

Appendix III

Retrofit/Repowered Clean Coal Facility Description

Go to

<http://www.icc.illinois.gov/electricity/policycommitteemtg.aspx>

and reference

“Presentations 3/6/12”

“FutureGen”

Appendix IV
Clean Coal Sourcing Agreement
as proposed by the FutureGen Alliance
08/13/12

UNIT CONTINGENT
POWER PURCHASE AGREEMENT
Between
[FUTUREGEN INDUSTRIAL ALLIANCE, INC.]
and
[BUYER]

[Date]

FOR SUBMISSION TO ILLINOIS POWER AGENCY

**UNIT CONTINGENT
POWER PURCHASE AGREEMENT**
Between
[FUTUREGEN INDUSTRIAL ALLIANCE, INC.]
and
[BUYER]

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**UNIT CONTINGENT
POWER PURCHASE AGREEMENT
Between
FUTUREGEN INDUSTRIAL ALLIANCE, INC.
and
[BUYER]**

This Power Purchase Agreement is made [_____], by and between [FutureGen Industrial Alliance, Inc., a non-profit corporation organized under the laws of the State of Delaware] (“Seller”) and [_____], a [_____] organized under the laws of the State of [_____] (“Buyer”), (each a “Party” and together the “Parties”).

RECITALS

A. The United States Department of Energy has entered into Cooperative Agreements with Seller in support of the Department’s FutureGen 2.0 Program;

B. Pursuant to the Cooperative Agreements, Seller or an Affiliate of Seller will develop, own and operate an electric power Project consisting of an oxy-combustion advanced coal power generation plant, with CO₂ capture at the site of the Meredosia generating station located in Meredosia, Illinois;

C. Pursuant to the Cooperative Agreements, Seller or an Affiliate of Seller will also develop, construct, own and operate a CO₂ pipeline and storage reservoir project located in Morgan County, Illinois to transport, inject and store CO₂ captured from Seller’s Project;

D. Seller is organized for the purpose of developing, owning and maintaining the Project and will incur all costs associated with that purpose;

E. Seller intends to enter into one or more agreements with buyers for the sale and delivery of the electric energy produced by the Project and each buyer will have a proportionate right to that output and proportionate obligation to pay for the full capital and operating costs of the Project based on that buyer’s share of the output;

F. Seller and Buyer have agreed to implement, pay for and operate the Project on a cost-of-service basis pursuant to which Buyer will compensate Seller for its proportionate share of all costs associated with constructing, owning, operating and maintaining the Project as further set forth in this agreement; and

G. Seller will be solely liable for the obligations of Seller under this agreement, and no Alliance Member Company or Affiliate of Seller will be so liable.

NOW, THEREFORE, the Parties agree as follows:

1. Definitions and Rules of Interpretation.

1.1. **Definitions.** Unless otherwise defined in this agreement, the capitalized terms used in this agreement have the meanings set forth whenever the terms appear in this agreement, whether in the singular or the plural or in the present or past tense. Other terms used in this agreement but not listed in this section 1.1 have the meanings as commonly used in the English language. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

“Addressee” has the meaning set forth in section 22.2.

“Affiliate” of any named Person means any other Person that controls, is under the control of, or is under common control with, the named Person. The term “control” (including the terms “controls”, “under the control of” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management of the policies of a Person, whether through ownership interest, by contract or otherwise; except that no Alliance Member Company is an Affiliate of Seller.

“Alliance Member Company” means one or more of the companies listed in Exhibit 1.1-D (Alliance Members) and any companies that may become members of Seller while this agreement is in force.

“Ameren Illinois” means the Illinois regulated utility Ameren Illinois Company.

“Ancillary Services” means those services other than Net Energy, Environmental Attributes and Capacity Attributes that are defined as Ancillary Services in the open access transmission tariff of MISO as of the Effective Date.

“Annual Damages Cap” has the meaning set forth in Exhibit 6.6(c).

“Annual Final Clean Coal Rate Adjustment” means the arithmetic average of the Final Clean Coal Rate Adjustments for each Contract Month during the applicable Contract Year.

“Annual Initial Clean Coal Rate Adjustment” means the arithmetic average of the Initial Clean Coal Rate Adjustments for each Contract Month during the applicable Contract Year.

“Applicable Law” means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, 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 or like actions (including those relating to human health, safety, the natural environment or otherwise).

“ARES” means an alternative retail electric supplier as defined in 220 ILCS 5/16-102.

“Btu” means a British thermal unit.

“Business Day” means any Day on which Federal Reserve Banks and Branches are open for business such that payments can be effected on the Fedwire system.

“Buyer” has the meaning set forth in the introductory paragraph hereof.

“Buyer Indemnified Persons” has the meaning set forth in section 13.1.

“Cancellation Costs” means the actual and demonstrable third party costs incurred by cancellation or termination of any third party contracts, including contracts with service providers, equipment vendors, financing prepayment and penalty costs, and similar costs.

“Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Project can generate at a particular moment and that can be purchased and sold under market rules adopted in the region where the Project is located.

“Clean Coal Buyer” means Buyer, an Electric Utility or an ARES that is subject to the requirements of subsection (d) of Section 1-75 of the Illinois Power Agency Act and paragraph (5) of subsection (d) of Section 16-115 of the Illinois Public Utilities Act.

“Clean Coal Facility” has the meaning set forth in Section 1-10 of Illinois Power Agency Act.

“CO₂ Services Agreement” means an agreement between Seller and the CO₂ Services Provider whereby the CO₂ Services Provider will develop, construct, own and operate a CO₂ pipeline and storage reservoir, and the other facilities that are necessary to transport, inject and store CO₂ produced by the Project.

“CO₂ Services Provider” means the party with whom Seller has entered into the CO₂ Services Agreement.

“Commercial Operation” means, with respect to the Project, that the Project has met the requirements for Commercial Operation in accordance with section 4.3.

“Commercial Operation Date” means, with respect to the Project, the date that the Project achieves Commercial Operation in accordance with section 4.3.

“Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any decision or other action made, attempted or taken by a Party, those efforts that a reasonably prudent business would undertake for the protection of its own interests under the conditions affecting that decision or other action including with respect to Project design and operation, electric system safety, the amount of notice of the need to take a particular action, the duration and type of the action, and the commercial and regulatory environment in which such decision or other action occurs. Commercially Reasonable or Commercially Reasonable Efforts will be reviewed and determined based upon the facts and circumstances known, or which could have been known with the exercise of reasonable efforts, at the time that an action is taken and will not be based upon a retroactive review by a Party or any tribunal of what would have been optimal at that time.

“Commission” means the Illinois Commerce Commission or its successor.

“Commonwealth Edison” means the Illinois regulated utility Commonwealth Edison Company.

“Confidential Information” has the meaning set forth in section 23.1.

“Contract Month” means each consecutive calendar Month period the first of which will begin on the Commercial Operation Date and each succeeding calendar Month; except that if the Commercial Operation Date does not occur on the first Day of a calendar Month, then the first Contract Month and the last Contract Month will be pro rated based on the number of Days in that Contract Month that elapsed prior to Commercial Operation.

“Contract Price” has the meaning set forth in section 6.3.

“Contract Year” means each consecutive 12-Month period beginning June 1 through May 31; except that if the Commercial Operation Date does not occur on June 1, then the first Contract Year will run from the Commercial Operation Date through the immediately following May 31.

“Cooperative Agreement” means a Cooperative Agreement entered into between Seller and the Department.

“Credit Support” means Credit Support to be provided by Buyer in accordance with Exhibit 14.

“Damages” has the meaning set forth in section 13.1.

“Day” means a calendar day.

“Delivery Point” means the point where Seller delivers the Net Energy generated by the Project to the MISO System, as specifically described in Exhibit 1.1-A (Delivery Point).

“Department” means the United States Department of Energy and any successor department or agency.

“Development and Construction Budget” means the budget established by Seller for the development and construction of the Project that describes in reasonable detail: (i) the sources of funds; and (ii) the anticipated Project Costs and credits for and in support of the Project up to and including the Commercial Operation Date. The Development and Construction Budget will be substantially in the form of Exhibit 5.5(b).

“Dispute” has the meaning set forth in section 17.1.

“Dispute Notice” has the meaning set forth in section 17.1.

“Effective Date” means the date on which the Parties execute this agreement.

“Electric Utility” or “Electric Utilities” means the electric utilities, as defined in 220 ILCS 5/16-102, for which the Illinois Power Agency is authorized to develop electricity procurement plans pursuant to Section 1-20 of the Illinois Power Agency Act.

“Eligible Retail Customers” means those retail customers that purchase power and energy from an Electric Utility under fixed-price bundled service tariffs as provided in Section 16-111.5(a) of the Illinois Public Utilities Act.

“Emergency” means an abnormal system condition requiring manual or automatic action to maintain operational control of the Project, or to prevent equipment damage or tripping of system elements that could adversely affect the reliability of the Project or the safety of persons or property.

“Environmental Attributes” means any and all presently existing or future benefits, emissions reductions, environmental air quality credits, emissions reduction credits, renewable energy credits, offsets and allowances, attributable to the Project commencing on the Commercial Operation Date and continuing during the Term, or otherwise attributable to the generation, purchase, sale or use of metered output from or by the Project during the Term, howsoever entitled or named, resulting from the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including any of the same arising out of presently existing or future legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (UNFCCC) or the Kyoto Protocol to the UNFCCC, or their successors or crediting “early action” emissions reduction, or laws or regulations involving or administered by the Clean Air Markets Division of the United States Environmental Protection Agency, or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, and any renewable energy certificate reporting rights to such Environmental Attributes. Notwithstanding any other provision hereof, Environmental Attributes do not include: (i) any state or federal tax credits; (ii) any state, federal or private cash payments or grants relating in any way to the

Project or the output thereof; or (iii) state, federal or private grants or other benefits related to the Project or the output.

“Event of Default” has the meaning set forth in section 16.1(a).

“Final Buyer Retail Sales” means, for any given Contract Month, the total amount of electric energy that Buyer sold to retail customers in Commonwealth Edison’s and Ameren Illinois’ service territories, determined using amounts as settled by PJM or MISO, as applicable, within 105 Days of that Contract Month.

“Final Clean Coal Rate Adjustment” has the meaning set forth in section 6.4(d)(ii).

“Final Settlement Payment” has the meaning set forth in section 6.4(d)(ii).

“Final Total Retail Load” means, for any given Contract Year, the total combined amount of electric energy sold by Electric Utilities and ARES to retail customers in Commonwealth Edison’s and Ameren Illinois’ service territories determined using amounts as settled by PJM or MISO, as applicable, within 105 Days of that Contract Year.

“Financial Close” means the date on which the Financing Documents relating to the financing of the Project are executed and delivered to Lenders by Seller, or if no Financing Documents are contemplated by Seller, the date on which the Department authorizes Seller to proceed with active construction of the Project.

“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 and/or permanent debt financing for the Project, 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 Project.

“Fixed Project Payment” has the meaning set forth in section 6.3(a).

“Fixed O&M Payment” has the meaning set forth in section 6.3(a).

“Forecasted Total Retail Load” means, for any given Contract Year, the total combined amount of electric energy forecasted to be sold on a Monthly basis for each Month of a Contract Year by Electric Utilities and ARES to retail customers in Commonwealth Edison’s and Ameren Illinois’ service territories representing amounts to be settled by PJM or MISO, as applicable, as forecasted by Commonwealth Edison and Ameren Illinois for their respective service territories and provided annually to Seller and the Illinois Power Agency by July 15 of the prior Contract Year.

“Force Majeure” has the meaning set forth in section 18.1.

“Formula Rate” has the meaning set forth in section 5.2(a).

“Fuel Payment” has the meaning set forth in section 6.3(a).

“FutureGen 2.0 Program” means the Department’s FutureGen 2.0 program, including the funding and implementation of the program pursuant to the Cooperative Agreements.

“Governmental Authority” means any federal, state, county, city, town, borough, village, district or other jurisdiction; federal, state, local, municipal, or other government; governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers), or official of any of the foregoing, exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power over the Project, or any of the Parties.

“Governmental Authorization” means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements, and similar requirements of whatever kind and however, described, that are issued by any Governmental Authority, including any amendments and adoption notices thereto, and which are to be obtained or maintained by any Person with respect to the development, design, acquisition, construction, equipping, financing, ownership, possession, start-up, testing, operation or maintenance of the Project, or any other transactions or matter contemplated by this agreement, including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements.

“Heat Rate Variance Adjustment” has the meaning given that term in Exhibit 6.3, Part D.

“Hourly Day-Ahead Energy Market Locational Marginal Price” means, for any hour, the hourly prices stated in U.S. Dollars published by MISO under the heading “Hourly Day-Ahead LMP” or any successor heading, for the zone in which the Delivery Point is located.

“Indemnified Person” has the meaning set forth in section 13.3(a).

“Indemnifying Person” has the meaning set forth in section 13.3(a).

“Initial Buyer Retail Sales” means, for any given Contract Month, the total amount of electric energy that Buyer sold to Eligible Retail Customers and Non-Eligible Retail Customers in Illinois, as that figure may be calculated after transactions occurring during that Contract Month have been settled by MISO or another applicable independent system operator within 15 Days of the end of current Contract Month.

“Initial Clean Coal Rate Adjustment” has the meaning set forth in section 6.4(c)(iv).

“Initial Settlement Payment” has the meaning set forth in section 6.4(d)(i).

“Initial Term” has the meaning set forth in section 2.1.

“Interconnection Facilities” means all facilities required to be installed to interconnect and deliver energy from the Project to the Delivery Point, but not limited to, interconnection, switching, metering, relaying, communications and safety equipment.

“Interest Rate” means, for any date, the lesser of: (i) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on that Day (or if not published on that Day, on the most recent preceding Day on which published), plus 2%; and (ii) the maximum rate permitted by Applicable Law.

“KWh” means a kilowatt hour.

“Lender” means, collectively, any lender(s) providing any Project Debt and any successor(s) or assigns thereto.

“Lender Consent” has the meaning set forth in section 16.2(b).

“LGIA” means the Large Generator Interconnection Agreement entered into by Seller, and MISO pursuant to which the Project will be interconnected with the MISO System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Term.

“Metering Point” means the point where the Project’s Net Energy is measured by the Metering and Telemetry Equipment.

“Metering and Telemetry Equipment” means all equipment required by this agreement to measure, record and telemeter power flows at the Metering Point.

“Minimum Annual Energy” means the quantity of Net Energy expressed in KWh that Seller intends to produce and deliver to the Delivery Point for the applicable Contract Year as set forth in Exhibit 6.6(c).

“Minimum Energy Shortfall” has the meaning set forth in section 6.6(c).

“MISO” means the Midwest Independent Transmission System Operator, Inc., or any successor organization.

“MISO System” means the transmission facilities operated by MISO, now or hereafter in existence, which provide energy transmission service from the Delivery Point.

“Month” means a period of time beginning on the first Day of a calendar month and ending the last Day of that calendar month as settled by PJM or MISO, as applicable. The term “Monthly” will be construed accordingly.

“MW” means megawatt.

“MWh” means megawatt hour.

“Net Energy” means electric energy, expressed in KWh, produced by the Project and delivered to and measured at the Metering Point.

“Non-Eligible Retail Customers” means all of the retail customers in an Electric Utility’s service area for which an Electric Utility provides delivery services but which are not Eligible Retail Customers as defined in Section 16-111.5(a) of the Illinois Public Utilities Act.

“Notice” has the meaning set forth in section 22.1, and “Notify” has the correlative meaning.

“Operating Budget” means the budget established by Seller for the operation and maintenance of the Project. The Operating Budget will be based on the categories of Project Costs set forth in Exhibit 5.5(c).

“Outside Commercial Operation Date” means the date that is [_____] Months after the Target Commercial Operation Date.

“Party” and “Parties” have the meaning set forth in the introductory paragraph hereof.

“Party Representative” has the meaning set forth in section 17.1.

“Person” means an individual person, corporation, firm, association, partnership (general or limited), joint venture, limited liability company, trust, estate or other legal entity or organization.

“PJM” means the PJM Interconnection, LLC, or any successor organization.

“Project” means the project consisting of the nominal 200 megawatt gross output Meredosia clean coal oxy-combustion electric generating station to be constructed, owned and operated by Seller located near Meredosia, Illinois as further described under “Project” in Exhibit 1.1-C (Project Description).

“Project Costs” means the total amount of all demonstrable costs expended, incurred or irrevocably committed by Seller to develop, obtain and maintain permits, finance, construct, operate, and maintain the Project, Project Debt, the costs and funding of all working capital reserves, operating reserves, maintenance reserves, debt service reserves and other reserves as may be required by Lenders or the Department, the costs of implementing Seller’s Cooperative Agreement, the costs of transporting,

injecting and storing CO₂ produced by the Project long term, general and administrative costs of the Project, organizational and general and administrative costs of Seller required by the Project, and including all charges to Seller by any third party that expended, incurred or irrevocably committed to costs at the request of Seller for any of the above. Without limiting the foregoing, Project Costs include all of the costs attributable to the cost categories listed in Exhibit 1.1-B (Project Costs), the Development and Construction Budget and the Operating Budget.

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

“Project Equity Investor” means an investor, if any, that receives an equity interest in the Project, directly or indirectly, in exchange for its investment. An investor is not a Project Equity Investor solely as a result of issuing or being the obligee for Project Debt.

“Prudent Utility Practice” means the applicable practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in the United States of America, during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment by a prudent utility operator, in light of the facts known (or that should have been known) at the time the decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, safety, expedition and the requirements of any Applicable Law and Governmental Authority having jurisdiction.

“Public Utilities Act” means the Illinois Public Utilities Act, 220 ILCS 5/1 *et seq.*

“Rate Cap Limit” means the limit set forth in Section 1-75(d)(2) of the Illinois Power Agency Act, as now in effect or hereafter amended, on the annual estimated average net increase in the amounts paid by Eligible Retail Customers in connection with electric service due to the costs incurred pursuant to sourcing agreements with Clean Coal Facilities. As of the Effective Date of this agreement, the Rate Cap Limit is as follows:

- (i) for Commonwealth Edison Eligible Retail Customers and Non-Eligible Retail Customers, \$2.382 per MWh, per year;
- (ii) for Ameren Illinois Eligible Retail Customers and Non-Eligible Retail Customers, \$2.169 per MWh, per year; and
- (iii) for customers of each ARES, the Rate Cap Limit for the utility set forth in subsections (i) and (ii) of this definition, as applicable, which provides distribution services for the customers of the ARES.

“Renewal Term” has the meaning set forth in section 2.2.

“Representative” means with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

“Seller” has the meaning set forth in the introductory paragraph hereof.

“Seller Decommissioning Costs” means the reasonable costs and expenses of Seller for the removal from service of all or part of the Project, which costs include decommissioning, dismantling, demolishing, disposing of, closing or removing all or part of the Project, costs of compliance with Environmental Laws and the monitoring, security and maintenance associated with the removal from service or decommissioning of all or part of the Project.

“Seller Indemnified Person(s)” has the meaning set forth in section 13.2.

“Seller’s Actual Monthly Net Energy Sales Revenue” means, for any Contract Month, the actual total revenue that Seller derived from the sale of Net Energy during that Contract Month.

“Seller’s Actual Monthly Revenue Requirement” means, for any Contract Month, the sum of each of the actual payments and credits set forth in Section 6.3.

“Seller’s Estimated Monthly Net Energy Production” has the meaning set forth in section 6.4(c)(ii).

“Seller’s Estimated Monthly Net Energy Sales Revenue” has the meaning set forth in section 6.4(c)(iii).

“Seller’s Estimated Monthly Revenue Requirement” has the meaning set forth in section 6.4(c)(i).

“Shortfall Damages Payment” has the meaning set forth in section 6.6(d).

“Sole Discretion” means with respect to any determination made by a Party, the sole and absolute discretion of that Party, for any reason or no reason, without regard to any standard of reasonableness or other standard by which the determination of that Party might be challenged.

“System Emergency” means the existence of a physical or operational condition or the occurrence of an event which, at the time of such occurrence or event, is: (i) imminently likely to endanger life or property, or (ii) impairs or will imminently impair the safety or reliability of the Project, the MISO System or the electric system of Buyer.

“Target Commercial Operation Date” means [_____].

“Term” means the Initial Term and Renewal Term, if any.

“Termination Payment” has the meaning set forth in section 16.5(a).

“Third-Party Claim” means any claim against any Indemnified Person by a person that is not a Party to this agreement, whether or not involving a proceeding.

“Total Bundled Rate” means the total amount paid for electric service by Eligible Retail Customers for the applicable period expressed on a per kilowatt hour basis which includes without limitation amounts paid for supply, transmission, distribution, surcharges and add-on taxes.

“Total Damages Cap” has the meaning set forth in Exhibit 6.6(c).

“Transportation and Storage Project” means the CO₂ transportation and storage project that is to be implemented as part of the FutureGen 2.0 Program, as further described under “Transportation and Storage Project” in Exhibit 1.1-C.

“Variable Payment” has the meaning set forth in section 6.3(a).

1.2. Rules of Interpretation.

- (a) In this agreement, unless a clear contrary intention appears:
- (i) the singular number includes the plural number and vice versa;
 - (ii) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
 - (iii) reference to any gender includes each other gender;
 - (iv) reference to any agreement, document or instrument means that agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
 - (v) reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;
 - (vi) “hereunder,” “hereof,” “hereto,” and words of similar import will be deemed references to this agreement as a whole and not to any particular section or other provision hereof;
 - (vii) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term;
 - (viii) “or” is used in the inclusive sense of “and/or”;
 - (ix) with respect to the determination of any period of time, “from” means “from and including” and “to” means “to but excluding”; and
 - (x) references to documents, instruments or agreements refer to all addenda, exhibits, schedules or amendments thereto.

(b) This agreement was negotiated by the Parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this agreement to be construed or interpreted against any Party will not apply to any construction or interpretation hereof.

Term.

1.3. **Initial Term.** The initial term of this agreement will begin on the Effective Date and end on the date that is [15-30] Contract Years after the Commercial Operation Date ("Initial Term").

1.4. **Renewal Term.** Upon 6 Months Notice to Buyer, but not earlier than 1 year before expiration of the Initial Term, Seller may extend the agreement for an additional 5 year term ("Renewal Term") on the same rates, terms and conditions applicable during Initial Term. The Parties acknowledge that the decision of Seller to enter into a Renewal Term will be in the Sole Discretion of Seller.

2. Conditions Precedent.

2.1. Conditions Precedent to Obligations of Buyer.

(a) The following are conditions precedent to the obligations of Buyer to purchase and accept Net Energy under this agreement:

- (i) Seller has obtained all Governmental Authorizations set forth in Exhibit 3.1(a)(i) required for the construction, ownership, operation and maintenance of the Project;
- (ii) the Federal Energy Regulatory Commission has authorized Seller to make the sales of Net Energy contemplated by this agreement;
- (iii) the Commission has approved this agreement pursuant to section 1-75 of the Illinois Power Agency Act;
- (iv) Seller has entered into a CO₂ Services Agreement or otherwise has rights sufficient for the transport and storage of CO₂ produced at the Project for a term no less than the Term of this agreement, and the Transportation and Storage Project is available to receive deliveries of CO₂ from Seller on a commercial basis;
- (v) Seller has achieved Commercial Operation of the Project; and
- (vi) the conditions in section 2.2 have been satisfied or waived.

(b) The conditions precedent in this section 3.1 are for the benefit of Buyer, and Buyer may waive any or all of these conditions.

2.2. Conditions Precedent to Obligations of Seller.

(a) The following are conditions precedent to the obligations of Seller to sell and deliver Net Energy under this agreement:

- (i) Seller has obtained all Governmental Authorizations set forth in Exhibit 3.1(a)(i) required for the construction, ownership, operation and maintenance of the Project;
- (ii) the Department has authorized funding for Phase III of each of Seller's Cooperative Agreements in a form reasonably satisfactory to Seller, and Seller has provided Notice to Buyer thereof;
- (iii) Seller has entered into a CO₂ Services Agreement or otherwise has rights sufficient for the transport and storage of CO₂ produced at the Project for a term no less than the Term of this agreement, and the Transportation and Storage Project is available to receive deliveries of CO₂ from Seller on a commercial basis;
- (iv) Seller has entered into one or more agreements (including this agreement), which together provide for the sale and delivery of the entire electrical energy output of

the Project and that, as determined in the Sole Discretion of Seller, will permit recovery by Seller of all Project Costs and has provided Notice to Buyer thereof;

(v) Seller has entered into an agreement for the supply of coal fuel for the Project;

(vi) the Federal Energy Regulatory Commission has authorized Seller to make the sales of Net Energy contemplated by this agreement.

(b) The conditions precedent in this section 3.2 are for the benefit of Seller, and Seller may waive any or all of these conditions.

Development, Construction and Commercial Operation.

2.3. **Construction of Project.** Seller shall use Commercially Reasonable Efforts to design, develop, permit, finance and construct the Project materially in accordance with the project description in Exhibit 1.1-C (Project Description), and so as to allow safe and reliable generation and delivery of Net Energy for the full term of the agreement, consistent with Prudent Utility Practice. Seller may amend Exhibit 1.1-C (Project Description) by Notice to Buyer and without the consent of Buyer so long as that amendment does not materially affect the ability of Seller to perform its obligations under this agreement.

2.4. **Progress Reports and Monitoring.** On the first Day of each Month following the Effective Date until the Commercial Operation Date is achieved, Seller shall provide Buyer with summary progress reports on the development and construction of the Project. These progress reports will include, but not be limited to, a project development schedule including all major activities and milestones and the status of these items, and other information determined pertinent by Seller in respect of its progress on development and construction of the Project. Buyer may at its sole risk and expense monitor the construction, start-up and testing of the Project and Seller shall permit that monitoring pursuant to reasonable requests of Buyer. All persons visiting the Project on behalf of Buyer shall comply with all of Seller's applicable safety and health rules and requirements.

2.5. **Commercial Operation.**

(a) Seller shall use Commercially Reasonable Efforts to achieve Commercial Operation of the Project no later than the Target Commercial Operation Date. Commercial Operation will be achieved on the date on which all of the following requirements have been achieved by Seller or waived in writing by Buyer, as applicable:

(i) the boiler, generator, turbine, and other associated equipment enabling the Project to deliver Net Energy in a stable, reliable, consistent and safe manner have been installed, tested and determined to be functioning properly;

(ii) Seller has obtained all Governmental Authorizations set forth in Exhibit 3.1(a)(i);

(iii) Seller has caused the Project to complete initial synchronization, to be in compliance with all aspects of the LGIA, and to meet the requirements of MISO for operating on the MISO System; and

(iv) Seller has installed all equipment needed to enable metering of the Net Energy at the Delivery Point as required by this agreement and has demonstrated to Buyer's reasonable satisfaction that such equipment is fully operational.

(b) Not more than 60, but at least 20, Days before Seller expects the Project to achieve Commercial Operation, Seller shall Notify Buyer of the expected Commercial Operation Date and that each of the conditions in section 4.3(a) has been, or will be, satisfied or waived in writing by the Parties not later than the expected Commercial Operation Date.

2.6. **Extension of Commercial Operation Date.** If Seller is unable to achieve Commercial Operation by the Outside Commercial Operation Date by reason of Force Majeure, then upon Notice to Buyer, Seller may extend the Outside Commercial Operation Date without payment or other penalty on a Day-for-Day basis for each Day of delay caused by reason of Force Majeure.

3. **Project Costs, Regulatory Review and Contract Price.**

3.1. **Project Cost Recovery.** Seller shall undertake the budgeting process described in this article 5 in order to keep Buyer apprised of Project Costs and the estimated Contract Price. Buyer acknowledges that subject to review and approval of this agreement by the Commission pursuant to section 5.2: (i) the Parties intend that the payments by Buyer under this agreement will fully compensate Seller for all Project Costs as finally determined by Seller from time to time; (ii) the final Project Costs for development and construction of the Project will not be known until after the Commercial Operation Date; (iii) the budgets provided under this article 5 will be used by Seller as the inputs to the Formula Rate and the basis for establishing the initial Contract Price subject to review and approval of the Commission; and (iv) Seller may revise the initial Contract Price from time to time based on actual Project Costs and the Formula Rate pursuant to this article 5.

3.2. **Regulatory Review and Approval.**

(a) If required by the Commission, Seller shall submit this agreement to the Commission for approval of the: (i) justness, reasonableness and prudence of the rates and terms hereof and (ii) recovery by Buyer of the Contract Price payable by Buyer from its Eligible Retail Customers, if applicable. If required by the Commission, Seller shall also submit to the Commission: (i) initial projections of its costs for the Project for the term of this agreement; and (ii) a formula rate ("Formula Rate") that will use Seller's costs projections to determine the Contract Price. The Parties acknowledge that based on the projections submitted by Seller and the Formula Rate, the Commission may determine the projected components of the Contract Price for each Contract Year of this agreement. Exhibit 5.2(a) sets forth an example of the Formula Rate. The final Formula Rate will be developed by Seller prior to approval of this agreement by the Commission.

(b) Not later than 6 Months before the Commercial Operation Date expected by Seller, and 60 Days before the beginning of each succeeding Contract Year, Seller shall submit to the Commission, if required, projections of its costs for the Project and expected levels of dispatch for the next Contract Year. The Parties acknowledge that based on the projections submitted by Seller, the Commission may determine the projected components of the Contract Price for each Contract Year of this agreement by reviewing the following inputs to the Formula Rate as set forth in Exhibit 5.2(a):

(i) **Initial Capital Costs:** The Commission may review the capital costs of the Project and calculate a range of capital costs that it believes would be a reasonable cost for the Project to be included in the formula rate; and may require the capital costs for the Project to be included in the Formula Rate be within or below the range of capital costs.

(ii) **Future Capital Costs:** Capital costs incurred beyond the initial construction of the Project, including costs for replacement of equipment and capital improvements, may be subject to review by the Commission and included in the Formula rate.

(iii) **Operations and Maintenance:** The Commission may review operations and maintenance costs that may be included in the Formula Rate, and may include in operations and maintenance costs, costs incurred for the administration, supervision, operation, maintenance,

preservation, and protection of Project's physical plant and other costs recorded in the operation and maintenance expense accounts for the Project.

(iv) **Fuel Costs:** The Commission may review fuel costs, which costs may include all costs associated with the procurement of fuel to be included in the Formula Rate, including, but not limited to, commodity costs, transportation costs, administrative costs, and costs relating to the procurement process.

(v) **Storage Costs:** The Commission may review CO₂ storage costs to be included in the Formula Rate, which may include costs incurred to capture CO₂, compress CO₂; build, operate, and maintain a storage site in which CO₂ may be injected; build, operate, and maintain a CO₂ pipeline; transport the CO₂ to a storage site or a pipeline; inject CO₂; and perform monitoring, verification and other activities associated with carbon capture and storage.

(vi) **Rate of Return:** The Commission may review and determine a rate of return for the Project based on, among other factors, a rate of return it deems sufficient for the Project to attract capital, an assumed capital structure including debt and equity, and a mechanism that allows for adjustment of the rate of return based on the final Project Costs including the cost of debt to be determined on or about the Commercial Operation Date, lender requirements for debt service coverage ratios and other customary financing requirements.

(vii) **Exclusions:** The Commission may exclude from the Formula Rate certain advertising expenses, political activity or lobbying expenses, social club dues, or charitable contributions, to the extent that, in each case, a utility would not be permitted to recover such costs.

(viii) **Other Costs:** Seller may request the Commission to review such other costs and inputs to the Formula Rate as Seller determines in its Sole Discretion.

(c) Buyer acknowledges and agrees that the Formula Rate and Project Costs approved by the Commission under those procedures that the Commission determines applicable to this agreement will be the basis for the Contract Price payable by Buyer. Buyer and Seller will use Commercially Reasonable Efforts to cooperate with each other in complying with any lawful review and approval requirements established by the Commission, and to obtain all lawful approvals required by the Commission for purposes of making the sales contemplated by this agreement. Buyer will use Commercially Reasonable Efforts to support Seller's requests for approvals of Project Costs, the Formula Rate and this agreement as may be required by the Commission or necessary to obtain in the judgment of Seller.

(d) If Buyer has Eligible Retail Customers, and the Commission issues an order that conditions its approval or modifies the terms of this agreement in any respect that disallows Buyer's full recovery of the Contract Price for the term of this agreement from Buyer's Eligible Retail Customers, then within 10 Days of that order each Party shall Notify the other as to whether the order is acceptable or unacceptable to it. If both Parties provide Notice that the order is acceptable or if neither Party provides Notice that the order is unacceptable, then the condition in section 3.1(a)(iii) will be deemed satisfied. If either Party provides Notice that the order is unacceptable, then either Party may file an appeal of the order.

(e) If Buyer has Eligible Retail Customers, and the Commission issues an order that conditions its approval or modifies the terms of this agreement in any respect other than to disallow Buyer's full recovery of the Contract Price for the term of this agreement, from its Eligible Retail Customers, then within 10 Days of that order Seller shall Notify Buyer as to whether the order is acceptable or unacceptable to it. If Seller provides Notice that the order is acceptable, then the condition in section 3.1(a)(iii) will be

deemed satisfied. If Seller provides Notice that the order is unacceptable, then either may file an appeal of the order.

(f) Buyer shall not be responsible for payment of the Contract Price to the extent its recovery from Buyer's Eligible Retail Customers is disallowed by the Commission; provided the Commission is properly exercising jurisdiction over this agreement.

(g) No provision of this agreement or its submission to the Commission's jurisdiction limits the ability of a Party to challenge any disallowance by the Commission of Buyer's recovery of costs of this agreement, or to assert any claim of federal preemption in relation to such disallowance.

Regulatory Modification of Agreement. If after approval of this agreement by the Commission, the Commission or another Governmental Authority having jurisdiction over Buyer restricts or denies Buyer's ability to recover the costs of this agreement from its Eligible Retail Customers, then the Parties shall negotiate in good faith to amend this agreement or enter into a new agreement in order to preserve to the maximum extent practical the ability of Seller to receive Buyer's proportionate share of the Project Costs.

Dodd-Frank Act. The Parties acknowledge that it is their intent that Net Energy be physically delivered by Seller to the Delivery Point in accordance with the terms of this agreement, and that such delivery is an essential part of the bargain entered into by Buyer pursuant to this agreement. If as a result of this agreement a Party becomes subject to the provisions of the Dodd-Frank Act (Pub. L. No. 111-203, July 21, 2010) regulating "swaps" (as defined in the Dodd-Frank Act and implementing regulations), and such statutory provisions or regulations significantly affect the allocation of benefits and burdens reflected in this agreement, the Parties will negotiate to amend this agreement to maintain the balance of benefits to and obligations of the Parties under this agreement. Any such amendment will maintain the requirement that Buyer will compensate Seller for its proportionate share of all costs associated with constructing, owning, operating and maintaining the Project as set forth in this agreement.

3.3. **Standard of Review.** Absent the express agreement of both Parties to any proposed change of rates provided by this agreement, the standard of review for changes to any section of this agreement proposed by a Party hereto, a non-Party or the Commission acting *sua sponte*, will be the 'public interest' standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the 'Mobile-Sierra' doctrine).

3.4. **Development, Construction and Operating Budget.**

(a) Solely for the purpose of providing Buyer with information regarding anticipated Project Costs, Seller shall provide to Buyer the information described in this section 5.6, which will not be binding in any way upon Seller.

(b) Not later than [_____] Months after the Effective Date, Seller shall deliver an initial Development and Construction Budget for the Project substantially in the form of Exhibit 5.6(b). Seller may revise the Development and Construction Budget from time to time to reflect changes in design of the Project and/or changes in Project Costs, and shall promptly provide a copy of each revised Development and Construction Budget to Buyer. If requested by Buyer, Seller shall discuss with Buyer the circumstances requiring revision of a Development and Construction Budget. The Development and Construction Budget will include Project Debt. Seller shall give Buyer at least 30 Days' Notice of its intention to increase or decrease the amount of Project Debt to be included in the Development and Construction Budget together with an explanation in reasonable detail setting forth the need for the increase or decrease.

(c) At least 6 Months before the Commercial Operation Date reasonably anticipated by Seller, Seller shall provide Buyer with an Operating Budget to be included in the Formula Rate substantially in the form of Exhibit 5.6(c) and applicable to the first 2 Contract Years. At least 60 Days before each Contract Year other than the first Contract Year, Seller shall provide Buyer with an Operating Budget to be included in the Formula Rate (or in the case of the second Contract Year an updated Operating Budget) applicable to the immediately succeeding Contract Year. From time to time after delivery of an Operating Budget to Buyer, Seller may revise the Operating Budget for the current Contract Year or for a succeeding Contract Year. If requested by Buyer, Seller shall discuss with Buyer the circumstances requiring the increase or decrease.

3.5. **Notice of Contract Price.** Subject to review and approval of this agreement by the Commission pursuant to section 5.2, at least 30 Days before the Commercial Operation Date reasonably anticipated by Seller, Seller shall provide Buyer with a schedule of the Contract Price and the Initial Clean Coal Rate Adjustment applicable upon Commercial Operation showing the Fixed Project Payment, the Fixed O&M Payment, Fuel Payment and the Variable Payment. The schedule will include supporting documentation with information reasonably necessary for Buyer to determine the bases for the Initial Clean Coal Rate Adjustment. The Initial Clean Coal Rate Adjustment will be effective, due and payable, pursuant to the terms of this agreement, for purposes of the first Contract Month invoicing, and each Contract Month thereafter.

3.6. **Amendment of Contract Price.** Subject to any requirements of the Commission from time to time, Seller may change the Contract Price, or any component thereof, based on changes to the Development and Construction Budget or the Operating Budget, or based on actual Project Costs incurred by Seller.

Purchase and Sale.

3.7. **Net Energy.** Beginning on the Commercial Operation Date and continuing through the end of the Term, Seller shall deliver the Net Energy produced by the Project to the Delivery Point, and Buyer shall pay for such Net Energy; provided that the obligations of the Parties in this section 3.7 will be settled financially as provided in section 0.

3.8. **Other Products.** Seller will retain and may sell to any Person Capacity Attributes, Ancillary Services, Environmental Attributes, and all other attributes, products or services of the Project, and Seller shall apply the proceeds of any sales thereof to reduce the Fixed Project Payment component of the Contract Price due from Buyer *pro rata* with all Clean Coal Buyers.

Contract Price.

(a) For each Contract Month during the Term in which Net Energy is made available at the Delivery Point, Seller shall calculate the Contract Price for Net Energy, which will be the sum of clauses (i) through (v) of this section 6.3(a), as may be adjusted by sections 6.3(b) and 6.3(c):

(i) A "Fixed Project Payment," equal to all Project Costs identified as "Fixed Project Costs" in Exhibit 6.3, Part A, as may be amended.

(ii) A "Fixed O&M Payment," equal to all Project Costs identified as "Fixed O&M Costs" in Exhibit 6.3, Part B, as may be amended.

(iii) A "Variable Payment," equal to all Project Costs identified as "Variable Costs" in Exhibit 6.3, Part C, as may be amended.

(iv) A "Fuel Payment" equal to all Project Costs identified as "Fuel Costs" in Exhibit 6.3, Part D, as may be amended. Beginning in the third Contract Year and continuing through the end of the Term, the Fuel Payment will be adjusted for the Heat Rate Variance Adjustment calculated in accordance with Exhibit 6.3, Part D.

(v) A "Capital Replacement and Additions Payment" equal to all Project Costs identified as "Capital Replacement and Additions" in Exhibit 6.3, Part E, as may be amended.

(b) An "Other Product Credit" equal to all Project Costs identified as "Other Product Credits" in Exhibit 6.3, Part F, as may be amended, which will be credited against the Fixed Project Payment.

(c) Starting in the second Contract Year, a credit against the Fixed Project Payment for any Fixed Project Payment revenue received in excess of the debt service payable, including principal and interest expense, in the previous Contract Year after taking into account the allowed rate of return for Project Equity Investors, if any, lender debt service coverage ratio requirements and other customary financing requirements.

Clean Coal Rate Adjustment Process.

(d) Payment for Seller's sale of Net Energy will be accomplished using the clean coal rate adjustment mechanism set forth in this section 6.4.

(e) Buyer hereby authorizes the Electric Utility that provided distribution service to Buyer's customers, or an affiliate of that Electric Utility, to release to Seller the Initial Buyer Retail Sales data within 15 Days of the end of each Contract Month, and the Final Buyer Retail Sales data within 110 Days of the end of each Contract Month 4 months prior; which information will be the same information submitted, or to be submitted, to MISO or PJM, as applicable.

(f) At least 60 Days prior to the start of each Contract Year, Seller shall provide to Buyer the following information:

(i) A forecast of each of the Contract Price components set forth in section 0, for each Contract Month in the coming Contract Year. Seller shall calculate the sum of these figures to produce an estimate of the Contract Price for each Contract Month in the coming Contract Year ("Seller's Estimated Monthly Revenue Requirement").

(ii) A forecast of the Net Energy that the Project will produce during each Contract Month in the coming Contract Year ("Seller's Estimated Monthly Net Energy Production").

(iii) A forecast of the revenue that the Project will generate from the sale of Net Energy into the MISO wholesale energy market during each Contract Month in the coming Contract Year ("Seller's Estimated Monthly Net Energy Sales Revenue").

(iv) A forecast of the Monthly "Initial Clean Coal Rate Adjustment," which will be equal to Seller's Estimated Monthly Revenue Requirement less Seller's Estimated Monthly Net Energy Sales Revenue, divided by the monthly Forecasted Total Retail Load, for each Contract Month in the coming Contract Year.

(g) For each Contract Month just ended, Seller shall calculate and provide to Buyer, and Buyer shall pay Seller:

(i) The "Initial Settlement Payment," which will be equal to the Initial Clean Coal Rate Adjustment multiplied by the Initial Buyer Retail Sales for the Contract Month just ended.

(ii) The "Final Settlement Payment," which will be equal to the Final Clean Coal Rate Adjustment for the fourth Contract Month preceding the Contract Month just ended, multiplied by

the Final Buyer Retail Sales. The "Final Clean Coal Rate Adjustment" is equal to Seller's Actual Monthly Revenue Requirement for the fourth Contract Month preceding the current Contract Month less Seller's Actual Monthly Net Energy Sales Revenue for the fourth Contract Month preceding the current Contract Month, divided by the Final Total Retail Load for the applicable Contract Month. If the Final Settlement Payment is greater than the Initial Settlement Payment, then Buyer shall pay Seller the difference. If the Final Settlement Payment is less than the Initial Settlement Payment, then Seller shall pay Buyer the difference.

(h) In the event that MISO or PJM publishes revised Hourly Day-Ahead Energy Market Locational Marginal Prices after the Final Settlement Payment for the applicable Contract Month has been paid, those revised prices will be used to recalculate applicable prior Final Settlement Payments, with interest accruing at the Interest Rate; except that in no event will Final Settlement Payments be adjusted under this section 3.8(h) as a result of revisions to Hourly Day-Ahead Energy Market Locational Marginal Prices that are published after the period ending 24 Months after the applicable Contract Month. Seller shall reflect all recalculations made under this section 3.8(h) in its invoice for the Contract Month following the completion of the recalculation.

Contract Price Limitation.

(i) Not later than 60 Days before the end of each Contract Year, Seller shall determine and submit to Buyer its determination whether the Annual Initial Clean Coal Rate Adjustment for the next Contract Year, excluding any penalties or other payments to Seller, would result in an estimated average incremental rate increase for Buyer's customers for the next Contract Year greater than the applicable Rate Cap Limit. If for any Contract Year Seller determines that the Annual Initial Clean Coal Rate Adjustment would result in an average incremental rate increase greater than the applicable Rate Cap Limit, then the Initial Clean Coal Rate Adjustment for each Contract Month in the next Contract Year will be adjusted downward in a manner pro-rata across all Contract Months so that the Annual Initial Clean Coal Rate Adjustment does not result in an estimated average incremental rate increase greater than the applicable Rate Cap Limit. The adjusted monthly Initial Clean Coal Rate Adjustments for the next Contract Year will be utilized to calculate the Initial Settlement Payment for each Contract Month in the next Contract Year as determined in section 6.4(d)(i). An example of this determination is attached as Exhibit 6.5(b).

(j) Not later than 110 Days following the end of each Contract Year, Seller shall determine whether the Annual Final Clean Coal Rate Adjustment for the immediately preceding Contract Year, excluding any penalties or other payments to Seller, resulted in an estimated average incremental rate increase for Buyer's customers for the applicable Contract Year greater than or less than the applicable Rate Cap Limit. If the Annual Final Clean Coal Rate Adjustment results in a rate exceeding the applicable Rate Cap Limit, then Seller shall refund to Buyer an amount equal to the difference between the Annual Final Clean Coal Rate Adjustment and the applicable Rate Cap Limit, multiplied by Buyer's total annual Final Buyer Retail Sales. An example of this determination is attached in Exhibit 6.5(b).

3.9. Minimum Annual Energy.

(a) Beginning on the Commercial Operation Date and continuing through the end of the Term, for each Contract Year, Seller shall use Commercially Reasonable Efforts to deliver the Minimum Annual Energy to the MISO wholesale energy market.

(b) For any period during which Seller is unable to deliver Net Energy due to Force Majeure or a System Emergency, Seller will be deemed to have been delivering Net Energy at a rate equivalent to the Monthly average of the Net Energy deliveries that occur during the Contract Month immediately following the Contract Month in which the condition preventing Seller from delivering Net Energy concludes.

(c) Beginning in the third Contract Year and continuing through the end of the Term, if Seller fails to deliver the Minimum Annual Energy for 2 consecutive Contract Years, then Seller shall determine the amount by which the sum of Minimum Annual Energy for those 2 Contract Years exceeds the sum of the Net Energy actually delivered in those 2 Contract Years, and that difference will be the "Minimum Energy Shortfall" applicable to the 2 Contract Years. Seller may remedy the Minimum Energy Shortfall by delivering, at any time during the following 2 Contract Years, Net Energy in a total amount that exceeds the Minimum Annual Energy for the applicable Contract Year, by crediting against the Minimum Energy Shortfall the excess of Net Energy delivered in the Contract Year above the Minimum Annual Energy for that Contract Year.

(d) If Seller fails to fully remedy a Minimum Energy Shortfall as provided in section 6.6(c) by the end of the second Contract Year following the 2 Contract Years for which there was an unremedied Minimum Energy Shortfall, then for that Contract Year and the subsequent Contract Year, Buyer may reduce each Contract Month's Initial Settlement Payment to Seller as determined in accordance with section 6.6(c) (such reduction is referred to herein as "Shortfall Damages Payment"); except that payments under this agreement will not be reduced under this section 6.6(d) in any Contract Year in excess of the amount of the Annual Damages Cap, and payments under this agreement will not be reduced under this section 6.6(d) if the Total Damages Cap for the Initial Term or Renewal Term, as the case may be, has been reached.

Additional Obligations.

(e) The obligation of Seller to make available Net Energy pursuant to this agreement is on an as-generated, unit contingent basis, and Seller's failure to make available Net Energy will not give Buyer the right to any damages, other than as specifically set forth in section 6.7. Without limiting the foregoing:

(i) Seller shall provide Buyer with reasonable advance Notice of project maintenance that will reduce delivered Net Energy; and

(ii) Seller shall provide Notice of any reduction in delivery of Net Energy due to a forced outage or based on any other transmission provider or MISO notice to reduce or discontinue deliveries from the Project pursuant to the terms of the LGIA or applicable tariff that will reduce the output of the Project by more than 25%. Seller's Notice shall include the expected duration, if known, of such reduction or termination of deliveries.

(f) Notwithstanding anything to the contrary in this agreement, Seller shall have no obligation to make Net Energy available for any period: (i) in which Seller's obligation to make Net Energy available is suspended pursuant to section 11.6; or (ii) in which either Party's obligations are suspended due to Force Majeure.

3.10. **Title and Risk of Loss.** As between the Parties, Seller will be deemed to be in control of Net Energy from the Project up to and until delivery and acceptance at the Delivery Point. Buyer will not receive title to or assume any risk of loss with respect to the Net Energy, the purchase and sale of which is settled financially pursuant to section 3.7.

Billing and Payment.

3.11. **Billing Period and Invoices.** The billing period is the Contract Month. Seller shall issue to Buyer an invoice for each Contract Month, setting forth in each such invoice:

- (a) the metered quantities of Net Energy delivered by Seller to the Delivery Point;
- (b) the Initial Settlement Payment for the Contract Month;
- (c) the Final Settlement Payment for the Contract Month 4 months prior;
- (d) any additional amount owing or credit determined pursuant to section 6.5(b); and
- (e) any additional amount owing or credit determined pursuant to section 6.6(d).

3.12. **Invoicing and Payment.** Seller shall invoice Buyer for each Contract Month within 30 Days after the last Day of that Contract Month, and Buyer shall pay this invoice not later than 15 Days after receipt of the invoice. Buyer will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by Seller. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, that interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

3.13. **Billing Disputes.** Either Party may dispute invoiced amounts with respect to any bill during the period ending 24 Months after the relevant Contract Month. Alleged or actual billing errors that are not disputed under this section 3.13 within the period prescribed are waived. A Party disputing a bill shall pay to the other Party both the undisputed and the disputed portions of invoiced amounts on or before the invoice due date. To resolve any billing dispute, the Parties shall use the procedures set forth in section 17. When the billing dispute is resolved, the Party owing shall pay the amount owed within 5 Business Days of the date of that resolution, with late payment interest charges calculated on the amount owed in accordance with the provisions of section 7.2.

4. **Transmission, Scheduling, Dispatch and Operation.**

4.1. **Designation of Scheduling Coordinator.** Seller may designate a scheduling coordinator for the Project, and may instruct the scheduling coordinator to request to dispatch the Project as frequently and at the highest level of production consistent with applicable MISO rules.

4.2. **Operating Procedures.** Seller shall staff, control, and operate the Project consistent at all times with Prudent Utility Practices. Seller personnel capable of starting, operating, and stopping the Project shall be continuously available at the Project.

4.3. **Outages Schedules.** At least 90 Days before Commercial Operation, and at least 90 Days before the beginning of each Contract Year, Seller shall provide Buyer with a non-binding planned outage schedule for the forthcoming Contract Year.

5. **Metering.** Seller shall use data published by MISO as to the quantity of electric energy delivered by the Project to the Delivery Point, for purposes of establishing the Net Energy delivered by the Project for purposes of this agreement.

6. **Compliance with Applicable Laws; Governmental Authorizations.**

6.1. **Compliance with Applicable Laws.** Each Party shall at all times comply with all Applicable Laws except for any non-compliance that, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on the ability of the non-complying Party to perform its obligations under this agreement.

6.2. **Regulatory Cooperation.** Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to such matters as may be reasonably requested in order to fulfill any regulatory reporting requirements with respect to this agreement.

6.3. **Governmental Authorizations.** Seller shall use Commercially Reasonable Efforts to obtain and maintain all Governmental Authorizations necessary to construct, operate and maintain the Project in accordance with its obligations under this agreement, and shall pay its respective charges and fees in connection therewith.

7. **[Reserved]**

8. **Representations and Warranties.**

8.1. **Buyer's Representations, Warranties and Covenants.** Buyer hereby represents and warrants as follows:

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

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

(i) require any consent or approval by any governing body of Buyer, other than that which has been obtained and is in full force and effect;

(ii) violate any Applicable Law, or violate any provision in any formation documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this agreement;

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

(iv) 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 agreement) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this agreement.

(c) This agreement is a valid and binding obligation of Buyer.

(d) The execution and performance of this agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this agreement.

8.2. **Seller's Representations, Warranties and Covenants.** Seller hereby represents and warrants as follows:

(a) Seller is a [non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Delaware]. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of

Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this agreement.

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

(i) require any consent or approval by any governing body or shareholders of Seller, other than that which has been obtained and is in full force and effect;

(ii) violate any Applicable Law, or violate any provision in any corporate documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this agreement;

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

(iv) 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 agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this agreement.

(c) This agreement is a valid and binding obligation of Seller.

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

9. Indemnification.

9.1. **Indemnification of Buyer by Seller.** Seller shall indemnify and hold harmless Buyer, and its Representatives and Affiliates (collectively, the "Buyer Indemnified Persons"), and will reimburse Buyer Indemnified Persons for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) involving a Third-Party Claim (collectively, "Damages") arising from, or related to, any personal injury or death to Persons and damage to any Person's real property and tangible personal property or facilities, or the property of any other Person to the extent arising from, or related to, breach of a representation or warranty given in this agreement, an Event of Default under this agreement, violation of any Applicable Laws or Governmental Authorizations, or by the gross negligence of Seller, its Affiliates, directors, officers, employees, or agents. Nothing in this section 13.1 will enlarge or relieve Seller of any liability to Buyer Indemnified Persons for any breach of this agreement. This indemnification obligation will apply notwithstanding any negligent or intentional acts, errors or omissions of a Buyer Indemnified Person, but Seller's liability to pay damages to a Buyer Indemnified Person will be reduced in proportion to the percentage by which that Buyer Indemnified Person's negligent or intentional acts, errors or omissions caused the damages. Seller is not required to indemnify a Buyer Indemnified Person for its damages resulting from that Buyer Indemnified Person's sole negligence, intentional acts or willful misconduct. These indemnity provisions will not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

9.2. **Indemnification of Seller by Buyer.** Buyer shall indemnify and hold harmless Seller, and its Representatives and Affiliates (collectively, the “Seller Indemnified Persons”), and will reimburse Seller Indemnified Persons for any Damages arising from, or related to, any personal injury or death to Persons and damage to any Person’s real property and tangible personal property or facilities, or the property of any other Person to the extent arising from, or related to, breach of a representation or warranty given in this agreement, an Event of Default under this agreement, violation of any Applicable Laws or Governmental Authorizations, or by the gross negligence of Buyer, its Affiliates, directors, officers, employees, or agents. Nothing in this section 13.2 will enlarge or relieve Buyer of any liability to Seller Indemnified Persons for any breach of this agreement. This indemnification obligation will apply notwithstanding any negligent or intentional acts, errors or omissions of Seller Indemnified Persons, but Buyer’s liability to pay damages to a Seller Indemnified Person will be reduced in proportion to the percentage by which that Seller Indemnified Person’s negligent or intentional acts, errors or omissions caused the damages. Buyer is not required to indemnify a Seller Indemnified Person for its damages resulting from that Seller Indemnified Person’s sole negligence, intentional acts or willful misconduct. These indemnity provisions will not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

9.3. **Third-Party Claims.**

(a) Promptly after receipt by a Person entitled to indemnity under this article 13 (an “Indemnified Person”) of notice of the assertion of a Third-Party Claim against it, such Indemnified Person shall give Notice to the Person obligated to indemnify under this article 13 (an “Indemnifying Person”) of the assertion of such Third-Party Claim, provided that the failure to Notify the Indemnifying Person will not relieve the Indemnifying Person of any liability that it may have to any Indemnified Person, except to the extent that the Indemnifying Person demonstrates that the defense of such Third-Party Claim is prejudiced by the Indemnified Person’s failure to give such Notice.

(b) If an Indemnified Person gives Notice to the Indemnifying Person pursuant to section 13.3(a) of the assertion of a Third-Party Claim, the Indemnifying Person will be entitled to participate in the defense of that Third-Party Claim and, to the extent that it wishes (unless (i) the Indemnifying Person is also a Person against whom the Third-Party Claim is made and the Indemnified Person determines in good faith that joint representation would be inappropriate or (ii) the Indemnifying Person fails to provide reasonable assurance to the Indemnified Person of its financial capacity to defend such Third-Party Claim and provide indemnification with respect to that Third-Party Claim), to assume the defense of that Third-Party Claim with counsel satisfactory to the Indemnified Person. After Notice from the Indemnifying Person to the Indemnified Person of its election to assume the defense of that Third-Party Claim, the Indemnifying Person shall not, so long as it diligently conducts the defense, be liable to the Indemnified Person under this article 13 for any fees of other counsel or any other expenses with respect to the defense of the Third-Party Claim, in each case subsequently incurred by the Indemnified Person in connection with the defense of the Third-Party Claim, other than reasonable costs of investigation. If the Indemnifying Person assumes the defense of a Third-Party Claim, (i) that assumption will conclusively establish for purposes of this agreement that the claims made in that Third-Party Claim are within the scope of and subject to indemnification, and (ii) no compromise or settlement of the Third-Party Claims may be effected by the Indemnifying Person without the Indemnified Person’s consent unless (A) there is no finding or admission of any violation of Applicable Law or any violation of the rights of any Person; (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and (C) the

Indemnified Person will have no liability with respect to any compromise or settlement of the Third-Party Claims effected without its Consent. If Notice is given to an Indemnifying Person of the assertion of any Third-Party Claim and the Indemnifying Person does not, within 10 Days after the Indemnified Person's Notice is given, give Notice to the Indemnified Person of its election to assume the defense of the Third-Party Claim, the Indemnifying Person will be bound by any determination made in the Third-Party Claim or any compromise or settlement effected by the Indemnified Person.

(c) Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third-Party Claim may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this agreement, the Indemnified Person may, by Notice to the Indemnifying Person, assume the exclusive right to defend, compromise or settle such Third-Party Claim, but the Indemnifying Person will not be bound by any determination of any Third-Party Claim so defended for the purposes of this agreement or any compromise or settlement effected without its Consent (which may not be unreasonably withheld).

(d) With respect to any Third-Party Claim subject to indemnification under this article 13: (i) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third-Party Claim and any related proceedings at all stages thereof where that Person is not represented by its own counsel, and (ii) the Parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

(e) With respect to any Third-Party Claim subject to indemnification under this article 13, the Parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all confidential information and the attorney-client and work-product privileges. In connection therewith, each Party agrees that: (i) it will use its Commercially Reasonable Efforts, in respect of any Third-Party Claim in which it has assumed or participated in the defense, to avoid production of confidential information (consistent with Applicable Law and rules of procedure), and (ii) all communications between any Party hereto and counsel responsible for or participating in the defense of any Third-Party Claim will, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

9.4. **Survival.** All representations, warranties, covenants and obligations in this agreement and the certificates delivered pursuant to this agreement will survive the termination of this agreement. The right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations will not be affected by any investigation (including any environmental investigation or assessment) conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this agreement, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations.

10. **Credit Support.**

Credit Annex. The credit and security rights and obligations of the Parties are set forth in the Credit Annex attached as Exhibit 14, which is specifically incorporated into this agreement.

Notice and Time for Establishing Credit Support. Seller shall Notify Buyer at least 45 Days before the date that Seller estimates Financial Close to occur, and Buyer shall establish the Credit Support required by section 14.1 and Exhibit 14 at least 30 Days prior to Seller's estimated date of Financial Close.

11. Early Termination.

11.1. Early Termination Rights of Seller.

(a) Seller may terminate this agreement at any time upon Notice to Buyer, if:

(i) the laws in effect, or adopted but not yet in effect, as of the execution of this agreement change in such a way as to require additional capital expenditures or make continued operation of the Project in the manner anticipated by Seller as of the execution of this agreement materially more expensive or burdensome; or

(ii) the Department terminates or ceases funding one or both Cooperative Agreements.

(b) If Seller terminates this agreement due to an event set forth in this section 15.1 neither Party will have any further liability to the other Party except for liabilities that have accrued prior to the Notice of termination.

11.2. Termination Rights of Buyer. Buyer may terminate this agreement at any time upon Notice to Seller if the Project fails to achieve Commercial Operation by the Outside Commercial Operation Date, as may be extended pursuant to this agreement. If Buyer terminates this agreement solely for the reasons set forth in this section 15.2, then it will have no liability for the Termination Payment.

Default and Remedies.

11.3. Events of Default of Either Party.

(a) Any of the following events will be an Event of Default ("Event of Default") of either Party, each of which will be an Event of Default upon its occurrence and no cure period will apply:

(i) A Party fails to pay an amount due hereunder that is not the subject of a good faith dispute within 30 Days of the due date.

(ii) A Party fails to maintain adequate security in accordance with the provisions of this agreement.

(iii) A Party files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law;

(iv) A Party makes an assignment or any general arrangement for the benefit of creditors;

(v) A Party otherwise becomes bankrupt or insolvent, however evidenced;

(vi) A Party has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or

(vii) A Party is generally unable to pay its debts as they fall due.

(b) Any of the following will constitute an Event of Default of a Party upon its occurrence, but will be subject to cure within 60 Days after the date of Notice from the other Party:

(i) Any representation or warranty made by a Party in this agreement proves to have been false or misleading in any material respect when made and that failure would reasonably be expected to result in a material adverse impact on the other Party; and

(ii) An involuntary case in bankruptcy or any proceeding under any other insolvency law is filed against a Party as debtor; provided, however, that that Party does not obtain a stay or dismissal of the filing within the cure period.

(c) A Party's failure to make any payment due to Seller under or in connection with this agreement will be an Event of Default of that Party upon its occurrence, but will be subject to cure within 5 Business Days after the date of Notice from the other Party.

(d) A Party's failure to comply with any other material obligation under this agreement will be an Event of Default of that Party upon its occurrence, but will be subject to cure within 30 Days after the date of Notice from the other Party.

11.4. Lender's Right to Cure Default of Seller; Lender Consent.

(a) Seller shall provide Buyer with a Notice identifying the Project Lender and providing appropriate contact information for the Project Lender. Following receipt of that Notice, Buyer shall provide Notice of any Event of Default of Seller to the Project Lender, and Buyer will accept a cure to an Event of Default of Seller performed by the Project Lender. In addition to the other cure periods provided to Seller in section 16.1, the Project Lender will have an additional 90 Days to cure any Event of Default.

(b) To facilitate Seller obtaining financing to construct and operate the Project, Buyer shall provide those consents to collateral assignment, certifications, representations, information or other documents as may be reasonably requested by Seller or the Project Lender in connection with the financing of the Project (generally, a "Lender Consent"). The Lender Consent will include the provisions set forth on Exhibit 16.2(b) and such other terms as the Project Lender may reasonably request. Seller shall be responsible for the incremental direct expenses incurred by Seller and Buyer in the preparation, negotiation, execution and/or delivery of any documents requested by the Project Lender, and provided by either Party, pursuant to this subsection.

11.5. Remedies upon Event of Default. Subject to the limitations on damages and remedies set forth in this agreement, for all Events of Default, the non-defaulting Party will be entitled to receive from the defaulting party all of the damages incurred by the non-defaulting Party in connection with that Event of Default; except that if an Event of Default has occurred and has continued uncured for a period of 365 Days, the non-defaulting Party shall either waive its right to collect further damages on account of such Event of Default or terminate this agreement as provided for in section 16.4.

11.6. Termination.

(a) Upon the occurrence of an Event of Default that has not been cured within the applicable cure period, the non-defaulting Party may declare a date, which will be between 15 and 30 Days after the Notice thereof, upon which this agreement will terminate.

(b) In connection with establishing a termination date under this section 16.4, the non-defaulting Party will have the right to accelerate the amounts owed it by the defaulting party under this agreement, to withhold any payments due to the defaulting Party under this agreement, and to suspend performance under this agreement.

(c) Neither Party has the right to terminate this agreement except as provided for upon the occurrence of an Event of Default as described above or as otherwise may be explicitly provided for in this agreement. If Seller is the non-defaulting party, it will be entitled to receive only the Termination Payment. Upon the termination of this agreement based solely on an Event of Default of Seller Buyer will be entitled to receive from Seller, subject to the limitation on damages set forth in sections 16.7 and 16.8, all of the damages incurred by Buyer in connection with that termination.

11.7. Termination Payment.

(a) If a Termination Payment ("Termination Payment") is owed by Buyer, it will be computed by multiplying a fraction the numerator of which is the total of the Monthly Final Buyer Retail Sales for the 12 Month period immediately preceding the Month in which the termination occurs, and the denominator of which is the total of the Final Total Retail Load for the same period, by the sum of:

(i) the total Project Costs through the date on which the termination is effective;
except that the amount owed by Buyer will not exceed the amounts provided for in the most recent Development and Construction Budget of Seller; plus

(ii) all Cancellation Costs;

(iii) all Decommissioning Costs; less

(iv) all Project Costs paid by Seller with contributions to Seller from Alliance Member Companies; less

(v) all Project Costs paid by Seller with funds received by Seller [and its Affiliates] from the Department pursuant to a Cooperative Agreement; less

(vi) all amounts paid by other purchasers of Project output in respect of Project Costs, Cancellation Costs and Decommissioning Costs; less

(vii) all amounts paid by Buyer in respect of Project Costs, Cancellation Costs and Decommissioning Costs before the date on which the termination is effective.

(b) Seller shall provide Buyer with a reasonably detailed invoice setting forth the bases for the Termination Payment. Buyer shall pay Seller the Termination Payment within 30 Days of receipt of the invoice from Seller. If Buyer disputes the termination payment, then Seller shall deposit the Termination Payment in an escrow account reasonably satisfactory to Buyer pending resolution of the dispute.

11.8. Remedies Cumulative. Each right or remedy of the Parties provided for in this agreement is cumulative of and is in addition to every other right or remedy provided for in this agreement, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein will not preclude the simultaneous or later exercise by that Party of any or all other rights or remedies provided for herein.

11.9. Limitation of Liability. The Parties acknowledge that the express remedies and measures of damages provided in this agreement satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability will be limited to direct, actual damages only. Neither Party will be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); except that if either Party is held liable to a third party for those damages and the Party held liable for those damages is entitled to indemnification therefore from the other Party hereto, the indemnifying Party will be liable for, and obligated to reimburse the indemnified Party for, those damages. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss. No Alliance Member Company or Affiliate of Seller will have any liability under this agreement.

11.10. Duty to Mitigate. Each Party shall use Commercially Reasonable Efforts to mitigate any damages it may incur as a result of the other Party's performance or non-performance of this agreement.

Dispute Resolution. In the event of any dispute arising under this agreement (a “Dispute”), within 10 Days following the delivered date of a written request by either Party (a “Dispute Notice”), (i) each Party shall appoint a representative (individually, a “Party Representative”, and together, the “Parties’ Representatives”), and (ii) the Parties’ Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the Parties’ Representatives cannot resolve the Dispute within 30 Days after commencement of negotiations, then within 10 Days following any request by either Party at any time thereafter, each Party Representative (i) shall independently prepare a written summary of the Dispute describing the issues and claims, (ii) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (iii) shall submit a copy of both summaries to a senior officer of the Party Representative’s Party with authority to irrevocably bind the Party to a resolution of the Dispute. Within 10 Business Days after receipt of the Dispute summaries, the senior officers for both Parties shall negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve the Dispute within 14 Days following receipt of the Dispute summaries by the senior officers, either Party may seek available legal remedies. Notwithstanding any provision in this agreement to the contrary, if no Dispute Notice has been issued within 24 Months following the occurrence of all events and the existence of all circumstances giving rise to the Dispute (regardless of the knowledge or potential knowledge of either Party of such events and circumstances), then the Dispute and all claims related thereto will be deemed waived and the aggrieved Party will thereafter be barred from proceeding thereon.

12. Force Majeure.

12.1. Force Majeure.

(a) The term “Force Majeure” means any event beyond Seller’s reasonable control and that is not due to Seller’s negligence or non-compliance with Applicable Law. An event of Force Majeure may include, but is not limited to flood, drought, earthquake, unusually severe weather, fire, lightning, or other Acts of God; epidemic; war; riot; civil disturbance or disobedience; sabotage; restraint by a Governmental Authority; expropriation; a failure by Seller to obtain required permits or approvals, or renewal of required permits or approvals, provided Seller has taken diligent action to obtain them; failure or breakdown of the Project that is not due to Seller’s failure to operate and maintain the Project in accordance with Prudent Utility Practices; an Emergency affecting the Project; a System Emergency; a Force Majeure event affecting a fuel supplier; or failure of transmission facilities.

(b) Notwithstanding section 18.1(a), the term Force Majeure does not include (i) acts or omissions of any third party, including any vendor, material man, customer, or supplier, unless such acts or omissions are themselves the result of Force Majeure; and (ii) changes in market conditions that affect the cost of supplies, or that affect demand or price for power, CO₂ or Environmental Attributes.

12.2. **Applicability of Force Majeure.** Seller will not be responsible or liable for any delay or failure in its performance under this agreement, and no delay, failure, or other occurrence or event will become an Event of Default, to the extent such delay, failure, occurrence or event is caused by Force Majeure, provided that:

(a) Seller gives Buyer prompt Notice describing the particulars of the occurrence of the Force Majeure; except that if the nature of the event of Force Majeure is such that Notice cannot be immediately given, then Seller shall provide verbal notice, the effectiveness of which will be subject to Buyer confirming receipt thereof as soon as practicable;

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

(c) Seller proceeds with reasonable diligence to remedy its inability to perform and provides progress reports to the other Party describing actions taken to end the Force Majeure; and

(d) when Seller is able to resume performance of its obligations under this agreement, Seller shall give Buyer Notice to that effect; except that if the nature of the event of Force Majeure is such that Notice cannot be immediately given, then Seller shall provide verbal notice, the effectiveness of which will be subject to the other Party confirming receipt thereof as soon as practicable.

12.3. **Certain Exceptions.** Except as otherwise expressly provided for in this agreement, the existence of a condition or event of Force Majeure will not relieve Seller of: (i) other obligations under this agreement to the extent that performance of those obligations is not precluded by the condition or event of Force Majeure; and (ii) obligations to make payments under this agreement.

12.4. **Termination of Agreement for Extended Force Majeure.** In the event that any delay or failure of performance caused by a condition or event of Force Majeure affecting Seller continues for an uninterrupted period of 18 Months from its inception, then either Party may, at any time following the end of the 18 Month period, terminate this agreement upon Notice to the other Party. If this agreement is terminated pursuant to this section 12.4, neither party will have liability in respect of the termination.

13. **Taxes.** Subject to the other provisions of this article 19, Seller shall pay or cause to be paid all taxes and assessments imposed on Seller with respect to the Net Energy delivered hereunder prior to the Delivery Point. Buyer shall pay or cause to be paid all taxes and assessments, if any, imposed on Seller with respect to Seller's purchase of Net Energy under this agreement.

14. **Assignments.** Seller may assign this agreement without the consent of Buyer as security for purposes of securing Project Debt, to an Affiliate, or in connection with a merger, consolidation, disposition or sale of the Project or substantially all of the assets of Seller. Buyer may assign this agreement to an Affiliate or in connection with a merger, consolidation, disposition, or sale of substantially all of the assets of Buyer without the prior consent of Seller, subject to the assignee or surviving entity meeting the creditworthiness requirements otherwise applicable to Buyer pursuant to section 14.

15. **Successors and Assigns.** This agreement will bind and benefit the Parties hereto and their successors and permitted assigns; provided that no conveyance or transfer of any interest of either Party will relieve a Party of any obligation to the other Party unless and until a Party's successors or assigns are approved in writing by the other Party which consent will be in the consenting Party's Sole Discretion.

16. **Notices.**

16.1. **Delivery.** Each Party giving or making any Notice, request, demand or other communication pursuant to this agreement (each, a "Notice") shall:

(a) give the Notice in writing; and

(b) use one of the following methods of delivery, each of which for purposes of this agreement is a writing: personal delivery; registered or certified mail, in each case, return receipt requested and postage prepaid; nationally recognized overnight courier, with all fees prepaid; facsimile; or e-mail.

16.2. **Addressees and Addresses.** Each Party giving a Notice shall address the Notice to the appropriate Person at the receiving party (the "Addressee") at the address listed in Exhibit 22.2 or at another address as designated by a Party in a Notice pursuant to this section 22.2.

16.3. **Effectiveness of a Notice.** Except as provided elsewhere in this agreement, a Notice is effective only if the Party giving the Notice has complied with this article 22, and if the Addressee has received the Notice. A Notice is deemed to have been received as follows:

- (a) if a Notice is delivered in person, or sent by registered or certified mail or nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt;
- (b) if a Notice is sent by facsimile, upon receipt by the Party giving the Notice of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the Addressee's facsimile number;
- (c) if a Notice is sent by email, upon confirmation by telephone of receipt of the email by the Addressee; and
- (d) notwithstanding the other clauses of this subsection, if any Notice is received after: (i) 5:00 p.m. on a Business Day where the Addressee is located, or (ii) on a Day that is not a Business Day where the Addressee is located, then the Notice is deemed received at 9:00 a.m. on the next Business Day where the Addressee is located.

Confidentiality.

16.4. **Confidentiality Obligation.** Each Party shall keep this agreement and the terms of this agreement (the "Confidential Information") confidential, and shall not, without the prior written consent of the other Party, directly or indirectly disclose any portion of the Confidential Information to any third party.

16.5. **Permitted Use and Disclosures.** A Party may disclose Confidential Information (whether directly or indirectly and by whatever means or method) only to those directors, officers, employees, consultants and agents of that Party, its Affiliates, or its Representatives (and in the case of Seller, Alliance Member Companies) who need to know the Confidential Information; provided, however, that those Affiliates, Representatives and Alliance Member Companies are subject to an obligation (or in the case of legal counsel, an ethical duty of confidentiality) to keep the information confidential. Seller may disclose Confidential Information to the Commission, the Federal Energy Regulatory Commission or any other Governmental Authority for purposes of establishing and continuing the effectiveness of any Governmental Authorizations deemed required by Seller in its Sole Discretion to effect the transactions contemplated by this agreement.

16.6. **Term of Confidentiality Obligation.** Notwithstanding the expiration or termination of this agreement, each Party shall keep the Confidential Information confidential in accordance with this agreement for a period of 3 years from the date of expiration or termination of this agreement.

16.7. **Exceptions to Disclosure of Confidential Information.** The obligations of confidentiality in this agreement do not apply to Confidential Information that:

- (i) at the time of disclosure is already in the public domain or becomes part of the public domain through no act or fault of the receiving Party;
- (ii) can be clearly demonstrated by the receiving Party to have been in the receiving Party's possession before the time it was received by the receiving Party under this agreement, and which was not then subject to any restriction in its use or disclosure;
- (iii) is disclosed in writing to the receiving Party after it was disclosed or made available to the receiving Party under this agreement, from another Person that is not a Party and that had no

obligation to keep it confidential and that did not acquire the Confidential Information directly or indirectly from the disclosing Party;

(iv) is disclosed as a result of the receiving Party's obligation to disclose imposed by any Applicable Law, regulation, order of any Governmental Authority, regulation of any stock exchange upon which a Party or any of its Affiliates is listed, or legal process; provided, however, that disclosures under this clause (iv) are subject to section 23.6; or

(v) is or was independently developed by the receiving Party without reference to the Confidential Information.

16.8. **Disclosure for Purposes of Cooperative Agreements.** Seller may disclose Confidential Information to the Department for purposes of complying with its obligations under its Cooperative Agreement and any regulation or policy of the Department applicable to Seller or the Project.

16.9. **Compelled Disclosure.** If a Party, its Affiliates, or its Representatives are required or obligated, whether by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process, then that Party shall promptly Notify the other Party of the intended disclosure, so that the other Party may take action including, without limitation, to seek an appropriate protective order, as appropriate, or waive compliance with this agreement and, further, the disclosing Party will cooperate with the reasonable requests of the non-disclosing Party in protecting the confidentiality of the Confidential Information in a lawful manner.

16.10. **Injunctive Relief.** Disclosure, communication or use of Confidential Information by the receiving Party not permitted by this agreement may cause irreparable harm and result in significant damages to the disclosing Party, and such harm and monetary damages may be difficult to ascertain or insufficient. In the event of any breach or threatened breach of this agreement by the receiving Party or any of its representatives, the disclosing Party and each of its Affiliates has the right, without the posting of a bond or other security, to equitable relief including specific performance and temporary, preliminary and permanent injunctive relief in addition to any other remedies that may be available to the disclosing Party or its Affiliates at law or in equity.

Non-Disclosure Agreements. Buyer agrees that Seller may require Buyer to enter into one or more non-disclosure agreements with vendors of Seller before Seller may disclose certain business or technical information to Buyer.

17. Miscellaneous.

17.1. **Examination of Records.** Each Party may, at its sole expense and during normal working hours upon reasonable notice to the other Party, examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, invoice, charge or computation made pursuant to this agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity of Net Energy delivered. If any examination reveals any inaccuracy in any statement, the necessary adjustments in that statement and the payments thereof will be made promptly and will bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; except that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of 12 Months from the rendition thereof, and thereafter any objection will be deemed waived.

Amendments. This agreement may only be amended, changed, modified or altered if that amendment, change, modification or alteration is by means of a writing signed by both Parties that

identifies itself as an amendment to this agreement; except that Exhibit 22.2 may be changed in accordance with the process in section 22.

17.2. **Waivers.** The Parties may waive any provision in this agreement only by a writing executed by the Party against whom the waiver is sought to be enforced. No failure or delay in (i) exercising any right or remedy, or (ii) requiring the satisfaction of any condition, under this agreement, and no act, omission or course of dealing between the Parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Person.

17.3. **Survival of Obligations.** Cancellation, expiration or earlier termination of this agreement will not relieve either Party of obligations, including warranties, remedies or indemnities, that by their nature should survive such cancellation, expiration, or termination, which obligations will survive for the period of the applicable statute(s) of limitation.

17.4. **Severability.** In the event any of the terms, covenants or conditions of this agreement, its exhibits, or the application of any such terms, covenants or conditions, is held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants and conditions of the agreement and their application not adversely affected thereby will remain in force and effect; provided, however, that the Parties shall negotiate in good faith, but have no obligation to agree, to attempt to implement an equitable adjustment in the provisions of this agreement with a view toward effecting the purposes of this agreement 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.

17.5. **Complete Agreement.** The terms and provisions contained in this agreement constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous communications, representations or agreements, either verbal or written, between Parties with respect to the subject matter hereof.

17.6. **Merger.** This agreement constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this agreement are expressly merged into and superseded by this agreement. The provisions of this agreement may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this agreement, no Party has relied upon any statement, representation, warranty or agreement of any other Party except for those expressly contained in this agreement. There are no conditions precedent to the effectiveness of this agreement, other than those expressly stated in this agreement.

17.7. **Counterparts.** The Parties may execute this agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this agreement in the presence of the other Parties to this agreement. This agreement is effective upon delivery of one executed counterpart from each Party to the other Party. In proving this agreement, a Party must produce or account only for the executed counterpart of the Party to be charged.

17.8. Third Party Beneficiaries and Dedication.

(a) Buyer Indemnified Persons and Seller Indemnified Persons are third party beneficiaries of this agreement. This agreement does not and is not intended to confer any rights or remedies upon any Person other than the Parties, Buyer Indemnified Persons and Seller Indemnified Persons.

(b) No undertaking by one Party to the other under any provision of this agreement will constitute the dedication of that Party's system, facilities, Project or any portion thereof to the other Party or to the public or affect the status of Buyer as an independent entity or Seller as an independent entity.

Governing Law. The laws of the State of Illinois, without giving effect to its conflicts of law principles, govern all matters arising out of or relating to this agreement, including, without limitation, its validity, interpretation, construction, performance or enforcement.

Designation of Forum. Any party bringing a legal action or proceeding against any other party arising out of or relating to this agreement shall bring the legal action or proceeding in the United States District Court for the Northern District of Illinois, or if there is no federal subject matter jurisdiction, in any court of the State of Illinois sitting in Chicago.

Waiver of Right to Contest Jurisdiction and Jury Trial.

(c) Each Party waives, to the fullest extent permitted by law: (i) any objection which it may now or later have to the laying of venue of any legal action or proceeding arising out of or relating to this agreement brought in such courts as are prescribed in section 24.11; and (ii) any claim that any action or proceeding brought in such courts has been brought in an inconvenient forum.

(d) Seller and Buyer each 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 agreement or any course of conduct, course of dealing, statements (whether oral or written) or actions of Seller and Buyer related hereto and expressly agree to have any disputes arising under or in connection with this agreement be adjudicated by a judge of the court having jurisdiction without a jury.

IN WITNESS WHEREOF, the undersigned have caused this agreement to be executed by their duly authorized representatives as of the dates set forth below.

[BUYER]

[SELLER]

By:

By:

Its:

Its:

Date:

Date:

EXHIBITS TO
UNIT CONTINGENT
POWER PURCHASE AGREEMENT

Between

[FUTUREGEN INDUSTRIAL ALLIANCE, INC.]

and

[BUYER]

**Exhibit 1.1-A
Delivery Point**

1. The Delivery Point will be located at Bus # 347685, Bus Name 1MERDSA 4 20.000, and as shown in the below diagram:

[Single Line Diagram to be Attached]

2. The Metering Point will be [_____]

**Exhibit 1.1-B
Project Costs**

Project Costs will include all costs of the Project related to the following cost categories:

Development & Construction Expenses:

- Development Expenses
- Permitting Expenses
- Legal Expenses
- Front-End Engineering & Design Expenses
- Utility Interconnection Expenses
- Site Preparation
- Engineering, Construction & Procurement
- Commissioning & Start-Up Expenses
- Owner's Project Management
- Security
- Spare Parts
- Initial Fuel Stockpile
- Initial Working Capital (non-Fuel)
- Insurance
- Financing Fees & Closing Costs
- Interest During Construction
- Debt Service Reserve Fund
- Operation & Maintenance Reserve Fund
- Management Reserve
- Sales Tax

Fixed Project Payment

- Rate of Return on Invested Equity Capital (if any)
- Principal Payments
- Interest Expense
- Ongoing Lender Fees and Administrative Costs

Fixed Operations and Maintenance

- Labor (Power Block, ASU & CPU)
- Maintenance Materials & Contract Labor:
- Consumables & Chemicals (fixed portion only; if any):
- Water and Water Treatment (fixed portion only; if any):
- Lime/Limestone (fixed portion only; if any)
- Waste Disposal (fixed portion only; if any):
- Carbon Transport & Storage (fixed portion only):
- Air Separation Unit (ASU) Fixed O&M (ex-Labor):
- Compression & Purification Unit (CPU) Fixed O&M (ex-Labor):

- ASU Fixed Fee for Capital Cost Recovery (if Over-the-Fence)
- Purchased Power:
- Ongoing Legal, Environmental and Permitting, & Engineering Support
- Insurance
- General & Administrative:
- Security
- Operator Fee
- Interconnection & Transmission Costs
- MISO Scheduling Coordinator
- Major Maintenance Sinking Fund
- Decommissioning Sinking Fund
- Local Property Taxes:
- Other Taxes and Fees

Variable Operations & Maintenance:

- Consumables & Chemicals:
- Water and Water Treatment:
- Lime/Limestone:
- Emissions Allowances:
- Waste Disposal:
- Carbon Transport & Storage Variable O&M:
- ASU Variable O&M:
- CPU Variable O&M:

Fuel

- Delivered Fuel Costs (including all applicable taxes)

Capital Replacement and Additions

- Boiler
- Air Quality Control System
- Steam Turbine Generator
- ASU
- CPU
- Balance of Plant

Other Product Revenues

- Capacity Attributes
- Ancillary Service Attributes
- Environmental Attributes

**Exhibit 1.1-C
Project Description**

FutureGen 2.0 is a series of projects whereby the FutureGen Alliance and its partners will repower, test, and commercially operate an existing coal facility with the goal of capturing and storing more than 90 percent of the plant's carbon dioxide (CO₂) emissions, while reducing other emissions to near-zero levels. The two principal components of FutureGen 2.0 are first, the repowered coal facility in Meredosia, Morgan County, Illinois, and second, the CO₂ pipeline from the power plant to a CO₂ storage site in Morgan County, Illinois and the associated final storage site facilities. For purposes of this agreement, the term "Project" does not encompass the transportation of the captured CO₂ by pipeline or the permanent storage of the CO₂.

"Project":

For purposes of this agreement, the "Project" is the contemplated large-scale test power plant, which will consist of repowering an existing steam turbine generator at Ameren's Meredosia Energy Center, to convert it to a clean coal oxy-combustion electric generator with a nominal 200 megawatt gross output. In addition, the Project includes an associated air separation unit (ASU) and a compression and purification unit (CPU) for the concentration and pressurization of CO₂. The oxy-combustion boiler has been designed to burn different coals ranging from bituminous coals to blends of bituminous and sub-bituminous coals. The power generated at the Project will be delivered for commercial sale into the MISO market.

The Project is designed to deliberately control and process the flue gas associated with combustion. Flue gas leaving the boiler is injected with trona via the Dry Sorbent Injection (DSI) System controlling SO₃ and H₂SO₄ before being stripped of particulate matter in a baghouse. After leaving the baghouse, flue gas enters a wet flue gas desulfurization (WFGD) adsorber. This system removes SO₂, and some particulate and acid gases from the flue gas.

The flue gas undergoes further treatment by first passing through a very high efficiency filtration system to reduce particulate matter to a very low level. Mercury is then removed from the flue gas as it passes through a mercury absorption bed.

Coal will be delivered to the Plant by truck and by barge as they have been historically through the life of the Meredosia Energy Center. Coal will continue to be stored at the existing coal pile with loading of the pile and working of the pile to continue as has been normal practice at the plant. Using the existing conveying system at the plant, coal will be transferred from the coal pile reclaim hopper to the breaker building for processing and sizing.

“Transportation and Storage Project”:

For purposes of this agreement, the Transportation and Storage Project is one whereby a partner of the Alliance will transport and store the liquefied CO₂ captured at the Meredosia clean coal power plant. The Transportation and Storage Project will be fully integrated with the Meredosia power plant with respect to project management, capacity, cost, and schedule, and will be designed to be capable of accepting, transporting and storing all of the CO₂ captured by the Project.

The Transportation and Storage Project will consist of a CO₂ pipeline; one or more pumping stations; one more more dense phase storage tanks; an injection pumping station, and two injection wells. The transportation component of the Transportation and Storage Project will use standard industrial practices to transport the CO₂ via the pipeline.

The CO₂ that the pipeline delivers to the storage site will be injected and permanently stored in an underground reservoir at the CO₂ storage site, a deep saline geologic formation at Mount Simon in Morgan County, Illinois. The storage site will be capable of injecting and storing at least 1.3 million metric tons of CO₂ annually, for a period of at least 30 years.

Exhibit 1.1-D
Alliance Members

As of the Effective Date of this agreement, the “Alliance Members” are the following entities:

Alpha Natural Resources, Inc.

Anglo American, PLC

CONSOL Energy, Inc.

Joy Global, Inc.

Peabody Energy Corporation

Rio Tinto

Xstrata Coal Pty Limited

Exhibit 3.1(a)(i)

Governmental Authorizations

For purposes of this agreement, the “Governmental Authorizations” are:

1. Air Pollution Control Permits (construction and operating), to be issued by the Illinois Environmental Protection Agency.
2. NPDES Construction Permit, to be issued by the Illinois Environmental Protection Agency.
3. Construction Permit under Rivers and Harbors Act § 10, and Clean Water Act § 404, to be issued by the U.S. Army Corps of Engineers.
4. NPDES Operation Permit, to be issued by the Illinois Environmental Protection Agency.

Exhibit 5.2(a)

Formula Rate

The Formula Rate for the Contract Price consists of the following components and will be determined on a Monthly basis for each Buyer as follows:

$$\begin{aligned} \text{Monthly Contract Price (\$/mo)} &= \text{FPP (\$/mo)} \\ &+ \text{FOM (\$/mo)} \\ &+ \text{VOM (\$/kWh)} * \text{Net Energy (kWh/mo)} \\ &+ \text{FC (\$/mo)} \\ &+ \text{CRA (\$/mo)} \\ &- \text{OPR (\$/mo)} \\ &- \text{FPRC (\$/mo)} \end{aligned}$$

where :

- FPP = Fixed Project Payment, expressed in dollars per month, for the Project Cost categories listed in Exhibit 6.3(a)
- FOM = Fixed Operations & Maintenance Payment, expressed in dollars per month for the Project Cost categories listed in Exhibit 6.3(b)
- VOM= Variable Operations & Maintenance Payment, expressed in dollars per kilowatt hour, for the Project Cost categories listed in Exhibit 6.3(c)
- FC= Fuel Cost Payment, expressed in dollars per month, for the Project Cost categories listed in Exhibit 6.3(d)
- CRA= Capital Replacement and Additions, expressed in dollars per month, for the Project Cost categories listed in Exhibit 6.3(e)
- OPR= Other Products Revenue, expressed in dollars per month, for the Project Cost categories listed in Exhibit 6.3(f)
- FPRC = Fixed Payment Revenue Credit, expressed in dollars per month, for Fixed Project Payment revenue received in excess of the debt service payable in the previous Contract Year after taking into account the allowed rate of return for Project

August 13, 2012
For Submission to Illinois Power Agency

Equity Investors, if any, lender debt service coverage ratio requirements and other customary financing requirements

Exhibit 5.6(b)

Form of Development and Construction Budget

Sources of Funds	Amount, \$ (As Spent)
Federal Grants	
Non-Federal Grants	
FutureGen Alliance Contributions	
Equity	
Debt	
<i>Total Capital Requirement</i>	

Uses of Funds	Amount, \$ (As Spent)
Development Expenses	
Permitting Expenses	
Legal Expenses	
Front-End Engineering & Design Expenses	
Utility Interconnection Expenses	
Site Option & Purchase Expenses	
Site Preparation	
Engineering, Construction & Procurement	
Commissioning & Start Up Expenses	
Owner's Project Management	
Security	
Spare Parts	
Initial Fuel Stockpile	
Initial Working Capital (non-Fuel)	
Insurance	
Financing Fees & Closing Costs	
Interest During Construction	
Debt Service Reserve Fund	
Operation & Maintenance Reserve Fund	
Management Reserve	
State Sales Tax	
<i>Total Project Cost</i>	

Exhibit 5.6(c)

Form of Operating Budget

Fixed Operation & Maintenance Category	\$/yr
Labor (Power Block, ASU & CPU)	
Maintenance Materials & Contract Labor:	
Consumables & Chemicals (fixed portion only; if any):	
Water and Water Treatment (fixed portion only; if any):	
Lime/Limestone (fixed portion only; if any)	
Waste Disposal (fixed portion only; if any):	
Carbon Transport & Storage (fixed portion only):	
Air Separation Unit (ASU) Fixed O&M (ex-Labor):	
Compression & Purification Unit (CPU) Fixed O&M (ex-Labor):	
ASU Fixed Fee for Capital Cost Recovery (if Over-the-Fence)	
Purchased Power :	
Ongoing Legal, Environmental and Permitting, & Engineering	
Insurance	
General & Administrative:	
Security	
Operator Fee	
Interconnection & Transmission Costs	
MISO Scheduling Coordinator	
Major Maintenance Sinking Fund	
Decommissioning Sinking Fund	
Local Property Taxes:	
Other Taxes and Fees	

Variable Operations & Maintenance Categories	\$/kWh
Consumables & Chemicals:	
Water and Water Treatment:	
Emission Allowances	
Lime/Limestone:	
Waste Disposal:	
Carbon Transport & Storage Variable O&M:	
ASU Variable O&M:	
CPU Variable O&M:	

Fuel Category	\$/yr
Delivered Coal Costs (including all applicable taxes)	

Exhibit 6.3

Contract Price

PART A - Fixed Project Payment of the Contract Price

The Fixed Project Payment of the Contract Price consists of the following components and is determined on a Monthly basis as follows:

$$\text{FPP (\$/mo)} = \frac{(\text{LFCR} * \text{TCR})}{12} + \text{LFAC}$$

(the "Fixed Project Costs")

where:

- FPP = Total Fixed Principal Payment expressed in dollars per month
- LFCR = Levelized Fixed Carrying Charge Rate applied to the Total Capital Requirements of the Project, expressed as a percent per year for the term of the agreement, is to be calculated based on a methodology similar to Attachment A to this Exhibit 6.3.
- TCR = Total Capital Requirements from Exhibit 5.5(b) as amended from time to time and approved by the Commission, less Federal Grants, Non-Federal Grants and FutureGen Alliance Contributions
- LFAC = Ongoing Lender Fees and Administrative Costs expressed in dollars per month

PART B – Fixed Operation & Maintenance Payment of the Contract Price

The Fixed Operation & Maintenance Payment of the Contract Price consists of the following components and is determined on a Monthly basis as follows:

$$\text{FOM (\$/mo)} = \text{LAB} + \text{MCL} + \text{CC} + \text{WAT} + \text{LIM} + \text{WST} + \text{CTS} + \text{ASUF} + \text{CPUF} + \text{ASUFF} + \text{PP} + \text{LEPE} + \text{INS} + \text{G\&A} + \text{SEC} + \text{OF} + \text{IT} + \text{SC} + \text{MMSF} + \text{DSF} + \text{FIT} + \text{SIT} + \text{LPT} + \text{OTF} + \text{CTS}$$

(collectively, the "Fixed O&M Costs")

where:

- FOM = Total Fixed Operation & Maintenance Payment expressed in dollars per month
- LAB = Labor costs for the power block, ASU and CPU expressed in dollars per month
- MCL = Maintenance Materials and Contract Labor costs expressed in dollars per month

CC =	Consumables and Chemicals costs, expressed in dollars per month (fixed portion only)
WAT =	Water and Water Treatment costs, expressed in dollars per month (fixed portion only)
LIM =	Lime and/or Limestone costs, expressed in dollars per month (fixed portion only)
WST =	Waste Disposal costs, expressed in dollars per month (fixed portion only)
ASUF =	ASU Fixed Operations and Maintenance costs, expressed in dollars per month
CPUF =	CPU Fixed Operations and Maintenance costs, expressed in dollars per month
ASUFF =	ASU Fixed Fee for capital recovery, only applies for over-the-fence purchase of O ₂ , expressed in dollars per month
PP =	Purchased Power for auxiliary loads, expressed in dollars per month
LEPE =	Ongoing Legal, Environmental and Permitting, and Engineering costs, expressed in dollars per month
INS =	Insurance costs, expressed in dollars per month
G&A =	General and Administrative costs, express in dollars per month
SEC =	Security costs, expressed in dollars per month
OF =	Operator Fee, expressed in dollars per month
IT =	Interconnection costs, expressed in dollars per month
SC =	Scheduling Coordinator costs, expressed in dollars per month
MMSF =	Major Maintenance Sinking Fund contribution, expressed in dollars per month
DSF =	Decommissioning Sinking Fund contribution, expressed in dollars per month
FIT =	Federal Income Taxes, expressed in dollars per month
SIT =	State Taxes, expressed in dollars per month
LPT =	Local Property Taxes, expressed in dollars per month

OFT = Other Fees and Taxes, expressed in dollars per month

CTS = CO₂ Transportation and Storage costs, expressed in dollars per month (fixed portion only)

PART C – Variable Operation & Maintenance Payment of the Contract Price

The Variable Operation & Maintenance Payment of the Contract Price consists of the following components and is determined on a Monthly basis as follows:

$$\text{VOM (\$/kWh)} = \text{CC} + \text{WAT} + \text{LIM} + \text{EA} + \text{WST} + \text{CTS} + \text{ASUV} + \text{CPUV} + \text{CTS}$$

(collectively, the “Variable Costs”)

where:

VOM = Total Variable Operations & Maintenance cost, expressed in dollars per kilowatt hour

CC = Consumables and Chemicals costs, expressed in dollars per kilowatt hour

WAT = Water and Water Treatment costs, expressed in dollars per kilowatt hour

LIM = Lime and/or Limestone costs, expressed in dollars per kilowatt hour

EA= Emission Allowance costs, expressed in dollars per kilowatt hour

WST= Waste Disposal costs, expressed in dollars per kilowatt hour

ASUV = ASU Variable Operations and Maintenance costs, expressed in dollars per kilowatt hour

CPUV = CPU Variable Operations and Maintenance costs, expressed in dollars per kilowatt hour

CTS = CO₂ Transportation and Storage costs, expressed in dollars per kilowatt hour

PART D – Fuel Cost Payment of the Contract Price

The Fuel Cost Payment of the Contract Price consists of the following components and is determined on a Monthly basis as follows:

$$\text{FC (\$/mo)} = (\text{AF} * \text{DCF}) - \text{HRVA} \\ \text{(the "Fuel Costs")}$$

where:

FC = Actual Fuel Cost for the project expressed in dollars per month

AF = The actual amount of fuel required to produce the Net Energy of the Project for the Contract Month, expressed in millions of Btu

DCF = The actual delivered cost of fuel required to produce the Net Energy of the Project in the Contract Month, expressed in dollars per million Btu.

HRVA = Heat Rate Variance Adjustment, expressed in dollars per month, as determined below

The Fuel Cost Payment will be adjusted for variances from the Target Heat Rate as set forth below:

If $\text{AHR} > \text{THR}$ then

$$\text{HRVA (\$/mo)} = (\text{AHR} - \text{THR}) * \text{DCF} * \text{Net Energy (for the Contract Month)}$$

If $\text{AHR} < \text{THR}$ then

$$\text{HRVA (\$/mo)} = \$0$$

where:

AHR = $\text{AF} / \text{Net Energy (for the Contract Month)}$, expressed in Btu per kilowatt hour

TFR = Target Heat Rate, expressed in Btu per kilowatt hour

The Target Heat Rate for each Contract Year is as follows:

<u>Contract Year</u>	<u>Target Heat Rate</u>
1	___ Btu/KWh
2	___ Btu/KWh
3	___ Btu/KWh
4	___ Btu/KWh
5	___ Btu/KWh
6	___ Btu/KWh
7	___ Btu/KWh
8	___ Btu/KWh
9	___ Btu/KWh
10	___ Btu/KWh
11	___ Btu/KWh
12	___ Btu/KWh
13	___ Btu/KWh
14	___ Btu/KWh
15	___ Btu/KWh
16	___ Btu/KWh
17	___ Btu/KWh
18	___ Btu/KWh
19	___ Btu/KWh
20	___ Btu/KWh
21	___ Btu/KWh
22	___ Btu/KWh
23	___ Btu/KWh
24	___ Btu/KWh
25	___ Btu/KWh
26	___ Btu/KWh
27	___ Btu/KWh
28	___ Btu/KWh
29	___ Btu/KWh
30	___ Btu/KWh

PART E – Capital Replacement and Additions

The Capital Replacement and Additions Payment of the Contract Price consists of the following components and is determined on a Monthly basis as follows:

$$\text{CRA (\$/mo)} = \text{BLR} + \text{AQCS} + \text{STG} + \text{ASU} + \text{CPU} + \text{BOP}$$

(collectively, the “Capital Replacement and Additions”)

where:

- CRA = Capital Replacement and Additions, expressed in dollars per month
- BLR = Boiler capital replacement or additions, expressed in dollars per month
- AQCS = Air quality control system replacement capital or additions, expressed in dollars per month
- STG = Steam turbine generator replacement capital or additions, expressed in dollars per month
- ASU = Air separation unit replacement capital or additions, expressed in dollars per month
- CPU = Compression and purification unit replacement capital or additions, expressed in dollars per month
- BOP = Balance-of-Plant unit replacement capital or additions, expressed in dollars per month

PART F – Other Products

The Contract Price for each Contract Month will be credited by the actual revenue received for Other Products sold during the Contract Month as follows:

$$\text{OP (\$/mo)} = \text{CAP} + \text{ANS} + \text{ENVA}$$

(collectively, the “Other Product Credits”)

where:

- CAP = Revenue received for Capacity Attributes sold in the Contract Month, expressed in dollars per month

ANS = Revenue received for Ancillary Service Attributes sold in the Contract Month,
expressed dollars per month

ENVA = Revenue received for Environmental Attributes sold in the Contract Month,
expressed in dollars per month

Attachment A to Exhibit 6.3

Example of Levelized Fix Carrying Charge Rate

Example of Levelized Fixed Carrying Charge Rate			
Inputs			
Capital Structure			
% Debt	50.0%		
% Preferred Stock	0.0%		
% Equity	50.0%		
Cost of Debt	8.50%	Treasury Rate + Credit Spread*	
Cost of Preferred	0.0%		
Cost of Equity	11.5%	After-Tax	
Weighted Pre-Tax Cost of Capital	10.00%		
Weighted After-Tax Cost of Capital	8.25%		
Tax Rates			
Federal Income Tax Rate	35.0%		
State Income Tax Rate	7.0%	Illinois Rate as of June 2011	
Replacement Tax Rate	2.5%		
Effective Fed/State Income Tax Rate	41.2%		
Capital Stock Tax Rate	0.0%		
Gross Reciepts Tax Rate	0.0%		
Real Estate Tax Rate	0.0%		
Investment Tax Credit	0.0%		
Book Depreciation Life	30	Straight Line	
Tax Depreciation Life	20	MACRS	
Tax Base	100%		
Realty Tax Portion	0%		
Outputs			
Carrying Charge Results			
Levelized Pre-Tax Carrying Charge	13.24%		
Levelized After-Tax Carrying Charge	12.85%		

Note:

* Cost of debt to be adjusted on or near the time of Commercial Operation Date for changes in applicable Treasury rates and credit spread, which adjustments will apply to the debt portion of the total capital

Yr	Book Depr	Return	Interest Exp	State Tax Depr	Fed Tax Depr	ITC	Amort ITC	State Taxes Differed	Federal Taxes Differed	State Taxes Current	Federal Taxes Current	Realty Tax	Capital Stock Tax
1	0.0333	0.1000	0.0425	0.0375	0.0375	0	0.0000		0.0015	0.0063	0.0295	0.00000	0.00000
2	0.0333	0.0967	0.0411	0.0722	0.0722		0.0000		0.0136	0.0035	0.163	0.00000	0.00000
3	0.0333	0.0933	0.0397	0.0668	0.0668		0.0000		0.0117	0.0037	0.172	0.00000	0.00000
4	0.0333	0.0900	0.0383	0.0618	0.0618		0.0000		0.0100	0.0039	0.179	0.00000	0.00000
5	0.0333	0.0867	0.0368	0.0571	0.0571		0.0000		0.0083	0.0040	0.185	0.00000	0.00000
6	0.0333	0.0833	0.0354	0.0529	0.0529		0.0000		0.0068	0.0041	0.190	0.00000	0.00000
7	0.0333	0.0800	0.0340	0.0489	0.0489		0.0000		0.0054	0.0042	0.193	0.00000	0.00000
8	0.0333	0.0767	0.0326	0.0452	0.0452		0.0000		0.0042	0.0042	0.196	0.00000	0.00000
9	0.0333	0.0733	0.0312	0.0446	0.0446		0.0000		0.0040	0.0040	0.188	0.00000	0.00000
10	0.0333	0.0700	0.0298	0.0446	0.0446		0.0000		0.0039	0.0038	0.177	0.00000	0.00000
11	0.0333	0.0667	0.0283	0.0446	0.0446		0.0000		0.0040	0.0036	0.167	0.00000	0.00000
12	0.0333	0.0633	0.0269	0.0446	0.0446		0.0000		0.0039	0.0034	0.157	0.00000	0.00000
13	0.0333	0.0600	0.0255	0.0446	0.0446		0.0000		0.0040	0.0031	0.146	0.00000	0.00000
14	0.0333	0.0567	0.0241	0.0446	0.0446		0.0000		0.0039	0.0029	0.136	0.00000	0.00000
15	0.0333	0.0533	0.0227	0.0446	0.0446		0.0000		0.0040	0.0027	0.126	0.00000	0.00000
16	0.0333	0.0500	0.0213	0.0446	0.0446		0.0000		0.0039	0.0025	0.115	0.00000	0.00000
17	0.0333	0.0467	0.0198	0.0446	0.0446		0.0000		0.0040	0.0023	0.105	0.00000	0.00000
18	0.0333	0.0433	0.0184	0.0446	0.0446		0.0000		0.0039	0.0020	0.095	0.00000	0.00000
19	0.0333	0.0400	0.0170	0.0446	0.0446		0.0000		0.0040	0.0018	0.084	0.00000	0.00000
20	0.0333	0.0367	0.0156	0.0446	0.0446		0.0000		0.0039	0.0016	0.074	0.00000	0.00000
21	0.0333	0.0333	0.0142	0.0223	0.0223		0.0000		-0.0039	0.0030	0.0142	0.00000	0.00000
22	0.0333	0.0300	0.0128	0.0000	0.0000		0.0000		-0.0117	0.0045	0.0210	0.00000	0.00000
23	0.0333	0.0267	0.0113	0.0000	0.0000		0.0000		-0.0117	0.0043	0.0199	0.00000	0.00000
24	0.0333	0.0233	0.0099	0.0000	0.0000		0.0000		-0.0117	0.0041	0.0189	0.00000	0.00000
25	0.0333	0.0200	0.0085	0.0000	0.0000		0.0000		-0.0117	0.0038	0.0179	0.00000	0.00000
26	0.0333	0.0167	0.0071	0.0000	0.0000		0.0000		-0.0117	0.0036	0.0168	0.00000	0.00000
27	0.0333	0.0133	0.0057	0.0000	0.0000		0.0000		-0.0117	0.0034	0.0158	0.00000	0.00000
28	0.0333	0.0100	0.0043	0.0000	0.0000		0.0000		-0.0117	0.0032	0.0148	0.00000	0.00000
29	0.0333	0.0067	0.0028	0.0000	0.0000		0.0000		-0.0117	0.0030	0.0137	0.00000	0.00000
30	0.0333	0.0033	0.0014	0.0000	0.0000		0.0000		-0.0117	0.0027	0.0127	0.00000	0.00000
31	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
32	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
33	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
34	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
35	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
36	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
37	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
38	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
39	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
40	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
41	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
42	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
43	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
44	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
45	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
46	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
47	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
48	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
49	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000
50	0.0000	0.0000	0.0000	0.0000	0.0000		0.0000		0.0000	0.0000	0.0000	0.00000	0.00000

Exhibit 6.4

Clean Coal Rate Adjustment Formula and Example Calculations

Seller's Estimated Monthly Revenue Requirement =

$$\begin{aligned} & \text{FPP (\$/mo) + FOM (\$/mo)} \\ & + \text{VOM (\$/kWh) * Net Energy (kWh/mo)} \\ & + \text{FC (\$/mo) + CRA (\$/mo)} \\ & - \text{OPR (\$/mo) - FPRC (\$/mo)} \end{aligned}$$

where:

FPP = Fixed Project Payment, expressed in dollars per month, for the Project Cost categories listed in Exhibit 6.3, Part A

FOM = Fixed Operations & Maintenance Payment, expressed in dollars per month for the Project Cost categories listed in Exhibit 6.3, Part B

VOM= Operations & Maintenance Payment, expressed in dollars per kilowatt hour, for the Project Cost categories listed in Exhibit 6.3, Part C

FC= Fuel Cost Payment, expressed in dollars per month, for the Project Cost categories listed in Exhibit 6.3, Part D

CRA= Capital Replacement and Additions, expressed in dollars per month, for the Project Cost categories listed in Exhibit 6.3, Part E

OPR= Other Products Revenue, expressed in dollars per month, for the Project Cost categories listed in Exhibit 6.3, Part F

FPRC = Fixed Payment Revenue Credit, expressed in dollars per month, for Fixed Project Payment revenue received in excess of the debt service payable in the previous Contract Year after taking into account the allowed rate of return for Project

Seller's Estimated Annual Revenue Requirement =

$$\sum \text{Seller's Estimated Monthly Revenue Requirement}_{(\text{month } i)}$$

**Initial Clean Coal Rate
Adjustment_(month i) (\$/MWh) =**

[Seller's Estimated Monthly Revenue Requirement_(month i) (\$/mo) – Seller's Monthly
Estimated Net Energy Sales Revenues_(month i) (\$/mo)] / Total Retail Load_(month i) (MWh/mo)

Initial Settlement Payment_(month i) (\$/mo) =

Initial Clean Coal Rate Adjustment_(month i) (\$/MWh) x Initial Buyers Retail Sales_(month i)
(MWh/mo)

Final Settlement Payment_(month i-4) (\$/mo) =

Final Clean Coal Rate Adjustment_(month i-4) (\$/MWh) x Final Buyers Retail Sales_(month i-4)
(MWh/mo)

where:

Final Clean Coal Rate Adjustment_(month i-4) (\$/MWh) =

Seller's Actual Monthly Revenue Requirement_(month i-4) (\$/mo) – Seller's Actual Monthly Net
Energy Sales Revenues_(month i-4) (\$/mo)] / Final Total Retail Load_(month i-4) (MWh/mo)

Initial Clean Coal Rate Adjustment Example Calculations

Calendar Year 2017

Month	Seller's Estimated Monthly Revenue Requirement (\$)	Seller's Estimated Monthly Net Energy Sales Revenue (\$)	Initial Clean Coal Rate Adjustment - ComEd Service Area (\$/MWh)	Initial Clean Coal Rate Adjustment - Ameren Service Area (\$/MWh)	Estimated Total Retail Load - ComEd Service Area (MWh)	Estimated Total Retail Load - Ameren Service Area (MWh)	Seller's Estimated Monthly Net Energy Production (MWh)	Forecasted Nodel Wholesale Energy Price (\$/MWh)
January	\$ -	\$ -					-	39.20
February	\$ -	\$ -					-	39.20
March	\$ -	\$ -					-	39.20
April	\$ -	\$ -					-	39.20
May	\$ -	\$ -					-	39.20
June	\$ -	\$ -					-	39.20
July	\$ 19,526,968	\$ 4,000,841	1.26	1.26	8,845,138	3,457,943	102,069	39.20
August	\$ 19,526,968	\$ 4,000,841	1.16	1.16	9,545,567	3,831,919	102,069	39.20
September	\$ 18,897,066	\$ 3,871,781	1.30	1.30	8,167,173	3,415,257	98,776	39.20
October	\$ 13,091,921	\$ 2,682,377	1.09	1.09	6,729,681	2,862,249	68,432	39.20
November	\$ 17,327,542	\$ 3,550,205	1.46	1.46	6,671,983	2,777,178	90,572	39.20
December	\$ 17,905,127	\$ 3,668,545	1.33	1.33	7,622,561	3,050,589	93,591	39.20
Total/ Annual Avg	\$ 106,275,591	\$ 21,774,590	1.26	1.26	47,582,103	19,395,135	555,509	39.20

Calendar Year 2018

Month	Seller's Estimated Monthly Revenue Requirement (\$)	Seller's Estimated Monthly Net Energy Sales Revenue (\$)	Initial Clean Coal Rate Adjustment - ComEd Service Area (\$/MWh)	Initial Clean Coal Rate Adjustment - Ameren Service Area (\$/MWh)	Estimated Total Retail Load - ComEd Service Area (MWh)	Estimated Total Retail Load - Ameren Service Area (MWh)	Seller's Estimated Monthly Net Energy Production (MWh)	Forecasted Nodel Wholesale Energy Price (\$/MWh)
January	\$ 18,069,901	\$ 3,851,283	1.14	1.14	8,985,280	3,537,512	93,591	41.15
February	\$ 16,321,201	\$ 3,478,578	1.12	1.12	8,263,312	3,193,093	84,534	41.15
March	\$ 18,069,901	\$ 3,851,283	1.38	1.38	7,363,642	2,957,043	93,591	41.15
April	\$ 12,435,200	\$ 2,650,345	1.02	1.02	6,811,451	2,755,429	64,407	41.15
May	\$ 18,069,901	\$ 3,851,283	1.51	1.51	6,684,193	2,754,912	93,591	41.15
June	\$ 19,923,714	\$ 4,246,391	1.54	1.54	7,067,541	3,097,407	103,193	41.15
July	\$ 20,587,838	\$ 4,387,937	1.31	1.31	8,892,676	3,466,609	106,632	41.15
August	\$ 20,587,838	\$ 4,387,937	1.21	1.21	9,596,870	3,841,522	106,632	41.15
September	\$ 19,923,714	\$ 4,246,391	1.35	1.35	8,211,067	3,423,816	103,193	41.15
October	\$ 13,212,401	\$ 2,815,992	1.08	1.08	6,765,850	2,869,423	68,432	41.15
November	\$ 17,487,001	\$ 3,727,048	1.45	1.45	6,707,841	2,784,138	90,572	41.15
December	\$ 18,069,901	\$ 3,851,283	1.33	1.33	7,663,529	3,058,234	93,591	41.15
Total/ Annual Avg	\$ 212,758,508	\$ 45,345,753	1.28	1.28	93,013,252	37,739,137	1,101,960	41.15

Exhibit 6.5(b)

Rate Cap Limit

The Rate Cap Limit for Buyer's Eligible Retail Customers or Buyer's Non-Eligible Retail Customers will be determined as follows:

Rate cap limits for each utility.

ComEd Rate Cap Limit Calculations (Incremental rate limit increase)	
(A) Reference Year	2008 – 2009
(B) Reference Year Delivered Volume, MWh	37,740,282 MWh
(C) Reference Year Total Bundled Rate Delivered Cost, \$	\$4,462,038,949
(D) Reference Year Unit Cost, \$/MWh (C/D)	\$118.23/MWh
(E) Clean Coal Portfolio Standard Incremental Rate Limit, %	2.015%
(F) Clean Coal Portfolio Standard Rate Limit Unit Cost, \$/MWh (E* D)	\$2.382/MWh

Ameren Illinois Utilities Rate Cap Limit Calculations (Incremental rate limit increase)	
(G) Reference Year	2008 – 2009
(H) Reference Year Delivered Volume, MWh	17,217,197 MWh
(I) Reference Year Total Bundled Rate Delivered Cost, \$	\$1,853,574,838
(J) Reference Year Unit Cost, \$/MWh (C/D)	\$107.66/MWh
(K) Clean Coal Portfolio Standard Incremental Rate Limit, %	2.015%
(L) Clean Coal Portfolio Standard Rate Limit Unit Cost, \$/MWh (E* D)	\$2.169MWh

Example of Contract Price Limitation Calculation:

	Initial Clean Coal Rate Adjustment (\$/MWh)	ComEd Service Area Rate Cap (\$/MWh)	Ameren Service Area Rate Cap (\$/MWh)	Adjusted Initial Clean Rate Adjustment – ComEd Service Area (\$/MWh)	Adjusted Initial Clean Rate Adjustment – Ameren Service Area (\$/MWh)
January	2.40	2.382	2.169	2.382	2.169
February	2.40	2.382	2.169	2.382	2.169
March	2.40	2.382	2.169	2.382	2.169
April	2.40	2.382	2.169	2.382	2.169
May	2.40	2.382	2.169	2.382	2.169
June	2.40	2.382	2.169	2.382	2.169
July	2.40	2.382	2.169	2.382	2.169
August	2.40	2.382	2.169	2.382	2.169
October	2.40	2.382	2.169	2.382	2.169
November	2.40	2.382	2.169	2.382	2.169
December	2.40	2.382	2.169	2.382	2.169
Annual Average	2.40	2.382	2.169	2.382	2.169

Example of True-up to Rate Cap

Actual Annual Clean Coal Rate Adjustment = 2.40 \$/MWh

Commonwealth Edison Service Area Rate Cap = 2.382 \$/MWh

Ameren Illinois Service Area Rate Cap = 2.169 \$/MWh

If the Actual Annual Clean Coal Rate Adjustment is greater than the applicable Rate Cap then Seller will refund to Buyer an amount equal to the following:

$$[\text{Actual Annual Clean Coal Rate Adjustment (\$/MWh)} - \text{Rate Cap (\$/MWh)}] * \text{Annual Total Buyer Retail Sales (MWh/yr)}$$

For Buyer retail sales in the Commonwealth Edison Service Area the refund amount would equal:

$$[2.40 \text{ \$/MWh} - 2.382 \text{ \$/MWh}] * \text{Annual Total Buyer Retail Sales in Commonwealth Edison Service Area (MWh/yr)}$$

For Buyer retail sales in the Ameren Illinois Service Area the refund amount would equal:

$$[2.40 \text{ \$/MWh} - 2.169 \text{ \$/MWh}] * \text{Annual Total Buyer Retail Sales in Ameren Illinois Service Area (MWh/yr)}$$

Exhibit 6.6(c)

Minimum Annual Energy and Shortfall Damages

Minimum Annual Energy:

<u>Contract Year</u>	<u>Minimum Annual Energy</u>
1	_____ MWh
2	_____ MWh
3	_____ MWh
4	_____ MWh
5	_____ MWh
6	_____ MWh
7	_____ MWh
8	_____ MWh
9	_____ MWh
10	_____ MWh
11	_____ MWh
12	_____ MWh
13	_____ MWh
14	_____ MWh
15	_____ MWh
16	_____ MWh
17	_____ MWh
18	_____ MWh
19	_____ MWh
20	_____ MWh
21	_____ MWh
22	_____ MWh
23	_____ MWh
24	_____ MWh
25	_____ MWh
26	_____ MWh
27	_____ MWh
28	_____ MWh
29	_____ MWh
30	_____ MWh

Shortfall Damages: If Shortfall Damages are indicated under the agreement, the Shortfall Damages applicable to Buyer for any Contract Month during the two-year duration of Shortfall Damages will be calculated as follows:

$$\text{Shortfall Damages Payment} = (((\text{AES}_1 + \text{AES}_2) - (\text{AEE}_1 + \text{AEE}_2)) * \text{ESP} * \text{BLRS}) / 24$$

Where:

AES_1 = The Minimum Annual Energy less the amount of Net Energy actually delivered, in the first of the two Contract Years in which Seller did not reach Minimum Annual Energy.

AES_2 = The Minimum Annual Energy less the amount of Net Energy actually delivered, in the second of the two Contract Years in which Seller did not reach Minimum Annual Energy.

AEE_1 = The amount by which Seller exceeded the Minimum Annual Energy in the first year after the two years in which there was an Annual Energy Shortfall.

AEE_2 = The amount by which Seller exceeded the Minimum Annual Energy in the second year after the two years in which there was an Annual Energy Shortfall.

ESP = Energy Shortfall Price = the mathematical average of the 24 individual Monthly location marginal prices of electricity, as measured at the Project's busbar, for the applicable 2 consecutive years in which there was a Minimum Energy Shortfall

BLRS = Buyers Load Ratio Share = a fraction the numerator of which is the total of the Monthly Final Buyer Retail Sales and the denominator of which is the total of the Final Total Retail Load during the applicable 2 Contract Years.

Annual Shortfall Damages Cap

The Annual Energy Damages Cap for any Contract Year is [_____].

Total Damages Cap

The Annual Energy Damages Cap for the Initial Term or the Renewal Term, as the case may be, is [_____].

Exhibit 14

Credit Annex

SECTION 1. DEFINITIONS.

Capitalized terms used in this Annex and not defined herein have the meaning assigned in the Unit Contingent Power Purchase Agreement between [FutureGen Industrial Alliance, Inc.] and [Buyer] ("Power Purchase Agreement")

"Backup Guarantor" means (a) [_____]; or (b) an entity, approved in advance by Seller in Seller's reasonable discretion, in each case that provides a replacement guaranty and support agreement or similar agreement obligating it to honor the payment obligations of Buyer's Guarantor; except that such Backup Guarantor will be deemed to be automatically approved if it satisfies the Ratings Limit.

"Buyer Guarantee" means a guarantee from Buyer's Guarantor, in the form attached to as Exhibit 1 to this Annex.

"Buyer's Guarantor" means [_____], or any Qualified Guarantor providing a Buyer's Guarantee on behalf of Buyer, or any successor guarantor of any of them, or successor-in-interest designated by Buyer that meets or exceeds the Ratings Limit, and otherwise satisfies the criteria for assignment under Section 7 of the Form of Guarantee of Buyer's Guarantor.

"Cash Escrow Agreement" means a cash collateral escrow agreement providing for the holding, investment and disbursement of such cash.

"Credit Requirements" means, with respect to any Person, either (a) meeting or exceeding the Ratings Limit, or (b) issuing or posting, or having caused to be issued or posted, the applicable Credit Support.

"Credit Support" means:

- (1) a Letter of Credit, in an amount of [_____] (\$_____), as security for Buyer's payment obligations hereunder; or
- (2) cash (in immediately available funds) in the amount of [_____] (\$_____), which cash will be delivered to a Custodian to be held by the Custodian pursuant to a Cash Escrow Agreement as security for Buyer's payment obligations under this Agreement; or
- (3) a Buyer's Guarantee from a Qualified Guarantor in an amount capped at [_____] (\$_____), which guarantees Buyer's payment obligations under this Agreement; or
- (4) a combination of any of the above that provides total security in the amount [_____] (\$_____).

"Custodian" means a U.S. commercial bank or a foreign bank with a U.S. branch mutually acceptable to the Parties, with such bank having a credit rating on its senior unsecured debt of: (a)(1)

“A3” or higher from Moody’s, or (2) “A-” or higher from S&P; or (b) if rated by both Moody’s and S&P, both (a)(1) and (a)(2).

“**GAAP**” means generally accepted accounting principles in the United States of America, or the corresponding accounting rules applicable to municipal and governmental entities in the United States of America.

“**Guaranteed Party**” means the Party in whose favor Credit Support is made or issued.

“**International Financial Reporting Standards**” means the accounting standards and interpretations adopted by the International Accounting Standards Board.

“**Letter of Credit**” means an irrevocable, transferable standby Letter of Credit, in the form attached as Exhibit 2 to this Annex, naming the Guaranteed Party (and its permitted transferees) as the Person entitled to demand payment and present draw requests thereunder.

“**Material Credit Event**” means, with respect to Buyer, (a) any event that results in Buyer’s failure to meet the Credit Requirements applicable to Buyer, (b) Buyer’s long term credit rating comes under review by a rating agency for possible downgrade, or (c) if the Alliance has reasonable grounds to believe that Buyer’s creditworthiness would no longer warrant investment grade status (e.g., because Buyer defaults on material payment obligations to third parties).

“**Moody’s**” means Moody’s Investor Services, Inc. and any successor thereto.

“**Outstanding Credit Support**” has the meaning provided in Section 5 of this Annex.

“**Qualified Guarantor**” means a Person who meets or exceeds the Ratings Limit and otherwise satisfies the criteria for assignment under Section 7 of the Form of Guarantee of Buyer’s Guarantor.

“**Ratings Limit**” means, with respect to any Person, such Person has a long-term credit rating (corporate, long-term senior unsecured debt, or underlying) of (a)(1) “Baa3” or higher by Moody’s or (2) “BBB-” or higher by S&P, or (b) if rated by both Moody’s and S&P, both (a)(1) and (a)(2).

“**S&P**” means Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) and any successor thereto.

SECTION 2. BUYER’S CREDIT SUPPORT.

(a) **Buyer’s Credit Support.** The Parties acknowledge and agree that as of the Effective Date, Buyer satisfies the Ratings Limit. If at any time after the Effective Date, if Buyer fails to meet the Ratings Limit, Buyer shall post or issue, or cause to be posted or issued, Credit Support in support of its obligations.

(b) Notice of Material Credit Event. Buyer shall Notify Seller of the occurrence of any event which, with notice or the passage of time or both, would constitute a Material Credit Event with respect to Buyer, which Notice shall be given by Buyer within 5 Business Days of the occurrence of such event. If at any time there occurs a Material Credit Event with respect to Buyer, then an Event of Default will be deemed to have occurred pursuant to Section 16 of the Power Purchase Agreement.

(c) No Obligation to Replenish. Neither Buyer nor Buyer's Guarantor will have any obligation to replenish Credit Support that may be provided by Buyer hereunder.

SECTION 3. LETTER OF CREDIT AS CREDIT SUPPORT. If Credit Support consists of a Letter of Credit, such Letter of Credit will:

(a) be issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a credit rating on its senior unsecured debt of: (1)(A) "A3" or higher from Moody's, or (2) "A-" or higher from S&P; or (ii) if rated by both Moody's and S&P, both (1)(A) and (1)(B);

(b) permit the Guaranteed Party to draw up to the "Available Amount" as defined in the Letter of Credit, for the purpose of paying any and all amounts owing to the Guaranteed Party under this Agreement; provided, however, that the Letter of Credit will not be required to allow reinstatement to the extent drawn, nor will the Party posting the Letter of Credit be required to provide an additional or supplemental Letter of Credit to maintain the initial available draw amount in the event the initial letter of credit is drawn down in whole or in part;

(c) if the Letter of Credit is issued by a foreign bank with a U.S. branch, permit the Guaranteed Party to draw upon the U.S. branch;

(d) permit the Guaranteed Party to draw the entire "Available Amount" thereunder to hold as cash collateral for any and all amounts owing to the Guaranteed Party under this Agreement if (i) the Letter of Credit will expire in fewer than 30 Days; and (ii) the Party providing Credit Support has not provided alternative Credit Support.

(e) remain by its terms, in place for at least 90 Days after any expiration or termination of this Agreement.

SECTION 4. CASH AS CREDIT SUPPORT.

If Credit Support consists of cash, Buyer, Seller and the Custodian shall enter into a Cash Escrow Agreement. Buyer shall select the Custodian, subject to the approval of the other Party (which approval shall not be unreasonably withheld, conditioned or delayed).

SECTION 5. SUBSTITUTION OF CREDIT SUPPORT.

Buyer may, at any time and from time to time, replace any or all of the Credit Support provided by it (the "Outstanding Credit Support") with one or more alternative forms of Credit Support, whereupon

the Guaranteed Party shall cooperate in obtaining the concurrent release and termination of the Outstanding Credit Support.

SECTION 6. BUYER'S FINANCIAL STATEMENTS.

(a) If requested by Seller, promptly following such demand, Buyer shall provide Seller with copies of its most recent financial statements (i) within one 120 Days of its fiscal year end for each year during the Term, and (ii) within 60 Days after the end of each of Buyer's first three fiscal quarters of each fiscal year. Buyer may deliver un-audited financials in satisfaction of this requirement, as long as audited financials are produced in the ordinary course and promptly delivered as soon as they are available. In addition, Buyer shall promptly provide to Seller, financial statements and other financial information reasonably requested by Seller for purposes of this Agreement and this Credit Annex.

(b) If Buyer does not make available such information as required to be made available under this Section 6(a) within 10 Days after a request by Seller, Seller may send Notice demanding that such information be made available in accordance with this Section 6(a). If the requested information is not provided in accordance with this Agreement within 30 Days after receipt of such Notice, or if Buyer is not otherwise able to show that a Material Credit Event with respect to Buyer has not occurred, Seller will be entitled to assume that a Material Credit Event with respect to Buyer has occurred.

(c) All such financial information made available under this Section, if not publicly available, will be treated as Confidential Information

SECTION 7. CREDIT SUPPORT NOT A LIMIT.

Notwithstanding any other provision of this Credit Annex, Credit Support contemplated by this Credit Annex: (i) constitutes security for, but is not a limitation of, either Party's obligations under this Credit Annex and this Agreement, and (ii) will not be the non-defaulting Party's exclusive remedy against the defaulting party for the defaulting Party's failure to perform in accordance with this Credit Annex and the Power Purchase Agreement.

Exhibit 1 To Credit Annex

FORM OF GUARANTEE OF BUYER'S GUARANTOR

THIS PURCHASER GUARANTY, dated as of [_____], is issued by [_____] ("Guarantor"), in favor of [Seller] ("Guaranteed Party").

RECITALS

A. Obligor and Guaranteed Party have entered into a Power Purchase Agreement dated as of [_____], 20[___] (the "Power Purchase Agreement").

B. This Guaranty is delivered to Guaranteed Party by Guarantor pursuant to the Power Purchase Agreement.

AGREEMENT

1. Guaranty.

A. Guaranty of Obligations Under the Power Purchase Agreement. For value received, Guarantor hereby absolutely, unconditionally and irrevocably, subject to the express terms hereof, guarantees the payment when due of all payment obligations, whether now in existence or hereafter arising, by Obligor to Guaranteed Party pursuant to the Power Purchase Agreement (the "Obligations"). This Guaranty is one of payment and not of collection and will apply regardless of whether recovery of all such Obligations may be or become discharged or uncollectible in any bankruptcy, insolvency or other similar proceeding, or otherwise unenforceable.

B. Maximum Guaranteed Amount. Notwithstanding anything to the contrary herein, Guarantor's aggregate obligation to Guaranteed Party hereunder is limited to [_____] U.S. Dollars (\$_____) (the "Maximum Guaranteed Amount") (it being understood for purposes of calculating the Maximum Guaranteed Amount of Guarantor hereunder that any payment by Guarantor either directly or indirectly to the Guaranteed Party, pursuant to a demand made upon Guarantor by Guaranteed Party or otherwise made by Guarantor pursuant to its obligations under this Guaranty including any indemnification obligations, will reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis), including costs and expenses incurred by Guaranteed Party in enforcing this Guaranty, and will not either individually or in the aggregate be greater or different in character or extent than the obligations of Obligor to Guaranteed Party under the terms of the Power Purchase Agreement. IN NO EVENT WILL GUARANTOR BE SUBJECT TO ANY CONSEQUENTIAL, EXEMPLARY, EQUITABLE, LOSS OF PROFITS, PUNITIVE, TORT OR OTHER SIMILAR DAMAGES.

2. Payment; Currency. All sums payable by Guarantor hereunder shall be made in freely transferable and immediately available funds and shall be made in the currency in which the Obligations were due. If Obligor fails to pay any Obligation when due, the Guarantor shall pay that Obligation directly to Guaranteed Party within 20 Days after written notice to Guarantor by Guaranteed Party. The written notice shall provide a reasonable description of the amount of the Obligation and explanation of why such amount is due.

3. Waiver of Defenses. Except as set forth above, Guarantor hereby waives notice of acceptance of this Guaranty and of the Obligations and any action taken with regard thereto, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of the Obligations, suit, or the taking of and failing to take other action by Guaranteed Party against Obligor, Guarantor or others and waives any defense of a surety. Without limitation, Guaranteed Party may at any time and from time to time without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder: (a) together with the Obligor, make any change to the terms of the Obligations; (b) take or fail to take any action of any kind in respect of any security for the Obligations; (c) exercise or refrain from exercising any rights against Obligor or others in respect of the Obligations or (d) compromise or subordinate the Obligations, including any security therefor. Notwithstanding the foregoing, Guarantor will be entitled to assert rights, setoffs, counterclaims and other defenses which Obligor may have to performance of any of the Obligations and also will be entitled to assert rights, setoffs, counterclaims and other defenses that the Guarantor may have against the Guaranteed Party, other than defenses based upon lack of authority of Obligor to enter into and/or perform its obligations under the Power Purchase Agreement or any insolvency, bankruptcy, reorganization, arrangement, composition, liquidation, dissolution or similar proceeding with respect to Obligor.

4. Term. This Guaranty will continue in full force and effect until the earlier to occur of (a) the substitution of an alternate form of Credit Support by Seller pursuant to the Credit Annex of the Power Purchase Agreement, or (b) termination of the Guarantee by the Guarantor; *provided* that Guarantor must provide no less than 30 Days' prior written notice to the Guaranteed Party, (c) the satisfaction of all Obligations of Obligor under the Power Purchase Agreement, or (d) the payment of Guarantor, without reservation of rights, of an aggregate amount equal to the Maximum Guaranteed Amount together with any other amounts required to be paid by Guarantor pursuant to Section 6 hereof. Guarantor further agrees that this Guaranty will continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored or returned due to bankruptcy or insolvency laws or otherwise. Guaranteed Party shall return this original executed document to Guarantor within 20 Days of termination of this Guaranty.

5. Subrogation. Until all Obligations are indefeasibly performed in full, but subject to Section 6 hereof, Guarantor hereby waives all rights of subrogation, reimbursement, contribution and indemnity from Obligor with respect to this Guaranty and any collateral held therefor, and Guarantor hereby subordinates all rights under any debts owing from Obligor to Guarantor, whether now existing or hereafter arising, to the prior payment of the Obligations.

6. Expenses. Whether or not legal action is instituted, Guarantor agrees to reimburse Guaranteed Party on written demand for all reasonable attorneys' fees and all other reasonable costs and expenses incurred by Guaranteed Party in enforcing its rights under this Guaranty. Notwithstanding the foregoing, the Guarantor will have no obligation to pay any such costs or expenses if, in any action or proceeding brought by Guaranteed Party giving rise to a demand for payment of such costs or expenses, it is finally adjudicated that the Guarantor is not liable to make payment under Section 2 hereof.
7. Assignment. Guarantor may not assign its rights or delegate its obligations under this Guaranty in whole or part without written consent of Guaranteed Party; except that Guarantor may assign its rights and delegate its obligations under this Guaranty without the consent of Guaranteed Party if such assignment and delegation is pursuant to the assignment and delegation of all of Guarantor's rights and obligations hereunder, in whatever form Guarantor determines may be appropriate, to a partnership, limited liability company, corporation, trust or other organization in whatever form that succeeds to all or substantially all of Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, *provided*, such entity has an Investment Grade Rating by either Moody's Investors Service, Inc. ("Moody's") or Standard & Poor's Ratings Group, a division of McGraw- Hill, Inc. ("S&P"). For purposes of this Section 7, "Investment Grade Rating" means a minimum credit rating for senior unsecured debt or corporate credit rating of BBB- by S&P or Baa3 by Moody's. Upon any such delegation and assumption of obligations and, if required, the written consent of Guaranteed Party (which consent shall not be unreasonably withheld, conditioned or delayed), Guarantor will be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption. Guaranteed Party shall not assign its rights hereunder except in connection with a permitted assignment of its rights and obligations under the Power Purchase Agreement.
8. Non-Waiver. The failure of Guaranteed Party to enforce any provisions of this Guaranty at any time or for any period of time will not be construed to be a waiver of any such provision or the right thereafter to enforce same. All remedies of Guaranteed Party under this Guaranty will be cumulative and will be in addition to any other remedy now or hereafter existing at law or in equity. The terms and provisions hereof may not be waived, altered, modified or amended except in a writing executed by Guarantor and Guaranteed Party.
9. Entire Agreement. This Guaranty and the Power Purchase Agreement are the entire and only agreements between Guarantor and Guaranteed Party with respect to the guaranty of the Obligations of Obligor by Guarantor. All agreements or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby.
10. Notice. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by Guarantor or by Guaranteed Party shall be in writing and will be deemed received (a) if given personally, when received; (b) if mailed by certified mail (postage prepaid and return receipt requested), 5 Days after deposit in the U.S. mails; (c) if given by facsimile, when transmitted with confirmed transmission; or (d) if given via overnight express courier service, when received or personally delivered, in each case with charges prepaid and addressed as follows (or such other address as either Guarantor or Guaranteed Party specifies in a notice delivered to the other in accordance with this Section):

If to Guarantor:

If to Guaranteed Party:

11. Counterparts. This Guaranty may be executed in counterparts, each of which when executed and delivered will constitute one and the same instrument.
12. Governing Law; Jurisdiction. This Guaranty will be governed by and construed in accordance with the laws of the state of New York without giving effect to principles of conflicts of law. Guarantor and Guaranteed Party agree to the non-exclusive jurisdiction of any federal district court located in Illinois over any disputes arising or relating to this Guaranty.
13. Further Assurances. Guarantor shall cause to be promptly and duly taken, executed and acknowledged and delivered, such further documents and instruments as Guaranteed Party may from time to time reasonably request in order to carry out the intent and purposes of this Guaranty.
14. Limitation on Liability. Except as specifically provided in this Guaranty, Guaranteed Party will have no claim, remedy or right to proceed against Guarantor or against any past, present or future stockholder, partner, member, director or officer thereof for the payment of any of the Obligations, as the case may be, or any claim arising out of any agreement, certificate, representation, covenant or warranty made by Obligor in the Power Purchase Agreement.

IN WITNESS WHEREOF, the Guarantor has executed and delivered this Guaranty as of the date first set forth above.

By:

Name: _____
Title: _____

Acknowledged and agreed:

By: _____

Name:

Title:

Exhibit 2 To Credit Annex

FORM OF BUYER'S LETTER OF CREDIT

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

Reference Number: _____

Transaction Date:

BENEFICIARY

[Counterparty receiving collateral support]

[Address of Counterparty]

Ladies and Gentlemen:

[_____] (the "Bank") hereby establishes this Irrevocable Non-Transferable Standby Letter of Credit ("Letter of Credit") in favor of [Beneficiary], a [State] corporation (the "Beneficiary"), for the account of [_____] [_____] (the "Applicant"), for the amount of [_____] AND [____]/100 Dollars (\$_____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., Eastern Prevailing Time, on the Expiration Date (as hereinafter defined).

This Letter of Credit expires and will be of no further force or effect upon the close of business on or, if such Day is not a Business Day (as hereinafter defined), on the next preceding Business Day (the "Expiration Date"); except that this Letter of Credit will automatically be extended for additional one-year terms unless we provide written notice to you, by certified mail return receipt requested or overnight delivery, at least 60 Days prior to the then current Expiration Date.

For the purposes hereof, "Business Day" means any Day on which commercial banks are not authorized or required to close in New York, NY.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation, on or prior to 5:00 p.m. Eastern Prevailing Time, on or prior to the Expiration Date, of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at such a telephone number as may be specified from time-to-time by the Bank.

The facsimile transmittal will be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds will be permitted under this Letter of Credit, and this Letter of Credit will remain in full force and effect with respect to any continuing balance; except that the Available Amount will be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment will be void and of no force or effect.

Banking charges will be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations will not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference will not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of [New York], without regard to the principles of conflicts of laws thereunder, will govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Bank

Name:

Title:

ATTACHMENT A TO LETTER OF CREDIT

DRAWING CERTIFICATE

TO [ISSUING BANK NAME]

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING

CERTIFICATE Bank

Bank Address

Subject: Irrevocable Non-Transferable Standby Letter of Credit

Reference Number: _____

The undersigned _____, an authorized representative of [PPA offtaker, or counterparty as beneficiary of letter of credit] (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), and (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. {____}, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ _____, for the following reason(s) [check applicable provision]:

A. An Event of Default, as defined in that certain Power Purchase Agreement between Applicant and Beneficiary, dated as of [Date of Execution] (the "Power Purchase Agreement"), with respect to the Applicant has occurred and is continuing.

B. A termination date has occurred or been designated under section 16.4 of the Power Purchase Agreement as a result of an Event of Default (as defined in the Power Purchase Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.

C. The Letter of Credit will expire in fewer than 20 Business Days (as defined in the Power Purchase Agreement) from the date hereof, and Applicant has not provided Beneficiary alternative Credit Support (as defined in the Power Purchase Agreement).

D. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof ("Notice of Non-renewal"), and Applicant has failed to provide the Beneficiary with

replacement Credit Support or a collateral support letter of credit satisfactory to Beneficiary in its sole discretion within 30 Days following the date of the Notice of Non-renewal.

[]E. Any other payment obligations under the Power Purchase Agreement.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of _____ U.S. DOLLARS AND _____/100ths (U.S. \$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit will be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on this _____ Day of _____ 20__:

Beneficiary: [_____]

By:

Name:

Title:

Exhibit 16.2(b)

Lender Consent Provisions

In the event Seller collaterally assigns its rights under the Unit Contingent Power Purchase Agreement between [FutureGen Industrial Alliance, Inc.] and [Buyer] ("Power Purchase Agreement"), to the Lender as security, any related Lender Consent will contain provisions substantially as follows:

1. Buyer will neither modify nor terminate the Power Purchase Agreement other than as provided therein, without the prior written consent of the Lender.
2. The Lender shall have the right, but not the obligation, to do any act required to be performed by Seller under the Power Purchase Agreement, and any such act performed by the Lender shall be as effective to prevent or cure an Event of Default as if done by Buyer itself.
3. If Buyer becomes entitled to terminate the Power Purchase Agreement due to an uncured Event of Default by Seller, Buyer shall not terminate the Power Purchase Agreement unless it has first given Notice of such uncured Event of Default to the Lender and has given the Lender the same cure period afforded to Seller under section 16 of the Power Purchase Agreement, plus an additional 90 Days beyond Seller's cure period to cure such Event of Default; except that if the Lender requires possession of the Project in order to cure the Event of Default, and if the Lender diligently seeks possession, the Lender's additional 90-Day cure period shall not begin until foreclosure is completed, a receiver is appointed or possession is otherwise obtained by or on behalf of the Lender.
4. Neither the Lender nor any other participant in the Project Debt shall be obligated to perform or be liable for any obligation of Buyer under the Power Purchase Agreement until and unless any of them assumes possession of the Project through the exercise of the Lender's rights and remedies.
5. Any party taking possession of the Project through the exercise of the Lender's rights and remedies shall remain subject to the terms of the Power Purchase Agreement and shall assume all of Buyer's obligations under the Power Purchase Agreement, both prospective and accrued, including the obligation to cure any then-existing defaults capable of cure by performance or the payment of money damages. In the event that the Lender or its successor assumes the Power Purchase Agreement in accordance with this paragraph 5, Buyer shall continue the Power Purchase Agreement with the Lender or its successor, as the case may be, substituted wholly in the place of Seller.
6. Within 90 Days of any termination of the Power Purchase Agreement in connection with any bankruptcy or insolvency Event of Default of Seller, the Lender (or its successor) and Buyer may enter into a new power purchase agreement on the same terms and conditions as the Power Purchase Agreement and for the period that would have been remaining under the Power Purchase Agreement but for such termination.

Exhibit 22.2

Addresses for Notices

Notices to Seller:

FutureGen Alliance Industrial, Inc.
1101 Pennsylvania Avenue, N.W.
Washington, DC 20004
Attention: Kenneth K. Humphreys
Fax: (202) 280-6114

With copies to:

Van Ness Feldman, PC
1050 Thomas Jefferson St., N.W.
Seventh Floor
Washington, DC 20007-3877
Attention: John J. Buchovecky
Fax: (202) 338-2416

Notices to Buyer:

Name	_____
Address	_____
Address	_____
Address	_____
Fax:	_____