EXECUTION COPY

ENERGY PURCHASE AGREEMENT

BY AND BETWEEN

BLACK HILLS ELECTRIC GENERATION, LLC

AND

BLACK HILLS COLORADO ELECTRIC, INC. ("BLACK HILLS")

Dated September 25, 2018

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Energy Purchase Agreement

Between

Black Hills Electric Generation, LLC

AND

Black Hills Colorado Electric, Inc.

This Energy Purchase Agreement ("Energy Purchase Agreement" or "Agreement") is made as of the Effective Date, by and between **Black Hills Electric Generation, LLC** ("Seller"), a limited liability company with a principal place of business at 7001 Mt. Rushmore Road, Rapid City, South Dakota 57702, and **Black Hills Colorado Electric, Inc**. ("Black Hills" or "Company"), with a principal place of business at 105 South Victoria Avenue, Pueblo, Colorado 81003. Seller and Black Hills are hereinafter referred to individually as a "Party" and collectively as the "Parties."

WHEREAS Seller is developing, designing and constructing an electric generating facility with an expected total nameplate capacity of approximately 59.4 MW, and which is further defined below as the "Facility";

WHEREAS Seller intends to locate the Facility in Huerfano and Las Animas Counties, Colorado, and to interconnect the Facility with the Interconnection Provider's System at the 115 kV Rattlesnake Butte substation, as further specified in the Interconnection Agreement;

WHEREAS Seller desires to sell and deliver to Black Hills at the Point of Delivery the Renewable Energy produced by the Facility and all associated Renewable Energy Credits and Clean Power Attributes, and Black Hills desires to buy the same from Seller;

WHEREAS Seller desires to sell and deliver to Black Hills at the Point of Delivery the full values of any environmental accreditation (allowances, offsets, credits, or other relevant attributes) which may relate to this project that that use any form of valuing clean power generation for any past, present, or future local, regional, state, or federal regulations; and

WHEREAS Seller has responded to Black Hills's solicitation of bids for the provision of Renewable Energy and Black Hills has accepted Seller's offer in accordance with the terms and conditions set forth in this Energy Purchase Agreement.

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

ARTICLE 1. DEFINITIONS AND RULES OF INTERPRETATION

1.1 Rules of Construction. The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this Energy Purchase Agreement, whether in the singular or the plural or in the present or past tense. Other terms used in this Energy Purchase Agreement but not listed in this Article shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

The masculine shall include the feminine and neuter.

References to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or exhibits of this Energy Purchase Agreement.

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

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

The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Energy Purchase Agreement. Unless expressly provided otherwise in this Energy Purchase Agreement, (a) where the Energy Purchase Agreement 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 the Energy Purchase Agreement gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."

Use of the word "or" shall be construed to mean "and/or" unless the context requires otherwise.

All references to a particular entity shall include such entity's successors and permitted assigns.

All references herein to any contract or other agreement shall be to such contract or other agreement as amended, supplemented, or modified to the date of reference.

All references herein to any Law shall be to such Law as amended, supplemented, modified or replaced from time to time.

Use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges and the like.

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

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

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

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

1.3 Interpretation of Arrangements for Electric Supply to the Facility. The Parties recognize that this Energy Purchase Agreement does not provide for the supply of any electric service by Black Hills to Seller or to the Facility and Seller must enter into separate arrangements for the supply of electric services to the Facility, including the supply of turbine unit start-up and shutdown house power and energy. The Parties acknowledge and agree that the arrangements for the supply of electric services to the Facility shall be separate and free-standing arrangements, subject to Section 9.3.

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

1.4 Definitions. The following terms shall have the meanings set forth herein:

"Abandonment" means (i) the relinquishment of all possession and control of the Facility by Seller, other than a transfer permitted under this Energy Purchase Agreement, or (ii) if prior to the Commercial Operation Date, complete cessation of the design, development, construction, testing and inspection of the Facility for thirty (30) consecutive Days by Seller and/or Seller's contractors, unless, and subject to any cure rights set forth in Article 12, Seller provides information to Black Hills reasonably demonstrating that any cessation of work in excess of thirty (30) consecutive Days is consistent with the overall schedule to achieve the Commercial Operation Milestone. Abandonment shall not include any relinquishment or cessation that is caused by or attributable to an Event of Default of, or request by, Black Hills, or an event of Force Majeure.

"Acceptable Security" means, as further set forth in Section 11.1(F):

(A) a letter of credit in form and substance reasonably satisfactory to Seller;

(B) cash (in immediately available funds), which cash must be delivered to a Custodian to be held by the Custodian as security for Seller pursuant to an escrow agreement reasonably satisfactory in form and substance to Seller;

(C) a Guaranty; or

(D) a combination of any of the above.

"Affiliate" of any named person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. The term "control" (including the terms "controls," "under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management of the policies of a person or entity, whether through ownership interest, by contract or otherwise.

"Applicable Law" means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

"Applicable Permits" shall have the meaning set forth in Section 4.7.

"Black Hills" shall have the meaning set forth in the Recitals.

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

"CCR" means the Colorado Code of Regulations, as amended.

"Change of Control" shall mean a transfer of the majority of the ownership interests of Seller or of the direct or indirect owner of a majority of the ownership interests in Seller, whether voluntary or by operation of law; any consolidation or merger of Seller or such owner in which Seller or such owner is not the surviving entity, in each case other than transactions among Affiliates of Seller or any exercise of rights or remedies by the Facility Lender or the Tax Investor resulting in a change in ownership or economic or voting rights.

"Clean Power Attributes" shall mean any and all RECs, allowances, offsets, credits, imputed reductions in any "greenhouse gases" or other pollutants (including any reduction, displacement or offset of emissions resulting from fuel combustion at another location), environmental air quality credits or any other attributes or benefits, whether choate or inchoate and whether or not having any specified or identifiable value, that are generated by, created in connection with or otherwise deemed or treated by any person as existing as a result of the

construction, operation or existence of the Facility or the generation, sale or transmission of the Renewable Energy, in each case during the Term, whether resulting from (i) any past, present, or future local, regional, state, federal or international environmental, energy or other legislation, regulation or other pact, treaty or agreement that in any way identifies, defines or values clean power generation (or similar terms) or any of the foregoing attributes, (ii) the anticipation by any person(s) of any such legislation, regulation or other pact, treaty or agreement, (iii) Black Hills' current marketing program or any successor green pricing program or other environmental or renewable energy credit trading program, (iv) any program, tracking system, market or other action or mechanism by any person(s) to identify, value, transfer or trade any such attributes, or (v) any combination of the foregoing; provided, that Clean Power Attributes shall not include any Tax Benefits.

"Close of the Business Day" means 5:00 PM Mountain Prevailing Time on a Business Day.

"Code" means the U.S. Internal Revenue Code of 1986, including applicable rules and regulations promulgated thereunder, as amended from time to time.

"COD Grace Period" shall have the meaning set forth in Section 12.1(C).

"Commercial Operation" means the period beginning on the Commercial Operation Date and continuing through the Term of this Energy Purchase Agreement.

"Commercial Operation Date" or "COD" means the date that Black Hills confirms, pursuant to Section 4.8, or is deemed to have confirmed, that all of the Conditions specified in Section 4.8 have occurred or otherwise been satisfied.

"Commercial Operation Milestone" means the Construction Milestone for the Commercial Operation Date, as may be extended pursuant to Section 14.4. The Commercial Operation Milestone is set forth as December 31, 2019 in Exhibit A.

"Commercial Operation Year" means any consecutive twelve (12) month period during the Term of this Energy Purchase Agreement, commencing with the Commercial Operation Date or any of its anniversaries.

"Committed Renewable Energy" means an amount not less than 194,100 MWh.

"Conditions" shall have the meaning set forth in Section 4.8.

"Confidential Information" shall have the meaning set forth in Section 20.17.

"Construction Milestone(s)" means the date(s) set forth in Exhibit A.

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

"COPUC" means "Colorado Public Utilities Commission" or any successor agency.

"COPUC Approval" shall have the meaning set forth in Section 6.1.

"Creditworthy" means, with respect to a designated person or entity, that such person or entity has a long-term credit rating (long-term senior unsecured debt) of (a) Baa3 or higher by Moody's, and (b) BBB- or higher by S&P at all times (or if only one of Moody's or S&P has rated Black Hills, Baa3 or higher by Moody's or BBB- or higher by S&P at all times).

"Curtailment Tax Benefits" means an amount equal to: (A) the Tax Benefits to which Seller would have been entitled with respect to any Deemed Generated Renewable Energy; plus (B) a "gross up" amount to take into account the federal, state and local income tax to Seller on Black Hills' payment of the amount set forth in clause (A), so that the net amount retained by Seller, after payment of federal, state and local income taxes, is equal to the amount set forth in clause (A) of this definition less any sales, transfer or other taxes that would have been the obligation of Seller if the Deemed Generated Renewable Energy had been generated and delivered to Black Hills. For purposes of determining the foregoing, Seller shall be deemed to be subject to tax at the highest marginal corporate income tax rates for the highest income bracket (federal, state, or local, as applicable) for the Seller or its parent, as appropriate, that are in effect or scheduled to be in effect for the tax year in which the receipt of such Curtailment Tax Benefits payment is taxed.

"Custodian" means an institutional bank or other entity reasonably acceptable to Seller.

"Damages Cap" means a cumulative amount equal to $4.5 million.

"Day" means a calendar day.

"Deemed Generated Renewable Energy" means the quantity of electric energy, expressed in MWh, that Seller reasonably calculates would have been produced by the Facility and delivered to the Point of Delivery during any period but for Black Hills' curtailment pursuant to Section 7.4.

"Delay Conditions" shall have the meaning set forth in Section 14.4.

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

"Delay Damages Cap" means a cumulative amount equal to $3 million.

"Disabling Procedures" shall have the meaning set forth in Section 15.1.

"Dispute" shall have the meaning set forth in Section 13.10.

"Effective Date" is the last day this Agreement is executed.

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

"Electric Metering Device(s)" means all metering equipment installed at the Facility pursuant to the Interconnection Agreement, including instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal units, communications equipment, phone lines and fiber optics.

"Eligible Energy Resource" means any resource that qualifies as such under 4 CCR 723-3-3652(n).

"Emergency" means an emergency condition as defined under the Interconnection Agreement or any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of Black Hills' load or generation supply as required pursuant to applicable national and regional reliability standards established by the COPUC, NERC and the FERC, as applicable, that could adversely affect the reliability of the Black Hills system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.

"Energy Payment Rate" means the rate as defined in Article 8 of this Energy Purchase Agreement.

"Energy Purchase Agreement" or this "Agreement" means this Energy Purchase Agreement between Seller and Black Hills, including the Exhibits attached hereto.

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

"EPC" shall have the meaning set forth in Section 4.8.

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

"Expected Nameplate Capacity Rating" means 59.4 MW.

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

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

"Facility Lender" means, collectively, any lender(s) providing any Facility Debt and any successor(s) or assigns thereto.

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

"Financing Documents" means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction and/or permanent debt financing to or for the benefit of the Facility, including any credit enhancement, credit support, working capital financing, or refinancing documents, or documents for the acquisition of a direct or indirect interest in Seller by a Tax Investor, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

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

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

"Generation Dispatch and Power Marketing," or "GDPM," means Black Hills' merchant representatives responsible for dispatch of generating units, including the Facility.

"Good Utility Practice(s)" means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the independent electric power generation industry for the type of facilities that are the subject of this Agreement, WECC and/or NERC) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. With respect to the Facility, Good Utility Practice(s) includes taking reasonable steps to ensure that:

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

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

(C) personnel capable of starting, operating, and stopping the Facility are continuously available, either at the Facility, or capable of remotely starting, operating, and stopping the Facility within ten (10) minutes, and capable of being at the Facility within a commercially reasonable period of time following notice, and in all cases, personnel capable of starting, operating, and stopping the Facility shall be continuously reachable by phone or pager;

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

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

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

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

(H) equipment, components, and process are appropriately permitted with any local, state, or federal Governmental Authority and are operated and maintained in accordance with applicable permit and regulatory requirements.

"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; any balancing authority to which Black Hills is subject or with authority over any Control Area containing any of Black Hills' service territory; or any court or governmental tribunal.

"Guaranty" means a guaranty from a Qualified Guarantor in favor of Seller, which guarantees Black Hills' payment and performance obligations under this Agreement.

"Hazardous Materials" means any substance, material, gas, or particulate matter that is regulated by any local governmental authority, any applicable State, or the United States of America, as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including protection of 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 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.; (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.; or (xi) chemicals subject to the Occupational Safety and Health Standards, Hazard Communication, as amended, 29 C.F.R. § 1910.1200; in each case as any of the foregoing statutes or regulations are amended, augmented or modified from time to time.

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

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

"Interconnection Agreement" means the one or more separate agreements between Seller and the Interconnection Provider for interconnection of the Facility to the Interconnection Provider's System, as such agreements may be amended from time to time.

"Interconnection Facilities" means Interconnection Provider's Interconnection Facilities and Seller's Interconnection Facilities.

"Interconnection Provider" means the person or entity that owns and operates the transmission lines, Interconnection Provider's Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Electric Interconnection Point.

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

"Interconnection Provider's System" means the contiguously interconnected electric transmission and sub-transmission facilities, including Interconnection Provider's Interconnection Facilities, over which the Interconnection Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"Issuer" shall have the meaning set forth in Section 11.1.

"kW" means kilowatt.

"kWh" means kilowatt hour.

"Laws" means any and all present and future federal, state and local laws, statutes, acts, enactments, policy, treaties, international agreements, ordinances, permits, judgments, injunctions, awards, decrees, rules, regulations, interpretations, determinations, requirements, writs, and orders of any Governmental Authorities.

"Lender Consent" shall have the meaning set forth in Section 19.2.

"MW" means megawatt or one thousand kW.

"MWh" means megawatt hours.

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

"Notice Period" shall have the meaning set forth in Section 4.8.

"Notice of Commercial Operations" shall have the meaning set forth in Section 4.8.

"On-Peak Hours" means 7:00 a.m. to 11:00 p.m., Mountain Standard or Mountain Daylight time, as appropriate, on Business Days and Saturdays other than Saturdays that are NERC holidays.

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

"Operating Committee" means one representative each from Black Hills and Seller appointed pursuant to Section 10.4.

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

"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 the Seller uses or maintains for the operation of the Facility.

"Party" and "Parties" shall have the meaning set forth in the introductory paragraph of this Agreement.

"Party Representative" and "Parties' Representatives" shall have the meaning set forth in Section 13.10.

"Pending Facility Transaction" shall have the meaning set forth in Section 19.3.

"Period" shall have the meaning set forth in Section 12.1.

"Permitted Encumbrance" means (i) the mortgage, security interest or financing statement in favor of the Facility Lender in connection with the Facility Debt, (ii) the Subordinated Mortgage and (ii) Black Hills' rights under the RoFO Agreement.

"PFT Notice" shall have the meaning set forth in Section 19.3.

"Point of Delivery" means the electric system point at which Seller makes available to Black Hills and delivers to Black Hills the Renewable Energy being provided by Seller to Black Hills under this Energy Purchase Agreement. The Point of Delivery shall be specified in Exhibit B to this Energy Purchase Agreement.

"Production Data" shall have the meaning set forth in Section 10.3.

"PTCs" means Production Tax Credits applicable to electricity produced from certain renewable resources pursuant to 26 U.S.C. § 45, or such substantially equivalent tax credit that provides Seller with a tax credit based on energy production from any portion of the Facility.

"Qualified Guarantor" means a person or entity that is Creditworthy.

"Renewable Energy" means the net electric energy generated exclusively by the Facility (which is electric energy derived from a technology that exclusively relies on a renewable energy source) and delivered to the Point of Delivery as measured by the Electric Metering Devices installed pursuant to Section 5.2, including any and all associated Renewable Energy Credits and Clean Power Attributes. Renewable Energy shall be of a power quality of 60 cycle, three-phase alternating current that is compliant with the Interconnection Agreement. Renewable Energy shall be net of energy that is self-generated and concurrently consumed by the Facility, and net of losses prior to the Point of Delivery.

"Renewable Energy Credits" or "RECs" shall have the meaning set forth in 4 CCR 723-3-3652(y) and means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of capacity and/or electric energy generated from an Eligible Energy Resource, including any and all environmental air quality credits, benefits, emissions reductions, off-sets, allowances, or other benefits as may be created or under any existing or future statutory or regulatory scheme (federal, state, or local) by virtue of or due to the Facility's actual energy production or the Facility's energy production capability because of the Facility's environmental or renewable characteristics or attributes. For the avoidance of doubt, "RECs" excludes all Tax Benefits.

"Replacement Energy Costs" means the costs incurred by Black Hills for the Renewable Energy which is necessary to replace that which Seller, in accordance with this Energy Purchase Agreement, was required to have produced at the Facility and deliver to Black Hills from and after the Commercial Operation Date (subject to the COD Grace Period), but failed to so provide, less the sum of any payments from Black Hills to Seller, under this Energy Purchase Agreement, which were eliminated as a result of such failure. Replacement Energy Costs include the amounts paid or incurred by Black Hills for replacement renewable energy, or replacement energy plus any Renewable Energy Credits or Clean Power Attributes, together with any energy transmission costs, replacement costs of energy, and directly associated transaction costs. Additional costs may include any penalties incurred as a result of the Seller's non-performance.

"RoFO Agreement" means the Right of First Offer Agreement in the form of Exhibit G hereto, being signed concurrently herewith.

"SCADA" means Supervisory Control and Data Acquisition.

"Scheduled Outage/Derating" means a planned interruption/reduction of the Facility's generation that both (i) has been coordinated in advance with Black Hills, with a mutually agreed

start date and duration, and (ii) is required for inspection, or preventive or corrective maintenance.

"Section 123 resources" shall have the meaning set forth in C.R.S. § 40-2-123 and 4 CCR 723-3-3602(q).

"Security Fund" means the letter of credit, guarantee and/or other collateral that Seller is required to establish and maintain, pursuant to Section 11.1, as security for Seller's performance under this Energy Purchase Agreement.

"Seller" shall have the meaning set forth in the Recitals.

"Seller's Interconnection Facilities" means (i) the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Interconnection Provider's System at the Electric Interconnection Point; (ii) Seller's metering, relays, and load control equipment on the low side of the step-up transformer as provided for in the Interconnection Agreement, which equipment is located within the Facility and is conceptually depicted in Exhibit B to this Energy Purchase Agreement; (iii) 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; and (iv) any other facilities designated as Seller's interconnection facilities under the Interconnection Agreement.

"Site" means the parcel(s) 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 Section 3.2 and Exhibit B to this Energy Purchase Agreement.

"State Tax Credit" means all tax deductions and tax credits that are now, or may in the future be, applicable to owners and/or operators of the Facility under the laws of the State of Colorado, including any tax deductions or tax credits from any local Governmental Authority within the State of Colorado.

"Subordinated Mortgage" shall have the meaning set forth in Section 11.2(A).

"Tax Benefits" means any and all: (A) PTCs and any federal depreciation deduction 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 investment tax credit that may be available to Seller with respect to the Facility under Code Section 48 (Energy Credits); (B) 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; (C) State Tax Credits; and (D) cash payments or specific grants of money from a Governmental Authority directly to Seller (whether in lieu of any of the foregoing or otherwise) relating to the development, construction or operation of the Facility, but, in each of the foregoing clauses (A) through (D), excluding any proceeds from any sale or transfer of any RECs or Clean Power Attributes relating to the Facility

or the Renewable Energy; provided, that to the extent any payment or benefit in clause (D) of this definition reduces the value or amount of any RECs or Clean Power Attributes available to Black Hills, such payment or benefit shall be deemed not to be a "Tax Benefit" and shall instead be deemed to be a "Clean Power Attribute" or "REC," as applicable.

"Tax Investor" means any person or entity who acquires a direct or indirect interest in Seller as part of a transaction to ensure that the Facility is owned at least in part by a person or entity able to use the Tax Benefits associated with holding an ownership interest in the Facility (including any subsequent transferees of any such person or persons or entity or entities).

"Term" means the period of time during which this Energy Purchase Agreement shall remain in full force and effect, and which is further defined in Article 2.

"Test Energy" means that energy which is produced by the Facility, delivered to Black Hills at the Point of Delivery, and purchased by Black Hills, pursuant to Section 4.9, in order to perform testing of the Facility prior to Commercial Operation. Test Energy includes any and all Renewable Energy Credits or Clean Power Attributes associated therewith.

"Turbines" means those generating devices that are included in the Facility.

"Ultimate Parent Entity" of Seller shall have the meaning set forth under Section 7A of the Clayton Act, 15 U.S.C. § 18a, a/k/a the Hart-Scott-Rodino Antitrust Improvements Act of 1976 et seq.

"WECC" means Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

ARTICLE 2. TERM AND TERMINATION

2.1 Term and Termination. This Energy Purchase Agreement shall become effective as of the date of its execution, and shall remain in full force and effect until the twenty fifth (25th) anniversary of the COD ("Term"), subject to any early termination or extension provisions set forth herein. Applicable provisions of this Energy Purchase Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination and, as applicable, to provide for: final billings and adjustments related to the period prior to termination, repayment of any money due and owing to either Party pursuant to this Energy Purchase Agreement, repayment of principal and interest associated with the Security Fund, and the indemnifications specified in this Energy Purchase Agreement.

ARTICLE 3. FACILITY DESCRIPTION

3.1 Summary Description. Seller shall construct, own, operate, and maintain the Facility, which shall consist of 27 Turbines, described as Vestas Model # 2.2MW v120, and associated equipment having a designed maximum output (nameplate rating) in aggregate of approximately 59.4 MW. Exhibit B to this Energy Purchase Agreement provides a detailed

description of the Facility, including identification of the equipment and components that make up the Facility.

3.2 Location. The Facility shall be located on the Site and shall be identified as Seller's "Busch Ranch II" Facility. The Facility is located in Huerfano and Las Animas Counties near Walsenburg, Colorado 81089. A scaled map that identifies the Site, the location of the Facility at the Site, the location of the Electric Interconnection Point and the location of the important ancillary facilities and Interconnection Facilities, is included in Exhibit B to this Energy Purchase Agreement.

3.3 General Design of the Facility. Seller shall construct the Facility according to Good Utility Practice(s) and the Interconnection Agreement. During Commercial Operation, Seller shall maintain the Facility according to Good Utility Practice(s) and the Interconnection Agreement. In addition to the requirements of the Interconnection Agreement, the Facility shall at all times:

(A) have the required panel space and battery supplied with sufficient voltage to accommodate metering, generator telemetering equipment and communications equipment for the Interconnection Provider and Black Hills; and

(B) use communication circuits from the Facility to the GDPM for the purpose of telemetering, supervisory control/data acquisition, and voice communications as required by Black Hills.

ARTICLE 4. COMMERCIAL OPERATION

4.1 Commercial Operation. Subject to extension as specifically provided for herein, the Facility shall achieve the Commercial Operation Date, and shall be fully capable of reliably producing the Renewable Energy to be provided under this Energy Purchase Agreement and delivering such Renewable Energy to Black Hills at the Point of Delivery, no later than the Commercial Operation Milestone; provided that Seller shall not be obligated to establish a Commercial Operation Date under this Energy Purchase Agreement that is earlier than the Commercial Operation Milestone and Black Hills shall not be obligated to establish a Commercial Operation Date under this Energy Purchase Agreement that is earlier than August 31, 2019.

4.2 Construction Milestones. In order to achieve the Commercial Operation Date by the Commercial Operation Milestone, Seller agrees to take reasonable efforts to meet the Construction Milestones set forth in Exhibit A to this Energy Purchase Agreement.

4.3 Site Report. Seller shall conduct a Phase I environmental investigation of the Site and shall provide Black Hills, on or before December 14, 2018, with a copy of the report summarizing such investigation, together with any data or information related thereto as Black Hills may reasonably request. Seller shall provide to Company, with such report, confirmation from an environmental engineer that the Site has been inspected for all Environmental Contamination and that the Site complies with all Applicable Laws relating to environmental or

occupational health and safety matters and Hazardous Materials. Such report, or other written confirmation from the Seller, shall include a confirmation that, based upon such investigation and to the best of Seller's knowledge, no conditions involving Environmental Contamination exist at or under the Site.

4.4 Facility Contracts. Seller shall provide copies to Black Hills promptly, but in no event later than thirty (30) days after their execution, of the following documents: purchase orders/contracts for the delivery and installation of the Turbines and the step-up transformer(s) for the Facility, any EPC agreement for the Facility, Facility operating agreements, and electric transmission and/or interconnection agreements for the Facility. Information that is commercially sensitive, confidential or proprietary may be redacted from the documents provided to Black Hills pursuant to this paragraph. Seller shall provide Black Hills with reasonable evidence that it has the capability to finance construction of the Facility, which evidence shall not be deemed to satisfy Seller's obligations under Article 11. Seller shall provide sufficient information for Black Hills to be reasonably assured that Seller has contracted with financially responsible vendors as part of the Facility construction process.

4.5 Progress Reports. Commencing upon the execution of this Agreement, Seller shall submit to Black Hills, on the first Day of each calendar month until the Commercial Operation Date is achieved, progress reports in a form reasonably satisfactory to Black Hills. These progress reports shall notify Black Hills of the current status of each Construction Milestone.

4.6 Black Hills Colorado Electric's Rights During Construction. Black Hills shall have the right to monitor the construction, start-up and testing of the Facility, and Seller shall comply with all reasonable requests of Black Hills with respect to the monitoring of these events. Seller shall give five (5) Business Days' advance notice to Black Hills of (i) any meeting with third party construction or engineering experts, consultants or contractors related to the Facility, and (ii) any material test of the Facility or the equipment or systems comprising the Facility, or such lesser advance notice as is possible under the circumstances. Seller shall cooperate in such physical inspections of the Facility as may be reasonably requested by Black Hills during and after completion of construction. All persons visiting the Facility on behalf of Black Hills shall comply with all of Seller's applicable safety and health rules and requirements. Black Hills' technical review and inspection of the Facility shall not be construed as endorsing the design thereof or as any warranty of safety, durability, or reliability of the Facility.

4.7 Governmental Approvals and Permits. Seller shall use commercially reasonable efforts to obtain, and shall pay for, all applicable environmental and other permits, consents, licenses, approvals or authorizations from any Governmental Authority required under Applicable Law or this Energy Purchase Agreement for the development, construction, ownership, operation or maintenance of the Facility ("Applicable Permits"), including the Applicable Permits set forth on Exhibit E. Company shall have the right to inspect and obtain copies of all Applicable Permits held by Seller. Seller will give Company at least five (5) Business Days' advance notice, or such lesser advance notice as is possible under the circumstances, of any known inspections by any Governmental Authority relating to any Applicable Permit.

4.8 Conditions to Commercial Operation. At least fifteen (15) Days prior to the date Seller believes all of the conditions set forth in this Section 4.8 ("Conditions") will be completed ("Notice Period"), Seller shall so advise Black Hills in writing. In so doing Seller shall provide evidence reasonably acceptable to Black Hills of the satisfaction or occurrence of all of the Conditions or the date prior to the end of the Notice Period upon which specifically described evidence of satisfaction of any Condition will be furnished to Black Hills. Seller shall continuously update Black Hills during the Notice Period as Conditions are satisfied, to allow Black Hills to confirm such satisfaction on an ongoing and incremental basis if Black Hills so desires. At least five (5) Business Days prior to the end of the Notice Period, Seller shall issue a notice ("Notice of Commercial Operation") to Black Hills notifying Black Hills that all of the Conditions have been satisfied or have occurred. Black Hills shall respond in writing within five (5) Business Days of receipt of Seller's Notice of Commercial Operation either (i) confirming to Seller that all of the conditions have been satisfied or have occurred, or (ii) stating with specificity those Conditions that it believes, in good faith, have not been satisfied or have not occurred or for which the proposed evidence is not sufficient. If Black Hills so advises Seller that it believes any Condition has not been satisfied or has not occurred, or for which the proposed evidence is insufficient, the Parties shall meet and confer in order to attempt to resolve all issues and reach mutual agreement in good faith on the steps that are reasonably required to demonstrate that the Conditions have been satisfied or have occurred. Black Hills' confirmation shall not be unreasonably withheld or delayed and Black Hills' failure to respond within five (5) Business Days after receipt of Seller's Notice of Commercial Operation shall be deemed to constitute Black Hills' confirmation to Seller of the satisfaction or occurrence of all Conditions. The Parties agree that review and approval of the evidence of achievement of the Conditions may occur on an ongoing and incremental basis, prior to the commencement of the Notice Period, during the Notice Period or pending any dispute, as such Conditions are satisfied. The Commercial Operation Date shall be established as the date on which Black Hills confirmed, or, if applicable, Black Hills was deemed to have confirmed, that all of the Conditions have been satisfied or have occurred. The Parties acknowledge that there are significant financial impacts associated with not achieving Commercial Operation by the Commercial Operation Milestone and agree to use good faith efforts to reasonably cooperate with each other in reviewing and evaluating the evidence of Conditions as set forth herein. As used herein, the term "Conditions" means the following:

(A) Seller has successfully completed all testing and commissioning of the components comprising the Facility that is required by any Financing Documents, any Applicable Permit, the Interconnection Agreement, Seller's Facility operating and maintenance agreements, Seller's engineering, procurement and construction ("EPC") agreement, and any manufacturers' warranties for the commencement of commercial operations at the Facility;

(B) An officer of Seller, familiar with the Facility has provided a list of the generation equipment, showing the make, model, serial number and designed nameplate capacity of each such piece of generation equipment and has certified the maximum output of the entire Facility as 59.4 MW;

(C) The Facility has achieved initial synchronization with the Interconnection Provider's System, and has demonstrated the reliability of its communications systems and communications with the GDPM;

(D) An independent professional engineer's certification has been obtained by Seller stating that the Facility has been completed in all material respects (excepting punch list items that do not materially and adversely affect the ability of the Facility to operate as intended hereunder) in accordance with this Energy Purchase Agreement;

(E) Seller has received written confirmation from the Interconnection Provider that (i) Seller is in compliance with the Interconnection Agreement, (ii) the interconnection of the Facility to the Interconnection Provider's System has been completed in accordance with the Interconnection Agreement, (iii) the Facility has operated at the Facility's full output capacity or at a generation level acceptable to the Interconnection Provider, without experiencing any abnormal or unsafe operating conditions on any interconnected system, and (iv) any other testing of the Facility and/or Seller's Interconnection Facilities required by the Interconnection Agreement has been completed satisfactorily;

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

(G) All arrangements for the supply of required electric services to the Facility, including the supply of turbine unit start-up and shutdown power and energy, house power and maintenance power have been completed by Seller separate from this Energy Purchase Agreement, are in effect, and are available for the supply of such electric services to the Facility;

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

(I) Staffing and training of Seller's personnel for the operation, maintenance and asset management of the Facility has been completed;

(J) Certificates of insurance evidencing the coverages required by Article 16 have been obtained and submitted to Black Hills;

(K) Seller has submitted to Black Hills a certificate of an officer of Seller familiar with the Facility after due inquiry stating that (i) all Applicable Permits required to be obtained by Seller by such date from any Governmental Authority have been obtained and are in full force and effect, (ii) Seller has made all arrangements and executed and/or obtained all rights of way and other real property rights required to deliver the Renewable Energy from the Facility to the Point of Delivery, and (iii) Seller is in compliance with the terms and conditions of this Energy Purchase Agreement in all material respects; and

(L) Seller has made all necessary governmental filings and/or applications for Renewable Energy Credit and (if applicable) Clean Power Attribute accreditation.

4.9 Test Energy. Seller shall coordinate the production and delivery of Test Energy with Black Hills. Black Hills shall cooperate with Seller to facilitate Seller's testing of the Facility necessary to satisfy the Conditions set forth in Section 4.8 and shall accept delivery of all Test Energy produced by a Facility which has been installed and interconnected in accordance with the Interconnection Agreement, and shall purchase all such Test Energy delivered to Black Hills at the Point of Delivery at a payment rate of 50% of the Energy Payment Rate.

4.10 Application for Clean Power Attributes and Renewable Energy Credits. Seller shall, from time to time and as reasonably requested by Black Hills, use all commercially reasonable efforts to make governmental filings and applications and procure for the benefit of Black Hills any Renewable Energy Credits or Clean Power Attributes that may be available under local, state or federal Law. Black Hills shall reimburse Seller and its Affiliates for its costs and expenses (including reasonable fees and expenses of counsel) incurred by Seller or such Affiliates to comply with this Section 4.10, including in connection with (i) any such government filings and applications, (ii) the preparation, negotiation, and execution of any instruments and other related documents necessary or desirable to procure, transfer, convey and assign to Black Hills such Renewable Energy Credits or Clean Power Attributes, and (iii) any reporting, notification or management requirements associated with such Renewable Energy Credits or Clean Power Attributes. In addition, Seller shall provide to Black Hills notices and other correspondence it receives from any Governmental Authority regarding any government filing or application made by Seller pursuant to this Section 4.10.

ARTICLE 5. DELIVERY AND METERING

5.1 Delivery Arrangements.

(A) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver, on a firm transmission service basis, the Renewable Energy and Test Energy (if applicable) from the Facility to Black Hills at the Point of Delivery. Seller shall (i) diligently negotiate an Interconnection Agreement with the Interconnection Provider; (ii) execute and deliver the Interconnection Provider's standard form of Interconnection Agreement, with such changes as are necessary to accommodate the characteristics of the Facility, and (iii) post and maintain any and all security for payment and performance, if, when and for so long as required under the Interconnection Agreement.

(B) Black Hills shall be responsible for all electric losses, transmission, and ancillary service arrangements and costs required to receive the Renewable Energy and Test Energy at the Point of Delivery and deliver such Renewable Energy and Test Energy from and beyond the Point of Delivery. Subject to Section 8.2, Black Hills may elect, at Black Hills' sole option, whether to obtain and utilize firm transmission service or non-

firm transmission service for the delivery of Renewable Energy from the Point of Delivery.

5.2 Electric Metering Devices. Electric Metering Devices shall be installed and maintained in accordance with the terms of the Interconnection Agreement. The Electric Metering Devices provided by the Interconnection Provider shall be used to provide data for the computation of payments for the sale of Renewable Energy under this Energy Purchase Agreement. Seller shall be responsible for the costs associated with the purchase, installation, operation, testing and maintenance of the Electric Metering Devices, in addition to any costs for the Electric Metering Devices assigned to Seller pursuant to the Interconnection Agreement.

Either Party may elect to install and maintain, at its own expense, check meters in addition to those installed and maintained by the Interconnection Provider, which installation and maintenance shall be performed in accordance with the requirements of the Interconnection Agreement. The Party installing check meters, at its own expense, shall inspect and test the check meters consistent with the requirements of the Interconnection Agreement for electric metering.

If any Electric Metering Devices, or check meters, are found to be defective or inaccurate pursuant to any testing conducted by the Interconnection Provider under the Interconnection Agreement, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by the Party owning such defective or inaccurate device and at that Party's expense, unless otherwise set forth in the Interconnection Agreement.

5.3 Adjustments for Inaccurate Meters.

(A) If an Electric Metering Device, or check meter, fails to register, or if the measurement made by an Electric Metering Device, or check meter, is found upon testing to be inaccurate by more than the allowance identified in the Interconnection Agreement, an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or check meter, for both the amount of the inaccuracy and the period of the inaccuracy using the same procedures set forth in the Interconnection Agreement.

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

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Black Hills, Black Hills shall use the corrected measurements as determined in accordance with this Article to recompute the amount due

for the period of the inaccuracy and shall subtract the previous payments by Black Hills for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Black Hills to Seller; if the difference is a negative number, that difference shall be paid by Seller to Black Hills, or at the discretion of Black Hills, may take the form of an offset to payments due Seller by Black Hills. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due, unless Black Hills elects payment via an offset.

(D) In the event of any conflict between this Section 5.3 and the terms and conditions of the Interconnection Agreement, the Interconnection Agreement terms and conditions shall control, and satisfaction of such terms and conditions shall be deemed to satisfy the provisions of this Section 5.3.

ARTICLE 6. CONDITIONS PRECEDENT

6.1 Regulatory Approval.

(A) No later than thirty (30) Days after execution of this Energy Purchase Agreement, Black Hills may apply to the COPUC for review and approval of this Agreement pursuant to any applicable COPUC rules to ensure the Company's ability to recover costs associated with such contract in a manner satisfactory to the Company (in its final and non-appealable form, "COPUC Approval"). Seller shall cooperate reasonably with Black Hills' efforts, if any, to seek COPUC Approval. If Black Hills fails to apply for COPUC Approval within thirty (30) Days following the date of this Energy Purchase Agreement, Black Hills shall be deemed to have waived its rights under this Section 6.1. In the event Black Hills applies for COPUC Approval, should Black Hills not receive COPUC Approval by October 1, 2018, Seller shall have the right to terminate this Agreement, without any further financial or other obligation to Seller as a result of such termination.

(B) Black Hills and Seller may request FERC authorization under the Federal Power Act for the transaction contemplated by this Agreement.

(C) In the event that Black Hills timely applies for approval pursuant to paragraphs (A) or (B) of this Section 6.1, Black Hills or Seller shall have the right to terminate this Energy Purchase Agreement, without any further financial or other obligation to the other Party as a result of such termination, by notice to the other Party at any time within six (6) months following the date of this Energy Purchase Agreement, extended to such longer time period as needed for COPUC or FERC to issue a final, non-appealable order either denying approval of this Energy Purchase Agreement or approving it with conditions unsatisfactory to Black Hills or requiring modification of this Agreement unsatisfactory to Seller, respectively, as a consequence of the failure of Black Hills or Seller, despite their commercially reasonable efforts, to obtain approval by

the COPUC or FERC without such unsatisfactory conditions or modifications. Absent such notice of termination by Black Hills or Seller on or before the referenced date, Black Hills and Seller shall be deemed to have waived their respective rights under this Section 6.1, and this Energy Purchase Agreement shall remain in full force and effect thereafter.

6.2. Network Resource. This Energy Purchase Agreement is subject to designation of the Facility as a network resource for Black Hills' native load customers, and the associated reservation of firm transmission service on the Black Hills transmission system for delivering the Renewable Energy from the Point of Delivery to Black Hills' native load customers, all without conditions materially unsatisfactory to Black Hills, and all in accordance with the provisions of the relevant open access transmission tariff applicable to FERC jurisdictional transmission service on the Interconnection Provider's System. Black Hills shall have the right to terminate this Energy Purchase Agreement, without any further financial or other obligation to Seller as a result of such termination, by notice to Seller at any time within ninety (90) Days following the date of this Energy Purchase Agreement, if the foregoing matters have not been confirmed to Black Hills' satisfaction.

ARTICLE 7. SALE AND PURCHASE OF RENEWABLE ENERGY

7.1 Sale and Purchase. Beginning on the Commercial Operation Date and continuing throughout the Term, Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to Black Hills, at the applicable prices set forth in Article 8, all Renewable Energy generated by the Facility, free and clear of all liens and encumbrances. For the avoidance of doubt, except as otherwise expressly provided for herein, this Energy Purchase Agreement shall not be construed to constitute a "take or pay" contract and Black Hills shall have no obligation to pay for any energy that has not actually been generated by the Facility, measured by the Electric Metering Device(s), and delivered to Black Hills at the Point of Delivery.

7.2 Committed Renewable Energy. Seller covenants to deliver the Committed Renewable Energy to the Point of Delivery throughout the Term.

7.3 Title and Risk of Loss. As between the Parties, Seller shall be deemed to be in control of the Renewable Energy and Test Energy output from the Facility up to and until delivery and receipt at the Point of Delivery and Black Hills shall be deemed to be in control of such energy from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Renewable Energy and Test Energy (including all RECs and Clean Power Attributes) shall transfer from Seller to Black Hills at the Point of Delivery.

7.4 Black Hills' Right to Curtail Renewable Energy. Black Hills shall have the right to notify Seller, by telephonic communication from the GDPM, to curtail the delivery of Renewable Energy to Black Hills from the Facility, and Seller shall immediately comply with such notification within fifteen (15) minutes of receiving the notification to the extent such compliance can be achieved through remote capabilities, and if such compliance cannot be achieved through remote capabilities, then Seller shall comply as promptly as reasonably

practicable consistent with Good Utility Practices. Black Hills may provide such notification for any reason and in its sole discretion.

7.5 Tax Benefits. If for any reason, Seller does not receive the PTCs or any other Tax Benefits for any period, the cost of Renewable Energy delivered to Black Hills under this Agreement shall not be affected, subject only to payment for curtailment pursuant to Section 8.2. Except as set forth in Article 14.4(B), the risk of not obtaining the Tax Benefits (other than the Curtailment Tax Benefits) shall be borne solely by Seller.

ARTICLE 8. PAYMENT CALCULATIONS

8.1 Renewable Energy Payment Rate. Commencing on the Commercial Operation Date of the Facility, Black Hills shall pay Seller for Renewable Energy delivered to Black Hills by Seller to the Point of Delivery in a Commercial Operation Year on a dollar per MWh delivered basis (collectively as set forth in this Section 8.1, the "Energy Payment Rate"). From the Commercial Operation Date through December 31, 2021, the price shall be $15.00/MWh. Beginning on January 1, 2022, the price shall be $19.80/MWh. Beginning on January 1, 2023, the price shall increase starting on the first day of each such calendar year by three percent (3%) of the price in effect in the immediately preceding calendar year. For the avoidance of doubt, and except as specifically provided for under Section 8.2 below, Black Hills shall not be obligated to make any payment to Seller under this Article 8 for any energy which, regardless of reason or event of Force Majeure affecting either Party, (a) does not qualify as Renewable Energy, (b) is not measured by the Electric Metering Device(s) installed pursuant to Section 5.2, as such measurement may be adjusted (or interpolated) pursuant to Section 5.3, or (b) is not delivered to Black Hills at the Point of Delivery.

8.2 Curtailment Energy Payment Rate. If delivery of Renewable Energy is curtailed by Black Hills pursuant to Section 7.4, then (a) Seller shall use reasonable efforts to determine the quantity of Deemed Generated Renewable Energy and (b) Black Hills shall pay to Seller such amounts that Seller would have received from Black Hills under this Agreement had production of the Renewable Energy not been so curtailed and the amount of any Curtailment Tax Benefits to which Seller is entitled but does not receive from any Governmental Authority or third party. Seller shall install sufficient measuring equipment at the Facility to collect data necessary to reasonably determine the amount of Deemed Generated Renewable Energy. Notwithstanding the foregoing, and for avoidance of doubt, no payment shall be due Seller under this Section 8.2 for curtailments of delivery of Renewable Energy resulting from or required by: (a) an Emergency, including any notice by the GDPM with respect to a transmission-related Emergency; (b) any action taken by the Interconnection Provider under the Interconnection Agreement, except an action taken by the Interconnection Provider to the extent directed by Black Hills for economic reasons; (c) any curtailment of transmission service by the applicable transmission service provider, arranged by either Party, to provide delivery of Renewable Energy from the Facility to the Point of Delivery, except an action by the applicable transmission service provider to the extent directed by Black Hills for economic reasons; (d) any Force Majeure affecting the ability of Black Hills to receive Renewable Energy; or (e) any order or written

demand from a Governmental Authority, requiring Seller to curtail deliveries of Renewable Energy as a result of Seller's failure to maintain in full force and effect any permit, consent, license, approval, or authorization from any Governmental Authority required by Law to construct and/or operate the Facility.

ARTICLE 9. BILLING AND PAYMENT

9.1 Billing Invoices. The billing period shall be the calendar month. No later than fifteen (15) Business Days after the end of each calendar month, Seller shall provide to Company an invoice for the amount due Seller by Black Hills for the services provided by Seller under this Energy Purchase Agreement, for the billing period covered by the statement. Seller's invoice shall be in such form as Company may reasonably request from time to time. The invoice will show the data reasonably pertinent to the calculation of monthly payments due to Seller. Black Hills shall not be limited to Seller's reported data and may make its own calculations on the basis of all information available to Black Hills. Billing disputes shall be resolved in accordance with Section 9.5.

9.2 Metered Billing Data. All billing data based on metered deliveries to Company shall be collected by the Electric Metering Device(s) in accordance with Article 5.

9.3 House Power Payments. Due to uncertainties concerning the appropriate provider of house power for the Facility, Seller agrees to provide a monthly payment to Black Hills or the appropriate provider of house power for the Facility consistent with Black Hills' Energy Payment Rate, also referred to as the Avoided Cost Rate or Average Hourly Incremental Cost of Electricity, in effect as of the Effective Date, as described and provided in Black Hills' tariff, Sheet R36, on file with the COPUC. To the extent Seller's actual costs for house power for the Facility would exceed its payment obligations under Black Hills' Energy Payment Rate ("Additional House Power Costs"), Black Hills (A) waives such Additional House Power Costs to the extent such amount is payable to Black Hills or (B) agrees to reimburse Seller for the Additional House Power Costs to the extent such amount is payable to any third party, as applicable.

9.4 General Payments. Unless otherwise specified herein, payments due under this Energy Purchase Agreement shall be due and payable by check or by electronic funds transfer, as designated by the owed Party, on or before the fifteenth (15th) Business Day following receipt of the billing invoice. Remittances received by mail will be considered to have been paid when due if the postmark indicates the payment was mailed on or before the fifteenth (15th) Business Day following receipt of the billing invoice. If the amount due is not paid on or before the due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to one hundred twenty-five percent (125%) of the LIBOR three-month rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that Day, the next succeeding date of publication). If the due date occurs on a Day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

9.5 Billing Disputes. Either Party may dispute invoiced amounts, but shall pay to the other Party at least the undisputed portion of invoiced amounts on or before the invoice due date. To resolve any billing dispute, the Parties shall use the procedures set forth in Section 13.10. When the billing dispute is resolved, the Party owing shall pay the amount owed within ten (10) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with the provisions of Section 9.4. Either Party at any time may offset against any and all undisputed amounts that may be due and owed to the other Party under this Energy Purchase Agreement, any and all undisputed amounts, including damages and other payments, that are owed by the other Party pursuant to this Energy Purchase Agreement. Undisputed and non-offset portions of amounts invoiced under this Energy Purchase Agreement shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

ARTICLE 10. OPERATIONS AND MAINTENANCE

10.1 Maintenance Schedule. Maintenance schedule requirements for the Facility, including any Scheduled Outage/Derating, shall be communicated to Black Hills in advance, and shall be subject to Black Hills's approval (not to be unreasonably withheld).

10.2 Facility Operation. Seller shall staff, control, and operate the Facility consistent at all times with Good Utility Practice(s) and the Operating Procedures developed pursuant to Section 10.4. Personnel capable of starting, operating, and stopping the Facility shall be continuously available, either at the Facility, or capable of remotely starting, operating, and stopping the Facility, within ten (10) minutes and capable of being at the Facility with no more than thirty (30) minutes notice. In all cases personnel capable of starting, operating and stopping the Facility shall be continuously reachable by phone or pager.

10.3 Outage and Performance Reporting.

(A) Seller shall comply with all current Black Hills, NERC, and WECC generating unit outage reporting requirements, as they may be revised from time to time, and as they apply to the Facility.

(B) When Forced Outages occur, Seller shall notify Black Hills' GDPM of the existence, nature, and expected duration of the Forced Outage as soon as practical, but in no event later than fifteen (15) minutes after the Forced Outage occurs, or such longer period of time as may be required if there exists immediate danger to person or property as a result of the Forced Outage. Seller shall immediately inform Black Hills' GDPM of changes in the expected duration of the Forced Outage unless relieved of this obligation by Black Hills' GDPM for the duration of each Forced Outage.

(C) Commencing upon the Commercial Operation Date and continuing through the Term on a continuous basis at all times during the Term, Seller shall electronically provide the energy production from the Facility in no greater than two (2)

minute intervals ("Production Data") to Black Hills and allow Black Hills to disclose such Production Data publicly to the extent required by regulatory requirements or reasonably necessary in connection with any regulatory proceeding applicable to Black Hills.

10.4 Operating Committee and Operating Procedures.

(A) Black Hills and Seller shall each appoint one representative and one alternate representative to act in matters relating to the Parties' performance obligations under this Energy Purchase Agreement and to develop operating arrangements for the generation, delivery and receipt of Renewable Energy hereunder. Such representatives shall constitute the Operating Committee, and shall be specified on Exhibit C. The Parties shall notify each other in writing of such appointments and any changes thereto. The Operating Committee shall have no authority to amend or modify the terms or conditions of this Energy Purchase Agreement (other than the Operating Procedures).

(B) Prior to the Commercial Operation Date, the Operating Committee shall develop mutually agreeable written Operating Procedures which shall include method of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel list for applicable Black Hills and Seller operating centers; operations and maintenance scheduling and reporting; Renewable Energy reports; unit operations log; and such other matters as may be mutually agreed upon by the Parties. The Operating Procedures shall constitute the binding and enforceable obligations of each Party and are incorporated by reference herein; provided, that in the event of any conflict between this Agreement and the Operating Procedures, this Agreement shall control. Notwithstanding any transfer, sale, or assignment of this Agreement or the Facility (directly or indirectly), or any Change of Control of either Party, that may impact the interests of the Parties to this Agreement, the Operating Procedures shall remain in effect and binding on each Party and its successors and assignees until other written Operating Procedures are mutually agreed upon.

(C) Not later than 7:00 a.m. (Mountain Standard Time or Mountain Daylight Time, as applicable) of each Day, Seller shall provide to Black Hills Seller's good-faith forecast of the expected hourly energy output of the Facility for the next Day.

10.5 Access to Facility. Appropriate representatives of Black Hills shall at all times, including weekends and nights, and with reasonable prior notice, have access to the Facility to read meters and to perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this Energy Purchase Agreement. While at the Facility, such representatives shall observe all 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 Reliability Standards. Seller shall operate the Facility in a manner that complies with all national and regional reliability standards, including standards set by WECC, NERC, the FERC, and the COPUC or any successor agencies setting reliability standards for the operation

of generation facilities. To the extent that Seller or the Facility contributes in whole or in part to actions that result in monetary penalties being assessed to Black Hills by WECC, NERC, or any successor agency, for lack of compliance with reliability standards, Seller shall reimburse Black Hills for its share of such monetary penalties.

10.7 Environmental Credits. The Parties acknowledge that current or future legislation or regulation, or private programs, tracking systems or markets, may create new or additional value, or modify existing value, in the ownership, use or allocation of Clean Power Attributes or Renewable Energy Credits. To the full extent allowed by such legislation or regulation, or such programs, systems or markets, Black Hills shall own or be entitled to claim all Clean Power Attributes and Renewable Energy Credits to the extent such credits may exist or be created during the Term (including Clean Power Attributes and Renewable Energy Credits generated or created in connection with Test Energy sold to Black Hills). To the extent necessary, Seller shall assign to Black Hills, in accordance with and subject to the provisions set forth in Section 4.10, all rights, title and authority for Black Hills to register, own, hold, and manage such credits or attributes in Black Hills's own name and for Black Hills's account, including any rights associated with any renewable energy tracking system that may be established with regard to monitoring, tracking, certifying, or trading such credits. Upon the request of Company from time to time, (i) Seller shall deliver or cause to be delivered to Company such attestations / certifications of all Clean Power Attributes and Renewable Energy Credits, and (ii) Seller shall provide full cooperation in connection with Company's registration and certification of Clean Power Attributes and Renewable Energy Credits. The Parties acknowledge that the benefit of any Clean Power Attributes and Renewable Energy Credits shall accrue to Black Hills, and the benefit of the Tax Benefits shall accrue to Seller. If any Clean Power Attributes or Renewable Energy Credits are connected in any way with the Tax Benefits, and are severable and marketable in any way, Seller shall sell and Black Hills shall purchase all of such Clean Power Attributes or Renewable Energy Credits generated from the Facility for a total consideration of one dollar ($1). Seller hereby acknowledges that this constitutes good and sufficient consideration.

10.8 Availability Reporting. Seller shall be responsible for providing accurate and timely updates on the current availability of the Facility to the GDPM as outlined in the Operating Procedures.

10.9 Peak Production Availability. During any On-Peak Hour of an On-Peak Month and during every hour of every business day in July and August, Seller shall use commercially reasonable efforts to minimize the extent and duration of any Scheduled Outage/Derating and Forced Outages.

ARTICLE 11. SECURITY FOR PERFORMANCE

11.1 Security Fund. No Security Fund is required under this Section 11.1 or otherwise under this Agreement if Seller is an Affiliate of Black Hills. If Seller is not an Affiliate, then Seller shall establish, fund, and maintain during the Term a Security Fund pursuant to the provisions of this Article 11, as follows:

(A) Upon execution of this Energy Purchase Agreement, Seller shall establish the Security Fund at a level of $10/kW of the Expected Nameplate Capacity Rating, which shall be comprised of one or more of the permitted forms under Section 11.1(F).

(B) No later than thirty (30) days later than the date of the COPUC Approval or its waiver or deemed waiver pursuant to Section 6.1(A), Seller shall fund and increase the amount of the Security Fund to a level of $50/kW of the Expected Nameplate Capacity Rating, which shall be comprised of one or more of the permitted forms under Section 11.1(F).

(C) Unless the Security Fund has already been increased in accordance with Section 11.1(D), no later than March 31, 2019, Seller shall fund and increase the amount of the Security Fund to a level of $125/kW of the Expected Nameplate Capacity Rating, which shall be comprised of one or more of the permitted forms under Section 11.1(F).

(D) No later than the date for financial closing of the Facility Debt for construction financing, Seller shall fund and increase the amount of the Security Fund to a level of $125/kW of the Expected Nameplate Capacity Rating, which shall be comprised of one or more of the permitted forms under Section 11.1(F).

The Security Fund shall be available to pay any amount due Black Hills pursuant to this Energy Purchase Agreement, and to provide Black Hills security that Seller will construct the Facility to meet the Construction Milestones. The Security Fund shall also provide security to Black Hills to cover Delay Damages, should the Facility fail to achieve the Commercial Operation Date, or other damages, including Replacement Energy Costs, for Seller Events of Defaults or indemnification obligations of Seller under this Energy Purchase Agreement.

(E) Black Hills may draw on the Security Fund, according to the following procedures:

(1) Prior to drawing on the Security Fund, Black Hills shall provide a written notice or invoice to Seller specifying the amount owed and basis therefor.

(2) Black Hills shall allow Seller thirty (30) Business Days from the delivery of such notice or invoice to pay such amount prior to drawing on the Security Fund.

Seller shall have the obligation to replenish the Security Fund following any draw on the Security Fund by Black Hills.

In addition to any other remedy available to it, Black Hills may, upon an Event of Default by Seller, before or after termination of this Energy Purchase Agreement and after giving written notice of the intent to do so, draw from the Security Fund such amounts as are necessary to recover amounts that are owed to Black Hills pursuant to this Energy Purchase Agreement, including any damages due to Black Hills and any amounts for which Black Hills is entitled to indemnification under this Energy Purchase Agreement. Black Hills may, in its sole discretion, draw all or any part of such amounts due to it from any form of security to the extent available

pursuant to this Section 11.1, and from all such forms, and in any sequence Black Hills may select. Any failure to draw upon the Security Fund or other security for any damages or other amounts due to Black Hills shall not prejudice Black Hills's rights to recover such damages or amounts in any other manner.

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

(1) An irrevocable standby letter of credit or a performance bond, in form and substance reasonably acceptable to Black Hills, from an issuer with an unsecured bond rating equivalent to A- or better as determined by at least two (2) rating agencies, one of which must be either Standard & Poor's or Moody's (or if either one or both are not available, equivalent ratings from alternate rating sources acceptable to Black Hills in its commercially reasonable discretion). In addition, if such unsecured bond rating of the Issuer is exactly equivalent to A-, the Issuer must not be on credit watch by a rating agency. Security provided in this form shall be consistent with this Energy Purchase Agreement and include a provision for at least thirty (30) Days advance notice to Black Hills of any expiration or earlier termination of the security so as to allow Black Hills sufficient time to exercise its rights under said security if Seller fails to extend or replace the security. The form of such security must provide that claims or draw-downs can be made unilaterally by Black Hills in accordance with the terms of this Energy Purchase Agreement. Such security must be issued for a minimum term of three hundred and sixty (360) Days. Seller shall cause the renewal or extension of the security for additional consecutive terms of three hundred and sixty (360) Days or more (or, if shorter, for at least the remainder of the Term of this Energy Purchase Agreement) no later than thirty (30) Days prior to each expiration date of the security. If the security is not renewed or extended as required herein, Black Hills 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. Security in the form of an irrevocable standby letter of credit shall be governed by the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Brochure No. 600.

(2) United States currency, deposited with Issuer, either: (i) in an account under which Black Hills is designated as beneficiary with sole authority to draft from the account or otherwise access the security; or (ii) held by Issuer as

escrow agent with instructions to pay claims made by Black Hills pursuant to this Energy Purchase Agreement, such instructions to be in a form and substance reasonably satisfactory to Black Hills. Security provided in this form shall include a requirement for immediate notice to Black Hills from Issuer and Seller in the event that the sums held as security in the account or trust do not at any time meet the required level for the Security Fund as set forth in this Section 11.1. Funds held in the account may be deposited in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three months or less, with all investment income thereon to be taxable to, and to accrue for the benefit of, Seller. After the Commercial Operation Date is achieved, annual account sweeps for recovery of interest earned by the Security Fund shall be allowed by Seller. At such times as the balance in the escrow account exceeds the amount of Seller's obligation to provide security hereunder, Black Hills shall remit to Seller on demand any excess in the escrow account above Seller's obligations.

(3) A guarantee, substantially in form and substance reasonably satisfactory to Black Hills from an Issuer with a senior, unsecured long term debt rating equivalent to BBB or better as determined by at least two (2) rating agencies, one of which must be either Standard & Poor's or Moody's (or, if either one or both are not available, equivalent ratings from alternate rating sources acceptable to Black Hills in its commercially reasonable discretion).

(G) Black Hills may reevaluate from time to time the value of all non-cash security posted by Seller for possible downgrade or for other negative circumstances. If Black Hills has commercially reasonable grounds to believe that there has been a material adverse change in the creditworthiness of the Issuer, then Seller shall be required to convert the Security Fund instrument provided by such Issuer to a Security Fund instrument meeting the criteria set forth in either Section 11.1(F)(1) or Section 11.1(F)(2) no later than 30 Days after receiving notice from Black Hills that such conversion of the Security Fund instrument is required pursuant to this Section 11.1.

(H) Promptly following the end of the Term and the completion of all of Seller's obligations under this Energy Purchase Agreement, or upon an early termination of this Energy Purchase Agreement pursuant to Section 6.1 or Section 14.3, Black Hills shall release the Security Fund (including any accumulated interest, if applicable) to Seller.

(I) Seller shall reimburse Black Hills for the incremental direct expenses (including the reasonable fees and expenses of counsel) incurred by Black Hills in connection with the preparation, negotiation, execution and/or release 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 Section 11.1.

11.2 Additional Security. No additional security is required under this Section 11.2 or otherwise under this Agreement if Seller is an Affiliate of Black Hills. If Seller is not an Affiliate, then:

(A) No later than the Commercial Operation Date, Seller shall execute and record a mortgage and, as appropriate, separate agreements, documents, or instruments under which Seller will provide Black Hills, in a form reasonably acceptable to Black Hills and the Facility Lender, with fully perfected subordinated security interest(s), and/or mortgage lien (collectively the "Subordinated Mortgage") in the Facility and in any and all real and personal property rights, contractual rights, or other rights that Seller acquires in order to construct and/or operate the Facility. The Subordinated Mortgage shall be given to secure Seller's continuing performance and any amounts that may be owed by Seller to Black Hills pursuant to this Energy Purchase Agreement, including any damages or costs excluded from the limitation on Seller's liability for the limited purposes set forth in Section 12.6. Seller agrees, and shall cause the Facility Lender to agree and the Financing Documents to provide, (i) that the lien of such Subordinated Mortgage shall be subordinate only to the lien of the Facility Lender, and (ii) that, as long as Black Hills is not in material default of its obligations under this Energy Purchase Agreement, the Facility and 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 this Energy Purchase Agreement and the assumption of Seller's obligations hereunder. The collateral securing the Subordinated Mortgage shall not include the pledge, assignment, or other interest in any stock or ownership interest in Seller.

(B) Black Hills agrees to cooperate with Seller and diligently negotiate in good faith, at Seller's request, to establish the form of these agreements and to execute and deliver such agreements as reasonably necessary to enable Seller to meet the Construction Milestones. The Parties shall confirm, define, and perfect such Subordinated Mortgage by executing, filing, and recording, at the expense of Seller, the Subordinated Mortgage. In addition, Seller agrees to execute and file such Uniform Commercial Code financing statements and to take such further action and execute such further instruments as shall reasonably be required by Black Hills to confirm and continue the validity, priority, and perfection of the Subordinated Mortgage. The granting of the Subordinated Mortgage shall not be to the exclusion of, nor be construed to limit, the amount of any further claims, causes of action or other rights accruing to Black Hills by reason of any breach or default by Seller under this Energy Purchase Agreement or the early termination of this Energy Purchase Agreement as provided for herein. The Subordinated Mortgage shall be discharged and released, and Black Hills shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration of the Term of this Energy Purchase Agreement, including any extension of the Term, and satisfaction by Seller of all obligations hereunder. Seller shall reimburse Black Hills for the incremental direct expenses (including the reasonable fees and expenses of counsel) incurred by Black Hills in connection with the preparation,

negotiation, execution and/or the discharge and release of the Subordinated Mortgage and any other documents evidencing the Subordinated Mortgage.

(C) The Subordinated Mortgage shall provide that if Black Hills acts to obtain title to the Facility pursuant to the interests provided by Seller pursuant to Section 11.2(A), Seller shall take all steps necessary to transfer all permits and licenses necessary to operate the Facility to Black Hills, and shall diligently pursue and cooperate in these transfers.

ARTICLE 12. DEFAULT AND REMEDIES

12.1 Events of Default of Seller.

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

(1) Seller's dissolution or liquidation;

(2) Seller's assignment of this Energy Purchase Agreement or any of its rights hereunder for the benefit of creditors (except for an assignment to the Facility Lender as security under the Financing Documents as permitted by this Energy Purchase Agreement);

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

(4) The sale by Seller to a third party, or diversion by Seller for any use, of Renewable Energy committed to Black Hills by Seller other than pursuant to Section 12.3;

(5) Seller's actual fraud or material intentional misrepresentation or misconduct in connection with this Energy Purchase Agreement and/or the operation of the Facility;

(6) Seller's failure to establish and maintain Acceptable Security and the funding of the Security Fund in accordance with Article 11; and/or

(7) Seller's failure to comply with the requirements of Section 11.2;

(B) Any of the following shall constitute an Event of Default of Seller upon its occurrence but shall be subject to cure within thirty (30) Days after the date of written notice from Black Hills to Seller and the Facility Lender and Tax Investor as provided for in Section 13.1:

(1) Seller's failure to maintain in effect any agreements required to deliver energy to the Point of Delivery pursuant to Section 5.1, including the Interconnection Agreement or any easements, rights of way or other real property rights required for the delivery of Renewable Energy from the Facility to the Point of Delivery;

(2) Seller's Abandonment of construction or operation of the Facility;

(3) Seller's failure to make any undisputed payment due to Black Hills under or in connection with this Energy Purchase Agreement; and/or

(4) Seller's failure to comply with any other material obligation under this Energy Purchase Agreement, which would result in a material adverse impact on Black Hills.

(C) Subject to Article 14 of this Agreement, Seller's failure to meet the Commercial Operation Milestone shall constitute an Event of Default of Seller upon its occurrence but shall be subject to cure within forty-five (45) Days after the date of written notice from Black Hills to Seller and the Facility Lender and Tax Investor as provided for in Section 13.1 ("COD Grace Period"); provided, however, that Seller shall have an additional forty-five (45) Day period to achieve the Commercial Operation Date, provided that, on or before the expiration of the initial forty-five (45) Day period, an independent engineer, mutually agreed to by the Parties, retained by Black Hills and paid for by Seller, provides a written opinion to Black Hills stating that Seller's plan for achieving the Commercial Operation Date is reasonably achievable within such additional forty-five (45) Day cure period. This provision would allow for a total cure period of ninety (90) Days if all conditions of this paragraph were met. Subject to the limitation on damages set forth in Section 17.2, Delay Damages under Section 12.4(A) shall begin accruing after the COD Grace Period has expired and shall continue accruing until the occurrence of one of the following events: (i) the Commercial Operation Date is achieved, or (ii) this Energy Purchase Agreement is terminated.

(D) Any of the following shall constitute an Event of Default of Seller upon its occurrence but shall be subject to cure within sixty (60) Days after the date of written notice from Black Hills to Seller and the Facility Lender and Tax Investor as provided for in Section 13.1:

(1) Seller's failure to meet the peak production availability requirements of Section 10.9;

(2) Seller's assignment of this Energy Purchase Agreement (other than an assignment for the benefit of creditors), or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Facility, except as permitted in accordance with Article 19;

(3) Any representation or warranty made by Seller in this Energy Purchase Agreement shall prove to have been false or misleading in any material

respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Black Hills;

(4) Any material breach of any covenant of Seller not otherwise specified in this Section 12.1; and/or

(5) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period.

(E) Seller's failure to deliver at least eighty-five percent (85%) of the Committed Renewable Energy from the Facility in any Commercial Operation Year ("Period") beginning after the second anniversary of COD, shall constitute an Event of Default of Seller upon its occurrence, provided that:

(1) to the extent such failure is attributable to the lack of wind resources below eighty-five percent (85%) of the projected wind resources for such Period, curtailment by Company under Section 7.4 or an event of Force Majeure, the contribution of such lack of such resource, curtailment or event of Force Majeure shall be imputed into the calculation of Committed Renewable Energy for the purposes of, and only for the purposes of, establishing an Event of Default of Seller under this Section 12.1(E), and

(2) this Event of Default shall be curable and deemed cured if (i) within thirty (30) Days following the end of Period, Seller cures the reason(s) for such default (or, if such cure cannot reasonably be effected within 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 any twelve-month period beginning in the Commercial Operation Year immediately subsequent to such Period, the production of Renewable Energy by the Facility (adjusted as provided in paragraph (1)) equals or exceeds ninety-five percent (95%) of the Committed Renewable Energy for such period.

Seller shall be permitted to add and/or replace Turbines or other equipment comprising the Facility on the Site if and to the extent reasonably required to cure Seller's default under this Section 12.1(E). Seller shall keep Company apprised at least monthly of Seller's cure efforts under this Section 12.1(E), if any.

12.2 Facility Lender's and Tax Investor's Right to Cure Default of Seller. Seller shall provide Black Hills with a notice identifying the Facility Lender and Tax Investor and providing appropriate contact information for the Facility Lender and Tax Investor and shall notify Black Hills promptly in the event of any change in such contact information. Following receipt of such notice Black Hills shall provide notice of any Event of Default of Seller to the Facility Lender

and Tax Investor, and Black Hills will accept a cure to an Event of Default of Seller performed by the Facility Lender or Tax Investor, so long as the cure is accomplished within the applicable cure period set forth in this Energy Purchase Agreement. If requested by Seller or Seller's Facility Lender or Tax Investor, Black Hills shall provide consent and legal opinions in form and substance reasonably acceptable to Black Hills. Seller shall reimburse Black Hills's reasonable costs and expenses to provide to Seller or Seller's Facility Lender and Tax Investor such consents and legal opinions.

12.3 Events of Default of Black Hills.

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

(1) Black Hills' dissolution or liquidation provided that division of Black Hills into multiple entities shall not constitute dissolution or liquidation, if following any division into multiple entities Black Hills enjoys a credit rating no worse than it did immediately prior to such division;

(2) Black Hills' assignment of this Energy Purchase Agreement or any of its rights hereunder for the benefit of creditors;

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

(4) Black Hills' actual fraud or material intentional misrepresentation or misconduct in connection with this Energy Purchase Agreement.

(B) Any of the following shall constitute an Event of Default of Black Hills upon its occurrence but shall be subject to cure within thirty (30) Days after the date of written notice from Seller to Black Hills as provided for in Section 13.1:

(1) Black Hills' failure to make any payment due hereunder (subject to the Company's rights with respect to disputed payments under Section 9.5 and net of outstanding damages and any other rights of offset that Black Hills may have pursuant to this Energy Purchase Agreement); and/or;

(2) Black Hills' failure to comply with any other material obligation under this Energy Purchase Agreement, which would result in a material adverse impact on Seller.

(C) Any of the following shall constitute an Event of Default of Black Hills upon its occurrence but shall be subject to cure within sixty (60) Days after the date of written notice from Seller to Black Hills as provided for in Section 13.1:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Black Hills that could materially impact Black Hills' ability to perform its obligations hereunder; provided, however, that Black Hills does not obtain a stay or dismissal of the filing within the cure period;

(2) Black Hills' assignment of this Energy Purchase Agreement (other than an assignment for the benefit of creditors), except as permitted in accordance with Article 19;

(3) Any representation or warranty made by Black Hills in this Energy Purchase Agreement shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller; and/or

(4) Any material breach of any covenant of Black Hills not otherwise specified in this Section 12.3.

12.4 Damages Prior to Termination. Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 17.2, the non-defaulting Party shall have the right to collect damages accruing prior to the termination of this Energy Purchase Agreement from the defaulting Party as set forth below, and the payment of any such damages accruing prior to the cure of an Event of Default shall constitute a part of the cure.

(A) Delay Damages.

(1) If Seller fails to meet the Commercial Operation Milestone set forth in Exhibit A, subject to extension for Force Majeure or delay attributable to Black Hills under Section 14.4, Seller shall pay damages to Black Hills on account of such failure ("Delay Damages"), subject to Section 17.2, in the amounts specified below:

Delay	Delay Damages
Failure to meet the Commercial Operation Milestone set forth in Exhibit A	$125 per MW of design maximum output per Day

(2) Delay Damages associated with a delay in achieving the Commercial Operation Milestone shall begin to accrue following the COD Grace Period. Subject to Black Hills' rights under Section 12.6 and under Section 12.5 for any termination of this Agreement for an Event of Default under Section 12.1(C), Delay Damages shall be Black Hills' sole and exclusive remedy and Seller's sole liability for Seller's delay in achieving the Commercial Operation Milestone and are payable in lieu of actual damages accrued for the period during which Delay Damages are assessed. All Delay Damages shall be cumulative.

(3) The Parties specifically recognize that Black Hills' damages associated with delays in achieving the Commercial Operation Milestone will be significant but that it will be difficult to quantify those damages. Delay Damages shall be deemed to constitute liquidate damages and do not constitute a penalty.

(B) Actual Damages. For all Events of Default (including failure to achieve the Commercial Operation Milestone after any period during which Delay Damages are assessed pursuant to Section 12.4(A)(2)), the non-defaulting Party shall be entitled to receive from the defaulting Party all of the damages incurred by the non-defaulting Party; provided, that if any 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 Energy Purchase Agreement as provided for in Section 12.5. If Seller is the defaulting Party, the Parties agree that the damages recoverable by Black Hills hereunder on account of an Event of Default of Seller shall include Replacement Energy Costs.

12.5 Termination. Upon the occurrence of an Event of Default which has not been cured within the applicable cure period, the non-defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and thirty (30) Days after the notice thereof, upon which this Energy Purchase Agreement shall terminate. Neither Party shall have the right to terminate this Energy Purchase Agreement except as provided for upon the occurrence of an Event of Default as described above or as otherwise may be explicitly provided for in this Energy Purchase Agreement. Upon the termination of this Energy Purchase Agreement under this Section 12.5, the non-defaulting Party shall be entitled to receive from the defaulting Party, all of the damages incurred by the non-defaulting Party in connection with such termination, including, if Seller is the defaulting Party, the value of all future Replacement Energy Costs for the then remaining Term.

12.6 Operation by Black Hills Following Event of Default of Seller.

(A) Prior to any termination of this Energy Purchase Agreement due to an Event of Default of Seller, Black Hills shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Energy Purchase Agreement) during the period provided for herein. 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 Black Hills' right under this Section 12.6.

(B) Black Hills shall give Seller and the Facility Lender and Tax Investor ten (10) Days notice in advance of the contemplated exercise of Black Hills' rights under this Section 12.6, specifying the date on which Black Hills will assume control of the Facility. Upon such notice, Seller shall collect and have available at a convenient, central location 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. Beginning as of the date specified in such notice and provided that the Facility Lender has not exercised its right to take possession of the Facility as provided in the Financing Documents, Black Hills, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Site and the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints Black Hills as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as Black Hills may reasonably deem necessary or appropriate to exercise Black Hills' step-in rights under this Section 12.6.

(C) Black Hills shall be entitled to immediately draw upon the Security Fund to cover any actual expenses incurred by Black Hills in exercising its rights under this Section 12.6.

(D) During any period that Black Hills is in possession of and constructing and/or operating the Facility pursuant to this Section 12.6, Black Hills shall perform and comply with all of the obligations of Seller under this Energy Purchase Agreement and shall use the proceeds from the sale of electricity generated by the Facility to first, reimburse Black Hills for any and all expenses reasonably incurred by Black Hills (including a return on capital at Black Hills' authorized return on equity most recently determined by the COPUC) in taking possession of and operating the Facility, and to second, remit any remaining proceeds to Seller.

(E) During any period that Black Hills is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and Black Hills shall assume possession, operation, and control solely as agent for Seller.

(1) In the event that Black Hills is in possession and control of the Facility for an interim period, Seller may resume operation and Black Hills shall relinquish its right to operate when Seller demonstrates to Black Hills' reasonable satisfaction that it will remove those grounds that originally gave rise to Black Hills' right to operate the Facility, as provided above, in that Seller (a) will resume operation of the Facility in accordance with the provisions of this Energy Purchase Agreement, and (b) has cured any Events of Default of Seller which allowed Black Hills to exercise its rights under this Section 12.6 (or, if the Event of Default is of such a nature that it cannot be cured by Seller without possession of the Facility, reasonable assurance that Seller will cure such Event of Default promptly following resumption of possession).

(2) In the event that Black Hills is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and Black Hills shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

(F) Black Hills' exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by Black Hills of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility Black Hills elects to return such possession and operation to Seller, Black Hills shall provide Seller with at least fifteen (15) Days advance notice of the date Black Hills intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

(G) In the event Black Hills assumes operation of the Facility under this Section 12.6, Black Hills shall operate the Facility in conformance with Good Utility Practice.

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

12.8 Remedies Cumulative. Subject to the exclusivity of Delay Damages provided in Section 12.4(A) and the limitations on damages set forth in Section 17.2, each right or remedy of the Parties provided for in this Energy Purchase Agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this Energy Purchase Agreement, and the exercise, or the beginning of the exercise, by a Party of any one or more or the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.9 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this Energy Purchase Agreement satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); provided that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification therefor from the other Party hereto, the Indemnifying Party shall be liable for, and obligated to reimburse the Indemnified Parties 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.

12.10 Payment of Amounts Due to Black Hills. Without limiting any other provisions of this Article 12 and at any time before or after termination of this Energy Purchase Agreement, Black Hills may send Seller an invoice for such damages (including Delay Damages) or other amounts as are due to Black Hills at such time from Seller under this Energy Purchase Agreement and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges. Black Hills may withdraw funds from the Security Fund as needed to provide payment for such invoice if the invoice is not paid by Seller on or before the fifteenth (15th) Business Day following the invoice due date.

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

ARTICLE 13. CONTRACT ADMINISTRATION AND NOTICES

13.1 Notices in Writing. Notices required by this Energy Purchase Agreement shall be addressed to the other Party, including the other Party's representative on the Operating Committee, at the addresses noted in Exhibit C as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this Energy Purchase Agreement to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed first-class or by overnight delivery, postage prepaid, to the representative of said other Party. If mailed, the notice, request, consent or other communication shall be simultaneously sent by facsimile, electronic mail or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the Close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning Facility operations shall be exempt from this Section.

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

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for its respective principals in all technical matters relating to performance of this Energy Purchase Agreement and to attempt to resolve disputes or potential disputes. However, they, in their capacity as representatives, shall not have the authority to amend or modify any provision of this Energy Purchase Agreement (other than the Operating Procedures).

13.4 Operating Records. Seller and Black Hills shall each keep complete and accurate records and all other data required by each of them for a period of three (3) years (or longer if required by applicable Law) for the purposes of proper administration of this Energy Purchase Agreement, including such records as may be required by state or federal regulatory authorities and WECC in the prescribed format.

13.5 Operating Log. Seller shall maintain an accurate and up-to-date operating log, in electronic format, with records of production for each clock hour; changes in operating status; Scheduled Outages/Deratings; Forced Outages; and other records needed for the purposes of proper administration of this Energy Purchase Agreement, including such records as may be required by state or federal regulatory authorities and WECC in the prescribed format.

13.6 Provision of Real Time Data. Seller shall provide all real-time data necessary for Black Hills to integrate the Facility into Company's SCADA system. Upon request from Black Hills, Seller shall also provide this type of information plus maximum gust speed on a historical hourly basis in a CSV formal or an Excel spreadsheet. Seller shall also maintain the Facility so that it is capable of interfacing with and reacting to Company's GDPM. In the event that Company reasonably concludes that Seller is not providing data required by this Section, then upon Notice from Company, Seller shall, at Seller's expense, take those actions necessary to fully comply with this Section. Upon Seller's request, Company shall cooperate with Seller in taking any such actions. Other real-time data requirements may be specified in the Operating Procedures created by the Operating Committee.

13.7 Billing and Payment Records. To facilitate payment and verification, Seller and Black Hills shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records. All records of Seller pertaining to the operation of a Facility shall be maintained at the Seller's principal place of business.

13.8 Examination of Records. Black Hills may examine the financial and Operating Records and data kept by the Seller relating to transactions under and administration of this Energy Purchase Agreement, at any time during the period the records are required to be maintained, upon request and during normal business hours.

13.9 Exhibits. Either Party may change the information for their notice addresses in Exhibit C at any time without the approval of the other Party. Exhibits A, B, E, G, H, I, J and K may be changed at any time with the mutual consent of both Parties. Exhibit F may be changed as provided therein. Exhibit D may be changed in accordance with Section 16.2(B).

13.10 Dispute Resolution. In the event of any dispute arising under this Energy Purchase Agreement (a "Dispute"), within ten (10) Days following the delivered date of a written request by either Party, (i) each Party shall appoint a representative with decision-making authority with respect to this Energy Purchase Agreement (individually, a "Party Representative," together, the "Parties' Representatives"), and (ii) the Parties' Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute expeditiously. In the event the Parties' Representatives cannot resolve the Dispute within thirty (30) Days after

commencement of negotiations, each Party shall be free to pursue any remedy available under this Energy Purchase Agreement or otherwise at law or equity.

ARTICLE 14. FORCE MAJEURE

14.1 Definition of Force Majeure.

(A) The term "Force Majeure," as used in this Energy Purchase Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure, and cannot be prevented, overcome, mitigated or avoided by such Party through the exercise of reasonable due diligence or commercially reasonable efforts, including acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds of sufficient strength or duration to materially damage a facility or significantly impair its operation for a period of time longer than normally encountered in similar businesses under comparable circumstances; lightning; ice storms; sabotage; vandalism beyond that which could reasonably be prevented by Seller; terrorism; war; riots; fire; explosion; blockades; insurrection; strike; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); the failure of a third party transmission provider (other than the Interconnection Provider); and actions or inactions of, or new or changed requirements imposed by, any Governmental Authority taken after the date hereof (including the adoption or change in any Law or environmental constraints lawfully imposed by such Governmental Authority) but only if such actions, inactions or requirements prevent or delay performance; and inability, despite due diligence, to obtain any licenses, permits, or approvals required by any Governmental Authority and the issuance of any order, injunction, or other legal or equitable decree interfering with the performance of a Party's obligations hereunder.

(B) The term Force Majeure does not include (i) inability by Seller to procure any component parts of the Facility, for any reason (the risk of which is assumed by Seller); (ii) any acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves excused by reason of Force Majeure or are in and of themselves events of Force Majeure; (iii) any full or partial curtailment in the electric output of the Facility that is caused by or arises from (a) a mechanical or equipment breakdown unless such mechanical or equipment breakdown is caused by an event of Force Majeure, or (b) conditions attributable to normal wear and tear; (iv) changes in market conditions that affect the cost of Black Hills' or Seller's supplies, or that affect demand or price for any of Black Hills' or Seller's products; (v) failure to abide by Good Utility Practices; (vi) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns; or (vii) any non-industry wide labor strikes, slowdowns or stoppages, or other labor disruptions against Seller or Seller's contractors or subcontractors.

14.2 Applicability of Force Majeure.

(A) Neither Party shall be responsible or liable for any delay or failure in its performance under this Energy Purchase Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure, provided that:

(1) the non-performing Party gives the other Party prompt written notice (but no later than ten (10) Days after the non-performing Party becomes aware of the event of Force Majeure) describing the particulars of the occurrence of the Force Majeure;

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

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

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

(B) Except as otherwise expressly provided for in this Energy Purchase Agreement, the existence of a condition or event of Force Majeure shall not relieve the Parties of their obligations under this Energy Purchase Agreement (including payment obligations) to the extent that performance of such obligations is not precluded by the condition or event of Force Majeure.

14.3 Limitations on Effect of Force Majeure. In no event will (i) any delay or failure of performance caused by any conditions or events of Force Majeure extend this Energy Purchase Agreement beyond its stated Term; (ii) any delay or failure of performance of Seller caused by any conditions or events of Force Majeure or by any Delay Conditions or any other excused delay or failure of performance be double counted for purposes of extending the deadline for the Commercial Operation Milestone or result in greater than a day-for-day extension of any such deadline. Notwithstanding anything to the contrary in this Energy Purchase Agreement, the first seven(7) Days of delay caused by any event or condition of Force Majeure shall not give rise to any extension or postponement of the Commercial Operation Milestone. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) Days from its occurrence or inception, as noticed pursuant to Section 14.2(A), the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) Day period, terminate this Energy Purchase Agreement upon written notice to the affected Party, without further obligation by

either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure may, but shall not be obligated to, extend such three hundred sixty-five (365) Day period, for such additional time as it, at its sole discretion, deems appropriate, if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure.

14.4 Delays Attributable to Black Hills.

(A) Seller shall be excused from a failure to meet the Commercial Operation Milestone where Seller can establish that such a failure is principally attributable to any delay or failure by Black Hills in obtaining any consents or approvals from Governmental Authorities or third parties required for Black Hills to perform its obligations under this Energy Purchase Agreement (whether or not caused by any conditions or events of Force Majeure) ("Delay Conditions"). In the event of such a failure, the Commercial Operation Milestone shall be extended for a period of time equal to the period of time between (i) the Commercial Operation Milestone and (ii) the Day that Black Hills has corrected the Delay Condition(s), or, in the case of a failure of Black Hills to receive either COPUC Approval (if applied for pursuant to Section 6.1(A)) or FERC approval (if applied for pursuant to Section 6.1(B)), a day-for-day extension for each day after October 1, 2018 that such failure persists, in each case unless the parties mutually agree that the Delay Condition(s) requires a different period of extension.

(B) Seller's failure to meet the Commercial Operation Milestone for any reason, including Delay Condition(s), Force Majeure, the acts or inaction of the Interconnection Provider or any third party, or any Event of Default, shall not give rise to any damages payable by Black Hills (or an increase in the price for Renewable Energy) associated with or arising from such failure resulting in the Facility not qualifying for PTCs, except in situations where the Seller can establish that the failure to meet the Commercial Operation Milestone: (i) actually caused the Facility not to qualify for PTCs, and (ii) was proximately caused by Black Hills' willful misconduct or negligence in its performance of this Agreement, or by a material uncured breach by Black Hills of this Agreement.

ARTICLE 15. REPRESENTATIONS, WARRANTIES AND COVENANTS

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as of the Effective Date as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of South Dakota. Seller is in good standing in the State of Colorado and is qualified to do business in the State of Colorado and in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and

authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Energy Purchase Agreement.

(B) The execution, delivery, and performance of its obligations under this Energy Purchase Agreement by Seller have been duly authorized by all necessary corporate action, and does not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to Black Hills upon its request);

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Energy Purchase Agreement;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Energy Purchase Agreement; 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 Energy Purchase Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Energy Purchase Agreement.

(C) This Energy Purchase Agreement is a valid and binding obligation of Seller.

(D) The execution and performance of this Energy Purchase Agreement will not (i) conflict with, constitute a breach or default under, trigger any Change of Control rights or remedies under, impose or create any lien under, or impose, result in or create any right of any person related to acceleration of remedies, buy-out rights, rights of first offer or refusal or rights of termination under, any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Facility; (ii) require the consent or approval of any person, which has not been obtained or will be obtained prior to the event or circumstance requiring such consent.

(E) To the best knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates

will be obtained by Seller in the ordinary course of business, all permits, consents, approvals, licenses, authorizations, or other action required by any Governmental Authority to authorize Seller's execution, delivery and performance of this Energy Purchase Agreement have been duly obtained and are in full force and effect.

(F) Seller shall comply with all applicable Laws presently in effect or which may be enacted during the Term of this Energy Purchase Agreement.

(G) As of the Effective Date and the COD, no Environmental Contamination exists at the Facility or on the Site and no claims are pending or threatened in writing for the foregoing. Seller shall disclose to Black Hills the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws or regulations arising out of the construction or operation of the Facility, or the presence of Environmental Contamination at the Facility or on the Site, alleged to exist by any Governmental Authority having jurisdiction over the Site, or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination.

(H) As of the COD for the Facility, the Facility shall constitute an Eligible Energy Resource.

(I) Prior to its sale and transfer of title to Black Hills, Seller has all right, title and interest in and to the Renewable Energy, RECs and Clean Power Attributes, free and clear of all liens and encumbrances, except to the extent of any security interest, mortgage or other lien held by the Facility Lender or Tax Investor and tax liens not yet due. Seller shall promptly notify Black Hills during the Term of any changes to any of the foregoing and shall promptly remove, discharge in full or bond over any such liens or encumbrances in accordance with Applicable Law.

(J) All tax returns with respect Seller or the Facility have been timely filed by Seller, each such return was true and complete in all material respects. There are no actions or audits pending, no tax liens imposed or threatened in writing, and no disputes or claims related to tax liability pending or threatened in writing, each with respect to the Facility or Seller. Seller shall promptly notify Black Hills during the Term of the existence or occurrence of any of the foregoing.

(K) Seller has all intellectual property rights necessary for construction, operation and maintenance of the Facility, and the performance of Seller's obligations under this Energy Purchase Agreement will not infringe on the intellectual property rights of any third party.

(L) To the extent any of the following cybersecurity provisions are applicable to the Facility or to Seller or any of its subcontractors or vendors, Seller shall comply with the following.

(1) Seller shall (i) minimize electronic connections made to the Facility except as required for construction, operation and maintenance of the

Facility, (ii) ensure that no employee or subcontractor of any of Seller's contractors or vendors, other than the Turbine supplier and its employees or direct subcontractors, connects any electronic device with portable storage to the Facility without prior notice to Black Hills and evidence that such device was scanned or inspected in accordance with cybersecurity industry standards and Good Utility Practices prior to connection to the Facility, and (iii) ensure that the Turbine supplier and its employees or direct subcontractors scan all electronic devices with portable storage to be connected to the Facility and determine that such devices are free of Disabling Procedures at the time of connection of any such device to the Facility.

(2) On a regular and frequent basis, Seller shall remove or cause to be removed all software components that are not reasonably required for the construction (to the extent not completed), operation or maintenance of the Facility. If removal is not technically or reasonably feasible, then Seller shall disable or cause to be disabled software not required for the construction (to the extent not completed), operation or maintenance of the Facility. Removal shall not impede the primary functions of the Facility. The software to be removed or disabled shall include: (i) device drivers for equipment components not procured or delivered, (ii) messaging services (e.g., email, instant messenger, peer-to-peer file sharing), (iii) source code, (iv) games, (v) software compilers in user workstations and servers, (vi) software compilers for programming languages that are not used in the Facility, (vii) unused networking and communications protocols, (viii) unused administrative utilities, diagnostics, network management, and system management functions, (ix) backups of files, databases, and programs used only during Facility development and construction (after completion of the same), and (x) all unused data and configuration files. Prior to the COD and on a regular and frequent basis thereafter, Seller shall remove or disable all services and ports in the Facility not required for normal operation, emergency operations, or troubleshooting.

(3) Prior to the COD, Seller shall provide or cause to be provided documentation of the Turbine supplier's (and any other contractors' or suppliers', if applicable) patch management program(s) and update process(es) (including third-party hardware, software, and firmware). This documentation shall include such contractors' or suppliers' method(s) or recommendation(s) for how the integrity of a patch is to be validated. This documentation shall also include, if applicable, such contractors' or suppliers' approach(es) and capability or capabilities to remediate newly reported zero-day vulnerabilities. Seller shall use commercially reasonable efforts (including facilitating direct communication between the appropriate information technology personnel of the Turbine supplier and Black Hills) to ensure that as of the COD, all hardware, software or firmware incorporated into the Facility includes all available updates and all available patches for the remediation of any known vulnerabilities or weaknesses. Prior to

the COD, Seller shall notify Black Hills of any hardware, software or firmware that, to Seller's knowledge, does not include all available updates and patches, and, if Seller becomes aware after the COD of any such lack of inclusion of available updates and patches, Seller shall promptly notify Black Hills thereof.

(4) Seller shall ensure that, if at any time during the Term, as a result of any breach or failure to follow the requirements of this Section 15.1(L) by Seller or any contractor or supplier of Seller, Black Hills' software, data, electronic devices, or network contract a virus, time bomb, bug, software lock, drop-dead device, malicious logic, code, worm, trojan horse, error, trap door, program or any other defect that is capable of accessing, modifying, deleting, damaging, disabling, deactivating, interfering with or otherwise harming Black Hills' software, data, electronic devices or network (collectively, "Disabling Procedures"), such contractor or supplier shall reasonably assist Black Hills in identifying and eradicating the Disabling Procedure.

15.2 Black Hills' Representations, Warranties and Covenants. Black Hills hereby represents and warrants as follows:

(A) Black Hills is a corporation in good standing under the laws of the State of Colorado and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Black Hills. Black Hills has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Energy Purchase Agreement.

(B) The execution, delivery, and performance of its obligations under this Energy Purchase Agreement by Black Hills have been duly authorized by all necessary corporate action, and do not and will not:

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

(2) violate any Applicable Law or violate any provision in any corporate documents of Black Hills, the violation of which could have a material adverse effect on the ability of Black Hills to perform its obligations under this Energy Purchase Agreement;

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

ability of Black Hills to perform its obligations under this Energy Purchase Agreement; 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 Energy Purchase Agreement) upon or with respect to any of the assets or properties of Black Hills now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Black Hills to perform its obligations under this Energy Purchase Agreement.

(C) This Energy Purchase Agreement is a valid and binding obligation of Black Hills, subject to the conditions precedent identified in Article 6.

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

(E) To the best knowledge of Black Hills, and except for the approval(s) identified in Article 6, all permits, licenses, approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Black Hills' execution, delivery and performance of this Energy Purchase Agreement, have been duly obtained and are in full force and effect.

ARTICLE 16. INSURANCE

16.1 Evidence of Insurance. Seller shall, upon request, provide Black Hills with an insurance certificate acceptable to Black Hills evidencing that insurance coverages for the Facility are in compliance with the specifications for insurance coverage set forth in Exhibit D to this Energy Purchase Agreement. Such certificates shall (a) name Black Hills as an additional insured (except worker's compensation); (b) provide that Black Hills shall receive thirty (30) Days prior written notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies (except that such notice shall be ten (10) Days for non-payment of premiums); (c) provide a waiver of any rights of subrogation against Black Hills, 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 that Black Hills, in its reasonable discretion, deems acceptable (such acceptance will not be unreasonably withheld). All policies shall be written on an occurrence basis, except as provided in Section 16.2. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by Black Hills. Seller's liability under this Energy Purchase Agreement is not limited to the amount of insurance coverage required herein. Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this

insurance applies: a. As if each Named Insured were the only Named Insured; and b. Separately to each insured against whom claim is made or suit is brought.

16.2 Term and Modification of Insurance.

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

(B) Black Hills shall have the reasonable right, at times deemed appropriate to Black Hills during the Term, to request Seller to modify the insurance minimum limits specified in Exhibit D in order to maintain 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 or caused to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide written notice to Black Hills, 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 design. Upon receipt of such notice, Seller shall use commercially reasonable efforts to obtain or cause to be obtained other insurance that would provide comparable protection against the risk to be insured.

16.3 Application of Proceeds. Seller shall apply any insurance proceeds to reconstruction of the Facility following a casualty.

ARTICLE 17. INDEMNITY

17.1 Indemnity by Each Party.

(A) Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party and its Affiliates and their respective officers, members, managers, partners, directors, employees, agents and Affiliates (the "Indemnified Parties") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to persons and damage to the Indemnified Parties' real property and tangible personal property or facilities or the property of any other person or entity to the extent arising out of, resulting from, or caused by an Event of Default by the Indemnifying Party under this Energy Purchase

Agreement, violation of or liability under any applicable environmental laws, or by the negligent or tortious acts, errors, or omissions of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents. The indemnification of third party claims provided under this Article 17 is not limited by the limitation on damages set forth in Section 17.2. Nothing in this Article 17 shall enlarge or relieve Seller or Black Hills of any liability to the other for any breach of this Agreement. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of any Indemnified Party, but the Indemnifying Party's liability to pay damages to such Indemnified Party shall be reduced in proportion to the percentage by which such Indemnified Party's negligent or intentional acts, errors or omissions caused the damages. Neither Party shall be indemnified for its damages to the extent 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.

(B) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article may apply, the Indemnified Parties shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Parties, provided, however, that if the defendants in any such action include both the Indemnified Parties and the Indemnifying Party and the Indemnified Parties 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 Parties 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.

(C) If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Parties may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided 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 Parties' counsel that such claim is meritorious or warrants settlement.

(D) Except as otherwise provided in this Article, 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 Parties will be the amount of the Indemnified Parties' actual loss net of any insurance proceeds received by the Indemnified Parties following a reasonable effort by the Indemnified Parties to obtain such insurance proceeds.

17.2 Limitation of Liability. Seller's liability under this Agreement for Delay Damages shall not exceed the Delay Damages Cap. Seller's total liability under this Agreement shall not exceed the Damages Cap; provided, that the Damages Cap shall not apply to any indemnification

obligations of Seller related to any losses incurred by Black Hills as a result of claims, actions or proceedings asserted or initiated by third parties (including the Interconnection Provider) and shall not apply to Seller's representations, warranties and covenants under Article 15 or to any payment obligations of Seller in the case of Black Hills' exercise of rights under Section 12.6. Black Hills' total liability for all claims under this Agreement shall not exceed the greater of the Damages Cap or the amount actually paid by Black Hills to Seller in respect of the Renewable Energy delivered and sold to Black Hills in the twelve (12) months immediately preceding the commencement of such claim (without double counting such amounts for multiple or overlapping claims or claims commenced at different times).

17.3 Limitation on Claims. Disputes and all claims related thereto shall be deemed waived unless proper notification is made under the terms of this Agreement within twenty-four (24) months following the occurrence of all events and the existence of all circumstances giving rise to the dispute. Upon a deemed waiver of claims the aggrieved Party shall thereafter be barred from proceeding thereon; provided that claims asserting gross negligence fraud, fraudulent concealment, or willful misconduct by the other Party shall not be subject to this limitation.

ARTICLE 18. LEGAL AND REGULATORY COMPLIANCE

18.1 Compliance With Laws. Each Party shall at all times comply with all Applicable Laws, except for any non-compliance which, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder. As applicable, each Party shall give all required notices, shall procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this Energy Purchase Agreement, and shall pay its respective charges and fees in connection therewith. Upon permanent cessation of generation of Renewable Energy from the Facility, Seller or its successors or assigns, as applicable, shall decommission the Facility, remove the Facility and remediate the Site as, if, and when required by law.

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

ARTICLE 19. ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS

19.1 No Assignment Without Consent. Except as permitted in this Article 19, neither Party shall assign this Energy Purchase Agreement or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided (i) at least thirty (30) Days prior notice of any such assignment shall be given to the

other Party; (ii) any assignee shall expressly assume the assignor's obligations hereunder (including the Operating Procedures and any other agreements or arrangements between the Parties with respect to this Agreement or the Facility), unless otherwise agreed to by the other Party; (iii) no such assignment shall impair any security given by Seller hereunder; and (iv) the assignee must first obtain such approvals as may be required by all applicable regulatory bodies.

(A) Seller's consent shall not be required for Black Hills to assign this Energy Purchase Agreement to an Affiliate of Black Hills.

(B) Black Hills' consent shall not be required for Seller to assign this Energy Purchase Agreement for collateral purposes to the Facility Lender. Seller shall notify Black Hills, pursuant to Section 13.1, of any such assignment to the Facility Lender no later than thirty (30) Days after the assignment.

19.2 Accommodation of Facility Lender and Tax Investor. To facilitate Seller's obtaining of financing to construct and operate the Facility, Black Hills shall make reasonable efforts to provide such consents to assignments, certifications, representations, information or other documents as may be reasonably requested by Seller or any Facility Lender or Tax Investor in connection with the financing of the Facility (generally, a "Lender Consent"). The Lender Consent shall include the provisions set forth on Exhibit K and such other terms as the Facility Lender may reasonably request that do not adversely affect any of Black Hills' rights, benefits, risks and/or obligations under this Energy Purchase Agreement. Seller shall reimburse, or shall cause any Facility Lender or Tax Investor (as applicable) to reimburse, Black Hills for the incremental direct expenses (including the reasonable fees and expenses of counsel) incurred by Black Hills in the preparation, negotiation, execution and/or delivery of any documents requested by Seller or any Facility Lender or Tax Investor, and provided by Black Hills, pursuant to this Section 19.2.

19.3 Change of Control.

(A) Any direct or indirect Change of Control of Seller shall require the prior written consent of Black Hills, which shall not be unreasonably withheld.

(B)

(1) For purposes of this Energy Purchase Agreement, a "Pending Facility Transaction" means (i) any direct or indirect Change of Control of Seller or any agreement or commitment to enter into or consummate any transaction that would result in the foregoing, (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 of the Facility or any group(s) of assets or equity interests which includes the Facility, and/or (iii) 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 of the Facility or any group(s) of assets or

equity interests which includes the Facility. A "Pending Facility Transaction" does not include, however, (I) a Change of Control involving the Ultimate Parent Entity of Seller, or (II) any transaction in connection with which the Ultimate Parent Entity of Seller or Seller offered and Black Hills declined its right of first offer under the RoFO Agreement.

(2) Seller shall give to Black Hills at least ninety (90) Days' prior notice of any Pending Facility Transaction (a "PFT Notice") in order to provide Black Hills (if Black Hills so elects) with a reasonable opportunity to discuss and negotiate with Seller the possible sale of the Facility to Black Hills. 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 Black Hills have any obligation to purchase the Facility, following any PFT Notice. If Seller and Black Hills do not reach written agreement with respect to the sale and purchase of the Facility within ninety (90) days following a PFT Notice, Seller and its Affiliates shall be free for a period of nine (9) months thereafter, subject only to the requirements of the RoFO Agreement, to sell the Facility and/or any group(s) of assets or equity interests which includes the Facility, to any third party on any terms and conditions selected by Seller or its Affiliates in its sole discretion. If Seller and its Affiliates have not closed the proposed Pending Facility Transaction within such nine-month period, this Section 19.3(B) shall again apply to any proposed Pending Facility Transaction.

(3) Seller acknowledges that the damages potentially sustainable by Black Hills for any breach of this Section 19.3(B) would be substantial but difficult to calculate with certainty. Accordingly, in the event of any breach by Seller of this Section 19.3(B), in lieu of actual damages, Seller shall pay to Black Hills within thirty (30) days following invoice therefor liquidated damages in the amount of five ($5) per kW of aggregate nameplate capacity of the Facility.

19.4 Notice of any Facility Lender and Tax Investor Action. Within ten (10) Days following Seller's receipt of each written notice from any Facility Lender or Tax Investor of a default, or Facility Lender's or Tax Investor's intent to exercise any remedies, under any Financing Document, Seller shall deliver a copy of such notice to Black Hills.

19.5 Transfer Without Consent is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Facility or in this Energy Purchase Agreement made without fulfilling the requirements of the Energy Purchase Agreement shall be null and void and shall constitute an Event of Default pursuant to Article 12.

19.6 Subcontracting. Seller may subcontract its duties or obligations under this Energy Purchase Agreement without the prior written consent of Black Hills, provided that no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

ARTICLE 20. MISCELLANEOUS

20.1 Waiver. Subject to the provisions of Section 13.10, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Energy Purchase Agreement, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

20.2 Taxes.

(A) Seller shall be solely responsible for any and all present or future taxes relating to the construction, ownership or leasing, operation or maintenance of the Facility, or any components or appurtenances thereof, or by reason of the sale and delivery of Renewable Energy up to the Point of Delivery, and all ad valorem taxes relating to the Facility.

(B) Black Hills shall be solely responsible for the payment of any present and future taxes or other impositions of Governmental Authorities (excluding any transfer or sales taxes with respect to the sale of Renewable Energy hereunder) at or beyond the Point of Delivery.

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

20.3 Fines and Penalties.

(A) Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this Energy Purchase Agreement, or any contractual obligation, permit or requirements of law, except for such fees, 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 fees, fines, penalties or costs in the event of an adverse determination.

(B) If fees, fines, penalties, or costs are claimed or assessed against Black Hills by any Governmental Authority due to noncompliance by Seller with this Energy Purchase Agreement, any requirements of Law, any permit or contractual obligation, 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 Seller's noncompliance with any

requirements of law, permit, or contractual obligation, Seller shall indemnify and hold Black Hills harmless against any and all losses, liabilities, damages, and claims suffered or incurred by Black Hills, including claims for indemnity or contribution made by third parties against Black Hills, except to the extent Black Hills recovers any such losses, liabilities or damages through other provisions of this Energy Purchase Agreement.

20.4 Rate Changes.

(A) The terms and conditions and the rates for service specified in this Agreement shall remain in effect for the Term. Absent the Parties' written agreement, this Agreement 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 Agreement whether proposed by a Party, a non-party, or the FERC acting sua sponte shall be the "public interest" standard of review set forth in United Gas Pipe Line v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (a/k/a the "Mobile Sierra Doctrine").

20.5 Disclaimer of Third Party Beneficiary Rights. In executing this Energy Purchase Agreement, Black Hills does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this Energy Purchase Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this Energy Purchase Agreement.

20.6 Relationship of the Parties.

(A) This Energy Purchase Agreement 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 Section 12.6, 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 Black Hills for any purpose; nor shall Seller represent to any person that he or she is or shall become a Black Hills employee. This Section 20.6(B) shall be deemed waived as applicable in accordance with the ordinary practices of the Parties and their Affiliates and Applicable Law during any time that Seller is an Affiliate of Black Hills.

20.7 Equal Employment Opportunity Compliance Certification. Seller acknowledges that as a government contractor Black Hills is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Black Hills. All applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1-7).

20.8 Survival of Obligations. Cancellation, expiration, or earlier termination of this Energy Purchase Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the expiration of the applicable statute of limitations, including representations, warranties, covenants, remedies, or indemnities, which obligations shall survive for the period of the applicable statute(s) of limitation.

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

20.10 Complete Agreement; Amendments. The terms and provisions contained in this Energy Purchase Agreement together with all documents or agreements referenced herein constitute the entire agreement between Black Hills and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Black Hills and Seller with respect to the sale of Renewable Energy from the Facility. The Parties are relying on no representation or understanding not contained herein. This Energy Purchase Agreement may be amended, changed, modified, or altered only in a writing signed by both Parties hereto, and provided further, that the Exhibits attached hereto may be changed according to the provisions of Section 13.9.

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

20.12 Headings. Captions and headings used in this Energy Purchase Agreement are for ease of reference only and do not constitute a part of this Energy Purchase Agreement.

20.13 Counterparts. This Energy Purchase Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument. Facsimile or other copies of documents or signature pages bearing original

signatures, and executed documents or signature pages delivered by facsimile or electronic mail, shall, in each such instance, be deemed to be, and shall constitute and be treated as, an original signed document or counterpart, as applicable.

20.14 Governing Law. The interpretation and performance of this Energy Purchase Agreement and each of its provisions shall be governed and construed in accordance with the laws of the State of Colorado, without regard to principles of conflict of laws.

20.15 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 Energy Purchase Agreement, and other relevant factual information about the relationship. In the event during the Term, either Party is contacted by the media concerning this Energy Purchase Agreement 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.

20.16 Black Hills Right of First Offer. No RoFO Agreement is required under this Section 20.16 or otherwise under this Agreement if Seller is an Affiliate of Black Hills. If Seller is not an Affiliate, in consideration for Black Hills' execution of this Energy Purchase Agreement and for other good and valuable consideration received and hereby acknowledged, Seller shall, simultaneously herewith, (i) execute the RoFO Agreement in the form set forth in Exhibit G, and (ii) ensure that Seller's Parent (as defined in Exhibit G) simultaneously executes Exhibit G provided that if this Energy Purchase Agreement is terminated as a result of the failure of any conditions precedent set forth in Article 6 hereof, such RoFO Agreement shall terminate simultaneously with the Energy Purchase Agreement.

20.17 Confidentiality. Although this Energy Purchase Agreement is not Confidential Information (except to the extent redacted or treated as confidential subject to an order of the COPUC designating it confidential or highly confidential), the Parties acknowledge and agree that during the course of the performance of their respective obligations under this Agreement, either Party may need to provide information to the other Party, which the disclosing party deems confidential, proprietary or a trade secret ("Confidential Information").

(A) 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 may be designated as Confidential Information by clear and distinct notation on such documentation or by equivalent method (including verbal notification followed promptly by written confirmation of the specific information to be treated as Confidential Information), 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 the Confidential Information of each Party without the need for any 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 Energy Purchase Agreement, 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, to use it for work necessary to the performance of this Energy Purchase Agreement, 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 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.

(B) Confidential Information shall not include any data or information: (i) which can be documented was in the public domain at the time it was disclosed by the disclosing Party to the receiving Party, or at any time thereafter through no fault or action of the receiving Party; (ii) which can be documented was independently developed by the receiving Party; (iii) which can be documented was known to the receiving Party from an ultimate source other than the disclosing Party without obligation of confidentiality and without breach of this Energy Purchase Agreement by the receiving Party; (iv) which is disclosed by a Party, in connection with such Party's performance of its obligations under this Energy Purchase Agreement, 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 Energy Purchase Agreement; or (v) which 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, 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 of 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Energy Purchase Agreement.

SELLER

By: _____

Name: Mark Lux

Title: Vice President – Power Delivery

Date: Sept 25, 2018

BLACK HILLS COLORADO ELECTRIC, INC.

By: _____

Name: Vance Crocker

Title: Vice President, Electric Operations

Date: September 26, 2018

EXHIBIT A

CONSTRUCTION MILESTONES

Construction Milestones

August 3, 2018	Seller shall demonstrate that the Facility has the required Network Resource designation
December 14, 2018	Seller shall provide Black Hills with documentation that all governmental permits have been obtained or will be obtained by the time needed to meet all Construction Milestones.
January 1, 2019	Seller shall have provided Company with a redacted copy of the executed Facility EPC, or other general contractor, agreements.
May 31, 2019	Seller shall provide Black Hills with evidence of complying with insurance coverage required prior to the Commercial Operation date.
August 2, 2019	Seller shall have laid the foundation for all Facility buildings, towers and step-up transformation facilities.
August 16, 2019	The turbines shall have been delivered to, and installed at, the site.
August 16, 2019	The step-up transformer shall have been delivered to, and installed at, the Site.
September 16, 2019	Seller shall have constructed Seller's Interconnection Facilities and such facilities are capable of being energized.
October 1, 2019	Seller shall provide Black Hills with copies of executed purchase orders/contracts for the delivery and installation of Facility turbine(s)/generator(s) and the step-up transformer(s)
October 1, 2019	Seller shall have provided Company with copies, as applicable, of executed Facility operating agreements, electric transmission and/or interconnection agreements.
December 31, 2019	The Facility shall achieve Commercial Operation (Commercial Operation Milestone).

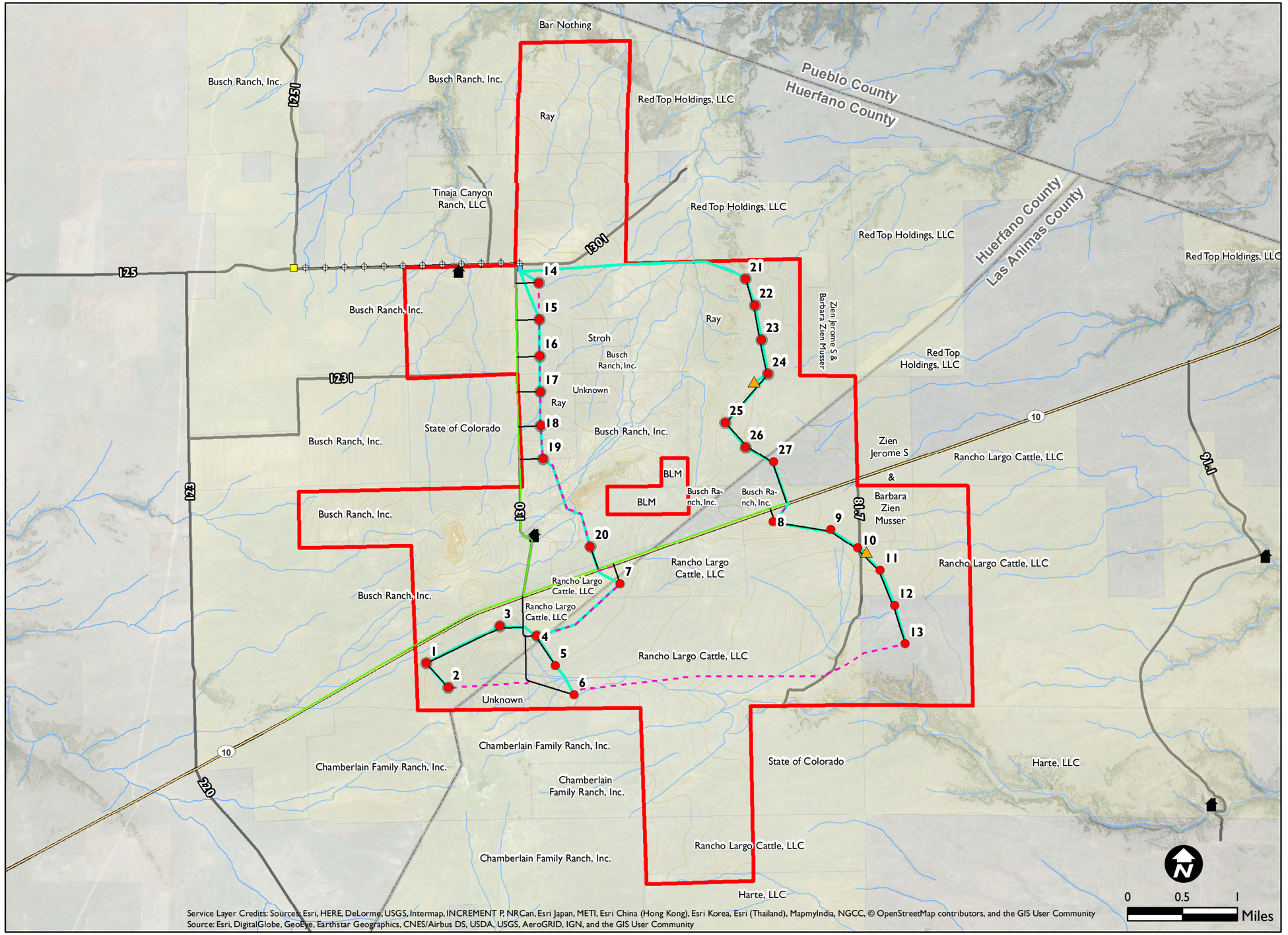
EXHIBIT B

FACILITY DESCRIPTION and SITE MAPS

Black Hills Electric Generation, LLC is developing the Busch Ranch II Wind Project in Huerfano and Las Animas Counties, Colorado. The project is located on several contiguous parcels of private land totaling approximately 13,000 acres. This proposed project is located approximately 20 miles east of I-25, north and south of State Highway 10, near the intersection of County Road 130. The project lies within four 7.5-minute U.S. Geological Survey Quadrangles: North Rattlesnake Butte, South Rattlesnake Butte, Myers Canyon, and Jones Lake Spring.

The development of this project includes the installation of 27 Vestas V120 2.2 MW wind turbine generators, with a nominal generating capacity of 59.4 MW. Seventeen of the wind turbine generators will be located in Huerfano County, and ten of the wind turbine generators will be located in Las Animas County. Construction is planned to begin in March 2019 and continue through September 2019, with commercial operation beginning in December 2019.

The following Figure 1 contains a site plan of the Busch Ranch II Wind Project.



Legend

- Proposed Wind Turbine
- Met Tower
- Rattlesnake Butte Substation
- Residence
- Access Road
- Collector Line
- Crane Path
- Delivery Route
- Transmission Line
- NHD Drainages
- Contour (10ft)
- Contour (50ft)
- Project Substation
- Wind Turbine Setback (280m)
- Parcel Ownership
- Project Area

Please refer to Appendix C, Typical Details, for proposed access road dimensions.

Pinyon Environmental, Inc.

SITE PLAN

Busch Ranch II Wind Project
Huerfano and Las Animas Counties, Colorado

Site Location: Multiple Sections, Townships 26 and 27S, Ranges 62 and 63W, 6th Principal Meridian	Drawn By: JAF	Figure: 1
Pinyon Project Number: 1117-720-04	Reviewed By: APH	Date: 6/19/2018

Document Path: Z:\PROJECTS\2017\1177204 Busch Ranch Wind Farm Project\Figures\ArcMap\MXDs\County Permitting\Site Plan.mxd

EXHIBIT C

NOTICE ADDRESSES

Page 1 of 1

BLACK HILLS COLORADO ELECTRIC, INC.

Notices:
Black Hills Colorado Electric, Inc.

Attention: Counsel
Phone: 303-566-3441
Fax: 720-210-1301

With a copy to:
Black Hills Corporation
1515 Wynkoop St., Suite 500
Denver, CO 80202
Attention: Counsel

Fax: 605.721.2550

Operating Committee Representative:

Kevin Hall
Kevin.hall@blackhillscorp.com

BLACK HILLS ELECTRIC GENERATION LLC

Notices:
Black Hills Electric Generation LLC

Attention: General Counsel
Phone: 605-721-1700
Fax: 605-721-2550

With a copy to:
Black Hills Corporation
7001 Mt. Rushmore Road
Rapid City, SD 57702
Attention: Counsel

Fax: 605.721.2550

Operating Committee Representative:

George Tatar
george.tatar@blackhillscorp.com

EXHIBIT D

INSURANCE COVERAGE

Part 1 of 3

Type of Insurance	Minimum Limits of Coverage
Commercial General Liability (CGL) and commercial umbrella	$5,000,000 combined single limit each occurrence and the aggregate, where applicable.

[Note: above may be achieved with any combination of CGL, umbrella, and self-insured retention.]

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.

Black Hills 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 primary as respects any claim, losses, damages, expenses, or liabilities arising out of this agreement and insured hereunder, and any insurance carried by Black Hills shall be excess of an concontributing with insurance afforded by these policies.

Business Automobile Liability	$1,000,000 combined single limit (each accident), including all Owned, Non-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.

EXHIBIT D

INSURANCE COVERAGE

Part 2 of 3

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.
	$1,000,000 each accident for bodily injury by accident, or $1,000,000 each employee for bodily injury by disease.

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, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than $10,000,000 each for flood and earthquake; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and turbines, in an amount equal to their full replacement value.

Business Interruption insurance	Amount required to cover Seller's continuing or increased expenses, resulting from full interruption, for a period of twelve (12) calendar months, unless otherwise agreed by both parties in writing.

EXHIBIT D

INSURANCE COVERAGE

Part 3 of 3

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 as determined by Black Hills, subject to a reasonable deductible that shall be the responsibility of Seller. Notwithstanding any other provision of this Energy Purchase Agreement, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date.

EXHIBIT E

SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED

1. United States Environmental Protection Agency/Colorado Division of Oil and Public Safety:

    a. Spill Prevention, Containment, and Countermeasures Plan for Construction

2. Federal Aviation Administration:

    a. No Hazard to Air Navigation Determinations for Wind Turbine Generators

    b. Final Notices of Actual Construction

3. Colorado Department of Public Health and Environment:

    a. Air Pollution Emission Permit for Land Development – General Permit 03

    b. Air Pollution Emission Permit for Concrete Batch Plant

    c. Stormwater Discharge Construction General Permit

    d. Section 401 Water Quality Certification

4. Colorado Department of Transportation:

    a. State Highway Access Permit

5. County Conditional/Special Use Permits

6. Local land use or zoning permits

Exhibit F

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]

APPLICANT:

[INSERT NAME OF SELLER]

_____

_____

BENEFICIARY:

BLACK HILLS COLORADO ELECTRIC, INC.

7001 MOUNT RUSHMORE RD
RAPID CITY, SOUTH DAKOTA 57702

AS THE ISSUING BANK ("ISSUER"), WE, [NAME OF ISSUING BANK], HEREBY ESTABLISH THIS IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ IN FAVOR OF THE ABOVE-NAMED BENEFICIARY ("BENEFICIARY") FOR THE 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 SUBSTANTIALLY 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 SIGNATOR MUST INDICATE HIS OR HER TITLE OR OTHER OFFICIAL CAPACITY. NO OTHER DOCUMENTS WILL BE REQUIRED TO BE PRESENTED. THIS 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 SUBSTANTIAL COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT AT THE ISSUER'S LETTERHEAD OFFICE, THE OFFICE LOCATED AT _____ OR ANY OTHER FULL SERVICE OFFICE OF THE ISSUER ON OR BEFORE THE ABOVE STATED EXPIRATION DATE, AS SUCH EXPIRATION DATE MAY BE EXTENDED HEREUNDER. PARTIAL AND MULTIPLE DRAWS AND PRESENTATIONS ARE PERMITTED ON ANY NUMBER OF OCCASIONS. FOLLOWING ANY PARTIAL DRAW, ISSUER WILL ENDORSE THIS LETTER OF CREDIT AND RETURN THE ORIGINAL TO BENEFICIARY.

ISSUER ACKNOWLEDGES THAT THIS LETTER OF CREDIT IS ISSUED PURSUANT TO THE PROVISIONS OF THAT CERTAIN ENERGY PURCHASE AGREEMENT BETWEEN THE BENEFICIARY AND THE APPLICANT DATED AS OF _____, 20__ (AS THE SAME MAY HAVE BEEN OR MAY BE AMENDED FROM TIME TO TIME, THE "PPA"). NOTWITHSTANDING ANY REFERENCE IN THIS LETTER OF CREDIT TO THE PPA OR ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS, OR REFERENCES IN THE PPA OR ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS TO THIS LETTER OF CREDIT, THIS LETTER OF CREDIT CONTAINS THE ENTIRE AGREEMENT BETWEEN BENEFICIARY AND ISSUER RELATING TO THE OBLIGATIONS OF ISSUER HEREUNDER.

THIS LETTER OF CREDIT WILL BE AUTOMATICALLY EXTENDED EACH YEAR WITHOUT AMENDMENT FOR A PERIOD OF ONE YEAR FROM THE EXPIRATION DATE HEREOF, AS EXTENDED, UNLESS AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE, ISSUER NOTIFIES BENEFICIARY BY REGISTERED MAIL THAT IT ELECTS NOT TO EXTEND THIS LETTER OF CREDIT FOR SUCH ADDITIONAL PERIOD. NOTICE OF NON-EXTENSION WILL BE GIVEN BY ISSUER TO BENEFICIARY AT BENEFICIARY'S ADDRESS SET FORTH HEREIN OR AT SUCH OTHER ADDRESS AS BENEFICIARY MAY DESIGNATE TO ISSUER IN WRITING AT ISSUER'S LETTERHEAD ADDRESS.

THIS LETTER OF CREDIT IS FREELY TRANSFERABLE 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 A COMPLETED WRITTEN TRANSFER REQUEST SUBSTANTIALLY IN THE FORM ATTACHED HERETO AS EXHIBIT "B." SUCH TRANSFER WILL BE EFFECTED AT NO COST TO BENEFICIARY. ANY TRANSFER FEES ASSESSED BY ISSUER WILL BE PAYABLE SOLELY BY APPLICANT, AND THE PAYMENT OF ANY TRANSFER FEES WILL NOT BE A CONDITION TO THE VALIDITY OR EFFECTIVENESS OF THE TRANSFER 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 STANDBY 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 13(B) AND 17 OF THE UCP, IN WHICH CASE THE TERMS OF THIS LETTER OF CREDIT SHALL GOVERN. WITH RESPECT TO ARTICLE 13(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 BENEFICIARIES (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 (COLLECTIVELY, AN "INTERRUPTION EVENT") AND CAUSES THE PLACE FOR PRESENTATION OF THIS LETTER OF CREDIT TO BE CLOSED FOR BUSINESS ON THE LAST DAY FOR PRESENTATION, THE EXPIRY DATE OF THIS LETTER OF CREDIT WILL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT TO A DATE THIRTY (30) CALENDAR DAYS AFTER THE PLACE FOR PRESENTATION REOPENS FOR BUSINESS.

ISSUER:

By:_____
AUTHORIZED SIGNATURE

Its:_____

EXHIBIT "A"

TO LETTER OF CREDIT

SIGHT DRAFT

$_____

At sight, pay to the order of [Name of Beneficiary to be inserted], the amount of USD $_____ (_____ and 00/100ths U.S. Dollars).

Drawn under [Name of Issuer to be inserted] Standby Letter of Credit No. _____.

Dated: _____, 20___

[Name of Beneficiary to be inserted]

By:_____
Its Authorized Representative and
[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 CREDIT NO: _____

CURRENT BENEFICIARY:	APPLICANT:
_____	_____
_____	_____
_____	_____
_____	_____

TO: [NAME OF ISSUING BANK]

The undersigned, as the current "Beneficiary" of the above referenced Letter of Credit, hereby requests that you reissue the Letter of Credit in favor of the transferee named below [INSERT TRANSFEREE NAME AND ADDRESS BELOW]:

_____
_____
_____
_____

From and after the date this transfer request is delivered to the Issuer, the transferee shall be the "Beneficiary" under the Letter of Credit for all purposes and shall be entitled to exercise and enjoy all of the rights, privileges and benefits thereof.

DATED: _____

[NAME OF BENEFICIARY]

By:_____
Name: _____
Title: _____

[NOTARY ACKNOWLEDGMENT]

[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

FORM OF RIGHT OF FIRST OFFER AGREEMENT

RIGHT OF FIRST OFFER AGREEMENT

AMONG

_____, LLC,

_____, [LLC],

AND

BLACK HILLS COLORADO ELECTRIC, INC.

_____ ___, 20___

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RIGHT OF FIRST OFFER AGREEMENT

AMONG

_____, LLC,

_____, LLC,

AND

BLACK HILLS COLORADO ELECTRIC, INC.

This Right of First Offer Agreement ("Agreement") is made and entered into as of the ____ day of _____, 2018 (the "Effective Date"), by and between (i) **_____**, _____ ("Owner"), and _____, [LLC], a _____ [limited liability company] ("Parent") (Owner and Parent, either, a "Seller"), and (ii) **Black Hills Colorado Electric, Inc**., a Delaware company, with offices at 105 South Victoria Avenue, Pueblo, Colorado 81003 ("Company"). Owner, Parent and Company may be referred to herein collectively as the "Parties" and individually as a "Party."

- Recitals -

A. Owner is developing and will own and operate a 59.4 megawatt, wind-powered electric generating plant (the "Plant"). The Plant is to be located on multiple parcels of real estate and related leases and easements in Huerfano and Las Animas Counties, Colorado, held by Owner (the "Land"). The Land is legally described on Appendix A hereto. The Land and the Plant, together with all associated improvements, fixtures, equipment, spare parts, leases, contracts, and other related real and personal property, and any additions thereto and replacements thereof (in whatever state they may exist as of the date of exercise of Company's rights hereunder), are herein referred to collectively as the "Facility."

B. Parent owns all of the outstanding membership interests in Owner (the "LLC Interests").

C. In connection with the execution and delivery of this Agreement, Owner and Company are executing and delivering an Energy Purchase Agreement with respect to the Plant (the "EPA"). This Agreement is being executed and delivered in consideration of Company's execution and delivery of the EPA and for other good and valuable consideration, the sufficiency of which is hereby acknowledged.

NOW, THEREFORE, in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as set forth below:

ARTICLE 1. GENERAL

1.1 Incorporation of Recitals. The foregoing recitals are hereby incorporated into and made a part of this Agreement as if set forth in their entirety.

1.2 Definitions. In addition to other capitalized terms defined elsewhere herein, the following terms shall have the meanings set forth below. Other capitalized terms used and not otherwise defined in this Agreement shall have the meanings ascribed thereto in the EPA.

"Agreed Title Status" has the meaning set forth in Section 3.4(c).

"Books & Records" as of any date means all of the following, to the extent held by or otherwise reasonably available to Sellers, but excluding any item subject to attorney-client privilege:

(i) all Facility Contracts and any other contracts and commitments of Owner;

(ii) property tax bills for the Facility for the three (3) preceding years;

(iii) soils reports, meteorological, water, sewer, traffic, drainage, mineral, fish and wildlife studies, and geotechnical and other engineering data pertaining to the Facility;

(iv) current financial statements and other financial information with respect to Owner;

(v) minute books and other corporate records for Owner and, to the extent related to Owner or the Facility, for Parent;

(vi) material environmental reports (including Phase I, II, and III reports), letters, test results advisories, and similar documents relating to environmental conditions at the Facility;

(vii) surveys, aerial photographs, topographic maps, or plats for the Facility;

(viii) third party appraisals of all or any part of the Facility prepared within the three (3) preceding years;

(ix) pending litigation, arbitration and administrative pleadings affecting the LLC Interests and/or the Facility;

(x) zoning and other land use documents applicable to the Facility;

(xi) notices of violations or alleged violations of any zoning, environmental and/or other laws, regulations and/or ordinances;

(xii) material plans, studies or other documents relating to the use, ownership or development of the Facility submitted to any Governmental Authority during the three (3) preceding years;

(xiii) current Permits;

(xiv) special district documents affecting all or any part of the Facility;

(xv) employment data, metrics and records (other than personal information of or related to employees) related to the construction, operation and maintenance of the Facility; and

(xvi) any other material documents relating to the Facility and/or the LLC Interests, if and to the extent requested by Company during its investigation of the Facility.

"Closing Date" means the date specified in the PSA for the closing of the purchase and sale of the Facility or the Relevant Interests, as contemplated by this Agreement.

"Company Representatives" has the meaning set forth in Section 3.1(b).

"Confidential Information" means all information that Company may discover or that Sellers may disclose to Company in the course of Company's investigations during the Due Diligence Period pursuant to this Agreement; provided, however, that "Confidential Information" shall not include information that

(i) is publicly available or in the public domain at the time discovered or disclosed;

(ii) is or becomes publicly available or enters the public domain through no fault of Company;

(iii) is rightfully communicated to Company by persons not bound by confidentiality obligations with respect thereto;

(iv) is already in Company's possession, free of any confidentiality obligations with respect thereto at the time of disclosure;

(v) is independently developed by Company, without reference to or use of information provided by or on behalf of Sellers; or

(vi) is approved for release or disclosure by either Seller in writing.

"Consent" means prior written consent, not to be unreasonably withheld, delayed or conditioned.

"Court" has the meaning set forth in Section 6.6.

"Disclosure Schedules" has the meaning set forth in Section 4.2.

"Due Diligence Period" has the meaning set forth in Section 3.1(a).

"Excluded Assets" means (a) in connection with any sale of the Facility or the Relevant Interests, any assets excluded from the sale under the Material Terms.

"Extension" has the meaning set forth in Section 3.1(b).

"Facility Contracts" means Seller's EPC contract(s), Interconnection Agreement, operations and maintenance agreement(s), and such other leases, easements, emissions

restrictions, special district documents, contracts, agreements and instruments to which either Seller is a party and that are material to the construction, interconnection, operation and/or maintenance of the Facility (excluding contracts, agreements and instruments pertaining to Facility Debt) as may be in effect as of the date of a Preliminary Exercise Notice.

"Facility RoFO" has the meaning set forth in Section 2.2(b).

"Full Access" has the meaning set forth in Section 3.1(b).

"LLC RoFO" has the meaning set forth in Section 2.1(b).

"Material Terms" has the meaning set forth in Section 2.1(a).

"Minimum Price" has the meaning set forth in Section 2.1(a).

"Notice" has the meaning set forth in Section 6.2.

"Permits" means permits, licenses, zoning modifications, variances, special use permits, special exceptions, building permits, occupancy permits and other governmental approvals and authorizations.

"Permitted Exceptions" means

(i) restrictions and obligations of Owner under the Facility Contracts;

(ii) easements, encroachments and other immaterial defects in title, which in any case do not impose upon Company a risk of forfeiture, foreclosure, or other loss or material impairment of the Facility or the Relevant Interests (as applicable); and

(ii) statutory liens arising in the ordinary course of business by operation of law with respect to real and personal property taxes that are not yet due or delinquent.

"Preliminary Exercise Notice" has the meaning set forth in Section 2.1(b).

"PSA" has the meaning set forth in Article 4.

"Relevant Interests" has the meaning set forth in Section 2.1.

"RoFO" has the meaning set forth in Section 2.2(b).

"RoFO Confirmation Deadline" has the meaning set forth in Section 2.3.

"RoFO Confirmation Notice" has the meaning set forth in Section 2.3.

"RoFO Notice" has the meaning set forth in Section 2.1(a).

"Survey" has the meaning set forth in Section 3.2(a).

"Third-Party Buyer" has the meaning set forth in Section 2.1(a).

"Title Commitment" has the meaning set forth in Section 3.4(a).

"Title Company" has the meaning set forth in Section 3.4(a).

"UCC Search" has the meaning set forth in Section 3.4(b).

This Agreement is independent of the EPA and, as a separate agreement, shall survive the amendment, modification or termination of the EPA, except as otherwise provided herein. In the event of any conflict between this Agreement and the EPA, this Agreement shall control.

ARTICLE 2.
RIGHT OF FIRST OFFER

2.1. LLC RoFO.

A. If and when in good faith Parent is interested in selling all or a majority of the LLC Interests (the "Relevant Interests") to a third party other than an Affiliate of Seller (a "Third-Party Buyer"), before entering into any binding agreement with the Third-Party Buyer, Parent shall by notice to Company (a "RoFO Notice"):

(i) indicate the percentage of the LLC Interests comprising the Relevant Interests, if not all LLC Interests, are being sold;

(ii) identify the prospective Third-Party Buyer and, if different, its ultimate parent entity;

(iii) specify the terms (if any) that would materially affect the price (the "Material Terms") under which Parent is willing to sell the Relevant Interests to the Third-Party Buyer (including any material assets comprising the Facility to be excluded in connection with such transfer); and

(iv) specify a price ("Minimum Price") below which Parent would not be willing to sell the Relevant Interests to the Third-Party Buyer.

B. Effective upon receipt of a RoFO Notice from Parent under this Section 2.1, Company shall have the right and option to purchase the Relevant Interests on the Material Terms and for a purchase price equal to the Minimum Price, all as specified in such RoFO Notice (the "LLC RoFO"). Company may reserve its exclusive right to exercise the LLC RoFO, if at all, by delivering to Parent a preliminary notice of exercise (a "Preliminary Exercise Notice") with respect to the Relevant Interests not more than sixty (60) days following receipt of a RoFO Notice from Parent. If Company delivers a Preliminary Exercise Notice within such sixty (60) day period, Parent shall not offer or sell the Relevant Interests or any LLC Interests held by Parent, shall immediately cease all negotiations with any third party related to any such offer or sale, and shall notify Company promptly of any offer or inquiry from any third party to purchase the LLC Interests (or any offer to Owner to purchase the Facility), until the earlier of (i) Company's failure to deliver a RoFO Confirmation Notice as of the RoFO Confirmation Deadline or (ii) Company's earlier notification to Parent in writing that it will not exercise the LLC RoFO.

C. If Company fails to deliver a Preliminary Exercise Notice with respect to the LLC RoFO within the sixty (60) day period following receipt of a RoFO Notice from Parent (or if Company earlier notifies Parent in writing that Company will not be exercising the LLC RoFO), Parent shall be free to sell the Relevant Interests to the identified Third-Party Buyer for such consideration and on such terms as Parent deems appropriate, provided that (i) such consideration shall have an aggregate value not less than the Minimum Price set forth in such RoFO Notice, (ii) such terms shall include the Material Terms set forth in such RoFO Notice, (iii) a definitive contract therefor is executed not more than one hundred eighty (180) days following expiration of such sixty (60) day period, and (iv) the transaction is closed not more than one hundred twenty (120) days following execution of the definitive contract.

2.2 Facility RoFO.

A. If and when in good faith Owner is interested in selling the Facility to a Third-Party Buyer, before entering into any binding agreement with the Third-Party Buyer, Owner shall provide a RoFO Notice to Company:

(i) specifying the Material Terms associated with such sale, if any;

(ii) identifying the prospective Third-Party Buyer and, if different, its ultimate parent entity; and

(iii) specifying the Minimum Price below which Owner would not be willing to sell the Facility to the Third-Party Buyer.

B. Effective upon receipt of a RoFO Notice from Owner under this Section 2.2, Company shall have the right and option to purchase the Facility on the Material Terms and for a purchase price equal to the Minimum Price, as specified in such RoFO Notice (the "Facility RoFO" and, together with the LLC RoFO, the "RoFOs"). Company shall exercise the Facility RoFO, if at all, by delivering to Owner a Preliminary Exercise Notice not more than sixty (60) days following receipt of a RoFO Notice from Owner. If Company delivers a Preliminary Exercise Notice within such sixty (60) day period, Owner shall not offer or sell the Facility or any portion thereof, shall immediately cease all negotiations with any third party related to any such offer or sale, and shall notify Company promptly of any offer or inquiry from any third party to purchase the Facility or any portion thereof (or any offer to Parent to purchase any LLC Interests), until the earlier of (i) Company's failure to deliver a RoFO Confirmation Notice as of the RoFO Confirmation Deadline or (ii) Company's earlier notification to Owner in writing that it will not exercise the Facility RoFO.

C. If Company fails to deliver a Preliminary Exercise Notice with respect to the Facility RoFO within the sixty (60) day period following receipt of a RoFO Notice from Owner (or if Company has earlier notified Owner that Company will not be exercising the Facility RoFO), Owner shall be free to sell the Facility to the identified Third-Party Buyer for such consideration and on such terms as Owner deems appropriate, provided that (i) such consideration shall have an aggregate value not less than the

Minimum Price set forth in the RoFO Notice, (ii) such terms shall include the Material Terms set forth in such RoFO Notice, if any, (iii) a definitive contract therefor is executed not more than one hundred eighty (180) days following expiration of such sixty (60) day period, and (iv) the transaction is closed not more than one hundred twenty (120) days following execution of the definitive contract.

2.3 Confirmation of Exercise. Not later than four (4) months following delivery of a Preliminary Exercise Notice with respect to a RoFO (the "RoFO Confirmation Deadline"), Company shall notify each Seller whether Company elects to confirm its exercise of the applicable RoFO (a "RoFO Confirmation Notice"). If Company fails to deliver a RoFO Confirmation Notice within such four (4) month period, Sellers shall be free to sell the Relevant Interests or the Facility, as applicable, to the identified Third-Party Buyer, for such consideration and on such terms as Sellers deem appropriate, provided that (i) such consideration shall have an aggregate value not less than the Minimum Price set forth in the relevant RoFO Notice, (ii) such terms shall include the Material Terms, if any, set forth in such RoFO Notice, (iii) a definitive contract therefor is executed not more than one hundred eighty (180) days following expiration of such four (4) month period, and (iv) the transaction is closed not more than one hundred twenty (120) days following execution of the definitive contract. Absent a definitive contract or closing within such 180- and 120-day periods respectively, however, this Article II shall again apply to any sale of the LLC Interests or the Facility.

A. Termination of RoFOs. Subject to Section 6.2 below, the RoFOs shall survive any sale of the Facility or the LLC Interests. Both RoFOs shall terminate concurrently with termination of the EPA for any reason.

ARTICLE 3.
DUE DILIGENCE INVESTIGATIONS AND PERMITS

3.1 Due Diligence - General.

A. For purposes of this Agreement, the "Due Diligence Period" means the period commencing upon delivery of a RoFO Notice by the relevant Seller through and including the first to occur of (A) the passing of the applicable sixty (60) day period for preliminary exercise, without delivery by Company of a Preliminary Exercise Notice, (B) the passing of the RoFO Confirmation Deadline four (4) months following Company's delivery of a Preliminary Exercise Notice, without delivery by Company of a RoFO Confirmation Notice, or (C) mutual execution of a PSA.

B. During the Due Diligence Period, Company and its agents, representatives and contractors ("Company Representatives") shall have access to the Facility and to the Books & Records subject to and in accordance with the provisions of this Article 3 ("Full Access"). The Due Diligence Period (and the RoFO Confirmation Deadline) shall be extended day-for-day (each, an "Extension") for each day that Company is actively seeking to conduct due diligence investigations but is materially precluded from conducting such investigations for any reason outside of Company's control. Company

shall notify Sellers in writing of any Extension (including the cause and duration thereof) claimed by Company pursuant to this Section.

3.2 Access to Facility.

A. Owner shall provide Company's Representatives access to the Facility during the Due Diligence Period, during normal business hours, subject to the provisions of this Article 3. Company's Representatives shall make no physical alterations to the Facility, nor shall Company's Representatives disturb, damage or alter any fixtures, improvements, equipment or other property comprising the Facility. Full Access shall include the right

(i) with Owner's representatives present, to interview Owner's managers, employees and operations and maintenance contractors;

(ii) to conduct any operating tests that Company deems necessary or appropriate on the Plant;

(iii) to conduct or cause to be conducted an ALTA or equivalent survey of the Facility, in such detail as Company may elect in its discretion (a "Survey"); and

(iv) to conduct or cause to be conducted a Phase I environmental assessment (or its equivalent) necessary to satisfy any applicable due diligence requirements under applicable environmental laws, and any Phase II assessment (or its equivalent) that Company may deem necessary or advisable based upon the findings of any Phase I assessment.

Company shall provide a copy of any Survey to Sellers.

B. Company's Representatives shall comply with the following conditions in connection with their access to the Facility:

(i) any Company Representative desiring to conduct an inspection of the Facility shall provide seven (7) days' prior written notice to Owner of the date(s), time(s), nature and estimated length of the proposed inspection(s);

(ii) Company's Representatives shall perform their inspections in a professional and workmanlike manner, shall not disturb the operation and maintenance of the Facility or adjacent property owners, and shall comply with Owner's safety rules, regulations and policies; and

(iii) Company shall promptly repair or reimburse Owner for the cost of repair of any damage caused by the inspections of Company or Company's Representatives.

C. Nothing herein shall authorize Company or Company's Representatives to subject the Facility to mechanic's or other liens. Company agrees not to permit or suffer and, to the extent permitted or suffered, shall cause to be removed and released promptly,

any mechanic's lien, materialmen's or other lien on account of supplies, machinery, tools, equipment, labor or materials furnished or used in connection with the entry, inspection or work upon or in relation to the Facility by Company's Representatives.

3.3 Books & Records. During the Due Diligence Period, Sellers shall make all Books & Records available for inspection by Company's Representatives during normal business hours, at the Facility or at any location designated by Sellers in the Denver metropolitan area, upon at least five (5) days' prior written notice to Sellers. Company may copy all or any part of the Books & Records at its expense.

3.4 Title.

A. During the Due Diligence Period, Company shall obtain a commitment for an ALTA Owner's Title Insurance Policy (the "Title Commitment") for the Land issued by a nationally recognized title company reasonably satisfactory to Sellers (the "Title Company") including, except as otherwise determined by Company in its sole discretion, pro forma endorsements for:

(i) extended coverage over the general exceptions,

(ii) zoning,

(iii) comprehensive (unless otherwise covered under energy project-specific endorsements for restrictions and encroachments and a separate minerals endorsement),

(iv) access,

(v) survey "same as,"

(vi) gap coverage,

(vii) arbitration,

(viii) contiguity,

(ix) minerals and subsurface substances,

(x) energy project - encroachment,

(xi) energy project – covenants, conditions and restrictions, and

(xii) energy project - leaseholds and easements.

If standards for title policies or endorsements materially change between the Effective Date and the date of a Preliminary Exercise Notice, this Section 3.4(a) shall be amended to include such standards as are substantially analogous to the requirements of this Section. Company shall provide a copy of the Title Commitment to Sellers.

B. During the Due Diligence Period, Company shall cause a nationally recognized third party search company to conduct a UCC lien search against Sellers at

the office of the Secretary of State of Colorado and the office of the Secretary of State of each state where Sellers are organized (collectively, the "UCC Search"). Company shall provide a copy of the UCC Search to Sellers.

C. For purposes of this Agreement and the PSA, "Agreed Title Status" for the Facility means the status of title therefor, as of the date of the RoFO Confirmation Notice, evidenced by the Title Commitment, the Survey (if any) and the UCC Search.

3.5. Confidentiality.

A. During the term of this Agreement and until the earlier to occur of (i) execution of a PSA, or (ii) the third (3rd) anniversary of any termination of this Agreement, neither Company nor Company's Representatives shall:

(i) disclose any Confidential Information to any third party, other than to Company's Representatives, Company's Affiliates, and Company's prospective investors, lenders and assignees, in each case on a confidential and "need-to-know" basis; or

(ii) use any Confidential Information except for the purpose of determining (or assisting Company in determining, as applicable) whether to confirm the exercise of a RoFO and to acquire the Facility or the Relevant Interests.

Company shall cause each person or entity to whom Company or Company's Representatives may disclose any Confidential Information to abide by this Section 3.5.

B. Notwithstanding Section 3.5(a), Company may disclose Confidential Information (i) as Company is legally required to furnish by subpoena, by other legal process or by applicable law, including disclosure required by the rules of any securities exchange, and/or (ii) to the Colorado Public Utilities Commission. In connection with any disclosure subject to this paragraph (b), Company shall (A) notify Sellers of the nature and recipient of the disclosure, prior to the disclosure, and (B) cooperate in any effort by Sellers to seek confidential treatment of any such Confidential Information from the intended recipient or any other third party.

Company shall have the right during the Due Diligence Period to make inquiries concerning the availability of Permits, to the extent that the Permits already held by Owner are insufficient for Company's ownership and intended use of the Facility or are not transferable to Company; provided that Company's inquiries concerning any Permit shall not alter, modify or interfere with Owner's Permits, Owner's ownership of the Facility or its ability to operate and maintain the Facility. Sellers shall reasonably cooperate with Company, at Company's expense, in Company's inquiries concerning Permits, including, without limitation, executing any necessary or required consents, approvals or authorizations.

All costs and expenses incurred by Company in connection with its due diligence pursuant to this Article 3 shall be solely and exclusively for the account of Company.

Company shall indemnify, hold harmless and defend Sellers and their officers, directors, members, managers, employees, agents, representatives and lenders from and against any and all claims, liabilities, causes of action and associated expenses (including reasonable attorneys' fees) which Sellers may incur by reason of (i) the entry, inspection, work or other activities on, or in relation to, the Facility by Company or any Company Representative, or (ii) any breach of this Article 3 or other conditions to Full Access by Company or any Company Representative.

ARTICLE 4.
PURCHASE AND SALE AGREEMENT

4.1 Execution of PSA.

A. If Company delivers a valid and timely RoFO Confirmation Notice with respect to either RoFO, Company and the applicable Seller shall negotiate expeditiously and in good faith and execute a Purchase and Sale Agreement ("PSA") as soon as reasonably practicable thereafter. If Company is acquiring the Facility from Owner, the PSA shall include the Minimum Price, any Material Terms and (to the extent not inconsistent therewith) the terms and conditions set forth in Appendix B attached hereto. If Company is acquiring Relevant Interests from Parent, the PSA shall include the Minimum Price, any Material Terms and (to the extent not inconsistent therewith) the terms and conditions set forth in Appendix C attached hereto. The PSA shall be consistent with this Agreement and, to the extent not inconsistent with the Agreement, the customs and practices of the industry as of the date of the RoFO Confirmation Notice.

B. This Agreement (including its Appendices) contains all material terms and conditions with respect to any purchase and sale of the Facility and any LLC Interests pursuant to the RoFOs.

4.2 Disclosure Schedules. Certain exhibits ("Disclosure Schedules") to be attached to the PSA will contemplate exceptions to Sellers' representations and warranties in the PSA concerning the Facility and the Relevant Interests. Sellers shall prepare and deliver to Company proposed draft forms of the Disclosure Schedules, with specificity and in good faith, to the best of Sellers' knowledge, reflecting the then-current status of the LLC Interests (if applicable), the Facility and its operations, as soon as reasonably practicable following Company's delivery of a Preliminary Exercise Notice and in any event at least sixty (60) days prior to the end of the applicable RoFO Confirmation Deadline. Thereafter, prior to execution of a PSA, Sellers may and shall make such changes to its Disclosure Schedules as intervening events and circumstances not in contravention of this Agreement may require. The Disclosure Schedules delivered by Sellers, as amended from time to time under this Section, shall be attached to the PSA if and when Company delivers a RoFO Confirmation Notice. In the event that Sellers fail or are unable to provide one or more Disclosure Schedules by the required deadline, each such Disclosure Schedule shall state "None."

ARTICLE 5.
CONDUCT OF BUSINESS

5.1. Ring-Fencing. During the Term of this Agreement, absent the Consent of Company to the contrary:

A. Owner shall not

(i) issue any new membership interests, issue any options, warrants, convertible debt or other rights to acquire any membership interests;

(ii) voluntarily dissolve or liquidate;

(iii) become liable by way of guaranty or otherwise for any obligations of any Affiliate or any third party;

(iv) pledge any of its assets to secure obligations of any Affiliate or any other third party;

(v) enter into any contract that includes a "cross-default" provision whereby a breach or default would arise thereunder upon the occurrence of any default or breach by an Affiliate or any other third party under any other contract to which Owner is not a party;

(vi) merge or consolidate with any other entity;

(vii) acquire any real or personal property used in its business other than in its own name;

(viii) commingle its assets with the assets of any third party;

(ix) fail to adhere to organizational formalities, such as maintaining appropriate books, records and accounts separate from its Affiliates;

(x) establish any subsidiaries;

(xi) engage in any business activity unrelated to the ownership, operation and maintenance of (and the production and sale of capacity, energy and ancillary services from) the Facility; or

(xii) agree to do any of the foregoing.

B. Parent shall not (i) sell or otherwise transfer any of the LLC Interests, (ii) pledge or otherwise further encumber any of the LLC Interests, or (iii) agree to do any of the foregoing.

5.2 After Preliminary Exercise. During the Due Diligence Period, absent the Consent of Company to the contrary, Sellers shall:

A. promptly advise Company of (i) any new or threatened litigation affecting the Facility, and (ii) any matters that may materially adversely affect the physical condition of the Facility or the operations conducted at the Facility;

B. not take any actions (or fail to take any actions) that would alter the Facility's Agreed Title Status;

C. perform all Facility Contracts as required by the terms thereof;

D. not enter into any new Facility Contract, or amend any Facility Contract, that would bind Company beyond the Closing Date;

E. not operate or in any manner deal with, incur liabilities or obligations with respect to, or undertake any transactions relating to the Facility other than transactions in the ordinary course of business of a nature and in an amount consistent with Sellers' prior practice;

F. not dispose of, further encumber or relinquish any interest in the Facility;

G. keep the Facility Debt current;

H. not waive, compromise or settle any right or claim, including those arising in the ordinary course of business, that would have a material adverse effect on the ownership, operation or fair market value of the Facility after the Closing Date;

I. not take any actions (or fail to take any actions) that would alter any Disclosure Schedule in any manner materially adverse to Company;

J. make or give all reports and filings with all Governmental Authorities required by law, and provide copies thereof to Company;

K. pay and discharge all of their obligations, as and when due; and

L. perform, or cause to be performed, all maintenance and repair of the Facility required in accordance with Good Utility Practices.

5.3. Condemnation. Sellers shall notify Company promptly if any Seller receives notice, or otherwise obtains knowledge, of any pending or threatened condemnation of all or any material part of the Facility. Sellers shall keep Company reasonably apprised of the status of any condemnation proceedings. Company shall have the right, at Company's sole cost and expense, to participate in any condemnation proceeding to the extent necessary to protect its interests under this Agreement. Automatically upon the effective date of any condemnation of the Facility or any portion thereof that would materially adversely affect the Facility, this Agreement shall terminate without penalty or liability to any Party, unless Company provides written notice to Sellers prior to such effective date that this Agreement will not terminate with respect to any portion of the Facility not being condemned or the LLC Interests applicable thereto.

5.4. No Other Restrictions. Except as specifically set forth in this Agreement and the EPA, until execution of a PSA, Sellers shall be permitted to conduct their business without interference from or obligation to Company.

ARTICLE 6.
MISCELLANEOUS

6.1. Termination.

A. This Agreement shall terminate in its entirety if and when

(i) the EPA is terminated for any reason, or

(ii) the Parties mutually execute a PSA.

B. Upon any termination of this Agreement, (i) the RoFOs and all other terms and conditions hereof (other than the confidentiality provisions of Section 3.5, and the indemnification obligations set forth in Section 5.8) shall thereupon be null and void, and (ii) Company shall upon request execute and record such documents as are appropriate to evidence such termination.

6.2. Notices. The preliminary exercise and confirmation of either RoFO by Company, and each other notice, request, demand, instruction or other document required or permitted to be given hereunder ("Notice"), shall be in writing, shall be addressed to the Parties at their respective addresses set forth below and marked to the designated individual's attention, and shall be delivered either (a) personally by messenger or courier service with evidence of receipt, (b) by FedEx or other nationally-recognized overnight courier service, or (c) by depositing it with the United States Postal Service, certified or registered mail, return receipt requested, with adequate postage prepaid. Notice by e-mail or facsimile shall be delivered concurrently with Notice by any of the above methods. Each Notice shall be deemed effective as of the date of delivery to the required address. Either Party shall have the right from time to time to change the address (other than to a post office box) to which Notices to such Party shall be sent by giving Notice to the other Party/ies of the changed address at least ten (10) days prior to such change.

(i) If to either Seller: _____

_____

_____

with a copy to: _____

_____

_____

(ii) If to Company: _____

_____

_____

with a copy to: _____

_____

_____

6.3. Recording. This Agreement shall not be recorded. In connection with the execution and delivery of this Agreement, Sellers are delivering to Company for recording or filing a Memorandum or Short Form of Option and appropriate financing statements to evidence and provide notice to third parties of Company's rights under this Agreement.

6.4. Brokers. Company and each Seller warrant and represent to the other that such Party has not employed a broker or agent in connection with the transactions contemplated herein. Company and Sellers covenant and agree, each to the other, to indemnify the other against any loss, liability, costs, claims, demands, damages, actions, causes of action, and suits arising out of or in any manner related to the alleged employment or use by the indemnifying Party of any broker or agent.

6.5. Time of Essence. Time is of the essence under this Agreement.

6.6. Applicable Law; Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado without giving effect to its principles of conflicts of laws. In the event of any disputes in connection with this Agreement, the Parties stipulate to the jurisdiction and the exclusive venue therefor as the Colorado District Court for the County of Denver (the "Court").

6.7. Specific Performance. Sellers acknowledge that, in the event of any breach hereof by Sellers, damage to Company would be substantial but a damage award would be insufficient to protect Company adequately. Accordingly, in the event of any such breach, in addition to any damages and/or other rights and remedies available under this Agreement, at law or equity, Company shall have the right to appropriate injunctive relief, including specific performance.

6.8. Reservation of Rights to Respond to RFPs. Nothing in this Agreement shall prevent Sellers from submitting to Company, in response to any request issued by Company or its Affiliates for proposals for power supplies or resources, any power purchase agreement or other proposal for or with respect to the Facility.

6.9. Entire Agreement, Waiver, Amendment. This Agreement, together with each other document or agreement between the Parties hereto referred to herein, constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any prior oral or written agreements with respect thereto. This Agreement may not be amended, nor may any provision hereof be waived, absent a writing signed by each Party. A waiver by any Party of a

breach by another Party hereunder shall not be deemed a waiver of any other or subsequent breach by such Party or any other Party.

6.10. Headings. The article and section headings are inserted for convenience only and are in no way intended to interpret, define or limit the scope or content of this Agreement or any provision hereof.

6.11. Successors and Assigns.

A. This Agreement may be assigned by Company or either Seller to any Affiliate of Company or such Seller, respectively, upon Notice to but without the consent of Sellers or Company, respectively. Any other assignment of this Agreement by Company or either Seller shall require the Consent of both Sellers or Company, respectively. No assignment shall release Company or either Seller from its obligations hereunder.

B. Subject to the foregoing, this Agreement (i) shall be binding upon and inure to the benefit of Company, Sellers, and their respective successors and assigns with respect to the Facility and the LLC Interests, and (ii) shall run with the Land to which it pertains.

6.12. Appendices. The appendices referred to in and attached to this Agreement are incorporated herein in full by this reference. To the extent that the terms and conditions of an appendix conflict with the terms and conditions of the main body of this Agreement, the terms and conditions of the applicable appendix shall control.

6.13. Severability. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, (a) the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby, and (b) the Parties shall thereupon amend this Agreement to legally and most closely embody the spirit and intent of the invalid provision.

6.14. Interpretation. This Agreement shall not be construed more strictly against one Party than against another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that both Sellers and Company, and their respective attorneys, have contributed substantially and materially to the preparation of each and every provision of this Agreement.

6.15. Counterparts. This Agreement may be executed in counterparts, all of which shall constitute one agreement binding on each of the Parties hereto and shall have the same force and effect as an original instrument, notwithstanding that each of the Parties hereto may not be signatories to the same original or the same counterpart. Delivery of a facsimile copy of the signature pages hereto shall have the same force and effect as delivery of an originally executed copy of the signature pages hereto.

[*the next page is the signature page*]

IN WITNESS WHEREOF, Company and Sellers have set their hands and seals hereto as of the Effective Date.

Company: **Black Hills Colorado Electric, Inc.,**
a Delaware Company

By: _____

Title:

Owner: _____,
_____

By: _____

_____ , [Manager]

Parent: _____, [**LLC**],

a _____ [limited liability company]

By: _____

_____ , [Manager]

APPENDIX A

(to Right of First Offer Agreement)

LEGAL DESCRIPTION OF THE LAND

Fee Interests:

Real Property Leases:

Easements:

* * * * *

APPENDIX B

(to Right of First Offer Agreement)

TERM SHEET

for

ASSET PURCHASE AND SALE AGREEMENT

The following terms and conditions shall be included in any Purchase and Sale Agreement ("PSA") for the purchase and sale of the Facility under the Facility RoFo. Capitalized terms used and not otherwise defined in this Term Sheet shall have the meaning ascribed thereto in the Right of First Offer Agreement (the "Agreement") (including the EPA, as applicable).

1. Parties. Seller: [name of Owner], LLC

Buyer: Company or its permitted assign

2. Purchase and Sale. Sellers shall agree to sell, convey and assign the Facility to Buyer, and Buyer shall agree to purchase and acquire the Facility from Seller, excluding the Excluded Assets, on the Closing Date. The Closing Date will be the tenth (10th) business day following the satisfaction of all applicable conditions precedent (or such other date as may be agreed by the Parties), provided that the outside date for the closing of the transaction ("Closing") will be nine (9) months following the date of the PSA (the "Drop Dead Date").

3. Purchase Price. The Purchase Price for the Facility shall be determined in accordance with the applicable provisions of the Agreement, subject to the adjustments contemplated herein. Buyer will allocate the Purchase Price among the assets comprising the Facility in its reasonable discretion, and will notify Seller of such allocation not later than the Closing Date.

4. Adjustments. The Purchase Price shall be subject to customary closing prorations and adjustments. All items of revenue, expense and risk attributable to the Facility shall be allocated and pro rated between the Parties as of 11:59 pm, local time, on the Closing Date. Any unknown or disputed adjustments will not delay the Closing but will be estimated and escrowed for post-closing resolution.

5. Assignment/Assumption of Closing Contracts. At the Closing, Seller shall assign and Buyer shall assume the Closing Contracts. "Closing Contracts" means all Facility Contracts, excluding any Facility Contracts among the Excluded Assets.

6. Third-Party Consents. Seller shall use commercially reasonable efforts to obtain prior to Closing all third-party public and private consents and approvals that are required for Seller to consummate the transactions contemplated by the PSA ("Third-Party Consents").

Buyer shall have the right, in consultation with Seller, to seek such Third-Party Consents if and to the extent that Seller is unable to obtain them.

7. Retained Liabilities. Buyer shall not assume any liabilities or other obligations of Seller except as specifically set forth in this Term Sheet. Seller will remain responsible for, and will discharge as and when due, all of its liabilities and obligations not assumed by Buyer at Closing.

8. Earnest Money. Upon execution of the PSA, Buyer shall deposit into an interest-bearing account to be held by the Title Company three percent (3%) of the Purchase Price for the Facility (the "Earnest Money"). The Earnest Money (i) shall be applied to the Purchase Price at Closing, or (ii) promptly shall be released to Buyer together with all interest thereon if the PSA is terminated without Closing for any reason other than Buyer's default.

9. Due Diligence. During the term of the PSA, Seller shall give to Buyer Full Access to the Facility and to Seller's Books & Records, to the same extent as permitted and subject to the same restrictions and obligations as set forth in the Agreement. Buyer shall not have a "due diligence out" under the PSA, however.

10. Confidentiality. The PSA will include confidentiality provisions substantially equivalent to §3.5 of the Agreement.

11. Seller's Representations and Warranties. The PSA will include customary representations and warranties from Seller. By way of example only, Seller will represent and warrant to Buyer as of the date of the PSA as follows:

(a) Seller is duly organized, validly existing and in good standing under the laws of the State of its organization, and is duly qualified to do business in the State of Colorado.

(b) Seller has all requisite power and authority to carry on its business, to enter into the PSA and each document, instrument or agreement to be executed by the Parties at or in connection with the Closing (the "Transaction Documents"), and to perform its obligations under the PSA and each Transaction Document.

(c) The consummation of the transactions contemplated by the PSA will neither violate nor be in conflict with (i) any provision of Seller's constituent documents, (ii) provided that all Third-Party Consents are obtained, any Facility Contract, or (iii) any judgment, decree, order, writ, injunction, statute, rule or regulation applicable to Seller.

(d) The execution, delivery and performance of the PSA and the other Transaction Documents, and the transactions contemplated thereby, have been duly authorized by all requisite action on the part of Seller.

(e) The PSA has been duly executed and delivered on behalf of Seller and, subject to customary limitations, constitutes a valid and binding obligation of Seller.

(f) Seller has incurred no liability for broker's or finder's fees relating to the transactions contemplated by the PSA for which Buyer shall have any responsibility or which might result in any liens on the Facility.

(g) Seller holds title to the Facility in Agreed Title Status. There are no liens or encumbrances on the Facility, other than (i) liens and encumbrances evidencing Permitted Exceptions, and (ii) liens and encumbrances which Seller will cause to be released at or prior to Closing.

(h) Seller has paid all taxes on or in respect of the Facility required to have been paid to date, and has filed all tax returns with respect thereto, as and when due.

(i) The Facility Contracts are the only material agreements in effect necessary for the ownership and operation of the Facility. Seller is not in default under any of the Closing Contracts. Each of the Closing Contracts is in full force and effect, and is enforceable against the applicable counterparty thereto. There have not occurred any events that (with notice and/or the passage of time) would place Seller in default under any Closing Contract. To the best of Seller's knowledge, no counterparty is in default under any Closing Contract.

(j) Seller has not commenced bankruptcy, reorganization or insolvency proceedings in respect of Seller, nor has Seller taken any action in furtherance of initiating any such proceedings. To Seller's knowledge, no third party is threatening to file any bankruptcy or insolvency proceedings against Seller.

(k) None of the personal property included in the Facility is subject to any lease or conditional sale arrangement (generally, "Personal Property Leases"), other than Personal Property Leases which Seller is entitled to prepay and discharge at or prior to Closing.

(l) Owner has sufficient rights to any and all intellectual property necessary to own, operate and maintain the Facility, and the consummation of the purchase and sale of the Facility, and the ownership, operation and maintenance of the Facility by Company after the Closing Date will not infringe the intellectual property rights of any other person.

(m) Except as set forth on the Disclosure Schedules:

i. The Facility is in good working order and repair, ordinary wear and tear excepted, with major maintenance performed as disclosed.

ii. The Facility conforms and has been operated by Seller in conformity in all material respects with all applicable laws, regulations, rules, orders, judgments and decrees (whether judicial or administrative in nature).

iii. There is no action, suit, arbitration or other proceeding pending (or to Seller's knowledge threatened) against Seller in any court or before any arbitrator or before or by any governmental body related to the Facility which, if

adversely determined, could (A) adversely affect the Facility, or (B) result in a material liability to Buyer.

iv. Seller holds all Permits necessary for Seller's ownership and operation of the Facility.

v. All of Seller's Permits have been duly issued, are currently valid and are not subject to any pending or, to Seller's knowledge, threatened revocation proceeding.

vi. Seller has not, and to Seller's knowledge no other Person has, used, released, discharged, generated, manufactured, produced, stored or disposed of hazardous substances in, on, under or about the Facility in violation of any environmental laws or that could reasonably be expected to subject Buyer to liability under any environmental law.

vii. There are no underground storage tanks on the Land.

(n) Except as set forth on the Disclosure Schedules, Seller has received no notice from any Governmental Authority asserting a claim for or stating that:

i. any special assessment or taxing district not reflected in the most recent tax notice for the Facility has been or is being formed;

ii. the existing use or occupancy of the Facility violates any zoning, land use or environmental law, including set back or height restrictions, in any material respect;

iii. the Facility violates any building code; or

iv. any action for eminent domain or condemnation has been commenced or threatened against any portion of the Facility.

During the term of the PSA, Seller shall take no actions that would cause or would be reasonably likely to cause any of its representations and warranties in the PSA to become inaccurate in any respect material and adverse to Buyer. In the event that any of Seller's representations and warranties become inaccurate in any respect material and adverse to Buyer, Seller shall take such commercially reasonable actions, make such filings, and expend such reasonable sums, as may be required to cure or hold Buyer harmless from such inaccuracy; provided, however, that Seller shall not be required to settle any labor dispute in order to maintain the accuracy of Seller's representations and warranties.

12. Buyer's Representations and Warranties. The PSA will include customary representations and warranties from the Buyer. By way of example only, Buyer will represent and warrant to Seller as of the date of the PSA as follows:

(a) Buyer is a _____, duly organized, validly existing and in good standing under the laws of the State of _____, and Buyer is duly qualified to carry on its business in the State of Colorado.

(b) Buyer has all requisite power and authority to carry on its business as presently conducted, to enter into the PSA and the other Transaction Documents, and perform its obligations under the PSA and the other Transaction Documents.

(c) The consummation of the transactions contemplated by the PSA will neither violate nor be in conflict with any provision of Buyer's constituent documents, any material agreement or instrument to which Buyer is a party or is bound, or any judgment, decree, order, statute, rule or regulation applicable to Buyer.

(d) The execution, delivery and performance of the PSA and the other Transaction Documents, and the transactions contemplated hereby and thereby, have been duly and validly authorized by all requisite action on the part of Buyer.

(e) The PSA has been duly executed and delivered on behalf of Buyer, and, subject to customary limitations, constitutes a valid and binding obligation of Buyer.

(f) Buyer has not incurred any liability for broker's or finder's fees relating to the transactions contemplated by the PSA for which Seller shall have any responsibility.

(g) There is no action, suit, legal proceeding or other proceeding pending or to Buyer's knowledge threatened against Buyer in any court or before any arbitrator or before or by any governmental body that could reasonably be expected to adversely affect the consummation of the transactions contemplated by the PSA.

(h) No bankruptcy, reorganization or insolvency proceedings are pending against Buyer, nor is Buyer contemplating initiating any such proceedings. To Buyer's knowledge, no third party is threatening to file any bankruptcy or insolvency proceedings against Buyer.

(i) Buyer has access to cash or cash commitments sufficient to pay the Purchase Price.

13. Updated Title Matters. Buyer will be entitled to update the Title Commitment, the Survey (if any) and/or the UCC Search from time to time during the term of the PSA. In the event that such updated title documents reflect matters inconsistent with Agreed Title Status, which matters (in Buyer's reasonable judgment) materially adversely affect or threaten title, ownership or operation of the Facility ("Late Title Defects"), Seller shall promptly take such actions as may be necessary to cure the Late Title Defects. Such cure must be effectuated to the satisfaction of Buyer at least ten (10) days prior to the Closing Date. If Seller fails to cure any Late Title Defects, in addition to other remedies, Buyer will be entitled to cure such Late Title Defects. Any costs incurred by Buyer in pursuing such cure shall be charged to Seller.

14. Conduct of Business Pending Closing. During the term of the PSA, Seller shall abide by the same restrictions as are set forth in Sections 5.1 and 5.2 of the Agreement.

15. Permits. Buyer shall have the right during the term of the PSA to seek Permits to the extent that the Permits already held by Seller are insufficient for Buyer's ownership and/or intended use of the Facility or are not transferable to Buyer; provided that Buyer's pursuit of any Permit shall not (a) alter, modify or interfere with Seller's Permits, Seller's ownership of the Facility or Seller's ability to operate and maintain the Facility, or (b) change the fundamental characteristics of the Facility or its operation. Seller shall reasonably cooperate with Buyer, at Buyer's expense, in Buyer's pursuit of Permits, including executing any necessary or required consents, approvals or authorizations.

16. Conditions to Closing: Buyer. The obligation of Buyer to close will be subject to satisfaction of the following conditions:

(a) All representations and warranties made by Seller to Buyer in the PSA and each other Transaction Document shall be true and correct, in all material respects, as of the Closing Date.

(b) Seller shall have performed, observed and complied, in all material respects, with all covenants, agreements and conditions required by the PSA and the other Transaction Documents to be performed on their part prior to or as of Closing.

(c) Title to the Facility shall be subject only to Permitted Exceptions.

(d) Buyer shall have obtained, or Seller shall have validly assigned to Buyer at Closing (to the extent assignable), all Permits necessary for Buyer's ownership and operation of the Facility.

(e) Buyer shall have received any Third-Party Consents required under the Real Property Leases, and any other Third-Party Consents necessary or in Buyer's discretion appropriate to Buyer's ownership and operation of the Facility.

(f) Buyer shall have received all necessary regulatory approvals required to include the Purchase Price and its other costs of acquisition of the Facility in Buyer's rate base.

17. Conditions to Closing: Seller. The obligation of Seller to close will be subject to satisfaction of the following conditions:

(a) All representations and warranties made by Buyer to Seller in the PSA and each other Transaction Document shall be true and correct, in all material respects, as of the Closing Date.

(b) Buyer shall have performed, observed and complied, in all material respects, with all covenants, agreements and conditions required by the PSA and the other Transaction Documents to be performed on its part prior to or as of Closing.

(c) No Event of Default of Company shall have occurred and be continuing under the EPA.

(d) The EPA shall not have been terminated by Seller due to an uncured Event of Default of Company thereunder.

18. Actions at Closing. At the Closing:

(a) Buyer shall pay the Purchase Price, as adjusted pursuant to this Term Sheet and the PSA, in immediately available funds.

(b) Seller shall cause all liens and encumbrances against the Facility (including the liens of the Facility Lender and other liens securing monies borrowed or guaranteed, but excluding Permitted Exceptions) to be released, or shall deliver to Buyer or the Title Company all instruments necessary to effect such releases.

(c) Seller shall prepay and discharge all Personal Property Leases, if any.

(d) Seller shall transfer the Land to Buyer as appropriate. Seller shall assign the balance of the Facility to Buyer via General Warranty Bill of Sale, subject only to the Permitted Exceptions.

(e) Buyer shall assume and indemnify Seller against all of Seller's obligations under the Closing Contracts accruing from and after the Closing Date.

(f) The Parties shall cause to be delivered as soon as practicable following Closing, a policy of title insurance issued by the Title Company, consistent with the Title Commitment, subject to the Permitted Exceptions (the "Title Policy").

(g) Seller and Buyer shall execute and deliver such closing statements, FIRPTA certificates, IRS filings, mechanic's lien affidavits and other documents (i) as may be requested by the Title Company, (ii) as are customary in the industry in the vicinity of the Facility, and (iii) as are otherwise reasonably necessary or desirable to consummate the transactions contemplated by the PSA.

(h) The EPA shall terminate, and subject to any accrued and unpaid obligations of the Parties thereunder, Buyer shall release and deliver to Seller any undrawn amounts of the Security Fund(s) provided under the EPA.

19. Closing Costs.

(a) Seller shall pay the premium for the Buyer's Title Policy (including the costs of all endorsements specified in section 3.4 of the Agreement).

(b) Buyer shall pay (i) all other fees and expenses charged by the Title Company, (ii) all recording costs for the transaction, (iii) any and all financing fees and costs, including without limitation, any and all discount points and lender legal fees, and (iv) any sales or transfer taxes arising as a consequence of the sale of the Facility.

(c) Each Party shall pay its own attorneys' fees.

(d) Any other closing costs shall be allocated between Seller and Buyer in accordance with the then-current customs of the industry in the vicinity of the Facility, or, if no custom prevails, 50-50 between the Parties.

20. Default - General. Time will be of the essence as to each and every one of the terms and conditions of the PSA, provided that each Party will be afforded a reasonable amount of time to cure any default under the EPA. Cure may be effected either by performance or by payment of such actual damages as may be appropriate to compensate for the breach. If the cure period would extend beyond the Drop Dead Date, the Closing Date may be extended, one time only, as reasonably specified by the non-defaulting Party.

21. Buyer's Default. If Buyer defaults and fails to timely cure its default, Seller shall be entitled to terminate the PSA and retain the Earnest Money as liquidated damages (and the EPA shall remain in full force and effect). Seller also will be entitled to its attorneys' fees and other out-of-pocket costs incurred in connection with Buyer's default. In no event shall Seller be entitled to specific performance.

22. Seller's Default. If Seller defaults and fails to timely cure its default, Buyer at its election may either (i) terminate the PSA, in which case Buyer shall be entitled to seek appropriate damages from Seller (and the EPA shall remain in full force and effect), or (ii) treat the PSA as being in full force and effect, in which case Buyer shall be entitled to specific performance and damages, if any. In either case, Buyer will be entitled to its attorneys' fees and other out-of-pocket costs incurred in connection with Seller's default.

23. Post-Closing Remedies. If Closing has occurred and a default under the PSA occurs or is discovered after the Closing Date, the aggrieved party may seek and recover any damages sustained by reason of such default.

24. Casualty to the Facility. If during the term of the PSA, the Facility is Materially Damaged (as defined below), Buyer will elect either (a) to terminate the PSA, or (b) to keep the PSA in force without regard to such Material Damage. In the event that Buyer keeps the PSA in force, Seller may but shall have no obligation to repair the Material Damage, but if Seller does not make such repair, subject to the requirements under the Financing Documents, Buyer shall be entitled to all insurance proceeds payable to or for the benefit of Seller, and any other awards by court order or otherwise, relating to or arising from the Material Damage, and Buyer shall have no further remedies associated with such Material Damage (including, for the avoidance of doubt, any claim for indemnification against Seller). In the event that Buyer elects to terminate the PSA, Seller shall be entitled to all insurance proceeds, and the parties shall be released from all obligations under the PSA. "Materially Damaged" shall mean damage or destruction to the Facility of any portion thereof, the repair or replacement of which would exceed five percent (5%) of the Purchase Price.

25. If during the term of the PSA, the Facility sustains damage less than Material Damage, the PSA shall remain in full force and effect, except that Buyer shall be entitled to a reduction in the Purchase Price equal to the cost of repair of the damage to the extent that such damage is not repaired or corrected by Seller.

26. Condemnation. The provisions of section 5.3 of the Agreement relating to condemnation of the Facility shall apply through and including the Closing Date.

27. Miscellaneous. The PSA shall contain procedures for providing notice, dispute resolution and miscellaneous provisions akin to those found in the Agreement and as otherwise agreed by the Parties. The PSA shall be governed by the laws of the state in which the Facility is located, and venue for any dispute thereunder shall be the Court specified in section 6.6 of the Agreement.

* * * * *

APPENDIX C

(to Right of First Offer Agreement)

TERM SHEET

for

MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT

The following terms and conditions shall be included in the Purchase and Sale Agreement ("PSA") for the purchase and sale of the Relevant Interests under the LLC RoFO. Capitalized terms used and not otherwise defined in this Term Sheet shall have the meaning ascribed thereto in the Right of First Refusal Agreement (the "Agreement") (including the EPA, as applicable).

1) Parties. Seller: [Parent], LLC

Buyer: Company or its permitted assign

2) Purchase and Sale. Seller shall agree to sell, convey and assign the Relevant Interests to Buyer, and Buyer shall agree to purchase and acquire the Relevant Interests from Seller, on the Closing Date. The Closing Date will be the tenth (10th) business day following the satisfaction of all applicable conditions precedent (or such other date as may be agreed by the Parties), provided that the outside date for the closing of the transaction ("Closing") will be nine (9) months following the date of the PSA (the "Drop Dead Date"). Owner will be permitted to distribute to Seller or otherwise dispose of the Excluded Assets prior to Closing.

3) Purchase Price. The Purchase Price for the Relevant Interests shall be determined in accordance with the applicable provisions of the Agreement, subject to the adjustments contemplated herein. Buyer will allocate the Purchase Price among the assets in its reasonable discretion, and will notify Seller of such allocation not later than the Closing Date.

4) Adjustments. The Purchase Price shall be subject to customary closing prorations and adjustments. All items of revenue, expense and risk attributable to the Facility shall be allocated and pro rated between the parties as of 11:59 pm, local time, on the Closing Date. Any unknown or disputed adjustments will not delay Closing but will be estimated and escrowed for post-closing resolution.

5) Excluded Contracts. At or prior to the Closing, Seller will cause Owner to terminate all of Facility Contracts among the Excluded Assets, without cost or liability to Buyer.

6) Third-Party Consents. Seller shall use commercially reasonable efforts to obtain prior to Closing all third-party public and private consents and approvals that are required for Seller to consummate the transactions contemplated by the PSA ("Third-Party Consents").

Buyer shall have the right, in consultation with Seller, to seek such Third-Party Consents if and to the extent Seller is unable to obtain them.

7) Retained Liabilities. Buyer shall take the Relevant Interests subject to no liabilities or other obligations of Owner or Seller except as specifically set forth in this Term Sheet. Seller will assume and discharge as and when due, all liabilities and obligations of Owner accruing prior to the Closing Date.

8) Earnest Money. Upon execution of the PSA, Buyer shall deposit into an interest-bearing account to be held by the Title Company three percent (3%) of the Purchase Price for the Facility (the "Earnest Money"). The Earnest Money (i) shall be applied to the Purchase Price at Closing, or (ii) promptly shall be released to Buyer together with all interest thereon if the PSA is terminated without Closing for any reason other than Buyer's default.

9) Due Diligence. During the term of the PSA, Seller shall cause Owner to give to Buyer Full Access to the Facility and to its Books & Records, to the same extent as permitted and subject to the same restrictions and obligations as set forth in the Agreement. Buyer shall not have a "due diligence out" under the PSA, however.

10) Confidentiality. The PSA will include confidentiality provisions substantially equivalent to section 3.5 of the Agreement.

11) Seller's Representations and Warranties. The PSA will include customary representations and warranties from Seller. By way of example only, Seller will represent and warrant to Buyer as of the date of the PSA as follows:

(a) Seller is duly organized, validly existing and in good standing under the laws of the State of its organization, and is duly qualified to do business in the State of Colorado.

(b) Seller has all requisite power and authority to carry on its business, to enter into the PSA and each document, instrument or agreement to be executed by the Parties at or in connection with the Closing (the "Transaction Documents"), and to perform its respective obligations under the PSA and each Transaction Document.

(c) The consummation of the transactions contemplated by the PSA will neither violate nor be in conflict with (i) any provision of the constituent documents of Seller or Owner, (ii) provided that all Third-Party Consents are obtained, any Facility Contract, or (iii) any judgment, decree, order, writ, injunction, statute, rule or regulation applicable to Seller or Owner.

(d) The execution, delivery and performance of the PSA and the other Transaction Documents, and the transactions contemplated thereby, have been duly authorized by all requisite action on the part of Seller.

(e) The PSA has been duly executed and delivered on behalf of Seller and, subject to customary limitations, constitutes a valid and binding obligation of Seller.

(f) Seller has incurred no liability for broker's or finder's fees relating to the transactions contemplated by the PSA for which Buyer shall have any responsibility or which might result in any liens on the Facility or the Relevant Interests.

(g) Owner holds title to the Facility in Agreed Title Status. There are no liens or encumbrances on the Facility, other than (i) liens and encumbrances evidencing Permitted Exceptions, and (ii) liens and encumbrances which Seller will cause to be released at or prior to Closing.

(h) Seller holds good title to the Relevant Interests, free and clear of all liens and encumbrances other than liens and encumbrances which Seller will cause to be released at or prior to the Closing.

(i) Owner has paid all taxes on or in respect of the Facility required to have been paid to date, and has filed all tax returns with respect thereto, as and when due.

(j) The Facility Contracts are the only material agreements in effect necessary for the ownership and operation of the Facility. Owner is not in default under any of the Facility Contracts. Each of the Facility Contracts is in full force and effect, and is enforceable against the applicable counterparty thereto. There have not occurred any events that (with notice and/or the passage of time) would place Owner in default under any Facility Contract. To the best of Seller's knowledge, no counterparty is in default under any Facility Contract.

(k) Owner is and has always been a "disregarded entity" for federal income tax purposes.

(l) Neither Seller nor Owner has commenced bankruptcy, reorganization or insolvency proceedings, nor has Seller or Owner taken any action in furtherance of initiating any such proceedings. To Seller's knowledge, no third party is threatening to file any bankruptcy or insolvency proceedings against either Seller or Owner.

(m) None of the material assets comprising the Facility is subject to any Asset Lease, other than Personal Property Leases which Seller is entitled to prepay and discharge at or prior to Closing.

(n) Owner has sufficient rights to any and all intellectual property necessary to own, operate and maintain the Facility, and the consummation of the purchase and sale of the Facility, and the ownership, operation and maintenance of the Facility by Company after the Closing Date will not infringe the intellectual property rights of any other person.

(o) Except as set forth on the Disclosure Schedules:

i. The Facility is in good working order and repair, ordinary wear and tear excepted, with major maintenance performed as disclosed.

ii. The Facility conforms and has been operated by Owner in conformity in all material respects with all applicable laws, regulations, rules, orders, judgments and decrees (whether judicial or administrative in nature).

iii. There is no action, suit, arbitration or other proceeding pending (or to Seller's knowledge threatened) against Seller or Owner in any court or before any arbitrator or before or by any governmental body related to the Facility which, if adversely determined, could (A) adversely affect the Facility or the Relevant Interests, or (B) result in a material liability to Buyer.

iv. Owner holds all material Permits necessary for its ownership and operation of the Facility.

v. All of the Permits held by Owner have been duly issued, are currently valid and are not subject to any pending or, to Seller's knowledge, threatened revocation proceeding.

vi. Owner has no liabilities, whether known or unknown, accrued, absolute or contingent, except (a) as and to the extent arising under the Facility Contracts, excluding any liabilities for breach, (b) arising under the Financing Documents, and (c) liabilities not material in the aggregate, incurred in the ordinary course of business.

vii. Owner has not, and to Seller's knowledge no other Person has, used, released, discharged, generated, manufactured, produced, stored or disposed of hazardous substances in, on, under or about the Facility in violation of any environmental laws or that could reasonably be expected to subject Buyer or Owner to liability under any environmental law.

viii. There are no underground storage tanks on the Land.

(p) Except as set forth on the Disclosure Schedules, neither Seller nor Owner has received notice from any Governmental Authority asserting a claim for or stating that:

i. any special assessment or taxing district not reflected in the most recent tax notice for the Facility has been or is being formed;

ii. the existing use or occupancy of the Facility violates any zoning, land use or environmental law, including set back or height restrictions, in any material respect;

iii. the Facility violates any building code; or

iv. any action for eminent domain or condemnation has been commenced or threatened against any portion of the Facility.

During the term of the PSA, Seller shall take no actions (and shall prevent Owner from taking any actions) that would cause or would be reasonably likely to cause any of Seller's

representations and warranties in the PSA to become inaccurate in any respect material and adverse to Buyer. In the event that any of Seller's representations and warranties becomes inaccurate in any respect material and adverse to Buyer, Seller shall take such commercially reasonable actions, make such filings, and expend such reasonable sums, as may be required to cure or hold Buyer harmless from such inaccuracy; provided, however, that neither Seller nor Owner shall be required to settle any labor dispute in order to maintain the accuracy of Seller's representations and warranties.

12) Buyer's Representations and Warranties. The PSA will include customary representations and warranties from Buyer. By way of example only, Buyer will represent and warrant to Seller as of the date of the PSA as follows:

(a) Buyer is a _____, duly organized, validly existing and in good standing under the laws of the State of _____, and Buyer is duly qualified to carry on its business in the State of Colorado.

(b) Buyer has all requisite power and authority to carry on its business as presently conducted, to enter into the PSA and the other Transaction Documents, and perform its obligations under the PSA and the other Transaction Documents.

(c) The consummation of the transactions contemplated by the PSA will neither violate nor be in conflict with any provision of Buyer's constituent documents, any material agreement or instrument to which Buyer is a party or is bound, or any judgment, decree, order, statute, rule or regulation applicable to Buyer.

(d) The execution, delivery and performance of the PSA and the other Transaction Documents, and the transactions contemplated hereby and thereby, have been duly and validly authorized by all requisite action on the part of Buyer.

(e) The PSA has been duly executed and delivered on behalf of Buyer, and, subject to customary limitations, constitutes a valid and binding obligation of Buyer.

(f) Buyer has not incurred any liability for broker's or finder's fees relating to the transactions contemplated by the PSA for which Seller shall have any responsibility.

(g) There is no action, suit, legal proceeding or other proceeding pending or to Buyer's knowledge threatened against Buyer in any court or before any arbitrator or before or by any governmental body that could reasonably be expected to adversely affect the consummation of the transactions contemplated by the PSA.

(h) No bankruptcy, reorganization or insolvency proceedings are pending against Buyer, nor is Buyer contemplating initiating any such proceedings. To Buyer's knowledge, no third party is threatening to file any bankruptcy or insolvency proceedings against Buyer.

(i) Buyer has access to cash or cash commitments sufficient to pay the Purchase Price.

13) Updated Title Matters. Buyer will be entitled to update the Title Commitment, the Survey (if any) and/or the UCC Search from time to time during the term of the PSA. In the event that such updated title documents reflect matters inconsistent with Agreed Title Status, which matters (in Buyer's reasonable judgment) materially adversely affect or threaten title, ownership or operation of the Facility ("Late Title Defects"), Seller shall promptly take such actions as may be necessary to cure the Late Title Defects. Such cure must be effectuated to the satisfaction of Buyer at least ten (10) days prior to the Closing Date. If Seller fails to cure any Late Title Defects, in addition to other remedies, Buyer will be entitled to cure such Late Title Defects. Any costs incurred by Buyer in pursuing such cure shall be charged to Seller.

14) Conduct of Business Pending Closing. During the term of the PSA, Seller shall abide (and shall cause Owner to abide) by the same restrictions as are set forth in Sections 5.1 and 5.2 of the Agreement.

15) Permits. Buyer shall have the right during the term of the PSA to seek Permits to the extent that (i) the Permits already held by Owner are insufficient for Buyer's ownership and/or intended use of the Facility, or (ii) the sale of the Relevant Interests to Buyer would cause a default thereunder; provided that Buyer's pursuit of any Permit shall not (a) alter, modify or interfere with any Permits held by Owner, the ownership of the Facility by Owner, or the ability of Owner to operate and maintain the Facility, or (b) change the fundamental characteristics of the Facility or its operation. Seller shall reasonably cooperate (and shall cause Owner to reasonably cooperate) with Buyer, at Buyer's expense, in Buyer's pursuit of Permits, including, without limitation, executing any necessary or required consents, approvals or authorizations.

16) Conditions to Closing: Buyer. The obligation of Buyer to close will be subject to satisfaction of the following conditions:

(a) All representations and warranties made by Seller to Buyer in the PSA and each other Transaction Document shall be true and correct, in all material respects, as of the Closing Date.

(b) Seller shall have performed, observed and complied, in all material respects, with all covenants, agreements and conditions required by the PSA and the other Transaction Documents to be performed on its part prior to or as of Closing.

(c) Title to the Facility shall be subject only to Permitted Exceptions.

(d) Owner shall have obtained all Permits necessary for its continued ownership and operation of the Facility.

(e) Buyer shall have received any Third-Party Consents required under the Real Property Leases, and any other Third-Party Consents necessary or in Buyer's discretion appropriate to Buyer's ownership and operation of the Facility.

(f) Buyer shall have received all necessary regulatory approvals required to include the Purchase Price and its other costs of acquisition of the Facility in Buyer's rate base.

17) Conditions to Closing: Seller. The obligation of Seller to close will be subject to satisfaction of the following conditions:

(a) All representations and warranties made by Buyer to Seller in the PSA and each other Transaction Document shall be true and correct, in all material respects, as of the Closing Date.

(b) Buyer shall have performed, observed and complied, in all material respects, with all covenants, agreements and conditions required by the PSA and the other Transaction Documents to be performed on its part prior to or as of Closing.

(c) No Event of Default of Company shall have occurred and be continuing under the EPA.

(d) The EPA shall not have been terminated by Owner due to an uncured Event of Default of Company thereunder.

18) Actions at Closing. At the Closing:

(a) Buyer shall pay the Purchase Price, as adjusted pursuant to this Term Sheet and the PSA, in immediately available funds.

(b) Seller shall cause all liens and encumbrances against the Relevant Interests and the Facility (including the liens of the Facility Lender, other liens securing monies borrowed or guaranteed, and liens securing obligations to Affiliates, but excluding Permitted Exceptions) to be released, or shall deliver to Buyer or the Title Company all instruments necessary to effect such releases.

(c) Seller shall pay off and discharge (or shall cause Owner to prepay and discharge) all Personal Property Leases, if any.

(d) Seller shall pay or otherwise discharge (or shall cause Owner to pay or discharge) all liabilities and other obligations of Owner to Affiliates.

(e) Seller shall convey the Relevant Interests to Buyer via General Warranty Bill of Sale.

(f) The Parties shall cause to be delivered as soon as practicable following Closing, a policy of title insurance issued by the Title Company, consistent with the Title Commitment, subject to the Permitted Exceptions (the "Title Policy").

(g) Seller shall post security in the amount of three percent (3%) of the Purchase Price to secure Seller's representations, warranties and covenants under the PSA, which security shall be released (absent any claims by Buyer) one (1) year following the Closing, in the form of either (i) cash collateral, to be held by a mutually agreeable neutral escrow agent in an interest-bearing account, or (ii) a guaranty from an investment-grade entity reasonably satisfactory to Buyer.

(h) Seller and Buyer shall execute and deliver (and Seller shall cause Owner to execute and deliver) such closing statements, FIRPTA certificates, IRS filings, mechanic's lien affidavits and other documents (i) as may be requested by the Title Company, (ii) as are customary in the industry in the vicinity of the Facility, and (iii) as are otherwise reasonably necessary or desirable to consummate the transactions contemplated by the PSA.

(i) The EPA shall terminate, and subject to any accrued and unpaid obligations of the Parties thereunder, Buyer shall release and deliver to Seller any undrawn amounts of the Security Fund(s) provided under the EPA.

19) Closing Costs.

(a) Seller shall pay the premium for the Buyer's Title Policy (including the costs of all endorsements specified in Section 3.4 of the Agreement).

(b) Buyer shall pay (i) all other fees and expenses charged by the Title Company, (ii) all recording costs for the transaction, (iii) any and all financing fees and costs, including, without limitation, any and all discount points and lender legal fees, and (iv) any sales or transfer taxes arising as a consequence of the sale of the Facility.

(c) Each Party shall pay its own attorneys' fees.

(d) Any other closing costs shall be allocated between Seller and Buyer in accordance with the then-current customs of the industry in the vicinity of the Facility, or, if no custom prevails, 50-50 between the Parties.

20) Default - General. Time will be of the essence as to each and every one of the terms and conditions of the PSA, provided that each Party will be afforded a reasonable amount of time to cure any default under the EPA. Cure may be effected either by performance or by payment of such actual damages as may be appropriate to compensate for the breach. If the cure period would extend beyond the Drop Dead Date, the Closing Date may be extended, one time only, as reasonably specified by the non-defaulting Party.

21) Buyer's Default. If Buyer defaults and fails to timely cure its default, Seller shall be entitled to terminate the PSA and retain the Earnest Money as liquidated damages (and the EPA shall remain in full force and effect). Seller also will be entitled to its attorneys' fees and other out-of-pocket costs incurred in connection with Buyer's default. In no event shall Seller be entitled to specific performance.

22) Seller's Default. If Seller defaults and fails to timely cure its default, Buyer at its election may either (i) terminate the PSA, in which case Buyer shall be entitled to seek appropriate damages from Seller (and the EPA shall remain in full force and effect), or (ii) treat the PSA as being in full force and effect, in which case Buyer shall be entitled to specific performance and damages, if any. In either case, Buyer will be entitled to its attorneys' fees and other out-of-pocket costs incurred in connection with Seller's default.

23) Post-Closing Remedies. If Closing has occurred and a default under the PSA occurs or is discovered after the Closing Date, the aggrieved party may seek and recover any damages sustained by reason of such default.

24) Casualty to the Facility. If during the term of the PSA, the Facility is Materially Damaged (as defined below), Buyer will elect either (a) to terminate the PSA, or (b) to keep the PSA in force without regard to such Material Damage. In the event that Buyer keeps the PSA in force, Owner may but shall have no obligation to repair the Material Damage, but if Owner does not make such repair, subject to the requirements under the Financing Documents, Buyer shall be entitled to all insurance proceeds, and any other awards by court order or otherwise, payable to or for the benefit of Seller and/or Owner relating to or arising from the Material Damage, and Buyer shall have no further remedies associated with such Material Damage (including, for the avoidance of doubt, any claim for indemnification against Seller). In the event that Buyer elects to terminate the PSA, Seller, Owner shall be entitled to all insurance proceeds, and the parties shall be released from all obligations under the PSA. "Materially Damaged" shall mean damage or destruction to the Facility of any portion thereof, the repair or replacement of which would exceed five percent (5%) of the Purchase Price.

If during the term of the PSA, the Facility sustains damage less than Material Damage, the PSA shall remain in full force and effect, except that Buyer shall be entitled to a reduction in the Purchase Price equal to the cost of repair of the damage to the extent that such damage is not repaired or corrected by Owner.

25) Condemnation. The provisions of Section 5.3 of the Agreement relating to condemnation of the Facility shall apply through and including the Closing Date.

26) Miscellaneous. The PSA shall contain procedures for providing notice, dispute resolution and miscellaneous provisions akin to those found in the Agreement and as otherwise agreed by the Parties. The PSA shall be governed by the laws of the state in which the Facility is located, and venue for any dispute thereunder shall be the Court specified in Section 6.6 of the Agreement.

* * * * *

EXHIBIT H

FORM OF GUARANTY

This Guaranty is executed and delivered as of this _____ day of _____, 20__ by _____., a _____ ("Guarantor"), in favor of Black Hills Colorado Electric, Inc., a Delaware company, ("Black Hills"), in connection with the performance by _____, a _____ ("Seller") of an Energy Purchase Agreement dated _____, 20____ between Seller and Black Hills (the "EPA").

- RECITALS -

A. Seller owns and operates or is planning to construct, own, and operate an electric generation facility having installed capacity of approximately ____ MW to be located in _____ County, Colorado (the "Facility").

B. Seller and Black Hills have entered into the EPA for the purchase and sale of capacity and electrical energy from the Facility on the terms and conditions set forth therein.

Seller is controlled by Guarantor. Guarantor expects to derive substantial benefits from the performance of the EPA by Seller and Black Hills. To induce Black Hills to enter into the EPA (or to consent to any assignment or the Facility or the EPA, or a Change of Control of Seller) and consummate the purchase and sale of electrical energy contemplated by the EPA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

- AGREEMENT -

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Black Hills the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the EPA, whether incurred before or after the date of delivery of this Guaranty (the "Obligations"). This is a guaranty of payment, not of collection, and as such, Black Hills shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty. This Guaranty is the independent and primary obligation of Guarantor, and shall remain in full force and effect notwithstanding (i) any failure of genuineness, validity, legality or enforceability of the EPA, (ii) the lack of power or authority of any party thereto to enter into the EPA, (iii) any substitution, release or exchange of any other guaranty or any other security for any of the Obligations, or (iv) any other circumstance whatsoever (other than full payment and performance) that might otherwise constitute a legal or equitable discharge of a surety or guarantor.

2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to ($US 4.5 million), plus costs of collection with respect to any valid claim(s) made by Black Hills hereunder that are incurred in the enforcement or protection of the rights of Black Hills.

3. Rights of Black Hills. Guarantor hereby grants to Black Hills, in Black Hills' 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 EPA;

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

4. Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the EPA has expired ("Default"), Guarantor shall immediately upon receipt of written demand by Black Hills (a) perform or cause Seller to perform the Obligation in Default, and (b) pay, reimburse, and indemnify Black Hills against any liabilities, damages, and related costs (including attorneys' fees) incurred by Black Hills as a result thereof, all in such manner and at such times as Black Hills may reasonably direct.

5. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

6. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by Black Hills.

7. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 4 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by any statutes or rules of law;

(b) any right to require Black Hills to proceed against Seller or any other person, or to require Black Hills 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 Black Hills;

(d) any duty of Black Hills 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 Black Hills to disclose to Guarantor any facts concerning Seller, the EPA or the Project, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Black Hills, 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, Black Hills.

8. Cumulative Remedies. The rights and remedies of Black Hills hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Black Hills may have at law, in equity, or under the EPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Black Hills need not join Seller in any action against Guarantor to preserve its rights set forth herein.

9. Representations and Warranties. Guarantor represents and warrants to Black Hills as follows:

(a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Seller is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency . This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

10. Collection Costs. Guarantor hereby agrees to pay to Black Hills, upon demand, and in addition to the maximum liability set forth in Section 3 hereof, all reasonable attorneys' fees and other expenses which Black Hills may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by Black Hills in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Black Hills of its rights and remedies hereunder.

11. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

12. Waiver or Amendment. No provision of this Guaranty or right of Black Hills hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Black Hills. 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 Black Hills.

13. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of Black Hills and Guarantor.

14. Governing Law. This Guaranty shall be governed by and construed in accordance with the law of the State of Colorado without regard to the principles of conflicts of law thereof.

15. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the EPA, addressed as follows:

(a) if to Black Hills: as provided in the EPA

(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 Black Hills as of the day and year first above written.

[Name of Guarantor]

By:_____
Name:
Title:

STATE OF_____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, as _____ of _____.

Witness my hand and official seal.

My commission expires: .

_____

Notary Public

(S E A L)

(space above reserved for recording information)

EXHIBIT I

FORM OF SUBORDINATED MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT –

THIS SUBORDINATED MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT ("Mortgage") is made as of _____, 20__, by _____, a _____ [corporation] [limited liability company] whose address is _____ ("Mortgagor"), in favor of BLACK HILLS COLORADO ELECTRIC, INC., a Delaware company, with offices at _____, Rapid City, South Dakota, _____ ("Mortgagee").

ARTICLE 1 RECITALS

Mortgagor owns and operates or is constructing and will own and operate an electric generating plant with an approximate nameplate capacity of ___ megawatts located in _____ County, Colorado (such plant, together with all associated equipment, buildings, structures, roads, improvements, turbines, generators, step up transformers, breakers, fuel systems, water systems, fire protection systems, switchyard facilities, auxiliary power system, controls and instrumentation and control room, piping, wiring, infrastructure, capital improvements, facilities necessary to connect to the Point of Delivery), protective and associated equipment, improvements, and other tangible assets, in each case to the extent applicable, all of which are located on the Site (defined below), land rights and contract rights (other than rights in any contract between Mortgagor and an affiliate of Mortgagor) owned by Mortgagor reasonably necessary for the construction, operation, and maintenance of such plant that produces the capacity and energy being sold under the EPA (as defined below), and any additions thereto and replacements thereof, and certain other related property (the "Project").

Mortgagor and Mortgagee are parties to an Energy Power Agreement dated as of _____, 20__ (such agreement, as amended, restated, supplemented, or otherwise modified and in effect from time to time, the "EPA"). Capitalized terms not otherwise defined herein shall have the meanings given to them in the EPA.

Section 11.2 of the EPA requires that (a) for the purpose of securing Mortgagor's payment of any amounts owed by Mortgagor to Mortgagee under the EPA, Mortgagor shall execute and deliver to Mortgagee this Mortgage covering the Project and the Property (as defined below), and (b) this Mortgage is to be subordinate to the priority and interests of the Facility Lender.

Mortgagor and Mortgagee expect to enter into one or more consents and agreements with the Facility Lender or any trustee or other agent for the Facility Lender (the "Agent"), individually and collectively, in a form and substance to be mutually agreed upon between Mortgagor, Mortgagee and any Facility Lender or the Agent (collectively, the "Consent"), which

will require that this Mortgage be subordinated to the interests and liens of the Agent and the Facility Lender on the terms set forth in Article 7 hereof.

ARTICLE 2 MORTGAGE AND SECURED OBLIGATIONS.

2.1 Mortgage. For and in consideration of the sum of One Hundred Dollars ($100.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and subject in all respects to the provisions of Article 7 hereof, Mortgagor hereby irrevocably and unconditionally grants, bargains, sells, releases, conveys, mortgages, warrants, assigns and pledges to Mortgagee, with right of entry and possession, and with power of sale, all right, title and interest which Mortgagor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property"):

2.1.1 The real property located in the County of _____, State of Colorado, and more particularly described in Exhibit A attached hereto (the "Site") and the ground lease(s) described on Exhibit A-1 for the tract or tracts of land described in Exhibit A-2 attached hereto (the "Leases");

2.1.2 The easements appurtenant, easements in gross, license agreements and other rights in land running in favor of Mortgagor relating to the construction, ownership, operation, maintenance or repair of the Project and appurtenant to any real property comprising the Site including but not limited to the rights acquired by Mortgagor under any easement agreements identified in Exhibit A attached hereto and all rights acquired hereunder (the "Easements");

2.1.3 Any land lying between the boundaries of the Site and the center line of any adjacent street, road, avenue or alley, whether platted, opened or proposed, and, if such land is described as two or more parcels, in any strips or gores that may separate or purport to separate any two or more of such parcels;

2.1.4 All water rights and conditional water rights that are appurtenant to or that have been used or are intended for use in connection with the Project, including but not limited to (i) well, pipeline, springs and reservoir rights, whether or not adjudicated or evidenced by any well or other permit, (ii) all rights with respect to nontributary groundwater underlying said land, (iii) any permit to construct any water well, water from which is intended to be used in connection with the Project, and (iv) all right, title and interest under any plan of augmentation or water exchange plan to be used in connection with the Project;

2.1.5 To the full extent owned or controlled by Mortgagor, any land, right of way or easement lying between the boundaries of the Site and (a) any water source properties; (b) the roads and any spur track to any railroad used to deliver materials, equipment or supplies to the Facility; and (c) the interconnection transmission line from the Facility to the Point of Delivery;

2.1.6 All mineral rights in and under the Site, and all crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Site;

2.1.7 All buildings, structures and improvements now or hereafter located on the Site and relating to the construction, ownership, operation, maintenance or repair of the Project, including but not limited to, and with the exception of items owned by the fee owners of such land, tenants or by third parties, all machinery, apparatus, equipment, fittings and fixtures (whether actually or constructively attached and including all trade fixtures) now or hereafter located in, on or under such land or improvements and used or usable in connection with any present or future operation thereof, including but not limited to all water delivery and wastewater disposal systems, handling and processing equipment, all auxiliary power generation, fire suppression, piping, tanks, engines, interconnection and communications apparatus, and all additions thereto and replacements therefore (collectively, the "Improvements");

2.1.8 All development rights associated with the Project, whether previously or subsequently transferred to the Project from other real property or now or hereafter susceptible of transfer from the Project to other real property;

2.1.9 All awards and payments, including interest thereon, resulting from the exercise of any right of eminent domain or any other public or private taking of, injury to, or decrease in the value of, any of the rights and interests described in Sections 2.1.1 through 2.1.8 above;

2.1.10 All approvals, consents, waivers, exemptions, variances, franchises, permits, authorizations, registrations or licenses related to the Site, the Property or the Project; and

2.1.11 All other or greater rights and interests of every nature in any of the above-described property and in the possession or use thereof and income there from, whether now owned or subsequently acquired by Mortgagor.

2.2 Secured Obligations. This Mortgage is made for the purpose of securing the following obligations (the "Secured Obligations"):

2.2.1 Performance of all obligations and payment of all amounts owed by Mortgagor to Mortgagee under the EPA; and

2.2.2 Payment and performance of all obligations of Mortgagor under this Mortgage; and

2.2.3 Performance of all modifications, amendments, extensions and renewals, however evidenced, of any of the foregoing.

ARTICLE 3 ASSIGNMENT OF RENTS.

3.1 Assignment. As further security for the Secured Obligations, on and as of the Debt Termination Date (as hereinafter defined) and subject in all respects to the provisions of Article 7 hereof, Mortgagor hereby assigns to Mortgagee all of Mortgagor's right, title and interest in and to all rents, receipts, revenues, profits, royalties, income and benefits now existing or hereafter derived from the Property or the Project, including all proceeds payable under any policy of insurance covering the loss of rents resulting from destruction or damage to the Property (collectively, the "Rents"). On and as of the Debt Termination Date and subject in all respects to the provisions of Article 7 hereof, Mortgagor hereby appoints Mortgagee as its true and lawful attorney in its name and stead (with or without taking possession of the Property) to collect all such Rents arising from or accruing at any time hereafter, on the condition that Mortgagee hereby grants to Mortgagor a license to collect and retain such Rents prior to the occurrence of any Event of Default (as defined in Section 6.1). Such license shall be revocable by Mortgagee without notice to Mortgagor at any time after the occurrence and during the continuance of an Event of Default not otherwise waived by Mortgagee, and immediately upon and during any such revocation (on and as of the Debt Termination Date and subject in all respects to the provisions of Article 7 hereof), Mortgagee shall be entitled to receive, and Mortgagor shall deliver to Mortgagee, any and all Rents theretofore collected by Mortgagor which remain in the possession or control of Mortgagor. It is the intention of Mortgagor to create and grant, and it is the intention of Mortgagee to create and receive, a present and absolute assignment (on and as of the Debt Termination Date and subject in all respects to the provisions of Article 7 hereof) of all Rents now due or which may hereafter become due, but it is agreed that Mortgagee's right to collect the Rents is conditioned upon the existence of an Event of Default. Failure of Mortgagee at any time to enforce its rights under this Article 3 shall not in any manner prevent its subsequent enforcement, and Mortgagee is not obligated to collect anything hereunder but is accountable only for sums collected. Any third party obligated to pay Rents with respect to the Property is hereby authorized to recognize the claims of Mortgagee hereunder without investigating the reason for any action taken by Mortgagee, or the validity or amount of indebtedness owing to Mortgagee, or the existence of an Event of Default or the application to be made by Mortgagee of any amounts to be paid to Mortgagee.

3.2 Application of Rents. Any Rents collected pursuant to the terms of this Article 3 shall be applied in the manner set forth in Section 6.11.

ARTICLE 4 GRANT OF SECURITY INTEREST.

4.1 Security Agreement. The parties acknowledge that some of the Property and some or all of the Rents constitute personal property or fixtures (the "Personalty"). Mortgagor as debtor hereby grants to Mortgagee as secured party a security interest in Mortgagor's right, title and interest in and to all such Personalty, to secure payment and performance of the Secured Obligations. Such interest, however, shall be subject in all respects to the provisions of Article 7 hereof. This Mortgage constitutes a security agreement under the Uniform Commercial Code as in effect in the State of Colorado (the "Code") covering the Personalty.

4.2 Financing Statements. Mortgagor hereby authorizes Mortgagee to prepare and file one or more financing statements, and agrees to execute and deliver to Mortgagee such other

documents as Mortgagee may from time to time reasonably require to perfect or continue the perfection of Mortgagee's security interest in the Personalty. Mortgagor shall pay all fees and costs of filing such documents in public offices and of obtaining such record searches as Mortgagee may reasonably require. In case Mortgagor fails to execute any such documents for the perfection or continuation of any security interest upon Mortgagor's request therefore, Mortgagor hereby irrevocably appoints Mortgagee as its true and lawful attorney-in-fact to execute any such documents on its behalf. Any such financing statements and other documents shall be subject to, and any such documents to be filed in the public records shall expressly incorporate, the provisions of Article 7 hereof.

4.3 Fixture Filing. This Mortgage constitutes a financing statement filed as a fixture filing under Sections 9-334 and 9-502 of the Code (as amended or recodified from time to time), covering any of the Property which now is or later may become fixtures attached to the Site or the Improvements and encumbered hereby, and is to be filed in the real estate records of the county in which the fixture collateral is or may be located. Notwithstanding the foregoing, the Parties intend that the Project, or portions thereof, shall constitute fixtures to the least extent possible under applicable law. The following addresses are the mailing addresses of Mortgagor, as debtor under the Code, and Mortgagee, as secured party under the Code, respectively:

Mortgagor: _____

_____

_____

Attention:_____

FEIN: _____

State Organizational ID Number: _____

Mortgagee:

Black Hills Colorado Electric, Inc.

_____

_____

Attention: _____

ARTICLE 5 REPRESENTATIONS, COVENANTS AND AGREEMENTS.

5.1 Good Title. Mortgagor represents on the date hereof and covenants (a) that it holds, and will continue to hold, valid and marketable title to the Site and the Easements, Leases and Improvements, (b) that as of the date hereof the Property, including the Site, the Easements, the Leases and the Improvements currently existing thereon, is unencumbered by Mortgagor (other than liens created or to be created by any Financing Documents (collectively the "Permitted Liens")), (c) that it has good right, full power and lawful authority to convey and mortgage the same, and (d) that it will warrant and forever defend the Property and the quiet and

peaceful possession of the Property against the lawful claims of all persons whomsoever except the Facility Lender in the exercise of their rights under any Senior Security Agreement and the grantees (or their successors) to any other Permitted Liens in the exercise of their rights under such Permitted Liens. Except for the Permitted Liens and as otherwise contemplated by Article 7 below, Mortgagor shall not permit any additional liens, whether voluntary or involuntary, to be asserted against the Property.

5.2 Subrogation. Subject to the provisions of Article 7, Mortgagee shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Mortgagee in accordance with this Mortgage.

5.3 Releases, Extensions, Modifications and Additional Security. From time to time, Mortgagee may perform any of the following acts without incurring any liability or giving notice to any person: (i) release any person liable for payment of any Secured Obligation; (ii) extend the time for performance or payment, or otherwise alter the terms of performance or payment, of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; (iv) alter, substitute or release any property securing the Secured Obligations; (v) join with Mortgagor in granting any easement or creating any restriction affecting the Property; or (vi) join in any subordination or other agreement affecting this Mortgage or the lien of it.

5.4 Payment of Taxes. Mortgagor shall pay or cause to be paid, prior to delinquency, all material real estate taxes and assessments, water and sewer charges, and all other charges against the Property if and to the extent such failure to pay would have a material adverse effect on the Project, and shall furnish to Mortgagee, no later than thirty (30) days following Mortgagee's written request, receipts evidencing such payment of the same; provided that Mortgagor shall have the right to contest the validity or amount of any such tax, charge or assessment. Mortgagor shall promptly pay any valid, final judgment rendered upon the conclusion of the relevant contest, if any, enforcing any such tax, charge or assessment and cause it to be satisfied of record if and to the extent such failure to pay would have a material adverse effect on the Project.

ARTICLE 6 DEFAULTS AND REMEDIES.

6.1 Events of Default. An "Event of Default" hereunder shall mean (i) an Event of Default as identified and described in the EPA, or (ii) a failure by Mortgagor to make any payment or perform any other covenant or agreement in all material respects under this Mortgage, which Event of Default or failure shall continue beyond any applicable notice or grace period provided in the EPA or herein or, if no specific cure period is provided herein, within thirty (30) days after notice of such default is given by Mortgagee to Mortgagor, any Agent and the Facility Lender.

6.2 Remedies. During the continuance of an Event of Default, Mortgagee shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Mortgagee at law or in equity ("Mortgagee's Remedies"). All of

such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies. However, the rights of Mortgagee to possess, assume control of, and operate and maintain the Project shall be in all cases exercised in accordance with the provisions of Section 12.6 of the EPA, and all rights and remedies of Mortgagee under this Mortgage shall be subject in all respects to the terms, conditions and provisions of the EPA, any Consent and Article 7 hereof and subordinate to the rights and remedies of the Agent and the Facility Lender as provided in Article 7.

6.3 Receiver. Mortgagee shall, as a matter of right, without notice to Mortgagor or anyone claiming by, under or through Mortgagor, and without regard for the solvency or insolvency of Mortgagor or the then-value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer. Such receiver shall have all powers and duties prescribed by applicable laws, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Mortgagee would have, upon entering and taking possession of the Property under Section 6.4.

6.4 Entry. Mortgagee, in person, by agent or by court appointed receiver, may enter, take possession of, construct, manage and operate all or any part of the Property in accordance with Section 12.6 of the EPA and subject to the terms and conditions of any Consent and Article 7 hereof, and may also do any and all other things in connection with those actions that Mortgagee may in its reasonable discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possessing all of Mortgagor's books and records related to the Site, the Improvements or the Project; entering into, enforcing, modifying or canceling leases or easements on such terms and conditions as Mortgagee may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Mortgagor, completing any unfinished construction; and contracting for and making repairs and alterations. If Mortgagee so requests, Mortgagor shall assemble all of the Property that has been removed from the Site and make all of it available to Mortgagee at the Site, other than Property permitted to be transferred under the terms of any Credit Agreement or other Loan Document, or that has been transferred with the consent of the Agent or the Facility Lender. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's attorney-in-fact to perform such acts and execute such documents as Mortgagee in its reasonable discretion may consider to be appropriate in connection with taking these measures, including endorsement of Mortgagor's name on any instruments.

6.5 Cure; Protection of Security. Mortgagee may cure any breach or default of Mortgagor, and if it chooses to do so in connection with any such cure, Mortgagee may also enter the Property and do any and all other things that it may in its reasonable discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: appearing in or defending any action or proceeding that purports to affect the security

of, or the rights or powers of Mortgagee under, this Mortgage; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien that in Mortgagee's judgment is or may be senior in priority to this Mortgage, such judgment of Mortgagee to be conclusive as between the parties to this Mortgage; obtaining insurance or paying any premiums or charges for insurance required to be carried hereunder or by the EPA; otherwise caring for and protecting any and all of the Property; and employing counsel, accountants, contractors and other appropriate persons to assist Mortgagee in the carrying out of the foregoing actions. Any reasonable amounts expended by Mortgagee under this Section 6.5 shall be secured by this Mortgage.

6.6 Uniform Commercial Code Remedies. Mortgagee may exercise any or all of the remedies granted to a secured party under the Code.

6.7 Foreclosure; Lawsuits. Mortgagee shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Mortgagor hereby grants to Mortgagee the power of sale pursuant to applicable law. Mortgagee or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder as allowed by applicable law, and the amount of any successful bid by Mortgagee shall be credited against the Secured Obligations. Without limiting the foregoing, Mortgagee may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction, or for damages, or to collect the indebtedness secured hereby, or for the enforcement of any other appropriate legal, equitable, statutory or contractual remedy. Mortgagee may cause the Property to be sold at public auction in one or more parcels, at Mortgagee's option, and conveyed to the purchaser, Mortgagor to remain liable to Mortgagee for any deficiency, subject to any limitations on Mortgagor's liability contained in the EPA.

6.8 Other Remedies. Mortgagee may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Mortgagor or any other person or entity in favor of Mortgagee in connection with the Secured Obligations or any part thereof, without prejudice to the right of Mortgagee thereafter to enforce any appropriate remedy against Mortgagor. Mortgagee shall have the right to pursue all remedies afforded to a mortgagee under applicable laws, and shall have the benefit of all of the provisions of such applicable laws, including all amendments thereto that may become effective from time to time after the date hereof.

6.9 Power of Sale for Personal Property. Under this power of sale, Mortgagee shall have the discretionary right to cause some or all of the Personalty to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law:

6.9.1 For purposes of this power of sale, Mortgagee may elect to treat as personal property any Property that is intangible or that can be severed from the Site or Improvements without causing structural damage. If it chooses to do so, Mortgagee may

dispose of any personal property in any manner permitted by Article 9 of the Code, including any public or private sale, or in any manner permitted by any other applicable law.

6.9.2 In connection with any such sale or other disposition of Personalty, by way of example and not of limitation as to commercially reasonable methods of sale, Mortgagor agrees that the following procedures constitute a commercially reasonable sale: Mortgagee shall mail written notice of the sale to Mortgagor not later than thirty (30) days prior to such sale. Upon receipt of any written request, Mortgagor will make the Personalty available to any bona fide prospective purchaser for inspection at the Project during reasonable business hours. Notwithstanding the foregoing, Mortgagee shall be under no obligation to consummate a sale if, in its judgment, none of the offers it receives equals the fair value of the Personalty offered for sale.

6.9.3 Mortgagee shall provide at least thirty (30) days prior written notice to Mortgagor, any Agent and the Facility Lender prior to taking any action permitted hereby.

6.10 Application of Foreclosure Sale Proceeds. Subject in all respects to the provisions of Article 7 below, the proceeds of any foreclosure sale shall be applied in the following manner to the extent permitted by law:

6.10.1 First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to reimburse Mortgagee hereunder or under the EPA;

6.10.2 Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Mortgagee under the terms of this Mortgage that then remain unpaid;

6.10.3 Third, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

6.10.4 Fourth, to remit the remainder, if any, to Mortgagor and its successors or assigns.

6.11 Application of Rents and Other Sums. Mortgagee shall apply, subject in all respects to Article 7 below, any and all Rents collected by it in the manner set forth in this Article 6. Mortgagee shall have no liability for any funds that it (or any receiver appointed hereunder) does not actually receive. Any and all sums other than Rents collected by Mortgagee or a receiver and proceeds of a foreclosure sale that Mortgagee may receive or collect under Section 6.2 and any Rents shall be applied in the following manner to the extent permitted by law:

6.11.1 First, to payment of all fees of any receiver appointed hereunder;

6.11.2 Second, to payment when due of prior or current real estate taxes or special assessments with respect to the Property;

6.11.3 Third, to payment when due of premiums for insurance of the type required by this Mortgage;

6.11.4 Fourth, to payment of all expenses for normal operation and maintenance of the Property;

6.11.5 Fifth, to pay all other Secured Obligations in any order and proportions as Mortgagee in its sole discretion may choose; and

6.11.6 Sixth,

(a) if received prior to any foreclosure sale of the Property, to Mortgagee for payment of the Secured Obligations, but no such payment made after acceleration of the Secured Obligations shall affect such acceleration;

(b) if received during or with respect to the period of redemption after a foreclosure sale of the Property,

(i) if the purchaser at the foreclosure sale is not Mortgagee, first to Mortgagee to the extent of any deficiency of the sale proceeds to repay the Secured Obligations, second to the purchaser as a credit to the redemption price, but if the Property is not redeemed, then to the purchaser of the Property; and

(ii) if the purchaser at the foreclosure sale is Mortgagee, to Mortgagee to the extent of any deficiency of the sale proceeds to repay the Secured Obligations and the balance to be retained by Mortgagee as a credit to the redemption price, but if the Property is not redeemed, then to Mortgagee, whether or not any such deficiency exists.

ARTICLE 7 SUBORDINATION TO FACILITY LENDERS.

7.1 Definitions. The following terms shall have the meanings set forth with respect to such terms:

"Debt Termination Date" shall mean the date on which (a) all Facility Debt has been indefeasibly paid and performed in full, (b) all letters of credit constituting Facility Debt have terminated or expired in accordance with their terms, and (c) all Financing Documents have been finally released and discharged.

"Qualified Entity" shall mean either of (i) an entity that enjoys creditworthiness not worse than Mortgagor or its ultimate parent entity prior to the change of control, has demonstrable experience in the power generation industry not less than that of Mortgagor and its affiliates and provides information to Mortgagee reasonably demonstrating such requirements, or (ii) an entity approved by Mortgagee in its reasonable discretion. The parties hereto expressly acknowledge and agree that an entity satisfying the criteria set forth in clause (i) above shall be deemed to have been approved by Mortgagee unless Mortgagee has notified Mortgagor, any Agent and the Facility Lender in writing that such entity does not satisfy the requirements set

forth above and provided documentation in support of its position. Any of the foregoing criteria relating to construction or operation and maintenance experience may be held by the Qualified Entity itself or through affiliation or contractual relations with an entity holding such qualification criteria.

7.2 Subordination. Notwithstanding anything to the contrary set forth in this Mortgage, and for so long as any Facility Debt is outstanding, this Mortgage and the liens created hereunder shall at all such times remain subject, subordinate and inferior to any and all Financing Documents from and after the date such Financing Documents are executed by Mortgagor until the Debt Termination Date. The priority of any and all Financing Documents over this Mortgage shall be effective without reference to the time, order or method of attachment of the liens of the Financing Documents or this Mortgage on any property, and the Agent and each Facility Lender, whether its Facility Debt shall be outstanding as of the date hereof or incurred after the date hereof, shall be deemed to have acquired the Facility Debt in reliance upon the subordination provisions contained herein.

7.3 Limitations on Mortgagee's Rights. Notwithstanding anything to the contrary set forth in this Mortgage, unless and until the Debt Termination Date has occurred, Mortgagee's rights to exercise or enforce any of Mortgagee's remedies herein or in any other security agreement or document shall be subject to the terms, conditions and provisions of any Consent, and, except as otherwise provided in the Consent, neither Mortgagee nor its designee or assignee shall have the right to exercise or enforce any of Mortgagee's remedies herein or in any other security agreement or other document securing the Secured Obligations unless (a) Mortgagee shall have provided Agent with a notice of an Event of Default of Mortgagor in accordance with any and all Consent, and the Facility Lender's right to cure as provided in any Consent shall have expired, and (b) Mortgagee shall have otherwise acted in accordance with the provisions of any Consent.

7.4 Consent to Transfer; Continuation of EPA.

7.4.1 Transfer. Notwithstanding anything to the contrary in the EPA, but subject to the conditions and limitations contained herein (including without limitation Section 7.4.2 below), Mortgagee consents to the transfer of Mortgagor's interest in the Project or the Property to any Agent or any Facility Lender or transferee of any Facility Lender pursuant to any Financing Documents or to a purchaser or grantee at a foreclosure sale (collectively, a "Transferee") at any time prior to the Debt Termination Date by judicial or nonjudicial foreclosure and sale, by a conveyance by Mortgagor in lieu of foreclosure, by a plan of liquidation in bankruptcy or otherwise, and agrees that upon such transfer of the Project, Mortgagee shall, unless the EPA shall have been terminated by Mortgagee after giving effect to the terms of the Consent, recognize the Transferee as the "Seller" under the EPA.

7.4.2 Continuation of EPA. Upon acquisition of the Project pursuant to Section 7.4.1 above, unless the EPA has been terminated by Mortgagee after giving effect to the terms of any Consent, the Transferee shall (i) be or operate the Project through a

Qualified Entity; (ii) cure within a reasonable period of time (it being acknowledged and agreed that such period of time shall be no less than the relevant cure period established in any Consent) all Events of Default of Mortgagor that are then existing under the EPA and that are capable of being cured (by performance and/or the payment of damages) at the time of such transfer, it being further acknowledged and agreed that (A) any and all such Events of Default not capable of being so cured shall be deemed waived by Mortgagee at such time, and (B) the Transferee shall not be personally liable to Mortgagee for the cure of monetary defaults existing on the date of such transfer in excess of the amounts available to Mortgagee from the Security Fund or secured by this Mortgage; (iii) maintain or replace the Security Fund in compliance with all of the provisions governing such Security Fund under the EPA; and (iv) assume and perform all other obligations of Mortgagor under the EPA arising on or after the date of such transfer to the Transferee. In a foreclosure sale under any Senior Security Agreement or any further transfer by the Transferee, the Project shall be sold or transferred subject to the assumption of the obligations stated in this Section 7.4.2 or in the Consent.

7.4.3 Other Rights. In the event that the Agent or the Facility Lender should exercise any right to foreclose on the lien(s) of the Financing Documents, then Mortgagee shall have the right to bid to purchase the Project at any foreclosure sale.

7.5 Perfection. If after application of any foreclosure or other proceeds on the Debt Termination Date, the Facility Debt shall have been indefeasibly paid and performed in full and any and all Financing Documents shall have been finally released and discharged, the Agent or the Facility Lender shall remit to Mortgagee any cash or other proceeds of the Project but only to the extent that Mortgagee's lien thereon shall lawfully attach thereto and Mortgagee shall be lawfully entitled thereto (and if competing claims exist, the Agent and the Facility Lender shall, unless Mortgagee shall have indemnified the Agent and Facility Lender in a manner reasonably acceptable to the Agent and the Facility Lender, be entitled to seek declaratory relief with respect thereto or to interplead such funds for a judicial determination of rights to such proceeds), and to the extent that Mortgagee shall be obligated to notify the Agent or Facility Lender of its lien in the same (or the Agent and the Facility Lender shall be required to acknowledge such lien), such notice obligation shall be deemed satisfied hereby to the fullest extent permitted by applicable law.

7.6 Liquidation; Dissolution; Bankruptcy. Upon any payment or distribution of assets or securities of Mortgagor of any kind or character, whether in cash, securities or other property, to creditors of Mortgagor in a liquidation (total or partial), reorganization, winding up or dissolution of Mortgagor, whether voluntary or involuntary, or in a bankruptcy, reorganization, insolvency, receivership, assignment for the benefit of creditors, marshalling of assets or similar proceeding relating to Mortgagor or its property or creditors:

7.6.1 the holders of Facility Debt shall be entitled to receive payment and performance in full, in cash or cash equivalents, of such Facility Debt before Mortgagee or any other holder of the Secured Obligations shall be entitled to receive, for or on

account of this Mortgage, any payment with respect to any Secured Obligations or on account of any purchase or other acquisition of any Secured Obligations by Mortgagor;

7.6.2 until the Debt Termination Date and the Facility Debt is indefeasibly paid and performed in full, in cash or cash equivalents, any payment or distribution of assets or securities of Mortgagor of any kind or character, whether in cash or other property, to which the holders of the Secured Obligations would be entitled with respect to the Secured Obligations but for this Section 7.6, shall be made by Mortgagor or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution directly to the holders of Facility Debt (or the Agent on their behalf) to the extent necessary to pay all such Facility Debt in full in cash or cash equivalents.

7.6.3 The foregoing provisions in Sections 7.6.1 and 7.6.2 shall not apply to the Security Fund or the proceeds thereof (including the proceeds of any action or proceeding brought to collect such proceeds).

7.7 No Waiver of Provisions. Except as otherwise provided herein or in any Consent, no right of any Agent or any Facility Lender shall in any way be impaired by any act or failure to act on the part of Mortgagor or on the part of any Agent or any Facility Lender or by any noncompliance by Mortgagor with the terms of this Mortgage, whether or not the Agent or the Facility Lender has knowledge of such noncompliance. Without limiting the generality of the foregoing, and subject to the other terms hereof and to any Consent, the Agent and the Facility Lender may, without notice to or consent from Mortgagee, do any of the following (each of the following actions being expressly and unconditionally consented to by Mortgagee):

7.7.1 amend, modify, supplement, renew, replace, extend, refund or refinance the terms of all of any part of the Facility Debt, any Financing Document or any other security or financing document executed in connection with any Credit Agreement in any respect whatsoever (including increasing the principal amount of the loan funded, refunded or refinanced or to be funded pursuant to the Financing Documents or advance additional amounts);

7.7.2 sell or otherwise transfer, release, realize upon or enforce or otherwise deal with, all or any part of the Facility Debt, any Financing Document or any other security or financing document or any collateral securing or guaranty supporting all or any part of the Facility Debt;

7.7.3 settle or compromise all or any part of the Facility Debt or any other liability of Mortgagor or any other person to any Agent or any Facility Lender and apply any sums received to the Facility Debt or any such liability in such manner and order as any Agent or any Facility Lender may determine; and

7.7.4 fail to take or to perfect, for any reason or for no reason, any lien securing all or any part of the Facility Debt, exercise or delay in or refrain or forbear from exercising any remedy against Mortgagor or any other person or any security or

guarantor for all or any part of the Facility Debt, or make any election of remedies or otherwise deal freely with respect to all or any part of the Facility Debt or any security or guaranty for all or any part of the Facility Debt.

7.8 Payments in Violation of this EPA. Should any payment on account of foreclosure of this Mortgage be received by Mortgagee in violation of this Mortgage and this Article 7 in particular, such payment or collateral shall be delivered forthwith to the Agent or the Facility Lender by Mortgagee for application to the Facility Debt in the form received.

7.9 Further Assurances. Mortgagee agrees promptly to execute and deliver to Mortgagor, the Facility Lender and the Agent, or their respective designees, all such further instruments and documents, including any amendments or modifications hereto and to any financing statements filed pursuant to Section 4.2 hereof, and to take all such action, including any additional filings or recordings, as and when reasonably requested by the Agent or the Facility Lender to effectuate the purposes of this Article 7 and any other provision of this Mortgage benefiting, or intended to benefit, the Agent and the Facility Lender or to protect and maintain the senior priority of the Facility Lender' liens on and security interests in the Project.

ARTICLE 8 RELEASE OF LIEN.

8.1 Payment in Full. If and when Mortgagor shall fully pay and perform all of the Secured Obligations and comply with all of the other terms and provisions hereof to be performed and complied with by Mortgagor, then Mortgagee shall release this Mortgage and the lien created hereunder by proper instrument upon payment, performance and discharge of all of the Secured Obligations and payment by Mortgagor of any filing fee in connection with such release.

8.2 Partial Release. Upon request of Mortgagor, Mortgagee agrees to execute and deliver partial releases of this Mortgage and the liens created hereunder with respect to those portions of the Property that Mortgagor can demonstrate are, at the time of Mortgagor's request, no longer reasonably necessary or useful for the construction, operation and maintenance of the Project; provided that Mortgagee shall not be obligated to consider the release of any portion of the Property that is and is expected to remain subject to any Financing Documents.

ARTICLE 9 MISCELLANEOUS PROVISIONS.

9.1 Additional Provisions. This Mortgage, any Consent and the EPA fully state all of the terms and conditions of the agreements of the parties hereto regarding the subject matters mentioned in or incidental to this Mortgage. The EPA also grants further rights to Mortgagee and contains further agreements and affirmative and negative covenants by Mortgagor that apply to this Mortgage and the Property.

9.2 Notices. All notices and other communications provided to either party hereto shall be in writing or by facsimile or electronic mail, shall refer on their face to this Mortgage or the EPA (although failure to so refer shall not render any such notice or communication ineffective), and shall be delivered or transmitted to such party at the following addresses or facsimile numbers:

If to Mortgagor: _____
_____
_____
Attention: _____
Tel.: _____
E-mail: _____
Fax: _____

If to Mortgagee: as provided in the EPA

or at such other address or facsimile number as may be designated by such party in a notice to the other parties. Any notice by Mortgagee of an Event of Default by Mortgagor shall be given contemporaneously to the Agent at its address or facsimile number set forth in the Consent. Any notice shall be deemed given when received.

9.3 Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment and performance of any of the Secured Obligations and to exercise all rights and powers under this Mortgage or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No waiver of any default of Mortgagor hereunder shall be implied from any omission by Mortgagee to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No acceptance of any payment of any one or more delinquent installments that does not include interest at the default rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee at any time thereafter to demand and collect payment of interest at such default rate or of late charges, if any. The provisions of this Section 9.3 shall be subject in all respects to the provisions of Article 7 hereof.

9.4 Waiver of Statutory Rights. To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws, or any so called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety.

9.5 Merger. No merger shall occur as a result of Mortgagee's acquiring any other estate in or any other lien on the Property unless Mortgagee consents to a merger in writing.

9.6 Binding on Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor, and shall inure to the benefit of Mortgagee and its successors and permitted assigns.

9.7 Captions. The captions and headings of various sections of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

9.8 Severability. If all or any portion of any provision of this Mortgage shall be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed as if such invalid, illegal or unenforceable provision or portion thereof was not contained herein.

9.9 Effect or Extensions of Time and Amendments. If the payment of the Secured Obligations or any part hereof be extended or varied in accordance with the EPA or if any part of the security be released, all persons now or at any time hereafter liable therefore, or interested in the Property, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse, if any, against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release. Nothing in this Section 9.9 shall be construed as waiving any provision contained herein or in the EPA that provides, among other things, that it shall constitute an Event of Default if Mortgagor sells, conveys, or encumbers the Property other than in accordance with the terms of the EPA and this Mortgage.

9.10 Applicable Law. This Mortgage shall be governed by and construed under the internal laws of the State of Colorado without regard to its conflict of law principles.

9.11 Recordation.

9.11.1 Mortgagor forthwith upon the execution and delivery of this Mortgage, and thereafter from time to time, will cause this Mortgage, and any security instrument creating a lien or evidencing the lien hereof upon the Property, or any portion thereof, and each instrument of further assurance, each incorporating the provisions of Article 7 hereof, which in each case may be a redacted version or a recording memorandum meeting the requirements of applicable law, to be filed, registered or recorded in such manner and in such places as may be required by Mortgagee in accordance with any present or future law in order to fully protect the lien hereof upon, and the interest of Mortgagee in, the Property.

9.11.2 Mortgagor will pay (or reimburse Mortgagee on demand for) all filing, registration or recording fees and taxes incident to this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and all federal, state, county and municipal stamp taxes,

duties, impositions, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument or any instrument of further assurance.

9.12 Modifications. This Mortgage may not be changed or terminated except in writing signed by the party against whom enforcement of the change or termination is sought. The provisions of this Mortgage shall extend and be applicable to all amendments, extensions and modifications of the EPA, and any and all references herein to the EPA shall be deemed to include any such amendments, extensions or modifications thereof.

9.13 Third Party Beneficiaries. Mortgagor and Mortgagee expressly agree and acknowledge that the Agent and the Facility Lender are and shall be third party beneficiaries of the provisions of hereof.

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IN WITNESS WHEREOF, Mortgagor has duly executed and delivered this Subordinated Mortgage, Security Agreement and Fixture Financing Statement as of the Effective Date.

_____, [LLC]

By: _____
Name:
Title:

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, as _____ of _____ a _____, on behalf of such company.

WITNESS my hand and official seal.

My commission expires: _____

_____

Notary Public

EXHIBIT A

(to Subordinated Mortgage, Security Agreement and Fixture Financing Statement)

SITE AND EASEMENTS

EXHIBIT J

FORM OF LEASEHOLD ADDENDUM

(TO SUBORDINATED MORTGAGE, SECURITY AGREEMENT
AND FIXTURE FINANCING STATEMENT)

LEASEHOLD ADDENDUM TO MORTGAGE

This Leasehold Addendum to Subordinated Mortgage, Security Agreement and Fixture Financing Statement ("Addendum") is attached to and made a part of that certain Mortgage, Security Agreement, Fixture Financing Statement (the "Mortgage") executed by [_____], a [_____] ("Mortgagor"), in favor of BLACK HILLS COLORADO ELECTRIC, INC., a Delaware company ("Mortgagee"). This Addendum shall constitute a part of the Mortgage and shall supplement the terms and conditions of the Mortgage. In the event of a conflict between the terms of the Mortgage and this Addendum, the terms of this Addendum shall prevail. Unless otherwise defined herein, the capitalized terms used herein shall have the meanings ascribed to them in the Mortgage. The term "Mortgage," as such term appears in EPA or any related documents, shall mean and refer to the Mortgage, as supplemented by this Addendum, together with all exhibits.

Granting Clause. The granting language set forth in Section 2.1 of the Mortgage shall extend to and include, the entire right, title and interest of Mortgagor in and to the Leased Property (hereinafter defined) demised to Mortgagor pursuant to the terms and conditions of the Ground Lease (hereinafter defined), together with any other or greater interest in the Property hereafter acquired by Mortgagor, including, but not limited to, any fee estate hereafter acquired by Mortgagor in the land or improvements demised to Mortgagor under the provisions of such Ground Lease, and the entire right, title and interest of Mortgagor in, to and under the Ground Lease. Except for that portion of the Property in which Mortgagor's interest therein is in the nature of a leasehold estate, the Mortgage shall be deemed to encumber, the fee simple title to the entire Property. As used herein, the term "Ground Lease" shall mean that certain [_____] dated as of [_____] executed by [_____], as landlord, and [_____[Mortgagor]____], as tenant.

Representations and Warranties. Mortgagor hereby represents, covenants and warrants to Mortgagee that:

Mortgagor is the sole owner and holder of the entire leasehold estate demised pursuant to the Ground Lease (referred to herein as the "Leased Property") and the entire right, title and interest of the lessee or tenant under the Ground Lease creating such Leased Property, and such Leased Property and Mortgagor's interest under such Ground Lease are free and clear of all liens, encumbrances, security interests and other claims whatsoever, subject only to those liens and encumbrances to which Mortgagor has consented in writing. The foregoing representation shall, as to that portion of the Property in which Mortgagor's interest therein is in the nature of

the Leased Property, be deemed to supersede the representation set forth in Section 5.1 of the Mortgage to the extent the foregoing representation conflicts with such representation in Section 5.1 of the Mortgage;

the Ground Lease is in full force and effect and unmodified;

all rents (including any additional rents and other charges) reserved in the Ground Lease have been paid to the extent they were payable prior to the date hereof;

there are no defaults under the Ground Lease by any of the parties thereto and there are no events or circumstances existing which, after notice or the passage of time, or both, would constitute a default or an event of default under such Ground Lease; and

Mortgagor has obtained all such consents and approvals to mortgage, pledge, assign, transfer, grant, bargain, sell, warrant, convey and/or encumber Mortgagor's interest in and to the Leased Property and/or the Ground Lease which are required from the landlord or lessor under the Ground Lease, and Mortgagee is, and at all times will be, free to exercise its rights and powers pursuant to the Mortgage, without any further consent or approval of the landlord or lessor under such Ground Lease.

Payments. Mortgagor will pay or cause to be paid all rents, additional rents, taxes, assessments, water rates, sewer rents, and other charges mentioned in and made payable by the Mortgagor under the Ground Lease, when and as often as the same shall become due and payable, and Mortgagor will within ten (10) days following Mortgagee's request therefor deliver to Mortgagee evidence of such payments.

Performance of Ground Lease. Mortgagor shall timely pay and perform, in a timely manner, each of its obligations under or in connection with the Ground Lease, and shall otherwise pay such sums and take such action as shall be necessary or required in order to maintain the Ground Lease in full force and effect in accordance with its terms. Mortgagor shall immediately furnish to Mortgagee copies of any notices given to Mortgagor by the lessor under the Ground Lease, alleging the default by Mortgagor in the timely payment or performance of its obligations under such Ground Lease and any subsequent communication related thereto. Mortgagor shall also promptly furnish to Mortgagee copies of any notices given to Mortgagor by the lessor under the Ground Lease, extending the term of the Ground Lease, requiring or demanding the expenditure of any sum by Mortgagor (or demanding the taking of any action by Mortgagor), or relating to any other material obligation of Mortgagor under such Ground Lease or any subsequent communication related thereto. Mortgagor agrees that Mortgagee, in its sole discretion, may advance any sum or take any action which Mortgagee believes is necessary or required to maintain the Ground Lease in full force and effect, and all such sums advanced by Mortgagee, together with all costs and expenses incurred by Mortgagee in connection with action taken by Mortgagee pursuant to this Section, shall be due and payable by Mortgagor to Mortgagee upon demand, shall bear interest until paid at the rate of eight percent (8%) per annum, and shall be secured by the Mortgage.

No Modification or Cancellation. Mortgagor will neither do nor neglect to do anything which may cause or permit the termination of the Ground Lease. Mortgagor will not surrender the Leased Property or its interest in and to the Ground Lease, nor terminate or cancel or suffer the termination or cancellation of the Ground Lease, and it will not without the express written consent of Mortgagee modify, change, supplement, alter or amend the Ground Lease, either orally or in writing.

No Subordination. Mortgagor shall not subordinate without Mortgagee's consent the Ground Lease or the Leased Property to any mortgage, deed of trust or other encumbrance of, or lien on, the fee interest of any owner of the Property. Any such attempted subordination shall be void and of no force or effect.

Subleases. All subleases entered into by Mortgagor with respect to all or any portion of the Property (and all existing subleases modified or amended by Mortgagor) shall provide that if Mortgagee forecloses under this or any other Mortgage encumbering the Property or enters into a new lease with the landlord under the Ground Lease, whether pursuant to the provisions for a new lease contained in such Ground Lease, in any Landlord Estoppel Agreement executed for the benefit of Mortgagee, or otherwise, the subtenant shall attorn to Mortgagee or its assignee and the sublease shall remain in full force and effect in accordance with its terms notwithstanding the termination of such Ground Lease.

Prepaid Rents; Security Deposits. Mortgagor hereby assigns to Mortgagee a security interest in any and all prepaid rents and security deposits and all other security which the landlord under the Ground Lease now or hereafter holds for the performance of Mortgagor's obligations thereunder.

Estoppels. Promptly upon demand by Mortgagee, Mortgagor shall use reasonable efforts to obtain from the landlord under the Ground Lease and furnish to Mortgagee an estoppel certificate of such landlord stating the date through which rent has been paid, whether or not there are any defaults under the Ground Lease, the specific nature of any claimed defaults, and such other matters as may be reasonably requested by Mortgagee.

No Waiver. Mortgagor will not waive, excuse, condone or in any way release or discharge the landlord under the Ground Lease of or from the obligations, covenants and agreements by the landlord to be done and performed.

Default Under or Termination of Ground Lease; Performance by Mortgagee. The occurrence of any default, after the expiration of any notice, grace and cure periods, by Mortgagor under the Ground Lease, or the termination of the Ground Lease before the expiration of the term thereof for any reason, without the prior written consent of Mortgagee, shall constitute an Event of Default under the Mortgage. For purposes of determining whether a default exists, Mortgagee shall be entitled to rely on, and accept as correct, any notice of default delivered by the lessor under the Ground Lease. Mortgagee may (but shall not be obligated to) take any action Mortgagee deems necessary or desirable to prevent or cure any default by Mortgagor in the performance of or compliance with any of Mortgagor's covenants and obligations under the Ground Lease. In such event, the performance by Mortgagee on behalf of

Mortgagor shall not remove or waive, as between Mortgagor and Mortgagee, the corresponding default under the terms hereof and any amount advanced and any costs incurred in connection therewith, with interest thereon at the rate of eight percent (8%) per annum, shall be repayable by Mortgagor without demand and shall be secured hereby and any such failure aforesaid shall be subject to all of the rights and remedies of Mortgagee under the Mortgage available on account of any Event of Default hereunder.

Advances by Mortgagee. To the extent permitted by law, the price payable by Mortgagor or by any other party so entitled, in the exercise of the right of redemption, if any, from a sale of the Property under a judicial order or decree of foreclosure of the Mortgage shall include all rents paid and other sums advanced by Mortgagee on behalf of Mortgagor as the tenant under the Ground Lease.

Rights of Mortgagee. Mortgagee shall have the right at any time during the term of the Ground Lease to:

do any act or thing required of Mortgagor under the Ground Lease that Mortgagor fails to do, and any act or thing done and performed by Mortgagee shall be as effective to prevent a forfeiture of Mortgagor's rights under the Ground Lease as if done by Mortgagor itself; and

realize on the security afforded by the Leased Property by exercising foreclosure proceedings or power of sale or other remedy afforded at law or in equity, or under the Mortgage, and to:

transfer, convey or assign the title of Mortgagor in the Ground Lease for the estate created by the Ground Lease to any purchaser at any foreclosure sale, whether the foreclosure sale is conducted pursuant to court order or pursuant to the power of sale contained in the Mortgage; and

acquire and succeed to the interest of Mortgagor under the Ground Lease by virtue of any foreclosure sale, whether the foreclosure sale is conducted pursuant to court order or pursuant to the power of sale contained in the Mortgage, or by assignment or deed in lieu of foreclosure.

Bankruptcy Code.

Attachment to Right to Remain in Possession. The lien of the Mortgage shall attach to all of Mortgagor's rights and remedies at any time arising under or pursuant to the Bankruptcy Code, including, without limitation, all of Mortgagor's rights to remain in possession of the property, estate and interest conveyed under the Mortgage.

Mortgagor's Election to Treat Ground Lease as Terminated. Mortgagor shall not without Mortgagee's prior written consent elect to treat the Ground Lease as terminated under the Bankruptcy Code. Any such election made without Mortgagee's consent shall be void.

Notice of Filing of Petition by or Against the Landlord Under the Ground Lease. Mortgagor shall, after obtaining knowledge thereof, promptly notify Mortgagee orally of any filing by or against the landlord under the Ground Lease of a petition under the Bankruptcy Code, by telephonic notice to the location for Mortgagee stated herein for notice. Mortgagor

shall thereafter forthwith give written notice of such filing to Mortgagee setting forth any information available to Mortgagor as to the date of such filing, the court in which such petition was filed and the relief sought therein. Mortgagor shall promptly deliver to Mortgagee, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Mortgagor in connection with any such petition and any proceedings relating thereto.

Mortgagee's Assumption of the Ground Lease. If there shall be filed by or against Mortgagor a petition under the Bankruptcy Code, and Mortgagor as lessee under the Ground Lease shall determine to reject the Ground Lease pursuant to the Bankruptcy Code, Mortgagor shall give Mortgagee not less than ten (10) days prior notice of the date on which Mortgagor shall apply to the Bankruptcy Court for authority to reject the Ground Lease. Mortgagee shall have the right, but not the obligation, to serve upon Mortgagor within such ten (10) day period a notice stating that (i) Mortgagee demands that Mortgagor assume and assign the Ground Lease to Mortgagee pursuant to the Bankruptcy Code and (ii) Mortgagee covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance under the Ground Lease. If Mortgagee shall serve upon Mortgagor the notice described in the preceding sentence, Mortgagor shall not seek to reject the Ground Lease and shall comply with the demand provided for in clause (A) of the preceding sentence within thirty (30) days after the notice shall have been given subject to the performance by Mortgagee of the covenant provided for in clause (B) in the preceding sentence.

As used in this Addendum, any reference to the "Bankruptcy Code" shall be a reference to Title 11 of the United States Code, as the same may be amended from time to time or any successor statute.

EXHIBIT K

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 Energy Purchase Agreement 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 Energy Purchase Agreement, and any such act performed by the Facility Lender shall be as effective to prevent or cure an Event of Default as if done by Seller itself.

3. If Company becomes entitled to terminate the Energy Purchase Agreement due to an uncured Event of Default by Seller, Company shall not terminate the Energy Purchase Agreement 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 Energy Purchase Agreement, plus an additional thirty (30) Days beyond Seller's cure period to cure such Event of Default; provided, however, that if the Facility Lender requires possession of the Facility in order to cure the Event of Default, and if the Facility Lender diligently seeks possession, the Facility Lender's additional 30-Day cure period shall not begin until foreclosure is completed, a receiver is appointed or possession is otherwise obtained by or on behalf of the Facility Lender.

4. The lien of the Subordinated Mortgage shall be subordinate to the lien of the Financing Documents, subject to the terms of the Lender Consent.

5. 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 Energy Purchase Agreement until and unless any of them assumes possession of the Facility through the exercise of the Facility Lender's rights and remedies.

6. 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 Energy Purchase Agreement and shall assume all of Seller's obligations under the Energy Purchase Agreement, both prospective and accrued, including the obligation to cure any then-existing defaults capable of cure by performance or the payment of money damages. In the event that the Facility Lender or its successor assumes the Energy Purchase Agreement in accordance with this paragraph 6, Company shall continue the Energy Purchase Agreement with the Facility Lender or its successor, as the case may be, substituted wholly in the place of Seller.

7. Within ninety (90) Days of any termination of the Energy Purchase Agreement 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 Energy Purchase Agreement and for the period that would have been remaining under the Energy Purchase Agreement but for such termination.