled Maintenance Energy.”

“Specified Ramp Range” shall have the meaning set forth in Exhibit I – Operating Standards.

“Successful Start” means, in response to a request from Company to start a Generating Unit or, if applicable, all Generating Units simultaneously [*if applicable* on natural gas or fuel oil, as designated by Company], Seller’s start and operation of such Generating Unit(s) that:

(i) syncs to the grid and achieves the Minimum Loading level for the requested operating configuration within ten (10) minutes for single-cycle starts (ninety (90) minutes for combined cycle starts) after the time Company requests the turbine start to begin, and

(ii) upon achieving such Minimum Loading level, generates continuously for a period of not less than one hour while synchronized to Transmission Authority’s System at or above such Minimum Loading level without experiencing any abnormal operating conditions [*if applicable* and,

(iii) continues to operate without interruption when switched from natural gas to fuel oil when ordered to do so by Company’s EMCC at any time during operation.]

“Target COD” shall have the meaning set forth in Section 4.5(A).

“Term” means the period of time during which this PPA remains in full force and effect, as further defined in Article 2.

“Termination LDs” shall have the meaning set forth in Section 12.2(C).

“Test Energy” shall have the meaning set forth in Section 4.6.

“Test Energy Rate” shall be \$[redacted]/MWh.

the Dow Jones Four Corners Electricity Price™ (Non-Firm Daily) Index for the Day on which the relevant Test Energy is generated, less \$10.00 per MWh.

“Transmission Authority” means collectively those entities owning and/or operating the interconnected transmission system applicable to Seller and the Facility pursuant to a Transmission Tariff, including (i) PSCo operating under and in accordance with its Transmission Tariff, and (ii) all entity(s) responsible under the Interconnection Agreement for providing the transmission lines, any Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Interconnection Point and transmission system.

“Transmission Authority’s System” means the contiguously interconnected electric transmission and sub-transmission facilities, over which the Transmission Authority has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Interconnection Point.

“Transmission Tariff” means the applicable Open Access Transmission Tariff of the Transmission Authority, as amended from time to time.

“Ultimate Parent” shall have the meaning set forth in the definition of Change of Control.

“Upstream Pipeline” means the interstate or intrastate natural gas pipeline [to be] interconnected to the Facility at the Fuel Delivery Point. The initial Upstream Pipeline is [redacted].

* * * * *

EXHIBIT B
 (to PPA)
CONSTRUCTION MILESTONES

Construction Milestone	Outcome
[Date]	Seller and all required counterparties shall have executed such Construction Contracts as are needed to construct the Facility.
[Date]	Seller and the Transmission Authority shall have executed the Interconnection Agreement.
[Date]	Seller shall have achieved closing on financing for the Facility or provided Company with proof of financial capability to construct the Facility.
[Date]	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformation facilities.
[Date]	The Generating Units and step-up transformer shall have been delivered and installed at the Site.
[Date]	Seller has submitted to Company and obtained Company approval of serialized information for all Electric Metering Devices and Back-Up Metering.
[Date]	All fuel supply and transportation arrangements have been put in place, the fuel interconnection facilities have been constructed and are operational, and a copy of the executed natural gas interconnection facilities agreement has been provided to Company.
[Date]	Seller shall have constructed Seller's Interconnection Facilities and such facilities are capable of being energized.
[Date]	Seller has demonstrated to Company's reasonable satisfaction that all Electric Metering Devices and Back-Up Metering and communications equipment are functional and provide data integrity.
[Date]	Start-up testing of the Facility commences.
[Date]	Capacity Resource Milestone. [NSP only]

[Date]	Target COD.
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EXHIBIT C
(to PPA)
FACILITY DESCRIPTION AND SITE MAPS

[This Exhibit shall include a description of the Facility and all material components thereof, including map, aerial pictures, one-line diagram, Point of Delivery and (if different) the Interconnection Point.]

The Facility shall be located on the Site and shall be identified as Seller's [REDACTED] Generation Facility. Maps and one-line diagrams of the Facility and associated equipment are included as part of this Exhibit.

The address of the Facility is [REDACTED], Latitude: [REDACTED], Longitude: [REDACTED].

The Facility must include the following specific components:

- have the panel space and 125VDC battery supplied voltage necessary to accommodate the metering, telemetering and communications equipment required by the PPA;
- have communication circuits from the Facility to the EMCC for the purpose of telemetering, SCADA System, and voice communications as required by Company;
- include equipment and software necessary to receive, accept and react to an AGC signal from Company's SCADA System for each operating configuration, as further specified on Exhibit I - Operating Standards;
- be capable of sending real time data (including fuel flows) and OPC interface to Company's plant information system (OPC is the Object Linking and Embedding for Process Control interface);
- be capable of dispatch at Minimum Loading levels with AGC and without AGC for each Generating Unit and combination of Generating Units [*if applicable* , including 10-minute quick remote start capability];
- be capable of operating, or continuing to operate without interruption in all required operating modes in the event of a planned or unplanned outage of one or more, but not all of the Generating Units.
- be capable of starting and operating on natural gas [*if applicable* and fuel oil, as designated by Company] at an ambient temperature down to [-__° Celsius ([-__° Fahrenheit).
- [*if applicable* be capable of continuing to operate without interruption when switching from natural gas to fuel oil, as designated by Company.]

- a Point of Delivery located at [REDACTED].

[Additional Bid Specific requirements to be added]

EXHIBIT D
(to PPA)
NOTICES AND CONTACT INFORMATION

Company	Seller
<p>Notices: [Redacted] Purchased Power Manager Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: [Redacted] E-mail: [Redacted]@xcelenergy.com</p> <p><i>with a cc to:</i> [Redacted] Purchased Power Analyst Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: [Redacted] E-mail: [Redacted]@xcelenergy.com</p>	<p>Notices: [Redacted] [Redacted] [Redacted] Phone: [Redacted] E-mail: [Redacted]@[Redacted].com</p> <p><i>with a cc to:</i> [Redacted] [Redacted] [Redacted] Phone: [Redacted] E-mail: [Redacted]@[Redacted].com</p>
<p>Operating Committee Representative: [Redacted] Purchased Power Manager Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: [Redacted] E-mail: [Redacted]@xcelenergy.com</p> <p>Alternate: [Redacted] Purchased Power Analyst Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: [Redacted] E-mail: [Redacted]@xcelenergy.com</p>	<p>Operating Committee Representative: [Redacted] [Redacted] [Redacted] Phone: [Redacted] E-mail: [Redacted]@[Redacted].com</p> <p>Alternate: _____ _____ _____ Phone: [Redacted] E-mail: [Redacted]@[Redacted].com</p>
<p>Real-Time Contact Information <u>EMCC</u> (24 hour coverage): Phone: 303-571-7426 E-mail:</p>	<p>Real-Time Contact Information <u>[Operations Command Center]</u> (24 hour coverage): Phone: [Redacted] E-mail: [Redacted]@[Redacted].com</p>

dlrtelectricmarketersnsp@xcelenergy.com

Transmission Ops:

Phone: 303-273-4811

E-mail: AGCOpr@xcelenergy.com

EXHIBIT E
 (to PPA)
INSURANCE COVERAGE

Type of Insurance	Minimum Limits of Coverage
Commercial General Liability (CGL) and commercial umbrella	\$11,000,000 combined single limit each occurrence and the aggregate, where applicable. If CGL insurance contains a general aggregate limit, it shall apply separately to the Facility.

CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of "Insured contract" to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

Company shall be included as an insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance. The CGL and commercial umbrella insurance to be obtained by or on behalf of Seller shall be endorsed as follows:

Such insurance as afforded by this policy for the benefit of Company shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this PPA, and insured hereunder, and any insurance carried by Company shall be excess of and noncontributing with insurance afforded by this policy.

Business Automobile Liability	\$2,000,000 combined single limit (each accident), including all Owned, Non-Owned, Hired and Leased Autos.
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Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Workers Compensation	Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.
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[Exhibit E - continued]

Type of Insurance	Minimum Limits of Coverage
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Employers Liability	\$2,000,000 each accident for bodily injury by accident, or \$2,000,000 each employee for bodily injury by disease.
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Builder's Risk	Replacement value of the Facility.
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Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy.

Environmental Impairment Liability	\$5,000,000 each occurrence.
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All-Risk Property insurance covering physical loss or damage to the Facility	Full replacement value of the Facility. A deductible may be carried which deductible shall be the absolute responsibility of Seller.
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All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$10,000,000 each for flood and earthquake; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and turbines, in an amount equal to their full replacement value.

Business Interruption insurance	Amount required to cover Seller's continuing or increased expenses, resulting from full interruption, for a period of 12 calendar months.
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Business Interruption insurance shall cover loss of revenues or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on Commercially Reasonable terms as determined by Company, subject to a Commercially Reasonable deductible that shall be the responsibility of Seller. Notwithstanding any other provision of this PPA, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date.

EXHIBIT F
(to PPA)
NEEDED PERMITS

<u>Permit</u>	<u>Status</u>	<u>Date / Projected Date of Grant</u>

EXHIBIT G
(to PPA)
FORM OF LETTER OF CREDIT

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit Date of Issuance: _____
No: _____

Beneficiary: [OpCo]

Initial Expiration Date: [Must be at least
one year after date of issuance]

Applicant:

As the Issuing Bank ("Issuer"), we, [Name of Issuing Bank], hereby establish this irrevocable Standby Letter of Credit No. _____ (this "Letter of Credit") in favor of the above-named beneficiary ("Beneficiary") for the account of the above-named applicant ("Applicant") in the amount of US\$_____ (_____ Million U.S. Dollars).

Beneficiary may draw all or any portion of this Letter of Credit at any time and from time to time, and Issuer will make funds immediately available to Beneficiary upon presentation of Beneficiary's draft(s) at sight in substantially the form attached hereto as Exhibit "A" ("Sight Draft"), drawn on Issuer and accompanied by this Letter of Credit. All Sight Drafts must be signed on behalf of Beneficiary, and the signator must indicate his or her title or other official capacity. No other documents will be required to be presented. Issuer will effect payment under this Letter of Credit within twenty-four (24) hours after presentment of any Sight Draft. Payment shall be made in U.S. Dollars with Issuer's own funds in immediately available funds.

Issuer will honor any Sight Draft presented in substantial compliance with the terms of this Letter of Credit at the Issuer's letterhead office, the office located at _____ or any other full service office of the Issuer on or before the above-stated expiration date, as such expiration date may be extended hereunder. Partial and multiple draws and presentations are permitted on any number of occasions. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary.

This Letter of Credit is issued pursuant to the provisions of that certain Power Purchase Agreement between Beneficiary and Applicant dated as of _____, 20__ (as the same may have been or may be amended from time to time, the "PPA"). Notwithstanding any reference in this Letter of Credit to the PPA or any other documents, instruments or agreements, or references in the PPA or any other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit will be automatically extended each year without amendment for a period of one (1) year from the expiration date hereof, as extended, unless at least thirty (30) days prior to the expiration date, Issuer notifies Beneficiary by registered mail that it elects not to extend this Letter of Credit for such additional period. Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary's address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer's letterhead address.

This Letter of Credit is freely transferable by Beneficiary in whole or in part, and the number of transfers is unlimited. Issuer shall effect any transfers immediately upon presentation to Issuer of this Letter of Credit and a completed written transfer request substantially in the form attached hereto as Exhibit "B." Such transfer will be effected at no cost to Beneficiary. Any transfer fees assessed by Issuer will be payable solely by Applicant, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer of this Letter of Credit.

Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims which Beneficiary may have against Applicant or Applicant may have against Beneficiary.

This Letter of Credit is subject to the uniform customs and practice for documentary credits (2007 Revision), International Chamber of Commerce publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control that interrupts Issuer's business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

ISSUER:

By: _____
Authorized Signature

EXHIBIT "A"
TO LETTER OF CREDIT

SIGHT DRAFT

Draft Number _____
\$ _____

At sight, pay to the order of [Name of Beneficiary to be inserted], the amount of
USD \$ _____ (_____ and 00/100ths U.S. Dollars).

Value received and charged to the account of: [Name of Issuer and address].
Drawn under [Name of Issuer to be inserted] Standby Letter of Credit No.
_____.

Dated: _____

Public Service Company of Colorado

By: _____
[name and title]

Account: [Applicant to be inserted]

EXHIBIT "B"
TO LETTER OF CREDIT

FORM OF TRANSFER REQUEST

Irrevocable Standby Letter of Credit No. _____

Current Beneficiary:

Applicant:

To: [Name of Issuer] ("Issuer")

The undersigned, as the current "Beneficiary" of the above-referenced Letter of Credit, hereby requests that you reissue the Letter of Credit in favor of the transferee named below [insert transferee name and address below]:

From and after the date this transfer request is delivered to Issuer, the transferee shall be the "Beneficiary" under the Letter of Credit for all purposes and shall be entitled to exercise and enjoy all of the rights, privileges and benefits thereof.

Dated: _____

Public Service Company of Colorado

By: _____

Name: _____

Title: _____

[Notary Acknowledgement]

To be signed by a person purporting to be an authorized representative of Beneficiary and indicating his or her title or other official capacity, and acknowledged by a notary public.

EXHIBIT H
(to PPA)
FORM OF GUARANTY

GUARANTY

This Guaranty is executed and delivered as of this ____ day of _____, 20__ by _____, a _____ [corporation] ("Guarantor"), in favor of PSCo ("Company"), in connection with the performance by _____, a _____ [limited liability company] ("Seller") of a Power Purchase Agreement dated _____, 20__ between Seller and Company (the "PPA").

- RECITALS -

A. Seller owns and operates a natural gas powered power electric generation facility having total nameplate capacity of approximately ____ MW located in _____ County, _____ (the "Facility").

B. Seller and Company have entered into the PPA for the purchase and sale of capacity and electrical energy from the Facility on the terms and conditions set forth therein.

C. Seller is controlled by Guarantor. Guarantor expects to derive substantial benefits from the performance of the PPA by Seller and Company. To induce Company to enter into and continue the PPA and to consummate the purchase and sale of electrical energy contemplated by the PPA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

- AGREEMENT -

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Company the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the PPA, whether incurred before or after the date of delivery of this Guaranty (the "Obligations"). This is a guaranty of payment, not of collection, and as such, Company shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty. This Guaranty shall survive termination of the PPA to the extent necessary to enforce and complete the rights, duties and obligations of Company and Seller thereunder.

2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to _____ dollars (US\$_____) plus costs of collection under Section 10 below.

3. Rights of Company. Guarantor hereby grants to Company, in Company's discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor's duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the PPA;

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

4. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the PPA has expired ("Default"), Guarantor shall immediately upon receipt of written demand by Company (a) perform or cause Seller to perform the Obligation in Default, and (b) pay, reimburse, and indemnify Company against any liabilities, damages, and related costs (including attorneys' fees) incurred by Company as a result thereof, all in such manner and at such times as Company may reasonably direct.

5. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless or whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

6. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by Company.

7. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 4 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;

(b) any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;

(c) any defense based upon an election of remedies by Company;

(d) any duty of Company to protect or not impair any security for the Obligations;

(e) the benefit of any laws limiting the liability of a surety;

(f) any duty of Company to disclose to Guarantor any facts concerning Seller, the PPA or the Facility, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Company, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and

(g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, Company.

8. Cumulative Remedies. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.

9. Representations and Warranties. Guarantor represents and warrants to Company as follows:

(a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Seller is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been

duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

10. Collection Costs. Guarantor shall pay to Company, upon demand, and in addition to the maximum liability set forth in Section 3 hereof, all reasonable attorneys' fees and other expenses which Company may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by Company in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Company of its rights and remedies hereunder.

11. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

12. Waiver or Amendment. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company.

13. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of Company and Guarantor.

14. Governing Law. This Guaranty shall be governed by and construed in accordance with the law of the State of *[insert home state of Company]* without regard to the principles of conflicts of law thereof. Venue for any dispute hereunder shall be as set forth in Section 13.5 of the PPA.

15. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the PPA, addressed as follows:

(a) if to Company: as provided in the PPA

(b) if to Guarantor: _____

Attn:

with a copy to: _____

Attn:

EXHIBIT I
(to PPA)
OPERATING STANDARDS

Ramp Rate

(A) **Equipment.** Each Generating Unit shall be capable of providing:

1. A **minimum** regulating range 15 MW per Unit or the highest 40% of the capacity available at the time of dispatch, whichever is greater, in automatic load regulation capacity;
2. Continuous response to EMCC pulsing at a minimum increasing rate of five percent of the capacity available at the time per minute over the regulating range, and a minimum decreasing rate of five percent of the capacity available at the time per minute over the regulating range; and
3. A low load point for the regulating range of the Unit, equal to or less than the Minimum Loading level for operation with AGC.

(B) **Testing.** Company shall have the right to routinely conduct, from the EMCC, verification testing of the Ramp Rate Availability Factor (RRAF) of the Facility, without prior notice to Seller. RRAF verification testing shall be conducted over the minimum regulating range of Unit(s) being tested, beginning at or below the applicable Minimum Loading of such minimum regulating range and ending at the maximum reported available capacity during the hour of the test (the “specified ramp range”), taking into consideration non-standard ambient conditions which exist at the time of the test. The timed portion of the test used to determine the increasing ramp rate shall begin when the output level of the Unit(s) being tested is at the minimum load point of the specified ramp range and shall end when such output is one MW less than the maximum load point of the specified ramp range. The timed portion of the test used to determine the decreasing ramp rate shall begin when the output level of the Unit(s) being tested is at the maximum load point of the specified ramp range and shall end when such output is one (1) MW greater than the minimum load point of the specified ramp range. The calculated “Actual Ramp Rate” for determining RRAF shall be the mean average of the increasing and decreasing ramp rates for the specified ramp range.

AGC AND REMOTE STARTING AND STOPPING

(A) **Capability.** The Facility will be equipped with a voice phone line for voice communication between the Facility and Company’s EMCC, and will have remote start and AGC control capability. When the Facility is staffed, notice of dispatch shall be given directly to the Seller’s operator at the Facility via the voice phone line. **if applicable** Company shall have the right to remote start all Generating Units at the Facility simultaneously. Initiation of a remote start will automatically page Seller’s *operator who shall be “on-call” at all times. Such automatic paging feature at the Facility shall be installed at Seller’s expense. During periods when the Facility is not

staffed and Company has started the Facility remotely, the Facility shall have the capability for Company to remotely control voltage. If the Facility fails to start remotely on the first attempt, Company will not be permitted to attempt a restart until the Seller's operator arrives on-site to correct the cause of the failed start.]

(B) Equipment. Company shall design, purchase, own, install and test telemetry equipment, generation load control equipment and associated circuits from the Facility demark to the EMCC, suitable for Automatic Generation Control and remoted starting of the Facility by Company. Generation load control equipment is defined as the equipment and associated hardware necessary to interpret the request for a generation load change and provide a signal to the governor of Seller's equipment. Seller shall in no way constrict or modify the generation load change signal path without review and written authorization by Company. The telemetry and generation load equipment is to provide the following: instantaneous net MW and MVAR levels, control status (available for automatic generation control), load regulation range limits, remote pulsing circuit, and any other parameters deemed necessary by Company. Seller shall purchase, own, install and test at the Facility the necessary generation load control equipment to interface and respond to Company's generation load control equipment, including equipment that reflects the identical MW and MVAR values as those telemetered to the EMCC. The Unit(s) will be equipped with a voice phone line for voice communication between the Facility and Company's EMCC..

(C) Testing. Company shall monitor the ability of the Facility to be automatically dispatched. It is the expectation of the Parties that the Facility will be available for automatic generation dispatch during 100% of the Facility's on-line hours (excluding periods of failure of Company's telemetry, during which the Facility will manually be dispatched by Company). Company shall notify Seller of any material non-compliance.

* * * * *

EXHIBIT J
(to PPA)
CAPACITY TESTING

General Capacity Testing Criteria:

For Company's planning, operating and reporting purposes, the seasonal capacity test is the testing procedure to determine the seasonal net dependable capacity of the Facility that can be expected during summer and winter after supplying power to all of the Facility's auxiliary equipment. The expected net dependable capacity for the Facility during the summer is [REDACTED] MW. The expected net dependable capacity for the Facility during the winter is [REDACTED] MW. The seasonal capacity test will be determined and reported as the lowest sustained, seasonally adjusted net kWh for any one clock hour of the two- or four-clock hour seasonal capacity test period. At Company's sole determination, the adjustments required to determine and perform the seasonal capacity test may include such applicable adjustments for ambient air conditions, condensing water availability and temperature, fuels, steam or water injection rates for emission control, steam heating loads, thermal host energy usage, reservoir levels, elevations and scheduled reservoir releases and water flow conditions. The Facility shall be operated in full compliance with Applicable Law during the seasonal capacity test. If the Facility fails to operate during the seasonal capacity test in accordance with any requirements of the seasonal capacity test, Company will require a retest of the Facility.

A seasonal capacity test shall be performed at least once every two years for each of the summer (April 1 to September 30) and winter (October 1 to March 31) seasons to demonstrate and verify that the seasonal capacity test is representative of what can be generated during Company's summer and winter peak load periods. Seller shall perform the initial seasonal capacity test within three months following the Commercial Operation Date. A capacity test performed by or on behalf of Seller, prior to COD, may constitute the initial seasonal capacity test if such test is performed in accordance with all the requirements for capacity testing set forth in this Exhibit.

Seller shall conduct each seasonal capacity test on a date mutually agreed upon by Company and Seller. Company shall conduct the seasonal capacity test as outlined below and may install seasonal capacity test equipment, obtain necessary seasonal capacity test readings, and specify equipment operation mode to ensure seasonal capacity test conditions are met as outlined in this Exhibit.

During the seasonal capacity test all auxiliary equipment used in normal operation of the Facility shall be in service and shall be in typical operating condition and in a normal state of maintenance. This includes equipment associated with any process or thermal host connected to the Facility. It shall be Seller's obligation to ensure that all auxiliary equipment needed for normal operation of the Facility is in typical operating condition for the scheduled seasonal capacity test. Emergency capability shall be excluded during the seasonal capacity test and all equipment, which

is not intended to be used on a normal daily basis, which could be used to extend capability, shall be excluded during the seasonal capacity test period. Seller shall be required to provide operational records to be used to substantiate the normal mode of operation. NO_x and CO emissions must be kept in compliance for the duration of the seasonal capacity test.

Steady state operation is required for the seasonal capacity test. The Facility shall be considered to be at steady state prior to starting a test if the Facility has operated at full capacity for at least thirty minutes with power output maintained at a near constant level. If the Facility is unable to maintain a near constant power output level during the scheduled seasonal capacity test period, Company may, in its sole discretion, require a subsequent seasonal capacity test at Seller's expense. Unless found to be inaccurate, the Electric Metering Device(s) will be utilized to measure the Facility's net power output during the Test period. During the seasonal capacity test and its preparation, Seller shall give Company personnel access to the Facility's equipment and instrumentation for observation and recording of process operating parameters and conditions.

Prior to each seasonal capacity test, Seller shall submit for Company's review a description of the Facility. Such Facility description shall include as appropriate:

- a. A description of the system.
- b. Cycle diagram(s) indicating the design/contract values for power generation and any connected process including mass flow rates, pressures, temperatures and enthalpies of the various process flow paths and heat rates.
- c. Any modifications to the Facility that could impact the Facility's capacity output since the last seasonal capacity test. Modifications include:
 - 1) Installation of new equipment or systems
 - 2) Alterations to existing equipment or systems
 - 3) Changes to any digital control system (DCS) control parameters including firing curves, temperature and pressure limits and steam/water injection schemes.
 - 4) Known damage or limitations of equipment or systems
- d. All relevant generation and process correction data, curves, thermal kits and application methodology.
- e. Cooling tower and/or Air Cooled Condenser performance and correction curves.
- f. Description of how the useful thermal output is applied.
- g. All requested historical operating data, in electronic format. Historic data may be used to identify, analyze and review effects of any changes in the Facility's equipment, DCS control parameters, Facility performance degradation, etc.

- h. The technical support information included in the Facility's state emission permit(s).
- i. Reservoir storage, elevations and water flow data.
- j. All electronic models used by Seller

For the initial seasonal capacity test, this information shall be submitted to Company no later than ninety (90) Days prior to the Commercial Operation Date. For the initial seasonal capacity test, the Facility's generation and process correction values will be calculated based on design or test information, in lieu of historic operational data, where applicable.

For subsequent seasonal capacity tests, this information shall be submitted to Company no later than thirty (30) Days prior to such seasonal capacity test. Seller shall provide to Company historic seasonal operational data from Facility's operation, where applicable. Such data shall include thermal energy supplied to and utilized by industrial or commercial processing loads, and heating and/or cooling processing loads. Prior to the seasonal capacity test, Company shall provide Seller with a comprehensive list of the historic seasonal operational data required.

The seasonal capacity test period will be not less than four continuous hours for the summer season and not less than two continuous hours for the winter season.

Immediately following each seasonal capacity test run and immediately after the seasonal capacity test is completed, Seller shall provide to Company all raw test data. Electronic and paper copies of the raw test data shall be provided to Company at the conclusion of each test run. Within sixty (60) Days following performance of each seasonal capacity test, Seller shall provide to Company for review and approval (i) calculations, fuel analyses and a final test report, in written and electronic format, (ii) all as-built equipment specifications, correction curves, equations and other information necessary for review of the seasonal capacity test results that have not been previously submitted to Company, and (iii) a fully functioning electronic model, in Gates-cycle or a similar program, that Company can use to verify Seller's calculations of, and adjustments to, test data. The final test report shall include clear and complete explanations of the calculations resulting in the test seasonal capacity and the adjustment of the test seasonal capacity to each of the Reference Conditions. Uncertainty, as defined in the ASME power test codes, shall not be used to adjust seasonal capacity test results.

If Seller believes that the tested capacity is not fairly representative of the seasonal net dependable capacity of the Facility, Seller may, in its sole discretion, require a re-test on a date determined by Company.

If Company believes that the tested capacity is not fairly representative of the seasonal net dependable capacity of the Facility, Company may, in its sole discretion, require Seller, at Seller's sole expense, to conduct a re-test on a date determined by Company, *provided* that Company shall pay all fuel commodity costs and any

associated fuel imbalance, transportation and other ancillary costs incurred by Company in connection therewith if the original seasonal capacity test complied with this Exhibit.

Combustion Turbine, Internal Combustion and Combined Cycle Unit Tests:

For the summer season, as-tested net capacity at the Facility shall be adjusted to ambient temperature and relative humidity conditions of 95°F and 20%, respectively. For the winter season, as-tested net capacity at the Facility shall be adjusted to ambient temperature and relative humidity conditions of 30°F and 60%, respectively. In both cases, the as-tested net capacity will be adjusted to the barometric pressure corresponding with the Facility's elevation above sea level.

The ambient air temperature measurement for the seasonal capacity test will represent surrounding ambient air temperature and not ambient air temperature which is heated or cooled by nearby equipment. For the purpose of the seasonal capacity test, having all compressor intake air conditioning equipment (i.e., evaporative coolers, humidifiers, heaters, etc.) out of service, shall be considered as the normal mode of operations. Air conditioning equipment may be used during the seasonal capacity test only to the extent that Seller can prove, with historical records, that said equipment is normally in service. The performance of intake air conditioning equipment shall be adjusted to historic or design ambient air conditions. Combustion turbine exhaust temperatures shall not exceed the design operating point established by the turbine manufacturer and specific to the combustion turbine being tested. The seasonal capacity test will be conducted using only an approved DCS control scheme governing operating parameters (i.e., turbine firing curve, etc.) as reflected in actual operating data from the prior twelve months.

Steam or water injection rates for emission control shall not exceed the levels specified in the technical support information in the application for the Facility emission permit(s).

For Combined Cycle Generating Units, the as-tested net capacity is affected by the turbine exhaust pressure and shall be seasonally adjusted to values representative of cooling water conditions at Company's corresponding seasonal maximum system load period. This adjustment may be based on historic cooling water temperature measurements, test data and/or design information.

Steam conditions will correspond to the operating standards established by the turbine manufacturer for the Facility. Duct burners, where applicable, will be operated at normal maximum firing levels during the seasonal capacity test. The normal maximum firing level will be determined based on historical and/or design information.

* * * * *

EXHIBIT K
(to PPA)
HEAT RATE TESTING

The Actual Net Heat Rate of the Facility shall be determined by heat rate testing by Seller at the full production capacity of the Facility, using Acceptable Natural Gas Fuel, at an ambient temperature of not less than 70° F, with (as applicable) cooling of intake air and full supplemental fuel firing. The Parties may mutually agree to remove the requirement that the ambient temperature be not less than 70° F

For the purposes of heat rate testing and determination of the Actual Net Heat Rate, (i) fuel input shall be measured at the Fuel Delivery Point and (ii) electric output shall be measured at the Point of Delivery. Testing shall be conducted over a continuous period until operation of the Generating Units is held constant for one hour. The Facility will be operated in full compliance with all Permits and Applicable Law throughout the test, with operation of all auxiliary equipment (including thermal export and in-line heaters) used during normal operation of the Facility. Seller may be required to provide operational records to be used to substantiate the normal mode of operation. Testing shall be performed in accordance with the current ASME test codes applicable to the Generating Units, or in accordance with other mutually-agreed test codes/procedures.

Each Party shall have the right to request and schedule a heat rate test on a Business Day, not more often than once every two years (or more frequently if mutually agreed to by the Parties) during any calendar year and upon Notice to the other Party at least thirty (30) Days prior to the Day of such test, pursuant to the procedures set forth in this Exhibit. Seller shall perform the heat rate test under Company observation and concurrence. Observation may be done remotely making use of digital data as recorded in the facility's control system or other equipment. Company shall have the right of access to all areas of the Facility necessary to observe and verify testing activities. Company shall have the right to install, during the heat rate test and at Company's expense, any temporary, redundant test equipment complying with governing test codes, including any digital data either in static or live streaming form, that Company deems necessary for the purpose of verifying test measurements obtained by, or on behalf of, Seller.

Seller's heat rate test procedure shall include (i) specification of the governing test codes, (ii) the extent to which the test codes will be followed, (iii) provisions for testing, including collection of test data, (iv) any deviations from the test code, and (v) the methodology for calculating test results, including the planned method of adjusting the tested net heat rate to each of the Reference Conditions, and (v) the configuration and operation of the plant equipment (i.e. specific firing curve, turbine governor valve position, use of duct burners, foggers, chillers, etc.). Seller shall be responsible for the full scope of heat rate testing, including, furnishing the test instrumentation, instrument calibration, set-up, data gathering, fuel analysis, data analysis and the issuance of a final report.

Prior to each heat rate test, Seller shall submit for Company's review a description of the Facility. Such Facility description shall include as appropriate:

- a. A description of the system.
- b. Cycle diagram(s) indicating the design/contract values for power generation and any connected process including mass flow rates, pressures, temperatures and enthalpies of the various process flow paths and heat rates.
- c. Any modifications to the Facility that could impact the Facility's capacity output or heat rate since the last heat rate test. Modifications include:
 - 1) Installation of new equipment or systems
 - 2) Alterations to existing equipment or systems
 - 3) Changes to any digital control system (DCS) control parameters including firing curves, temperature and pressure limits and steam/water injection schemes.
 - 4) Known damage or limitations of equipment or systems
- d. All relevant generation and process correction data, curves, thermal kits and application methodology.
- e. Cooling tower and/or air-cooled condenser performance and correction curves.
- f. Description of how the useful thermal output is applied.
- g. All requested historical operating data, in electronic format. Historic data may be used to identify, analyze and review effects of any changes in the Facility's equipment, DCS control parameters, Facility performance degradation, etc.
- h. The technical support information included in the Facility's state emission permit(s).
- i. Reservoir storage, elevations and water flow data.
- j. All electronic models used by Seller.

For the initial heat rate test, this information shall be submitted to Company no later than ninety (90) Days prior to the Commercial Operation Date. For the initial heat rate test, the Facility's generation and process correction values will be calculated based on design or test information, in lieu of historic operational data, where applicable.

For subsequent heat rate tests, this information shall be submitted to Company no later than [] () Days prior to such heat rate test. Seller shall provide to Company historic seasonal operational data from Facility's operation, where applicable. Such data shall include thermal energy supplied to and utilized by industrial or commercial processing loads, and heating and/or cooling processing loads. Prior to the

heat rate test, Company shall provide Seller with a comprehensive list of the historic seasonal operational data required.

Immediately following each heat rate test run and immediately after the heat rate test is completed, Seller shall provide to Company all raw test data. Within sixty (60) Days following performance of each heat rate test, Seller shall provide to Company for review and approval (i) calculations, fuel analyses and a final test report, in written and electronic format, (ii) all as-built equipment specifications, correction curves, equations and other information necessary for review of the heat rate test results that have not been previously submitted to Company, and (iii) a fully functioning electronic model, in Gates-cycle or a similar program, that Company can use to verify Seller's calculations of, and adjustments to, test data. The final test report shall include clear and complete explanations of the calculations resulting in the test net heat rate and the adjustment of the test net heat rate to each of the Reference Conditions. Uncertainty, as defined in the ASME power test codes, shall not be used to adjust heat rate test results.

In connection with any heat rate test, Company may also require Seller to perform heat rate testing at up to seven Company-specified load points for each possible Facility operating configuration (e.g. with and without supplemental fuel firing, and each simple cycle and combined cycle Unit operating mode) for the sole purpose of developing an accurate dispatch heat rate curve for each possible Facility operating configuration. Seller shall prepare and submit to Company for review and approval, at least thirty (30) Days prior to each heat rate test, the proposed part load heat rate test procedure. Such test procedure shall include (i) specification of the governing test codes, (ii) the extent to which the test codes will be followed, (iii) provisions for testing, including collection of test data, (iv) any deviations from the test code, and (v) the methodology for calculating test results, including the planned method of adjusting the tested net heat rate to each of the Reference Conditions, and (v) the configuration and operation of the plant equipment (i.e. specific firing curve, turbine governor valve position, use of duct burners, foggers, chillers, etc.). Seller shall be responsible for the full scope of heat rate testing, including, furnishing the test instrumentation, instrument calibration, set-up, data gathering, fuel analysis, data analysis and the issuance of a final report.

Seller shall notify Company of any generation equipment tuning and adjustment that may impact the heat rate performance of the Facility or the accuracy of the correction curves utilized to adjust the results of the most recent heat rate test. Upon such notification, Company may require Seller to perform additional heat rate testing of the Facility and provide new correction curves, that reflect the actual post-tuning condition of the Facility equipment.

The results of such testing shall be adjusted to applicable Company standards for ambient temperature, relative humidity, and barometric pressure using the final design correction curves reflecting expected Facility equipment performance, after all equipment tuning and adjustments have been completed, to determine the Actual Net Heat Rate.

The ambient air temperature measurement for the Test will represent surrounding ambient air temperature and not ambient air temperature which is heated or cooled by nearby equipment. For the purpose of the Test, having all compressor intake air conditioning equipment (i.e., evaporative coolers, humidifiers, heaters, etc.) out of service, shall be considered as the normal mode of operations. Air conditioning equipment may be used during the Test only to the extent that Seller can prove, with historical records, that said equipment is normally in service. The performance of intake air conditioning equipment shall be adjusted to historic ambient air conditions. Combustion turbine exhaust temperatures shall not exceed the design operating point established by the turbine manufacturer and specific to the combustion turbine being tested. The Test will be conducted using only an approved DCS control scheme governing operating parameters (i.e., turbine firing curve, etc.) as specified in the turbine manufacturer's requirements and consistent with Good Utility Practices. Steam or water injection rates for emission control shall not exceed the levels specified in the technical support information in the application for the Facility emission permit(s).

For Combined Cycle Generating Units, the as-tested net capacity is affected by the turbine exhaust pressure and shall be seasonally adjusted to values representative of cooling water conditions at Company's corresponding seasonal maximum system load period. This adjustment may be based on historic cooling water temperature measurements, test data and/or design information.

Steam conditions will correspond to the operating standards established by the turbine manufacturer for the Facility. Duct burners, where applicable, will be operated at normal maximum firing levels during the Test. The normal maximum firing level will be determined based on historical and/or design information.

Seller shall perform the initial heat rate test within three months following the Commercial Operation Date. If the initial heat rate test is performed after COD, the Actual Net Heat Rate resulting from such test shall apply retroactively from the Commercial Operation Date for the purposes of determining the Heat Rate Adjustment pursuant to Section 8.4. The heat rate test performed by or on behalf of Seller, prior to COD, may constitute the initial heat rate test if such test is performed in accordance with all the requirements for heat rate testing set forth in this Exhibit (except that in such case, Company shall waive the requirement that the heat rate test be performed at an ambient temperature of not less than 70° F).

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EXHIBIT L
(to PPA)
MAINTENANCE

A. Schedules. At least three months prior to COD, Seller shall provide to Company a schedule of the expected Scheduled Outages/Deratings for the Facility ("Maintenance Schedule") for the balance of the calendar year in which COD is projected to occur. Thereafter, on or before February 1 of each successive year, Seller shall submit to Company (i) an annual Maintenance Schedule for such calendar year (including the date, start time and expected duration of the outage), and (ii) a projected long-term Maintenance Schedule encompassing the following four calendar years. All Maintenance Schedules, including any changes, shall be subject to Company's Commercially Reasonable approval and are also subject to the approval of the ERO and subject to the ERO's then current operating criteria.

B. Advance Changes. Either Seller or Company may change an annual Maintenance Schedule from time to time, upon prior notice to the other Party, as follows based on the original total duration:

<u>Scheduled Duration of Outage</u>	<u>Minimum Required Advance Notice if Changed by Seller</u>
• Fewer than 2 Days	at least 48 hours
• 2 to 5 Days	at least 7 Days
• Major overhauls (over 5 Days)	at least 90 Days

Maintenance changes requested by Company shall be scheduled by the Parties consistent with Good Utility Practices. Seller shall comply with all maintenance changes directed by the ERO.

C. Company Late Changes. Not less than 12 hours prior to commencement of any Scheduled Outage/Derating, Company may request verbally or in writing, that Seller defer or reschedule such Scheduled Outage/Derating. Subject to Good Utility Practice, Seller shall comply with any such request and reschedule such Scheduled Outage/Derating to a subsequent mutually agreed date if Company agrees to pay Seller the actual incremental direct costs incurred by Seller in such deferral or rescheduling. Seller shall provide to Company, in advance, a non-binding good faith estimate of such costs, and Company shall promptly advise Seller whether Company is willing to reimburse Seller to implement such deferral or rescheduling.

D. ERO Late Changes. Prior to commencement of any Scheduled Outage/Derating the ERO may, either verbally or in writing, direct Seller (either itself or through the Company), to defer such Scheduled Outage/Derating. Seller shall comply with any such request and reschedule such Scheduled Outage/Derating to a subsequent date mutually agreed to by Company and Seller. Should ERO's rules, tariffs or procedures entitle Seller to compensation for such deferral or rescheduling,

Company shall provide reasonable cooperation and assistance to Seller to recover such compensation from the ERO.

[Choose one of the following, as appropriate]:

[for simple cycle facilities:]

D. SME. Seller shall be entitled to 360 MWh of Scheduled Maintenance Energy ("SME") per MW of Net Capability during each Commercial Operation Year as a credit towards Seller's CAF under Section 8.1, *provided, however*, that such SME is scheduled in advance with Company pursuant to paragraph (A) above and approved in writing by Company prior to Seller's use of such SME. If Seller uses fewer than 360 MWh of SME per MW of Net Capability in a Commercial Operation Year, Seller may carry over unused SME for use in the next Commercial Operation Year as additional credit towards Seller's CAF during the next Commercial Operation Year, *provided, however*, that the total SME per MW of Net Capability that may be accumulated by Seller for use in any Commercial Operation Year, including carry over SME, shall not exceed 672 MWh per MW of Net Capability. SME may not be advanced from future Commercial Operation Years.

[for combined cycle facilities:]

D. SME. Seller shall be entitled to 456 MWh of Scheduled Maintenance Energy ("SME") per MW of Net Capability during each Commercial Operation Year as a credit towards Seller's CAF under Section 8.1, *provided, however*, that such SME is scheduled in advance with Company pursuant to paragraph (A) above and approved in writing by Company prior to Seller's use of such SME. If Seller uses fewer than 456 MWh of SME per MW of Net Capability in a Commercial Operation Year, Seller may carry over unused SME for use in the next Commercial Operation Year as additional credit towards Seller's CAF during the next Commercial Operation Year, *provided, however*, that the total SME per MW of Net Capability that may be accumulated by Seller for use in any Commercial Operation Year, including carry over SME, shall not exceed 720 MWh per MW of Net Capability. SME may not be advanced from future Commercial Operation Years.

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EXHIBIT N
(to PPA)

ESC EVENT ADJUSTMENTS

a. ESC Bonuses. If during some or all of an ESC Event the entire Facility is fully mechanically available (or is deemed fully available pursuant to Section 8.1) [on natural gas and/or fuel oil,] Seller shall be entitled to an ESC Bonus with respect to such ESC Event in an amount equal to

NC x DE x ABF, where:

NC = the available Net Capability of the Facility, expressed in kW;

DE = the number of hours during the ESC Event, during which the Facility is or is deemed fully available (excluding the number of hours, if any, during the ESC Event when the Facility was subject to an SME Outage); and

ABF = the applicable Availability Bonus Factor (ABF):

<u>PSCo</u>	
Yellow:	\$0.005
Orange:	\$0.015
Red:	\$0.050

The Facility shall not be de-rated for adverse ambient conditions, for purposes of calculations under this Exhibit.

b. ESC Penalties. If some or all of the Facility is unavailable mechanically (other than due to Scheduled Outages/Deratings eligible for SME under Exhibit L - Maintenance -- "SME Outages") during some or all of an ESC Event, Seller shall be subject to an ESC Penalty with respect to such ESC Event equal to

ANC x DO x ARF, where:

ANC = the Affected Net Capability of the Facility (i.e. the portion of the capacity of the Facility subject to the outage), expressed in kW;

DO = the hours during which the Facility is not fully available due to causes other than SME Outages; and

ARF = the applicable Availability Reduction Factor (ARF):

<u>PSCo</u>	
Yellow:	(\$0.025)
Orange:	(\$0.075)
Red:	(\$0.250)

c. Netting. In the event that Seller is subject to both an ESC Bonus and an ESC Penalty with respect to an ESC Event, the two adjustments shall be netted against

each other, to determine the actual ESC Adjustment to be paid / charged to Seller with respect to such ESC Event.

d. Limits on Seller's Liability. With respect to each Commercial Operation Year:

1. With respect to Yellow ESC Events during such Commercial Operation Year, in no event shall Seller be subject to aggregate negative ESC Adjustments in excess of an amount equal to 200 hours x Yellow ARF x NC;

2. With respect to Orange ESC Events during such Commercial Operation Year, in no event shall Seller be subject to aggregate negative ESC Adjustments in excess of an amount equal to 75 hours x Orange ARF x NC; and

3. With respect to Red ESC Events during such Commercial Operation Year, in no event shall Seller be subject to aggregate negative ESC Adjustments in excess of an amount equal to 40 hours x Red ARF x NC.

[Choose one of the following, as appropriate]:

[for gas-only facilities]

(E) No De-Rating. In determining whether the Facility is "fully available" for purposes of an ESC Event, the Facility will not be de-rated for ambient conditions (notwithstanding Section 8.1 to the contrary).

or

[for dual-fuel facilities]

(E) No De-Rating / Dual Fuel. In determining whether the Facility is "fully available" during an ESC Event:

1. the Facility will not be de-rated for ambient conditions (notwithstanding Section 8.1 to the contrary);

2. if Acceptable Natural Gas Fuel is available on an interruptible basis at the Fuel Delivery Point, the Facility must be available on Acceptable Natural Gas Fuel; and

3. if Acceptable Natural Gas Fuel is not available on an interruptible basis at the Fuel Delivery Point, the Facility must be available on Acceptable Fuel Oil.
if applicable

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EXHIBIT O
(to PPA)

LENDER CONSENT PROVISIONS

In the event Seller collaterally assigns its rights hereunder to a Facility Lender as security, any related Lender Consent will contain provisions substantially as follows:

1. Seller and Company will neither modify nor terminate the PPA in any material respect, without the prior written consent of the Facility Lender.
2. The Facility Lender shall have the right, but no obligation, to do any act required to be performed by Seller under the PPA, and any such act performed by the Facility Lender shall be as effective to prevent or cure a default as if done by Seller itself.
3. If Company becomes entitled to terminate the PPA due to an Event of Default by Seller, Company shall not terminate the PPA unless it has first given notice of such Event of Default to the Facility Lender and has given the Facility Lender the same cure period afforded to Seller under Article 12 of the PPA, plus an additional thirty (30) Days beyond Seller's cure period to cure such Event of Default; *provided, however,* that if the Facility Lender requires possession of the Facility in order to cure the Event of Default, and if the Facility Lender diligently seeks possession, the Facility Lender's additional thirty (30)-Day cure period shall not begin until foreclosure is completed, a receiver is appointed, any bankruptcy stay is removed, or possession is otherwise obtained by or on behalf of the Facility Lender.
4. The Facility Lender shall provide to Company a copy of any notices of default and/or intent to exercise remedies delivered to Seller under the Financing Documents.
5. Upon any foreclosure, deed-in-lieu or other exercise of the rights and remedies of the Facility Lender that results in a successor owner or operator of the Facility, the Facility Lender shall require and cause the successor (i) to assume all of Seller's prospective obligations under the PPA, (ii) to cure any then-existing defaults by Seller that are capable of cure by performance or the payment of money damages, (iii) to have substantial experience in the operation of power generation facilities akin to the Facility, either directly, through its affiliates or through an operator acceptable to Company, and (iv) to enjoy (together with its parents and affiliates) an Investment Grade Credit Rating or other creditworthiness satisfactory to Company. Except for the foregoing, the Facility Lender shall not be obligated to perform or be liable for any obligation of Seller under the PPA.
6. Upon any rejection or other termination of the PPA in connection with any bankruptcy or insolvency of Seller, the Facility Lender (or its successor) and Company shall enter into a new power purchase agreement on the same terms and conditions as the PPA and for the period that would have been remaining under the PPA but for such termination.

* * * * *

EXHIBIT P-1 – RESERVED

EXHIBIT P-2

FACILITY PURCHASE AND SALE AGREEMENT (“PSA”) PROVISIONS

Any PSA executed to implement exercise of Company’s Option or ROFO rights will include provisions substantially as follows:

Type of Transaction

The transaction will be structured as an asset acquisition. Company (“Buyer”) shall purchase and Seller shall sell 100% of the assets (“Assets”) of a completed, commercially operational, integrated natural gas powered electricity generating plant with nameplate capacity of [XX] MW and all facilities and all other assets and rights relating to the project (the “Project”), free and clear of all encumbrances and liabilities, except for permitted encumbrances and assumed liabilities as defined in the PSA.

Purchase Price and Payment Terms

Buyer shall pay Seller the “Purchase Price,” which is determined pursuant to Section 19.5(C) of this PPA.

Buyer shall be entitled to withhold from the payment of the Purchase Price up to [XXXX] in the event of certain breaches of Seller’s representations, warranties or covenants pending Seller’s cure of any such breach, with Buyer’s aggregate holdback amount not to exceed 20% of the Purchase Price.

Seller shall be responsible for all taxes relating to the pre-closing period and all transfer taxes and any sales, use or other taxes related to the purchase and sale of the Assets and any purchase or conveyance of real or personal property to be used in the Project.

Seller’s Closing Deliverables:

Upon the terms and conditions to be defined within the PSA, the obligations of Buyer to consummate the transactions contemplated are subject to the satisfaction by Seller of certain closing conditions, including:

- Transfer of all of the Assets of the Project, which include all rights and title to assets necessary for the commercial operation of the Project, to Buyer or its designated affiliate.
- An opinion of legal counsel that each material discretionary permit required for the Project has been obtained and is valid, binding, in full force and effect and non-appealable.
- Evidence that any liens on the Project, real property or any other assets or interests of the Project have been removed as of the closing other than permitted liens which have been scheduled or liens which have been scheduled and bonded to Buyer’s reasonable satisfaction.
- Certain conditions do not exist at the time of closing including, but not limited to, the existence of a material adverse effect. A material adverse effect would be defined in the PSA and would include, in addition to other terms, a change in tax

law that could have a negative impact on Buyer's business or the economic viability of the Project.

- All certifications, affidavits, approvals and permits required to demonstrate satisfaction of all representations, warranties, and covenants made by Seller pertaining to the closing.

Buyer's Closing Deliverables:

Upon the terms and conditions to be defined within the PSA, the obligations of Seller to consummate the transactions contemplated are subject to the satisfaction by Buyer of certain closing conditions, including:

- Delivery of the Purchase Price.
- All certifications, affidavits, approvals and permits required to demonstrate satisfaction of all representations, warranties, and covenants made by Buyer pertaining to the closing.

Required Approvals

The transaction is subject to obtaining specified approvals, authorizations, or orders, including but not limited to the following (to the extent necessary):

- Approval of the board of directors of Buyer and the board of directors or similar governing body of Seller shall be obtained prior to execution of the PSA.
- Third party consents.
- Applicable governmental and regulatory approvals prior to closing, including to the extent necessary, any applicable state agencies or commissions regulating utility activities and any government agencies having approval, consent or authority over the transactions contemplated by the PSA, including but not limited to the Minnesota Public Utilities Commission, the IRS, the FERC, the Department of Justice, the US Fish and Wildlife Service and the FAA.

Representations and Warranties

The transaction is subject to customary representations and warranties to be made by Buyer and Seller as of the execution date or the effective date of the PSA and the closing thereunder, including the following:

- Corporate existence and powers – Seller is a limited liability company validly existing and in good standing and has the power and authority to conduct its business as now conducted.
- Authority (execution and delivery)
- No conflicts - the transaction does not create any conflicts.
- Consents and approvals – no consent, approval or authorization is required in connection with the execution and performance of the PSA.
- Legal proceedings of Buyer– there are no legal proceedings pending, or to Buyer's knowledge, threatened in writing, against Buyer, that affect the consummation of the transaction contemplated by the PSA.

- Legal proceedings of Seller and the Project – there are no legal proceedings pending, or to Seller’s knowledge, threatened in writing, against the Seller or the Project or affecting Seller’s ability to sell the Project.
- Sufficient funds – Buyer has available, or will maintain sufficient sources of, funds to complete the transaction.
- Compliance with Laws – Seller is in compliance with all laws applicable to the Seller, Project and the transactions contemplated by the PSA.
- Environmental – Seller and its affiliates have no environmental liabilities and are in compliance with environmental requirements. Seller and its affiliates have not received any notice of an alleged violation of environmental law pertaining to the Project from any governmental entity. There are no facts, circumstances, conditions or occurrences relating to the Project that could reasonably be expected to form the basis of a claim, requirement or obligation imposed by any governmental entity under any environmental law on Seller or its affiliates.
- Contracts – Schedule of material contracts binding on the Seller or to which the Project is subject and Seller has furnished to Buyer true, correct and complete copies of all material contracts. Each scheduled contract, including but not limited to the Generator Interconnection Agreement, is in full force and effect and neither Seller nor the Project is in material violation or default under such contracts.
- Land Contracts – The land contracts and real property owned by the Project are in full force and effect, and shall comprise all of the real property interests necessary in connection with the interconnection, operation and maintenance of the Project, all in accordance with all laws, and are sufficient to enable the Project to be commercially operable as contemplated in the PSA, including legal and physical ingress and egress rights to and from public right-of-way for operation, and maintenance of the Project.
- Data – Seller has delivered to buyer true, correct and complete copies of all data related to the Project.
- Permits - All permits required to own, operate and maintain the Project are held by Seller or an affiliate, are final and non-appealable, are scheduled, and Seller has obtained and furnished to Buyer true, correct and complete copies of such permits. Such permits are in full force and effect and are legal, valid, binding and enforceable in accordance with their respective terms.
- Title – Seller or an affiliate is in possession of and has good and marketable title to the Project free and clear of all encumbrances, except for Permitted Encumbrances. Seller and its affiliates have no legal obligation or non-binding agreement in principle with any other person to sell or affect a sale of all, or any portion of, the Project.
- Other representation and warranties customary in a transaction of this nature, including those pertaining to taxes, title, finders, intellectual property, brokers and insurance.

Termination Provisions

The PSA may be terminated prior to the closing upon written notice by the terminating party (as described below) in the event of certain occurrences, including:

- By either party, in the event the closing has not occurred by [TBD], regardless of the reason for such termination, provided that the terminating party is not in breach of the PSA.
- By either party in the event regulatory approvals for the transaction are not obtained on terms reasonably acceptable to Buyer.
- By Buyer in the event any authority has issued an order or taken any other action that restrains, enjoins, or otherwise prohibits the consummation of the transactions contemplated by the PSA, and such order or action is nonappealable.
- By Buyer in the event of material breach of the PSA by Seller.
- Security: Seller shall fund and maintain security in favor of Buyer, or a parent guaranty acceptable to Buyer, to secure Seller's obligations under the PSA including the indemnification provision below.

Indemnification

Each party shall indemnify and hold harmless the other party and its respective employees, representatives, officers, directors and agents from and against any and all damages arising out of the result of any breach or violation of any representation, warranty, covenant, inaccuracy within the PSA, or any liability not assumed as part of the PSA, or any fraud, willful misconduct, or negligence in performance of this PSA. Seller shall indemnify Buyer for any environmental (including hazardous material) claims arising prior to the closing date other than environmental claims resulting from Buyer's negligence. No claim for indemnification shall be brought against the indemnifying party until the total damages for which such party is liable exceeds in the aggregate a threshold amount of [\$XXX], at which point indemnification may be sought for the full aggregate amount of damages, including those amounts that do not exceed the threshold. The aggregate damages to which the indemnified parties are entitled shall not exceed the indemnity cap, which shall be at least 30% of the purchase price. Such threshold and indemnity cap shall not apply to damages to the extent they arise from a breach of covenants required to be performed after the closing or from breach of certain "fundamental" representations (as applicable to each party) such as corporate existence, power, authority, conflicts, title, land contracts, real property, environmental, intellectual property or tax matters and shall not apply to liabilities arising prior to the closing date, which shall be the responsibility of Seller.

EXHIBIT P-3 –MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT ("MIPSA") PROVISIONS

Any PSA executed to implement exercise of Company's Option or ROFO rights will include provisions substantially as follows:

Type of Transaction

The transaction will be structured as an entity acquisition. Company ("Buyer") shall purchase and Seller shall sell 100% of its direct and indirect equity ownership interests of the project company ("Project Company") (including, if applicable, Seller's (or its affiliates) direct and indirect equity ownership interest in any tax equity partnership (the "TE Partnership") that owns, directly or indirectly, equity ownership interests of the Project Company, together, the "Equity Interests"), which owns a completed, commercially operational, integrated natural gas powered electricity generating plant with nameplate capacity of [XX] MW and all facilities and all other assets and rights relating to the project (the "Project"), free and clear of all encumbrances and liabilities, except for permitted encumbrances and assumed liabilities as defined in the PSA.

Purchase Price and Payment Terms

Buyer shall pay Seller the "Purchase Price," which is determined pursuant to Section 19.5(C) of this PPA.

Buyer shall be entitled to withhold from the payment of the Purchase Price up to [\$XXX] in the event of certain breaches of Seller's representations, warranties or covenants pending Seller's cure of any such breach, with Buyer's aggregate holdback amount not to exceed 20% of the Purchase Price.

Seller shall be responsible for all taxes relating to the pre-closing period and all transfer taxes and any sales, use or other taxes related to the purchase and sale of the Equity Interests and any purchase or conveyance of real or personal property to the Project Company to be used in the Project.

Seller's Closing Deliverables:

Upon the terms and conditions to be defined within the PSA, the obligations of Buyer to consummate the transactions contemplated are subject to the satisfaction by Seller of certain closing conditions, including:

Transfer of the Equity Interests, which include all rights and title to assets necessary for the commercial operation of the Project, to Buyer or its designated affiliate.

An opinion of legal counsel that each material discretionary permit required for the Project has been obtained and is valid, binding, in full force and effect and non-appealable.

Evidence that any liens on the Equity Interests, Project Company, Project, real property or any other assets or interests of the Project Company have been removed as of the closing other than permitted liens which have been scheduled or liens which have been scheduled and bonded to Buyer's reasonable satisfaction.

Certain conditions do not exist at the time of closing including, but not limited to, the existence of a material adverse effect. A material adverse effect would be defined in the PSA and would include, in addition to other terms, a change in tax law that could have a negative impact on Buyer's business, the Equity Interests, or the economic viability of the Project.

All certifications, affidavits, approvals and permits required to demonstrate satisfaction of all representations, warranties, and covenants made by Seller pertaining to the closing.

Buyer's Closing Deliverables:

Upon the terms and conditions to be defined within the PSA, the obligations of Seller to consummate the transactions contemplated are subject to the satisfaction by Buyer of certain closing conditions, including:

Delivery of the Purchase Price.

All certifications, affidavits, approvals and permits required to demonstrate satisfaction of all representations, warranties, and covenants made by Buyer pertaining to the closing.

Required Approvals

The transaction is subject to obtaining specified approvals, authorizations, or orders, including but not limited to the following (to the extent necessary):

Approval of the board of directors of Buyer and the board of directors or similar governing body of Seller shall be obtained prior to execution of the PSA.

Third party consents.

Applicable governmental and regulatory approvals prior to closing, including to the extent necessary, any applicable state agencies or commissions regulating utility activities and any government agencies having approval, consent or authority over the transactions contemplated by the PSA, including the Minnesota Public Utilities Commission, the IRS, the FERC, the Department of Justice, the US Fish and Wildlife Service and the FAA.

Representations and Warranties

The transaction is subject to customary representations and warranties to be made by Buyer and Seller as of the execution date or the effective date of the PSA and the closing thereunder, including the following:

Corporate existence and powers – Seller is a [corporation] validly existing and in good standing and has the power and authority to conduct its business as now conducted.

Project Company existence and powers – the Project Company is a limited liability company validly existing and in good standing and has the power and authority to operate and own the Project and has been engaged in no other business since its formation.

(If applicable) The TE Partnership existence and powers – the TE Partnership is a limited liability company validly existing and in good standing and has the power and authority to own and manage the Project Company and the Project and has been engaged in no other business since its formation.

Authority (execution and delivery)

No conflicts - the transaction does not create any conflicts.

Consents and approvals – no consent, approval or authorization is required in connection with the execution and performance of the PSA.

Legal proceedings of Buyer– there are no legal proceedings pending, or to Buyer’s knowledge, threatened in writing, against Buyer, that affect the consummation of the transaction contemplated by the PSA.

Legal proceedings of Seller, TE Partnership (if applicable) and Project Company – there are no legal proceedings pending, or to Seller’s knowledge, threatened in writing, against the Seller relating to the Project or affecting Seller’s ability to sell the Equity Interests and there are no legal proceedings pending, or to Seller’s knowledge, threatened in writing, against the Project Company or the TE Partnership (if applicable).

Sufficient funds – Buyer has available, or will maintain sufficient sources of, funds to complete the transaction.

Compliance with Laws – Seller, the TE Partnership (if applicable) and the Project Company are in compliance with all laws applicable to such entity and the transactions contemplated by the PSA.

Environmental – Seller, the TE Partnership (if applicable), the Project Company and their respective affiliates have no environmental liabilities (solely in the case of Seller relating to the Project) and are in compliance with environmental requirements (solely in the case of Seller relating to the Project). Seller and its affiliates (including the TE Partnership, if applicable, and the Project Company) have not received any notice of an alleged violation of environmental law pertaining to the Project from any governmental entity. There are no facts, circumstances, conditions or occurrences relating to the Project, the TE Partnership, if applicable, or the Project Company that could reasonably be expected to form the basis of a claim, requirement or obligation imposed by any governmental entity under any environmental law on Seller or its affiliates (including the TE Partnership, if applicable, and the Project Company) or Buyer.

Contracts – Schedule of material contracts binding on the (x) Seller relating to the TE Partnership, if applicable, the Project Company or the Project), (y) TE Partnership, if applicable, the Project Company or the Project, or the assets of any of the TE Partnership, if applicable, or the Project Company, has been provided and Seller has

furnished to Buyer true, correct and complete copies of all such contracts. Each scheduled contract, including but not limited to the Generator Interconnection Agreement, is in full force and effect and neither Seller, the TE Partnership, if applicable, nor the Project Company, nor to the knowledge of Seller any other counterparty thereto, is in material violation or default under such contracts.

Land Contracts – The land contracts and real property owned by the Project Company are in full force and effect, and shall comprise all of the real property interests necessary in connection with the interconnection operation and maintenance of the Project, all in accordance with all laws, and are sufficient to enable the Project to be commercially operable as contemplated in the PSA, including legal and physical ingress and egress rights to and from public right-of-way for operation, and maintenance of the Project.

Data – Seller has delivered to buyer true, correct and complete copies of all data related to the Project.

Permits - All permits required to own, operate and maintain the Project are held by the Project Company, are scheduled, and Seller has obtained and furnished to Buyer true, correct and complete copies of such permits. Such permits are non-appealable, in full force and effect and are legal, valid, binding and enforceable in accordance with their respective terms.

Title – The Project Company is in possession of and has good and marketable title to the Project free and clear of all encumbrances, except for Permitted Encumbrances. Seller has good and marketable title to the Project Company's equity interests, free and clear of all encumbrances. Seller and its affiliates have no legal obligation or non-binding agreement in principle with any other person to sell or affect a sale of all, or any portion of, the Project or the Project Company.

Other representation and warranties customary in a transaction of this nature, including those pertaining to taxes, title, finders, intellectual property, brokers and insurance.

Termination Provisions

The PSA may be terminated prior to the closing upon written notice by the terminating party (as described below) in the event of certain occurrences, including:

By either party, in the event the closing has not occurred by [TBD], regardless of the reason for such termination, provided that the terminating party is not in breach of the PSA.

By either party in the event regulatory approvals for the transaction are not obtained on terms reasonably acceptable to Buyer.

By Buyer in the event any authority has issued an order or taken any other action that restrains, enjoins, or otherwise prohibits the consummation of the transactions contemplated by the PSA, and such order or action is nonappealable.

By Buyer in the event of material breach of the PSA by Seller.

Security: Seller shall fund and maintain security in favor of Buyer, or a parent guaranty acceptable to Buyer, to secure Seller's obligations under the PSA including the indemnification provision below.

Indemnification

Each party shall indemnify and hold harmless the other party and its respective employees, representatives, officers, directors and agents from and against any and all damages arising out of the result of any breach or violation of any representation, warranty, covenant, inaccuracy within the PSA, or any liability not assumed as part of the PSA, or any fraud, willful misconduct, or negligence in performance of this PSA. Seller shall indemnify Buyer for any environmental (including hazardous material) claims arising prior to the closing date other than environmental claims resulting from Buyer's negligence. No claim for indemnification shall be brought against the indemnifying party until the total damages for which such party is liable exceeds in the aggregate a threshold amount of [\$XXX], at which point indemnification may be sought for the full aggregate amount of damages, including those amounts that do not exceed the threshold. The aggregate damages to which the indemnified parties are entitled shall not exceed the indemnity cap, which shall be at least 30% of the purchase price. Such threshold and indemnity cap shall not apply to damages to the extent they arise from a breach of covenants required to be performed after the closing or from breach of certain "fundamental" representations (as applicable to each party) such as corporate existence, power, authority, conflicts, title, land contracts, real property, environmental, intellectual property or tax matters and shall not apply to liabilities arising prior to the closing date, which shall be the responsibility of Seller.*

*

EXHIBIT Q
(to PPA)
NATURAL GAS FUEL SPECIFICATIONS

Specifications:

O₂: ≤ ___ % by volume

H₂S: ≤ ___ grains / Ccf

Total Sulphur: ≤ ___ grains / Ccf

CO₂: ≤ ___ % by volume

H₂O: ≤ ___ lbs / MMcf

Heating Value: ≥ ___ Btu / ft³

Temperature: ≤ ___ ° F

Pressure:

Minimum: ___ psi

Maximum: ___ psi

EXHIBIT R
(to PPA)

FUEL OIL

[if applicable]

Fuel Oil Storage Facilities. The Fuel Oil Storage Facilities included in the Facility shall include one or more active storage tanks for Fuel Oil sufficient to operate the Facility at its full capacity exclusively on Fuel Oil for a period of 72 consecutive hours.

Fuel Oil Management Plan. *[insert manufacturer's requirements for periodic testing of the Facility on fuel oil, and for use of fuel oil sufficiently frequently to avoid degradation below Acceptable Fuel Oil standards]*

Specifications for Acceptable Fuel Oil. *[insert manufacturer's requirements for Acceptable Fuel Oil – e.g. ASTM D975-10C Low Sulfur fuel oil; or list specs]*

EXHIBIT S

METER AND COMMUNICATIONS REQUIREMENTS

These meter requirements shall apply to all Electric Metering Devices.

- Electric Metering Devices shall meet requirements set forth in American National Standards Institute (ANSI) C12.1 and 12.20. Current transformers and voltage transformers supplying this meter should meet requirements of IEEE/ANSI C57.13 and ANSI C57.13.6. In addition to meeting these requirements the current transformers should be high accuracy extended range transformers with at least .15% accuracy from 1% to full rating factor. Prior to the purchase of Electric Metering Devices, current transformers, potential transformers and associated communication equipment, Seller must submit relevant information such that Company can review and verify that the equipment meets Company requirements.
- No later than ninety (90) days prior to generating any Test Energy, Seller shall provide to Company in mutually agreeable format all necessary specifications related to the Electric Metering Devices and/or communication therewith including, but not limited to, the make, model, port configuration, connection assignments, and physical locations.
- Company may inspect and verify that the equipment was approved and properly installed. In addition, Company may elect to test the Electric Metering devices for accuracy, current transformers and potential transformers and verify that the communication circuits to Company Xcel are operational.
- Upon prior written notice sufficiently in advance, Company shall have the right to make requests in regard to reasonable modifications to Seller's metering equipment and configurations in order to ensure accurate telemetering and communication.
- Company shall have the right to install any telemetering and communication equipment Company deems reasonably necessary for purposes related to this PPA. Seller shall, upon prior written notice sufficiently in advance, cooperate with any such installation.
- Electric Metering Devices shall be programmed to, at any time of remote electronic communications and access, provide a time and date stamp of downloaded delivery information.
- Electric Metering Devices shall be programmed to, at any time of manual read of the meter's display, provide the time and date of the information gathered. The Seller shall provide the communication channels for the Company's remote

terminal unit and the Company's Itron Enterprise Edition Meter Data Management Agent. The implementation of these communication paths and RTU shall follow Company's latest standard. The Seller must have these communication paths installed, tested, and functional prior to generating Test Energy.

- Company shall have the right, via read-only access, and upon prior reasonable written notice to Seller, to independently audit Seller's meters and any records pertaining to the amount of energy generated by the Facility and any associated losses. Any audit shall be performed at the Facility or if applicable, other location within the same state as the Facility which is mutually agreed upon by both Company and Seller. Records related to such audits, inspections, testing or adjustments shall be maintained and subject to audit by Company for a period of 24 months. Company shall further have the right to request and receive in physical or electronic form any and all records or data files related to such audits, inspections, testing or adjustments.
- Seller shall provide secure and reliable communication from the Electric Metering Devices as follows:
 - DNP output from the meter to Company's EMCC via a remote terminal unit located near the Electric Metering Devices and hardwired from the meter to the remote terminal unit.
 - Time stamped meter register and interval data from the meter to Company's Itron Enterprise Edition Meter Data Management Agent with servers located in Denver, CO. Electric Metering Devices must have an Itron approved Translation Interface Module to facilitate correct data transmission over this communication path.
 - Prior to generating Test Energy, Seller shall provide to Company one-line electrical drawings of the Facility showing the electrical location of the Electric Metering Devices for Company's review and approval.

[BATTERY]¹ STORAGE

ENERGY PURCHASE AGREEMENT

BETWEEN

PUBLIC SERVICE COMPANY OF COLORADO

AND

[REDACTED]



- [date] -

¹ **Note to Seller:** This form has been designed primarily for battery energy storage, but can be adapted to accommodate other storage technologies.

TABLE OF CONTENTS

	PAGE
Article 1 - Rules of Interpretation.....	1
1.1 Interpretation.....	1
1.2 Interpretation with Other Agreements	2
1.3 Good Faith and Fair Dealing.....	2
Article 2 – Term and Termination.....	2
Article 3 – Facility Description	3
3.1 Description.....	3
3.2 General Design of the Facility.....	3
Article 4 - Implementation	3
4.1 Project Development	3
4.2 Environmental Matters	4
4.3 Permits.....	5
4.4 Safety Requirements; Governmental Inspections.....	6
4.5 Commercial Operation.....	6
4.6 Pre-COD Testing	8
Article 5 – Delivery and Testing	9
5.1 Arrangements	9
5.2 Charging Requirements	9
5.3 Market Changes	10
5.4 Communication Protocols.....	10
5.5 Electric Metering Devices	11
5.6 Battery Storage System Testing	12
Article 6 – Conditions Precedent	13
6.1 PUC Approval	13
6.2 Other Company CPs.....	14
6.3 Seller CPs.....	14
Article 7 – Sale and Purchase	14
7.1 General Obligation	14
7.2 AGC	14
7.3 Battery Storage System Dispatch	14
7.4 Reserved	15
7.5 Ancillary Services	15
Article 8 – Payment Calculations.....	15
8.1 Variable O&M Payment	15
8.2 Payment for Contract Capacity	16
8.3 Reserved	16
8.4 Monthly Payment Reduction	16
8.5 Excess Throughput Charge	20

8.6	Annual Throughput Limit Banking and Borrowing.....	20
Article 9 – Billing and Payment.....		20
9.1	Billing.....	20
9.2	Payment.....	21
9.3	Billing Disputes.....	21
Article 10 – Operations and Maintenance.....		21
10.1	Operation and Administration.....	21
10.2	Facility Maintenance.....	22
10.3	Repair Obligations.....	22
10.4	Books and Records.....	23
10.5	Access to Facility.....	24
10.6	Real Time Data.....	24
10.7	Accreditation.....	24
10.8	Operating Committee and Operating Procedures.....	24
Article 11 – Security for Performance.....		25
11.1	Security Fund.....	25
11.2	Replenishment.....	26
11.3	Form.....	26
11.4	Replacement.....	27
11.5	Survival.....	27
11.6	Expenses.....	28
Article 12 – Default and Remedies.....		28
12.1	Default by Seller: General.....	28
12.2	Default by Seller: Failure to Achieve COD.....	31
12.3	Default by Company.....	32
12.4	Limitations on Damages.....	33
12.5	Bankruptcy.....	34
12.6	Cumulative Remedies.....	34
12.7	Duty to Mitigate.....	35
Article 13 – Dispute Resolution.....		35
13.1	Negotiation.....	35
13.2	Time Bar.....	35
13.3	No Termination Pending Dispute Resolution.....	35
13.4	Governing Law.....	36
13.5	Venue.....	36
13.6	Waiver of Jury Trial.....	37
Article 14 – Force Majeure.....		37
14.1	Definition.....	37
14.2	Applicability of Force Majeure.....	37
14.3	Limitations on Effect of Force Majeure.....	38
Article 15 – Representations, Warranties and Covenants.....		38

Article 16 - Insurance	39
16.1 Evidence of Insurance	39
16.2 Policy Requirements	40
16.3 No Implied Limitation	40
16.4 Term and Modification of Insurance.....	40
16.5 Application of Proceeds	40
Article 17 - Indemnity	40
17.1 Indemnification: General	40
17.2 Indemnification: Environmental.....	41
17.4 Limitations.....	41
17.5 Procedures	41
17.6 Amounts Owed	42
Article 18 – Lender Provisions.....	42
18.1 Accommodation of Facility Lender	42
18.2 Notices.....	42
Article 19 - Assignment	43
19.1 Assignment by Seller	43
19.2 Assignment by Company	44
19.3 Right of First Offer (ROFO).....	44
19.4 PFT.....	45
19.5 Memo of Option	46
Article 20 - Miscellaneous	46
20.1 Notices.....	46
20.2 Taxes and Tax Incentives	47
20.3 Applicable Laws.....	48
20.4 Fines and Penalties	48
20.5 Rate Changes.....	48
20.6 Certifications	49
20.7 Disclaimer of Third Party Beneficiaries	49
20.8 Relationship of the Parties	49
20.9 Survival of Obligations	49
20.10 Severability	49
20.11 Complete Agreement; Amendments.....	50
20.12 Waiver.....	50
20.13 Binding Effect.....	50
20.14 Headings.....	50
20.15 Counterparts and Electronic Signatures	50
20.16 Press Release	50
20.17 Exhibits	50
20.18 Confidentiality	50
20.19 Accounting Treatment.....	51

- EXHIBIT A DEFINITIONS**
- EXHIBIT B CONSTRUCTION MILESTONES**
- EXHIBIT C FACILITY DESCRIPTION AND SITE MAPS**
- EXHIBIT D NOTICES**
- EXHIBIT E INSURANCE COVERAGE**
- EXHIBIT F SELLER'S NEEDED PERMITS**
- EXHIBIT G FORM OF LETTER OF CREDIT**
- EXHIBIT H FORM OF GUARANTY**
- EXHIBIT I AGC PROTOCOLS; DISPATCH AND AVAILABILITY NOTICES; DATA COLLECTION; TECHNICAL SPECIFICATIONS**
- EXHIBIT J BATTERY PAYMENT RATE AND CAPACITY PAYMENT RATE**
- EXHIBIT K LENDER CONSENT PROVISIONS**
- EXHIBIT L PSA PROVISIONS**
- EXHIBIT M BATTERY STORAGE SYSTEM TESTING PROTOCOLS**
- EXHIBIT M-1 BATTERY STORAGE SYSTEM GUARANTEED PERFORMANCE LEVELS**
- EXHIBIT N RESERVED**
- EXHIBIT O BATTERY STORAGE SYSTEM OPERATING PROCEDURES**
- EXHIBIT P SAFETY REQUIREMENTS**
- EXHIBIT Q EXAMPLE ADJUSTMENT CALCULATIONS**

**BATTERY STORAGE
ENERGY PURCHASE AGREEMENT
BETWEEN
PUBLIC SERVICE COMPANY OF COLORADO
AND
[REDACTED], LLC**

This Battery Storage Energy Purchase Agreement (this “PPA”) is made as of this [REDACTED] day of [REDACTED], 20 [REDACTED] (“Effective Date”), by and between (i) Public Service Company of Colorado, a Colorado corporation with a principal place of business at 1800 Larimer Street, Denver, CO 80202 (“Company”), and (ii) [REDACTED], LLC, a [REDACTED] [limited liability company] with a principal place of business at [REDACTED] (“Seller”). Company and Seller are hereinafter referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS Seller desires to develop, design, construct, interconnect, own, operate and maintain the Facility as defined herein; and

WHEREAS Seller desires to sell and deliver, and Company desires to accept and receive, certain products and services provided, stored and/or delivered from the Facility to the Point of Delivery at the prices and on the terms and conditions set forth in this PPA.

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

Article 1 - Rules of Interpretation

1.1 Interpretation.

(A) Capitalized terms listed in this PPA shall have the meanings set forth in Exhibit A - Definitions or as otherwise defined in this PPA, whether in the singular or the plural or in the present or past tense. Words not otherwise defined in this PPA shall (i) have meanings as commonly used in the English language, (ii) be given their generally accepted meaning consistent with Good Utility Practice, and (iii) be given their well known and generally accepted technical or trade meanings.

(B) The following rules of interpretation shall apply: (1) The masculine shall include the feminine and neuter; (2) references to “Articles,” “Sections” or “Exhibits” shall be to articles, sections, or exhibits of this PPA except as the context may otherwise require; (3) all Exhibits are incorporated into this PPA (*provided, however*, that in the event of a conflict with the terms of this PPA, the PPA shall control); and (4) use of the

words “include” or “including” or similar words shall be interpreted as “include without limitation” or “including, without limitation.”

(C) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. None of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

1.2 Interpretation with Other Agreements.

(A) This PPA does not provide authorization for Seller to interconnect the Facility or inject power into the Transmission Authority’s System. Seller shall contract for interconnection services in accordance with the applicable Transmission Tariff. Seller acknowledges that the Interconnection Agreement is/will be a separate contract and that (i) this PPA is not binding on the Transmission Authority, (ii) this PPA does not create any rights between Seller and the Transmission Authority, and (iii) the Interconnection Agreement does not modify the Parties’ rights and obligations under this PPA. The applicable Transmission Authority shall be deemed to be a separate and unaffiliated contracting party for purposes of this PPA, regardless whether such Transmission Authority is Company or an Affiliate of Company.

(B) This PPA does not provide for the supply of retail power for purposes of operating the Facility, including start-up, shut-down, lighting, HVAC or any other purpose (“House Power”). For the avoidance of doubt, House Power expressly excludes any Charging Energy. Seller shall contract with the utility providing House Power to the Site (the “Local Provider”) for the supply of House Power. Seller acknowledges that (i) Seller must obtain House Power independently, (ii) this PPA is not binding on the Local Provider, (iii) this PPA does not create any rights between Seller and the Local Provider, and (iv) Seller’s contract for House Power does not affect the Parties’ rights and obligations under this PPA. For purposes of this PPA, the Local Provider shall be deemed to be a separate and unaffiliated contracting party regardless whether the Local Provider is Company or an Affiliate of Company.

1.3 Good Faith and Fair Dealing. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (a) when this PPA specifically references the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) wherever this PPA specifically gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be Commercially Reasonable.

Article 2 - Term and Termination

This PPA shall become effective as of the date of its execution, and shall remain in full force and effect until 11:59 pm on the last Day of the calendar month during which occurs the []th anniversary of the Commercial Operation Date (the “Scheduled Termination Date”), subject to early termination as provided in this PPA. Applicable provisions of this PPA shall continue in effect after termination to the extent necessary to (i) provide for final billings, payments and adjustments, (ii) enforce or complete the duties,

obligations or responsibilities of the Parties (including under Section 12.1(B)-(D), Section 12.2(C), Section 12.3(B)-(C), Article 13 and Article 17 below), and (iii) address any remedies or indemnifications arising prior to termination.

Article 3 - Facility Description

3.1 Description. Seller shall construct, interconnect, own, operate, and maintain the Facility, as further described in Exhibit C – Facility Description and Site Maps. A scaled map that identifies the Site, the location of the Facility, the Battery Units, the Interconnection Point and Interconnection Facilities, the Point of Delivery, and other important facilities, is included in Exhibit C – Facility Description and Site Maps.

3.2 General Design of the Facility.

(A) Seller shall design, construct, operate and maintain the Facility according to Good Utility Practices and the Interconnection Agreement.

(B) The Facility shall include all equipment specified in Exhibit C - Facility Description and Site Maps and otherwise necessary to fulfill Seller's obligations under this PPA, including all equipment necessary (i) to meet the requirements of Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications and Exhibit O – Battery Storage System Operating Procedures, and (ii) to interconnect successfully with the Transmission Authority's System for the delivery of Energy to the Point of Delivery.

(C) The Battery Storage System Nameplate Capacity shall be [] MW AC and [] MWh. Seller shall certify to Company the final actual Battery Storage System Nameplate Capacity promptly following COD.

Article 4 - Implementation

4.1 Project Development.

(A) Seller shall enter into and perform at its expense all contracts required for (i) the engineering, procurement, construction, acquisition, manufacture, delivery, installation and operation of the Facility, and (ii) the storage and delivery of Energy from the Facility to the Point of Delivery (generally, the "Construction Contracts") with qualified and experienced contractors. Upon written request by Company, Seller shall provide copies of any or all Construction Contracts to Company. All Construction Contracts obtained by Company shall be deemed Confidential Information subject to Section 20.18 below.

(B) In its efforts to achieve COD, Seller shall use Commercially Reasonable Efforts to achieve the milestones set forth in Exhibit B – Construction Milestones, and shall notify Company promptly following achievement of each such milestone.

(C) Prior to the Commercial Operation Date, Seller shall (i) submit monthly progress reports to Company in a form agreed by the Parties, advising Company of the current status of each Construction Milestone, any significant developments or delays (along with an action plan for making up delays), and Seller's best estimate of the

Commercial Operation Date; (ii) provide copies of reports submitted to the Facility Lender relating to status, progress and development of the Facility, and (iii) invite Company to participate in monthly meetings to discuss the progress reports, answer questions, and assess the schedule. Seller shall make all relevant counterparties under the Construction Contracts available to Company, upon request, in order to keep Company fully informed on the status of development. Each report delivered to Company under this paragraph (C) shall be deemed Confidential Information subject to Section 20.18.

(D) Upon request, Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Site to verify compliance with this PPA, *provided, however*, that Company shall comply with all of Seller's applicable safety and health rules and requirements.

(E) Neither Company's review of Construction Contracts and Seller's reports, nor its discussions with Seller and its contractors, nor its monitoring of development and construction of the Facility, shall be construed as an endorsement by Company of the design, engineering, construction or testing thereof nor as any express or implied warranty as to the performance, safety, durability, or reliability of the Facility.

4.2 Environmental Matters.

(A) No later than sixty (60) Days following PUC Approval, Seller shall complete and provide to Company a comprehensive independent "Phase I" environmental site assessment of the Site that is conducted in compliance with ASTM E1527-13 or E2257-16, as applicable (including associated raw data, if requested by Company), which report shall have been prepared as of a reasonably proximate-time such that it reflects the then-current conditions of the site. Seller shall notify Company promptly (i) if (and to what extent) any Environmental Contamination on the Site will preclude or interfere with Seller's ability to perform its obligations under this PPA, and (ii) Seller's plan for remediation thereof that would allow Seller to perform this PPA as and when due. The Phase I report delivered to Company under this paragraph shall be deemed Confidential Information for purposes of Section 20.18.

(B) Throughout the Term, Seller promptly shall

1. disclose to Company and remediate, at Seller's sole cost and expense, any Environmental Contamination identified at the Site;
2. provide to Company copies of any further environmental assessments or investigations of the Site (including associated raw data, if requested by Company); and
3. disclose to Company the existence of any enforcement, legal, or regulatory action or proceeding relating to any alleged presence of Environmental Contamination and/or the alleged violation of any Applicable Law related to protection of human health, the environment, or natural resources, including protected species.

(C) For purposes hereof:

1. "Environmental Contamination" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or

character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Site will not be available or usable for the purposes contemplated by this PPA, and/or (iii) will preclude or interfere with Seller's ability to perform its obligations under this PPA as and when due.

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

4.3 Permits.

(A) Seller shall obtain and pay for all Permits necessary under Applicable Law or advisable pursuant to Good Utility Practice for the construction, ownership, operation and maintenance of the Facility and the charging and delivery of the products and services required by this PPA. Seller shall keep Company informed as to the status of its permitting efforts and shall provide Company the opportunity to review and comment on major applications for draft and final Permits. Seller shall promptly inform Company of (i) any Permits which Seller is unable to obtain, that are delayed, limited, suspended, terminated or otherwise constrained, along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA, and (ii) Seller's plan to overcome such issue(s) to allow Seller to perform this PPA as and when due. Company shall have the right to inspect and obtain copies of all Permits held by Seller.

(B) Seller represents and warrants to Company that, except for those Permits identified in Exhibit F - Seller's Needed Permits (each of which Seller anticipates will be obtained by Seller in the ordinary course of business not later than the applicable date set forth in Exhibit F – Seller's Needed Permits), all Permits and other actions required or recommended by applicable Governmental Authorities to authorize Seller's

execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(C) Throughout the Term, Seller promptly shall disclose to Company the existence of any enforcement, legal, or regulatory action or proceeding relating to the alleged violation of any Permit held by Seller, which proceeding (if successful) could materially interfere with Seller's performance of this PPA.

(D) For purposes hereof, "Permits" means all applicable construction, land use, air quality, emissions control, environmental, protected species, and other permits, licenses and approvals from any Governmental Authority for construction, ownership, operation and maintenance of the Facility and the charging and delivery of Energy therefrom.

4.4 Safety Requirements; Governmental Inspections. Seller shall, and shall cause its Affiliates and contractors to, design and construct the Facility and conduct all work or cause all work in connection therewith to be conducted in accordance with the Safety Requirements. Seller shall, and shall cause its Affiliates and contractors to, take all actions to comply with the Safety Requirements. Seller shall notify Company (i) sufficiently in advance of any known upcoming significant inspections by any Governmental Authority relating to the Facility, to allow Company the opportunity to attend, and (ii) promptly after any unscheduled or impromptu inspection with a description of the nature and outcome of such inspection.

4.5 Commercial Operation.

(A) Seller shall cause COD to occur no later than [REDACTED], 20[REDACTED] (the "Target COD"). Company shall not be obligated to accept and establish a Commercial Operation Date earlier than [REDACTED], 20[REDACTED] (***insert date that is [45] days prior to Target COD***).

(B) Seller shall notify Company of the date on which Seller believes the Facility has achieved Commercial Operation (a "COD Notice"). A COD Notice shall include all necessary supporting documentation of the satisfaction or occurrence of all COD Conditions. Company shall have ten (10) Business Days to review a COD Notice and raise any Commercially Reasonable objection to Seller's satisfaction of any of the COD Conditions, *provided, however*, that Seller's COD Notice shall be deemed accepted by Company as of the date of delivery if Company fails to object within such time period. Seller may notify Company of completion of one or more COD Conditions on an individual

and incremental basis prior to COD, *provided, however*, that Company shall in all cases have up to ten (10) Business Days to review and object to each such notice.

(C) For purposes hereof:

1. the “Commercial Operation Date” or “COD” means 12:01 am on the Day after which Seller’s COD Notice has been accepted by Company or deemed accepted by Company pursuant to Section 4.5(B); and

2. the “COD Conditions” are:

(a) an officer of Seller, authorized to bind Seller and who is familiar with the Facility, has confirmed in writing that (1) all necessary and material Permits have been obtained, are in full force and effect, and the entity granting the Permit has not placed any temporary or conditional restrictions or limitations on the Facility or its operation (2) Seller is in compliance with this PPA in all material respects, and (3) the Facility is available to commence normal operations in accordance with Seller’s operating agreements, Construction Contracts, and applicable manufacturers’ warranties;

(b) Seller has made all necessary arrangements to obtain and pay the Local Provider for House Power;

(c) Seller and the Transmission Authority have executed the Interconnection Agreement, and Seller has received no notice of breach thereof from the Transmission Authority,

(d) the Facility is interconnected to the Transmission Authority’s System, and has been fully tested, achieved initial synchronization, and been successfully operated at charging and dispatch levels acceptable to the Transmission Authority, without experiencing any abnormal or unsafe operating conditions on any interconnected system,

(e) Seller has made all arrangements necessary to deliver Energy from the Facility to the Point of Delivery during the Term;

(f) Seller has obtained and provided to Company an independent registered professional engineer’s certification stating that the Facility has been completed in all material respects, except for “punch list” items that do not have a Material Adverse Effect on the ability of the Facility to operate for its intended purpose and are not required for the safe operation of the Facility or otherwise affect the capacity, efficiency, reliability, operability, safety or mechanical or electrical integrity of the Facility;

(g) Seller has provided to Company either the certifications required by 4 CCR 723-3668 or successor rule requiring Seller to provide certain certifications to Company prior to achieving commercial operation or suitable evidence that the Facility is exempt from such rule;

(h) Seller has demonstrated the functionality and reliability of the Facility’s communications systems and AGC interface with Company’s EMCC, the capability of the

Facility to receive and respond to signals from Company's SCADA System, the accuracy of Electric Metering Devices and their ability to communicate with the Company;

(i) Seller has successfully completed a Commercial Operation Test in accordance with Section 5.6(A) and Exhibit M – Battery Storage System Testing Protocols.

(j) Battery Units comprising one hundred percent (100%) of the Battery Storage System Nameplate Capacity planned for the Facility, and associated equipment sufficient to allow such Battery Units to store Charging Energy and deliver Discharging Energy to the Point of Delivery, have been installed and become operable.

(k) Seller has executed and delivered to Company all documents or instruments required under Article 16.

(D) Prior to COD, should Seller require Company's assistance in meeting the COD Conditions because the Transmission Authority considers Company to be the market participant for the Facility, Company shall use Commercially Reasonable Efforts to cooperate with and provide assistance to Seller, so long as Seller provides any security the Transmission Authority requires and reimburses Company for all expenses, including fees of counsel, Company may incur in providing such cooperation and assistance.

(E) For purposes hereof, the first "Commercial Operation Year" shall mean the period starting at 12:01 a.m. on the Commercial Operation Date and ending at 11:59 pm on the last Day of the calendar month in which the first anniversary of COD occurs, and each successive "Commercial Operation Year" shall mean the 12-month period following the prior Commercial Operation Year. The Annual Throughput Limit [**bid-specific -- may be n/a**] for the first Commercial Operation Year shall be prorated to reflect the number of Days by which the first Commercial Operation Year exceeds three hundred sixty-five (365) Days.

4.6 Pre-COD Testing.

(A) Seller shall provide Company and Transmission Authority with the information necessary to have the Facility registered with the Transmission Authority for inclusion in any generation and energy storage modeling maintained by the Transmission Authority, sufficiently in advance to allow the Facility to be registered in such model at least six months prior to dispatching any Pre-COD Test Energy. Company shall cooperate reasonably to assist in the registration of the Facility to allow dispatch of Test Energy.

(B) Seller shall coordinate the receipt and delivery of Test Energy with Company, with not less than seven (7) Business Days' prior notice, or such other Commercially Reasonable prior notice as Company may reasonably request. Company shall provide all Test Energy required to charge the Battery Storage System, and Discharging Energy from the Facility derived from such Test Energy shall be treated as dispatched by the Company hereunder. Company shall reasonably cooperate with Seller to provide such Test Energy at a time that will mitigate the costs of such Energy (including, if requested by Seller, by providing Seller with projections of the Charging Energy Price

for periods during which such price is determined by Company in its sole discretion pursuant to its cost calculator), and Seller shall reimburse Company for the cost of the Test Energy (based on the Charging Energy Price at the time of charging) to the extent that it exceeds the Discharging Energy discharged by the Battery Storage System derived from such Test Energy (based on the Discharging Energy Price at the time of discharging).

(C) For purposes hereof, "Test Energy" means all Charging Energy stored by the Facility prior to COD, required to satisfy the COD Conditions.

Article 5 - Delivery and Testing

5.1 Arrangements.

(A) Seller shall be responsible for arranging, maintaining and paying the costs associated with the interconnection of the Facility to the Transmission Authority's System. Seller shall comply with the Transmission Authority's requirements for interconnection and shall comply with all requirements set forth in the applicable Transmission Tariff.

The Interconnection Agreement for the Facility shall provide for both Energy Resource Interconnection Service and Network Resource Interconnection Service under the Transmission Tariff. The resulting Interconnection Agreement must include Energy Resource Interconnection Service at a minimum. Seller shall cooperate reasonably in any request by Company to assist in Company's efforts to have the Facility approved as a Network Resource and Network Load or equivalent classification pursuant to the applicable Transmission Tariff and Company's efforts to obtain Firm Network Interconnection Transmission Service under the Transmission Tariff.

(B) Seller hereby authorizes Company to contact, discuss and obtain information concerning the Facility and the Interconnection Facilities directly with/from the Transmission Authority. Promptly upon request by Company, Seller shall confirm such authorization in writing to the Transmission Authority and any applicable transmission owners in such form as may be requested by Company or the Transmission Authority.

(C) To the extent required, Company shall arrange and be responsible for scheduling and transmission services beyond the Point of Delivery with respect to the output of the Facility. To the extent applicable, Company shall be the market participant with respect to the output of the Facility, as defined by the Transmission Authority.

(D) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver Discharging Energy. Company shall be responsible for all electrical losses, transmission and ancillary service arrangements and costs required to transmit and deliver Discharging Energy beyond the Point of Delivery.

5.2 Charging Requirements

(A) Company shall be responsible for arranging, managing, purchasing, and scheduling all of the Charging Energy for the Battery Storage System in accordance with the terms of Section 7.3 and Exhibit O – Battery Storage System Operating

Procedures. Company shall deliver Charging Energy to the Point of Delivery, and Seller shall be responsible for accepting and transferring Charging Energy from the Point of Delivery to the Battery Storage System. Seller shall be responsible for delivering all Discharging Energy up to the Point of Delivery. Company shall be responsible for accepting and transferring all Discharging Energy at and from the Point of Delivery.

(B) Seller shall take any and all action necessary to allow the delivery of Charging Energy to the Battery Storage System in accordance with the terms of this PPA, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Point of Delivery to the Battery Storage System and receive any such Charging Energy at the Point of Delivery.

(C) Company shall be responsible for the costs associated with supplying and delivering any Charging Energy to the Point of Delivery; *provided*, that Seller shall be responsible for certain costs arising out of a Seller Initiated Test as set forth in Section 5.6.

(D) [The Battery Storage System may not be, and Company shall not issue any instruction, order, Dispatch Notice or other communication requesting or requiring the Battery Storage System to be, charged, discharged or operated in any manner which results in an amount of Energy discharged by the Battery Storage System in any given Commercial Operation Year which exceeds the Annual Throughput Limit, except to the extent provided in accordance with Section 8.5.] ***bid-specific -- may be n/a***

5.3 Market Changes.

(A) If at any time during the Term, the Transmission Authority changes or the facilities at the Point of Delivery cease to be subject to the Transmission Tariff, the Parties shall cooperate in good faith to facilitate the delivery of Energy from the Point of Delivery to Company's load, at the least possible cost to the Parties, consistent with this PPA to the extent possible.

(B) If at any time during the Term, the Transmission Authority, the ERO or any other Governmental Authority with jurisdiction imposes an organized market or Company elects to join a regional transmission organization or participate in an organized market that changes the manner in which the Facility is scheduled and dispatched, the Parties shall cooperate in good faith to change their protocols for operation of the Facility accordingly, at the least possible cost to the Parties, consistent with this PPA to the extent possible.

5.4 Communication Protocols. The Parties shall agree to the communication protocols outlined in Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications to facilitate the exchange of information between the

Parties. Each Party may update its contact information set forth in Exhibit D – Notices from time to time by notifying the other Party in writing.

5.5 Electric Metering Devices.

(A) All Electric Metering Devices used to measure Energy shall be owned, installed, and maintained in accordance with the Interconnection Agreement, at no cost to Company.

1. Seller shall configure Electric Metering Devices via electronic remote communications and via physical access in a manner that enables separate, bi-directional (as applicable) meter readings for all Energy transmitted at the Point of Delivery as set forth in Exhibit C - Facility Description and Site Maps.

2. Seller shall separately configure Electric Metering Devices, installed in accordance with and conforming to the Local Provider's electrical service and tariff requirements, as necessary, to separately account for all House Power.

3. Seller shall arrange any necessary authorization to provide Company access to all Electric Metering Devices for purposes related to this PPA, and shall provide Company the opportunity to be present at any time when such Electric Metering Devices are to be inspected, tested or adjusted.

(B) Either Party may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering"), *provided, however,* that the specifications, installation and testing of any such Back-Up Metering shall be consistent with the requirements for the Electric Metering Devices. Upon written request from the other Party, the installing Party shall test the Back-Up Metering. The actual cost of any such test shall be borne by the Party requesting the test, unless, upon such test, Back-Up Metering is inaccurate by more than one percent, in which case the cost of the retest shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(C) If an Electric Metering Device or Back-Up Metering fails to register, or if the measurement is inaccurate by more than one percent, an adjustment shall be made correcting all measurements as follows:

1. If the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-Up Metering, if installed, to determine the amount of such inaccuracy, *provided, however,* that Back-Up Metering has been tested and maintained and adjusted for losses on the same basis as the Electric Metering Device. If Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one percent, the Parties shall use the best available information for the period of inaccuracy, adjusted for losses to the Point of Delivery in accordance with applicable manufacturers' parameters or as otherwise agreed by the Parties.

2. If the Parties cannot agree on the actual period during which inaccurate measurements were made, the period shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) one hundred eighty

(180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

3. To the extent that an adjustment period covers a period of deliveries for which payment has already been made by Company, Company shall use the corrected measurements as determined in accordance with this Article 5 to re-compute the amount due for the period of the inaccuracy and shall subtract or add the previous payments made by Company for this period from such re-computed amount. The net difference shall be reflected as an adjustment on the next regular invoice in accordance with Article 9.

5.6 Battery Storage System Testing.

(A) Prior to the Commercial Operation Date, Seller shall schedule and successfully complete a "Commercial Operation Test" in accordance with Exhibit M – Battery Storage System Testing Protocols.

(B) On an annual basis during the Delivery Period, upon seven (7) days prior notice to Company, Seller shall schedule and complete a "Periodic Test" in accordance with Exhibit M – Battery Storage System Testing Protocols. In addition, either Party shall have the right to require a retest at any time if such Party reasonably believes that the actual Performance Criteria has varied materially from the results of the most recent Tests. Such retest shall be scheduled as soon as is reasonably practicable for the Parties consistent with Good Utility Practice. Any such retest shall be deemed a Seller Initiated Test, as defined in Section 5.6(D), except to the extent that such discretionary testing is conducted during a day in which Company has dispatched the Facility, in which case such Test shall be deemed to be a Company Dispatched Test, as defined in Section 5.6(D).

(C) If Seller fails any Periodic Test, then Seller shall be required to commence repairs in accordance with Section 10.3.

(D) Seller may also conduct other discretionary tests, at times and for durations reasonably agreed to by Company, that Seller deems necessary for purposes of reliably operating the Facility or for re-performing a required Test. If such discretionary testing is conducted during a day in which Company has dispatched the Facility being tested ("Company Dispatched Test"), Seller shall not be obligated to pay for the electricity required to charge the Battery Storage System relating to such Company Dispatched Test of the Battery Storage System, and Discharging Energy from the Facility shall be treated as dispatched by Company hereunder. If discretionary testing is conducted during a day in which Company has not dispatched the Facility being tested ("Seller Initiated Test"), then Company shall provide all electricity required to charge the Battery Storage System; provided that Company shall reasonably cooperate with Seller in its efforts to perform the Seller Initiated Test at a time that will mitigate the costs of such Energy (including, if requested by Seller, by providing Seller with projections of the Charging Energy Price for periods during which such price is determined by Company in its sole discretion pursuant to its cost calculator), and Seller shall reimburse Company for the cost of such Charging Energy used to charge the Battery Storage System to the extent that it exceeds the Discharging Energy discharged by the Battery Storage System during such Seller

Initiated Test (based on the Charging Energy Price at the time of charging and the Discharging Energy Price at the time of discharging). Company shall reasonably cooperate with Seller to schedule testing during periods when Company is dispatching the Facility so that such testing will be deemed to be a Company Dispatched Test; provided that Company is not required to use or change its utilization of its owned or controlled assets or market positions to facilitate the characterization of such testing as a Company Dispatched Test.

Article 6 - Conditions Precedent

6.1 PUC Approval.

(A) No later than forty-five (45) Days after the date of this PPA, Company may apply to the PUC for PUC Approval. If Company fails to apply for PUC Approval within forty-five (45) Days following the Effective Date, Company shall be deemed to have waived its right to obtain PUC Approval and to terminate this PPA under this Section 6.1, and this PPA shall remain in full force and effect thereafter.

(B) If Company applies for PUC Approval, Company shall use Commercially Reasonable Efforts to obtain PUC Approval as soon as reasonably practicable, and Seller shall cooperate with such efforts.

(C) If Company applies for PUC Approval, Company shall have the right to terminate this PPA, without any further financial or other obligation to Seller as a result of such termination, by notice to Seller

1. at any time within thirty (30) Days following issuance of a written order by the PUC rejecting PUC Approval, or granting PUC Approval with conditions unacceptable to Company in its sole discretion;
2. at any time between the two hundred fiftieth (250th) and two hundred eightieth (280th) Day following Company's application for PUC Approval, if prior to the date of such termination the PUC has not issued a written order granting or rejecting PUC Approval;
3. at any time within thirty (30) Days following timely request for reconsideration (in whole or in any material part) by any third party with standing, of a written PUC order granting PUC Approval; and/or
4. at any time within 30 Days following timely appeal by any party with standing, of a written PUC order granting PUC Approval.

If Company is eligible but fails to terminate this PPA by the applicable date, Company shall be deemed to have waived its right to terminate this PPA under this Section 6.1(C), and this PPA shall remain in full force and effect thereafter.

(D) For purposes of this PPA, "PUC Approval" means a written order of the PUC making an affirmative determination that all costs incurred under this PPA are recoverable from Company's retail customers pursuant to Applicable Law, subject only to the requirement that the PUC retains ongoing prudence review of Company's performance and administration of this PPA, as determined by Company in its sole

discretion.

6.2 Other Company CPs. *[if any]*.

6.3 Seller CPs. *[if any - bid specific]*.

6.4 Following a termination pursuant to Section 6.1 *[or Section 6.3]*, the Company will return to Seller the initial Security Fund within five (5) Business Days of such termination.

Article 7 - Sale and Purchase

7.1 General Obligation.

(A) Beginning on the Commercial Operation Date, Seller shall receive at the Point of Delivery, store in the Battery Storage System, and deliver to the Point of Delivery, and Company shall receive at the Point of Delivery, the Energy and other products and services required by this PPA. Seller shall not curtail or interrupt deliveries of Energy to Company for economic reasons of any type.

(B) Title and risk of loss of the products and services transacted by this PPA shall transfer from Seller to Company at the Point of Delivery.

7.2 Dispatch. Beginning on the Commercial Operation Date, Company shall dispatch the Facility through the EMCC AGC system in accordance with Exhibit I – AGC Protocols; Dispatch And Availability Notices; Data Collection; Technical Specifications. Seller shall ensure that, throughout the Term, the SCADA signal is capable of functioning on all AGC Set Points within the margin of error specified in the manufacturer's energy set point margin of error.

7.3 Battery Storage System Dispatch.

(A) During each Operating Day, Company's EMCC will have the exclusive right to dispatch the Battery Storage System, seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices to Seller electronically in accordance with the Battery Storage System Operating Procedures and subject to the requirements and limitations set forth in this PPA. Seller shall abide with all directives from Company's EMCC, subject only to Good Utility Practices.

(B) For each Operating Day, Seller shall provide to Company (in accordance with the protocols outlined in Exhibit O – Battery Storage System Operating Procedures and as may be updated by written agreement of the Operating Committee pursuant to Section 10.8) an hourly schedule of the expected availability of the Battery Storage System for such Operating Day, no later than two (2) Business Days before such Operating Day (the "Availability Notice"). Seller must update Company immediately, unless an event or circumstance makes it unsafe to do so, then as soon as practicable, in accordance with the protocols outlined in Exhibit O – Battery Storage System Operating Procedures if the availability of the Battery Storage System for dispatch by Company changes or is likely to change after the Availability Notice is submitted. Seller shall accommodate Company's reasonable requests for changes in the time or form of delivery of the Availability Notices.

7.4 Reserved.

7.5 Ancillary Services.

(A) During the Term, Seller shall make available to Company and Company shall own, all Ancillary Services associated with the Facility, including but not limited to the sole right to sell the Ancillary Services associated with the Facility and to retain all revenues therefrom. Seller shall use Commercially Reasonable Efforts to maximize the Ancillary Services available from the Facility.

(B) Any compensation Seller receives under the Interconnection Agreement or otherwise from third parties for Ancillary Services shall be provided to Company at no additional cost to Company under this PPA. To implement the foregoing, Seller shall credit Company, as a reduction to Seller's monthly invoice or other mutually-agreed mechanism, for any compensation that Seller receives from third parties for Ancillary Services; *provided*, that if a Governmental Authority or Transmission Authority implements new or revised requirements for generators and/or energy storage resources to create, modify, or supply Ancillary Services, requiring Seller to install additional equipment after the Effective Date to meet such requirements, then Seller, after consultation with Company, shall, if requested to do so by Company, install any such additional equipment and shall be allowed to reduce the amount to be credited to Company for Ancillary Services by an amount sufficient to recover the cost of such additional equipment (up to the amount of any cap agreed to by the Parties for such work). Any cost not so recovered by Seller in any billing period shall be carried forward as a reduction of the amount of the credit in subsequent billing periods.

(C) For purposes hereof, "Ancillary Services" means any service associated, directly or indirectly, with the reliable generation, storage and/or transmission of Energy from the Facility from time to time, including but not limited to: operating reserves, ramp capability, reactive supply, reactive supply capability, voltage control, voltage control capability, and any rights to compensation for any of these services. "Ancillary Services" also includes any other identified as an "ancillary service" or "other ancillary service" in the Transmission Tariff. For the avoidance of doubt, "Ancillary Service" includes any service associated, directly or indirectly, with the reliable generation and/or transmission of energy from the Facility, regardless of whether the Facility, the Transmission Authority or the Company is deemed to be the service provider for the service.

Article 8 - Payment Calculations

8.1 Variable O&M Payment.

(A) [Reserved].

(B) Commencing on the Commercial Operation Date, Company shall pay Seller a variable monthly charge (such payment in any given month, the "Variable O&M Payment") based upon the following formula:

Variable O&M Payment = BPR x E_{MWh} , where:

BPR = Battery Payment Rate, as set forth in Exhibit J – Battery Payment Rate and Capacity Payment Rate

E_{MWh} = all Discharging Energy delivered by the Facility to the Point of Delivery, expressed in MWh, in any given month

(C) The Battery Payment Rate shall be deemed Confidential Information for purposes of Section 20.18 below.

(D) Compensation to Seller may also be subject to a reduction to the Variable O&M Payment in accordance with Section 8.4.

8.2 Payment for Contract Capacity.

(A) Subject to reduction as set forth in Section 8.4(B) and Section 8.4(C), Company shall pay Seller a monthly payment for capacity (the "Monthly Capacity Payment") based upon the following formula:

Monthly Capacity Payment = $(SC \times CP) - RTE_{Adj} - AA - DA$, where:

SC = Storage Capacity, as determined by the most recently completed Test

CP = Capacity Payment Rate, as set forth in Exhibit J – Battery Payment Rate and Capacity Payment Rate

RTE_{Adj} = Round Trip Efficiency Adjustment to Monthly Capacity Payment, as set forth in Section 8.4(B).

AA = Availability Adjustment to Monthly Capacity Payment, as set forth in Section 8.4(C).

DA = Dispatchability Adjustment to Monthly Capacity Payment, as set forth in Section 8.4(D).

(B) The Capacity Payment Rate shall be deemed Confidential Information for purposes of Section 20.18 below.

(C) For clarity, compensation to Seller may also be subject to a reduction to the Monthly Capacity Payment in accordance with Section 8.4(B), Section 8.4(C) and Section 8.4(D).

8.3 Reserved.

8.4 Monthly Payment Reduction.

(A) For each month of the Delivery Period, the Monthly Capacity Payment may be reduced by (i) the Round Trip Efficiency Adjustment based on Section 8.4(B), the

Guaranteed Storage Availability Payment Adjustment based on Section 8.4(C) and the Dispatchability Adjustment based on Section 8.4(D).

(B) If the Round Trip Efficiency as determined by the most recently completed Test is less than the then-applicable Guaranteed Round Trip Efficiency, then the Monthly Capacity Payment shall be reduced by the Round Trip Efficiency Adjustment, which shall be calculated as follows:

1. The "Round Trip Efficiency Adjustment" or "RTE_{Adj}" for each month is given by:

If $[RTE_{test} < RTE_G]$, then $RTE_{Adj} =$

$$[1 - (RTE_{test} / RTE_G)] \times [(Discharging MWh_{Actual} * Discharging LMP) - (Charging MWh_{Actual} * Charging LMP)]$$

where:

RTE_{test} = the Round Trip Efficiency as determined by the most recently completed Test.

RTE_G = the then-applicable Guaranteed Round Trip Efficiency, as identified in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels

$Discharging MWh_{Actual}$ = the Discharging Energy delivered to Company at the Point of Delivery for the affected month expressed in MWh.

$Discharging LMP$ = the average of the Discharging Energy Price for each $Discharging MWh_{Actual}$ for the affected month expressed in Dollars per MWh; *provided*, that the Discharging LMP may not, in any event, be less than \$[0] for any given month.

$Charging MWh_{Actual}$ = the Charging Energy delivered to Seller at the Point of Delivery for the affected month expressed in MWh.

$Charging LMP$ = the average of the Charging Energy Price for each $Charging MWh_{Actual}$ for the affected month expressed in Dollars per MWh.

Provided, that in no event shall the Round Trip Efficiency Adjustment be less than \$0.

Exhibit Q – Example Adjustment Calculations sets forth the sample calculations for the Round Trip Efficiency Adjustment.

(C) For each month of the Delivery Period, Seller shall either (i) achieve an Equivalent Availability Factor of not less than 97% (“Guaranteed Storage Availability”) or (ii) pay, or incur a reduction in the Monthly Capacity Payments for such month equal to, the Guaranteed Storage Availability Payment Adjustment, as calculated below. Any Guaranteed Storage Availability Payment Adjustment, if applicable, shall be reflected in the Monthly Capacity Payment for such month; *provided*, that if the Monthly Capacity Payment is less than the Guaranteed Storage Availability Payment Adjustment for such month, the difference shall be due and payable no later than thirty (30) Business Days after receipt by Seller of Company’s billing statement for such month, pursuant to Section 9.1(B).

“Availability Factor” means, during any given Outage, the factor obtained by dividing the maximum power output that could be provided during such Outage for [] () hours (assuming that the Battery Storage System was charged up to its maximum available Storage Capacity during such Outage) as reported by the SCADA System in accordance with Exhibit O – Battery Storage System Operating Procedures, by the Guaranteed Maximum Discharging Rate.

“Equivalent Availability Factor” of the Battery Storage System shall be calculated as follows: (Hours – Total Equivalent Forced Outage Hours – Total Equivalent Planned Outage Hours) / (Hours – Total Equivalent Planned Outage Hours).

“Equivalent Outage Hours” (Planned or Forced) means, for any Outage, the product of (x) the number of hours during such Outage multiplied by (y) one minus the Availability Factor during such Outage.

“Guaranteed Storage Availability Payment Adjustment” means, for each month during the Delivery Period, an amount equal to the following:

Guaranteed Storage Availability Payment Adjustment = Capacity Payment Rate x Storage Capacity x (the Guaranteed Storage Availability (as a percentage) minus the Equivalent Availability Factor (as a percentage));

provided, that in any given month, the Guaranteed Storage Availability Payment Adjustment shall not exceed the Guaranteed Storage Availability Payment Adjustment Cap. For avoidance of doubt the Storage Capacity in the above calculation is the capacity determined by the most recently completed Test.

“Guaranteed Storage Availability Payment Adjustment Cap” = Storage Capacity x Capacity Payment Rate for the applicable month.

“Hours” means, for each month during the Delivery Period, the total

number of hours in such month.

“Total Equivalent Forced Outage Hours” means the sum of the number of Equivalent Outage Hours during Battery Storage System Forced Outages during the applicable month.

“Total Equivalent Planned Outage Hours” means the sum of the number of Equivalent Outage Hours during Battery Storage System Planned Outages during the applicable month.

Exhibit Q – Example Adjustment Calculations sets forth the sample calculations for the Guaranteed Storage Availability Payment Adjustment.

(D) If in any given month during the Delivery Period the Facility does not operate in compliance with one or more Dispatch Notices, then the Monthly Capacity Payment shall be reduced for such month by an amount equal to the Dispatchability Adjustment, as determined according to the following formula:

“Dispatchability Adjustment_m” = SC x CP x DAF_m, where:

SC = Storage Capacity, as determined by the most recently completed Test

CP = Capacity Payment Rate, as set forth in Exhibit J – Battery Payment Rate and Capacity Payment Rate

m = a given month

DAF_m (Dispatch Availability Factor) = Shortfall Hours_m / On-Control Hours_m, where:

Shortfall Hours_m = the total number of hours that the Facility was unable to operate in compliance with a Dispatch Notice. The Facility will be deemed to be unable to operate in compliance with a Dispatch Notice for any hour for which the following calculation is greater than 0.02:

Sum of the absolute value of the 5- minute deviations in the Facility Output/sum of the absolute value of the 5- minute Dispatch Notices for the Facility Output.

Where:

Dispatch Notice: Dispatch Notice in MW during the each 5- minute interval in the respective dispatch hour.

Facility Output: Average output in MW of the Facility during each 5-minute interval in the respective dispatch hour as measured by the BESS Meter.

On-Control Hours_m = the total number of hours during for which the Company has dispatched the Facility.

Exhibit Q – Example Adjustment Calculations sets forth the sample calculations for the Dispatchability Adjustment.

8.5 [Excess Throughput Charge.

(A) Company shall pay Seller a payment equal to [] for each MWh of Energy discharged by the Battery Storage System above the Annual Throughput Limit in any given Commercial Operation Year[, up to but not exceeding the sum of the Annual Throughput Limit plus the Excess Throughput Limit in any given Commercial Operation Year]. For purposes of determining the amount of Energy discharged by the Battery Storage System in any given Commercial Operation Year, any Energy discharged by the Battery Storage System during a Seller Initiated Test or a Periodic Test shall be excluded.] **bid-specific -- may be n/a**

8.6 [Annual Throughput Limit Banking and Borrowing.

(A) If, in any Commercial Operation Year, Company has not used all of the Annual Throughput Limit for such Commercial Operation Year, then [] MWh of the unused Annual Throughput Limit for such Commercial Operation Year shall be added to the Annual Throughput Limit for the subsequent Commercial Operation Year.

(B) If, in any Commercial Operation Year, Company has used all of the Annual Throughput Limit for such Commercial Operation Year, then, for such Commercial Operation year, Company may add up to [] MWh of the Annual Throughput Limit allocated to the subsequent Commercial Operation Year, which use shall reduce the Annual Throughput Limit for the subsequent Commercial Operation Year.] **bid-specific -- may be n/a**

Article 9 - Billing and Payment

9.1 Billing.

(A) The billing period under this PPA shall be the calendar month.

(B) As soon as practicable and in any event within twenty (20) Days after the end of each month, Company shall provide to Seller a statement containing Company's calculation of the amount due to Seller for such month, including the applicable billing parameters based upon Company's reading of the Electric Metering Devices consistent with Section 5.5.

(C) Within fifteen (15) Business Days following receipt of Company's billing statement, Seller shall submit an invoice to Company in a form and by a method to be determined by the Parties, showing the amount due Seller for the relevant month, specifying the products and services provided, billing meter register reads for relevant measurement quantities, total usage in kWh being billed, date and time at which

accumulated and billed production was read by the Electric Metering Devices, all billing parameters, rates and factors, and any other data relevant to the calculation of payments due to Seller. Such invoice shall include an explanation of any items in dispute, as well as all supporting documentation upon which Seller relies.

9.2 Payment. All payments shall be remitted via check or electronic funds transfer, as designated by the owed Party, on or before the fifteenth (15th) Business Day following receipt of the invoice described in Section 9.1(C). Remittances received by mail will be considered to have been paid when due if the postmark indicates the payment was mailed on or before the fifteenth (15th) Business Day following receipt of the billing invoice.

(A) If a payment is late, a late payment charge shall be applied to the unpaid balance for the number of Days payment was late and shall be added to the next billing statement. Late payment charges shall include interest calculated using the prime rate of interest as published on the date of the invoice in *The Wall Street Journal* (or, if unavailable, an equivalent publication on or about that date).

(B) Company at any time may offset against amounts owed to Seller, any liquidated amounts, accrued damages and other payments, and undisputed billing errors and adjustments, which are owed by Seller to Company.

(C) Seller and Company may net their obligations to each other under this PPA, and payment of the net amount shall discharge all mutual undisputed obligations between the Parties.

9.3 Billing Disputes. Either Party may dispute invoiced amounts pursuant to Section 13.1, but shall pay to the other Party at least the portion of invoiced amounts that is not disputed, on or before the invoice due date. When the billing dispute is resolved, the owing Party shall pay the amount owed within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with Section 9.2(A).

Article 10 - Operations and Maintenance

10.1 Operation and Administration

(A) Seller shall staff, control, and operate the Facility consistent with Good Utility Practices, Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications, Exhibit O – Battery Storage System Operating Procedures, and this PPA. Personnel of Seller shall be available 24x7 via telephone or other electronic means with (i) the capability of remotely starting, operating and stopping the Facility within ten (10) minutes, and (ii) the ability to be present at the Site within 30 minutes, subject to the Safety Requirements.

(B) Seller shall comply with Good Utility Practices, the requirements of all Governmental Authorities and all reasonable requirements of Company in the operation of the Facility. By way of example only, Seller shall perform all capacity testing of the Facility and related reporting, as and when required by Governmental Authorities. Any such testing shall be deemed to be a Seller Initiated Test.

(C) Seller shall provide to Company a day-ahead availability schedule in accordance with Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications, Exhibit O – Battery Storage System Operating Procedures, and any other reporting requirements required for compliance with NERC reliability standards. Company shall forward Seller's schedule to the applicable local reliability coordinator on Seller's behalf, *provided, however*, that Seller shall remain responsible to ensure the timeliness and accuracy of schedules and any changes to the real-time or schedule availability of the Facility. If and to the extent that the ERO modifies the scheduling or other reporting requirements imposed on Company or the Facility, Seller shall timely provide required data to Company or the ERO, as applicable.

(D) Seller shall, and shall cause its Affiliates and contractors to operate, and maintain the Facility and conduct all work or cause all work in connection therewith to be conducted in accordance with the Safety Requirements. Seller shall, and shall cause its Affiliates and contractors to, take all actions to comply with the Safety Requirements.

10.2 Facility Maintenance.

(A) Seller shall maintain the Facility in accordance with Good Utility Practice. Seller shall coordinate its regular maintenance requirements for the Facility with Company ("Maintenance Schedules"). Maintenance Schedules, including planned outages of the Facility (including any Battery Storage System Planned Outages), shall be provided to Company in writing and sufficiently in advance for Commercially Reasonable review, and shall be subject to Company's Commercially Reasonable approval. Seller shall coordinate with Company and the Transmission Authority on the timing and duration of planned outages. Company has the right to not permit a planned outage if it conflicts with the requirement of the ERO or if the ERO rejects the planned outage request.

(B) Seller shall minimize the amount of scheduled maintenance during the months of January, February, June, July, August, September and December to the maximum extent consistent with Good Utility Practices. Seller shall coordinate with Company and the Transmission Authority on the timing and duration of planned outages of the Facility (including any Battery Storage System Planned Outages).

(C) When Forced Outages occur, Seller shall notify EMCC of the existence, nature, start time, and expected duration of the Forced Outage as soon as practicable, but in no event later than thirty (30) minutes after the Forced Outage occurs. Thereafter, Seller shall immediately inform EMCC of changes in the expected duration of the Forced Outage except to the extent relieved of this obligation by EMCC with respect thereto.

(D) Seller shall develop and provide Company with a copy of its Facility cold weather policy. In the event of a Forced Outage or Facility derate, Seller shall conduct a root cause analysis, take corrective actions as are reasonable under the circumstances to prevent reoccurrences and provide a copy of such analyses and corrective action to Company.

10.3 Repair Obligations.

(A) In the event that:

1. an equipment failure (regardless of when such equipment failure occurs, but excluding any equipment failure for which a Successful Repair has already been demonstrated) with respect to the Battery Storage System results in the Battery Storage System failing the Test set forth in Exhibit M – Battery Storage System Testing Protocols for Grid Charging Capability or being otherwise incapable of charging from the grid, or results in (i) the Minimum Charging Time in excess of 115% of the Guaranteed Minimum Charging Time, (ii) the Maximum Charging Rate less than 85% of the Guaranteed Maximum Charging Rate, (iii) the Minimum Discharging Time in excess of 115% of the Guaranteed Minimum Discharging Time, (iv) the Maximum Discharging Rate less than 85% of the Guaranteed Maximum Discharging Rate, (v) the Response Time in excess of 115% of the Guaranteed Response Time, or (vi) the Storage Capacity less than 85% of the Guaranteed Storage Capacity, respectively; ***bracketed material bid-specific – may be n/a***

2. a Test demonstrates that any of the Performance Criteria do not meet the levels required to pass such Test in accordance with Exhibit M – Battery Storage System Testing Protocols;

then Seller shall repair the Battery Storage System in accordance with Good Utility Practice and the procedure set forth in this Section 10.3. Within fourteen (14) days of any such failure, Seller shall demonstrate such remedy to the reasonable satisfaction of Company (a “Successful Repair”) or present to Company a description of the reason for the failure and a plan and schedule for a Successful Repair (the “Repair Plan”).

(B) If Company reasonably disagrees with Seller’s Repair Plan, Company may, at its expense, hire an Independent Engineer approved by Seller (such approval not to be unreasonably withheld) to perform an on-site assessment of the situation and make recommendations for completing a Successful Repair. Upon two (2) Business Days’ notice by Company, Seller shall grant the Independent Engineer and Company personnel access to the Battery Storage System and all relevant information including log books, maintenance records and reports, and other applicable materials. If, after seven (7) days of the delivery to Seller of such engineering report, Seller fails, in any material respect to meet the recommendations set forth in such report (as such recommendations may be updated from time to time by the Independent Engineer) for the Successful Repair, or make sufficient progress in effecting same consistent with Good Utility Practice, in each case as determined and reported by the Independent Engineer, Seller shall be in breach of this Section 10.3.

10.4 Books and Records.

(A) Seller shall maintain an accurate and up-to-date hourly operating log for the Facility, in electronic format, that identifies real-time operating information for the Battery Storage System, including levels of capacity availability; production for each clock hour; changes in operating status; Forced Outages; information required by Governmental Authorities in the prescribed format; and other information reasonably requested by Company.

(B) Seller and Company shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including metering, billing and payment records, and such records as may be required by Governmental Authorities. Originals or copies of all Operating Records shall be maintained at the Site or such other Colorado location as may be specified by Seller from time to time. Company may examine and make copies of such Operating Records from time to time upon request, during normal business hours.

10.5 Access to Facility. Representatives of Company shall have access to the Facility from time to time, on Commercially Reasonable prior notice, to read meters, perform inspections and take such other actions as may be appropriate to facilitate Company's performance of this PPA. While at the Facility, such representatives shall observe Seller's standard safety precautions and shall conduct themselves in a manner that will not interfere with operation of the Facility.

10.6 Real Time Data.

(A) Seller shall communicate all data necessary for Company to integrate the Facility into Company's EMCC in real time through the Facility's SCADA System in accordance with Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications, and subject to Exhibit O – Battery Storage System Operating Procedures. Seller shall maintain the Facility's SCADA System so that it is capable of interfacing with and reacting to Company's AGC Set-Point and responding to signals from Company's EMCC in accordance with the AGC Protocols, subject to Exhibit O – Battery Storage System Operating Procedures.

(B) From and after the Commercial Operation Date, Seller shall provide Company, at Seller's expense, real time performance data in accordance with Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications for the Term of this PPA. Seller shall maintain Seller-owned data collection systems that are compatible with Company's PI System. Seller shall ensure that real time communications capabilities are available and maintained for transmission to Company's PI System. Company shall have the right to disclose data gathered through Company's PI System publicly; *provided, however*, that such data is (i) masked to obscure the origin of the data and (ii) aggregated so that the data cannot be correlated and used by competitors of Seller, except as otherwise provided in Section 20.18.

10.7 Accreditation. Seller shall perform from time to time, at its expense, any reporting and testing (including capacity testing) of the Facility required by Governmental Authorities.

10.8 Operating Committee and Operating Procedures.

(A) Company and Seller shall each appoint one representative and one alternate representative to act as the Operating Committee in matters relating to the Parties' performance obligations under this PPA and to develop operating arrangements for the charging, discharging, delivery, dispatch, and receipt of Energy from the Facility. The Parties' initial representatives on the Operating Committee are set forth in Exhibit D – Notices.

(B) The Operating Committee will finalize mutually agreeable written Battery Storage System Operating Procedures for the Battery Storage System that are consistent with the requirements of this PPA, including Section 5.2 and Exhibit O – Battery Storage System Operating Procedures in order to address administrative matters such as: day-to-day communications; key personnel; operations-center interface; metering, telemetering, telecommunications, and data acquisition procedures; operations and maintenance scheduling and reporting; reports; operations log; testing procedures; and such other matters as may be mutually agreed upon by the Operating Committee. For the avoidance of doubt, Company (or its representative on the Operating Committee) shall have no obligation to agree to operational limitations except for those set forth in Part I of Exhibit O – Battery Storage System Operating Procedures.

(C) The Operating Committee shall review the requirements for AGC and data collection from time to time after the date hereof and may agree on modifications thereto to the extent necessary or convenient for operation of the Facility in accordance with this PPA.

(D) The Operating Committee shall have authority to act in all technical and day-to-day operational matters relating to performance of this PPA and to attempt to resolve potential disputes, provided, however, that except as explicitly provided herein, the Operating Committee shall have no authority to amend or waive any provision of this PPA, including any provision included within Exhibit O – Battery Storage System Operating Procedures.

Article 11 - Security for Performance

11.1 Security Fund.

(A) During the Term of this PPA, Seller shall fund and maintain security in favor of Company, at Seller's expense, to secure Seller's obligations to Company under this PPA (the "Security Fund"), in accordance with this Article 11.

(B) Seller shall establish and fund the Security Fund in the amount of [insert \$[125]/kW x Battery Storage System Nameplate Capacity kW], no later than 30 Days following the date of the execution of this PPA. Within 5 Business Days following COD, the amount of the Security Fund shall be reduced to [insert \$[75]/kW x Battery Storage System Nameplate Capacity kW].

(C) Without notice to Seller, Company may draw from the Security Fund such amounts as are necessary to recover amounts owing to Company pursuant to this PPA, including any Liquidated Delay Damages, Actual Damages, liquidated damages for failure to achieve COD, and any amounts for which Company is entitled to indemnification under this PPA. Company may, in its sole discretion, draw all or any part of such amounts from any form of security to the extent available pursuant to this Article 11 and in any sequence Company may select. Company's failure or delay to draw any amount from the Security Fund in any instance shall not prejudice Company's rights to subsequently recover such amount from the Security Fund or in any other manner.

(D) Company shall notify Seller within five (5) Business Days following any draw on the Security Fund by Company, including the amount thereof and the basis therefor.

11.2 Replenishment. Seller shall replenish the Security Fund to the applicable levels set forth in Section 11.1(B) within fifteen (15) Business Days after Company makes a draw on the Security Fund; *provided*, such replenishment shall not exceed the amount remaining under the applicable Damage Cap (as provided in Section 12.4(A)). Notwithstanding the foregoing, within fifteen (15) Business Days after Company makes a draw on the Security Fund associated with the damages described in Section 12.4(B), Seller shall replenish all amounts drawn from the Security Fund.

11.3 Form.

(A) The Security Fund may be in the form of an irrevocable standby letter of credit substantially in the form of Exhibit G – Form of Letter of Credit (a “Letter of Credit”) from a financial institution acceptable to Company (“Issuer”).

1. The Issuer of the Letter of Credit shall have and maintain a Credit Rating equivalent to A- (or better) by Standard & Poors and A3 (or better) from Moodys. If such Credit Rating is A- or A3, the Issuer must not be on credit watch by any rating agency.

2. The Letter of Credit must be for a minimum term of three hundred sixty (360) Days. Seller shall give Company at least thirty (30) Days advance notice prior to any expiration or earlier termination of the Letter of Credit. Seller shall cause the renewal or extension of the Letter of Credit for additional consecutive terms of three hundred sixty (360) Days or more (or, if shorter, the remainder of the Term) more than thirty (30) Days prior to each expiration date of the security. If the Letter of Credit is not renewed or extended at least thirty (30) Days prior to its expiration date or otherwise is terminated early, Company shall have the right to draw immediately upon the Letter of Credit and to place the amounts so drawn, at Seller’s cost and with Seller’s funds, in an Escrow Account in accordance with paragraph (B) below, until and unless Seller provides a substitute form of security meeting the requirements of this Section 11.3.

(B) The Security Fund may be in the form of U.S. currency deposited into an escrow account with a state- or federally-chartered commercial bank with an office in the State of Colorado, with net assets of at least \$1 billion (the “Escrow Account”).

1. The Escrow Account shall be governed by an escrow and account control agreement in form mutually satisfactory to Seller, Company and the escrow agent, provided that (a) Company shall hold a first and exclusive perfected security interest in the funds in the Escrow Account, (b) Company shall be permitted unilaterally to draw down any amount therein, regardless of any protest by Seller or any other party liable thereon (*provided* that nothing in the escrow agreement shall preclude any protest against Company by Seller, following any draw, that such draw did not comply with this PPA), and (c) Seller shall pay all fees and expenses of the escrow agent.

2. Funds held in the Escrow Account may be invested as Seller may direct in any of the following:

- a money-market fund sponsored by the escrow agent;
- U.S. treasury obligations with a maturity of ninety (90) Days or less;
- commercial paper rated “A” or better, with a maturity of ninety (90) Days or less; and
- other liquid investment-grade investments with maturities of three months or less, approved by Company in advance (such approval not to be unreasonably withheld or delayed).

3. All investment income on the Escrow Account shall be taxable to, and accrue for the benefit of, Seller. After the Commercial Operation Date, periodic sweeps by Seller for recovery of interest earned by the escrowed funds shall be allowed, and, at any time the balance in the Escrow Account exceeds the required amount of security, the escrow agent may remit the excess to Seller.

(C) Following COD, the Security Fund may consist of a guaranty substantially in the form of Exhibit H – Form of Guaranty, from a parent or other guarantor (“Guarantor”) with a minimum tangible net worth of at least \$250,000,000 and an Investment Grade Credit Rating (and if such Credit Rating is exactly equivalent to BBB-(S&P) / Baa3 (Moody’s), the Guarantor must not be on credit watch by any rating agency). If the Credit Rating of the Guarantor is downgraded below Investment Grade, put on credit watch, or an event occurs that (in the reasonable determination of Company) portends a Material Adverse Effect in the creditworthiness of the Guarantor, then Company may require Seller to convert the guaranty to a Security Fund instrument meeting the criteria set forth in either paragraph (A) or paragraph (B) above no later than ten (10) Days after notice from Company.

(D) Company shall negotiate in good faith any needed escrow and account control agreement and, upon request by Seller, immaterial changes to Exhibit G – Form of Letter of Credit and/or Exhibit H – Form of Guaranty, provided that Seller shall pay or reimburse Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in connection therewith.

(E) Seller may change the form of the Security Fund at any time and from time to time upon Commercially Reasonable prior notice to Company, *provided, however*, that the Security Fund must at all times satisfy the requirements of this Article 11.

11.4 Replacement. In the event that the Security Fund ever fails to comply with the requirements of this Article 11 or Company determines in a commercially reasonable manner that an event has occurred or circumstances have developed that threaten to cause the Security Fund to fail to comply with the requirements of this Article 11 (e.g. a Guarantor is placed on negative credit watch by a rating agency), Seller shall be required to replace the Security Fund with security in compliance with Article 11 within five (5) Days following notice thereof from Company.

11.5 Survival. The Security Fund shall survive termination of this PPA to be available to pay any amounts owed to Company arising prior to or upon termination.

Promptly following (i) the end of the Term and the completion of all of Seller's obligations under this PPA, or (ii) termination of this PPA for any reason prior to the Scheduled Termination Date, Company shall determine the amount, if any, owed by Seller for any obligations or damages arising out of this PPA. Company may draw such amount and shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller.

11.6 Expenses. Seller shall reimburse Company for its direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the preparation, negotiation, execution and/or release (including making a draw of funds) of the Security Fund under this Article 11.

Article 12 - Default and Remedies

12.1 Default by Seller: General

(A) Events. Any of the following events shall constitute a default by Seller under this PPA. If no cure period is provided below, such default shall be deemed an Event of Default by Seller immediately upon its occurrence. If a cure period is provided below, such default shall mature into an Event of Default if not cured within the indicated cure period, subject to Section 13.3 below.

1. Seller's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for Seller or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) Days from inception.

Cure Period: None.

2. Seller's authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against Seller without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) Days from its inception or which result in adjudication of bankruptcy or insolvency within such time.

Cure Period: None.

3. Seller's assignment of this PPA or the Facility or any Change of Control, not permitted by Section 19.1.

Cure Period: None.

4. Any representation or warranty by Seller in this PPA that has a Material Adverse Effect on Seller's ability to perform this PPA is proven to have been false in any material respect when made.

Cure Period: None.

5. Seller's failure to establish and, once established, maintain the Security Fund as and in the amounts required under Article 11.

Cure Period: Five (5) Business Days after Company provides notice of Seller's failure.

6. Seller's failure to obtain and maintain insurance in scope and amounts required under Article 16.

Cure Period: Five (5) Business Days after Company provides notice of Seller's failure.

7. Seller's failure to make any payment to Company as and when required by this PPA, including Liquidated Delay Damages, Actual Damages, and any required indemnification.

Cure Period: Ten (10) Business Days after Company provides notice that the amount is overdue.

8. Any representation or warranty by Seller in this PPA that has a Material Adverse Effect on Seller's ability to perform this PPA ceases to remain true in all material respects during the Term, other than due to a change of law.

Cure Period: Thirty (30) Days after Company provides notice of such breach.

9. The breach by Seller of the Interconnection Agreement, which breach (i) materially interferes with Seller's production and/or delivery of any product or service to be produced or delivered pursuant to this PPA or Company's ability to accept or receive such product or service, (ii) Company's ability to transmit Energy beyond the Point of Delivery, and/or (iii) otherwise has a Material Adverse Effect on Company.

Cure Period: Thirty (30) Days from the breach or the cure period allowed by the Interconnection Agreement (whichever is longer).

10. Seller starts-up, operates, charges, or discharges or permits or causes any third party (including Seller's designated operator) to start-up, operate, charge or discharge any Battery Storage System other than as specifically permitted under this PPA.

Cure Period: None.

11. Seller intentionally or knowingly delivers, or attempts to deliver, Energy for sale under this PPA that was not associated with or stored by the Facility.

Cure Period: None.

12. The average Equivalent Availability Factor of the Battery Storage System is less than ninety percent (90%) on average for a Commercial Operation Year.

Cure Period: Seller shall be deemed to have cured this default if the average Equivalent Availability Factor of the Battery Storage System is at least ninety percent (90%) for the subsequent Commercial Operation Year.

13. The Round Trip Efficiency derived from a Test is less than 90% of the then-applicable Guaranteed Round Trip Efficiency.

Cure Period: Seller shall be deemed to have cured this default if, within 30 days, Seller completes a Test demonstrating that the Round Trip Efficiency is at least equal to 90% of the then-applicable Guaranteed Round Trip Efficiency.

14. Seller's failure to complete a Successful Repair in accordance with Section 10.3.

Cure Period: Seller shall be deemed to have cured this default if, within [30] days, Seller completes a Successful Repair.

15. The failure by Seller to perform or observe any other material obligation to Company under this PPA, unexcused by Force Majeure (other than failure to achieve COD, which is addressed in Section 12.2 below).

Cure Period: Thirty (30) Days after Company provides notice thereof; *provided*, that if such default is not reasonably capable of cure within such 30 Day period, Seller shall have such additional period of time (not to exceed ninety (90) Days in any event) as is reasonably necessary for cure, so long as Seller initiates cure within such 30 Day period and diligently prosecutes the cure to conclusion thereafter.

16. Seller removes from the Site equipment upon which the Commercial Operation Test has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and the equipment is not returned within five (5) days after notice from Company.

Cure Period: None

17. Seller makes any material misrepresentation or omission in any report (including any status report, logs, and reports required under Section 4.1, Section 5.5, Section 10.4, Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications, and Exhibit M – Battery Storage System Testing Protocols) required to be made or furnished by Seller pursuant to this PPA.

Cure Period: Five (5) Days after notice from Company.

18. Subject to Section 7.3, Seller makes any material misrepresentation or omission in any Availability Notice.

Cure Period: None.

(B) Remedies for Default. In connection with any default by Seller under this Section 12.1 (whether or not cured by Seller), Company may

1. Seek Actual Damages in such amounts and on such basis for the default as authorized by this PPA;
2. Offset against any payments due to Seller, any Actual Damages and other amounts due from Seller; and/or
3. Draw any Actual Damages and other amounts due from Seller, from the Security Fund.

(C) Termination for Event of Default. Upon and at any time following an Event of Default by Seller under this Section 12.1, in addition to its rights under Section 12.1(B) above, Company may terminate this PPA immediately upon notice to Seller, without penalty or further obligation to Seller. In connection with any such termination, Company may collect from Seller (subject to the Damage Cap) all Actual Damages arising from such Event of Default through the Scheduled Termination Date.

(D) Specific Performance. In addition to the other remedies specified herein, upon any Event of Default of Seller under this Section 12.1, Company may elect to treat this PPA as being in full force and effect and Company shall have the right to specific performance.

12.2 Default by Seller: Failure to Achieve COD.

(A) COD Delay. Seller shall be in default under this PPA if the Facility fails to achieve COD by the Target COD (“COD Delay”). Seller shall be liable to pay [insert \$[250]/MW x Battery Storage System Nameplate Capacity MW] per Day (“Liquidated Delay Damages”) to Company as a liquidated damage and not a penalty, in lieu of Actual Damages, for any COD Delay. Except as provided in Section 12.2(C) below, the payment of Liquidated Delay Damages shall be Company’s sole and exclusive remedy for a COD Delay. Liquidated Delay Damages shall begin to accrue on the Day after the Target COD (as it may be extended due to Force Majeure) until the first to occur of COD or termination of this PPA pursuant to Section 12.2(C) below.

(B) Cure. Seller shall have a cure period of forty-five (45) Days for its failure to achieve Commercial Operation by the Target COD, *provided, however*, that if during such period Seller provides a written opinion from a mutually-agreeable Independent Engineer that COD can reasonably be achieved within an additional forty-five (45) Day period, then Seller’s cure period to achieve Commercial Operation shall be no more than ninety (90) Days after the Target COD. Seller’s payment of accrued Liquidated Delay Damages shall be a condition to any such cure.

(C) Termination. Failure to cure a COD Delay within the applicable cure period set forth in Section 12.2(B) shall be an Event of Default by Seller. Upon such an Event of Default, Company may (i) terminate this PPA immediately upon notice to Seller, without penalty or further obligation to Seller except as to costs and balances incurred prior to the effective date of such termination, and (ii) in connection therewith, in addition to accrued Liquidated Delay Damages but in lieu of Actual Damages for the balance of

the Term, collect from Seller liquidated damages therefor in the amount of [insert \$[100]/kW x Battery Storage System Nameplate Capacity kW] (“Termination LDs”).

12.3 Default by Company.

(A) Events. Any of the following events shall constitute a default by Company under this PPA. If no cure period is provided below, such default shall be deemed an Event of Default by Company immediately upon its occurrence. If a cure period is provided below, such default shall mature into an Event of Default if not cured within the indicated cure period, subject to Section 13.3 below.

1. Company’s application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for Company or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) Days from inception.

Cure Period: None.

2. Company’s authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against Company without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) Days from inception or which result in adjudication of bankruptcy or insolvency within such time.

Cure Period: None.

3. Company’s assignment of this PPA, not permitted by Section 19.2.

Cure Period: None.

4. Any representation or warranty by Company in this PPA that has a Material Adverse Effect on Company’s ability to perform this PPA is proven to have been false in any material respect when made.

Cure Period: None.

5. Company’s failure to make any payment to Seller as and when required by this PPA, including invoiced amounts, Actual Damages and any required indemnification.

Cure Period: Ten (10) Business Days after Seller provides notice that the amount is overdue.

6. Any representation or warranty by Company in this PPA that has a Material Adverse Effect on Company’s ability to perform this PPA ceases to remain true during the Term, other than due to a change of law.

Cure Period: Thirty (30) Days after Seller provides notice of such breach.

7. The failure by Company to perform or observe any other material obligation to Seller under this PPA, unexcused by Force Majeure.

Cure Period: Thirty (30) Days after Seller provides notice thereof; *provided*, that if such default is not reasonably capable of cure within such thirty (30) Day period, Company shall have such additional period of time (not to exceed ninety (90) Days in any event) as is reasonably necessary for cure, so long as Company initiates cure within such thirty (30) Day period and diligently prosecutes the cure to conclusion thereafter.

(B) Remedies for Default. In connection with any default by Company (whether or not cured by Company), Seller may

1. Seek Actual Damages in such amounts and on such basis for the default as authorized by this PPA; and/or
2. Offset against any payments due to Company, any Actual Damages and other amounts due from Company.

(C) Termination for Event of Default. Upon an Event of Default by Company, in addition to its rights under Section 12.3(B) above, Seller may terminate this PPA immediately upon notice to Company, without penalty or further obligation to Company, and in connection therewith, collect from Company all Actual Damages arising from such Event of Default through the Scheduled Termination Date.

12.4 Limitations on Damages.

(A) Except as otherwise provided in Section 12.4(B), following COD Seller's aggregate financial liability to Company for Actual Damages shall not exceed [insert \$[75]/kW x Battery Storage System Nameplate Capacity] (the "Damage Cap"). If at any time following COD, Company incurs damages in excess of the Damage Cap that Seller does not pay when billed by Company, Company shall have the right to terminate this PPA upon notice to Seller, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(B) Actual Damages payable by Seller arising out of any of the following events shall not be subject to the Damage Cap and shall not be credited against the Damage Cap:

1. damage to Company-owned facilities proximately caused by negligence, breach of this PPA or misconduct by Seller, its directors, officers, employees and agents;
2. Seller's intentional misrepresentation or intentional misconduct in connection with this PPA or the operation of the Facility;
3. the sale or diversion by Seller to a third party of any Energy, capacity, or Ancillary Services from the Facility, excluding any sales in mitigation of damages;

4. Seller's failure (i) to maintain insurance coverages in the types and amounts required by this PPA or (ii) to apply any insurance proceeds as required by Section 16.5;

5. any indemnification under this PPA;

6. any Environmental Contamination caused or exacerbated by Seller;

or

7. damages incurred by Company in connection with any bankruptcy or insolvency proceeding involving Seller, including Company's loss of the benefit of its bargain due to rejection or other termination of this PPA in such proceeding.

(C) The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to all direct damages proximately caused by such default ("Actual Damages") incurred by the non-defaulting Party, provided that if Seller is the defaulting Party, Actual Damages recoverable by Company hereunder may include Replacement Power Costs. **Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, special, treble, equitable or indirect damages, lost profits or other business interruption damages regardless of whether the relevant cause of action arises from statute, in tort or contract** (except to the extent expressly provided herein); *provided, however*, that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for all such damages.

(D) To the extent damages required to be paid hereunder are liquidated, the Parties acknowledge that actual damages would be substantial but difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.5 Bankruptcy. This PPA grants each Party the contractual right to "cause the liquidation, termination or acceleration" of the transactions within the meaning of Sections 556, 560 and 561 of the U.S. Bankruptcy Code, as they may be amended superseded or replaced from time to time. Upon a bankruptcy, a non-defaulting Party shall be entitled to exercise its rights and remedies under this PPA in accordance with the safe harbor provisions of the Bankruptcy Code set forth in, *inter alia*, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 548(d)(2), 556, 560 and 561, as they may be amended, superseded or replaced from time to time.

12.6 Cumulative Remedies. Except as explicitly provided to the contrary in this PPA, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any other rights or remedies provided for herein

12.7 Duty to Mitigate. Each Party shall use Commercially Reasonable Efforts to mitigate any damages it may incur as a result of a default by the other Party under this PPA.

Article 13 - Dispute Resolution

13.1 Negotiation.

(A) In the event of any dispute arising under or associated with the Parties' performance of this PPA (a "Dispute"), within ten (10) Business Days following notice by either Party (a "Dispute Notice"), (i) each Party shall appoint a representative, and (ii) the representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. Any Dispute that is mutually agreed by the Parties (each acting in its sole and complete discretion) to involve engineering, construction or technical matters as the sole or primary area of disagreement between the Parties shall be deemed to be a "Technical Dispute" (each, a "Technical Dispute"). The Parties agree that the technical expert for purposes of resolving any Technical Disputes shall be a mutually-agreeable Independent Engineer, the costs and expenses for which will be shared equally by the Parties. The Independent Engineer may, if he or she deems it appropriate, hold a hearing on the subject of the Technical Dispute and shall, upon the request of either Party, meet with the Parties or their representatives with respect to such Technical Dispute within three (3) Business Days of the request for such meeting. The Independent Engineer shall render a decision solely resolving the Technical Dispute within five (5) Business Days of the meeting with the Parties or their representatives or hearing (if any), or such longer period as the Parties and the Independent Engineer may agree. The decision of the Independent Engineer shall be advisory rather than final and binding on the Parties.

(B) In the event the Parties' representatives cannot resolve the Dispute, or if either Party is not satisfied with the resolution of the Technical Dispute by the Independent Engineer, within thirty (30) Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to senior management. Within ten (10) Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within ten (10) Business Days after receipt of each Party's Dispute summaries, the designated senior managers for both Parties shall negotiate in good faith to resolve the Dispute. If such senior managers are unable to resolve the Dispute thereafter, either Party may seek available legal remedies, subject to Sections 13.3 and 19.3.

13.2 Time Bar. If no Dispute Notice has been issued within eighteen (18) months following the occurrence of events or circumstances giving rise to the Dispute (regardless of the actual knowledge of either Party of such events and circumstances), all claims related to such Dispute (including any allegations of billing errors) shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon.

13.3 No Termination Pending Dispute Resolution. Notwithstanding Section 12.1 or Section 12.3 to the contrary:

(A) An Event of Default shall not be deemed to have occurred (and hence neither Party may terminate this PPA) for failure by the other Party to pay any amount(s) allegedly due totaling less than \$100,000, if (1) such amount(s) are disputed in good faith, (2) the Party alleged to owe such amount(s) promptly commences and diligently pursues resolution of the Dispute pursuant to Section 13.1, and (3) the owed amount (if any) is paid within ten (10) Business Days after all dispute resolution mechanisms are completed with respect thereto.

(B) An Event of Default by Seller shall not be deemed to have occurred (and hence Company may not terminate this PPA) for failure by Seller to pay any amount(s) allegedly due totaling \$100,000 or more, if

1. such amount(s) are disputed by Seller in good faith;
2. Seller promptly commences and diligently pursues resolution of the Dispute pursuant to Section 13.1;
3. Seller either holds an Investment Grade Credit Rating, or posts cash collateral to secure its obligations (if any) with respect to the disputed amount(s), in an amount equal to the amount(s) in dispute, under a mutually agreeable third-party escrow agreement, in addition to the Security Fund; and
4. the owed amount (if any) is paid by Seller within ten (10) Business Days after all dispute resolution mechanisms are completed with respect thereto.

(C) An Event of Default by Company shall not be deemed to have occurred (and hence Seller may not terminate this PPA) for failure by Company to pay any amount(s) allegedly due totaling \$100,000 or more, if

1. such amount(s) are disputed by Company in good faith;
2. Company promptly commences and diligently pursues resolution of the Dispute pursuant to Section 13.1;
3. Company either holds an Investment Grade Credit Rating, or posts cash collateral to secure its obligations (if any) with respect to the disputed amount(s), in an amount equal to the amount(s) in dispute, under a mutually agreeable third-party escrow and account control agreement; and
4. the owed amount (if any) is paid by Company within ten (10) Business Days after all dispute resolution mechanisms are completed with respect thereto.

13.4 Governing Law. The interpretation and performance of this PPA and all actions related hereto (whether sounding in contract, tort or otherwise), shall be governed and construed in accordance with the laws of the State of Colorado, exclusive of conflict of laws principles.

13.5 Venue. The Parties submit to the exclusive jurisdiction of the state courts of the State of Colorado for purposes of resolving any Dispute hereunder, except as provided in Section 19.3 Venue for any court proceedings shall lie exclusively in the

Colorado District Court for the City and County of Denver or, if jurisdictionally available, then the U.S. District Court for the District of Colorado.

13.6 Waiver of Jury Trial. **Seller and Company each hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury** in respect of any litigation based hereon, or arising out of, under, or in connection with, this PPA or any course of conduct, course of dealing, statements (whether oral or written) or actions of Seller and Company related hereto and expressly agree to have any Disputes be adjudicated by a judge of the court having jurisdiction, without a jury, subject only to Section 19.3.

Article 14 - Force Majeure

14.1 Definition. For purposes hereof, “Force Majeure” means an event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) was not anticipated as of the Effective Date, (ii) is not within the control of or the result of the fault or negligence of the Party claiming excuse, and (iii) which by exercise of due diligence and foresight could not reasonably have been avoided; By way of example only, “Force Majeure” includes any delay or failure by the Transmission Authority to perform its obligations under the Interconnection Agreement. Force Majeure shall not include:

- a. inability, or excess cost, to procure any equipment necessary to perform this PPA;
- b. acts or omissions of a third party (including vendors and contractors to Seller), unless such acts or omissions are themselves excused by reason of Force Majeure;
- c. failure to timely to apply for, or diligently pursue, the Permits set forth on Exhibit F – Seller’s Needed Permits hereto;
- d. mechanical or equipment breakdown or inability to operate, attributable to circumstances occurring within design criteria and normal operating tolerances of similar equipment;
- e. Environmental Contamination at the Site;
- f. changes in market conditions;
- g. changes of law; or
- h. labor strikes, slowdowns, work stoppages, or other labor disruptions.

14.2 Applicability of Force Majeure. A Party shall be relieved of its obligations to perform this PPA and shall not be considered to be in default with respect to any obligation under this PPA if and to the extent such Party is prevented from fulfilling such obligation by Force Majeure, *provided, however*, that: (i) such Party gives prompt notice describing the circumstances and impact of the Force Majeure; (ii) the relief from its obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure; (iii) such Party proceeds with due diligence to overcome the Force Majeure and resumes performance of its obligations under this PPA as soon as

practicable thereafter; and (iv) such Party provides notice upon conclusion of the Force Majeure.

14.3 Limitations on Effect of Force Majeure.

(A) Force Majeure shall only relieve a Party of such obligations as are actually precluded by the Force Majeure.

(B) In no event will the existence of Force Majeure extend this PPA beyond its stated Term.

(C) If, (i) prior to COD, Force Majeure affecting Seller continues for a period of ninety (90) consecutive Days or any one-hundred fifty (150) non-consecutive Days, or (ii) after COD Force Majeure affecting Seller continues for a period of one-hundred eighty (180) consecutive Days or any two-hundred seventy (270) non-consecutive Days in any three consecutive Commercial Operation Years, Company may, at any time following the end of such period, terminate this PPA upon notice to Seller, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

Article 15 - Representations, Warranties and Covenants

Each Party hereby represents and warrants to the other as follows, which representations and warranties shall be deemed to be repeated, if applicable, by each Party throughout the Term:

(A) Such Party is a valid separate legal entity, duly organized, validly existing and in good standing under Applicable Law. It is qualified to do business in the State in which the Facility is located and each other jurisdiction where the failure to so qualify would have a Material Adverse Effect on the business or financial condition of the other Party. It has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The Party's execution, delivery, and performance of all of its obligations under this PPA have been duly authorized by all necessary organizational action, and do not and will not:

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

2. violate any Applicable Law, the violation of which could have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA;

3. result in a breach or constitute a default under the representing Party's formation documents, bylaws or equivalent, or under any agreement relating to its management or affairs, any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which it is a party or by which it or its properties or assets may be bound or affected, the breach or default of which could reasonably be

expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA; or

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

(C) This PPA is a valid and binding obligation of the representing Party.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the representing Party is a party or any judgment, order, or Applicable Law, applicable to it or its business.

(E) Within the meaning of the U.S. Bankruptcy Code, (i) this PPA constitutes a "master netting agreement," (ii) all transactions pursuant to this PPA constitute "forward contracts" or a "swap agreement," (iii) the representing Party is a "forward contract merchant" and "master netting agreement participant," and (iv) all payments made or to be made pursuant to this PPA constitute "settlement payments."

(F) Seller further hereby covenants to Company throughout the Term that Seller shall deliver to Company the products and services required by this PPA free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person

Article 16 - Insurance

16.1 Evidence of Insurance. No later than commencement of construction and thereafter at least five Days prior to each applicable expiration date, Seller shall provide Company with two copies of insurance certificates acceptable to Company evidencing that insurance coverages for the Facility are in force and in compliance with the specifications for insurance coverage set forth in Exhibit E – Insurance Coverage to this PPA. Such certificates shall

(A) name Company as an additional insured (except worker's compensation);

(B) provide that Company shall receive thirty (30) Days prior written notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies (except that such notice may be ten (10) Days for non-payment of premiums);

(C) provide a waiver of any rights of subrogation against Company, its Affiliates and their officers, directors, agents, subcontractors, and employees; and

(D) indicate that the "Commercial General Liability" policy has been endorsed as described above.

16.2 Policy Requirements. All policies shall be written with insurers with an AM Best rating of at least A-VII or a Standard & Poor's rating of at least A. All policies shall be written on an occurrence basis, except as provided in Section 16.4. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by Company. Seller may satisfy its insurance requirements using any reasonable combination of primary and secondary coverage.

16.3 No Implied Limitation. Seller's liability under this PPA is not limited to the amount of insurance coverage required herein.

16.4 Term and Modification of Insurance.

(A) All insurance required under this PPA shall cover occurrences during the Term and for a period of two years after the Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this PPA and such insurance shall be maintained by Seller for a minimum of six years after the Term.

(B) Company shall have the right, at times deemed appropriate to Company during the Term, to request Seller to modify the insurance minimum limits specified in Exhibit E – Insurance Coverage in order to maintain Commercially Reasonable coverage amounts. Seller shall make Commercially Reasonable Efforts to comply with any such request.

(C) If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide notice to Company, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric energy storage plants of similar type, geographic location and capacity (or, if not enough data is available for energy storage plants, such advisor may use utilize data regarding electric generation projects as a proxy for energy storage). Upon receipt of such notice, Seller shall use Commercially Reasonable Efforts to obtain other insurance that would provide comparable protection against the risk to be insured.

16.5 Application of Proceeds. Except to the extent otherwise required by the Financing Documents, Seller shall apply any casualty insurance proceeds to reconstruction of the Facility following any material casualty to the Facility that occurs more than eighteen (18) months prior to the Scheduled Termination Date.

Article 17 - Indemnity

17.1 Indemnification: General. Each Party (the "Indemnifying Party") shall indemnify, defend and hold the other Party (the "Indemnified Party") harmless from and against all claims, demands, lawsuits (including citizen suits), losses, liabilities, fines, penalties, and expenses (including attorneys' fees) (generally, "Losses"), to the extent proximately caused by

- a default under this PPA (including any breach by Seller of the Safety Requirements) by the Indemnifying Party;

- a violation or alleged violation of Applicable Laws by the Indemnifying Party; and
- the negligence, intentional acts and other misconduct of the directors, officers, employees, or agents of the Indemnifying Party.

17.2 Indemnification: Environmental. Seller shall indemnify, defend and hold Company harmless from and against all Losses arising out of any claim by any Governmental Authority or other third party alleging Environmental Contamination at the Site and/or illegal disposal of Hazardous Materials off-Site, regardless of merit and regardless of Seller's responsibility therefor.

17.3 Indemnification: Company Remote Start of Facility. Should Company remotely start the Facility, Seller shall indemnify, defend and hold Company harmless from and against all claims, demands, lawsuits (including citizen suits), losses, liabilities, fines, penalties, and expenses (including attorneys' fees) that may result therefrom.

17.4 Limitations.

(A) The foregoing indemnification obligations shall apply notwithstanding any contributory misconduct of the Indemnified Party, but the Indemnifying Party's liability to indemnify the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party's misconduct caused the damages.

(B) Neither Party shall be indemnified for Losses resulting from the sole negligence or willful misconduct of the directors, officers, employees, or agents of such Party.

(C) These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy. Nothing in this Section 17.1 shall enlarge or relieve Seller or Company of any liability to the other for any breach of this PPA.

17.5 Procedures.

(A) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall provide notice thereof to the Indemnifying Party; *provided* that a delay in providing such notice shall limit the obligations of the Indemnifying Party only to the extent that such delay actually prejudices the ability of the Indemnifying Party to contest the claim or defend the proceeding.

(B) The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall reasonably conclude that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense.

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

17.6 Amounts Owed. In the event that a Party is obligated for indemnification under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual Losses net of any insurance proceeds received by the Indemnified Party following a Commercially Reasonable effort by the Indemnified Party to obtain such insurance proceeds.

Article 18 - Lender Provisions

18.1 Accommodation of Facility Lender.

(A) Company shall provide such consents to collateral assignment, certifications, representations, estoppels, information or other documents, as may be reasonably requested by Seller in connection with the financing of the Facility consistent with the terms set forth in Exhibit K – Lender Consent Provisions (generally, a "Lender Consent"), *provided, however, that* in providing a Lender Consent, Company shall have no obligation to

1. modify the terms of this PPA;
2. provide any consent or enter into any agreement that has a Material Adverse Effect on any of Company's rights, benefits, risks, or obligations under this PPA;
3. transfer or release any property or property interests of Company;
4. release or subordinate (or cause the release or subordination) of any lien on any property of Company for the benefit of Seller or the Facility Lender; or
5. permit any lien to be placed on property of Company.

(B) Seller shall reimburse, or shall cause the Facility Lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of each Lender Consent and any documents requested by Seller or the Facility Lender pursuant to this Section 18.1.

18.2 Notices.

(A) Seller shall provide Company with a notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender. Following receipt of such notice, Company shall provide to the Facility Lender a copy of each notice of alleged default delivered to Seller under Section 12.1 or Section 12.2, and Company will accept a cure thereof performed by the Facility Lender, so long as the cure is

accomplished within the applicable cure period set forth in this PPA or the relevant Lender Consent.

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

Article 19 - Assignment

19.1 Assignment by Seller.

(A) Seller shall not sell, exchange or otherwise transfer the Facility or any material portion thereof to any third party, nor shall Seller undergo any Change of Control (whether voluntary or by operation of law), absent the prior written consent of Company, which shall not be unreasonably withheld or delayed. Company shall have no obligation to provide any consent under this Article 19 unless

1. Seller has complied with Sections 19.3 and 19.4 if and as applicable;
2. Seller has provided to Company such information concerning the transferee's direct and indirect ownership as Company reasonably requests;
3. the transferee has substantial experience in the operation of power energy storage facilities akin to the Facility, either directly, through its affiliates or through a Qualified Operator;
4. the transferee (together with its parents and affiliates) possesses an Investment Grade Credit Rating or other creditworthiness satisfactory to Company;
5. Seller has provided to Company at least thirty (30) Days' prior notice of the transaction; and
6. Seller pays or reimburses Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the transaction.

(B) Any Change of Control or sale, transfer, or assignment of any interest in the Facility effected without fulfilling the requirements of this PPA shall be null, void and a breach of this PPA.

(C) Seller shall assign this PPA to any successor owner of the Facility, and shall cause such successor to assume all obligations of Seller (accrued and prospective) hereunder via a writing reasonably satisfactory to Company. Seller also may assign this PPA for collateral purposes to any Facility Lender, and may subcontract some or all of its duties under this PPA, upon notice to but without the consent of Company

(D) Except as permitted in this Section 19.1, Seller may not assign this PPA or any portion hereof. No assignment shall relieve Seller of its obligations under this PPA, nor impair any security posted by Seller unless such security is replaced in accordance with Article 11. Before this PPA is assigned by Seller, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

19.2 Assignment by Company.

(A) Company may assign this PPA to any Affiliate, or to any successor that provides retail electric service in all or substantially all of Company's service territory and is subject to rate and quality service regulation under the jurisdiction of the PUC. Any other assignment of this PPA by Company shall require the prior written consent of Seller, not to be unreasonably withheld or delayed.

(B) If an assignee of Company possesses a Credit Rating equal to or better than Investment Grade or Company's Credit Rating as of the date of assignment (whichever is higher), Seller shall release Company from its obligations hereunder if so requested by Company. Except for the foregoing, no assignment shall relieve Company of its obligations under this PPA.

(C) Any assignee of Company shall assume all obligations of Company (accrued and prospective) hereunder via a writing reasonably satisfactory to Seller. Before this PPA is assigned by Company, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

19.3 Right of First Offer ("ROFO").

(A) At any time after the Commercial Operation Date,

(1) if Seller proposes to sell the Facility to an unaffiliated third party, Seller shall first offer to sell the Facility to Company via notice to Company,

(2) if Seller's parent proposes to sell a majority of any class of voting and/or non-voting equity interests in Seller (excluding interests owned by tax equity investors) to an unaffiliated third party, Seller shall cause its parent first to offer to sell such equity interests to Company via notice to Company, and

(3) if Seller's parent owns no assets other than its equity interests in Seller and the parent of Seller's parent proposes to sell a majority of any class of voting and/or non-voting equity interests in Seller's parent (excluding interests owned by tax equity investors) to an unaffiliated third party, Seller shall cause its parent's parent first to offer to sell such equity interests to Company via notice to Company

(in each case, a "ROFO Notice"). Any ROFO Notice shall describe the proposed transaction, including the minimum price, status of title to the Site, liabilities to be assumed and other terms which Seller or its relevant parent (as applicable) is willing to accept to proceed with the contemplated transaction. The contents of a ROFO Notice shall be deemed Confidential Information for purposes of Section 20.18 below.

(B) Following issuance of a ROFO Notice, Seller shall allow Company 60 Days to investigate the proposed transaction and conduct due diligence. Due diligence shall include such physical inspections, surveys and operating tests of the Facility and the Site, such reviews of Seller's contracts, books and records, and interviews of such

personnel, as Company may reasonably request. All information obtained by Company from such investigations shall be deemed Confidential Information subject to Section 20.18 below. Within such 60-Day period, Company may elect to purchase the Facility or the relevant equity interests (as applicable) on substantially the same terms as set forth in the ROFO Notice. If Company fails to notify Seller of Company's election within such 60-Day period, Company shall be deemed to have rejected the transaction.

(C) If Company elects to purchase the Facility or the specified equity interests (as applicable), the Parties shall negotiate and execute a PSA. If Company elects to purchase the Facility the PSA shall include the price and other terms set forth in the ROFO Notice and such other terms as are set forth in Exhibit []-2] - Facility PSA Provisions]. If Company elects to purchase the specified equity interests, the PSA shall include the price and other terms set forth in the ROFO Notice and such other terms as are set forth in Exhibit []-3 – MIPSAs Provisions. If Company rejects the transaction described in a ROFO Notice, Seller shall have the right to sell the Facility (or Seller's relevant parent shall have the right to sell the specified equity interests, as applicable) on terms not more favorable to Seller or its parent vs. the terms set forth in the ROFO Notice, at any time within the twelve-month period following issuance of the ROFO Notice. If Seller or its relevant parent fails to close a transaction on such terms within such 12-month period, any sale of the Facility or equity interests in Seller shall again be subject to this Section 19.3.²

(D) If Company rejects the transaction described in a ROFO Notice, Seller shall have the right to sell the Facility (or Seller's relevant parent shall have the right to sell the specified equity interests, as applicable) on terms not more favorable to Seller or its parent vs. the terms set forth in the ROFO Notice, at any time within the twelve-month period following issuance of the ROFO Notice. If Seller or its relevant parent fails to close a transaction on such terms within such twelve (12)-month period, any sale of the Facility or equity interests in Seller shall again be subject to this Section 19.3.

(E) This Section 19.3 shall be specifically enforceable by Company, without bond and without the need to prove irreparable harm.

(F) Seller shall cooperate in all respects reasonably necessary for Company to exercise its ROFO rights, and shall operate the Facility in the ordinary course of business following the date of issuance of a ROFO Notice.

19.4 PFT.

(A) Seller shall give Company at least ninety (90) Days' prior notice (a "PFT Notice") of any Pending Facility Transaction that does not otherwise trigger Company's ROFO rights under Section 19.3, in order to provide Company with an opportunity to discuss and negotiate with Seller the possible sale of the Facility to Company. Any PFT Notice shall include a fair summary of Seller's plans with respect to the Facility in connection with the proposed Pending Facility Transaction, to the extent

² **NTD:** Referenced exhibits to be included.

then known by Seller. The contents of a PFT Notice shall be deemed Confidential Information for purposes of Section 20.18 below.

(B) Seller shall have no obligation to sell nor shall Company have any obligation to purchase the Facility, following any PFT Notice. Issuance of a PFT Notice shall not relieve Seller of its obligation to offer a ROFO to Company if and when applicable pursuant to Section 19.3. In the event that the transaction giving rise to the PFT Notice has not been completed within twelve (12) months following a PFT Notice, Seller shall be required to resubmit a PFT Notice for such transaction.

(C) Any breach of this Section 19.4 shall entitle Company to liquidated damages from Seller in the amount of [*insert \$[5]/kW x Battery Storage System Nameplate Capacity kW*].

(D) For purposes hereof, a "Pending Facility Transaction" or "PFT" means:

1. any Change of Control of Seller;
2. the issuance by Seller or any of its Affiliates of a request for proposals or the response by Seller or any of its Affiliates to a request for proposal or similar process (e.g., auction) for the purchase or sale to any unaffiliated third party of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility;
3. the transmission by Seller or any of its Affiliates of a draft letter of intent, memorandum of understanding, term sheet or similar document (or a revised version thereof) to an unaffiliated third party with respect to the sale of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility; or
4. the execution by Seller or any of its Affiliates of any letter of intent, memorandum of understanding, term sheet or similar document, whether or not legally binding, which contemplates the sale or lease to an unaffiliated third party of any equity interests in Seller or the Facility or any group(s) of assets or equity interests that includes the Facility; *provided, however*, that a PFT does not include (i) any financing or refinancing of the Facility Debt, (ii) any transaction among Affiliates of Seller, and/or (iii) any transaction for which Seller offers ROFO rights to Company under Section 19.3.

19.5 Memo of Option. Within thirty (30) Days following PUC Approval, the Parties shall execute and record a Memorandum of Option, in form reasonably specified by Company memorializing its ROFO rights under Section 19.3.

Article 20 - Miscellaneous

20.1 Notices

(A) Notices required by this PPA shall be addressed to the other Party at the addresses noted in Exhibit D - Notices, as either Party updates such addresses from time to time by notice to the other Party. A Notice shall be deemed to have been received as follows: (1) if it is delivered by email, when the recipient, by an email sent to the email address for the sender stated in Exhibit D – Notices or by a notice delivered by another

method in accordance with this Section 20.1(A), acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this Section 20.1(A); and, (2) If it is delivered in writing, when receipt is acknowledged in writing by the counterparty (or absent such acknowledgement, when delivered via third-party messenger or via FedEx or other reputable overnight courier service). Any notice shall be deemed to have been received by the close of the Business Day on which it was delivered. Real-time or routine communications concerning Facility operations shall be exempt from this Section 20.1(A). The Parties recognize the need for accurate communications between them. Each Party consents to the recording of telephone conversations between their employees and representatives, related to the performance and administration of this PPA.

(B) The Parties recognize the need for accurate communications between them. Each Party consents to the recording of telephone conversations between their employees and representatives, related to the performance and administration of this PPA.

20.2 Taxes and Tax Incentives.

(A) Company shall purchase all Energy on a wholesale basis, for resale to Company’s wholesale and retail customers. Company shall obtain and provide Seller with any certificates required by any Governmental Authority or otherwise reasonably requested by Seller to evidence that the deliveries of Energy hereunder are sales for resale.

(B) Company shall be solely responsible for sales, use and value-added taxes imposed with respect to the purchase of fuel by Company for consumption by the Facility to produce the Energy dispatched and received by Company hereunder.

(C) As between the Parties, Company shall be solely responsible for the payment of (1) any sales, use or equivalent taxes imposed by Governmental Authorities, whether now in existence or hereafter enacted, on the purchase of the products and services provided hereunder, and (2) any taxes imposed by Governmental Authorities, whether now in existence or hereafter enacted, on the transmission of the products and services provided hereunder beyond the Point of Delivery.

(D) Subject to Section 20.2(B) and (C) above and Section 20.19 below, Seller shall be solely responsible for any and all present and future taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Facility and the Site (including *ad valorem* taxes on the Facility and the Site), and any taxes imposed at or prior to the Point of Delivery with respect to the products and services to be sold and delivered to Company hereunder, whether calculated based upon cost, value, labor, capital, production, savings, green attributes or other parameters. Seller’s prices under Article 8 are inclusive of such taxes and impositions during the Term, and Seller assumes the risk of changes in such taxes after the Effective Date.

(E) The Parties shall cooperate to minimize tax exposure, *provided, however,* that neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder.

(F) If at any time after the Effective Date and during the Term, any person or entity, including Seller, Facility Lender, Seller's upstream parent, or any Affiliate, realizes any economic or monetary benefit from Tax Credit Legislation with respect to the Facility ("Economic Benefit"), then Company shall be entitled to receive fifty percent (50%) of such Economic Benefit realized by Seller, Facility Lender, Seller's upstream parent, or any Affiliate, promptly upon receipt of such Economic Benefit.

20.3 Applicable Laws. Each Party shall comply with all Applicable Laws (including the Transmission Authority Tariff) in connection with its performance of this PPA, at its own expense, except for any non-compliance that (individually or in the aggregate) could not reasonably be expected to have a Material Adverse Effect on the other Party or on such Party's ability to perform this PPA.

(A) As applicable, each Party shall give all required notices, shall procure and maintain all Permits necessary for performance of this PPA, and shall pay its respective charges and fees in connection therewith.

(B) Each Party shall promptly disclose to the other Party, any violation of any Applicable Laws arising out of performance of this PPA.

(C) Upon permanent cessation of energy storage by the Facility, Seller shall decommission and remove the Facility and remediate the Site as, if and when required by Applicable Laws.

(D) Seller acknowledges that as a government contractor Company is subject to Applicable Laws regarding equal employment opportunity and affirmative action, including 41 C.F.R. § 60-1.4(a)(1-7). Such Applicable Laws may also be applicable to Seller as a subcontractor to Company. All such Applicable Laws shall be deemed to be incorporated herein as required by Applicable Law.

(E) Each Party assumes the risk of changes in Applicable Laws following the date hereof, that affect such Party's costs of ownership and operation of its assets, and its performance of this PPA, except as otherwise specifically set forth herein.

20.4 Fines and Penalties. Seller shall pay when due all fees, fines, penalties and costs incurred by Company, Seller and/or their agents, employees or contractors arising from noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination

20.5 Rate Changes.

(A) The terms and conditions and the rates for service specified in this PPA shall remain in effect for the Term hereof. Neither Party shall seek (nor support any

third party seeking) any prospective or retroactive change to the rates or terms of service under this PPA pursuant to Section 205, 206 or 306 of the Federal Power Act.

(B) The standard of review for changes to this PPA whether proposed by a Party, a non-party, or FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (aka the “Mobile-Sierra doctrine”), as interpreted in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1*, 128 S. Ct. 2733 (2008).

20.6 Certifications. Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available personnel and records relating to the Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation, including administrative proceedings before the PUC.

20.7 Disclaimer of Third Party Beneficiaries. In executing this PPA, Company does not and does not intend to extend its credit or financial support for the benefit of any Facility Lender or any other third party transacting with Seller. Nothing in this PPA 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 PPA.

20.8 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties, nor to impose any partnership obligation or liability upon either Party. Except as specifically provided for in this PPA to the contrary, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

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

20.9 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations, including warranties, remedies, or indemnities, that by their nature should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.

20.10 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however, that*

Company and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

20.11 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Company and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Company and Seller with respect to the purchase, sale and delivery of Energy, capacity, and other products and services required by this PPA. Any amendment of this PPA, or any waiver of any provision hereof, shall be evidenced by a writing signed by the Party/ies to be bound thereby.

20.12 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

20.13 Binding Effect. This PPA is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, legal representatives, and assigns.

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

20.15 Counterparts and Electronic Signatures. This PPA may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument. A manually signed copy of this PPA, or a copy of this PPA signed with an electronic or digital signature, delivered by e-mail shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a Party until such Party has delivered or caused to be delivered a signed copy of this PPA.

20.16 Press Release. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size and nature of the Facility, the Term, and other relevant factual information about the relationship.

20.17 Exhibits. Either Party may change the information in Exhibit D – Notices at any time by notice without the approval of the other Party. All other Exhibits may be changed to the extent allowed by specific provisions of this PPA or with the mutual consent of both Parties.

20.18 Confidentiality.

(A) For purposes hereof, "Confidential Information" means

1. information specifically designated as Confidential Information in this PPA; and

2. written information delivered by one Party to the other from time to time during the Term, which information is labeled prominently as “Confidential,” “Proprietary” or the like and specifically references this PPA; *provided, however*, that “Confidential Information” shall not include information that:

- (a) is publicly available as of the date hereof, or becomes publicly available during the Term through no fault of the recipient Party;
- (b) can be documented was independently developed by the recipient Party; and/or
- (c) is disclosed to the recipient Party from an ultimate source other than the protected Party, without breach of this PPA by the recipient Party.

(B) The recipient Party shall (i) maintain the confidentiality of all Confidential Information of the protected Party, using the same degree of care used by the recipient Party to protect its own Confidential Information (and in any event not less than a reasonable degree of care), and (ii) shall use Confidential Information only in connection with its performance of this PPA. Confidential Information may be disclosed by the recipient Party to its agents, employees, directors, officers, consultants, auditors, lenders and equity investors, subject to their acceptance of the obligations of confidentiality imposed hereby and for whose violations of this Section 20.18 the recipient Party shall be responsible.

(C) In the event that Confidential Information is disclosed to a PUC, its staff, parties, intervenors, participants or consumer counsel in any regulatory or administrative proceedings before a PUC, the disclosing Party shall submit such Confidential information in accordance with applicable PUC confidentiality rules and procedures, PUC protective order or signed non-disclosure agreement. In the event that Confidential Information must otherwise be disclosed by Applicable Law (e.g. pursuant to subpoena or civil discovery), the Party required to make disclosure shall notify the protected Party sufficiently in advance to allow the protected Party a reasonable opportunity to obtain a protective order or seek other remedies, prior to disclosure by the recipient Party.

20.19 Accounting Treatment.

(A) If and when Company reasonably determines that Company must consolidate financial information of Seller into Company’s financial statements under FASB ASC 810 or other accounting standard applicable to Company:

- 1. the Parties shall use Commercially Reasonable Efforts to amend this PPA and/or the Parties’ protocols for operation of the Facility to avoid such treatment, at the least possible cost to the Parties, consistent with the intent of this PPA to the extent possible; or
- 2. if such avoidance is not reasonably feasible, Seller shall provide to Company from time to time upon request such quarterly and annual financial

information as may be needed for Company to comply with such standard, in such format and within such time frames as Company may reasonably request.

(B) If and when Company reasonably determines that Company must treat this PPA as a “finance lease” under FASB ASC 840 or other accounting standard applicable to Company, the Parties shall use Commercially Reasonable Efforts to amend this PPA and/or the Parties’ protocols for operation of the Facility to avoid such treatment, at the least possible cost to the Parties, consistent with the intent of this PPA to the extent possible, if so requested by Company.

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IN WITNESS WHEREOF, the Parties have executed this PPA as of the date first set forth above.

Seller:

_____ [LLC]

By: _____

[NAME]

[TITLE]

Company:

**PUBLIC SERVICE COMPANY OF COLORADO, a
Colorado corporation,**

By: _____

[NAME]

[TITLE]

Authorized signatory for Public Service Company of
Colorado

EXHIBIT A DEFINITIONS

The following terms shall have the meanings set forth herein:

“Actual Damages” shall have the meaning set forth in Section 12.4(C).

“Affiliate” of any designated person or entity means any person or entity that directly or indirectly controls, is under the control of, or is under common control with, the designated person or entity by the power to direct or cause the direction of the management of the policies of designated person or entity, whether through ownership interest, by contract or otherwise.

“AGC” or “Automatic Generation Control” means the equipment and capability of an electric energy storage facility automatically to adjust the charging and discharging quantity within the applicable Balancing Authority with the purpose of interchange balancing and specifically, the Facility’s capability of accepting an AGC Set-Point electronically, and the automatic adjustment and regulation of the Facility’s Energy production via the SCADA System.

“AGC Protocols” means the protocols for AGC included in Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications, as such protocols may be modified from time to time in accordance with Section 10.8.

“AGC Remote/Local” means a handshake electronic signal sent from the Facility to the EMCC AGC system, and from the EMCC AGC system to the Facility, indicating the Facility is receiving AGC Set-Point locally (from the Facility) or remotely (EMCC AGC system) and is following that AGC Set-Point.

“AGC Set-Point” means the Company-generated analog or digital signal sent by the SCADA System to the Facility, representing the quantity of Energy to be stored by the Battery Storage System. The AGC Set-Point is calculated by the EMCC AGC system and communicated electronically to the Facility via the SCADA System.

[“Annual Throughput Limit” means [_____] MWh.] ***bid-specific -- may be n/a***

“Applicable Law” means all laws, statutes, treaties, codes, ordinances, regulations, standards, certificates, orders, licenses and permits of any Governmental Authority that are applicable to a Party, the business of a Party or the Facility, now in effect or hereafter enacted, including amendments to or interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards and/or like actions, including, for the avoidance of doubt, electrical, building, fire, zoning, environmental, and occupational health and safety requirements.

“Arbitration Service” means Judicial Arbitration and Mediation Services, Inc. (aka JAMS).

“Availability” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Availability Notice” shall have the meaning set forth in Section 7.3(B).

“Back-Up Metering” shall have the meaning set forth in Section 5.5(B).

“Balancing Authority” means the system of electrical generation, distribution and transmission facilities within which generation is regulated in order to maintain interchange schedules with other such systems.

“Battery Payment Rate” is as set forth on Exhibit J – Battery Payment Rate and Capacity Payment Rate.

“Battery Storage System” means that portion of the Facility that is required to store energy using the Battery Units, including, without limitation, step-up transformers, output breakers, facilities necessary to connect to the Interconnection Point, protective and associated equipment, improvements, and other tangible and intangible assets, contract rights, Permits, easements, rights of way, surface use agreements and other interests or rights in real estate, owned or used for construction, operation, maintenance and delivery of the foregoing.

“Battery Storage System Forced Outage” means any Outage of the Battery Storage System that is not an Excused Outage.

“Battery Storage System Nameplate Capacity” means the designed maximum capacity of the Battery Storage System expressed in MWs and calculated by dividing the MWhs of energy the Battery Storage System is designed to store, divided by the number of hours the Battery Storage System is designed to discharge at full output, as designated by the manufacturer, as measured at the Interconnection Point, as set forth in Section 3.2.

“Battery Storage System Operating Procedures” means those procedures applicable to the operation of the Battery Storage System, as developed by the Operating Committee in accordance with the procedure, and subject to the requirements, set forth in Exhibit O – Battery Storage System Operating Procedures.

“Battery Storage System Planned Outage” means a planned removal from service of the Battery Storage System, or some part thereof constituting not less than ten percent (10%) of the Battery Storage System Nameplate Capacity, that is required for inspection, or routine, preventive or corrective maintenance; provided that Battery Storage System Planned Outages during any Commercial Operation Year may not exceed ninety-six (96) hours.

“Battery Units” means the batteries, power electronic systems, enclosures and other equipment necessary for the Battery Storage System to store electricity at the Site and transmit such electricity upon command. The manufacturer and model number of the Battery Units will be identified on Exhibit C – Facility Description and Site Maps.

“Business Day” means any Day that is not a Saturday, a Sunday, or a NERC recognized holiday.

“Capacity Payment Rate” shall have the meaning set forth in Exhibit J – Battery Payment Rate and Capacity Payment Rate

“Change of Control” means the occurrence of any one of the following events with respect to Seller or any direct or indirect owner of a majority of the ownership interests in Seller: (a) a transfer of a majority of the ownership interests in Seller or such owner; (b) any consolidation or merger of Seller or such owner in which Seller or such owner, as the case may be, is not the continuing or surviving entity; or (c) a sale or conveyance of any direct or indirect ownership interest in Seller following which [REDACTED] (“Ultimate Parent”) is no longer the direct or indirect owner of at least 50% of the ownership interests of Seller, *provided, however*, that a Change of Control shall not be deemed to have occurred as a result of:

- (i) transactions exclusively among Affiliates of Seller;
- (ii) any exercise by the Facility Lender of its rights and remedies under the Financing Documents;
- (iii) a change of control of Ultimate Parent; or
- (iv) any change of economic and/or voting rights triggered in Seller’s organizational documents arising from a tax-equity financing of the Facility.

“Charging Energy” means energy withdrawn from the Transmission Authority’s electrical system and delivered at the Point of Delivery used to charge the Battery Storage System and discharged at a later time.

“Charging Energy Price” means, if Company has joined a regional transmission organization or is participating in an organized market for which nodal prices can be determined, then the applicable nodal price per MWh in the day-ahead market as determined by Company in its sole discretion, or, if not, then the applicable price per MWh as determined by Company in its sole discretion pursuant to its cost calculator.

“COD Conditions” means all of the requirements that must be satisfied by Seller as a prerequisite to achieving Commercial Operation. The COD Conditions are set forth in Section 4.5.

“COD Delay” shall have the meaning set forth in Section 12.2.

“COD Notice” shall have the meaning set forth in Section 4.5.

“Commercial Operation” means the period beginning on the Commercial Operation Date and continuing through the balance of the Term of this PPA.

“Commercial Operation Date” or “COD” shall have the meaning set forth in Section 4.5.

“Commercial Operation Test” means the commercial operation test described in Exhibit M – Battery Storage System Testing Protocols.

“Commercial Operation Year” shall have the meaning set forth in Section 4.5(E).

“Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any action to be taken or attempted by a Party under this PPA, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action at a reasonable cost; (b) is consistent with Good Utility Practices; (c) is consistent with the terms in this PPA; and (d) takes into consideration the amount of advance notice required to take such action, the duration and type of action, and the competitive environment in which such action occurs.

“Company Dispatched Test” shall have the meaning set forth in Section 5.6(D).

“Confidential Information” shall have the meaning set forth in Section 20.18(A).

“Construction Contracts” shall have the meaning set forth in Section 4.1(A).

“Construction Milestones” means the dates set forth in Exhibit B – Construction Milestones.

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

“Damage Cap” shall have the meaning set forth in Section 12.4.

“Day” means a calendar day.

“Delivery Period” shall be the period during which the Facility is available to receive Charging Energy from, or deliver Discharging Energy to, Company, commencing at 12:01 am on the Commercial Operation Date and continuing until midnight on the Scheduled Termination Date, subject to early termination as provided in this PPA.

“Discharging Energy” means all Energy discharged by the Battery Storage System and delivered to the Point of Delivery.

“Discharging Energy Price” means, if Company has joined a regional transmission organization or is participating in an organized market for which nodal

prices can be determined, then the applicable nodal price per MWh in the day-ahead market as determined by Company in its sole discretion, or, if not, then the applicable price per MWh as determined by Company in its sole discretion pursuant to its cost calculator.

“Dispatchability Adjustment” shall have the meaning set forth in Section 8.4(D).

“Dispatch Availability Factor” shall have the meaning set forth in Section 8.4(D).

“Dispatch Notice” means the operating instruction, and any subsequent updates, given by Company to Seller, directing the Battery Storage System to (i) charge at a specified megawatt input or discharge at a specified megawatt output, and (ii) at a specified Ramp Rate. Dispatch Notices may be communicated electronically, via facsimile, telephonically or other verbal means. Telephonic or other verbal communications shall be documented (either recorded by tape, electronically or in writing) and such recordings shall be made available to both Company and Seller upon request.

“Dispatch Parameter” means, as applicable, the (i) the megawatt input for charging specified in a Dispatch Notice; and (ii) the megawatt output for discharging specified in a Dispatch Notice.

“Dispute” shall have the meaning set forth in Section 13.1(A).

“Dispute Notice” shall have the meaning set forth in Section 13.1(A).

“Economic Benefit” has the meaning set forth in Section 20.2(E).

“Electric Metering Devices” means revenue quality meters, metering equipment and/or data processing equipment used to measure, record and transmit data with respect to the to the Charging Energy delivered to and the Discharging Energy delivered from the Battery Storage System, including metering current transformers and metering voltage transformers. The Electric Metering Devices must transmit to Company five-minute revenue quality meter data.

“Emergency” means any event or occurrence during the Term that results in the declaration of an Emergency Condition under and as defined in the Interconnection Agreement.

“Energy” means all electrical energy stored and discharged by the Battery Storage System during the Term.

“Energy Markets Control Center” or “EMCC” means Company's merchant representatives responsible for dispatch of the Facility.

“Energy Resource Interconnection Service” means the type of interconnection service which allows Seller to connect the Facility to the transmission or distribution system, as applicable, as an “Energy Resource” as defined by the Transmission Tariff,

and be eligible to deliver the Facility's output using the existing firm or non-firm capacity on the transmission system on an as-available basis. *if needed*

"Environmental Contamination" shall have the meaning set forth in Section 4.2.

"Equivalent Availability Factor" shall have the meaning set forth in Section 8.4(C).

"Equivalent Outage Hours" shall have the meaning set forth in Section 8.4(C).

"ERO" means the Electric Reliability Organization certified by FERC pursuant to Section 215 of the Federal Power Act, or any successor organization. The certified ERO as of the date of this PPA is the Western Electricity Coordinating Council (WECC) and [*to be provided*].

"Escrow Account" shall have the meaning set forth in Section 11.3(B).

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

"Excess Throughput Limit" means [] MWh.] ***bid-specific -- may be n/a***

"Excused Outage" means any Outage of the Battery Storage System resulting from: (i) a Battery Storage System Planned Outage; (ii) Force Majeure or Emergency; (iii) a breach of this Agreement by Company; (iv) insufficient stored energy not caused by any act or omission of Seller; (v) an Outage resulting from a request by Company; (vii) any Outage where Seller failed to comply with a dispatch that was not in accordance with the Battery Storage System Operating Procedures.

"Facility" means the Battery Storage System, and all equipment necessary to interconnect to the Transmission Authority's System, all as further described in Exhibit C – Facility Description and Site Maps, including Seller's rights to the Site and all of the following: the Battery Units, buildings, step-up transformers, output breakers, facilities necessary to connect to the Interconnection Point, protective and associated equipment, improvements, and other tangible and intangible assets, contract rights, Permits, easements, rights of way, surface use agreements and other interests or rights in real estate, owned or used for construction, operation, maintenance and delivery of the capacity and energy subject to this PPA.

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

"Facility Lender" means, collectively, any lenders or tax equity investors providing Facility Debt, including any successors or assigns thereof.

"Federal Power Act" means the provisions of 16 U.S.C. §791(A) *et seq.* and amendments or supplements thereto.

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

“Financing Documents” means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction or permanent debt financing and/or tax equity financing for the Facility, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

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

“Forced Outage” means any condition at the Facility that requires the immediate and unplanned removal of at least ten percent of the capacity of the Battery Storage System from service, or that results in a material deviation from the Guaranteed Performance identified in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels, another outage state, or a reserve shutdown state, resulting from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to abnormal Facility conditions or alarms.

“Good Utility Practices” means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the electric power generation and storage industry pertaining to facilities of the type, similar size and location to the Facility that, at a particular time, in the exercise of Commercially Reasonable judgment, in light of the facts that are known (or reasonably should have been known) at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, Permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices is not limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the applicable segment of the electric power generation and storage industry in the relevant region, during the relevant period.

“Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; and/or any court or governmental tribunal. By way of example only, “Governmental Authorities” include NERC, the ERO, the Market Operator (if any), an applicable PUC, the Transmission Authority and FERC, and successor organizations.

“Grid Charging Capability” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Guaranteed Maximum Charging Rate” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Guaranteed Maximum Discharging Rate” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Guaranteed Minimum Charging Time” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Guaranteed Minimum Discharging Time” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Guaranteed Performance” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Guaranteed Response Time” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Guaranteed Round Trip Efficiency” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Guaranteed Storage Availability” shall have the meaning set forth in Section 8.4(C).

“Guaranteed Storage Availability Payment Adjustment” shall have the meaning set forth in Section 8.4(C).

“Guaranteed Storage Availability Payment Adjustment Cap” shall have the meaning set forth in Section 8.4(C).

“Guaranteed Storage Capacity” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Hours” shall have the meaning set forth in Section 8.4(C).

“House Power” shall have the meaning set forth in Section 1.2(B).

“Independent Engineer” means a qualified and independent third party engineering firm.

“Interconnection Agreement” means the separate contract for interconnection of the Facility to the Transmission Authority’s System, as such agreement may be amended from time to time. For purposes of this PPA, the Interconnection Agreement shall be interpreted to include any third party facility construction agreement or other agreement required by the Transmission Authority to interconnect the Facility in accordance with the Transmission Tariff. For the avoidance of doubt, “Interconnection Agreement” excludes any temporary or provisional interconnection agreement or any

agreement where the Transmission Provider may limit the operational output of the Facility.

“Indemnified Party” shall have the meaning set forth in Section 17.1.

“Indemnifying Party” shall have the meaning set forth in Section 17.1.

“Interconnection Facilities” means those facilities designated in the Interconnection Agreement for the direct purpose of interconnecting the Facility at the Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities, whether owned by Seller, the Transmission Authority or another entity. This equipment is conceptually depicted in Exhibit C – Facility Description and Site Maps to this PPA.

“Interconnection Point” means the physical point within the operational authority of the Transmission Authority as specified in the Interconnection Agreement as project [REDACTED], at which electrical interconnection is made between the Facility and the Transmission Authority’s System in accordance with the Transmission Tariff and the Interconnection Agreement.

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

“kW” means kilowatt, and “kWh” means kilowatt hour.

“Lender Consent” shall have the meaning set forth in Section 18.1.

“Liquidated Delay Damages” shall have the meaning set forth in Section 12.2.

“Maintenance Schedule” shall have the meaning set forth in Section 10.2.

“Market Operator” means the entity that instructs market participants and/or generators to regulate generation and energy storage assets (including the Facility) within any energy market in which Company participates, based on price-based offer curves for the purpose of matching generation output to system load demand while maintaining bulk electric system reliability. If such entity is the Transmission Authority, then “Market Operator” shall mean such entity acting in its capacity as such.

“Material Adverse Effect” means any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results in operations or condition (financial or otherwise), prospects, or property of a Party, its business, or this PPA.

“Maximum Charging Rate” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Maximum Discharging Rate” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Minimum Charging Time” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Minimum Discharging Time” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“MW” means megawatt or one thousand kW, and “MWh” means megawatt hours.

“NERC” means the North American Electric Reliability Corporation or any successor organization.

“Network Resource Interconnection Service” means the type of interconnection service which allows Seller to connect the Facility to the transmission or distribution system, as applicable, as a “Network Resource” as defined by the Transmission Tariff, and be eligible to deliver the Facility’s output in a manner comparable to that in which the Transmission Authority integrates its generating facilities to serve native load customers. *if needed*

“Operating Committee” means representative(s) each from Company and Seller, pursuant to Section 10.8.

“Operating Day” means a day within the Delivery Period on which the Battery Storage System operates.

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

“Outage” means any period during which the capacity of the Battery Storage System is unavailable for any reason as reported by the SCADA system in accordance with Exhibit O – Battery Storage System Operating Procedures.

“Party” and “Parties” shall have the meanings set forth in the introductory paragraph.

“Pending Facility Transaction” or “PFT” shall have the meaning set forth in Section 19.4.

“Performance Criteria” means the performance test elements set forth in Exhibit M – Battery Storage System Testing Protocols.

“Performance Tolerance Band” shall have the meaning set forth in Section 8.4(D).

“Periodic Test” shall have the meaning set forth in Section 5.6(B).

“PFT Notice” shall have the meaning set forth in Section 19.4.

“PI System” means the “plant information” system for the Facility.

“Point of Delivery” means the physical point within the operational authority of Transmission Authority at which (i) Seller makes available and delivers to Company the Energy being provided by Seller to Company under this PPA and (ii) Company makes available and delivers to Seller the Charging Energy being provided by Company to Seller under this PPA. The Point of Delivery is specified in Exhibit C – Facility Description and Site Maps to this PPA.

“PUC” means the Colorado Public Utilities Commission or any successor agency.

“PUC Approval” shall have the meaning set forth in Section 6.1(D).

“Qualified Operator” means an operator of battery energy storage systems that has sufficient experience to successfully operate the Facility, including a minimum of one (1) year of experience in the battery energy storage business, and owns, controls or operates a minimum of 20 MW and 40 MWh of battery energy storage capacity in aggregate with at least one facility that has at least 5 MW and 10 MWh of battery energy storage capacity.

“Ramp Rate” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Repair Plan” shall have the meaning set forth in Section 10.3(A).

“Replacement Power Costs” for any period mean the costs incurred by Company to replace the products and services which Seller was required to provide under this PPA (but failed to so provide) during such period, less the sum of any payments from Company to Seller under this PPA that were eliminated with respect to such period as a result of such failure. Replacement Power Costs shall be determined on an hourly basis and shall equal the sum of the following for each hour where the following calculation achieves a positive number:

Hourly Replacement Power Costs = (A + B + C) – D, where

“A” = the product of (x) the number of MW of lost capacity, derived by subtracting the number of MW of capacity of the Facility that qualifies for capacity credit actually made available to Company from the amount of qualifying capacity associated with the entire Facility, and (y) the applicable market price for capacity made available to Company’s system, for such hour;

“B” = the price paid by Company for the MWh of energy purchased by Company to replace the Energy that was not delivered under this PPA during such hour;

“C” = the actual cost of transmission, Ancillary Services, fuel and fuel transportation, other incremental costs, and any related penalties that could not be avoided or mitigated, and transaction charges to deliver reasonably available energy to Company in amounts equal to the number of MWh for which Replacement Power Costs are owed; and

“D” = the sum of all payments avoided by Company as a result of Seller’s breach, for such hour, including avoided payments under Article 8.

“Response Time” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“ROFO” and “ROFO Notice” shall have the meanings set forth in Section 19.3.

“Round Trip Efficiency” or “RTE” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Round Trip Efficiency Adjustment” shall have the meaning set forth in Section 8.4.

“Safety Requirements” means those requirements set forth in Exhibit P – Safety Requirements, in addition to any other safety-related practices required by Applicable Law and Good Utility Practice.

“SCADA” means supervisory control and data acquisition.

“Scheduled Termination Date” shall have the meaning set forth in Article 2.

“Security Fund” shall have the meaning set forth in Section 11.1.

“Seller Initiated Test” shall have the meaning set forth in Section 5.6(A).

“Site” means the parcel of real property on which the Facility will be located, including any easements, rights of way, surface use agreements and other interests or rights in real estate necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in Exhibit C – Facility Description and Site Maps to this PPA.

“State of Charge” or “SOC” means the amount of electric energy in a Battery Unit expressed as a percent of the Storage Capacity.

“Storage Capacity” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Successful Remedy” shall have the meaning set forth in Section 10.3(A).

“Tax Credit Legislation” means any federal or state legislation enacted into law that provides federal or state income tax credits, direct payment or other monetary incentives, for owners of facilities that utilize equipment which receives, stores, and delivers electric energy using batteries or other energy storage technologies.

“Target COD” shall have the meaning set forth in Section 4.5(A).

“Technical Dispute” shall have the meaning set forth in Section 13.1(A).

“Term” means the period of time during which this PPA remains in full force and effect, as further defined in Article 2.

“Test” shall have the meaning set forth in the first paragraph of Exhibit M – Battery Storage System Testing Protocols.

“Total Equivalent Forced Outage Hours” shall have the meaning set forth in Section 8.4(C).

“Total Equivalent Planned Outage Hours” shall have the meaning set forth in Section 8.4(C).

“Transmission Authority” means collectively those entities owning and/or operating the interconnected transmission system applicable to Seller and the Facility pursuant to a Transmission Tariff, including (i) Public Service Company of Colorado operating under and in accordance with its Transmission Tariff, and (ii) all entity(ies) responsible under the Interconnection Agreement for providing the transmission lines, any Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Interconnection Point and transmission system.

“Transmission Authority’s System” means the contiguously interconnected electric transmission and sub-transmission facilities, over which the Transmission Authority has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Interconnection Point.

“Transmission Tariff” means the applicable Open Access Transmission Tariff of the Transmission Authority, as amended from time to time.

“Ultimate Parent” shall have the meaning set forth in the definition of Change of Control.

“Variable O&M Payment” shall have the meaning set forth in Section 8.1(B).

* * * * *

EXHIBIT B CONSTRUCTION MILESTONES

Construction

<u>Milestone</u>	<u>Outcome</u>
<i>[Date]</i>	Seller and all required counterparties shall have executed such Construction Contracts as are needed to construct the Facility.
<i>[Date]</i>	Seller and the Transmission Authority shall have executed the Interconnection Agreement.
<i>[Date]</i>	Seller shall have achieved closing on financing for the Facility or provided Company with proof of financial capability to construct the Facility.
<i>[Date]</i>	Commencement of construction of the Facility.
<i>[Date]</i>	Procurement of Battery Units.
<i>[Date]</i>	Seller shall have laid the foundation for all Facility buildings, energy storage facilities and step-up transformation facilities.
<i>[Date]</i>	The step-up transformer and Battery Units shall have been delivered and installed at the Site.
<i>[Date]</i>	Seller's Interconnection Facilities shall have been constructed, and such facilities are capable of being energized.
<i>[Date]</i>	Start-up testing of the Facility commences.

EXHIBIT C FACILITY DESCRIPTION AND SITE MAPS

[This Exhibit shall include a description of the Facility and all material components thereof, including map, aerial pictures, one-line diagram, Point of Delivery and (if different) the Interconnection Point as well as the manufacturer and model numbers of the Battery Units.]

The Facility shall be located on the Site and shall be identified as Seller's [REDACTED] Energy Storage Facility. Maps and one-line diagrams of the Facility and associated equipment are included as part of this Exhibit, as may be updated from time to time.

The address of the Facility is [REDACTED].

The Facility and the Battery Storage System must include the following specific components:

- * major equipment including batteries and inverters;
- * communication circuits from the Facility to the EMCC for the purpose of telemetering, supervisory control/data acquisition, and voice communications as required by Company;
- * equipment and software necessary to receive, accept and react to an AGC signal from the Company's SCADA System and to comply with the AGC Protocols as further specified on Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications;
- * ramping capability, voltage control (on and off peak) and frequency control. pursuant to NERC guidelines/requirements.
- * capability of sending real time data and OPC interface to Company's PI System;
- * a Point of Delivery located at [REDACTED];

The proposed Facility includes the components that are equivalent to, or better than, the following:

- [Additional Bid Specific information to be added]

EXHIBIT D
NOTICES

<u>Company</u>	<u>Seller</u>
<p>Notices: [Redacted] Purchased Power Manager Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: [Redacted] E-mail: [Redacted]@xcelenergy.com</p> <p><i>with a cc to:</i> [Redacted] Purchased Power Analyst Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: [Redacted] E-mail: [Redacted]@xcelenergy.com</p>	<p>Notices: [Redacted] [Redacted] [Redacted] Phone: [Redacted] E-mail: [Redacted]@[Redacted].com</p> <p><i>with a cc to:</i> [Redacted] [Redacted] [Redacted] Phone: [Redacted] E-mail: [Redacted]@[Redacted].com</p>
<p>Operating Committee Representative: [Redacted] Purchased Power Manager Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: [Redacted] E-mail: [Redacted]@xcelenergy.com</p> <p>Alternate: [Redacted] Purchased Power Analyst Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: [Redacted] E-mail: [Redacted]@xcelenergy.com</p>	<p>Operating Committee Representative: [Redacted] [Redacted] [Redacted] Phone: [Redacted] E-mail: [Redacted]@[Redacted].com</p> <p>Alternate: _____ _____ _____ Phone: [Redacted] E-mail: [Redacted]@[Redacted].com</p>
<p>Real-Time Contact Information <u>EMCC</u> (24 hour coverage): Phone: 303-571-7426</p>	<p>Real-Time Contact Information <u>[Operations Command Center]</u> (24 hour coverage): Phone: [Redacted]</p>

<p>E-mail: dlrtelectricmarketersnsp@xcelenergy.com</p> <p><u>Transmission Ops:</u> Phone: 303-273-4811 E-mail: AGCOpr@xcelenergy.com</p>	<p>E-mail: _____@_____.com</p>
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EXHIBIT E INSURANCE COVERAGE

Type of Insurance	Minimum Limits of Coverage
Commercial General Liability (CGL) and commercial umbrella	\$11,000,000 combined single limit each occurrence and the aggregate, where applicable. If CGL insurance contains a general aggregate limit, it shall apply separately to the Facility.

CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of "Insured contract" to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

Company shall be included as an insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance. The CGL and commercial umbrella insurance to be obtained by or on behalf of Seller shall be endorsed as follows:

Such insurance as afforded by this policy for the benefit of Company shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this PPA, and insured hereunder, and any insurance carried by Company shall be excess of and noncontributing with insurance afforded by this policy.

Business Automobile Liability	\$2,000,000 combined single limit (each accident), including all Owned, Non-Owned, Hired and Leased Autos.
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Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Workers Compensation	Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.
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[Exhibit E - continued]

Type of Insurance	Minimum Limits of Coverage
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Employers Liability	\$2,000,000 each accident for bodily injury by accident, or \$2,000,000 each employee for bodily injury by disease.
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Builder's Risk	Replacement value of the Facility.
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Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy.

Environmental Impairment Liability	\$5,000,000 each occurrence.
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All-Risk Property insurance covering physical loss or damage to the Facility	Full replacement value of the Facility. A deductible may be carried which deductible shall be the absolute responsibility of Seller.
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All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$10,000,000 each for flood and earthquake; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and turbines, in an amount equal to their full replacement value.

Business Interruption insurance	Amount required to cover Seller's continuing or increased expenses, resulting from full interruption, for a period of 12 calendar months.
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Business Interruption insurance shall cover loss of revenues or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on Commercially Reasonable terms as determined by Company, subject to a Commercially Reasonable deductible that shall be the responsibility of Seller. Notwithstanding any other provision of this PPA, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date.

EXHIBIT F
SELLER'S NEEDED PERMITS

Bid Specific

EXHIBIT G
FORM OF LETTER OF CREDIT

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit Date of Issuance: _____
No: _____
Beneficiary: Public Service Company Initial Expiration Date: [Must be at least
of Colorado one year after date of issuance]
Applicant:

As the Issuing Bank ("Issuer"), we, [Name of Issuing Bank], hereby establish this irrevocable Standby Letter of Credit No. _____ (this "Letter of Credit") in favor of the above-named beneficiary ("Beneficiary") for the account of the above-named applicant ("Applicant") in the amount of US\$ _____ (_____ Million U.S. Dollars).

Beneficiary may draw all or any portion of this Letter of Credit at any time and from time to time, and Issuer will make funds immediately available to Beneficiary upon presentation of Beneficiary's draft(s) at sight in substantially the form attached hereto as Exhibit "A" ("Sight Draft"), drawn on Issuer and accompanied by this Letter of Credit. All Sight Drafts must be signed on behalf of Beneficiary, and the signator must indicate his or her title or other official capacity. No other documents will be required to be presented. Issuer will effect payment under this Letter of Credit within twenty-four (24) hours after presentment of any Sight Draft. Payment shall be made in U.S. Dollars with Issuer's own funds in immediately available funds.

Issuer will honor any Sight Draft presented in substantial compliance with the terms of this Letter of Credit at the Issuer's letterhead office, the office located at _____ or any other full service office of the Issuer on or before the above-stated expiration date, as such expiration date may be extended hereunder. Partial and multiple draws and presentations are permitted on any number of occasions. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary.

This Letter of Credit is issued pursuant to the provisions of that certain Battery Storage Energy Purchase Agreement between Beneficiary and Applicant dated as of _____, 20__ (as the same may have been or may be amended from time to time, the "PPA"). Notwithstanding any reference in this Letter of Credit to the PPA or any other documents, instruments or agreements, or references in the PPA or any other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit will be automatically extended each year without amendment for a period of one (1) year from the expiration date hereof, as extended, unless at least thirty

(30) days prior to the expiration date, Issuer notifies Beneficiary by registered mail that it elects not to extend this Letter of Credit for such additional period. Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary's address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer's letterhead address.

This Letter of Credit is freely transferable by Beneficiary in whole or in part, and the number of transfers is unlimited. Issuer shall effect any transfers immediately upon presentation to Issuer of this Letter of Credit and a completed written transfer request substantially in the form attached hereto as Exhibit "B." Such transfer will be effected at no cost to Beneficiary. Any transfer fees assessed by Issuer will be payable solely by Applicant, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer of this Letter of Credit.

Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims which Beneficiary may have against Applicant or Applicant may have against Beneficiary.

This Letter of Credit is subject to the uniform customs and practice for documentary credits (2007 Revision), International Chamber of Commerce publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control that interrupts Issuer's business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

ISSUER:

By: _____
Authorized Signature

EXHIBIT "A"
TO LETTER OF CREDIT

SIGHT DRAFT

Draft Number _____
\$ _____

At sight, pay to the order of [Name of Beneficiary to be inserted], the amount of
USD \$ _____ (_____ and 00/100ths U.S. Dollars).

Value received and charged to the account of: [Name of Issuer and address].
Drawn under [Name of Issuer to be inserted] Standby Letter of Credit No.
_____.

Dated: _____

Public Service Company of Colorado

By: _____
[name and title]

Account: [Applicant to be inserted]

EXHIBIT "B"
TO LETTER OF CREDIT

FORM OF TRANSFER REQUEST

Irrevocable Standby Letter of Credit No. _____

Current Beneficiary:

Applicant:

To: [Name of Issuer] ("Issuer")

The undersigned, as the current "Beneficiary" of the above-referenced Letter of Credit, hereby requests that you reissue the Letter of Credit in favor of the transferee named below [insert transferee name and address below]:

From and after the date this transfer request is delivered to Issuer, the transferee shall be the "Beneficiary" under the Letter of Credit for all purposes and shall be entitled to exercise and enjoy all of the rights, privileges and benefits thereof.

Dated: _____

Public Service Company of Colorado

By: _____

Name: _____

Title: _____

[Notary Acknowledgement]

To be signed by a person purporting to be an authorized representative of Beneficiary and indicating his or her title or other official capacity, and acknowledged by a notary public.

EXHIBIT H
FORM OF GUARANTY

GUARANTY

This Guaranty is executed and delivered as of this ____ day of _____, 20__ by _____, a _____ [corporation] ("Guarantor"), in favor of Public Service Company of Colorado ("Company"), in connection with the performance by _____, a _____ [limited liability company] ("Seller") of a Battery Storage Energy Purchase Agreement dated _____, 20__ between Seller and Company (the "PPA").

- RECITALS -

A. Seller proposes to construct, own and operate Battery Storage System having a Battery Storage System Nameplate Capacity of approximately ____ MW located in _____ County, _____ (the "Facility").

B. Seller and Company have entered into the PPA for the purchase and sale of electrical energy from the Facility on the terms and conditions set forth therein.

C. Seller is controlled by Guarantor. Guarantor expects to derive substantial benefits from the performance of the PPA by Seller and Company. To induce Company to enter into and continue the PPA and to consummate the purchase and sale of electrical energy contemplated by the PPA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

- AGREEMENT -

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Company the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the PPA, whether incurred before or after the date of delivery of this Guaranty (the "Obligations"). This is a guaranty of payment, not of collection, and as such, Company shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty. This Guaranty shall survive termination of the PPA to the extent necessary to enforce and complete the rights, duties and obligations of Company and Seller thereunder.

2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to _____ dollars (US\$_____) plus costs of collection under Section 10 below.

3. Rights of Company. Guarantor hereby grants to Company, in Company's discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor's duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the PPA;

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

4. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the PPA has expired ("Default"), Guarantor shall immediately upon receipt of written demand by Company (a) perform or cause Seller to perform the Obligation in Default, and (b) pay, reimburse, and indemnify Company against any liabilities, damages, and related costs (including attorneys' fees) incurred by Company as a result thereof, all in such manner and at such times as Company may reasonably direct.

5. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

6. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by Company.

7. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 4 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;

(b) any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;

(c) any defense based upon an election of remedies by Company;

(d) any duty of Company to protect or not impair any security for the Obligations;

(e) the benefit of any laws limiting the liability of a surety;

(f) any duty of Company to disclose to Guarantor any facts concerning Seller, the PPA or the Facility, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Company, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and

(g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, Company.

8. Cumulative Remedies. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.

9. Representations and Warranties. Guarantor represents and warrants to Company as follows:

(a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Seller is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

10. Collection Costs. Guarantor shall pay to Company, upon demand, and in addition to the maximum liability set forth in Section 2 hereof, all reasonable attorneys'

fees and other expenses which Company may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by Company in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Company of its rights and remedies hereunder.

11. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

12. Waiver or Amendment. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company.

13. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of Company and Guarantor.

14. Governing Law. This Guaranty shall be governed by and construed in accordance with the law of the State of [*insert home state of Company*] without regard to the principles of conflicts of law thereof. Venue for any dispute hereunder shall be as set forth in Section 13.5 of the PPA.

15. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the PPA, addressed as follows:

(a) if to Company: as provided in the PPA

(b) if to Guarantor: _____

Attn:

with a copy to: _____

Attn:

or to such other address (es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to Company as of the day and year first above written.

[Name of Guarantor]

By: _____

Name:

Title:

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of _____.

Witness my hand and official seal.

My commission expires: _____.

(S E A L)

Notary Public

EXHIBIT I

AGC PROTOCOLS; DISPATCH AND AVAILABILITY NOTICES; DATA COLLECTION; TECHNICAL SPECIFICATIONS

AGC

1. **AGC Communications between Company and Seller.** Company will receive and send AGC Set-Point and related data over a secure analog or digital line. The data points covered under this PPA, as described below, may overlap data requirements for the Transmission Authority or Company’s applicable forecasting group.

<u>Facility</u>			
<u>Description</u>	<u>Units</u>	<u>Description</u>	<u>Units</u>
Actual Real Power	MW	AGC Set-Point (echo)	MW
Actual Reactive Power	MVar	Actual Real Power	MW
Average Voltage (at high voltage interconnection)	kV	Actual Reactive Power	MVar
		AGC Status	Remote/Local

2. **Response times and limitations of Facility in regards to AGC.** The following protocols outline the expectations for responding to the AGC Set-Point. Except in the case of the frequency changes, these protocols will be generally bound by the manufacturers’ specifications for the equipment that Seller has chosen for the Battery Energy Storage Facility.

a. Allowable Variances in Excess of AGC Set-Point. Once the Battery Energy Storage Facility has reached the AGC Set-Point, the Battery Energy Storage Facility output may not vary from the AGC Set-Point by more than 2% on average as measured during a 5-minute period.

b. Range of AGC Set-Point. The range of set-point values can be between 0% and 100% of Park Potential.

3. **Backup Communications.** In the event of an AGC failure, Company and Seller shall communicate via telephone in order to correct the failure.

* * * * *

EXHIBIT J

BATTERY PAYMENT RATE AND CAPACITY PAYMENT RATE

This Exhibit J sets forth the applicable rates for energy and capacity.

This entire Exhibit shall be deemed Confidential Information subject to Section 20.18.

Commercial Operation Year (Year)	Battery Payment Rate (\$/MWh)	Capacity Payment Rate (\$/kW-month)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

EXHIBIT K

LENDER CONSENT PROVISIONS

In the event Seller collaterally assigns its rights hereunder to a Facility Lender as security, any related Lender Consent will contain provisions substantially as follows:

1. Seller and Company will neither modify nor terminate the PPA in any material respect, without the prior written consent of the Facility Lender.
2. The Facility Lender shall have the right, but no obligation, to do any act required to be performed by Seller under the PPA, and any such act performed by the Facility Lender shall be as effective to prevent or cure a default as if done by Seller itself.
3. If Company becomes entitled to terminate the PPA due to an Event of Default by Seller, Company shall not terminate the PPA unless it has first given notice of such Event of Default to the Facility Lender and has given the Facility Lender the same cure period afforded to Seller under Article 12 of the PPA, plus an additional 30 Days beyond Seller's cure period to cure such Event of Default; *provided, however*, that if the Facility Lender requires possession of the Facility in order to cure the Event of Default, and if the Facility Lender diligently seeks possession, the Facility Lender's additional 30-Day cure period shall not begin until foreclosure is completed, a receiver is appointed, any bankruptcy stay is removed, or possession is otherwise obtained by or on behalf of the Facility Lender.
4. The Facility Lender shall provide to Company a copy of any notices of default and/or intent to exercise remedies delivered to Seller under the Financing Documents.
5. Upon any foreclosure, deed-in-lieu or other exercise of the rights and remedies of the Facility Lender that results in a successor owner or operator of the Facility, the Facility Lender shall require and cause the successor (i) to assume all of Seller's prospective obligations under the PPA, (ii) to cure any then-existing defaults by Seller that are capable of cure by performance or the payment of money damages, (iii) to have substantial experience in the operation of power energy storage facilities akin to the Facility, either directly, through its affiliates or through an operator acceptable to Company, and (iv) to enjoy (together with its parents and affiliates) an Investment Grade Credit Rating or other creditworthiness satisfactory to Company. Except for the foregoing, the Facility Lender shall not be obligated to perform or be liable for any obligation of Seller under the PPA.
6. Upon any rejection or other termination of the PPA in connection with any bankruptcy or insolvency of Seller, the Facility Lender (or its successor) and Company shall enter into a new power purchase agreement on the same terms and conditions as the PPA and for the period that would have been remaining under the PPA but for such termination.

* * * * *

EXHIBIT L

PSA PROVISIONS

Any PSA executed to implement exercise of Company's ROFO rights will include provisions substantially as follows:

1. The PSA shall close on such Business Day as may be specified by Company, not more than 180 Days following execution of the PSA (or such longer period as may be required for the PUC to act thereon).

2. Seller shall operate the Facility, and both Parties shall perform the PPA, in the ordinary course of business pending closing of the PSA.

3. Seller shall convey the Facility to Company via special warranty deed, free and clear of all mortgages, deeds of trust, UCC-1s, and other liens materially adverse to Company's ownership and operation thereof.

4. All revenues and expenses of the Facility shall be prorated as of the date of closing.

5. Seller shall provide customary comprehensive representations, warranties and indemnities to Company regarding its legal right to execute and perform the PSA, and regarding title, physical condition, vendors, employees, operations, finances, contracts, maintenance and other relevant matters pertaining to the Facility, unqualified by its knowledge but subject to such factual exceptions as Seller may disclose. Absent fraud, Seller's liability for breach of such reps and warranties shall not exceed 100% of the purchase price. Seller's post-closing obligations shall be secured by a suitable combination of hold-back escrow, letter of credit and/or guaranty from a creditworthy affiliate.

6. Company shall provide customary representations and warranties to Seller regarding its capacity and legal right to execute and perform the PSA, unqualified by its knowledge.

7. Company shall assume all material contracts of Seller related to the Facility that are reviewed and approved by Company (such approval not to be unreasonably withheld) during the due diligence period.

8. Company's obligation to close shall be conditioned upon (i) approval by the PUC, (ii) counterparty consent under all material contracts requiring such consent, (iii) receipt by Company of all Permits needed to own and operate the Facility, and (iv) no material casualty or condemnation of the Facility prior to closing.

9. Company shall have the right of specific performance, without the need to post bond or prove irreparable harm from Seller's failure to close. Venue for any dispute under the PSA shall be the State District Court for the County in which the Facility is located.

10. Such other terms as may then be standard in the market.

EXHIBIT M

BATTERY STORAGE SYSTEM TESTING PROTOCOLS

This Exhibit M sets forth the Performance Criteria and protocols for any testing of the Battery Storage System under this PPA. The Commercial Operation Test, Periodic Test, and other discretionary testing identified in Section 5.6 are sometimes referred to in this Exhibit individually as a “Test” and jointly as the “Tests.”

PART I. GENERAL.

The Tests shall be conducted in accordance with Good Utility Practices and the provisions of this Exhibit M.

PART II. REQUIREMENTS APPLICABLE TO THE TESTS.

A. Required Performance Criteria.

Tests conducted pursuant to this Exhibit M shall include the following elements (unless Company otherwise agrees in writing in its sole discretion):

- “Availability” is defined as the ability of the system to receive and respond to signals from the EMCC. This value is calculated as the ratio of time the system can function as described to total time within the annual measured period, calculated as a percentage. Availability is not negatively impacted by outages beyond the control of the vendor, including:
 - i. any Outage where Seller failed to comply with a Dispatch Notice that was not in accordance with the Battery Storage System Operating Procedures;
 - ii. Force Majeure; or
 - iii. a breach of this Agreement by Company that prohibits the ability of the system to receive and respond to signals from the EMCC.
- “Enterprise Wide Information System” (“EWIS”) means the Company supplied OSI/PI Servers and software used by the Battery Storage System to record historical operations parameters or compatible replacement.
- “Battery Management System” or “BMS” is defined as the electronic control and communication system that manages and protects the Battery Storage System.
- “Grid Charging Capability” means the ability for the Battery Storage System to charge and store Charging Energy delivered from an offsite source by the Transmission Authority’s electrical system.
- “Storage Capacity” is defined as the rated amount of energy that the Battery Storage System can hold, measured in MWh and measured at the Point of Delivery.

- “Self-Discharge Rate” is defined as the loss of charge of the Battery Storage System while idle.
- “Minimum Charging Time” is defined as the amount of time between a measurement of 0% State of Charge (SOC) to reaching full Storage Capacity (expressed in units of time).
- “Minimum Discharging Time” is defined as the amount of time between full Storage Capacity to reaching a measurement of 0% SOC (expressed in units of time).
- “Maximum Charging Rate” is defined as the maximum rate of charging (expressed in MW).
- “Maximum Discharging Rate” is defined as the maximum rate of discharging (expressed in MW).
- “Performance Test” means the Maximum Charging Rate, Maximum Discharging Rate, Minimum Discharging Time, Minimum Charging Time, Storage Capacity, and Round Trip Efficiency of the Battery Storage System tests.
- “Round Trip Efficiency” is defined as the amount of Discharging Energy discharged by the Battery Storage System relative to the amount of Charging Energy, measured at the Point of Delivery, calculated as shown below
$$\text{Round Trip Efficiency (RTE)} = \frac{\text{Battery Energy (WhD)}}{\text{Charging Energy (WhI)}}$$
- “Ramp Rate” shall have the meaning set forth in the Transmission Tariff.
- “Response Time” is defined as the amount of time for the Battery Storage System to dispatch instructions from Company’s SCADA.

B. Test Parameters.

During any Performance Test, at a minimum, the following parameters shall be measured and recorded simultaneously for the Battery Storage System at the level of granularity necessary to assess the measured criteria and at least every four (4) seconds:

- (i) Time;
- (ii) Net electrical energy output to the Point of Delivery (kWh);
- (iii) Net electrical energy input from the Point of Delivery (kWh);
- (iv) Reactive power (VARs);

- (v) State of Charge (%);

During any Performance Test, at a minimum, the following parameters shall be measured and recorded simultaneously for the Battery Storage System at least every thirty (30) minutes:

- (i) Relative humidity (%);
- (ii) Ambient temperature (°F); and
- (iii) Average battery temperature (°F).

C. Performance Test Showing. Seller must demonstrate to Company's reasonable satisfaction, that the Battery Storage System:

- (i) is capable of storing and delivering the MW and MWh amount identified by Seller as the maximum rated power and energy;
- (ii) can deliver full rated power (MW) to the Point of Delivery for [two (2)] [four (4)] consecutive hours, totalling to the Storage Capacity, inclusive of identified Round Trip Efficiency losses.

APPENDIX A: All identified Exhibit M-1 required performance levels are met.

D. Performance Test Conditions.

- (i) At all times during a Test, the Battery Storage System, including all auxiliary equipment, shall be operated in compliance with the Test Plan, Good Utility Practices and all operating protocols and conditions recommended, required, or established by the manufacturer.
- (ii) Company in its sole discretion may elect to shorten the run periods or waive a particular portion of a Test at any time. Such election or waiver during one Test does not shorten any run period or waive any portion of any subsequent Test.
- (iii) [Reserved].
- (iv) Abnormal Conditions. If abnormal operating conditions occur during a Test, Company may postpone or reschedule all or part of such Test in its reasonable discretion in accordance with PART II.F. or PART II.G., below.
- (v) Applicable Laws. The Battery Storage System shall be operated in compliance with all Applicable Laws, including those governing safety, noise, air, and water emissions during any Test.
- (vi) Instrumentation and Metering. Seller shall provide all

instrumentation, metering, and data collection equipment required to perform the Test. Class 0.2S or Class 0.5S meters should be used to verify performance of the Battery Storage System during any Test. Seller shall calibrate or cause to be calibrated all such instrumentation, metering, and data collection equipment no more than three (3) months prior to the date of the Test, if appropriate to the tool type. Copies of all calibration sheets shall be provided to Company at least five (5) Business Days prior to the Test.

Permanently installed instruments shall include but not be limited to revenue metering devices located in the switchyard where the Facility is located.

- E. Test Records. Seller shall provide all records associated with PART II.A. through PART II.D. with the Final Report described below in PART II.H. The records shall include copies of the raw data taken during the Test. This information will be provided in a format reasonably acceptable to Company. Collectively, the records and data provided with the Final Report shall be "Test Records".
- F. Incomplete Test. If any Test is not completed in accordance herewith, Company may in its sole discretion: (i) accept the Test results up to the time the Test stopped (other than in the case such Test is a Commercial Operation Test); (ii) require that the portion of the Test not completed, be completed within a reasonable specified time period; or (iii) require that the Test be entirely repeated. Notwithstanding the above, if Seller is unable to complete a Test due to a Seller's Force Majeure or the actions or inactions of Company, Seller shall be permitted to reconduct such Test as a Seller Initiated Test under Section 5.6(D) on dates and at times reasonably acceptable to Company.
- G. Retest. After the successful completion of a Test, Seller has the right, for any reason, to conduct a retest at Seller's sole expense, including the cost of charging the Battery Storage System. If the Test Records provided by Seller to Company in accordance with PART II.E. are not in accord with the records and notes of the Company representative who attended such Test on Company's behalf, Company may require the Test to be repeated or conducted by Company or a testing firm of Company's choice and attended by Seller's representatives. If the retest determines that the Test Records provided by Seller to Company are correct, then such retest will be deemed to be a Company Dispatched Test. If the retest determines that the Test Records provided by Seller to Company are incorrect, then such retest will be deemed to be a Seller Initiated Test. The records from any retest shall be used to determine Battery Storage System performance as of the date of the original Test being repeated.
- H. Final Report. Within fifteen (15) Business Days after the completion of a Test (including a retest), Seller shall prepare and submit to Company a

written report of the Test in a format reasonably acceptable to Company. At a minimum, the report shall include:

- (i) a record of the personnel present during all or any part of the Test, whether serving in an operating, testing, monitoring or other such participatory role;
- (ii) a record verifying that inspections took place and the results were acceptable prior to testing initiation;
- (iii) a record of the test conditions (e.g. weather conditions) and test set up (e.g. equipment type and placement used);
- (iv) a record of any unusual or abnormal conditions or events that occurred during the Test and any actions taken in response thereto;
- (v) the Test Records;
- (vi) the system performance in relation to the Performance Criteria identified in Exhibit M-1, either by direct measurement or via agreed to calculation; and
- (vii) Seller's statement of either Seller's acceptance of the Test or Seller's rejection of the Test results and reason(s) therefore.

Within ten (10) Business Days after receipt of such report, Company shall notify Seller in writing of either Company's acceptance of the Test results or Company's rejection of the Test and reason(s) therefore.

If Company rejects the results of any Test or retest, or Seller rejects the results of the initial Commercial Operation Test, such Test shall be repeated in accordance with PART II.G.

- I. Company Representative. Company shall be entitled to have at least two (2) representatives from Company and one (1) independent third party witness reasonably acceptable to Seller present to witness each Test and shall be allowed reasonable access to the area from where the plant is being controlled (e.g., plant control room), and reasonable access to inspect the instrumentation necessary for Test data acquisition prior to commencement of any Test, subject to providing reasonable advance notice to Seller and adhering to Seller's safety protocols that have been communicated to Company. Company shall be responsible for all costs, expenses and fees payable or reimbursable to the representative and the third party, if any.

PART III. COMMERCIAL OPERATION TEST.

- A. Test Plan. The Test Plan is provided in PART V Section F and G of this Exhibit M.
- B. Test Dates. Seller shall provide Company with at least seven (7) Business Days' notice of Seller's proposed dates for the Commercial Operation Test. Company shall confirm the dates in writing prior to the first date of the Test.
- C. Costs. Costs for testing are as set forth in Section 5.6. The Commercial Operation Test is a Company Initiated Test.

PART IV. PERIODIC TESTS.

- A. Test Plan. The Test Plan is provided in PART V - Section F of this Exhibit M, unless specified below or the Parties agree otherwise in writing.
 - B. Instrumentation and Metering. The Parties shall use the same instrumentation and metering as was used in the Commercial Operation Test, unless the Parties otherwise agree in writing. Company reserves the right, in its sole discretion and at its expense, to install its own back-up instrumentation and metering to verify the results of the periodic tests. If requested in writing, Company shall provide copies of any inspection or testing reports to Seller.
 - C. Test Dates. Seller is responsible for scheduling each Periodic Test. The date of any such Test shall be confirmed in writing by Company to Seller prior to the date of the Test. The Parties should attempt but are not required to schedule such Test on days that Company will or is likely to dispatch the Battery Storage System.
 - D. Costs. Costs for testing are as set forth in Section 5.6.
- PART V. TEST PLAN.
- Any Test shall be performed according to the provisions of this Exhibit M, and the Test Plan below.
- A. **GENERAL:**
 - (i) This document provides the procedure for Performance Test and evaluation of the Battery Storage System for the Facility. This document shall be the template to develop the final Performance Test procedures as mutually agreed to between the Parties. The complete final Performance Test procedure shall be submitted sixty (60) Days prior to the test.
 - (ii) The sole purpose of the Performance Test will be the determination of Maximum Charging Rate, Maximum Discharging Rate, Minimum Discharging Time, Minimum Charging Time, Storage Capacity, and Round Trip Efficiency of the Battery Storage System for comparison to the Guaranteed Performance values provided in Exhibit M-1. Uncertainties and test tolerance of 0.5% will be applied to any guarantee.
 - (iii) Prior to each test, a pre-test meeting shall be held and recorded. The meeting shall review the applicable approved performance test procedure, the applicable requirements of such Performance Test, as well as all instrumentation locations, calibration sheets, and other relevant topics including safety requirements.
 - (iv) Data shall be recorded by the SCADA/EWIS system data logging functions. The use of alternative means for data acquisition shall be used only with prior written consent of Seller. Company shall supply all raw data from the SCADA/EWIS system, daily during pre-test activities and during testing phase.
 - (v) Prior to the start of testing the Battery Storage System, the control settings (tuning and constants) shall be verified.
 - (vi) Any alteration or modifications to test measurement devices, or to the Battery Storage System, which could reasonably be expected to

influence the outcome of the applicable Performance Test, shall not be permitted, without prior written consent of Company, and if accepted by Company, shall be fully documented by Seller and Company.

B. RESPONSIBILITIES:

(i) Specific responsibilities for this Performance Test program are as follows:

a. Seller:

- i. Perform commissioning.
- ii. Manage the application of proper commissioning procedures until the Performance Tests have been completed.
- iii. Support Company with testing and interface with the Utility/ISO as required to schedule and perform testing.

b. Company:

- i. Support Seller with testing and interface with the Utility/ISO as required to schedule and perform testing.
- ii. Witness energy testing and/or review test documentation.
- iii. Provide energy for the Performance Test program.

C. EQUIPMENT DEFINITION:

The test configuration will consist of the Battery Storage System and its associated equipment.

D. MEASUREMENTS & INSTRUMENTATION:

- (i) Instrumentation for the Performance Test will consist of Battery Storage System instruments. Calibration certificates will be provided with the instruments.
- (ii) The State of Charge during all tests shall be read from the Battery Management System.
- (iii) The charge rate and discharge rates shall be measured using the Electric Metering Devices.
- (iv) For purposes of testing the Round Trip Efficiency and notwithstanding the last sentence of the definition of Electric Metering Devices, the Charging Energy and Discharging Energy shall be measured by the Electric Metering Devices without normalizing for electrical losses between the Electric Metering Devices and the Point of Delivery.

E. DATA COLLECTION:

- (i) All measurements of charge rate, discharge rate, input current and voltage, output current and voltage, thermal output, system temperatures, ambient conditions, and other parameters that must be measured shall be collected simultaneously at a temporal resolution applicable to the function of the system application and

system metrics to which they are being applied and in accordance with recognized standards applicable to the measurements being taken.

(ii) Data scan rate shall be 4 seconds or faster for all tests.

(iii) CANCELLATION OR CESSATION OF TESTING UNDER CERTAIN CIRCUMSTANCES

a. In connection with any of the acceptance and other testing pursuant to this Agreement, including the Performance Tests, Seller shall each have the unilateral right to cease such tests if Seller determines that a matter or event is occurring that may damage or adversely affect the equipment or system. Seller shall promptly remedy such condition and shall thereafter promptly reschedule the testing.

F. Test to measure Maximum Charging Rate, Maximum Discharging Rate, Minimum Discharging Time, Minimum Charging Time, Storage Capacity, and Round Trip Efficiency:

(i) A capacity test shall be performed to determine Maximum Charging Rate, Maximum Discharging Rate, Minimum Discharging Time, Minimum Charging Time, Storage Capacity, and Round Trip Efficiency of the Battery Storage System.

(ii) The Battery Storage System shall be discharged to 5% SOC and held for a period of 30 minutes.

(iii) The Battery Storage System shall be discharged to 0% SOC level or to the minimum SOC as quickly as practical.

(iv) The system shall be left at rest in an active standby state for 120 minutes or time adjusted by Seller based on battery technology.

(v) The Battery Storage System shall be charged as close to the Guaranteed Maximum Charging Rate specified in Exhibit M-1 as possible ("Maximum Charging Rate") until the BMS causes the allowable charging rate to be derated to prevent overvoltage. The maximum AC power during this charge cycle shall be recorded and used for satisfaction of the Guaranteed Maximum Charging Rate. The AC energy input **Wh_{li}**, into the system during system charging and the time until the system begins to limit charging below the Maximum Charging Rate shall be measured and recorded.

(vi) The Battery Storage System shall be charged to 100% SOC as close to the Maximum Charging Rate as possible subject to the limitation of the BMS. The total AC energy input **Wh_l** (includes the energy at both the Maximum Charging Rate and derated charge rates), into the system during system charging, shall be measured and recorded. The total charging time period until Battery Storage System has charged or taken the Storage Capacity (including the

- time at both the Maximum Charging Rate and derated charge rates) will be used to determine the Minimum Charging Time.
- (vii) The system shall be left at rest in an active standby state for 120 minutes or time adjusted by Seller based on battery technology.
 - (viii) The Battery Storage System shall be discharged as close to the Guaranteed Maximum Discharging Rate specified in Exhibit M-1. The maximum AC power during this discharge cycle shall be recorded and used for satisfaction of the Guaranteed Maximum Discharging Rate. AC energy output **WhDi** out of the system during system discharging, and the time until the system begins to limit discharge below the Guaranteed Maximum Discharging Rate shall be measured and recorded. The time period until the system has supplied the Guaranteed Storage Capacity will be used for satisfaction of Guaranteed Minimum Discharging Time.
 - (ix) The system shall be discharged from the prior level to 0% SOC (or its warranted limits) at a current/voltage limited by the BMS. The total AC energy output from the system **WhD** (includes the energy at both the rated and derated discharge rates) shall be measured and recorded during discharge.
 - (x) The system shall be left at rest in an active standby state for 120 minutes or time adjusted by Seller based on battery technology.
 - (xi) The reference capacity test value (Storage Capacity) shall be **WhDi** as measured in F.(viii).
 - (xii) The power and times (hours/minutes/seconds) recorded in steps F.(v), F.(vi), and F.(viii) shall be the value used to verify conformance to the Guaranteed Maximum Charging Rate, Guaranteed Maximum Discharging Rate, Guaranteed Minimum Charging Time, and Guaranteed Minimum Discharging Time.
 - (xiii) The total AC energy input **WhI** and the total AC energy output from the system **WhD** recorded in steps F.(vi) and F.(ix) shall be used to determine Round Trip Efficiency for conformance to the Guaranteed Round Trip Efficiency. The Guaranteed Round Trip Efficiency shall be as defined in Part II of this Exhibit M.
- G. Grid Charging Capability Test (During COD Test):
- (i) Modify control system to disable code that prevents grid charging. Note this step must be performed by Seller's qualified controls programmer.
 - (ii) If SOC is above 80% discharge at a rate specified by Seller until Battery Storage Systems is below 80% SOC.
 - (iii) Record the SOC of the Battery Storage System.
 - (iv) The Battery Storage System shall be charged at the Maximum Charging Rate for 10 minutes.
 - (v) Following the 10-minute charging period, record the final SOC of the Battery Storage System.

- (vi) The initial and final SOC of the Battery Storage System recorded in steps G.(iii) and G.(v), and achieved charging rate shall be used to verify conformance to Grid Charging Capability.
- (vii) Modify control system to enable code that prevents grid charging. Note this step must be performed by Seller's qualified controls programmer.

* * * *

EXHIBIT M-1

GUARANTEED PERFORMANCE LEVELS

BATTERY STORAGE SYSTEM GUARANTEED PERFORMANCE LEVELS

This Exhibit M-1 sets forth the guaranteed performance levels ("Guaranteed Performance") for certain Performance Criteria.

Guaranteed Round Trip Efficiency:

The Guaranteed Round Trip Efficiency shall be as set forth in the table below:

Year	RTE
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

<u>Performance Metric</u>	<u>Guaranteed Level</u>	<u>Point of Measurement</u>
Guaranteed Storage Capacity	[] MWh	Point of Delivery
Self-Discharge Rate	[]/month	Point of Delivery
Guaranteed Minimum Charging Time	Storage Capacity in MWh/ [] MW /RTE plus [] minutes (At Maximum Charging Rate)	Point of Delivery
Guaranteed Maximum Charging Rate	[] MW	Point of Delivery
Guaranteed Minimum Discharging Time	Storage Capacity / [] MW hours plus [] minutes	Point of Delivery
Guaranteed Maximum Discharging Rate	[] MW	Point of Delivery
Maximum Ramp Rate	[] MW/second	Point of Delivery
Guaranteed Response Time	[] seconds	Point of Delivery
Grid Charging Capability (During COD Test)	Pass	Point of Delivery

**EXHIBIT N
RESERVED**

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EXHIBIT O

BATTERY STORAGE SYSTEM OPERATING PROCEDURES

The Battery Storage System Operating Procedures will include the provisions set forth in this Exhibit O – Battery Storage System Operating Procedures. No later than 90 days prior to the Commercial Operation Date, the Operating Committee shall develop the Battery Storage System Operating Procedures in accordance with Section 10.8. The Battery Storage System Operating Procedures can be reviewed annually (date and time to be mutually agreed) to optimize operations for both Parties. Parties shall cooperate to integrate the systems and controls necessary to implement the Battery Storage System Operating Procedures.

I. Operational Limitations:

The operation of the Battery Storage System shall be subject to the following limitations: If the year-to-date average State of Charge exceeds [50]% at any time during the second half of a Commercial Operation Year, then the maximum allowed State of Charge shall be limited to the State of Charge that, if held for the rest of the Commercial Operation Year, would equal an annual averaged State of Charge of [50]%. If the allowable State of Charge has been limited, the State of Charge limitation will be released once the year-to-date State of Charge is less than [45]%.

II. Data Points to Be Sent from Seller to Company Via SCADA

The following data points will be transmitted via SCADA from Seller to Company and represent energy storage level data:

Table 1

<u>Energy Storage</u>	
<u>Description</u>	<u>Units</u>
Real Power Set-Point (echo)	MW
Actual Real Power	MW
Actual Reactive Power	MVar
Battery State of Charge	% & MWh
Remaining Throughput (Commercial Operation Year)	MWh
YTD Average SOC (Commercial Operation Year)	%
Maximum Allowable SOC	MWh

Additional Data Points Reserved for Future Use	
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The following data points will be transmitted via SCADA from Company to Seller and represent energy storage level data:

Table 2

<u>Energy Storage</u>	
<u>Description</u>	<u>Units</u>
Charge Power Set-Point*	MW
Discharge Power Set-Point*	MW
Duration of Charge/Discharge Set-Point**	minutes
Target State of Charge*	%
Ramp Rate	MW/s
Control Mode (target time or target SOC)	Boolean
Additional Data Points Reserved for Future Use	

* Parties will resolve any conflicts in priority of signal in the Battery Storage System Operating Procedures

**System will observe either time entry or SOC target depending on Control Mode

Data points transmitted via SCADA from Seller to Company are subject to Battery Storage Operating Procedures.

1. **Response times of Battery Storage System.** The Battery Storage System Operating Procedures will include protocols that outline the expectations for responding to the Company’s set points.

2. **Backup Communications.** In the event of a communications failure, Company and Seller shall communicate via telephone in order to correct the failure.

III. Availability Scheduling Requirements

a. The Battery Storage System availability schedule shall be posted at 4:00 AM two (2) Business Days prior to the applicable Day, and shall be applicable through the end of such Day. For example, on Monday, an availability schedule is required for Wednesday (midnight to midnight). On Tuesday, the schedule for Thursday. On Wednesday, the schedule for Friday, and so on. The schedule shall be submitted through an availability scheduling system as specified by Company to Seller. Prior to the Commercial Operation Date,

Company shall provide Seller with the information necessary for Seller to access the chosen availability scheduling system.

- b. If any events or circumstances reduce the scheduled availability of the Battery Storage System by 10% or more (or the current requirements of the applicable ERO if less than 10%), such reduction shall be (1) communicated to the real-time operator via telephone with (2) an immediate update to the availability schedule in the availability scheduling system.

* * * * *

EXHIBIT P

SAFETY REQUIREMENTS

Seller shall design and construct the Facility in compliance with all Applicable Laws and shall ensure the Facility is operated in compliance with Good Utility Practice. Seller shall identify codes and standards that are applicable to the design of the Facility and ensure that upon substantial completion the Facility meets applicable codes and standards. Seller is solely responsible for maintaining the Facility in compliance with all Applicable Laws. Seller will provide Company with an independent registered professional engineer's certification stating that the Facility has been completed in all material respects (including compliance with all Applicable Laws) prior to COD.

Prior to COD, Seller will provide documentation submitted as part of the Adams County permitting process and, if not otherwise submitted as part of such permitting process, the following additional documents:

1. Operations and maintenance documentation, including an operations manual and maintenance manual, and schedule for planned maintenance;
2. Safety procedures for personnel (may be included within the operations or maintenance manual), and supplier safety manual;
3. Training materials for local first responders, identifying known hazards and failure modes, and methods for approach and action, if appropriate;
4. Emergency management plan, including instructions on how to interpret alarms and faults, location of emergency stops, egress pathways, known hazards, and emergency contact information for a subject matter expert who can be available on site within 2 hours; and
5. System drawings and documentation, including all physical, electrical, mechanical, and communications diagrams for all Facility sub-components, to allow for confirmation of claimed safety features including but not limited to, respectively, sufficient spacing, security, and signage; appropriate electrical ratings, grounding, and interconnections; foundations and construction materials; awareness of system operation and alarms; and fault ranges and emergency stops, but excluding any vendor proprietary drawings. As applicable, certifications for all claimed standards compliance should be provided.

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EXHIBIT Q

EXAMPLE ADJUSTMENT CALCULATIONS

Example of Roundtrip Efficiency Adjustment

Example of Roundtrip Efficiency Adjustment based on the following assumed facts:

- (a) Seller's actual roundtrip efficiency as determined by latest test (RTE) = 85%.
- (b) Seller's Guaranteed Roundtrip Efficiency (RTE_G) = 87%.
- (c) Amount of Discharging Energy delivered to the Point of Delivery for the affected month (Discharging MWh_{Actual}) = 9,180 MWh.
- (d) Discharging LMP = \$13.50
- (e) Amount of Charging Energy delivered to the Point of Delivery for the affected month (Charging MWh_{Actual}) = 10,800 MWh.
- (f) Charging LMP = \$1.50

Given these assumed facts, the Round Trip Efficiency Adjustment is calculated as follows:

Round Trip Efficiency Adjustment

$$\begin{aligned} &= [1 - (\text{RTE}_{\text{test}} / \text{RTE}_G)] \times [(\text{Discharging } MWh_{\text{Actual}} * \text{Discharging LMP}) - (\text{Charging } MWh_{\text{Actual}} * \text{Charging LMP})] \\ &= [1 - (85\% / 87\%)] \times ((9,180 \text{ MWh} \times \$13.50/\text{MWh}) - 10,800 \text{ MWh} \times \$1.50/\text{MWh}) \\ &= 2.2989\% \times (\$123,930 - \$16,200) \\ &= \$2,476.55 \end{aligned}$$

Example of Guaranteed Storage Availability Payment Adjustment

Example of Guaranteed Storage Availability Payment Adjustment based on the following assumed facts:

- (a) Seller operates a 100 MW, 4-hour Battery Energy Storage System.
- (b) There are 720 Hours in the given month (based on an assumed 30-day month).

- (c) The Capacity Payment Rate in the given Commercial Operation Year is \$15/kW-month.
- (d) The Storage Capacity determined by the most recent Test is 100 MW (100,000 kW).
- (e) The Guaranteed Storage Availability is 97%.
- (f) Seller experiences four (4) outage events in the applicable month.
 - a. Outage Event #1 is a Planned Outage Event which persists for 12 Hours during which 0 MW of capacity is available for 4 Hours.
 - b. Outage Event #2 is an unplanned outage which persists for 16 hours during which only 50 MW of capacity is available for 4 Hours.
 - c. Outage Event #3 is an unplanned outage which persists for 30 hours during which 0 MW of capacity is available for 4 Hours.
 - d. Outage Event #4 is an unplanned outage which persists for 20 hours during which 25 MW of capacity is available for 4 hours.

Given these assumed facts, the monthly Guaranteed Storage Availability Payment Adjustment due to Company is calculated as follows:

- (a) The Availability Factor and resulting Equivalent Planned Outage Hours and Equivalent Forced Outage Hours are calculated for each outage as follows:

Outage Event #1:

$$\text{Availability Factor} = 0 \text{ MW} / 100 \text{ MW} = 0$$

$$\text{Equivalent Planned Outage Hours} = 12 \times (1 - 0) = 12 \text{ Hours}$$

$$\text{Equivalent Forced Outage Hours} = 0 \text{ Hours}$$

Outage Event #2:

$$\text{Availability Factor} = 50 \text{ MW} / 100 \text{ MW} = 0.5$$

$$\text{Equivalent Planned Outage Hours} = 0 \text{ Hours}$$

$$\text{Equivalent Forced Outage Hours} = 16 \times (1 - 0.5) = 8 \text{ Hours}$$

Outage Event #3:

$$\text{Availability Factor} = 0 \text{ MW} / 100 \text{ MW} = 0$$

$$\text{Equivalent Planned Outage Hours} = 0 \text{ Hours}$$

$$\text{Equivalent Forced Outage Hours} = 30 \times (1 - 0) = 30 \text{ Hours}$$

Outage Event #4:

$$\text{Availability Factor} = 25 \text{ MW} / 100 \text{ MW} = 0.25$$

$$\text{Equivalent Planned Outage Hours} = 0 \text{ Hours}$$

$$\text{Equivalent Forced Outage Hours} = 20 \times (1 - 0.25) = 15 \text{ Hours}$$

- (b) The Total Equivalent Planned Outage Hours and Total Equivalent Forced Outage Hours are calculated as follow:

$$\text{Total Equivalent Planned Outage Hours} = 12 + 0 + 0 + 0 = 12 \text{ Hours}$$

$$\text{Total Equivalent Forced Outage Hours} = 0 + 8 + 30 + 15 = 53 \text{ Hours}$$

- (c) The Equivalent Availability Factor is calculated as follows:

$$\text{Equivalent Availability Factor} = (\text{Hours} - \text{Total Equivalent Forced Outage Hours} - \text{Total Equivalent Planned Outage Hours}) / (\text{Hours} - \text{Total Equivalent Planned Outage Hours})$$

$$\text{Equivalent Availability Factor} = (720 - 53 - 12) / (720 - 12) = 0.925$$

- (d) The Guaranteed Storage Availability Payment Adjustment for the applicable month is then calculated as follows:

$$\text{Guaranteed Storage Availability Payment Adjustment} = \text{Capacity Payment Rate} \times \text{Storage Capacity} \times (\text{the Guaranteed Storage Availability (as a percentage)} - \text{the Equivalent Availability Factor (as a percentage)});$$

$$\text{Guaranteed Storage Availability Payment Adjustment} =$$

$$\$15/\text{kW-month} \times 100,000 \text{ kW} \times (.97 - .925) = \$67,500$$

Example of Dispatch Availability Factor

Example of Dispatch Availability Factor for a month m (DAF_m) based on the following assumed facts:

The total number of hours during such month for which the Company provided a Dispatch Notice (On-Control Hours $_m$): 40

The total number of hours during such month that the Facility was unable to operate in compliance with a Dispatch Notice (Shortfall Hours): 1

$$\text{DAF}_m = 1 / 40 = 0.025$$

Sample Calculation for Non-Shortfall Hour:

Hour i	5 minute Interval	Dispatch Notice (MW)	Energy Storage System Output (MW)	Absolute Value of the 5-Minute Deviation in the Facility Output (MW)	Absolute Value of the Dispatch Notice for the Facility Output (MW)
i	1	-90	-90	0	90
i	2	-90	-89	1	90
i	3	-90	-88	2	90
i	4	-90	-89	1	90
i	5	0	0	0	0
i	6	0	0	0	0
i	7	0	0	0	0
i	8	0	0	0	0
i	9	90	88	2	90
i	10	90	89	1	90
i	11	90	90	0	90
i	12	90	89	1	90

The Shortfall Calculation is: The sum of the absolute value of the 5- minute deviations in the Facility Output/The sum of the absolute value of the 5- minute Dispatch Notices for the Facility Output =Sum of column 5 in the table above/Sum of column 6 in the table above=8/720=0.011

Since the Shortfall Calculation is less than 0.02 the hour is counted as a Non- Shortfall Hour.

Sample Calculation for Shortfall Hour:

Hour i	5 minute Interval	Dispatch Notice (MW)	Energy Storage System Output (MW)	Absolute Value of the 5-Minute Deviation in the Facility Output (MW)	Absolute Value of the Dispatch Notice for the Facility Output (MW)
i	1	-90	-90	0	90
i	2	-90	-89	1	90
i	3	-90	-75	15	90
i	4	-90	-75	15	90
i	5	0	0	0	0
i	6	0	0	0	0
i	7	0	0	0	0
i	8	0	0	0	0
i	9	90	88	2	90
i	10	90	75	15	90
i	11	90	90	0	90
i	12	90	89	1	90

The Shortfall Calculation is: The sum of the absolute value of the 5- minute deviations in the Facility Output/The sum of the absolute value of the 5- minute Dispatch Notices for the Facility Output =Sum of column 5 in the table above/Sum of column 6 in the table above=49/720=0.068

Since the Shortfall Calculation is more than 0.02 the hour is counted as a Shortfall Hour.