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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION REGULATION

IN THE MATTER OF SOUTHWESTERN)) FILED		
PUBLIC SERVICE COMPANY'S)	2015 APR 2 PM 3 37		
APPLICATION FOR APPROVAL AND)	ZOID THEN Z THE D ST		
AUTHORITY TO: (1) ENTER INTO			
SEPARATE PURCHASED POWER)			
AGREEMENTS WITH NEXTERA ENERGY)			
RESOURCES' ROSWELL AND CHAVES)	CASE NO. 15-1002-UT		
COUNTY SOLAR FACILITIES; (2)			
RECOVER THE ASSOCIATED ENERGY	•		
COSTS THROUGH ITS FUEL AND			
PURCHASED POWER COST ADJUSTMENT)			
CLAUSE; AND (3) ESTABLISH AND			
IMPLEMENT A SHARED SAVINGS)	· ·		
MECHANISM,			
)			
SOUTHWESTERN PUBLIC SERVICE)			
COMPANY,			
)			
APPLICANT.			
)			

APPLICATION

In accordance with the New Mexico Public Utility Act (NMSA 1978, §§ 62-3-1 et seq. – "PUA"); the New Mexico Public Regulation Commission's ("Commission") Rule 551 (17.9.551 NMAC – "Rule 551"); and Section 62-16-4(H) of the Renewable Energy Act (NMSA 1978, §§ 62-16-1 to 62-16-10 – "REA"), Applicant, Southwestern Public Service Company ("SPS") requests the Commission enter a final order granting the following relief by July 2, 2015:

authorizing SPS to enter into a long-term purchased power agreement ("LTPPA") with NextEra Energy Resources' ("NextEra") Roswell Solar, LLC ("Roswell") for the purchase of 70 MW of solar energy beginning no later than December 31, 2016 and continuing for 25 years ("Roswell LTPPA");

- authorizing SPS to enter into a LTPPA with NextEra Energy Resources' Chaves County Solar, LLC ("Chaves County") for the purchase of 70 MW of solar energy beginning no later than December 31, 2016 and continuing for 25 years ("Chaves County LTPPA");
- (3) authorizing SPS to recover the New Mexico retail jurisdictional allocated share of total energy costs under the Roswell and Chaves County LTPPAs through its fuel and purchased power cost adjustment clause ("FPPCAC") in accordance with Rules 551.9(A)(1) and 550;
- (4) authorizing SPS to establish and implement a mechanism to share in actual energy cost savings that result from the Roswell and Chaves County LTPPAs on a 75 percent (customer) and 25 percent (SPS) basis; and
- (5) granting to SPS all other approvals, authorizations, waivers, or variances that the Commission determines are necessary to implement and effectuate the relief requested in this case.

In support of this Application, SPS states the following:

I. Jurisdiction and Affected Parties

- 1. SPS is a public utility as defined in Section 62-3-3(G) of the PUA. The Commission has jurisdiction over this application under the PUA and Rule 551.
- 2. This Commission regulates SPS's New Mexico retail service and rates and the Public Utility Commission of Texas regulates SPS's Texas retail rates and operations. The Federal Energy Regulatory Commission ("FERC") regulates SPS's wholesale power sales and transmission of electricity in interstate commerce.

- 3. SPS, a New Mexico corporation, is a fully integrated generation, transmission, and distribution utility serving approximately 386,000 retail customers in a 52,000 square-mile area that encompasses the eastern and southeastern portions of New Mexico, as well as the Panhandle and South Plains areas of Texas. Approximately 119,000 of those retail customers reside in New Mexico. SPS serves wholesale electric customers, as well.
- 4. SPS's principal office in New Mexico is located at 111 East Fifth Street, Roswell, New Mexico 88201, and its principal corporate office is located at 600 S. Tyler Street, Suite 2900, Amarillo, Texas 79101.
- 5. SPS is a wholly owned subsidiary of Xcel Energy Inc. ("Xcel Energy"), which is a holding company under FERC regulations adopted under the Public Utility Holding Company Act of 2005. In addition to SPS, Xcel Energy is the parent company of three other rate-regulated utility operating companies, a regulated natural gas pipeline company, two transmission only operating companies regulated by the FERC, and a non-profit service company that was established under the authority of the Securities and Exchange Commission, but which is now under the supervision of the FERC, and other legal entities.

II. Authorized Representatives and Service of Documents

6. SPS's corporate representatives and attorneys who should receive all notices, pleadings, discovery requests and responses, and other documents related to this case are:

¹ 18 C.F.R. Part 366.

² Northern States Power Company, a Minnesota corporation; Northern States Power Company, a Wisconsin corporation; and Public Service Company of Colorado, a Colorado corporation.

³ Xcel Energy Services Inc.

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III. Notice

8. A copy of the proposed notice, except for the case number and the specific dates for the procedural schedule, is attached to this Application as Exhibit 1. SPS proposes to publish notice one time in a newspaper of general circulation in each of the counties in which SPS operates.

IV. SPS's Request for Approval of Solar PPAs under Rule 551

A. SPS's 2014 Request for Proposal for Solar Generation Resources

- 9. SPS has entered into two separate PPAs with subsidiaries of Next Era that provide for the purchase of solar energy over a 25-year period. SPS is requesting in this filing Commission approval of the Solar PPAs in accordance with Rule 551. The following subparagraphs in this section discuss the Solar PPAs and the associated approvals.
- 10. Since the acceptance of SPS's 2012 Integrated Resource Plan ("IRP") by the Commission in Case No. 12-00298-UT, the pricing of photovoltaic ("PV") solar generation has declined due to improved production efficiencies related to the manufacturing of PV modules and PV system design, as well as availability of state and federal tax credits for solar energy development.
- 11. With the pending reduction of the Federal Investment Tax Credit ("ITC"), and the potential energy savings associated with PV generation, SPS issued its Request for Proposals for Solar Generation Resources on September 12, 2014 ("2014 Solar RFP"), requesting proposals for more than 10 MW of solar generation under a PPA with a commercial operation date ("COD") no later than December 31, 2016.
- 12. SPS received a total of 104 bids from ten distribution voltage entities and nine transmission voltage entities in response to the 2014 Solar RFP. As a result of SPS's analysis of the bids, it determined that the proposals submitted by NextEra for the Roswell Solar facility and Chaves County Solar facility would provide the greatest benefit to SPS's resource portfolio and customers.

13. Procurement of the LTPPAs is fundamentally consistent with the 2012 IRP. In addition, procurement of the LTPPAs is reasonable in light of the changes in market conditions for solar energy that have resulted in a decrease in solar PV generation prices since the Commission's acceptance of the 2012 IRP.

B. Roswell and Chaves County LTPPAs

- 14. On March 4, 2015, SPS entered into separate LTPPAs with Roswell Solar LLC and Chaves County Solar LLC⁴ for the purchase of 190,650 MWh of solar energy from each facility. The term of each LTPPA is 25 years, commencing with the COD of each facility. Both facilities will be located in Chaves County, near the City of Roswell, New Mexico. The levelized price over the term of the Roswell LTPPA is \$41.55/MWh, and \$42.08/MWh over the term of the Chaves County LTPPA.
- 15. Although both the Roswell and Chaves County LTPPAs follow the SPS's Model Renewable Purchase Agreement ("Model PPA"), there are four substantive modifications. Specifically, the LTPPAs: (i) provide for the purchase of an "energy only" product, with an option allowing SPS to purchase renewable energy certificates in the future; (ii) contain a mechanism to share in certain tax credits that may be received by the project, including any incremental production tax credits received by the projects; (iii) expand the remedies available to cure a default related to delivery of Committed Solar Energy; and (iv) contain a pre-COD "Partial Interest" and a "Full Interest" purchase option.
- 16. The terms of the Roswell and Chaves County LTPPAs are discussed in the direct testimony of SPS witness Jessica Collins.

NextEra formed the limited liability companies for the purpose of designing and constructing the solar facilities.

V. Ratemaking Treatment for the Energy Costs Associated with the Solar PPAs

- 17. In accordance with Rule 551.9.A(1), SPS requests approval to recover the New Mexico retail jurisdictional allocated share of energy costs associated with the Roswell and Chaves County LTPPAs through SPS's FPPCAC under Rule 550. The total energy cost for the LTPPAs will be proportionally allocated among SPS's three jurisdictions (New Mexico retail, Texas retail, and wholesale). Based on the 2014 New Mexico retail fuel allocation, the New Mexico retail share of the LTPPAs' total energy costs is estimated to be approximately 20 percent.
- 18. Additionally, SPS estimates that the Roswell and Chaves County LTPPAs will result in substantial energy cost savings for SPS's customers, including its New Mexico retail customers because the cost of energy under the LTPPAs will be below SPS's avoided energy costs. The current estimated net present value of these energy savings for all SPS jurisdictions is projected to be in excess of \$26.5 million over the 25-year term of the PPAs. In accordance with Section 62-16-4(H) of the REA, SPS is requesting that the Commission authorize SPS to establish and implement a cost sharing mechanism that will govern the sharing of actual energy cost savings that will result from the Roswell and Chaves County LTPPAs with SPS's New Mexico retail ratepayers on a 75/25 basis, wherein SPS would retain 25 percent of the energy cost savings. The direct testimony of SPS witnesses Ruth M. Sakya and Craig L. Berg discuss and quantify these projected customer savings. The direct testimony of Ms. Sakya further addresses SPS's proposal to share in the actual cost savings.

VI. SPS's Filing Satisfies the Applicable Approval Requirements

19. SPS's filing demonstrates that: (a) the Roswell and Chaves County LTPPAs benefit SPS's New Mexico retail customers and are in the public interest; (b) the Rule 551 filing and approval requirements have been satisfied; and (c) the proposed sharing mechanism for energy cost savings realized through the LTPPAs is consistent with, and furthers the policy and objectives of the REA as articulated in Section 62-16-4(H), in that it promotes, and will in the future continue to promote, the development of renewable energy resources in New Mexico that exceed SPS's renewable portfolio standard requirements under the REA.

VII. Miscellaneous Matters

- 20. In support of this Application, SPS is concurrently filing the direct testimony of:
- (a) Ruth M. Sakya, whose testimony discusses:
 - (i) SPS's compliance with Rule 551 requirements;
 - (ii) SPS's proposed cost recovery of the solar energy purchases; and
 - (iii) SPS's proposal to establish and implement a mechanism to share in the actual energy cost savings that result from the Roswell and Chaves County LTPPAs with its New Mexico retail ratepayers on a 75/25 basis;
- (b) Craig L. Berg, whose testimony discusses:
 - (i) the basis for SPS's selection of the Roswell and Chaves County LTPPAs as additional system resources;
 - (ii) the transmission delivery costs for the projects; and
 - (iii) quantifies the net present value of the projected total system avoided energy savings over the term on the LTPPAs; and

- (c) Jessica L. Collins, whose testimony discusses:
 - (i) the contract negotiation process; and
 - (ii) the terms and conditions of the Roswell and Chaves County LTPPAs.
- 21. After the filing of the Application, SPS will file a motion for a protective order and proposed protective order and confidentiality agreement, which is being submitted to expedite Staff's and the Intervenors', if any, review of confidential materials provided through the discovery process in the case.
- 22. To obtain the benefit of the ITCs and Production Tax Credits ("PTCs"), and the favorable pricing provided by the LTPPAs, SPS requests that the Commission enter its final order approving the LTPPAs by no later than July 2, 2015.

VIII. Prayer for Relief

For the reasons set out in this Application and the accompanying testimony, SPS respectfully requests that the Commission enter its final order by July 2, 2015 granting the following relief: (A) authorizing SPS to enter into the Roswell and Chaves County LTPPAs; (B) authorizing SPS to recover through its FPPCAC the New Mexico retail jurisdictional share of purchased power costs under the Roswell and Chaves County LTPPAs; (C) authorizing SPS to establish and implement a mechanism to share in the actual energy cost savings that result from the Roswell and Chaves County LTPPAs on a 75/25 basis; and (D) granting to SPS all other approvals, authorizations, waivers, or variances that the Commission determines are necessary to implement and effectuate the other relief granted in this case.

Respectfully submitted,

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XCEL ENERGY SERVICES INC. Matthew P. Loftus, Esq. 816 Congress Avenue, Suite 1650 Austin, TX 78701-2471 806.640.6625 or 512.478.1327

ATTORNEYS FOR SOUTHWESTERN PUBLIC SERVICE COMPANY

APPLICATION EXHIBIT 1

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF SOUTHWESTERN)	
PUBLIC SERVICE COMPANY'S	
APPLICATION FOR APPROVAL AND	
AUTHORITY TO: (1) ENTER INTO	
SEPARATE PURCHASED POWER)	
AGREEMENTS WITH NEXTERA ENERGY)	
RESOURCES' ROSWELL AND CHAVES)	CASE NO. 15-0082-UT
COUNTY SOLAR FACILITIES; (2)	
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CLAUSE; AND (3) ESTABLISH AND).
IMPLEMENT A SHARED SAVINGS	
MECHANISM,)
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SOUTHWESTERN PUBLIC SERVICE	·
COMPANY,)
)
APPLICANT.)
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NOTICE TO CUSTOMERS

NOTICE IS HEREBY GIVEN that:

1. On April 2, 2015, Southwestern Public Service Company ("SPS") filed an Application with the New Mexico Public Regulation Commission ("Commission") requesting the Commission grant the following relief by July 2, 2015: (1) authorizing SPS to enter into a long-term purchased power agreement ("LTPPA") with NextEra Energy Resources' ("NextEra") Roswell, Solar LLC for the purchase of 70 MW of solar energy beginning no later than December 31, 2016 and continuing for 25 years; (2) authorizing SPS to enter into a LTPPA with NextEra's Chaves County Solar, LLC for the purchase of 70 MW of solar energy beginning no later than December 31, 2016 and continuing for 25 years; (3) authorizing SPS to recover the New Mexico retail jurisdictional allocated share of total energy costs under the Roswell and Chaves County PPAs through its fuel and purchased power cost adjustment clause ("FPPCAC") in accordance with Commission Rules 17.9.551.9(A)(1) NMAC ("Rule 551") and 17.9.550

- NMAC; (4) authorizing SPS to establish and implement a mechanism to share in actual energy cost savings that result from the Roswell and Chaves County LTPPAs on a 75 percent (customer) and 25 percent (SPS) basis; and (5) granting to SPS all other approvals, authorizations, waivers, or variances that the Commission determines are necessary to implement and effectuate the relief requested in this case.
- 2. Based on a Request for Proposals issued by SPS for solar generation resources, SPS selected NextEra's Roswell and Chaves County solar photovoltaic generation projects through a competitive bid solicitation process. SPS will annually procure approximately 190,650 MWh of solar energy from each solar facility. Both facilities will be located in Chaves County, near the City of Roswell, New Mexico. SPS estimates that the LTPPAs will result in substantial energy cost savings for SPS's customers, including its New Mexico retail customers, over the 25-year term of the contracts.
- 3. Over the 25-year term of the contracts, SPS estimates that the LTPPAs will result in estimated energy cost savings of over \$5.3 million (net present value) for its New Mexico retail customers. The table below represents the projected monthly bill impacts to representative customers in each rate class, assuming current base rates, levelized annual savings under the LTPPAs, and a 20 percent allocation to New Mexico retail:

Table RMS-1: Average Monthly Customer Impacts of LTPPAs

Rate Schedule	Total Monthly Bill before LTPPAs	Estimated Decrease with LTPPAs	Decrease as
Residential Service Tariff 1018.16 – 800 kWh	\$ 86.11	\$0.08	0.09%
Small General Service Tariff 3110.17 – 1,500 kWh	\$ 134.24	\$0.14	0.11%
Secondary General Service Tariff 4060.3 – 50 kW, 20,000 kWh	\$ 1,584.70	\$1.90	0.12%
Large General Service Transmission Tariff 4110.4 – 4,000 kW, 800,000 kWh \$ 66,9		\$69.14	0.10%

- 4. SPS proposes a shared savings mechanism to share the actual savings (75 percent customers/25 percent SPS) of the realized annual fuel savings generated as a result of the LTPPAs. The performance based shared savings mechanism will be calculated annually, and applied to SPS's FPPCAC balancing account and spread over a 12-month period.
- 5. SPS's filing demonstrates that: (a) the Roswell and Chaves County LTPPAs benefit SPS's New Mexico retail customers and are in the public interest; (b) the Commission's Rule 551 filing and approval requirements have been satisfied; and (c) the proposed sharing mechanism for energy cost savings realized through the LTPPAs is consistent with, and furthers the policy and objectives of the Renewable Energy Act ("REA") as articulated in Section

62-16-4(H), in that it promotes, and will in the future continue to promote, the development of renewable energy resources in New Mexico that exceed SPS's renewable portfolio standard requirements under the REA.

- 6. In accordance with Rule 551.10(A), the Commission may approve SPS's application without a formal hearing if no protest is filed within sixty (60) days after the date that notice is given pursuant to a Commission order. If a protest is filed, Rule 551.10(B) requires that the Commission issue a final order acting on SPS's Application within six (6) months after the date the application is filed, or else the application is deemed approved. The Commission has assigned Case No. 15
 -UT to this filing and inquiries should refer to that case number. Further information regarding this case may be obtained by contacting SPS or the 8. Commission at the addresses and telephone numbers provided below. All inquiries or written comments concerning this matter should refer to Case No. 15_-UT. 9. The Hearing Examiner has established the following schedule for this case: Any person desiring to become a part to this case must file a Motion for Leave to Α. Intervene, pursuant to 1.2.2.23 NMAC on or before ______, 2015. Any protest to SPS's Application shall be filed on or before ______, 2015, B. which is sixty (60) days from the date of publication of notice. Staff shall, and Intervenors may, file direct testimony on or before _____, C. 2015. Any rebuttal testimony may be filed on or before ______, 2015. D. A public hearing will be held beginning at on ______, 2015, at the E. offices of the Commission, 1120 Paseo De Peralta, Santa Fe, New Mexico, for the purpose of hearing and receiving testimony, exhibits, arguments, and any other appropriate matters in order to determine whether proposed changes in rates in this case should be approved by the Commission. Interested persons should contact the Commission for confirmation of the hearing date, time, and place.
- 10. Any interested person may examine SPS's Application and supporting documents at the offices of SPS, 111 E. Fifth Street, Roswell, New Mexico, telephone (505) 625-5499 and 600 S. Tyler, Amarillo, Texas, telephone (806) 378-2709 or at the offices of the Commission, at the address set out in paragraph 9(E) above, telephone 1-888-427-5772.
- 11. The procedural dates and requirements currently set in this case are subject to further Order of the Commission or the Hearing Examiner. Interested persons should contact the

Commission for confirmation of the hearing date, time and place, since hearings are occasionally rescheduled.

- 12. The Commission's Rules of Procedure, 1.2.2.1 NMAC, et seq., shall apply to this proceeding unless modified by order of the Commission or the Hearing Examiner. A copy of such Rules may be obtained from the offices of the Commission.
- 13. Any interested person may appear at the time and place of hearing and make a written or oral comment as allowed under 1.2.2.23(F) NMAC without becoming an Intervenor. Interested persons may also send written comments, which shall reference Case No. 15
 -UT. Such comments will not be considered as evidence in this case.
- 14. Anyone filing pleadings or pre-filed testimony will serve copies on all parties of record, Commission Staff, and the Hearing Examiner. Any person whose testimony has been pre-filed will attend the hearing and submit to examination under oath. If you file documents in person, the location for filing is the Commission's address listed in paragraph 9(E). If you file documents by mail, send them to: NMPRC, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.
- 15. Any person with a disability requiring special assistance in order to participate in this proceeding should contact the Commission as soon as possible prior to the commencement of the hearing.

ISSUED at Santa Fe, N	lew Mexico, this	day of	, 2015.
1	NEW MEXICO PUBI	LIC REGULATION	COMMISSION
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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF SOUTHWESTERN)
PUBLIC SERVICE COMPANY'S	
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APPLICANT.	
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DIRECT TESTIMONY

of

CRAIG L. BERG

on behalf of

SOUTHWESTERN PUBLIC SERVICE COMPANY

APRIL 2, 2015

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GLOSSARY OF ACRONYMS AND DEFINED TERMS

Acronym/Defined Term

Meaning

2012 IRP SPS's last Integrated Resource Plan approved in

Case 12-00298-UT

2014 Solar RFP Request for Proposal issued in September 2014

for solar renewable resources

2015 IRP SPS's next Integrated Resource Plan to be filed

in July 2015

CC Combined Cycle

Commission New Mexico Public Regulation Commission

Chavez County PPA Chaves County Solar facility

CT Combustion Turbine

DC Direct Current

IM Integrated Market

IRP Integrated Resource Plan

LMP Locational Marginal Price

LTPPA or LTPPAs Long-term Purchased Power Agreement(s)

MW Megawatt

MWh Megawatt Hours

Model PPA Model Solar Power Purchase Agreement

NPV Net Present Value

PPA Purchased Power Agreement

Acronym/Defined Term

Meaning

PV

Photovoltaic

RFP

Request for Proposal

Roswell PPA

Roswell Solar facility

RTBM

Real-Time Balancing Market

Rule 551

17.9.551.8 NMAC

SPP

Southwest Power Pool

SPS

Southwestern Public Service Company, a New

Mexico corporation

TCR

Transmission Congestion Rights

Xcel Energy

Xcel Energy Inc.

XES

Xcel Energy Services Inc.

LIST OF ATTACHMENTS

Attachment	Description
CLB-1	Summary of Final Strategist Model Results
CLB-2	Map of Proposed Solar Project locations
CLB-3	2014 Solar RFP
CLB-4	Levelized Cost Analysis

1 I. WITNESS IDENTIFICATION AND QUALIFICATIONS 2 Q. Please state your name and business address. 3 A. My name is Craig L. Berg. My business address is 1800 Larimer Street Suite 1400, 4 Denver, Colorado, 80202. 5 Q. On whose behalf are you testifying in this proceeding? 6 Α. I am filing testimony on behalf of Southwestern Public Service Company, a New 7 Mexico corporation ("SPS") and wholly-owned electric utility subsidiary of Xcel 8 Energy Inc. ("Xcel Energy"). Xcel Energy is a registered holding company that 9 owns several electric and natural gas utility operating companies.¹ 10 Q. By whom are you employed and in what position? 11 A. I am employed by Xcel Energy Services Inc. ("XES"), the service company 12 subsidiary of Xcel Energy, as Senior Resource Planner - SPS. 13 Q. Please briefly outline your responsibilities as Senior Resource Planner. 14 A. I am responsible for working with other analysts and planners in the development of 15 strategic resource plans for SPS including; need assessment, planning, solicitation,

¹ Xcel Energy is the parent company of four wholly-owned electric utility operating companies: Northern States Power Company, a Minnesota corporation; Northern States Power Company, a Wisconsin corporation; Public Service Company of Colorado, a Colorado corporation; and SPS (collectively, "Operating Companies"). Xcel Energy's natural gas pipeline subsidiary is WestGas InterState, Inc. Xcel Energy also has two transmission-only operating companies, Xcel Energy Southwest Transmission Company, LLC and Xcel Energy Transmission Development Company, LLC, both of which are regulated by the Federal Energy Regulatory Commission.

- and negotiation of long-term purchased power agreements ("LTPPAs"), and financial
 analysis of various resource and purchase/sales options.
- 3 Q. Please describe your educational background.
- 4 A. I graduated from the University of Wyoming with a Bachelor of Science in Economics (1987) and a Master of Science in Economics (1988).
- 6 Q. Please describe your professional experience.

A.

I have been actively engaged in emerging electric and natural gas market issues since the early 1990s, and have substantial experience with issues related to resource planning, financial analysis, ratemaking, regulatory accounting, rate unbundling, stranded cost, open access, and the availability of physical and financial products within the gas and power sectors. Prior to my current position, I held the positions of Manager of Business Analysis (2005-2006) and Manager of Resource Planning and Bidding (2007-2008). In July 2008, I requested to step down as the Manager of Resource Planning and accepted a position as Senior Resource Planner Analyst. Prior to joining Xcel Energy, I held a number of other positions at other energy companies within the public utilities sector including Manager Pricing, Director Electric Restructuring, Manager Market Analysis, and Senior Principal Energy Supply. Early in my career, I was employed by the State of Nevada as a Regulatory

1		Economist where I was involved with revenue requirements, class cost of service,
2		resource planning, and rate design issues within the electric, gas, and
3		telecommunications sectors.
4	Q.	Have you attended or taken any special courses or seminars relating to public
5		utilities?
6	A.	I have received training related to many utility-related subjects including class
7		cost-of-service, rate design, revenue requirements, financial analysis, risk
8		management, commercial contracts, and resource planning. I have also received
9		training and/or supervised analysts responsible for the following system dispatch
10		models: PROSYM, RISKSYM, MARKETSYM, PROMOD, and Strategist.
11	Q.	Have you testified before any regulatory authorities?
12	A.	Yes. I have testified before the New Mexico Public Regulation Commission
13		("Commission"), as well as state regulatory authorities in Texas, California,
14		Colorado, Nevada, and at the Federal Energy Regulatory Commission.

1		II. WITNESS ASSIGNMENT AND SUMMARY OF TESTIMONY
2	Q.	What is your assignment in this proceeding?
3	Α.	My testimony addresses a number of the criteria enumerated in 17.9.551.8 NMAC
4		("Rule 551") for Commission approval of the following proposed LTPPAs between
5		SPS and NextEra Energy Resources ("NextEra") for the purchase of solar energy:
6		(1) 70 megawatts ("MW") from the Roswell Solar facility to be developed by
7		NextEra and located near Roswell, NM in Chaves County ("Roswell PPA");
8		and
9		(2) 70 MW from the Chaves County Solar facility to be developed by NextEra
10		and located near Roswell, NM in Chaves County ("Chaves County PPA").
11	Q.	Does your testimony follow any particular Commission rules?
12	A.	Yes. Rule 551 includes specific criteria that apply to LTPPAs. Rule 551 defines
13		LTPPAs as contracts with terms of five years or more. My testimony, as well as the
14		testimonies of Ms. Ruth Sakya and Ms. Jessica Collins, addresses the criteria and
15		support approval of the LTPPAs. In conformity with Rule 551, my testimony will
16		provide:
17 18 19		• a discussion of how the LTPPAs were selected and whether utility-owned generation could have been constructed as an alternative with greater benefits to customers <i>Rule 551.8(D)(9)</i> ;

1 2 3		• evidence that entering into the LTPPAs is consistent with the provision o safe and reliable electric utility service at the lowest reasonable cos including relevant factors <i>Rule 551.8(D)(6)</i> ;
4 5 6 7		• evidence that the LTPPAs are consistent with SPS's most recent commission accepted integrated resource plan <i>Rule 551.8(D)(8)</i> ; and
8 9		• a description of the transmission delivery costs Rule 551.8(D)(3).
10	Q.	Please summarize the conclusions in your testimony.
11	A.	The acquisition of the proposed LTPPAs: (1) is consistent with SPS's
12		Commission-accepted Integrated Resource Plan ("IRP"); (2) is expected to be
13		consistent with the upcoming 2015 IRP; and (3) will permit SPS to provide low-cost
14		carbon-free energy at a price below SPS's forecasted system avoided energy costs
15		The total system net present value ("NPV") avoided energy savings for the
16		period (2017-2041) are approximately \$26.5 million for the total SPS system. On a
17		levelized basis, the LTPPAs provide savings relative to avoided energy by
18		approximately \$6.01/megawatt-hour ("MWh"). For purposes of analyzing the
19		reasonableness of the LTPPAs, SPS did not include any potential avoided or deferred
20		capacity benefits, which potentially makes the economic assessment conservative
21		The final modeling results are shown in Attachment CLB-1. A map showing
22		location of the Chaves County Solar facility and the Roswell Solar facility is

provided as Attachment CLB-2.

23

1		Thus, the Commission should authorize SPS to enter into the LTPPAs and
2		approve SPS's request for recovery of the energy-related costs through SPS's Fuel
3		and Purchased Power Cost Adjustment Clause in accordance with Rule 550
4		(17.9.550 NMAC).
5	Q.	How is the remainder of your testimony presented?
6	A.	The remainder of my testimony will: (1) describe SPS's resource planning process;
7		(2) provide an overview of SPS's Request for Proposals ("RFP") for solar generation
8		("2014 Solar RFP"); and (3) present the economic analysis that supports the selection
9		of the LTPPAs for which SPS seeks approval.

III. SPS'S RESOURCE PLANNING PROCESS

2 Q. Please generally describe SPS's resource planning process.

A.

In its simplest form, electric resource planning involves using forecasts of customer electric demand and energy to determine the appropriate sources of electric supply that should be developed to meet customer requirements in a cost-effective and reliable fashion. SPS compares its existing firm generating resources, including owned generating capacity and firm purchased power, to SPS's projected annual peak firm load obligation over the planning period. Required reserve margins are included to determine SPS's capacity position.

SPS's assessment of electric resource need includes determining both the magnitude of the need as well as the type of resources required (*i.e.*, peaking, intermediate, or baseload). Additionally, resource need assessment must be conducted in accordance with regulatory requirements specifying resource assessment processes and resource specific acquisition, (*e.g.*, requirements for integrated resource planning and amounts of renewable resources in a supply portfolio). This approach is commonly referred to as a load and resources balance.

SPS determines the type of resources its electric supply system requires by evaluating how different resource technologies integrate with SPS's existing electric

supply to serve the overall system capacity and energy needs in a least-cost manner. Planning to meet a resource need is an iterative process performed with computer simulation tools (*Strategist* and PROSYM, products of Ventyx) that seek a least-cost solution consistent with resource availability, predicted market conditions and fuel costs, power supply reliability, system reliability, and electric system constraints. Typical solutions for meeting resource needs consist of the following: enhancing current resources, demand management, building new resources, and purchasing new long-term or short-term energy and capacity.

If an electric resource addition is required, competitive bid solicitations

If an electric resource addition is required, competitive bid solicitations provide a market price that can be compared against self-build options to determine the most economic option to meet a resource need. The ultimate decision is made based on the economic value of the alternatives, the risks inherent in each alternative, the ability to obtain the generation in a timely manner, and other factors affecting a project's value to SPS.

Q. Has SPS filed an IRP under Rule 17.7.3 NMAC?

A.

Yes. SPS filed its last integrated resource plan in Case No. 12-00298-UT on July 16, 2012 ("2012 IRP"). The 2012 IRP describes SPS's action plan to evaluate and recommend supply-side resource options utilizing the resource planning process

1		described above. The Commission issued its Final Order accepting SPS's 2012 IRP
2		as compliant with 17.7.3 NMAC on August 30, 2012. SPS will file its next IRP in
3		July 2015 ("2015 IRP").
4	Q.	Is the acquisition of the LTPPAs consistent with SPS's 2012 IRP?
5	A.	Yes. SPS has consistently supported the approach of acquiring renewable generation
6		when the pricing is below SPS's forecasted system avoided energy costs. This
7		philosophy was followed in the 2012, as well as the 2009, IRP. In particular, the
8		2012 IRP rests upon the following basic tenets: (1) add generation capacity (as
9		necessary to meet the capacity shortfall resulting from customer load and available
10		resources) in a timely manner to meet the required Southwest Power Pool ("SPP")
11		Capacity Margin; and (2) ensure that the combination of the capacity and energy
12		resources selected minimizes total system cost for ratepayers.
13	Q.	Rule 551(D)(8) also allows for LTPPAs to not be consistent with IRPs if material
14		changes have arisen that warrant a different course of action. Have material
15		changes occurred for solar generation since the Commission accepted the 2012
16		IRP?
17	A.	Yes. After the Commission accepted the 2012 IRP, SPS had discussions with certain
18		solar developers. Those discussions revealed potential pricing that was favorable to

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SPS's forecasted avoided energy costs. The 2014 Solar RFP confirmed that solar 2 photovoltaic ("PV") generation pricing had dropped significantly since the time the 2012 IRP was accepted. The recent decrease in solar PV pricing provides SPS with the opportunity to further minimize costs through the acquisition of the LTPPAs 5 without compromising SPS's ability to timely meet the required SPP Capacity 6 Margin. Thus, while the LTTPAs are fundamentally consistent with the 2012 IRP, 7 the pricing of solar PV generation is a material decrease since SPS's 2012 IRP was accepted. Q. Why do you believe solar PV prices have declined since the time SPS's 2012 IRP was accepted? A. The recent decrease in solar pricing is the result of several factors. First, solar resource developers are attempting to acquire and secure bilateral agreements to take advantage of the Federal Investment Tax Credit ("ITC"), which is scheduled to be 14 reduced from the present 30% to 10% beginning January 1, 2017. The need to secure agreements before January 1, 2017 has enabled developers to offer lower 16 pricing. The January 1, 2017 deadline also influenced the timing of the 2014 Solar RFP to allow any resulting facility to commence commercial operations on or before that date.

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Second, PV prices have declined as a result of improved efficiencies related to the manufacturing of PV modules. This decrease in PV module pricing has enabled PV developers to design systems that increase direct current ("DC") installation capacity (via an increase in PV modules) relative to the Alternating Current/DC inverter capacity. The impact of this design change is an increased amount of energy produced and an improved capacity factor for one-axis PV tracking systems (Capacity Factor's have increased from about 25% to 35%). Consequently, the increase in energy produced reduces their average energy cost, which has enabled PV developers to reduce their bid prices. Q. Do you believe future pricing reductions in solar PV generation are possible? Possibly, yes. It is possible that future cost reductions in solar PV generation will occur due to purported production efficiencies for solar panels. In addition, while the ITC will be reduced effective January 1, 2017, it is possible that the ITC could be modified at some point in the future. Combinations of these factors, in addition to others, may result in future reductions to solar PV generation pricing. In the event that solar prices actually decline in the future, SPS could issue a subsequent solar RFP to take advantage of such circumstances for the benefit of customers.

Q.	Did the reduction in PV generation pricing lead to SPS issuing an RFP for solar
	generation resources in 2014?
A.	Yes. As discussed above, the prices reflected a significant decrease observed over
	the past several years. Thus, SPS elected to issue the Solar RFP in September 2014.
	As discussed below, the timing was also influenced by the upcoming reduction in the
	Federal ITC associated with solar generation ending December 31, 2016. A copy of
	the 2014 Solar RFP is provided as Attachment CLB-3.
Q.	Why is the procurement of the LTPPAs consistent with sound resource
	planning?
A.	The LTPPAs provide carbon-free energy at prices that are at a discount to SPS's
	forecasted avoided energy costs. Thus, the LTPPAs will meet customer demand at a
	cost reduction to ratepayers. Finally, as discussed by Ms. Ruth Sakya, if in a future
	filing the Commission authorizes SPS to exercise its option to procure RECs, the
	LTPPAs can be used to meet future New Mexico Renewable Portfolio Standard
	requirements.
	A. Q.

1	Q.	At what price does SPS have the option of purchasing the REC's for
2		compliance?
3	Α.	SPS can initially exercise its option to purchase the RECs associated with the
4		LTPPAs for \$0.50/MWh, in the first year of the LTPPA's, escalating each year
5		thereafter at a rate of two percent (2%) per year. Ms. Collins discusses this option
6		further in her testimony.

1		IV. <u>DESCRIPTION OF THE 2014 SOLAR RFP</u>
2	Q.	Please describe the 2014 Solar RFP.
3	A.	The 2014 Solar RFP was issued on September 12, 2014. The RFP sought solar
4		generation with commercial operation dates beginning no later than December 31.
5		2016, which would allow the projects to avail themselves to the ITC. In addition, the
6		2014 Solar RFP:
7 8 9 10		 requested that all bidders provide SPS terms and conditions under which the environmental benefits and RECs associated with the energy would be included in the purchase and a proposal under which the bidder would retain ownership of the RECs;
11 12 13		• sought bids for a minimum size of 10 MW;
14 15 16 17		 required the projects interconnect directly to the SPP transmission system or alternatively, interconnect to certain distribution substations identified by SPS within the RFP documentation; and
18		• required bids to be submitted on or before October 10, 2014.
19	Q.	How many bids were received?
20	A.	On October 10, 2014, SPS received proposals from ten distribution voltage entities
21		that resulted in 52 bids and proposals from nine transmission voltage entities that
22		resulted in 52 additional bids, for a total of 104 proposals. Attachment CLB-4, pages
23		1-2 (transmission bids) and pages 3-4 (distribution bids) shows a summary of the
24		initial bids received.

V. EVALUATION OF THE 2014 SOLAR RFP BIDS

2 Q. Please describe SPS's bid evaluation process for the 2014 Solar RFP.

A. The analysis was broken into two phases: (1) screening curve evaluation phase, and (2) final evaluation phase.

During the screening curve evaluation, SPS short-listed certain bids based upon the system avoided energy cost results. First an optimized base model run was determined using *Strategist* that contains the optimized mix of generation resources (Combustion Turbine ("CT") and/or Combined Cycle ("CC")) throughout the forecast period. Next, a subsequent model run (change case) was developed, which contained all of the same resources in the base model run <u>plus</u> the addition of 200 MW of PV generation in the change case. The difference in annual costs between the base model run and the change case represented the avoided cost. During the screening curve evaluation, SPS sought additional information from certain bidders. The intent was to develop a ranking of the lowest cost bids and to determine a subset or short-list of bids from which to request re-pricing. The final evaluation was based upon re-pricing of bidders (from short-listed in the initial evaluation phase) and actual hourly generation shapes from their proposed projects.

1 Q. What does re-pricing mean?

- 2 A. Re-pricing means that SPS contacted the short-listed bidders and asked them to provide their best and final pricing.
- 4 Q. Please further describe SPS's screening curve evaluation.
- In the screening curve evaluation, SPS first calculated the levelized cost of each bid to determine its rank relative to SPS's system avoided energy costs. The levelized cost is a stream of periodic energy costs, where in each period the costs are the same thereby allowing SPS to compare bids on the equal basis.

In general, the short-list for transmission and distribution voltage RFP bids was determined based upon whether the calculated levelized cost of each bid was less than SPS's system avoided energy costs. Certain other bids were included in the short-list because their proposed pricing was slightly above system avoided cost, but SPS thought these bidders might be willing to re-price their proposed project to remain competitive at a level below SPS's system avoided energy costs. A summary of the initial bids and the ones included in the short-list is contained in Attachment CLB-4, pages 1-2 (transmission) and pages 3-4 (distribution). The short-listed bids are shaded in the attachments.

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After the short-list was determined, SPS consulted with Xcel Energy internal operations, transmission, purchased power, and regulatory personnel to discuss any issues that might arise due to existing unit operations, transmission constraints, transmission service requests, PPA exceptions provided by the bidders, and REC strategy. After consulting with these Xcel Energy internal groups, SPS narrowed the selection to certain bidders (i.e., the short-list of bidders). Re-pricing was requested from four out of ten distribution voltage entities and from four out of nine of the transmission voltage entities. Attachment CLB-4, page 5 (transmission) and page 6 (distribution) contains a summary of the re-pricing from short-listed bidders. On October 22, 2014, SPS received re-pricing from the selected short-listed bidders. O. With respect to the screening curve evaluation, how were SPS's avoided energy costs determined? A. SPS used the production costing model, *Strategist*, to determine the avoided energy cost. First, a dynamically optimized base model was developed that contained certain capital resource additions and simulated the system dispatch to meet SPS's forecasted system load for a twenty-year period. The optimized base model contained the addition of certain resources that were fixed in the model: (1) a 177 MW CT in 2018, (2) a second 177 MW CT in 2021, and (3) the conversion of the

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two CTs (in 2018 and 2021) to a 735 MW gas CC power plant in 2023. The remainder of resource additions (beginning 2024) was dynamically optimized, which means that, in addition to optimizing system dispatch necessary to achieve the lowest energy production costs, the system optimizes the types and quantities of generation resources that are needed in the future. Next, Strategist was re-dispatched as a "change case," assuming all of the above resource additions, plus the addition of 200 MW of solar beginning in January 1, 2017. The only thing altered between the base case and the change case was the inclusion of 200 MW of PV generation. The difference in total fuel and energy costs between the base model run and the change case represents the avoided energy cost associated with the addition of 200 MW of solar. Two hundred MW was selected in the change case to be consistent with the target MW quantity listed in the RFP. Was the Strategist analysis conducted in the final evaluation basically the same as that discussed above? Yes, except in the case of the final evaluation, the actual hourly generation shape associated with each of the specific projects was used in the analysis, whereas in the initial evaluation a generic hourly PV generation shape was used. Thus, the exact

characteristics of the two projects were modeled in the final evaluation.

1 Q. What were the results of the final Strategist analysis?

A. The final *Strategist* analysis demonstrated significant energy savings due to the addition of the two NextEra projects, each 70 MW, beginning January 1, 2017. The total system NPV of avoided energy savings for the period (2017-2041) is approximately \$26.5 million. The levelized gas price used in the analysis was \$6.20/MMBtu. The levelized savings of the project compared to system avoided energy cost is \$6.01/MWh. The break-even levelized gas price is \$5.42/MMBtu, which means at a twenty-five year levelized natural gas price of below \$5.42/MMBtu, the proposed PPA would no longer be economic based upon a comparison to system avoided energy costs. Attachment CLB-1 contains a summary of the final *Strategist* evaluation including identification of avoided energy cost savings.

13 Q. What was the final result of the 2014 Solar RFP bid analysis?

14 A. Taking all of the criteria described earlier into account, SPS determined that the two
15 NextEra LTPPAs provided the best economic resource addition to SPS's resource
16 portfolio.

1 Q. Did SPS consider an ownership option of certain solar facilities?

Yes. In the 2014 Solar RFP, SPS sought proposals for build-own transfers, under which SPS would have ultimately been the owner of the solar facility. A build-own-transfer structure (also known as a "turn-key project") is when the bidder is responsible for designing and constructing the facility, which upon the Commercial Operation Date, is then turned over to the utility for operation. SPS chose this approach because it does not internally have the experience in constructing such solar facilities. This approach is consistent with Xcel Energy's past practice.

SPS received only one ownership proposal, which was uneconomic from a pricing perspective when compared to the LTPPA alternatives. The bidder indicated that the future price of buying the facility in year seven would be based upon a fair market value determination in year seven. This uncertainty of not knowing the purchase price at the time of the evaluation effectively precluded SPS from buying the facility.

- Q. Was it economically feasible for SPS to consider near term or immediate ownership of a solar facility versus the bids that were received in the 2014 Solar RFP?
- 18 A. No. As I discussed above:

2		 the availability of the ITC is one of the primary reasons solar PV generation costs have decreased recently;
3		 the availability of the ITC impacted the pricing of bids for the 2014 Solar RFP; and
5 6		 the pricing of the LTPPAs and estimated avoided energy savings reflect the impact of the ITC.
7		However, because of Internal Revenue Service ("IRS") normalization requirements,
8		SPS would not have been able to flow the benefits of the ITC to its customers in a
9		similar fashion as NextEra did for its pricing of the LTPPAs. IRS Code Section
10		50(d) imposes the normalization requirement on SPS.
11	Q.	Please explain what "normalization" means in the context of utility accounting.
12	A.	Normalization refers to a method of accounting in which the tax benefits associated
13		with depreciation of utility assets are spread over the same time period that the costs
14		of depreciation are recovered from customers.
15	Q.	What impact does the normalization requirements have on SPS's ability to flow
16		through ITC benefits to customers if it were to own solar facilities?
17	A.	The normalization requirements would require SPS to spread the impact of ITC to
18		customers over the book life of the solar facilities. Thus, SPS would not be able to
19		immediately flow through the benefits of ITC.

1	Q.	Is NextEra un	er the same normalization	requirements as SPS?
---	----	---------------	---------------------------	----------------------

A.

- A. No. Because NextEra is not a public utility, it is not subject to the normalization requirements. Thus, it could immediately reflect the ITC in the pricing of its bids.
- Q. Does the selection of the LTPPAs mean that SPS will incur transmission
 delivery costs for the energy produced by the solar facilities?
 - It is uncertain at this time what, if any, transmission delivery costs will be assigned to these projects. On March 1, 2014, the Southwest Power Pool commenced operations of its Integrated Marketplace ("IM"), which contains: a Day Ahead Market; a Transmission Congestion Rights ("TCR") market; and a Real-Time Balancing Market ("RTBM"). TCRs are financial instruments that allow Market Participants to hedge against the congestion cost associated with energy delivery. The hedge is defined with a source, sink, and MW value. The revenue from TCRs is based on the difference between Locational Marginal Price ("LMP") paid to the generator, and the LMP price at the load. Like traffic congestion, transmission congestion cannot be completely eliminated or avoided. However, one can hedge to manage the uncertainty of congestion. The risk of any differential between the PV generation LMP pricing and load LMP pricing are typically minimal when the generation and

load are located in the same general area. This is effectively the situation with the proposed LTPPAs.

SPS submitted requests for firm transmission service for the proposed LTPPA's to the SPP in February 2015. At this time, SPS does not know what the transmission cost impacts might be to secure firm network transmission service. SPS will receive preliminary results from the transmission service study no later than three months after the initial submission. The final results may not be known for up to 24 months. SPS expects one of the following two end results and resulting actions:

1. Result: Transmission Upgrades are significant

Action(s): SPS does not accept firm transmission service. As a result of not having firm service, SPS would not have the free right to convert those rights into TCRs. SPS would either bid to purchase TCRs or have no hedge between the day-ahead LMP at the generator and the SPS load. However, because the load LMP and generator LMP are located in the same general area, the risk associated with any difference between the LTPPAs generation LMP and SPS load LMP is expected to be minimal.

1		2. Result: Transmission Upgrades are minimal or reasonable
2		Action(s): SPS would have the free opportunity to convert these rights into
3		TCRs to hedge the real time balancing market LMP price difference between the
4		generator and the SPS load.
5	Q.	Will the procurement of the LTPPAs provide safe and reliable electric utility
6		service at the lowest reasonable cost?
7	A.	Yes. As I discussed in detail above, the pricing of the LTPPAs is below SPS's
8		forecasted system avoided energy costs. The total system NPV avoided energy
9		savings for the period (2017-2041) are approximately \$26.5 million for the total SPS
10		system. The LTPPAs are energy only contracts and are not expected to negatively
11		impact the reliability of the SPS/SPP transmission system due to the procurement.
12	Q.	SPS witness Jessica Collins discusses the possible ownership options associated
13		with the NextEra Yield Co. What is the NextEra Yield Co?
14	A.	During negotiations, NextEra indicated it will structure the projects as part of a Yield
15		Co, where 100% of earnings would be distributed as periodic payments to Yield Co
16		investors. Yield Cos are publicly traded companies formed to own operating assets
17		that produce predictable cash flows, which allows for a lower cost of financing.
18		They serve the same purpose as master limited partnerships (MLP) or real estate

investment trusts (REIT), which most utilities cannot form due to regulatory
constraints. As addressed by Ms. Collins, SPS could purchase the solar facilities
upon the dissolution of the NextEra Yield Co.

1		VI. <u>CONCLUSION</u>
2	Q.	Would you please summarize your testimony?
3	A.	The proposed LTPPAs were selected as a result of a competitive bidding process and
4		after comprehensive evaluations of the bids received. The procurement of the
5		LTPPAs is consistent with SPS's 2012 IRP and is reasonable in light of the material
6		decrease in solar PV generation pricing since the time the 2012 IRP was accepted by
7		the Commission. Finally, the LTPPAs are expected to provide significant energy
8		savings for customers. Thus, the Commission should approve the LTPPAs and
9		permit SPS to recover the resulting energy costs as fuel and purchased power
10		expense in accordance with Rule 550.
11	Q.	Were Attachments CLB-1, CLB-2, and CLB-4 prepared by you or under your
12		direct supervision and control?
13	A.	Yes.
14	Q.	Is Attachment CLB-3 a true and correct copy of the 2014 Solar RFP issued in
15		September 2014?
16	Α.	\mathbf{Yes} :
17	Q.	Does this conclude your pre-filed direct testimony?
18	A.	de de la composition de la compositio La Yest de la composition de la composi

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

CRAIG L. BERG, first being sworn on his oath, states:

I am the witness identified in the preceding testimony. I have read the testimony and the accompanying attachments and am familiar with their contents. Based upon my personal knowledge, the facts stated in the testimony are true. In addition, in my judgment and based upon my professional experience, the opinions and conclusions stated in the testimony are true, valid, and accurate.

ERAIG L. BERG

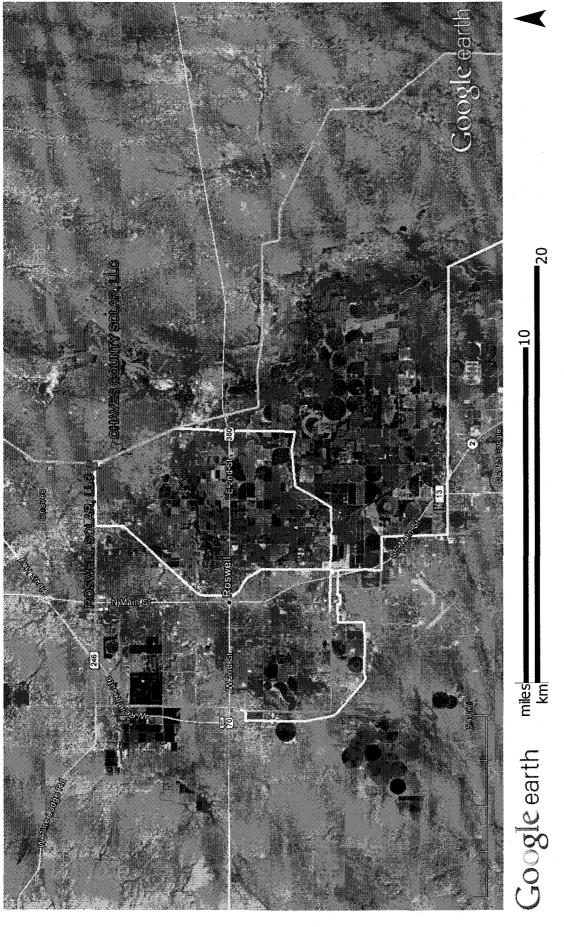
SWORN TO AND SUBSCRIBED before me this 30 day of March, 2015.

JENNIFER D. AUGUSTINE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20064006595
MY COMMISSION EXPIRES 02/16/2018

My Commission Expires:

Strategist Final Model Results

Contract Year		~	2	ო	4	5	9	7	00	6	10	=======================================	12	
	NPV	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	
Cost of 140 MW Solar		\$14,199	\$14,411	\$14,626	\$14,879	\$15,062	\$15,286	\$15,511	\$15,778	\$15,972	\$16,206	\$16,445	\$16,723	
Avoided Cost		\$14,495	\$15,255	\$16,300	\$17,473	\$19,167	\$19,001	\$18,720	\$19,403	\$17,624	\$18,265	\$19,445	\$19,732	
Energy Savings		\$296	\$844	\$1,675	\$2,594	\$4,104	\$3,715	\$3,210	\$3,625	\$1,652	\$2,059	\$3,000	\$3,009	
GWh		406	404	402	401	398	395	393	392	389	387	385	384	
Contract Year		13 2029	14 2030	15 2031	16 2032	17 2033	18 2034	19 2035	20 2036	21 2037	22 2038	23 2039	24 2040	25 2041
Cost of 140 MW Solar	\$183,758	\$16,928	\$17,173	\$17,425	\$17,719	\$17,934	\$18,192	\$18,455	\$18,766	\$18,989	\$19,261	\$19,537	\$19,862	\$20,099
Avoided Cost	\$210,304	\$20,620	\$19,936	\$20,370	\$20,655	\$20,052	\$20,078	\$20,500	\$20,525	\$20,734	\$20,911	\$21,074	\$21,151	\$22,192
Avoided Energy Savings	\$26,545	\$3,692	\$2,762	\$2,945	\$2,936	\$2,119	\$1,885	\$2,045	\$1,759	\$1,745	\$1,650	\$1,538	\$1,288	\$2,093
GWh	4,416	381	379	377	376	373	371	369	368	365	363	361	360	357
Cost of 140 MW Solar	Levelized \$16,170	GWh 389	\$/MWh \$ 41.61											
Avoided Cost	\$18,505	389	\$ 47.63											
Energy Savings	\$2,336	389	\$ 6.01											
Gas Price \$/MMBtu			\$6.20											
Avoided Cost Implied Heat Rate	ıt Rate		7.68											
Break-Even Gas Price			\$ 5.42											



2014 Request for Proposals For Solar Generation Resources

Southwestern Public Service Company

Released September 12, 2014



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Appendices

Appendix A
Proposal Forms

Appendix B
Model Renewable Purchase Agreement

Notice of Disclaimer

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

SPS reserves the right to modify, supplement or withdraw this RFP at any time, whether due to changes in law or otherwise, and including by issuing one or more addenda to this RFP during this solicitation, which addenda shall become a part of this RFP. No part of this RFP and no part of any subsequent correspondence by SPS, its affiliates, or their respective employees, directors, officers, customers, agents or consultants shall be taken as providing legal, financial or other advice or as establishing a contract or contractual obligation. Contractual obligations on the part of SPS will arise only if and when definitive agreements have been approved and executed by the appropriate parties having the authority to approve and enter into such agreements. SPS reserves the right to request from a respondent (a.k.a., Bidder) information that is not explicitly detailed in this document, obtain clarification from respondents concerning proposals, conduct contract development discussions with selected respondents, conduct discussions with members of the evaluation team and other support resources as described in this RFP and in compliance with all FERC Code of Conduct rules.

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

any determination of SPS to select or reject its proposal. Each respondent, in submitting its proposal, irrevocably agrees and acknowledges that it is making its proposal subject to and in agreement with the terms of this RFP.

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

SPS 2014 Solar Generation RFP

Section 1. RFP Scope

Southwestern Public Service Company ("SPS"), an operating company subsidiary of Xcel Energy Inc., is issuing this Request for Proposals ("RFP") as a component of SPS's resource planning process. Through this solicitation, SPS is seeking proposals for photovoltaic solar generation.

This RFP can be found online at http://www.xcelenergy.com/ by clicking on the "About Us" menu at the top of the home page, then on the link "Our Company", then on the link "Projects and RFPs", and finally choosing the appropriate RFP. SPS invites proposals from all potential suppliers ("Bidders") who are capable of meeting the conditions of this RFP.

1.1 Regulatory Context

SPS may require certain regulatory approvals from those jurisdictions in which it operates. Such approvals shall include, but may not be limited to, approval of any resulting Power Purchase Agreements ("PPAs"), and regulatory treatment of such costs, which SPS may consider in its sole discretion pursuant to the terms of the model PPA.

1.2 Resource Need Assessment

Through this solicitation, SPS is requesting proposals of solar resources that could begin delivery to SPS on or before December 31, 2016 and that would be contracted through SPS's PPA. SPS may opt to acquire more or fewer resources, depending, among other things, on the quality of bids received in response to this RFP, on updates to SPS's forecasts, on regional transmission availability, and on changes to regulatory or legal requirements.

Section 2. Eligible Project Information

2.1 Eligible Project Structures

Bidders to this RFP should propose a PPA structure, subject to the accounting considerations and the index pricing considerations discussed in later sections of this RFP. A Model PPA¹ is provided in Appendix B. Bidders should review and respond to the terms and conditions of the Model PPA when submitting their proposals.

In the event SPS desires to proceed with negotiations of a PPA, SPS will work to negotiate the agreements with Bidders selected through this solicitation. The Model PPA attached in Appendix B is provided to familiarize Bidders with the terms and conditions under which SPS purchases solar energy and provide Bidders with an opportunity to respond to the Model PPA when developing their proposals. Bidders should familiarize themselves with the terms and conditions of this Model PPA and should provide proposed modifications, if any, to the Model PPA with their proposals. In preparing proposals, Bidders should also note that certain bid-specific information contained in each proposal would be inserted into a final PPA should an agreement be reached.

SPS is under no obligation to develop the PPA from any other contract form provided by the Bidder, and strongly discourages Bidders from proposing such forms.

To the extent that the validity of a Bidder's proposal, and a Bidder's ability to execute the PPA, is contingent upon changing language in the Model PPA, the proposal must specifically identify the required changes as Model PPA Exceptions (see Narrative Topics under Section 4.3 of this RFP) and should indicate what impact complying with the terms of the Model PPA would have on their bid pricing.

2.2 Eligible Project Resources

SPS is requesting up to 200 MW of photovoltaic solar generation. Solar generation proposals shall be either: 1) to-be-built generation resources to be interconnected on the distribution facilities identified in the Table 2.2a below. These resources shall be 10 MW AC for each distribution interconnection location, and 2) remaining resources to be interconnected

¹ The Model PPA is a sample agreement containing terms and conditions acceptable to SPS. SPS understands that bidders may desire to modify and supplement the Model PPA when submitting their proposals. If SPS elects to negotiate a PPA with one or more Bidders, SPS will consider any proposed changes.

at distribution or transmission at site(s) proposed by the developer.

Table 2.2a

Substation	Latitude	Longitude
Fiesta	32.407305	-104.2206251
Strata	32.349429	-103.936817
Livingston Ridge	32.41313	-103.7899335
North Canal	32.45765	-104.2287566
South Loving	32.269886	-104.1002588
Wood Draw	32.097194	-103.928417
Cooper Ranch	32.540554	-103.2959199
Ochoa	32.210895	-103.517699
Zia	32.652086	-103.7969978

SPS requires that Bidders provide in their proposals SPS's ownership of 100% of the environmental benefits and renewable energy credits ("RECs") associated with the energy generated by the project and purchased by SPS, and a proposal under which Bidder retains ownership of 100% of such RECs.

2.3 Pricing

Forms C1 and C2 provide the pricing template for solar generation PPA proposals. All pricing must be in terms of current year dollars, also referred to as escalated or nominal dollars. For example, a \$25 per megawatt-hour ("MWh") energy price bid for 2017 means that in 2017, energy from the facility will be purchased at a rate of \$25/MWh. SPS's preference is for fixed price proposals. However, Bidders wishing to submit bids with terms that use price indices to periodically adjust prices should refer to Section 2.8 in developing their proposals.

Proposals should include estimated costs for any new or upgraded interconnection facilities required for the interconnection of the proposed project. Any distribution interconnections shall be required to interconnect to the applicable substation at the distribution breaker

SPS will be responsible for payment of any transmission service and ancillary service costs on the SPS system required to deliver Bidder's proposed energy beyond the point of interconnection at which SPS would receive the energy from Bidder's facility.

All Bidders must complete Forms C1 and/or C2, which requires the Bidders to provide information necessary for an economic evaluation of their proposals.

2.4 Regulatory Approvals

SPS will submit to its regulatory agencies any agreements it enters into with successful Bidders to ensure SPS's ability to recover costs associated with such agreements in a manner satisfactory to SPS. SPS further reserves the right to terminate such agreements if, among other things, SPS fails to receive satisfactory assurance that SPS will be able to recover all of its costs associated with such agreements in a manner satisfactory to SPS. These termination provisions are presented in the Model PPA.

2.5 Contract Lengths

Eligible Bidders to this RFP may propose one contract term length for each proposal. Bidders may propose contract term lengths of ten (10), fifteen (15), twenty (20) or twenty-five (25) years. SPS's objectives with respect to contract term lengths are to avoid the concurrent expiration of multiple contracts and to avoid or minimize the adverse financial impact of imputed debt, capital lease, and Variable Interest Entity, as defined below, related obligations.

2.6 RoFO and Purchase Option

The Model PPA includes a Right of First Offer ("RoFO") that, subject to specific conditions, may be exercised by SPS or its affiliate. In addition, the Model PPA includes a provision that grants SPS, or an affiliate, the option to purchase the solar facility after the sixth (6th) commercial operation year. In the event SPS, or an affiliate, elects to exercise the option, the Model PPA provides details regarding, among other things, the determination of the facility purchase price. As further explained in Sections 4.3 and 5 below, although SPS is receptive to considering a Bidder's proposed changes to the Model PPA, retaining provisions in the agreement that would provide SPS with a RoFO and the option to purchase the facility is of particular importance to SPS.

2.7 Contract Accounting

All contracts proposed to be entered into as a result of this RFP will be assessed by SPS for appropriate accounting and/or tax treatment. Bidders shall be required to supply promptly to SPS any and all information that SPS requires in order to make such assessments. SPS's assessment will include, but shall not be limited to, whether the proposal could result in a contract that would either (i) require SPS to account for all or a portion of the arrangement as a capital lease² pursuant to Financial

² "Capital Lease" – shall have the meaning as set forth in FASB ASC 840.

Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 840, or (ii) require consolidation of the seller or assets or liabilities of the seller in SPS's financial statements due to Variable Interest Entity ³ ("VIE") issues. To the extent FASB modifies authoritative accounting standards at the time of SPS's assessment and are expected to become effective during the contract term, such assessment shall be performed both under the current and future standards.

SPS prefers arrangements that do not result in a capital lease or VIE consolidation. As a result, all Bidders shall state in their proposals (i) that the Bidder has considered applicable accounting standards in regard to capital leases and Variable Interest Entities, (ii) summarize any changes that the Bidder proposes to the Model PPA in order to attempt to address these issues, and (iii) whether to the Bidder's knowledge and belief, the Bidder's proposal would result in such treatment as of the date of the proposal.

By submitting a proposal, each bidder agrees to make available to SPS at any point in the bid evaluation and throughout any resulting contract negotiation process any and all financial data associated with the Bidder, the facility included in the proposal and/or the PPA and any other information that SPS determines, in its sole discretion, is required to verify or independently determine the accounting and tax treatment associated with a proposal. Such information may include, but shall not be limited to, data supporting the economic life (both initial and remaining) of the facility, the fair market value of the facility, and any and all other costs (including debt specific to the asset being proposed) associated with the Bidder's proposal. This shall be in addition to financial data contained within the Bidder's financial statements (e.g., income statements, balance sheets, etc.).

³ "Variable Interest Entity" or "VIE" – shall have the meaning as set forth in FASB ASC 810.

Section 3. Delivery and Interconnection Information

3.1 <u>Power Delivery Requirements</u>

SPS will be responsible for arranging any transmission service required to deliver power obtained under this RFP pursuant to an executed PPA. SPS will include the estimated costs of transmission service and any associated network upgrades for delivery when evaluating bids. If firm transmission service is delayed beyond the COD, such that non-firm service or service with interim redispatch is required, output from the facility may be curtailed without compensation to the bidder.

3.2 Proposals Requiring SPP Interconnection Service

[Transmission interconnected projects submit directly to the SPP, per Attachment V of the OATT, the Generator Interconnection Procedures (GIP)]

Pursuant to SPP business practices, any distribution-level generator interconnection of 5 MW or greater must be studied for impacts to the transmission system. This requires SPS to submit an Affected System Generator Interconnection (ASGI) request to SPP to study in the Definitive Interconnection System Impact Study (DISIS). SPP performs the DISIS in a "cluster" method twice a year, starting in April and October. Prior to the October 1 study cycle, SPS will submit ASGI requests to SPP for the proposed distribution sites in Table 2.2a. Impact studies typically take four to six months to be completed, so results for the Table 2.2a sites should be available sometime in late first quarter or early second quarter 2015. Multiple studies and additional funding are always a possibility. The SPP study reports will indicate required transmission upgrades, timeframes for completion and cost estimates. Per the SPP OATT, all generator interconnection costs are borne by the interconnection customer. All proposed pricing must include all customer interconnection costs, e.g., capital costs for distribution interconnection facilities and any distribution or transmission upgrades that may be required.

For the purposes of this RFP, SPS will require the bidder requesting SPS distribution interconnection, including to the proposed interconnection sites, to provide initial funding in the amount of \$30,000 to cover ASGI study costs. If any funding is not used for the system impact study, it will be refunded to the party requesting interconnection. The bidder must submit all funding and generator interconnection information to SPS with the bid package.

If a bidder requests distribution interconnection to SPS (including all interconnection information and the \$30,000 initial funding) for a location

not in the table, in time for SPS to submit a complete ASGI request to SPP, the study will be performed along with the others. In this case, the bidder should also notify the RFP manager with the size of the plant and the location, to ensure timely submittal of the Affected System interconnection request. If a bidder submits a new distribution interconnection request to SPS along with the bid package, too late for SPS to submit an ASGI request prior to the October 1 study start, SPS will place it into the April 2015 study and results will be expected four to six months later. After the SPP study process is completed and reports provided to SPS, SPS will provide the party requesting interconnection with any transmission system upgrades required along with the distribution system upgrades.

Forms C1 and C2 include a section where Bidders must enter information regarding their SPP-determined interconnection cost.

Section 4. Proposal Content Requirements and Submission Procedure

4.1 Schedule Estimate

A preliminary schedule for this RFP process is provided below. SPS reserves the right to revise this schedule at any time in its sole discretion. In the event SPS elects to negotiate a PPA, SPS would plan for the completion of contract development and the signing of project agreements as quickly as possible while still providing sufficient time for the proposal review and evaluation process. Under such circumstances, SPS's goal is to complete contract development discussions, sign contracts and receive Commission approval pursuant to the schedule below.

Proposals are due by 5:00 PM CST Friday, October 10, 2014.

RFP Issued	September 12, 2014
Proposals Due	October 10. 2014
Evaluation & Due Diligence	October 2014
Negotiations with Selected Bidder(s)	November 2014
Finalize / Sign Contracts	December 2014
Application for Regulatory Approval	January 2015

4.2 Minimum Requirements for Proposals

This section describes the minimum requirements that all proposals must satisfy to be eligible for this solicitation. Unless SPS in its sole discretion elects otherwise, proposals that do not comply with these requirements will be deemed ineligible and will not be considered further. As stated in this RFP, notwithstanding the terms in this Section 4.2, SPS reserves the right to reject any proposal for any reason in its sole discretion.

- Proposals must include all applicable content requirements described in Section 4.3, including clear and complete written descriptions of all information requested, and completed forms.
- Proposals must clearly specify all pricing terms in accordance with Section 2.3. Except as otherwise indicated in Sections 2.3 and 2.8, proposals with pricing that is subject to change will be rejected.

⁴ SPS reserves the right to adjust this schedule appropriately, including (but not limited to) for changes to the regulatory calendar.

- Proposals must clearly demonstrate compliance with all power delivery requirements listed in Section 3.0 of this RFP.
- Proposals must demonstrate an acceptable level of development and technology risk, as determined by SPS's bid evaluation team.
- Proposals must demonstrate that the Bidder's project development team has, within the last 5 years, successfully completed the development, construction and commissioning of at least one project of similar scale and with characteristics similar to the proposed project.
- Bidders must demonstrate to the satisfaction of SPS that they can meet the security requirements contained in the Model PPA.
- Proposals must clearly demonstrate any financing requirements and an indicative financing structure (construction and permanent) for any proposed resources that will be constructed under a Bidder's proposal.
- For plants proposed to be constructed each Bidder must present clear and sufficient proof that it has or can secure an adequate and confirmed supply of equipment, including without limitation solar panels, sufficient (at a minimum) to meet the required proposal. Bidders shall also identify any other long-lead time items (e.g., step-up transformers) that must be procured and evidence that the Bidder has the wherewithal to successfully complete such procurement in a manner consistent with the proposed project schedule.

4.3 Proposal Content Requirements

This section outlines the content and format requirements for all proposals submitted in response to this RFP. Unless SPS in its sole discretion elects otherwise, proposals that do not include the information requested in this section will be ineligible for further evaluation, unless the information requested is not applicable or relevant to a given bid. Although these requirements assist SPS in evaluating bids, SPS reserves the right to conduct any further due diligence it considers necessary to evaluate bids and reject any bids for any reason in its sole discretion. SPS also reserves the right and holds the expectation that it will perform any and all due diligence required to achieve satisfactory knowledge of the proposal prior to entering into any PPA discussions or negotiations.

Proposal Format

The first section of each proposal must contain an Executive Summary that provides an overview of the bid's characteristics, including any unique aspects or benefits. The second section of the proposal must include the applicable set of forms included in Appendix A. These forms will contain essential information about each bid. A separate set of forms and related information must be submitted with each proposal. The third section of the proposal must include other proposal information, which must be presented in narrative form under specific topic headings, with each topic heading beginning on a new page.

A complete proposal will include the following components:

- 1. Executive Summary
- 2. Complete set of applicable forms
- 3. Form attachments (as necessary to elaborate on form information)
- 4. Narrative topics discussion (four topics described below)
- 5. Requested maps and electronic data

Proposal Forms

Appendix A and the proposal forms include any special instructions for completing the forms. Some information may be requested on more than one form. Although such requests may be redundant, Bidders must provide the information requested on each applicable form.

Narrative Topics

In addition to completed forms, each proposal must also include a thorough written discussion of each of the following topics. The narrative topics should be organized under the following headings, with each heading beginning on a separate page. These narratives have been developed based on the assumption that a new construction project is being proposed by Bidder. Bidders with projects which have already been constructed should develop their narratives in a manner appropriate for their project.

- Development Experience
- Financial Information
- Project Description and Development Schedule
- Equipment Description
- Real Property Acquisition Description and Plan
- Permitting Plan
- Community/State Reaction Assessment
- Operations and Maintenance ("O&M") Plan

- Exceptions to Model PPA
- Energy Production Profile (solar generation proposals)

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

Financial Information - All proposals must provide two (2) years of audited financial statements or the equivalent for Bidders and other responsible parties (including any entities that would provide parent guaranties of the Bidders' obligations), and as appropriate describe the plan for financing the proposed project during construction and operation. Proposals should also include indications of any financing commitments which have been discussed or obtained at the time the proposal is submitted. Proposals must explain in detail the plan for meeting the security requirements outlined in the Model PPA and must set forth the credit rating (if any) of any entities that would provide parent guaranties of the Bidders' obligations. Proposals must also include an organization chart showing the entities that own the Bidders and a description of the Bidders' organization structure (including primary and secondary businesses). Financial information may be provided primarily in electronic format so long as at least one (1) hard copy of the financial information is provided with the each proposal. Financial information should also include the following:

- An indication of whether the financing for the project (both construction and permanent) will be on-balance sheet or a nonrecourse project financing
- Expected debt/equity ratios for the project
- Anticipated costs of project debt

Project Description and Development Schedule - All proposals for the construction of new generation facilities must set out a description of the proposed project, including a description and plans for the proposed site and rights of way, utilities services, equipment configuration, construction and equipment procurement, supply of spare parts, opportunities for future expansion of the project, required permits, the nameplate capacity of the resource in MW, the Bidders' key consultants (if known) for solar studies and permitting studies, and the Bidders' construction contractors and prime subcontractors (if known). Such proposals must provide a detailed

Gantt chart of project development activities developed using Microsoft Project or similar software (note that .pdf file-type is acceptable for submittal) that includes (at a minimum) entering major equipment and construction subcontracts, target completion dates for financing, engineering, permitting, equipment procurement, construction, startup and commissioning, and guaranteed dates for substantial completion. Proposals must describe the overall development strategy that will ensure that the project can be developed in time to meet the proposed commercial operation date.

It is SPS's expectation that SPS will have first rights to the proposed project during the proposal review and approval process. In support of this, and included in this narrative, Bidders must also provide any and all information which would restrict the Bidder from providing SPS with exclusive rights to negotiate a PPA for the proposed project. Such restrictions could include, but are not limited to, prior active submission or participation in other RFPs, exclusivity rights granted to other parties, rights of first offer or refusal, purchase options, and active auctions for the project as applicable.

Equipment Description - At a minimum, proposals should indicate for all major equipment, 1) the name of the manufacturer, 2) model, 3) key metrics and characteristics of the equipment, 4) performance history of the equipment, 5) terms of warranties and/or guarantees, 6) contracting status, and 7) availability of equipment and planned delivery dates

Real Property Acquisition Description and Plan - Proposals must provide a description of the status of real property acquisition for the project that is sufficient for SPS to assess the completeness and sufficiency of the Bidder's real property rights, including but not limited to:

- The status of current site ownership,
- The plan for acquiring any and all currently uncontrolled necessary real property rights to the project,
- Acreage of real property required for the project and a schedule for the completion of the real property acquisition process, and
- Any subdivision or zoning modifications and all city or county land use permits that will be required, such as conditional use, special use or other similar permits and approvals, which will be required for any phase of development, construction, or operations of the project.

Permitting Plan - Proposals must describe all federal, state and local permits and approvals that will be required (other than land use permits

included in the Real Property Acquisition Description and Plan), including, but not limited to, federal environmental assessments under the National Environmental Policy Act ("EA/EIS"), wastewater discharge permits, hazardous waste permits, and no hazard permits/determinations from the Federal Aviation Administration. Proposals must also provide written documentation evidencing that consultation has occurred with appropriate governmental agencies responsible for reviewing potential project development impacts to state and federally listed wildlife species, as well as species and habitats of concern. Proposals must report on the status of all such permit applications and any feedback from permitting agencies. Proposals must provide the status of all required environmental permit applications (such as water, wastewater discharge, and hazardous waste permits) and any feedback Bidders have received from permitting agencies.

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

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

Operations and Maintenance ("O&M") Plan - Bidders shall summarize their O&M plans and labor arrangements for the generation facilities associated with their proposals.

Exceptions to Model PPA - In support of SPS's efforts to complete project evaluation, approval and contract negotiations in a timely manner, Bidders are highly encouraged to review and provide their comments to the Model PPA to the extent they are applicable to the proposal. To the extent that the validity of a Bidder's proposal and/or the Bidder's ability to execute a PPA is contingent upon material changes to the language in the Model PPA, Bidders should specifically identify the terms in the Model PPA they propose to change and should summarize their proposed changes to such terms. Significant exceptions taken to the Model PPA may negatively impact a proposal's likelihood for selection through the bid

evaluation process. To the extent that a bidder wishes to propose changes to the Model PPA that (if accepted by SPS) would reduce the Bidder's proposed pricing; the proposal should specifically identify such changes and the associated price reduction. To the extent practicable, Bidders should develop exhibits, schedules, attachments and other supplemental documents required by the Model PPA.

Energy Production Profile (data to be provided in Microsoft Excel format) - All proposals must provide information on expected annual energy production. SPS requests an 8,760 hourly energy production profile as well as the equipment manufacturer's power curve adjusted for the proposed site. In addition, SPS encourages Bidders to provide hourly energy production projections and associated hourly solar data for other years as well. Data should be applicable at the point of interconnection as defined in the Bidder's Interconnection Request. Solar production data that is based on theoretical modeling or a combination of on-site metered data and modeled data will be considered. However, regardless of the source of this data, Bidders must provide the resource data measurement plan used to derive the data. If the measurement plan relies entirely or in part on theoretical data, the Bidder should include background on the firm that conducted the study, the technology employed and any track record attesting to the accuracy of the methods used.

Proposals must answer the following questions concerning projections of solar generation:

- How was solar data collected, certified and correlated to a reference point?
- Who provided this service?
- What is the basis year of the underlying data? Was it a high, average or low year?
- How was the solar data transformed into generation output? Is this a typical year?
- What derates were used for such factors as array losses, line losses, forced outages, and other factors?
- What is the final, resultant derate from the nameplate MW of the proposed solar farm?

Upon request, Bidders must be prepared to provide SPS with the underlying solar data supporting these estimates with the understanding that SPS may engage an external consultant for an independent verification and evaluation of the solar resource. The provided data shall be sufficient for these purposes.

4.4 Proposal Submission Deadline

Bids will be accepted until 5:00 P.M. Central Time on **Friday**, **October 10**, **2014**. All bids must be transmitted by express, certified or registered mail, or hand delivered to SPS's RFP point of contact at the following address:

SPS 2014 Solar Generation RFP submission:

Brian Fleming SPS Solar Generation RFP 600 Tyler Street, Suite 2900 Amarillo, TX 79101

Office:

(806) 378-2460

Email:

brian.fleming@xcelenergy.com

Proposals received later than the due date and time indicated will be rejected and returned unopened, unless SPS determines in its sole discretion that extenuating circumstances led to late delivery.

One (1) bound hardcopy of the proposal must be included in the submittal. In addition, <u>Bidders must submit one electronic copy on a USB drive</u> in a Microsoft Office format. All bid forms must be completed and submitted in MS Excel (.xls) format.

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

Response to SPS 2014 Solar Generation RFP

Confidential Sealed Bid Proposal

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

4.5 Information Policy

To obtain additional information about this RFP, Bidders may submit written requests to the RFP Project Managers. For requests regarding interconnection procedures, Bidders may submit written requests via email (only) to brian.fleming@xcelenergy.com. For all other information requests, Bidders may submit requests via email (only) to craig.l.berg@xcelenergy.com.

Questions or requests will only be accepted via email. SPS will maintain a log of all inquiries and coordinate the preparation of written responses.

Once a response is prepared, SPS will forward the response to the inquiring party and, at SPS's discretion if the response and question is deemed by SPS to be relevant to other Bidders, post such response to the RFP web page. As they develop their proposals, Bidders should check the RFP web page for any updates or addenda. Parties without email addresses will not receive these responses. SPS has established this policy in an effort to provide Bidders with information about the bidding process.

4.6 Clarification of Proposals

While evaluating proposals, SPS may request clarification of, or additional information about, any item in the proposal. Such requests will be sent to Bidders by the RFP Project Manager, and Bidders are required to provide a written or electronic response to the RFP Project Manager within five (5) business days, or SPS may deem the Bidder to be non-responsive and stop evaluating the bid. Bidders are encouraged to provide an alternate point of contact to ensure a timely response to clarification questions.

4.7 Confidentiality

Bidders should clearly identify each page of proposal information that Bidders claim should be considered to be confidential or proprietary. Nonetheless, SPS reserves the right to release all proposals to its affiliates and to its and such affiliates' agents, advisors, and consultants for purposes of proposal evaluation. In addition, all information, regardless of its confidential or proprietary nature, may be disclosed by SPS to parties with an interest in a regulatory proceeding, the appropriate governmental authorities or judicial body with jurisdiction relating to these matters, or may be subject to legal discovery. It is not SPS's intent to enter into any separate confidentiality, non-disclosure, or other agreements similar in intent as a condition to receiving a Bidder's proposal.

4.8 Addenda to RFP

Any additional responses required from Bidders by any addenda to this RFP shall become part of each proposal. Bidders must list all addenda received at the bottom of the Proposal Certification Form.

4.9 Representation

SPS is a public utility with an on-going obligation to serve its customers.

This RFP does not commit SPS to pay, and SPS shall not pay any costs incurred in the preparation of a proposal in response to this RFP. This RFP does not commit SPS to procure or contract for any products or services offered in response to this RFP. SPS reserves the right to modify or withdraw this RFP, to negotiate with all qualified Bidders to resolve technical or contractual specifications, to reject any or all responses and/or to terminate contract development discussions at any time. Prior to the execution of a contract, SPS reserves the right to:

- request from a Bidder information that is not explicitly detailed in this document,
- reject any or all proposals,
- reject any proposals that, in SPS's sole discretion, are not complete or contain irregularities, or waive irregularities in any bid that is submitted,
- accept or reject any proposals not received on or before the due date specified,
- accept other than the lowest cost proposal(s),
- · obtain clarification from Bidders concerning proposals, and
- conduct contract development discussions with selected Bidders.

Section 5. Bid Evaluation

SPS desires that Bidders offer power supply proposals that provide maximum value to SPS with minimal risk. To this end, SPS has identified project characteristics, and terms and conditions that would be viewed more favorably by SPS, including but not limited to the following:

Acceptable Level of Development Risk - SPS seeks to diversify and minimize the development risk in its selected portfolio.

Low Cost - SPS seeks reasonably priced resources that will allow it to remain a low-cost energy provider.

High Reliability - SPS is committed to providing a reliable supply of electric power to its customers. Therefore, SPS seeks to acquire new power supplies that, at a minimum, meet established industry-wide reliability, availability and performance criteria. Bidders are encouraged to offer proposals that exceed these criteria and thereby provide additional value to SPS.

Maintenance - A willingness of suppliers to coordinate maintenance activities with SPS and provide timely communication of planned and unplanned outages provides considerable value in maintaining adequate reserve levels and controlling solar generation variability on the system. Bidders are encouraged to offer coordinated maintenance scheduling (including SPS approval of maintenance schedules) and proposed solar outage communication protocols in their bids.

Power Purchase Agreement - As stated in Section 4.3 above, if a Bidder submits significant changes to the Model PPA including, but not limited to, an unwillingness to give SPS, or its affiliate, the option to purchase the solar facility, that could result in a negative outcome in SPS's evaluation process.

NOTE: This list is neither exhaustive nor comprehensive and does not in any way limit SPS's ability to evaluate proposals in any manner it deems necessary in order to identify resources that best meet SPS's needs. Nor does it commit SPS to any particular modeling methodology or approach.

Appendix A

Proposal Forms

The Generation Proposal Forms are posted on SPS's website at:

http://www.xcelenergy.com/About Us/Our Company/Projects and RFPs

Appendix B

Model Renewable Purchase Agreement

The Model Power Purchase Agreement is posted on SPS's website at:

http://www.xcelenergy.com/About Us/Our Company/Projects and RFPs

SPS Transmission Initial Screening Results

Bid#	<u>MWs</u>	RECs	No RECs	Buy Out	Levelized Bid Price	<u>Levelized</u> <u>AC</u>	<u>AC</u> Savings
Indicates	short-listed	d entities		the state of the s			
1	70		Х		\$42.30	\$47.09	\$4.79
2	70	X			\$42.80	\$47.09	\$4.29
3	40	Х	X		\$42.82	\$47.09	\$4.26
4	70		Х		\$42.91	\$47.09	\$4.18
5	70	Χ			\$43.50	\$47.09	\$3.58
6	25	Χ	X	10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.200 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.0000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.0000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.0000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.0000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.000 10.00	\$44.97	\$47.09	\$2.11
7	80	Х			\$45.08	\$47.09	\$2.01
8	30	Χ	X		\$45.09	\$47.09	\$1.99
9	- 80	Х			\$45.23	\$47.09	\$1.86
10	40	Χ	X		\$46.41	\$47.09	\$0.68
11	50	Χ			\$47.71	\$47.09	(\$0.62)
12	50	Х			\$47.73	\$47.09	(\$0.64)
13	90		X		\$48.00	\$47.09	(\$0.91)
14	90	Χ			\$48.00	\$47.09	(\$0.91)
15	90		X		\$48.00	\$47.09	(\$0.91)
16	90	X			\$48.00	\$47.09	(\$0.91)
17	25	Χ	X		\$48.68	\$47.09	(\$1.59)
18	110		X	1	\$48.90	\$47.09	(\$1.81)
19	110	Χ			\$48.90	\$47.09	(\$1.81)
20	110		X	14.6	\$48.90	\$47.09	(\$1.81)
21	110	Χ			\$48.90	\$47.09	(\$1.81)
22	90		Х	Χ	\$49.14	\$47.09	(\$2.05)
23	90	Χ		Х	\$49,14	\$47.09	(\$2.05)
24	90		X	Χ	\$49.14	\$47.09	(\$2.05)
25	90	Χ		Χ	\$49.14	\$47.09	(\$2.05)
26	30		X		\$49.21	\$47.09	(\$2.12)
27	50	Χ			\$49.47	\$47.09	(\$2.38)
28	114	Χ	Х		\$49.50	\$47.09	(\$2.41)
29	50	Х			\$49.54	\$47.09	(\$2.45)
30	30		X		\$49.66	\$47.09	(\$2.57)
31	30	Χ			\$49.71	\$47.09	(\$2.62)
32	114	Χ	X		\$49.75	\$47.09	(\$2.66)
33	110	Х	Χ		\$49.84	\$47.09	(\$2.75)
34	55	Χ	Χ		\$49.84	\$47.09	(\$2.75)
35	55	Χ	$\mathbf{X}_{\mathbf{x}}$		\$49.84	\$47.09	(\$2.75)

SPS Transmission Initial Screening Results

<u> Bid #</u>	<u>MWs</u>	RECs	No RECs	Buy Out	Levelized	<u>Levelized</u>	<u>AC</u>
					Bid Price	<u>AC</u>	<u>Savings</u>
36	55	X	X		\$49.84	\$47.09	(\$2.75)
37	55	Χ	X		\$49.84	\$47.09	(\$2.75)
38	110	Χ	X		\$49.84	\$47.09	(\$2.75)
39	114	Χ	X		\$50.00	\$47.09	(\$2.91)
40	110		X	Χ	\$50.12	\$47.09	(\$3.03)
41	110	Χ		Χ	\$50.12	\$47.09	(\$3.03)
42	110		X	Χ	\$50.12	\$47.09	(\$3.03)
43	110	Χ		Χ	\$50.12	\$47.09	(\$3.03)
44	99		X		\$50.65	\$47.09	(\$3.56)
45	99	Χ			\$51.50	\$47.09	(\$4.41)
46	50		X		\$53.65	\$47.09	(\$6.56)
47	40	Χ	X		\$54.11	\$47.09	(\$7.03)
48	50	Χ			\$54.50	\$47.09	(\$7.41)
49	150	Χ			\$54.75	\$47.09	(\$7.66)
50	100	Χ			\$55.75	\$47.09	(\$8.66)
51	40	Χ	X		\$57.76	\$47.09	(\$10.67)
52	100	Χ			\$67.45	\$47.09	(\$20.36)
53	40	X			\$67.85	\$47.09	(\$20.76)

SPS Distribution Initial Screening Results

<u>Bid #</u>	<u>MWs</u>	RECs	No RECs	Buy Out	Levelized PPA	<u>Levelized</u> <u>AC</u>	Levelized Savings
Indicates s	hort-listed	entity	15 18 18 18				
1	10	Х	Х		\$43.06	\$47.33	\$4.27
2	90		10		\$45.91	\$47.33	\$1.42
3	70				\$47.91	\$47.33	(\$0.58)
4	40		1.27		\$48.67	\$47.33	(\$1.34)
5	30				\$48.99	\$47.33	(\$1.66)
6	10	X	X		\$50.70	\$47.33	(\$3.37)
7	10	Х	Х		\$50.76	\$47.33	(\$3.43)
8	10	Х	X		\$50.80	\$47.33	(\$3.47)
9	10	Х	X		\$50.84	\$47.33	(\$3.51)
10	10	Χ	Х		\$50.89	\$47.33	(\$3.56)
11	10	X	Х		\$51.31	\$47.33	(\$3.98)
12	10	X	X		\$51.74	\$47.33	(\$4.41)
13	10	X	X		\$51.84	\$47.33	(\$4.51)
14	10	Х	Х		\$52.22	\$47.33	(\$4.89)
15	10	X	Х		\$52.22	\$47.33	(\$4.89)
16	10	X	X		\$52.22	\$47.33	(\$4.89)
17	10	X	X		\$52.68	\$47.33	(\$5.35)
18	10	Χ	₹ X		\$52.68	\$47.33	(\$5.35)
19	10	X	X		\$52.68	\$47.33	(\$5.35)
20	10	Χ	Х		\$52.68	\$47.33	(\$5.35)
21	10	Χ	X		\$52.68	\$47.33	(\$5.35)
22	70	Χ	X		\$53.30	\$47.33	(\$5.97)
23	70	X	X		\$53.30	\$47.33	(\$5.97)
24	-10	Χ	X		\$53.97	\$47.33	(\$6.64)
25	10	X	X 🗐	148	\$53.97	\$47.33	(\$6.64)
26	70	X	X	Χ	\$54.46	\$47.33	(\$7.13)
27	70	Χ	X	X	\$54.46	\$47.33	(\$7.13)
28	10	X	X		\$55.08	\$47.33	(\$7.75)
29	10	Х	X		\$55.13	\$47.33	(\$7.80)
30	10	Х	Х		\$56.50	\$47.33	(\$9.17)
31	10	X	Χ		\$57.90	\$47.33	(\$10.57)
32	70	X	X		\$58.90	\$47.33	(\$11.57)
33	10	Х	X		\$59.00	\$47.33	(\$11.67)
34	10	Х	Χ		\$59.00	\$47.33	(\$11.67)
35	10	X	Χ		\$59.70	\$47.33	(\$12.37)

SPS Distribution Initial Screening Results

Bid#	<u>MWs</u>	RECs	No RECs Buy Out	Levelized	<u>Levelized</u>	Levelized
				PPA	AC	Savings
36	10	Χ	X	\$60.90	\$47.33	(\$13.57)
37	10	Х	X	\$61.60	\$47.33	(\$14.27)
38	10	Χ	X	\$62.54	\$47.33	(\$15.21)
39	10	Χ	X	\$62.54	\$47.33	(\$15.21)
40	10	X	X	\$62.54	\$47.33	(\$15.21)
41	10	X	Χ	\$62.54	\$47.33	(\$15.21)
42	10	Х	X	\$62.54	\$47.33	(\$15.21)
43	10	X	Χ	\$62.54	\$47.33	(\$15.21)
44	10	X	Χ	\$62.54	\$47.33	(\$15.21)
45	10	X	Χ	\$62.54	\$47.33	(\$15.21)
46	10	X	X	\$62.54	\$47.33	(\$15.21)
47	70	X	Х	\$63.00	\$47.33	(\$15.67)
48	70	X	Χ	\$63.28	\$47.33	(\$15.95)
49	10	Χ	X	\$63.75	\$47.33	(\$16.42)
50	10	X	X	\$64.00	\$47.33	(\$16.67)
51	10	X	X	\$64.20	\$47.33	(\$16.87)
52	10	X	Χ	\$74.50	\$47.33	(\$27.17)
53	10		X	\$79.38	\$47.33	(\$32.05)
54	20	X		\$87.08	\$47.33	(\$39.75)
55	10	X		\$89.59	\$47.33	(\$42.26)
56	10	Χ	X	\$90.81	\$47.33	(\$43.48)
57	10		Χ	\$97.75	\$47.33	(\$50.42)
58	10	X		\$120.00	\$47.33	(\$72.67)
59	10	X		\$130.00	\$47.33	(\$82.67)

SPS Transmission Final Screening Results Re-Priced Bids

Bid#	<u>MWs</u>	RECs	No RECs	Buy Out	Levelized Bid Price	Avoided Cost	<u>Levelized</u> <u>Savings</u>
Indicates F	inal Analys	is in Stra	tegist				
1	70	Х			\$41.55	\$47.09	\$5,54
2	70	X			\$42.08	\$47.09	\$5.00
3	30	Х			\$42.07	\$47.09	\$5.02
4	70		X		\$42.30	\$47.09	\$4.79
5	70	X			\$42.80	\$47.09	\$4.29
6	70		X		\$42.91	\$47.09	\$4.18
7	70	X			\$43.50	\$47.09	\$3.58
8	25	X	Χ		\$44.97	\$47.09	\$2.11
9	30	X	X		\$45.09	\$47.09	\$1.99
10	80	X			\$45.23	\$47.09	\$1.86
11	80	X			\$45.36	\$47.09	\$1.72
12	130	Χ			\$46.26	\$47.09	\$0.82
13	180	X			\$46.05	\$47.09	\$1.04
14	50	X			\$47.73	\$47.09	(\$0.64)
15	50	Х			\$47.86	\$47.09	(\$0.78)
16	25	X	Χ		\$48.68	\$47.09	(\$1.59)
17	30		Χ		\$49.21	\$47.09	(\$2.12)
18	90		Χ		\$49.47	\$47.09	(\$2.38)
19	50	X			\$49.47	\$47.09	(\$2.38)
20	30		X		\$49.66	\$47.09	(\$2.57)
21	30	X			\$49.71	\$47.09	(\$2.62)
22	90		Χ	Χ	\$49.81	\$47.09	(\$2.73)
23	110	X	Χ		\$49.84	\$47.09	(\$2.75)
24	55	X	X		\$49.84	\$47.09	(\$2.75)
25	55	Х	Χ		\$49.84	\$47.09	(\$2.75)
26	55	X	X		\$49.84	\$47.09	(\$2.75)
27	55	X	Χ		\$49.84	\$47.09	(\$2.75)
28	110	X	Χ		\$49.84	\$47.09	(\$2.75)
29	50	Х			\$49.91	\$47.09	(\$2.82)
30	110		X		\$49.92	\$47.09	(\$2.83)
31	110		X	Х	\$50.12	\$47.09	(\$3.04)
32	90	X			\$50.62	\$47.09	(\$3.53)
33	90	X		X	\$51.08	\$47.09	(\$3.99)
34	110	X			\$51.11	\$47.09	(\$4.02)

Х

\$51.44

\$47.09

(\$4.35)

35

110

Х

SPS Distribution Final Screening Results Re-Priced Bids

Bid#			<u>MWs</u>	RECs	No RECs	PPA Levelized	Avoided Cost	AC Savings
1	With distribution \$	With 10 yr NM PTC at COD	70			\$34.39	\$47.33	\$12.94
2	With distribution \$	with 10 yr NM PTC at COD	70			\$34.48	\$47.33	\$12.85
3	With distribution \$	with 10 yr NM PTC at COD	70			\$34.95	\$47.33	\$12.38
4	With distribution \$	with 10 yr NM PTC at COD	70			\$34.98	\$47.33	\$12.35
5	With distribution \$	with 10 yr NM PTC at COD	70	х	Х	\$37.41	\$47.33	\$9.92
6	PTC		70			\$39.32	\$47.33	\$8.01
7	PTC		70			\$39.99	\$47.33	\$7.34
8	With distribution \$	With 10 yr NM PTC in 2022	70	X	x	\$42.02	\$47.33	\$5.30
9	With distribution \$	4 yr NM PTC	70	X	X	\$46.87	\$47.33	\$0.46
10	NO PTC		70			\$47.24	\$47.33	\$0.09
11	NO PTC		70			\$47.29	\$47.33	\$0.04
12	With distribution \$	4 yr NM PTC	70			\$47.68	\$47.33	(\$0.36)
13	With distribution \$	4 yr NM PTC	70			\$47.88	\$47.33	(\$0.55)
14	With distribution \$	4 yr NM PTC	70			\$48.07	\$47.33	(\$0.74)
15	With distribution \$	4 yr NM PTC	70			\$48.36	\$47.33	(\$1.03)
16	NO PTC		70			\$49.49	\$47.33	(\$2.16)
17	NO PTC		70			\$49.59	\$47.33	(\$2.26)
18	NO PTC		70			\$49.63	\$47.33	(\$2.30)
19	NO PTC		70			\$49.87	\$47.33	(\$2.54)

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF SOUTHWESTERN)
PUBLIC SERVICE COMPANY'S)
APPLICATION FOR APPROVAL AND	
AUTHORITY TO: (1) ENTER INTO)
SEPARATE PURCHASED POWER	
AGREEMENTS WITH NEXTERA ENERGY	
RESOURCES' ROSWELL AND CHAVES) CASE NO. 15- <u>7/2083</u> -UT
COUNTY SOLAR FACILITIES; (2))
RECOVER THE ASSOCIATED ENERGY	
COSTS THROUGH ITS FUEL AND	
PURCHASED POWER COST ADJUSTMENT	
CLAUSE; AND (3) ESTABLISH AND)
IMPLEMENT A SHARED SAVINGS	
MECHANISM,	
SOUTHWESTERN PUBLIC SERVICE	PPR PR
COMPANY,	
APPLICANT.	
)
	en series de la companya de la compa
	\mathcal{G}

DIRECT TESTIMONY

of

JESSICA L. COLLINS

on behalf of

SOUTHWESTERN PUBLIC SERVICE COMPANY

APRIL 2, 2015

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GLOSSARY OF ACRONYMS AND DEFINED TERMS

Acronym/Defined Term

Meaning

2014 Solar RFP

Request for Proposal issued in September 2014

for solar renewable resources

AC

Alternating Current

Chavez County PPA

Chaves County Solar facility

COD

Commercial Operation Date

Commission

New Mexico Public Regulation Commission

kW

Kilowatt

LTPPA

Long-term Purchased Power Agreement(s)

MW

Megawatt

MWh

Megawatt hour

NextEra

NextEra Energy Resources

Operating Companies

Northern States Power Company, a Minnesota corporation; Northern States Power Company, a Wisconsin corporation; Public Service Company of Colorado, a Colorado corporation; and SPS

PV

Photovoltaic

PPA or PPAs

Purchased Power Agreement(s)

PTC

Production Tax Credit

REC

Renewable Energy Certificate

Roswell PPA

Roswell Solar facility

Rule 551

17.9.551.8 NMAC

SPP

Southwest Power Pool

Acronym/Defined Term

Meaning

SPS

Southwestern Public Service Company, a New

Mexico corporation

Xcel Energy

Xcel Energy Inc.

XES

Xcel Energy Services Inc.

LIST OF ATTACHMENTS

Attachment	Description
JLC-1	Solar Energy Purchase Agreement between Southwestern Public Service Company and Roswell Solar LLC
JLC-2	Solar Energy Purchase Agreement between Southwestern Public Service Company and Chaves County Solar LLC
JLC-3	Model Renewable Solar Energy Purchase Agreement included in 2014 Solar RFP

1 I. WITNESS IDENTIFICATION AND QUALIFICATIONS 2 O. Please state your name and business address. 3 A. My name is Jessica L. Collins. My business address is 1800 Larimer, Denver, 4 Colorado 80202. 5 Q. On whose behalf are you testifying in this proceeding? 6 A. I am filing testimony on behalf of Southwestern Public Service Company, a New 7 Mexico corporation ("SPS") and electric utility subsidiary of Xcel Energy Inc. 8 ("Xcel Energy"). Xcel Energy is a registered holding company that owns several 9 electric and natural gas utility operating companies.¹ 10 Q. By whom are you employed and in what position? 11 A. I am employed by Xcel Energy Services Inc. ("XES"), the service company 12 subsidiary of Xcel Energy, as Manager, Renewable Power Purchases.

¹ Xcel Energy is the parent company of four wholly-owned electric utility operating companies: Northern States Power Company, a Minnesota corporation; Northern States Power Company, a Wisconsin corporation; Public Service Company of Colorado, a Colorado corporation; and SPS (collectively, "Operating Companies"). Xcel Energy's natural gas pipeline subsidiary is WestGas InterState, Inc. Xcel Energy also has two transmission-only operating companies, Xcel Energy Southwest Transmission Company, LLC and Xcel Energy Transmission Development Company, LLC, both of which are regulated by the Federal Energy Regulatory Commission.

1	Q.	Please briefly outline your responsibilities as Manager, Renewable Power
2		Purchases.
3	A.	I am responsible for managing and coordinating the negotiation and
4		administration of long-term renewable energy purchased power agreements
5		("LTPPAs" or, singularly, "LTPPA") and associated legal documents, including
6		purchases from qualifying renewable energy facilities across all four Xcel Energy
7		electric Operating Companies.
8	Q.	Please describe your educational background.
9	A.	I graduated from the University of Arizona in May 2003, receiving a Bachelor of
10		Science degree in electrical engineering with a minor in business administration.
11	Q.	Please describe your professional experience.
12	A.	Prior to joining XES, I was employed by Raytheon Company, Space and Airborne
13		Systems as a Systems Engineer. As a sub-Integrated Product Team lead, I was
14		responsible for managing a team of systems engineers developing lighting and
15		electrical systems for military aircraft.
16		In April 2007, I joined XES as Manager, Market Operations. As Manager,
17		Market Operations, I was responsible for managing the relationship between the
18		wholesale electric trading function for the Xcel Energy Operating Companies,

("Commission").

including SPS, and the various regional transmission providers and market operators. My primary focus was market policy and operational issues in the Southwest Power Pool, Inc. ("SPP") region. I served as SPS and Xcel Energy's representative on several of the SPP stakeholder committees, including the Market Working Group, the Business Practices Working Group, the Generation Working Group, the Consolidated Balancing Authority Steering Committee, and the Mitigated Offer Development Task Force. I also served as chair of the Change Working Group. In March 2013, I moved into my current position, Manager, Renewable Power Purchases.

Q. Have you testified before any regulatory authorities?

A. Yes. I have testified before the Public Utility Commission of Texas. I have also filed written testimony with the New Mexico Public Regulation Commission

1 2		II. ASSIGNMENT AND SUMMARY OF TESTIMONY AND CONCLUSIONS
3	Q.	What is your assignment in this proceeding?
4	A.	My testimony addresses a number of the criteria enumerated in 17.9.551.8 NMAC
5		("Rule 551") for Commission-approval of the following proposed LTPPAs
6		between SPS and NextEra Energy Resources ("NextEra") for the purchase of
7		solar energy:
8		(1) 70 megawatts ("MW") from the Roswell Solar facility to be developed by
9		NextEra and located near Roswell, New Mexico in Chaves County
10		("Roswell Purchase Power Agreement ("PPA")"); and
11		(2) 70 MW from the Chaves County Solar facility to be developed by NextEra
12		and located near Roswell, New Mexico in Chaves County ("Chaves
13		County PPA").
14	Q.	Please summarize your testimony and conclusions.
15	A.	In September 2014, SPS issued a Request for Proposals ("2014 Solar RFP")
16		seeking solar energy able to begin delivery to SPS no later than December 31,
17		2016. As SPS witness Craig L. Berg discusses, two NextEra resources were
18		selected based upon bids received through the competitive bidding process in the
19		2014 Solar RFP and contract negotiations ensued. SPS entered into the LTPPAs

1		on March 4, 2015. The Roswell and Chaves County PPAs are the result of a
2		competitive bidding process that will provide SPS with approximately 190,650
3		megawatt hours ("MWh"), per facility, of reasonably priced energy per year over
4		the 25-year terms of the contracts. Copies of the LTPPAs are provided as
5		Attachments JLC-1 and JLC-2.
6		The terms and conditions of the LTPPAs are reasonable because they will
7		permit SPS to obtain low cost energy that will benefit its customers. In addition,
8		the LTPPAs are materially consistent with: (1) the proposals submitted by
9		NextEra in response to the 2014 Solar RFP; and (2) the terms and conditions of
10		SPS's Model PPA.
11	Q.	What criteria under Rule 551 does your testimony address?
12	A.	Consistent with Rule 551, my testimony:
13 14 15 16		 provides copies of the LTPPAs Rule 551.8(D)(1); discusses the Roswell and Chaves County solar facilities and construction timelines Rule 551.8(D)(5);
17 18 19		• discusses the terms of LTPPAs Rule 551.8(D)(2)(a);
20 21		 discusses the amount of capacity and energy to be purchased under the LTPPAs Rule 551.8(D)(2)(b);

1 2 3		• addresses the price or pricing formula under which SPS will pay for the power and energy under the LTPPAs Rule 551.8(D)(2)(c);
4 5		• discusses SPS's obligations by the electric utility to pay for any fixed or variable administrative, transactional or operation and maintenance costs
6 7		incurred through the operation of the generation facility $Rule 551.8(D)(2)(d)$;
8 9 10		• addresses provisions relating to non-performance under the LTPPAs Rule 551.8(D)(2)(e); and
11 12 13		• provides a description of the transmission interconnection costs Rule 551.8(D)(3).
14	Q.	The counterparties to the LTPPAs are Chaves County Solar, LLC and
15		Roswell Solar, LLC. How do they relate to NextEra?
16	A.	They are both limited liability companies that NextEra formed for purposes of
17		designing and constructing the solar facilities. For purposes of this testimony, I
18		refer to both of the LTPPA counterparties as "NextEra."
19	Q.	In your testimony you have terms that are capitalized, but not included in the
20		glossary of defined terms above. Where can those definitions be found?
21	A.	These terms are defined in Exhibit A of the LTPPAs.

2		POWER AGREEMENTS AND NEGOTIATION PROCESS
3		a. <u>Description of the solar facilities.</u>
4	Q.	Please generally describe NextEra's Roswell and Chaves County facilities
5		and the respective LTPPAs.
6	A.	The Roswell facility is a new 70 MW alternating current ("AC") (at the Point of
7		Delivery) solar photovoltaic ("PV") power generation station that will be located
8		in Chaves County, New Mexico near the City of Roswell. Facility descriptions
9		and site maps are provided as Exhibit C to Attachment JLC-1. Construction is
10		expected to take up to seven months, and the facility is expected to be fully
11		operational by December 2016. Construction milestones are listed in Exhibit B of
12		Attachment JLC-1. SPS expects the project to produce approximately 202,820
13		MWh of solar energy in the first year and average approximately 190,650 MWh
14		of solar energy per year over the twenty-five year term of the PPA.
15		The Chaves County facility is a new 70 MW AC (at the Point of Delivery)
16		solar PV generation station that will be located in Chaves County, New Mexico.
17		Facility descriptions and site maps are provided as Exhibit C to Attachment
18		JLC-2. Construction is expected to take up to seven months, and the facility is
19		expected to be fully operational by December 2016. Construction milestones are

1		listed in Exhibit B of Attachment JLC-2. SPS expects the project to produce
2		approximately 202,820 MWh of solar energy during the first year and average
3		approximately 190,650 MWh of solar energy over the twenty-five years of the
4		PPA.
5	Q.	Since the facilities will all be constructed in New Mexico, are there
6		permitting requirements that apply?
7	A.	Yes. Exhibit F of the LTPPAs shows the required permits for the facilities,
8		including New Mexico specific construction and development permits. Under the
9		LTPPAs, the counterparty is responsible for obtaining all permits.
10		b. <u>Description of the negotiation process.</u>
11	Q.	Please describe the goals of SPS's contract negotiation process.
12	A.	The contract negotiation process is designed to achieve reasonable contract terms
13		as defined in SPS's Model PPA (described below), and focuses on producing the
14		economic promise the successful bid made in the competitive bid solicitations
15		process. Attachment JLC-3 is a copy of the Model PPA used in the negotiation
16		process.

1 Q. Please briefly describe the contract negotiation process with NextEra.

2 A. Following the evaluation and selection process, SPS entered into contract 3 negotiations with NextEra for the Roswell Solar and Chaves County PPAs. 4 Formal negotiations between SPS and NextEra began in November 2014. 5 Through this process, meetings were held to: (1) discuss requested deviations to 6 the Model PPA as submitted with the NextEra proposals; and (2) develop draft 7 contracts for review by both parties. For each requested deviation from the Model 8 PPA, SPS evaluated the issue or the specific term or condition and, where 9 appropriate, consulted with Company subject matter experts to receive input 10 and/or acceptance to ensure the change did not compromise the intent of the 11 provision or unnecessarily shift risks to SPS. Final contracts were executed in 12 March 2015, following the completion of the negotiation process, including 13 internal management approval.

14 Q. Please generally describe the Model PPA.

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A. The Model PPA was developed to allow bidders to familiarize themselves with common terms and conditions under which SPS purchases renewable energy.

The Model PPA provisions include, but are not limited to, the commercial operation of the facility, the delivery and metering of the solar energy produced,

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terms and conditions related to the price of the solar energy and associated renewable energy certificates ("RECs"). In addition, the Model PPA establishes performance criteria for operating and maintaining the facility, financial security requirements, contract administrative and notice requirements, and assignment and other transfer restrictions. Finally, the Model PPA defines events of default, force majeure, and other representations, warranties, and covenants. Please describe the provisions in the Roswell Solar and Chaves County Solar Q. LTPPAs that differ from the Model PPA. As a result of the negotiations, there are four substantive modifications to the Model PPA. First, the LTPPAs provide for the purchase of an "energy only" product. The contracts include a provision that allows SPS to purchase RECs at a future date. For these reasons, all references to SPS's ownership of, or rights to RECs and associated environmental attributes as part of the energy purchase are qualified and only applicable if SPS exercises its REC purchase option. This REC purchase option will be discussed in greater detail later in my testimony. Second, the LTPPAs contain a mechanism to share in certain tax credits that may be received by the projects. NextEra anticipates that the solar facilities

will qualify to receive New Mexico Production Tax Credits ("PTC"). If a change in law or other change results in the projects receiving more PTC payments than originally anticipated ("Incremental PTC Payment"), the LTPPAs provide for SPS to receive 50% of the incremental payments ("Shared PTC Payment") 30 days following Seller's receipt of the Incremental PTC Payment. This payment will be credited through fuel to reduce overall costs to SPS ratepayers. Ms. Sakya discusses the proposal to crediting the Incremental PTC Payment further in her testimony.

Third, the LTPPAs expand the remedies available to cure a default related to delivery of Committed Solar Energy (as set forth in Exhibit J to the LTPPAs). This provision is discussed in greater detail below.

Finally, the LTPPAs contain a pre-Commercial Operation Date ("COD") "Partial Interest" and a "Full Interest" purchase option that is not contained in the Model PPA. The Partial Interest purchase option allows SPS or an affiliate of SPS to purchase up to 50% of the Facility interests any time before the facility achieves Commercial Operation. The Full Interest purchase option allows SPS, or an affiliate, to purchase the Facility Property or 100% of the Facility interests

exercisable upon the dissolution of the NextEra Yield Co. NextEra Yield Co is described further by Mr. Berg.

While these purchase options are changes to the Model PPA, I note that the Model PPA, as well as the executed LTPPAs, contains a provision for SPS, or an affiliate, to purchase the facilities within six months prior to the 25th anniversary of the COD, with 120 days-notice. Should any of these options be exercised, SPS will seek the appropriate approval from the Commission in a separate filing.

9 Q. Describe further SPS's ability to purchase RECs under the LTPPAs.

As noted above, as part of the evaluation and selection process, SPS chose a lower cost "energy only" option, meaning that the seller retains ownership of 100% of the RECs. However, all RECs associated with the contracted energy purchases may be purchased by SPS on a prospective basis, for the remainder of the term of each LTPPA for a pre-established price per REC by providing 12-months prior written notice. In addition, SPS will be given a Right of First Offer for the purchase of RECs should the Seller initiate a sale of RECs for a term of longer than one year with a third party.

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1		c. <u>Explanation of key terms and conditions the LITTAS.</u>
2	Q.	What is the term of each LTPPA?
3	A.	Each LTPPA has a term of 25 years, expiring on the 25th anniversary of the
4		respective COD. Under the LTPPAs, a new Commercial Operation Year starts on
5		the annual anniversary of the date each facility achieves Commercial Operation.
6		There are no provisions in the contracts to extend the purchase arrangement
7		beyond the 25-year terms.
8	Q.	What is the expected size and amount of energy to be purchased each year
9		under the LTPPAs?
10	A.	The LTPPAs are each 70 MW and are expected to provide an average of 190,650
11		MWh each year over the 25-year terms of the contracts. The expected monthly
12		generation profile is provided as Exhibit K to Attachments JLC-1 and JLC-2.
13	Q.	Please describe the pricing under the LTPPAs.
14	A.	The Roswell levelized price over the term is \$41.55/MWh. The Roswell Solar
15		Energy Payment Rate escalates annually at 2% for the 25-year term of the
16		contract. The Chaves County levelized price over the term is \$42.08/MWh. The
17		Chaves County Energy Payment Rate escalates annually at 2% for the 25-year
18		term of the contract. Exhibit J to each PPA provides the annual pricing structure.

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1		The Test Energy Payment Rate is 70% of the first year price in each of the
2		LTPPAs. There are no price re-openers.
3	Q.	Will either of the LTPPAs require SPS to pay for fixed or variable
4		administrative, transactional, or operation and maintenance costs?
5	A.	No. All of SPS's costs under the LTPPAs are related to energy received or
6		compensable curtailment payments.
7	Q.	Under the LTPPAs is there any obligation for SPS to pay insurance-related
8		costs?
9	A.	No. However, the seller is required to maintain certain insurance coverages as set
10		forth in Exhibit E and SPS is to be named as an additional insured.
11	Q.	Under the LTPPAs are there any security guarantees?
12	A.	Under Article 11 of the LTPPAs, the seller is required to establish, fund and
13		maintain a Security Fund that is available to pay any amount due to SPS pursuant
14		to the LTPPAs, and to provide SPS security that the seller will satisfy its
15		obligations under the LTPPAs. Seller is required to replenish the Security Fund if
16		SPS makes a draw on the Security Fund. However, the Seller is not required to
17		replenish the Security Fund to a level in excess of the remaining amount of the
18		applicable Damage Cap. I discuss the Damage Cap further below.

1 Q. Describe the LTPPA provisions that relate to non-performance.

2 A. The parties are obligated to comply with the general terms and conditions of the 3 contracts. Specific Events of Default are defined therein, along with remedies for 4 each. For any uncured Event of Default under the contract, SPS may initiate any, 5 some, or all of the following actions: (1) Offset payments due to the counterparty; 6 (2) seek Actual Damage amounts; (3) draw on the Security Fund for any unpaid 7 damage or any other required and unpaid amounts; (4) if after the COD, exercise 8 Step-In Rights; or (5) immediately terminate the contract (upon notice) and 9 collect all Liquidated and Delay Damages in connection with the Event of 10 Default.

For Events of Default after Commercial Operations, SPS is entitled to recover Actual Damages up to the Damage Cap. If damages, actual and/or liquidated, exceed the Damage Cap and the seller does not agree to pay such damages, SPS may terminate the contract.

15 Q. Describe how the Damage Cap is determined under the LTPPAs.

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A. The Damage Cap is calculated by taking the product of the project size (in kilowatts ("kW")) and \$150, which results in a Damage Cap of \$10.5 million for each project (70,000kW x \$150/kW). As mentioned above, if damages exceed this

1 amount and seller does not agree to pay the damages, SPS may terminate the 2 contract. 3 Q. Are there other specific performance requirements captured in the LTPPAs? 4 Yes. In addition to the obligation to comply with the general terms of the 5 contracts, the LTPPAs require specific performance related to attaining certain 6 milestones and meeting twelve-month minimum production requirements. 7 Liquidated delay damages will be paid to SPS for delays in meeting the 8 Commercial Operation milestone established in Exhibit B of each contract. 9 O. Please explain the minimum production requirements in greater detail. 10 A. The LTPPAs require the solar facilities to deliver a pre-established amount of 11 Committed Solar Energy. The contract provision(s) ensures that the solar 12 facilities produce energy equal to at least 85% of the Committed Solar Energy 13 (including predefined allowable adjustments) during each contract year. Failure 14 to achieve the Committed Solar Energy of 85% is considered an Event of Default. 15 Such a default may be remedied by curing or initiating a cure within 30 days 16 following the end of the measurement period and production of Solar Energy 17 equal to or in excess of 95% of Committed Solar Energy in the subsequent 18 measurement period or production of Solar Energy equal to or in excess of 90% in

1 the subsequent measurement period and payment of liquidated damages in an 2 amount equal to the Replacement Energy Costs to bring the total MWh (those 3 delivered plus the Replacement Energy) to the 95% level. In addition, the 4 LTPPAs allow the addition and/or replacement of Solar Units on the sites if and 5 to the extent reasonably required to cure the default. 6 Q. Will SPS accept energy above the committed levels in the LTPPAs? 7 A. Yes. SPS will accept and pay for energy delivered up to 115% of committed solar 8 energy level at the contract price. In the event that energy in any year exceeds 9 115% of the committed level, SPS will have the option to either: (i) pay Roswell 10 and/or Chaves County at the current contract price for all energy delivered; or (ii) 11 elect not to accept any of the energy. If SPS elects not to accept the excess 12 energy, Roswell and/or Chaves County may sell that energy to a third party. 13 Q. Describe the LTPPA provisions that relate to delivery of the energy and, in 14 particular, any transmission-related costs that SPS is obligated to pay. 15 A. NextEra is responsible for the costs associated with interconnection of the 16 Roswell and Chaves County facilities to the transmission system. In addition, the 17 sellers are responsible for delivering energy to the Point of Delivery. SPS is 18 responsible for arranging for any transmission service and for the cost of any

1	system upgrades required to secure transmission service for deliveries of energy
2	beyond the Point of Delivery. Mr. Berg discusses the responsibility associated
3	with transmission delivery costs.

1		IV. <u>CONCLUSION</u>
2	Q.	Are Attachments JLC-1, JLC-2, and JLC-3 true and correct copies of the
3		Roswell PPA, Chaves County PPA, and Model PPA respectively?
4	A.	Yes.
5	Q.	Does this conclude your pre-filed direct testimony?
6	A.	Yes.

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

Jessica L. Collins, being first duly sworn on her oath, states:

I am the witness identified in the preceding testimony. I have read the testimony and the accompanying attachments and am familiar with their contents. Based upon my personal knowledge, the facts stated in the testimony are true. In addition, in my judgment and based upon my professional experience, the opinions and conclusions stated in the testimony are true, valid, and accurate.

Jessica L. Collins

SWORN TO AND SUBSCRIBED before me this <u>30</u> day of March, 2015.

OTANIA

Notary Public, State of Colorado

My Commission Expires:

Final

SOLAR ENERGY PURCHASE AGREEMENT

BETWEEN

SOUTHWESTERN PUBLIC SERVICE COMPANY

AND

ROSWELL SOLAR, LLC



- MARCH 4, 2015 -

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SOLAR ENERGY PURCHASE AGREEMENT BETWEEN SOUTHWESTERN PUBLIC SERVICE COMPANY AND ROSWELL SOLAR, LLC

This Solar Energy Purchase Agreement ("PPA") is made this 4th day of March, 2015 ("Effective Date") by and between (i) Southwestern Public Service Company, a New Mexico corporation with a principal place of business at 1800 Larimer Street, Suite 1000, Denver, CO 80202 ("Company"), and (ii) Roswell Solar, LLC, a Delaware limited liability company, with a principal place of business at 700 Universe Boulevard, Juno Beach, Florida 33408 ("Seller"). Company and Seller are hereinafter referred to individually as a "Party" and collectively as the "Parties."

WHEREAS on September 12, 2014 Company issued a Request for Proposals as a component of its resource planning process, seeking proposals for photovoltaic solar generation.

WHEREAS Seller desires to develop, design, construct, interconnect, and own, operate and maintain a 70 MW (at the Point of Delivery as defined below) solar power generation station located near the City of Roswell in Chaves County, New Mexico (the "Facility" as defined herein) and to sell and deliver to Company certain products and services delivered from the Facility to the Point of Delivery at the prices and on the terms and conditions set forth in this PPA

WHEREAS Company desires to accept and receive such Solar Energy and other products and services delivered from the Facility to the Point of Delivery at the prices and on the terms and conditions set forth in this PPA.

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

Article 1 - Rules of Interpretation

1.1 <u>Interpretation</u>.

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

- (B) The following rules of interpretation shall apply: (1) The masculine shall include the feminine and neuter; (2) references to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or exhibits of this PPA except as the context may otherwise require; (3) all Exhibits are incorporated into this PPA; provided, however, that in the event of a conflict with the terms of this PPA, the PPA shall control; and (4) use of the words "include" or "including" or similar words shall be interpreted as "include without limitation" or "including, without limitation."
- (C) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

1.2 <u>Interpretation with Other Agreements</u>.

- (A) This PPA does not provide Seller authorization to interconnect the Facility or inject power into the electric delivery system. Seller shall contract for interconnection services in accordance with the applicable Transmission Tariff. Seller acknowledges that any Interconnection Agreement Seller enters into is a separate contract and that (i) this PPA is not binding on the Transmission Authority, (ii) this PPA does not create any rights between Seller and the Transmission Authority, and (iii) the Interconnection Agreement does not modify the Parties' rights and obligations under this PPA. Seller agrees that any applicable Transmission Authority shall be deemed to be a separate and unaffiliated contracting party regardless of whether such Transmission Authority is Company or an Affiliate of Company.
- (B) This PPA does not provide for the supply of House Power. Seller shall contract with the Local Provider for the supply of House Power. Seller acknowledges that obtaining House Power is a separate contract and that (i) this PPA is not binding on the Local Provider, (ii) this PPA does not create any rights between Seller and the Local Provider, and (iii) the House Power contract does not modify the Parties' rights and obligations under this PPA. Seller agrees that the Local Provider shall be deemed to be a separate and unaffiliated contracting party regardless whether the Local Provider is Company or an Affiliate of Company. Subject to Seller's right to self-generate and consume energy concurrently generated by the Facility or as otherwise allowed by Applicable Law, Seller shall obtain House Power exclusively from the Local Provider.
- 1.3 Good Faith and Fair Dealing. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (a) when this PPA requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) wherever this PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be Commercially Reasonable.

1.4 <u>Waiver</u>. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

Article 2 - Term and Termination

This PPA shall become effective as of the Effective Date, and shall remain in full force and effect until the Scheduled Termination Date, subject to early termination or extension as provided in this PPA or otherwise agreed to by the Parties. Applicable provisions of this PPA shall continue in effect after termination to the extent necessary to (i) provide for final billings, payments and adjustments, (ii) enforce or complete the duties, obligations or responsibilities of the Parties, and (iii) address any remedies or indemnifications, arising prior to termination.

Article 3 - Facility Description

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

3.2 General Design of the Facility.

- (A) Seller shall design, construct, operate and maintain the Facility according to Good Utility Practice(s) and the Interconnection Agreement.
- (B) The Facility shall include all equipment necessary to successfully interconnect with the Transmission Authority's System for the delivery of the Facility's output to the Point of Delivery.
- (C) The Facility shall include all equipment and telecommunications capabilities necessary to communicate with Company's SCADA system.
- (D) The Facility shall include all equipment specified in <u>Exhibit C Facility Description</u> or otherwise necessary to fulfill Seller's obligations under this PPA.

Article 4 - Implementation

4.1 Project Development.

(A) No later than sixty (60) Days following the Effective Date, Seller shall complete a Phase 1 environmental assessment ("Phase1") of the Site and shall disclose to Company any Environmental Contamination identified in that investigation

and confirm that such Environmental Contamination has been remediated or is capable of being remediated and that the Site remains appropriate for its intended use by Seller. Seller shall promptly inform Company if due to any Environmental Contamination Seller is constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) that would allow Seller to fully perform under this PPA. Upon request, Seller shall provide Company a copy of the Phase 1 report and any backup data; provided, however, that the Phase 1 and backup data shall be deemed Confidential Information pursuant to Section 20.18. Throughout the Term, Seller shall ensure that any Environmental Contamination identified at the Facility or Site is promptly remediated. Seller shall promptly disclose to Company the presence of any material Environmental Contamination or the existence of any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination.

- (B) Seller shall at its own expense enter the Construction Contract and all other major contracts necessary to the successful development of, construction of, operation of and delivery from the Facility with qualified and experienced contractors. Upon written request by Company, Seller shall provide Company with a memorandum of agreement executed by the Seller and the contractor party to the Construction Contract and all other major contracts, which memorandum shall set forth the basic terms of such contract, including without limitation the names of the parties thereto, the date of such contract, a summary of any products or services to be provided and information reasonably sufficient for Company to determine that such Construction Contract or major contract provides obligations necessary to meet the Construction Milestones or in lieu thereof, at Seller's option, a copy of the Construction Contract or other major contract (provided that Seller shall be permitted to redact pricing and other sensitive information).
- (C) Prior to the Commercial Operation Date, Seller shall (i) submit monthly progress reports to Company in a form agreed upon by the Parties advising Company of the current status of each Construction Milestone, any significant developments or delays along with an action plan for making up delays, and Seller's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility Lender, if any, relating to status, progress and development of the project; and (iii) invite Company to participate in monthly meetings to discuss the progress reports, answer questions, and assess the schedule. Seller shall make all relevant contractors available to Company in order to keep Company fully informed on the status of the development.
- (D) Upon request, Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Facility for compliance with this PPA; provided, however, that Company shall comply with all of

Seller's applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

- (E) Seller shall obtain and pay for all Permits necessary for the construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility to Company. Seller shall keep Company reasonably informed as to the status of its permitting efforts. Seller shall promptly inform Company of any Permits it is unable to obtain, that are delayed, limited, suspended, terminated or otherwise constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) with any Permits to allow Seller to fully perform under this PPA. Upon reasonable request, Company shall have the right to inspect and obtain copies of all Permits held by Seller.
- (F) Seller shall notify Company (i) sufficiently in advance of any known upcoming significant inspections by any Governmental Authority relating to the Facility to allow Company the opportunity to attend, and (ii) promptly after any unscheduled or impromptu inspection with a description of the nature and outcome of such inspection.
- 4.2 <u>Commercial Operation</u>. Subject to extension as authorized in this PPA, the Facility shall achieve Commercial Operation no later than the Commercial Operation Milestone; *provided, however, that* Seller shall not be obligated to establish a Commercial Operation Date that is earlier than the Commercial Operation Milestone and Company shall not be obligated to accept a Commercial Operation Date that is greater than ninety (90) Days prior to the Commercial Operation Milestone. In its efforts to achieve the Commercial Operation Milestone, Seller agrees to use Commercially Reasonable Efforts to achieve the Construction Milestones set forth in <u>Exhibit B Construction Milestones</u>. Notwithstanding the foregoing, the Commercial Operation Milestone may be extended for not more than:
- (A) Ninety (90) days on a day-for-day basis if Seller has used Commercially Reasonable Efforts (including Seller's timely filing of required documents and payment of all applicable fees) to obtain Permits necessary for the construction and operation of the Facility in accordance with this PPA but is unable to obtain such Permits due to delays beyond Seller's reasonable control ("Permitting Delay"); or
- (B) Ninety (90) days on a day-for-day basis if Seller has used Commercially Reasonable Efforts (including Seller's timely filing of required documents and payment of all applicable fees) to have the Facility physically interconnected to the

Transmission Authority's System and to complete all Seller's Interconnection Facilities needed, if any, in order to interconnect the Facility to the Transmission Authority's System, but fails to secure any necessary commitments from the Transmission Authority for such interconnection, related agreements and upgrades due to delays beyond Seller's reasonable control ("<u>Transmission Delay</u>", and collectively with Permitting Delay, a "<u>Permitted Extension</u>").

Seller shall provide Notice to Company promptly upon Seller becoming aware of the facts or circumstances giving rise to a Permitted Extension. If Seller claims any one or more of the foregoing Permitted Extensions, such extensions cannot cumulatively exceed ninety (90) Days and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping Days.

Notwithstanding any Permitted Extension(s), Seller recognizes and agrees that it assumes all risk of qualifying for Investment Tax Credits and any other tax benefits and any Permitted Extension(s) shall not result in any price increase or other increased liability to Company under this PPA.

- 4.3 <u>COD Conditions</u>. Seller shall provide Company a Notice of the date Seller believes the Facility has achieved Commercial Operation along with all supporting documentation of the satisfaction or occurrence of all COD Conditions. Company shall have up to ten (10) Business Days to review such evidence and raise any Commercially Reasonable objection to Seller's satisfaction of any of the COD Conditions; *provided, however, that* such Notice shall be deemed accepted by Company if Company fails to object within such time period. Seller may provide Notice of completion of the COD Conditions on an individual and incremental basis pending resolution of any objections; *provided, however, that* Company shall in all cases have up to ten (10) Business Days to review and object to each Notice. The COD Conditions are:
- (A) an officer of Seller, authorized to bind Seller and who is familiar with the Facility, has provided written confirmation that (1) all necessary and material Permits have been obtained and are in full force and effect, (2) Seller is in compliance with this PPA in all material respects, (3) the Facility is available to commence normal operations in accordance with Seller's operating agreements, Construction Contract, and applicable manufacturers' warranties, (4) the Facility has been registered with the Transmission Authority, (5) Seller is obligated under and in material compliance with the Interconnection Agreement, (6) the Facility is fully interconnected to the Transmission Authority's System, has been fully tested, has achieved initial synchronization, and has been successfully operated at a generation level acceptable to the Transmission Authority, without experiencing any abnormal or unsafe operating conditions on any interconnected system, (7) Seller has completed any testing of the Facility and Interconnection Facilities required by the Interconnection Agreement, and (8) Seller has made all other arrangements necessary to deliver the output of the Facility to the Point of Delivery;

- (B) an independent registered professional engineer's certification has been obtained by Seller and provided to Company stating that the Facility has been completed in all material respects, except for punch list items that do not have a Material Adverse Effect on the ability of the Facility to operate for its intended purpose;
- (C) Seller has demonstrated (1) the reliability of the Facility's communications systems and communication interface with Company's EMCC and the Facility is capable of receiving and reacting to signals from Company's SCADA System, and (2) all AGC equipment is installed and operational; and
- (D) at least ninety-five percent (95%) of the Solar Units and associated equipment sufficient to allow such Solar Units to generate and deliver Solar Energy to the Point of Delivery have been completed.

4.4 Test Energy.

- (A) Seller shall provide Company and Transmission Authority with the information necessary to have the Facility registered with the Transmission Authority for inclusion in any generation modeling maintained by the Transmission Authority, sufficiently in advance to allow the Facility to be registered in such model at least four months prior to generating any Test Energy. Upon receipt of such information, Company will cooperate reasonably to assist in the registration of the Facility to allow generation of Test Energy.
- (B) Prior to the COD but not before June 30, 2016, Seller shall coordinate the production and delivery of Test Energy with Company, with not less than five (5) Days' Notice, or such other Commercially Reasonable prior Notice as Company may reasonably request. The Parties shall cooperate to facilitate Seller's testing of the Facility necessary to satisfy the COD Conditions. Company shall only be required to accept delivery of Test Energy required to satisfy COD Conditions. Company shall purchase and pay the Test Energy Rate for all Test Energy delivered prior to COD.

Article 5 - Delivery

5.1 <u>Electric Delivery Arrangements</u>. Seller shall be responsible for making, maintaining and paying the costs associated with the interconnection of the Facility to the Transmission Authority's System. Seller shall comply with the Transmission Authority's requirements for the interconnection and shall comply with all requirements set forth in the applicable Transmission Tariff. The Interconnection Request shall request Energy Resource Interconnection Service or its equivalent as authorized under the applicable Transmission Tariff. Company shall seek to have the Facility designated as a Network Resource and to obtain network long-term firm transmission service under the applicable Transmission Tariff and Seller shall cooperate reasonably in any request by Company to assist in Company's efforts to have the Facility approved as a Network Resource or equivalent classification pursuant to the applicable Transmission Tariff. To the extent required, Company shall arrange and be responsible for scheduling and

transmission services at the Point of Delivery, and shall schedule or arrange for scheduling services with the Transmission Authority to deliver Solar Energy from the Point of Delivery to Company load. To the extent applicable during the Term, Company shall be the market participant as defined by the Transmission Authority for the Facility.

- (A) Seller authorizes Company to contact and obtain information concerning the Facility and Interconnection Facilities directly from any applicable Transmission Authority and, upon request, Seller shall confirm such authorization in writing to such Transmission Authority or any applicable transmission owners in such form as requested by Company or the Transmission Authority.
- (B) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver, on a firm-basis, the output from the Facility to the Point of Delivery.
- (C) Company shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to transmit and deliver the output from the Facility at and beyond the Point of Delivery. If at any time during the Term, the Transmission Provider changes or the Interconnection Facilities cease to be subject to the Transmission Tariff, then the Parties shall cooperate in good faith to amend this PPA in a manner to mitigate the impact of such changes on the Parties and to facilitate the delivery of output from the Point of Delivery to Company's customers at the least possible cost to Company; provided, however, that such actions shall not materially adversely affect either Party's rights, benefits, risks or obligations under this PPA.

5.2 Electric Metering Devices.

- (A) All Electric Metering Devices used to measure energy shall be owned, installed, and maintained in accordance with the Interconnection Agreement at no cost to Company under this PPA.
- 1. For purposes of this PPA, meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided*, *however*, *that* the Operating Committee may revise this loss adjustment based on actual experience.
- 2. Seller shall arrange any necessary authorization to provide Company access to all Electric Metering Devices for all purposes necessary to perform under this PPA and shall provide Company the opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted.
- (B) Either Party may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering"), provided, however, that the

specifications, installation and testing of any such Back-Up Metering shall be consistent with the requirements for the Electric Metering Devices. Upon written request, the installing Party shall conduct retests requested by the other Party. The actual cost of any retest shall be borne by the Party requesting the test, unless, upon such retest, Back-Up Metering is inaccurate by more than one percent (1%), in which case the cost of the retest shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

- (C) If an Electric Metering Device or Back-Up Metering, fails to register, or if the measurement is inaccurate by more than one percent, an adjustment shall be made correcting all measurements as follows:
- 1. If the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-Up Metering, if installed, to determine the amount of such inaccuracy, *provided*, *however*, *that* Back-Up Metering has been tested and maintained and adjusted for losses on the same basis as the Electric Metering Device. If Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one percent (1%), the Parties shall use the best available information for the period of inaccuracy, adjusted as agreed by the Parties for losses to the Point of Delivery.
- 2. If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.
- 3. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Company, Company shall use the corrected measurements as determined in accordance with this <u>Article 5</u> to re-compute the amount due for the period of the inaccuracy and in accordance with <u>Article 9</u> may adjust the next regular bill to reflect such re-computed amount, *provided however, that* 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.

Article 6 - Conditions Precedent

6.1 Company CPs.

- (A) No later than forty-five (45) Days after the Effective Date of this PPA, Company shall file a written request for State Regulatory Approval. Company shall use Commercially Reasonable Efforts to obtain State Regulatory Approval, and Seller shall cooperate with Company's efforts to seek State Regulatory Approval. If within forty-five (45) Days following the Effective Date of this PPA Company fails to apply for State Regulatory Approval or gives written Notice to Seller that it is affirmatively waiving its right to request State Regulatory Approval under this Section 6.1, Company shall be deemed to have waived its right to seek State Regulatory Approval or to terminate this PPA under this Section 6.1 and this PPA shall remain in full force and effect thereafter.
- (B) In the event that Company applies for State Regulatory Approval, either Party shall have the right to terminate this PPA, without any further financial or other obligation to Seller as a result of such termination, by Notice to Seller not more than ten (10) Days after the earlier of (i) fourteen (14) Days after receipt of a written order from the State Regulatory Agency rejecting State Regulatory Approval or imposing conditions on State Regulatory Approval unsatisfactory to either Party, or (ii) six (6) months following the written request for State Regulatory Approval without receipt of State Regulatory Approval without conditions unsatisfactory to either Party.
- (C) If Company fails to terminate this PPA in the time allowed by this paragraph, Company shall be deemed to have waived its right to terminate this PPA under this <u>Section 6.1</u> and this PPA shall remain in full force and effect thereafter.
- 6.2 <u>Seller CPs</u>. Seller shall have the right to terminate this PPA, without any further financial or other obligation to Company as a result of such termination, by Notice to Company within fourteen (14) Days following the failure of Seller to satisfy or waive in its sole discretion any of the following conditions precedent (the "<u>Seller CPs</u>") by the indicated deadline:

Seller CP	<u>Deadline</u>
Obtain land use and building permits	September 1, 2015
Execute Large Generator Interconnection Agreement	November 1, 2015

If Seller fails to terminate this PPA in the times allowed by <u>Sections 6.1</u> or <u>6.2</u>, the Seller CPs shall be deemed to have been waived and this PPA shall remain in full force and effect thereafter.

Article 7 - Sale and Purchase

7.1 General Obligation.

- (A) Beginning on the Commercial Operation Date, Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to Company, and Company shall receive and purchase at the Point of Delivery, the Solar Energy (not to exceed 70 MW (AC) at the Point of Delivery) and other products and services required by this PPA; provided, however, that Seller's obligation to deliver and sell RECs to Company is contingent upon Company's exercise of the REC Purchase Option, as set forth in Section 7.3. Seller shall not curtail or interrupt deliveries from the Facility as required by this PPA for economic reasons of any type whatsoever; provided, however, that Seller's obligation to generate, deliver and sell to Company the Solar Energy and other products and services required hereunder shall be excused during Seller Excuse Hours.
- (B) Title and risk of loss of the products and services transacted by this PPA shall transfer from Seller to Company at the Point of Delivery.
- 7.2 <u>Committed Solar Energy</u>. Seller covenants to deliver the Committed Solar Energy to the Point of Delivery, except as otherwise provided in this PPA (including during Seller Excuse Hours). Beginning at the end of the second Commercial Operation Year and continuing at the end of each Commercial Operation Year thereafter for the balance of the Term, Seller shall provide to Company (i) a calculation of the actual output of the Facility for the just-completed Commercial Operation Year (including adjustments per <u>Exhibit L</u>) against the Committed Solar Energy for such year.

7.3 AGC.

- (A) Beginning on the Commercial Operation Date, Company shall dispatch the Facility through the EMCC AGC system.
- (B) Company may notify Seller, by telephonic communication or through use of the AGC Set-Point, to curtail the delivery of Solar Energy to Company from the Facility and to the Point of Delivery, for any reason and in its sole discretion and Seller shall promptly comply with such notification.
- (C) The AGC Set-Point is calculated by the EMCC AGC system and communicated electronically through the SCADA System. Seller shall ensure that, throughout the Term, the SCADA signal is capable of functioning on all AGC Set-Points within the margin of error specified in the solar facility's control system manufacturer's energy set point margin of error.
- (D) Seller shall ensure that Facility AGC Remote/Local status is in "Remote" set-point control during normal operations.

7.4 Compensation for Other Products and Services.

- (A) Seller hereby grants Company the option to commence purchasing all of the RECs associated with the Solar Energy on a prospective basis (the "REC Option"). Company may exercise its REC Option by providing Seller with 12-months prior written Notice of its intent to begin purchasing the RECs for the remainder of the Term. Upon the commencement of the Company's purchasing of all of the RECs associated with the Solar Energy, Company shall compensate Seller at the Solar Energy Payment Rate applicable for that Commercial Operation Year as set forth in the Column labelled "Rate \$/(MWh) with RECs" on EXHIBIT J COMMITTED SOLAR ENERGY AND SOLAR ENERGY PAYMENT RATE.
- (B) Notwithstanding the foregoing, if at any time during the Term, Seller, or an Affiliate of Seller, originates a long term transaction (i.e., of a one year or greater duration) for the sale of RECs attributable to the Facility with an unaffiliated third party, by notice to Company (a "REC Notice"), Seller first shall offer to sell the RECs to Company on the same terms (the "REC ROFO"). The REC Notice shall identify (i) the nature and terms of the transaction, and (ii) the minimum price which Seller is willing to accept to proceed with the contemplated third party transaction. All information disclosed to Company by Seller with respect to the REC ROFO shall be deemed Confidential Information subject to Section 20.18.
- 1. Seller shall allow Company twenty (20) Business Days after the REC Notice to consider the proposed transaction. Within such period, Company shall either:
 - (i) exercise its REC ROFO on substantially comparable terms to the proposed transaction; or,
 - (ii) waive its REC ROFO (and its REC option) with respect to, and for the duration of, that transaction. If Company fails to respond to a REC Notice within such twenty (20) Business Day period, Company shall be deemed to have waived its REC ROFO right with respect to that transaction.
- 2. If Company exercises its REC ROFO, the Parties shall have an additional twenty (20) Business Day period to sign definitive agreements on terms no less favorable to Company than those contained in the REC Notice.
- 3. If Company does not exercise its REC ROFO, Seller shall have the right to close its proposed transaction with the identified prospective buyer, *provided*, *however*, *that* such transaction shall have a

purchase price of not less than the minimum price set forth in the REC Notice and the transaction shall have been closed not more than thirty (30) Business Days following expiration of the Company's right to exercise its REC ROFO.

- (C) If at any time the Company purchases all of the RECs associated with the Solar Energy, the following shall apply:
- all rights, title and authority for Company to register the Eligible Energy Resource and own, hold and manage such RECs in Company's own name and to Company's account, including any rights associated with any renewable energy information or tracking system that exists or may be established (including but not limited to participants in any applicable REC Registration Program and the United States government) with regard to monitoring, registering, tracking, certifying, or trading such credits. Seller shall authorize Company to act as its agent for the purposes of registering the Eligible Energy Resource, and tracking and certifying RECs, and Company has full authority to hold, sell or trade such RECs to its own account of said renewable energy information or tracking systems. Upon the request of Company, at no cost to Company, (i) Seller shall deliver or cause to be delivered to Company such attestations/certifications of RECs, and (ii) Seller shall cooperate with Company's registration and certification of RECs.
- 2. Company shall make all applications and/or filings required by Applicable Law from time to time for REC accreditation and for the provision of such RECs to Company.
- 3. Seller shall retain any RECs associated with any Excess Solar Energy and any curtailed energy pursuant to <u>Section 8.2(C)</u> that are not delivered to Company.
- (D) Seller shall make available to Company all Generation Benefits (other than RECs) and Ancillary Services associated with the Facility at no additional charge under this PPA. Any compensation Seller receives under the Interconnection Agreement or otherwise for Generation Benefits (other than RECs) or Ancillary Services associated with the Facility and its output shall be provided to Company at no additional cost to Company under this PPA. Seller shall credit Company, as a reduction to Seller's monthly invoice or other mutually agreed mechanism, for any compensation that Seller receives for Generation Benefits or Ancillary Services.
- 1. Seller shall use Commercially Reasonable Efforts to maximize the availability of Generation Benefits and Ancillary Services available from the Facility; *provided, however, that* Seller shall not be required to operate its Facility in a manner that reduces the real output of the Facility in order to maximize any Generation Benefits and Ancillary Services for Company.

2. In the event a Governmental Authority or Transmission Authority implements new or revised requirements for generators to create, modify, change, or supply Ancillary Services, requiring Seller to install additional equipment after the Commercial Operation Date to meet such requirements, then Seller shall be allowed to reduce the amount owed to Company for Ancillary Services by an amount sufficient to recover the cost of such additional equipment; provided, however, that the amount of credit shall in no event be less than zero. Any excess of such cost over the amount of the credit in any year shall instead be carried forward as a reduction of the amount of the credit in subsequent years.

Article 8 - Payment Calculations

8.1 Solar Energy Payment Rate.

- (A) Prior to the Commercial Operation Date, Company shall pay Seller for Test Energy delivered to the Point of Delivery pursuant to <u>Section 4.4</u> at the Test Energy Rate. Seller shall not be entitled to Compensable Curtailment Energy payment prior to the COD in connection with Test Energy.
- (B) Commencing on the Commercial Operation Date, Company shall pay Seller the Solar Energy Payment Rate for Solar Energy delivered to the Point of Delivery. The Solar Energy Payment Rate for a specific Commercial Operation Year shall be effective on the first (1st) Day of the calendar month following the calendar month in which the applicable anniversary of COD occurs (for example, if COD occurs on December 10, 2016, the Solar Energy Payment Rate by Commercial Operation Year for the second Commercial Operation Year as described in EXHIBIT_J shall be effective as of January 1, 2018).
- (C) In the event that the Solar Energy in any Commercial Operation Year (including any Compensable Curtailment Energy) exceeds one hundred fifteen percent (115%) of the Committed Solar Energy ("Excess Solar Energy"), Company shall have the option to either (i) pay Seller the Solar Energy Payment Rate for all such Excess Solar Energy and RECs associated therewith (if applicable), or (ii) elect not to accept any Excess Solar Energy.
- 1. Seller shall notify Company upon Seller's delivery of Solar Energy hereunder that exceeds one hundred ten percent (110%) of the Committed Solar Energy for a Commercial Operation Year. Company shall elect within ten (10) Business Days of Seller's Notice to either accept or decline the Excess Solar Energy after the date of Company's election and through the balance of such Commercial Operation Year.
- 2. If Company elects not to accept Excess Solar Energy, Seller shall have the right to sell such Excess Solar Energy (including associated RECs) to one or more third parties until the end of the applicable Commercial Operation Year, after which the Parties' obligations shall resume pursuant to this

PPA; provided, however, that Seller shall be solely responsible for arranging transmission service and delivery arrangements to such third party at no cost to Company under this PPA.

8.2 <u>Curtailment Energy Payment Rate</u>.

- (A) If following Commercial Operation (i) delivery of Solar Energy is curtailed by Company pursuant to <u>Section 7.3</u>, or Company elects to utilize non-firm transmission service to deliver Solar Energy from the Point of Delivery and such non-firm transmission service is restricted or reduced by the applicable transmission service provider, except to the extent such restriction or reduction would also have been imposed even if firm transmission service had been in place, or an Economic Curtailment occurs, and (ii) any such reduction is not included as a Non-Compensable Curtailment, then:
- 1. the Parties shall determine the quantity of Solar Energy that would have been produced by the Facility (i) during those periods of time when the Facility is on AGC and the AGC Set-Point is set at a level that will not allow the entire Facility Nameplate Capacity to be deliverable by determining the difference between Potential Energy and the delivered Solar Energy, and (ii) during those periods of time when the Facility is not on AGC or the AGC Set-Point is set at a level that will allow the Facility Nameplate Capacity to be deliverable by determining the amount that would have been available for delivery had its generation not been so curtailed ("Compensable Curtailment Energy").
- 2. Compensable Curtailment Energy shall be the number of MWh represented by the Potential Energy less the Solar Energy actually delivered and measured by the Electric Metering Devices (and excluding any Non-Compensable Curtailments) during the period of curtailment.
- 3. Company shall pay to Seller for such Compensable Curtailment Energy (net of any Non-Compensable Curtailments) all amounts that Seller would have received from Company under this PPA had such Compensable Curtailment Energy actually been delivered.
- (B) For purposes of determining Compensable Curtailment Energy, the amount of Potential Energy at any given time shall be calculated using the best-available data and methods to determine an accurate representation of the amount of Solar Energy.
- 1. To the extent available, Company agrees to use Seller's real time Park Potential communicated to Company through the SCADA System as the proxy for Potential Energy, except to the extent that Park Potential is demonstrated not to accurately reflect the Potential Energy (plus or minus two percent (2%) over a period of one month).

- 2. During those periods of time when the Park Potential is unavailable or does not accurately represent Potential Energy, the Parties shall use the best available data obtained through Commercially Reasonable methods to determine the Potential Energy.
- (C) Seller shall be entitled to sell any curtailed energy and associated RECs to third parties to whom Seller is able to successfully transact and deliver; provided, however, that the net amount realized for such sale shall offset amounts owed by Company for Compensable Curtailment Energy. Company shall reasonably cooperate with any such sales, and Seller accepts sole responsibility to obtain transmission rights to deliver such energy at no cost to Company. Seller accepts all risk of the unavailability of transmission rights during any curtailment.
- (D) Notwithstanding anything in this <u>Article 8</u> to the contrary, curtailments or reductions of delivery for any of the following reasons shall constitute "Non-Compensable Curtailments" and shall be excluded from Compensable Curtailment Energy, and no payment shall be due Seller under paragraph (A) above for curtailments of delivery of Solar Energy arising out of or resulting from:

1. an Emergency;

- 2. any action taken which reduces or limits the allowable output of the Facility under the Interconnection Agreement or limited operation, provisional, or conditional interconnection agreement, including curtailments arising out of interconnection limits established by the Transmission Authority or market rules that make limited operation, conditional or provisional interconnection agreements subordinate to unconditional interconnection agreements;
- 3. the restriction or reduction of transmission service by the applicable transmission service provider to the extent such restriction or reduction would also have been imposed even if firm transmission service had been in place;
- 4. maintenance outages, whether planned or unplanned, of any part of the transmission system or any testing of the transmission system to the extent such maintenance outage or testing requires a restriction or reduction to the output of the Facility or Company's transmission service arrangements;
- 5. the lack of available transmission for generation from the Facility to the Point of Delivery;
- 6. Seller's failure to maintain in full force and effect any Permit to construct and/or operate the Facility to the extent such failure prevents the Seller from delivering Solar Energy to the Point of Delivery; and

- 7. Seller's failure to maintain AGC capability or its failure or refusal to respond to AGC instructions from the EMCC in a manner consistent with the terms of this Agreement.
- 8.3 <u>REC Payment Rate</u>. If Company exercises the REC Purchase Option, Company shall pay Seller the REC Payment Rate for each REC associated with Test Energy, Solar Energy, and any Excess Solar Energy delivered to and paid for by Company.
- 8.4 PTCs. As of the Effective Date, Seller anticipates that the Facility will be eligible to receive PTCs for its output in the amount of Twenty-Two Million Dollars (\$22,000,000) ("Expected PTC Payments"). If the Facility becomes eligible for and actually receives any PTCs, Seller will be entitled to one hundred percent (100%) of the all PTCs received up to the amount of Expected PTC Payments. Any additional PTCs actually received, whether due to a change in law or otherwise, (each an "Incremental PTC Payment") will be shared equally between the Parties. No later than thirty (30) Days after Seller's receipt of an Incremental PTC Payment, Seller will remit to Company a payment equal to fifty percent (50%) of the Incremental PTC Payment ("Shared PTC Payment"). Any disputes with respect to a Shared PTC Payment shall be resolved in accordance with Section 9.3.

Article 9 - Billing and Payment

9.1 Billing.

- (A) The billing period shall be the calendar month. Within ten (10) Days after the end of any month, Company will provide to Seller a statement containing the applicable billing parameters based on Company's reading of the Electric Metering Devices and Company's assessment of the amount due during the previous calendar month. No later than fifteen (15) Business Days after the end of each month, Seller shall submit an invoice to Company in a form and by a method mutually agreed to by the Parties showing the payment amount due Seller during the previous calendar month, specifying the Solar Energy, RECs (if applicable), and other products and services provided, all billing parameters, rates and factors, and any other data reasonably relevant to the calculation of payments due to Seller.
- (B) Seller shall include an explanation of any items in dispute, as well as all supporting documentation upon which Seller relies. Billing disputes shall be resolved in accordance with <u>Section 9.3</u>.
- (C) All billing data based on metered deliveries to Company shall be based on meter readings in accordance with <u>Section 5.2</u>.

- 9.2 <u>Payment</u>. Unless otherwise specified herein, undisputed payments shall be payable by check or electronic funds transfer, as designated by the owed Party, on or before the fifteenth (15th) Business Day following receipt of the 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.
- (A) If a payment is late, a late payment charge shall be applied to the unpaid balance for the number of days payment was late and shall be added to the next billing statement. Late payment charges shall include interest calculated using the prime rate of interest as published on the date of the invoice in *The Wall Street Journal* (or, if unavailable, an equivalent publication on or about that date).
- (B) Company at any time may offset against amounts owed to Seller, any liquidated amounts, accrued damages and other payments, and undisputed billing errors and adjustments, which are owed by Seller pursuant to this PPA.
- (C) Seller and Company shall net their obligations to each other under this PPA, and payment of the net amount will discharge all mutual undisputed obligations between the Parties.
- 9.3 <u>Billing Disputes</u>. Either Party may dispute invoiced amounts, but shall pay at least the undisputed portion on or before the date due. To resolve any billing dispute, the Parties shall use the procedures set forth in <u>Article 13</u>. 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, without late payment interest except to the extent that it shall have been established that the amount owed was not disputed in good faith, in which case late payment interest charges shall be calculated on the amount found not to have been disputed in good faith in accordance with the provisions of <u>Section 9.2</u>.

Article 10 - Operations and Maintenance

10.1 Operation and Administration.

- (A) Seller shall staff, control, and operate the Facility consistent with Good Utility Practices and the Operating Procedures. During daylight hours and/or when the Facility is capable of operation, personnel shall be available at all times via telephone or other electronic means with (i) the capability of remotely operating and stopping the Facility within ten (10) minutes, and (ii) the ability to be present at the Site within sixty (60) minutes or as soon as reasonably practicable.
- (B) Seller shall comply with the applicable requirements of NERC, ERO, Transmission Authority, FERC, or successor organizations, Company requirements, Governmental Authority, and Good Utility Practice in the operation of the Facility.

- 1. To the extent that the actions of Seller or the Facility contributes in whole or in part to actions that result in monetary penalties being assessed to Company by NERC, ERO, Transmission Authority, FERC, or other Governmental Authority, Seller shall reimburse Company for all such monetary penalties proximately caused by Seller or the Facility.
- (C) Seller shall be responsible for providing accurate and timely updates on the current availability of the Facility to Company's EMCC. Seller shall provide to Company a day-ahead availability forecast in accordance with Exhibit H Operating Standards (AGC Protocols, Data Collection). Seller acknowledges that such forecasting is consistent with the reporting requirements required for compliance with NERC standards intended to maintain reliability. Seller, as the generator, is primarily responsible for complying with applicable generator owner and operator NERC standards and reporting the information to Transmission Authority, ERO or other reliability coordinator. Company agrees to provide the forecasted information to the reliability coordinator on Seller's behalf; provided, however, that Seller shall remain responsible to ensure the reliability and accuracy of forecasts and any changes to the real-time or forecast availability of the Facility.

10.2 Facility Maintenance.

- (A) Seller shall maintain the Facility in accordance with Good Utility Practice and relevant equipment manufacturers' requirements. Seller shall coordinate its regular maintenance requirements for the Facility with Company. Beginning with the first calendar month following COD and continuing through the balance of the Term, Seller shall provide monthly Maintenance Schedules to Company in writing not later than the fifteenth (15th) Day of the preceding month ("Maintenance Schedule").
- (B) Except as otherwise agreed to by Company, Seller shall minimize the amount of scheduled maintenance during On-Peak Months to the full extent consistent with Good Utility Practices. During each Business Day of an On-Peak Month, Seller shall use Commercially Reasonable Efforts to (i) maximize the amount of Solar Energy produced by the Facility, and (ii) minimize the extent and duration of Forced Outages.
- (C) When Forced Outages occur, Seller shall notify Company's EMCC of the existence, nature, start time, and expected duration of the Forced Outage as soon as practical, but in no event later than thirty (30) minutes after Seller becomes aware that the Forced Outage has occurred. Seller shall immediately inform Company's EMCC of changes in the expected duration of the Forced Outage unless relieved of this obligation by Company's EMCC for the duration of the Forced Outage.

10.3 Books and Records.

- (A) 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; Forced Outages; information required by Applicable Law, Governmental Authority, Transmission Authority, or the ERO in the prescribed format; PTC Payments (if applicable), and other information reasonably requested by Company.
- (B) Seller and Company shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including such records as may be required by Governmental Authorities, Transmission Authority, NERC or ERO as applicable. All records of Seller pertaining to the operation of a Facility shall be maintained at Seller's Juno Beach, Florida facility or such other location as is mutually agreed to by the Parties.
- (C) Each Party shall keep all books and records necessary for metering, billing and payment and shall provide the other Party Commercially Reasonable access to those records.
- (D) Company may audit and examine from time to time upon request and during normal business hours: (i) Seller's Operating Procedures, (ii) equipment manuals and Operating Records, and (iii) data kept by Seller relating to transactions under and administration of this PPA, by Company with Applicable Law and relevant accounting standards. Seller shall maintain all such records at Seller's Juno Beach, Florida facility or some other mutually agreeable location and shall cooperate with Company's audit rights under this Section 10.3.

10.4 Operating Committee and Operating Procedures.

- (A) Company and Seller shall each appoint one representative and one alternate representative to act as the Operating Committee in matters relating to the Parties' performance obligations under this PPA and to develop operating arrangements for the generation, delivery and receipt of any output from the Facility. Operating Committee representatives shall be included in Exhibit D Notices and Contact Information.
- (B) The Operating Committee may develop mutually agreeable written Operating Procedures consistent with the requirements of this PPA, to address matters of day-to-day communications; key personnel; operations-center interface; metering, telemetering, telecommunications, and data acquisition procedures; operations and maintenance scheduling and reporting; reports; operations log; testing procedures; and such other matters as may be mutually agreed upon by the Parties.
 - (C) The Operating Committee shall review the requirements for AGC

from time to time after the date hereof and may agree on modifications thereto to the extent necessary or convenient for operation of the Facility in accordance with this PPA.

- (D) The Operating Committee shall have authority to act in all technical and day-to-day operational matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes; *provided, however, that* except to the extent explicitly provided for in this PPA, such representatives and the Operating Committee shall not have the authority to amend or modify any provision of this PPA.
- 10.5 <u>Access to Facility</u>. Appropriate representatives of Company shall have access to the Facility with Commercially Reasonable prior notice, to read meters and perform inspections as may be appropriate to facilitate the performance of this PPA. While at the Facility, such representatives shall observe such Commercially Reasonable safety precautions as may be required by Seller and shall conduct themselves in a manner that will not interfere with the operation of the Facility.
- 10.6 <u>Capacity Accreditation</u>. Company has certain planning, operating and reporting requirements. Seller shall complete at its own expense all applicable testing and reporting requirements for the Facility, including any required capacity testing pursuant to, and in accordance with, the procedures and guidelines applicable to Company-owned or purchased generation set forth in SPP Criteria as amended from time to time.

10.7 Real Time Data.

- (A) Seller shall communicate all data necessary for Company to integrate the Facility into Company's EMCC in real time through the Facility's SCADA System in accordance with the AGC Protocols. Seller shall maintain the Facility's SCADA System so that it is capable of interfacing with and reacting to Company's AGC Set-Point and responding to signals from the Company's EMCC in accordance with the AGC Protocols.
- 1. Seller shall use Commercially Reasonable Efforts to adjust the real time Park Potential when Company communicates to Seller a measured difference of plus or minus two percent (2%) between the metered Solar Energy, during a time where there was no AGC Set-Point, and Park Potential.
- 2. In the event that Company reasonably concludes that Seller is not (i) providing the data required by this <u>Section 10.7</u>, (ii) interfacing with and reacting to Company's AGC Set-Point as required by this PPA, and/or (iii) providing Park Potential data within the required margin of error, then upon Notice from Company, Seller shall, at Seller's expense, take those actions necessary to fully comply with this paragraph. Upon Seller's request, Company shall cooperate with Seller in taking any such actions.

(B) From the commencement of the delivery of Test Energy, Seller shall maintain a minimum of one meteorological station at the Facility. Beginning on the Commercial Operation Date (and up to sixty (60) Days prior thereto, if so requested by Company on reasonable prior notice), Seller shall provide Company, at Seller's expense, real time unit performance and meteorological data for all Solar Units and the meteorological station at the Facility in accordance with Exhibit H -Operating Standards (AGC Protocols, Data Collection) for the Term of this PPA. Seller shall undertake to maintain Seller-owned data collection systems that are compatible with Company's PI. Seller shall ensure that real time communications capabilities are available and maintained for the transmission to Company's PI. Seller shall ensure that all meteorological equipment at a minimum meets the specifications set forth in Exhibit H - Operating Standards (AGC Protocols, Data Collection). Company shall be entitled to disclose data gathered through the Company's PI to third parties as Confidential Information subject to the provisions of Section 20.18. Company shall have the right to disclose data gathered through the Company's PI system publicly; provided, however, that such data is (i) masked to obscure the origin of the data and (ii) aggregated so that the data cannot be correlated and used by competitors of Seller and/or the suppliers of Solar Units.

Article 11 - Security Fund

- (A) No later than thirty (30) Days following the Parties' receipt of the initial written order from the applicable State Regulatory Agency approving this PPA on terms and conditions satisfactory to Company and its sole discretion, Seller shall establish, fund, and maintain a Security Fund that is available to pay any amount due to Company pursuant to this PPA, and to provide Company security that Seller will satisfy its obligations under this PPA.
- 1. The Security Fund shall equal the Pre-COD Security Fund up to the COD, and the Post-COD Security Fund on and after the COD and throughout the Term.
- 2. Seller shall replenish the Security Fund within fifteen (15) Business Days after Company makes a draw on the Security Fund as authorized by this PPA, up to the required amount; *provided, however, that* Seller shall not be required to replenish the Security Fund to a level in excess of the remaining amount of the applicable Damage Cap. Notwithstanding the foregoing, Seller shall replenish all amounts drawn from the Security Fund in respect of damages described in <u>Section 12.3(C)</u>.
- (B) Company may draw from the Security Fund such amounts as are necessary to recover amounts owing to Company that have not been timely paid pursuant to this PPA, including any damages due to Company and any amounts for which Company is entitled to indemnification under this PPA. Company may, in its sole discretion, draw all or any part of such amounts due to it from any form of security to the extent available pursuant to this Article 11 and in any sequence

Company may select. Company's failure or delay to draw any amount from the Security Fund in any instance shall not prejudice Company's rights to subsequently recover such amount from the Security Fund or in any other manner.

- (C) The Security Fund shall be maintained at Seller's expense, shall be originated by or deposited in a financial institution or company ("<u>Issuer</u>") satisfying the requirements of this <u>Article 11</u>, and shall be in the form of one or more of the following instruments:
- 1. The Security Fund may be in the form of an irrevocable standby letter of credit in the form and substance of <u>Exhibit G-1 Form of Letter of Credit</u>, and any material changes to such Exhibit shall be subject to review and approval by Company at its sole discretion (the "<u>Letter of Credit</u>").
 - a. The Issuer for the Letter of Credit shall have and maintain an unsecured bond rating (unenhanced by third-party support) equivalent to A- by Standard & Poor's (or better) or A3 by Moody's (or better), and if ratings from either are not available, equivalent ratings from alternate rating sources reasonably acceptable to Company. If such rating is equivalent to A-, the Issuer must not be on credit watch or have a negative outlook by any rating agency.
 - b. The Letter of Credit must be for a minimum term of three hundred sixty (360) Days. Seller shall give Company at least thirty (30) Days' advance Notice prior to any expiration or earlier termination of the Letter of Credit. Seller shall cause the renewal or extension of the Letter of Credit or other authorized security for additional consecutive terms of three hundred sixty (360) Days or more (or, if shorter, the remainder of the Term) more than thirty (30) Days prior to each expiration date of the security. If the Letter of Credit or other security is not renewed or extended at least thirty (30) Days prior to its expiration date or otherwise is terminated early, Company shall have the right to draw immediately upon the security and to 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) below, until and unless Seller provides a substitute form of such security meeting the requirements of this Article 11.
- 2. The Security Fund may be in the form of United States currency, in which Company holds a first and exclusive perfected security interest, deposited with an Issuer who is a state or federally chartered commercial bank with operations in the State in which the Facility is located (or such other escrow agent acceptable to Company in its sole discretion) in an account under which Company is designated as beneficiary with sole authority to draft from the account or otherwise access the security (the "Escrow Account"). The Escrow Account shall be established pursuant to an Escrow Agreement substantially in the form attached as Exhibit G-3 Escrow Agreement. Funds held in the Escrow 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. After the Commercial Operation Date, periodic sweeps by Seller for recovery of interest earned by the escrowed funds shall be allowed, and, at any time the balance in the Escrow Account exceeds the required amount of security, the escrow agent may remit any excess to Seller.

- 3. Following COD, the Security Fund may consist of a guaranty substantially in the form of Exhibit G-2 Form of Guaranty, from an Issuer with a minimum net worth of at least \$200,000,000 and a senior unsecured credit rating (unenhanced by third-party support) equivalent to BBB+ or better by Standard & Poor's or Baa1 or better by Moody's, and if ratings from both Standard & Poor's and Moody's (or if either one or both) are not available, equivalent ratings from alternate rating sources reasonably acceptable to Company. If such senior unsecured credit rating of the Issuer is exactly equivalent to BBB+, the Issuer must not be on credit watch or have a negative outlook by a rating agency. If the credit rating of the Issuer is downgraded or there has been a change that has a Material Adverse Effect in the creditworthiness of the Issuer, then Seller shall be required to convert the guarantee provided by such Issuer to a Security Fund instrument meeting the criteria set forth in either sub-paragraph (1) or sub-paragraph (2) above no later than ten (10) Business Days after receiving information from or about the Issuer that the Issuer no longer satisfies the requirements of this paragraph.
- (D) Promptly upon any draw upon the Security Fund, Company shall give Notice to Seller of the amount thereof and the reason therefor, including the obligation(s) that Seller has not satisfied which entitled Company to draw on the Security Fund.
- (E) Seller may change the form of the Security Fund at any time and from time to time upon Commercially Reasonable prior Notice to Company; *provided, however, that* the Security Fund must at all times satisfy the requirements of this <u>Article 11</u>.
- (F) Company may reevaluate from time to time the value of any Security posted by Seller to determine, in a Commercially Reasonable manner, whether (i) it continues to satisfy the requirements in this PPA or (ii) there has been a change that has a Material Adverse Effect on the creditworthiness of the Issuer, such that it does not or, with the passage of time, it will no longer satisfy the requirements of this PPA. If Company determines, in a Commercially Reasonable manner, that there has been an event that has caused Seller's Security to no longer satisfy the requirements of this PPA, then Company shall provide prompt Notice to Seller of such event and after receipt of such Notice, Seller shall be required to provide alternative Security that satisfies the terms of this PPA.
- (G) The Security Fund shall survive termination of this PPA to be available to pay any amounts owed to Company arising prior to or upon termination. Promptly following (i) the end of the Term and the completion of all of Seller's

obligations under this PPA, or (ii) termination of this PPA for any reason prior to the end of the Term, Company shall determine the amount, if any, owed by Seller for any obligations or damages arising out of this PPA. Company may draw such amount and shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller.

(H) Seller shall reimburse Company for the incremental direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the preparation, negotiation, execution and/or release (including making a draw of funds) of any security instruments, and other related documents, used by Seller to establish and maintain the Security Fund pursuant to Seller's obligations under this <u>Article 11</u>.

Article 12 - Default and Remedies

- 12.1 <u>Events of Default</u>. Any of the following events shall constitute an Event of Default of the specified Party if such event has not been cured within the cure period specified for such event:
- (A) Either Party's failure to make any payment to the other Party as required by this PPA, including invoices pursuant to <u>Article 9</u>, Liquidated Delay Damages, Actual Damages, any required indemnification, or any other required payment, and such amount remains unpaid for a period of ten (10) Business Days after the date the defaulting Party receives Notice from the non-defaulting Party that the amount is overdue.
- (B) Either Party's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for a Party or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment against it without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) Days from its inception.
- (C) Either Party's authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against a Party without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) Days from its inception or which result in adjudication of bankruptcy or insolvency within such time.
- (D) Either Party's unauthorized assignment of this PPA or Change of Control (other than a Permitted Transaction), immediately upon its occurrence and without further notice from the non-defaulting Party.

- (E) Any material representation or warranty made by a Party in this PPA that is false in any material respect when made, if it is proven that such Party knowingly or intentionally made such false representation or warranty.
- (F) Any material representation or warranty made by a Party in this PPA ceases to remain true during the Term if such cessation would reasonably be expected to result in a Material Adverse Effect on the non-defaulting Party immediately upon its occurrence and without further notice from the non-defaulting Party; if such misrepresentation is not remedied within ten (10) Business Days after notice is received by the defaulting Party; provided if the default is not reasonably capable of being cured within the ten (10) Business Day cure period specified above, the defaulting Party will have such additional time (not exceeding an additional forty-five (45) Days) as is reasonably necessary to cure the failure, so long as the Party promptly commences and diligently pursues the cure.
- (G) Seller's failure to establish and maintain the Security Fund as and in the amounts required that remains uncured for five (5) Business Days after Company provides Notice of Seller's failure.
- (H) Seller's failure to achieve Commercial Operation more than forty-five (45) Days after the Commercial Operation Milestone (after giving effect to Permitted Extensions); provided, however, that if during such period Seller provides a written opinion from a mutually agreeable independent engineer that the COD can reasonably be achieved within an additional forty-five (45) Day period, then Seller shall be allowed a total period not to exceed ninety (90) Days after the Commercial Operation Milestone to achieve Commercial Operation, provided further that Liquidated Delay Damages shall have been paid throughout the entire period of delay and that no additional cure period for such default shall be required.
- (I) Seller's failure to deliver at least eighty five percent (85%) of the Committed Solar Energy during any Commercial Operation Year, beginning with the second (2nd) Commercial Operation Year (a "<u>Committed Solar Energy Measurement Period</u>").
- 1. To the extent such failure to deliver Committed Solar Energy is attributable to (i) Seller Excuse Hours; (ii) actual solar irradiation falling below the Expected Solar Irradiation for the twelve (12) month period, as calculated using the methodology set forth in Exhibit L; or (iii) curtailment by Company under Sections 7.3 and 8.2, the contribution of such occurrences shall be imputed into the calculation of Committed Solar Energy for the purposes of, and only for the purposes of establishing a default of Seller under this paragraph. Seller shall be permitted to add and/or replace Solar Units on the Site if and to the extent reasonably required to cure Seller's default pursuant to this paragraph.
 - 2. The failure to deliver Committed Solar Energy may be

remedied if (i) within thirty (30) Days following the end of the applicable Committed Solar Energy Measurement Period, Seller cures the reason(s) for such default (or, if such cure cannot reasonably be effected within thirty (30) Days, Seller commences to cure such default within thirty (30) days and then diligently pursues such cure to completion as soon as practicable thereafter), and (ii) as a result of such efforts, during the Commercial Operation Year immediately subsequent to Seller's successful cure of the reason(s) for such default, either (a) the production of Solar Energy by the Facility (adjusted as provided in paragraph (1)) equals or exceeds ninety five percent (95%) of the Committed Solar Energy, or (b) the production of Solar Energy by the Facility (adjusted as provided in paragraph (1)) equal or exceeds ninety percent (90%) of the Committed Solar Energy and Seller has paid to Company liquidated damages in an amount equal to the Replacement Power Costs incurred by Company for the difference between (i) 95% of the Committed Solar Energy and (ii) the actual amount of delivered Solar Energy, in MWh, as adjusted pursuant to Section 12.2(I)(1).

- 3. Seller shall keep Company apprised at least monthly of Seller's cure efforts under this <u>Section 12.1(I)</u>, if any.
- (J) A termination or cessation of service under the Interconnection Agreement or any other agreement necessary for Seller to interconnect the Facility to the Transmission Authority's System; *provided, however, that* if the termination of, or cessation of service under, any such agreement is not due to the fault of Seller, Seller shall have sixty (60) days from such termination or cessation to cure such default or such longer cure period as provided in any such agreement.
- (K) The failure by either Party to perform or observe any other material obligation to the other Party under this PPA, that is not excused by Force Majeure; provided however, that: (i) neither Party shall be entitled to terminate this PPA on account of this Event of Default unless such failure shall remain unremedied for thirty (30) Days after Notice thereof shall have been given by the non-defaulting Party; and (ii) if the Event of Default is not reasonably capable of being cured within the thirty (30) Day cure period specified above, the defaulting Party will have such additional time (not exceeding an additional ninety (90) Days) as is reasonably necessary to cure the failure, so long as the Party promptly commences the cure within the initial 30-Day cure period and diligently pursues the cure to completion thereafter.
- 12.2 <u>Remedies</u>. Upon the occurrence of any Event of Default of this PPA, the non-defaulting Party may pursue all rights and remedies available to it at law and in accordance with the terms of this PPA. Except as explicitly provided to the contrary in this PPA, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any other rights or remedies provided for herein.

- (A) <u>Termination and Damages</u>. For any uncured Event of Default, the non-defaulting Party may, at its option, do any, some, or all of the following:
- Offset from any payments due from the non-defaulting Party any amount otherwise due, including any unpaid Liquidated Delay Damages or Actual Damages;
- 2. Seek Actual Damages in such amounts and on such basis for the default as authorized by this PPA:
- 3. In the case of an Event of Default by Seller, draw on the Security Fund for any unpaid Liquidated Delay Damages and Actual Damages, or any other required and unpaid amount;
- 4. In the case of an Event of Default by Seller occurring after the Commercial Operation Date, exercise Company's Step-In Rights.
- 5. Terminate this PPA immediately upon Notice, without penalty or further obligation to the defaulting Party. Upon the termination of this PPA under this <u>Section 12.2</u>, the non-defaulting Party shall be entitled to receive from the defaulting Party, subject to the Damage Caps, all of the Liquidated Delay Damages and Actual Damages in connection with the Event of Default resulting in such termination.
- (B) <u>Liquidated Delay Damages</u>. Prior to the COD, Seller shall be liable to pay Company Liquidated Delay Damages as a liquidated damage and not a penalty for any delay in meeting the Commercial Operation Milestone (after giving effect to Permitted Extensions) on the terms and conditions as follows:
- 1. Provided Seller actually pays Liquidated Delay Damages as and when owed, the payment of such Liquidated Delay Damages shall be Company's sole and exclusive remedy for Seller's failure to achieve, or Seller's delay in achieving the Commercial Operation Milestone, except for the right to terminate the PPA as provided in Section 12.2(A)(5) above. Liquidated Delay Damages shall be payable in lieu of Actual Damages accrued for the period during which Liquidated Delay Damages are assessed. The Parties specifically recognize that Company's damages associated with any delays in achieving the Commercial Operation Milestone will be significant but that it will be difficult to quantify those damages.
- 2. All Liquidated Delay Damages shall begin to accrue on the Day after the Commercial Operation Milestone as may be extended pursuant to this PPA until the Day after such Commercial Operation Date is achieved.
- (C) <u>Actual Damages</u>. For all Events of Default arising after the COD, the non-defaulting Party shall be entitled to receive from the defaulting Party all direct

damages proximately caused by such Event of Default ("Actual Damages") incurred by the non-defaulting Party; provided, however, that if an Event of Default has occurred and has continued uncured for a period of three hundred sixty-five (365) Days, the non-defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this PPA. If Seller is the defaulting Party, the Parties agree that Actual Damages recoverable by Company hereunder on account of an Event of Default of Seller may include the present value of the Replacement Power Costs. If Company is the defaulting Party, the Parties agree that Actual Damages may include any direct damages available under this PPA.

(D) Specific Performance. In addition to the other remedies specified in this Article 12, in the event that any Event of Default of a Party is not cured within the applicable cure period set forth herein, the non-defaulting Party may elect to treat this PPA as being in full force and effect and the non-defaulting Party shall have the right to specific performance. By way of example, 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 that would result in the cure, or partial cure, of the Event of Default, Company's right to specific performance shall include the right to obtain an order compelling Seller to enforce its rights under the operating agreement.

12.3 Limitation on Damages.

- (A) Except as otherwise provided in this <u>Section 12.3</u>, (i) Seller's aggregate financial liability to Company for Liquidated Delay Damages shall not exceed Pre-COD Damage Cap, and (ii) Seller's aggregate financial liability to Company for Actual Damages shall not exceed the Post-COD Damage Cap (collectively the "<u>Damage Cap(s)</u>").
- (B) If at any time during the Term, Company incurs damages in excess of a Damage Cap that Seller does not agree to pay when billed by Company, Company shall have the right to terminate this PPA upon Notice.
- (C) The Damage Caps shall not apply to Actual Damages arising out of any of the following events:
- 1. damage to Company-owned facilities caused by Seller's acts or omissions;
- 2. Seller's intentional misrepresentation or misconduct in connection with this PPA or the operation of the Facility;
- 3. the sale or diversion by Seller to a third party of any capacity or energy committed to Company under this PPA except to the extent

permitted by this PPA.;

- 4. Seller's failure (i) to have insurance coverages in the types and amounts required by this PPA at the time a casualty occurs, or (ii) to apply any insurance proceeds to restoration of damaged equipment of the Facility following a casualty, in each case except to the extent allowed by this PPA:
 - 5. any claim for indemnification under this PPA;
- 6. any Environmental Contamination caused by Seller in connection with this PPA; or
- 7. damages incurred by Company in connection with any bankruptcy or insolvency proceeding involving Seller, including Company's loss of the benefit of its bargain due to rejection or other termination of this PPA in such proceeding.
- (D) The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to Actual Damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, special, equitable or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); provided, however, that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, 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.

12.4 Step-In Rights.

- (A) Upon the occurrence of an Event of Default occurring after the Commercial Operation Date, Company shall have the right, subject to the rights of the Facility Lender pursuant to the Lender Consent, but not the obligation, to exercise its Step-In Rights for the period of time until Seller has cured its Event of Default or this PPA has been terminated. Exercising Step-In Rights shall not preclude or limit Company's right to exercise any remedy it has against Seller under this PPA. Seller shall not grant any person, other than the Facility Lender, a right to possess, assume control of, and operate the Facility that is equal to or superior to Company's right under this Section 12.4.
 - (B) Seller irrevocably appoints Company as Seller's attorney-in-fact

for the exclusive purpose of executing such documents and taking such other actions necessary to implement Company's Step-In Rights. Seller shall not grant any person, other than the Facility Lender, a right to possess, assume control of, or operate the Facility in derogation of Company's Step-In Rights.

- (C) Company acknowledges that the Facility Lender may foreclose and take possession of and operate the Facility and Company may be required to relinquish its Step-In Rights in such circumstance. Company's Step-In Rights shall be limited only by foreclosure of the Facility as a result of Seller's material default of its contractual obligations with the Facility Lender.
- (D) Company shall implement its Step-In Rights in conformance with Good Utility Practice and shall perform Seller's obligations in a manner consistent with Seller's duties under this PPA. Seller shall reimburse Company for its expenses and costs (including the fees and expenses of counsel) incurred by Company in connection with exercising its Step-In Rights. Company shall give Seller and the Facility Lender ten (10) Days' Notice in advance of exercising Company's Step-In Rights. Upon receipt of such Notice:
- 1. Seller shall make available at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Good Utility Practice.
- 2. Seller shall give Company, its employees, contractors, or designated third parties unrestricted access to the Site and the Facility.
- 3. Seller shall cooperate in the implementation of Company's Step-In Rights.
- 4. Company shall use the output generated and delivered from the Facility during such period in partial satisfaction of Seller's obligations hereunder.
- (E) Company may draw upon the Security Fund to cover any expenses incurred by Company in exercising its rights under this <u>Section 12.4</u>.
 - (F) Seller shall retain legal title to and ownership of the Facility.
- (G) Company shall provide Seller with at least fifteen (15) Days' Notice of Company's intent to relinquish its Step-In Rights. Company shall relinquish its Step-In Rights on the earliest of (i) termination of this PPA; (ii) Seller curing all outstanding defaults; (iii) Company's unilateral decision to relinquish possession of the Facility; or (iv) the Parties' mutual decision.
- (H) Company's Step-In Rights shall not constitute an assumption by Company of any liability attributable to Seller.

12.5 <u>Duty to Mitigate</u>. 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 PPA.

Article 13 - Dispute Resolution

- (A) In the event of any dispute arising under this PPA (a "Dispute"), within ten (10) Business Days following Notice by either Party, (i) each Party shall appoint a representative, and (ii) the representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the representatives cannot resolve the Dispute within thirty (30) Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to a designated representative of each Party's senior management. Within ten (10) Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within ten (10) Business Days after receipt of each Party's Dispute summaries, the senior management representatives for both Parties shall negotiate in good faith to resolve the Dispute. If such senior management representatives are unable to resolve the Dispute thereafter, either Party may seek available legal remedies.
- (B) If no Notice has been issued within twenty four (24) months following the occurrence of events or 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.
- (C) SELLER AND COMPANY EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS PPA OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF SELLER AND COMPANY RELATED HERETO AND EXPRESSLY AGREE TO HAVE ANY DISPUTES ARISING UNDER OR IN CONNECTION WITH THIS PPA BE ADJUDICATED BY A JUDGE OF THE COURT HAVING JURISDICTION WITHOUT A JURY.

Article 14 - Force Majeure

14.1 <u>Applicability of Force Majeure</u>. A Party shall be relieved of its obligations to perform this PPA and shall not be considered to be in default with respect to any obligation under this PPA if and to the extent such Party is prevented from fulfilling such obligation by Force Majeure, *provided, however, that*: (i) such Party gives prompt Notice describing the circumstances and impact of the Force Majeure; (ii) the relief from its obligations sought by such Party is of no greater scope

and of no longer duration than is required by the Force Majeure; (iii) such Party proceeds with due diligence to overcome the Force Majeure and resumes performance of its obligations under this PPA; and (iv) such Party provides Notice prior to the conclusion of the Force Majeure.

- 14.2 <u>Limitations on Effect of Force Majeure</u>. Force Majeure shall only relieve a Party of such obligations as are actually precluded by the Force Majeure. In no event will the existence of Force Majeure extend this PPA beyond its stated Term. If a Force Majeure affecting Seller continues for an uninterrupted period of ninety (90) Days from its inception (with respect to Force Majeure occurring prior to COD) or three hundred sixty-five (365) Days from its inception (with respect to Force Majeure occurring after COD), Company may, at any time following the end of such period, terminate this PPA upon Notice to Seller, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination; provided, however, that if the Force Majeure is one that can be corrected through repair or restoration work to the Facility or other actions by Seller, and Seller provides evidence that it is diligently pursuing such actions, then Company shall not have the right to terminate this PPA for an additional ninety (90) day period during any suspension so long as (i) Seller is using Good Utility Practice to complete such repair work, restoration or such other actions, and (ii) prior to expiration of the initial ninety (90) or three hundred sixty-five (365) Day period, Seller informs and provides reasonable proof to Company of Seller's intention and ability to undertake and complete such actions.
- 14.3 <u>Delays Attributable to Company</u>. Seller shall be excused from performing its obligations under this PPA where Seller can establish that such a failure was caused by (i) any delay or failure by Company to perform its obligations under this PPA, or (ii) any delay or failure by the Transmission Authority to perform its obligations under the Interconnection Agreement, in each case whether or not caused by Force Majeure.

Article 15 - Representations and Warranties

- 15.1 <u>General Representations and Warranties</u>. Each Party hereby represents and warrants to the other as follows, which representations and warranties will be deemed to be repeated, if applicable, by each Party throughout the Term:
- (A) It is a valid separate legal entity, duly organized, validly existing and in good standing under Applicable Law. It is qualified to do business in the State in which the Facility is located and each other jurisdiction where the failure to so qualify would have a Material Adverse Effect on the business or financial condition of the other Party; it has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.
- (B) The Party's execution, delivery, and performance of all of its obligations under this PPA have been duly authorized by all necessary corporate

action, and do not and will not:

- 1. require any consent or approval by any governing corporate or management body, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to the other Party upon its request);
- 2. violate any Applicable Law, or violate any provision in any formation documents, the violation of which could have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA;
- 3. result in a breach or constitute a default under the representing Party's formation documents or bylaws, or under any agreement relating to its management or affairs or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which it is a party or by which it or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA; or
- 4. result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of the representing Party now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA.
- (C) This PPA is a valid and binding obligation of the representing Party.
- (D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the representing Party is a party or any judgment, order, or Applicable Law, applicable to it or its business.
- (E) Within the meaning of the United States bankruptcy code, (i) this PPA constitutes a "master netting agreement," (ii) all transactions pursuant to this PPA constitute "forward contracts" or a "swap agreement," (iii) the representing Party is a "forward contract merchant" and "master netting agreement participant," and (iv) and all payments made or to be made pursuant to this PPA constitute "settlement payments."
- (F) It is (i) an "eligible contract participant" as defined in Section 1a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. §1a(12); (ii) a "market participant" under applicable exchange and market rules; (iii) a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of this PPA, or the products or byproducts thereof; and (iv) entering into this PPA solely for purposes related to its business as such.

- (G) This PPA grants each Party the contractual right to "cause the liquidation, termination or acceleration" of the transactions within the meaning of Sections 556, 560 and 561 of the bankruptcy code, as they may be amended, superseded or replaced from time to time. Upon a bankruptcy, a non-defaulting Party shall be entitled to exercise its rights and remedies under this PPA in accordance with the safe harbor provisions of the bankruptcy code set forth in, inter alia, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 548(d)(2), 556, 560 and 561, as they may be amended, superseded or replaced from time to time.
- 15.2 <u>Seller's Specific Representation</u>. To the best knowledge of Seller, and except for those Permits identified in <u>Exhibit F Seller's Permits</u>, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Permits, or other action required by any Governmental Authority to authorize Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.
- 15.3 <u>Company's Specific Representation</u>. To the best knowledge of Company, and except for the State Regulatory Approval identified in <u>Section 6.1</u>, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Company's execution, delivery and performance of this PPA, have been duly obtained and are in full force and effect.

Article 16 - Insurance

16.1 <u>Evidence of Insurance</u>. No later than commencement of construction and then on or before June 1 of each year during the Term thereafter, Seller shall provide Company with two copies of insurance certificates acceptable to Company evidencing that insurance coverages for the Facility are in compliance with the specifications for insurance coverage set forth in Exhibit E - Insurance Coverage to this PPA. Such certificates shall (a) name Company as an additional insured (except workers' compensation); (b) provide that Company shall receive thirty (30) Days prior Notice of non-renewal or cancellation of any of the corresponding policies (except that such Notice shall be ten (10) Days for non-payment of premiums; (c) provide a waiver of any rights of subrogation against Company, its Affiliates and their officers, directors, agents, subcontractors, and employees; and (d) indicate that the Commercial General Liability policy has been endorsed as described above. All policies shall be written with insurers with an AM Best rating of at least A-VII or a Standard & Poor's rating of at least A. All policies shall be written on an occurrence basis, except as provided in Section 16.2. ΑII policies shall contain endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by Company. Seller's liability under this PPA is not limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All insurance required under this PPA shall cover occurrences

during the Term and for a period of two years after the Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this PPA and such insurance shall be maintained by Seller for a minimum of six years after the Term.

- (B) Company shall have the right, at times deemed appropriate to Company during the Term, to request Seller to modify the insurance minimum limits specified in Exhibit E Insurance Coverage in order to maintain Commercially Reasonable coverage amounts. Seller shall make all Commercially Reasonable Efforts to comply with any such request.
- (C) If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide Notice to Company, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and capacity. Upon receipt of such Notice, Seller shall attempt to obtain other insurance that would provide comparable protection against the risk to be insured.
- 16.3 <u>Application of Proceeds</u>. Seller shall apply any insurance proceeds to reconstruction of the Facility following a casualty.

Article 17 - Indemnity

- 17.1 <u>Indemnification</u>. Each Party (the "<u>Indemnifying Party</u>") agrees to indemnify, defend and hold harmless the other Party (the "<u>Indemnified Party</u>") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including attorneys' fees) for personal injury or death to persons and damage to the Indemnified Party's real property and tangible personal property or facilities or the property of any other person or entity, or for any third-party claims in connection with this PPA, to the extent arising out of, resulting from, or caused by (i) an Event of Default or other breach under this PPA, (ii) violation of Applicable Laws, A. negligent or tortious acts, errors, or omissions, or (iv) intentional acts or willful misconduct of the Indemnifying Party, its Affiliates, directors, officers, employees, or agents.
- (A) This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Indemnified Party, but the Indemnifying Party's liability to indemnify the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party's negligent or intentional acts, errors or omissions caused the damages.
- (B) Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions

shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

- (C) Nothing in this <u>Section 17.1</u> shall enlarge or relieve Seller or Company of any liability to the other for any breach of this PPA.
- 17.2 <u>Notice of Claim.</u> Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative proceeding, legal proceeding, or investigation as to which the indemnity provided for in this <u>Article 17</u> may apply, the Indemnified Party shall give Notice thereof to the Indemnifying Party. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however, that* if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs.
- 17.3 <u>Settlement of Claim</u>. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided*, *however*, *that* settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.
- 17.4 Amounts Owed. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a Commercially Reasonable effort by the Indemnified Party to obtain such insurance proceeds.

Article 18 - Lender Provisions

18.1 Accommodation of Facility Lender. To facilitate Seller's obtaining of financing to construct and operate the Facility, Company shall make Commercially Reasonable Efforts to provide such consents to collateral assignment, certifications, representations, information or other documents (including, but not limited to, estoppel certificates related to a Tax Equity Financing), as may be reasonably requested by Seller or the Facility Lender in connection with the financing of the Facility consistent with the terms set forth in Exhibit I – Lender Consent Provisions (generally, a "Lender Consent"); provided, however, that in providing a Lender Consent, Company shall have no obligation to alter or modify the terms of the PPA or provide any consent or enter into any agreement, in each case that has a Material Adverse Effect on any of Company's rights, benefits, risks, or obligations under this PPA. Seller shall

reimburse, or shall cause the Facility Lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the Lender Consent and any documents requested by Seller or the Facility Lender, and provided by Company, pursuant to this <u>Section 18.1</u>. Seller shall provide Company with a Notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender.

- 18.2 <u>Facility Lender Notice and Right to Cure</u>. Seller shall provide Company with a Notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender. Following receipt of such Notice, Company shall provide Notice of any breach or default of Seller to the Facility Lender, and Company will accept a cure performed by the Facility Lender, so long as the cure is accomplished within the applicable cure period set forth in this PPA or the Lender Consent.
- 18.3 <u>Notice of Facility Lender Action</u>. Within ten (10) Days following Seller's receipt of each 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 Company.
- 18.4 Officer Certificates. Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available personnel and records relating to the Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation, including administrative proceedings before utility regulatory commissions.

Article 19 - Assignment and Other Transfer Restrictions

- 19.1 <u>Transfer Without Consent Is Null and Void</u>. Except for any Permitted Transfer, any Change of Control or sale, transfer, or assignment of any interest in the Facility or in this PPA made without fulfilling the requirements of this PPA shall be null and void and a breach of this PPA.
- (A) Except as permitted in this <u>Section 19.1</u>, neither Party shall assign this PPA or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that (i) at least thirty (30) Days' prior Notice of any proposed assignment requiring consent shall be given to the other Party; (ii) any assignee shall expressly assume the assignor's obligations under this PPA unless otherwise agreed by the other Party; (iii) no assignment shall relieve the assignor of its obligations under this PPA in the event the assignee fails to perform, unless the other Party waives in writing the assignor's continuing obligations under this PPA; (iv) no assignment shall impair any security given by Seller unless such security has been

replaced in accordance with <u>Article 11</u>; and (v) before this PPA is assigned by Seller, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities. For the avoidance of doubt, the requirements delineated in romanettes (ii) through (iv) of this <u>Section 19.1</u> shall apply to all assignments, including Permitted Transactions.

- 1. Seller's consent shall not be required for Company to assign this PPA to an Affiliate of Company; provided, however, that Company shall remain liable for obligations incurred under this PPA unless released in accordance with the terms of this PPA. In the event that a permitted assignee of Company is an entity that provides retail electric service in the State in which the Facility is located and is subject to rate and quality service regulation under the jurisdiction of the State Regulatory Agency and has or attains an Investment Grade, Seller shall release Company from its obligations under this PPA if Company requests to be so released by Notice to Seller.
- 2. Company's consent shall not be required for Seller to assign this PPA, for collateral purposes, to the Facility Lender. Seller shall provide Company Notice of any such assignment no later than thirty (30) Days after the assignment.
- 3. Company's consent shall not be required for any assignment by a Facility Lender to a (i) Qualified Operator or (ii) to a third-party that contracts with a Qualified Operator, after the Facility Lender has exercised its foreclosure rights with respect to the PPA or the Facility.
- (B) Any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Company, which shall not be unreasonably withheld; *provided, however, that* Company shall have no obligation to provide any such consent prior to the fulfillment and expiration of all rights conferred pursuant to Section 19.2.

19.2 Option, ROFO and PFT.

- (A) Seller hereby grants to Company, and its Affiliates, (i) an option to purchase (A) fifty percent (50%) of the equity interests in Seller (the "Partial Interest") prior to the Commercial Operation Date or (B) either (1) the Facility Property or (2) one hundred percent (100%) of the equity interests in Seller (the "Full Interest"), exercisable upon the dissolution or winding up of NextEra YieldCo and within six (6) months prior to the Scheduled Termination Date (the "Option"), on the terms and conditions set forth in this Section 19.2(A). Company, or its Affiliate, may and shall exercise its Option by providing at least one hundred twenty (120) Days' Notice to Seller of its intent to purchase the Partial Interest, Full Interest or Facility Property (collectively, the "Acquired Interest"), as applicable.
- 1. The purchase price shall be the higher of (i) fair market value of the Acquired Interest; or (ii) the Facility Debt or, in the case of the

acquisition of the Partial Interest, fifty percent (50%) of the Facility Debt as of the Notice date.

- 2. Within thirty (30) Days of Company or its Affiliate's Option exercise, the Parties shall jointly appoint a qualified, independent appraiser. If the Parties cannot agree, then each Party shall select an appraiser and the two appraisers shall appoint the appraiser. Seller shall provide all information regarding Acquired Interest necessary for the appraiser's determination of fair market value. The appraiser shall complete its appraisal within sixty (60) Days of receipt of all such necessary data. The costs of the appraisal shall be included as part of the purchase price. During the period in which the appraiser is evaluating the Acquired Interest, as applicable, Seller shall allow Company or its Affiliate the Commercially Reasonable opportunity to investigate the proposed transaction and conduct due diligence.
- 3. Upon determination of fair market value of the Acquired Interest, the Parties shall use Commercially Reasonable Efforts to negotiate and sign definitive agreements consummating the transaction within ninety (90) Days. Upon payment of the purchase price, Seller shall execute and deliver to Company or its Affiliate all instruments necessary to effect transfer of ownership of the Acquired Interest, as applicable, to Company or its Affiliate, subject only to the liens of Facility Lenders Company or its Affiliate elects to assume.
- 4. After the Company or its Affiliate's Option is exercised and continuing through closing on any resulting sale, Seller shall maintain the physical Facility Property in Commercially Reasonable condition and to perform those contractual and other obligations under agreements comprising any portion of the Facility Property.
- (B) At any time after the Commercial Operation Date, if (i) Seller, (ii) any Affiliate of Seller, or (iii) members of Seller holding a majority of the equity interests in Seller, offers to convey the Facility or a majority of the equity interests in Seller to an unaffiliated third party (other than pursuant to a Permitted Transaction or to a Tax Equity Investor), Seller shall simultaneously offer Company a right of first offer with respect to the proposed transaction (the "ROFO"). Seller shall identify (i) the buyer, (ii) the nature and terms of the transaction, and (iii) the minimum price Seller is willing to accept to proceed with the contemplated transaction (the "ROFO Notice"). All information disclosed to Company by Seller with respect to the ROFO shall be deemed Confidential Information and subject to Section 20.18.
- 1. Seller shall allow Company or its Affiliate sixty (60) Days after the ROFO Notice to investigate the proposed transaction and conduct due diligence. Within such period, Company or its Affiliate shall either (i) exercise its ROFO rights on substantially comparable terms to the proposed transaction or (ii) cancel its ROFO rights.

- 2. If Company or its Affiliate exercises its ROFO rights, the Parties shall have an additional one hundred twenty (120) Day period to sign definitive agreements on terms no less favorable to Company than those contained in the ROFO Notice. Seller shall cooperate in all respects necessary for Company or its Affiliate to exercise its ROFO rights.
- 3. If Company or its Affiliate does not exercise its ROFO rights, Seller shall have the right to close its proposed transaction with the identified prospective buyer; provided, however, that such transaction shall have an aggregate value of not less than the minimum price set forth in the ROFO Notice and the transaction shall have been closed not more than nine (9) months following expiration of the Company and its Affiliates' right to exercise its ROFO rights.
- To the extent Seller proposes a Pending Facility Transaction that does not otherwise trigger Company's ROFO rights. Seller shall give Company at least ninety (90) Days' prior Notice of such Pending Facility Transaction (a "PFT Notice") in order to provide Company or its Affiliate with an opportunity to discuss and negotiate with Seller the possible sale of the equity interests in Seller or the Facility Property, as applicable, to Company or its Affiliate. Any PFT Notice shall include a fair summary of Seller's plans with respect to the Facility in connection with the proposed Pending Facility Transaction, to the extent then known by Seller. All information disclosed to Company by Seller with respect to the ROFO shall be deemed Confidential Information and subject to Section 20.18. Seller shall have no obligation to sell nor shall Company have any obligation to purchase the equity interests in Seller or the Facility Property, as applicable, following any PFT Notice; provided, however, that issuance of a PFT Notice shall not relieve Seller of its obligations to provide a ROFO Notice if and when applicable pursuant to this Section 19.2. In the event that the transaction giving rise to the PFT Notice has not been completed within nine (9) months of the PFT Notice, Seller shall be required to resubmit the PFT Notice for such transaction.
- 19.3 <u>Subcontracting</u>. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Company; *provided, however, that* no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

Article 20 - Miscellaneous

20.1 <u>Notices</u>. Notices required by this PPA shall be in writing and addressed to the other Party, including the other Party's representative on the Operating Committee, at the addresses noted in <u>Exhibit D – Notices and Contact Information</u> as either Party updates them from time to time by Notice to the other Party. Notices shall be either hand delivered or mailed, postage prepaid. If mailed, Notices shall be simultaneously sent by facsimile or other electronic means. Any Notice 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 the close of the Business Day, 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 <u>Section 20.1</u>.

20.2 Taxes and Change of Law.

- (A) Seller shall be solely responsible for any and all present or future taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Facility, or any components or appurtenances thereof, any sales or *ad valorem* taxes relating to the Facility, or any taxes on the products and services generated by Seller, sold and delivered to Company at the Point of Delivery. Seller's prices under <u>Article 8</u> are inclusive of such taxes and impositions during the Term.
- (B) Company shall be solely responsible for the payment of any taxes imposed by Governmental Authorities on the Solar Energy purchased under this PPA beyond the Point of Delivery.
- (C) The Parties shall cooperate to minimize tax exposure; *provided, however, that* neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder. All electric energy delivered by Seller to Company hereunder shall be sales for resale, with Company reselling such electric energy. Company shall obtain and provide Seller with any certificates required by any Governmental Authority, or otherwise reasonably requested by Seller to evidence that the deliveries of electric energy hereunder are sales for resale.
- 20.3 <u>Applicable Laws</u>. Each Party shall at all times comply with all Applicable Laws, except for any non-compliance that, individually or in the aggregate, could not reasonably be expected to have a material effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder.
- (A) As applicable, each Party shall give all required notices, shall procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this PPA, and shall pay its respective charges and fees in connection therewith.
- (B) Each Party shall promptly disclose to the other, any violation of any Applicable Laws arising out of or in connection with the Facility and this PPA.
- (C) Upon permanent cessation of generation from the Facility, Seller shall decommission the Facility, remove the Facility and remediate the Site as, if and when required by Applicable Laws.

20.4 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 PPA, or any

contractual obligation, Permit or requirements of Applicable Law, except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination.

(B) If fees, fines, penalties, or costs are claimed or assessed against Company by any Governmental Authority due to noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, or if the work of Seller or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, Seller shall reimburse and hold Company harmless against any such costs incurred by Company, including claims for indemnity or contribution made by third parties against Company in accordance with Article 17.

20.5 Rate Changes.

- (A) The terms and conditions and the rates for service specified in this PPA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this PPA 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 PPA whether proposed by a Party, a non-party, or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in <u>United Gas Pipe Line v. Mobile Gas Service Corp.</u>, 350 U.S. 332 (1956) and <u>Federal Power Commission v. Sierra Pacific Power Co.</u>, 350 U.S. 348 (1956) (the Mobile-Sierra doctrine), as interpreted in <u>Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1, 128 S. Ct. 2733 (2008).</u>
- 20.6 <u>Disclaimer of Third-Party Beneficiary Rights</u>. In executing this PPA, Company does not and does not intend to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this PPA.

20.7 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Except as specifically provided for in this PPA to the contrary, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

- (B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of Company for any purpose; nor shall Seller represent to any person that he or she is or shall become a Company employee.
- 20.8 Equal Employment Opportunity Compliance Certification. Seller acknowledges that as a government contractor Company is subject to Applicable Laws regarding equal employment opportunity and affirmative action. Such Applicable Laws may also be applicable to Seller as a subcontractor to Company. All such Applicable Laws shall be deemed to be incorporated herein as required by Applicable Law, including 41 C.F.R. §60-1.4(a)(1)-(7).
- 20.9 <u>Survival of Obligations</u>. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations, including warranties, remedies, or indemnities, that by their nature should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.
- 20.10 <u>Severability</u>. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however, that* Company and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision that has been found to be invalid, illegal or unenforceable.
- 20.11 Complete Agreement: Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Company and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Company and Seller with respect to the sale of any output from the Facility. This PPA, including Exhibits, may be amended, changed, modified, or altered in accordance with the terms of this PPA; provided, however, that such amendment, change, modification, or alteration shall be in writing.
- 20.12 <u>Binding Effect</u>. This PPA is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, legal representatives, and assigns.
 - 20.13 Headings. Captions and headings used in this PPA are for ease of

reference only and do not constitute a part of this PPA.

- 20.14 <u>Counterparts</u>. This PPA may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument.
- 20.15 <u>Governing Law</u>. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State in which the Facility is located, exclusive of conflict of laws principles. The Parties submit to the exclusive jurisdiction of the federal district courts of the State in which the Facility is located, and venue is hereby stipulated as the capital city of such State or such other city as mutually agreed to by the Parties.
- 20.16 <u>Press Releases and Media Contact</u>. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size, type and timing of the Facility, the long-term nature of this PPA, and other relevant factual information about the relationship. In the event, during the Term, either Party is contacted by the media concerning this PPA or the Facility, the contacted Party shall inform the other Party of the existence of the inquiry, any questions asked, and the substance of any information provided to the media.
- 20.17 <u>Exhibits</u>. Either Party may change the information in <u>Exhibit D Notices and Contact Information</u> at any time by Notice without the approval of the other Party. All other Exhibits may be changed to the extent allowed by specific provisions of this PPA or with the mutual consent of both Parties.

20.18 Confidentiality.

- (A) Although this PPA is not Confidential Information, the Parties acknowledge and agree that during the course of the performance of their respective obligations under this PPA, either Party may need to provide information to the other Party, which the disclosing party deems confidential, proprietary or a trade secret ("Confidential Information").
- 1. Confidential Information shall include all documentation and data, including special techniques, methods, computer programs and software, that the disclosing Party considers proprietary or trade secret and furnishes to the receiving Party and wants the receiving Party to treat as Confidential Information. Disclosing Party shall designate Confidential Information by clear and distinct notation on such documentation or by equivalent method, and shall be treated as such by the receiving Party. Documentation and data not so designated need not be considered by the receiving Party to be proprietary or trade secret; provided, however, that any and all data and documentation regarding Facility output, performance, outages and similar operational information shall be considered Confidential Information without the need for further designation if any disclosure thereof would be in a form or by a means that associates such data or documentation with the Facility or Seller or any of its Affiliates, or from which a reasonable person

could make such an association. The disclosing Party hereby grants to the receiving Party authority to use Confidential Information for the purposes of this PPA, including keeping electronic copies of such Confidential Information. The receiving Party agrees to keep such Confidential Information confidential, except as set forth in this Section 20.18, to use it for work necessary to the performance of this PPA, and not to sell, transfer, sublicense, disclose or otherwise make available any such Confidential Information to others; provided, however, that Confidential Information may be disclosed by the receiving Party (i) to the agents, employees, advisors, consultants, or potential or actual debt or equity investors of the receiving Party, subject to their acceptance of the obligations of confidentiality imposed hereby and for whose violations of this requirement of confidentiality the receiving Party shall be responsible and (ii) pursuant to Applicable Law, including all Laws and regulations governing disclosure to a State Regulatory Agency.

- 2. Confidential Information shall not include any data or information that:
 - a. can be documented was in the public domain as allowed by this <u>Section 20.18</u>, or through no fault or action of the receiving Party at the time it was disclosed by the disclosing Party to the receiving Party or at any time thereafter:
 - b. can be documented was independently developed by the receiving Party;
 - c. can be documented was known to the receiving Party from an ultimate source other than the disclosing Party without breach of this PPA by the receiving Party;
 - d. is disclosed by a Party, in connection with such Party's performance of its obligations under this PPA, to its consultants or contractors or other third parties who are in turn subject to a confidentiality agreement with the disclosing Party to treat the information at least with the care required by this PPA; or,
 - e. is legally requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process or, in the opinion of its counsel, by Applicable Laws) to be disclosed in a judicial or administrative proceeding other than a proceeding before a State Regulatory Agency; provided, however, that the Party requested or required to make a disclosure shall promptly notify the non- disclosing Party, no later than five (5) Days after such request or requirement and prior to disclosure so that the non-disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of this Section 20.18.

3. In proceedings before a State Regulatory Agency, a Party may disclose Confidential Information pursuant to the State Regulatory Agency's procedures relating to confidential information; provided, however, that if the designation of such information as Confidential Information is contested or a Party is required to disclose information which a Party has labeled "Highly Confidential Information," the Party requested or required to make a disclosure shall promptly notify the non-disclosing Party, no later than five (5) Days after such request or requirement and prior to disclosure so that the non-disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of this Section 20.18.

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IN WITNESS WHEREOF, the Parties have executed this PPA.

Seller:

ROSWELL SOLAR, LLC, A Delaware Limited Liability Company

Bv:

Michael O'Sullivan Vice President

Company:

Southwestern Public Service Company

David T. Hudson, President

Southwestern Public Service Company

EXHIBIT A DEFINITIONS

The following terms shall have the meanings set forth herein:

"Actual Damages" has the meaning set forth in Section 12.2(C).

"<u>Acquired Interest</u>" shall have the meaning set forth in <u>Section</u> 19.2(A).

"Affiliate" means any person or entity that directly or indirectly controls, is under the control of, or is under common control with, the named entity by the power to direct or cause the direction of the management of the policies of named entity, whether through ownership interest, by contract or otherwise.

"AGC" or "Automatic Generation Control" means the equipment and capability of an electric generation facility to automatically adjust the generation quantity within the applicable Balancing Authority with the purpose of interchange balancing and specifically, the Facility's capability of accepting AGC Set-Point electronically and automatically adjusting and regulating the Facility's energy production via the Facility's SCADA System.

"AGC Protocols" means the protocols attached hereto as Exhibit H - Operating Standards (AGC Protocols. Data Collection), as modified in accordance with Section 10.4.

"AGC Remote/Local" means a handshake electronic signal sent from the Facility to the EMCC AGC system, and from the EMCC AGC system to the Facility, indicating the Facility is receiving AGC Set-Point locally (from the facility) or remotely (EMCC AGC system) and is following that AGC Set-Point.

"AGC Set-Point" means the Company-generated analog or digital signal sent by the SCADA System to the Facility, representing the maximum Solar Energy output for the Facility.

"Ancillary Services" means those ancillary services defined under the Transmission Tariff as well as those other services and products that may be included under such tariff from time to time, which are associated, directly or indirectly, with the capacity of the Facility or the transmission of energy from the Facility.

"Applicable Law" means all laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority that are applicable to a Party, the business of a Party or the Facility, now in effect or hereafter enacted; amendments to or interpretations of any of the foregoing by a Governmental Authority having jurisdiction; and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or

like actions.

"Back-Up Metering" shall have the meaning set forth in Section 5.2(B).

"Balancing Authority" means the system of electrical generation, distribution and transmission facilities within which generation is regulated in order to maintain interchange schedules with other such systems.

"Business Day" means any Day that is not a Saturday, a Sunday, or a FERC recognized holiday.

"Change of Control" means the occurrence of any one of the following events with respect to Seller or any direct or indirect owner of a majority of the ownership interests in Seller: (i) a transfer of a majority of the ownership interests in Seller or such owner; or (ii) any consolidation or merger of Seller or such owner in which Seller or such owner, as the case may be, is not the continuing or surviving entity, or (iii) a sale or conveyance of any direct or indirect ownership interest in Seller following which NextEra Energy, Inc. is no longer the direct or indirect owner of at least fifty percent (50%) of the ownership interests of Seller, provided, however, that a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

"COD Conditions" means all of the requirements that must be satisfied by Seller as a prerequisite to achieving Commercial Operation as set forth in Section 4.3.

"Code" means the Internal Revenue Code of 1986, as amended.

"<u>Commercial Operation</u>" means the period beginning on the Commercial Operation Date and continuing through the Term of this PPA.

"Commercial Operation Date" or "COD" means 12:00 am on the date following the date upon which Seller satisfies the COD Conditions, or such other date as is mutually agreed upon by the Parties.

"<u>Commercial Operation Milestone</u>" means the Construction Milestone for the Commercial Operation Date specified in <u>Exhibit B – Construction Milestones</u>.

"Commercial Operation Year" means any consecutive 12 month period during the Term, commencing with the Commercial Operation Date or any of its anniversaries.

"Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any action required to be made, attempted or taken by a Party under this PPA, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action at a reasonable cost; (b) is consistent with Good Utility Practices; and (c) takes into consideration the amount of advance notice required to take such action, the

duration and type of action and the competitive environment in which such action occurs.

"Committed Solar Energy" for any period means the megawatt-hours of Solar Energy committed to be delivered to the Company by Seller from the Facility in such period, set forth in Exhibit J — Committed Solar Energy and Solar Energy Payment Rate (by Commercial Operation Year). For any period that does not coincide with a Commercial Operation Year, Committed Solar Energy shall be calculated as the month-weighted sum of the Committed Solar Energy falling in each of the two Commercial Operation Years using expected monthly generation profile data, set forth in Exhibit K - Expected Monthly Generation Profile.

"Committed Solar Energy Measurement Period" shall have the meaning set forth in Section 12.1(I)

"Company" shall have the meaning set forth in the first paragraph of this PPA.

"Compensable Curtailment Energy" shall have the meaning set forth in Section 8.2(A)(1).

"Confidential Information" shall have the meaning set forth in Section 20.18(A).

"<u>Construction Contract</u>" means the contract or contracts providing for the engineering, procurement, construction, acquisition, manufacture, delivery and installation of the generating and step-up transformation equipment that is to be part of the Facility and the engineering, procurement and construction of the Facility.

"<u>Construction Milestones</u>" means the dates set forth in <u>Exhibit B – Construction Milestones</u>.

"<u>Damage Caps</u>" shall have the meaning set forth in <u>Section 12.3(A)</u>. "<u>Day</u>" means a calendar day.

"Dispute" shall have the meaning set forth in Article 13.

"Economic Curtailment" shall mean curtailments of delivery of Solar Energy that arise from Company's scheduling and other market participation activities as may be required of Seller by the Market Operator, if any, including any such curtailment arising from any energy offer made by, or on behalf of, Company with respect to the Facility. If Seller asserts that any curtailment was an Economic Curtailment and Company disputes that such curtailment arose from such scheduling or market participation activities of Company, Company shall furnish to Seller, subject to Section 20.18, copies of such records of Company relating to Company's scheduling and market participation activities as Seller reasonably requests for purposes of resolving the dispute.

"Effective Date" shall have the meaning set forth in the introductory paragraph.

"<u>Electric Metering Devices</u>" means revenue quality meters, metering equipment and data processing equipment used to measure, record or transmit data relating to the output from the Facility, including the metering current transformers and the metering voltage transformers.

"<u>Eligible Energy Resource</u>" means any resource that qualifies as a renewable energy resource eligible to be certified to receive, claim, own or use Renewable Energy Credits pursuant to the protocols and procedures developed and approved by the State Regulatory Agency in the REC Registration Program.

"Emergency" means any event or occurrence after the date of this PPA that results in the declaration of an Emergency Condition under and as defined in the Interconnection Agreement.

<u>"Energy Markets Control Center"</u> or "<u>EMCC</u>" means Company's merchant representatives responsible for dispatch of generating units, including the Facility.

"Energy Resource Interconnection Service" means the type of interconnection service which allows Seller to connect the Facility to the transmission or distribution system, as applicable, as an "Energy Resource" as defined by the Transmission Tariff, and be eligible to deliver the Facility's output using the existing firm or non-firm capacity on the transmission system on an as-available basis.

"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 Applicable Law and present a material risk under Applicable Laws that the Site will not be available or usable for the purposes contemplated by this PPA.

"Equity Interests" has the meaning set forth in Section 19.2(A).

"ERO" means the Electric Reliability Organization certified by FERC pursuant to Section 215 of the Federal Power Act or any successor organization; the Southwest Power Pool is the certified ERO as of the date of this PPA.

"<u>Escrow Account</u>" shall have the meaning set forth in <u>Article 11(C)(2)</u>. "<u>Event of Default</u>" shall have the meaning set forth in <u>Article 12</u>.

"Excess Solar Energy" shall have the meaning set forth in Section 8.1(C).

"Expected Solar Irradiation" for any 12-month period means the annual average solar irradiation values from the GeoModel SolarGIS time series data set file for the coordinates of Site (N 33.450°, W 104.456°). The Expected Solar Irradiation (global horizontal) is 2045 kWh/m²/yr.

"<u>Facility</u>" means Seller's electric generating facilities, associated balance of plant, parts and equipment consistent with the warranties for the major components, and all equipment necessary to interconnect to the Transmission

Authority's System, all as further described in <u>Exhibit C - Facility Description and Site Maps</u>, including all of the following: Seller's equipment, buildings, Solar Units, generators, step-up transformers, output breakers, facilities necessary to connect to the 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 construction, operation, maintenance, generation and delivery of the capacity and energy subject to this PPA.

"Facility Debt" means the obligations of Seller or its Affiliates pursuant to the Financing Documents, including principal of, premium on 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. For the avoidance of doubt, Facility Debt includes Tax Equity Financing.

"<u>Facility Lender</u>" means, collectively, any lenders providing any Facility Debt and any successors or assigns thereto and any Tax Equity Investors.

"Facility Property" means all property rights necessary for the use of the Facility for its intended purpose, including (i) the Facility; (ii) the Site; (iii) Seller's Interconnection Facilities; (iv) the Facility collection facilities and substation; (v) Seller's rights and obligations under the Interconnection Agreement; (vi) Permits, and all material contracts; and (vii) all Facility fixtures, equipment and personal property.

"<u>Federal Power Act</u>" means the provisions of 16 U.S.C. §791(A) *et seq.* and amendments or supplements thereto.

"<u>FERC</u>" means the Federal Energy Regulatory Commission or any successor agency.

"Financing Documents" means the documents associated with any Tax Equity Financing and the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction or permanent debt financing 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" means an event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) is not within the control of or the result of the fault or negligence of the Party claiming its occurrence, and (ii) by exercise of due diligence and foresight could not reasonably have been avoided, including acts of God; sudden action of the elements such as

floods, earthquakes, hurricanes, tornados, lightning, fire, ice storms, smoke or other particulates from volcanoes; sabotage; the discovery of Native American burial grounds not evidenced in Seller's Phase 1 environmental assessment of the Site, conducted in accordance with ASTM standards; the discovery of endangered species, as defined by Applicable Law; vandalism beyond that which could reasonably be prevented by Seller; terrorism; war; riots; explosion; blockades; insurrection; except as set forth in subsection (e) below, labor strikes, slowdowns or labor disruptions (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable); actions or inactions by any Governmental Authority taken after the date hereof (including the adoption or change in any rule, Applicable Law 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 following COD, provided, however, that Force Majeure shall not include: (a) inability, or excess cost, to procure any equipment necessary to perform the obligations of this PPA; (b) acts or omissions of a third party, unless such acts or omissions are themselves excused by reason of Force Maieure; (c) mechanical or equipment breakdown or inability to operate, if such breakdown or inability to operate is attributable to Seller's failure to operate and maintain the equipment in accordance with Good Utility Practices or the applicable manufacturer's instructions; (d) changes in market conditions; or (e) any labor strikes, slowdowns, work stoppages, or other labor disruptions limited to Seller, Seller's Affiliates, or any third party employed by Seller to work on the Facility.

"<u>Forced Outage</u>" means any condition at the Facility that requires the immediate and unplanned removal of the Facility, or at least ten percent (10%) thereof, from service, another outage state, or a reserve shutdown state, resulting from immediate mechanical/electrical/hydraulic control system trips and operator- initiated trips in response to abnormal Facility conditions or alarms.

"Full Interest" shall have the meaning set forth in Section 19.2(A).

"Generation Benefits" means existing or future environmental benefits or attributes, economic and other related carbon credits, carbon offsets, carbon allowances or benefits, Renewable Energy Credits or green tags, carbon dioxide emissions credits, and avoided or reduced carbon dioxide emissions that are attributable to Energy generated by the Seller and sold to Company under this PPA, whether pursuant to or arising from any Governmental Authority or international agreement or treaty, provided, however, that this definition excludes (i) any credits, offsets or other benefits arising out of or associated with any emission or pollutant other than carbon dioxide emissions, (ii) any local, state or federal depreciation deductions or other tax credits providing a tax benefit to Seller based on ownership of, or energy production from, any portion of the Facility, including the ITCs that may be available to Seller with respect to the Facility, and (iii) depreciation and other tax benefits arising from ownership or operation of the Facility unrelated to its status as a generator of renewable or environmentally clean energy.

"Good Utility Practices" means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the electric power generation industry pertaining to facilities of the same type as and similar size and location to the Facility that, at a particular time, in the exercise of Commercially Reasonable judgment, in light of the facts that are known, or reasonably should have been known, at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with equipment Permits. codes. standards. recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices is not limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the applicable segment of the electric power generation industry in the relevant region, during the relevant period.

"Governmental Authority" means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; 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, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of 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.; (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; (viii) defined as a pursuant to the Comprehensive Environmental "hazardous substance" Response, Compensation, and Liability Act, 42 §9601 et seq.; (ix) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 et seq.

"<u>House Power</u>" means retail power to the Facility, for purposes of unit startup or shut-down, or for any other purpose.

"Incremental PTC Payment" has the meaning set forth in Section 8.4.

"Indemnified Party" shall have the meaning set forth in Section 17.1.

"Indemnifying Party" shall have the meaning set forth in Section 17.1.

"Interconnection Agreement" means the separate agreement for interconnection of the Facility to the Transmission Authority's System, as such agreement may be amended from time to time. For purposes of this PPA, the Interconnection Agreement shall be interpreted to include any third party facility construction agreement or other Agreement required by the Transmission Authority to interconnect the Facility in accordance with the Transmission Tariff.

"Interconnection Facilities" means those facilities designated in the Interconnection Agreement for the direct purpose of interconnecting the Facility at the Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities, whether owned by Seller, the Transmission Authority or another entity. This equipment is conceptually depicted in Exhibit C – Facility Description and Site Maps to this PPA.

"Interconnection Point" means the physical point within the operational authority of Transmission Authority, as specified in the Interconnection Agreement, at which electrical interconnection is made between the Facility and the Transmission Authority's System in accordance with the Transmission Tariff and the Interconnection Agreement.

"Investment Grade" means a long-term credit rating (corporate or long-term senior unsecured debt) of (a) Baa3 or higher by Moody's, and (b) BBB- or higher by S&P.

"Issuer" shall have the meaning set forth in Article 11.

"ITC" means an investment tax credit applicable to electricity produced from certain renewable resources pursuant to Code §48.

"ITC Recapture Amount" means the amount payable (determined on an after-tax basis) to the IRS by Seller under Code §50(a) due to Seller's ineligibility for ITC after such time as Seller or its Affiliate, Tax Equity Investor or Facility Lender has claimed the ITC.

"kW" means kilowatt.

"kWh" means kilowatt hour.

"Lender Consent" shall have the meaning set forth in Section 18.1.

"Letter of Credit" shall have the meaning set forth in Article 11(C)(1).

"<u>Liquidated Delay Damages</u>" means \$200 per MW of Facility AC Nameplate Capacity per Day.

"Local Provider" means the utility providing House Power to the Facility.

"Maintenance Schedule" has the meaning set forth in Section 10.2(A).

"Market Operator" means the entity that instructs market participants and/or generators to regulate generation assets, including the Facility, within any energy market in which Company participates with respect to the Renewable Energy or capacity attributes and Ancillary Services based on price-based offer curves for the purpose of matching generation output to system load demand while maintaining bulk electric system reliability. If such entity is also the Transmission Provider, then "Market Operator" shall be construed to mean such entity acting in its capacity as the entity that instructs market participants and/or generators to regulate generation assets, including the Facility, within the energy market in which Company participates with respect to the Renewable Energy or capacity attributes or Ancillary Services based on price-based offer curves for the purpose of matching generation output to system load demand while maintaining bulk electric system reliability.

"<u>Material Adverse Effect</u>" means any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results in operations, or condition (financial or otherwise), prospects, or property of a Party, its business, or this PPA.

"MW" means megawatt or one thousand kW.

"MWh" means megawatt hours.

"Nameplate Capacity" means the designed maximum output for the Facility at the Point of Delivery in AC and shall equal [] MW.

"NEER" means NextEra Energy Resources, LLC.

"NERC" means the North American Electric Reliability Corporation or any successor organization.

"Network Resource" means the applicable amount of capacity for the Facility that has been designated as a "network resource" under the Transmission Tariff.

"NextEra YieldCo" means, collectively, NextEra Energy Operating Partners, LP and any entity in which NextEra Energy Operating Partners, LP holds, directly or indirectly, fifty percent (50%) or more of the equity interests.

"Non-Compensable Curtailment" shall have the meaning set forth in <u>Section</u> 8.2.

"Notice(s)" shall have the meaning set forth in Section 20.1.

"On-Peak Months" means the months of January, February, June, July,

August, September and December.

"<u>Operating Committee</u>" means one representative each from Company and Seller pursuant to <u>Section 10.4</u>.

"<u>Operating Procedures</u>" means those procedures developed pursuant to <u>Section 10.4</u>, if any.

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

"Option" shall have the meaning set forth in Section 19.2(A).

"Park Potential" means the number provided to the Company in real time through the Company's SCADA System in accordance with the AGC Protocols, which depicts Seller's real time calculation of the Potential Energy capable of being provided by the Facility to Company as measured at the Point of Delivery. Park Potential shall be calculated as the aggregate energy available in real time for delivery at the Point of Delivery using the best-available data obtained through Commercially Reasonable methods, and shall be dependent upon measured plane-of-array solar insolation, temperature, barometric pressure, wind speed (mph), wind direction, Solar Unit availability, derate(s) and transmission line losses, and any other adjustment necessary to accurately reflect the Potential Energy at the Point of Delivery.

"Partial Interest" shall have the meaning set forth in Section 19.2(A).

"<u>Party</u>" and "<u>Parties</u>" shall have the meanings set forth in the introductory paragraph.

"Pending Facility Transaction" or "PFT" means (i) any proposed Change of Control of Seller, (ii) the issuance by Seller or any of its Affiliates of a request for proposals or the response by Seller or any of its Affiliates to a request for proposal or similar process (e.g., auction) for the purchase or sale to any unaffiliated third party of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility, (iii) the commencement by Seller or any of its Affiliates of substantive negotiations with any unaffiliated third party with respect to the sale of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility, and (iv) the execution by Seller or any of its Affiliates of any letter of intent, memorandum of understanding or similar document, whether or not legally binding, which contemplates the sale or lease to an unaffiliated third party of any equity interests in Seller or the Facility or any group(s) of assets or equity interests that includes the Facility, provided, however, that a PFT does not include (v) any financing, refinancing or replacing of the Facility Debt by Seller or any of its Affiliates; (w) any transaction between and among Affiliates of Seller; and (x)

any transaction in which Company declined to exercise its ROFO rights; (y) any Tax Equity Financing; and (z) any Permitted Transaction.

"<u>Permit(s)</u>" means all applicable construction, land use, air quality, emissions control, environmental and other permits, licenses and approvals from any Governmental Authority required under Applicable Laws for construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility to Company.

"Permitted Transfer" means any of the following:

- transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates, provided, however, that the equity interests in Seller (excluding interests held by Facility Lender) continue to be held, directly or indirectly, no less than fifty percent (50%) by NextEra Energy, Inc. or NextEra Energy YieldCo, any exercise by a Facility Lender of its rights and remedies under the Financing Documents.
- (ii) a Change of Control of the Ultimate Parent Entity of Seller,
- (iii) any change of economic and voting rights triggered in Seller's organization documents arising from the financing of the Facility and which does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change.
- (iv) the direct or indirect transfer of shares of or equity interests in Seller to a Tax Equity Investor; or
- (v) a transfer of the Facility packaged with any of the following:
 - a. all or substantially all of the assets of NEER or Seller's Ultimate Parent Entity;
 - b. all or substantially all of the renewable energy generation portfolio of NEER or Seller's Ultimate Parent Entity; or
 - all or substantially all of the solar generation portfolio of NEER or Seller's Ultimate Parent Entity; provided that the Facility does not represent more than fifty percent (50%) of the generation of such solar generation portfolio; or
 - d. all or substantially all of the equity interest of NextEra YieldCo; provided, however, that in the case of each of (a), (b) (c), and (d), the entity that operates the Facility following such transfer is (or

contracts with) a Qualified Operator.

"Permitting Delay" shall have the meaning set forth in Section 4.2(A)

"PFT Notice" shall have the meaning set forth in Section 19.2(C).

"Phase 1" shall have the meaning set forth in Section 4.1(A).

"PI" means the "plant information" system as described and implemented in Section 10.7(B).

"Point of Delivery" means the physical point within the operational authority of the Transmission Authority at which Seller makes available to Company and delivers to Company the Solar Energy being provided by Seller to Company under this PPA. The Point of Delivery is the 115kV bus within the Company's Chaves Substation.

"Post-COD Damage Cap" means \$150/kW [multiplied by the number of AC kW in the Facility Nameplate Capacity].

"Post-COD Security Fund" means \$75/kW [multiplied by the number of AC kW in the Facility Nameplate Capacity].

"<u>Potential Energy</u>" means the quantity of the energy that Seller is capable of delivering at the Point of Delivery. In the event that Park Potential is not a reliable proxy for Potential Energy pursuant to <u>Section 8.2(B)</u>, Potential Energy shall be calculated as the aggregate energy available for delivery at the Point of Delivery using the best-available data obtained through Commercially Reasonable methods, and shall be dependent upon measured Solar speeds, power curves, Solar Unit availability, derate(s) and transmission line losses, and any other adjustment necessary to accurately reflect the Facility's capability to produce and deliver energy to the Point of Delivery.

"PPA" shall have the meaning set forth in the introductory paragraph.

"Pre-COD Damage Cap" means \$150/kW [multiplied by the number of AC kw in the Facility Nameplate Capacity].

"Pre-COD Security Fund" means \$150/kW [multiplied by the number of AC kW in the Facility Nameplate Capacity].

"PTC" means the New Mexico Renewable Energy Production Tax Credit, pursuant §7-2A-19 of the New Mexico Statutes.

"PTC Payment" has the meaning set forth in Section 8.4.

"Qualified Operator" means NextEra Energy Resources Operating Services, LLC or an operator of solar generation facilities that demonstrates to Company's reasonable satisfaction that it has sufficient experience to successfully operate the

Facility, including a minimum of three (3) years' experience in the solar energy generation and operation business, and owns, controls or operates a minimum of two hundred (200) MW of solar energy generation capacity.

"<u>REC Payment Rate</u>" means, if applicable, the amount shown in Exhibit J as the rate per REC associated with Test Energy, Solar Energy, and any Excess Solar Energy delivered to and paid for by Company.

"REC Registration Program" means any State, regional or federal program established to register Eligible Energy Resources and create and certify RECs arising from energy generated from such resources, including any rights associated with any renewable energy information or tracking system that exists or may be established by Applicable Law with regard to monitoring, registering, tracking, certifying, or trading such credits.

"Renewable Energy Credits" or "RECs" means in *Texas*: pursuant to PUCT Substantive Rule 25.173(c)(13), one MWh of Renewable Energy that is physically metered, verified in Texas and meets the requirements set forth in subsection (e) of PUCT Substantive Rule 25.173 and in *New Mexico*: a renewable energy certificate within the meaning of Part 572 of Title 17, Chapter 9, New Mexico Administrative Code, with respect to 1,000 kWh of generated Renewable Energy. For the avoidance of doubt, "RECs" excludes (i) any local, state or federal depreciation deductions or other tax credits providing a tax benefit to Seller based on ownership of, or energy production from, any portion of the Facility, including the ITC that may be available to Seller with respect to the Facility under Applicable Laws, and (ii) depreciation and other Tax Benefits arising from ownership or operation of the Facility unrelated to its status as a generator of renewable or environmentally clean energy.

"Replacement Power Costs" means the costs incurred by Company, after the Commercial Operation Milestone, that are necessary to replace the products and services that Seller was required to provide under this PPA, but failed to so provide, less the sum of any payments from Company to Seller, under this PPA, that were eliminated as a result of such failure; provided, however, that the net amount shall never be less than zero in any hour and, if the calculation for any hour results in a number less than zero, the number for such hour shall be deemed to be zero. Replacement Power Costs shall be determined on an hourly basis and shall equal the sum of all hours where the following calculation achieves a positive number.

Replacement Power Costs = (A + B + C) - D, where

"A" is the product of (x) the number of MW of the Nameplate Capacity (AC) and (y) the applicable market price for AC capacity made available to Company's system;

"B" is the sum of (i) the product of the number of MWh of energy purchased by Company to replace any of the Committed Solar Energy that was not delivered under this PPA and the applicable market price for energy delivered to Company's system at a point nearest to the Point of Delivery for the hour, and (ii) the product of the MWh of energy derived in clause (i) and the actual cost of registered RECs for that number of MWh;

"C" is an amount equal to the actual cost of transmission, ancillary services, fuel and fuel transportation and related penalties that could not be avoided or mitigated and transaction charges to deliver reasonably available energy to Company in amounts equal to the number of MWh for which Replacement Power Costs are owed; and

"D" is the product of the Committed Solar Energy that was not delivered under this PPA and the Solar Energy Payment Rate.

"Replacement Sales Amount" means the sum of any payments which Company should have made but did not make to Seller less the revenue received, if any, by Seller for sales in mitigation of damages with respect to the Solar Energy and other products and services that Company was required to accept and purchase under this PPA, but failed to purchase.

"ROFO" shall have the meaning set forth in Section 19.2(B).

"ROFO Notice" shall have the meaning set forth in Section 19.2(B).

"SCADA" means supervisory control and data acquisition.

"<u>Scheduled Termination Date</u>" means the twenty-fifth (25th) anniversary of the Commercial Operation Date.

"Security Fund" means the letter of credit, escrow fund, guaranty and/or other collateral that Seller is required to establish and maintain, pursuant to Article 11, as security for Seller's performance under this PPA.

"Seller" shall have the meaning set forth in the introductory paragraph.

"Seller Excuse Hours" means those hours during which Seller is unable to schedule or deliver Solar Energy to Company as a result of (A) Non-Compensable Curtailments; (B) Force Majeure; (C) Economic Curtailments; and (D) any unexcused failure of Company to perform any obligation of Company under this PPA that causes Seller to be unable to generate or deliver Solar Energy to the Point of Delivery.

"Shared PTC Payment" has the meaning set forth in Section 8.4.

"Site" means the parcel of real property on which the Facility will be constructed and located, including 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 the Facility. The Site is more specifically

described in Exhibit C - Facility Description to this PPA.

"Solar Energy" means the net electric energy generated from (or, with respect to any curtailed energy, capable of being generated from) the Facility using solar electric generation technologies, including any and all associated RECs and delivered to the Point of Delivery as measured by the Electric Metering Devices installed pursuant to Section 5.2. Solar Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement. Solar Energy shall be net of energy self-generated and concurrently consumed by the Facility, and net of losses prior to the Point of Delivery.

"Solar Energy Payment Rate" means the applicable rate as shown on Exhibit J - Committed Solar Energy and Solar Energy Payment Rate (by Commercial Operation Year). If the Company is not purchasing all of the RECs associated with the Solar Energy, the appropriate Solar Energy Payment Rate shall be as set forth in the column labeled "Rate \$/(MWh) excluding RECs." If the Company is purchasing all of the RECs associated with the Solar Energy, the appropriate Solar Energy Payment Rate shall be as set forth in the column labeled "Rate \$/(MWh) with RECs."

"Solar Units" means the equipment necessary for the Facility to collect sunlight at the Site and convert it into electricity or thermal energy. Solar Units include photovoltaic modules, inverters, transformers, and tracking devices.

"SPP" or "Southwest Power Pool" means the Southwest Power Pool, a NERC regional electric reliability council and Regional Transmission Organization, or any successor organization.

"<u>State Regulatory Agency</u>" means, as applicable, the Public Utility Commission of Texas or the New Mexico Public Regulation Commission.

"State Regulatory Approval" means a final, written order of the State Regulatory Agency that is not subject to application for rehearing, reargument and reconsideration, and that makes the affirmative determination that Company's execution of this PPA is reasonable and in the public interest, and all costs incurred under this PPA are recoverable from the retail customers pursuant to Applicable Law, subject only to the requirement that the State Regulatory Agency retains ongoing prudency review of Company's performance and administration of this PPA.

"Step-In Rights" means Company's right, but not the obligation, to assume control of and operate the Facility as agent for Seller (whether voluntary or involuntary) in accordance with Seller's rights, obligations, and interest under this PPA.

"<u>Tax Benefits</u>" means any and all (i) tax credits based on ownership of, investment in or energy production from the Facility or any portion thereof, including the production credit and the investment credit described, respectively, in Sections 45 and 48 of the Code, as amended, (ii) grants based on ownership of, investment in or

energy production from the Facility or any portion thereof, including the grant described in Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, and (iii) other tax benefits, including depreciation and other cost recovery deductions, arising in connection with ownership of, investment in, or operation of the Facility, or any portion thereof, in each case allocated, allowed, allowable, assigned, awarded, certified or otherwise transferred or granted to Seller or its Affiliate or Company by any Governmental Authority in any jurisdiction in connection with the Facility.

"Tax Equity Financing" means a transaction or series of transactions involving one or more investors seeking a return that is enhanced by tax credits and/or tax depreciation (each a "Tax Equity Investor") and generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without "leverage")), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a solar project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Code, as amended (a pass-through lease).

"<u>Term</u>" means the period of time during which this PPA shall remain in full force and effect as further defined in <u>Article 2</u>.

"<u>Test Energy</u>" means that energy which is produced by the Facility prior to COD but not before June 30, 2016, delivered to Company at the Point of Delivery, and purchased by Company, pursuant to <u>Section 4.4</u>.

"<u>Test Energy Rate</u>" means a payment rate of seventy percent (70%) of the Solar Energy Payment Rate applicable as of the Commercial Operation Date.

"Transmission Authority" means collectively those entities owning and/or operating the Interconnection Facilities and the interconnected transmission system applicable to Seller and the Facility pursuant to the Transmission Tariff, including (i) Southwestern Public Service Company operating under and in accordance with the SPP OATT, and ii) all entity(s) responsible under the Interconnection Agreement for providing the transmission lines, any Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Interconnection Point to the transmission system.

"<u>Transmission Authority's System</u>" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Authority has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Interconnection Point.

"Transmission Delay" shall have the meaning set forth in Section 4.2(B).

"<u>Transmission Provider</u>" means the Southwest Power Pool, Inc., its successors or assigns, or any similar entity that in the future may replace SPP with respect to all or a substantial part of its current responsibilities.

"<u>Transmission Tariff</u>" means the applicable Open Access Transmission Tariff of the Transmission Authority, as amended from time to time.

"<u>Ultimate Parent Entity</u>" shall have the meaning set forth under Section 7A of the Clayton Act, 15 U.S.C. §18a, also known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

EXHIBIT B CONSTRUCTION MILESTONES

Construction Milestone	Outcome
12/1/2015	Seller and all required counterparties have executed major procurement contracts, the Construction Contract, any operating agreements, and the Interconnection Agreement needed to commence construction of the Facility.
12/1/2015	Seller shall have achieved closing on financing for the Facility or provided SPS with proof of financial capability to construct the Facility.
5/1/2016	Commencement of construction of the Facility
12/1/2016	Commercial Operation Milestone.

EXHIBIT C FACILITY DESCRIPTION AND SITE MAPS

The Facility is a 70 MW AC (at the Point of Delivery) solar photovoltaic power generation station located on the Site and shall be identified as the Seller's Roswell Solar Generation Facility. The Site consists of approximately 618 acres. The address of the Facility is along East Pine Lodge Road, near the intersection with Wrangler Road, near the City of Roswell in Chaves County, New Mexico. The approximate center of the Site is at 33.456489°, -104.459728°. The Facility will interconnect to the Company's Chaves Substation located adjacent to the Site, and the Southwest Power Pool interconnection study queue position is GEN-2014-033.

Maps and one-line diagrams of the Facility and associated equipment are included as part of this Exhibit. The panels, inverters, associated equipment, and Site boundary and acreage shown on the attached diagrams are based on preliminary design and are subject to change based on detailed engineering and procurement.

The Facility must include the following specific components:

- * have the panel space and 125VDC battery supplied voltage necessary to accommodate the metering, telemetering and communications equipment required by the PPA;
- * communication circuits from the Facility to the EMCC for the purpose of telemetering, supervisory control/data acquisition, and voice communications as required by Company;
- * equipment and software necessary to receive, accept and react to an AGC signal from the Company's SCADA System and to comply with the AGC Protocols as further specified on Exhibit H-AGC Protocols;
- * each Solar Unit is equipped with meteorological measurement equipment (e.g. anemometers), individually linked to Seller's information system; and,
- * capability of sending real time data and OPC interface to Company's plant information PI system.

700 UNIVERSE BLVD. JUNO, FL 23408

YAANIMIJARY

ROSWELL SOLAR

W-001

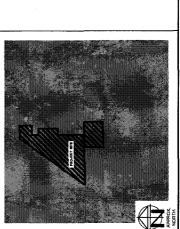
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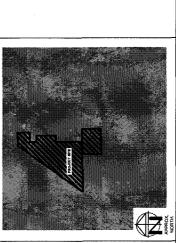
ROSWELL, NEW MEXICO
SOLAR ELECTRIC SYSTEM PROJECT - 70.0 MW

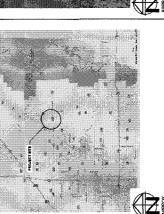
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	YOURNESS THE YEAR IS LARGE AN OWNER BE ABLA CIVE OF CETCHARGO SETTING IN THE MATERIAL SET.		V#191	EXISTING SITE PLAN
	PROVIDER ELECTRIC GRID PER THE REQUIREMENTS OF THE NATIONAL ELECTRICAL CODE.	PROJECT MANAGER	VE-111	ARRAY PLAN
SANTA FE		NEXTERA ENERGY		
		700 UNIVERSE BLVD.	105.44	TRACKER ELEVATIONS
		DONTAUT: DAVE GOOK		
● ALRIVOURGUE		TEL: (501) 304-5719	108-14	SMOLE LINE DAKORAM
			VA-802	DC WIRE SCHEDWLE
Brettsta ere				
	PERMITTING/PLANNING NOTES:			
ROSWELL	1. THIS BY SYSTEM MISTALLATION IS SUBJECT TO MISPECTION BY THE CITY BUILDING OFFICIALS, NEXTERA. BLUE GAK DIERGY AND MULTIPLE OTHER STAKEHOLDERS IN THIS PROJECT.			
)	2 THIS PROJECT SHALL COMPONENT THE FOLLOWING CODE VERSIONS			
SILVER	3. OCCUPANCY GROUP:			
CILL	4. TYPE OF GONSTRUCTION:			
	s. Docupancy Langing Calculations			

AERIAL VIEW

STREET MAP:







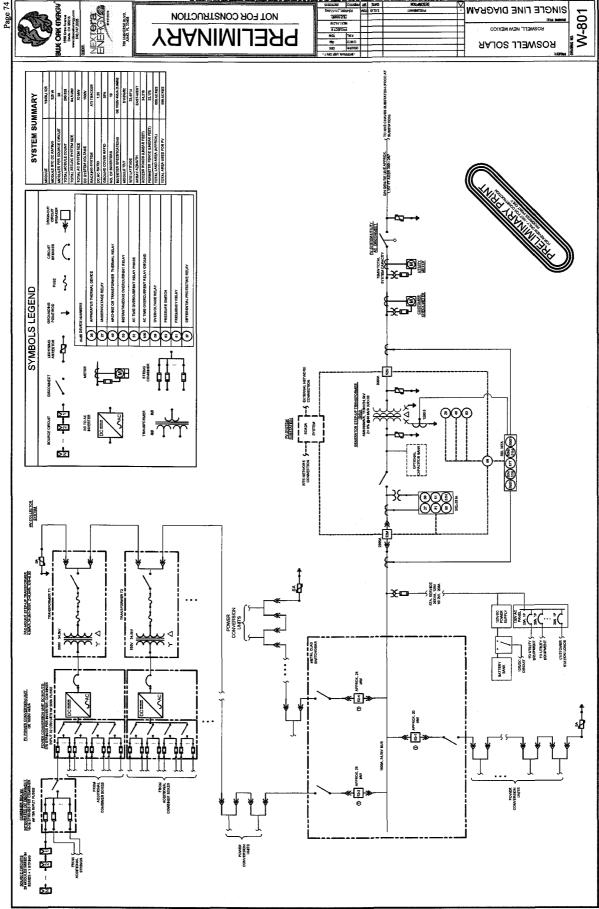


EXHIBIT D NOTICES AND CONTACT INFORMATION

Company	Seller
Notices: Thomas A. Imbler Vice President, Commercial Operations Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.7414 Jessica Collins Renewable Purchased Power Manager Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.7740	Notices: Roswell Solar, LLC c/o NextEra Energy Resources, LLC 700 Universe Boulevard Juno Beach, FL 33408 Attn: Tim Oliver, Executive Director Phone: 561-691-7072 Email: Timothy.Oliver@nee.com Roswell Solar, LLC c/o NextEra Energy Resources, LLC 700 Universe Boulevard Juno Beach, FL 33408 Attn: Mitch Ross, Vice President and General Counsel Phone: 561-691-7126 Email: Mitch.Ross @nee.com
Operating Committee Representative: Jessica Collins Renewable Purchased Power Manager Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.7740 Alternate: Purchased Power Analyst Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.XXXX	Operating Committee Representative: Roswell Solar, LLC c/o NextEra Energy Resources, LLC 700 Universe Boulevard Juno Beach, FL 33408 Attn: Tim Oliver, Executive Director Phone: 561-691-7072 Email: Timothy.Oliver@nee.com Alternate: Roswell Solar, LLC c/o NextEra Energy Resources, LLC 700 Universe Boulevard Juno Beach, FL 33408 Attn: Gregory Schneck Phone: 561-304-5274 Email: Greg.Schneck@nee.com

Real-Time Contact Information:

Real-time Communications Contact: Generation Dispatch desk (24-hr coverage)

Phone: 303.571.6280 Fax: 303.571.7305

Transmission Operation Contact:
Position: Real Time Transmission

Ops

Phone: 303.571.6490 Fax: 303.571.2779

E-mail:

mark.schultz@xcelenergy.com

Real-Time Contact Information:

Fleet Performance and Diagnostics Center (FPDC)

Phone: (561) 691-3636 Toll Free: (866) 375-3737 Fax: (561) 694-3615

Workers Compensation	Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.
Employers Liability	\$2,000,000 each accident for bodily injury by accident, or \$2,000,000 each employee for bodily injury by disease.

D. Halanda Biral	Replacement value of the Facility.
Builder's Risk	I Replacement Value of the Facility
Danaci 3 I (ISK	Treplacement value of the Lacinty.

Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy.

Pollution Liability	\$5,000,000 each occurrence.
All-Risk Property insurance covering physical loss or damage to the Facility	Full replacement value of the Facility. A deductible may be carried, which deductible shall be the absolute responsibility of Seller.

All-Risk Property insurance shall include: (i) coverage for fire, flood, storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$10,000,000 each for flood and earthquake; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and Units, in an amount equal to their full replacement value.

Business Interruption insurance	Amount required to cover Seller's continuing or
	increased expenses, resulting from full
	interruption, for a period of 12 calendar months.

Business Interruption insurance shall cover loss of revenues or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on Commercially Reasonable terms as determined by Company, subject to a Commercially Reasonable deductible that shall be the responsibility of Seller. Notwithstanding any other provision of this PPA, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date.

EXHIBIT F SELLER'S PERMITS

Description of Entitlement/Permit	Issuing Agency
Special Use Permit for land use	Extraterritorial Zone (ETZ) Commission (a joint commission of representatives from Roswell and Chaves County)
Building and Encroachment Permits	Chaves County

EXHIBIT G FORM OF SECURITY DOCUMENTS

EXHIBIT G-1 FORM OF LETTER OF CREDIT

LETTERHEAD OF ISSUING BANK

Irrevocable Standby Letter of Credit No.:	Date of Issuance:
Beneficiary:	Applicant:

As the issuing bank ("Issuer"), we, [Name	of Issuing Bank], hereby establish this
rrevocable Standby Letter of Credit No	(this "Letter of Credit") in favor of the
above-named beneficiary ("Beneficiary") for the	e account of the above-named applicant
("Applicant") in the amount of USD \$	(
U.S. Dollars).	

Beneficiary may draw all or any portion of this Letter of Credit at any time and from time to time and Issuer will make funds immediately available to Beneficiary upon presentation of Beneficiary's draft(s) at sight in the form attached hereto as Exhibit A ("Sight Draft"), drawn on Issuer and accompanied by this Letter of Credit. All Sight Draft(s) must be signed on behalf of Beneficiary, and signatory must indicate his or her title or other official capacity. No other documents will be required to be presented. Issuer will effect payment under this Letter of Credit within 24 hours after presentment of the Sight Draft(s). Payment shall be made in U.S. Dollars with Issuer's own funds in immediately available funds.

Issuer will honor any Sight Draft(s) presented in compliance with the terms of this Letter of Credit at the Issuer's letterhead office, the office located at______ or any other full service office of the Issuer on or before the above stated expiration date, as such expiration date may be extended hereunder. Partial and multiple draws and presentations are permitted on any number of occasions. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary.

Issuer acknowledges that this Letter of Credit is issued pursuant to the provisions of that certain Solar Energy Purchase Agreement between the Beneficiary and the Applicant dated as of ______, 201_ (as the same may have been or may be amended from time to time, the "PPA"). Notwithstanding any reference in this Letter of Credit to the PPA or any other documents, instruments or agreements, or references in the PPA or any other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit will be automatically extended each year without amendment for a period of one year from the expiration date hereof, as extended, unless at least thirty (30) days prior to the expiration date, Issuer notifies Beneficiary by registered mail or overnight courier that it elects not to extend this Letter of Credit for such additional period. Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary's address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer's letterhead address.

This Letter of Credit is freely transferable by Beneficiary in whole or in part and the number of transfers is unlimited. Issuer agrees that it will effect any transfers immediately upon presentation to Issuer of this Letter of Credit and all amendments (if any) and a completed written transfer request in the form attached hereto as Exhibit B. Such transfer will be effected at no cost to Beneficiary. Any transfer fees assessed by Issuer will be payable solely by Applicant, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer or this Letter of Credit.

Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims Beneficiary may have against Applicant or Applicant may have against Beneficiary.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(B) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(B) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from the Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of god, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control that interrupts Issuer's business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

1550	ER:
Ву: _	
lts:	AUTHORIZED SIGNATURE

EXHIBIT A (TO LETTER OF CREDIT)

SIGHT DRAFT

Draft Number \$	
At sight, pay to the order of [Name of Beneficiary to be inserted], the amount o USD \$and 00/100ths U.S. Dollars).	f
Value received and charged to the account of : [name of Issuer and address] Drawn under [Name of Issuer to be inserted] Standby Letter of Credit No	
Dated:, 20	
[Name of Beneficiary to be inserted]	
Ву:	
Its Authorized Representative [Title or Other Official Capacity to be inserted]	

[Name and Address of Issuer to be inserted]

To:

EXHIBIT B (TO LETTER OF CREDIT)

FORM OF TRANSFER REQUEST

REDIT NO:
APPLICANT:
ary" of the above referenced Letter of Credit, er of Credit in favor of the transferee named DADDRESS BELOW]:
st is delivered to Issuer, the transferee shall dit for all purposes and shall be entitled to es and benefits thereof.
[NAME OF BENEFICIARY]
By: Name: Title:

[TO BE SIGNED BY A PERSON PURPORTING TO BE AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY AND INDICATING THEIR TITLE OR OTHER OFFICIAL CAPACITY, AND ACKNOWLEDGED BY A NOTARY PUBLIC.]

EXHIBIT G-2

FORM OF GUARANTY

This Guaranty is executed and delivered as of thisday of, 20, by, ("Guarantor"), in		
by		
- RECITALS -		
A. Seller is planning to construct, own, and operate a solar power electric generation facility having nameplate capacity of approximately located inCounty, New Mexico (the "Facility").		
B. Seller and Company have entered into the PPA for the purchase and sale of capacity and electrical energy from the Facility on the terms and conditions set forth therein.		
C. Seller is controlled by Guarantor. Guarantor expects to derive substantial benefits from the performance of the PPA by Seller and Company. To induce Company to enter into the PPA and consummate the purchase and sale of electrical energy contemplated by the PPA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.		
NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:		
- AGREEMENT -		
1. <u>Guaranty</u> . Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Company the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the PPA, whether incurred before or after the date of delivery of this Guaranty (the " <u>Obligations</u> "). This is a guaranty of payment, not of collection, and as such, Company shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.		
2. <u>Maximum Liability</u> . Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to (\$US), [Note: the Post-COD Security Amount specified in the PPA to be inserted here] plus costs of collection with respect to any valid claim(s) made by Company hereunder that are incurred in the enforcement or protection of the rights of Company, as further described in Section 10 hereof.		

- 3. <u>Rights of Company</u>. Guarantor hereby grants to Company, in Company's discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor's duties hereunder, the power and authority from time to time:
- (a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the PPA;
- (b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations; and
- (c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.
- 4. <u>Performance</u>. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the PPA has expired ("<u>Default</u>"), Guarantor shall immediately upon receipt of written demand by Company (a) perform or cause Seller to perform the Obligation in Default, and (b) pay, reimburse, and indemnify Company against any liabilities, damages, and related costs (including attorneys' fees) incurred by Company as a result thereof, all in such manner and at such times as Company may reasonably direct.
- 5. <u>Satisfaction</u>. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.
- 6. <u>Notice of Acceptance</u>. Guarantor waives and acknowledges notice of acceptance of this Guaranty by Company.
- 7. <u>Waivers by Guarantor</u>. Guarantor hereby waives and agrees not to assert or take advantage of:
- (a) all set-offs, counterclaims, and, subject to Section 4 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws (as defined in the PPA);

- (b) any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder:
 - (c) any defense based upon an election of remedies by Company;
- (d) any duty of Company to protect or not impair any security for the Obligations;
 - (e) the benefit of any laws limiting the liability of a surety;
- (f) any duty of Company to disclose to Guarantor any facts concerning Seller, the PPA or the Facility, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Company, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and
- (g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, Company.
- 8. <u>Cumulative Remedies</u>. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.
- 9. <u>Representations and Warranties</u>. Guarantor represents and warrants to Company as follows:
- (a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Seller is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.
- (b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law or judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.
 - 10. Collection Costs. Guarantor hereby agrees to pay to Company,

upon demand, and in addition to the maximum liability set forth in Section 2 hereof, all reasonable attorneys' fees and other expenses which Company may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all such attorneys' fees and other expenses incurred by Company in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Company of its rights and remedies hereunder.

- 11. <u>Severability</u>. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.
- 12. <u>Waiver or Amendment</u>. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company.
- 13. <u>Successors and Assigns</u>. This Guaranty shall inure to the benefit of and bind the successors and assigns of Company and Guarantor.
- 14. <u>Governing Law</u>. This Guaranty shall be governed by and construed in accordance with the law of the State of New Mexico without regard to the principles of conflicts of law thereof.
- 15. <u>Notices</u>. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the PPA, addressed as follows:

(a)	if to Company:	as provided in the PPA
(b)	if to Guarantor.	<u> </u>
	with a copy to:	Attn: Phone: () Fax: ()
		Attn: Phone: ()

Fax: ()
or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.
IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to Company as of the day and year first above written.
[Name of Guarantor]
By: Name: Title:
STATE OF COLORADO)) ss. COUNTY OF DENVER) The forgoing instrument was calculated before me this day of
The forgoing instrument was acknowledged before me this day of, 2014 by, as of Witness my hand and official seal. My commission expires:
Notary Public (S.E.A.L.)

EXHIBIT G-3 FORM OF ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is entered into and effective this day or by and among Southwestern Public Service Company
("Company") and ("Escrow Agent").
- RECITALS -
WHEREAS, Seller and Company are parties to a Solar Energy Purchase Agreement dated, 201_ (the "PPA"), pursuant to which Seller agrees to build and operate an electric generating facility inCounty, New Mexico (the "Facility") and to sell energy from the Facility to Company. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the PPA; and
WHEREAS, Article 11 of the PPA requires Seller to provide security in favor of Company in amounts set forth in the PPA, up to a total of \$_(the "Escrow Total"); and
WHEREAS, Seller has elected to establish and deliver funds (the "Escrow Funds") into an escrow account with Escrow Agent to meet its PPA security obligations, and Seller, Company and Escrow Agent agree to enter into this Agreement to define the terms of that account.
NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and other consideration set forth in this Agreement and the PPA, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:
- AGREEMENT -
1. Appointment of Escrow Agent. On the terms, and subject to the conditions, set forth in this Agreement, Seller and Company hereby appoint Escrow Agent as their agent and custodian to hold, invest and distribute the Escrow Funds and all interest and investment earnings thereon (the "Escrow Interest") in accordance with this Agreement. To the extent any Escrow Interest accrues during the term of this Agreement, such Escrow Interest shall be added to but shall not be included as part of the principal amount of the Escrow Funds except as set forth in Section 5.
2. <u>Delivery of Funds to Escrow Agent</u> .
a. Seller shall deposit with Escrow Agent an amount equal to \$on or beforeon or before [the date required by the PPA].
Escrow Agent shall retain and disburse the Escrow Funds pursuant to the terms of this Agreement. The execution and full performance of this Agreement by Seller and Escrow Agent, and retention and disbursement by Escrow Agent of the Escrow Funds

pursuant to the terms hereof, fully satisfies Seller's initial obligations under Article 11 of the PPA to establish and maintain a security fund. Escrow Agent shall hold the Escrow Funds under the terms of this Agreement and distribute the Escrow Funds only in accordance with <u>Section 5</u>.

- b. The Escrow Funds shall, for all purposes, be considered property of Seller unless and until distributed to Company in accordance with this Agreement. To protect Company prior to such distribution, Seller hereby grants to Company a first priority security interest in all of Seller's right, title and interest in and to the Escrow Funds held under this Agreement for the purpose of securing Seller's obligations under the PPA. However, any release of any portion of the Escrow Funds to Company in accordance with this Agreement shall act as an automatic termination of Company's security interest in the Escrow Funds so released. Seller authorizes Company to file such financing statements and other documents as Company reasonably deems necessary or advisable to protect Company's rights in the Escrow Funds. Each party will sign such documents (including, upon the request of Company a control agreement), provide such information, send such notices and take such other actions as any other party reasonably requests to consummate more effectively the intent and purpose of the parties under this Section 2(c).
- 3. <u>Investment.</u> Escrow Agent shall hold and invest the Escrow Funds only in accordance with the terms of this Agreement. At the written direction of Seller, Escrow Agent shall invest and reinvest the Escrow Funds in cash or one or more of the following short-term securities: a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three (3) months or less. All investments of the Escrow Funds shall be held by, or registered in the name of, Escrow Agent or its nominee. All Escrow Interest and investment income earned on the Escrow Funds shall accrue for the benefit of, and be taxable to, Seller.
- 4. <u>Distributions of Escrow Funds by Escrow Agent</u>. Escrow Agent shall hold the Escrow Funds until instructed or otherwise required to deliver the same or any portion thereof in accordance with <u>Section 5</u>.

5. Distributions.

- a. <u>Escrow Interest</u>. Once Escrow Funds being held by Escrow Agent reach the Escrow Total, Seller may be paid Escrow Interest earned on the Escrow Funds at times and amounts in Seller's discretion as long as the amount of the Escrow Funds does not, as a result, become less than the Escrow Total.
- b. Release at End of Term: Substitution of Security. After the full and final satisfaction of all of Seller's obligations under the PPA, any Escrow Funds remaining with Escrow Agent after all deductions for any damages or other allowed charges made by Company, and all accrued Escrow Interest, shall be released to Seller. If Seller provides a letter of credit or other security under the PPA in form and substance as required by the PPA and in the full amount of the Escrow Total to secure Seller's obligations to Company prior to the expiration or termination of the

PPA, the Escrow Funds and any Escrow Interest shall be released to Seller upon the delivery to Company of such effective letter of credit or security mechanism as permitted by the PPA.

- c. <u>Escrow Claims by Company</u>. During the term of the PPA, Company may draw all or any portion of the Escrow Funds to the extent necessary to recover amounts owing to Company pursuant to the PPA that are not the subject of a good faith dispute, including any damages due to Company and any amounts for which Company is entitled to indemnification under the PPA. Each claim against the Escrow Funds under this Agreement shall be made by Company by delivering to Escrow Agent a certificate, in substantially the form of Exhibit A attached hereto, specifying the nature of the claim (a "Claim Certificate"). A copy of each Claim Certificate shall also be delivered to Seller contemporaneously with provision to Escrow Agent. Escrow Agent shall pay to Company the amount of Escrow Funds set forth in the Claim Certificate, in accordance with the Claim Certificate, on the first business day after it receives the Claim Certificate.
- d. <u>Regulations of the Comptroller of the Currency</u>. Company and Seller acknowledge that regulations of the Comptroller of the Currency grant Company and Seller the right to receive brokerage confirmations of any security transactions as they occur. Company and Seller specifically waive such notifications to the extent permitted by law, and Seller will receive monthly cash transaction statements that will detail all investment transactions.

6. Rights and Obligations of Escrow Agent.

a. <u>Duties</u>.

- i. Escrow Agent hereby accepts its obligations under this Agreement and represents that it has the legal power and authority to enter into this Agreement and to perform its obligations hereunder. Escrow Agent agrees that all Escrow Funds held by Escrow Agent under this Agreement shall be segregated from all other property held by Escrow Agent and shall be identified as being held in connection with this Agreement. Segregation may be accomplished by appropriate identification on the books and records of Escrow Agent. Escrow Agent's documents and records with respect to the transactions contemplated by this Agreement shall be available for examination by authorized representatives of Company and Seller. Escrow Agent will deliver to Company and Seller written statements not less than quarterly summarizing any activity with respect to the Escrow Funds (including the amount of interest and earnings thereon) and detailing the balance of the Escrow Funds.
- ii. This Agreement may be terminated only by a writing executed by all of Company, Seller and Escrow Agent.
- iii. In the event that this Agreement is scheduled to expire or terminate during the term of the PPA, and Seller has not provided security pursuant to the PPA required to replace this Agreement, Company may draw the entire balance of Escrow Funds, up to the Escrow Total, within five (5) business days of the scheduled expiration or termination date, and without regard to any objection

asserted by Seller, provided Company holds the Escrow Funds it draws in escrow until the earlier of (i) the date Seller provides adequate replacement security in compliance with the PPA, or (ii) the date Company is entitled to draw and retain all or any portion of the Security Fund under the PPA.

- iv. Escrow Agent and Seller will provide immediate notice to Company in the event that (i) the amount of Escrow Funds at any time falls below \$______ prior to the time the Second Deposit is due or (ii) the amount of Escrow Funds at any time falls below the Escrow Total after the Second Deposit is due.
- b. <u>No Other Duties</u>. Escrow Agent shall not have any duties or responsibilities under this Agreement except as expressly set forth herein.
- c. <u>Escrow Fee</u>. Escrow Agent shall be entitled to receive solely from Seller (a) compensation for its regular services as escrow agent under this Agreement and (b) reimbursement for all reasonable and necessary out-of-pocket expenses incurred by Escrow Agent in fulfilling its obligations under this Agreement, including, without limitation, reasonable fees and disbursements of legal counsel. Such compensation and reimbursement obligations shall be paid from time to time as incurred. In no circumstance will Company have any obligation to pay any amount to Escrow Agent arising out of or under this Agreement.
- d. Resignation of Escrow Agent. Escrow Agent may at any time resign by giving thirty (30) days' advance written notice of such resignation to Company and Seller. Upon such resignation, Escrow Agent shall not be discharged from its obligations under this Agreement until (a) a successor escrow agent, as mutually agreed on by Seller and Company, shall have been appointed, (b) the successor escrow agent shall have executed and delivered an Escrow Agreement in substantially the form of this Agreement and (c) all Escrow Funds then held by Escrow Agent under this Agreement shall have been delivered to such successor escrow agent.
- 7. <u>Liability of Escrow Agent</u>. Escrow Agent shall not be liable for any action taken in accordance with the terms of this Agreement, including, without limitation, any distribution of the Escrow Funds in accordance with <u>Section 4</u>, as long as the action was taken in good faith. Escrow Agent shall not be liable for any other act or failure to act under or in connection with this Agreement, except for its own negligence or intentional tortious misconduct. Seller and Company agree to indemnify, defend and hold Escrow Agent harmless from and against all claims, causes of action, costs, judgments, losses and damages arising out of or related to this Agreement, except for any such claims, causes of action, costs, judgments, losses or damages arising from or related to any breach of this Agreement by Escrow Agent or negligent or intentional tortious actions or omissions of Escrow Agent.
- a. <u>Reliance on Documentary Evidence</u>. Escrow Agent shall be entitled to rely on any written notice, certificate, affidavit, letter, document or other communication that is reasonably believed by Escrow Agent to be genuine and to have been signed or sent by the proper party or parties, and on statements contained therein, without further inquiry or investigation. Notwithstanding anything to the contrary in this

Agreement, Escrow Agent may act on any written instructions given jointly by Company and Seller.

- b. <u>Interpleader</u>. If Company and Seller shall disagree about the interpretation of this Agreement, or about the rights and obligations or the propriety of any act contemplated by Escrow Agent hereunder, then Escrow Agent may, within its reasonably exercised discretion, file an action of interpleader in the appropriate court of competent jurisdiction and deposit all of the applicable Escrow Funds with such court.
- 8. <u>Termination of Agreement</u>. This Agreement shall continue through the date on which all obligations of Seller under the PPA have been fully satisfied or all of the Escrow Funds shall have been paid to Company pursuant to the terms of this Agreement.
 - 9. Taxes. Taxes on distributions of the Escrow Funds shall be paid by Seller.
- 10. <u>Notices</u>. All notices and other communications (including all certificates delivered pursuant to <u>Section 5</u>) under this Agreement by Company or Seller to Escrow Agent shall be delivered contemporaneously to the other parties in the same manner as provided to Escrow Agent. All notices and other communications under this Agreement shall be given in writing and shall be personally delivered, sent by facsimile transmission or sent to the applicable parties at their respective addresses indicated in this <u>Section 9</u> by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service, as follows:

If to Seller, to:
Attention:
Phone:
Fax:
If to Company:
Manager, Renewable Purchases Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000
Denver, CO 80202 Phone: (303) 571 Fax: (303) 571-7002
If to Escrow Agent, to:

	 _
ΛΗ	 _
Attention:	
Phone:	
Fax [.]	

or to such other person or address as any party shall have specified by notice in writing to the other parties. If personally delivered, such communication shall be deemed delivered upon actual receipt; if sent by facsimile transmission, such communication shall be deemed delivered the day of the transmission, or if the transmission is not made on a business day, the first business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this Section 9, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this Section 9, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal

11. Miscellaneous.

- a. <u>Captions</u>. All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.
- b. <u>No Third-Party Beneficiary</u>. No provision of this Agreement is intended to nor shall in any way inure to the benefit of any customer, property owner or other third party, so as to constitute any such person a third-party beneficiary under this Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.
- c. <u>Integration: Amendment.</u> This Agreement constitutes the entire agreement among the parties relating to the transactions described herein and supersedes any and all prior oral or written understandings. No amendment of, addition to or modification of any provision hereof shall be binding on the parties, and no party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable party or parties.
- d. <u>Governing Law</u>. The Agreement is made in the state in which the Facility is located and shall be interpreted and governed by the laws of such state or the laws of the United States, as applicable.
- e. <u>Good Faith and Fair Dealing: Reasonableness</u>. The parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) whenever this Agreement requires the consent, approval or similar action of a party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) whenever this Agreement gives a party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

- f. <u>Severability</u>. Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in force. The parties will, however, use their reasonable best endeavors to agree on the replacement of the void, illegal or unenforceable provisions with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.
- g. <u>Cooperation</u>. The parties agree to cooperate reasonably with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require any party to act in a manner inconsistent with its rights under this Agreement.
- h. Execution in Counterparts and by Facsimile Transmission. This Agreement may be executed in two (2) or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. This Agreement may be executed and delivered by facsimile, and the parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures.

[This space intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date first set forth above.

Dated:	Contract of the Contract of th
	By: Name:
	Its:
Dated:	Southwestern Public Service Company
	By: Name:
	Its:
Dated:	(Escrow Agent)
	Ву:
	Name:
	lts:

EXHIBIT A TO ESCROW AGREEMENT

ESCROW CLAIM CERTIFICATE

TO:		
, 20 " <u>Escrow Agreeme</u>	, by and among Con <u>nt</u> "). Capitalized ter	that certain Escrow Agreement, dated as of npany, Seller and you, as Escrow Agent (the ms used but not otherwise defined in this ed to them in the Escrow Agreement.
receive Escrow Fu	nds in the amount of	any hereby certifies that Company is entitled to \$pursuant to the terms of to the following (generally):
distribute, on the f	first business day afte	escrow Agreement, you are hereby instructed to er your receipt of this Certificate, the sum of ands to the undersigned by wire transfer to the
	Bank:	
	Account:	
	Routing Number:	
Date:	, 20	
		Southwestern Public Service Company
		Ву:
		Name:
		Title:

EXHIBIT H

OPERATING STANDARDS

(AGC Protocols, Data Collection)

1. AGC Electronic Communications Between Company and Seller

Company will receive and send AGC Set-Point and related data over an analog or digital line. The data points covered under this PPA, as described below, may overlap data requirements for the Transmission Provider, Transmission Authority or Company's Solar Forecasting group.

2. Data Points to Be Sent from Seller to Company via AGC

The following data points will be transmitted via AGC from Seller to Company and represent Facility level data:

Description	Units
AGC Set-Point (echo)	MW
Power demand	MW
Actual power	MW
Park Potential	MW
Actual reactive power	Mvars
Average voltage	kV
Number of units online and running	Integer
AGC status	Remote/Local

3. Response Times and Limitations of Facility in Regards to AGC

The following protocols outline the expectations around responding to the AGC Set-Point. Except in the case of the frequency of changes, these protocols will be generally bound by the manufacturers' specifications for the equipment that Seller has chosen for the Facility.

- a. <u>Required Response Time</u>. The Facility will respond to the AGC Set-Point within the maximum Solar Unit manufacturers' specifications. The response time will vary based on the mix of available Solar Units and the current level of output of the Facility. The required response time will be subject to change based upon any change in the Solar Unit manufacturers' specifications for ramp rate.
- b. <u>Allowable Variances in Excess of AGC Set-Point</u>. Once the Facility has reached the AGC Set-Point, there may be variances in excess of such set-point up to two percent (2%) on average as measured during a ten (10)-minute period. This is due to changing solar conditions vs. the manufactures' specifications for responding

to those new conditions provided irradiance conditions allow for achieving the assigned AGC Set-Point.

- c. <u>Frequency of Changes</u>. Company can send a new AGC Set-Point to the Facility as frequently as the Solar Unit manufacturer's specifications allow, using the specification for the least frequent change to output. If, however, the AGC Set-Point is below 10% of Park Potential, then Company will be restricted from changing the AGC Set-Point for thirty (30) minutes to prevent the Solar Units from cycling on and off.
- d. Range of AGC Set-Point. The range of set-point values can be between zero percent (0%) and one hundred percent (100%) of Park Potential.

4. Backup Communications

In the event of an AGC failure, the Company and Seller shall communicate via telephone in order to correct the failure.

5. Data Collection

Not later than the Commercial Operation Date, or when requested by the Company prior to the Commercial Operation Date, Seller will deliver to Company a report showing (i) manufacturer, model and year of all panels, inverters and meteorological instrumentation and (ii) the latitude and longitude of the center of the solar panels for every inverter and every meteorological station. Seller will also transmit and provide to Company the real-time data set forth below, refreshed as frequently as allowed by the SCADA System, not to exceed fifteen (15) minute intervals.

- A. Two (2) data points from each inverter:
 - 1. Inverter generation (kW)
 - 2. Inverter availability
- B. Five (5) data points from the meteorological station(s):
 - 1. Global horizontal insolation (GHI) (W/m²)
 - 2. Plane-of-array insolation (POA) using a reference cell (W/m²)
 - 3. Temperature (°C)
 - 4. Wind speed (m/s)
 - 5. Wind direction (degrees relative to true north)

Seller shall provide a map and key for each inverter sufficient to allow Company to correlate the data received through Company's data historian system to each individual inverter.

EXHIBIT I LENDER CONSENT PROVISIONS

In the event Seller collaterally assigns its rights hereunder to the Facility Lender as security, any related Lender Consent will contain provisions substantially as follows:

- 1. Seller and Company will neither modify nor terminate the PPA, other than as provided therein, without the prior written consent of the Facility Lender.
- 2. The Facility Lender shall have the right, but not the obligation, to do any act required to be performed by Seller under the PPA, and any such act performed by the Facility Lender shall be as effective to prevent or cure a default as if done by Seller itself
- 3. If Company becomes entitled to terminate the PPA due to an uncured Event of Default by Seller, Company shall not terminate the PPA unless it has first given notice of such uncured Event of Default to the Facility Lender and has given the Facility Lender the same cure period afforded to Seller under Section 12.1 of the PPA, plus an additional thirty (30) Days beyond Seller's cure period to cure any monetary Event of Default and an additional sixty (60) Days beyond Seller's cure period to cure any non-monetary Event of Default; provided, however, that if the Facility Lender requires possession of the Facility in order to cure the Event of Default, and if the Facility Lender diligently seeks possession, the Facility Lender's additional thirty (30) Day or sixty (60) Day, as applicable, cure period shall not begin until foreclosure is completed, a receiver is appointed or possession is otherwise obtained by or on behalf of the Facility Lender.
- 4. Neither the Facility Lender nor any other participant in the Facility Debt shall be obligated to perform or be liable for any obligation of Seller under the PPA until and unless any of them assumes possession of the Facility through the exercise of the Facility Lender's rights and remedies.
- 5. Any party taking possession of the Facility through the exercise of the Facility Lender's rights and remedies shall remain subject to the terms of the PPA and shall assume all of Seller's obligations under the PPA, both prospective and accrued, including the obligation to cure any then-existing defaults capable of cure by performance or the payment of money damages. In the event that the Facility Lender or its successor assumes the PPA in accordance with this paragraph 5, Company shall continue the PPA with the Facility Lender or its successor, as the case may be, substituted wholly in the place of Seller.
- 6. Within ninety (90) Days of any termination of the PPA in connection with any bankruptcy or insolvency Event of Default of Seller, the Facility Lender (or its successor) and Company shall enter into a new power purchase agreement on the same terms and conditions as the PPA and for the period that would have been remaining under the PPA but for such termination.

EXHIBIT J

COMMITTED SOLAR ENERGY AND SOLAR ENERGY PAYMENT RATE
(by Commercial Operation Year)

Commercial Operation Year	Committed Solar Energy (MWh)	Rate \$/(MWh) excluding RECs	Rate \$/(MWh) with RECs	Commercial Operation Year	Committed Solar Energy (MWh)	Rate \$/(MWh) excluding RECs	Rate \$/(MWh) with RECs
1	202,820	\$34.78	\$35.28	14	189,636	\$44.99	\$45.64
2	201,805	\$35.48	\$35.99	15	188,622	\$45.89	\$46.55
_ 3	200,791	\$36.19	\$36.71	16	187,608	\$46.81	\$47.48
4	199,777	\$36.91	\$37.44	17	186,594	\$47.75	\$48.43
5	198,763	\$37.65	\$38.19	18	185,580	\$48.70	\$49.40
6	197,749	\$38.40	\$38.95	19	184,566	\$49.67	\$50.39
7	196,735	\$39.17	\$39.73	20	183,552	\$50.67	\$51.40
8	195,721	\$39.95	\$40.53	21	182,538	\$51.68	\$52.42
9	194,706	\$40.75	\$41.34	22	181,523	\$52.71	\$53.47
10	193,693	\$41.57	\$42.16	23	180,509	\$53.77	\$54.54
11	192,679	\$42.40	\$43.01	24	179,495	\$54.84	\$55.63
12	191,664	\$43.24	\$43.87	25	178,481	\$55.94	\$56.75
13	190,650	\$44.11	\$44.74				

EXHIBIT K
EXPECTED MONTHLY GENERATION PROFILE

Month	Percent of Annual Generation
January	6.1%
February	6.8%
March	8.7%
April	9.6%
May	10.4%
June	10.4%
July	10.3%
August	9.7%
September	8.7%
October	7.6%
November	6.2%
December	5.5%

EXHIBIT L

METHODOLOGY FOR ADJUSTING THE TWELVE-MONTH COMMITTED SOLAR ENERGY VALUE FOR DIFFERENCES IN ACTUAL SOLAR IRRADIATION AND EXPECTED SOLAR IRRADIATION

Committed Solar Energy may be adjusted if the irradiation received at the Site is below the Expected Solar Irradiation. The adjustment to the 12-month average calculation of Committed Solar Energy is appropriate only when actual solar irradiation falls below the Expected Solar Irradiation for the relevant period as agreed to by the Parties.

As an illustrative example, Table 1 below provides the historical generation and solar irradiation between the months of January and December 2017, the adjustments to the Committed Solar Energy related to this irradiation and the resulting 12-month Committed Solar Energy percentage for a hypothetical solar generating facility. The steps taken in the calculations, and referenced sections in the PPA, are provided below.

Step 1 - Actual Solar Irradiation to Expected Solar Irradiation

The Expected Solar Irradiation is determined on a monthly basis by calculating the total monthly values of global horizontal irradiance using the GeoModel SolarGIS irradiance time series data set corresponding to the solar generating facility site (point 33.450 N, 104.456 W) referenced under the definition of "Expected Solar Irradiation" in the PPA. The Expected Solar Irradiation relevant to the facility is the global horizontal irradiance of 2045 kWh/m2/yr (PPA, Exhibit A, definition of "Expected Solar Irradiation"; Table 1 - Column B).

The actual monthly solar irradiation is determined by the average total reading of all functional global horizontal pyranometers at the Site for the month. (Table 1 - Column C). By dividing the actual solar irradiation by the Expected Solar Irradiation, a ratio is calculated for each month (Table 1 - Column D).

In Table 1, Seller has provided Company with the GeoModel time series irradiance data set expected monthly global horizontal irradiance data (Column B), data including the pyranometer reading pertaining to the Facility, and all pertinent data regarding the solar irradiation adjusted Committed Solar Energy calculation for calculating the annual twelve month Committed Solar Energy Value.

Step 2 – Adjustments to Committed Solar Energy

The Committed Solar Energy on a monthly basis is determined by multiplying the expected monthly generation profile (Exhibit K of PPA and column E in Table 1) by the annual Committed Solar Energy (Exhibit J of PPA and Column F in Table 1) for the relevant year of operation. The resulting monthly Committed Solar Energy is adjusted down (pursuant to Section 12.1(I) of the PPA) by multiplying the Committed Solar Energy by any monthly actual to Expected Solar Irradiation ratio that is below the expected amount (Table 1 - Column G).

The actual generation delivered is equal to the MWh that were produced and delivered per the PPA. (Table 1 - Column H.)

The Compensable Curtailment & Seller Excuse Hours is equal to the MWh that were curtailed (Table 1 – Column I.)

The total constructive generation is equal to the sum of the actual generation and the Compensable Curtailment & Seller Excuse Hours (Table 1 – Column J.)

Step 3 - Committed Solar Energy Percentage

In the final step, the summation of the 12 months of total constructive generation is divided by the summation of the 12 months adjusted Committed Solar Energy to determine the Committed Solar Energy percentage (Table 1 - Column K.)

IABLE 1

Committed Solar Energy

g		T		<u> </u>										
Total Constructive to Adjusted Committed Generation [Column J/Column G]	Column K													95.10%
Total Constructive Generation (MWh) [Column H+	Column J	10.633	11,738	15,170	16,571	18,071	17,977	17,888	16,834	15,078	13,210	10.820	9,605	173,597
Compens able Curtailme nt & Seller Excuse Hours	Column 1	100	100	100	100	100	100	100	100	100	100	100	100	1,200
Actual Generation Delivered (MWh)	Column H	10,533	11,638	15,070	16,471	17,971	17,877	17,788	16,734	14,978	13,110	10,720	9,505	172,397
Irradiance Adjusted Committed Generation (MWh)	Column G	11.153	12,323	15,957	17,440	19,028	18,928	18,835	17,718	15,860	13,882	11.351	10,065	182,538
Committed Generation (MWh)	Column F	12.392	13,692	17,730	19,378	21,142	21,031	20,928	19,687	17,622	15,424	12.612	11,183	202,820
Expected Monthly Generation Profile (%)	Column E	6.11%	6.75%	8.74%	9.55%	10.42%	10.37%	10.32%	9.71%	8.69%	7.60%	6.22%	5.51%	100.00%
Actual to Expected Solar Irradiation (%)	Column D	%0.06	%0.06	%0.06	%0.06	%0.06	%0.06	%0.06	%0.06	%0:06	%0.06	%0:06	%0.06	
Actual Solar Irradiation (kWh/m2/ mon)	Column C	95	110	157	187	212	211	206	189	159	129	66	84	1,841
Expected Solar Irradiation (kWh/m2/ mon)	Column B	106	122	175	207	236	235	229	211	177	144	109	94	2,045
		2017	2017	2017	2017	2017	2017	2017	2017	2017	2017	2017	2017	
		Jan	Feb	Mar	Apr	Мау	unr	Ιης	Aug	Sep	Oct	Nov	Dec	

Final

SOLAR ENERGY PURCHASE AGREEMENT BETWEEN

SOUTHWESTERN PUBLIC SERVICE COMPANY

AND

CHAVES COUNTY SOLAR, LLC



- MARCH 4, 2015 -

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EXHIBIT L METHODOLOGY FOR ADJUSTING THE TWELVE-MONTH COMMITTED SOLAR ENERGY VALUE FOR DIFFERENCES IN ACTUAL SOLAR IRRADIATION AND EXPECTED SOLAR IRRADIATION

SOLAR ENERGY PURCHASE AGREEMENT BETWEEN SOUTHWESTERN PUBLIC SERVICE COMPANY AND

CHAVES COUNTY SOLAR, LLC

This Solar Energy Purchase Agreement (this "PPA") is made this 4th day of March, 2015 ("Effective Date") by and between (i) Southwestern Public Service Company, a New Mexico corporation with a principal place of business at 1800 Larimer Street, Suite 1000, Denver, CO 80202 ("Company"), and (ii) Chaves County Solar, LLC, a Delaware limited liability company, with a principal place of business at 700 Universe Boulevard, Juno Beach, Florida 33408 ("Seller"). Company and Seller are hereinafter referred to individually as a "Party" and collectively as the "Parties."

WHEREAS on September 12, 2014 Company issued a Request for Proposals as a component of its resource planning process, seeking proposals for photovoltaic solar generation.

WHEREAS Seller desires to develop, design, construct, interconnect, and own, operate and maintain a 70 MW (at the Point of Delivery as defined below) solar power generation station located approximately ten (10) miles northeast of the City of Roswell in Chaves County, New Mexico (the "Facility" as defined herein) and to sell and deliver to Company certain products and services delivered from the Facility to the Point of Delivery at the prices and on the terms and conditions set forth in this PPA.

WHEREAS Company desires to accept and receive such Solar Energy and other products and services delivered from the Facility to the Point of Delivery at the prices and on the terms and conditions set forth in this PPA.

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

Article 1 - Rules of Interpretation

1.1 Interpretation.

- (A) Capitalized terms listed in this PPA shall have the meanings set forth in Exhibit A Definitions or as otherwise defined in this PPA, whether in the singular or the plural or in the present or past tense. Words not otherwise defined in this PPA shall (i) have meanings as commonly used in the English language, (ii) be given their generally accepted meaning consistent with Good Utility Practice, and (iii) be given their well-known and generally accepted technical or trade meanings.
- (B) The following rules of interpretation shall apply: (1) The masculine shall include the feminine and neuter; (2) references to "Articles,"

"<u>Sections</u>," or "<u>Exhibits</u>" shall be to articles, sections, or exhibits of this PPA except as the context may otherwise require; (3) all Exhibits are incorporated into this PPA; provided, however, that in the event of a conflict with the terms of this PPA, the PPA shall control; and (4) use of the words "include" or "including" or similar words shall be interpreted as "include without limitation" or "including, without limitation."

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

1.2 Interpretation with Other Agreements.

- (A) This PPA does not provide Seller authorization to interconnect the Facility or inject power into the electric delivery system. Seller shall contract for interconnection services in accordance with the applicable Transmission Tariff. Seller acknowledges that any Interconnection Agreement Seller enters into is a separate contract and that (i) this PPA is not binding on the Transmission Authority, (ii) this PPA does not create any rights between Seller and the Transmission Authority, and (iii) the Interconnection Agreement does not modify the Parties' rights and obligations under this PPA. Seller agrees that any applicable Transmission Authority shall be deemed to be a separate and unaffiliated contracting party regardless of whether such Transmission Authority is Company or an Affiliate of Company.
- (B) This PPA does not provide for the supply of House Power. Seller shall contract with the Local Provider for the supply of House Power. Seller acknowledges that obtaining House Power is a separate contract and that (i) this PPA is not binding on the Local Provider, (ii) this PPA does not create any rights between Seller and the Local Provider, and (iii) the House Power contract does not modify the Parties' rights and obligations under this PPA. Seller agrees that the Local Provider shall be deemed to be a separate and unaffiliated contracting party regardless whether the Local Provider is Company or an Affiliate of Company. Subject to Seller's right to self-generate and consume energy concurrently generated by the Facility or as otherwise allowed by Applicable Law, Seller shall obtain House Power exclusively from the Local Provider.
- 1.3 Good Faith and Fair Dealing. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (a) when this PPA requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) wherever this PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be Commercially Reasonable.

1.4 <u>Waiver</u>. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

Article 2 - Term and Termination

This PPA shall become effective as of the Effective Date, and shall remain in full force and effect until the Scheduled Termination Date, subject to early termination or extension as provided in this PPA or otherwise agreed to by the Parties. Applicable provisions of this PPA shall continue in effect after termination to the extent necessary to (i) provide for final billings, payments and adjustments, (ii) enforce or complete the duties, obligations or responsibilities of the Parties, and (iii) address any remedies or indemnifications, arising prior to termination.

Article 3 - Facility Description

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

3.2 General Design of the Facility.

- (A) Seller shall design, construct, operate and maintain the Facility according to Good Utility Practice(s) and the Interconnection Agreement.
- (B) The Facility shall include all equipment necessary to successfully interconnect with the Transmission Authority's System for the delivery of the Facility's output to the Point of Delivery.
- (C) The Facility shall include all equipment and telecommunications capabilities necessary to communicate with Company's SCADA system.
- (D) The Facility shall include all equipment specified in <u>Exhibit C Facility Description</u> or otherwise necessary to fulfill Seller's obligations under this PPA.

Article 4 - Implementation

4.1 Project Development.

(A) No later than sixty (60) Days following the Effective Date, Seller shall complete a Phase 1 environmental assessment ("Phase1") of the Site and shall disclose to Company any Environmental Contamination identified in that investigation and confirm that such Environmental Contamination has been remediated or is capable of being remediated and that the Site remains appropriate for its intended

use by Seller. Seller shall promptly inform Company if due to any Environmental Contamination Seller is constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) that would allow Seller to fully perform under this PPA. Upon request, Seller shall provide Company a copy of the Phase 1 report and any backup data; provided, however, that the Phase 1 and backup data shall be deemed Confidential Information pursuant to Section 20.18. Throughout the Term, Seller shall ensure that any Environmental Contamination identified at the Facility or Site is promptly remediated. Seller shall promptly disclose to Company the presence of any material Environmental Contamination or the existence of any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination.

- (B) Seller shall at its own expense enter the Construction Contract and all other major contracts necessary to the successful development of, construction of, operation of and delivery from the Facility with qualified and experienced contractors. Upon written request by Company, Seller shall provide Company with a memorandum of agreement executed by the Seller and the contractor party to the Construction Contract and all other major contracts, which memorandum shall set forth the basic terms of such contract, including without limitation the names of the parties thereto, the date of such contract, a summary of any products or services to be provided and information reasonably sufficient for Company to determine that such Construction Contract or major contract provides obligations necessary to meet the Construction Milestones or in lieu thereof, at Seller's option, a copy of the Construction Contract or other major contract (provided that Seller shall be permitted to redact pricing and other sensitive information).
- (C) Prior to the Commercial Operation Date, Seller shall (i) submit monthly progress reports to Company in a form agreed upon by the Parties advising Company of the current status of each Construction Milestone, any significant developments or delays along with an action plan for making up delays, and Seller's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility Lender, if any, relating to status, progress and development of the project; and (iii) invite Company to participate in monthly meetings to discuss the progress reports, answer questions, and assess the schedule. Seller shall make all relevant contractors available to Company in order to keep Company fully informed on the status of the development.
- (D) Upon request, Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Facility for compliance with this PPA; provided, however, that Company shall comply with all of Seller's applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof

nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

- (E) Seller shall obtain and pay for all Permits necessary for the construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility to Company. Seller shall keep Company reasonably informed as to the status of its permitting efforts. Seller shall promptly inform Company of any Permits it is unable to obtain, that are delayed, limited, suspended, terminated or otherwise constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) with any Permits to allow Seller to fully perform under this PPA. Upon reasonable request, Company shall have the right to inspect and obtain copies of all Permits held by Seller.
- (F) Seller shall notify Company (i) sufficiently in advance of any known upcoming significant inspections by any Governmental Authority relating to the Facility to allow Company the opportunity to attend, and (ii) promptly after any unscheduled or impromptu inspection with a description of the nature and outcome of such inspection.
- 4.2 <u>Commercial Operation</u>. Subject to extension as authorized in this PPA, the Facility shall achieve Commercial Operation no later than the Commercial Operation Milestone; *provided, however, that* Seller shall not be obligated to establish a Commercial Operation Date that is earlier than the Commercial Operation Milestone and Company shall not be obligated to accept a Commercial Operation Date that is greater than ninety (90) Days prior to the Commercial Operation Milestone. In its efforts to achieve the Commercial Operation Milestone, Seller agrees to use Commercially Reasonable Efforts to achieve the Construction Milestones set forth in <u>Exhibit B Construction Milestones</u>. Notwithstanding the foregoing, the Commercial Operation Milestone may be extended for not more than:
- (A) Ninety (90) days on a day-for-day basis if Seller has used Commercially Reasonable Efforts (including Seller's timely filing of required documents and payment of all applicable fees) to obtain Permits necessary for the construction and operation of the Facility in accordance with this PPA but is unable to obtain such Permits due to delays beyond Seller's reasonable control ("Permitting Delay"); or
- (B) Ninety (90) days on a day-for-day basis if Seller has used Commercially Reasonable Efforts (including Seller's timely filing of required documents and payment of all applicable fees) to have the Facility physically interconnected to the Transmission Authority's System and to complete all Seller's Interconnection Facilities needed, if any, in order to interconnect the Facility to the Transmission Authority's System, but fails to secure any necessary commitments from the Transmission Authority for such interconnection, related agreements and upgrades due to delays

beyond Seller's reasonable control ("<u>Transmission Delay</u>", and collectively with Permitting Delay, a "<u>Permitted Extension</u>").

Seller shall provide Notice to Company promptly upon Seller becoming aware of the facts or circumstances giving rise to a Permitted Extension. If Seller claims any one or more of the foregoing Permitted Extensions, such extensions cannot cumulatively exceed ninety (90) Days and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping Days.

Notwithstanding any Permitted Extension(s), Seller recognizes and agrees that it assumes all risk of qualifying for Investment Tax Credits and any other tax benefits and any Permitted Extension(s) shall not result in any price increase or other increased liability to Company under this PPA.

- 4.3 <u>COD Conditions</u>. Seller shall provide Company a Notice of the date Seller believes the Facility has achieved Commercial Operation along with all supporting documentation of the satisfaction or occurrence of all COD Conditions. Company shall have up to ten (10) Business Days to review such evidence and raise any Commercially Reasonable objection to Seller's satisfaction of any of the COD Conditions; *provided, however, that* such Notice shall be deemed accepted by Company if Company fails to object within such time period. Seller may provide Notice of completion of the COD Conditions on an individual and incremental basis pending resolution of any objections; *provided, however, that* Company shall in all cases have up to ten (10) Business Days to review and object to each Notice. The COD Conditions are:
- (A) an officer of Seller, authorized to bind Seller and who is familiar with the Facility, has provided written confirmation that (1) all necessary and material Permits have been obtained and are in full force and effect, (2) Seller is in compliance with this PPA in all material respects, (3) the Facility is available to commence normal operations in accordance with Seller's operating agreements, Construction Contract, and applicable manufacturers' warranties, (4) the Facility has been registered with the Transmission Authority, (5) Seller is obligated under and in material compliance with the Interconnection Agreement, (6) the Facility is fully interconnected to the Transmission Authority's System, has been fully tested, has achieved initial synchronization, and has been successfully operated at a generation level acceptable to the Transmission Authority, without experiencing any abnormal or unsafe operating conditions on any interconnected system, (7) Seller has completed any testing of the Facility and Interconnection Facilities required by the Interconnection Agreement, and (8) Seller has made all other arrangements necessary to deliver the output of the Facility to the Point of Delivery;
- (B) an independent registered professional engineer's certification has been obtained by Seller and provided to Company stating that the Facility has been completed in all material respects, except for punch list items that do not have a Material Adverse Effect on the ability of the Facility to operate for its intended purpose;

- (C) Seller has demonstrated (1) the reliability of the Facility's communications systems and communication interface with Company's EMCC and the Facility is capable of receiving and reacting to signals from Company's SCADA System, and (2) all AGC equipment is installed and operational; and
- (D) at least ninety-five percent (95%) of the Solar Units and associated equipment sufficient to allow such Solar Units to generate and deliver Solar Energy to the Point of Delivery have been completed.

4.4 <u>Test Energy</u>.

- (A) Seller shall provide Company and Transmission Authority with the information necessary to have the Facility registered with the Transmission Authority for inclusion in any generation modeling maintained by the Transmission Authority, sufficiently in advance to allow the Facility to be registered in such model at least four months prior to generating any Test Energy. Upon receipt of such information, Company will cooperate reasonably to assist in the registration of the Facility to allow generation of Test Energy.
- (B) Prior to the COD but not before June 30, 2016, Seller shall coordinate the production and delivery of Test Energy with Company, with not less than five (5) Days' Notice, or such other Commercially Reasonable prior Notice as Company may reasonably request. The Parties shall cooperate to facilitate Seller's testing of the Facility necessary to satisfy the COD Conditions. Company shall only be required to accept delivery of Test Energy required to satisfy COD Conditions. Company shall purchase and pay the Test Energy Rate for all Test Energy delivered prior to COD.

Article 5 - Delivery

5.1 <u>Electric Delivery Arrangements</u>. Seller shall be responsible for making, maintaining and paying the costs associated with the interconnection of the Facility to the Transmission Authority's System. Seller shall comply with the Transmission Authority's requirements for the interconnection and shall comply with all requirements set forth in the applicable Transmission Tariff. The Interconnection Request shall request Energy Resource Interconnection Service or its equivalent as authorized under the applicable Transmission Tariff. Company shall seek to have the Facility designated as a Network Resource and to obtain network long-term firm transmission service under the applicable Transmission Tariff and Seller shall cooperate reasonably in any request by Company to assist in Company's efforts to have the Facility approved as a Network Resource or equivalent classification pursuant to the applicable Transmission Tariff. To the extent required, Company shall arrange and be responsible for scheduling and transmission services at the Point of Delivery, and shall schedule or arrange for scheduling services with the Transmission Authority to deliver Solar Energy from the Point of Delivery to Company load. To the extent applicable during the Term, Company shall be the market participant as defined by the Transmission Authority for the Facility.

- (A) Seller authorizes Company to contact and obtain information concerning the Facility and Interconnection Facilities directly from any applicable Transmission Authority and, upon request, Seller shall confirm such authorization in writing to such Transmission Authority or any applicable transmission owners in such form as requested by Company or the Transmission Authority.
- (B) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver, on a firm-basis, the output from the Facility to the Point of Delivery.
- (C) Company shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to transmit and deliver the output from the Facility at and beyond the Point of Delivery. If at any time during the Term, the Transmission Provider changes or the Interconnection Facilities cease to be subject to the Transmission Tariff, then the Parties shall cooperate in good faith to amend this PPA in a manner to mitigate the impact of such changes on the Parties and to facilitate the delivery of output from the Point of Delivery to Company's customers at the least possible cost to Company; *provided, however, that* such actions shall not materially adversely affect either Party's rights, benefits, risks or obligations under this PPA.

5.2 <u>Electric Metering Devices</u>.

- (A) All Electric Metering Devices used to measure energy shall be owned, installed, and maintained in accordance with the Interconnection Agreement at no cost to Company under this PPA.
- 1. For purposes of this PPA, meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided, however, that* the Operating Committee may revise this loss adjustment based on actual experience.
- 2. Seller shall arrange any necessary authorization to provide Company access to all Electric Metering Devices for all purposes necessary to perform under this PPA and shall provide Company the opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted.
- (B) Either Party may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering"), provided, however, that the specifications, installation and testing of any such Back-Up Metering shall be consistent with the requirements for the Electric Metering Devices. Upon written request, the installing Party shall conduct retests requested by the other Party. The actual cost of any retest shall be borne by the Party requesting the test, unless, upon such retest, Back-Up Metering is inaccurate by more than one percent (1%), in which

case the cost of the retest shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

- (C) If an Electric Metering Device or Back-Up Metering, fails to register, or if the measurement is inaccurate by more than one percent, an adjustment shall be made correcting all measurements as follows:
- 1. If the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-Up Metering, if installed, to determine the amount of such inaccuracy, *provided, however, that* Back-Up Metering has been tested and maintained and adjusted for losses on the same basis as the Electric Metering Device. If Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one percent (1%), the Parties shall use the best available information for the period of inaccuracy, adjusted as agreed by the Parties for losses to the Point of Delivery.
- 2. If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.
- 3. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Company, Company shall use the corrected measurements as determined in accordance with this <u>Article 5</u> to re-compute the amount due for the period of the inaccuracy and in accordance with <u>Article 9</u> may adjust the next regular bill to reflect such re-computed amount, *provided however, that* 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.

Article 6 - Conditions Precedent

6.1 Company CPs.

(A) No later than forty-five (45) Days after the Effective Date of this PPA, Company shall file a written request for State Regulatory Approval. Company shall use Commercially Reasonable Efforts to obtain State Regulatory Approval, and Seller shall cooperate with Company's efforts to seek State Regulatory Approval. If within forty-five (45) Days following the Effective Date of this PPA Company fails to apply for State Regulatory Approval or gives written Notice to Seller that it is affirmatively waiving its right to request State Regulatory Approval under this Section 6.1, Company shall be deemed to have waived its right to seek State Regulatory Approval or to terminate this PPA under this Section 6.1 and this PPA shall remain in full force and effect thereafter.

- (B) In the event that Company applies for State Regulatory Approval, either Party shall have the right to terminate this PPA, without any further financial or other obligation to Seller as a result of such termination, by Notice to Seller not more than ten (10) Days after the earlier of (i) fourteen (14) Days after receipt of a written order from the State Regulatory Agency rejecting State Regulatory Approval or imposing conditions on State Regulatory Approval unsatisfactory to either Party, or (ii) six (6) months following the written request for State Regulatory Approval without receipt of State Regulatory Approval without conditions unsatisfactory to either Party.
- (C) If Company fails to terminate this PPA in the time allowed by this paragraph, Company shall be deemed to have waived its right to terminate this PPA under this <u>Section 6.1</u> and this PPA shall remain in full force and effect thereafter.
- 6.2 <u>Seller CPs</u>. Seller shall have the right to terminate this PPA, without any further financial or other obligation to Company as a result of such termination, by Notice to Company within fourteen (14) Days following the failure of Seller to satisfy or waive in its sole discretion any of the following conditions precedent (the "<u>Seller CPs</u>") by the indicated deadline:

Seller CP	<u>Deadline</u>
Obtain land use and building permits	September 1, 2015
Execute Large Generator Interconnection Agreement	November 1, 2015

If Seller fails to terminate this PPA in the times allowed by <u>Sections 6.1</u> or <u>6.2</u>, the Seller CPs shall be deemed to have been waived and this PPA shall remain in full force and effect thereafter.

Article 7 - Sale and Purchase

7.1 General Obligation.

(A) Beginning on the Commercial Operation Date, Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to Company, and Company shall receive and purchase at the Point of Delivery, the Solar Energy (not to exceed 70 MW (AC) at the Point of Delivery) and other products and services required by this PPA; provided, however, that Seller's obligation to deliver and sell RECs to Company is contingent upon Company's exercise of the REC Purchase Option, as set forth in Section 7.3. Seller shall not curtail or interrupt deliveries from the Facility as required by this PPA for economic reasons of any type whatsoever; provided, however, that Seller's obligation to generate, deliver and sell to Company the Solar Energy and other products and services required hereunder shall be excused during Seller Excuse Hours.

- (B) Title and risk of loss of the products and services transacted by this PPA shall transfer from Seller to Company at the Point of Delivery.
- 7.2 <u>Committed Solar Energy</u>. Seller covenants to deliver the Committed Solar Energy to the Point of Delivery, except as otherwise provided in this PPA (including during Seller Excuse Hours). Beginning at the end of the second Commercial Operation Year and continuing at the end of each Commercial Operation Year thereafter for the balance of the Term, Seller shall provide to Company (i) a calculation of the actual output of the Facility for the just-completed Commercial Operation Year (including adjustments per <u>Exhibit L</u>) against the Committed Solar Energy for such year.

7.3 AGC.

- (A) Beginning on the Commercial Operation Date, Company shall dispatch the Facility through the EMCC AGC system.
- (B) Company may notify Seller, by telephonic communication or through use of the AGC Set-Point, to curtail the delivery of Solar Energy to Company from the Facility and to the Point of Delivery, for any reason and in its sole discretion and Seller shall promptly comply with such notification.
- (C) The AGC Set-Point is calculated by the EMCC AGC system and communicated electronically through the SCADA System. Seller shall ensure that, throughout the Term, the SCADA signal is capable of functioning on all AGC Set-Points within the margin of error specified in the solar facility's control system manufacturer's energy set point margin of error.
- (D) Seller shall ensure that Facility AGC Remote/Local status is in "Remote" set-point control during normal operations.

7.4 Compensation for Other Products and Services.

- (A) Seller hereby grants Company the option to commence purchasing all of the RECs associated with the Solar Energy on a prospective basis (the "REC Option"). Company may exercise its REC Option by providing Seller with 12-months prior written Notice of its intent to begin purchasing the RECs for the remainder of the Term. Upon the commencement of the Company's purchasing of all of the RECs associated with the Solar Energy, Company shall compensate Seller at the Solar Energy Payment Rate applicable for that Commercial Operation Year as set forth in the Column labelled "Rate \$/(MWh) with RECs" on EXHIBIT J COMMITTED SOLAR ENERGY AND SOLAR ENERGY PAYMENT RATE.
- (B) Notwithstanding the foregoing, if at any time during the Term, Seller, or an Affiliate of Seller, originates a long term transaction (i.e., of a one year or greater duration) for the sale of RECs attributable to the Facility

with an unaffiliated third party, by notice to Company (a "REC Notice"), Seller first shall offer to sell the RECs to Company on the same terms (the "REC ROFO"). The REC Notice shall identify (i) the nature and terms of the transaction, and (ii) the minimum price which Seller is willing to accept to proceed with the contemplated third party transaction. All information disclosed to Company by Seller with respect to the REC ROFO shall be deemed Confidential Information subject to Section 20.18.

- 1. Seller shall allow Company twenty (20) Business Days after the REC Notice to consider the proposed transaction. Within such period, Company shall either:
 - (i) exercise its REC ROFO on substantially comparable terms to the proposed transaction; or,
 - (ii) waive its REC ROFO (and its REC option) with respect to, and for the duration of, that transaction. If Company fails to respond to a REC Notice within such twenty (20) Business Day period, Company shall be deemed to have waived its REC ROFO right with respect to that transaction.
- 2. If Company exercises its REC ROFO, the Parties shall have an additional twenty (20) Business Day period to sign definitive agreements on terms no less favorable to Company than those contained in the REC Notice.
- 3. If Company does not exercise its REC ROFO, Seller shall have the right to close its proposed transaction with the identified prospective buyer, *provided, however, that* such transaction shall have a purchase price of not less than the minimum price set forth in the REC Notice and the transaction shall have been closed not more than thirty (30) Business Days following expiration of the Company's right to exercise its REC ROFO.
- (C) If at any time the Company purchases all of the RECs associated with the Solar Energy, the following shall apply:
- 1. Seller shall automatically and irrevocably assign to Company all rights, title and authority for Company to register the Eligible Energy Resource and own, hold and manage such RECs in Company's own name and to Company's account, including any rights associated with any renewable energy information or tracking system that exists or may be established (including but not limited to participants in any applicable REC Registration Program and the United States government) with regard to monitoring, registering, tracking, certifying, or trading such credits. Seller shall authorize Company to act as its agent for the purposes of registering the Eligible Energy Resource, and tracking and certifying RECs, and Company has full authority to hold, sell

or trade such RECs to its own account of said renewable energy information or tracking systems. Upon the request of Company, at no cost to Company, (i) Seller shall deliver or cause to be delivered to Company such attestations/certifications of RECs, and (ii) Seller shall cooperate with Company's registration and certification of RECs.

- 2. Company shall make all applications and/or filings required by Applicable Law from time to time for REC accreditation and for the provision of such RECs to Company.
- 3. Seller shall retain any RECs associated with any Excess Solar Energy and any curtailed energy pursuant to <u>Section 8.2(C)</u> that are not delivered to Company.
- (D) Seller shall make available to Company all Generation Benefits (other than RECs) and Ancillary Services associated with the Facility at no additional charge under this PPA. Any compensation Seller receives under the Interconnection Agreement or otherwise for Generation Benefits (other than RECs) or Ancillary Services associated with the Facility and its output shall be provided to Company at no additional cost to Company under this PPA. Seller shall credit Company, as a reduction to Seller's monthly invoice or other mutually agreed mechanism, for any compensation that Seller receives for Generation Benefits or Ancillary Services.
- 1. Seller shall use Commercially Reasonable Efforts to maximize the availability of Generation Benefits and Ancillary Services available from the Facility; *provided, however, that* Seller shall not be required to operate its Facility in a manner that reduces the real output of the Facility in order to maximize any Generation Benefits and Ancillary Services for Company.
- 2. In the event a Governmental Authority or Transmission Authority implements new or revised requirements for generators to create, modify, change, or supply Ancillary Services, requiring Seller to install additional equipment after the Commercial Operation Date to meet such requirements, then Seller shall be allowed to reduce the amount owed to Company for Ancillary Services by an amount sufficient to recover the cost of such additional equipment; *provided, however, that* the amount of credit shall in no event be less than zero. Any excess of such cost over the amount of the credit in any year shall instead be carried forward as a reduction of the amount of the credit in subsequent years.

Article 8 - Payment Calculations

8.1 Solar Energy Payment Rate.

(A) Prior to the Commercial Operation Date, Company shall pay Seller for Test Energy delivered to the Point of Delivery pursuant to <u>Section 4.4</u> at the Test Energy Rate. Seller shall not be entitled to Compensable Curtailment Energy payment prior to the COD in connection with Test Energy.

- (B) Commencing on the Commercial Operation Date, Company shall pay Seller the Solar Energy Payment Rate for Solar Energy delivered to the Point of Delivery. The Solar Energy Payment Rate for a specific Commercial Operation Year shall be effective on the first (1st) Day of the calendar month following the calendar month in which the applicable anniversary of COD occurs (for example, if COD occurs on December 10, 2016, the Solar Energy Payment Rate by Commercial Operation Year for the second Commercial Operation Year as described in <u>EXHIBIT</u> J shall be effective as of January 1, 2018).
- (C) In the event that the Solar Energy in any Commercial Operation Year (including any Compensable Curtailment Energy) exceeds one hundred fifteen percent (115%) of the Committed Solar Energy ("Excess Solar Energy"), Company shall have the option to either (i) pay Seller the Solar Energy Payment Rate for all such Excess Solar Energy and RECs associated therewith (if applicable), or (ii) elect not to accept any Excess Solar Energy.
- 1. Seller shall notify Company upon Seller's delivery of Solar Energy hereunder that exceeds one hundred ten percent (110%) of the Committed Solar Energy for a Commercial Operation Year. Company shall elect within ten (10) Business Days of Seller's Notice to either accept or decline the Excess Solar Energy after the date of Company's election and through the balance of such Commercial Operation Year.
- 2. If Company elects not to accept Excess Solar Energy, Seller shall have the right to sell such Excess Solar Energy (including associated RECs) to one or more third parties until the end of the applicable Commercial Operation Year, after which the Parties' obligations shall resume pursuant to this PPA; provided, however, that Seller shall be solely responsible for arranging transmission service and delivery arrangements to such third party at no cost to Company under this PPA.

8.2 <u>Curtailment Energy Payment Rate</u>.

- (A) If following Commercial Operation (i) delivery of Solar Energy is curtailed by Company pursuant to <u>Section 7.3</u>, or Company elects to utilize non-firm transmission service to deliver Solar Energy from the Point of Delivery and such non-firm transmission service is restricted or reduced by the applicable transmission service provider, except to the extent such restriction or reduction would also have been imposed even if firm transmission service had been in place, or an Economic Curtailment occurs, and (ii) any such reduction is not included as a Non-Compensable Curtailment, then:
- 1. the Parties shall determine the quantity of Solar Energy that would have been produced by the Facility (i) during those periods of time when the Facility is on AGC and the AGC Set-Point is set at a level that will not allow the entire Facility Nameplate Capacity to be deliverable by determining the difference between Potential Energy and the delivered Solar Energy, and (ii) during those

periods of time when the Facility is not on AGC or the AGC Set-Point is set at a level that will allow the Facility Nameplate Capacity to be deliverable by determining the amount that would have been available for delivery had its generation not been so curtailed ("Compensable Curtailment Energy").

- 2. Compensable Curtailment Energy shall be the number of MWh represented by the Potential Energy less the Solar Energy actually delivered and measured by the Electric Metering Devices (and excluding any Non-Compensable Curtailments) during the period of curtailment.
- 3. Company shall pay to Seller for such Compensable Curtailment Energy (net of any Non-Compensable Curtailments) all amounts that Seller would have received from Company under this PPA had such Compensable Curtailment Energy actually been delivered.
- (B) For purposes of determining Compensable Curtailment Energy, the amount of Potential Energy at any given time shall be calculated using the best-available data and methods to determine an accurate representation of the amount of Solar Energy.
- 1. To the extent available, Company agrees to use Seller's real time Park Potential communicated to Company through the SCADA System as the proxy for Potential Energy, except to the extent that Park Potential is demonstrated not to accurately reflect the Potential Energy (plus or minus two percent (2%) over a period of one month).
- 2. During those periods of time when the Park Potential is unavailable or does not accurately represent Potential Energy, the Parties shall use the best available data obtained through Commercially Reasonable methods to determine the Potential Energy.
- (C) Seller shall be entitled to sell any curtailed energy and associated RECs to third parties to whom Seller is able to successfully transact and deliver; provided, however, that the net amount realized for such sale shall offset amounts owed by Company for Compensable Curtailment Energy. Company shall reasonably cooperate with any such sales, and Seller accepts sole responsibility to obtain transmission rights to deliver such energy at no cost to Company. Seller accepts all risk of the unavailability of transmission rights during any curtailment.
- (D) Notwithstanding anything in this <u>Article 8</u> to the contrary, curtailments or reductions of delivery for any of the following reasons shall constitute "Non-Compensable Curtailments" and shall be excluded from Compensable Curtailment Energy, and no payment shall be due Seller under paragraph (A) above for curtailments of delivery of Solar Energy arising out of or resulting from:
 - 1. an Emergency;

- 2. any action taken which reduces or limits the allowable output of the Facility under the Interconnection Agreement or limited operation, provisional, or conditional interconnection agreement, including curtailments arising out of interconnection limits established by the Transmission Authority or market rules that make limited operation, conditional or provisional interconnection agreements subordinate to unconditional interconnection agreements;
- 3. the restriction or reduction of transmission service by the applicable transmission service provider to the extent such restriction or reduction would also have been imposed even if firm transmission service had been in place;
- 4. maintenance outages, whether planned or unplanned, of any part of the transmission system or any testing of the transmission system to the extent such maintenance outage or testing requires a restriction or reduction to the output of the Facility or Company's transmission service arrangements;
- 5. the lack of available transmission for generation from the Facility to the Point of Delivery;
- 6. Seller's failure to maintain in full force and effect any Permit to construct and/or operate the Facility to the extent such failure prevents the Seller from delivering Solar Energy to the Point of Delivery; and
- 7. Seller's failure to maintain AGC capability or its failure or refusal to respond to AGC instructions from the EMCC in a manner consistent with the terms of this Agreement.
- 8.3 <u>REC Payment Rate</u>. If Company exercises the REC Purchase Option, Company shall pay Seller the REC Payment Rate for each REC associated with Test Energy, Solar Energy, and any Excess Solar Energy delivered to and paid for by Company.
- 8.4 PTCs. As of the Effective Date, Seller anticipates that the Facility will be eligible to receive PTCs for its output in the amount of Fifteen Million Dollars (\$15,000,000) ("Expected PTC Payments"). If the Facility becomes eligible for and actually receives any PTCs, Seller will be entitled to one hundred percent (100%) of the all PTCs received up to the amount of Expected PTC Payments. Any additional PTCs actually received, whether due to a change in law or otherwise, (each an "Incremental PTC Payment") will be shared equally between the Parties. No later than thirty (30) Days after Seller's receipt of an Incremental PTC Payment, Seller will remit to Company a payment equal to fifty percent (50%) of the Incremental PTC Payment ("Shared PTC Payment"). Any disputes with respect to a Shared PTC Payment shall be resolved in accordance with Section 9.3.

Article 9 - Billing and Payment

9.1 Billing.

- (A) The billing period shall be the calendar month. Within ten (10) Days after the end of any month, Company will provide to Seller a statement containing the applicable billing parameters based on Company's reading of the Electric Metering Devices and Company's assessment of the amount due during the previous calendar month. No later than fifteen (15) Business Days after the end of each month, Seller shall submit an invoice to Company in a form and by a method mutually agreed to by the Parties showing the payment amount due Seller during the previous calendar month, specifying the Solar Energy, RECs (if applicable), and other products and services provided, all billing parameters, rates and factors, and any other data reasonably relevant to the calculation of payments due to Seller.
- (B) Seller shall include an explanation of any items in dispute, as well as all supporting documentation upon which Seller relies. Billing disputes shall be resolved in accordance with <u>Section 9.3</u>.
- (C) All billing data based on metered deliveries to Company shall be based on meter readings in accordance with <u>Section 5.2</u>.
- 9.2 <u>Payment</u>. Unless otherwise specified herein, undisputed payments shall be payable by check or electronic funds transfer, as designated by the owed Party, on or before the fifteenth (15th) Business Day following receipt of the 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.
- (A) If a payment is late, a late payment charge shall be applied to the unpaid balance for the number of days payment was late and shall be added to the next billing statement. Late payment charges shall include interest calculated using the prime rate of interest as published on the date of the invoice in *The Wall Street Journal* (or, if unavailable, an equivalent publication on or about that date).
- (B) Company at any time may offset against amounts owed to Seller, any liquidated amounts, accrued damages and other payments, and undisputed billing errors and adjustments, which are owed by Seller pursuant to this PPA.
- (C) Seller and Company shall net their obligations to each other under this PPA, and payment of the net amount will discharge all mutual undisputed obligations between the Parties.
- 9.3 <u>Billing Disputes</u>. Either Party may dispute invoiced amounts, but shall pay at least the undisputed portion on or before the date due. To resolve any billing dispute, the Parties shall use the procedures set forth in <u>Article 13</u>. 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, without late payment interest except to the extent that it shall have been established that the amount owed was not disputed in good faith, in which case late payment interest charges shall be calculated on the amount found not to have been disputed in good faith in accordance with the provisions of <u>Section 9.2</u>.

Article 10 - Operations and Maintenance

10.1 Operation and Administration.

- (A) Seller shall staff, control, and operate the Facility consistent with Good Utility Practices and the Operating Procedures. During daylight hours and/or when the Facility is capable of operation, personnel shall be available at all times via telephone or other electronic means with (i) the capability of remotely operating and stopping the Facility within ten (10) minutes, and (ii) the ability to be present at the Site within sixty (60) minutes or as soon as reasonably practicable.
- (B) Seller shall comply with the applicable requirements of NERC, ERO, Transmission Authority, FERC, or successor organizations, Company requirements, Governmental Authority, and Good Utility Practice in the operation of the Facility.
- 1. To the extent that the actions of Seller or the Facility contributes in whole or in part to actions that result in monetary penalties being assessed to Company by NERC, ERO, Transmission Authority, FERC, or other Governmental Authority, Seller shall reimburse Company for all such monetary penalties proximately caused by Seller or the Facility.
- (C) Seller shall be responsible for providing accurate and timely updates on the current availability of the Facility to Company's EMCC. Seller shall provide to Company a day-ahead availability forecast in accordance with Exhibit H Operating Standards (AGC Protocols, Data Collection). Seller acknowledges that such forecasting is consistent with the reporting requirements required for compliance with NERC standards intended to maintain reliability. Seller, as the generator, is primarily responsible for complying with applicable generator owner and operator NERC standards and reporting the information to Transmission Authority, ERO or other reliability coordinator. Company agrees to provide the forecasted information to the reliability coordinator on Seller's behalf; provided, however, that Seller shall remain responsible to ensure the reliability and accuracy of forecasts and any changes to the real-time or forecast availability of the Facility.

10.2 Facility Maintenance.

(A) Seller shall maintain the Facility in accordance with Good Utility Practice and relevant equipment manufacturers' requirements. Seller shall coordinate its regular maintenance requirements for the Facility with Company. Beginning with the first calendar month following COD and continuing through the balance of the Term, Seller shall provide monthly Maintenance Schedules to

Company in writing not later than the fifteenth (15th) Day of the preceding month ("Maintenance Schedule").

- (B) Except as otherwise agreed to by Company, Seller shall minimize the amount of scheduled maintenance during On-Peak Months to the full extent consistent with Good Utility Practices. During each Business Day of an On-Peak Month, Seller shall use Commercially Reasonable Efforts to (i) maximize the amount of Solar Energy produced by the Facility, and (ii) minimize the extent and duration of Forced Outages.
- (C) When Forced Outages occur, Seller shall notify Company's EMCC of the existence, nature, start time, and expected duration of the Forced Outage as soon as practical, but in no event later than thirty (30) minutes after Seller becomes aware that the Forced Outage has occurred. Seller shall immediately inform Company's EMCC of changes in the expected duration of the Forced Outage unless relieved of this obligation by Company's EMCC for the duration of the Forced Outage.

10.3 Books and Records.

- (A) 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; Forced Outages; information required by Applicable Law, Governmental Authority, Transmission Authority, or the ERO in the prescribed format; PTC Payments (if applicable), and other information reasonably requested by Company.
- (B) Seller and Company shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including such records as may be required by Governmental Authorities, Transmission Authority, NERC or ERO as applicable. All records of Seller pertaining to the operation of a Facility shall be maintained at Seller's Juno Beach, Florida facility or such other location as is mutually agreed to by the Parties.
- (C) Each Party shall keep all books and records necessary for metering, billing and payment and shall provide the other Party Commercially Reasonable access to those records.
- (D) Company may audit and examine from time to time upon request and during normal business hours: (i) Seller's Operating Procedures, (ii) equipment manuals and Operating Records, and (iii) data kept by Seller relating to transactions under and administration of this PPA, by Company with Applicable Law and relevant accounting standards. Seller shall maintain all such records at Seller's Juno Beach, Florida facility or some other mutually agreeable location and shall cooperate with Company's audit rights under this <u>Section 10.3</u>.

10.4 Operating Committee and Operating Procedures.

- (A) Company and Seller shall each appoint one representative and one alternate representative to act as the Operating Committee in matters relating to the Parties' performance obligations under this PPA and to develop operating arrangements for the generation, delivery and receipt of any output from the Facility. Operating Committee representatives shall be included in Exhibit D Notices and Contact Information.
- (B) The Operating Committee may develop mutually agreeable written Operating Procedures consistent with the requirements of this PPA, to address matters of day-to-day communications; key personnel; operations-center interface; metering, telemetering, telecommunications, and data acquisition procedures; operations and maintenance scheduling and reporting; reports; operations log; testing procedures; and such other matters as may be mutually agreed upon by the Parties.
- (C) The Operating Committee shall review the requirements for AGC from time to time after the date hereof and may agree on modifications thereto to the extent necessary or convenient for operation of the Facility in accordance with this PPA.
- (D) The Operating Committee shall have authority to act in all technical and day-to-day operational matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes; provided, however, that except to the extent explicitly provided for in this PPA, such representatives and the Operating Committee shall not have the authority to amend or modify any provision of this PPA.
- 10.5 Access to Facility. Appropriate representatives of Company shall have access to the Facility with Commercially Reasonable prior notice, to read meters and perform inspections as may be appropriate to facilitate the performance of this PPA. While at the Facility, such representatives shall observe such Commercially Reasonable safety precautions as may be required by Seller and shall conduct themselves in a manner that will not interfere with the operation of the Facility.
- 10.6 <u>Capacity Accreditation</u>. Company has certain planning, operating and reporting requirements. Seller shall complete at its own expense all applicable testing and reporting requirements for the Facility, including any required capacity testing pursuant to, and in accordance with, the procedures and guidelines applicable to Company-owned or purchased generation set forth in SPP Criteria as amended from time to time.

10.7 Real Time Data.

(A) Seller shall communicate all data necessary for Company to integrate the Facility into Company's EMCC in real time through the Facility's

SCADA System in accordance with the AGC Protocols. Seller shall maintain the Facility's SCADA System so that it is capable of interfacing with and reacting to Company's AGC Set-Point and responding to signals from the Company's EMCC in accordance with the AGC Protocols.

- 1. Seller shall use Commercially Reasonable Efforts to adjust the real time Park Potential when Company communicates to Seller a measured difference of plus or minus two percent (2%) between the metered Solar Energy, during a time where there was no AGC Set-Point, and Park Potential.
- 2. In the event that Company reasonably concludes that Seller is not (i) providing the data required by this <u>Section 10.7</u>, (ii) interfacing with and reacting to Company's AGC Set-Point as required by this PPA, and/or (iii) providing Park Potential data within the required margin of error, then upon Notice from Company, Seller shall, at Seller's expense, take those actions necessary to fully comply with this paragraph. Upon Seller's request, Company shall cooperate with Seller in taking any such actions.
- From the commencement of the delivery of Test Energy, Seller shall maintain a minimum of one meteorological station at the Facility. Beginning on the Commercial Operation Date (and up to sixty (60) Days prior thereto, if so requested by Company on reasonable prior notice), Seller shall provide Company, at Seller's expense, real time unit performance and meteorological data for all Solar Units and the meteorological station at the Facility in accordance with Exhibit H - Operating Standards (AGC Protocols, Data Collection) for the Term of this PPA. Seller shall undertake to maintain Seller-owned data collection systems that are compatible with Company's PI. Seller shall ensure that real time communications capabilities are available and maintained for the transmission to Company's PI. Seller shall ensure that all meteorological equipment at a minimum meets the specifications set forth in Exhibit H - Operating Standards (AGC Protocols. <u>Data Collection</u>). Company shall be entitled to disclose data gathered through the Company's PI to third parties as Confidential Information subject to the provisions of Section 20.18. Company shall have the right to disclose data gathered through the Company's PI system publicly; provided, however, that such data is (i) masked to obscure the origin of the data and (ii) aggregated so that the data cannot be correlated and used by competitors of Seller and/or the suppliers of Solar Units.

Article 11 - Security Fund

- (A) No later than thirty (30) Days following the Parties' receipt of the initial written order from the applicable State Regulatory Agency approving this PPA on terms and conditions satisfactory to Company and its sole discretion, Seller shall establish, fund, and maintain a Security Fund that is available to pay any amount due to Company pursuant to this PPA, and to provide Company security that Seller will satisfy its obligations under this PPA.
 - 1. The Security Fund shall equal the Pre-COD Security Fund

up to the COD, and the Post-COD Security Fund on and after the COD and throughout the Term.

- 2. Seller shall replenish the Security Fund within fifteen (15) Business Days after Company makes a draw on the Security Fund as authorized by this PPA, up to the required amount; *provided, however, that* Seller shall not be required to replenish the Security Fund to a level in excess of the remaining amount of the applicable Damage Cap. Notwithstanding the foregoing, Seller shall replenish all amounts drawn from the Security Fund in respect of damages described in Section 12.3(C).
- (B) Company may draw from the Security Fund such amounts as are necessary to recover amounts owing to Company that have not been timely paid pursuant to this PPA, including any damages due to Company and any amounts for which Company is entitled to indemnification under this PPA. Company may, in its sole discretion, draw all or any part of such amounts due to it from any form of security to the extent available pursuant to this Article 11 and in any sequence Company may select. Company's failure or delay to draw any amount from the Security Fund in any instance shall not prejudice Company's rights to subsequently recover such amount from the Security Fund or in any other manner.
- (C) The Security Fund shall be maintained at Seller's expense, shall be originated by or deposited in a financial institution or company ("<u>Issuer</u>") satisfying the requirements of this <u>Article 11</u>, and shall be in the form of one or more of the following instruments:
- 1. The Security Fund may be in the form of an irrevocable standby letter of credit in the form and substance of <u>Exhibit G-1 Form of Letter of Credit</u>, and any material changes to such Exhibit shall be subject to review and approval by Company at its sole discretion (the "<u>Letter of Credit</u>").
 - a. The Issuer for the Letter of Credit shall have and maintain an unsecured bond rating (unenhanced by third-party support) equivalent to A- by Standard & Poor's (or better) or A3 by Moody's (or better), and if ratings from either are not available, equivalent ratings from alternate rating sources reasonably acceptable to Company. If such rating is equivalent to A-, the Issuer must not be on credit watch or have a negative outlook by any rating agency.
 - b. The Letter of Credit must be for a minimum term of three hundred sixty (360) Days. Seller shall give Company at least thirty (30) Days' advance Notice prior to any expiration or earlier termination of the Letter of Credit. Seller shall cause the renewal or extension of the Letter of Credit or other authorized security for additional consecutive terms of three hundred sixty (360) Days or more (or, if shorter, the remainder of the Term) more than thirty (30) Days prior to each expiration date of the security. If the Letter of Credit or other security is not renewed or extended at least thirty (30) Days prior to its expiration date or

otherwise is terminated early, Company shall have the right to draw immediately upon the security and to 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) below, until and unless Seller provides a substitute form of such security meeting the requirements of this Article 11.

- The Security Fund may be in the form of United States currency, in which Company holds a first and exclusive perfected security interest, deposited with an Issuer who is a state or federally chartered commercial bank with operations in the State in which the Facility is located (or such other escrow agent acceptable to Company in its sole discretion) in an account under which Company is designated as beneficiary with sole authority to draft from the account or otherwise access the security (the "Escrow Account"). The Escrow Account shall be established pursuant to an Escrow Agreement substantially in the form attached as Exhibit G-3 - Escrow Agreement. Funds held in the Escrow 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. After the Commercial Operation Date, periodic sweeps by Seller for recovery of interest earned by the escrowed funds shall be allowed, and, at any time the balance in the Escrow Account exceeds the required amount of security, the escrow agent may remit any excess to Seller.
- Following COD, the Security Fund may consist of a guaranty substantially in the form of Exhibit G-2 - Form of Guaranty, from an Issuer with a minimum net worth of at least \$200,000,000 and a senior unsecured credit rating (unenhanced by third-party support) equivalent to BBB+ or better by Standard & Poor's or Baa1 or better by Moody's, and if ratings from both Standard & Poor's and Moody's (or if either one or both) are not available, equivalent ratings from alternate rating sources reasonably acceptable to Company. If such senior unsecured credit rating of the Issuer is exactly equivalent to BBB+, the Issuer must not be on credit watch or have a negative outlook by a rating agency. If the credit rating of the Issuer is downgraded or there has been a change that has a Material Adverse Effect in the creditworthiness of the Issuer, then Seller shall be required to convert the guarantee provided by such Issuer to a Security Fund instrument meeting the criteria set forth in either sub-paragraph (1) or sub-paragraph (2) above no later than ten (10) Business Days after receiving information from or about the Issuer that the Issuer no longer satisfies the requirements of this paragraph.
- (D) Promptly upon any draw upon the Security Fund, Company shall give Notice to Seller of the amount thereof and the reason therefor, including the obligation(s) that Seller has not satisfied which entitled Company to draw on the Security Fund.
- (E) Seller may change the form of the Security Fund at any time and from time to time upon Commercially Reasonable prior Notice to Company; *provided*,

however, that the Security Fund must at all times satisfy the requirements of this Article 11.

- (F) Company may reevaluate from time to time the value of any Security posted by Seller to determine, in a Commercially Reasonable manner, whether (i) it continues to satisfy the requirements in this PPA or (ii) there has been a change that has a Material Adverse Effect on the creditworthiness of the Issuer, such that it does not or, with the passage of time, it will no longer satisfy the requirements of this PPA. If Company determines, in a Commercially Reasonable manner, that there has been an event that has caused Seller's Security to no longer satisfy the requirements of this PPA, then Company shall provide prompt Notice to Seller of such event and after receipt of such Notice, Seller shall be required to provide alternative Security that satisfies the terms of this PPA.
- (G) The Security Fund shall survive termination of this PPA to be available to pay any amounts owed to Company arising prior to or upon termination. Promptly following (i) the end of the Term and the completion of all of Seller's obligations under this PPA, or (ii) termination of this PPA for any reason prior to the end of the Term, Company shall determine the amount, if any, owed by Seller for any obligations or damages arising out of this PPA. Company may draw such amount and shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller.
- (H) Seller shall reimburse Company for the incremental direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the preparation, negotiation, execution and/or release (including making a draw of funds) of any security instruments, and other related documents, used by Seller to establish and maintain the Security Fund pursuant to Seller's obligations under this Article 11.

Article 12 - Default and Remedies

- 12.1 Events of Default. Any of the following events shall constitute an Event of Default of the specified Party if such event has not been cured within the cure period specified for such event:
- (A) Either Party's failure to make any payment to the other Party as required by this PPA, including invoices pursuant to Article 9, Liquidated Delay Damages, Actual Damages, any required indemnification, or any other required payment, and such amount remains unpaid for a period of ten (10) Business Days after the date the defaulting Party receives Notice from the non-defaulting Party that the amount is overdue.
- (B) Either Party's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for a Party or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment against it without such authorization, consent

or application, which proceedings continue undismissed or unstayed for a period of sixty (60) Days from its inception.

- (C) Either Party's authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against a Party without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) Days from its inception or which result in adjudication of bankruptcy or insolvency within such time.
- (D) Either Party's unauthorized assignment of this PPA or Change of Control (other than a Permitted Transaction), immediately upon its occurrence and without further notice from the non-defaulting Party.
- (E) Any material representation or warranty made by a Party in this PPA that is false in any material respect when made, if it is proven that such Party knowingly or intentionally made such false representation or warranty.
- (F) Any material representation or warranty made by a Party in this PPA ceases to remain true during the Term if such cessation would reasonably be expected to result in a Material Adverse Effect on the non-defaulting Party immediately upon its occurrence and without further notice from the non-defaulting Party; if such misrepresentation is not remedied within ten (10) Business Days after notice is received by the defaulting Party; provided if the default is not reasonably capable of being cured within the ten (10) Business Day cure period specified above, the defaulting Party will have such additional time (not exceeding an additional forty-five (45) Days) as is reasonably necessary to cure the failure, so long as the Party promptly commences and diligently pursues the cure.
- (G) Seller's failure to establish and maintain the Security Fund as and in the amounts required that remains uncured for five (5) Business Days after Company provides Notice of Seller's failure.
- (H) Seller's failure to achieve Commercial Operation more than forty-five (45) Days after the Commercial Operation Milestone (after giving effect to Permitted Extensions); provided, however, that if during such period Seller provides a written opinion from a mutually agreeable independent engineer that the COD can reasonably be achieved within an additional forty-five (45) Day period, then Seller shall be allowed a total period not to exceed ninety (90) Days after the Commercial Operation Milestone to achieve Commercial Operation, provided further that Liquidated Delay Damages shall have been paid throughout the entire period of delay and that no additional cure period for such default shall be required.
 - (I) Seller's failure to deliver at least eighty five percent (85%) of the

Committed Solar Energy during any Commercial Operation Year, beginning with the second (2nd) Commercial Operation Year (a "<u>Committed Solar Energy Measurement Period</u>").

- 1. To the extent such failure to deliver Committed Solar Energy is attributable to (i) Seller Excuse Hours; (ii) actual solar irradiation falling below the Expected Solar Irradiation for the twelve (12) month period, as calculated using the methodology set forth in Exhibit L; or (iii) curtailment by Company under Sections 7.3 and 8.2, the contribution of such occurrences shall be imputed into the calculation of Committed Solar Energy for the purposes of, and only for the purposes of, establishing a default of Seller under this paragraph. Seller shall be permitted to add and/or replace Solar Units on the Site if and to the extent reasonably required to cure Seller's default pursuant to this paragraph.
- The failure to deliver Committed Solar Energy may be remedied if (i) within thirty (30) Days following the end of the applicable Committed Solar Energy Measurement Period, Seller cures the reason(s) for such default (or, if such cure cannot reasonably be effected within thirty (30) Days, Seller commences to cure such default within thirty (30) days and then diligently pursues such cure to completion as soon as practicable thereafter), and (ii) as a result of such efforts, during the Commercial Operation Year immediately subsequent to Seller's successful cure of the reason(s) for such default, either (a) the production of Solar Energy by the Facility (adjusted as provided in paragraph (1)) equals or exceeds ninety five percent (95%) of the Committed Solar Energy, or (b) the production of Solar Energy by the Facility (adjusted as provided in paragraph (1)) equal or exceeds ninety percent (90%) of the Committed Solar Energy and Seller has paid to Company liquidated damages in an amount equal to the Replacement Power Costs incurred by Company for the difference between (i) 95% of the Committed Solar Energy and (ii) the actual amount of delivered Solar Energy, in MWh, as adjusted pursuant to Section 12.2(I)(1).
- 3. Seller shall keep Company apprised at least monthly of Seller's cure efforts under this <u>Section 12.1(l)</u>, if any.
- (J) A termination or cessation of service under the Interconnection Agreement or any other agreement necessary for Seller to interconnect the Facility to the Transmission Authority's System; *provided, however, that* if the termination of, or cessation of service under, any such agreement is not due to the fault of Seller, Seller shall have sixty (60) days from such termination or cessation to cure such default or such longer cure period as provided in any such agreement.
- (K) The failure by either Party to perform or observe any other material obligation to the other Party under this PPA, that is not excused by Force Majeure; provided however, that: (i) neither Party shall be entitled to terminate this PPA on account of this Event of Default unless such failure shall remain unremedied for thirty (30) Days after Notice thereof shall have been given by the non-defaulting Party; and (ii) if the Event of Default is not reasonably capable of being cured within

the thirty (30) Day cure period specified above, the defaulting Party will have such additional time (not exceeding an additional ninety (90) Days) as is reasonably necessary to cure the failure, so long as the Party promptly commences the cure within the initial 30-Day cure period and diligently pursues the cure to completion thereafter.

- 12.2 <u>Remedies</u>. Upon the occurrence of any Event of Default of this PPA, the non-defaulting Party may pursue all rights and remedies available to it at law and in accordance with the terms of this PPA. Except as explicitly provided to the contrary in this PPA, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any other rights or remedies provided for herein.
- (A) <u>Termination and Damages</u>. For any uncured Event of Default, the non-defaulting Party may, at its option, do any, some, or all of the following:
- 1. Offset from any payments due from the non-defaulting Party any amount otherwise due, including any unpaid Liquidated Delay Damages or Actual Damages;
- 2. Seek Actual Damages in such amounts and on such basis for the default as authorized by this PPA;
- 3. In the case of an Event of Default by Seller, draw on the Security Fund for any unpaid Liquidated Delay Damages and Actual Damages, or any other required and unpaid amount;
- 4. In the case of an Event of Default by Seller occurring after the Commercial Operation Date, exercise Company's Step-In Rights.
- 5. Terminate this PPA immediately upon Notice, without penalty or further obligation to the defaulting Party. Upon the termination of this PPA under this <u>Section 12.2</u>, the non-defaulting Party shall be entitled to receive from the defaulting Party, subject to the Damage Caps, all of the Liquidated Delay Damages and Actual Damages in connection with the Event of Default resulting in such termination.
- (B) <u>Liquidated Delay Damages</u>. Prior to the COD, Seller shall be liable to pay Company Liquidated Delay Damages as a liquidated damage and not a penalty for any delay in meeting the Commercial Operation Milestone (after giving effect to Permitted Extensions) on the terms and conditions as follows:
- 1. Provided Seller actually pays Liquidated Delay Damages as and when owed, the payment of such Liquidated Delay Damages shall be Company's sole and exclusive remedy for Seller's failure to achieve, or Seller's delay

in achieving the Commercial Operation Milestone, except for the right to terminate the PPA as provided in Section 12.2(A)(5) above. Liquidated Delay Damages shall be payable in lieu of Actual Damages accrued for the period during which Liquidated Delay Damages are assessed. The Parties specifically recognize that Company's damages associated with any delays in achieving the Commercial Operation Milestone will be significant but that it will be difficult to quantify those damages.

- 2. All Liquidated Delay Damages shall begin to accrue on the Day after the Commercial Operation Milestone as may be extended pursuant to this PPA until the Day after such Commercial Operation Date is achieved.
- (C) <u>Actual Damages</u>. For all Events of Default arising after the COD, the non-defaulting Party shall be entitled to receive from the defaulting Party all direct damages proximately caused by such Event of Default ("<u>Actual Damages</u>") incurred by the non-defaulting Party; *provided, however, that* if an Event of Default has occurred and has continued uncured for a period of three hundred sixty-five (365) Days, the non-defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this PPA. If Seller is the defaulting Party, the Parties agree that Actual Damages recoverable by Company hereunder on account of an Event of Default of Seller may include the present value of the Replacement Power Costs. If Company is the defaulting Party, the Parties agree that Actual Damages may include any direct damages available under this PPA.
- (D) Specific Performance. In addition to the other remedies specified in this Article 12, in the event that any Event of Default of a Party is not cured within the applicable cure period set forth herein, the non-defaulting Party may elect to treat this PPA as being in full force and effect and the non-defaulting Party shall have the right to specific performance. By way of example, 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 that would result in the cure, or partial cure, of the Event of Default, Company's right to specific performance shall include the right to obtain an order compelling Seller to enforce its rights under the operating agreement.

12.3 Limitation on Damages.

- (A) Except as otherwise provided in this <u>Section 12.3</u>, (i) Seller's aggregate financial liability to Company for Liquidated Delay Damages shall not exceed Pre-COD Damage Cap, and (ii) Seller's aggregate financial liability to Company for Actual Damages shall not exceed the Post-COD Damage Cap (collectively the "<u>Damage Cap(s)</u>").
- (B) If at any time during the Term, Company incurs damages in excess of a Damage Cap that Seller does not agree to pay when billed by Company, Company shall have the right to terminate this PPA upon Notice.

- (C) The Damage Caps shall not apply to Actual Damages arising out of any of the following events:
- 1. damage to Company-owned facilities caused by Seller's acts or omissions.
- 2. Seller's intentional misrepresentation or misconduct in connection with this PPA or the operation of the Facility;
- 3. the sale or diversion by Seller to a third party of any capacity or energy committed to Company under this PPA except to the extent permitted by this PPA.;
- 4. Seller's failure (i) to have insurance coverages in the types and amounts required by this PPA at the time a casualty occurs, or (ii) to apply any insurance proceeds to restoration of damaged equipment of the Facility following a casualty, in each case except to the extent allowed by this PPA;
 - 5. any claim for indemnification under this PPA;
- 6. any Environmental Contamination caused by Seller in connection with this PPA; or
- 7. damages incurred by Company in connection with any bankruptcy or insolvency proceeding involving Seller, including Company's loss of the benefit of its bargain due to rejection or other termination of this PPA in such proceeding.
- (D) The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to Actual Damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, special, equitable or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); provided, however, that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, 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.

12.4 Step-In Rights.

(A) Upon the occurrence of an Event of Default occurring after the Commercial Operation Date, Company shall have the right, subject to the rights of the Facility Lender pursuant to the Lender Consent, but not the obligation, to exercise

its Step-In Rights for the period of time until Seller has cured its Event of Default or this PPA has been terminated. Exercising Step-In Rights shall not preclude or limit Company's right to exercise any remedy it has against Seller under this PPA. Seller shall not grant any person, other than the Facility Lender, a right to possess, assume control of, and operate the Facility that is equal to or superior to Company's right under this Section 12.4.

- (B) Seller irrevocably appoints Company as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions necessary to implement Company's Step-In Rights. Seller shall not grant any person, other than the Facility Lender, a right to possess, assume control of, or operate the Facility in derogation of Company's Step-In Rights.
- (C) Company acknowledges that the Facility Lender may foreclose and take possession of and operate the Facility and Company may be required to relinquish its Step-In Rights in such circumstance. Company's Step-In Rights shall be limited only by foreclosure of the Facility as a result of Seller's material default of its contractual obligations with the Facility Lender.
- (D) Company shall implement its Step-In Rights in conformance with Good Utility Practice and shall perform Seller's obligations in a manner consistent with Seller's duties under this PPA. Seller shall reimburse Company for its expenses and costs (including the fees and expenses of counsel) incurred by Company in connection with exercising its Step-In Rights. Company shall give Seller and the Facility Lender ten (10) Days' Notice in advance of exercising Company's Step-In Rights. Upon receipt of such Notice:
- 1. Seller shall make available at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Good Utility Practice.
- 2. Seller shall give Company, its employees, contractors, or designated third parties unrestricted access to the Site and the Facility.
- 3. Seller shall cooperate in the implementation of Company's Step-In Rights.
- 4. Company shall use the output generated and delivered from the Facility during such period in partial satisfaction of Seller's obligations hereunder.
- (E) Company may draw upon the Security Fund to cover any expenses incurred by Company in exercising its rights under this <u>Section 12.4</u>.
 - (F) Seller shall retain legal title to and ownership of the Facility.
 - (G) Company shall provide Seller with at least fifteen (15) Days'

Notice of Company's intent to relinquish its Step-In Rights. Company shall relinquish its Step-In Rights on the earliest of (i) termination of this PPA; (ii) Seller curing all outstanding defaults; (iii) Company's unilateral decision to relinquish possession of the Facility; or (iv) the Parties' mutual decision.

- (H) Company's Step-In Rights shall not constitute an assumption by Company of any liability attributable to Seller.
- 12.5 <u>Duty to Mitigate</u>. 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 PPA.

Article 13 - Dispute Resolution

- (A) In the event of any dispute arising under this PPA (a "Dispute"), within ten (10) Business Days following Notice by either Party, (i) each Party shall appoint a representative, and (ii) the representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the representatives cannot resolve the Dispute within thirty (30) Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to a designated representative of each Party's senior management. Within ten (10) Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within ten (10) Business Days after receipt of each Party's Dispute summaries, the senior management representatives for both Parties shall negotiate in good faith to resolve the Dispute. If such senior management representatives are unable to resolve the Dispute thereafter, either Party may seek available legal remedies.
- (B) If no Notice has been issued within twenty four (24) months following the occurrence of events or 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.
- (C) SELLER AND COMPANY EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS PPA OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF SELLER AND COMPANY RELATED HERETO AND EXPRESSLY AGREE TO HAVE ANY DISPUTES ARISING UNDER OR IN CONNECTION WITH THIS PPA BE ADJUDICATED BY A JUDGE OF THE COURT HAVING JURISDICTION WITHOUT A JURY.

Article 14 - Force Majeure

- 14.1 Applicability of Force Majeure. A Party shall be relieved of its obligations to perform this PPA and shall not be considered to be in default with respect to any obligation under this PPA if and to the extent such Party is prevented from fulfilling such obligation by Force Majeure, *provided, however, that*: (i) such Party gives prompt Notice describing the circumstances and impact of the Force Majeure; (ii) the relief from its obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure; (iii) such Party proceeds with due diligence to overcome the Force Majeure and resumes performance of its obligations under this PPA; and (iv) such Party provides Notice prior to the conclusion of the Force Majeure.
- 14.2 <u>Limitations on Effect of Force Majeure</u>. Force Majeure shall only relieve a Party of such obligations as are actually precluded by the Force Majeure. In no event will the existence of Force Majeure extend this PPA beyond its stated Term. If a Force Majeure affecting Seller continues for an uninterrupted period of ninety (90) Days from its inception (with respect to Force Majeure occurring prior to COD) or three hundred sixty-five (365) Days from its inception (with respect to Force Majeure occurring after COD), Company may, at any time following the end of such period, terminate this PPA upon Notice to Seller, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination; provided, however, that if the Force Majeure is one that can be corrected through repair or restoration work to the Facility or other actions by Seller, and Seller provides evidence that it is diligently pursuing such actions, then Company shall not have the right to terminate this PPA for an additional ninety (90) day period during any suspension so long as (i) Seller is using Good Utility Practice to complete such repair work, restoration or such other actions, and (ii) prior to expiration of the initial ninety (90) or three hundred sixty-five (365) Day period, Seller informs and provides reasonable proof to Company of Seller's intention and ability to undertake and complete such actions.
- 14.3 <u>Delays Attributable to Company</u>. Seller shall be excused from performing its obligations under this PPA where Seller can establish that such a failure was caused by (i) any delay or failure by Company to perform its obligations under this PPA, or (ii) any delay or failure by the Transmission Authority to perform its obligations under the Interconnection Agreement, in each case whether or not caused by Force Majeure.

Article 15 - Representations and Warranties

- 15.1 <u>General Representations and Warranties</u>. Each Party hereby represents and warrants to the other as follows, which representations and warranties will be deemed to be repeated, if applicable, by each Party throughout the Term:
- (A) It is a valid separate legal entity, duly organized, validly existing and in good standing under Applicable Law. It is qualified to do business in the State

in which the Facility is located and each other jurisdiction where the failure to so qualify would have a Material Adverse Effect on the business or financial condition of the other Party; it has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

- (B) The Party's execution, delivery, and performance of all of its obligations under this PPA have been duly authorized by all necessary corporate action, and do not and will not:
- 1. require any consent or approval by any governing corporate or management body, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to the other Party upon its request);
- 2. violate any Applicable Law, or violate any provision in any formation documents, the violation of which could have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA;
- 3. result in a breach or constitute a default under the representing Party's formation documents or bylaws, or under any agreement relating to its management or affairs or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which it is a party or by which it or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA; or
- 4. result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of the representing Party now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA.
- (C) This PPA is a valid and binding obligation of the representing Party.

- (D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the representing Party is a party or any judgment, order, or Applicable Law, applicable to it or its business.
- (E) Within the meaning of the United States bankruptcy code, (i) this PPA constitutes a "master netting agreement," (ii) all transactions pursuant to this PPA constitute "forward contracts" or a "swap agreement," (iii) the representing Party is a "forward contract merchant" and "master netting agreement participant," and (iv) and all payments made or to be made pursuant to this PPA constitute "settlement payments."
- (F) It is (i) an "eligible contract participant" as defined in Section 1a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. §1a(12); (ii) a "market participant" under applicable exchange and market rules; (iii) a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of this PPA, or the products or byproducts thereof; and (iv) entering into this PPA solely for purposes related to its business as such.
- (G) This PPA grants each Party the contractual right to "cause the liquidation, termination or acceleration" of the transactions within the meaning of Sections 556, 560 and 561 of the bankruptcy code, as they may be amended, superseded or replaced from time to time. Upon a bankruptcy, a non-defaulting Party shall be entitled to exercise its rights and remedies under this PPA in accordance with the safe harbor provisions of the bankruptcy code set forth in, inter alia, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 548(d)(2), 556, 560 and 561, as they may be amended, superseded or replaced from time to time.
- 15.2 <u>Seller's Specific Representation</u>. To the best knowledge of Seller, and except for those Permits identified in <u>Exhibit F Seller's Permits</u>, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Permits, or other action required by any Governmental Authority to authorize Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.
- 15.3 <u>Company's Specific Representation</u>. To the best knowledge of Company, and except for the State Regulatory Approval identified in <u>Section 6.1</u>, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Company's execution, delivery and performance of this PPA, have been duly obtained and are in full force and effect.

Article 16 - Insurance

16.1 <u>Evidence of Insurance</u>. No later than commencement of construction and then on or before June 1 of each year during the Term thereafter, Seller shall provide Company with two copies of insurance certificates acceptable to Company evidencing that insurance coverages for the Facility are in compliance with the

specifications for insurance coverage set forth in Exhibit E — Insurance Coverage to this PPA. Such certificates shall (a) name Company as an additional insured (except workers' compensation); (b) provide that Company shall receive thirty (30) Days prior Notice of non-renewal or cancellation of any of the corresponding policies (except that such Notice shall be ten (10) Days for non-payment of premiums; (c) provide a waiver of any rights of subrogation against Company, its Affiliates and their officers, directors, agents, subcontractors, and employees; and (d) indicate that the Commercial General Liability policy has been endorsed as described above. All policies shall be written with insurers with an AM Best rating of at least A-VII or a Standard & Poor's rating of at least A. All policies shall be written on an occurrence basis, except as provided in Section 16.2. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by Company. Seller's liability under this PPA is not limited to the amount of insurance coverage required herein.

16.2 <u>Term and Modification of Insurance</u>.

- (A) All insurance required under this PPA shall cover occurrences during the Term and for a period of two years after the Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this PPA and such insurance shall be maintained by Seller for a minimum of six years after the Term.
- (B) Company shall have the right, at times deemed appropriate to Company during the Term, to request Seller to modify the insurance minimum limits specified in Exhibit E Insurance Coverage in order to maintain Commercially Reasonable coverage amounts. Seller shall make all Commercially Reasonable Efforts to comply with any such request.
- (C) If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide Notice to Company, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and capacity. Upon receipt of such Notice, Seller shall attempt to obtain other insurance that would provide comparable protection against the risk to be insured.
- 16.3 <u>Application of Proceeds</u>. Seller shall apply any insurance proceeds to reconstruction of the Facility following a casualty.

Article 17 - Indemnity

17.1 <u>Indemnification</u>. Each Party (the "<u>Indemnifying Party</u>") agrees to indemnify, defend and hold harmless the other Party (the "<u>Indemnified Party</u>") from and against all third-party claims, demands, losses, liabilities, penalties, and

expenses (including attorneys' fees) for personal injury or death to persons and damage to the Indemnified Party's real property and tangible personal property or facilities or the property of any other person or entity, or for any third-party claims in connection with this PPA, to the extent arising out of, resulting from, or caused by (i) an Event of Default or other breach under this PPA, (ii) violation of Applicable Laws, negligent or tortious acts, errors, or omissions, or (iv) intentional acts or willful misconduct of the Indemnifying Party, its Affiliates, directors, officers, employees, or agents.

- (A) This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Indemnified Party, but the Indemnifying Party's liability to indemnify the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party's negligent or intentional acts, errors or omissions caused the damages.
- (B) Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.
- (C) Nothing in this <u>Section 17.1</u> shall enlarge or relieve Seller or Company of any liability to the other for any breach of this PPA.
- 17.2 <u>Notice of Claim.</u> Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative proceeding, legal proceeding, or investigation as to which the indemnity provided for in this <u>Article 17</u> may apply, the Indemnified Party shall give Notice thereof to the Indemnifying Party. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however, that* if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs.
- 17.3 <u>Settlement of Claim</u>. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided, however, that* settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.
- 17.4 <u>Amounts Owed</u>. Except as otherwise provided in this <u>Article 17</u>, in the event that a Party is obligated to indemnify and hold the other Party and its

successors and assigns harmless under this <u>Article 17</u>, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a Commercially Reasonable effort by the Indemnified Party to obtain such insurance proceeds.

Article 18 - Lender Provisions

- 18.1 Accommodation of Facility Lender. To facilitate Seller's obtaining of financing to construct and operate the Facility, Company shall make Commercially Reasonable Efforts to provide such consents to collateral assignment, certifications, representations, information or other documents (including, but not limited to, estoppel certificates related to a Tax Equity Financing), as may be reasonably requested by Seller or the Facility Lender in connection with the financing of the Facility consistent with the terms set forth in Exhibit I - Lender Consent Provisions (generally, a "Lender Consent"); provided, however, that in providing a Lender Consent, Company shall have no obligation to alter or modify the terms of the PPA or provide any consent or enter into any agreement, in each case that has a Material Adverse Effect on any of Company's rights, benefits, risks, or obligations under this PPA. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the Lender Consent and any documents requested by Seller or the Facility Lender, and provided by Company, pursuant to this Section 18.1. Seller shall provide Company with a Notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender.
- 18.2 <u>Facility Lender Notice and Right to Cure</u>. Seller shall provide Company with a Notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender. Following receipt of such Notice, Company shall provide Notice of any breach or default of Seller to the Facility Lender, and Company will accept a cure performed by the Facility Lender, so long as the cure is accomplished within the applicable cure period set forth in this PPA or the Lender Consent.
- 18.3 <u>Notice of Facility Lender Action</u>. Within ten (10) Days following Seller's receipt of each 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 Company.
- 18.4 Officer Certificates. Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available personnel and records relating to the Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation, including administrative proceedings before utility regulatory commissions.

Article 19 - Assignment and Other Transfer Restrictions

- 19.1 <u>Transfer Without Consent Is Null and Void</u>. Except for any Permitted Transfer, any Change of Control or sale, transfer, or assignment of any interest in the Facility or in this PPA made without fulfilling the requirements of this PPA shall be null and void and a breach of this PPA.
- (A) Except as permitted in this <u>Section 19.1</u>, neither Party shall assign this PPA or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that (i) at least thirty (30) Days' prior Notice of any proposed assignment requiring consent shall be given to the other Party; (ii) any assignee shall expressly assume the assignor's obligations under this PPA unless otherwise agreed by the other Party; (iii) no assignment shall relieve the assignor of its obligations under this PPA in the event the assignee fails to perform, unless the other Party waives in writing the assignor's continuing obligations under this PPA; (iv) no assignment shall impair any security given by Seller unless such security has been replaced in accordance with <u>Article 11</u>; and (v) before this PPA is assigned by Seller, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities. For the avoidance of doubt, the requirements delineated in romanettes (ii) through (iv) of this <u>Section 19.1</u> shall apply to all assignments, including Permitted Transactions.
- 1. Seller's consent shall not be required for Company to assign this PPA to an Affiliate of Company; provided, however, that Company shall remain liable for obligations incurred under this PPA unless released in accordance with the terms of this PPA. In the event that a permitted assignee of Company is an entity that provides retail electric service in the State in which the Facility is located and is subject to rate and quality service regulation under the jurisdiction of the State Regulatory Agency and has or attains an Investment Grade, Seller shall release Company from its obligations under this PPA if Company requests to be so released by Notice to Seller.
- 2. Company's consent shall not be required for Seller to assign this PPA, for collateral purposes, to the Facility Lender. Seller shall provide Company Notice of any such assignment no later than thirty (30) Days after the assignment.
- 3. Company's consent shall not be required for any assignment by a Facility Lender to a (i) Qualified Operator or (ii) to a third-party that contracts with a Qualified Operator, after the Facility Lender has exercised its foreclosure rights with respect to the PPA or the Facility.
- (B) Any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Company, which shall not be unreasonably withheld; *provided, however, that* Company shall have no obligation to provide any such consent prior to the fulfillment and expiration of all rights conferred pursuant to <u>Section 19.2</u>.

19.2 Option, ROFO and PFT.

- (A) Seller hereby grants to Company, and its Affiliates, (i) an option to purchase (A) fifty percent (50%) of the equity interests in Seller (the "Partial Interest") prior to the Commercial Operation Date or (B) either (1) the Facility Property or (2) one hundred percent (100%) of the equity interests in Seller (the "Full Interest"), exercisable upon the dissolution or winding up of NextEra YieldCo and within six (6) months prior to the Scheduled Termination Date (the "Option"), on the terms and conditions set forth in this Section 19.2(A). Company, or its Affiliate, may and shall exercise its Option by providing at least one hundred twenty (120) Days' Notice to Seller of its intent to purchase the Partial Interest, Full Interest or Facility Property (collectively, the "Acquired Interest"), as applicable.
- 1. The purchase price shall be the higher of (i) fair market value of the Acquired Interest; or (ii) the Facility Debt or, in the case of the acquisition of the Partial Interest, fifty percent (50%) of the Facility Debt as of the Notice date.
- 2. Within thirty (30) Days of Company or its Affiliate's Option exercise, the Parties shall jointly appoint a qualified, independent appraiser. If the Parties cannot agree, then each Party shall select an appraiser and the two appraisers shall appoint the appraiser. Seller shall provide all information regarding Acquired Interest necessary for the appraiser's determination of fair market value. The appraiser shall complete its appraisal within sixty (60) Days of receipt of all such necessary data. The costs of the appraisal shall be included as part of the purchase price. During the period in which the appraiser is evaluating the Acquired Interest, as applicable, Seller shall allow Company or its Affiliate the Commercially Reasonable opportunity to investigate the proposed transaction and conduct due diligence.
- 3. Upon determination of fair market value of the Acquired Interest, the Parties shall use Commercially Reasonable Efforts to negotiate and sign definitive agreements consummating the transaction within ninety (90) Days. Upon payment of the purchase price, Seller shall execute and deliver to Company or its Affiliate all instruments necessary to effect transfer of ownership of the Acquired Interest, as applicable, to Company or its Affiliate, subject only to the liens of Facility Lenders Company or its Affiliate elects to assume.
- 4. After the Company or its Affiliate's Option is exercised and continuing through closing on any resulting sale, Seller shall maintain the physical Facility Property in Commercially Reasonable condition and to perform those contractual and other obligations under agreements comprising any portion of the Facility Property.
- (B) At any time after the Commercial Operation Date, if (i) Seller, (ii) any Affiliate of Seller, or (iii) members of Seller holding a majority of the equity interests in Seller, offers to convey the Facility or a majority of the equity interests in Seller to an unaffiliated third party (other than pursuant to a

Permitted Transaction or to a Tax Equity Investor), Seller shall simultaneously offer Company a right of first offer with respect to the proposed transaction (the "ROFO"). Seller shall identify (i) the buyer, (ii) the nature and terms of the transaction, and (iii) the minimum price Seller is willing to accept to proceed with the contemplated transaction (the "ROFO Notice"). All information disclosed to Company by Seller with respect to the ROFO shall be deemed Confidential Information and subject to Section 20.18.

- 1. Seller shall allow Company or its Affiliate sixty (60) Days after the ROFO Notice to investigate the proposed transaction and conduct due diligence. Within such period, Company or its Affiliate shall either (i) exercise its ROFO rights on substantially comparable terms to the proposed transaction or (ii) cancel its ROFO rights.
- 2. If Company or its Affiliate exercises its ROFO rights, the Parties shall have an additional one hundred twenty (120) Day period to sign definitive agreements on terms no less favorable to Company than those contained in the ROFO Notice. Seller shall cooperate in all respects necessary for Company or its Affiliate to exercise its ROFO rights.
- 3. If Company or its Affiliate does not exercise its ROFO rights, Seller shall have the right to close its proposed transaction with the identified prospective buyer; *provided, however, that* such transaction shall have an aggregate value of not less than the minimum price set forth in the ROFO Notice and the transaction shall have been closed not more than nine (9) months following expiration of the Company and its Affiliates' right to exercise its ROFO rights.
- To the extent Seller proposes a Pending Facility Transaction that does not otherwise trigger Company's ROFO rights, Seller shall give Company at least ninety (90) Days' prior Notice of such Pending Facility Transaction (a "PFT Notice") in order to provide Company or its Affiliate with an opportunity to discuss and negotiate with Seller the possible sale of the equity interests in Seller or the Facility Property, as applicable, to Company or its Affiliate. Any PFT Notice shall include a fair summary of Seller's plans with respect to the Facility in connection with the proposed Pending Facility Transaction, to the extent then known by Seller. All information disclosed to Company by Seller with respect to the ROFO shall be deemed Confidential Information and subject to Section 20.18. Seller shall have no obligation to sell nor shall Company have any obligation to purchase the equity interests in Seller or the Facility Property, as applicable, following any PFT Notice; provided, however, that issuance of a PFT Notice shall not relieve Seller of its obligations to provide a ROFO Notice if and when applicable pursuant to this Section 19.2. In the event that the transaction giving rise to the PFT Notice has not been completed within nine (9) months of the PFT Notice, Seller shall be required to resubmit the PFT Notice for such transaction.
- 19.3 <u>Subcontracting</u>. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Company; *provided, however, that* no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

Article 20 - Miscellaneous

20.1 <u>Notices</u>. Notices required by this PPA shall be in writing and addressed to the other Party, including the other Party's representative on the Operating Committee, at the addresses noted in <u>Exhibit D – Notices and Contact Information</u> as either Party updates them from time to time by Notice to the other Party. Notices shall be either hand delivered or mailed, postage prepaid. If mailed, Notices shall be simultaneously sent by facsimile or other electronic means. Any Notice 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 the close of the Business Day, 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 20.1.

20.2 Taxes and Change of Law.

- (A) Seller shall be solely responsible for any and all present or future taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Facility, or any components or appurtenances thereof, any sales or *ad valorem* taxes relating to the Facility, or any taxes on the products and services generated by Seller, sold and delivered to Company at the Point of Delivery. Seller's prices under <u>Article 8</u> are inclusive of such taxes and impositions during the Term.
- (B) Company shall be solely responsible for the payment of any taxes imposed by Governmental Authorities on the Solar Energy purchased under this PPA beyond the Point of Delivery.
- (C) The Parties shall cooperate to minimize tax exposure; *provided, however, that* neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder. All electric energy delivered by Seller to Company hereunder shall be sales for resale, with Company reselling such electric energy. Company shall obtain and provide Seller with any certificates required by any Governmental Authority, or otherwise reasonably requested by Seller to evidence that the deliveries of electric energy hereunder are sales for resale.
- 20.3 <u>Applicable Laws</u>. Each Party shall at all times comply with all Applicable Laws, except for any non-compliance that, individually or in the aggregate, could not reasonably be expected to have a material effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder.
- (A) As applicable, each Party shall give all required notices, shall procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this PPA, and shall pay its respective charges and fees in connection therewith.
 - (B) Each Party shall promptly disclose to the other, any violation of

any Applicable Laws arising out of or in connection with the Facility and this PPA.

(C) Upon permanent cessation of generation from the Facility, Seller shall decommission the Facility, remove the Facility and remediate the Site as, if and when required by Applicable Laws.

20.4 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 PPA, or any contractual obligation, Permit or requirements of Applicable Law, except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination.
- (B) If fees, fines, penalties, or costs are claimed or assessed against Company by any Governmental Authority due to noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, or if the work of Seller or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, Seller shall reimburse and hold Company harmless against any such costs incurred by Company, including claims for indemnity or contribution made by third parties against Company in accordance with Article 17.

20.5 Rate Changes.

- (A) The terms and conditions and the rates for service specified in this PPA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this PPA 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 PPA whether proposed by a Party, a non-party, or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in <u>United Gas Pipe Line v. Mobile Gas Service Corp.</u>, 350 U.S. 332 (1956) and <u>Federal Power Commission v. Sierra Pacific Power Co.</u>, 350 U.S. 348 (1956) (the Mobile-Sierra doctrine), as interpreted in <u>Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1</u>, 128 S. Ct. 2733 (2008).
- 20.6 <u>Disclaimer of Third-Party Beneficiary Rights</u>. In executing this PPA, Company does not and does not intend to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this PPA.

20.7 Relationship of the Parties.

- (A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Except as specifically provided for in this PPA to the contrary, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.
- (B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of Company for any purpose; nor shall Seller represent to any person that he or she is or shall become a Company employee.
- 20.8 <u>Equal Employment Opportunity Compliance Certification</u>. Seller acknowledges that as a government contractor Company is subject to Applicable Laws regarding equal employment opportunity and affirmative action. Such Applicable Laws may also be applicable to Seller as a subcontractor to Company. All such Applicable Laws shall be deemed to be incorporated herein as required by Applicable Law, including 41 C.F.R. §60-1.4(a)(1)-(7).
- 20.9 <u>Survival of Obligations</u>. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations, including warranties, remedies, or indemnities, that by their nature should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.
- 20.10 <u>Severability</u>. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided*, *however*, *that* Company and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.
- 20.11 <u>Complete Agreement: Amendments.</u> The terms and provisions contained in this PPA constitute the entire agreement between Company and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Company and Seller with respect to the sale of any output from the Facility. This PPA, including Exhibits, may be amended, changed, modified, or altered in accordance with the

terms of this PPA; *provided, however, that* such amendment, change, modification, or alteration shall be in writing.

- 20.12 <u>Binding Effect</u>. This PPA is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, legal representatives, and assigns.
- 20.13 <u>Headings</u>. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.
- 20.14 <u>Counterparts</u>. This PPA may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument.
- 20.15 <u>Governing Law</u>. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State in which the Facility is located, exclusive of conflict of laws principles. The Parties submit to the exclusive jurisdiction of the federal district courts of the State in which the Facility is located, and venue is hereby stipulated as the capital city of such State or such other city as mutually agreed to by the Parties.
- 20.16 Press Releases and Media Contact. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size, type and timing of the Facility, the long-term nature of this PPA, and other relevant factual information about the relationship. In the event, during the Term, either Party is contacted by the media concerning this PPA or the Facility, the contacted Party shall inform the other Party of the existence of the inquiry, any questions asked, and the substance of any information provided to the media.
- 20.17 <u>Exhibits</u>. Either Party may change the information in <u>Exhibit D Notices and Contact Information</u> at any time by Notice without the approval of the other Party. All other Exhibits may be changed to the extent allowed by specific provisions of this PPA or with the mutual consent of both Parties.

20.18 Confidentiality.

- (A) Although this PPA is not Confidential Information, the Parties acknowledge and agree that during the course of the performance of their respective obligations under this PPA, either Party may need to provide information to the other Party, which the disclosing party deems confidential, proprietary or a trade secret ("Confidential Information").
- 1. Confidential Information shall include all documentation and data, including special techniques, methods, computer programs and software, that the disclosing Party considers proprietary or trade secret and furnishes to the receiving Party and wants the receiving Party to treat as Confidential Information. Disclosing Party shall designate Confidential Information by clear and distinct notation on such documentation or by equivalent method, and shall be treated as

such by the receiving Party. Documentation and data not so designated need not be considered by the receiving Party to be proprietary or trade secret; provided, however, that any and all data and documentation regarding Facility output, performance, outages and similar operational information shall be considered Confidential Information without the need for further designation if any disclosure thereof would be in a form or by a means that associates such data or documentation with the Facility or Seller or any of its Affiliates, or from which a reasonable person could make such an association. The disclosing Party hereby grants to the receiving Party authority to use Confidential Information for the purposes of this PPA, including keeping electronic copies of such Confidential Information. The receiving Party agrees to keep such Confidential Information confidential, except as set forth in this <u>Section 20.18</u>, to use it for work necessary to the performance of this PPA, and not to sell, transfer, sublicense, disclose or otherwise make available any such Confidential Information to others; provided, however, that Confidential Information may be disclosed by the receiving Party (i) to the agents, employees, advisors, consultants, or potential or actual debt or equity investors of the receiving Party, subject to their acceptance of the obligations of confidentiality imposed hereby and for whose violations of this requirement of confidentiality the receiving Party shall be responsible and (ii) pursuant to Applicable Law, including all Laws and regulations governing disclosure to a State Regulatory Agency.

- 2. Confidential information shall not include any data or information that:
 - a. can be documented was in the public domain as allowed by this <u>Section 20.18</u>, or through no fault or action of the receiving Party at the time it was disclosed by the disclosing Party to the receiving Party or at any time thereafter;
 - b. can be documented was independently developed by the receiving Party;
 - c. can be documented was known to the receiving Party from an ultimate source other than the disclosing Party without breach of this PPA by the receiving Party;
 - d. is disclosed by a Party, in connection with such Party's performance of its obligations under this PPA, to its consultants or contractors or other third parties who are in turn subject to a confidentiality agreement with the disclosing Party to treat the information at least with the care required by this PPA; or,
 - e. is legally requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process or, in the opinion of its counsel, by Applicable Laws) to be disclosed in a judicial or administrative proceeding other than a proceeding before a State Regulatory Agency; *provided, however, that* the Party requested or required to make a disclosure shall promptly notify the non-disclosing Party, no later than five (5) Days after such request or requirement and

prior to disclosure so that the non-disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of this <u>Section 20.18</u>.

3. In proceedings before a State Regulatory Agency, a Party may disclose Confidential Information pursuant to the State Regulatory Agency's procedures relating to confidential information; provided, however, that if the designation of such information as Confidential Information is contested or a Party is required to disclose information which a Party has labeled "Highly Confidential Information," the Party requested or required to make a disclosure shall promptly notify the non-disclosing Party, no later than five (5) Days after such request or requirement and prior to disclosure so that the non-disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of this Section 20.18.

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IN WITNESS WHEREOF, the Parties have executed this PPA.

Seller:

CHAVES COUNTY SOLAR, LLC, A Delaware Limited Liability Company

Michael O'Sullivan Vice President

Company:

Southwestern Public Service Company

By:

David T. Hudson, President Southwestern Public Service Company

EXHIBIT A DEFINITIONS

The following terms shall have the meanings set forth herein:

"Actual Damages" has the meaning set forth in Section 12.2(C).

"Acquired Interest" shall have the meaning set forth in Section 19.2(A).

"Affiliate" means any person or entity that directly or indirectly controls, is under the control of, or is under common control with, the named entity by the power to direct or cause the direction of the management of the policies of named entity, whether through ownership interest, by contract or otherwise.

"AGC" or "Automatic Generation Control" means the equipment and capability of an electric generation facility to automatically adjust the generation quantity within the applicable Balancing Authority with the purpose of interchange balancing and specifically, the Facility's capability of accepting AGC Set-Point electronically and automatically adjusting and regulating the Facility's energy production via the Facility's SCADA System.

"AGC Protocols" means the protocols attached hereto as Exhibit H - Operating Standards (AGC Protocols. Data Collection), as modified in accordance with Section 10.4.

"AGC Remote/Local" means a handshake electronic signal sent from the Facility to the EMCC AGC system, and from the EMCC AGC system to the Facility, indicating the Facility is receiving AGC Set-Point locally (from the facility) or remotely (EMCC AGC system) and is following that AGC Set-Point.

"AGC Set-Point" means the Company-generated analog or digital signal sent by the SCADA System to the Facility, representing the maximum Solar Energy output for the Facility.

"Ancillary Services" means those ancillary services defined under the Transmission Tariff as well as those other services and products that may be included under such tariff from time to time, which are associated, directly or indirectly, with the capacity of the Facility or the transmission of energy from the Facility.

"Applicable Law" means all laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority that are applicable to a Party, the business of a Party or the Facility, now in effect or hereafter enacted; amendments to or interpretations of any of the foregoing by a Governmental Authority having jurisdiction; and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions.

"Back-Up Metering" shall have the meaning set forth in Section 5.2(B).

"Balancing Authority" means the system of electrical generation, distribution and transmission facilities within which generation is regulated in order to maintain interchange schedules with other such systems.

"Business Day" means any Day that is not a Saturday, a Sunday, or a FERC recognized holiday.

"Change of Control" means the occurrence of any one of the following events with respect to Seller or any direct or indirect owner of a majority of the ownership interests in Seller: (i) a transfer of a majority of the ownership interests in Seller or such owner; or (ii) any consolidation or merger of Seller or such owner in which Seller or such owner, as the case may be, is not the continuing or surviving entity, or (iii) a sale or conveyance of any direct or indirect ownership interest in Seller following which NextEra Energy, Inc. is no longer the direct or indirect owner of at least fifty percent (50%) of the ownership interests of Seller, provided, however, that a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

"COD Conditions" means all of the requirements that must be satisfied by Seller as a prerequisite to achieving Commercial Operation as set forth in Section 4.3.

"Code" means the Internal Revenue Code of 1986, as amended.

"<u>Commercial Operation</u>" means the period beginning on the Commercial Operation Date and continuing through the Term of this PPA.

"Commercial Operation Date" or "COD" means 12:00 am on the date following the date upon which Seller satisfies the COD Conditions, or such other date as is mutually agreed upon by the Parties.

"Commercial Operation Milestone" means the Construction Milestone for the Commercial Operation Date specified in Exhibit B – Construction Milestones.

"Commercial Operation Year" means any consecutive 12 month period during the Term, commencing with the Commercial Operation Date or any of its anniversaries.

"Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any action required to be made, attempted or taken by a Party under this PPA, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action at a reasonable cost; (b) is consistent with Good Utility Practices; and (c) takes into consideration the amount of advance notice required to take such action, the duration and type of action and the competitive environment in which such action occurs.

"Committed Solar Energy" for any period means the megawatt-hours of Solar Energy committed to be delivered to the Company by Seller from the Facility in such

period, set forth in Exhibit J – Committed Solar Energy and Solar Energy Payment Rate (by Commercial Operation Year). For any period that does not coincide with a Commercial Operation Year, Committed Solar Energy shall be calculated as the month-weighted sum of the Committed Solar Energy falling in each of the two Commercial Operation Years using expected monthly generation profile data, set forth in Exhibit K - Expected Monthly Generation Profile.

"Committed Solar Energy Measurement Period" shall have the meaning set forth in Section 12.1(I)

"Company" shall have the meaning set forth in the first paragraph of this PPA.

"<u>Compensable</u> Curtailment <u>Energy</u>" shall have the meaning set forth in Section 8.2(A)(1).

"Confidential Information" shall have the meaning set forth in Section 20.18(A).

"Construction Contract" means the contract or contracts providing for the engineering, procurement, construction, acquisition, manufacture, delivery and installation of the generating and step-up transformation equipment that is to be part of the Facility and the engineering, procurement and construction of the Facility.

"Construction Milestones" means the dates set forth in Exhibit B – Construction Milestones.

"Damage Caps" shall have the meaning set forth in Section 12.3(A).

"Day" means a calendar day.

"Dispute" shall have the meaning set forth in Article 13.

"Economic Curtailment" shall mean curtailments of delivery of Solar Energy that arise from Company's scheduling and other market participation activities as may be required of Seller by the Market Operator, if any, including any such curtailment arising from any energy offer made by, or on behalf of, Company with respect to the Facility. If Seller asserts that any curtailment was an Economic Curtailment and Company disputes that such curtailment arose from such scheduling or market participation activities of Company, Company shall furnish to Seller, subject to Section 20.18, copies of such records of Company relating to Company's scheduling and market participation activities as Seller reasonably requests for purposes of resolving the dispute.

"Effective Date" shall have the meaning set forth in the introductory paragraph.

"<u>Electric Metering Devices</u>" means revenue quality meters, metering equipment and data processing equipment used to measure, record or transmit data relating to the output from the Facility, including the metering current transformers and the metering voltage transformers.

"<u>Eligible Energy Resource</u>" means any resource that qualifies as a renewable energy resource eligible to be certified to receive, claim, own or use Renewable Energy Credits pursuant to the protocols and procedures developed and approved by the State Regulatory Agency in the REC Registration Program.

"Emergency" means any event or occurrence after the date of this PPA that results in the declaration of an Emergency Condition under and as defined in the Interconnection Agreement.

"Energy Markets Control Center" or "EMCC" means Company's merchant representatives responsible for dispatch of generating units, including the Facility.

"Energy Resource Interconnection Service" means the type of interconnection service which allows Seller to connect the Facility to the transmission or distribution system, as applicable, as an "Energy Resource" as defined by the Transmission Tariff, and be eligible to deliver the Facility's output using the existing firm or non-firm capacity on the transmission system on an as-available basis.

"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 Applicable Law and present a material risk under Applicable Laws that the Site will not be available or usable for the purposes contemplated by this PPA.

"Equity Interests" has the meaning set forth in Section 19.2(A).

"ERO" means the Electric Reliability Organization certified by FERC pursuant to Section 215 of the Federal Power Act or any successor organization; the Southwest Power Pool is the certified ERO as of the date of this PPA.

"<u>Escrow Account</u>" shall have the meaning set forth in <u>Article 11(C)(2)</u>. "<u>Event of Default</u>" shall have the meaning set forth in <u>Article 12</u>.

"Excess Solar Energy" shall have the meaning set forth in Section 8.1(C).

"Expected Solar Irradiation" for any 12-month period means the annual average solar irradiation values from the GeoModel SolarGIS time series data set file for the coordinates of Site (N 33.450°, W 104.456°). The Expected Solar Irradiation (global horizontal) is 2045 kWh/m²/yr.

"Facility" means Seller's electric generating facilities, associated balance of plant, parts and equipment consistent with the warranties for the major components, and all equipment necessary to interconnect to the Transmission Authority's System, all as further described in Exhibit C - Facility Description and Site Maps, including all of the following: Seller's equipment, buildings, Solar Units, generators, step-up transformers, output breakers, facilities necessary to connect to the 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 construction, operation,

maintenance, generation and delivery of the capacity and energy subject to this PPA.

"Facility Debt" means the obligations of Seller or its Affiliates pursuant to the Financing Documents, including principal of, premium on 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. For the avoidance of doubt, Facility Debt includes Tax Equity Financing.

"<u>Facility Lender</u>" means, collectively, any lenders providing any Facility Debt and any successors or assigns thereto and any Tax Equity Investors.

"Facility Property" means all property rights necessary for the use of the Facility for its intended purpose, including (i) the Facility; (ii) the Site; (iii) Seller's Interconnection Facilities; (iv) the Facility collection facilities and substation; (v) Seller's rights and obligations under the Interconnection Agreement; (vi) Permits, and all material contracts; and (vii) all Facility fixtures, equipment and personal property.

"<u>Federal Power Act</u>" means the provisions of 16 U.S.C. §791(A) *et seq.* and amendments or supplements thereto.

"FERC" means the Federal Energy Regulatory Commission or any successor agency.

"<u>Financing Documents</u>" means the documents associated with any Tax Equity Financing and the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction or permanent debt financing 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" means an event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) is not within the control of or the result of the fault or negligence of the Party claiming its occurrence, and (ii) by exercise of due diligence and foresight could not reasonably have been avoided, including acts of God; sudden action of the elements such as floods, earthquakes, hurricanes, tornados, lightning, fire, ice storms, smoke or other particulates from volcanoes; sabotage; the discovery of Native American burial grounds not evidenced in Seller's Phase 1 environmental assessment of the Site, conducted in accordance with ASTM standards; the discovery of endangered species, as defined by Applicable Law; vandalism beyond that which could reasonably be prevented by Seller; terrorism; war; riots; explosion; blockades; insurrection; except as set forth in subsection (e) below, labor strikes, slowdowns or labor disruptions (in which case the affected Party shall have no obligation to settle

the strike or labor dispute on terms it deems unreasonable); actions or inactions by any Governmental Authority taken after the date hereof (including the adoption or change in any rule, Applicable Law 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 following COD, provided, however, that Force Majeure shall not include: (a) inability, or excess cost, to procure any equipment necessary to perform the obligations of this PPA; (b) acts or omissions of a third party, unless such acts or omissions are themselves excused by reason of Force Majeure; (c) mechanical or equipment breakdown or inability to operate if such breakdown or inability to operate is attributable to Seller's failure to operate and maintain the equipment in accordance with Good Utility Practices or the applicable manufacturer's instructions; (d) changes in market conditions; or (e) any labor strikes, slowdowns, work stoppages, or other labor disruptions limited to Seller, Seller's Affiliates, or any third party employed by Seller to work on the Facility.

"<u>Forced Outage</u>" means any condition at the Facility that requires the immediate and unplanned removal of the Facility, or at least ten percent (10%) thereof, from service, another outage state, or a reserve shutdown state, resulting from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to abnormal Facility conditions or alarms.

"Full Interest" shall have the meaning set forth in Section 19.2(A).

"Generation Benefits" means existing or future environmental benefits or attributes, economic and other related carbon credits, carbon offsets, carbon allowances or benefits, Renewable Energy Credits or green tags, carbon dioxide emissions credits, and avoided or reduced carbon dioxide emissions that are attributable to Energy generated by the Seller and sold to Company under this PPA, whether pursuant to or arising from any Governmental Authority or international agreement or treaty, provided, however, that this definition excludes (i) any credits, offsets or other benefits arising out of or associated with any emission or pollutant other than carbon dioxide emissions, (ii) any local, state or federal depreciation deductions or other tax credits providing a tax benefit to Seller based on ownership of, or energy production from, any portion of the Facility, including the ITCs that may be available to Seller with respect to the Facility, and (iii) depreciation and other tax benefits arising from ownership or operation of the Facility unrelated to its status as a generator of renewable or environmentally clean energy.

"Good Utility Practices" means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the electric power generation industry pertaining to facilities of the same type as and similar size and location to the Facility that, at a particular time, in the exercise of Commercially Reasonable judgment, in light of the facts that are known, or reasonably should have been known, at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, Permits, codes, standards, equipment manufacturer's

recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices is not limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the applicable segment of the electric power generation industry in the relevant region, during the relevant period.

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

<u>"Hazardous Materials"</u> 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, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of 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.; (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 §9601 et seq.; (ix) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 et seq.

"<u>House Power</u>" means retail power to the Facility, for purposes of unit start-up or shut-down, or for any other purpose.

"Incremental PTC Payment" has the meaning set forth in Section 8.4.

"Indemnified Party" shall have the meaning set forth in Section 17.1.

"Interconnection Agreement" means the separate agreement for interconnection of the Facility to the Transmission Authority's System, as such agreement may be amended from time to time. For purposes of this PPA, the Interconnection Agreement shall be interpreted to include any third party facility construction agreement or other Agreement required by the Transmission Authority to interconnect the Facility in accordance with the Transmission Tariff.

"Interconnection Facilities" means those facilities designated in the Interconnection Agreement for the direct purpose of interconnecting the Facility at the Interconnection Point, along with any easements, rights of way, surface use

agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities, whether owned by Seller, the Transmission Authority or another entity. This equipment is conceptually depicted in Exhibit C – Facility Description and Site Maps to this PPA.

"Interconnection Point" means the physical point within the operational authority of Transmission Authority, as specified in the Interconnection Agreement, at which electrical interconnection is made between the Facility and the Transmission Authority's System in accordance with the Transmission Tariff and the Interconnection Agreement.

"Investment Grade" means a long-term credit rating (corporate or long-term senior unsecured debt) of (a) Baa3 or higher by Moody's, and (b) BBB- or higher by S&P.

"Issuer" shall have the meaning set forth in Article 11.

"ITC" means an investment tax credit applicable to electricity produced from certain renewable resources pursuant to Code §48.

"ITC Recapture Amount" means the amount payable (determined on an after-tax basis) to the IRS by Seller under Code §50(a) due to Seller's ineligibility for ITC after such time as Seller or its Affiliate, Tax Equity Investor or Facility Lender has claimed the ITC

"kW" means kilowatt.

"kWh" means kilowatt hour.

"Lender Consent" shall have the meaning set forth in Section 18.1.

"Letter of Credit" shall have the meaning set forth in Article 11(C)(1).

"<u>Liquidated Delay Damages</u>" means \$200 per MW of Facility AC Nameplate Capacity per Day.

"Local Provider" means the utility providing House Power to the Facility.

"Maintenance Schedule" has the meaning set forth in Section 10.2(A).

"Market Operator" means the entity that instructs market participants and/or generators to regulate generation assets, including the Facility, within any energy market in which Company participates with respect to the Renewable Energy or capacity attributes and Ancillary Services based on price-based offer curves for the purpose of matching generation output to system load demand while maintaining bulk electric system reliability. If such entity is also the Transmission Provider, then "Market Operator" shall be construed to mean such entity acting in its capacity as the entity that instructs market participants and/or generators to regulate generation assets, including the Facility, within the energy market in which Company participates

with respect to the Renewable Energy or capacity attributes or Ancillary Services based on price-based offer curves for the purpose of matching generation output to system load demand while maintaining bulk electric system reliability.

"<u>Material Adverse Effect</u>" means any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results in operations, or condition (financial or otherwise), prospects, or property of a Party, its business, or this PPA.

"MW" means megawatt or one thousand kW.

"MWh" means megawatt hours.

"Nameplate Capacity" means the designed maximum output for the Facility at the Point of Delivery in AC and shall equal [] MW.

"NEER" means NextEra Energy Resources, LLC.

"NERC" means the North American Electric Reliability Corporation or any successor organization.

"Network Resource" means the applicable amount of capacity for the Facility that has been designated as a "network resource" under the Transmission Tariff.

"NextEra YieldCo" means, collectively, NextEra Energy Operating Partners, LP and any entity in which NextEra Energy Operating Partners, LP holds, directly or indirectly, fifty percent (50%) or more of the equity interests.

"Non-Compensable Curtailment" shall have the meaning set forth in Section 8.2.

"Notice(s)" shall have the meaning set forth in Section 20.1.

"<u>On-Peak Months</u>" means the months of January, February, June, July, August, September and December.

"<u>Operating Committee</u>" means one representative each from Company and Seller pursuant to <u>Section 10.4</u>.

"Operating Procedures" means those procedures developed pursuant to Section 10.4, if any.

"<u>Operating Records</u>" means all agreements associated with the Facility, operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that Seller uses or maintains for the operation of the Facility.

"Option" shall have the meaning set forth in Section 19.2(A).

"Park Potential" means the number provided to the Company in real time through the Company's SCADA System in accordance with the AGC Protocols, which depicts Seller's real time calculation of the Potential Energy capable of being provided by the Facility to Company as measured at the Point of Delivery. Park Potential shall be calculated as the aggregate energy available in real time for delivery at the Point of Delivery using the best-available data obtained through Commercially Reasonable methods, and shall be dependent upon measured plane- of-array solar insolation, temperature, barometric pressure, wind speed (mph), wind direction, Solar Unit availability, derate(s) and transmission line losses, and any other adjustment necessary to accurately reflect the Potential Energy at the Point of Delivery.

"Partial Interest" shall have the meaning set forth in Section 19.2(A).

"Party" and "Parties" shall have the meanings set forth in the introductory paragraph.

"Pending Facility Transaction" or "PFT" means (i) any proposed Change of Control of Seller, (ii) the issuance by Seller or any of its Affiliates of a request for proposals or the response by Seller or any of its Affiliates to a request for proposal or similar process (e.g., auction) for the purchase or sale to any unaffiliated third party of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility, (iii) the commencement by Seller or any of its Affiliates of substantive negotiations with any unaffiliated third party with respect to the sale of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility, and (iv) the execution by Seller or any of its Affiliates of any letter of intent, memorandum of understanding or similar document, whether or not legally binding, which contemplates the sale or lease to an unaffiliated third party of any equity interests in Seller or the Facility or any group(s) of assets or equity interests that includes the Facility, provided, however, that a PFT does not include (v) any financing, refinancing or replacing of the Facility Debt by Seller or any of its Affiliates; (w) any transaction between and among Affiliates of Seller; and (x) any transaction in which Company declined to exercise its ROFO rights; (y) any Tax Equity Financing; and (z) any Permitted Transaction.

"Permit(s)" means all applicable construction, land use, air quality, emissions control, environmental and other permits, licenses and approvals from any Governmental Authority required under Applicable Laws for construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility to Company.

"Permitted Transfer" means any of the following:

transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates, provided, however, that the equity interests in Seller (excluding interests held by Facility Lender) continue to be held, directly or indirectly, no less than fifty percent (50%) by NextEra Energy, Inc. or NextEra Energy YieldCo,

any exercise by a Facility Lender of its rights and remedies under the Financing Documents,

- (ii) a Change of Control of the Ultimate Parent Entity of Seller.
- (iii) any change of economic and voting rights triggered in Seller's organization documents arising from the financing of the Facility and which does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change,
- (iv) the direct or indirect transfer of shares of or equity interests in Seller to a Tax Equity Investor; or
- (v) a transfer of the Facility packaged with any of the following:
 - a. all or substantially all of the assets of NEER or Seller's Ultimate Parent Entity;
 - b. all or substantially all of the renewable energy generation portfolio of NEER or Seller's Ultimate Parent Entity; or
 - all or substantially all of the solar generation portfolio of NEER or Seller's Ultimate Parent Entity; provided that the Facility does not represent more than fifty percent (50%) of the generation of such solar generation portfolio; or
 - d. all or substantially all of the equity interest of NextEra YieldCo; provided, however, that in the case of each of (a), (b) (c), and (d), the entity that operates the Facility following such transfer is (or contracts with) a Qualified Operator.

"Permitting Delay" shall have the meaning set forth in Section 4.2(A)

"PFT Notice" shall have the meaning set forth in Section 19.2(C).

"Phase 1" shall have the meaning set forth in Section 4.1(A).

"PI" means the "plant information" system as described and implemented in Section 10.7(B).

"Point of Delivery" means the physical point within the operational authority of the Transmission Authority at which Seller makes available to Company and delivers to Company the Solar Energy being provided by Seller to Company under this PPA. The Point of Delivery is the 115kV bus within the Company's Chaves Substation.

"Post-COD Damage Cap" means \$150/kW [multiplied by the number of AC kW in the Facility Nameplate Capacity].

"Post-COD Security Fund" means \$75/kW [multiplied by the number of AC kW

in the Facility Nameplate Capacity].

"Potential Energy" means the quantity of the energy that Seller is capable of delivering at the Point of Delivery. In the event that Park Potential is not a reliable proxy for Potential Energy pursuant to Section 8.2(B), Potential Energy shall be calculated as the aggregate energy available for delivery at the Point of Delivery using the best-available data obtained through Commercially Reasonable methods, and shall be dependent upon measured Solar speeds, power curves, Solar Unit availability, derate(s) and transmission line losses, and any other adjustment necessary to accurately reflect the Facility's capability to produce and deliver energy to the Point of Delivery.

"PPA" shall have the meaning set forth in the introductory paragraph.

"Pre-COD Damage Cap" means \$150/kW [multiplied by the number of AC kw in the Facility Nameplate Capacity].

"Pre-COD Security Fund" means \$150/kW [multiplied by the number of AC kW in the Facility Nameplate Capacity].

"PTC" means the New Mexico Renewable Energy Production Tax Credit, pursuant §7-2A-19 of the New Mexico Statutes.

"PTC Payment" has the meaning set forth in Section 8.4.

"Qualified Operator" means NextEra Energy Resources Operating Services, LLC or an operator of solar generation facilities that demonstrates to Company's reasonable satisfaction that it has sufficient experience to successfully operate the Facility, including a minimum of three (3) years' experience in the solar energy generation and operation business, and owns, controls or operates a minimum of two hundred (200) MW of solar energy generation capacity.

"REC Payment Rate" means, if applicable, the amount shown in Exhibit J as the rate per REC associated with Test Energy, Solar Energy, and any Excess Solar Energy delivered to and paid for by Company.

"REC Registration Program" means any State, regional or federal program established to register Eligible Energy Resources and create and certify RECs arising from energy generated from such resources, including any rights associated with any renewable energy information or tracking system that exists or may be established by Applicable Law with regard to monitoring, registering, tracking, certifying, or trading such credits.

"Renewable Energy Credits" or "RECs" means in *Texas*: pursuant to PUCT Substantive Rule 25.173(c)(13), one MWh of Renewable Energy that is physically metered, verified in Texas and meets the requirements set forth in subsection (e) of PUCT Substantive Rule 25.173 and in *New Mexico*: a renewable energy certificate within the meaning of Part 572 of Title 17, Chapter 9, New Mexico Administrative Code, with respect to 1,000 kWh of generated Renewable Energy. For the

avoidance of doubt, "RECs" excludes (i) any local, state or federal depreciation deductions or other tax credits providing a tax benefit to Seller based on ownership of, or energy production from, any portion of the Facility, including the ITC that may be available to Seller with respect to the Facility under Applicable Laws, and (ii) depreciation and other Tax Benefits arising from ownership or operation of the Facility unrelated to its status as a generator of renewable or environmentally clean energy.

"Replacement Power Costs" means the costs incurred by Company, after the Commercial Operation Milestone, that are necessary to replace the products and services that Seller was required to provide under this PPA, but failed to so provide, less the sum of any payments from Company to Seller, under this PPA, that were eliminated as a result of such failure; provided, however, that the net amount shall never be less than zero in any hour and, if the calculation for any hour results in a number less than zero, the number for such hour shall be deemed to be zero. Replacement Power Costs shall be determined on an hourly basis and shall equal the sum of all hours where the following calculation achieves a positive number.

Replacement Power Costs = (A + B + C) - D, where

"A" is the product of (x) the number of MW of the Nameplate Capacity (AC) and (y) the applicable market price for AC capacity made available to Company's system;

"B" is the sum of (i) the product of the number of MWh of energy purchased by Company to replace any of the Committed Solar Energy that was not delivered under this PPA and the applicable market price for energy delivered to Company's system at a point nearest to the Point of Delivery for the hour, and (ii) the product of the MWh of energy derived in clause (i) and the actual cost of registered RECs for that number of MWh:

"C" is an amount equal to the actual cost of transmission, ancillary services, fuel and fuel transportation and related penalties that could not be avoided or mitigated and transaction charges to deliver reasonably available energy to Company in amounts equal to the number of MWh for which Replacement Power Costs are owed; and

"D" is the product of the Committed Solar Energy that was not delivered under this PPA and the Solar Energy Payment Rate.

"Replacement Sales Amount" means the sum of any payments which Company should have made but did not make to Seller less the revenue received, if any, by Seller for sales in mitigation of damages with respect to the Solar Energy and other products and services that Company was required to accept and purchase under this PPA, but failed to purchase.

"ROFO" shall have the meaning set forth in Section 19.2(B).

"ROFO Notice" shall have the meaning set forth in Section 19.2(B).

"SCADA" means supervisory control and data acquisition.

"Scheduled Termination Date" means the twenty-fifth (25th) anniversary of the Commercial Operation Date.

"Security Fund" means the letter of credit, escrow fund, guaranty and/or other collateral that Seller is required to establish and maintain, pursuant to Article 11, as security for Seller's performance under this PPA.

"Seller" shall have the meaning set forth in the introductory paragraph.

"Seller Excuse Hours" means those hours during which Seller is unable to schedule or deliver Solar Energy to Company as a result of (A) Non-Compensable Curtailments; (B) Force Majeure; (C) Economic Curtailments; and (D) any unexcused failure of Company to perform any obligation of Company under this PPA that causes Seller to be unable to generate or deliver Solar Energy to the Point of Delivery.

"Shared PTC Payment" has the meaning set forth in Section 8.4.

"Site" means the parcel of real property on which the Facility will be constructed and located, including 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 the Facility. The Site is more specifically described in Exhibit C - Facility Description to this PPA.

"Solar Energy" means the net electric energy generated from (or, with respect to any curtailed energy, capable of being generated from) the Facility using solar electric generation technologies, including any and all associated RECs and delivered to the Point of Delivery as measured by the Electric Metering Devices installed pursuant to Section 5.2. Solar Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement. Solar Energy shall be net of energy self-generated and concurrently consumed by the Facility, and net of losses prior to the Point of Delivery.

"Solar Energy Payment Rate" means the applicable rate as shown in Exhibit J — Committed Solar Energy and Solar Energy Payment Rate (by Commercial Operation Year). If the Company is not purchasing all of the RECs associated with the Solar Energy, the appropriate Solar Energy Payment Rate shall be as set forth in the column labeled "Rate \$/(MWh) excluding RECs." If the Company is purchasing all of the RECs associated with the Solar Energy, the appropriate Solar Energy Payment Rate shall be as set forth in the column labeled "Rate \$/(MWh) with RECs."

"Solar Units" means the equipment necessary for the Facility to collect sunlight at the Site and convert it into electricity or thermal energy. Solar Units include photovoltaic modules, inverters, transformers, and tracking devices.

"SPP" or "Southwest Power Pool" means the Southwest Power Pool, a NERC regional electric reliability council and Regional Transmission Organization, or any

successor organization.

"State Regulatory Agency" means, as applicable, the Public Utility Commission of Texas or the New Mexico Public Regulation Commission.

"State Regulatory Approval" means a final, written order of the State Regulatory Agency that is not subject to application for rehearing, reargument and reconsideration, and that makes the affirmative determination that Company's execution of this PPA is reasonable and in the public interest, and all costs incurred under this PPA are recoverable from the retail customers pursuant to Applicable Law, subject only to the requirement that the State Regulatory Agency retains ongoing prudency review of Company's performance and administration of this PPA.

"Step-In Rights" means Company's right, but not the obligation, to assume control of and operate the Facility as agent for Seller (whether voluntary or involuntary) in accordance with Seller's rights, obligations, and interest under this PPA.

"Tax Benefits" means any and all (i) tax credits based on ownership of, investment in or energy production from the Facility or any portion thereof, including the production credit and the investment credit described, respectively, in Sections 45 and 48 of the Code, as amended, (ii) grants based on ownership of, investment in or energy production from the Facility or any portion thereof, including the grant described in Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, and (iii) other tax benefits, including depreciation and other cost recovery deductions, arising in connection with ownership of, investment in, or operation of the Facility, or any portion thereof, in each case allocated, allowed, allowable, assigned, awarded, certified or otherwise transferred or granted to Seller or its Affiliate or Company by any Governmental Authority in any jurisdiction in connection with the Facility.

"Tax Equity Financing" means a transaction or series of transactions involving one or more investors seeking a return that is enhanced by tax credits and/or tax depreciation (each a "Tax Equity Investor") and generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without "leverage")), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a solar project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Code, as amended (a pass-through lease).

"<u>Term</u>" means the period of time during which this PPA shall remain in full force and effect as further defined in <u>Article 2</u>.

"<u>Test Energy</u>" means that energy which is produced by the Facility prior to COD but not before June 30, 2016, delivered to Company at the Point of Delivery, and purchased by Company, pursuant to <u>Section 4.4.</u>

"Test Energy Rate" means a payment rate of seventy percent (70%) of the

Solar Energy Payment Rate applicable as of the Commercial Operation Date.

"Transmission Authority" means collectively those entities owning and/or operating the Interconnection Facilities and the interconnected transmission system applicable to Seller and the Facility pursuant to the Transmission Tariff, including (i) Southwestern Public Service Company operating under and in accordance with the SPP OATT, and ii) all entity(s) responsible under the Interconnection Agreement for providing the transmission lines, any Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Interconnection Point to the transmission system.

"<u>Transmission Authority's System</u>" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Authority has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Interconnection Point.

"Transmission Delay" shall have the meaning set forth in Section 4.2(B).

"<u>Transmission Provider</u>" means the Southwest Power Pool, Inc., its successors or assigns, or any similar entity that in the future may replace SPP with respect to all or a substantial part of its current responsibilities.

"<u>Transmission Tariff</u>" means the applicable Open Access Transmission Tariff of the Transmission Authority, as amended from time to time.

"<u>Ultimate Parent Entity</u>" shall have the meaning set forth under Section 7A of the Clayton Act, 15 U.S.C. §18a, also known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

* * * * *

EXHIBIT B CONSTRUCTION MILESTONES

Construction Milestone	Outcome
12/1/2015	Seller and all required counterparties have executed major procurement contracts, the Construction Contract, any operating agreements, and the Interconnection Agreement needed to commence construction of the Facility.
12/1/2015	Seller shall have achieved closing on financing for the Facility or provided SPS with proof of financial capability to construct the Facility.
5/1/2016	Commencement of construction of the Facility
12/1/2016	Commercial Operation Milestone.

EXHIBIT C FACILITY DESCRIPTION AND SITE MAPS

Road, near the City of Roswell in Chaves County, New Mexico. The approximate center of the Site is at 33.438050°, -The Facility is a 70 MW AC (at the at the Point of Delivery) solar photovoltaic power generation station located on the approximately 550 acres. The address of the Facility is along Horizon Road, near the intersection with Wrangler 104.440656°. The Facility will interconnect to the Company's Chaves Substation located approximately one mile northwest of the Site, and the Southwest Power Pool interconnection study queue position is GEN-2014-034. Site and shall be identified as the Seller's Chaves County Solar Generation Facility. The Site consists or

GEN-2014-035), Seller reserves the right to use a larger step-up transformation and associated electrical equipment in order to combine the projects' interconnection facilities, including the gen-tie to Company's Chaves County Substation, Maps and one-line diagrams of the Facility and associated equipment are included as part of this Exhibit. The panels, preliminary design and are subject to change based on detailed engineering and procurement. Additionally, if Seller's Affiliate develops an incremental project up to 30 MW AC (under study by Southwest Power Pool as queue position inverters, associated equipment, and Site boundary and acreage shown on the attached diagrams are based or while metering the projects separately for scheduling and settlement purposes.

The Facility must include the following specific components:

- * have the panel space and 125VDC battery supplied voltage necessary to accommodate the metering, telemetering and communications equipment required by the PPA;
- communication circuits from the Facility to the EMCC for the purpose of telemetering, supervisory control/data acquisition, and voice communications as required by Company;
- * equipment and software necessary to receive, accept and react to an AGC signal from the Company's SCADA System and to comply with the AGC Protocols as further specified on Exhibit H-AGC Protocols
- * each Solar Unit is equipped with meteorological measurement equipment (e.g. anemometers), individually linked to Seller's information system; and,
- * capability of sending real time data and OPC interface to Company's plant information PI system.

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CHAVES COUNTY SOLAR:
ROSWELL, NEW MEXICO SOLAR ELECTRIC SYSTEM PROJECT - 70.0 MW

PROJECT TEAM: DRAWING INDEX:	1000 NO. 1111.2 120 VO. 111.2 120 VO. 120		
PROJECT TEAM:	Company Control of the Control of th		
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PROJECT LOCATION:	ансьяния в высыпности в	• overno	STREET MAP:

TITLE SHEET

CHAVES COUNTY
SOLAR

W-001

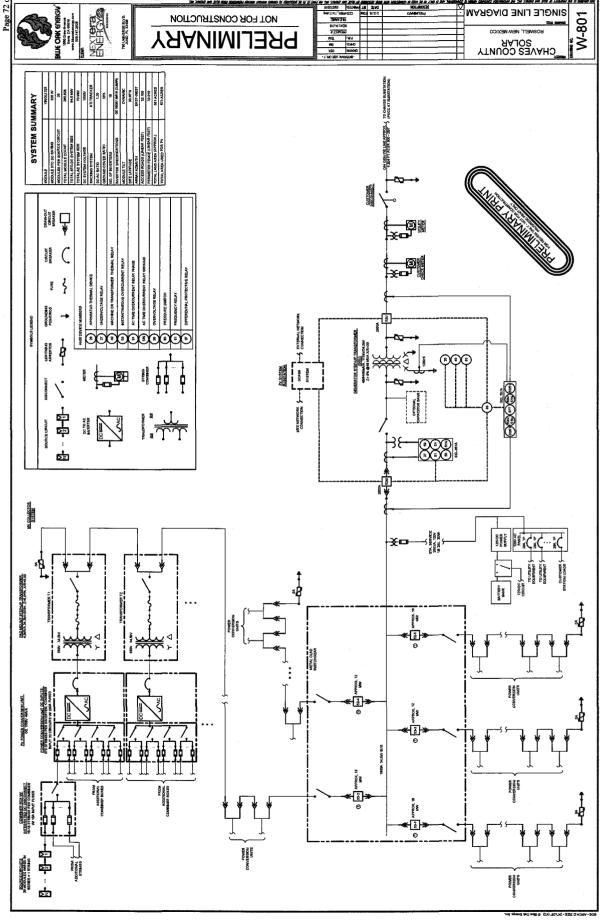


EXHIBIT D NOTICES AND CONTACT INFORMATION

Company	Seller
Notices: Thomas A. Imbler Vice President,	Notices: Chaves Solar, LLC c/o NextEra Energy Resources, LLC 700 Universe Boulevard
Commercial Operations Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.7414	Juno Beach, FL 33408 Attn: Tim Oliver, Executive Director Phone: 561-691-7072 Email: Timothy.Oliver@nee.com
Jessica Collins Renewable Purchased Power Manager Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.7740	Chaves Solar, LLC c/o NextEra Energy Resources, LLC 700 Universe Boulevard Juno Beach, FL 33408 Attn: Mitch Ross, Vice President and General Counsel Phone: 561-691-7126 Email:Mitch.Ross @nee.com
Operating Committee Representative:	Operating Committee Representative:
Jessica Collins Renewable Purchased Power Manager Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.7740	Chaves Solar, LLC c/o NextEra Energy Resources, LLC 700 Universe Boulevard Juno Beach, FL 33408 Attn: Tim Oliver, Executive Director Phone: 561-691-7072 Email: Timothy.Oliver@nee.com
Alternate: Purchased Power Analyst Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.XXXX	Alternate: Chaves Solar, LLC c/o NextEra Energy Resources, LLC 700 Universe Boulevard Juno Beach, FL 33408 Attn: Gregory Schneck Phone: 561-304-5274 Email: Greg.Schneck@nee.com

Real-Time Contact Information

Real-time Communications Contact: Generation Dispatch desk (24-hr

coverage)

Phone: 303.571.6280 Fax: 303.571.7305

Transmission Operation Contact:
Position: Real Time Transmission

Ops

Phone: 303.571.6490 Fax: 303.571.2779

E-mail:

mark schultz@xcelenergy.com

Real-Time Contact Information

Fleet Performance and Diagnostics Center (FPDC)

Phone: (561) 691-3636

Toll Free: (866) 375-3737 Fax: (561) 694-3615

EXHIBIT E INSURANCE COVERAGE

TYPE OF INSURANCE	MINIMUM LIMITS OF COVERAGE
Commercial General Liability (CGL) and commercial umbrella	\$11,000,000 combined single limit each occurrence and the aggregate, where applicable. If CGL insurance contains a general aggregate limit, it shall apply separately to the Facility.

CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of "insured contract" to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

Company shall be included as an insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance.

The CGL and commercial umbrella insurance to be obtained by or on behalf of Seller shall be endorsed as follows:

Such insurance as afforded by this policy for the benefit of Company shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this PPA, and insured hereunder, and any insurance carried by Company shall be in excess of and noncontributing with insurance afforded by this policy.

Business Automobile Liability	\$2,000,000 combined single limit	(each
	accident), including all Owned, Non-Owne	d,
	Hired and Leased Autos.	

Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

TYPE OF INSURANCE	MINIMUM LIMITS OF COVERAGE

Workers Compensation	Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.
Employers Liability	\$2,000,000 each accident for bodily injury by accident, or \$2,000,000 each employee for bodily injury by disease.

Builder's Risk Replacement value of the Facility.		
Builder's Risk Replacement value of the Facility.	D. Salara Dial	m () () F - 114
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Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy.

Pollution Liability	\$5,000,000 each occurrence.
All-Risk Property insurance covering physical loss or damage to the Facility	Full replacement value of the Facility. A deductible may be carried, which deductible shall be the absolute responsibility of Seller.

All-Risk Property insurance shall include: (i) coverage for fire, flood, storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$10,000,000 each for flood and earthquake; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and Units, in an amount equal to their full replacement value.

Business Interruption insurance	Amount required to cover Seller's continuing or
	increased expenses, resulting from full
	interruption, for a period of 12 calendar months.

Business Interruption insurance shall cover loss of revenues or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on Commercially Reasonable terms as determined by Company, subject to a Commercially Reasonable deductible that shall be the responsibility of Seller. Notwithstanding any other provision of this PPA, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date.

EXHIBIT F SELLER'S PERMITS

Description of Entitlement/Permit	Issuing Agency	
Special Use Permit for land use	Chaves County	
Building and Encroachment Permits	Chaves County	

EXHIBIT G FORM OF SECURITY DOCUMENTS

EXHIBIT G-1 FORM OF LETTER OF CREDIT

LETTERHEAD OF ISSUING BANK

Irrevocable Standby Letter of Credit No.:	Date of Issuance:Initial Expiration Date: [Must be at least one year after date of issuance]
Beneficiary:	Applicant:

As th	ne issuin	g bank	("Issuer"),	we, [Nam	e of	Issuing	Bank],	hereby	establi	sh this
irrevo	cable Sta	andby Le	tter of Cre	dit No		(this "Le	tter of	Credit")	in favor	of the
above	e-named	beneficia	ry ("Benef	ficiary") for	the a	ccount	of the a	above-na	med ap	plicant
("App	licant") in	the amo	unt of USD	\$. (
		U.S	S. Dollars).			•				

Beneficiary may draw all or any portion of this Letter of Credit at any time and from time to time and Issuer will make funds immediately available to Beneficiary upon presentation of Beneficiary's draft(s) at sight in the form attached hereto as Exhibit A ("Sight Draft"), drawn on Issuer and accompanied by this Letter of Credit. All Sight Draft(s) must be signed on behalf of Beneficiary, and signatory must indicate his or her title or other official capacity. No other documents will be required to be presented. Issuer will effect payment under this Letter of Credit within 24 hours after presentment of the Sight Draft(s). Payment shall be made in U.S. Dollars with Issuer's own funds in immediately available funds.

Issuer will honor any Sight Draft(s) presented in compliance with the terms of this Letter of Credit at the Issuer's letterhead office, the office located at ______, or any other full service office of the Issuer on or before the above stated expiration date, as such expiration date may be extended hereunder. Partial and multiple draws and presentations are permitted on any number of occasions. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary.

Issuer acknowledges that this Letter of Credit is issued pursuant to the provisions of that certain Solar Energy Purchase Agreement between the Beneficiary and the Applicant dated as of_, 201_ (as the same may have been or may be amended from time to time, the "PPA"). Notwithstanding any reference in this Letter of Credit to the PPA or any other documents, instruments or agreements, or references in the PPA or any other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit will be automatically extended each year without amendment for a period of one year from the expiration date hereof, as extended, unless at least thirty (30) days prior to the expiration date, Issuer notifies Beneficiary by registered mail or overnight courier that it elects not to extend this Letter of Credit for such additional period. Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary's address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer's letterhead address.

This Letter of Credit is freely transferable by Beneficiary in whole or in part and the number of transfers is unlimited. Issuer agrees that it will effect any transfers immediately upon presentation to Issuer of this Letter of Credit and all amendments (if any) and a completed written transfer request in the form attached hereto as Exhibit B. Such transfer will be effected at no cost to Beneficiary. Any transfer fees assessed by Issuer will be payable solely by Applicant, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer or this Letter of Credit.

Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims

Beneficiary may have against Applicant or Applicant may have against Beneficiary.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(B) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(B) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from the Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of god, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control that interrupts Issuer's business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

ICCLIED.

انانانا	JEN.	
By: .		
lts:	AUTHORIZED SIGNATURE	

EXHIBIT A (TO LETTER OF CREDIT)

SIGHT DRAFT

Draft Number \$	
	of [Name of Beneficiary to be inserted], the amount ofand 00/100ths U.S. Dollars).
	ed to the account of : [name of Issuer and address]. er to be inserted] Standby Letter of Credit No.
Da	ated:, 20
	[Name of Beneficiary to be inserted]
	By:
	Its Authorized Representative [Title or Other Official Capacity to be inserted]

To: [Name and Address of Issuer to be inserted]

EXHIBIT B (TO LETTER OF CREDIT)

FORM OF TRANSFER REQUEST

IRREVOCABLE STANDBY LETTER OF C	CREDIT NO:
CURRENT BENEFICIARY:	APPLICANT:
TO: [NAME OF ISSUING BANK]	
	iary" of the above referenced Letter of Credit, ter of Credit in favor of the transferee named D ADDRESS BELOW]:
	est is delivered to Issuer, the transferee shall edit for all purposes and shall be entitled to les and benefits thereof.
DATED:	[NAME OF BENEFICIARY]
[NOTARY ACKNOWLEDGMENT]	By: Name: Title:

[TO BE SIGNED BY A PERSON PURPORTING TO BE AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY AND INDICATING THEIR TITLE OR OTHER OFFICIAL CAPACITY, AND ACKNOWLEDGED BY A NOTARY PUBLIC.]

EXHIBIT G-2 FORM OF GUARANTY

This	Guaranty is	executed and	delivered	as of this	day of	
20 by					Guarantor"), ir	
Southwes	tern Public	Service Co	mpany ("Company"),	in connection	with the
performand	ce by			_, a		
company (("Seller"), of a	Solar Energy	/ Purchase	e Agreement o	dated	, 201_
] (the " <u>PPA</u>	
			- RECITALS	; -		
A.	Seller is p	lanning to co	nstruct, ov	vn, and opera	te a solar pow	er electric
generation	facility havir	ng nameplate	capacity (of approximate	ely MW (AC) to be
located in_	•	County, New M		• •	, <u> </u>	•

- B. Seller and Company have entered into the PPA for the purchase and sale of capacity and electrical energy from the Facility on the terms and conditions set forth therein.
- C. Seller is controlled by Guarantor. Guarantor expects to derive substantial benefits from the performance of the PPA by Seller and Company. To induce Company to enter into the PPA and consummate the purchase and sale of electrical energy contemplated by the PPA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

- AGREEMENT -

- 1. <u>Guaranty</u>. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Company the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the PPA, whether incurred before or after the date of delivery of this Guaranty (the "<u>Obligations</u>"). This is a guaranty of payment, not of collection, and as such, Company shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.
- 2. <u>Maximum Liability</u>. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to (\$US_____), [Note: the Post-COD Security Amount specified in the PPA to be inserted here] plus costs of collection with respect to any valid claim(s) made by Company hereunder that are incurred in the enforcement or protection of the rights of Company, as further described in Section 10 hereof.
- 3. <u>Rights of Company</u>. Guarantor hereby grants to Company, in Company's discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor's duties hereunder, the power and authority from time to time:
- (a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the PPA;
- (b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations; and
- (c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

- 4. <u>Performance</u>. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the PPA has expired ("<u>Default</u>"), Guarantor shall immediately upon receipt of written demand by Company (a) perform or cause Seller to perform the Obligation in Default, and (b) pay, reimburse, and indemnify Company against any liabilities, damages, and related costs (including attorneys' fees) incurred by Company as a result thereof, all in such manner and at such times as Company may reasonably direct.
- 5. <u>Satisfaction</u>. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.
- 6. <u>Notice of Acceptance</u>. Guarantor waives and acknowledges notice of acceptance of this Guaranty by Company.
- 7. <u>Waivers by Guarantor</u>. Guarantor hereby waives and agrees not to assert or take advantage of:
- (a) all set-offs, counterclaims, and, subject to Section 4 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws (as defined in the PPA);
- (b) any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;
 - (c) any defense based upon an election of remedies by Company;
- (d) any duty of Company to protect or not impair any security for the obligations;
 - (e) the benefit of any laws limiting the liability of a surety;
- (f) any duty of Company to disclose to Guarantor any facts concerning Seller, the PPA or the Facility, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Company, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and

- (g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, Company.
- 8. <u>Cumulative Remedies</u>. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.
- 9. <u>Representations and Warranties</u>. Guarantor represents and warrants to Company as follows:
- (a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Seller is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.
- (b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law or judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.
- 10. <u>Collection Costs</u>. Guarantor hereby agrees to pay to Company, upon demand, and in addition to the maximum liability set forth in Section 2 hereof, all reasonable attorneys' fees and other expenses which Company may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all such attorneys' fees and other expenses incurred by Company in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Company of its rights and remedies hereunder.
- 11. <u>Severability</u>. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.
- 12. <u>Waiver or Amendment</u>. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company.

- 13. <u>Successors and Assigns</u>. This Guaranty shall inure to the benefit of and bind the successors and assigns of Company and Guarantor.
- 14. <u>Governing Law</u>. This Guaranty shall be governed by and construed in accordance with the law of the State of New Mexico without regard to the principles of conflicts of law thereof.
- 15. <u>Notices</u>. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the PPA, addressed as follows:

(a)	if to Company:	as provided in the PPA
(b)	if to Guarantor.	
	with a copy to:	Attn: Phone: () Fax: ()
	,,	Attn: Phone: ()

or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to Company as of the day and year first above written.

	[Name of Guarantor]
	By: Name: Title:
STATE OF)) ss.
COUNTY OF)
	was acknowledged before me thisday of, as
of	
Witness my	hand and official seal.
My commission exp	oires:
	Notary Public
(SEAL)	

EXHIBIT G-3 FORM OF ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is entered into and effective this day of

by and among _____

("Seller"), Southwestern Public Service Company ("Company") and ("Escrow Agent").
- RECITALS -
WHEREAS, Seller and Company are parties to a Solar Energy Purchase Agreement dated, 201_ (the "PPA"), pursuant to which Seller agrees to build and operate an electric generating facility in County, New Mexico (the "Facility") and to sell energy from the Facility to Company. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the PPA; and
WHEREAS, Article 11 of the PPA requires Seller to provide security in favor of Company in amounts set forth in the PPA, up to a total of \$(the "Escrow Total"); and
WHEREAS, Seller has elected to establish and deliver funds (the "Escrow Funds") into an escrow account with Escrow Agent to meet its PPA security obligations, and Seller, Company and Escrow Agent agree to enter into this Agreement to define the terms of that account.
NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and other consideration set forth in this Agreement and the PPA, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:
- AGREEMENT -
1. Appointment of Escrow Agent. On the terms, and subject to the conditions, set forth in this Agreement, Seller and Company hereby appoint Escrow Agent as their agent and custodian to hold, invest and distribute the Escrow Funds and all interest and investment earnings thereon (the "Escrow Interest") in accordance with this Agreement. To the extent any Escrow Interest accrues during the term of this Agreement, such Escrow Interest shall be added to but shall not be included as part of the principal amount of the Escrow Funds except as set forth in Section 5.
2. <u>Delivery of Funds to Escrow Agent</u> .
a. Seller shall deposit with Escrow Agent an amount equal to \$on or beforeon or before [the date required by the PPA].
Escrow Agent shall retain and disburse the Escrow Funds pursuant to the terms of this Agreement. The execution and full performance of this Agreement by Seller and Escrow Agent, and retention and disbursement by Escrow Agent of the Escrow Funds pursuant to the terms hereof, fully satisfies Seller's initial obligations under Article 11 of the PPA to establish and maintain a security fund. Escrow Agent shall hold the Escrow Funds under the terms of this Agreement and distribute the Escrow Funds

only in accordance with Section 5.

- b. The Escrow Funds shall, for all purposes, be considered property of Seller unless and until distributed to Company in accordance with this Agreement. To protect Company prior to such distribution, Seller hereby grants to Company a first priority security interest in all of Seller's right, title and interest in and to the Escrow Funds held under this Agreement for the purpose of securing Seller's obligations under the PPA. However, any release of any portion of the Escrow Funds to Company in accordance with this Agreement shall act as an automatic termination of Company's security interest in the Escrow Funds so released. Seller authorizes Company to file such financing statements and other documents as Company reasonably deems necessary or advisable to protect Company's rights in the Escrow Funds. Each party will sign such documents (including, upon the request of Company a control agreement), provide such information, send such notices and take such other actions as any other party reasonably requests to consummate more effectively the intent and purpose of the parties under this Section 2(c).
- 3. <u>Investment.</u> Escrow Agent shall hold and invest the Escrow Funds only in accordance with the terms of this Agreement. At the written direction of Seller, Escrow Agent shall invest and reinvest the Escrow Funds in cash or one or more of the following short-term securities: a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three (3) months or less. All investments of the Escrow Funds shall be held by, or registered in the name of, Escrow Agent or its nominee. All Escrow Interest and investment income earned on the Escrow Funds shall accrue for the benefit of, and be taxable to, Seller.
- 4. <u>Distributions of Escrow Funds by Escrow Agent</u>. Escrow Agent shall hold the Escrow Funds until instructed or otherwise required to deliver the same or any portion thereof in accordance with <u>Section 5</u>.

5. <u>Distributions</u>.

- a. <u>Escrow Interest</u>. Once Escrow Funds being held by Escrow Agent reach the Escrow Total, Seller may be paid Escrow Interest earned on the Escrow Funds at times and amounts in Seller's discretion as long as the amount of the Escrow Funds does not, as a result, become less than the Escrow Total.
- b. Release at End of Term: Substitution of Security. After the full and final satisfaction of all of Seller's obligations under the PPA, any Escrow Funds remaining with Escrow Agent after all deductions for any damages or other allowed charges made by Company, and all accrued Escrow Interest, shall be released to Seller. If Seller provides a letter of credit or other security under the PPA in form and substance as required by the PPA and in the full amount of the Escrow Total to secure Seller's obligations to Company prior to the expiration or termination of the PPA, the Escrow Funds and any Escrow Interest shall be released to Seller upon the delivery to Company of such effective letter of credit or security mechanism as permitted by the PPA.
 - c. Escrow Claims by Company. During the term of the PPA,

Company may draw all or any portion of the Escrow Funds to the extent necessary to recover amounts owing to Company pursuant to the PPA that are not the subject of a good faith dispute, including any damages due to Company and any amounts for which Company is entitled to indemnification under the PPA. Each claim against the Escrow Funds under this Agreement shall be made by Company by delivering to Escrow Agent a certificate, in substantially the form of Exhibit A attached hereto, specifying the nature of the claim (a "Claim Certificate"). A copy of each Claim Certificate shall also be delivered to Seller contemporaneously with provision to Escrow Agent. Escrow Agent shall pay to Company the amount of Escrow Funds set forth in the Claim Certificate, in accordance with the Claim Certificate, on the first business day after it receives the Claim Certificate.

d. Regulations of the Comptroller of the Currency. Company and Seller acknowledge that regulations of the Comptroller of the Currency grant Company and Seller the right to receive brokerage confirmations of any security transactions as they occur. Company and Seller specifically waive such notifications to the extent permitted by law, and Seller will receive monthly cash transaction statements that will detail all investment transactions.

6. Rights and Obligations of Escrow Agent.

a. <u>Duties</u>.

- i. Escrow Agent hereby accepts its obligations under this Agreement and represents that it has the legal power and authority to enter into this Agreement and to perform its obligations hereunder. Escrow Agent agrees that all Escrow Funds held by Escrow Agent under this Agreement shall be segregated from all other property held by Escrow Agent and shall be identified as being held in connection with this Agreement. Segregation may be accomplished by appropriate identification on the books and records of Escrow Agent. Escrow Agent's documents and records with respect to the transactions contemplated by this Agreement shall be available for examination by authorized representatives of Company and Seller. Escrow Agent will deliver to Company and Seller written statements not less than quarterly summarizing any activity with respect to the Escrow Funds (including the amount of interest and earnings thereon) and detailing the balance of the Escrow Funds.
- ii. This Agreement may be terminated only by a writing executed by all of Company, Seller and Escrow Agent.
- iii. In the event that this Agreement is scheduled to expire or terminate during the term of the PPA, and Seller has not provided security pursuant to the PPA required to replace this Agreement, Company may draw the entire balance of Escrow Funds, up to the Escrow Total, within five (5) business days of the scheduled expiration or termination date, and without regard to any objection asserted by Seller, provided Company holds the Escrow Funds it draws in escrow until the earlier of (i) the date Seller provides adequate replacement security in compliance with the PPA, or (ii) the date Company is entitled to draw and retain all or any portion of the Security Fund under the PPA.

- iv. Escrow Agent and Seller will provide immediate notice to Company in the event that (i) the amount of Escrow Funds at any time falls below \$______ prior to the time the Second Deposit is due or (ii) the amount of Escrow Funds at any time falls below the Escrow Total after the Second Deposit is due.
- b. <u>No Other Duties</u>. Escrow Agent shall not have any duties or responsibilities under this Agreement except as expressly set forth herein.
- c. <u>Escrow Fee.</u> Escrow Agent shall be entitled to receive solely from Seller (a) compensation for its regular services as escrow agent under this Agreement and (b) reimbursement for all reasonable and necessary out-of-pocket expenses incurred by Escrow Agent in fulfilling its obligations under this Agreement, including, without limitation, reasonable fees and disbursements of legal counsel. Such compensation and reimbursement obligations shall be paid from time to time as incurred. In no circumstance will Company have any obligation to pay any amount to Escrow Agent arising out of or under this Agreement.
- d. Resignation of Escrow Agent. Escrow Agent may at any time resign by giving thirty (30) days' advance written notice of such resignation to Company and Seller. Upon such resignation, Escrow Agent shall not be discharged from its obligations under this Agreement until (a) a successor escrow agent, as mutually agreed on by Seller and Company, shall have been appointed, (b) the successor escrow agent shall have executed and delivered an Escrow Agreement in substantially the form of this Agreement and (c) all Escrow Funds then held by Escrow Agent under this Agreement shall have been delivered to such successor escrow agent.
- e. <u>Liability of Escrow Agent</u>. Escrow Agent shall not be liable for any action taken in accordance with the terms of this Agreement, including, without limitation, any distribution of the Escrow Funds in accordance with <u>Section 4</u>, as long as the action was taken in good faith. Escrow Agent shall not be liable for any other act or failure to act under or in connection with this Agreement, except for its own negligence or intentional tortious misconduct. Seller and Company agree to indemnify, defend and hold Escrow Agent harmless from and against all claims, causes of action, costs, judgments, losses and damages arising out of or related to this Agreement, except for any such claims, causes of action, costs, judgments, losses or damages arising from or related to any breach of this Agreement by Escrow Agent or negligent or intentional tortious actions or omissions of Escrow Agent.
- f. Reliance on Documentary Evidence. Escrow Agent shall be entitled to rely on any written notice, certificate, affidavit, letter, document or other communication that is reasonably believed by Escrow Agent to be genuine and to have been signed or sent by the proper party or parties, and on statements contained therein, without further inquiry or investigation. Notwithstanding anything to the contrary in this Agreement, Escrow Agent may act on any written instructions given jointly by Company and Seller.
- g. <u>Interpleader</u>. If Company and Seller shall disagree about the interpretation of this Agreement, or about the rights and obligations or the propriety of

any act contemplated by Escrow Agent hereunder, then Escrow Agent may, within its reasonably exercised discretion, file an action of interpleader in the appropriate court of competent jurisdiction and deposit all of the applicable Escrow Funds with such court.

- 7. <u>Termination of Agreement</u>. This Agreement shall continue through the date on which all obligations of Seller under the PPA have been fully satisfied or all of the Escrow Funds shall have been paid to Company pursuant to the terms of this Agreement.
 - 8. <u>Taxes</u>. Taxes on distributions of the Escrow Funds shall be paid by Seller.
- 9. <u>Notices</u>. All notices and other communications (including all certificates delivered pursuant to <u>Section 5</u>) under this Agreement by Company or Seller to Escrow Agent shall be delivered contemporaneously to the other parties in the same manner as provided to Escrow Agent. All notices and other communications under this Agreement shall be given in writing and shall be personally delivered, sent by facsimile transmission or sent to the applicable parties at their respective addresses indicated in this <u>Section 9</u> by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service, as follows:

If to Seller, to:
Art. C.
Attention:
Phone:
Fax:
If to Company:
Manager, Renewable Purchases Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000
Denver, CO 80202
Phone: (303) 571
Fax: (303) 571-7002
If to Escrow Agent, to:
Attention:
Phone:
Fax:

or to such other person or address as any party shall have specified by notice in writing to the other parties. If personally delivered, such communication shall be deemed delivered upon actual receipt; if sent by facsimile transmission, such communication shall be deemed delivered the day of the transmission, or if the transmission is not made on a business day, the first business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this <u>Section 9</u>, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this <u>Section 9</u>, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal.

Miscellaneous.

- a. <u>Captions</u>. All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.
- b. <u>No Third-Party Beneficiary</u>. No provision of this Agreement is intended to nor shall in any way inure to the benefit of any customer, property owner or other third party, so as to constitute any such person a third-party beneficiary under this Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.
- c. <u>Integration; Amendment</u>. This Agreement constitutes the entire agreement among the parties relating to the transactions described herein and supersedes any and all prior oral or written understandings. No amendment of, addition to or modification of any provision hereof shall be binding on the parties, and no party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable party or parties.
- d. <u>Governing Law</u>. The Agreement is made in the state in which the Facility is located and shall be interpreted and governed by the laws of such state or the laws of the United States, as applicable.
- e. <u>Good Faith and Fair Dealing: Reasonableness</u>. The parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) whenever this Agreement requires the consent, approval or similar action of a party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) whenever this Agreement gives a party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.
- f. <u>Severability</u>. Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in force. The parties will, however,

use their reasonable best endeavors to agree on the replacement of the void, illegal or unenforceable provisions with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

- g. <u>Cooperation</u>. The parties agree to cooperate reasonably with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require any party to act in a manner inconsistent with its rights under this Agreement.
- h. <u>Execution in Counterparts and by Facsimile Transmission</u>. This Agreement may be executed in two (2) or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. This Agreement may be executed and delivered by facsimile, and the parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures.

[This space intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date first set forth above.

Dated:	By: Name: Its:
Dated:	Southwestern Public Service Company
	By: Name: Its:
Dated:	(Escrow Agent)
	By: Name: Its:

EXHIBIT A TO ESCROW AGREEMENT

ESCROW CLAIM CERTIFICATE

TO:	
, 20 , by and a " <u>Escrow Agreement</u> "). Ca	ursuant to that certain Escrow Agreement, dated as of among Company, Seller and you, as Escrow Agent (the pitalized terms used but not otherwise defined in this ning ascribed to them in the Escrow Agreement.
receive Escrow Funds in the	ve of Company hereby certifies that Company is entitled to amount of \$pursuant to the terms of PPA, due to the following (generally):
distribute, on the first busine	rms of the Escrow Agreement, you are hereby instructed to ess day after your receipt of this Certificate, the sum of Escrow Funds to the undersigned by wire transfer to the
Bank [.]	
Account:	
Routing N	Number:
Data	•
Date:, 2	0
	Southwestern Public Service Company
	Ву:
	Name:
	Title:

EXHIBIT H

OPERATING STANDARDS

(AGC Protocols, Data Collection)

1. AGC Electronic Communications Between Company and Seller

Company will receive and send AGC Set-Point and related data over an analog or digital line. The data points covered under this PPA, as described below, may overlap data requirements for the Transmission Provider, Transmission Authority or Company's Solar Forecasting group.

2. Data Points to Be Sent from Seller to Company via AGC

The following data points will be transmitted via AGC from Seller to Company and represent Facility level data:

Description	Units
AGC Set-Point (echo)	MW
Power demand	MW
Actual power	MW
Park Potential	MW
Actual reactive power	Mvars
Average voltage	kV
Number of units online and running	Integer
AGC status	Remote/Local

3. Response Times and Limitations of Facility in Regards to AGC

The following protocols outline the expectations around responding to the AGC Set-Point. Except in the case of the frequency of changes, these protocols will be generally bound by the manufacturers' specifications for the equipment that Seller has chosen for the Facility.

- a. <u>Required Response Time</u>. The Facility will respond to the AGC Set-Point within the maximum Solar Unit manufacturers' specifications. The response time will vary based on the mix of available Solar Units and the current level of output of the Facility. The required response time will be subject to change based upon any change in the Solar Unit manufacturers' specifications for ramp rate.
- b. <u>Allowable Variances in Excess of AGC Set-Point</u>. Once the Facility has reached the AGC Set-Point, there may be variances in excess of such set-point up to two percent (2%) on average as measured during a ten (10)-minute period. This is due to changing solar conditions vs. the manufactures' specifications for responding

to those new conditions provided irradiance conditions allow for achieving the assigned AGC Set-Point.

- c. <u>Frequency of Changes</u>. Company can send a new AGC Set-Point to the Facility as frequently as the Solar Unit manufacturer's specifications allow, using the specification for the least frequent change to output. If, however, the AGC Set-Point is below 10% of Park Potential, then Company will be restricted from changing the AGC Set-Point for thirty (30) minutes to prevent the Solar Units from cycling on and off.
- d. Range of AGC Set-Point. The range of set-point values can be between zero percent (0%) and one hundred percent (100%) of Park Potential.

4. Backup Communications

In the event of an AGC failure, the Company and Seller shall communicate via telephone in order to correct the failure.

5. Data Collection

Not later than the Commercial Operation Date, or when requested by the Company prior to the Commercial Operation Date, Seller will deliver to Company a report showing (i) manufacturer, model and year of all panels, inverters and meteorological instrumentation and (ii) the latitude and longitude of the center of the solar panels for every inverter and every meteorological station. Seller will also transmit and provide to Company the real-time data set forth below, refreshed as frequently as allowed by the SCADA System, not to exceed fifteen (15) minute intervals.

- A. Two (2) data points from each inverter:
 - 1. Inverter generation (kW)
 - 2. Inverter availability
- B. Five (5) data points from the meteorological station(s):
 - 1. Global horizontal insolation (GHI) (W/m²)
 - 2. Plane-of-array insolation (POA) using a reference cell (W/m²)
 - 3. Temperature (°C)
 - 4. Wind speed (m/s)
 - 5. Wind direction (degrees relative to true north)

Seller shall provide a map and key for each inverter sufficient to allow Company to correlate the data received through Company's data historian system to each individual inverter.

EXHIBIT I LENDER CONSENT PROVISIONS

In the event Seller collaterally assigns its rights hereunder to the Facility Lender as security, any related Lender Consent will contain provisions substantially as follows:

- 1. Seller and Company will neither modify nor terminate the PPA, other than as provided therein, without the prior written consent of the Facility Lender.
- 2. The Facility Lender shall have the right, but not the obligation, to do any act required to be performed by Seller under the PPA, and any such act performed by the Facility Lender shall be as effective to prevent or cure a default as if done by Seller itself.
- 3. If Company becomes entitled to terminate the PPA due to an uncured Event of Default by Seller, Company shall not terminate the PPA unless it has first given notice of such uncured Event of Default to the Facility Lender and has given the Facility Lender the same cure period afforded to Seller under Section 12.1 of the PPA, plus an additional thirty (30) Days beyond Seller's cure period to cure any monetary Event of Default and an additional sixty (60) Days beyond Seller's cure period to cure any non-monetary Event of Default; provided, however, that if the Facility Lender requires possession of the Facility in order to cure the Event of Default, and if the Facility Lender diligently seeks possession, the Facility Lender's additional thirty (30) Day or sixty (60) Day, as applicable, cure period shall not begin until foreclosure is completed, a receiver is appointed or possession is otherwise obtained by or on behalf of the Facility Lender.
- 4. Neither the Facility Lender nor any other participant in the Facility Debt shall be obligated to perform or be liable for any obligation of Seller under the PPA until and unless any of them assumes possession of the Facility through the exercise of the Facility Lender's rights and remedies.
- 5. Any party taking possession of the Facility through the exercise of the Facility Lender's rights and remedies shall remain subject to the terms of the PPA and shall assume all of Seller's obligations under the PPA, both prospective and accrued, including the obligation to cure any then-existing defaults capable of cure by performance or the payment of money damages. In the event that the Facility Lender or its successor assumes the PPA in accordance with this paragraph 5, Company shall continue the PPA with the Facility Lender or its successor, as the case may be, substituted wholly in the place of Seller.
- 6. Within ninety (90) Days of any termination of the PPA in connection with any bankruptcy or insolvency Event of Default of Seller, the Facility Lender (or its successor) and Company shall enter into a new power purchase agreement on the same terms and conditions as the PPA and for the period that would have been remaining under the PPA but for such termination.

EXHIBIT J

COMMITTED SOLAR ENERGY AND SOLAR ENERGY PAYMENT RATE
(by Commercial Operation Year)

Commercial Operation Year	Committed Solar Energy (MWh)	Rate \$/(MWh) excluding RECs	Rate \$/(MWh) with RECs	Commercial Operation Year	Committed Solar Energy (MWh)	Rate \$/(MWh) excluding RECs	Rate \$/(MWh) with RECs
1	202,820	\$35.23	\$35.73	14	189,636	\$45.57	\$46.22
2	201,805	\$35.93	\$36.44	15	188,622	\$46.49	\$47.14
3	200,791	\$36.65	\$37.17	16	187,608	\$47.41	\$48.09
4	199,777	\$37.39	\$37.92	17	186,594	\$48.36	\$49.05
5	198,763	\$38.13	\$38.68	18	185,580	\$49.33	\$50.03
6	197,749	\$38.90	\$39.45	19	184,566	\$50.32	\$51.03
7	196,735	\$39.67	\$40.24	20	183,552	\$51.32	\$52.05
8	195,721	\$40.47	\$41.04	21	182,538	\$52.35	\$53.09
9	194,706	\$41.28	\$41.86	22	181,523	\$53.40	\$54.15
10	193,693	\$42.10	\$42.70	23	180,509	\$54.46	\$55.24
11	192,679	\$42.95	\$43.55	24	179,495	\$55.55	\$56.34
12	191,664	\$43.80	\$44.43	25	178,481	\$56.67	\$57.47
13	190,650	\$44.68	\$45.31				

EXHIBIT K
EXPECTED MONTHLY GENERATION PROFILE

Month	Percent of Annual Generation
January	6.1%
February	6.8%
March	8.7%
April	9.6%
May	10.4%
June	10.4%
July	10.3%
August	9.7%
September	8.7%
October	7.6%
November	6.2%
December	5.5%

EXHIBIT L

METHODOLOGY FOR ADJUSTING THE TWELVE-MONTH COMMITTED SOLAR ENERGY VALUE FOR DIFFERENCES IN ACTUAL SOLAR IRRADIATION AND EXPECTED SOLAR IRRADIATION

Committed Solar Energy may be adjusted if the irradiation received at the Site is below the Expected Solar Irradiation. The adjustment to the 12-month average calculation of Committed Solar Energy is appropriate only when actual solar irradiation falls below the Expected Solar Irradiation for the relevant period as agreed to by the Parties.

As an illustrative example, Table 1 below provides the historical generation and solar irradiation between the months of January and December 2017, the adjustments to the Committed Solar Energy related to this irradiation and the resulting 12-month Committed Solar Energy percentage for a hypothetical solar generating facility. The steps taken in the calculations, and referenced sections in the PPA, are provided below.

Step 1 - Actual Solar Irradiation to Expected Solar Irradiation

The Expected Solar Irradiation is determined on a monthly basis by calculating the total monthly values of global horizontal irradiance using the GeoModel SolarGIS irradiance time series data set corresponding to the solar generating facility site (point 33.450 N, 104.456 W) referenced under the definition of "Expected Solar Irradiation" in the PPA. The Expected Solar Irradiation relevant to the facility is the global horizontal irradiance of 2045 kWh/m2/yr (PPA, Exhibit A, definition of "Expected Solar Irradiation"; Table 1 - Column B).

The actual monthly solar irradiation is determined by the average total reading of all functional global horizontal pyranometers at the Site for the month. (Table 1 - Column C). By dividing the actual solar irradiation by the Expected Solar Irradiation, a ratio is calculated for each month (Table 1 - Column D).

In Table 1, Seller has provided Company with the GeoModel time series irradiance data set expected monthly global horizontal irradiance data (Column B), data including the pyranometer reading pertaining to the Facility, and all pertinent data regarding the solar irradiation adjusted Committed Solar Energy calculation for calculating the annual twelve month Committed Solar Energy Value.

Step 2 – Adjustments to Committed Solar Energy

The Committed Solar Energy on a monthly basis is determined by multiplying the expected monthly generation profile (Exhibit K of PPA and column E in Table 1) by the annual Committed Solar Energy (Exhibit J of PPA and Column F in Table 1) for the relevant year of operation. The resulting monthly Committed Solar Energy is adjusted down (pursuant to Section 12.1(I) of the PPA) by multiplying the Committed Solar Energy by any monthly actual to Expected Solar Irradiation ratio that is below the expected amount (Table 1 - Column G).

The actual generation delivered is equal to the MWh that were produced and

delivered per the PPA. (Table 1 - Column H.)

The Compensable Curtailment & Seller Excuse Hours is equal to the MWh that were curtailed (Table 1 – Column I.)

The total constructive generation is equal to the sum of the actual generation and the Compensable Curtailment & Seller Excuse Hours (Table 1 – Column J.)

Step 3 – Committed Solar Energy Percentage

In the final step, the summation of the 12 months of total constructive generation is divided by the summation of the 12 months adjusted Committed Solar Energy to determine the Committed Solar Energy percentage (Table 1 - Column K.)

IABLE 1

Committed Solar Energy

Total Constructive to Adjusted Committed Generation [Column J/Column G]	Column K													95.10%
Total Constructive Generation (MWh) [Column H+	Column J	10,633	11,738	15,170	16,571	18,071	776,71	17,888	16,834	15,078	13.210	10,820	9,605	173,597
Compens able Curtailme nt & Seller Excuse Hours	Column I	100	100	100	100	100	100	100	100	100	100	100	100	1,200
Actual Generation Delivered (MWh)	Column H	10,533	11,638	15,070	16,471	17,971	17,877	17,788	16,734	14,978	13,110	10,720	9,505	172,397
Irradiance Adjusted Committed Generation (MWh)	Column G	11,153	12,323	15,957	17,440	19,028	18,928	18,835	17,718	15,860	13 887	11,351	10,065	182,538
Committed Generation (MWh)	Column F	12,392	13,692	17,730	19,378	21,142	21,031	20,928	19,687	17,622	15 474	12,612	11,183	202,820
Expected Monthly Generation Profile (%)	Column E	6.11%	6.75%	8.74%	9.55%	10.42%	10.37%	10.32%	9.71%	8.69%	%09''	6.22%	5.51%	100.00%
Actual to Expected Solar Irradiation (%)	Column D	%0'06	%0:06	%0.06	%0:06	%0:06	%0'06	%0:06	%0:06	%0.06	%0.06	%0:06	%0.06	
Actual Solar Irradiation (kWh/m2/ mon)	Column C	95	110	157	187	212	211	206	189	159	129	66	84	1,841
Expected Solar Irradiation (kWh/m2/ mon)	Column B	106	122	175	207	236	235	229	211	177	144	109	94	2,045
		2017	2017	2017	2017	2017	2017	2017	2017	2017	2017	2017	2017	
		Jan	Feb	Mar	Apr	Мау	unr	Þ	Aug	Sep	Oct	Nov	Dec	

SOLAR ENERGY PURCHASE AGREEMENT BETWEEN

SOUTHWESTERN PUBLIC SERVICE COMPANY

AND

("SELLER")

2015 APR 2 PM 3

NEW MEXICO

O Xcel Energy

- [DATE] -

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SOLAR ENERGY PURCHASE AGREEMENT BETWEEN SOUTHWESTERN PUBLIC SERVICE COMPANY AND

This Solar Ene	ergy Purchase Agreemen	t (this "PPA") is m	ade this
	, 201 ("Effective Date")	`	
Public Service Com	pany, a New Mexico co	orporation with a p	rincipal place of
	mer Street, Suite 1000, D		
(ii)	, a		company, with a
principal place of busi	ness at [street, city, state	, zip code] ("Seller")	 Company and
	referred to individually a	as a " <u>Party</u> " and co	ollectively as the
"Parties."			

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

WHEREAS Seller desires to sell and deliver and Company desires to accept and receive certain products and services delivered from the Facility to the Point of Delivery at the prices and on the terms and conditions set forth in this PPA.

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

Article 1 - Rules of Interpretation

1.1 <u>Interpretation</u>.

- (A) Capitalized terms listed in this PPA shall have the meanings set forth in Exhibit A Definitions or as otherwise defined in this PPA, whether in the singular or the plural or in the present or past tense. Words not otherwise defined in this PPA shall (i) have meanings as commonly used in the English language, (ii) be given their generally accepted meaning consistent with Good Utility Practice, and (iii) be given their well-known and generally accepted technical or trade meanings.
- (B) The following rules of interpretation shall apply: (1) The masculine shall include the feminine and neuter; (2) references to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or exhibits of this PPA except as the context may otherwise require; (3) all Exhibits are incorporated into this PPA; provided, however, that in the event of a conflict with the terms of this PPA, the PPA shall control; and (4) use of the words "include" or "including" or similar words shall be interpreted as "include without limitation" or "including, without limitation."
- (C) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this

PPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

1.2 <u>Interpretation with Other Agreements</u>.

- (A) This PPA does not provide Seller authorization to interconnect the Facility or inject power into the electric delivery system. Seller shall contract for interconnection services in accordance with the applicable Transmission Tariff. Seller acknowledges that any Interconnection Agreement Seller enters into is a separate contract and that (i) this PPA is not binding on the Transmission Authority, (ii) this PPA does not create any rights between Seller and the Transmission Authority, and (iii) the Interconnection Agreement does not modify the Parties' rights and obligations under this PPA. Seller agrees that any applicable Transmission Authority shall be deemed to be a separate and unaffiliated contracting party regardless of whether such Transmission Authority is Company or an Affiliate of Company.
- (B) This PPA does not provide for the supply of House Power. Seller shall contract with the Local Provider for the supply of House Power. Seller acknowledges that obtaining House Power is a separate contract and that (i) this PPA is not binding on the Local Provider, (ii) this PPA does not create any rights between Seller and the Local Provider, and (iii) the House Power contract does not modify the Parties' rights and obligations under this PPA. Seller agrees that the Local Provider shall be deemed to be a separate and unaffiliated contracting party regardless whether the Local Provider is Company or an Affiliate of Company. Subject to Seller's right to self-generate and consume energy concurrently generated by the Facility or as otherwise allowed by Applicable Law, Seller shall obtain House Power exclusively from the Local Provider.
- 1.3 <u>Good Faith and Fair Dealing</u>. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (a) when this PPA requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) wherever this PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be Commercially Reasonable.
- 1.4 <u>Waiver</u>. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

Article 2 - Term and Termination

This PPA shall become effective as of the Effective Date, and shall remain in full force and effect until the Scheduled Termination Date, subject to early termination

or extension as provided in this PPA or otherwise agreed to by the Parties. Applicable provisions of this PPA shall continue in effect after termination to the extent necessary to (i) provide for final billings, payments and adjustments, (ii) enforce or complete the duties, obligations or responsibilities of the Parties, and (iii) address any remedies or indemnifications, arising prior to termination.

Article 3 - Facility Description

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

3.2 General Design of the Facility.

- (A) Seller shall design, construct, operate and maintain the Facility according to Good Utility Practice(s) and the Interconnection Agreement.
- (B) The Facility shall include all equipment necessary to successfully interconnect with the Transmission Authority's System for the delivery of the Facility's output to the Point of Delivery.
- (C) The Facility shall include all equipment and telecommunications capabilities necessary to communicate with Company's SCADA system.
- (D) The Facility shall include all equipment specified in <u>Exhibit C Facility Description</u> or otherwise necessary to fulfill Seller's obligations under this PPA.

Article 4 - Implementation

4.1 Project Development.

(A) No later than sixty (60) Days following the Effective Date, Seller shall complete a Phase 1 environmental assessment ("Phase1") of the Site and shall disclose to Company any Environmental Contamination identified in that investigation and confirm that such Environmental Contamination has been remediated or is capable of being remediated and that the Site remains appropriate for its intended use by Seller. Seller shall promptly inform Company if due to any Environmental Contamination Seller is constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) that would allow Seller to fully perform under this PPA. Upon request, Seller shall provide Company a copy of the Phase 1 report and any backup data; provided, however, that the Phase 1 and backup data shall be deemed Confidential Information pursuant to Section 20.18. Throughout the Term, Seller shall ensure that any Environmental Contamination identified at the Facility or Site is promptly remediated. Seller shall promptly disclose to Company the presence of any material Environmental Contamination or the existence of any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination.

- (B) Seller shall at its own expense enter the Construction Contract and all other major contracts necessary to the successful development of, construction of, operation of and delivery from the Facility with qualified and experienced contractors. Upon written request by Company, Seller shall provide Company with a memorandum of agreement executed by the Seller and the contractor party to the Construction Contract and all other major contracts, which memorandum shall set forth the basic terms of such contract, including without limitation the names of the parties thereto, the date of such contract, a summary of any products or services to be provided and information reasonably sufficient for Company to determine that such Construction Contract or major contract provides obligations necessary to meet the Construction Milestones or in lieu thereof, at Seller's option, a copy of the Construction Contract or other major contract (provided that Seller shall be permitted to redact pricing and other sensitive information).
- (C) Prior to the Commercial Operation Date, Seller shall (i) submit monthly progress reports to Company in a form agreed upon by the Parties advising Company of the current status of each Construction Milestone, any significant developments or delays along with an action plan for making up delays, and Seller's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility Lender relating to status, progress and development of the project; and (iii) invite Company to participate in monthly meetings to discuss the progress reports, answer questions, and assess the schedule. Seller shall make all relevant contractors available to Company in order to keep Company fully informed on the status of the development.
- (D) Upon request, Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Facility for compliance with this PPA; provided, however, that Company shall comply with all of Seller's applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.
- (E) Seller shall obtain and pay for all Permits necessary for the construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility to Company. Seller shall keep Company reasonably informed as to the status of its permitting efforts. Seller shall promptly inform Company of any Permits it is unable to obtain, that are delayed, limited, suspended, terminated or otherwise constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent this circumstance may

limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) with any Permits to allow Seller to fully perform under this PPA. Upon reasonable request, Company shall have the right to inspect and obtain copies of all Permits held by Seller.

- (F) Seller shall notify Company (i) sufficiently in advance of any known upcoming significant inspections by any Governmental Authority relating to the Facility to allow Company the opportunity to attend, and (ii) promptly after any unscheduled or impromptu inspection with a description of the nature and outcome of such inspection.
- 4.2 <u>Commercial Operation</u>. Subject to extension as authorized in this PPA, the Facility shall achieve Commercial Operation no later than the Commercial Operation Milestone; *provided*, *however*, *that* Seller shall not be obligated to establish a Commercial Operation Date that is earlier than the Commercial Operation Milestone and Company shall not be obligated to accept a Commercial Operation Date that is earlier than the Commercial Operation Milestone. In its efforts to achieve the Commercial Operation Milestone, Seller agrees to use Commercially Reasonable Efforts to achieve the Construction Milestones set forth in <u>Exhibit B Construction</u> Milestones.
- 4.3 <u>COD Conditions</u>. Seller shall provide Company a Notice of the date Seller believes the Facility has achieved Commercial Operation along with all supporting documentation of the satisfaction or occurrence of all COD Conditions. Company shall have up to ten (10) Business Days to review such evidence and raise any Commercially Reasonable objection to Seller's satisfaction of any of the COD Conditions; *provided, however, that* such Notice shall be deemed accepted by Company if Company fails to object within such time period. Seller may provide Notice of completion of the COD Conditions on an individual and incremental basis pending resolution of any objections; *provided, however, that* Company shall in all cases have up to ten (10) Business Days to review and object to each Notice. The COD Conditions are:
- (A) an officer of Seller, authorized to bind Seller and who is familiar with the Facility, has provided written confirmation that (1) all necessary and material Permits have been obtained and are in full force and effect, (2) Seller is in compliance with this PPA in all material respects, (3) the Facility is available to commence normal operations in accordance with Seller's operating agreements, Construction Contract, and applicable manufacturers' warranties, (4) the Facility has been registered with the Transmission Authority, (5) Seller is obligated under and in material compliance with the Interconnection Agreement, (6) the Facility is fully interconnected to the Transmission Authority's System, has been fully tested, has achieved initial synchronization, and has been successfully operated at a generation level acceptable to the Transmission Authority, without experiencing any abnormal or unsafe operating conditions on any interconnected system, (7) Seller has completed any testing of the Facility and Interconnection Facilities required by the

Interconnection Agreement, and (8) Seller has made all other arrangements necessary to deliver the output of the Facility to the Point of Delivery;

- (B) an independent registered professional engineer's certification has been obtained by Seller and provided to Company stating that the Facility has been completed in all material respects, except for punch list items that do not have a Material Adverse Effect on the ability of the Facility to operate for its intended purpose;
- (C) Seller has demonstrated (1) the reliability of the Facility's communications systems and communication interface with Company's EMCC and the Facility is capable of receiving and reacting to signals from Company's SCADA System, and (2) all AGC equipment is installed and operational; and
- (D) at least ninety-five percent (95%) of the Solar Units and associated equipment sufficient to allow such Solar Units to generate and deliver Solar Energy to the Point of Delivery have been completed.

4.4 Test Energy.

- (A) Seller shall provide Company and Transmission Authority with the information necessary to have the Facility registered with the Transmission Authority for inclusion in any generation modeling maintained by the Transmission Authority, sufficiently in advance to allow the Facility to be registered in such model at least four months prior to generating any Test Energy. Upon receipt of such information, Company will cooperate reasonably to assist in the registration of the Facility to allow generation of Test Energy.
- (B) Prior to the COD but not before [date], Seller shall coordinate the production and delivery of Test Energy with Company, with not less than five (5) Days' Notice, or such other Commercially Reasonable prior Notice as Company may reasonably request. The Parties shall cooperate to facilitate Seller's testing of the Facility necessary to satisfy the COD Conditions. Company shall only be required to accept delivery of Test Energy required to satisfy COD Conditions. Company shall purchase and pay the Test Energy Rate for all Test Energy delivered prior to COD.

Article 5 - Delivery

5.1 <u>Electric Delivery Arrangements</u>. Seller shall be responsible for making, maintaining and paying the costs associated with the interconnection of the Facility to the Transmission Authority's System. Seller shall comply with the Transmission Authority's requirements for the interconnection and shall comply with all requirements set forth in the applicable Transmission Tariff. The Interconnection Request shall request Energy Resource Interconnection Service or its equivalent as authorized under the applicable Transmission Tariff. Company shall seek to have the Facility designated as a Network Resource and to obtain network long-term firm transmission service under the applicable Transmission Tariff and Seller shall

cooperate reasonably in any request by Company to assist in Company's efforts to have the Facility approved as a Network Resource or equivalent classification pursuant to the applicable Transmission Tariff. To the extent required, Company shall arrange and be responsible for scheduling and transmission services at the Point of Delivery, and shall schedule or arrange for scheduling services with the Transmission Authority to deliver Solar Energy from the Point of Delivery to Company load. To the extent applicable during the Term, Company shall be the market participant as defined by the Transmission Authority for the Facility.

- (A) Seller authorizes Company to contact and obtain information concerning the Facility and Interconnection Facilities directly from any applicable Transmission Authority and, upon request, Seller shall confirm such authorization in writing to such Transmission Authority or any applicable transmission owners in such form as requested by Company or the Transmission Authority.
- (B) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver, on a firm-basis, the output from the Facility to the Point of Delivery.
- (C) Company shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to transmit and deliver the output from the Facility at and beyond the Point of Delivery. If at any time during the Term, the Transmission Provider changes or the Interconnection Facilities cease to be subject to the Transmission Tariff, then the Parties shall cooperate in good faith to amend this PPA in a manner to mitigate the impact of such changes on the Parties and to facilitate the delivery of output from the Point of Delivery to Company's customers at the least possible cost to Company; *provided, however, that* such actions shall not materially adversely affect either Party's rights, benefits, risks or obligations under this PPA.

5.2 Electric Metering Devices.

- (A) All Electric Metering Devices used to measure energy shall be owned, installed, and maintained in accordance with the Interconnection Agreement at no cost to Company under this PPA.
- 1. For purposes of this PPA, meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided*, *however*, *that* the Operating Committee may revise this loss adjustment based on actual experience.
- 2. Seller shall arrange any necessary authorization to provide Company access to all Electric Metering Devices for all purposes necessary to perform under this PPA and shall provide Company the opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted.

- (B) Either Party may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering"), provided, however, that the specifications, installation and testing of any such Back-Up Metering shall be consistent with the requirements for the Electric Metering Devices. Upon written request, the installing Party shall conduct retests requested by the other Party. The actual cost of any retest shall be borne by the Party requesting the test, unless, upon such retest, Back-Up Metering is inaccurate by more than one percent (1%), in which case the cost of the retest shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.
- (C) If an Electric Metering Device or Back-Up Metering, fails to register, or if the measurement is inaccurate by more than one percent, an adjustment shall be made correcting all measurements as follows:
- 1. If the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-Up Metering, if installed, to determine the amount of such inaccuracy, *provided*, *however*, *that* Back-Up Metering has been tested and maintained and adjusted for losses on the same basis as the Electric Metering Device. If Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one percent (1%), the Parties shall use the best available information for the period of inaccuracy, adjusted as agreed by the Parties for losses to the Point of Delivery.
- 2. If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.
- 3. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Company, Company shall use the corrected measurements as determined in accordance with this <u>Article 5</u> to re-compute the amount due for the period of the inaccuracy and in accordance with <u>Article 9</u> may adjust the next regular bill to reflect such re-computed amount, *provided however, that* 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.

Article 6 - Conditions Precedent

6.1 Company CPs.

(A) No later than forty-five (45) Days after the Effective Date of this PPA, Company may file a written request for State Regulatory Approval. Company shall use Commercially Reasonable Efforts to obtain State Regulatory Approval, and Seller shall cooperate with Company's efforts to seek State Regulatory Approval. If within forty-five (45) Days following the Effective Date of this PPA Company fails to

apply for State Regulatory Approval or gives written Notice to Seller that it is affirmatively waiving its right to request State Regulatory Approval under this Section 6.1, Company shall be deemed to have waived its right to seek State Regulatory Approval or to terminate this PPA under this Section 6.1 and this PPA shall remain in full force and effect thereafter.

- (B) In the event that Company applies for State Regulatory Approval, Company shall have the right to terminate this PPA, without any further financial or other obligation to Seller as a result of such termination, by Notice to Seller not more than ten (10) Days after the earlier of (i) fourteen (14) Days after receipt of a written order from the State Regulatory Agency rejecting State Regulatory Approval or imposing conditions on State Regulatory Approval unsatisfactory to Company, or (ii) I months following the written request for State Regulatory Approval without receipt of State Regulatory Approval without conditions unsatisfactory to Company. If Company fails to terminate this PPA in the time allowed by this paragraph, Company shall be deemed to have waived its right to terminate this PPA under this Section 6.1 and this PPA shall remain in full force and effect thereafter.
- 6.2 <u>Seller CPs</u>. Seller shall have the right to terminate this PPA, without any further financial or other obligation to Company as a result of such termination, by Notice to Company within fourteen (14) Days following the failure of Seller to satisfy or waive in its sole discretion any of the following conditions precedent (the "<u>Seller CPs</u>") by the indicated deadline:

Seller CP	<u>Deadline</u>

If Seller fails to terminate this PPA in the times allowed by this <u>Section 6.2</u>, the Seller CPs shall be deemed to have been waived and this PPA shall remain in full force and effect thereafter.

Article 7 - Sale and Purchase

7.1 General Obligation.

(A) Beginning on the Commercial Operation Date, Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to Company, and Company shall receive and purchase at the Point of Delivery, the Solar Energy (not to exceed [] MW (AC) at the Point of Delivery) and other products and services required by this PPA. Seller shall not curtail or interrupt deliveries from the Facility as required by this PPA for economic reasons of any type whatsoever; *provided*, *however*, that Seller's obligation to generate, deliver and sell to Company the Solar

Energy and other products and services required hereunder shall be excused during Seller Excuse Hours.

- (B) Title and risk of loss of the products and services transacted by this PPA shall transfer from Seller to Company at the Point of Delivery.
- 7.2 <u>Committed Solar Energy</u>. Seller covenants to deliver the Committed Solar Energy to the Point of Delivery, except as otherwise provided in this PPA (including during Seller Excuse Hours). Beginning at the end of the second Commercial Operation Year and continuing at the end of each Commercial Operation Year thereafter for the balance of the Term, Seller shall provide to Company (i) a calculation of the actual output of the Facility for the just-completed Commercial Operation Year (including adjustments per <u>Exhibit L</u>) against the Committed Solar Energy for such year.

7.3 AGC.

- (A) Beginning on the Commercial Operation Date, Company shall dispatch the Facility through the EMCC AGC system.
- (B) Company may notify Seller, by telephonic communication or through use of the AGC Set-Point, to curtail the delivery of Solar Energy to Company from the Facility and to the Point of Delivery, for any reason and in its sole discretion and Seller shall promptly comply with such notification.
- (C) The AGC Set-Point is calculated by the EMCC AGC system and communicated electronically through the SCADA System. Seller shall ensure that, throughout the Term, the SCADA signal is capable of functioning on all AGC Set-Points within the margin of error specified in the solar facility's control system manufacturer's energy set point margin of error.
- (D) Seller shall ensure that Facility AGC Remote/Local status is in "Remote" set-point control during normal operations.

7.4 Compensation for Other Products and Services.

- (A) The Parties acknowledge that existing and future Applicable Laws create value in the ownership, use or allocation of RECs. To the full extent allowed by such Applicable Law, Company shall own or be entitled to claim all RECs to the extent such credits may exist or be created during the Term associated with Test Energy, Solar Energy, and any Excess Solar Energy delivered to and paid for by Company.
- 1. Seller hereby automatically and irrevocably assigns to Company all rights, title and authority for Company to register the Eligible Energy Resource and own, hold and manage such RECs in Company's own name and to Company's account, including any rights associated with any renewable energy information or tracking system that exists or may be established (including but not

limited to participants in any applicable REC Registration Program and the United States government) with regard to monitoring, registering, tracking, certifying, or trading such credits. Seller hereby authorizes Company to act as its agent for the purposes of registering the Eligible Energy Resource, and tracking and certifying RECs, and Company has full authority to hold, sell or trade such RECs to its own account of said renewable energy information or tracking systems. Upon the request of Company, at no cost to Company, (i) Seller shall deliver or cause to be delivered to Company such attestations/certifications of RECs, and (ii) Seller shall cooperate with Company's registration and certification of RECs.

- 2. Company shall make all applications and/or filings required by Applicable Law from time to time for REC accreditation and for the provision of such RECs to Company.
- 3. Seller shall retain any RECs associated with any Excess Solar Energy and any curtailed energy pursuant to <u>Section 8.2(C)</u> not delivered to Company.
- (B) Seller shall make available to Company all Generation Benefits and Ancillary Services associated with the Facility at no additional charge under this PPA. Any compensation Seller receives under the Interconnection Agreement or otherwise for Generation Benefits or Ancillary Services associated with the Facility and its output shall be provided to Company at no additional cost to Company under this PPA. Seller shall credit Company, as a reduction to Seller's monthly invoice or other mutually agreed mechanism, for any compensation that Seller receives for Generation Benefits or Ancillary Services.
- 1. Seller shall use Commercially Reasonable Efforts to maximize the availability of Generation Benefits and Ancillary Services available from the Facility; *provided*, *however*, *that* Seller shall not be required to operate its Facility in a manner that reduces the real output of the Facility in order to maximize any Generation Benefits and Ancillary Services for Company.
- 2. In the event a Governmental Authority or Transmission Authority implements new or revised requirements for generators to create, modify, change, or supply Ancillary Services, requiring Seller to install additional equipment after the Commercial Operation Date to meet such requirements, then Seller shall be allowed to reduce the amount owed to Company for Ancillary Services by an amount sufficient to recover the cost of such additional equipment; *provided, however, that* the amount of credit shall in no event be less than zero. Any excess of such cost over the amount of the credit in any year shall instead be carried forward as a reduction of the amount of the credit in subsequent years.

Article 8 - Payment Calculations

8.1 Solar Energy Payment Rate.

- (A) Prior to the Commercial Operation Date, Company shall pay Seller for Test Energy delivered to the Point of Delivery pursuant to <u>Section 4.4</u> at the Test Energy Rate. Seller shall not be entitled to Compensable Curtailment Energy payment prior to the COD in connection with Test Energy.
- (B) Commencing on the Commercial Operation Date, Company shall pay Seller the Solar Energy Payment Rate for Solar Energy delivered to the Point of Delivery. The Solar Energy Payment Rate for a specific Commercial Operation Year shall be effective on the first (1st) Day of the calendar month following the calendar month in which the applicable anniversary of COD occurs (for example, if COD occurs on December 10, 2016, the Solar Energy Payment Rate by Commercial Operation Year for the second Commercial Operation Year as described in EXHIBIT J shall be effective as of January 1, 2018).
- (C) In the event that the Solar Energy in any Commercial Operation Year (including any Compensable Curtailment Energy) exceeds one hundred fifteen percent (115%) of the Committed Solar Energy ("Excess Solar Energy"), Company shall have the option to either (i) pay Seller the Solar Energy Payment Rate for all such Excess Solar Energy and RECs associated therewith, or (ii) elect not to accept any Excess Solar Energy.
- 1. Seller shall notify Company upon Seller's delivery of Solar Energy hereunder that exceeds 110% of the Committed Energy for a Commercial Operation Year. Company shall elect within ten (10) Business Days of Seller's Notice to either accept or decline the Excess Solar Energy after the date of Company's election and through the balance of such Commercial Operation Year.
- 2. If Company elects not to accept Excess Solar Energy, Seller shall have the right to sell such Excess Solar Energy (including associated RECs) to one or more third parties until the end of the applicable Commercial Operation Year, after which the Parties' obligations shall resume pursuant to this PPA; provided, however, that Seller shall be solely responsible for arranging transmission service and delivery arrangements to such third party at no cost to Company under this PPA.

8.2 <u>Curtailment Energy Payment Rate.</u>

(A) If following Commercial Operation (i) delivery of Solar Energy is curtailed by Company pursuant to <u>Section 7.3</u>, or Company elects to utilize non-firm transmission service to deliver Solar Energy from the Point of Delivery and such non-firm transmission service is restricted or reduced by the applicable transmission service provider, except to the extent such restriction or reduction would also have been imposed even if firm transmission service had been in place, or an Economic

Curtailment occurs, and (ii) any such reduction is not a Non-Compensable Curtailment then

- 1. the Parties shall determine the quantity of Solar Energy that would have been produced by the Facility (i) during those periods of time when the Facility is on AGC and the AGC Set-Point is set at a level that will not allow the entire Facility Nameplate Capacity to be deliverable by determining the difference between Potential Energy and the delivered Solar Energy, and (ii) during those periods of time when the Facility is not on AGC or the AGC Set-Point is set at a level that will allow the Facility Nameplate Capacity to be deliverable by determining the amount that would have been available for delivery had its generation not been so curtailed ("Compensable Curtailment Energy").
- 2. Compensable Curtailment Energy shall be the number of MWh represented by the Potential Energy less the Solar Energy actually delivered and measured by the Electric Metering Devices (and excluding any Non-Compensable Curtailments) during the period of curtailment.
- 3. Company shall pay to Seller for such Compensable Curtailment Energy (net of any Non-Compensable Curtailments) all amounts that Seller would have received from Company under this PPA had such Compensable Curtailment Energy actually been delivered.
- (B) For purposes of determining Compensable Curtailment Energy, the amount of Potential Energy at any given time shall be calculated using the best-available data and methods to determine an accurate representation of the amount of Solar Energy.
- 1. To the extent available, Company agrees to use Seller's real time Park Potential communicated to Company through the SCADA System as the proxy for Potential Energy, except to the extent that Park Potential is demonstrated not to accurately reflect the Potential Energy (plus or minus two percent (2%) over a period of one month).
- 2. During those periods of time when the Park Potential is unavailable or does not accurately represent Potential Energy, the Parties shall use the best available data obtained through Commercially Reasonable methods to determine the Potential Energy.
- (C) Seller shall be entitled to sell any curtailed energy and associated RECs to third parties to whom Seller is able to successfully transact and deliver; provided, however, that the net amount realized for such sale shall offset amounts owed by Company for Compensable Curtailment Energy. Company shall reasonably cooperate with any such sales, and Seller accepts sole responsibility to obtain transmission rights to deliver such energy at no cost to Company. Seller accepts all risk of the unavailability of transmission rights during any curtailment.

(D) Notwithstanding anything in this <u>Article 8</u> to the contrary, curtailments or reductions of delivery for any of the following reasons shall constitute "Non-Compensable Curtailments" and shall be excluded from Compensable Curtailment Energy, and no payment shall be due Seller under paragraph (A) above for curtailments of delivery of Solar Energy arising out of or resulting from

1. an Emergency;

- 2. any action taken which reduces or limits the allowable output of the Facility under the Interconnection Agreement or limited operation, provisional, or conditional interconnection agreement, including curtailments arising out of interconnection limits established by the Transmission Authority or market rules that make limited operation, conditional or provisional interconnection agreements subordinate to unconditional interconnection agreements;
- 3. the restriction or reduction of transmission service by the applicable transmission service provider to the extent such restriction or reduction would also have been imposed even if firm transmission service had been in place;
- 4. maintenance outages, whether planned or unplanned, of any part of the transmission system or any testing of the transmission system to the extent such maintenance outage or testing requires a restriction or reduction to the output of the Facility or Company's transmission service arrangements;
- 5. the lack of available transmission for generation from the Facility to the Point of Delivery;
- 6. Seller's failure to maintain in full force and effect any Permit to construct and/or operate the Facility to the extent such failure prevents the Seller from delivering Solar Energy to the Point of Delivery; and
- 7. Seller's failure to maintain AGC capability or its failure or refusal to respond to AGC instructions from the EMCC in a manner consistent with the terms of this Agreement.

Article 9 - Billing and Payment

9.1 Billing.

(A) The billing period shall be the calendar month. Within ten (10) Days after the end of any month, Company will provide to Seller a statement containing the applicable billing parameters based on Company's reading of the Electric Metering Devices and Company's assessment of the amount due during the previous calendar month. No later than fifteen (15) Business Days after the end of each month, Seller shall submit an invoice to Company in a form and by a method mutually agreed to by the Parties showing the payment amount due Seller during the previous calendar month, specifying the Solar Energy and other products and

services provided, all billing parameters, rates and factors, and any other data reasonably relevant to the calculation of payments due to Seller.

- (B) Seller shall include an explanation of any items in dispute, as well as all supporting documentation upon which Seller relies. Billing disputes shall be resolved in accordance with Section 9.3.
- (C) All billing data based on metered deliveries to Company shall be based on meter readings in accordance with <u>Section 5.2</u>.
- 9.2 <u>Payment</u>. Unless otherwise specified herein, undisputed payments shall be payable by check or electronic funds transfer, as designated by the owed Party, on or before the fifteenth (15th) Business Day following receipt of the 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.
- (A) If a payment is late, a late payment charge shall be applied to the unpaid balance for the number of days payment was late and shall be added to the next billing statement. Late payment charges shall include interest calculated using the prime rate of interest as published on the date of the invoice in *The Wall Street Journal* (or, if unavailable, an equivalent publication on or about that date).
- (B) Company at any time may offset against amounts owed to Seller, any liquidated amounts, accrued damages and other payments, and undisputed billing errors and adjustments, which are owed by Seller pursuant to this PPA.
- (C) Seller and Company shall net their obligations to each other under this PPA, and payment of the net amount will discharge all mutual undisputed obligations between the Parties.
- 9.3 <u>Billing Disputes</u>. Either Party may dispute invoiced amounts, but shall pay at least the undisputed portion on or before the date due. To resolve any billing dispute, the Parties shall use the procedures set forth in <u>Article 13</u>. 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, without late payment interest except to the extent that it shall have been established that the amount owed was not disputed in good faith, in which case late payment interest charges shall be calculated on the amount found not to have been disputed in good faith in accordance with the provisions of <u>Section 9.2</u>.

Article 10 - Operations and Maintenance

10.1 Operation and Administration.

(A) Seller shall staff, control, and operate the Facility consistent with Good Utility Practices and the Operating Procedures. During daylight hours and/or when the Facility is capable of operation, personnel shall be available at all times via

telephone or other electronic means with (i) the capability of remotely operating and stopping the Facility within ten (10) minutes, and (ii) the ability to be present at the Site within thirty (30) minutes.

- (B) Seller shall comply with the applicable requirements of NERC, ERO, Transmission Authority, FERC, or successor organizations, Company requirements, Governmental Authority, and Good Utility Practice in the operation of the Facility.
- 1. To the extent that the actions of Seller or the Facility contributes in whole or in part to actions that result in monetary penalties being assessed to Company by NERC, ERO, Transmission Authority, FERC, or other Governmental Authority, Seller shall reimburse Company for all such monetary penalties proximately caused by Seller or the Facility.
- (C) Seller shall be responsible for providing accurate and timely updates on the current availability of the Facility to Company's EMCC. Seller shall provide to Company a day-ahead availability forecast in accordance with Exhibit H Operating Standards (AGC Protocols, Data Collection). Seller acknowledges that such forecasting is consistent with the reporting requirements required for compliance with NERC standards intended to maintain reliability. Seller, as the generator, is primarily responsible for complying with the NERC standards and reporting the information to Transmission Authority, ERO or other reliability coordinator. Company agrees to provide the forecasted information to the reliability coordinator on Seller's behalf; provided, however, that Seller shall remain responsible to ensure the reliability and accuracy of forecasts and any changes to the real-time or forecast availability of the Facility.

10.2 Facility Maintenance.

- (A) Seller shall maintain the Facility in accordance with Good Utility Practice and relevant equipment manufacturers' requirements. Seller shall coordinate its regular maintenance requirements for the Facility with Company. Beginning with the first calendar month following COD and continuing through the balance of the Term, Seller shall provide monthly Maintenance Schedules to Company in writing not later than the fifteenth (15th) Day of the preceding month ("Maintenance Schedule").
- (B) Except as otherwise agreed to by Company, Seller shall minimize the amount of scheduled maintenance during On-Peak Months to the full extent consistent with Good Utility Practices. During each Business Day of an On-Peak Month, Seller shall use Commercially Reasonable Efforts to (i) maximize the amount of Solar Energy produced by the Facility, and (ii) minimize the extent and duration of Forced Outages.
- (C) When Forced Outages occur, Seller shall notify Company's EMCC of the existence, nature, start time, and expected duration of the Forced

Outage as soon as practical, but in no event later than thirty (30) minutes after Seller becomes aware that the Forced Outage has occurred. Seller shall immediately inform Company's EMCC of changes in the expected duration of the Forced Outage unless relieved of this obligation by Company's EMCC for the duration of the Forced Outage.

10.3 Books and Records.

- (A) 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; Forced Outages; information required by Applicable Law, Governmental Authority, Transmission Authority, or the ERO in the prescribed format; and other information reasonably requested by Company.
- (B) Seller and Company shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including such records as may be required by Governmental Authorities, Transmission Authority, NERC or ERO as applicable. All records of Seller pertaining to the operation of a Facility shall be maintained in ______ or such other location as is mutually agreed to by the Parties.
- (C) Each Party shall keep all books and records necessary for metering, billing and payment and shall provide the other Party Commercially Reasonable access to those records.
- (D) Company may audit and examine from time to time upon request and during normal business hours: (i) Seller's Operating Procedures, (ii) equipment manuals and Operating Records, and (iii) data kept by Seller relating to transactions under and administration of this PPA, by Company with Applicable Law and relevant accounting standards. Seller shall maintain all such records in _______ or some other mutually agreeable location and shall cooperate with Company's audit rights under this <u>Section 10.3</u>.

10.4 Operating Committee and Operating Procedures.

- (A) Company and Seller shall each appoint one representative and one alternate representative to act as the Operating Committee in matters relating to the Parties' performance obligations under this PPA and to develop operating arrangements for the generation, delivery and receipt of any output from the Facility. Operating Committee representatives shall be included in Exhibit D Notices and Contact Information.
- (B) The Operating Committee may develop mutually agreeable written Operating Procedures consistent with the requirements of this PPA, to address matters of day-to-day communications; key personnel; operations-center interface; metering, telemetering, telecommunications, and data acquisition procedures; operations and maintenance scheduling and reporting; reports;

operations log; testing procedures; and such other matters as may be mutually agreed upon by the Parties.

- (C) The Operating Committee shall review the requirements for AGC from time to time after the date hereof and may agree on modifications thereto to the extent necessary or convenient for operation of the Facility in accordance with this PPA.
- (D) The Operating Committee shall have authority to act in all technical and day-to-day operational matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes; *provided, however, that* except to the extent explicitly provided for in this PPA, such representatives and the Operating Committee shall not have the authority to amend or modify any provision of this PPA.
- 10.5 Access to Facility. Appropriate representatives of Company shall have access to the Facility with Commercially Reasonable prior notice, to read meters and perform inspections as may be appropriate to facilitate the performance of this PPA. While at the Facility, such representatives shall observe such Commercially Reasonable safety precautions as may be required by Seller and shall conduct themselves in a manner that will not interfere with the operation of the Facility.
- 10.6 <u>Capacity Accreditation</u>. Company has certain planning, operating and reporting requirements. Seller shall complete at its own expense all applicable testing and reporting requirements for the Facility, including any required capacity testing pursuant to, and in accordance with, the procedures and guidelines applicable to Company-owned or purchased generation set forth in SPP Criteria as amended from time to time.

10.7 Real Time Data.

- (A) Seller shall communicate all data necessary for Company to integrate the Facility into Company's EMCC in real time through the Facility's SCADA System in accordance with the AGC Protocols. Seller shall maintain the Facility's SCADA System so that it is capable of interfacing with and reacting to Company's AGC Set-Point and responding to signals from the Company's EMCC in accordance with the AGC Protocols.
- 1. Seller shall use Commercially Reasonable Efforts to adjust the real time Park Potential when Company communicates to Seller a measured difference of plus or minus two percent (2%) between the metered Solar Energy, during a time where there was no AGC Set-Point, and Park Potential.
- 2. In the event that Company reasonably concludes that Seller is not (i) providing the data required by this <u>Section 10.7</u>, (ii) interfacing with and reacting to Company's AGC Set-Point as required by this PPA, and/or (iii) providing Park Potential data within the required margin of error, then upon Notice

from Company, Seller shall, at Seller's expense, take those actions necessary to fully comply with this paragraph. Upon Seller's request, Company shall cooperate with Seller in taking any such actions.

For the Term of this PPA Seller shall maintain one meteorological station at the Facility. Beginning on the Commercial Operation Date (and up to sixty (60) Days prior thereto, if so requested by Company on reasonable prior notice), Seller shall provide Company, at Seller's expense, real time unit performance and meteorological data for all Solar Units and the meteorological station at the Facility in accordance with Exhibit H - Operating Standards (AGC Protocols, Data Collection) for the Term of this PPA. Seller shall undertake to maintain Seller-owned data collection systems that are compatible with Company's PI. Seller shall ensure that real time communications capabilities are available and maintained for the transmission to Company's PI. Seller shall ensure that all meteorological equipment at a minimum meets the specifications set forth in Exhibit H - Operating Standards (AGC Protocols, Data Collection). Company shall be entitled to disclose data gathered through the Company's PI to third parties as Confidential Information subject to the provisions of Section 20.18. Company shall have the right to disclose data gathered through the Company's PI system publicly; provided, however, that such data is (i) masked to obscure the origin of the data and (ii) aggregated so that the data cannot be correlated and used by competitors of Seller and/or the suppliers of Solar Units.

Article 11 - Security Fund

- (A) No later than thirty (30) Days following the Parties' receipt of the initial written order from the applicable State Regulatory Agency approving this PPA on terms and conditions satisfactory to Company and its sole discretion, Seller shall establish, fund, and maintain a Security Fund that is available to pay any amount due to Company pursuant to this PPA, and to provide Company security that Seller will satisfy its obligations under this PPA.
- 1. The Security Fund shall equal the Pre-COD Security Fund up to the COD, and the Post-COD Security Fund on and after the COD and throughout the Term.
- 2. Seller shall replenish the Security Fund within fifteen (15) Business Days after Company makes a draw on the Security Fund as authorized by this PPA, up to the required amount; *provided, however, that* Seller shall not be required to replenish the Security Fund to a level in excess of the remaining amount of the applicable Damage Cap. Notwithstanding the foregoing, Seller shall replenish all amounts drawn from the Security Fund in respect of damages described in Section 12.3(C).
- (B) Company may draw from the Security Fund such amounts as are necessary to recover amounts owing to Company that have not been timely paid pursuant to this PPA, including any damages due to Company and any amounts for

which Company is entitled to indemnification under this PPA. Company may, in its sole discretion, draw all or any part of such amounts due to it from any form of security to the extent available pursuant to this <u>Article 11</u> and in any sequence Company may select. Company's failure or delay to draw any amount from the Security Fund in any instance shall not prejudice Company's rights to subsequently recover such amount from the Security Fund or in any other manner.

- (C) The Security Fund shall be maintained at Seller's expense, shall be originated by or deposited in a financial institution or company ("<u>Issuer</u>") satisfying the requirements of this <u>Article 11</u>, and shall be in the form of one or more of the following instruments:
- 1. The Security Fund may be in the form of an irrevocable standby letter of credit in the form and substance of Exhibit G-1 Form of Letter of Credit, and any material changes to such Exhibit shall be subject to review and approval by Company at its sole discretion (the "Letter of Credit").
 - a. The Issuer for the Letter of Credit shall have and maintain an unsecured bond rating (unenhanced by third-party support) equivalent to A- or better as determined by all rating agencies that have provided such a rating, and if ratings from either Standard & Poor's or Moody's are not available, then equivalent ratings from alternate rating sources reasonably acceptable to Company. If such rating is equivalent to A-, the Issuer must not be on credit watch or have a negative outlook by any rating agency.
 - b. The Letter of Credit must be for a minimum term of three hundred sixty (360) Days. Seller shall give Company at least thirty (30) Days' advance Notice prior to any expiration or earlier termination of the Letter of Credit. Seller shall cause the renewal or extension of the Letter of Credit or other authorized security for additional consecutive terms of three hundred sixty (360) Days or more (or, if shorter, the remainder of the Term) more than thirty (30) Days prior to each expiration date of the security. If the Letter of Credit or other security is not renewed or extended at least thirty (30) Days prior to its expiration date or otherwise is terminated early, Company shall have the right to draw immediately upon the security and to 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) below, until and unless Seller provides a substitute form of such security meeting the requirements of this Article 11.
- 2. The Security Fund may be in the form of United States currency, in which Company holds a first and exclusive perfected security interest, deposited with an Issuer who is a state or federally chartered commercial bank with operations in the State in which the Facility is located (or such other escrow agent acceptable to Company in its sole discretion) in an account under which Company is designated as beneficiary with sole authority to draft from the account or otherwise access the security (the "Escrow Account"). The Escrow Account shall be established pursuant to an Escrow Agreement substantially in the form attached as

- <u>Exhibit G-3 Escrow Agreement</u>. Funds held in the Escrow 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. After the Commercial Operation Date, periodic sweeps by Seller for recovery of interest earned by the escrowed funds shall be allowed, and, at any time the balance in the Escrow Account exceeds the required amount of security, the escrow agent may remit any excess to Seller.
- Following COD, the Security Fund may consist of a guaranty substantially in the form of Exhibit G-2 - Form of Guaranty, from an Issuer with a minimum net worth of at least \$200,000,000 and a senior unsecured credit rating (unenhanced by third-party support) equivalent to BBB+ or better as determined by all rating agencies that have provided such a rating, and if ratings from both Standard & Poor's and Moody's (or if either one or both are not available, equivalent ratings from alternate rating sources reasonably acceptable to Company). If such senior unsecured credit rating of the Issuer is exactly equivalent to BBB+, the Issuer must not be on credit watch or have a negative outlook by a rating agency. If the credit rating of the Issuer is downgraded or there has been a change that has a Material Adverse Effect in the creditworthiness of the Issuer, then Seller shall be required to convert the guarantee provided by such Issuer to a Security Fund instrument meeting the criteria set forth in either sub-paragraph (1) or sub-paragraph (2) above no later than ten (10) Business Days after receiving information from or about the Issuer that the Issuer no longer satisfies the requirements of this paragraph.
- (D) Promptly upon any draw upon the Security Fund, Company shall give Notice to Seller of the amount thereof and the reason therefor, including the obligation(s) that Seller has not satisfied which entitled Company to draw on the Security Fund.
- (E) Seller may change the form of the Security Fund at any time and from time to time upon Commercially Reasonable prior Notice to Company; *provided, however, that* the Security Fund must at all times satisfy the requirements of this Article 11.
- (F) Company may reevaluate from time to time the value of any Security posted by Seller to determine, in a Commercially Reasonable manner, whether (i) it continues to satisfy the requirements in this PPA or (ii) there has been a change that has a Material Adverse Effect on the creditworthiness of the Issuer, such that it does not or, with the passage of time, it will no longer satisfy the requirements of this PPA. If Company determines, in a Commercially Reasonable manner, that there has been an event that has caused, or will cause, with the passage of time, Seller's Security to no longer satisfy the requirements of this PPA, then Company shall provide prompt Notice to Seller of such event and after receipt of such Notice, Seller shall be required to provide alternative Security that satisfies the terms of this PPA.

- (G) The Security Fund shall survive termination of this PPA to be available to pay any amounts owed to Company arising prior to or upon termination. Promptly following (i) the end of the Term and the completion of all of Seller's obligations under this PPA, or (ii) termination of this PPA for any reason prior to the end of the Term, Company shall determine the amount, if any, owed by Seller for any obligations or damages arising out of this PPA. Company may draw such amount and shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller.
- (H) Seller shall reimburse Company for the incremental direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the preparation, negotiation, execution and/or release (including making a draw of funds) of any security instruments, and other related documents, used by Seller to establish and maintain the Security Fund pursuant to Seller's obligations under this Article 11.

Article 12 - Default and Remedies

- 12.1 <u>Events of Default</u>. Any of the following events shall constitute an Event of Default of the specified Party if such event has not been cured within the cure period specified for such event:
- (A) Either Party's failure to make any payment to the other Party as required by this PPA, including invoices pursuant to <u>Article 9</u>, Liquidated Delay Damages, Actual Damages, any required indemnification, or any other required payment, and such amount remains unpaid for a period of ten (10) Business Days after the date the defaulting Party receives Notice from the non-defaulting Party that the amount is overdue.
- (B) Either Party's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for a Party or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment against it without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of thirty (30) Days from its inception.
- (C) Either Party's authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against a Party without such authorization, application or consent, which proceedings remain undismissed or unstayed for thirty (30) Days from its inception or which result in adjudication of bankruptcy or insolvency within such time.

- (D) Either Party's unauthorized assignment of this PPA or Change of Control, immediately upon its occurrence and without further notice from the non-defaulting Party.
- (E) Any material representation or warranty made by a Party in this PPA that is proven to have been false in any material respect when made.
- (F) Any material representation or warranty made by a Party in this PPA ceases to remain true during the Term if such cessation would reasonably be expected to result in a Material Adverse Effect on the non-defaulting Party immediately upon its occurrence and without further notice from the non-defaulting Party; if such misrepresentation is not remedied within ten (10) Business Days after notice is received by the defaulting Party; provided if the default is not reasonably capable of being cured within the ten (10) Business Day cure period specified above, the defaulting Party will have such additional time (not exceeding an additional forty-five (45) Days) as is reasonably necessary to cure the failure, so long as the Party promptly commences and diligently pursues the cure.
- (G) Seller's failure to establish and maintain the Security Fund as and in the amounts required that remains uncured for five (5) Business Days after Company provides Notice of Seller's failure.
- (H) Seller's failure to achieve Commercial Operation more than forty-five (45) Days after the Commercial Operation Milestone; *provided, however, that* if during such period Seller provides a written opinion from a mutually agreeable independent engineer that the COD can reasonably be achieved within an additional forty-five (45) Day period, then Seller shall be allowed a total period not to exceed ninety (90) Days after the Commercial Operation Milestone to achieve Commercial Operation, *provided further that* Liquidated Delay Damages shall have been paid throughout the entire period of delay and that no additional cure period for such default shall be required.
- (I) Seller's failure, commencing twelve (12) months after the COD, to deliver at least eighty five percent (85%) of the Committed Solar Energy. Seller's failure to deliver Committed Solar Energy shall be measured during each twelve (12) month period ending on the anniversary of the Commercial Operation Date ("Committed Solar Energy Measurement Period"), utilizing data from the previous twelve (12) months. For the avoidance of doubt, the first Committed Solar Energy Measurement Period will commence at the end of the second Commercial Operation Year.
- 1. To the extent such failure to deliver Committed Solar Energy is attributable to (i) Seller Excuse Hours; (ii) actual solar irradiation falling below the Expected Solar Irradiation for the twelve (12) month period, as calculated using the methodology set forth in Exhibit L; or (iii) curtailment by Company under Sections 7.3 and 8.2, the contribution of such occurrences shall be imputed into the calculation of Committed Solar Energy for the purposes of, and only for the purposes

of, establishing a default of Seller under this paragraph. Seller shall be permitted to add and/or replace Solar Units on the Site if and to the extent reasonably required to cure Seller's default pursuant to this paragraph.

- 2. This Event of Default shall be curable and deemed cured if (i) within thirty (30) Days following the end of the applicable Committed Solar Energy Measurement Period, Seller cures the reason(s) for such default (or, if such cure cannot reasonably be effected within thirty (30) Days, Seller commences to cure such default within thirty (30) days and then diligently pursues such cure to completion as soon as practicable thereafter), and (ii) as a result of such efforts, during the twelve (12) month period subsequent to the applicable Committed Solar Energy Measurement Period, the production of Solar Energy by the Facility (adjusted as provided in paragraph 1 equals or exceeds ninety five percent (95%) of the Committed Solar Energy.
- 3. Seller shall keep Company apprised at least monthly of Seller's cure efforts under this <u>Section 12.1(I)</u>, if any.
- (J) A termination or cessation of service under the Interconnection Agreement or any other agreement necessary for Seller to interconnect the Facility to the Transmission Authority's System; *provided, however, that* if the termination of, or cessation of service under, any such agreement is not due to the fault of Seller, Seller shall have sixty (60) days from such termination or cessation to cure such default or such longer cure period as provided in any such agreement.
- (K) The failure by either Party to perform or observe any other material obligation to the other Party under this PPA, that is not excused by Force Majeure; provided however, that: (i) neither Party shall be entitled to terminate this PPA on account of this Event of Default unless such failure shall remain unremedied for thirty (30) Days after Notice thereof shall have been given by the non-defaulting Party; and (ii) if the Event of Default is not reasonably capable of being cured within the thirty (30) Day cure period specified above, the defaulting Party will have such additional time (not exceeding an additional ninety (90) Days) as is reasonably necessary to cure the failure, so long as the Party promptly commences the cure within the initial 30-Day cure period and diligently pursues the cure to completion thereafter.
- 12.2 <u>Remedies</u>. Upon the occurrence of any Event of Default of this PPA, the non-defaulting Party may pursue all rights and remedies available to it at law and in accordance with the terms of this PPA. Except as explicitly provided to the contrary in this PPA, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any other rights or remedies provided for herein.

- (A) <u>Termination and Damages</u>. For any uncured Event of Default, the non-defaulting Party may, at its option, do any, some, or all of the following:
- 1. Offset from any payments due from the non-defaulting Party any amount otherwise due, including any unpaid Liquidated Delay Damages or Actual Damages;
- 2. Seek Actual Damages in such amounts and on such basis for the default as authorized by this PPA;
- 3. In the case of an Event of Default by Seller, draw on the Security Fund for any unpaid Liquidated Delay Damages and Actual Damages, or any other required and unpaid amount:
- 4. In the case of an Event of Default by Seller occurring after the Commercial Operation Date, exercise Company's Step-In Rights.
- 5. Terminate this PPA immediately upon Notice, without penalty or further obligation to the defaulting Party. Upon the termination of this PPA under this <u>Section 12.2</u>, the non-defaulting Party shall be entitled to receive from the defaulting Party, subject to the Damage Caps, all of the Liquidated Delay Damages and Actual Damages in connection with the Event of Default resulting in such termination.
- (B) <u>Liquidated Delay Damages</u>. Prior to the COD, Seller shall be liable to pay Company Liquidated Delay Damages as a liquidated damage and not a penalty for any delay in meeting the Commercial Operation Milestone on the terms and conditions as follows:
- 1. Provided Seller actually pays Liquidated Delay Damages as and when owed, the payment of such Liquidated Delay Damages shall be Company's sole and exclusive remedy for Seller's failure to achieve, or Seller's delay in achieving the Commercial Operation Milestone, except for the right to terminate the PPA as provided in Section 12.2(A)(5) above. Liquidated Delay Damages shall be payable in lieu of Actual Damages accrued for the period during which Liquidated Delay Damages are assessed. The Parties specifically recognize that Company's damages associated with any delays in achieving the Commercial Operation Milestone will be significant but that it will be difficult to quantify those damages.
- 2. All Liquidated Delay Damages shall begin to accrue on the Day after the Commercial Operation Milestone as may be extended pursuant to this PPA until the Day after such Commercial Operation Date is achieved.
- (C) <u>Actual Damages</u>. For all Events of Default arising after the COD, the non-defaulting Party shall be entitled to receive from the defaulting Party all direct damages proximately caused by such Event of Default ("<u>Actual Damages</u>") incurred by the non-defaulting Party; provided, however, that if an Event of Default has occurred and has continued uncured for a period of three hundred sixty-five (365)

Days, the non-defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this PPA. If Seller is the defaulting Party, the Parties agree that Actual Damages recoverable by Company hereunder on account of an Event of Default of Seller may include the present value of the Replacement Power Costs. If Company is the defaulting Party, the Parties agree that Actual Damages may include any direct damages available under this PPA.

(D) <u>Specific Performance</u>. In addition to the other remedies specified in this <u>Article 12</u>, in the event that any Event of Default of Seller is not cured within the applicable cure period set forth herein, Company may elect to treat this PPA as being in full force and effect and Company shall have the right to specific performance. By way of example, 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 that would result in the cure, or partial cure, of the Event of Default, Company's right to specific performance shall include the right to obtain an order compelling Seller to enforce its rights under the operating agreement.

12.3 <u>Limitation on Damages</u>.

- (A) Except as otherwise provided in this <u>Section 12.3</u>, (i) Seller's aggregate financial liability to Company for Liquidated Delay Damages shall not exceed Pre-COD Damage Cap, and (ii) Seller's aggregate financial liability to Company for Actual Damages shall not exceed the Post-COD Damage Cap (collectively the "Damage Cap(s)").
- (B) If at any time during the Term, Company incurs damages in excess of a Damage Cap that Seller does not agree to pay when billed by Company, Company shall have the right to terminate this PPA upon Notice.
- (C) The Damage Caps shall not apply to Actual Damages arising out of any of the following events:
- 1. damage to Company-owned facilities caused by Seller's acts or omissions;
- 2. Seller's intentional misrepresentation or misconduct in connection with this PPA or the operation of the Facility;
- 3. the sale or diversion by Seller to a third party of any capacity or energy committed to Company under this PPA except to the extent permitted by this PPA.;
- 4. Seller's failure (i) to maintain insurance coverages in the types and amounts required by this PPA, or (ii) to apply any insurance proceeds to restoration of damaged equipment of the Facility following a casualty except to the extent allowed by this PPA;

- 5. any claim for indemnification under this PPA;
- 6. any Environmental Contamination caused by Seller in connection with this PPA; or
- 7. damages incurred by Company in connection with any bankruptcy or insolvency proceeding involving Seller, including Company's loss of the benefit of its bargain due to rejection or other termination of this PPA in such proceeding.
- (D) The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to Actual Damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, special, equitable or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); provided, however, that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, 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.

12.4 Step-In Rights.

- (A) Upon the occurrence of an Event of Default occurring after the Commercial Operation Date, Company shall have the right, subject to the rights of the Facility Lender pursuant to the Lender Consent, but not the obligation, to exercise its Step-In Rights for the period of time until Seller has cured its Event of Default or this PPA has been terminated. Exercising Step-In Rights shall not preclude or limit Company's right to exercise any remedy it has against Seller under this PPA. Seller shall not grant any person, other than the Facility Lender, a right to possess, assume control of, and operate the Facility that is equal to or superior to Company's right under this Section 12.4.
- (B) Seller irrevocably appoints Company as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions necessary to implement Company's Step-In Rights. Seller shall not grant any person, other than the Facility Lender, a right to possess, assume control of, or operate the Facility in derogation of Company's Step-In Rights.
- (C) Company acknowledges that the Facility Lender may foreclose and take possession of and operate the Facility and Company may be required to relinquish its Step-In Rights in such circumstance. Prior to commencing construction of the Facility, Seller shall obtain the written agreement of the Facility Lender

recognizing Company's Step-In Rights as being limited only by foreclosure of the Facility as a result of Seller's material default of its contractual obligations with the Facility Lender.

- (D) Company shall implement its Step-In Rights in conformance with Good Utility Practice and shall perform Seller's obligations in a manner consistent with Seller's duties under this PPA. Seller shall reimburse Company for its expenses and costs (including the fees and expenses of counsel) incurred by Company in connection with exercising its Step-In Rights. Company shall give Seller and the Facility Lender ten (10) Days' Notice in advance of exercising Company's Step-In Rights. Upon receipt of such Notice:
- 1. Seller shall make available at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Good Utility Practice.
- 2. Seller shall give Company, its employees, contractors, or designated third parties unrestricted access to the Site and the Facility.
- 3. Seller shall cooperate in the implementation of Company's Step-In Rights.
- 4. Company shall use the output generated and delivered from the Facility during such period in partial satisfaction of Seller's obligations hereunder.
- (E) Company may draw upon the Security Fund to cover any expenses incurred by Company in exercising its rights under this Section 12.4.
 - (F) Seller shall retain legal title to and ownership of the Facility.
- (G) Company shall provide Seller with at least fifteen (15) Days' Notice of Company's intent to relinquish its Step-In Rights. Company shall relinquish its Step-In Rights on the earliest of (i) termination of this PPA; (ii) Seller curing all outstanding defaults; (iii) Company's unilateral decision to relinquish possession of the Facility; or (iv) the Parties' mutual decision.
- (H) Company's Step-In Rights shall not constitute an assumption by Company of any liability attributable to Seller.
- 12.5 <u>Duty to Mitigate</u>. 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 PPA.

Article 13 - Dispute Resolution

- (A) In the event of any dispute arising under this PPA (a "Dispute"), within ten (10) Business Days following Notice by either Party, (i) each Party shall appoint a representative, and (ii) the representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the representatives cannot resolve the Dispute within thirty (30) Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to a designated representative of each Party's senior management. Within ten (10) Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within ten (10) Business Days after receipt of each Party's Dispute summaries, the senior management representatives for both Parties shall negotiate in good faith to resolve the Dispute. If such senior management representatives are unable to resolve the Dispute thereafter, either Party may seek available legal remedies.
- (B) If no Notice has been issued within twenty four (24) months following the occurrence of events or 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.
- (C) SELLER AND COMPANY EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS PPA OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF SELLER AND COMPANY RELATED HERETO AND EXPRESSLY AGREE TO HAVE ANY DISPUTES ARISING UNDER OR IN CONNECTION WITH THIS PPA BE ADJUDICATED BY A JUDGE OF THE COURT HAVING JURISDICTION WITHOUT A JURY.

Article 14 - Force Majeure

- 14.1 <u>Applicability of Force Majeure</u>. A Party shall be relieved of its obligations to perform this PPA and shall not be considered to be in default with respect to any obligation under this PPA if and to the extent such Party is prevented from fulfilling such obligation by Force Majeure, *provided, however, that*: (i) such Party gives prompt Notice describing the circumstances and impact of the Force Majeure; (ii) the relief from its obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure; (iii) such Party proceeds with due diligence to overcome the Force Majeure and resumes performance of its obligations under this PPA; and (iv) such Party provides Notice prior to the conclusion of the Force Majeure.
- 14.2 <u>Limitations on Effect of Force Majeure</u>. Force Majeure shall only relieve a Party of such obligations as are actually precluded by the Force Majeure. In no

event will the existence of Force Majeure extend this PPA beyond its stated Term. If a Force Majeure affecting Seller continues for an uninterrupted period of ninety (90) Days from its inception (with respect to Force Majeure occurring prior to COD) or three hundred sixty-five (365) Days from its inception (with respect to Force Majeure occurring after COD), Company may, at any time following the end of such period, terminate this PPA upon Notice to Seller, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination; provided, however, that if the Force Majeure is one that can be corrected through repair or restoration work to the Facility or other actions by Seller, and Seller provides evidence that it is diligently pursuing such actions, then Company shall not have the right to terminate this PPA for an additional ninety (90) day period during any suspension so long as (i) Seller is using Good Utility Practice to complete such repair work, restoration or such other actions, and (ii) prior to expiration of the initialnintey (90) or three hundred sixty-five (365) Day period, Seller informs and provides reasonable proof to Company of Seller's intention and ability to undertake and complete such actions.

14.3 <u>Delays Attributable to Company</u>. Seller shall be excused from performing its obligations under this PPA where Seller can establish that such a failure was caused by (i) any delay or failure by Company to perform its obligations under this PPA, or (ii) any delay or failure by the Transmission Authority to perform its obligations under the Interconnection Agreement, in each case whether or not caused by Force Majeure.

Article 15 - Representations and Warranties

- 15.1 <u>General Representations and Warranties</u>. Each Party hereby represents and warrants to the other as follows, which representations and warranties will be deemed to be repeated, if applicable, by each Party throughout the Term:
- (A) It is a valid separate legal entity, duly organized, validly existing and in good standing under Applicable Law. It is qualified to do business in the State in which the Facility is located and each other jurisdiction where the failure to so qualify would have a Material Adverse Effect on the business or financial condition of the other Party; it has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.
- (B) The Party's execution, delivery, and performance of all of its obligations under this PPA have been duly authorized by all necessary corporate action, and do not and will not:
- 1. require any consent or approval by any governing corporate or management body, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to the other Party upon its request);

- 2. violate any Applicable Law, or violate any provision in any formation documents, the violation of which could have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA;
- 3. result in a breach or constitute a default under the representing Party's formation documents or bylaws, or under any agreement relating to its management or affairs or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which it is a party or by which it or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA; or
- 4. result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of the representing Party now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA.
- (C) This PPA is a valid and binding obligation of the representing Party.
- (D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the representing Party is a party or any judgment, order, or Applicable Law, applicable to it or its business.
- (E) Within the meaning of the United States bankruptcy code, (i) this PPA constitutes a "master netting agreement," (ii) all transactions pursuant to this PPA constitute "forward contracts" or a "swap agreement," (iii) the representing Party is a "forward contract merchant" and "master netting agreement participant," and (iv) and all payments made or to be made pursuant to this PPA constitute "settlement payments."
- (F) It is (i) an "eligible contract participant" as defined in Section 1a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. §1a(12); (ii) a "market participant" under applicable exchange and market rules; (iii) a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of this PPA, or the products or byproducts thereof; and (iv) entering into this PPA solely for purposes related to its business as such.
- (G) This PPA grants each Party the contractual right to "cause the liquidation, termination or acceleration" of the transactions within the meaning of Sections 556, 560 and 561 of the bankruptcy code, as they may be amended, superseded or replaced from time to time. Upon a bankruptcy, a non-defaulting Party shall be entitled to exercise its rights and remedies under this PPA in accordance

with the safe harbor provisions of the bankruptcy code set forth in, inter alia, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 548(d)(2), 556, 560 and 561, as they may be amended, superseded or replaced from time to time.

- 15.2 <u>Seller's Specific Representation</u>. To the best knowledge of Seller, and except for those Permits identified in <u>Exhibit F Seller's Permits</u>, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Permits, or other action required by any Governmental Authority to authorize Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.
- 15.3 <u>Company's Specific Representation</u>. To the best knowledge of Company, and except for the State Regulatory Approval identified in <u>Section 6.1</u>, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Company's execution, delivery and performance of this PPA, have been duly obtained and are in full force and effect.

Article 16 - Insurance

Evidence of Insurance. No later than commencement of construction and then semi-annually on or before June 1 and December 1 of each year during the Term thereafter (and at such other times as may be reasonably requested by Company from time to time), Seller shall provide Company with two copies of insurance certificates acceptable to Company evidencing that insurance coverages for the Facility are in compliance with the specifications for insurance coverage set forth in Exhibit E - Insurance Coverage to this PPA. Such certificates shall (a) name Company as an additional insured (except workers' compensation); (b) provide that Company shall receive thirty (30) Days prior Notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies (except that such Notice shall be ten (10) Days for non-payment of premiums; (c) provide a waiver of any rights of subrogation against Company, its Affiliates and their officers, directors, agents, subcontractors, and employees; and (d) indicate that the Commercial General Liability policy has been endorsed as described above. All policies shall be written with insurers with an AM Best rating of at least A-VII or a Standard & Poor's rating of at least A. All policies shall be written on an occurrence basis, except as provided in Section 16.2. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by Company. Seller's liability under this PPA is not limited to the amount of insurance coverage required herein.

16.2 <u>Term and Modification of Insurance</u>.

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

- (B) Company shall have the right, at times deemed appropriate to Company during the Term, to request Seller to modify the insurance minimum limits specified in Exhibit E Insurance Coverage in order to maintain Commercially Reasonable coverage amounts. Seller shall make all Commercially Reasonable Efforts to comply with any such request.
- (C) If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide Notice to Company, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and capacity. Upon receipt of such Notice, Seller shall attempt to obtain other insurance that would provide comparable protection against the risk to be insured.
- 16.3 <u>Application of Proceeds</u>. Seller shall apply any insurance proceeds to reconstruction of the Facility following a casualty.

Article 17 - Indemnity

- 17.1 <u>Indemnification</u>. Each Party (the "<u>Indemnifying Party</u>") agrees to indemnify, defend and hold harmless the other Party (the "<u>Indemnified Party</u>") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including attorneys' fees) for personal injury or death to persons and damage to the Indemnified Party's real property and tangible personal property or facilities or the property of any other person or entity, or for any third-party claims in connection with this PPA, to the extent arising out of, resulting from, or caused by (i) an Event of Default or other breach under this PPA, (ii) violation of Applicable Laws, (iii) negligent or tortious acts, errors, or omissions, or (iv) intentional acts or willful misconduct of the Indemnifying Party, its Affiliates, directors, officers, employees, or agents.
- (A) This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Indemnified Party, but the Indemnifying Party's liability to indemnify the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party's negligent or intentional acts, errors or omissions caused the damages.
- (B) Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.
- (C) Nothing in this <u>Section 17.1</u> shall enlarge or relieve Seller or Company of any liability to the other for any breach of this PPA.

- 17.2 Notice of Claim. Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative proceeding, legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall give Notice thereof to the Indemnifying Party. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs.
- 17.3 <u>Settlement of Claim</u>. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided, however, that* settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.
- 17.4 <u>Amounts Owed</u>. Except as otherwise provided in this <u>Article 17</u>, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this <u>Article 17</u>, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a Commercially Reasonable effort by the Indemnified Party to obtain such insurance proceeds.

Article 18 - Lender Provisions

18.1 Accommodation of Facility Lender. To facilitate Seller's obtaining of financing to construct and operate the Facility, Company shall make Commercially Reasonable Efforts to provide such consents to collateral assignment, 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 consistent with the terms set forth in Exhibit I – Lender Consent Provisions (generally, a "Lender Consent"); provided, however, that in providing a Lender Consent, Company shall have no obligation to alter or modify the terms of the PPA or provide any consent or enter into any agreement, in each case that has a Material Adverse Effect on any of Company's rights, benefits, risks, or obligations under this PPA. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the Lender Consent and any documents requested by Seller or the Facility Lender, and provided by Company, pursuant to this <u>Section 18.1</u>. Seller shall provide Company with a Notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender.

- 18.2 Facility Lender Notice and Right to Cure. Seller shall provide Company with a Notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender. Following receipt of such Notice, Company shall provide Notice of any breach or default of Seller to the Facility Lender, and Company will accept a cure performed by the Facility Lender, so long as the cure is accomplished within the applicable cure period set forth in this PPA or the Lender Consent.
- 18.3 <u>Notice of Facility Lender Action</u>. Within ten (10) Days following Seller's receipt of each 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 Company.
- 18.4 Officer Certificates. Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available personnel and records relating to the Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation, including administrative proceedings before utility regulatory commissions.

Article 19 - Assignment and Other Transfer Restrictions

- 19.1 <u>Transfer Without Consent Is Null and Void</u>. Except for any Permitted Transfer, any Change of Control or sale, transfer, or assignment of any interest in the Facility or in this PPA made without fulfilling the requirements of this PPA shall be null and void and a breach of this PPA.
- (A) Except as permitted in this <u>Section 19.1</u>, neither Party shall assign this PPA or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that (i) at least thirty (30) Days' prior Notice of any proposed assignment requiring consent shall be given to the other Party; (ii) any assignee shall expressly assume the assignor's obligations under this PPA unless otherwise agreed by the other Party; (iii) no assignment shall relieve the assignor of its obligations under this PPA in the event the assignee fails to perform, unless the other Party waives in writing the assignor's continuing obligations under this PPA; (iv) no assignment shall impair any security given by Seller unless such security has been replaced in accordance with <u>Article 11</u>; and (v) before this PPA is assigned by Seller, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.
- 1. Seller's consent shall not be required for Company to assign this PPA to an Affiliate of Company; *provided, however, that* Company shall remain liable for obligations incurred under this PPA unless released in accordance with the terms of this PPA. In the event that a permitted assignee of Company is an entity that provides retail electric service in the State in which the Facility is located and is subject to rate and quality service regulation under the jurisdiction of the State

Regulatory Agency and has or attains an Investment Grade, Seller shall release Company from its obligations under this PPA if Company requests to be so released by Notice to Seller.

- 2. Company's consent shall not be required for Seller to assign this PPA, for collateral purposes, to the Facility Lender. Seller shall provide Company Notice of any such assignment no later than thirty (30) Days after the assignment.
- (B) Any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Company, which shall not be unreasonably withheld; *provided, however, that* Company shall have no obligation to provide any such consent prior to the fulfillment and expiration of all rights conferred pursuant to <u>Section 19.2</u>.

19.2 Option, ROFO and PFT.

- (A) Seller hereby grants to Company, and its Affiliates, an option to purchase the Facility Property (the "Option") exercisable at any of the following times: (1) within six (6) months after the end of the sixth (6th) Commercial Operation Year; and (2) within six (6) months prior to the Scheduled Termination Date, on the terms and conditions set forth in this Section 19.2(A). Company, or its Affiliate, may and shall exercise its Option by providing at least one hundred twenty (120) Days' Notice to Seller of its intent to purchase the Facility Property.
- 1. The purchase price shall be the higher of (i) fair market value or (ii) the Facility Debt, in each case measured as of the Notice date, provided that Seller shall be permitted to adjust the Facility Debt measurement to include any adjustments to the Notice date calculation as of the closing date to account for changes in the costs of the Facility Debt that existed as of the Notice date.
- 2. Within thirty (30) days of Company's (or its Affiliate's) Option exercise, the Parties shall jointly appoint a qualified, independent appraiser. If the Parties cannot agree, then each Party shall select an appraiser and the two appraisers shall appoint the appraiser. Seller shall provide all information regarding the Facility Property necessary for the appraiser's determination of fair market value. The appraiser shall complete its appraisal within sixty (60) days of receipt of all such necessary data. The costs of the appraisal shall be included as part of the purchase price. During the period in which the appraiser is evaluating the Facility Property, Seller shall allow Company the Commercially Reasonable opportunity to investigate the proposed transaction and conduct due diligence.
- 3. Upon determination of fair market value, the Parties shall use Commercially Reasonable Efforts to negotiate and sign definitive agreements consummating the transaction within ninety (90) days. Upon payment of the purchase price, Seller shall execute and deliver to Company all instruments

necessary to effect transfer of ownership of the Facility Property to Company or its Affiliate, subject only to the liens of Facility Lender which Company elects to assume.

- 4. After the Option is exercised and continuing through closing on any resulting sale, Seller shall maintain the physical Facility Property in Commercially Reasonable condition and to perform those contractual and other obligations under agreements comprising any portion of the Facility Property.
- (B) At any time after the Commercial Operation Date, if (i) Seller, (ii) any Affiliate of Seller, or (iii) members of Seller holding a majority of the interests in Seller, offer to convey the Facility to an unaffiliated third party, Seller shall simultaneously offer Company a right of first offer with respect to the proposed transaction (the "ROFO"). Seller shall identify (i) the buyer, (ii) the nature and terms of the transaction, and (iii) the minimum price Seller is willing to accept to proceed with the contemplated transaction (the "ROFO Notice").
- 1. Seller shall allow Company sixty (60) Days after the ROFO Notice to investigate the proposed transaction and conduct due diligence. Within such period, Company shall either (i) exercise its ROFO rights on substantially comparable terms to the proposed transaction or (ii) cancel its ROFO rights.
- 2. If Company exercises its ROFO rights, the Parties shall have an additional one hundred twenty (120) Day period to sign definitive agreements on terms no less favorable to Company than those contained in the ROFO Notice. Seller shall cooperate in all respects necessary for Company to exercise its ROFO rights.
- 3. If Company does not exercise its ROFO rights, Seller shall have the right to close its proposed transaction with the identified prospective buyer; provided, however, that such transaction shall have an aggregate value of not less than the minimum price set forth in the ROFO Notice and the transaction shall have been closed not more than nine (9) months following expiration of the Company's right to exercise its ROFO rights.
- (C) To the extent Seller proposes a Pending Facility Transaction that does not otherwise trigger Company's ROFO rights, Seller shall give Company at least ninety (90) Days' prior Notice of such Pending Facility Transaction (a "PFT Notice") in order to provide Company with an opportunity to discuss and negotiate with Seller the possible sale of the Facility to Company. Any PFT Notice shall include a fair summary of Seller's plans with respect to the Facility in connection with the proposed Pending Facility Transaction, to the extent then known by Seller. Seller shall have no obligation to sell nor shall Company have any obligation to purchase the Facility, following any PFT Notice; provided, however, that issuance of a PFT Notice shall not relieve Seller of its obligations to provide a ROFO Notice if and when applicable pursuant to this Section 19.2. In the event that the transaction giving rise to the PFT Notice has not been completed within nine months of the PFT Notice, Seller shall be required to resubmit the PFT Notice for such transaction.

19.3 <u>Subcontracting</u>. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Company; *provided, however, that* no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

Article 20 - Miscellaneous

20.1 <u>Notices</u>. Notices required by this PPA shall be in writing and addressed to the other Party, including the other Party's representative on the Operating Committee, at the addresses noted in <u>Exhibit D – Notices and Contact Information</u> as either Party updates them from time to time by Notice to the other Party. Notices shall be either hand delivered or mailed, postage prepaid. If mailed, Notices shall be simultaneously sent by facsimile or other electronic means. Any Notice 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 the close of the Business Day, 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 20.1.

20.2 Taxes and Change of Law.

- (A) Seller shall be solely responsible for any and all present or future taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Facility, or any components or appurtenances thereof, any sales or *ad valorem* taxes relating to the Facility, or any taxes on the products and services generated by Seller, sold and delivered to Company at the Point of Delivery. Seller's prices under <u>Article 8</u> are inclusive of such taxes and impositions during the Term.
- (B) Company shall be solely responsible for the payment of any taxes imposed by Governmental Authorities on the Solar Energy purchased under this PPA beyond the Point of Delivery.
- (C) The Parties shall cooperate to minimize tax exposure; provided, however, that neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder. All electric energy delivered by Seller to Company hereunder shall be sales for resale, with Company reselling such electric energy. Company shall obtain and provide Seller with any certificates required by any Governmental Authority, or otherwise reasonably requested by Seller to evidence that the deliveries of electric energy hereunder are sales for resale.
- 20.3 <u>Applicable Laws</u>. Each Party shall at all times comply with all Applicable Laws, except for any non-compliance that, individually or in the aggregate, could not reasonably be expected to have a material effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder.
- (A) As applicable, each Party shall give all required notices, shall procure and maintain all necessary governmental permits, licenses, and inspections

necessary for performance of this PPA, and shall pay its respective charges and fees in connection therewith.

- (B) Each Party shall promptly disclose to the other, any violation of any Applicable Laws arising out of or in connection with the Facility and this PPA.
- (C) Upon permanent cessation of generation from the Facility, Seller shall decommission the Facility, remove the Facility and remediate the Site as, if and when required by Applicable Laws.

20.4 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 PPA, or any contractual obligation, Permit or requirements of Applicable Law, except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination.
- (B) If fees, fines, penalties, or costs are claimed or assessed against Company by any Governmental Authority due to noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, or if the work of Seller or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, Seller shall reimburse and hold Company harmless against any such costs incurred by Company, including claims for indemnity or contribution made by third parties against Company in accordance with Article 17.

20.5 Rate Changes.

- (A) The terms and conditions and the rates for service specified in this PPA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this PPA 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 PPA whether proposed by a Party, a non-party, or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in <u>United Gas Pipe Line v. Mobile Gas Service Corp.</u>, 350 U.S. 332 (1956) and <u>Federal Power Commission v. Sierra Pacific Power Co.</u>, 350 U.S. 348 (1956) (the Mobile-Sierra doctrine), as interpreted in <u>Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1</u>, 128 S. Ct. 2733 (2008).
- 20.6 <u>Disclaimer of Third-Party Beneficiary Rights</u>. In executing this PPA, Company does not and does not intend to extend its credit or financial support for the

benefit of any third parties lending money to or having other transactions with Seller. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this PPA.

20.7 Relationship of the Parties.

- (A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Except as specifically provided for in this PPA to the contrary, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.
- (B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of Company for any purpose; nor shall Seller represent to any person that he or she is or shall become a Company employee.
- 20.8 Equal Employment Opportunity Compliance Certification. Seller acknowledges that as a government contractor Company is subject to Applicable Laws regarding equal employment opportunity and affirmative action. Such Applicable Laws may also be applicable to Seller as a subcontractor to Company. All such Applicable Laws shall be deemed to be incorporated herein as required by Applicable Law, including 41 C.F.R. §60-1.4(a)(1)-(7).
- 20.9 <u>Survival of Obligations</u>. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations, including warranties, remedies, or indemnities, that by their nature should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.
- 20.10 <u>Severability</u>. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however, that* Company and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision that has been found to be invalid, illegal or unenforceable.

- 20.11 <u>Complete Agreement; Amendments</u>. The terms and provisions contained in this PPA constitute the entire agreement between Company and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Company and Seller with respect to the sale of any output from the Facility. This PPA, including Exhibits, may be amended, changed, modified, or altered in accordance with the terms of this PPA; *provided, however, that* such amendment, change, modification, or alteration shall be in writing.
- 20.12 <u>Binding Effect</u>. This PPA is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, legal representatives, and assigns.
- 20.13 <u>Headings</u>. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.
- 20.14 <u>Counterparts</u>. This PPA may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument.
- 20.15 Governing Law. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State in which the Facility is located, exclusive of conflict of laws principles. The Parties submit to the exclusive jurisdiction of the state courts of the State in which the Facility is located, and venue is hereby stipulated as the capital city of such State or such other city as mutually agreed to by the Parties.
- 20.16 Press Releases and Media Contact. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size, type and timing of the Facility, the long-term nature of this PPA, and other relevant factual information about the relationship. In the event, during the Term, either Party is contacted by the media concerning this PPA or the Facility, the contacted Party shall inform the other Party of the existence of the inquiry, any questions asked, and the substance of any information provided to the media.
- 20.17 <u>Exhibits</u>. Either Party may change the information in <u>Exhibit D Notices and Contact Information</u> at any time by Notice without the approval of the other Party. All other Exhibits may be changed to the extent allowed by specific provisions of this PPA or with the mutual consent of both Parties.

20.18 Confidentiality.

(A) Although this PPA is not Confidential Information, the Parties acknowledge and agree that during the course of the performance of their respective obligations under this PPA, either Party may need to provide information to the other Party, which the disclosing party deems confidential, proprietary or a trade secret ("Confidential Information").

- 1 Confidential Information shall include all documentation and data, including special techniques, methods, computer programs and software, that the disclosing Party considers proprietary or trade secret and furnishes to the receiving Party and wants the receiving Party to treat as Confidential Information. Disclosing Party shall designate Confidential Information by clear and distinct notation on such documentation or by equivalent method, and shall be treated as such by the receiving Party. Documentation and data not so designated need not be considered by the receiving Party to be proprietary or trade secret; provided, however, that any and all data and documentation regarding Facility output, performance, outages and similar operational information shall be considered Confidential Information without the need for further designation if any disclosure thereof would be in a form or by a means that associates such data or documentation with the Facility or Seller or any of its Affiliates, or from which a reasonable person could make such an association. The disclosing Party hereby grants to the receiving Party authority to use Confidential Information for the purposes of this PPA, including keeping electronic copies of such Confidential Information. The receiving Party agrees to keep such Confidential Information confidential, except as set forth in this Section 20.18, to use it for work necessary to the performance of this PPA, and not to sell, transfer, sublicense, disclose or otherwise make available any such Confidential Information to others; provided, however, that Confidential Information may be disclosed by the receiving Party (i) to the agents, employees, advisors, consultants, or potential or actual debt or equity investors of the receiving Party, subject to their acceptance of the obligations of confidentiality imposed hereby and for whose violations of this requirement of confidentiality the receiving Party shall be responsible and (ii) pursuant to Applicable Law, including all Laws and regulations governing disclosure to a State Regulatory Agency.
- 2. Confidential Information shall not include any data or information that:
 - a. can be documented was in the public domain as allowed by this <u>Section 20.18</u>, or through no fault or action of the receiving Party at the time it was disclosed by the disclosing Party to the receiving Party or at any time thereafter:
 - b. can be documented was independently developed by the receiving Party;
 - c. can be documented was known to the receiving Party from an ultimate source other than the disclosing Party without breach of this PPA by the receiving Party;
 - d. is disclosed by a Party, in connection with such Party's performance of its obligations under this PPA, to its consultants or contractors or other third parties who are in turn subject to a confidentiality agreement with the disclosing Party to treat the information at least with the care required by this PPA; or

- e. is legally requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process or, in the opinion of its counsel, by Applicable Laws) to be disclosed in a judicial or administrative proceeding other than a proceeding before a State Regulatory Agency; *provided, however, that* the Party requested or required to make a disclosure shall promptly notify the non-disclosing Party, no later than five (5) Days after such request or requirement and prior to disclosure so that the non-disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of this <u>Section 20.18</u>.
- 3. In proceedings before a State Regulatory Agency, a Party may disclose Confidential Information pursuant to the State Regulatory Agency's procedures relating to confidential information; provided, however, that if the designation of such information as Confidential Information is contested or a Party is required to disclose information which a Party has labeled "Highly Confidential Information," the Party requested or required to make a disclosure shall promptly notify the non-disclosing Party, no later than five (5) Days after such request or requirement and prior to disclosure so that the non-disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of this Section 20.18.

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IN WITNESS WHEREOF, the Parties have executed this PPA.

Seller:	
<u></u>	
By:	
Company:	
Sou	thwestern Public Service Company
Ву:	
	David T. Hudson, President and CEO Southwestern Public Service Company

EXHIBIT A DEFINITIONS

The following terms shall have the meanings set forth herein:

"Actual Damages" has the meaning set forth in Section 12.2(C).

"Affiliate" means any person or entity that directly or indirectly controls, is under the control of, or is under common control with, the named entity by the power to direct or cause the direction of the management of the policies of named entity, whether through ownership interest, by contract or otherwise.

"AGC" or "Automatic Generation Control" means the equipment and capability of an electric generation facility to automatically adjust the generation quantity within the applicable Balancing Authority with the purpose of interchange balancing and specifically, the Facility's capability of accepting AGC Set-Point electronically and automatically adjusting and regulating the Facility's energy production via the Facility's SCADA System.

"AGC Protocols" means the protocols attached hereto as Exhibit H - Operating Standards (AGC Protocols, Data Collection), as modified in accordance with Section 10.4.

"AGC Remote/Local" means a handshake electronic signal sent from the Facility to the EMCC AGC system, and from the EMCC AGC system to the Facility, indicating the Facility is receiving AGC Set-Point locally (from the facility) or remotely (EMCC AGC system) and is following that AGC Set-Point.

"AGC Set-Point" means the Company-generated analog or digital signal sent by the SCADA System to the Facility, representing the maximum Solar Energy output for the Facility.

"Ancillary Services" means those ancillary services defined under the Transmission Tariff as well as those other services and products that may be included under such tariff from time to time, which are associated, directly or indirectly, with the capacity of the Facility or the transmission of energy from the Facility.

"Applicable Law" means all laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority that are applicable to a Party, the business of a Party or the Facility, now in effect or hereafter enacted; amendments to or interpretations of any of the foregoing by a Governmental Authority having jurisdiction; and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions.

"Back-Up Metering" shall have the meaning set forth in Section 5.2(B).

"<u>Balancing Authority</u>" 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.

"Business Day" means any Day that is not a Saturday, a Sunday, or a FERC recognized holiday.

"Change of Control" means the occurrence of any one of the following events with respect to Seller or any direct or indirect owner of a majority of the ownership interests in Seller: (i) a transfer of a majority of the ownership interests in Seller or such owner; or (ii) any consolidation or merger of Seller or such owner in which Seller or such owner, as the case may be, is not the continuing or surviving entity, or (iii) a sale or conveyance of any direct or indirect ownership interest in Seller following which ________ is no longer the direct or indirect owner of at least fifty percent (50%) of the ownership interests of Seller, provided, however, that a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

"COD Conditions" means all of the requirements that must be satisfied by Seller as a prerequisite to achieving Commercial Operation as set forth in Section 4.3.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commercial Operation" means the period beginning on the Commercial Operation Date and continuing through the Term of this PPA.

"Commercial Operation Date" or "COD" means 12:00 am on the date following the date upon which Seller satisfies the COD Conditions, or such other date as is mutually agreed upon by the Parties.

"Commercial Operation Milestone" means the Construction Milestone for the Commercial Operation Date specified in Exhibit B – Construction Milestones.

"Commercial Operation Year" means any consecutive 12 month period during the Term, commencing with the Commercial Operation Date or any of its anniversaries.

"Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any action required to be made, attempted or taken by a Party under this PPA, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action at a reasonable cost; (b) is consistent with Good Utility Practices; and (c) takes into consideration the amount of advance notice required to take such action, the duration and type of action and the competitive environment in which such action occurs.

"Committed Solar Energy" for any period means the megawatt-hours of Solar Energy committed to be delivered to the Company by Seller from the Facility in such

period, set forth in Exhibit J – Committed Solar Energy and Solar Energy Payment Rate (by Commercial Operation Year). For any period that does not coincide with a Commercial Operation Year, Committed Solar Energy shall be calculated as the month-weighted sum of the Committed Solar Energy falling in each of the two Commercial Operation Years using expected monthly generation profile data, set forth in Exhibit K - Expected Monthly Generation Profile.

"Committed Solar Energy Measurement Period" shall have the meaning set forth in Section 12.1(I)

"Company" shall have the meaning set forth in the first paragraph of this PPA.

"Compensable Curtailment Energy" shall have the meaning set forth in Section 8.2(A)(1).

"Confidential Information" shall have the meaning set forth in Section 20.18(A).

"Construction Contract" means the contract or contracts providing for the engineering, procurement, construction, acquisition, manufacture, delivery and installation of the generating and step-up transformation equipment that is to be part of the Facility and the engineering, procurement and construction of the Facility.

"<u>Construction Milestones</u>" means the dates set forth in <u>Exhibit B –</u> Construction Milestones.

"Damage Caps" shall have the meaning set forth in Section 12.3(A).

"<u>Day</u>" means a calendar day.

"Dispute" shall have the meaning set forth in Article 13.

"Economic Curtailment" shall mean curtailments of delivery of Solar Energy that arise from Company's scheduling and other market participation activities as may be required of Seller by the Market Operator, if any, including any such curtailment arising from any energy offer made by, or on behalf of, Company with respect to the Facility. If Seller asserts that any curtailment was an Economic Curtailment and Company disputes that such curtailment arose from such scheduling or market participation activities of Company, Company shall furnish to Seller, subject to Section 20.18, copies of such records of Company relating to Company's scheduling and market participation activities as Seller reasonably requests for purposes of resolving the dispute.

"Effective Date" shall have the meaning set forth in the introductory paragraph.

"<u>Electric Metering Devices</u>" means revenue quality meters, metering equipment and data processing equipment used to measure, record or transmit data relating to the output from the Facility, including the metering current transformers and the metering voltage transformers.

"Eligible Energy Resource" means any resource that qualifies as a renewable energy resource eligible to be certified to receive, claim, own or use Renewable Energy Credits pursuant to the protocols and procedures developed and approved by the State Regulatory Agency in the REC Registration Program.

"Emergency" means any event or occurrence after the date of this PPA that results in the declaration of an Emergency Condition under and as defined in the Interconnection Agreement.

"Energy Markets Control Center" or "EMCC" means Company's merchant representatives responsible for dispatch of generating units, including the Facility.

"Energy Resource Interconnection Service" means the type of interconnection service which allows Seller to connect the Facility to the transmission or distribution system, as applicable, as an "Energy Resource" as defined by the Transmission Tariff, and be eligible to deliver the Facility's output using the existing firm or non-firm capacity on the transmission system on an as-available basis.

"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 Applicable Law and present a material risk under Applicable Laws that the Site will not be available or usable for the purposes contemplated by this PPA.

"ERO" means the Electric Reliability Organization certified by FERC pursuant to Section 215 of the Federal Power Act or any successor organization; the Southwest Power Pool is the certified ERO as of the date of this PPA.

"Escrow Account" shall have the meaning set forth in Article 11(C)(2).

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

"Excess Solar Energy" shall have the meaning set forth in Section 8.1(C).

"Expected Solar Irradiation" for any 12-month period means the annual average solar irradiation values contained in the NREL Solar Prospector TMY file for the coordinates of Site (N []°, W []°). The Expected Solar Irradiation (global horizontal) is kWh/m²/yr.

"Facility" means Seller's electric generating facilities, associated balance of plant, parts and equipment consistent with the warranties for the major components, and all equipment necessary to interconnect to the Transmission Authority's System, all as further described in Exhibit C - Facility Description and Site Maps, including all

of the following: Seller's equipment, buildings, Solar Units, generators, step-up transformers, output breakers, facilities necessary to connect to the 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 construction, operation, maintenance, generation and delivery of the capacity and energy subject to this PPA.

"Facility Debt" means the obligations of Seller or its Affiliates pursuant to the Financing Documents, including principal of, premium on 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. For the avoidance of doubt, Facility Debt includes Tax Equity Financing.

"<u>Facility Lender</u>" means, collectively, any lenders providing any Facility Debt and any successors or assigns thereto_and any Tax Equity Investors.

"Facility Property" means all property rights necessary for the use of the Facility for its intended purpose, including (i) the Facility; (ii) the Site; (iii) Seller's Interconnection Facilities; (iv) the Facility collection facilities and substation; (v) Seller's rights and obligations under the Interconnection Agreement; (vi) Permits, and all material contracts; and (vii) all Facility fixtures, equipment and personal property.

"Federal Power Act" means the provisions of 16 U.S.C. §791(A) *et seq.* and amendments or supplements thereto.

"FERC" means the Federal Energy Regulatory Commission or any successor agency.

"Financing Documents" means the documents associated with any Tax Equity Financing and the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction or permanent debt financing 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" means an event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) is not within the control of or the result of the fault or negligence of the Party claiming its occurrence, and (ii) by exercise of due diligence and foresight could not reasonably have been avoided, including acts of God; sudden action of the elements such as floods, earthquakes, hurricanes, tornados, lightning, fire, ice storms, smoke or other

particulates from volcanoes; sabotage; the discovery of Native American burial grounds not evidenced in Seller's Phase 1 environmental assessment of the Site, conducted in accordance with ASTM standards; the discovery of endangered species, as defined by Applicable Law: vandalism beyond that which could reasonably be prevented by Seller; terrorism; war; riots; explosion; blockades; insurrection; except as set forth in subsection (e) below, labor strikes, slowdowns or labor disruptions (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable); actions or inactions by any Governmental Authority taken after the date hereof (including the adoption or change in any rule, Applicable Law 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 following COD, provided, however, that Force Majeure shall not include: (a) inability, or excess cost, to procure any equipment necessary to perform the obligations of this PPA; (b) acts or omissions of a third party, unless such acts or omissions are themselves excused by reason of Force Majeure; (c) mechanical or equipment breakdown or inability to operate, attributable to circumstances occurring within design criteria and normal operating tolerances of similar equipment designed to be located in the local vicinity, unless such breakdown or condition was itself caused by an event of Force Majeure; (d) changes in market conditions; or (e) any labor strikes, slowdowns, work stoppages, or other labor disruptions limited to Seller, Seller's Affiliates, or any third party employed by Seller to work on the Facility.

"Forced Outage" means any condition at the Facility that requires the immediate and unplanned removal of the Facility, or at least ten percent (10%) thereof, from service, another outage state, or a reserve shutdown state, resulting from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to abnormal Facility conditions or alarms.

"Generation Benefits" means existing or future environmental benefits or attributes, economic and other related carbon credits, carbon offsets, carbon allowances or benefits, Renewable Energy Credits or green tags, carbon dioxide emissions credits, and avoided or reduced carbon dioxide emissions that are attributable to Energy generated by the Seller and sold to Company under this PPA, whether pursuant to or arising from any Governmental Authority or international agreement or treaty, provided, however, that this definition excludes any credits, offsets or other benefits arising out of or associated with any emission or pollutant other than carbon dioxide emissions.

"Good Utility Practices" means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the electric power generation industry pertaining to facilities of the same type as and similar size and location to the Facility that, at a particular time, in the exercise of Commercially Reasonable judgment, in light of the facts that are known, or reasonably should have been known, at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with

Applicable Law, Permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices is not limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the applicable segment of the electric power generation industry in the relevant region, during the relevant period.

"Governmental Authority" means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; 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, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of 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.; (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et sea.; (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq.; (ix) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act. 7 U.S.C. §136 et seq.

"<u>House Power</u>" means retail power to the Facility, for purposes of unit start-up or shut-down, or for any other purpose.

"Indemnified Party" shall have the meaning set forth in Section 17.1.

"Indemnifying Party" shall have the meaning set forth in Section 17.1.

"Interconnection Agreement" means the separate agreement for interconnection of the Facility to the Transmission Authority's System, as such agreement may be amended from time to time. For purposes of this PPA, the Interconnection Agreement shall be interpreted to include any third party facility construction agreement or other Agreement required by the Transmission Authority to interconnect the Facility in accordance with the Transmission Tariff.

"Interconnection Facilities" means those facilities designated in the Interconnection Agreement for the direct purpose of interconnecting the Facility at the Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities, whether owned by Seller, the Transmission Authority or another entity. This equipment is conceptually depicted in Exhibit C – Facility Description and Site Maps to this PPA.

"Interconnection Point" means the physical point within the operational authority of Transmission Authority, as specified in the Interconnection Agreement, at which electrical interconnection is made between the Facility and the Transmission Authority's System in accordance with the Transmission Tariff and the Interconnection Agreement.

"Investment Grade" means a long-term credit rating (corporate or long-term senior unsecured debt) of (a) Baa3 or higher by Moody's, and (b) BBB- or higher by S&P.

"Issuer" shall have the meaning set forth in Article 11.

"ITC" means an investment tax credit applicable to electricity produced from certain renewable resources pursuant to Code §48.

"ITC Recapture Amount" means the amount payable (determined on an after-tax basis) to the IRS by Seller under Code §50(a) due to Seller's ineligibility for ITC after such time as Seller or its Affiliate, Tax Equity Investor or Facility Lender has claimed the ITC.

"kW" means kilowatt.

"kWh" means kilowatt hour.

"Lender Consent" shall have the meaning set forth in Section 18.1.

"Letter of Credit" shall have the meaning set forth in Article 11(C)(1).

"<u>Liquidated Delay Damages</u>" means \$200 per MW of Facility AC Nameplate Capacity per Day.

"Local Provider" means the utility providing House Power to the Facility.

"Maintenance Schedule" has the meaning set forth in Section 10.2(A).

"Market Operator" means the entity that instructs market participants and/or generators to regulate generation assets, including the Facility, within any energy market in which Company participates with respect to the Renewable Energy or capacity attributes and Ancillary Services based on price-based offer curves for the purpose of matching generation output to system load demand while maintaining

bulk electric system reliability. If such entity is also the Transmission Provider, then "Market Operator" shall be construed to mean such entity acting in its capacity as the entity that instructs market participants and/or generators to regulate generation assets, including the Facility, within the energy market in which Company participates with respect to the Renewable Energy or capacity attributes or Ancillary Services based on price-based offer curves for the purpose of matching generation output to system load demand while maintaining bulk electric system reliability.

"Material Adverse Effect" means any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results in operations, or condition (financial or otherwise), prospects, or property of a Party, its business, or this PPA.

"MW" means megawatt or one thousand kW.

"MWh" means megawatt hours.

"Nameplate Capacity" means the designed maximum output for the Facility at the Point of Delivery in AC and shall equal [] MW.

"NERC" means the North American Electric Reliability Corporation or any successor organization.

"Network Resource" means the applicable amount of capacity for the Facility that has been designated as a "network resource" under the Transmission Tariff.

"Non-Compensable Curtailment" shall have the meaning set forth in Section 8.2.

"Notice(s)" shall have the meaning set forth in Section 20.1.

"On-Peak Months" means the months of January, February, June, July, August, September and December.

"Operating Committee" means one representative each from Company and Seller pursuant to Section 10.4.

"Operating Procedures" means those procedures developed pursuant to Section 10.4, if any.

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

"Option" shall have the meaning set forth in Section 19.2(A).

"Park Potential" means the number provided to the Company in real time through the Company's SCADA System in accordance with the AGC Protocols, which depicts Seller's real time calculation of the Potential Energy capable of being provided by the Facility to Company as measured at the Point of Delivery. Park Potential shall be calculated as the aggregate energy available in real time for delivery at the Point of Delivery using the best-available data obtained through Commercially Reasonable methods, and shall be dependent upon measured plane-of-array solar insolation, temperature, barometric pressure, wind speed (mph), wind direction, Solar Unit availability, derate(s) and transmission line losses, and any other adjustment necessary to accurately reflect the Potential Energy at the Point of Delivery.

"Party" and "Parties" shall have the meanings set forth in the introductory paragraph.

"Pending Facility Transaction" or "PFT" means (i) any proposed Change of Control of Seller, (ii) the issuance by Seller or any of its Affiliates of a request for proposals or the response by Seller or any of its Affiliates to a request for proposal or similar process (e.g., auction) for the purchase or sale to any unaffiliated third party of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility, (iii) the commencement by Seller or any of its Affiliates of substantive negotiations with any unaffiliated third party with respect to the sale of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility, and (iv) the execution by Seller or any of its Affiliates of any letter of intent, memorandum of understanding or similar document, whether or not legally binding, which contemplates the sale or lease to an unaffiliated third party of any equity interests in Seller or the Facility or any group(s) of assets or equity interests that includes the Facility, provided, however, that a PFT does not include (x) any financing, refinancing or replacing of the Facility Debt by Seller or any of its Affiliates; (y) any transaction between and among Affiliates of Seller; and (z) any transaction in which Company declined to exercise its ROFO rights.

"Permit(s)" means all applicable construction, land use, air quality, emissions control, environmental and other permits, licenses and approvals from any Governmental Authority required under Applicable Laws for construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility to Company.

"Permitted Transfer" means any of the following:

transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates, provided, however, that the equity interests in Seller (excluding interests held by Facility Lender) continue to be held, directly or indirectly, no less than fifty percent (50%) by [______],

- (ii) any exercise by a Facility Lender of its rights and remedies under the Financing Documents,
- (iii) a Change of Control of the Ultimate Parent Entity of Seller,
- (iv) any change of economic and voting rights triggered in Seller's organization documents arising from the financing of the Facility and which does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change,
- (v) the direct or indirect transfer of shares of or equity interests in Seller to a Tax Equity Investor; or
- (vi) a transfer of the Facility packaged with any of the following:
 - a. all or substantially all of the assets of Seller's Ultimate Parent Entity;
 - b. all or substantially all of the renewable energy generation portfolio of Seller's Ultimate Parent Entity; or
 - c. all or substantially all of the solar generation portfolio of Seller's Ultimate Parent Entity; provided, however, that in the case of (c), the Facility does not represent more than fifty percent (50%) of the generation of such solar generation portfolio; and

provided further that in the case of each of (a), (b) and (c), the entity that operates the Facility following such transfer is (or contracts with) a Qualified Operator.

"PFT Notice" shall have the meaning set forth in Section 19.2(C).

"Phase 1" shall have the meaning set forth in Section 4.1(A).

"Pl" means the "plant information" system as described and implemented in Section 10.7(B).

"Point of Delivery" mea	ns the physical point within the	operational authority of
the Transmission Authority at	which Seller makes available to	Company and delivers
to Company the Solar Energy	being provided by Seller to Co	ompany under this PPA.
The Point of Delivery is the	bus within the Company's	Substation.

"<u>Post-COD Damage Cap</u>" means \$150/kW [multiplied by the number of AC kW in the Facility Nameplate Capacity].

"<u>Post-COD Security Fund</u>" means \$75/kW [multiplied by the number of AC kW in the Facility Nameplate Capacity].

"<u>Potential Energy</u>" means the quantity of the energy that Seller is capable of delivering at the Point of Delivery. In the event that Park Potential is not a reliable

proxy for Potential Energy pursuant to <u>Section 8.2(B)</u>, Potential Energy shall be calculated as the aggregate energy available for delivery at the Point of Delivery using the best-available data obtained through Commercially Reasonable methods, and shall be dependent upon measured Solar speeds, power curves, Solar Unit availability, derate(s) and transmission line losses, and any other adjustment necessary to accurately reflect the Facility's capability to produce and deliver energy to the Point of Delivery.

"PPA" shall have the meaning set forth in the introductory paragraph.

"Pre-COD Damage Cap" means \$150/kW [multiplied by the number of AC kw in the Facility Nameplate Capacity].

"Pre-COD Security Fund" means \$150/kW [multiplied by the number of AC kW in the Facility Nameplate Capacity].

"Qualified Operator" means [_____]or an operator of solar generation facilities that demonstrates to Company's reasonable satisfaction that it has sufficient experience to successfully operate the Facility, including a minimum of three (3) years' experience in the solar energy generation and operation business, and owns, controls or operates a minimum of 200 MW of solar energy generation capacity.

<u>"REC Registration Program"</u> means any State, regional or federal program established to register Eligible Energy Resources and create and certify RECs arising from energy generated from such resources, including any rights associated with any renewable energy information or tracking system that exists or may be established by Applicable Law with regard to monitoring, registering, tracking, certifying, or trading such credits.

"Renewable Energy Credits" or "RECs" means in *Texas*: pursuant to PUCT Substantive Rule 25.173(c)(13), one MWh of Renewable Energy that is physically metered, verified in Texas and meets the requirements set forth in subsection (e) of PUCT Substantive Rule 25.173 and in *New Mexico*: a renewable energy certificate within the meaning of Part 572 of Title 17, Chapter 9, New Mexico Administrative Code, with respect to 1,000 kWh of generated Renewable Energy. For the avoidance of doubt, "RECs" excludes (i) any local, state or federal depreciation deductions or other tax credits providing a tax benefit to Seller based on ownership of, or energy production from, any portion of the Facility, including the ITC that may be available to Seller with respect to the Facility under Applicable Laws, and (ii) depreciation and other Tax Benefits arising from ownership or operation of the Facility unrelated to its status as a generator of renewable or environmentally clean energy.

"Replacement Power Costs" means the costs incurred by Company, after the Commercial Operation Milestone, that are necessary to replace the products and services that Seller was required to provide under this PPA, but failed to so provide,

less the sum of any payments from Company to Seller, under this PPA, that were eliminated as a result of such failure; *provided, however, that* the net amount shall never be less than zero in any hour and, if the calculation for any hour results in a number less than zero, the number for such hour shall be deemed to be zero. Replacement Power Costs shall be determined on an hourly basis and shall equal the sum of all hours where the following calculation achieves a positive number.

Replacement Power Costs = (A + B + C) - D, where

"A" is the product of (x) the number of MW of the Nameplate Capacity (AC) and (y) the applicable market price for AC capacity made available to Company's system;

"B" is the sum of (i) the product of the number of MWh of energy purchased by Company to replace any of the Committed Solar Energy that was not delivered under this PPA and the applicable market price for energy delivered to Company's system at a point nearest to the Point of Delivery for the hour, and (ii) the product of the MWh of energy derived in clause (i) and the actual cost of registered RECs for that number of MWh;

"C" is an amount equal to the actual cost of transmission, ancillary services, fuel and fuel transportation and related penalties that could not be avoided or mitigated and transaction charges to deliver reasonably available energy to Company in amounts equal to the number of MWh for which Replacement Power Costs are owed; and

"D" is the product of the Committed Solar Energy that was not delivered under this PPA and the Solar Energy Payment Rate.

"Replacement Sales Amount" means the sum of any payments which Company should have made but did not make to Seller less the revenue received, if any, by Seller for sales in mitigation of damages with respect to the Solar Energy and other products and services that Company was required to accept and purchase under this PPA, but failed to purchase.

"ROFO" shall have the meaning set forth in Section 19.2(B).

"ROFO Notice" shall have the meaning set forth in Section 19.2(B).

"SCADA" means supervisory control and data acquisition.

"Scheduled Termination Date" means [______].

"Security Fund" means the letter of credit, escrow fund, guaranty and/or other collateral that Seller is required to establish and maintain, pursuant to Article 11, as security for Seller's performance under this PPA.

"Seller" shall have the meaning set forth in the introductory paragraph.

"Seller Excuse Hours" means those hours during which Seller is unable to schedule or deliver Solar Energy to Company as a result of (A) Non-Compensable Curtailments; (B) Force Majeure; (C) Economic Curtailments; and (D) any unexcused failure of Company to perform any obligation of Company under this PPA that causes Seller to be unable to generate or deliver Solar Energy to the Point of Delivery.

"Site" means the parcel of real property on which the Facility will be constructed and located, including 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 the Facility. The Site is more specifically described in Exhibit C - Facility Description to this PPA.

"Solar Energy" means the net electric energy generated from the Facility using solar electric generation technologies, including any and all associated RECs and delivered to the Point of Delivery as measured by the Electric Metering Devices installed pursuant to Section 5.2. Solar Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement. Solar Energy shall be net of energy self-generated and concurrently consumed by the Facility, and net of losses prior to the Point of Delivery.

"Solar Energy Payment Rate" means the rate as shown in Exhibit J – Committed Solar Energy and Solar Energy Payment Rate (by Commercial Operation Year).

"Solar Units" means the equipment necessary for the Facility to collect sunlight at the Site and convert it into electricity or thermal energy. Solar Units include photovoltaic arrays, and tracking devices.

<u>"SPP"</u> or <u>"Southwest Power Pool"</u> means the Southwest Power Pool, a NERC regional electric reliability council and Regional Transmission Organization, or any successor organization.

[This is not used in the agreement] "State Regulatory Agency" means the Public Utility Commission of Texas or the New Mexico Public Regulation Commission.

"State Regulatory Approval" means a final, written order of the State Regulatory Agency that is not subject to application for rehearing, reargument and reconsideration, and that makes the affirmative determination that Company's execution of this PPA is reasonable and in the public interest, and all costs incurred under this PPA are recoverable from the retail customers pursuant to Applicable Law, subject only to the requirement that the State Regulatory Agency retains ongoing prudency review of Company's performance and administration of this PPA.

"Step-In Rights" means Company's right, but not the obligation, to assume control of and operate the Facility as agent for Seller (whether voluntary or involuntary) in accordance with Seller's rights, obligations, and interest under this PPA.

"Tax Benefits" means any and all (i) tax credits based on ownership of, investment in or energy production from the Facility or any portion thereof, including the production credit and the investment credit described, respectively, in Sections 45 and 48 of the Code, as amended, (ii) grants based on ownership of, investment in or energy production from the Facility or any portion thereof, including the grant described in Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, and (iii) other tax benefits, including depreciation and other cost recovery deductions, arising in connection with ownership of, investment in, or operation of the Facility, or any portion thereof, in each case allocated, allowed, allowable, assigned, awarded, certified or otherwise transferred or granted to Seller or its Affiliate or Company by any Governmental Authority in any jurisdiction in connection with the Facility.

"Tax Equity Financing" means a transaction or series of transactions involving one or more investors seeking a return that is enhanced by tax credits and/or tax depreciation (each a "Tax Equity Investor") and generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without "leverage")), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a solar project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Code, as amended (a pass-through lease).

"<u>Term</u>" means the period of time during which this PPA shall remain in full force and effect as further defined in <u>Article 2</u>.

"<u>Test Energy</u>" means that energy which is produced by the Facility prior to COD but not before [date], delivered to Company at the Point of Delivery, and purchased by Company, pursuant to <u>Section 4.4</u>.

"<u>Test Energy Rate</u>" means a payment rate of seventy percent (70%) of the Solar Energy Payment Rate applicable as of the Commercial Operation Date.

"Transmission Authority" means collectively those entities owning and/or operating the Interconnection Facilities and the interconnected transmission system applicable to Seller and the Facility pursuant to the Transmission Tariff, including (i) Southwestern Public Service Company operating under and in accordance with the SPP OATT, and ii) all entity(s) responsible under the Interconnection Agreement for providing the transmission lines, any Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Interconnection Point to the transmission system.

"<u>Transmission Authority's System</u>" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Authority has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Interconnection Point.

"<u>Transmission Provider</u>" means the Southwest Power Pool, Inc., its successors or assigns, or any similar entity that in the future may replace SPP with respect to all or a substantial part of its current responsibilities.

"<u>Transmission Tariff</u>" means the applicable Open Access Transmission Tariff of the Transmission Authority, as amended from time to time.

"<u>Ultimate Parent Entity</u>" shall have the meaning set forth under Section 7A of the Clayton Act, 15 U.S.C. §18a, also known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

EXHIBIT B CONSTRUCTION MILESTONES

Construction Milestone	Outcome	
		··

EXHIBIT C FACILITY DESCRIPTION AND SITE MAPS

[This Exhibit shall include a description of the Facility and all material components thereof.]

The Facility shall be located on the Site and shall be identified as Seller's [] Generation Facility. Maps and
one-line diagrams of the Facility and associated equipment are included as part of this Exhibit.
The address of the Facility is [

The Facility must include the following specific components:

- * have the panel space and 125VDC battery supplied voltage necessary to accommodate the metering, telemetering and communications equipment required by the PPA;
- * communication circuits from the Facility to the EMCC for the purpose of telemetering, supervisory control/data acquisition, and voice communications as required by Company;
- * equipment and software necessary to receive, accept and react to an AGC signal from the Company's SCADA System and to comply with the AGC Protocols as further specified on Exhibit H-AGC Protocols;
- * each Solar Unit is equipped with meteorological measurement equipment (e.g. anemometers), individually linked to Seller's information system;
- * capability of sending real time data and OPC interface to Company's plant information PI system;

Additional Bid Specific requirements to be added

EXHIBIT D NOTICES AND CONTACT INFORMATION

Company	Seller
Notices: Thomas A. Imbler Vice President, Commercial Operations Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.7414 Jessica Collins Renewable Purchased Power Manager Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.7740	Notices: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode
Operating Committee Representative: Jessica Collins Renewable Purchased Power Manager Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.7740 Alternate: Purchased Power Analyst Xcel Energy Services Inc. 1800 Larimer Street, Suite 1000 Denver, CO 80202 Phone: 303.571.XXXX	Operating Committee Representative: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone: [Name Title Company Street Address City, State zipcode Phone:]
Real-Time Contact Information	Real-Time Contact Information

Real-time Communications Contact:
Generation Dispatch desk (24-hr coverage)
Phone: 303.571.6280
Fax: 303.571.7305

Transmission Operation Contact:
Position: Real Time Transmission
Ops
Phone: 303.571.6490
Fax: 303.571.2779
E-mail:
mark.schultz@xcelenergy.com

EXHIBIT E INSURANCE COVERAGE

TYPE OF INSURANCE	MINIMUM LIMITS OF COVERAGE		
Commercial General Liability (CGL) and commercial umbrella	\$11,000,000 combined single limit each occurrence and the aggregate, where applicable. If CGL insurance contains a general aggregate limit, it shall apply separately to the Facility.		

CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of "insured contract" to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

Company shall be included as an insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance.

The CGL and commercial umbrella insurance to be obtained by or on behalf of Seller shall be endorsed as follows:

Such insurance as afforded by this policy for the benefit of Company shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this PPA, and insured hereunder, and any insurance carried by Company shall be in excess of and noncontributing with insurance afforded by this policy.

Business Automobile Liability	\$2,000,000	combined	single	limit	(each
-	accident), in	cluding all	Owned,	Non-C	Owned,
	Hired and Leased Autos.				

Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

T	
TYPE OF INSURANCE	MINIMUM LIMITS OF COVERAGE
I IFE OF INSURANCE	IAIIIAIIAIOIAI MIAII 12 OI OO A MIAYOM

Workers Compensation	Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.
Employers Liability	\$2,000,000 each accident for bodily injury by accident, or \$2,000,000 each employee for bodily injury by disease.
Builder's Risk	Replacement value of the Facility.

Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy.

Environmental Impairment Liability	\$5,000,000 each occurrence.	

All-Risk Property insurance	Full replacement value of the Facility. A
covering physical loss or	deductible may be carried, which deductible
damage to the Facility	shall be the absolute responsibility of Seller.

All-Risk Property insurance shall include: (i) coverage for fire, flood, storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$10,000,000 each for flood and earthquake; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and Units, in an amount equal to their full replacement value.

Business Interruption insurance	Amount required to cover Seller's continuing or	
	increased expenses, resulting from full	
	interruption, for a period of 12 calendar months.	

Business Interruption insurance shall cover loss of revenues or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on Commercially Reasonable terms as determined by Company, subject to a Commercially Reasonable deductible that shall be the responsibility of Seller. Notwithstanding any other provision of this PPA, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date.

EXHIBIT F SELLER'S PERMITS

Description of Entitlement/Permit	Issuing Agency

EXHIBIT G FORM OF SECURITY DOCUMENTS

EXHIBIT G-1 FORM OF LETTER OF CREDIT

LETTERHEAD OF ISSUING BANK

Irrevocable Standby Letter of Credit	Date of Issuance: Initial Expiration Date: [Must be at least one year after date of issuance]
Beneficiary:	Applicant:
irrevocable Standby Letter of Credit No. above-named beneficiary ("Beneficiary") ("Applicant") in the am	lame of Issuing Bank], hereby establish this (this "Letter of Credit") in favor of the for the account of the above-named applicant ount of USD \$ U.S. Dollars).
time and Issuer will make funds immediat Beneficiary's draft(s) at sight in the forr drawn on Issuer and accompanied by the signed on behalf of Beneficiary, and sign capacity. No other documents will be required under this Letter of Credit within 24 h	this Letter of Credit at any time and from time to tely available to Beneficiary upon presentation of mattached hereto as Exhibit A ("Sight Draft"), his Letter of Credit. All Sight Draft(s) must be ator must indicate his or her title or other official uired to be presented. Issuer will effect payment hours after presentment of the Sight Draft(s). with Issuer's own funds in immediately available
Credit at the Issuer's letterh	nted in compliance with the terms of this Letter of lead office, the office located at y other full service office of the Issuer on or
before the above stated expiration dat hereunder. Partial and multiple draws an	e, as such expiration date may be extended of presentations are permitted on any number of suer will endorse this Letter of Credit and return
certain Solar Energy Purchase Agreemedated as of, 201_ (as the time to time, the "PPA"). Notwithstanding	redit is issued pursuant to the provisions of that ent between the Beneficiary and the Applicant same may have been or may be amended from any reference in this Letter of Credit to the PPA agreements, or references in the PPA or any

other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit will be automatically extended each year without amendment for a period of one year from the expiration date hereof, as extended, unless at least thirty (30) days prior to the expiration date, Issuer notifies Beneficiary by registered mail or overnight courier that it elects not to extend this Letter of Credit for such additional period. Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary's address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer's letterhead address

This Letter of Credit is freely transferable by Beneficiary in whole or in part and the number of transfers is unlimited. Issuer agrees that it will effect any transfers immediately upon presentation to Issuer of this Letter of Credit and all amendments (if any) and a completed written transfer request in the form attached hereto as Exhibit B. Such transfer will be effected at no cost to Beneficiary. Any transfer fees assessed by Issuer will be payable solely by Applicant, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer or this Letter of Credit.

Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims Beneficiary may have against Applicant or Applicant may have against Beneficiary.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(B) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(B) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from the Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of god, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control that interrupts Issuer's business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

ISSU	ER:
Ву: _	
Its:	AUTHORIZED SIGNATURE

EXHIBIT A (TO LETTER OF CREDIT)

SIGHT DRAFT

of
]. O.
,

[Name and Address of Issuer to be inserted]

To:

EXHIBIT B (TO LETTER OF CREDIT)

FORM OF TRANSFER REQUEST

IRREVOCABLE STANDBY LETTER OF	CREDIT NO:
CURRENT BENEFICIARY:	APPLICANT:
	·
TO: [NAME OF ISSUING BANK]	
	ciary" of the above referenced Letter of Credit, etter of Credit in favor of the transferee named ND ADDRESS BELOW]:
	nest is delivered to Issuer, the transferee shall redit for all purposes and shall be entitled to eges and benefits thereof.
DATED:	[NAME OF BENEFICIARY]
	Ву:
[NOTARY ACKNOWLEDGMENT]	Name:
	Title:

[TO BE SIGNED BY A PERSON PURPORTING TO BE AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY AND INDICATING THEIR TITLE OR OTHER OFFICIAL CAPACITY, AND ACKNOWLEDGED BY A NOTARY PUBLIC.]

EXHIBIT G-2 FORM OF GUARANTY

This Guaranty is executed and delivered as of this day of,
20 by, a(" <u>Guarantor</u> "), in favor of Southwestern Public Service Company (" <u>Company</u> "), in connection with the
performance by, a
company ("Seller"), of a Solar Energy Purchase Agreement dated , 201
performance by, a, company ("Seller"), of a Solar Energy Purchase Agreement dated, 201_ between Seller and Company [as amended by dated] (the "PPA").
- RECITALS -
A. Seller is planning to construct, own, and operate a solar power electric generation facility having nameplate capacity of approximately MW (AC) to be
located in County, New Mexico (the "Facility").
B. Seller and Company have entered into the PPA for the purchase and sale of capacity and electrical energy from the Facility on the terms and conditions set forth therein.
C. Seller is controlled by Guarantor. Guarantor expects to derive substantial benefits from the performance of the PPA by Seller and Company. To induce Company to enter into the PPA and consummate the purchase and sale of electrical energy contemplated by the PPA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.
NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:
- AGREEMENT -
1. <u>Guaranty</u> . Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Company the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the PPA, whether incurred before or after the date of delivery of this Guaranty (the " <u>Obligations</u> "). This is a guaranty of payment, not of collection, and as such, Company shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.
2. <u>Maximum Liability</u> . Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to (\$US), [Note: the Post-COD Security Amount specified in the PPA to be inserted here] plus costs of collection with respect to any valid claim(s) made by Company hereunder that are incurred in the enforcement or protection of the rights of Company, as further described in Section 10 hereof.

- 3. <u>Rights of Company</u>. Guarantor hereby grants to Company, in Company's discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor's duties hereunder, the power and authority from time to time:
- (a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the PPA:
- (b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations: and
- (c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.
- 4. <u>Performance</u>. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the PPA has expired ("<u>Default</u>"), Guarantor shall immediately upon receipt of written demand by Company (a) perform or cause Seller to perform the Obligation in Default, and (b) pay, reimburse, and indemnify Company against any liabilities, damages, and related costs (including attorneys' fees) incurred by Company as a result thereof, all in such manner and at such times as Company may reasonably direct.
- 5. <u>Satisfaction</u>. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.
- 6. <u>Notice of Acceptance</u>. Guarantor waives and acknowledges notice of acceptance of this Guaranty by Company.
- 7. <u>Waivers by Guarantor</u>. Guarantor hereby waives and agrees not to assert or take advantage of:
- (a) all set-offs, counterclaims, and, subject to Section 4 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws (as defined in the PPA);

- (b) any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;
 - (c) any defense based upon an election of remedies by Company;
- (d) any duty of Company to protect or not impair any security for the Obligations;
 - (e) the benefit of any laws limiting the liability of a surety;
- (f) any duty of Company to disclose to Guarantor any facts concerning Seller, the PPA or the Facility, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Company, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and
- (g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, Company.
- 8. <u>Cumulative Remedies</u>. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.
- 9. <u>Representations and Warranties</u>. Guarantor represents and warrants to Company as follows:
- (a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Seller is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.
- (b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law or judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

- 10. <u>Collection Costs.</u> Guarantor hereby agrees to pay to Company, upon demand, and in addition to the maximum liability set forth in Section 2 hereof, all reasonable attorneys' fees and other expenses which Company may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all such attorneys' fees and other expenses incurred by Company in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Company of its rights and remedies hereunder.
- 11. <u>Severability</u>. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.
- 12. <u>Waiver or Amendment</u>. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company.
- 13. <u>Successors and Assigns</u>. This Guaranty shall inure to the benefit of and bind the successors and assigns of Company and Guarantor.
- 14. <u>Governing Law</u>. This Guaranty shall be governed by and construed in accordance with the law of the State of New Mexico without regard to the principles of conflicts of law thereof.
- 15. <u>Notices</u>. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the PPA, addressed as follows:

(a)	if to Company:	as provided in the PPA	
(b)	if to Guarantor.		
		Attn: Phone: () Fax: ()	
	with a copy to:		
		Attn: Phone: () Fax: ()	

or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to Company as of the day and year first above written.

(SEAL)

EXHIBIT G-3 FORM OF ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is entered into and effective this day of, by and among ("Seller"),
Southwestern Public Service Company ("Company") and ("Seller"), company").
- RECITALS -
WHEREAS, Seller and Company are parties to a Solar Energy Purchase Agreement dated, 201_ (the "PPA"), pursuant to which Seller agrees to build and operate an electric generating facility in County, New Mexico (the "Facility") and to sell energy from the Facility to Company. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the PPA; and
WHEREAS, Article 11 of the PPA requires Seller to provide security in favor of Company in amounts set forth in the PPA, up to a total of \$ (the "Escrow Total"); and
WHEREAS, Seller has elected to establish and deliver funds (the "Escrow Funds") into an escrow account with Escrow Agent to meet its PPA security obligations, and Seller, Company and Escrow Agent agree to enter into this Agreement to define the terms of that account.
NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and other consideration set forth in this Agreement and the PPA, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:
- AGREEMENT -
1. Appointment of Escrow Agent. On the terms, and subject to the conditions, set forth in this Agreement, Seller and Company hereby appoint Escrow Agent as their agent and custodian to hold, invest and distribute the Escrow Funds and all interest and investment earnings thereon (the "Escrow Interest") in accordance with this Agreement. To the extent any Escrow Interest accrues during the term of this Agreement, such Escrow Interest shall be added to but shall not be included as part of the principal amount of the Escrow Funds except as set forth in Section 5.
2. Delivery of Funds to Escrow Agent.
a. Seller shall deposit with Escrow Agent an amount equal to \$ on or before on or before [the date required by the PPA].
b. Escrow Agent shall retain and disburse the Escrow Funds pursuant to the terms of this Agreement. The execution and full performance of this Agreement by Seller and Escrow Agent, and retention and disbursement by Escrow Agent of the

Escrow Funds pursuant to the terms hereof, fully satisfies Seller's initial obligations under Article 11 of the PPA to establish and maintain a security fund. Escrow Agent shall hold the Escrow Funds under the terms of this Agreement and distribute the Escrow Funds only in accordance with <u>Section 5</u>.

- c. The Escrow Funds shall, for all purposes, be considered property of Seller unless and until distributed to Company in accordance with this Agreement. To protect Company prior to such distribution, Seller hereby grants to Company a first priority security interest in all of Seller's right, title and interest in and to the Escrow Funds held under this Agreement for the purpose of securing Seller's obligations under the PPA. However, any release of any portion of the Escrow Funds to Company in accordance with this Agreement shall act as an automatic termination of Company's security interest in the Escrow Funds so released. Seller authorizes Company to file such financing statements and other documents as Company reasonably deems necessary or advisable to protect Company's rights in the Escrow Funds. Each party will sign such documents (including, upon the request of Company a control agreement), provide such information, send such notices and take such other actions as any other party reasonably requests to consummate more effectively the intent and purpose of the parties under this Section 2(c).
- 3. <u>Investment</u>. Escrow Agent shall hold and invest the Escrow Funds only in accordance with the terms of this Agreement. At the written direction of Seller, Escrow Agent shall invest and reinvest the Escrow Funds in cash or one or more of the following short-term securities: a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three (3) months or less. All investments of the Escrow Funds shall be held by, or registered in the name of, Escrow Agent or its nominee. All Escrow Interest and investment income earned on the Escrow Funds shall accrue for the benefit of, and be taxable to, Seller.
- 4. <u>Distributions of Escrow Funds by Escrow Agent</u>. Escrow Agent shall hold the Escrow Funds until instructed or otherwise required to deliver the same or any portion thereof in accordance with Section 5.

Distributions.

- a. <u>Escrow Interest</u>. Once Escrow Funds being held by Escrow Agent reach the Escrow Total, Seller may be paid Escrow Interest earned on the Escrow Funds at times and amounts in Seller's discretion as long as the amount of the Escrow Funds does not, as a result, become less than the Escrow Total.
- b. Release at End of Term; Substitution of Security. After the full and final satisfaction of all of Seller's obligations under the PPA and the ROFO Agreement, any Escrow Funds remaining with Escrow Agent after all deductions for any damages or other allowed charges made by Company, and all accrued Escrow Interest, shall be released to Seller. If Seller provides a letter of credit or other security under the PPA in form and substance as required by the PPA and in the full amount of the Escrow Total

to secure Seller's obligations to Company prior to the expiration or termination of the PPA, the Escrow Funds and any Escrow Interest shall be released to Seller upon the delivery to Company of such effective letter of credit or security mechanism as permitted by the PPA.

- c. <u>Escrow Claims by Company</u>. During the term of the PPA or the ROFO Agreement, Company may draw all or any portion of the Escrow Funds to the extent necessary to recover amounts owing to Company pursuant to the PPA or the ROFO Agreement that are not the subject of a good faith dispute, including any damages due to Company and any amounts for which Company is entitled to indemnification under the PPA. Each claim against the Escrow Funds under this Agreement shall be made by Company by delivering to Escrow Agent a certificate, in substantially the form of Exhibit A attached hereto, specifying the nature of the claim (a "Claim Certificate"). A copy of each Claim Certificate shall also be delivered to Seller contemporaneously with provision to Escrow Agent. Escrow Agent shall pay to Company the amount of Escrow Funds set forth in the Claim Certificate, in accordance with the Claim Certificate, on the first business day after it receives the Claim Certificate.
- d. Regulations of the Comptroller of the Currency. Company and Seller acknowledge that regulations of the Comptroller of the Currency grant Company and Seller the right to receive brokerage confirmations of any security transactions as they occur. Company and Seller specifically waive such notifications to the extent permitted by law, and Seller will receive monthly cash transaction statements that will detail all investment transactions.

Rights and Obligations of Escrow Agent.

a. Duties.

- i. Escrow Agent hereby accepts its obligations under this Agreement and represents that it has the legal power and authority to enter into this Agreement and to perform its obligations hereunder. Escrow Agent agrees that all Escrow Funds held by Escrow Agent under this Agreement shall be segregated from all other property held by Escrow Agent and shall be identified as being held in connection with this Agreement. Segregation may be accomplished by appropriate identification on the books and records of Escrow Agent. Escrow Agent's documents and records with respect to the transactions contemplated by this Agreement shall be available for examination by authorized representatives of Company and Seller. Escrow Agent will deliver to Company and Seller written statements not less than quarterly summarizing any activity with respect to the Escrow Funds (including the amount of interest and earnings thereon) and detailing the balance of the Escrow Funds.
- ii. This Agreement may be terminated only by a writing executed by all of Company, Seller and Escrow Agent.

- iii. In the event that this Agreement is scheduled to expire or terminate during the term of the PPA, and Seller has not provided security pursuant to the PPA required to replace this Agreement, Company may draw the entire balance of Escrow Funds, up to the Escrow Total, within five (5) business days of the scheduled expiration or termination date, and without regard to any objection asserted by Seller, provided Company holds the Escrow Funds it draws in escrow until the earlier of (i) the date Seller provides adequate replacement security in compliance with the PPA, or (ii) the date Company is entitled to draw and retain all or any portion of the Security Fund under the PPA.
- iv. Escrow Agent and Seller will provide immediate notice to Company in the event that (i) the amount of Escrow Funds at any time falls below \$_____ prior to the time the Second Deposit is due or (ii) the amount of Escrow Funds at any time falls below the Escrow Total after the Second Deposit is due.
- b. <u>No Other Duties</u>. Escrow Agent shall not have any duties or responsibilities under this Agreement except as expressly set forth herein.
- c. <u>Escrow Fee</u>. Escrow Agent shall be entitled to receive solely from Seller (a) compensation for its regular services as escrow agent under this Agreement and (b) reimbursement for all reasonable and necessary out-of-pocket expenses incurred by Escrow Agent in fulfilling its obligations under this Agreement, including, without limitation, reasonable fees and disbursements of legal counsel. Such compensation and reimbursement obligations shall be paid from time to time as incurred. In no circumstance will Company have any obligation to pay any amount to Escrow Agent arising out of or under this Agreement.
- d. Resignation of Escrow Agent. Escrow Agent may at any time resign by giving thirty (30) days' advance written notice of such resignation to Company and Seller. Upon such resignation, Escrow Agent shall not be discharged from its obligations under this Agreement until (a) a successor escrow agent, as mutually agreed on by Seller and Company, shall have been appointed, (b) the successor escrow agent shall have executed and delivered an Escrow Agreement in substantially the form of this Agreement and (c) all Escrow Funds then held by Escrow Agent under this Agreement shall have been delivered to such successor escrow agent.
- e. <u>Liability of Escrow Agent</u>. Escrow Agent shall not be liable for any action taken in accordance with the terms of this Agreement, including, without limitation, any distribution of the Escrow Funds in accordance with <u>Section 4</u>, as long as the action was taken in good faith. Escrow Agent shall not be liable for any other act or failure to act under or in connection with this Agreement, except for its own negligence or intentional tortious misconduct. Seller and Company agree to indemnify, defend and hold Escrow Agent harmless from and against all claims, causes of action, costs, judgments, losses and damages arising out of or related to this Agreement, except for any such claims, causes of action, costs, judgments, losses or damages arising from or

related to any breach of this Agreement by Escrow Agent or negligent or intentional tortious actions or omissions of Escrow Agent.

- f. Reliance on Documentary Evidence. Escrow Agent shall be entitled to rely on any written notice, certificate, affidavit, letter, document or other communication that is reasonably believed by Escrow Agent to be genuine and to have been signed or sent by the proper party or parties, and on statements contained therein, without further inquiry or investigation. Notwithstanding anything to the contrary in this Agreement, Escrow Agent may act on any written instructions given jointly by Company and Seller.
- g. <u>Interpleader</u>. If Company and Seller shall disagree about the interpretation of this Agreement, or about the rights and obligations or the propriety of any act contemplated by Escrow Agent hereunder, then Escrow Agent may, within its reasonably exercised discretion, file an action of interpleader in the appropriate court of competent jurisdiction and deposit all of the applicable Escrow Funds with such court.
- 7. <u>Termination of Agreement</u>. This Agreement shall continue through the date on which all obligations of Seller under the PPA and the ROFO Agreement have been fully satisfied or all of the Escrow Funds shall have been paid to Company pursuant to the terms of this Agreement.
 - 8. <u>Taxes</u>. Taxes on distributions of the Escrow Funds shall be paid by Seller.
- 9. <u>Notices</u>. All notices and other communications (including all certificates delivered pursuant to <u>Section 5</u>) under this Agreement by Company or Seller to Escrow Agent shall be delivered contemporaneously to the other parties in the same manner as provided to Escrow Agent. All notices and other communications under this Agreement shall be given in writing and shall be personally delivered, sent by facsimile transmission or sent to the applicable parties at their respective addresses indicated in this <u>Section 9</u> by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service, as follows:

IT TO	Seller, to:		
-			· · · · · · · · · · · · · · · · · · ·
-	12005		
7	Attention:		
F	Phone:		
F	ax:		
If to	Company	/ :	
)	Cel Energ	gy Service	
•	1800 Larin	ner Street	Suite 1000

Phone: (303) 571 Fax: (303) 571-7002	
If to Escrow Agent, to:	
	-
Attention:	-
Phone:	_

Denver, CO 80202

or to such other person or address as any party shall have specified by notice in writing to the other parties. If personally delivered, such communication shall be deemed delivered upon actual receipt; if sent by facsimile transmission, such communication shall be deemed delivered the day of the transmission, or if the transmission is not made on a business day, the first business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this Section 9, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this Section 9, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal.

10. Miscellaneous.

- a. <u>Captions</u>. All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.
- b. <u>No Third-Party Beneficiary</u>. No provision of this Agreement is intended to nor shall in any way inure to the benefit of any customer, property owner or other third party, so as to constitute any such person a third-party beneficiary under this Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.
- c. <u>Integration; Amendment.</u> This Agreement constitutes the entire agreement among the parties relating to the transactions described herein and supersedes any and all prior oral or written understandings. No amendment of, addition to or modification of any provision hereof shall be binding on the parties, and no party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable party or parties.

- d. <u>Governing Law</u>. The Agreement is made in the state in which the Facility is located and shall be interpreted and governed by the laws of such state or the laws of the United States, as applicable.
- e. <u>Good Faith and Fair Dealing: Reasonableness</u>. The parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) whenever this Agreement requires the consent, approval or similar action of a party, such consent, approval or similar action shall not be unreasonably withheld or delayed, and (ii) whenever this Agreement gives a party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.
- f. <u>Severability</u>. Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in force. The parties will, however, use their reasonable best endeavors to agree on the replacement of the void, illegal or unenforceable provisions with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.
- g. <u>Cooperation</u>. The parties agree to cooperate reasonably with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require any party to act in a manner inconsistent with its rights under this Agreement.
- h. <u>Execution in Counterparts and by Facsimile Transmission</u>. This Agreement may be executed in two (2) or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. This Agreement may be executed and delivered by facsimile, and the parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures.

[This space intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date first set forth above.

Dated:	
	Ву:
	Name:
	Its:
Dated:	Southwestern Public Service Company
Datou.	Couline Stern Lubile Convice Company
	Ву:
	Name:
	lts:
Dated:	(Escrow Agent)
	By:
	Name:
	Its:

EXHIBIT A TO ESCROW AGREEMENT

ESCROW CLAIM CERTIFICATE

TO:		
<u>Escrow Agreeme</u> , 20	, by and among Co <u>ent</u> "). Capitalized te	that certain Escrow Agreement, dated as of impany, Seller and you, as Escrow Agent (the rms used but not otherwise defined in this led to them in the Escrow Agreement.
receive Escrow Fu	unds in the amount of	pany hereby certifies that Company is entitled to \$ pursuant to the terms of to the following (generally):
distribute, on the	first business day aft	Escrow Agreement, you are hereby instructed to ter your receipt of this Certificate, the sum of tunds to the undersigned by wire transfer to the
	Bank:	
	Account:	
	Routing Number:	
Date:	, 20	
		Southwestern Public Service Company
		Ву:
		Name: Title:
		1100.

EXHIBIT H

OPERATING STANDARDS

(AGC Protocols, Data Collection)

1. AGC Electronic Communications Between Company and Seller

Company will receive and send AGC Set-Point and related data over an analog or digital line. The data points covered under this PPA, as described below, may overlap data requirements for the Transmission Provider, Transmission Authority or Company's Solar Forecasting group.

2. Data Points to Be Sent from Seller to Company via AGC

The following data points will be transmitted via AGC from Seller to Company and represent Facility level data:

Description	Units
AGC Set-Point (echo)	MW
Power demand	MW
Actual power	MW
Park Potential	MW
Actual reactive power	Mvars
Average voltage	kV
Number of units online and running	Integer
AGC status	Remote/Local

3. Response Times and Limitations of Facility in Regards to AGC

The following protocols outline the expectations around responding to the AGC Set-Point. Except in the case of the frequency of changes, these protocols will be generally bound by the manufacturers' specifications for the equipment that Seller has chosen for the Facility.

- a. <u>Required Response Time</u>. The Facility will respond to the AGC Set-Point within the maximum Solar Unit manufacturers' specifications. The response time will vary based on the mix of available Solar Units and the current level of output of the Facility. The required response time will be subject to change based upon any change in the Solar Unit manufacturers' specifications for ramp rate.
- b. <u>Allowable Variances in Excess of AGC Set-Point</u>. Once the Facility has reached the AGC Set-Point, there may be variances in excess of such set-point up to two percent (2%) on average as measured during a 10-minute period. This is due to changing solar conditions vs. the manufactures' specifications for responding to those

new conditions provided irradiance conditions allow for achieving the assigned AGC Set-Point.

- c. <u>Frequency of Changes</u>. Company can send a new AGC Set-Point to the Facility as frequently as the Solar Unit manufacturer's specifications allow, using the specification for the least frequent change to output. If, however, the AGC Set-Point is below 10% of Park Potential, then Company will be restricted from changing the AGC Set-Point for 30 minutes to prevent the Solar Units from cycling on and off.
- d. Range of AGC Set-Point. The range of set-point values can be between zero percent (0%) and one hundred percent (100%) of Park Potential.

4. Backup Communications

In the event of an AGC failure, the Company and Seller shall communicate via telephone in order to correct the failure.

5. Data Collection

Not later than the Commercial Operation Date, or when requested by the Company prior to the Commercial Operation Date, Seller will deliver to Company a report showing (i) manufacturer, model and year of all panels, inverters and meteorological instrumentation and (ii) the latitude and longitude of the center of the solar panels for every inverter and every meteorological station. Seller will also transmit and provide to Company the real-time data set forth below, refreshed as frequently as allowed by the SCADA System, not to exceed fifteen (15) minute intervals.

- A. Two (2) data points from each inverter:
 - 1. Inverter generation (kW)
 - 2. Inverter availability
- B. Five (5) data points from the meteorological station(s):
 - 1. Global horizontal insolation (GHI)
 - 2. Plane-of-array insolation (POA) using a reference cell
 - 3. Temperature
 - 4. Wind speed (mph)
 - 5. Wind direction (degrees relative to true north)

Seller shall provide a map and key for each inverter sufficient to allow Company to correlate the data received through Company's data historian system to each individual inverter.

EXHIBIT I LENDER CONSENT PROVISIONS

In the event Seller collaterally assigns its rights hereunder to the Facility Lender as security, any related Lender Consent will contain provisions substantially as follows:

- 1. Seller and Company will neither modify nor terminate the PPA, other than as provided therein, without the prior written consent of the Facility Lender.
- 2. The Facility Lender shall have the right, but not the obligation, to do any act required to be performed by Seller under the PPA, and any such act performed by the Facility Lender shall be as effective to prevent or cure a default as if done by Seller itself.
- 3. If Company becomes entitled to terminate the PPA due to an uncured Event of Default by Seller, Company shall not terminate the PPA unless it has first given notice of such uncured Event of Default to the Facility Lender and has given the Facility Lender the same cure period afforded to Seller under Section 12.1 of the PPA, plus an additional thirty (30) Days beyond Seller's cure period to cure any monetary Event of Default and an additional sixty (60) Days beyond Seller's cure period to cure any non-monetary Event of Default; provided, however, that if the Facility Lender requires possession of the Facility in order to cure the Event of Default, and if the Facility Lender diligently seeks possession, the Facility Lender's additional thirty (30) Day or sixty (60) Day, as applicable, cure period shall not begin until foreclosure is completed, a receiver is appointed or possession is otherwise obtained by or on behalf of the Facility Lender.
- 4. Neither the Facility Lender nor any other participant in the Facility Debt shall be obligated to perform or be liable for any obligation of Seller under the PPA until and unless any of them assumes possession of the Facility through the exercise of the Facility Lender's rights and remedies.
- 5. Any party taking possession of the Facility through the exercise of the Facility Lender's rights and remedies shall remain subject to the terms of the PPA and shall assume all of Seller's obligations under the PPA, both prospective and accrued, including the obligation to cure any then-existing defaults capable of cure by performance or the payment of money damages. In the event that the Facility Lender or its successor assumes the PPA in accordance with this paragraph 5, Company shall continue the PPA with the Facility Lender or its successor, as the case may be, substituted wholly in the place of Seller.
- 6. Within ninety (90) Days of any termination of the PPA in connection with any bankruptcy or insolvency Event of Default of Seller, the Facility Lender (or its successor) and Company shall enter into a new power purchase agreement on the same terms and conditions as the PPA and for the period that would have been remaining under the PPA but for such termination.

EXHIBIT J COMMITTED SOLAR ENERGY AND SOLAR ENERGY PAYMENT RATE (by Commercial Operation Year)

Commercial Operation Year	Committed Solar Energy (MWh)	Rate \$/(MWh)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

Commercial Operation Year	Committed Solar Energy (MWh)	Rate \$/(MWh)
11		
12		
13		
14		
15		
16		
17	·	
18		
19		
20		

EXHIBIT K EXPECTED MONTHLY GENERATION PROFILE

Month	Percent of Annual Generation
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	-
December	

EXHIBIT L

METHODOLOGY FOR ADJUSTING THE TWELVE-MONTH COMMITTED SOLAR ENERGY VALUE FOR DIFFERENCES IN ACTUAL SOLAR IRRADIATION AND EXPECTED SOLAR IRRADIATION

Committed Solar Energy may be adjusted if the irradiation received at the Site is below the Expected Solar Irradiation. The adjustment to the 12-month average calculation of Committed Solar Energy is appropriate only when actual solar irradiation falls below the Expected Solar Irradiation for the relevant period as agreed to by the Parties.

As an illustrative example, Table 1 below provides the historical generation and solar irradiation between the months of January and December 2017, the adjustments to the Committed Solar Energy related to this irradiation and the resulting 12-month Committed Solar Energy percentage for a hypothetical solar generating facility. The steps taken in the calculations, and referenced sections in the PPA, are provided below.

Step 1 – Actual Solar Irradiation to Expected Solar Irradiation

The Expected Solar Irradiation is determined on a monthly basis by calculating the mean monthly values of the NREL Solar Prospector TMY data set referenced under the definition of "Expected Solar Irradiation" in the PPA. The Expected Solar Irradiation relevant to Seller is the global horizontal irradiance of 1964 kWh/m2/yr (PPA, Exhibit A, definition of "Expected Solar Irradiation"; Table 1 - Column B).

The actual monthly solar irradiation is determined by the pyranometer reading at Alamosa for the month. (Table 1 - Column C). By dividing the actual solar irradiation by the Expected Solar Irradiation, a ratio is calculated for each month (Table 1 - Column D).

Seller shall provide Company with the NREL Solar Prospector TMY data including the pyranometer reading pertaining to the Facility, and all pertinent data regarding the solar irradiation adjusted Committed Solar Energy calculation whenever an adjustment is made by Seller.

Step 2 – Adjustments to Committed Solar Energy

The Committed Solar Energy on a monthly basis is determined by multiplying the expected monthly generation profile (Exhibit K of PPA and column E in Table 1) by the annual Committed Solar Energy (Exhibit J of PPA and Column F in Table 1) for the relevant year of operation. The resulting monthly Committed Solar Energy is adjusted down (pursuant to Section 12(I) of the PPA) by multiplying the Committed Solar Energy by any monthly actual to Expected Solar Irradiation ratio that is below the expected amount (Table 1 - Column G).

The actual generation delivered is equal to the MWh that were produced and delivered per the PPA. (Table 1 - Column H.)

Step 3 - Committed Solar Energy Percentage

In the final step, the summation of the 12 months of actual generation is divided by the summation of the 12 months adjusted Committed Solar Energy to determine the Committed Solar Energy percentage (Table 1 - Column I).

TABLE 1

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF SOUTHWESTERN)
PUBLIC SERVICE COMPANY'S)
APPLICATION FOR APPROVAL AND)
AUTHORITY TO: (1) ENTER INTO	
SEPARATE PURCHASED POWER)
AGREEMENTS WITH NEXTERA ENERGY)
RESOURCES' ROSWELL AND CHAVES) CASE NO. 15- <u>00083</u> -UT
COUNTY SOLAR FACILITIES; (2))
RECOVER THE ASSOCIATED ENERGY)
COSTS THROUGH ITS FUEL AND	
PURCHASED POWER COST ADJUSTMENT), •
CLAUSE; AND (3) ESTABLISH AND)
IMPLEMENT A SHARED SAVINGS	
MECHANISM,	
SOUTHWESTERN PUBLIC SERVICE	
COMPANY,	
	? ドラード
APPLICANT.	

DIRECT TESTIMONY

of

RUTH M. SAKYA

on behalf of

SOUTHWESTERN PUBLIC SERVICE COMPANY

APRIL 2, 2015

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GLOSSARY OF ACRONYMS AND DEFINED TERMS

Acronym/Defined Term

Meaning

Chaves County PPA

PPA with Chaves County Solar, LLC

Commission

New Mexico Public Regulation Commission

EPA

Environmental Protection Agency

FPPCAC

Fuel and Purchased Power Cost Adjustment

Clause

Fuel

Fuel in Base and Fuel and Purchased Power

Adjustment Clause

Incremental PTC Payment

Results of projects receiving more production

tax credits than originally anticipated

IRP

Integrated Resource Plan

ITC

Investment Tax Credit

LTPPA

Long-term Purchased Power Agreement

LTPPAs

Roswell and Chaves County PPAs

MW

Megawatt

MWh

Megawatt-hour

NPV

Net Present Value

PTC

Production Tax Credit

PUCT

Public Utility Commission of Texas

PV

Photovoltaic

REA

Renewable Energy Act

Acronym/Defined Term

Meaning

REC

Renewable Energy Certificate

Roswell PPA

PPA with Roswell Solar, LLC

RPS

Renewable Portfolio Standard

Rule 550

17.9.550 NMAC - Fuel and Purchased Power Cost Adjustment Clauses for Electric Utilities

Rule 551

17.9.551 NMAC - Prior Approval of Purchased

Power Agreements

Rule 572

17.9.572 NMAC - Renewable Energy for

Electric Utilities

Shared PTC Payment

Sharing of the Incremental Production Tax

Credit

SPP

Southwest Power Pool

SPS

Southwestern Public Service Company, a New

Mexico corporation

Xcel Energy

Xcel Energy Inc.

XES

Xcel Energy Services Inc.

I. WITNESS IDENTIFICATION AND QUALIFICATIONS 1 2 Q. Please state your name and business address. My name is Ruth M. Sakya. My business address is 1400 Ducale Drive SE, Rio 3 Α. 4 Rancho, New Mexico 87124. 5 On whose behalf are you testifying in this proceeding? Q. I am filing testimony on behalf of Southwestern Public Service Company, a New 6 A. Mexico corporation ("SPS") and wholly-owned electric utility subsidiary of Xcel 7 Energy Inc. ("Xcel Energy"). Xcel Energy is a registered holding company that 8 owns several electric and natural gas utility operating companies.1 9 By whom are you employed and in what position? 10 Q. I am employed by SPS, as Manager, Regulatory Policy. 11 A. Please briefly outline your responsibilities as Manager, Regulatory Policy. 12 Q. I am responsible for determining the appropriate regulatory policy for SPS. In this 13 Α. role, I direct and prepare comments, testimony, and briefing materials for policy 14 matters impacting SPS. Among my responsibilities are SPS's renewable energy, 15 energy efficiency, and load management matters before the New Mexico Public 16

("Commission")

and

the

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Regulation

Commission

Utility

Public

¹ Xcel Energy is the parent company of the following four wholly-owned electric utility operating companies: Northern States Power Company, a Minnesota corporation; Northern States Power Company, a Wisconsin corporation; Public Service Company of Colorado, a Colorado corporation; and SPS. Xcel Energy's natural gas pipeline subsidiary is WestGas Interstate, Inc. SPS also has two transmission-only operating companies, Xcel Energy Southwest Transmission Company, LLC, and Xcel Energy Transmission Development Company, both of which are regulated by the Federal Energy Regulatory Commission.

Commission of Texas ("PUCT"), including changes to the Commission's rules 1 related to renewable energy, energy efficiency, and cost recovery riders. In carrying 2 out my responsibilities regarding these matters, I have become familiar with the 3 4 Commission's rules and the applicable statutes affecting these areas. 5 Q. Please describe your educational background. I graduated from the University of Wyoming in 1998 with a Bachelor of Science 6 A. degree in Finance and, in 2001, with a Master of Science degree in Finance, with an 7 emphasis in Regulatory Economics. I completed the coursework and successfully 8 passed the qualifying exams toward a Ph.D. in Public Affairs from the University of 9 10 Colorado, Denver. 11 Q. Please describe your professional experience. I began my career in 1999 as an intern with the Illinois Commerce Commission and 12 A. in 2000 joined the PUCT as a Senior Policy Analyst. I have held various other 13 positions, including Rate Analyst at a multi-jurisdictional electric and gas utility, and 14 Senior Analyst and then Supervising Analyst with a consulting firm specializing in 15 services to regulatory agencies and municipal entities. In 2004, I accepted a position 16 with Xcel Energy Services Inc. ("XES") as Senior Rate Analyst. In 2007, I accepted 17 a position with XES as Manager, Regulatory Policy. Beginning January 1, 2012, my 18 position as Manager, Regulatory Policy was transferred to SPS, where my job 19

responsibilities continue to be the same as they have been since 2007.

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1	Q.	Have you testified or filed testimony before any regulatory authorities?			
2	A.	Yes. I have filed testimony before the Commission, the PUCT, and the Colorado			
3		Public Utilities Commission. I have testified before each of these regulatory			
4		authorities regarding, among other things, the topics discussed in this direct			
5		testimony.			
6					

II. PURPOSE OF THIS PROCEEDING, WITNESS ASSIGNMENT, AND TESTIMONY SUMMARY

Q. What is the purpose of this proceeding?

In this proceeding, SPS is requesting approval and authorization to enter into the following long-term purchased power agreements ("LTPPAs") for the purchase of solar energy: (1) Roswell Solar, LLC ("Roswell PPA"), rated at 70 megawatts ("MW"); and (2) Chaves County Solar, LLC ("Chaves County PPA"), also rated at 70 MW. In addition, SPS is requesting authorization to recover the New Mexico retail jurisdictional share of all energy-related costs associated with the LTPPAs through SPS's fuel in base and fuel and purchased power cost adjustment clause ("FPPCAC") (collectively, "fuel"). Finally, SPS requests that the Commission establish the ratemaking treatment for SPS's proposed sharing of the actual savings resulting from the LTPPAs between customers and SPS.

SPS is filing this case under Rule 551 (17.9.551 NMAC - Prior Approval of Purchased Power Agreements), which establishes requirements and procedures for the approval of PPAs. Rule 551 includes specific criteria that apply to LTPPAs, which are contracts with terms of five years or more (Rule 551.7(E)). The LTPPAs will be system resources that will generate cost savings for SPS's customers, meet the definition of LTPPAs under Rule 551.7(E), and are "power purchase agreements" as defined by Rule 551.7(F).

A.

Q. What is your assignment in this proceeding?

A.

A. My testimony will: (1) provide an overview of SPS; (2) demonstrate SPS's overall compliance with Rule 551.8; (3) discuss and support SPS's request to recover its energy related costs incurred under the LTPPAs and provide estimated bill impacts to SPS's New Mexico retail customers; and (4) support SPS's proposal to share in the actual savings generated by the LTPPAs. Specifically, I address the requirements of Rule 551.8(A), (B), (C), and (D)(4) and (7).

8 Q. Please summarize the conclusions in your testimony.

Consistent with the requirements of Rule 551.8(B), SPS has timely filed its application for approval of LTPPAs. The acquisition of the LTPPAs as an SPS system resource will permit SPS to provide low-cost energy and reduce its system energy costs for New Mexico retail and other jurisdictional customers. As a result, the Commission should authorize SPS to enter into the LTPPAs and approve SPS's request for recovery of the energy-related costs under the LTPPAs through fuel in accordance with Rule 550 (17.9.550 NMAC – Fuel and Purchased Power Cost Adjustment Clauses for Electric Utilities) and Rule 551.9(A)(1).

In addition, the Commission should approve SPS's request for a performance-based financial incentive that allows SPS to share the actual fuel cost savings achieved by the LTPPAs on a 75 percent (customer) and 25 percent (SPS) basis. This proposal:

1		• will promote the acquisition of renewable energy by utilities in excess
2		of the minimum amounts required by the Renewable Portfolio
3		Standard ("RPS") in the Renewable Energy Act (Sections 62-16-1 to
4		62-16-10 NMSA 1978 - "REA"), through cost effective renewable
5		energy which serves as a general energy resource in SPS's resource
6		portfolio;
7		• is modeled after, and consistent with, other sharing proposals that
8		have been approved by the Commission, which will provide
9		incentives to SPS to identify and pursue cost-effective renewable
10		resources that can be considered as alternatives to conventional
11		resources outside of the RPS;
12		• will be based on SPS's actual costs and evidence supporting the
13		reasonableness of the amounts of the sharing; and
14		• will be considered in this proceeding under Rule 551.9(B).
15		Accordingly, SPS's proposed sharing mechanism should be approved.
16	Q.	Is SPS presenting any other witness in support of its Application?
17	A.	Yes, SPS is presenting two other witnesses:
18		• Craig L. Berg – describes SPS's resource planning process; provides an
19		overview of SPS's Request for Proposals for solar generation; and presents

1	the economic analysis that supports the selection of requested LIFFAS. Wil
2	Berg addresses the requirements of Rule 551.8(D)(6), (8), (9), and (10).
3	• Jessica L. Collins - discusses the terms and conditions of the LTPPAs
4	describes the contract negotiation process; and supports the reasonableness of
5	the terms and conditions of the LTPPAs. Ms. Collins addresses the
6	requirements of Rule 551.8(D)(1), (2), (3), and (5).
7	

III. SPS OVERVIEW

Q.	Please briefly describe SPS.
A.	Headquartered in Amarillo, Texas, SPS is a fully integrated generation, transmission,
	and distribution electric utility that serves approximately 383,000 customers
	(approximately 119,000 retail customers in New Mexico) in a 50,000 square-mile
	area of the Panhandle and the South Plains of Texas and eastern and southern New
	Mexico. SPS's service area extends approximately 400 miles from north to south
	and 200 miles from east to west.

SPS serves most towns within the service area, while many areas outside those towns are served by rural electric cooperatives, most of which are wholesale customers of SPS. The largest components of SPS's New Mexico retail service are agriculture and oil and gas production. The principle New Mexico cities in which SPS provides retail service are Carlsbad, Clovis, Hobbs, Roswell, and Tucumcari.

1		IV. <u>COMPLIANCE WITH RULE 551 REQUIREMENTS</u>
2	Q.	Does SPS's filing satisfy the requirements of 551.8(A)?
3	A.	Yes. Rule 551.8(A) requires that no electric utility become irrevocably obligated
4		under a Long Term Purchase Power Agreement ("LTPPA") without first obtaining
5		Commission approval of the LTPPA. Although SPS has signed both LTPPAs, the
6		LTPPAs include provisions allowing SPS to terminate the contracts if Commission
7		approval is not received. See Section 6.1 of the LTPPAs that are provided as
8		Attachments JLC-1 and JLC-2 to Ms. Collins' direct testimony.
9	Q.	Has SPS timely filed its Application with the Commission?
10	Ą.	Yes. Rule 551.8(B) requires filing within thirty days of LTPPA execution. The
11		LTPPAs were executed on March 4, 2015; accordingly, this Application is being
12		filed on a timely basis.
13	Q.	Has SPS served copies of its Application on the Commission's Utility Division
14		Staff, the New Mexico Attorney General, and all parties in SPS's most recent
15		general electric base rate case?
16	A.	Yes.
17	Q.	Has SPS complied with the requirements of Rule 551.8(D)?
18	A.	Yes. As I described earlier, together, Mr. Berg, Ms. Collins, and I support all
19		subparts of Section D.
20		

1 2	V	. COST RECOVERY, BILL IMPACTS, FINANCIAL IMPACTS, AND OTHER CONTRACT PROVISIONS
3	A.	COST RECOVERY
4	Q.	Please describe SPS's proposed cost recovery for the energy purchases under
5		the LTPPAs (Rule 551(8)(D)(4)).
6	A.	SPS requests approval to recover the New Mexico retail jurisdictional allocated share
7		of total energy costs made under the LTPPAs through fuel in accordance with Rules
8		550 and 551.9(A)(1). Purchased energy costs are properly recorded in FERC
9		Account 555 (purchased power expense) and, thus, are appropriately recoverable
10		through fuel. The total energy cost for the LTPPAs will be proportionally allocated
11		based on system energy use among SPS's three jurisdictions (New Mexico retail,
12		Texas retail, and wholesale). The New Mexico retail share of the LTPPAs' total
13		energy costs is estimated to be approximately 20 percent. ²
14	Q.	Are there other provisions in the LTPPAs requiring ratemaking treatment?
15	A.	Yes. As described by SPS witness Ms. Collins, the LTPPAs contain a mechanism to
16		share in certain tax credits that may be received by the Roswell and Chaves County
17		projects. If a change in law or other change results in the projects receiving more
18		production tax credit ("PTC") payments than originally anticipated ("Incremental

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PTC Payment"), the LTPPAs provide for SPS to receive 50 percent of the

² Based on the 2014 New Mexico retail fuel allocation.

1		incremental payments ("Snared PTC Payment") 30 days following receipt of the
2		Incremental PTC Payment.
3	Q.	How does SPS propose to treat the Shared PTC payment?
4	A.	SPS would return the credit through fuel, spread over a 12-month period, to account
5		for seasonal customer usage variations. The payment would be allocated among
6		SPS's jurisdiction based on the prior year's loss-adjusted energy usage, consistent
7		with the time period over which the Shared PTC was accrued.
8	В.	CUSTOMER BILL IMPACTS
9	Q.	Does SPS estimate that the proposed LTPPAs will lower New Mexico retail
10		customer rates (Rule 551(8)(D)(4))?
11	A.	Yes. Over the 25-year contract terms, SPS estimates that the LTPPAs will result in
12		estimated energy cost savings of over \$5.3 million (net present value) ³ for its New
13		Mexico retail customers. More specifically, SPS projects that if the LTPPAs are
14		approved, the monthly bill of a residential customer using 800 kWh per month would
15		decrease by \$0.08, or 0.09 percent per month, assuming current base rates, levelized
16		annual savings under the LTPPAs, and a 20 percent allocation to New Mexico retail.
17	Q.	Has SPS developed a representative customer impact study?
18	A.	Yes. The table below shows SPS's projected bill impacts to representative customers
19		in each rate class. The monthly bill is based on SPS's existing rates.

³ \$26.5 million (total SPS) * 20% (estimated New Mexico allocation).

Table RMS-1: Average Monthly Customer Impacts of LTPPAs

Rate Schedule	Total Mont Bill before LTPPAs	e Î	Estimated Decrease with LTPPAs	Decrease as % of Bill
Residential Service Tariff 1018.16 – 800 kWh	\$ 86	5.11	\$0.08	0.09%
Small General Service Tariff 3110.17 – 1,500 kWh	\$ 134	1.24	\$0.14	0.11%
Secondary General Service Tariff 4060.3 – 50 kW, 20,000 kWh	\$ 1,584	1.70	\$1.90	0.12%
Large General Service Transmission Tariff 4110.4 – 4,000 kW, 800,000 kWh	\$ 66,901	1.00	\$69.14	0.10%

1 C. FINANCIAL IMPACTS

2 Q. Will the proposed LTPPAs effect SPS's financial condition and financial metrics

3 (Rule 551(8)(D)(7))?

A. No. At this time, the projected financial impact is relatively insignificant. Timely cost recovery is the most material potential financial impact and, to the extent SPS is authorized to timely recover its energy-related costs through fuel, the LTPPAs have limited impact to SPS's financial condition and financial metrics.

More specifically, SPS has examined the issue of imputed debt on its financial metrics. Only one of the rating agencies, Standard & Poor's Ratings Services, views PPAs as creating fixed, debt like, financial obligations that represent substitutes for debt financed capital investments in generation capacity (*i.e.*, a utility that has entered into a PPA has contracted with a supplier to make the financial investment on its behalf) and therefore merit inclusion in a utility's financial metrics as though they are part of a utility's capital structure. The LTPPAs are expected to

add approximately \$8 million of imputed debt in the calculation of SPS's credit
metrics, which will only have a slight impact on the overall credit metrics.

3 D. OTHER CONTRACT PROVISIONS

- 4 Q. Do the LTPPAs include other provisions requiring further explanation?
 - A. Yes. As Ms. Collins describes, the LTPPAs include a Renewable Energy Certificate ("REC") purchase option. Specifically, SPS may purchase RECs associated with the contracted energy on a prospective basis, for the remainder of the term of the LTPPA, for a pre-established price per REC by providing 12-months prior written notice. Additionally, the LTPPAs provide SPS with a Right of First Offer for the purchase of RECs, should a sale of RECs for a term of longer than one year with a third party be initiated. In other words, the LTPPAs could include REC purchases for the purpose of compliance with the RPS diversity requirement under Renewable Energy for Electric Utilities 17.9.572 NMAC ("Rule 572") or possible compliance with the Environmental Protection Agency's ("EPA") Rule 111(D) whereby RECs may possibly be utilized. However, at this time, SPS is not purchasing the RECs and the customer bill impacts exclude REC payments.

17 Q. Would a REC purchase require prior Commission approval?

A. Yes. SPS would file an application before the Commission before such a transaction and associated cost recovery could occur, likely as part of its annual RPS plan and report filing under Rule 572 (if used for RPS compliance) or other ratemaking

1	proceeding (if used for compliance with the EPA's rule). As part of the application,
2	SPS would include the information and analysis required by Rule 572, including the
3	resource need and reasonable cost threshold analysis. SPS is not requesting approval
4	of REC purchases at this time.
5	

VI. SHARED SAVINGS PROPOSAL

- 2 Q. What do you describe in this section of your testimony?
- A. In this section of my testimony, I discuss SPS's ratemaking proposal to share in the actual savings (75 percent customers/25 percent SPS) of the realized annual fuel
- 5 savings generated as a result of the LTPPAs.

A.

- 6 A. SHARED SAVINGS MECHANICS
- 7 Q. Please describe SPS's sharing proposal in more detail.
 - SPS's proposal follows a similar methodology that SPS uses for calculating electric commodity sales margins. Currently, SPS allocates these credits on a total SPS basis (New Mexico retail, Texas retail, and FERC wholesale). For purposes of the sharing proposal, SPS will first determine the total SPS fuel savings resulting from the LTPPAs and allocate these savings based on the percentage relationship between the total system sales and New Mexico retail sales. The total SPS cost savings will then be multiplied by the New Mexico retail jurisdictional sales to calculate the applicable savings. If there is a positive balance (*i.e.*, there were demonstrated savings) at the end of the calendar year, SPS will calculate the 75/25 percent sharing and apply SPS's 25 percent to the FPPCAC balancing account. Customer cost savings will be inured each month, realizing the difference between actual and avoided costs through bills lower than they would have otherwise been. The margin sharing will be applied to the FPPCAC balancing account and spread over a 12-month period.

1 O. How will cost savings be calculated?

A. The fuel savings will be determined based on the difference between the solar purchase price power MWh and the avoided energy costs at the solar farms' location on the transmission network. Avoided costs will be calculated using the Southwest Power Pool's ("SPP") hourly Day Ahead Market Locational Marginal Price at the LTPPAs settlement location⁴, which provides an accurate calculation of SPS's avoided costs. The Day Ahead Market Locational Marginal Price will be multiplied by the facilities' loss-adjusted energy output and SPS will deduct any SPP Market-imposed charges in order to hold SPS customers indifferent as to the supply source. This methodology is consistent with the Commission-approved avoided cost calculation used for energy purchased from New Mexico-located Qualifying Facilities.

B. SPS'S SHARED SAVINGS PROPOSAL IN THE PUBLIC INTEREST

15 Q. Is SPS's sharing proposal in the public interest?

16 A. Yes. SPS's proposal is reasonable and good public policy, wherein SPS is
17 encouraged to continue activities to pursue resource opportunities, which not only
18 result in significant cost savings for customers, but furthers the goals of the REA to
19 normalize renewable energy resources such that these resources are able to compete

⁴ A settlement location is a pricing node on the grid used to settle energy market injections and withdrawals. Settlement locations are associated with a generator or a load-serving substation.

economically with conventional resources. In addition, as I described earlier, as a 1 result of SPS's contract negotiations, SPS has secured the option to purchase 2 3 economic RECs, which may significantly reduce future costs, depending on the 4 outcome of the EPA's carbon reduction regulations. 5 As Mr. Berg describes, SPS issued a request for proposal to take advantage of potentially favorable solar photovoltaic ("PV") generation pricing, which SPS 6 believed would incorporate the upcoming expiration of the Federal Investment Tax 7 Credit ("ITC") and the possibility of obtaining some of the New Mexico PTCs. 8 After a thorough evaluation, SPS actively pursued the short-listed bidders and 9 ultimately decided to enter into the LTPPAs. As explained by Mr. Berg, as a result 10 of SPS's efforts, and assuming the Commission provides its approval, the two solar 11 12 facilities: (1) will be located in New Mexico, which will provide economic and 13 environmental benefits to New Mexico, consistent with objectives of the 14 15 REA; (2) will provide an estimated total system net present value ("NPV") of 16 avoided energy savings for the period (2017 - 2041) of approximately 17 18 \$26.5 million; and (3) can, if approved by the Commission, be used to meet RPS requirements. 19

1		The proposed sharing mechanism allows SPS customers to receive the majority of
2		benefits resulting from the LTPPAs on a real-time (monthly) basis and also
3		encourages SPS to actively pursue other possible renewable energy resources that
4		could be used to potentially reduce customer bills and enable renewable resources to
5		be considered as conventional resources.
6	Q.	Does the REA authorize the Commission to allow incentives to encourage
7		utilities to pursue procurement of renewable generation?
8	A.	Yes. The REA explicitly authorizes the Commission to provide incentives for
9		renewable energy resources beyond the minimum requirements outlined by the RPS.
10		Section 62-16-2(A)(5) (purpose) provides that "a public utility should have
11		incentives to go beyond the minimum requirements of the renewable portfolio
12		standard." Likewise, section 62-16-4(H) specifies:
13 14 15 16 17		The commission shall determine if it is in the public interest for the commission to provide appropriate performance-based financial or other incentives to encourage public utilities to acquire renewable energy supplies in amounts that exceed the requirements of the renewable portfolio standard.
18		Accordingly, the REA itself provides the basis for SPS's request to receive
19		performance-based financial incentives for acquiring renewable resources, outside of
20		the RPS requirements, particularly in instances where the resource acquisition results
21		in cost savings and makes renewable resources more competitive with conventional
22		resources.

Q. Has the Commission approved similar sharing mechanisms for other SPS activities?

3 A. Yes, the Commission has approved several sharing mechanisms.

- Percent (shareholders) sharing mechanism on non-firm economy energy sales margins. The Certification of Stipulation highlights SPS's testimony regarding FERC Opinion No. 203 (regarding the Southwest Bulk Power Experiment), in which the FERC reasoned that 75 percent of a big pie is preferable to 100 percent of a small pie. The 75/25 percent sharing was affirmed and approved in many subsequent fuel continuation and base rate proceedings. In Case Nos. 10-00395-UT and 12-00350-UT, the Commission approved SPS's current sharing of 90/10 percent. The margin credit is provided monthly as an offset to the FPPCAC balancing account.
- In Case No. 04-00334-UT⁶, the Commission first approved a 75/25 percent sharing mechanism on REC sales margins. Over time, the sharing mechanism has changed (both increasing and decreasing) and is currently

⁵ In the Matter of the Filing by Southwestern Public Service Company of its Tariffs Seeking a Rate Adjustment for Electric Service to its New Mexico Customers, Case No. 1957, Order Approving Stipulation (Feb. 24, 1986).

⁶ In the Matter of Southwestern Public Service Company's 2003 Annual Portfolio Report and 2004 Annual Portfolio Procurement Plan Pursuant to the Renewable Energy Act (Laws 2004, Chapter 65), Case No. 04-00334-UT, Final Order (Dec. 21, 2004).

90/10 percent between customers and shareholders, respectively (Case No. 1 12-00350-UT). The REC sales margins are credits through the RPS Rider. 2 Section 62-17-5(F) of the Efficient Use of Energy Act and Section (L) of 3 17.7.2 NMAC provide that the Commission shall provide public utilities an 4 opportunity to earn a profit on cost-effective energy efficiency and load 5 management resource development that is financially more attractive to the 6 utility than supply-side utility resources. In Case No. 13-00286-UT, the 7 Commission approved the sharing of the net benefits.⁸ SPS's incentive is 8 9 recovered through its Energy Efficiency Rider. Under Xcel Energy's Joint Operating Agreement, which is a FERC-approved 10 tariff, SPS annually allocates an amount of net margins earned in electric 11 commodity transactions that do not involve its facilities or those of any Xcel 12 Energy Operating Company. SPS reduces its New Mexico retail cost of 13 service by \$125,000, keeps the first \$125,000 per year of the New Mexico 14 jurisdictional share of net electric commodity margins allocated to SPS, and 15 then credits New Mexico fuel costs with 50 percent of the New Mexico

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In the Matter of Southwestern Public Service Company's Application for Revision of its Retail Rates under Advice Notice No. 235. Case No. 10-00395-UT, Final Order Partially Adopting Recommended Decision (Mar. 26, 2014).

⁸ In the Matter of Southwestern Public Service Company's Application for Approval of its (A) 2014 $Energy\ Efficiency\ and\ Load\ Management\ Plan\ and\ Associated\ Programs, (B)\ Request\ for\ Financial\ Incentives$ for 2013-2015; (C) Cost Recovery Tariff Rider, and (D) Request to Establish Lower Minimum Savings Requirements for 2014 under the Efficient Use of Energy Act, Case No. 13-00286-UT, Final Order Adopting Certification of Stipulation (Jun. 25, 2014).

1		jurisdictional share of the remaining net margins. The credits are applied
2		annually through the FPPCAC balancing account.
3	Q.	Is there a common, underlying theme supporting the sharings or incentives
4		approved above?
5	A.	Yes. In each case, the sharing of savings or financial incentive encourages SPS to
6		undertake best efforts to identify and pursue activities that either: (1) furthers the
7		statutorily-defined public interest, while preserving the majority of benefits for
8		customers (as is the case with energy efficiency); or (2) results in lower customer
9		costs (sales margins).
10	Q.	Would approval of a shared savings mechanism for the LTPPAs be consistent
11		with the prior approved sharings?
12	A.	Yes. SPS's sharing mechanism both furthers the public interest and generates
13		customer cost savings. Through this filing, SPS has demonstrated its ability to
14		execute and obtain renewable resources based on current, favorable, market
15		conditions which were time constrained. These resource acquisitions are not only
16		cost-effective renewable resources, they lower SPS's overall system costs, and
17		compete effectively with conventional resources. Moreover, the REA itself outlines
18		the many benefits of renewable energy, including promotion of energy self
19		sufficiency, preservation of the state's natural resources, and pursuit of an improved
20		environment in New Mexico. All of these benefits are provided by the LTPPAs,

1		which resulted from SPS's preemptive and diligent activities on behalf of its
2		customers.
3	Q.	Can you further elaborate on the types of activities SPS undertook to respond to
4		the changing and favorable market conditions?
5	A.	As Mr. Berg explains, discussions between SPS and solar developers revealed
6		potential pricing reductions from what existed at the time the Commission approved
7		SPS's 2012 Integrated Resource Plan ("IRP"). The decrease in pricing was in part
8		driven by the reduction of the ITC from 30 percent to 10 percent beginning January
9		1, 2017.
10		To take advantage of these circumstances, it was critical for SPS to issue the
11		2014 Solar RFP as soon as possible, which in turn would allow the screening
12		evaluation, final evaluation, negotiations, and filing for Commission approval to take
13		place in sufficient time for the facilities to be constructed and operational no later
14		than December 31, 2016.
15		Thus, to retain the cost savings for customers, as well as secure a
16		cost-effective means of potentially complying with future RPS requirements, SPS
17		had to quickly and comprehensively respond to the evolving circumstances in the
18		solar PV market and the ITC rules. Approval of the proposed shared savings
19		mechanism would encourage these types of activities by SPS in the future.

1	Q.	Are the proposed LTPPAs economically beneficial when compared to other
2		LTPPAs for solar energy which have recently been approved by this
3		Commission?
4	Ą.	Yes. The actual and levelized price of power under the proposed LTPPA is
5		significantly less than the price of energy under other LTPPAs for solar energy or
6		utility-owned solar energy projects that have been approved by this Commission.
7		This lower cost per megawatt hour ("MWh") will provide substantial economic
8		benefits to SPS's New Mexico retail customers over the life of the LTPPA. For
9		example, in Case No. 12-00386-UT, the Commission approved EPE's proposed
10		LTPPA for a solar project with annual costs of \$57.90 per MWh and in Case No.
11		14-00158-UT, Public Service Company of New Mexico has proposed a self-build
12		solar project with a levelized cost of \$68.20. In comparison, the LTPPAs have
13		levelized prices of \$41.55 and \$42.08.
14	Q.	Is it possible that SPS will have to respond quickly in the future to changing
15		circumstances to obtain beneficial renewable resource procurements for
16		customers?
17	A.	Yes. As Mr. Berg describes, solar PV technologies have rapidly changed since the
18		Commission accepted SPS's 2012 IRP. Although the ITC is set to be reduced on
19		January 1, 2017, it is possible that the ITC could be changed in the future, which
20		could create beneficial circumstances for customers. The shared savings mechanism

would encourage SPS to continue its active market presence and ability to readily 1 identify changing circumstances and take necessary steps to potentially procure cost-2 saving renewable resources for the benefit of customers. 3 In addition to encouraging SPS to identify changing circumstances and 4 0. efficiently take steps to potentially procure cost-saving renewable resources, is 5 the shared savings mechanism also supported by the financial impact to SPS 6 7 resulting from the LTPPAs? Yes. While I described above that the financial impacts will not be significant, the 8 A. LTPPAs are expected to add approximately \$8 million of imputed debt in the 9 calculation of SPS's credit metrics (total SPS). At the same time, the LTPPAs are 10 expected to provide total system NPV avoided energy savings for the period (2017-11 2041) of approximately \$26.5 million (total SPS). As Mr. Berg describes, SPS did 12 not include any potential avoided or deferred capacity benefits associated with the 13 LTPPAs, which potentially makes the economic assessment conservative. 14 Thus, in addition to encouraging SPS to undertake similar types of actions in 15 the future to potentially procure cost-effective renewable resources for customers, 16 particularly for future acquisitions which may have a more significant financial 17 impact, it is equitable for the Commission to consider the financial impact on SPS 18 from undertaking such procurements in determining whether to approve a shared 19 20 savings mechanism.

1 VII. <u>CONCLUSION</u>

- 2 Q. Does this conclude your pre-filed direct testimony?
- 3 A. Yes.

VERIFICATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

Ruth M. Sakya, first being sworn on her oath, states:

I am the witness identified in the preceding testimony. I have read the testimony and the accompanying attachments and am familiar with their contents. Based upon my personal knowledge, the facts stated in the direct testimony are true. In addition, in my judgment and based upon my professional experience, the opinions and conclusions stated in the testimony are true, valid, and accurate.

Ruth M. Sakya RUTH M. SAKYA

SUBSCRIBED AND SWORN TO before me this 30 day of March 2015.

OFFICIAL SEAL
Sonya Liares

NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 9136/2013

Notary Public of the State of New Mexico
My Commission Expires: 9/30/20/8

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF SOUTHWESTERN)		
PUBLIC SERVICE COMPANY'S)	*	
APPLICATION FOR APPROVAL AND)		
AUTHORITY TO: (1) ENTER INTO		
SEPARATE PURCHASED POWER)		
AGREEMENTS WITH NEXTERA ENERGY)		
RESOURCES' ROSWELL AND CHAVES)	CASE NO. 15- <u>00083</u> -UT	
COUNTY SOLAR FACILITIES; (2)		
RECOVER THE ASSOCIATED ENERGY)		
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CERTIFICATE OF SERVICE

I certify that true and correct copies of Southwestern Public Service Company's Application and Direct Testimony of Craig L. Berg, Jessica L. Collins, and Ruth M. Sakya were sent via electronic mail, Federal Express or hand-delivery, as indicated below, to each of the following parties to Southwestern Public Service Company's most recent rate case, on this 2nd day of April, 2015:

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