

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY

**Petition for Approval of Initial
Procurement Plan**

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Docket No. 09-0373

**THE ILLINOIS POWER AGENCY'S
REPLY IN SUPPORT OF ITS PROCUREMENT PLAN**

The Illinois Power Agency (“IPA”), pursuant to the Administrative Law Judge’s October 19, 2009 ruling, states as follows for its verified Reply in support of its Procurement Plan filed with the Commission. On September 30, 2009, the Illinois Power Agency submitted to the Illinois Commerce Commission its power Procurement Plan for the period beginning June 2010 (“Procurement Plan” or “Plan), in accordance with Section 16-111.5(d)(2) of the Illinois Public Utilities Act, 220 ILCS 5/16-111.5(d)(2). On October 5, 2005, the Illinois Commerce Commission Staff (“Staff”), Commonwealth Edison Company (“ComEd”), AmerenCILCO, AmerenCIPS, and AmerenIP (together referred to as “Ameren”) and Constellation Energy Commodities Groups, Inc. and Constellation NewEnergy, Inc. (collectively, “Constellation”), filed Objections to the Plan. Exelon Generation Company, LLC (“ExGen”) filed Objections on October 6, 2009, and subsequently served amended Objections on October 9, 2009. On October 16, 2009, the IPA, Staff, ComEd, ExGen, the People of the State of Illinois, by and through Illinois Attorney General Lisa Madigan (“Attorney General”), the Illinois Competitive Energy Association (“Competitive Energy”), Invenergy Wind LLC (“Invenergy”), Illinois Wind Energy Association (“Illinois Wind Association”), Wind on the Wires and Environmental Law and

Policy Center (collectively referred to as “WoW/ELPC”)¹ filed Responses to the Objections. The IPA states as follows for its reply in support of its Plan. The absence of an IPA response to each argument raised in the October 16, 2009 Responses to Objections does not indicate the IPA concedes the points made.

I. Reply to Commonwealth Edison

A. The IPA’s long-term renewable proposal is valid (Replying to ComEd Response at 1-3.)

ComEd asserts that the Plan does not specifically subject its long-term renewable energy procurement proposal to the rate caps set forth in Section 1-75(c)(2) of the IPA Act, 20 ILCS 3855/1-75(c)(2). ComEd further argues, without citation to the PUA or the IPA Act, that any long-term renewable procurement does not comply with the requirement under the IPA Act because only “standard” wholesale products can be purchased under the Plan. Notwithstanding, ComEd recommends that these defects can be remedied by first making clear that the long-term renewables are procured under, and in compliance with, Section 1-75 of the IPA Act, rather than under Section 16-111.5 of the PUA. According to ComEd, if long-term renewable contracts are purchased under the correct statutory process, the inherent value of the renewable energy certificate (“REC”) in any bundled long-term bid for renewable energy will need to be determined. Second, ComEd recommends that the Plan “conduct a simultaneous procurement of around-the-clock (“ATC”) block energy for a similar term” recommended in the Plan.

The IPA disagrees that long-term renewable contracts are not “standard wholesale products.” The Plan is required to meet the expected load requirements with a “proposed mix and selection of standard wholesale products for which contracts will be executed during the next year, separately or in combination, to meet that portion of its load requirements” taking into

¹ Wind on the Wire and Environmental Law and Policy Center filed joint comments.

account “proposed term structures for each wholesale product type included in the proposed procurement plan portfolio of products.” 220 ILCS 5/16-111.5(b). Section 16-111.5(b) provides examples of certain standard wholesale products (*e.g.* “including but not limited to 5/16 peak period block energy”), but expressly does not limit these stated products as the only wholesale contracts that can be awarded. Indeed, the PUA specifically references renewable energy as a wholesale product that must be acquired under the PUA and the IPA Act. *See e.g.* 220 ILCS 5/16-111.5(j). Renewable energy acquired through long-term contracts is also consistent with legislative finding of the Electric Service Customer Choice and Rate Relief Law of 1997 (“Rate Relief Law of 1997”). Section 16-101A of the Rate Relief Law of 1997 provides that “[i]ncluding cost-effective renewable resources in a diverse electricity supply portfolio will reduce long-term direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure.” 220 ILCS 5/16-101A. Finally, the PUA further provides that “[n]othing in this Section precludes the consideration of contracts longer than 5 years” in developing and approving procurement Plans. 220 ILCS 5/16-111.5(b). Contracts for long term renewable energy are standard, and increasingly common. As of June, 2009, the California Public Utilities Commission has approved over 116 contracts contributing 8,334 MW of capacity,² many of which have contract terms that range of 10 years,³ 15 years,⁴ 20 years,⁵ and 25 years.⁶ See

² California Public Utilities Commission Renewable Portfolio Standard, Third Quarterly Report, July 2009, p. 2, http://www.cpuc.ca.gov/NR/rdonlyres/EBEEB616-817C-4FF6-8C07-2604CF7DDC43/0/Third_Quarter_2009_RPS_Legislative_Report_2.pdf.

³ Southern California Edison Co. Power Purchase Agreement with Mountain View Power Partners, LLC (MVPP), CPUC Energy Division Resolution E-4248, June 18, 2009 (“[t]he MVPP project is an existing, 66.6 megawatt (MW) facility located near Palm Springs, CA in San Gorgonio Pass. The project is priced below the 2008 market price referent (MPR) for a 10-year contract with an online date in 2011.”)

CPUC October 20, 2009 list of Renewable Portfolio Standard contracts and projects that are online, under development, and pending CPUC approval.⁷

The Michigan Public Service Commission has approved numerous long-term public renewable energy purchase agreements (“REPA”) pursuant the Section 460.1033(3) of the Michigan Public Utilities Act, MCL 460.1033(3), including a recent 20-year contract for 50 MW of renewable energy between Indiana Michigan Power Company (“I&M”) and Fowler Ridge II Wind Farm, LLC (Fowler Ridge).⁸ The MPSC not only concluded that the acquisition of the renewable energy was appropriate, but also concluded that 20-year contract term “provides I&M customers with an adequate source of renewable energy for a reasonable time” and that the “contract is reasonable and prudent and provides opportunities that may not otherwise be available or commercially practical.” *Id.* The Commission’s order not only determined that the 20-year term was reasonable, but adopted and published the actual contract provisions. *Id.*, see

⁴ San Diego Gas and Electric (SDG&E) Co. Power Purchase Agreement with NaturEner Glacier Wind Energy 1 and 2, LLCs, CPUC Resolution E-4192, October 2, 2008 (two bilateral (PPA), each 15 year terms, with a combined 210 MW fo energy beginning on or before 12/31/2009.)

⁵ *In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) for Approval of Renewables Portfolio Standard Power Purchase and Wind Project Development Agreement with Alta Windpower Development, LLC and for Authority to Recover the Costs of Such Power Purchase and Wind Project Development Agreement in Rates*, CPUC Decision 08-05-017, May 15, 2008 (1,500 MW.)

⁶ Pacific Gas and Electric Co. Power Purchase Agreements with BrightSource Energy III through VI, CPUC Energy Division Resolution E-4269, September 24, 2009 (5 bilateral agreements for a combined 1000 MW of solar thermal energy.)

⁷ <http://www.cpuc.ca.gov/PUC/energy/Renewables/>

⁸ *In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for Indiana Michigan Power Company to fully comply with Public Acts 286 and 295 of 2008*, MPSC Case No. U-15808, Opinion and Order (September 15, 2009.)

attached Exhibit A. The Indiana Utility Regulatory Commission has also approved long-term PPAs between regulated energy retailers and renewable energy providers of 100 to 200 MW of production in 2008,⁹ and approved two other 20-year contracts for renewable energy in 2007. There are also long-term contracts between energy producers and retailers occurring outside of regulated proceedings. In September 2009, Oklahoma Gas & Electric Co. entered into a 20-year power purchase agreement with CPV Renewable Energy Company (CPV REC) for energy from the 152 MW Keenan II wind energy project in Woodward County, Oklahoma, beating out over 50 other respondents to a request for proposal.¹⁰

The IPA further disagrees with ComEd's suggestion that "long term" contracts are barred by the PUA or the IPA. Section 16-111.5(b) of the PUA specifically permits the IPA to identify the appropriate "term structures for each wholesale product." 220 ILCS 5/16-111.5(b). More to the point – the ICC ultimately determines and adopts the Procurement Plan, and the ICC has clear authority to adopt a procurement plan that incorporates long-term PPAs as part of the portfolio. 220 ILCS 5/16-111.5(b).

The IPA further disagrees that renewable energy can only be acquired under the limits set forth in Section 1-75(c)(2) of the IPA Act. The IPA has broad authority to meet the electricity procurement needs of the eligible retail customers and to ensure "adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability 20 ILCS 3855/1-5(A). The IPA Act further requires that the Plan include provisions to acquire cost-effective energy resources for a

⁹ *In re verified Petition of Indianapolis Power & Light Co., for approval pursuant to Ind. Code §§ 8-1-2-42(a), 8-1-8.8-11 and to the extent necessary 8-1-2.5-6 of a renewable wind energy project power purchase agreement with Hoosier Wind Project, LLC including the timely recovery of costs through rates and confidential treatment of power purchase agreement pricing and related confidential information, IRUC Cause No. 43485, Order, October 1, 2008.*

¹⁰ <http://newsblaze.com/story/2009092911190200001.pnw/topstory.html>

minimum percentage of each utility's total supply. 20 ILCS 3855/1-75(c)(1). These renewable energy resources, purchased to satisfy the IPA Act's renewable portfolio standard ("RPS") are subject to a cap on the price to be paid for renewable energy. 20 ILCS 3855/1-75(c)(2). However, neither the IPA Act, nor the PUA Act limit the acquisition of renewable energy to only the amounts required to satisfy the RPS, which are actually minimum volume goals. Moreover, the cost caps that apply to the purchase of renewable energy apply only to the "renewable" energy acquired to satisfy the RPS. There is no provision in the IPA Act or the PUA that would preclude the acquisition of energy, derived from renewable resources, outside of the minimums required to meet the RPS. *See* IPA's Response at 3 to 6.

With regards to ComEd's second recommendation, that the Plan conduct a simultaneous procurement of around-the-clock ("ATC") block energy for a similar term, the IPA does not believe this is required. First, as described above, there is no statutory requirement that energy derived from renewable sources only be included in the Plan under Section 1-75. Second, while the IPA recognizes the variable nature of power generated from certain renewable energy resources, the IPA does not believe that the simultaneous procurement of additional ATC blocks in the Spring 2010 procurement cycle should occur at this time. Rather, delivery volume guarantees should be provided by individual bidders as part of the standard terms and conditions of any awarded contracts.

Finally, ComEd suggests that because the IPA has provided additional detail regarding the long-term PPAs in its October 16, 2009 Response, that "it appears inevitable that there will exist numerous issues of fact . . . that will require hearings. . . ." ComEd Response at 3. ComEd's hypothetical is wrong. First, the Commission has already determined that no hearing is required, October 8, 2009 Order, and the Commission's decision is as valid now as it was on

October 8th. The IPA's Response outlined various contract terms, including, the delivery point of the energy, the commencement date of the delivery, the proposal that energy could be provided from both new and existing generation facilities, and the location of where the facilities could be located, all of which are contract terms that can be determined in the contract formation sessions contemplated by the PUA. 220 ILCS 5/16-111.5. However, these are not questions of fact – rather they are issues that are expected to be determined by the interested parties (meaning the potential suppliers and the Utilities) after the Plan is approved. Therefore, there is no basis or reason for the Commission to change its decision.

II. Reply to Staff (Replying to Staff at 1-4.)

Staff asserts that new Section 16-115D of the PUA, 220 ILCS 5/16-115D, requires both alternative retail electric suppliers and electric utilities operating outside their service territories (“Alternative Suppliers”) to procure renewable energy resources in amounts at least equal to the annual percentages set forth in 1-75(c)(1) of the IPA Act, times the actual amount of metered electricity delivered by the Alternative Suppliers during each 12-month period June 1 through May 31, commencing June 1, 2009. Staff Response at 2. According to Staff, Section 16-115D(b) also requires Alternative Suppliers to meet at least 50% of their renewable quota through alternative compliance payments (“ACPs”). 220 ILCS 5/16-115D(b). Staff also notes that the Commission is required to publish (1) the maximum ACP rates for each applicable utility service territory, equal to the maximum allowable rate increase due to the costs of the utility's purchase of renewable energy resources, (2) estimates of the actual ACP rates that it expects will ultimately prevail, and (3) the actual ACP rates based on the total value for which ComEd and Ameren contracted to spend on renewable resources for the compliance period. Staff recommends that the Commission include these calculations in its order in this proceeding.

The IPA does not oppose Staff's recommendations.

III. Reply to ExGen.

ExGen argues that the IPA is precluded from proposing modifications or suggested alternatives to the Plan because "the approval timeline in the Plan [does not] allow for any revisions or amendments by the IPA," and should the IPA revise or amend the Plan, this would "trigger ExGen's statutory right to file objections." ExGen Response at 1.

The IPA disagrees with ExGen's statutory interpretation because the IPA no longer has "editorial control" over the Plan. The Plan is now pending before the Commission for approval, modification or amendment, and any recommendation by the IPA on how the Plan can be improved is subject to the Commission's discretion. Section 16-111.5(d)(3) provides that once the Plan is submitted to the Commission, it is the Commission, not the IPA that "shall enter its order confirming or modifying the procurement plan" 220 ILCS 5/16-111.5(d)(3), *see also* § 16-111.5(b) ("[a]pproval and implementation of the procurement plan shall be subject to review and approval by the Commission. . . .") In addition, the IPA Act authorizes the Commission to modify the Plan without triggering a requirement that the IPA resubmit a new Plan:

(d) The draft procurement plans are subject to public comment, as required by Section 16-111.5 of the Public Utilities Act.

(e) The Agency shall submit the final procurement plan to the Commission. The Agency shall revise a procurement plan if the Commission determines that it does not meet the standards set forth in Section 16-111.5 of the Public Utilities Act.

20 ILCS 3855/1-75(d), (e). Any modification to the proposed Plan, whether made at the suggestion of the IPA or any other party, is made by the Commission, not the IPA, and a

modification made by the Commission does not “trigger” a new round of opportunities for ExGen to object.

IV. Response to the Attorney General

The Attorney General states that its Response addresses four issues: (1) the appropriate hedging ratio for procurement of on-peak energy during July and August; (2) procurement of demand-response resources; (3) certification of Renewable RECs procured to comply with the RPS; and (4) procurement of renewable energy resources to hedge against carbon risk.

A. It is appropriate to oversubscribe for July and August to hedge against price volatility (Responding to the Attorney General’s Response at 1-3.)

The Attorney General asserts that the language in the Plan to subscribe at 110% of July and August forecast needs to be clarified. As noted in the IPA’s Response (at 9-10), the IPA recommended modifying the Plan’s language at page 19 (see page 10 of the IPA Response):

Oversubscription for peak hours in the July and August delivery periods has been used to mitigate weather risk in the last two procurement plans. However, analysis of the results of this approach over the past two years indicates that the strategy has cost consumers more than what it has saved. Therefore, the IPA proposes to procure at the 110% subscription level for July and August peak periods, but at the 100% subscription level for the remaining months in the Plan ~~all months in this Plan~~.

B. Procurement of Demand-Response Resources (Replying to Attorney General’s Response at 3 to 7.)

The Attorney General argues that a single solicitation for demand response during the Spring of 2010 “should be sufficient to comply with the statutory requirement to procure demand response from eligible retail customers.” Attorney General Response at 7. The IPA agrees with the Attorney General’s comments regarding Demand Response procurement.

C. Certification of Renewable Energy Credits (Replying to Attorney General’s Response at 7 to 8.)

The IPA provides no response to the Attorney General's comments.

D. Using long term renewable contracts to mitigate carbon risk (Replying to Attorney General's Response at 9-13.)

The Attorney General states that they "are confident that the IPA Procurement Administrator and the Procurement Monitor could, based on the framework set forth in the Plan and applicable statutes, design a solicitation for long term contracts that would protect consumers against carbon risk." Attorney General Response at 10. The IPA agrees with these comments. The Attorney General also asserts that "the purchases of renewable energy to mitigate carbon risk (with or without a REC) are not constrained by the cost cap that applies in the RPS context." Attorney General Response at 12.) The IPA agrees with these comments. In addition to the details of the long-term PPA identified in the IPA's October 16, 2009 Response (responding to Staff, at pp. 7 to 8), terms for the procurement contracts will be addressed through the contract formation and RFP process set forth in Section 16-111.5(c) of the PUA. Under this process, the IPA and its Procurement Administrator manage the bidder pre-qualification and registration, obtain the electric utilities' agreement to the final form of the supply contracts and credit collateral agreements, and may negotiate price with bidders. 220 ILCS 5/16-111.5(c). This process is verified and overseen by the Commission's Procurement Monitor. 220 ILCS 5/16-111.5(d).

V. Response to the Competitive Energy Association.

The Competitive Energy Association supports certain objections to the Plan previously filed by ExGen, ComEd, and Staff.

The IPA has responded to each of these points made by the Competitive Energy Association. *See* IPA Response at 3 to 8, 21 to 22; *also see infra* at 2 to 3.

VI. Response to the Wind Energy Association.

A. Immediacy of Approving the Procurement Plan (Replying to Wind Energy Association Response at 2- 4.)

Wind Energy Association recommends that the Commission “approve the plan as quickly as possible. . . .” and that the Commission should not hold workshops on the proposal for long-term renewables before approving them as part of the Plan. Wind Energy Association Response at 2. Wind Energy Association also suggest that the Commission “direct the Agency to work with the Commission, the procurement administrator and stakeholders to develop a viable Request for Proposal (‘RFP’) and contract for long-term renewable PPAs as soon as possible.” *Id.*

The IPA notes that the time frame for the Commission’s approval of the Plan, and the process for developing RFP’s for the PPAs is governed by the PUA. The Commission is required to confirm or modify the proposed Plan “within 90 days after the filing . . . by the Illinois Power Agency,” which in this instance is December 29, 2009. 220 ILCS 5/16-111.5(d)(3). Wind Energy Association’s recommendation that stakeholders develop the RFP *and* the contracts is not technically consistent with the PUA. Under the PUA, the Procurement Administrator, in consultation with the Commission, Ameren, and other interested parties, may develop the contract form that will be used for the wholesale products to be procured through the RFP. 220 ILCS 5/16–111.5(c)(1)(v); 220 ILCS 5/16-111.5(e)(2). The IPA does not oppose further discussion to develop the standard contract terms to be used for the bid process, but this is already contemplated by Section 16-111.5 of the PUA. In past procurement events, “interested parties”, meaning the potential suppliers and the utilities, have held discussions among themselves to fix the terms of the contracts, and the IPA anticipates this will be required again. However, only the Procurement Administrator, “designs and issue[s] a request for proposals to

supply electricity in accordance with each utility's procurement plan.” 220 ILCS 5/16-111.5(e)(4); 220 ILCS 5/16 – 111.5(c)(1)(vi). The Commission cannot order the IPA to formally include “other stakeholders” in the RFP process.

B. Procurement Timeline and Contract Commencement Date (Replying to Wind Energy Association Response at 4 to 6.)

Wind Energy Association also supports the Plan proposal to initiate long-term renewable contracts for delivery beginning in June 2011. Wind Energy Association Response at 5. Wind Energy further advocates that the procurement of long-term PPAs begin with the first procurement event in March 2010 to allow project developers the greatest amount of time to finance new construction of renewable facilities, and to secure funding under the American Reinvestment and Recovery Act. *Id.* The IPA agrees with the Wind Energy Association’s comments.

C. Bundled long-term renewable energy contracts and details regarding their procurement (Responding to Wind Energy Association Response at 6 to 8, 10 to 13.)

The Wind Energy Association argues that a solicitation for long-term renewable contracts with the associated RECs could “fulfill approximately 60 percent of the RPS requirement.” Wind Energy Association Response at 7. The IPA disagrees with the Wind Energy Association’s characterization of the long-term PPAs. The IPA Act requires that the Plan acquire renewable energy supplies for a specified minimum percentage of each utility’s total supply. 20 ILCS 3855/1-75(c)(1). These renewable energy resources, purchased to satisfy the IPA Act’s RPS are subject to a cap on the price to be paid for renewable energy. 20 ILCS 3855/1-75(c)(2). However, neither the IPA Act, nor the PUA Act limit the acquisition of renewable energy to only the amounts required to satisfy the minimum RPS volume requirements. For long-term PPAs, the Plan is not bound by the cost-cap associated with the

RPS. Under the proposed Plan, the IPA may count the REC portion of the long-term PPA procurement toward the RPS requirements if doing so is beneficial to consumers, but the long-term PPAs are not required to fulfill the RPS.

The Wind Energy Association also responds to comments made by Staff and other parties, relating to the additional details of the long term procurement plans. Wind Energy Response at 10 to 13. The IPA has addressed these details in its October 16, 2009 Response:

- a. Unit Contingent Contracts.** The IPA agrees that the bids will be unit contingent – payments will only be made by the purchaser for units of energy delivered.
- b. Delivery Point.** The IPA disagrees with the Wind Energy Association’s recommendation that energy be delivered at the generator bus. Responses to the RFP will require that energy be delivered to the load zone.
- c. Consumer rate impact threshold.** As stated above, the long-term renewable PPAs are not subject to the RPS cost cap.
- d. Impact on utility credit rating.** The IPA provides no response to the Wind Energy Association’s comments.
- e. Single REC procurement event.** The Wind Energy Association recommends that this issue be addressed in the RFP. The IPA provides no response to the Wind Energy Association’s recommendation.
- f. Preference for renewables.** The IPA agrees with the Wind Energy Association’s statement that nuclear generation is not defined as a “renewable resource.” Section 1-10 of the IPA Act defines “Renewable energy resources” as “energy and its associated renewable energy credit or renewable energy credits

from wind, solar thermal energy, photovoltaic cells and panels, biodiesel, crops and untreated and unadulterated organic waste biomass, trees and tree trimmings, hydropower that does not involve new construction or significant expansion of hydropower dams, and other alternative sources of environmentally preferable energy.” 20 ILCS 3855/1-10. Nuclear energy is not a renewable energy resource under the IPA Act.

VII. Response to Wind on the Wires and the Environmental Law and Policy Center (“WoW/ELPC”).

A. The purchase of 3.5% of annualized load volumes as renewable energy is low risk (Responding to WoW/ELPC’s Response at 2 to 6.)

The IPA generally agrees with the Response and points made by WoW/ELPC.

B. Long term renewable portfolio fosters environmentally sustainable electric service (Responding to WoW/ELPC’s Response at 6 to 10.)

The IPA does not respond to this point.

C. The terms of the PPA Contract (Responding to WoW/ELPC’s Response at 10 to 14.)

WoW/ELPC has also provided its views on the details that should apply to the long term PPAs. The IPA has addressed these details in its October 16, 2009 Response, and in the immediately preceding section.

D. Whether the Renewable Energy Resource Budget should apply to the Utilities’ long-term renewable PPAs.

This issue has been addressed many times by the IPA. *See, e.g. infra* at 2-3. WoW/ELPC suggests that since the IPA is proposing to purchase renewable resources, that the Long term PPA contracts will count toward the Renewable Resources Budget (“RRB”). Ameren Objections at 5. As described above, the longer term renewable PPA procurement is being

conducted outside of the RPS context, therefore the RPS requirements are not applicable. 20 ILCS 3855/1-75(c). The IPA may count the REC portion of the procurement toward the RPS requirements if doing so is beneficial to consumers.

VII. Response to Invenergy.

The IPA does not reply to the Response filed by Invenergy.

Conclusion

In summary, the Illinois Power Agency reiterates the following fundamental arguments in support of its Power Procurement Plan:

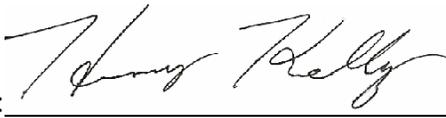
- Long term renewable contracts are properly included in the proposed mix and selection of “standard wholesale products”, as those products are not limited to the examples given in Section 16-111.5(b), and are also consistent with the legislative findings of the Rate Relief Law of 1997.
- The Commission need not, and should not, rule on the details of the terms and conditions for the long term renewable contracts since the Plan allows for the IPA, in consultation with the Procurement Administrator, the Procurement Monitor, ICC Staff, and interested parties, subject to approval by the Utilities, to develop such terms and conditions pursuant to the process included in Section 16-111.5(e) of the Public Utilities Act.
- Long term power procurement can be conducted outside of the RPS requirements set forth in Section 1-75(c) of the IPA Act.
- Hearings are not necessary as there are no issues of fact to consider, and would only add unnecessary delay in a time-constrained schedule.

Because there are no issues of fact in the Reply, no verification will be filed. The Illinois Power Agency's Procurement Plan is consistent with the requirements of the Act, meets the needs of customers, and should be confirmed by the Commission.

Dated: October 26, 2009

Respectfully submitted,

Illinois Power Agency

By: _____

One of its Attorneys

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Docket No. 09-0373

Petition for Approval of Initial
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THE ILLINOIS POWER AGENCY'S
REPLY IN SUPPORT OF ITS PROCUREMENT PLAN

Exhibit A

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Slip Copy

In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for INDIANA MICHIGAN POWER COMPANY to fully comply with Public Acts 286 and 295 of 2008.
U-15808

Michigan Public Service Commission
At the September 15, 2009 meeting of the Michigan Public Service Commission in Lansing, Michigan.

By its action of September 15, 2009.

OPINION AND ORDER

PRESENT: Hon. Orjiakor N. Isiogu, Chairman; Hon. Monica Martinez, Commissioner; Hon. Steven A. Transeth, Commissioner.

BY THE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

On October 6, 2008, Governor Jennifer M. Granholm signed into law Public Acts 286 and 295 of 2008, which amended [MCL 460.1 et seq.](#) and created [MCL 460.1001 et seq.](#), respectively. On October 21, 2008, the Commission commenced this case to facilitate Indiana Michigan Power Company's (I&M) obtaining the regulatory reviews, determinations, and approvals necessary for it to fully comply with the new acts.

On August 10, 2009, I&M filed an application under [MCL 460.1033\(3\)](#), which requires Commission review and approval of unsolicited renewable energy contracts, for *ex parte* approval of a renewable energy purchase agreement (REPA) with Fowler Ridge II Wind Farm, LLC (Fowler Ridge). I&M requests that the Commission (1) accept the application for filing; (2) promptly make

such investigation and give such notice as it may deem necessary in the circumstances; (3) determine that the approvals requested will not result in an alteration in I&M's rates or rate schedules that will result in an increase in the cost of service to I&M's customers, making *ex parte* approval appropriate; (4) approve the Fowler Ridge power purchase agreement (PPA) for purposes of Section 37 of Act 295 and the related capacity charges for purposes of Subsection 6j(13)(b) of Act 304; (5) find I&M's decision to enter into the Fowler Ridge PPA reasonable and prudent; (6) find that confidential treatment of certain business information described in the application is appropriate and should be granted to the extent requested; and (7) grant such other and further relief as may be lawful, necessary, and proper.

I&M states that the 20-year REPA will result in the provision of 50 nameplate megawatts of wind-powered electric capacity, energy, and renewable energy credits. I&M states in its application that its contract with Fowler Ridge is the result of a competitive request for proposal process. I&M filed a copy of the agreement with certain portions redacted to protect confidential information that might affect the competitive market. However, I&M offered the Commission Staff an opportunity to review an unredacted version of the contract.

An electric provider shall submit to the Commission a contract for review and approval. If the Commission approves the contract, it shall be considered to be consistent with the electric provider's renewable energy plan. The Commission shall not approve a contract based on an unsolicited proposal unless the Commission determines that the unsolicited proposal provides opportunities that may not otherwise be available or commercially practical. [MCL 460.1033\(3\)](#).

[MCL 460.1037](#) provides in part:

If, after the effective date of this act, an electric provider whose rates are regulated by the commission enters a renewable energy contract or a contract to purchase renewable energy credits without the associated renewable energy, the commission shall determine whether the contract provides reasonable and prudent terms and conditions and complies with the retail rate impact limits under section 45. In making this determination, the commission shall consider the contract price and term. If the contract is a

renewable energy contract, the commission shall also consider at least all of the following:

(a) The cost to the electric provider and its customers of the impacts of accounting treatment of debt and associated equity requirements imputed by credit rating agencies and lenders attributable to the renewable energy contract. The commission shall use standard rating agency, lender, and accounting practices for electric utilities in determining these costs, unless the impacts for the electric provider are known.

(b) Subject to section 45, the life-cycle cost of the renewable energy contract to the electric provider and customers including costs, after expiration of the renewable energy contract, of maintaining the same renewable energy output in megawatt hours, whether by purchases from the marketplace, by extension or renewal of the renewable energy contract, or by the electric provider purchasing the renewable energy system and continuing its operation.

(c) Electric provider and customer price and cost risks if the renewable energy systems supporting the renewable energy contract move from contracted pricing to market-based pricing after expiration of the renewable energy contract.

As required by Section 37 of Act 295, the Commission has considered each of the factors listed in Section 37(a), (b), and (c), and finds that the Fowler Ridge PPA should be approved. With regard to subsection (a), because the costs associated with this purchase agreement will be recovered under the funding mechanisms provided for in Act 295, it is unlikely that I&M would experience a financial rating change due to this contract. With regard to subsection (b), the 20-year contract term, which the Commission believes is the longest contract term presently offered by developers, provides I&M customers with an adequate source of renewable energy for a rea-

sonable time. With regard to subsection (c), the possibility of this activity will not occur until the end of the 20-year contract term. Because this is an adequate contract length, review of possible replacement costs is unnecessary. Further, the Commission finds that the contract is reasonable and prudent and provides opportunities that may not otherwise be available or commercially practical.

Ex parte review and approval is appropriate, as the REPA will not affect rates or rate schedules resulting in an increase in the cost of service to customers. The Commission finds no prohibition against *ex parte* approval of a REPA in Act 295.

THEREFORE, IT IS ORDERED that the renewable energy purchase agreement between Indiana Michigan Power Company and Fowler Ridge II Wind Farm LLC, is approved for the purposes of compliance with 2008 PA 295. Due to its length and availability on the Commission's website, a copy of the renewable energy purchase agreement is not attached to this order. A person may contact the Commission Staff at (517) 241-6170 or by e-mail at: mpscedockets@michigan.gov to obtain a print version of the document.

The Commission reserves jurisdiction and may issue further orders as necessary.

Mary Jo Kunkle, Executive Secretary.

RENEWABLE ENERGY PURCHASE AGREEMENT FOR WIND ENERGY RESOURCES BETWEEN INDIANA MICHIGAN POWER COMPANY AS PURCHASER AND FOWLER RIDGE II WIND FARM LLC AS SELLER

FEBRUARY 5, 2009

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CONSENT AND ASSIGNMENT TERMS

RENEWABLE ENERGY PURCHASE AGREEMENT BETWEEN INDIANA MICHIGAN POWER COMPANY AND FOWLER RIDGE II WIND FARM LLC

This Renewable Energy Purchase Agreement (the "REPA") is made as of February 5, 2009, by and between Fowler Ridge II Wind Farm LLC ("Seller"), a limited liability company, with a principal place of business at 4101 Winfield Road, Warrenville, IL 60555 and Indiana Michigan Power Company ("Purchaser"), an Indiana corporation, with a principal place of business at 1 Riverside Plaza Columbus, Ohio 43215-2373. Seller and Purchaser are hereinafter referred to individually as a "Party" and collectively as the "Parties".

WHEREAS Seller desires to develop, design, construct, own or lease and operate a renewable electric generating facility with an expected total name plate capacity of up to three hundred fifty (350) MW, and which is further defined below as the "Facility"; and

WHEREAS, the first Facility capacity installed, in an amount as set forth herein, shall be developed as Stage 1, as defined herein; and

WHEREAS Seller intends to locate the Facility at Benton and Tippecanoe Counties, Indiana, and to interconnect the Facility with the Interconnection Provider's System; and

WHEREAS Seller desires to sell and deliver to Purchaser at the Point of Delivery the Renewable Energy Products produced by an undivided fifty (50) MW share of the Total Facility Capacity, and Purchaser desires to buy the same from Seller; and

WHEREAS Purchaser has accepted Seller's offer to sell such Renewable Energy Products in accordance with the terms and conditions set forth in this REPA.

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

Article 1 - Definitions and Rules of Interpretation

1.1 Rules of Construction.

The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this REPA, whether in the singular or the plural or in the present or past tense. Other terms used in this REPA but not listed in this Article shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice. Words not otherwise defined herein that have well known and generally accepted tech-

nical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

(A) The masculine shall include the feminine and neuter.

(B) References to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or exhibits of this REPA.

(C) The Exhibits attached hereto are incorporated in and are intended to be a part of this REPA; provided, that in the event of a conflict between the terms of any Exhibit and the terms of this REPA, the terms of this REPA shall take precedence.

(D) This REPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this REPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this REPA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this REPA. Unless expressly provided otherwise in this REPA, (i) where the REPA requires the consent, approval, or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the REPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Each reference in this REPA to any agreement or document (including those set forth electronically on an internet web site) or a portion or provision thereof shall be construed as a reference to the relevant agreement or document as amended, supplemented or otherwise modified from time to time.

(G) Each reference in this REPA to applicable laws and to terms defined in, and other provisions of, applicable laws (including those set forth electronically on an internet web site) shall be references to the same (or a successor to the same) as amended, supplemented or otherwise modified from time to time.

(H) Each reference in this REPA to a Person includes its successors and permitted assigns and, in the case of a

Governmental Authority, any Person succeeding to its functions and capacities.

(I) In this REPA, the words "include," "includes" and "including" are to be construed as being at all times followed by the words "without limitation."

1.2 Interpretation with Interconnection Agreement.

The Parties recognize that Seller will enter into a separate Interconnection Agreement with the Interconnection Provider.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this REPA are not binding upon the Interconnection Provider.

(B) Notwithstanding any other provision in this REPA, nothing in the Interconnection Agreement shall alter or modify Seller's or Purchaser's rights, duties and obligations under this REPA. This REPA shall not be construed to create any rights between Seller and the Interconnection Provider.

(C) Seller expressly recognizes that, for purposes of this REPA, the Interconnection Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Purchaser or an Affiliate of Purchaser.

1.3 Interpretation of Arrangements for Electric Supply to the Facility.

The Parties recognize that this REPA does not provide for the supply of any electric service by Purchaser to Seller or to the Facility, and Seller must enter into separate arrangements for the supply of electric services to the Facility, including the supply of turbine unit start-up and shut-down house power and energy.

(A) The Parties acknowledge and agree that the arrangements for the supply of electric services to the Facility shall be separate and free-standing arrangements and that the terms of this REPA are not binding upon the supplier of such electric services.

(B) Notwithstanding any other provision in this REPA, nothing in the arrangements for the supply of retail electric services to the Facility shall alter or modify Seller's or

Purchaser's rights, duties and obligations under this REPA. This REPA shall not be construed to create any rights between Seller and the supplier of such retail electric services.

(C) Seller expressly recognizes that, for purposes of this REPA, the supplier of retail electric services to the Facility shall be deemed to be a separate entity and separate contracting party whether or not the arrangements for the supply of retail electric services to the Facility is entered into with Purchaser or an Affiliate of Purchaser.

1.4 Definitions.

The following terms shall have the meanings set forth below when used herein:

“AAA” shall have the meaning set forth in Section 13.9.

“Abandonment” means (i) the relinquishment of all possession and control of the Facility by Seller, other than a transfer permitted under this REPA, following achievement of the Stage 1 Commercial Operation Date, or (ii) following commencement of construction of the Facility, but prior to the Stage 1 Commercial Operation Date, complete cessation of the design, construction, testing and inspection of the Facility * * * by Seller and/or Seller's contractors, but only if such relinquishment or cessation is not caused by or attributable to an Event of Default of, or request by, Purchaser, or an event of Force Majeure.

“Additional Period” shall have the meaning set forth in Section 12.1(D).

“Actual Stage 1 Facility Capacity” means, (a) if Seller delivers a notice to Purchaser pursuant to Section 3.1(B), the amount of Facility capacity specified in such notice, which (i) shall not be less than that portion of the Expected Stage 1 Facility Capacity that has achieved Stage 1 Commercial Operation on or prior to December 31, 2009, (ii) shall not be less than eighty-five percent (85%) of the Expected Stage 1 Facility Capacity, and (iii) shall not exceed the Expected Stage 1 Facility Capacity, or (b) if Seller does not deliver a notice to Purchaser pursuant to Section 3.1(B), the Expected Stage 1 Facility Capacity.

“Affiliate” of any named person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. The term “control” (including the terms “controls”, “under the con-

trol 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 or entity, whether through ownership interest, by contract or otherwise.

“Ancillary Services” means regulation and frequency response services, energy imbalance services, automatic generating control, spinning reserve, non-spinning reserve, replacement reserve, reactive power, voltage support and any other services that support the transmission of capacity and energy or the reliable operation of the Transmission Provider's transmission system, all to the extent included as ancillary services in the Transmission Operator's open access transmission tariff, in each case, to the extent commonly sold or saleable and, in each case, to the extent that the assets comprising the Facility are Eligible to provide such services under normal operating conditions.

“Arbitrator” shall have the meaning set out in Section 13.9.

* * *

“Back-Up Metering” shall have the meaning set forth in Section 5.4.

“Beneficial Environmental Interests” means Purchaser's Contract Capacity Share of all Non-Power Attributes associated in any way, directly or indirectly, with the Facility and all RECs associated with such Non-Power Attributes, but in all cases excluding (i) Production Tax Credits, and any other federal or state tax credits, deductions, or exemptions applicable to Seller based on its ownership or operation of the Facility or on the production and sale of Renewable Energy to the Purchaser, or (ii) cash payments or outright grants of money relating to the ownership, development, construction, expansion, operation, maintenance or financing of the Facility.

“Business Day” means any calendar day that is not a Saturday, a Sunday, or a NERC Holiday.

“Calculation Period” shall have the meaning set forth in Section 7.2.

“Capacity Value” means all installed capacity and unforced capacity attributed to the Facility by the Transmission Operator, any regional reliability organization or

other Governmental Authority or that is commonly saleable to third parties.

“Cash” shall have the meaning set forth in Section 11.1.

“Clock Hour” means sixty-minute increments commencing at the top of the hour on the clock (i.e., 12 o'clock)

“Close of the Business Day” means 5:00 PM EPT on a Business Day.

* * *

“Commercial Operation Milestone” has the meaning set forth in Section 12.4.

“Communications Equipment” shall have the meaning set forth in Section 3.3(B).

“Conditions” shall have the meaning set forth in Section 4.7.

“Contract Administration Committee” means one representative each from Purchaser and Seller pursuant to Section 10.3.

“Contract Administration Procedures” means those procedures developed pursuant to Section 10.3.

* * *

“Contract Rate” shall have the meaning set forth in Section 7.1.

“Contract Year” means each full calendar year of the Term, whether such calendar year is comprised of 365 or 366 Days, commencing with the first calendar year subsequent to the year in which the Stage 1 Commercial Operation Date occurs.

“Control Area” means the system of electrical generation, distribution, and transmission facilities within which generation is regulated in order to maintain interchange schedules with other such systems.

“Day” means a calendar day.

“Delay Damages” shall have the meaning set forth in Section 12.4.

“Delivery Period” shall mean the period that commences on at 0000 hours on the Stage 1 Commercial Operation Date and continues through the remainder of the Term.

“Dispute” shall have the meaning set forth in Section 13.9.

“Dispute Notice” shall have the meaning set forth in Section 13.9.

* * *

“Electric Interconnection Point” means the physical 345 kV point at which electrical interconnection is made between the Facility and the Interconnection Provider's System.

“Electric Metering Device(s)” means all meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the Renewable Energy from the Facility.

* * *

“Emergency” means an Emergency Condition as defined under the Interconnection Agreement or the OATT; provided, that any condition or situation that results from lack of sufficient generating capacity to meet load requirements or that results solely from economic conditions shall not constitute an Emergency, unless one or more of the enumerated conditions or situations identified in the definitions of Emergency Condition under the Interconnection Agreement or the OATT also exists.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in MWh.

“Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Site will not be available or usable for the purposes contemplated by this REPA.

“EPT” means Eastern Prevailing Time.

“Event of Default” shall have the meaning set forth in Article 12.

“Expected Annual Energy” shall be one hundred fifty thousand (150,000) MWh, multiplied by a fraction, the numerator of which is the Actual Stage 1 Facility Capacity and the denominator of which is the Expected Stage 1 Facility Capacity.

* * *

“Facility” means the Seller's electric * * * Seller's Interconnection Facilities, as identified and described in Article 3 and Exhibit B to this REPA, including all of the following, the purpose of which is to produce electricity and deliver such electricity to the Electric Interconnection Point: Seller's equipment, buildings, all of the generation facilities, including generators, turbines, step-up transformers, output breakers, facilities necessary to connect to the Electric Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facility that produces the Renewable Energy subject to this REPA.

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

“Facility Lender” means, collectively, any lender(s) providing any Facility Debt.

“Federal Funds Effective Rate” means the rate for that Day opposite the caption “Federal Funds (Effective)” as set forth in the weekly statistical release designated as H. 15 (519), or any successor publication published by the Board of Governors of the Federal Reserve System.

“FERC” means the Federal Energy Regulatory Commission.

“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 Facility, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

“Force Majeure” shall have the meaning set forth in Article 14.

“Forced Outage” means any condition at the Facility that requires immediate removal of the Facility, or some part thereof, from service. This type of outage results from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to Facility conditions and/or alarms.

“GATS” means the Generation Attribute Tracking System administered by PJM Environmental Information Services, Inc. (“PJM-EIS”) and providing environmental and emissions attributes reporting and tracking services to its subscribers in support of renewable portfolio standards and other information disclosure requirements that may be implemented by government agencies. GATS tracks generation attributes and the ownership of the attributes as they are traded or used to meet government standards. GATS includes any successor tracking system or systems with the same or similar purpose administered by PJM-EIS.

“GATS Certificates” means certificates recognized by the Generation Attribute Tracking System of the PJM Environmental Information Services, Inc. and associated with the generation of electricity from the Facility.

“Good Utility Practice(s)” means the practices, methods, and acts (including practices, methods, and acts engaged in or approved by a significant portion of the electric wind-powered generation industry, the Transmission Operator and/or NERC) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the

Facility, Good Utility Practice(s) includes taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Facility's reasonable needs;

(B) sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Facility properly, efficiently, and in coordination with Purchaser and are capable of responding to reasonably foreseeable Emergency conditions whether caused by events on or off the Site;

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(E) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits; and

(F) equipment and components meet or exceed the standard of durability that is generally used for electric wind-generation operations in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency conditions.

"Governmental Authority" means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

* * *

"Hazardous Materials" means any substance, material, gas, or particulate matter that is regulated by any local governmental authority, any applicable State, or the United States of America, as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including protection of nonhuman forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a "hazardous substance" pursuant to the Clean Water Act, [33 U.S.C. §1251 et seq.](#) ([33 U.S.C. §1251](#)); (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, [42 U.S.C. §6901 et seq.](#) ([42 U.S.C. §6901](#)); (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, [42 U.S.C. §9601 et seq.](#) ([42 U.S.C. §9601](#)); (ix) defined as a "chemical substance" under the Toxic Substances Control Act, [15 U.S.C. §2601 et seq.](#) ([15 U.S.C. §2601](#)); or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, [7 U.S.C. §136 et seq.](#) ([7 U.S.C. §136](#)).

"Indemnified Party" shall have the meaning set forth in Article 17.

"Indemnifying Party" shall have the meaning set forth in Article 17.

"Interconnection Agreement" means the separate generation interconnection agreement and other related agreements between Seller and the Interconnection Provider for interconnection of the Facility to the Interconnection Provider's System.

"Interconnection Provider" means the Transmission Operator or any Transmission Provider responsible for the operation of the Interconnection Provider's Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Electric Interconnection Point.

"Interconnection Provider's Interconnection Facilities" means the facilities necessary to connect Transmission Operator's existing electric system to the Electric Inter-

connection Point, including breakers, bus work, bus relays, and associated equipment installed by the Interconnection Provider for the direct purpose of interconnecting the Facility, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. Arrangements for the installation and operation of the Interconnection Provider's Interconnection Facilities shall be governed by the Interconnection Agreement.

“Interconnection Provider's System” means the contiguously interconnected electric transmission facilities, including Interconnection Provider's Interconnection Facilities, over which the Interconnection Provider has rights to provide for the bulk transmission of capacity and energy from the Electric Interconnection Point.

“Issuer” shall have the meaning set forth in Section 11.1(C).

“Liabilities” shall have the meaning set forth in Article 17.

“Locational Marginal Price” or “LMP” means the hourly integrated market clearing marginal price for Energy, including losses and congestion, at the location the Energy is delivered or received, or at an equivalent location.

“MW” means megawatt, an amount of power equal to 1,000 kilowatts or 1,000,000 watts.

“MWh” means megawatt-hours, an amount of energy equal to 1,000 kilowatt-hours or 1,000,000 watt-hours.

“NERC” means the North American Electric Reliability Council.

“NERC Holiday” means every Day other than a Saturday or Sunday which the NERC declares to be a holiday for power scheduling purposes.

“Network Resource” shall have the meaning as defined in the OATT.

“Non-Power Attributes” means any characteristic of the Facility related to its benefits to the environment, including any avoided, reduced, displaced or off-set emissions of pollutants to the air, soil or water such as sulfur dioxides (SOx), nitrogen oxides (NOx), carbon monoxide

(CO), mercury (Hg), particulates, and any other pollutant that is now or may in the future be regulated under federal, or local pollution control laws, regulations or ordinances or any voluntary rules, guidelines or programs; and further including any avoided emissions of carbon dioxide (CO₂) and any other greenhouse gas (GHG) that contributes to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

“OATT” means the FERC filed Open Access Transmission Service Tariff of the Transmission Operator, and as it may be amended and approved by FERC.

“Operating Records” means operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that the Seller uses or maintains for the operation of the Facility.

“Output Shortfall” shall have the meaning set forth in Section 7.2.

“Permits” means those permits, consents, approvals, licenses and authorizations identified in Exhibit F.

“PJM” means PJM Interconnection, LLC.

“PJM Manuals and Agreements” means the, collectively, (i) all instructions, rules, procedures and guidelines established by PJM, (ii) all documents and protocols issued by PJM and (iii) all agreements to which Seller, Purchaser or any Affiliates of Purchaser, on the one hand, and PJM, on the other hand, are parties, either bilaterally or in concert with other entities, as may be in effect from time to time, in each case for the operation, planning, and accounting requirements of PJM and the PJM Interchange Energy Market, including the OATT.

“Point of Delivery” or “POD” means the Electric Interconnection Point, as shown on Exhibit G, at which point the quantities of Renewable Energy delivered are recorded and measured by the relevant Transmission Provider's revenue meters, or at such other location as may be mutually agreed between the Parties.

“Procedures” shall have the meaning set forth in Section 13.9.

“Production Tax Credit” or “PTC” means tax credits applicable to electricity produced from certain renewable

resources pursuant to [26 U.S.C. § 45](#), or any substantially equivalent federal tax credits applicable to Seller based on its ownership or operation of the Facility or on the production and sale of Renewable Energy to the Purchaser.

* * *

“Renewable Energy” means the net electric energy generated exclusively by the Wind Turbines in Commercial Operation and delivered to the Point of Delivery as measured by the Electric Metering Devices installed pursuant to Section 5.4.

“Renewable Energy Credit” or “REC” means any credit, certificate, allowance or similar right that is related to Purchaser's Contract Capacity Share of the Non-Power Attributes of the Facility, whether arising pursuant to law, regulation, certification, markets, trading, off-set, private transaction, renewable portfolio standards, voluntary programs or otherwise. Without limiting the generality of the foregoing definitions, RECs shall include GATS Certificates.

“Renewable Energy Products” means, collectively, the Renewable Energy and Ancillary Services produced by Purchaser's Contract Capacity Share of the Total Facility Capacity and all of the Capacity Value and Beneficial Environmental Interests associated with such Contract Capacity Share.

“REPA” means this Renewable Energy Purchase Agreement between Seller and Purchaser.

“Replacement Energy Costs” means the costs incurred by Purchaser for the Renewable Energy which are necessary to replace that which Seller, in accordance with this REPA, was required to have delivered to Purchaser, but failed to so provide, less the sum of any payments from Purchaser to Seller, under this REPA, which were eliminated as a result of such failure. Replacement Energy Costs include the amounts paid or incurred by Purchaser for replacement Renewable Energy, or replacement Energy plus replacement Beneficial Environmental Interests, transmission of Energy, and directly associated transaction costs. Additional costs may include any penalties incurred by Purchaser as a result of the Seller's non-performance.

“RFC” means the ReliabilityFirst Corporation, one of the eight regional reliability councils approved by the North

American Electric Reliability Corporation (NERC).

“Scheduled Outage/Derating” means a planned interruption/reduction of the Facility's generation by Seller that both (i) is in compliance with the requirements of Section 10.9, and (ii) is required for inspection, or preventive or corrective maintenance.

“Security Fund” means the fund that Seller is required to establish and maintain, pursuant to Section 11.1, as security for Seller's performance under this REPA.

“Seller Guarantor” shall have the meaning set forth in Section 11.1(C).

“Seller's Interconnection Facilities” means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Interconnection Provider's System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer it includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Facility.

“Site” means the parcels of real property, including any easements, rights of way, surface use agreements and other interests or rights in real estate, as more specifically described in Section 3.2 of and Exhibit B to this REPA, as such exhibit is amended by Seller with the approval of Purchaser from time to time or in accordance with the last sentence of Section 3.2.

* * *

“Term” means the period of time during which this REPA shall remain in full force and effect, and which is further defined in Article 2.

“Test Energy” means that Energy (whether or not produced for testing purposes) that is produced by the Facility, delivered to Purchaser at the Point of Delivery, and purchased by Purchaser pursuant to Section 4.8 (i) prior to the Stage 1 Commercial Operation Date, and (ii) after the Stage 1 Commercial Operation Date, produced by addi-

tional Wind Turbines that have not yet achieved Commercial Operation, along with all RECs or other Beneficial Environmental Interests associated with such Energy.

* * *

“Transmission Operator” means PJM or any Transmission Provider, independent system operator, regional transmission operator or other transmission operator from time to time having authority to control the transmission Control Area to which the Facility is interconnected.

“Transmission Provider” means any Person or Persons that owns, operates or controls facilities used for the transmission of electrical energy in interstate commerce.

“Wind Turbines” means those generating devices powered by the wind that are included in the Facility.

Article 2 - Term and Termination

This REPA shall become effective as of the date of its execution, and shall remain in full force and effect until the twentieth (20th) anniversary of the * * * subject to any early termination provisions set forth herein. Applicable provisions of this REPA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for: final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this REPA, repayment of principal and interest associated with Security Funds, and the indemnifications specified in this REPA.

Article 3 - Facility Description

3.1 Summary Description.

* * *

3.2 Location.

The Facility shall be located on the Site and shall be identified as Seller's Fowler Ridge II Wind Farm LLC Facility. The Site is located in Benton and Tippecanoe Counties, Indiana. A scaled map that identifies the Site, the location of the Electric Interconnection Point, and the expected location of the important ancillary facilities and

Seller's Interconnection Facilities is included in Exhibit B to this REPA. The description of the Site may be amended by Seller from time to time to limit the Site to the parcels of real property on which Stage 1 and, if applicable, Stage 2 are located.

3.3 General Design of the Facility.

Seller shall construct the Facility according to Good Utility Practice(s), the Interconnection Agreement, and rules of the Transmission Operator, including the PJM Manuals and Agreements. In addition to the requirements of the Interconnection Agreement, the design of the Facility shall at all times include:

(A) the required panel space and 125V DC battery-supplied voltage to accommodate metering, generator telemetering equipment and Communications Equipment; and

(B) communication circuits from the Facility to Purchaser for the purpose of telemetering, supervisory control/data acquisition, transmittal of real time data as described in Exhibit A and Exhibit H, and voice communications as reasonably required by Purchaser (collectively, “Communications Equipment”); and

(C) metering accuracy current transformers and voltage transformers located at the Electric Interconnection Point (or some other point mutually agreed to by the Parties) as required to connect to the Electric Metering Devices.

Article 4 - Commercial Operation

4.1 Commercial Operation.

Subject to extension as specifically provided for herein, Seller shall use commercially reasonable efforts to cause the Facility to achieve the * * * and to be fully capable of reliably producing the Renewable Energy to be provided under this REPA and delivering such Renewable Energy to Purchaser at the Point of Delivery as provided in Section 4.7, no later than the Commercial Operation Milestone.

4.2 Intentionally Omitted.

4.3 Site Report.

Seller shall conduct a Phase I environmental investigation

of the Site and shall provide Purchaser, on or before March 31, 2009, with a copy of the report summarizing such investigation, together with any data or information generated pursuant to such investigation. Either (i) such report shall confirm that, no conditions involving Environmental Contamination exist at or under the Site that would materially impact performance of Seller's obligations under this REPA, or (ii) Seller shall provide to Purchaser a remediation plan for removal, prior to the Stage 1 Commercial Operation Date, of such Environmental Contamination.

4.4 Facility Contracts.

Upon Purchaser's request, Seller shall provide sufficient information for Purchaser to be reasonably assured that Seller has contracted with financially responsible vendors as part of the Facility construction process. Information that is commercially sensitive, confidential or proprietary, as reasonably determined by Seller, may be redacted from the documents provided to Purchaser pursuant to this paragraph.

4.5 Progress Reports.

Seller shall submit to Purchaser, on the first Day of each calendar month until the * * * progress reports in a form reasonably satisfactory to Purchaser. These progress reports shall describe the status of the development and construction of the Facility as of the end of the preceding month including (i) a description of the progress of development and construction, * * *

4.6 Purchaser's Rights During Construction.

Purchaser shall have the right to monitor the construction, start-up and testing of the Facility during normal business operating hours, and Seller shall comply with all reasonable requests of Purchaser with respect to the monitoring of these events, provided, however, that Purchaser shall not unreasonably interfere with or disrupt the activities of the Seller. Seller shall cooperate in such physical inspections of the Facility as may be reasonably requested by Purchaser during and after completion of construction. All persons visiting the Facility on behalf of Purchaser shall comply with all of Seller's applicable safety and health rules and requirements. Purchaser's technical review and inspection of the Facility shall not be construed as endorsing the design thereof nor as any warranty of safety, durability, or reliability of the Facility.

4.7 Conditions to Commercial Operation.

Seller will notify Purchaser when (i) * * * which notices will be neither unreasonably withheld nor delayed by Seller. These notifications are contingent upon Seller providing evidence reasonably acceptable to Purchaser of the satisfaction or occurrence of all of the conditions set forth in this Section 4.7 ("Conditions") with respect to the Facility or the Wind Turbines, as applicable, and shall include a declaration by Seller to that effect. The Parties agree that review and approval of such Conditions may occur on an ongoing and incremental basis, pending resolution of any dispute, as such Conditions are satisfied. The Conditions with respect to the Facility are:

(A) an officer of Seller has certified that the Seller has successfully completed that testing of a portion of the Facility that includes sufficient Wind Turbines to satisfy * * * as such testing is required by the Financing Documents, the Facility's governmental permits, the Interconnection Agreement, Seller's operation, maintenance and service agreement, Seller's engineering, procurement and construction ("EPC") agreement, and manufacturers' warranties for the commencement of commercial operations at the Facility, except as the applicable requirements may be waived by Seller or the applicable contract counterparties from time to time;

(B) an officer of Seller, familiar with the Facility, has provided a list of the Facility's major equipment, showing the make, model, serial number and designed maximum output (nameplate capacity) of each Wind Turbine and has certified the designed maximum output of each Wind Turbine of the completed portion of the Facility;

(C) the Facility has achieved initial synchronization with the Interconnection Provider's System;

(D) Intentionally omitted.

(E) Seller is both obligated under, and in compliance with, the Interconnection Agreement, and the interconnection of the Facility to the Interconnection Provider's System has been completed in accordance with the Interconnection Agreement;

(F) Seller has made all arrangements and executed all agreements required to deliver the Renewable Energy from the Facility to the Point of Delivery in accordance

with the provisions of this REPA;

(G) all arrangements for the supply of required electric services to the Facility, including the supply of station service have been completed by Seller separate from this REPA, are in effect, and are available for the supply of such electric services to the Facility;

(H) the Communications Equipment shall have been programmed and installed, and Seller shall have demonstrated that it can reliably transmit real time data and measurements with Purchaser in accordance with the requirements of Exhibit H;

(I) the security arrangements meeting the requirements of Article 11 have been established;

(J) certificates of insurance evidencing the coverages required by Article 16 have been obtained and submitted to Purchaser, or a certificate of an officer of Seller has been provided to Purchaser that provisions for substitute self-insurance as allowed hereunder is in place;

(K) Seller has submitted to Purchaser a certificate of an officer of Seller familiar with the Facility after due inquiry stating that all permits, consents, licenses, approvals, and authorizations required to be obtained by Seller from any Governmental Authority to construct and/or commence operation of the Facility in compliance with applicable law and this REPA have been obtained and are in full force and effect, and that Seller is in compliance with the terms and conditions of this REPA in all material respects;

(L) Seller has made all necessary governmental filings and applications that it is required to make for accreditation in GATS pursuant to Section 10.10;

(M) Seller has executed with Purchaser such documentation as required by PJM, consistent with this REPA for filing with PJM, permitting Purchaser to transact with the Transmission Operator and in the PJM market for Renewable Energy Products from the Facility; and

(N) FERC has accepted Seller's market-based rate tariff for the sales of Energy under this REPA.

(O) Seller shall have provided the following items to Purchaser prior to the Stage 1 Commercial Operation Date:
(1) the approximate Wind Turbine layout of the Site with

the latitude and longitude and model of each Wind Turbine and the manufacturer's power curve; (2) a non-binding, good faith 12 month x 24 hour forecast of net energy production from the Facility; and (3) historical wind data from the Site anemometers together with a commissioning sheet or other suitably complete descriptive document for each of the Site's permanent met towers as well as all off-Site met towers; provided that the data set forth in the foregoing items (1) and (2) above shall be updated and re-submitted to the Purchaser no later than thirty (30) Days after the Stage 1 Commercial Operation Date; provided that, if Seller shall not have provided such items to Purchaser on or prior to the later of September 1, 2009 and ninety (90) days prior to the Stage 1 Commercial Operation Date, Seller shall pay Purchaser liquidated damages in the amount of \$1,000 per Day for each Day until all of such items have been delivered to Purchaser.

4.8 Test Energy.

Seller shall coordinate the production and delivery of Purchaser's Contract Capacity Share of Test Energy with Purchaser. * * * specified in Section 8.1 with respect to Purchaser's Contract Capacity Share of the Energy from such Wind Turbines. Purchaser shall cooperate with Seller to facilitate Seller's testing of the Facility necessary to satisfy the Conditions set forth in Section 4.7 and shall accept delivery of all Test Energy produced by a Wind Turbine which has been installed and interconnected in accordance with the Interconnection Agreement, and shall purchase all such Test Energy delivered to Purchaser at rates described in Section 8.1.

However, Purchaser shall not be obligated to accept any Test Energy prior to satisfaction of conditions set forth in Section 4.7 (C), (E), (F), (G), (H), (I), (K), (L), (M), and (N) * * * Seller shall provide Purchaser with at least five (5) days notice prior to the first deliveries of Test Energy to Purchaser.

4.9 QF Waiver.

For so long as this REPA is in effect, Seller waives, and agrees not to assert, the rights Seller may have against Purchaser to cause Purchaser to purchase or transmit energy or capacity pursuant to [18 C.F.R. section 292.303](#) or [section 292.304](#) in the event that the Facility achieves the status of the Facility as a qualifying facility as defined in the Public Utility Regulatory Policies Act of 1978.

Article 5 - Delivery and Metering

5.1 Seller's and Purchaser's Obligations.

Subject to, and in accordance with, the terms and conditions of this REPA, Purchaser does hereby purchase and agree to pay for all Renewable Energy Products, and Seller does hereby sell and agrees to deliver, or cause to be delivered, such Renewable Energy Products during the Delivery Period. Purchaser shall have the exclusive right to purchase and receive the Renewable Energy Products. During the period on and after the COD, Seller shall not offer, sell, or make available any of the Renewable Energy Products to any Person other than Purchaser, other than as mitigation expressly provided for in this REPA in the event of a Purchaser Event of Default.

5.2 Can Run-Must Run Obligation.

Except to the extent the Facility is actually unavailable or limited (including in accordance with Good Utility Practice(s) and due to curtailments under Section 7.4), Seller shall operate the Facility to provide the Renewable Energy Products to Purchaser in all hours of the Delivery Period. Seller agrees that, notwithstanding anything herein to the contrary, Seller will not curtail or otherwise reduce deliveries of the Renewable Energy Products in order to sell such Renewable Energy Products to other purchasers.

5.3 Delivery Arrangements.

(A) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements, and costs required to deliver Purchaser's Contract Capacity Share of the Renewable Energy and Test Energy from the Facility to Purchaser at the Point of Delivery. Purchaser shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to receive its Contract Capacity Share of Renewable Energy and Test Energy at the Point of Delivery and deliver such energy to points beyond the Point of Delivery.

(B) Seller shall be responsible for any and all transmission upgrade costs identified by the Transmission Operator that are necessary to designate the Facility as a Network Resource.

5.4 Electric Metering Devices.

Seller will comply with the terms and conditions of the Interconnection Agreement. The following provisions on Electric Metering Devices shall apply only to the extent they do not conflict with the performing Party's rights and obligations under the Interconnection Agreement or the OATT, as applicable.

(A) Seller shall provide Purchaser with reasonable advance notice of, and permit a representative of Purchaser to witness and verify, inspections and tests of the Electric Metering Devices, provided, however, that Purchaser shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. Upon request by Purchaser, Seller shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of Purchaser to inspect or witness the testing of any Electric Metering Device, provided, however, that Purchaser shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all of Seller's safety standards. The actual expense of any such requested additional inspection or testing shall be borne by Purchaser, unless upon such inspection or testing an Electric Metering Device is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by Seller. If requested by Purchaser in writing, Seller shall provide copies of any inspection or testing reports to Purchaser.

(B) Purchaser and Seller each may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering") in addition to the Electric Metering Devices. Each Party, at its own expense, shall inspect and test its Back-Up Metering upon installation and at least annually thereafter. Each Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, provided, however, that the observing Party shall not unreasonably interfere with or disrupt the activities of the testing Party and shall comply with all of the testing Party's safety standards. Upon request by a Party, the other Party shall perform additional inspections or tests of its Back-Up Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of such Back-Up Metering, provided, however, that the observing Party shall not unreasonably interfere with or disrupt the activities of the testing Party and shall comply with all of the testing Party's safety standards. The actual expense of any such requested additional inspection or testing shall be borne

by the requesting Party, unless, upon such inspection or testing, the Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the testing Party. If requested by the requesting Party in writing, the testing Party shall provide copies of any inspection or testing reports to the requesting Party.

(C) If any Electric Metering Devices, or any Back-Up Metering, are found to be defective or inaccurate, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party's expense. The Party discovering such defect or inaccuracy shall promptly notify the other Party of such discovery.

5.5 Adjustment for Inaccurate Meters.

The following provisions on Adjustment for Inaccurate Meters shall apply only to the extent to the extent they do not conflict with the performing Party's rights and obligations under the Interconnection Agreement or the OATT, as applicable.

If an Electric Metering Device, or Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device, or Back-Up Metering, is found upon testing to be inaccurate by more than one percent (1.0%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use the Back-Up Metering, if installed, to determine the amount of such inaccuracy, provided, however, that the Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. If both Parties have installed Back-Up Metering, and the Back-Up Metering of both Parties is inaccurate by not more than one percent (1.0%) from the measurements made by the standard meter used in the test, the readings from the Back-Up Metering whose readings most closely conforms with the measurements made by the standard meter shall be used. In the event that neither Party has installed Back-Up Metering, or the Back-Up Metering is also found to be

inaccurate by more than one percent (1.0%) from the measurement made by the standard meter used in the test, the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Renewable Energy from the Facility during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

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

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Purchaser, Purchaser shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Purchaser for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Purchaser to Seller; if the difference is a negative number, that difference shall be paid by Seller to Purchaser, or at the discretion of Purchaser, may take the form of an offset to payments due Seller by Purchaser (or by payment to Purchaser, if sufficient payments do not remain to offset). Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due, unless Purchaser elects payment via an offset.

5.6 Scheduling Arrangements.

Purchaser shall be responsible for scheduling all of its Contract Capacity Share of the Test Energy and of the Renewable Energy, including all necessary Open Access Same Time Information System (OASIS) tagging, and other procedures or protocols established by the Transmission Operator. Seller shall be responsible for all scheduling costs, imbalance costs and congestion costs related to delivery of Test Energy and Renewable Energy to the Point of Delivery or to the extent any such costs are incurred as a result of the failure by Seller to curtail deliveries in connection with a Reliability Curtailment or Eco-

conomic Curtailment. Purchaser shall be responsible for all scheduling costs, imbalance costs, and congestion costs incurred at the Point of Delivery and for delivery of its Contract Capacity Share of the Test Energy and Renewable Energy at and from the Point of Delivery, excluding any such costs arising from the failure by Seller to curtail deliveries in connection with a Reliability Curtailment or Economic Curtailment. To the extent either Party incurs such scheduling costs, imbalance costs or congestion costs which are the responsibility of the other Party, such costs shall be added to or shall be netted against the invoice for Test Energy and Renewable Energy, as appropriate.

5.7 Adjustments to Metering Arrangements.

Seller and Purchaser recognize that electric generation facilities other than the Facility also may schedule energy deliveries over the Seller's Interconnection Facilities to the POD and that the metering arrangements described herein may need to be modified to allow such other energy to be distinguished from the output of the Facility. The Parties will cooperate in making such amendments to the metering arrangements described herein as needed to allow the output of the Facility to be distinguished from and to be scheduled separately from the energy production of such other electric generation facilities. All costs and expenses incurred in connection with this Section 5.7 for the procurement and installation of any additional or replacement metering devices, or modification of existing metering devices, shall be borne solely by Seller.

Article 6 - Seller Conditions Precedent

* * *

Article 7 - Sale and Purchase of Renewable Energy

7.1 Sale and Purchase.

Beginning on the Stage 1 Commercial Operation Date and subject to Purchaser's Economic Curtailment rights, Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to Purchaser, and Purchaser shall purchase, at the applicable rates set forth in Article 8 ("Contract Rate"), all Renewable Energy Products generated by the Facility. Purchaser shall acquire all transmission services needed for it to receive its Contract Capacity Share of the Renewable Energy at the Point of Delivery. Purchaser shall have no obligation to pay for any energy that

has not actually been generated by the Facility (other than in the case of non-generation in response to a notice of Economic Curtailment in accordance with Exhibit J), delivered to Purchaser at a location other than the Point of Delivery or delivered contrary to an Economic Curtailment or Reliability Curtailment.

* * *

7.3 Title and Risk of Loss.

As between the Parties, Seller shall be deemed to be in control of the Renewable Energy and Test Energy output from the Facility up to and until delivery and receipt at the Point of Delivery and Purchaser shall be deemed to be in control of such energy at and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Renewable Energy and Test Energy shall transfer from Seller to Purchaser at the Point of Delivery.

7.4 Purchaser's Right to Curtail Renewable Energy.

Seller shall at all times during the Term comply with the directives of the Transmission Operator and the Interconnection Provider, whether delivered directly or indirectly through Purchaser or another purchaser of Facility output. In addition, Purchaser shall have the right to notify Seller, by telephonic communication or other method as reasonably determined by Purchaser, of a Reliability Curtailment or of an Economic Curtailment. Purchaser shall notify Seller of the maximum amount of Renewable Energy, if any, during any Reliability Curtailment that Seller may continue to deliver, and Seller shall ensure that the amount of net Energy delivered by the Facility at the Point of Delivery does not exceed such amount. Any Economic Curtailment by Purchaser shall be of Purchaser's entire Contract Capacity Share. No compensation shall be due from Purchaser to Seller as a result of any curtailment of the Facility's generation arising from any Reliability Curtailment. The compensation that shall be paid by Purchaser to Seller during periods of Economic Curtailment shall be calculated in accordance with * * * and will be Seller's sole compensation from Purchaser as a result of Economic Curtailment.

7.5 Reductions for Curtailments.

(A) In the event of a Reliability Curtailment, Force Majeure Event or other planned or unplanned outage of the Facility, Seller shall allocate the curtailment ratably

among purchasers of Facility output, by delivering to Purchaser its Contract Capacity Share of the non-curtailed level of output.

(B) During periods of Economic Curtailment by Purchaser, Seller shall (i) reduce Purchaser's Contract Capacity Share to zero (0) and (ii) curtail operation of Wind Turbine capacity representing a percentage of the Total Facility Capacity most closely corresponding to Purchaser's Contract Capacity Share in the absence of an Economic Curtailment.

(C) During periods of a curtailment comparable to an Economic Curtailment required by any other purchaser of a portion of the output of the Facility, Seller shall (i) increase Purchaser's Contract Capacity Share to an amount determined by removing the curtailed amount from the Total Facility Capacity for Purchaser's Contract Capacity Share calculation, and (ii) curtail operation of Wind Turbine capacity representing a percentage of the Total Facility Capacity most closely corresponding to the portion of the Total Facility Capacity that the curtailing purchaser is entitled to receive in the absence of the required curtailment.

7.6 Tax Benefits.

(A) If, for any reason, Seller does not receive the Production Tax Credits for any period, the cost of Renewable Energy Products delivered to Purchaser under this REPA shall not be affected. The risk of not obtaining the Production Tax Credits shall be borne solely by Seller, except to the extent set forth in Section 7.4 and Section 12.4.

(B) Seller shall be entitled to all Production Tax Credits and any other federal or state tax credits, deductions, or exemptions applicable to Seller based on its ownership or operation of the Facility or on the production and sale of Renewable Energy and Beneficial Environmental Interests to the Purchaser, and Purchaser acknowledges that Seller has the right to sell or transfer the Production Tax Credits, or such other tax credits, deductions, or exemptions at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to Purchaser hereunder. Purchaser shall have no claim, right or interest in such credits or in any amount that Seller realized from the sale of such credits, deductions, or exemptions.

Article 8 - Payment Calculations

8.1 Payments for Test Energy.

Purchaser shall pay Seller for Test Energy delivered to Purchaser by Seller to the Point of Delivery at ninety percent (90%) of the Contract Rate set forth in Exhibit C. During periods in which Test Energy is being sold and where the real-time LMP at the Point of Delivery is negative, Seller shall pay Purchaser one hundred percent (100%) of the negative real-time LMP costs associated with delivering energy during such periods.

8.2 Payments for Renewable Energy other than Test Energy.

* * *

Article 9 - Billing and Payment

9.1 Billing Invoices.

The monthly billing period shall be the calendar month. No later than ten (10) Business Days after the end of each calendar month, Seller shall provide to Purchaser, by first-class mail or electronically, an invoice for the amount due Seller by Purchaser for the services provided by Seller and purchased by Purchaser, under this REPA, during the previous calendar month billing period. Seller's invoice will show all billing parameters, Contract Rates and factors, and any other data reasonably pertinent to the calculation of monthly payments due to Seller. Seller's failure to timely provide Purchaser with the monthly invoice shall not waive Purchaser's responsibility for payment under the terms stated in Section 9.2.

9.2 Payments.

Unless otherwise specified herein, payments due under this REPA shall be due and payable by check or by electronic funds transfer, as designated by the owed Party, on or before the later of (i) the twentieth (20th) Day of the month following the month to which such payment relates and (ii) the tenth (10th) Day following receipt of the billing invoice. Remittances received by mail will be considered to have been paid when due if the postmark indicates the payment was mailed on or before the fifteenth (15th) Business Day following receipt of the billing invoice. If the amount due is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late

payment charge shall be calculated using an annual interest rate equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such Day (or if not published on such Day on the most recent preceding Day on which published), plus two percent (2%). If the due date occurs on a Day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

9.3 Billing Disputes.

Purchaser may dispute invoiced amounts, but shall pay to Seller the undisputed portion 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 13.9. When the billing dispute is resolved, the Party owing shall pay the amount owed within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with the provisions of Section 9.2. Purchaser at any time may offset against any and all amounts that may be due and owed to Seller under this REPA any amounts that are owed by Seller to Purchaser pursuant to this REPA including damages and other payments. Undisputed and non-offset portions of amounts invoiced under this REPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.2.

Article 10 - Operations and Maintenance

10.1 Facility Operation.

Seller shall staff, control, and operate the Facility consistent at all times with Good Utility Practice(s) and the Contract Administration Procedures developed pursuant to Section 10.3. Personnel capable of starting, operating, and stopping the Facility shall be continuously available, either at the Facility or capable of remotely starting, operating and stopping the Facility with no more than sixty (60) minutes notice. In all cases, personnel capable of starting, operating, and stopping the Facility shall be continuously reachable by phone or pager. Seller shall maintain the Communications Equipment in good operating order at all times during the Term.

10.2 Outage and Performance Reporting.

(A) Seller shall comply with all current Purchaser, NERC,

RFC and the Transmission Operator generating unit outage reporting requirements, as they may be revised from time to time, and as they apply to the Facility.

(B) When a Forced Outage of ten percent (10%) or greater of Wind Turbines in Commercial Operation occurs, Seller shall notify Purchaser of the existence, nature, and Seller's best estimate of the expected duration of the Forced Outage as soon as practical (and in no event later (i) than thirty (30) minutes after the discovery of the Forced Outage if it occurs during normal business hours or (ii) thirty (30) minutes after the beginning of normal business hours if such Forced Outage is discovered outside of normal business hours). Seller shall thereafter immediately inform Purchaser of changes in the expected duration of the Forced Outage, unless relieved of this obligation by Purchaser for the duration of each Forced Outage.

(C) Seller shall provide Purchaser with prompt notice of any malfunction or other failure of the Communications Equipment.

10.3 Contract Administration Committee.

(A) Purchaser and Seller shall each appoint one representative and one alternate representative to act in matters relating to the Parties' performance obligations under this REPA and to develop operating arrangements for the generation, delivery and receipt of Renewable Energy hereunder. Such representatives shall constitute the Contract Administration Committee and shall be specified as set forth in Exhibit D. The Parties shall notify each other in writing of such appointments and any changes thereto. The Contract Administration Committee shall have no authority to modify the terms or conditions of this REPA.

(B) Prior to the Stage 1 Commercial Operation Date, the Contract Administration Committee shall develop mutually agreeable written Contract Administration Procedures which shall include: method of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel list for applicable Purchaser and Seller operating centers; operations and maintenance scheduling and reporting; Renewable Energy reports; and such other matters as may be mutually agreed upon by the Parties.

10.4 Access to Facility.

Appropriate representatives of Purchaser shall at all reasonable times, including where appropriate weekends and nights, and with reasonable prior notice, have access to the Facility to read meters, to perform maintenance and service of Purchaser's equipment and to perform all inspections and operational reviews as may be reasonably appropriate to facilitate the performance of this REPA; provided that Purchaser does not unreasonably interfere with the operation of the Facility and causes all persons visiting the Facility on its behalf to comply with all of Seller's applicable safety, health and similar rules and requirements. Purchaser agrees to comply with the foregoing conditions when it visits the Facility.

10.5 Reliability Standards.

Seller shall operate the Facility in a manner that complies with all national and regional reliability standards that apply to wind-electric generation facilities, including standards set by the Transmission Operator, NERC, the FERC, and the RFC or any successor agencies setting reliability standards for the operation of such generation facilities. To the extent that Seller does not operate the Facility in accordance with such standards that result in monetary penalties being assessed to Purchaser by the Transmission Operator, RFC, NERC, or FERC, Seller shall reimburse Purchaser for its share of such monetary penalties.

10.6 Beneficial Environmental Interests.

The Parties acknowledge that future and or existing legislation or regulation may create value in the ownership, use or allocation of the Beneficial Environmental Interests of the Facility. Purchaser shall own or be entitled to claim all Beneficial Environmental Interests related to its Contract Capacity Share of the Renewable Energy, to the extent such value may exist during the Term.

10.7 Availability Reporting.

(A) On the first Business Day of each calendar month commencing after the Stage 1 Commercial Operation Date, Seller shall furnish Purchaser with a notice setting forth its good faith estimate of (i) the hourly availabilities of the Facility for such month and the next month and (ii) the expected average daily Availability of the Facility for each of the ten (10) months subsequent to such next month. With respect to the preceding clause (A)(i), if Seller later updates its availability estimates for such periods, it shall deliver to Purchaser a revised notice setting

forth its then current good faith estimate of hourly availabilities of the Facility for the balance of such month and the next month. Seller does not guarantee the accuracy of said notices and said notices are only intended to be its good faith estimate of the projected Availability of the Facility at the time such notice is given.

(B) Seller shall furnish to Purchaser a notice substantially in the form attached hereto as Exhibit K (an "Availability Notice") at or before 9:00 a.m. EPT on the Business Day immediately prior to the first Day to which such Availability Notice shall relate that shall set forth the amount of Renewable Energy that Seller anticipates will actually be available in each hour through the next Business Day. Each such Availability Notice shall be effective until delivery of a subsequent Availability Notice. Seller does not guarantee the accuracy of said notices and said notices are only intended to be its good faith estimate of the projected amount of Renewable Energy from the Facility at the time such notice is given.

10.8 Intentionally Deleted.

10.9 Planned Maintenance Schedule.

No later than two (2) months prior to (a) the Stage 1 Commercial Operation Date and (b) each calendar year thereafter during the Term, Seller shall submit to Purchaser a schedule of planned maintenance for the following calendar year for the Facility, which schedule shall be updated by Seller by each March 31 and September 30 thereafter to cover the twelve month period following each such update. Such schedule shall be consistent with the requirements of Good Utility Practice and the Interconnection Agreement, and otherwise in accordance with this REPA. No planned maintenance of the Facility or any portion thereof in excess of ten percent (10%) of the Total Facility Capacity may be scheduled during the period June, July, and August during any partial or calendar year of the Term, except as may be required by Good Utility Practice. Such schedule, and each supplement thereto, shall indicate the planned commencement and completion dates for each planned maintenance during the period covered thereby, as well as the affected portion(s) of the Facility. If Purchaser desires to change the scheduled commencement or duration of such planned maintenance, the Purchaser shall notify the Seller of the requested change and the Seller shall use reasonable efforts to accommodate the requested change. At least one (1) week prior to any planned maintenance that impacts more than ten percent (10%) of the Total Facility Capacity, Seller

shall telephonically notify Purchaser of the expected commencement date of such planned maintenance, the affected portion(s) of the Facility during such planned maintenance and the expected completion date of such planned maintenance. As soon as practicable, all such telephonic notification shall be confirmed in writing.

10.10 REC Compliance.

Seller shall be responsible for insuring that the GATS Certificates delivered under this REPA meet all requirements for entry into GATS and as otherwise specified by the PJM-EIS. Seller shall be responsible for registering and maintaining compliance during the duration of this REPA with GATS and the PJM-EIS and will be responsible for timely delivery as allowed by GATS and the PJM-EIS.

10.11 Public Statements/Other Use.

Without the written consent of Purchaser, Seller shall not (1) make any public statements or representations inconsistent with the provisions of this REPA with respect to the Renewable Energy Products (or any portion thereof), (2) use the Purchaser's Contract Capacity Share of the Facility's Beneficial Environmental Interests to meet any federal, state or local renewable energy requirement, renewable energy procurement, renewable energy portfolio standard or other renewable energy mandate or (3) advertise, market, sell, retire, convey or otherwise transfer or seek to transfer the Purchaser's Contract Capacity Share of the Facility's Beneficial Environmental Interests, which rights are expressly reserved to Purchaser during the Term of this REPA.

10.12 Real-Time Information.

Seller will use commercially reasonable efforts on and after the Stage 1 Commercial Operation Date to continuously transmit real-time data to Purchaser in compliance with Exhibit A and Exhibit H. Purchaser and Seller shall each bear the cost of and responsibilities for their respective systems, equipment and communications links required for receipt of such real-time information.

10.13 Web-Based Operational Reporting.

Purchaser may at its option make available to Seller on the Internet a web-based reporting system which will provide the Parties with the capability to generate and submit

standardized reports for purposes of satisfying the requirements of the Parties contained in Sections 10.2, 10.7 and 10.9. Purchaser will develop user requirements for such reporting system in consultation with Seller.

Article 11 - Security for Performance

11.1 Seller Security Fund.

(A) Seller shall establish, fund, and maintain a Security Fund, pursuant to the provisions of this Article 11, which shall be available to provide Purchaser security arising from Seller's failure to timely achieve * * * Seller shall (i) * * * and (iii) maintain the Security Fund at such required level throughout the remainder of the Term. Following written notification from the Purchaser of any draw, Seller shall replenish the Security Fund to such required level within five (5) Business Days after receipt of written notification of any draw on the Security Fund by Purchaser.

(B) Subject to the limitations of Section 12.4(A)(2), in addition to any other remedy available to it, Purchaser may, before or after termination of this REPA, draw from the Security Fund such amounts as are necessary to recover amounts Purchaser is owed pursuant to this REPA, including any damages due to Purchaser and any amounts for which Purchaser is entitled to indemnification under this REPA. Purchaser may, in its sole discretion, draw all or any part of such amounts due to it from any form of security to the extent available pursuant to this Section 11.1, and from all such forms, and in any sequence Purchaser may select. Any failure to draw upon the Security Fund or other security for any damages or other amounts due to Purchaser shall not prejudice Purchaser's rights to recover such damages or amounts in any other manner.

(C) The Security Fund shall be maintained at Seller's expense, shall be provided by a guarantor ("Seller Guarantor") or shall be originated by or deposited in a financial institution or company ("Issuer") reasonably acceptable to Purchaser, and shall be in the form of one or more of the following instruments. Seller may change the form of the Security Fund at any time and from time to time upon reasonable prior notice to Purchaser, but the Security Fund must at all times be comprised of one or any combination of the following:

(1) An irrevocable standby letter of credit, in form and substance reasonably acceptable to Purchaser, from an Issuer with a senior unsecured debt rating equivalent to

A- or better as determined by at least two (2) rating agencies, one of which must be either Standard & Poor's or Moody's (or if either one or both are not available, equivalent ratings from alternate rating sources acceptable to Purchaser). In addition, if such senior unsecured debt rating of the Issuer is exactly equivalent to A-, the Issuer must not be on credit watch by a rating agency. Security provided in this form shall be consistent with this REPA and include a provision for at least thirty (30) Days advance notice to Purchaser of any expiration or earlier termination of the security so as to allow Purchaser sufficient time to exercise its rights under said security if Seller fails to extend or replace the security. The form of such security must meet Purchaser's requirements to ensure that claims or draw-downs can be made unilaterally by Purchaser in accordance with the terms of this REPA. Such security must be issued for a minimum term of three hundred and sixty (360) Days. Seller shall cause the renewal or extension of the security for additional consecutive terms of three hundred and sixty (360) Days or more (or, if shorter, the remainder of the Term of this REPA) no later than thirty (30) Days prior to each expiration date of the security. If the security is not renewed or extended as required herein, Purchaser shall have the right to draw immediately upon the security and be entitled to hold the amounts so drawn as security, provided Purchaser satisfies the conditions of subparagraph (2)(i) below. If Purchaser does not meet the conditions of subparagraph (2)(i) below, Purchaser will place the amounts so drawn, at Seller's cost and with Seller's funds, in an interest bearing escrow account in accordance with subparagraph (2)(ii) below, until and unless Seller provides a substitute form of such security meeting the requirements of this Article. Security in the form of an irrevocable standby letter of credit shall be governed by the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Brochure No. 600.

(2) United States currency ("Cash"), deposited (i) with Purchaser provided that Purchaser satisfies the following conditions: (a) it is not a defaulting Party, and (b) Purchaser has a credit rating from Standard and Poor's of at least BBB or from Moody's of at least Baa2. Purchaser will pay interest to Seller on Cash held at the Federal Funds Effective Rate; or (ii) if, and only if, Purchaser does not meet the conditions of subparagraph (2)(i) above, then the Cash shall be held with Issuer, either: (a) in an account under which Purchaser is designated as beneficiary with sole authority to draft from the account or otherwise access the security; or (b) held by Issuer as escrow agent with instructions to pay claims made by Purchaser pursuant to this REPA, such instructions to be

in a form reasonably satisfactory to Purchaser. Security held pursuant to subparagraph (2)(ii) above shall be subject to the following: (x) include a requirement for immediate notice to Purchaser from Issuer and Seller in the event that the sums held as security in the account or trust do not at any time meet the required level for the Security Fund as set forth in this Section 11.1, (y) funds held in the account may be deposited in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three months or less, with all investment income thereon to be taxable to, and to accrue for the benefit of, Seller, and (z) after the Stage 1 Commercial Operation Date is achieved, annual account sweeps for recovery of interest earned by the Security Fund shall be allowed by Seller. Seller grants to Purchaser a present and continuing first priority security interest in all Cash which has been transferred to Purchaser or held by Issuer. At such times as the balance of Cash held by Purchaser or by Issuer exceeds the amount of Seller's obligation to provide security hereunder, Purchaser shall remit to Seller on demand any excess in the account above Seller's obligations.

(3) A guarantee or guarantees in such amounts as are determined by Seller, but totaling the amount of the applicable required Security Fund, from a Seller Guarantor or Guarantors (i) with a senior unsecured and uncredit-enhanced long term debt rating(s) of (a) BBB or better from Standard & Poor's or (b) Baa2 or better from Moody's at the applicable time or (ii) as otherwise satisfactory to Purchaser in its reasonably-exercised discretion. The guarantee shall be (a) if by BP Corporation North America Inc. or Dominion Resources Inc., or any of their US-based Affiliates, in the form set forth in Exhibit L, and (b) if by any other Seller Guarantor, in a form satisfactory to Purchaser in its reasonably-exercised discretion, using a form substantially similar to that set forth in Exhibit L as the starting point for such guarantee. If more than one guaranty is issued pursuant to this Section 11.1, Purchaser shall have the right to draw down on any one of such outstanding guaranties in accordance with this REPA for one hundred percent (100%) of a given claim eligible for payment thereunder, but only up to the total amount of such guaranty.

(D) If Purchaser has commercially reasonable grounds to believe that there has been a material adverse change in the creditworthiness of any Issuer or Seller Guarantor, then Seller shall be required to convert the Security Fund instrument provided by such Issuer or Seller Guarantor to a Security Fund instrument meeting the criteria set forth

in Section 11.1(C)(1), Section 11.1(C)(2), or Section 11.1(C)(3) no later than fifteen (15) Days after receiving notice from Purchaser that such conversion of the Security Fund instrument is required pursuant to this Section 11.1(D).

(E) Promptly following the end of the Term and the completion of all of Seller's obligations under this REPA, Purchaser shall release the Security Fund (including any accumulated interest, if applicable) to Seller.

* * *

Article 12 - Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following shall constitute an "Event of Default" of Seller upon its occurrence and no cure period shall be applicable:

- (1) Seller's dissolution or liquidation;
- (2) Seller's assignment of this REPA or any of its rights hereunder for the benefit of creditors (except for an assignment to the Facility Lender as security under the Financing Documents as permitted by this REPA);
- (3) Seller's filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or Seller voluntarily taking advantage of any such law or act by answer or otherwise;
- (4) The filing of a case in bankruptcy or any proceeding under any other insolvency law against Issuer providing a guarantee pursuant to Section 11.1(C)(3) hereof as debtor, if Seller fails to convert the Security Fund instrument provided by such Issuer into to a Security Fund instrument meeting the criteria set forth in Section 11.1(C)(1), Section 11.1(C)(2), or Section 11.1(C)(3) within five (5) Business Days;
- (5) The filing of a case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor, or against Seller's parent or any other Affiliate as debtor that could materially impact Seller's ability to perform its obligations hereunder, if such filing has not been dismissed within sixty (60) days of filing; and/or

(6) The sale by Seller to a third party, or diversion by Seller for any use, of Renewable Energy Products committed to Purchaser by Seller, provided that, during the period in which an Event of Default of Purchaser has occurred and is continuing, Seller may make such third party sales of Renewable Energy in mitigation of damages;

(B) Seller's failure to establish and maintain the funding of the Security Fund in accordance with Section 11.1 shall constitute an Event of Default of Seller subject to cure within five (5) Business Days after the date of written notice from Purchaser to Seller and the Facility Lender as provided for in Section 13.1;

(C) Seller's failure to make any payment required under this REPA; shall constitute an Event of Default of Seller subject to cure within ten (10) Days after the date of written notice from Purchaser to Seller and the Facility Lender as provided for in Section 13.1:

* * *

(E) Seller's failure to achieve the Stage 1 Commercial Operation Date by the Commercial Operation Milestone shall constitute an Event of Default of Seller subject to cure * * * after the date of written notice from Purchaser to Seller and the Facility Lender as provided for in Section 13.1; provided, however, that Seller shall have an * * * provided that, (1) Seller pays damages to Purchaser for such delay in accordance with Section 12.4(A) and (2) on or before the expiration of the * * *, an independent engineer, mutually agreed to by the Parties, retained by Purchaser and paid for by Seller, provides a written opinion to Purchaser stating that Seller's plan for * * * is reasonably achievable within such additional * * *. This provision would allow for a total cure period of * * * if all conditions of this paragraph are met. Notwithstanding the foregoing, damages for an Event of Default under this Section 12.1(E) shall be subject to the limitations set forth in Section 12.4(A).

(F) Any of the following shall constitute an Event of Default of Seller subject to * * * after the date of written notice from Purchaser to Seller and the Facility Lender as provided for in Section 13.1:

- (1) [reserved]
- (2) Any representation or warranty made by Seller in this

REPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Purchaser; and/or

* * *

12.2 Facility Lender's Right to Cure Default of Seller.

Seller shall provide Purchaser with a notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender. Following receipt of such notice, Purchaser shall provide notice of any Event of Default of Seller to the Facility Lender concurrently with the provision of such notice to Seller, and Purchaser will accept a cure to an Event of Default of Seller performed by the Facility Lender, so long as the cure is accomplished within the applicable cure period set forth in this REPA or such other period as provided in the Consent and Assignment.

12.3 Events of Default of Purchaser.

(A) Any of the following shall constitute an "Event of Default" of Purchaser upon its occurrence and no cure period shall be applicable:

(1) Purchaser's dissolution, or liquidation provided that division of Purchaser into multiple entities shall not constitute dissolution or liquidation;

(2) Purchaser's assignment of any of its rights hereunder for the benefit of creditors;

(3) Purchaser's filing of a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any State, or Purchaser voluntarily taking advantage of any such law or act by answer or otherwise;

(4) The filing of a case in bankruptcy or any proceeding under any other insolvency law against Purchaser that materially impacts Purchaser's ability to perform its obligations hereunder, if such filing has not been dismissed * * * and/or

(5) Purchaser's assignment of this REPA, except as permitted in accordance with Article 19.

(B) Purchaser's failure to make any payment due hereunder (net of outstanding damages and any other rights of offset that Purchaser may have pursuant to this REPA) shall constitute an Event of Default of Purchaser upon its occurrence but shall be subject to * * * after the date of written notice from Seller to Purchaser as provided for in Section 13.1:

(C) Purchaser's failure to comply with any material obligation under this REPA, other than as otherwise specified in this Article 12, which would result in a material adverse impact on Seller, shall constitute an Event of Default of Purchaser upon its occurrence but shall be subject to cure within thirty (30) Days after the date of written notice from Seller to Purchaser as provided for in Section 13.1, provided that if such failure is not capable of being * * *, then such cure period will be extended for an additional reasonable period of time, * * *, so long as Purchaser is exercising reasonable diligence to cure such failure.

(D) Any representation or warranty made by Purchaser in this REPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller, and shall constitute an Event of Default of Purchaser upon its occurrence but shall be subject to * * * after the date of written notice from Seller to Purchaser as provided for in Section 13.1.

* * *

12.4 Damages.

Upon the occurrence of an Event of Default, the non-defaulting Party shall have the right to collect damages accruing prior to the termination of this REPA from the defaulting Party as set forth below, and the payment of any such damages accruing prior to the cure of an Event of Default shall constitute a part of the cure, or its sole remedy, as applicable.

(A) Damages for Seller's Delay in or Failure to Achieve Stage 1 Commercial Operation Date.

(1) The Commercial Operation Milestone shall be February 15, 2010. The Commercial Operation Milestone shall be subject to extension for Force Majeure events, provided that, no extension to the Commercial Milestone

shall be provided with respect to Force Majeure delays in achieving Seller's conditions precedent specified in Article 6, for which Seller's sole remedy shall be the termination rights provided in Article 6. If Seller fails to achieve the Stage 1 Commercial Operation Date with respect to any portion of the Actual Stage 1 Facility Capacity on or prior to the Commercial Operation Milestone ("Delay"), Seller shall pay damages to Purchaser on account of such delay ("Delay Damages") for Purchaser's Contract Capacity Share of any such delayed Actual Stage 1 Facility Capacity in the amounts specified below: * * *

(2) * * *

(B) Actual Damages. For all Events of Default (other than Seller's failure to meet the Commercial Operation Milestone, for which Purchaser shall be entitled to collect Delay Damages pursuant to Section 12.4(A) and damages for failure to maintain the Guaranteed Availability, which are subject to a limitation in Section 7.2), the non-defaulting Party shall be entitled to receive from the defaulting Party all of the damages incurred by the non-defaulting Party in connection with such Event of Default, subject to the provisions of Sections 12.8 and 12.10. If Seller is the defaulting Party, the Parties agree that the damages recoverable by Purchaser hereunder on account of an Event of Default of Seller (other than Seller's failure to meet the Commercial Operation Milestone, for which Purchaser shall be entitled to collect Delay Damages pursuant to Section 12.4(A) and damages for failure to maintain the Guaranteed Availability, for which damages shall be as specified Section 7.2) shall include, but not be limited to, Replacement Energy Costs. If Purchaser is the defaulting Party, the Parties agree that the damages recoverable by Seller hereunder on account of an Event of Default of Purchaser shall include Seller's loss of Production Tax Credits resulting from Purchaser's default.

12.5 Termination.

Upon the occurrence of an Event of Default which has not been cured within the applicable cure period, and so long as such Event of Default continues to occur, the non-defaulting Party shall have the right to declare a date upon which this REPA shall terminate. Neither Party shall have the right to terminate this REPA 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 REPA. Upon the termination of this REPA under this Section 12.5, the non-defaulting Party shall be entitled to receive from the defaulting Party, all of the damages in-

curred by the non-defaulting Party in connection with such termination as set forth in Section 12.4.

12.6 Specific Performance.

In addition to the other remedies specified in this Article 12, in the event that any Event of Default of Seller is not cured within the applicable cure period set forth herein, Purchaser may elect to treat this REPA as being in full force and effect and Purchaser shall have the right to specific performance. If the breach by Seller arises from a failure by a third party operating the Facility pursuant to an operating agreement entered into with Seller, and Seller fails or refuses to enforce its rights under the operating agreement which would result in the cure, or partial cure, of the Event of Default, Purchaser's right to specific performance shall include the right to obtain an order compelling Seller to enforce its rights under the operating agreement. Likewise, for any breach of this REPA by Purchaser, other than payment obligations, Seller shall have the right to specific performance.

12.7 Remedies Cumulative.

Subject to the exclusivity of Delay Damages provided in Section 12.4(A), and the limitation of liability set forth in Section 7.2, each right or remedy of the Parties provided for in this REPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this REPA, 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 shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.8 Waiver and Exclusion of Other Damages.

The Parties confirm that the express remedies and measures of damages provided in this REPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. NEITHER PARTY SHALL 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); PROVIDED, THAT IF EITHER PARTY IS HELD LIABLE TO A THIRD PARTY FOR SUCH DAMAGES AND THE PARTY HELD LIABLE FOR

SUCH DAMAGES IS ENTITLED TO INDEMNIFICATION THEREFORE FROM THE OTHER PARTY HERETO, THE INDEMNIFYING PARTY SHALL BE LIABLE FOR, AND OBLIGATED TO REIMBURSE THE INDEMNIFIED PARTY FOR, SUCH 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.

12.9 Payment of Amounts Due to Seller or Purchaser.

Without limiting any other provisions of this Article 12 and at any time before or after termination of this REPA, either Party may send the other Party an invoice for such damages (including Delay Damages) or other amounts as are due to the invoicing Party at such time from the other Party under this REPA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges. * * *

12.10 Duty to Mitigate.

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

Article 13 - Contract Administration and Notices

13.1 Notices in Writing.

Notices required by this REPA shall be addressed to the other Party, including the other Party's representative on the Contract Administration Committee, at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this REPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed, postage prepaid, to the representative of said other Party. If mailed, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the Close of the Business Day

on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning Facility operations shall be exempt from this Section 13.1.

13.2 Representative for Notices.

Each Party shall maintain a designated representative to receive notices. Such representative may, at the option of each Party, be the same person as that Party's representative or alternate representative on the Contract Administration Committee, or a different person. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives.

The Parties' representatives designated above shall have authority to act for its respective principals in all technical matters relating to performance of this REPA and to attempt to resolve disputes or potential disputes. However, they, in their capacity as representatives, shall not have the authority to amend or modify any provision of this REPA.

13.4 Operating Records.

Seller and Purchaser shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this REPA, including such records as may be required by state or federal regulatory authorities and the Transmission Operator in the prescribed format.

13.5 Operating Log.

Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Facility with records of production for each Clock Hour; changes in operating status; Scheduled Outages/Deratings and Forced Outages for the purposes of proper administration of this REPA, including such records as may be required by state or federal regulatory authorities and the Transmission Operator in the prescribed format.

13.6 Billing and Payment Records.

To facilitate payment and verification, Seller and Purchaser shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records. All records of Seller pertaining to the operation of a Facility shall be maintained on the premises of the Facility or at such other location in the United States designated in writing by Seller to Purchaser.

13.7 Examination of Records.

Seller and Purchaser may examine the financial and Operating Records and data kept by the other Party relating to transactions under and administration of this REPA, at any time during the period the records are required to be maintained, upon request and during normal business hours.

13.8 Exhibits.

Exhibits A, B, and F may be changed at any time with the mutual, written consent of both Parties. Either Party may change the information for their notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit C may be changed only to the extent permitted under Section 20.4. Exhibit E may be changed in accordance with Section 16.2(B).

13.9 Dispute Resolution.

(A) In the event of any dispute, controversy or claim arising under or relating to this REPA, including the breach, termination or validity thereof (a "Dispute"), within ten (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", 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 thirty (30) Days after commencement of negotiations, within ten (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 ten (10) Business Days

after receipt of the Dispute summaries, the senior officers for both Parties shall negotiate in good faith to resolve the Dispute. The Parties agree that no statements of position or offers of settlement made in the course of such discussions or in such summaries shall be offered into evidence for any purpose in any litigation or arbitration between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation or arbitration. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation or arbitration.

(B) If the Parties are unable to resolve the Dispute within thirty (30) Days after commencement of negotiations of the Parties' Representatives, upon the demand of either Party the Dispute shall be resolved by binding and mandatory arbitration in accordance with this Section 13.9 and the then current Commercial Arbitration Rules (the "Procedures") of the American Arbitration Association (the "AAA") (regardless of limits on applicability set forth in Rule E-1 of the Procedures), as supplemented to the extent necessary to determine any procedural appeal questions by the Federal Arbitration Act (Title 9 of the United States Code). Specific provisions in this Section 13.9 shall control over contrary provisions in the Procedures.

(C) The Parties shall attempt jointly to select a sole arbitrator (the "Arbitrator"). The Parties shall have ten (10) Days after the demand for arbitration to mutually agree upon the Arbitrator. If they do not do so, each Party shall, on or before the twentieth (20th) Day after the demand for arbitration, appoint one person to serve as its arbitrator. The two arbitrators shall have until the thirtieth (30th) Day after the demand for arbitration to select a third impartial arbitrator who shall preside over the Arbitration Panel. Each arbitrator (whether the Arbitrator or the Arbitration Panel) shall have significant experience and expertise in the wind-powered electric generating industry and shall be a person who has never been a director, officer or employee of either Party or its Affiliates and who is not otherwise financially affiliated with any Party or its Affiliates.

(D) If the two arbitrators have not agreed upon an independent third arbitrator by such date, the Parties shall use the AAA's list of potential arbitrators under Rule E-5 of the Procedures which will meet the arbitrator qualifications set forth in Section 13.9(C). The Parties will have three (3) Business Days to select the third arbitrator either

by agreeing upon an arbitrator on the AAA's list or by striking proposed arbitrators as provided in Rule E-5 of the Procedures. If the Parties cannot agree on a third arbitrator, or if a Party fails timely to appoint its own arbitrator under Section 13.9(C), the AAA office in Indianapolis, Indiana shall appoint such arbitrator(s) in accordance with the Procedures, with due regard to the selection criteria set forth above and input from the Parties and other arbitrators. The three arbitrators so appointed together shall be referred to as the "Arbitration Panel."

(E) Each Party shall have the right to conduct discovery to the extent reasonably necessary for it to be able to present its case to the Arbitrator or the Arbitration Panel, as applicable, and up to five depositions of knowledgeable persons; provided that any disagreement between the Parties as to what constitutes reasonable discovery shall be resolved by the Arbitrator or the Arbitration Panel, as applicable. The fact that either Party has invoked the provisions of this Section 13.9, the arbitration proceedings and related communications, and the decision of the arbitrators shall all be considered confidential information subject to Section 20.15 hereof, and the arbitrators shall make no disclosure of any confidential information that would not be permitted by a Party under Section 20.15.

(F) Unless an Arbitration Panel is selected as provided above, the Arbitrator shall act as the sole arbitrator. The Arbitrator or Arbitration Panel, as applicable, shall promptly conduct telephonic hearings to issue prompt rulings on any discovery disputes. Upon selection, the Arbitrator or Arbitration Panel shall promptly establish a schedule for submitting briefs and supporting documents. The Arbitrator or Arbitration Panel, as applicable, shall hold an oral hearing on the merits within ninety (90) days of being selected. The Arbitrator or Arbitration Panel shall render a final decision within thirty (30) days of the conclusion of oral hearing on the merits. Each Party shall bear one-half of the costs of arbitration, and each Party shall bear its own attorneys' fees and costs. The place of arbitration shall be Indianapolis, Indiana or such other place as is convenient to the Arbitrator or the Arbitration Panel, as applicable, and mutually agreed by the Parties in writing.

(G) The award rendered by the Arbitrator or the Arbitration Panel shall be final and binding and shall be the sole and exclusive remedy between the Parties regarding the Dispute in question. The award may be enforced in accordance with the terms of this REPA by any court having jurisdiction thereof. The Arbitrator or the Arbitration

Panel, as applicable, may not grant or award consequential, incidental, punitive, exemplary, treble or indirect damages or lost profits.

TABLETABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

(I) Notwithstanding any provision in this REPA to the contrary, if no Dispute Notice has been issued within twenty-four (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), the Dispute and all claims related thereto shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon.

(J) Nothing in this Section 13.9 shall preclude, or be construed to preclude, the resort by either Party to a court of competent jurisdiction solely for the purposes of securing a temporary or preliminary injunction to preserve the status quo or avoid irreparable harm pending arbitration pursuant to this Section 13.9.

Article 14 - Force Majeure

14.1 Definition of Force Majeure.

(A) The term "Force Majeure", as used in this REPA, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, including acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage the Facility or significantly impair its construction or operation for a period of time longer than normally encountered in similar businesses under comparable circumstances; long-term material changes in renewable energy flows across the Facility caused by climatic change; lightning; fire; ice storms; sabotage; terrorism; war; riots; fire; explosion; blockades; insurrection; strike; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); and actions or inactions by any Governmental Authority taken after the date hereof (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such Governmental Authority) but only if such requirements, actions, or failures to act prevent or delay performance; and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any Governmental Authority.

(B) The term Force Majeure does not include (i) any acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves excused by reason of Force Majeure; (ii) any full or partial curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions, unless such breakdown, mishap or events or conditions are themselves excused by reason of Force Majeure; (iii) changes in market conditions that affect the cost of Purchaser's or Seller's supplies, or that affect demand or price for any of Purchaser's or Seller's products; (iv) the inability for any reason to pay amounts hereunder when due.

14.2 Applicability of Force Majeure.

(A) Other than as set forth in Section 14.3, neither Party shall be responsible or liable for any delay or failure in its performance under this REPA, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

(1) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the Force Majeure;

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

(3) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure; and

(4) when the non-performing Party is able to resume performance of its obligations under this REPA, that Party shall give the other Party written notice to that effect.

Failure of a Party to comply with provisions (1) through (4) of this Section 14.2(A) shall create liability of such Party only to the extent the other Party was damaged by such failure.

(B) Except as otherwise expressly provided for in this REPA, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations un-

der this REPA (including payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

14.3 Limitations on Effect of Force Majeure.

In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this REPA beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted * * * from its occurrence or inception, as noticed pursuant to Section 14.2(A), the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) Day period, and until the Force Majeure interruption ends; terminate this REPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, * * * for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure.

Article 15 - Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants.

Seller hereby represents, warrants, or covenants, as applicable:

(A) Seller is a limited liability company 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 assets, and to execute, deliver, and perform its obligations under this REPA.

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

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained

and is in full force and effect (evidence of which shall be delivered to Purchaser upon its request);

(2) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Seller or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this REPA, provided that, as to performance, Seller must obtain and maintain certain governmental permits and approvals and comply with any subsequently-imposed legal requirements related to performance;

(3) result in a breach or constitute a default under Seller's formation documents 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 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 REPA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this REPA) upon or with respect to any of the assets 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 REPA.

(C) This REPA is a valid and binding obligation of Seller, subject to the conditions precedent identified in Article 6.

(D) The execution and performance of this REPA 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 or the Facility.

(E) Seller shall disclose to Purchaser, the extent of, and as soon as it is known to Seller, any violation of any environmental laws or regulations arising out of the construction or operation of the Facility, or the presence of Environmental Contamination at the Facility or on the Site, alleged to exist by any Governmental Authority having jurisdiction over the Site, or the existence of any past or present enforcement, legal, or regulatory action or pro-

ceeding relating to such alleged violation or alleged presence of Environmental Contamination.

15.2 Purchaser's Representations and Warranties.

Purchaser hereby represents and warrants as follows:

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

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

(1) require any consent or approval of Purchaser's Board of Directors, or shareholders, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Seller upon its request);

(2) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award currently in effect having applicability to Purchaser or violate any provision in any corporate documents of Purchaser, the violation of which could have a material adverse effect on the ability of Purchaser to perform its obligations under this REPA;

(3) result in a breach or constitute a default under Purchaser's corporate charter or bylaws, or under any agreement relating to the management or affairs of Purchaser, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Purchaser is a party or by which Purchaser 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 Purchaser to perform its obligations under this REPA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this REPA) upon or with respect

to any of the assets or properties of Purchaser 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 Purchaser to perform its obligations under this REPA.

(C) This REPA is a valid and binding obligation of Purchaser.

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

(E) All approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Purchaser's execution, delivery and performance of this REPA, have been duly obtained and are in full force and effect.

Article 16 - Insurance

16.1 Evidence of Insurance.

Upon request made on or after the commencement of construction of the Facility, Seller shall provide Purchaser with insurance certificates reasonably acceptable to Purchaser evidencing that insurance coverages for the Facility are in compliance with the specifications for insurance coverage set forth in Exhibit E to this REPA. Such certificates shall (a) name Purchaser as an additional insured under the commercial general liability, business automobile liability, and excess liability policies; (b) provide a waiver of any rights of subrogation against Purchaser, its Affiliates and their officers, directors, agents, subcontractors, and employees; and (c) indicate that the Commercial General Liability policy has been endorsed as described above. All policies shall be written with insurers that Purchaser, in its reasonable discretion, deems acceptable (such acceptance will not be unreasonably withheld). All policies shall be written on an occurrence basis, except as provided in Section 16.2. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by Purchaser. Seller's liability under this REPA is not limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All insurance required under this REPA shall cover occurrences during the Term and for a period of two (2) years after the Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this REPA and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) years after the Term.

(B) If any insurance required to be maintained by Seller hereunder ceases to be available on commercially reasonable terms in the commercial insurance market, Seller shall provide written notice to Purchaser, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not available on commercially reasonable terms in the commercial insurance market for electric generating plants of similar type, geographic location and design. Upon receipt of such notice, Seller shall use commercially reasonable efforts to obtain other insurance that would provide comparable protection against the risk to be insured, Purchaser shall not unreasonably withhold its consent to modify or waive such requirement.

16.3 Self-Insurance.

Seller shall have the right to self-insure any of the required coverages in Section 16.2 to the extent permissible by applicable statute. In the event that Seller elects to self-insure, Seller will provide Purchaser with evidence of such insurance via an on-line "Memorandum of Insurance."

Article 17 - Indemnity

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Article 18 - Legal and Regulatory Compliance

(A) Each Party shall at all times comply with all laws, ordinances, rules, and regulations applicable to it, except for any non-compliance which, individually or in the aggregate, could not reasonably be expected to have a material effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder. As applicable, each Party shall give all required notices, shall procure and maintain all governmental permits, licenses, and inspections necessary for performance of this

REPA, and shall pay its respective charges and fees in connection therewith.

(B) Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available, upon reasonable request, personnel and records relating to the Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation, including administrative proceedings before utility regulatory commissions.

Article 19 - Assignment, Subcontracting, and Financing

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19.2 Accommodation of Facility Lender.

Purchaser shall make reasonable efforts to provide such consents to assignments, certifications, representations, information or other documents as may be reasonably requested by Seller or the Facility Lender in connection with the financing of the Facility, which shall include providing Facility Lender with the protections contained in the form of Consent and Assignment attached hereto as Exhibit N; provided, that in responding to any such request, Purchaser shall have no obligation to provide any consent, or enter into any agreement (other than as provided in the Consent and Assignment), that materially adversely affects any of Purchaser's rights, benefits, risks and/or obligations under this REPA. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Purchaser for the incremental direct expenses (including the reasonable fees and expenses of counsel) incurred by Purchaser in the preparation, negotiation, execution and/or delivery of any documents requested by Seller or the Facility Lender, and provided by Purchaser, pursuant to this Section 19.2.

19.3 Notice of Facility Lender Action.

Within ten (10) Days following Seller's receipt of each written notice from the Facility Lender of default, or Facility Lender's intent to exercise any remedies, under the Financing Documents, Seller shall deliver a copy of such notice to Purchaser.

19.4 Transfer Without Consent is Null and Void.

Any sale, transfer, or assignment of any interest in the Facility or in this REPA made without fulfilling the requirements of the REPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

19.5 Subcontracting.

Seller may subcontract its duties or obligations under this REPA without the prior written consent of Purchaser, provided, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

Article 20 - Miscellaneous

20.1 Waiver.

The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this REPA, or to take advantage of any of its rights there under, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect. No provision of this REPA shall be waived except in a writing signed by the waiving Party.

20.2 Taxes.

(A) Seller shall be solely responsible for any and all present or future taxes relating to the construction, equipment procurement, ownership or leasing, operation or maintenance of the Facility, or any components or appurtenances thereof, and all ad valorem and other taxes attributable to the Facility, land, land rights or interests in land for the Facility. Purchaser shall be solely responsible for any and all present or future taxes (other than taxes on Seller's net income) incurred by reason of the sale and delivery of Renewable Energy and Beneficial Environmental Interests to Purchaser, or incurred at and after the delivery of the Renewable Energy to the Point of Delivery.

(B) The Parties shall cooperate to minimize tax exposure; however, neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder. All Renewable Energy delivered by Seller to Purchaser hereunder shall be sales for resale, with Purchaser reselling such Renewable Energy. Purchaser shall obtain and provide Seller with any certificates required by any Governmental Authority, or otherwise

reasonably requested by Seller to evidence that the deliveries of Renewable Energy hereunder are sales for resale.

20.3 Fines and Penalties.

(A) Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this REPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination.

(B) If fees, fines, penalties, or costs are claimed or assessed against either Party by any Governmental Authority due to noncompliance by the other Party with this REPA, any requirements of law with which compliance is required by this REPA, any permit or contractual obligation, or, if the work of the other Party or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to the other Party's noncompliance with any requirements of law with which compliance is required by this REPA, permit, or contractual obligation, such other Party shall indemnify and hold the first-mentioned Party, the first-mentioned Party's Affiliates and each of its and their directors, officers, employees, and agents harmless against any and all losses, liabilities, damages, and claims suffered or incurred by any such person or entity of the first-mentioned Party, including claims for indemnity or contribution made by third parties against the first-mentioned Party, except to the extent such person or entity of the first-mentioned Party recovers any such losses, liabilities or damages through other provisions of this REPA. Except as otherwise provided in this Section 20.3(B), any fines, penalties or other costs incurred by either Party, its Affiliates, or its and their directors, officers, employees, agents, or subcontractors for non-compliance by any of them with applicable laws will not be reimbursed by the other Party but will be the sole responsibility of such non-complying Party, its Affiliates, its and their directors, officers, employees, agents, or subcontractors (as the case may be).

20.4 Rate Changes.

(A) The terms and conditions and the rates for service specified in this REPA shall remain in effect for the term of the transaction described herein. Absent the Parties'

written agreement, this REPA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act.

(B) Absent the agreement of all parties to the proposed change, the standard of review for changes to this REPA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review set forth in [United Gas Pipe Line v. Mobile Gas Service Corp., 350 U.S. 332 \(1956\)](#) and [Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 \(1956\)](#) (the "Mobile-Sierra doctrine"), or otherwise the most stringent standard of review permissible under applicable law to preserve the intent of the parties pursuant to this Section 20.4 to uphold the sanctity of contracts without modification.

20.5 Disclaimer of Third Party Beneficiary Rights.

In executing this REPA, Purchaser does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Other than as expressly provided herein with respect to the Facility Lenders, nothing in this REPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this REPA.

20.6 Relationship of the Parties.

(A) This REPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform Seller's services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of Purchaser for any purpose; nor shall Seller represent to any person that he or she is or shall become a Purchaser employee.

20.7 Equal Employment Opportunity Compliance Certification.

Each Party acknowledges that the other Party, as a government contractor or as the Affiliate of a government contractor, is or may be subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to the other Party as a result of its execution of this REPA. All applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including [41 C.F.R. §60-1.4\(a\)\(1-7\)](#).

20.8 Survival of Obligations.

Cancellation, expiration, or earlier termination of this REPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, remedies, or indemnities, which obligations shall survive for the period of the applicable statute(s) of limitation.

20.9 Severability.

In the event any of the terms, covenants, or conditions of this REPA, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the REPA and their application not adversely affected thereby shall remain in force and effect; provided, however, that Purchaser and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this REPA with a view toward effecting the purposes of this REPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

20.10 Complete Agreement; Amendments.

The terms and provisions contained in this REPA constitute the entire agreement between Purchaser and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Purchaser and Seller with respect to the sale of Renewable Energy Products from and associated with the Facility. This REPA may be

amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto.

20.11 Binding Effect.

This REPA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

20.12 Headings.

Captions and headings used in this REPA are for ease of reference only and do not constitute a part of this REPA.

20.13 Counterparts.

This REPA may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

20.14 Governing Law.

The interpretation and performance of this REPA and each of its provisions shall be governed and construed in accordance with the laws of the State of New York without regard its conflicts of laws provisions.

20.15 Confidentiality.

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20.16 Forward Contract.

The Parties acknowledge and agree that this REPA and the transactions contemplated by this REPA constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Seller is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

IN WITNESS WHEREOF, the Parties have executed this REPA.

Seller:

Fowler Ridge II Wind Farm LLC

By:

Name: David A. Stoner

Title: Vice President

Purchaser:

Indiana Michigan Power Company

By: _____

Name: _____

Title: _____

EXHIBIT A to Renewable Energy Purchase Agreement Dated February 5, 2009, Between Fowler Ridge II Wind Farm LLC and Indiana Michigan Power Company

TELEMETRY AND COMMUNICATIONS EQUIPMENT

Seller shall provide or cause to be provided the following telemetry and communications equipment:

A. Data Feeds:

1) OPC feed from Facility SCADA server of all data specified in Exhibit H to Purchaser's on-site server or MODBUS or similar, and

2) Facility substation or Point of Interconnect data feed of the Revenue Meter data and all Sub-meter data from Facility substations via DNP or MODBUS and all over Ethernet to Purchaser's off-site server.

3) The data provided in A-1 will be transmitted over a separate physical network from data provided in A-2.

B. Equipment:

1) Data line (minimum 256K up/down TCP/IP) to the Facility substation

2) Server rack/UPS and space in Facility substation server room for Purchaser's on-site server and other related communications equipment.

3) Analog phone line in the Facility substation for use by Purchaser (at Purchaser's cost).

4) DSL line to the Facility substation and/or Point of Interconnect for use by Purchaser (separate physical connection from the Dataline in B-1) (at Purchaser's cost).

EXHIBIT B to Renewable Energy Purchase Agreement Dated February 5, 2009, Between Fowler Ridge II Wind Farm LLC and Indiana Michigan Power Company

FACILITY DESCRIPTION AND SITE MAPS

A. Facility Description

Seller's wind-electric generation facilities located on the Site, including but not necessarily limited to: Wind Turbines, supervisory control and data acquisition system, padmounted transformers, collection system, step up transformers, substations, switching stations, rights in Seller's Interconnection Facilities sufficient to transmit the entire output of the Facility, and related facilities and equipment.

B. Site Maps and Description

See attached maps

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EXHIBIT C to Renewable Energy Purchase Agreement Dated February 5, 2009, Between Fowler Ridge II Wind Farm LLC and Indiana Michigan Power Company

CONTRACT RATE

(\$ Per MWh)

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The Contract Rate for Saturdays, Sundays, and all NERC

Holidays shall be:

TABLETABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

ment Dated February 5, 2009, Between Fowler Ridge II Wind Farm LLC and Indiana Michigan Power Company

NOTICE ADDRESSES

EXHIBIT D to Renewable Energy Purchase Agreement Purchaser

Seller

Notices:
Indiana Michigan Power Company C/O American Electric Power Service Corporation 155 West Nationwide Boulevard Columbus, OH 43215 Attn: Contract Administration Fax:(614) 583-1606

Notices:
Fowler Ridge II Wind Farm LLC C/O BP Alternative Energy North America Inc. 700 Louisiana Street, 33rd Floor Houston, TX 77002 Attn: President Fax: (713) 354-2120

with copies to:
American Electric Power Service Corporation 155 West Nationwide Boulevard Columbus, OH 43215 Attn: Director, Credit Risk Department Fax: (614) 583-1604

With a copy to:
BP America Inc. 501 Westlake Blvd. Houston, TX 77070 Attn: Law Department Fax: (281) 366-7583

and
Attn: Chief Counsel, CO&L American Electric Power Service Corporation 155 West Nationwide Boulevard Columbus, OH 43215 Attn: Chief Counsel Fax: (614) 583-1603

Contract Administration Committee Representative: Jay Godfrey (614) 583-6162 jfgodfrey@aep.com

Contract Administration Committee Representative: Reid Buckley (510) 267-9323 Reid.Buckley@bp.com

Alternate: To be designated in writing by Purchaser at or prior to the first meeting of the Contract Administration Committee

Alternate: To be designated in writing by Seller at or prior to the first meeting of the Contract Administration Committee

EXHIBIT E to Renewable Energy Purchase Agreement Dated February 5, 2009, Between Fowler Ridge II Wind Farm LLC and Indiana Michigan Power Company

ment Dated February 5, 2009, Between Fowler Ridge II Wind Farm LLC and Indiana Michigan Power Company

INSURANCE COVERAGE

Point of Delivery

SPECIFICATION OF INSURANCE COVERAGE

The "Point of Interconnection" identified and defined in the Interconnection Agreement, which will be at or near the Dequine substation 345kV bus.

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EXHIBIT H to Renewable Energy Purchase Agreement Dated February 5, 2009, Between Fowler Ridge II Wind Farm LLC and Indiana Michigan Power Company

EXHIBIT F to Renewable Energy Purchase Agreement Dated February 5, 2009, Between Fowler Ridge II Wind Farm LLC and Indiana Michigan Power Company

Requirements Specification Real Time Data Requirements for Wind Farms PJM Version 1.1

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EXHIBIT G to Renewable Energy Purchase Agree-

Requirements Specification

Real Time Data Requirements for Wind Farms**Version 1.1**1. Purpose

The purpose for real time data from the Wind Farm SCADA system to AEP's Generation Control System is so that AEP is able to utilize detailed information, such as individual measured turbine wind speeds, in order to produce the most accurate generation forecast for the wind farm.

2. Required Wind Farm SCADA Information

Data must be collected by the wind farm SCADA system and transmitted to the AEP RTU at a minimum refresh rate of once every 30 seconds. Minimum required SCADA information includes the following:

- i. Total wind farm output (MW and MVAR), which should come from the same metering that the interconnect agreement stipulates
- ii. Meteorological Tower Data
 - a) Temperature
 - b) Pressure
 - c) Relative Humidity
 - d) Wind Speed
 - e) Wind Direction
- iii. Per Turbine Information:
 - a) Output (in kW and kVAR)
 - b) Wind Speed (in m/s or mph, with at least one decimal point resolution)
 - c) Wind Direction (in degrees)
 - d) Status

1. Available (turbine is in the run state and able to generate)
 2. Maintenance mode (turbine placed in service by an operator)
 3. Faulted (auto shutdown of the turbine due to an out of spec condition)
 4. Curtailment (includes Economic and Reliability)
 5. Communication loss (Wind Turbine is not communicating with the SCADA system. Does not indicate a mechanical problem, Wind Turbine is assumed to be generating)
- e) Blade Angle(s) in Degrees (to the extent provided by SCADA supplier)

3. Data Communication to AEP

Data communication of the required wind farm SCADA and revenue quality metering information to AEP must include communication paths to AEP's information systems: 1) access to substation RTU (metering data only), and 2) with a TCP/IP network connection to a PC, which will be owned and maintained by AEP and located at the wind farm site (SCADA information from 2(ii) and 2(iii) above). AEP will be responsible for the telecommunication lines and equipment from the RTU and the AEP PC to AEP's information systems. The wind farm owner must be responsible for any telecommunications from the wind farm SCADA to the AEP PC.

Communication to the RTU at the wind farm site should be accomplished using an industry standard interface, both in hardware interface and in software protocol, that can be supported by the RTU. At a minimum, RTUs should support RS232 hardware, using either Modbus or DNP protocol, although there may be other hardware interfaces and software protocols that can be utilized.

Communication to AEP using a PC located at the site and a dedicated TCP/IP network connect should use an industry standard protocol (such as OPC or Modbus TCP, where the AEP PC would be an OPC/Modbus client that collects data from Seller's OPC/Modbus server) to communicate the point data from the wind farm SCADA to the AEP PC.

4. Point-to-point check out

The SCADA vendor will be required to perform a point-

by-point data checkout, verifying that each point is properly transmitted to the AEP RTU and AEP PC. All metering, communications and point-to-point check out must be completed prior to the delivery of test energy:

Data	Units
Turbine Data	
For each turbine (n = 1 to number of turbines at site)	
Turbine n Nacelle Wind Speed	m/s
Turbine n Nacelle position	deg
Turbine n Wind Deviation	deg
Turbine n Turbine Power	kW
Turbine n BladeAngle 1 - Actual	deg
Turbine n BladeAngle 2 - Actual	deg
Turbine n BladeAngle 3 - Actual	deg
Turbine n Turbine Status	See below for turbine statuses
Met Data	
For each Met Tower (n = 1 to number of Met Towers at site)	
Met n Wind Speed (multiple points if multiple heights are available)	m/s
Met n Wind Direction	deg
Met n Ambient Temperature	deg C
Met n Barometric Pressure	mB
Met n Humidity	%

Turbine Statuses:

1. Ready to generate, but wind speed too low
2. Ready to generate, but wind speed too high
3. Online and generating
4. Offline due to scheduled outage, or unplanned outage

EXHIBIT J

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EXHIBIT K to Renewable Energy Purchase Agreement Dated February 5, 2009, Between Fowler Ridge II Wind Farm LLC and Indiana Michigan Power Company

EXHIBIT I to Renewable Energy Purchase Agreement Dated February 5, 2009, Between Fowler Ridge II Wind Farm LLC and Indiana Michigan Power Company

FORM OF AVAILABILITY NOTICE

Effective Date _____

RESERVED

Time _____

Hour	Capacity	No. of Wind Tur-	Ancillary Services	Reason for Change in Capac-
------	----------	------------------	--------------------	-----------------------------

	bines in Operation	ity/No. of Wind Turbines
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
TOTAL		

EXHIBIT L to Renewable Energy Purchase Agreement Dated February 5, 2009, Between Fowler Ridge II Wind Farm LLC and Indiana Michigan Power Company

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ACCEPTED AND AGREED TO THIS ____ DAY OF _____, 200__

INDIANA MICHIGAN POWER COMPANY

By: _____

Name: _____

Title: _____

EXHIBIT M to Renewable Energy Purchase Agreement Dated February 5, 2009, Between Fowler Ridge II Wind Farm LLC and Indiana Michigan Power Company

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EXHIBIT N to Renewable Energy Purchase Agreement Dated February 5, 2009, Between Fowler Ridge II Wind Farm LLC and Indiana Michigan Power Company

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[SIGNATURES FOLLOW]

TABLETABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

[Assignor]

STATE OF INDIANA)
)
COUNT OF ALLEN)

Marc E. Lewis, being first duly sworn, deposes and says:

1. I am employed by Indiana Michigan Power Company (I&M or Company) as Vice President of External Relations. I received a Bachelor of Science degree in Economics from the University of Kentucky in 1977 and a Juris Doctorate degree from the Ohio State University in 1981. I represented the Staff of the Public Service Commission of West Virginia from 1981 to 1986, focusing on telecommunications and electricity regulation. From 1986 to 2004, I represented I&M and other affiliated companies in regulatory proceedings in Indiana, Michigan, Texas, Oklahoma, Louisiana and Arkansas, focusing primarily on I&M regulatory, corporate, bankruptcy, litigation, and legislative matters as a Staff Attorney, Senior Attorney and then Assistant General Counsel. In 2005, I accepted the position of Vice President of External Relations and have responsibilities for governmental relations, community relations and corporate communications. I am actively involved in legislative and regulatory matters, including I&M's interest in developing wind power as part of its generation portfolio.

By: _____

Title:

Name:

[Agent]

By: _____

Name:

Title:

By: _____

Name:

Title:

AFFIDAVIT OF MARC E. LEWIS

ss:

2. I&M's request for Commission approval of a renewable wind energy project power purchase agreement with Fowler Ridge II Wind Farm, LLC, a subsidiary of BP Wind Energy North America (BPWE), and the means by which I&M proposes to recover the cost of the Fowler Ridge II Wind Power Purchase Agreement (Fowler Ridge II Wind PPA) is a reasonable and prudent request. BPWE and its indirect subsidiaries are not affiliates of I&M.

3. I&M is seeking Commission approval under Section 37 of Act 295 and under Section 6j(13)(b) of Act 304 of a renewable energy purchase power agreement for wind between I&M and Fowler Ridge II Wind Farm. Under the agreement, I&M would purchase approximately 50 MWs of wind power from Fowler Ridge Wind Farm II, LLC, a subsidiary of BPWE. The source of the energy would be a wind farm located in Benton County, Indiana (with a portion in Tippecanoe County). I&M is also seeking authority to recover all of the costs of the 20-year Fowler Ridge II Wind PPA through I&M's Power Supply Cost Recov-

ery Clause.

4. I&M's request in this case is similar to the request made in Case No. U-15361 in which I filed testimony. On December 4, 2007 in Case No. U-15361 the MPSC approved I&M's 100 MW wind purchased power agreement and cost recovery with the Fowler Ridge Wind Farm in Benton County, Indiana. In that case, I&M requested Commission approval of a wind purchased power agreement to begin delivery of power on or before December 31, 2008 to I&M for a period of twenty years. The agreement provided that I&M would also receive the renewable energy certificates (RECs) that may be produced. The Commission authorized I&M's costs associated with the Fowler Ridge purchase power agreement be included in I&M's PSCR clause and factors.

5. I am familiar with [MCL 460.1027](#), Act 295 which establishes a renewable portfolio standard for I&M of approximately 10% renewable power generation by 2015. I am also familiar with the Commission's Temporary Order issued on December 4, 2008 in Case No. U-15800 to implement Act 295. In its Temporary Order, the Commission directed I&M to file its renewable energy plan in Case No. U-15808. The Commission also directed energy providers who must file renewable energy contracts with the Commission for review and approval under Section 37, to file the request in the Commission docket assigned to the provider for filing of its renewable energy plan.

6. The characteristics of wind generation and the proposed Fowler Ridge II Wind PPA are contained in I&M's Renewable Energy Plan as approved by the Commission on May 12, 2009 in Case No. U-15808. In Case No. U-15808, I&M set forth its plan to meet the renewable energy standards of the "Clean, Renewable, and Efficient Energy Act" 2008 PA 295 (the Act). Pursuant to the Act, the renewable portfolio standard for I&M is approximately 10% renewable power generation by 2015. I&M's plan to meet the renewable energy standards includes the additional purchase of electric energy and capacity produced by wind generation. In particular, AEP has made a public commitment to achieve a System-wide goal of adding 2,000 MW (nameplate) of wind resources by 2011 as part of its comprehensive strategy to address greenhouse gas (GHG) emissions. I&M's contribution to this goal includes the addition of 150 MW of renewable wind generation from the Fowler Ridge Wind Farm by 2011 (100 MW from the first phase is currently on line). Beyond this nearer term goal it is anticipated that I&M would seek an additional 820 MW by 2016 for a total of

970 MW of renewable wind generation in order to achieve the requirements set forth in the Act. This additional wind generation will be shared between Indiana and Michigan customers on a jurisdictional allocation basis, with 15.5% assumed to be allocated to Michigan based on the projected ratio of Michigan's internal energy requirements to total I&M internal energy requirements through 2029. At present, all of the additional wind capacity is expected to be obtained through Purchase Power Agreements (PPAs).

7. The Fowler Ridge II Wind PPA is a renewable energy contract as defined in Act 295, [MCL 460.1011\(c\)](#) and Fowler Ridge II is a renewable energy system as defined in Act 295, [MCL 460.1011\(k\)](#).

8. The Fowler Ridge II Wind PPA meets the location requirements of the Act under [MCL 460.1029\(2\)\(g\)](#) which states a renewable energy system must be a wind energy system that is interconnected to the electric provider transmission system, and is located in a state in which the electric provider has service territory. The Fowler Ridge Wind Farm II is located in Indiana, a state in which I&M has service territory, and is interconnected to I&M's transmission network. In addition, Fowler Ridge II Wind Farm is conveniently located close to I&M's transmission network, which is within the PJM Interconnection, LLC (PJM) footprint. As such, it will be relatively easy to transmit the power from the wind farm to I&M's customers. Moreover, the processing of the request for an interconnection to the network is completed with executed Interconnection Service and Construction Service Agreements filed with the Federal Energy Regulatory Commission.

9. I&M is interested in adding additional wind energy to its generation portfolio in order to comply with I&M's Renewable Energy Plan and I&M supports the use of wind energy as a means for creating a diverse portfolio of generating resources. While wind has certain operational challenges, it is also a non-emitting source of electricity that can further diversify I&M's generation portfolio, which also includes coal, nuclear, and hydro generation.

10. I&M executed the Fowler Ridge II Wind PPA for the purchase of approximately 50 MWs of wind power at a competitive price after negotiations over the terms, conditions and price. The Fowler Ridge II Wind PPA is expected to begin initial delivery of power on or before February 15, 2010 and will supply energy under the Fowler Ridge II Wind PPA to I&M for a period of 20 years. In

addition, the Fowler Ridge II Wind PPA provides that I&M will receive the RECs that may be produced by Fowler Ridge II Wind Farm.

11. I&M's Application seeks Commission approval to recover the Michigan jurisdictional portion of the Fowler Ridge II Wind PPA costs on an accrual basis as part of its PSCR proceedings. The Fowler Ridge II Wind PPA satisfies the factors listed in Section 37(a), (b) and (c) because the costs associated with this contract will be recovered in I&M's annual PSCR factors and therefore it is unlikely that I&M would experience any financial rating change due to the contract. Further, the contract is consistent with the rate impact limits under [Section 45](#) of Act 295, [MCL 460.1045](#).

12. The Fowler Ridge II Wind PPA 20-year contract term, which is the longest contract term presently being offered by wind developers, provides I&M with an adequate source of renewable energy for a reasonable period of time. Because of the adequate length of the contract and because the possibility of market based pricing will occur after that time, the review of possible replacement costs is unnecessary.

13. The Fowler Ridge II Wind PPA produces real benefits for I&M, its customers, and the State of Michigan. The Fowler Ridge II Wind PPA also reduces I&M's variable costs, improves its capacity settlement position in the AEP Pool, and increases the potential for off system sales. The Fowler Ridge II Wind PPA also further diversifies I&M's generation portfolio, and meets the increasing in-

terest of customers in the use of more renewable resources. It also provides an opportunity for I&M and its customers to learn more about the use of renewable resources as a means for serving their energy needs.

14. Approval of the application in this case is not an alteration or amendment in rates or rate schedules and it will not result in an increase in the cost of service to I&M's customers.

15. I&M's Application requests that the Commission approve the Fowler Ridge II Wind PPA between I&M and Fowler Ridge II Wind Farm LLC and authorize I&M to engage in the Fowler Ridge II Wind PPA as a renewable energy project for purposes of Section 37 of Act 295. I&M also requests approval of all of the purchased power costs related to the purchase over the full 20-year term and the authority to recover the retail portion of those costs on an accrual basis in accordance with Section 6j(13)(b) of Act 304.

16. Based on my experience, I believe it is in I&M's best interest, as well as its customers' best interest, for the Commission to grant the Company's request to approve the Fowler Ridge II PPA.

Further Affiant Sayeth not.

Marc E. Lewis Indiana Michigan Power Company Vice President of External Relations

STATE OF INDIANA)
)
COUNTY OF ALLEN)

ss:

Subscribed and sworn to before me, a Notary Public, in and for said County and State this 7th day of Aug. 2009.

I am a resident of Allen County, Indiana. My commission expires: March 6, 2015

Regiana M. Sistevaris, Notary Public

AFFIDAVIT OF JAY F. GODFREY

STATE OF OHIO)
)
COUNTY OF FRANKLIN)

ss:

Jay F. Godfrey, being first duly sworn, deposes and says:

1. I am the Managing Director - Renewable Energy by American Electric Power Service Corporation (AEPSC), a wholly owned subsidiary of American Electric Power Company, Inc. (AEP). AEP is the parent company of Indiana Michigan Power Company (I&M). AEPSC supplies engineering, financing, accounting and similar planning and advisory services to AEP's eleven electric operating companies, including I&M.

2. I have over fourteen years of commercial and financial management experience in the wind energy industry. Prior to joining AEPSC's wind energy group in 2002, I served seven years in various project finance and wind project development roles for Enron Wind Corporation, since acquired by General Electric (GE), which operates today as GE Energy. Other business management experience includes serving as the Financial Controller for two different publicly held companies in non-energy related fields and holding other management positions. Since joining AEPSC, I have been involved in the asset management and project financing of AEP's two wind projects, the 150 MW Trent Wind Farm and the 160.5 MW Desert Sky Wind Farm, development efforts for potential green-field projects, and procurement and management of AEP's renewable energy purchase agreements. My experience includes negotiating wind energy power purchase and sales agreements, wind system operations and maintenance agreements, real estate agreements related to wind projects, wind turbine purchase agreements, and project loan documents. I also have experience evaluating the impact of various financial parameters on wind project investment returns. I am a past member of the Board of Directors of the American Wind Energy Association, the Washington D.C. based trade association for the wind industry, and currently serves as Advisor to that same Board. I earned a Bachelor's degree in Business Administration from California State University - Chico and a Masters in Business Administration from National University. In 2006, I completed the AEP strategic Leadership Program at The Ohio State University.

3. As Managing Director - Renewable Energy, I am responsible for managing AEP's and its subsidiaries' portfolio of Renewable Energy Purchase Agreements (REPAs) and related long-term structured emission reduction offset agreements. I direct the team that structures and issues the renewable energy Requests for Proposal (RFPs) and model REPAs, reviews and responds to questions posed by potential bidders, and evaluates proposals. I also lead the negotiation and finalization of the REPAs with the winning bidder(s). In addition, I am responsible for the

acquisition of potential wind project development sites within AEP's service territory.

4. I&M's request for MPSC approval of a Wind Power Purchase Agreement between I&M and Fowler Ridge Wind Farm II, LLC (Fowler Ridge II Wind PPA), a subsidiary of BP Wind Energy North America (BPWE), for the purchase of a 50 MW share of electrical output and environmental attributes by I&M for a 20-year period from Fowler Ridge Wind Farm II is a reasonable and prudent request.

5. On February 5, 2009, I&M executed a Wind Power Purchase Agreement with Fowler Rider Wind Farm II, LLC. The 50 MW share of electrical output that I&M will receive from the Fowler Ridge II will be sourced from the 750 MW nameplate capacity wind farm that is being developed by BPWE. The wind farm, which is primarily located in western Benton County, Indiana, interconnects with the Dequine substation on I&M's transmission system at 345kV. I&M's transmission system is within the PJM Interconnection, LLC (PJM) footprint. AEP's East Zone generating affiliates, which include I&M, are members of the PJM Regional Transmission Organization (RTO).

6. The contracted output was the result of a competitive RFP process conducted by an affiliate of I&M, AEP Ohio and simultaneous with I&M executing a new 50 MW REPA, the two AEP Ohio companies (Columbus Southern and Ohio Power) each executed similar 50 MW REPAs. AEP's wind experience was beneficial in negotiating the Fowler Ridge II Wind PPA because AEP was able to leverage its experience as a wind generation developer, owner, operator, and seller, and negotiating **long-term** wind energy agreements, to effectively balance the interests of both the developer and I&M. The Fowler Ridge II Wind PPA that is the subject of this Case reflects AEP's vast experience with all aspects of wind generation and will advance the development and commercial operation of the first wind generation facility in the State of Indiana directly connected to I&M's transmission system and interconnected to PJM that will furnish emission-free (green) power and environmental attributes to AEP and to the customers of I&M for a period of twenty years.

7. The Fowler Ridge II Wind PPA has time of day contract pricing. These prices will escalate beginning in 2010 at 2.25% per year for the term of the contract. An unredacted version of the agreement will be made available to MPSC Staff.

8. The benefit of the Fowler Ridge II Wind PPA is the 20-year REPA allows I&M to secure the lowest-available prices for reliable renewable resources and to ensure that this energy will be economically accessible to its native load customers in the coming years. As various states throughout the PJM service territory continue to implement Renewable Portfolio Standards (RPS) and goals and the federal government moves toward renewable standards and carbon limits, the availability of renewable energy will likely be constrained. Although these same standards and goals will also spur growth in the number of renewable energy providers throughout the PJM service territory, there is no guarantee that the supply of renewable energy resources will remain abreast of the demand. In particular, access to available transmission will increasingly impact cost and availability of these resources.

9. The 20-year REPA also provides a direct benefit to the consumer. The 20-year agreement, which is also the expected life of the technology, allows renewable energy resource providers to procure long-term financing, thereby amortizing the cost of their projects over a longer period. Such financing has the effect of reducing the up-front costs and allows for a more economically leveled price over the term of the contract.

10. In addition, the Fowler Ridge II Wind PPA benefits I&M and its customer because of the federal Production Tax Credit. The renewable energy production tax credit (PTC), a credit of 2.1 cents per kilowatt-hour, is the primary federal incentive for wind energy and has been essential to the industry's growth. Although the PTC has undergone a series of short-term extensions since its establishment in 1992, in February of 2009, through the American Recovery and Reinvestment Act, Congress acted to provide a three-year extension of the PTC through December 31, 2012. The PTC, which goes to the at-risk owner of the facility, helps to buy-down the purchase price that I&M or any purchaser would pay for the renewable product.

11. The Fowler Ridge II Wind PPA stipulates that I&M will receive all current and future attributes, including the associated RECs. The RECs associated with the Fowler Ridge II Wind PPA will be maintained and counted toward I&M's compliance with any renewable energy standards. In addition, receiving the RECs helps voluntarily reduce GHG emissions per megawatt hour. These RECs

are also legal proof that one megawatt-hour (MWh) of electricity has been generated by a renewable fuel or environmentally friendly source. The RECs will be tracked through the PJM Generation Attribute Tracking System (GATS). Administered by PJM Environmental Services, Inc., GATS is a database that tracks the ownership of RECs and generation attributes that result from the generation of electricity as they are traded or used to meet government standards. GATS provides environmental and emissions attributes reporting and tracking services to its subscribers in support of RPS and other information disclosure requirements that may be implemented by government agencies. The RECs associated with the Project demonstrate that I&M has obtained all attributes associated with the renewable energy produced by the Project.

12. The Company will routinely compete for renewable energy and advanced cleaner energy equipment, facility sites and related products and services. Maintaining the confidentiality of the specific terms and conditions involved in acquiring such equipment, facilities and related products and services will help ensure that the suppliers offer their best prices to I&M and thereby help I&M achieve the lowest reasonable cost for these items.

13. Accordingly, maintaining the confidentiality of the various redacted provisions of the Fowler Ridge II Wind PPA will help I&M provide I&M customers the lowest cost renewable energy and advanced cleaner energy project alternatives consistent with 2008 PA 295.

14. Public disclosure of the redacted details in the Fowler Ridge II Wind PPA will hamper I&M's ability to provide the lowest reasonable renewable energy power supply cost to its retail electric customers. Therefore, I believe it is in I&M's, as well as its customers', best interest for such competitively sensitive information to remain confidential.

15. Based on my experience, I believe it is in I&M's best interest, as well as its customers' best interest for the Commission to grant the Company's request to approve the Fowler Ridge II PPA.

Further Affiant Sayeth not.

Jay F. Godfrey Managing Director - Renewable Energy
American Electric Power Service Corporation

STATE OF OHIO)
)
COUNTY OF FRANKLIN)

ss:

Subscribed and sworn to before me, a Notary Public, in and for said County and State this 7th day of August 2009.

I am a resident of Franklin County, Ohio. My commission expires: Oct. 1, 2013

AFFIDAVIT OF JON R. MACLEAN

Notary Public

STATE OF OHIO)
)
COUNTY OF FRANKLIN)

ss:

Jon R. MacLean, being first duly sworn, deposes and says:

1. I am Manager of Production Resource Modeling in the Corporate Planning & Budgeting Department of the American Electric Power Service Corporation (AEPSC), a wholly owned subsidiary of the American Electric Power Company, Inc. (AEP), the parent company of Indiana Michigan Power Company (I&M).

2. I received a Bachelor of Science - Electrical Engineering degree from Ohio University in 1976. I was employed by Dayton Power and Light from 1976 through 1984 in its Generation Planning Department. In 1984, I joined AEPSC as an Engineer in the Generation Performance Analysis Section, which now is the Resource Planning Section. At AEP, I have served as Engineer, Senior Engineer, Principal Engineer, and, since 2004, Manager.

3. As manager of Production Resource Modeling I supervise planning studies in the area of production costing for AEP's eastern and western electric utility operating companies. These studies include fuel expense projections, marginal cost studies and other analyses that involve the use of electric energy costs.

4. The Fowler Ridge II PPA is contained in I&M's Renewable Energy Plan (REP) filed in MPSC Case No. U-15808 and is otherwise reasonable and prudent based upon, among other things, the estimated the cost impact of the Fowler Ridge II PPA on I&M's Michigan retail customers. My analysis, which isolates the cost impact of

the Fowler Ridge II PPA contained in I&M's REP, considered the cost of the wind energy from Fowler Ridge II (utilizing the same Fowler Ridge II timing, volume, and pricing as used in I&M's REP), net of the relative changes in I&M's fuel cost (including net pool energy credit/cost), and primary capacity settlements under the AEP System Interconnection (Pool) Agreement. Attachment JRM-1, attached hereto in a redacted version, offers a summary view of the net cost impact of the Fowler Ridge II PPA on I&M and the Company's Michigan customers. The analysis was limited to the period 2010 through 2020 since these are the years currently included in the AEP detailed production costing model, PROMOD. On a cost per kWh basis, the estimated incremental net cost through 2020 for an annual supply of renewable wind energy is projected to be less than 0.023 cents per kWh, with the average cost over the period of only 0.020 cents per kWh. On a Michigan jurisdictional basis, the net cost of a full year's energy purchase is estimated to range between \$0.7 million and \$0.9 million during the period from 2010 through 2020. An unredacted copy of Exhibit JRM-1 will be made available to the MPSC staff.

5. Based on my experience, I believe it is in I&M's best interest, as well as its customers' best interest for the Commission to grant the Company's request to approve the Fowler Ridge II PPA.

Further Affiant Sayeth not.

Jon R. MacLean Manager of Production Resource Modeling American Electric Power Service Corporation

STATE OF OHIO)
)
 COUNTY OF FRANKLIN)

ss:

Subscribed and sworn to before me, a Notary Public, in and for said County and State this 7th day of Aug. 2009.

Notary Public

I&M - Total Company & Michigan Jurisdictional Relative Change in Annual Revenue Requirement Due to Fowler Ridge II PPA 2010-2020 (Millions of Dollars)

I am a resident of Franklin County, Ohio. My commission expires: 12/12/2009

A	B	C	D	E	F	G
	PPA Cost	Variable Costs including Pool Energy Settlements	Capacity Settlement	Net Revenue Requirement Change	Net Revenue Requirement Change ¹	Michigan Jurisdictional Net Cost ²
	(\$M)	(\$M)	(\$M)	(\$M)	(¢/kWh)	(\$M)
2010				5.7	0.023	0.9
2011				5.7	0.022	0.9
2012				5.8	0.022	0.9
2013				5.7	0.022	0.9
2014				4.6	0.017	0.7
2015		Proprietary and Confidential Data		4.7	0.018	0.7
2016				4.8	0.018	0.8
2017				5.0	0.019	0.8
2018				5.1	0.019	0.8
2019				5.4	0.020	0.9
2020				5.6	0.020	0.9

1. Based on total I&M annual internal load.

2. Based on a 15.95% I&M Retail allocation factor.

END OF DOCUMENT