

2019
Renewable Energy
and Storage
Request for Proposals

Black Hills Colorado Electric, LLC

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Renewable Energy RFP

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Notice of Disclaimer

The information contained in this Request for Proposals (“RFP”) has been prepared solely to assist bidders in deciding whether or not to submit a proposal. Black Hills Colorado Electric, LLC (“Black Hills” or the “Company”) does not represent this information to be comprehensive or to contain all of the information that a bidder may need to consider in order to submit a proposal. Black Hills, its members, affiliates and their respective employees, shareholders, officers, directors, customers, agents, attorneys and advisors do not make any current or future representation, promise or warranty, express or implied, as to the accuracy, reliability or completeness of the information contained herein, or in any document or information made available to a bidder, whether or not the aforementioned parties knew or should have known of any errors or omissions, or were responsive for their inclusion in, or omission from, this RFP.

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

The Company reserves the right to withdraw and terminate this RFP at any time prior to the execution of a contract. The Company further reserves the right, at its sole and exclusive discretion, to waive irregularities and informalities in any that is submitted, or receive and open proposals received after the specified time of closing.

All proposals submitted to the Company pursuant to the RFP shall become the exclusive property of the Company and may be used for any reasonable purpose by the Company. The Company shall consider materials provided by bidders in response to this RFP to be confidential only if such materials are clearly designated as “Confidential.” Bidders should be aware that their proposal, even if marked “Confidential,” may be subject to discovery and disclosure in regulatory or judicial proceedings that may or may not be initiated by the Company.

Any verbal communication with any employee of the Company, or any of its members, affiliates, or their respective employees, shareholders, officers, directors, customers, agents, attorneys and advisors concerning this RFP is not binding and shall in no way alter any term or condition of the RFP. The CPUC's rules on confidentiality will apply. *See* 4 CCR 723-1-1000–1103. Consistent with these rules and other applicable confidentiality rules, the Company may use any information it receives in appropriate regulatory proceedings.

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

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

THIS RFP IS FOR THE SOLICITATION OF BIDS FOR ELIGIBLE ENERGY RESOURCES, INCLUDING SECTION 123 RESOURCES, AND STORAGE OF AN AMOUNT OF UP TO 200 MW. THE COMPANY RESERVES THE RIGHT NOT TO PROPOSE TO ACQUIRE ANY RESOURCES AND MAY WITHDRAW AND TERMINATE THIS RFP AT ANY TIME PRIOR TO THE EXECUTION OF A CONTRACT.

1. Introduction

Black Hills Colorado Electric, LLC (“Black Hills” or the “Company”), an indirect subsidiary of Black Hills Corporation, is issuing this Request for Proposals (“RFP”).

The Company is seeking to acquire projects of up to 200 MW of eligible energy resources (as defined in C.R.S. § 40-2-124, including Section 123 Resources) and storage (stand-alone storage or storage combined with renewable energy) through this solicitation,¹ the capacity of which will be valued appropriate to resource type. The competitive bid process will allow all eligible resources an opportunity to bid, and be compared. This will enable the determination of the most cost-effective resource. In this RFP, the Company has included the bid policies and model contracts necessary for the acquisition of a resource through a competitive bidding process. Importantly, the Company is only seeking to acquire projects in a portfolio that yield customer savings every year.

Bidders to this ERP who propose a resource which they believe meets the definition of a Section 123 resource should indicate in their proposal why the bidder believes the resource qualifies as a Section 123 Resource. The Company will review the bidder’s Section 123 Resource claims, determine whether in the Company’s estimation the claim is valid, and report its findings and the bidder’s claims in its 120-Day Report.

The term “Section 123 Resource” is in reference to C.R.S. § 40-2-123(1)(a) which states as follows:

The commission shall give the fullest possible consideration to the cost-effective implementation of new clean energy and energy-efficient technologies in its consideration of generation acquisitions for electric utilities, bearing in mind the beneficial contributions such technologies make to Colorado’s energy security, economic prosperity, environmental protection, and insulation from fuel price increases.

These “new clean energy and energy-efficient technologies” are referred to as “Section 123 resources.” In Decision No. C08-559, the Colorado Public Utilities Commission (“Commission”) found that the acquisition of Section 123 resources that are also Eligible energy resources (as those resources are defined in C.R.S. 40-2-124(1)(a)) are not subject to the retail rate impact rule of C.R.S. 40-2-124(1)(g).

The Commission clarified in Decision No. C08-1153 the definition of Section 123 adopted by the Commission. That clarified definition is as follows:

...an eligible energy resource will be considered a new clean energy, or energy efficient technology, or a demonstration project if it is

¹ Any new eligible energy resource that is paired with storage shall be limited at any given time to the lesser of: (a) the nameplate capacity of the renewable generation facility, and (b) a maximum of 200 MW.

clean and incorporates one or more technologies, representing a substantial portion of its overall installed cost, that have not been regularly commercially demonstrated, up to the point in time the resource is formally bid, or if not bid, acquired.

Subsequently, the ERP Rules were amended and the following definition of the term “Section 123 Resources” was added (Rule 3602(q)):

“Section 123 resources” mean new energy technology or demonstration projects, including new clean energy or energy-efficient technologies under § 40-2-123(1)(a), C.R.S. and § 40-2-123(1)(c), C.R.S. and Integrated Gasification Combined Cycle projects under § 40-2-123(2).

The Commission further clarified in Decision No. C13-0094 in Docket No. 11A-869E, Public Service Company of Colorado’s 2011 ERP that, per the statutory language, a Section 123 resource must be both *new* and *clean* and added:

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

Subsequently, Senate Bill 13-252, signed into law on June 5, 2016, amended C.R.S. § 40-2-124, the Renewable Energy Standard, to encourage the deployment of methane capture technologies and stated that pyrolysis resources are Eligible energy resources if the Commission determines that the electricity generated by those resources is greenhouse gas neutral and added the following definition:

“Greenhouse Gas Neutral”, with respect to electricity generated by a coal mine methane or synthetic gas facility, means that the volume of greenhouse gases emitted into the atmosphere from the conversion of fuel to electricity is no greater than the volume of greenhouse gases that would have been emitted into the atmosphere over the next five years, beginning with the planned date of operation of the facility, if the fuel had not been converted to electricity, where greenhouse gases are measured in terms of carbon dioxide equivalent.”

In addition, Senate Bill 13-252 defined pyrolysis:

“Pyrolysis” means the thermochemical decomposition of material at elevated temperatures without the participation of oxygen.

The Company is also interested in pursuing proposals for utility ownership of generation resources. Affiliate-developed and owned proposals may also be evaluated as part of this solicitation. The Company invites proposals from all potential suppliers who

are capable of meeting the conditions of this RFP.

1.1 Regulatory Context

The Colorado Public Utilities Commission (“CPUC” or “Commission”) has adopted Electric Resource Planning (“ERP”) rules that establish a process to determine the need for additional electric resources by Commission jurisdictional electric utilities including the Company. This solicitation is unique in that it is part of an amendment the Company is proposing to its last Commission-approved ERP.²

This RFP is being held to permit the Company the opportunity to increase the amount of renewable energy on its system with immediate and annual savings to customers by displacing higher cost power supplies with lower cost renewable energy and energy storage supplies. The Company will follow the same concepts governing a typical ERP process, including issuing an RFP that results in the selection of a set of electric resources in a cost-effective resource portfolio, taking into consideration projected system needs, reliability of proposed resources, beneficial contributions of new clean energy and energy-efficient technologies, expected generation loading characteristics, and various risk factors.

A set of electric resources will be selected that results in a cost-effective resource portfolio, taking into consideration projected system needs, reliability of proposed resources, beneficial contributions of new clean energy and energy-efficient technologies, expected generation loading characteristics, and various risk factors.

The Company is applying the ERP rule 3612 that requires an Independent Evaluator (“IE”) conduct a review of Black Hills’ evaluation of proposals received in response to a competitive solicitation. The Company will work cooperatively with the IE and shall provide the IE immediate and continuing access to all documents and data reviewed, used, or produced by the utility in this solicitation and evaluation process.

The Company is applying the ERP rules that prescribe a timeline for performing competitive resource acquisitions. The Company will notify bidders within fifteen days of the due date for bid submission whether their bid complies with the RFP’s bid submission requirements. The Company will make a 30-day report to the Commission on RFP response and will make a communication to bidders within forty-five days after bid receipt on whether their bid was advanced to computer-based modeling (see “Required Communications” below).

² On June 3, 2016, Black Hills submitted its last ERP in Proceeding No. 16A-0436E. On January 17, 2017, the presiding Administrative Law Judge issued Recommended Decision No. R17-0039, granting the Company’s ERP, as modified by a Settlement Agreement. The Phase I became effective by operation of law. On February 9, 2018, the Company submitted its 120-day report as part of the Phase II process, selecting a 60-MW wind project as the winning bid. On June 14, 2018, the Commission issued its Phase II Decision No. C18-0462, approving the resource selection.

Black Hills will file its bid evaluation report within 120 days after receipt of bids. Within thirty days after the Company files its 120-day report the IE will provide a report to the Commission containing their analysis of whether the utility conducted a fair bid solicitation and bid evaluation process. Within forty-five (45) days after the Company files its 120-day report, parties to the resource plan proceeding may file comments on the Company's report and the IE's report with the Commission. The Commission will then complete its evaluation and issue a decision as to the Company's preferred plan to meet the identified need.

The ERP Rules further provide that Black Hills (1) make a communication to bidders concerning bid disclosure and bid model representation dispute resolution; (2) provide the form of nondisclosure agreement; and (3) require of bidders that they provide bidder contact and employment metric information.

Required Communications

Bid Information Disclosure

Black Hills notifies bidders that, upon completion of the competitive acquisition process begun with this RFP,³ Black Hills will post on its website the following information from all bids and utility proposals: bidder name; bid price and utility cost; generation technology type; size of facility; contract duration or expected useful life of facility for utility proposals; and whether the proposed purchased power agreement includes an option for the utility to purchase the bid facility during or at the end of the contract term.

Model Representation and Dispute Resolution

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

With its notice, Black Hills will also provide bidders the modeling inputs and assumptions that reasonably relate to their bid resource or to the transmission of electricity from their proposed facility to Black Hills. These modeling inputs and assumptions will explain how the bid facility will be represented in the computer-based modeling, i.e., what costs will be assumed with respect to the bid facility including costs that Black Hills assesses the bid for transmission interconnection, gas supply, integration costs etc. In the event that the modeling inputs and assumptions contain confidential or highly confidential information, Black Hills will request that the bidder execute a nondisclosure agreement prior to receiving the information.

Within seven calendar days after receiving the modeling inputs and assumptions

³ Completion of the resource acquisition process is defined as the execution of all PPAs, if any, for the solicited resources.

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

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

Nondisclosure Agreement

The form of nondisclosure agreement necessary to obtain access to confidential and highly confidential modeling inputs and assumptions is included as Attachment D.

Required Bidder Information

Black Hills requires that each bidder in its Form 2 provide the contact name of the owner or developer designated to receive notice of whether the bid is advanced to computer-based modeling.

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

1.2 Resource Assessment

The purpose of this solicitation is to address the selection of projects of up to 200 MW of eligible energy resources, including Section 123 Resources, and storage that increase the penetration of renewable energy on the Company's system. Resources selected will be part of a portfolio that provides customer bill savings during each year. This competitive bid process will allow all eligible energy resources an opportunity to bid and be compared, enabling the determination of the most cost-effective resource to fill this resource need. In this RFP, as provided in ERP rule 3611, the Company has included the bid policies, RFPs, and model contracts necessary for the acquisition of a resource through a competitive bidding process.

The Company proposes to issue an RFP for renewable energy and storage so that the bids can be evaluated and presented to the Commission. The Company may opt not to acquire any energy resources depending on (among other things) the quality of bids received, the status of other resource acquisitions that are planned or currently underway, regional transmission availability, and the feasibility, viability and cost-effectiveness of the bids received.

1.3 Compliance with the ERP Rule 3611(g) Written Bidding Policy Requirement

As provided in Rule 3611(g) of the ERP rules, the written bidding policy that the Company will use to ensure that proposals are solicited and evaluated in a fair and reasonable manner is set forth in Section 5 and includes the following elements:

Assumptions. Assumptions underlying the evaluation process (General Planning Assumptions).

Criteria. The criteria by which the Company shall evaluate proposals submitted in response to this RFP.

Models. The Company will utilize spreadsheet-based models, as well as proprietary software to evaluate proposals considered as part of the resource acquisition plan, as generally described in Section 5 of this RFP.

2. Project Information

2.1 Eligible Project Structures

Bidders to this RFP may propose a PPA structure, a build and transfer to Company ownership option, a utility self-build, or a PPA structure with a build transfer option. A Model PPA is provided as Attachment F. The Company understands that bidders may desire to modify and supplement the Model PPA when submitting their proposals, and anticipates negotiating with selected bidders in an effort to develop documents acceptable to all parties. Concerning bidders that propose the inclusion of storage, as described in Section 4.3.1., they are strongly encouraged to describe or list any changes to the Model PPA to reflect the operating characteristics of the storage device.

2.2 Eligible Project Resources

Eligible projects under this RFP must qualify as an eligible energy resource, as defined in C.R.S. § 40-2-124, including Section 123 Resources,⁴ or involve storage (stand-alone storage or storage combined with renewable energy). Eligible proposals may be for new, to-be-built resources, or for existing resources. Eligible projects that include storage combined with a new eligible energy resource shall be limited at any given time to the lesser of: (a) the nameplate capacity of the renewable generation facility, and (b) a

⁴ The term “Section 123 Resource” is in reference to C.R.S. § 40-2-123(1)(a).

maximum of 200 MW.

2.3 Pricing

The Company is only seeking to acquire projects that as a portfolio yield customer savings every year.

The pricing template is included in Form 6 of Attachment A.

All pricing must be in terms of current year dollars, also referred to as escalated or nominal dollars. For example, a \$25 per megawatt-hour (“MWh”) energy price bid for 2030 means that in 2030, energy from the facility will be purchased at a rate of \$25/MWh at the metered point of delivery.

If a bidder believes that escalating its PPA pricing according to movements in an index will reduce its overall bid price, the bidder may take an appropriate exception on Form 6 and provide an alternate price that would be escalated from a fixed schedule or a known, published and widely recognized index that is closely related to the appropriate generation segment of the power industry. A bidder that wishes to propose such alternate pricing tied to an index must submit one pricing form in escalated or nominal dollars and another pricing form tied to an index meeting the requirements of the preceding sentence and must describe the index used and how it serves to reduce the overall bid price.

Bidders will be responsible for procuring transmission service and all transmission and scheduling costs needed to deliver power from the proposed resource to the point of delivery on the Company’s transmission system. Proposals that rely upon supply resources located outside of the Company’s system must provide for the delivery of the full capacity amount to the Company’s transmission system. The Company is not currently a network customer of any other transmission provider and, therefore, if transmission is required on any other transmission provider’s system, it must be Firm Point-to-Point Transmission. Said transmission service shall be continuously reserved for the duration of the capacity transaction.

Proposals must include initial estimated costs for any new or upgraded interconnection facilities required for the interconnection of the proposed resources to applicable interconnection provider’s system and all costs for transmission required from the generation facility to the proposed point of interconnection with the Company’s transmission system. If Firm Point-to-Point transmission service is required and not obtained prior to the time the bidder submits its proposal, the burden will be on the bidder to identify all known fixed and variable costs for delivery to the Company’s system as well as any known transmission constraints. All pricing in bidders’ proposals should reflect those costs (if applicable) at the time of submittal.

For proposals with an active Small or Large Generator Interconnection Procedures (“LGIP”) request, the bidder should provide the LGIP identifier(s) associated with the project in their proposal. Bidders should clearly indicate the cost of any interconnection by listing each component of the interconnection facilities as a separate and distinct line

item in their proposals. Bidders should also clearly indicate the costs of each transmission component required to deliver power to the point of delivery on the Company's transmission system. If a bidder is accepted for further consideration after Step 2.B. of the evaluation process set forth in Section 5.2, the Company's Transmission Function will conduct transmission studies associated with the bidder's proposal, to the extent applicable, after receipt of which the bidder must resubmit within fifteen (15) days its pricing information for its proposal to the Company. For ease of comparison, pricing on Form 6 should include all of the price components up to the point of delivery on the Company's transmission system. The Company will consider the transmission costs required by, or imposed on the system by a particular resource as part of the bid evaluation criteria.

All bidders must complete Form 6 which requires them to provide (i) the price (expressed in \$/MWh) for each year of the term of the PPA taking into account existing tax credits or any other credits the project is eligible to generate and (ii) the price (expressed in \$/MWh) for each year of the term of the PPA if the project is not eligible to generate such credits.

A renewable energy credit ("REC") results from 1 MWh of renewable energy. Under the terms of any transaction, all RECs from a proposed project must be conveyed to the Company. All other environmental benefits associated with the generation must also be conveyed to the Company. All proposals must include in their pricing the transfer to the Company of 100% of the environmental benefits and RECs associated with the energy that the Company purchases through the PPA.

Projects bid in response to this solicitation may have "Clean Power Attributes," meaning 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. All proposals must include in their pricing the transfer to the Company of 100% of the Clean Power Attributes associated with the energy that the Company purchases through the PPA.

Bidders are not required to acquire and include regulation services with any bids. In

general, so long as the bidder can obtain firm transmission support and scheduling services for the intermittent generation, the Company is able to supply regulation services either through its generation resources if the project is located within the Company's electric service territory or through the services the Company obtains from Public Service Company of Colorado. The cost of this firm transmission and any costs of scheduling and system set-up will be the responsibility of the bidder. Bidders for projects not directly connected to the Black Hills system will be allowed to acquire and include in their bids regulation services; bidders will have the choice of obtaining regulation services through a third-party provider, balancing authority, or Black Hills when submitting bids for intermittent resources. The Company will provide the IE with the cost of providing regulation services for any bidders that elect to obtain regulation services through Black Hills. This cost will be added to these bids. If bidders elect to obtain regulation services from a third-party provider or balancing authority, bidders should include and specify these costs in any bids. This will allow for comparison of all bids requiring regulation services on a neutral basis.

Finally, as applicable, bidders must make arrangements to provide resource forecasting services on a day ahead and hour ahead time frame. This service will include the expected hourly outputs from the facility day ahead pursuant to the WECC prescheduling calendar and reevaluate forecast intraday on an hour ahead basis.

2.4 Regulatory Approvals

Within 120 days of the Company's receipt of bids in its competitive acquisition process, the Company will file a report with the Commission describing the cost-effective resource plans and assessing the costs and benefits from the potential acquisition of resources. Upon Commission approval of the resource acquisition, Company actions consistent with that approval are presumed prudent. However, the Company reserves the right to: (1) inform the Commission that the Company could not reach agreement with the proponent of a selected resource; (2) request Commission approval of any agreements it enters into with successful bidders that vary in any material respect from the Model PPA; and (3) to terminate any agreement if the Company fails to receive Commission approval of submitted agreements.

2.5 Contract Lengths

Bidders may propose contract term lengths between 5 and 20 years. One of the Company's objectives with respect to term lengths is to avoid the concurrent expiration of multiple contracts and to avoid or minimize the adverse financial impact of finance lease, and Variable Interest Entity-related obligations.

2.6 Right of First Offer

The Model PPA includes a Right of First Offer ("ROFO") which specifies, in addition to other terms and conditions, that the Company may purchase the facility if and when the facility owner is interested in selling the facility to a third party during the

term of the PPA. In addition, while not required under the Model PPA, bidders, at their option, may offer the Company an end-of-term or other purchase option that specifies that the Company can purchase the facility (or the stock of the facility owner) for its appraised fair market value at a specified time or times during, or at the end of, the PPA term.

2.7 Contract Accounting

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

The Company has specific concerns regarding proposals received in response to this RFP that could result in either (i) a contract that must be accounted for by the Company as a finance lease or an operating lease⁵ pursuant to ASC 842, or (ii) consolidation of the seller or assets owned by the seller onto the Company's balance sheet due to Variable Interest Entity⁶ ("VIE") issues as set forth in ASC 810. The following shall therefore apply to any proposal submitted pursuant to this RFP:

- The Company is unwilling to be subject to any accounting or tax treatment that results from a PPA's finance lease or VIE treatment. As a result, all bidders are required to state in their proposal(s): (i) that the bidder has reviewed and considered applicable accounting standards in regard to finance leases and variable interest entities, i.e., ASC 842 Leases, ASC 810 Consolidations, (ii) a summary of any changes that the bidder proposes to the Model PPA in order to attempt to address these items, and (iii) to the bidder's knowledge and belief, the bidder's proposal should not result in such treatment as of the date of the proposal.
- As applicable, the Company will not execute a PPA without confirmation from the Company's external Auditors that the PPA will not be classified as either a finance lease or a VIE.

By submitting a proposal, each bidder agrees to make available to the Company at any point in the bid evaluation process any and all financial data associated with the bidder, the facility included in the proposal and/or the PPA or other contracts that the Company requires to verify independently the bidder's accounting declarations or certifications required above. Such information may include, but shall not be limited to, data supporting the economic life (both initial and remaining) of the facility, the fair market value of the facility, and any and all other costs (including debt specific to the asset being proposed) associated with the bidder's proposal. Financial data contained in

⁵ "Finance Lease" and "Operating Lease" shall have the meaning as set forth in ASC 842 Lease as issued and amended from time to time by the Financial Accounting Standards Board.

⁶ "Variable Interest Entity" or "VIE" shall have the meaning as set forth in ASC 810 Consolidation as issued and amended from time to time by the FASB.

the bidder's financial statements (e.g. income statements, balance sheets, etc.) may also be required to provide additional information.

2.8 Company or Company Affiliate Developed Proposals

The Company or affiliates of the Company may independently develop proposals to submit into this RFP process. As discussed above, the Company and its affiliates reserve the right to develop, independently or in partnership, proposals for consideration as part of the overall solicitation. Also, bidders are encouraged to consider submitting proposals that offer partial or total ownership by the Company of assets.

3. Delivery and Interconnection Information

3.1 General information

Bids that propose to interconnect to the Company's transmission system and that do not have an existing Large Generator Interconnection Agreement ("LGIA"), Small Generator Interconnection Agreement ("SGIA"), or an existing interconnection queue position will be studied by Black Hills to estimate electric interconnection and delivery requirements and costs.⁷

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

3.2

Certificated Transmission Upgrades

If the Company has received a certificate of public convenience and necessity to construct a transmission upgrade, whether the transmission line is to an Energy Resource Zone or for another purpose, the cost of the upgrade will not be included in the evaluation of proposals that use those upgrades.

4. Proposal Content Requirements and Submission Procedure

4.1 Schedule Estimate

An indicative schedule for this RFP process is provided below. The Company reserves the right to adjust this schedule appropriately, including, but not limited to, for changes to the regulatory calendar. The indicative date for the issuance of this RFP is December 13, 2020.

⁷ Note that the Company will apply the appropriate study procedure (i.e. LGIP or SGIP) during any formal interconnection study process. For purposes of RFP bid evaluation, the Company has provided the LGIA form in Appendix G as the vehicle to obtain interconnection information necessary for its due diligence reviews.

Date	Action/Deadline
11/22/19	Application and Testimonies Submitted
12/6/19	Pre-Bid Conference
12/13/19	Issuance of RFP
12/16/2020	Response to Interventions
2/15/2020	RFP Bids Due
2/15/2020	RFP Bid Evaluation Begins
5/19/2020	Any Necessary Bid Refresh
6/22/2020	120-Day Report (Rule 3613(d))
7/13/2020	Independent Evaluator Report
7/27/2020	Intervenor Comments on 120-Day Report
8/10/2020	Company Response Comments
9/9/2020	Commission Decision on Phase II Issues
11/9/2020	Execution of Agreement(s)

As listed in the above table, the Company is requiring that execution of any agreement (such as a PPA) take place within 61 days of the Commission’s Decision that is expected September 9, 2020.

4.2 Minimum Requirements for Proposals

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

Proposals must meet the eligibility requirements identified previously in this RFP.

Proposals must include all applicable content requirements described in this RFP and the attachments, including clear and complete written descriptions of all information requested, and completed forms.

Proposals must clearly specify all pricing terms in accordance with the pricing section of this RFP. The Company reserves the right to reject proposals with pricing that is subject to change.

For bidders proposing a PPA, proposals must describe the bidder's exceptions and/or changes to the Model PPA. **Bidders who are presenting a project that includes storage are strongly encouraged to describe or list their changes to the Model PPA, as described in Section 4.3.1.**

Proposals must clearly demonstrate compliance with all power delivery requirements.

Bidders must demonstrate, to the satisfaction of the Company that they can meet the security requirements contained in the Model PPA. If a bidder submits an Equity Proposal, the bidders must propose equivalent security requirements and demonstrate that they can meet such requirements.

Proposals must clearly demonstrate any financing requirements and an indicative financing structure (construction and permanent) for any proposed resources that will be delivered under the proposals.

Each bidder must present clear and sufficient proof that it has or can secure an adequate and confirmed supply of turbines, panels or other technology sufficient (at a minimum) to support the generation resources included in its bid.

In addition to the foregoing, for proposals involving existing supply side resources, proposals must:

- Demonstrate availability of the facility by including:
 - A written acknowledgment by the existing power purchaser of the date of termination of the existing purchase power agreement and confirmation that there are no contract provisions that would prevent the re-contracting of the resource with the Company;
 - A written release or provide for security acceptable to the Company covering any obligations or potential liability associated with the existing purchase power agreement that could potentially interfere with the delivery of the amount of capacity and energy included in the bid;
 - Include the year each unit was installed, the rated capacity of each, the forced outage rate, the scheduled outage rate, the fuel type, the average heat rate (Btu/kWh), and all run time restrictions, including a detailed maintenance and repair history of the facility;
 - Include a detailed dispatch history of the facility; and

- Include a discussion of any air and other permit extensions and transmission extensions required to be obtained in connection with the proposal.

In addition to the foregoing, for proposals involving new construction, proposals must:

- Demonstrate an acceptable level of development and technology risk, as determined by the Company;
- Demonstrate that the bidder's project development team has successfully completed the development, construction and commissioning of at least one utility scale and utility grade project with characteristics similar to the proposed project; and
- Demonstrate that the bidder's project will qualify for any applicable tax credits.

Bidders must provide the bid fee (described in Section 4.8 below) for each bid submitted.

It is the Company's expectation that the Company will have first rights to the proposed project during the proposal review and approval process. In support of this, bidders must provide any and all information which would restrict the bidder from providing the Company with exclusive rights to negotiate a PPA for the proposed project. Such restrictions could include, but are not limited to, prior active submission or participation in other RFPs, exclusivity rights granted to other parties, rights of first offer or refusal, purchase options, and active auctions for the project as applicable. Absent inclusion of restrictions in a response, all **proposals submitted shall be binding upon bidders, if accepted by the Company as the selected or back-up bidder(s), until twelve months after the Company's receipt of bids in its competitive acquisition process. No proposals may be withdrawn during such 12-month period. Negligence on the part of a bidder in preparing the proposal confers no right of withdrawal after the time fixed for the submission of proposals.**

4.3 Proposal Content Requirements

This section outlines the content and format requirements for all proposals submitted in response to this RFP. Unless the Company in its sole discretion elects otherwise, proposals that do not include the information requested in this section will be deemed ineligible for further evaluation, unless the information requested is not applicable or relevant to a given bid.

Although these requirements assist the Company in assessing bids, the Company reserves the right to conduct any further due diligence it considers necessary to evaluate bids. The Company also reserves the right and holds the expectation that it will perform

any and all due diligence required to achieve satisfactory knowledge of the proposal prior to entering into any PPA.

4.3.1 Proposal Format and Narrative Topics

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

A complete proposal will include the following components:

- Executive Summary;
- Complete set of applicable forms;
- Form attachments (as necessary to elaborate on form information)
- Narrative Topics Discussion (topics described below); and
- Requested maps and electronic data

The proposal forms and topic headings are described below.

Proposal Forms

Form 1	Bid Certification
Form 2	Bid Submittal
Form 3	Project Information
Form 4	Developments and Siting Status
Form 5-1	Photovoltaic Project Data
Form 5-2	Wind Project Data
Form 5-3	Solar Thermal, Biomass, Storage and Other Project Data
Form 6	Pricing
Form 7	Legal and Financial
Form 8	Environmental
Form 9	Energy and Fuel Delivery
Form 10	Experience and Qualifications
Form 11	Project Status and Schedule
Form 12	Representation Authorization
Form 13	Exceptions to Model PPA
Form 14	Construction Milestones
Form 15	Capacity and Energy Profile

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

Narrative Topics – All Resources

In addition to completed forms, each proposal must also include a thorough written discussion of each of the following topics. The narrative topics should be organized under the following headings, with each heading beginning on a separate page.

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

Financing. All proposals must provide specific information regarding any necessary financing or refinancing including information regarding expected financing sources, whether the project will be financed as a recourse or non-recourse project, the percentages of debt and equity financing, the expected cost of debt and the financing commitments that the bidder has obtained. Proven access to financing must be established for bids to be seriously considered in response to this RFP.

Operations and Maintenance ("O&M") Plan. Bidders shall summarize their O&M plans and labor arrangements for the generation facilities associated with their proposals. Such plans shall include the bidder's plan and timeline for responding to the loss of generators, turbines, transformers and other major plant components. Consistent with this O&M Plan requirement, any bid for utility-ownership proposals (*i.e.* utility self-build or build-transfer) shall include all project costs, including estimated O&M. If a utility ownership proposal received from a bidder does not include estimated O&M costs, then the Company shall seek an estimate of O&M costs from the bidder or impute generic estimated O&M costs to the bid in the evaluation process. Estimated or imputed O&M costs for utility-ownership proposals shall be included in the 120-Day Report and designated as highly confidential. This estimate will be included in the evaluation of any utility-ownership proposal to allow for appropriate comparisons with any PPA proposals. These costs will be evaluated for purposes of bid evaluation only and not for purposes of rate recovery.

Exceptions to Model PPA. In support of the Company's efforts to complete project

evaluation, approval and contract negotiations in a timely manner, bidders are encouraged to review and provide their comments to the Model PPA. To the extent that the validity of a bidder's proposal and/or the bidder's ability to execute a PPA is contingent upon material changes to the language in the Model PPA, bidders should specifically identify the terms in the Model PPA they propose to change and should summarize their proposed changes to such terms.

Concerning bidders that propose the inclusion of storage, they are strongly encouraged to describe or list any changes to the Model PPA to reflect the operating characteristics of the storage device. In particular, to ensure proper evaluation of storage, bidders should specifically describe the restrictions of Black Hills' ability to dispatch the charging and discharging of the facility. If there are any dispatch restrictions associated with a storage facility, those should be explained. Bidders of storage facilities that do not describe any such dispatch restrictions bear the risk of incomplete modelling.

Bidders are advised that the Commission stated in Decision C09-0004 that, "With respect to any disadvantages in negotiations created by contract modifications, we find that contract changes may indeed place a bidder in a disadvantaged position, depending upon the change requested. For example, if a bidder proposes to remove a term that protects ratepayer interests, then other bids that retain this term will maintain an advantage over a bid with the term removed." To the extent that a bidder wishes to propose changes to the Model PPA that (if accepted by the Company) would reduce the bidder's proposed pricing, the proposal should specifically identify such changes and the associated price reduction. To the extent practicable, bidders should develop exhibits, schedules, attachments and other supplemental documents required by the Model PPA. Bidders also must complete and submit Form 13 (Exceptions to the Model PPA.)

Narrative Topics - Existing Resources

In addition to completed forms, each proposal involving existing resources must also include a thorough written discussion of each of the following topics. The narrative topics should be organized under the following headings, with each heading beginning on a separate page:

Operating and Maintenance History. All proposals for the sale of capacity and energy from existing generating facilities must describe the plant operating and maintenance history, including a description of the material warranty claims, material casualties, forced outages, material issues that have arisen under project-related permits, material matters or disputes that have arisen under project-related agreements, material litigation, allegations or notices of violations of law, including any environmental laws and completed and pending environmental remediation activities and other matters material to the generating facility. Such proposals must provide information on the plant's condition and a description of preventative and corrective maintenance programs.

Dispatch History. All proposals for the sale of capacity and energy from existing generating facilities must include the dispatch history of the facilities.

Permitting Plan. Proposals must describe all federal, state and local permits and approvals or extensions that will be required. Proposals must report on the status of all such permit applications and any feedback from permitting agencies. Proposals must provide the status of all required environmental permit applications and any feedback bidders have received from permitting agencies.

Narrative Topics – New Facilities

In addition to completed forms, each proposal for new facilities must also include a thorough written discussion of each of the following topics. The narrative topics should be organized under the following headings, with each heading beginning on a separate page.

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

Project Description and Development Schedule. All proposals for the construction of new generation facilities must set out a description of the proposed project, including a description of, and plans for, the proposed site and rights of way, water supply and other utilities services, equipment configuration, fuel supply and transportation, transmission and interconnection (including identifying the point of interconnection), construction and equipment procurement, opportunities for future expansion of the project, required permits, the nameplate capacity of the resource in MW, the bidder’s key consultants (if known) for wind or other permitting studies, and the bidder’s construction contractors and prime subcontractors (if known). Such proposals must provide a detailed Gantt chart of project development activities developed using Microsoft Project or similar software (note that .pdf file type is acceptable for submittal) that includes (at a minimum) entering major equipment and construction subcontracts, target completion dates for financing, engineering, permitting, equipment procurement, construction, startup and commissioning, and guaranteed dates for substantial completion. Proposals must describe the overall development strategy that will ensure that the project can be developed in time to meet the proposed commercial operation date.

In addition, proposals must describe what steps a bidder will take and how the bidder will manage the project in order to manage the expected continued increase in the cost of project construction. Bidders should describe what steps they have taken or will take to mitigate the risk to themselves as well as the Company and its customers of increases in component, commodity, equipment and other project costs (including but not limited to currency risk) between the time of the bid and the proposed in-service date for the project.

For Section 123 projects involving the use of fuels, bidders should provide as much detail as possible regarding the fuel source including details on any potential contracts that fix fuel volume, quality, and/or pricing over the term of the proposed PPA on a delivered and/or non-delivered basis.

Equipment Description. Proposals should indicate for all major equipment (i) the name of the manufacturer and other vendors, (ii) models, (iii) key metrics and characteristics of the equipment, (iv) planned delivery dates, (v) contracting status, (vi) performance history of the equipment, and (vii) any unique benefits or values associated with (or other relevant information about) the proposed technology as opposed to other technologies in its class. In addition to the foregoing (to the extent not included in such information), proposals must indicate the following information: (i) rating and capabilities, (ii) number, (iii) proposed configuration and size, and (iv) the order status of the panels or turbines (e.g., whether the panels/turbines have been ordered or are in the manufacturer's queue).

Operation and Maintenance. Bidders shall describe operations and maintenance practices and services, which practices and services must demonstrate compliance with prudent utility practices and equipment manufacturer recommendations. Bidders will identify the warranties to be provided by the bidder and by any equipment manufacturers. This requirement shall apply to all bids, including any bid for utility-ownership proposals (*i.e.* build-transfer).

Real Property Acquisition Description and Plan. Proposals must provide a description of the status of real property acquisition for the project that is sufficient for the Company to assess the progress and sufficiency of the real property rights required for the successful development of the project. Bidders should be able to demonstrate site control or a verifiable and achievable plan for achieving site control for a period equal to or greater than the useful life of the facility. Data provided should include, as relevant, completeness and sufficiency of the bidder's real property rights, including but not limited to:

- The status of current site ownership;
- The plan for acquiring any and all currently uncontrolled necessary real property rights to the project;
- Acreage of real property required for the project and a schedule for the completion of the real property acquisition process;
- Any subdivision or zoning modifications and all city or county land use permits that will be required, such as conditional use, special use or other similar permits and approvals, which will be required for any phase of development, construction, or operations of the project;
- A plan for achieving the foregoing subdivisions, modifications and permits, and a report on the status of such modifications and permits (including the status of any pending applications, any expected difficulties or delays with respect to modifications or permits, and feedback from permitting agencies, community or neighborhood groups); and

- A description of existing and planned land uses in all directions surrounding the proposed development site.

Permitting Plan. Proposals must describe all federal, state and local permits and approvals that will be required (other than land use permits included in the Real Property Acquisition Description and Plan), including, but not limited to, federal environmental assessments under the National Environmental Policy Act (“EA/EIS”), wastewater discharge permits, hazardous waste permits, and no hazard permits/determinations from the Federal Aviation Administration. Proposals must also provide written documentation evidencing that consultation has occurred with appropriate governmental agencies (for example, the Colorado Division of Wildlife or the U.S. Fish and Wildlife Service) responsible for reviewing potential project development impacts to state and federally listed wildlife species, as well as species and habitats of concern. Proposals must report on the status of all such permit applications and any feedback from permitting agencies. Proposals must provide the status of all required environmental permit applications and any feedback bidders have received from permitting agencies.

Transmission Plan. All proposals must include a description of the bidder’s plan to transmit power from the project to the proposed point of interconnection or delivery on the Black Hills transmission system. The information should include a description and expected route of any radial transmission line dedicated principally to the project, including a summary of the status of obtaining requisite easements. If any new FERC-regulated transmission or any upgrades to non-Black Hills transmission will be required to deliver power from the project to the proposed point of delivery (“New Transmission”), the proposal also must include a complete description of the required New Transmission including: (i) the owner and developer of the New Transmission; (ii) the complete expected route for the New Transmission; (iii) the voltage and capacity of the New Transmission; (iv) the status of planning, permitting, financing, and construction of the New Transmission, to the extent known to the bidder; (v) the location of the interconnection of the project into the New Transmission; (vi) whether the bidder’s project, if successful, would be sufficient for the New Transmission to be built without the participation of other power projects or other third parties; (vii) if not, what other projects would need to be built, in what time frame, to allow the New Transmission to be built in time for the bidder to meet its scheduled in-service date; and (viii) a one-line diagram including the proposed project, any New Transmission, and the point-of-interconnection on the Black Hills transmission system.

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

- An assessment of any local zoning or land use regulatory issues, and a timeframe for resolution of any such issues;
- A list of the references used to assess the community reaction, and the methodology used to draw conclusions;
- A list of key local contacts interviewed and their opinions;

- An assessment of the local community reaction at the time of the bid;
- An action plan for working with the local community/state to successfully complete the project; and
- A description of the bidder's proposed conflict resolution methodology.

Section 123 Resource. Respondents should indicate whether or not they believe their project meets the requirements of a Section 123 resource. If Respondent claims that its project is a Section 123 resource, it should provide sufficient justification for that claim.

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

- The availability of training programs, including training through apprenticeship programs registered with the United States Department of Labor's office of apprenticeship and training or by state apprenticeship councils recognized by that office;
- The employment of Colorado labor as compared to importation of out-of-state workers;
- Long-term career opportunities; and
- Industry-standard wages, health care, and pension benefits.

Water Use. All proposals must provide the consumptive water use in gallons/MWh.

Non-Quantifiable Externality Benefits. Respondents may include a qualitative assessment and discussion of how their proposed project incorporates the following non-energy factors including, but not limited to:

- Economic development;
- Resource diversification; and
- Environmental benefits.

Energy Production Profile Data. Proposals must include a description of any energy production profile data gathered by, or in the possession of, the bidder. However, bidders should not provide on-site meteorological data in their initial bid submissions. Upon request, bidders must be prepared to provide the Company with the underlying meteorological data with the understanding that the Company may engage an external consultant for an independent verification and evaluation of the generation resource.

Proposals also must answer the following questions concerning projections of wind generation:

- How was wind data collected, certified and correlated to a reference point?
- Who provided this service?
- What is the hub height of the reference turbine?
- How was wind data manipulated to get to hub height?

- What is the wind shear, and how was it calculated?
- What is the confidence level of the forecast, e.g., P50, P90 or P99 data?
- What is the basis year of the underlying data? Was it a high, average or low year?
- How was the wind data transformed into generation output? Is this a typical year?
- What derates were used for such factors as array losses, line losses, forced outages, blade degradation, and other factors?
- What is the final, resultant derate from the nameplate MW of the proposed wind farm?

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

- What is the confidence level of the forecast, e.g., P50, P90 or P99 data?
- Who provided this service?
- What is the basis year of the underlying data?
- Was it satellite or ground based sources?
- What is the annual capacity degradation factor?
- What derates were used for such factors as array losses, line losses, forced outages, and other factors?
- What is the final, resultant derate from the nameplate MW of the proposed facility?

4.4 Pre-Bid Conference

Time: TBD (MT)

Date: 12-6-19 TBD

Location: Black Hills Energy, 1515 Arapahoe St., Tower 1 – Suite 1200, Denver, CO

Interested parties and bidders are encouraged to provide questions to the Company's RFP Project Manager in writing by through the IE's website prior to the meetings so that issues may be addressed in a timely manner.

A summary of the bid conference proceedings, including submitted questions and answers, will be prepared by the Company and e-mailed to all prospective bidders within three weeks after the conference through the IE's website.

4.5 Proposal Submission Deadline

Bids will be accepted until 4:00 p.m. Mountain Time on February 15, 2020. All bids must be transmitted electronically at the following website: TBD. Proposals received later than the due date and time indicated will be rejected, unless the Company determines, at its sole discretion, to consider such proposals.

4.6 Information Policy

To obtain additional information about this RFP, bidders may only submit electronic requests to: TBD. Questions or requests can only be transmitted and will only be accepted via the RFP website.

The IE will maintain a log of all inquiries and the Company will coordinate the preparation of electronic responses through the IE. Once a response is prepared, the Company will forward the response to the IE and the IE will post the responses on the project website. The RFP project website is:

TBD

The Company has established this information policy to ensure that all bidders have the same knowledge about the bidding process.

4.7 Bid Evaluation Fees

All bidders that meet the eligibility requirements described in the written bidding policy will be required to pay to the Company a bid evaluation fee of: **(1) \$3,000 for projects of the size of 0-10 MW; or (2) \$10,000 for projects of the size greater than 10 MW.** The bid evaluation fee is required for each proposal submitted. The bid evaluation fee will be used to offset the expenses incurred in evaluating the bid. Separate fees will be required for any required transmission interconnection evaluations. Proposals that do not satisfy the requirements for a single proposal may be evaluated as multiple proposals, each of which would be subject to a separate bid evaluation fee. For purposes of clarification, each proposal that triggers interconnection studies for multiple points or levels of interconnection would be deemed separate proposals for each such point or level. If the Company deems a bidder's proposal to constitute multiple proposals, the Company will notify the bidder and allow it to elect to pay the additional bid fee(s) or to revise its proposal to comply with the Company's requirements for a single proposal.

Bid evaluation fees will be accepted until 4:00 p.m. Mountain Time on February 15, 2020. Instructions for bid fee payment will be emailed to a bidder upon submission of a bid through the RFP website at: TBD. Bid evaluation fees shall be non-refundable.

4.8 Clarification of Proposals

While evaluating proposals, the Company may request clarification of, or additional information about, any item in the proposal. Such requests will be sent to bidders through the IE's website, and bidders are required to provide an electronic response to the IE's website within three (3) business days, or the Company may deem the bidder to be non-responsive and either suspend or terminate evaluation of the proposal. Bidders are encouraged to provide an alternate point of contact to ensure a timely response to clarification questions.

4.9 Confidentiality

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

Notwithstanding the above paragraph and as indicated in Section 1.1, upon completion of the competitive acquisition process Black Hills will post on its website the following information from all bids and utility proposals: bidder name; bid price and utility cost; generation technology type; size of facility; contract duration or expected useful life of facility for utility proposals; and whether the proposed purchased power agreement includes an option for the utility to purchase the bid facility during or at the end of the contract term.

Upon completion of the competitive acquisition process in accordance with ERP rule 3613(i), and consistent with the above requirement for website posting of bids and utility proposals as provided in ERP rule 3613(k), protected information that was filed in Commission proceeding will be refiled as non-confidential or public information as specified in the Commission order described below. To satisfy this requirement Black Hills will file a proposal that addresses the public release of all confidential and highly confidential information related to bids for potential resources and resources the utility proposed to build and own as a rate base investment. At a minimum, Black Hills will address its 120-day report (described in Section 5.2, Step 5), the IE's report (also described in Section 5.2, Step 5), and all documents related to these reports filed by Black Hills, the parties, or the IE. Black Hills will file its proposal in the Commission proceeding within 14 months after the receipt of bids in its competitive acquisition process. Parties will have 30 calendar days after Black Hills files its proposal to file responses. Black Hills then may reply to any responses filed within ten calendar days. The Commission will issue an order specifying to Black Hills and other parties the documents that shall be refiled as public information.

4.10 Addenda to RFP

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

5. Evaluation and Criteria

5.1 Written (Electronic) Bidding Process

Proposal evaluation will be conducted as part of the Company's Renewable Advantage docket before the Colorado Public Utilities Commission.

The evaluation process will include an assessment of both economic and non-economic criteria. The economic evaluation will be conducted primarily using proprietary modeling software and spreadsheet analysis tools. Non-economic factors will be assessed through a due diligence process that will gauge the relative risks and benefits of the proposal, based on the factors described below. The Company also will cooperate with, and provide access to information provided by bidders to an IE as provided in ERP rule 3612.

The following paragraphs provide the general steps which the Company intends to follow to evaluate proposals.

5.2 Bid Evaluation Process

A bid evaluation team, made up of various work groups within the Company, affiliates of the Company, and any consultants hired by the Company to assist with the bid evaluation (collectively, the "Bid Evaluation Team"), will evaluate and select bids, and subject matter experts from the Company, its affiliates and consultants may directly contact bidders during the bid evaluation stage. In the event the Company or any affiliates submit a bid, the Company or affiliate bidding teams will be identified, a written separation and confidentiality policy will be instituted, and communications between the Bid Evaluation Team and the Bidding Team(s) will be **only** in the same manner that other bidders may communicate with the Company in connection with this RFP.

The Bid Evaluation Team may conduct scenario and sensitivity analyses of proposals to evaluate risks and strategic value. The results of these analyses may be considered in the Company's evaluation of proposals, including the selection of proposal(s) for a short list, if applicable.

Step 1 – Initial Eligibility Screening

The information provided in each bid will first be evaluated for completeness and consistency with and responsiveness to the proposal content requirements outlined in Section 4.3 of this RFP.

Preliminary due diligence will also be conducted at this stage to identify any "fatal flaws" associated with a bid, such as run time restrictions or an unacceptably high level of risk due to the size, age or condition of an existing facility or the level of development or technology risk of a new facility, including without limitation permitting

issues and transmission constraints.

As a result of this screening review, the Company may either eliminate bids from further consideration, or contact bidders to clarify information or request additional information. Given the short amount of time allotted to evaluate the bids, the Company will limit follow up contacts to only those bids that meet the minimum eligibility requirements described in Section 2.2.

Notification will be provided to bidders whose proposals are rejected in this initial screening.

Step 2 – Transmission Assessment and Initial Economic Evaluation

Following Step 1, the Company will notify each bidder that has one or more proposals that have satisfied the eligibility screening described in Step 1. While not entirely concurrent, the activities described in Steps 2.A., 2.B., and 2.C. below will overlap to some extent.

A. Interconnection Cost Estimates

Based on the results of Step 1, the Company will forward bids that do not have an existing LGIA or an existing interconnection queue position to the Company's Transmission Function where interconnection cost estimates will be developed, if applicable. The Company's Transmission Function will provide estimates of interconnection costs for use in the Company's evaluation of the proposals. The Company will provide these cost estimates to the bidders so that they can update their bid pricing. Such bidders must submit final bid pricing back to the Company within 15 calendar days of the date the interconnection cost estimates are provided to such bidders.

B. Transmission Upgrade Assessment

Some or all of the bids passed to the Company's Transmission Function in Step 2.A above will also be evaluated to assess the general siting, permitting, and construction time requirements associated with the Company's system transmission network upgrades or third party transmission provider's system transmission network upgrades required as a result of a proposal needed to a) deliver the entire proposed capacity and energy from the proposed facility interconnection point with the Company's system to the Company's customers, or b) deliver the entire proposed capacity and energy from a third party transmission system to the Company's electric system. The impact of these analyses on a bidder's proposed schedule will be a factor in the evaluation of its proposal.

C. Initial Economic Screening

More specifically, the Bid Evaluation Team will screen all remaining proposals based on individual bid economics and individual bid transmission upgrade costs and time requirements. Using traditional spreadsheet analysis tools, the Company will evaluate the

economics of individual bids. The levelized \$/MWh price of each proposal will be calculated, and this levelized \$/MWh price will be the primary determinant of the bids' economic value to the Company's customers. If this screening identifies bids that are clearly noncompetitive, the Company may eliminate such bids from further consideration and select a subset of original bids for further evaluation.

Initial economic evaluation analyses will be updated as additional information is received about proposals.

The primary purpose of the initial economic screening is to rank each bid by technology so that the most promising bids can be forwarded to the subject matter experts for their review as quickly as possible and to identify those bids likely to be moved forward for computer modeling of bid portfolios. The initial economic screening consists of calculating an "all-in" levelized cost of energy ("LEC"). In addition to the costs provided in the bid, the Company will estimate incremental costs or benefits, as necessary, such as:

- Projects that propose to interconnect to the Black Hills distribution system will be credited with avoided line losses in their LEC calculations;
- For bids proposing wind generation, the Company will estimate resource integration costs;
- For bids proposing solar generation (PV or solar thermal), the Company will estimate resource integration costs;
- For bids proposing non-dispatchable renewable generation or recycled energy generation resources that exhibit high levels of off-peak generation (e.g., geothermal, hydro, non-dispatchable biomass, etc.), the Company will estimate resource integration costs as determined by Black Hills;
- No renewable energy credit ("REC") value benefits will be credited to the LEC calculations for any renewable generation projects;
- No Clean Power Attributes will be credited to the LEC calculations for any renewable projects unless such attributes are based on enacted laws or regulations which have been affirmed through the entire administrative review process and entire appellate review process. The value of such Clean Power Attributes must, in the Company's sole discretion, be reasonably ascertainable and certain.

D. Initial Economic Screening of Storage

Energy Storage systems will be evaluated according to the initial economic screening process described above. However, to provide more clarity on the unique attributes of storage, this section clarifies issue-specific analysis to storage. The Company will evaluate bids that include energy storage proposals based on the capacity value an energy storage project may provide and the benefits of price-arbitraging (the energy storage system stores low-cost power and sells it at a later time for a higher price).

The specific ELCC values that the Company will assign to a storage project will be based on the project's duration. For storage combined with eligible energy resources, the ELCC attributed to the storage component will be added to the ELCC of the accompanying eligible energy resource for a combined project ELCC. The combined project ELCC will be limited to a maximum of 100 percent of the eligible energy resource nameplate capacity.

Energy-arbitrage benefits will be calculated through model logic that allows the storage device to charge during low-cost periods and discharge during high-cost periods. The Company will consider the level of restrictions on the Company's ability to dispatch the charging and discharging of the energy storage device in the determination of the energy-arbitrage benefits. Placing restrictions on the Company's ability to dispatch the energy storage devices will complicate the modeling and will likely result in less value being ascribed to the energy storage device. Bidders are encouraged to include all necessary restrictions, but to not overly restrict the Company's ability to dispatch the energy storage devices.

The Company will credit 30-minute start energy storage facilities a value \$0.20/kW-month and 15-minute start energy storage a value of \$0.22/kW-month.

The Company will not evaluate any potential benefits of energy storage on ancillary services.

Step 3 – Non-Economic Analysis

This analysis may assess the non-price characteristics of the bids. Non-price factors that may be assessed include, as applicable and without limitation, the following:

- Development, construction and operation experience including ability to use tax advantages;
- Environmental compliance and status of permitting – environmental, land use permitting, zoning and other permits;
- Real property acquisition site control progress and plan; and
- Transmission access plan feasibility and arrangements.

If a non-economic analysis identifies bids that are clearly noncompetitive or otherwise unacceptable, the Company may eliminate such bids from further consideration and select a subset of original bids for further evaluation.

Step 4 – Portfolio Analysis of Bids

Contingent upon the existence of sufficient bids passing through bid eligibility and due diligence screening, the Company shall pass forward to the computer modeling of bids.

Pursuant to ERP Rule 3613(a), 45 days after bids are received the Company will email each bidder and indicate whether its bid has been advanced to computer modeling of bids. For those bids not advanced to computer modeling, the Company will

provide the reason(s) why the project will not be evaluated further. For those bids advanced to computer modeling, the Company will provide the modeling inputs and assumptions that reasonably relate to that potential resource or to the transmission of electricity from that facility to the Company. *See* Section 1.1 for more details on each Bidder's opportunity to address the Company's modeling assumptions as it pertains to their bid.

The general planning assumptions that will be used in the evaluation of proposals are included in Attachment C to this RFP.

The results from the modeling process, together with a consideration of due diligence findings (described in Step 3) will form the basis for the Company's analysis of bids.

Step 5 – Selection Process

Within 120 days of the Company's receipt of bids in its competitive acquisition process, the Company will file a report with the Commission describing the Company's resource acquisition recommendation. The Company shall also provide the Commission with the best value employment metrics information provided by bidders under ERP Rule 3616 and by the Company pursuant to ERP Rule 3611.

The Company will work with the IE approved by the Commission to assist the Commission with the complex issues and analyses involved in utility resource modeling and selection. Within 30 days after the filing of the Company's 120-day report, the IE shall separately file a report that contains the IE's analysis of whether the utility conducted a fair bid solicitation and bid evaluation process, with any deficiencies specifically reported. The IE shall provide confidential versions of these reports to Staff of the Commission and the Office of Consumer Counsel ("OCC")

Within 45 days after the filing of the 120-day, the parties in the resource plan proceeding may file comments on the Company's report and the IE's report.

Within 60 days after the filing of the 120-day report, the Company may file comments responding to the IE's report and the parties' comments.

Within 90 days after the receipt of the 120-day report, the Commission shall issue a written decision approving, conditioning, modifying, or rejecting the Company's position and proposal regarding the acquisition of renewable energy resources. If a decision is made that the Company acquire specified renewable energy resources, the Company and the successful bidder(s) must negotiate signed agreements within 61 days.

Attachment A

Forms

- Form 1 Bid Certification
- Form 2 Bid Submittal
- Form 3 Project Information
- Form 4 Developments and Siting Status
- Form 5-1 Photovoltaic Project Data
- Form 5-2 Wind Project Data
- Form 5-3 Solar Thermal, Biomass, Storage, and Other Project Data
- Form 6 Pricing
- Form 7 Legal and Financial
- Form 8 Environmental
- Form 9 Energy and Fuel Delivery
- Form 10 Experience and Qualifications
- Form 11 Project Status and Schedule
- Form 12 Representation Authorization
- Form 13 Exceptions to Model PPA
- Form 14 Construction Milestones
- Form 15 Capacity and Energy Profile

Form 1 - Bid Certification Form

The bidder hereby certifies that all of the statements and representations made in this proposal are true to the best of the bidder's knowledge and belief, and agrees to be bound by the representations, terms, and conditions contained in the RFP. The bidder accepts the contract included in the RFP, except as specifically noted in writing. The bidder acknowledges that the officer whose signature appears below is able to contractually commit the bidder for its proposal.

Name of Bidding Company:

Authorized Signature:

Print or Type Authorized Name:

Title of Authorized Individual:

Date Signed:

Provide any and all information which would restrict the bidder from providing the Company with exclusive rights to negotiate a PPA or Equity Contract for the proposed project. Such restrictions could include, but are not limited to, prior active submission or participation in other RFPs, exclusivity rights granted to other parties, rights of first offer or refusal, purchase options, and active auctions for the project as applicable. Absent inclusion of restrictions in a response, all **proposals submitted shall be binding upon bidders, if accepted by the Company as the selected or back-up bidder(s), until twelve months from the proposal submission deadline. No proposals may be withdrawn during the twelve-month period. Negligence on the part of a bidder in preparing the proposal confers no right of withdrawal after the time fixed for the submission of proposals.**

Form 2 – Bid Submittal Sheet

Project Name: _____

Project Location: _____
(City, County, State)

Bidder Contact Information:

Name: _____

Company: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Sale Type:

- Expansion of Existing Facility
- Power Purchase Agreement
- Other

Turbine Type (if applicable): _____

Fuel Type: _____
(Describe primary and secondary fuel types if applicable)

Fuel Delivery Logistics: _____
(Describe any fuel transportation or storage details)

Nameplate Capacity (MW) _____

Net Summer Capability (MW): _____

Estimated Annual Energy Production (MWh): _____

Projected Capacity Factor (%): _____

Development Resource Acquisition Status:

Existing Facility

Under Construction

New Project

Proposed Project Closing Date: _____

Proposed Project Construction Date: _____

Proposed Commercial Operation Date: _____

Form 3 – Project/Facility Information Form

Location and Size

Project/Facility Location: _____

(Provide of a map that identifies the location of all key facilities and all transmission lines, roads, etc.)

Latitude _____

Longitude _____

Project/Facility Capability, Availability

Unit/facility data (complete as applicable)

Nameplate Capacity (MW): _____

Expected Net Summer Capacity (MW): _____

Minimum Production Level Guarantee: _____

Storage- Nameplate Capacity _____

Storage- Duration of Nameplate Capacity (hours) _____

Ancillary Service Provider:

Bidder

The Company

Other (Please specify):_

Is metering, telemetering, and/or communications equipment necessary for the above services?

Yes

No

Explain: _____

Is the cost of the above metering, telemetering, and communications equipment included in capacity charge? _____

If it is not, please provide an estimated cost for this equipment: _____

Is the cost of ancillary services included in the capacity and/or energy pricing? _____

If yes, please identify what is included:

- | | |
|---|--|
| <input type="checkbox"/> Scheduling | <input type="checkbox"/> Voltage Control |
| <input type="checkbox"/> System Control | <input type="checkbox"/> Regulation |
| <input type="checkbox"/> Dispatch Services | <input type="checkbox"/> Frequency Response |
| <input type="checkbox"/> Reactive Supply | <input type="checkbox"/> Operating Reserve |
| <input type="checkbox"/> Spinning | <input type="checkbox"/> Supplemental Response
(10 Min Loading requirement) |
| <input type="checkbox"/> Other (Please Specify) _____ | |

Provide additional comments concerning ancillary services, if necessary:

Under Separate Attachment Labeled "Form 3 - Ancillary Services"

Provide Load Level Heat Rates as applicable:

	Net Load Level (MW)	Net Heat Rate (BTU/kWh HHV)	
		At 32° F	At 95° F
Minimum Load			
Intermediate Load			
Full Load			
Emergency			

Operating Limitations (complete as applicable)

Minimum Run Time per Dispatch	Hours
Minimum Down Time	Hours
Expected Forced Outage Rate or Availability	%
Ramp Rate	MW/minute
Start Up Time from Cold Start	Minutes
Start Up Time from Hot Start	Minutes
Automatic Generation Control (AGC) capable?	Yes or No
Minimum sustained operating level (MW) of the facility	MW

Fuel (if applicable)

(a) Please list primary and secondary fuel types of this resource.

Primary _____

Secondary _____

(b) Please describe fuel delivery logistics and storage.

Provide an operations and maintenance plan including seasonal and yearly availability, planned outage schedules, plans to ensure availability of spare parts and equipment and responsible O&M personnel description.

Under Separate Attachment Labeled “Form 3 - Operations and Maintenance Plan”

Provide a description of the operating characteristics of the resource. Identify any engineering, mechanical or operational limitations with respect to yearly, monthly and daily, or hourly startups. Provide the details of any regulatory or permitting requirements that would impact the resource’s operations. Provide anticipated start-up/ramp-up requirements and times. Describe existing or proposed procedures, requirements with respect to real time, and prescheduled dispatching of the resource.

Under Separate Attachment Labeled “Form 3 - Operating Characteristics”

Energy Delivery

The Company service area lies at the south end of the front range of Colorado.

The front range of Colorado is generally capacity deficient and relies on the interconnected transmission system of several entities to supply the capacity and energy requirements not met by generation resources located within the area.

There are four primary transmission paths which connect the front range of Colorado to the remainder of the Western Electricity Coordinating Council (“WECC”). Five constrained areas are identified on these paths and are commonly known as TOTs 1A, 2A, 3, 5 & 7.

Additional information on the five major transmission constraints affecting Colorado, including the appropriate contact person, is published by the WECC.

The major interconnections of the Company’s transmission system within the WECC are shown in Table 3:

Table 3 Black Hills’ Major Interconnections

Interconnection Name	Interconnecting Utility	Back Hills Interconnection Voltage
Midway	Public Service Company of Colorado, Western Area Power Administration, Colorado Springs, Tri-State G&T	115 kV
West Station	Tri-State G&T	115 kV
Boone	Public Service Company of Colorado, Tri-State G&T	115 kV
Reader	Public Service Company of Colorado	115 kV
Canon West	Public Service Company of Colorado, Western Area Power Administration	115 kV

Price quoted in this bid reflects delivery to the following points of delivery:

- | | |
|---------------------------------------|--|
| <input type="checkbox"/> Midway | <input type="checkbox"/> Boone |
| <input type="checkbox"/> Reader | <input type="checkbox"/> Canon West |
| <input type="checkbox"/> West Station | <input type="checkbox"/> Internally connected to the Company |

As a reminder, include with your response a thorough written discussion of each of the applicable narrative topics described in Section 4.3.1 of the RFP. The written discussion of the narrative topics should be separately provided even if the topic is also covered by one of the Forms.

Form 4 - Development and Siting Status (New Construction)

Bidders shall provide a thorough description of the development status of its proposed project on a separate sheet labeled as Form 4. Information provided should include status of the following:

Site Acreage: _____

- Site, Zoning and Construction Permitting (Include the size of project (acres) and any zoning restrictions that would impact development or use of facility) Describe any rezoning plans and issues;
- Environmental Assessments and Studies;
- Emissions and Environmental Permitting;
- Regulatory and Governmental Approvals;
- Engineering and Design Activities;
- Resource Acquisitions (i.e., land, equipment such as turbines, fuel supply, waste disposal arrangements, etc.);
- Construction Status;
- Project Schedule and Milestones (Include construction start through commercial operation date);
- Describe existing and planned land uses in all directions surrounding the proposed site;
- Describe all city or county land use permits that are or will be required such as conditional use or special use approvals;
- For development projects, report on the status of land use permitting activities, including the status of any pending applications and any feedback from permitting agencies, community or neighborhood groups;
- Opportunities to expand the project and the requirements associated with any expansion;

Indicate whether bidder controls the site through

1. Ownership of a leasehold interest in, or a right to develop a site for the purpose of constructing the proposed generating facility;
2. An option to purchase or acquire a leasehold site for such purpose; or
3. An exclusivity or other business relationship between bidder and the entity having the right to sell, lease or grant bidder the right to possess or occupy a site for such purpose.

If site control described above has not yet been secured, describe plan and schedule for obtaining such site control; and

Provide a brief written description. Identify all known and/or potential structures, reserves, parks, animal life, flora and fauna whose proximity to the proposed project could jeopardize the schedule for commercial operation;

Form 5 - Technical Description and Data Needed by Resource Type

Bidders shall complete the following forms providing technical description of the selected technology.

Form 5-1 Photovoltaic

Form 5-2 Wind

Form 5-3 Solar Thermal, Biomass, Storage, and Other

4. Collector System Equivalent Model. IC may apply the equivalencing methodology described in Section 3.4 of the WECC WPP Power Flow Modeling Guide.

- Collector system voltage: ____ kV Equiv. Collector System Thermal Rating: ____ MVA
- R: ____ ohm or ____ pu on 100 MVA and collector kV base (positive sequence)
- X: ____ ohm or ____ pu on 100 MVA and collector kV base (positive sequence)
- B: ____ μ F or ____ pu on 100 MVA and collector kV base (positive sequence)

5. Inverter Step-Up Transformer. Note: These are typically two-winding air-cooled transformers. If the proposed project contains different types or sizes of step-up transformers, please provide data for each type.

- Rating: ____ MVA
- Nominal voltage for each winding (Low /High): ____ / ____ kV
- Available taps: ____ (indicate fixed or with LTC), Operating Tap: ____
- Positive sequence impedance (Z1) ____ %, ____ X/R on transformer self-cooled MVA

6. Inverter and PV Module Data.

- Number of Inverters: ____
- Nameplate Rating (each Inverter): ____ / ____ kW/kVA
- Describe reactive capability as a function of voltage: _____

7. Plant Reactive Power Compensation. Provide the following information for plant-level reactive compensation, if applicable:

- Individual shunt capacitor and size of each: ____ X ____ MVA
- Dynamic reactive control device, (SVC, STATCOM): _____
- Control range _____ MVar (lead and lag)
- Control mode (e.g., voltage, power factor, reactive power): _____
- Regulation point _____
- Describe the overall reactive power control strategy: _____

LV-TV: R1: _____ pu X1: _____ pu

4. Collector System Equivalent Model. This can be found by applying the equivalencing methodology described in Appendix A; otherwise, typical values can be used.

- Collector system voltage: _____ kV
- Equiv. Collector System Thermal Rating: _____ MVA
- R: _____ ohm or _____ pu on 100 MVA and collector kV base (positive sequence)
- X: _____ ohm or _____ pu on 100 MVA and collector kV base (positive sequence)
- B: _____ μ F or _____ pu on 100 MVA and collector kV base (positive sequence)

5. Wind-turbine Generator (WTG) Pad-Mounted Transformer. Note: These are typically two-winding air-cooled transformers. If the proposed project contains different types or sizes of pad-mounted transformers, please provide data for each type.

- Rating: _____ MVA
- Nominal voltage for each winding (Low /High): _____/_____ kV
- Winding Connections: _____/_____ (Delta, Wye, Wye grounded)
- Available taps: _____ (please indicated fixed or ULTC)
- Operating Tap: _____
- Positive sequence impedance (Z1): _____%, _____X/R on transformer self-cooled MVA

6. WTG Powerflow Data. Proposed projects may include one or more WTG Types (See NOTE 1 below). Please provide the following information for each:

- Number of WTGs: _____
- Nameplate rating (each WTG): _____ MW
- WTG Manufacturer and Model: _____
- WTG Type: _____ (Type 1, 2, 3, or 4; see Note 6.1 below)

For Type 1 or Type 2 WTGs:

- Uncompensated power factor at full load: _____
- Power factor correction capacitors at full load (total MVAR): _____ MVAR or “None”
- Number of shunt stages and size: _____
- MVAR Rating of each stage: _____

For Type 3 and Type 3 WTGs:

- Maximum (uncompensated) over-excited power factor (producing MVAR) at full load: _____

- Maximum (uncompensated) under-excited power factor (absorbing MVAR) at full load: _____
- Control mode: _____ (voltage control, fixed power factor)

NOTE 6.1: WTG Type can be one of the following:

- Type 1 – Squirrel-cage induction generator
- Type 2 – Wound rotor induction machine with variable rotor resistance
- Type 3 – Doubly-fed asynchronous generator
- Type 4 – Full converter interface

7. Wind Farm Reactive Power Compensation. Provide the following wind farm reactive compensation, if applicable, to supplement generator(s) reactive capability in order to meet Transmission Provider's (TP) reactive capability criteria:

- Individual shunt capacitor and size of each: _____X_____ MVAR
- Dynamic reactive control device, (SVC, STATCOM): _____
- Control Range: _____ MVAR (lead and lag)
- Control mode (line drop, voltage droop, voltage control): _____
- Regulation point _____
- Describe the overall reactive power control strategy: _____

- Battery idle time following a discharge event.
- Discharge
- Round Trip Efficiency every year
- Performance Metrics
 - Degradation
 - Guaranteed Storage Capacity (MWh)
 - Self-Discharge Rate (MWh/month)
 - Guaranteed Minimum Charging Time (minutes)
 - Guaranteed Maximum Charge Rate (MW)
 - Guaranteed Minimum Discharging Time (minutes)
 - Guaranteed Maximum Discharging Rate (MW)
 - Maximum Ramp Rate (MW/Second)
 - Guaranteed Response Time (Seconds)

Form 6 – Pricing

Please describe the pricing mechanism for your proposal. List prices in the table below. The company -is interested in the methodology used by bidders to ensure pricing includes all applicable charges. Examples of items to discuss are: demand charges versus energy charges. Are there start up charges, or start-up fuel costs? If there is a separate demand component, describe the methodology for calculating the kW billing demand determinant. Is pricing dependent upon certain subsidies or credits? If so, please provide a detailed explanation. Is pricing fixed or subject to change? How is the transmission charge component calculated?

Please provide responses on a separate page and label as “Form 6 – Pricing”

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All pricing must be provided in terms of current year dollars, also referred to as nominal or escalated dollars. Bidders may propose prices that are either fixed for the term, escalate at a known, non-indexed rate or are subject to index escalation conforming to the guidelines set forth in section 2.3 of this RFP. If a bidder provides alternative pricing tied to an index, a second Form 6 with this alternate pricing must also be submitted. Forms with such alternative pricing must described the index used and how it serves to reduce the overall bid price.

If bidders offer energy storage with a renewable generating facility, the bidder must break out the pricing components for both the energy storage and renewable generation.

If applicable, please complete the table below and identify all pricing information related to this bid. Attach additional pages as needed. Transmission charges must include all charges from the Facility to the Point of Delivery on the Company’s system, including but not limited to, any required upgrades. Further, any bid for utility-ownership proposals (*i.e.* utility self-build or build-transfer) should include estimated fixed and variable O&M costs if possible. See the RFP for details.

<u>Calendar Year</u>	<u>Price (\$/MWh) with PTC</u>	<u>Price (\$/MWh) without PTC</u>

Etc.

Energy Quantity

<u>Service Year</u>	<u>Quantity (MWh)</u>
<u>Year 1</u>	
<u>Year 2</u>	
<u>Year 3</u>	

Etc.

Additional Notes

Specify any other charges: _____

For ownership arrangements, alternative purchase terms may include:

- Outright purchase and operation of the project by the company at the date of commercial operation. This offer can include pricing that assumes the Company would make periodic progress payments during the construction phase or pricing that assumes the bidder will finance construction. (Bidder to provide training to Company operating personnel);
- Joint development and ownership by the Company and the Bidder;
- Purchase of the project by the Company with Bidder having principal responsibility for continued development and operation. This offer can include pricing that assumes the Company would make periodic progress payments during the construction phase or pricing that assumes the bidder will finance construction;
- Purchase of the project by the Company at commercial operation with operation by the Bidder for a specified time period during which time bidder would provide training to the Company's operating personnel. This offer can include pricing that assumes the Company would make periodic progress payments during the construction phase or pricing that assumes the bidder will finance construction.

Price proposal must specify fixed and variable payments, escalation rates to be applied, if any, and all other pricing information necessary for the Company to fully evaluate the proposal. In addition, provide a summary of the major capital and operating expenses along with a budget for projected capital costs, site acquisition, improvements, permitting, construction, testing and commissioning, along with other appropriate inclusions.

Start-up Costs (\$/Start): _____

Variable O&M Costs (\$/MWh): _____

Fixed O&M Costs (\$/Annum): _____

Specify the Year the Costs are associated with: _____

Briefly describe what is included in the fixed O&M costs: _____

Briefly describe what is included in the variable O&M costs: _____

Interconnection Costs (total): _____

New Interconnection/Interconnection Upgrade costs:

Transmission Charges: _____

Ongoing Service & Facilities Charges: _____

Form 7 - Legal and Financial

****Please provide responses on a separate page and label as Form 7:**

The proposal should contain at a minimum the following information:

Describe the current or proposed legal status of the Bidder and the state of organization.

Disclose any known commercial affiliations, partnerships, or alliances with the Company or Black Hills Corporation or its affiliates including Black Hills Power Inc. or Cheyenne Light, Fuel & Power Company.

Describe the structure and the status of the project financing. Include major provisions of the plan along with the milestones that the project must meet for ongoing financing. Specific information regarding any necessary financing or refinancing is required including information regarding expected financing sources, whether the project will be financed as a recourse or non-recourse project, the percentages of debt and equity financing, the expected cost of debt and the financing commitments that the bidder has obtained. Proven access to financing must be established for bids to be seriously considered in response to the RFP.

Describe all anticipated credit support arrangements and parental, subsidiary, and venture relationships that are pertinent to the proposal.

Provide, under separate cover, audited financial statements for two years of operation, if available.

A credit worthiness evaluation will be conducted on each Bidder.

Form 8 - Environmental

Using the table below and any written documentation necessary to show that consultation has occurred with appropriate governmental agencies (for example, the Colorado Division of Wildlife or the U.S. Fish and Wildlife Service) responsible for reviewing the potential project.

Agency	Land-use or Environmental Regulated Activity	Requirement	Will your proposal trigger or cause the requirement to be applicable?	If triggered, how will you address in your proposal? If you consider this to be the responsibility of the owner/operator (for build/transfer bids only), please note.	Estimated timeframe to obtain permit or comply with requirement (such as developing a plan and obtaining approval).
U.S. Fish and Wildlife Service					
	Endangered Species Act, Section 9	Section 9 deals with the "take" of a species listed on the Threatened & Endangered (T&E) Species list. Impacts could include significantly modifying its habitat with this project.			
	Endangered Species Act, Section 7	Section 7 deals with the development of a Habitat Conservation Plan in the event T&E species are adversely impacted.			
	Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act	Both Acts address the instance of "take" of a Migratory Bird or Eagle. The USFWS has also develop an Eagle Take Permit designed to offset takes, not to allow takes.			
	Avian Protection Plan	The USFWS recommends the development of an Avian Protection Plan for an adverse impacts to migratory birds.			
U.S. Army Corps of Engineers					
	Section 404 compliance; Individual Permit	Section 404 requires a permit for the discharge of dredged or fill material into navigable waters.			
	Section 404 compliance: NWP 14 (Linear Transportation Facilities) (i.e., access roads)	The NWP 14 permit is for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States.			
	Section 404 compliance: NWP 12 (Utilities) (i.e., power lines and	The NWP 12 permit is for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of water of the United States. -			

Agency	Land-use or Environmental Regulated Activity	Requirement	Will your proposal trigger or cause the requirement to be applicable?	If triggered, how will you address in your proposal? If you consider this to be the responsibility of the owner/operator (for build/transfer bids only), please note.	Estimated timeframe to obtain permit or comply with requirement (such as developing a plan and obtaining approval).
	collection systems)				
	Section 404 Compliance: NWP 51 (Land-based Renewable Energy Generation Facilities)	The NWP 51 permit is for discharges of dredged or fill material into non-tidal water of the United States for the construction, expansion, or modification of land-based renewable energy production facilities, including attend features. Such facilities include infrastructure to collect solar, wind, biomass, or geothermal energy.			
	Section 404 compliance: NWP 33 (Temporary Construction, Access, and Dewatering)	The NWP 33 permit is for temporary structure, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard permit requirements.			
	Section 401 - certification for surface water quality	Colorado Water Quality Control Division (WQCD) has jurisdiction for Section 401 compliance.			
U.S. Environmental Protection Agency					
	Spill Prevention, Containment, and Countermeasures (SPCC) plan	Plans are required for facilities that exceed 1320 gallons of storage and regulation are located at 40 Code of Federal Regulations [C.F.R.] 112.7.			

Agency	Land-use or Environmental Regulated Activity	Requirement	Will your proposal trigger or cause the requirement to be applicable?	If triggered, how will you address in your proposal? If you consider this to be the responsibility of the owner/operator (for build/transfer bids only), please note.	Estimated timeframe to obtain permit or comply with requirement (such as developing a plan and obtaining approval).
	National Environmental Policy Act (NEPA)	The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. The project needs to have a federal nexus to federal land or federal permits.			
Federal Aviation Administration					
	FAA Obstruction Evaluation/Airport Airspace Analysis	Renewal Energy projects involving wind turbines and MET tower installations need to conduct an obstruction evaluation with the FFA.			
Colorado Department of Public Health and Environment (CDPHE)					
	Clean Water Act Section 401 - Water Quality Certification (WQC)	The State of Colorado (CDPS) has primacy to issued General Permit Storm water Discharges Associated with Construction Activity.			
	Water	The Department also issues General Permits for Storm water Discharges Associated with Light Industry Activity.			
	Water	The Department issues a Construction Dewatering Permit.			
	Air Quality	The department issues permits for PSD, Major and Minor sources of air pollution. This would apply to Co-generation facilities or energy generation sources combusting some type of fuel.			
	Air Quality - Land Development Permit	The Department issues fugitive dust control permits for projects >25 acres contiguous development and >6 months in duration.			

Agency	Land-use or Environmental Regulated Activity	Requirement	Will your proposal trigger or cause the requirement to be applicable?	If triggered, how will you address in your proposal? If you consider this to be the responsibility of the owner/operator (for build/transfer bids only), please note.	Estimated timeframe to obtain permit or comply with requirement (such as developing a plan and obtaining approval).
	SARA	Community Right to Know - SARA Tier II Chemical Inventory reporting. The State of Colorado requires annual reporting for facilities that exceed quantity thresholds for stored chemicals at the site.			
	Solid Waste	The Department regulates activities associated with the disposal of solid and hazardous waste. This may involve obtaining permits or registrations.			
Colorado Parks and Wildlife					
	Nongame and Endangered Species Approval	If habitat or concern species exist, biological surveys may be required, and mitigation measures implemented.			
Colorado Public Utilities Commission (CPUC)					
	State HAZMAT Permit	No person may offer or accept hazardous material for transportation in commerce unless that person is registered in conformance with the United States DOT. Vehicles requiring a placard must obtain authorization and a State HAZMAT Permit from the CPUC.			
	Rules for Electric Utilities CCR 723-3	This regulation covers a wide range of activities concerning electric utilities. There are provisions throughout the section that address environmental and land issues.			
State of Colorado, Department of Agriculture					
	Pesticide Business License	To legally apply any pesticide or herbicide for compensation, an entity must have a Commercial Pesticide Applicator License.			
State of Colorado, Office of Archaeology and Historic Preservation					

Agency	Land-use or Environmental Regulated Activity	Requirement	Will your proposal trigger or cause the requirement to be applicable?	If triggered, how will you address in your proposal? If you consider this to be the responsibility of the owner/operator (for build/transfer bids only), please note.	Estimated timeframe to obtain permit or comply with requirement (such as developing a plan and obtaining approval).
	Review impacts to National Register of Historic Places-eligible sites	This regulatory activity is required for any federally funded or permitted project with the potential to impact cultural resources required to comply. Excavation on State lands during property evaluation for archaeological/paleontological significance requires a survey and Test Excavation Permit.			
Colorado General Assembly					
	1041 Process in Section 24-65.1-101.	The Colorado General Assembly enacted measures to further define the authority of state and local governments in making planning decisions for matters of statewide interest. These powers are commonly referred to as "1041 powers", based on the number of the bill of the proposed legislation (HB 74-1041). These 1041 powers allow local governments to identify, designate, and regulate areas and activities of state interest through a local permitting process. The general intention of these powers is to allow for local governments to maintain their control over particular development projects even where the development project has statewide impacts. The statute concerning areas and activities of state interest can be found in Section 24-65.1-101.			
County					
	Development Services Division	Most counties require a Conditional Use Permit, or similar use permit for land development projects.			

Agency	Land-use or Environmental Regulated Activity	Requirement	Will your proposal trigger or cause the requirement to be applicable?	If triggered, how will you address in your proposal? If you consider this to be the responsibility of the owner/operator (for build/transfer bids only), please note.	Estimated timeframe to obtain permit or comply with requirement (such as developing a plan and obtaining approval).
	Site Development Plan	A Site Plan is an accurately scaled drawing of a lot or parcel showing, at a minimum, the property address, the schedule/tax number, all existing structures, easements, rights-of-way, and setbacks from the property lines to the existing structures (if any), the location of the lot in relation to abutting streets, driveway/access location(s), dimensions of the proposed structure and of existing structures, including height.			
	Other	Specific county requirements that may not be on this list.			

Form 8 - Continued

Emission Rates on Primary Fuel (if Applicable)

If proposing multiple units duplicate the request and label as appropriate:

	Minimum Load (Lb/MMBtu)	Intermediate Load (Lb/MMBtu)	Full Load (Lb/MMBtu)
Capacity in MW			
Particulate Matter - PM10			
Particulate Matter - PM2.5			
Lead			
Mercury			
Oxides of Sulfur			
Oxides of Nitrogen			
Carbon Dioxide			
Carbon Monoxide			
Volatile Organic Compounds			

Maximum NO_x emission rate (in parts per million): _____

Maximum CO emission rate (in parts per million): _____

Maximum permitted/permittable annual capacity factor (%): _____

Emission Rates on Secondary Fuel (if applicable): Repeat table above for emission rates on secondary fuel.

Additional Notes:

Form 9 – Energy and Fuel Delivery

****Please provide responses on a separate page and label as Form 9:**

Provide a detailed description of the point of delivery at which bidder is proposing to deliver the capacity and energy to the Company system; including the location and voltage level of such point. If the proposed point of delivery is also the point of interconnection described on a separate form, the bidder may simply indicate below that the points are the same and refer back to the other form.

For proposals that will require third-party transmission service(s) to deliver, on a firm transmission service basis, the capacity and energy to the point of delivery specified above, provide a detailed description of the interconnection, electric losses, transmission and ancillary service arrangements, by provider, that will be required, including the identity of all third party providers, the location and voltage level of the interconnection point to the interconnection service provider’s facilities, any interconnection facilities that Bidder owns or intends to construct and own, the specific services provided by each provider, and the line losses, point(s) of receipt and point(s) of delivery associated with each third party transmission service. Attach a USGS-based map that shows the location of the interconnection point and the generation facility.

Provide documentation that the third-party services discussed above will be available to bidder during the proposed contract term. This should include: (a) any associated transmission studies that directly examined delivery of the proposed energy to the point of delivery, (b) detailed information on any or all new transmission facilities and/or upgrades to existing facilities that will be required to deliver the proposed energy to the point of delivery, and (c) a detailed discussion of the schedule for siting, permitting, and construction of such new facilities and/or upgrades. Attach documentation to this form as needed.

If applicable, provide a detailed description of the fuel supply arrangements bidder is proposing including a) purchase plan or arrangements for fuel, b) transportation arrangements for delivery of the fuel to the Facility, c) a detailed discussion of the schedule for siting, permitting and construction of any fuel-related facilities including any

new transportation facilities or any upgrades to existing transportation facilities required for the proposed or existing project, d) any dual fuel capability bidder is proposing including the type of fuel, the purchase plan or arrangements for acquiring such fuel, the amount of on-site storage for such fuel or transportation arrangements for such fuel and the schedule for siting, permitting and construction of any fuel-related facilities for such fuel including any new transportation facilities or any upgrades to existing transportation facilities required for such fuel.

--

Form 10 - Experience and Qualifications

****Please provide responses on a separate page and label as Form 10.**

Each Respondent shall:

Provide a general description of the Bidder's background and experience in projects similar to this proposal.

Provide its form of business classification (i.e., sole proprietorship, partnership, or corporation)

List all affiliated companies, including holding companies, subsidiaries, and predecessor companies presently or in the past engaged in developing and/or implementing similar projects.

List all material lawsuits or contested proceedings relevant to the development of any electricity generation resource in which there were adverse results to the Bidder or where adjudication is pending.

Provide a statement of Respondent's financial status and ability to obtain financing for the proposed site(s).

Provide a list of any current credit issues raised by rating agencies, banks, or accounting firms.

Provide a list of all credit ratings from the major rating agencies, if possible.

Form 11 - Project Status and Schedule

****Please provide responses on a separate page and label as Form 11:**

Identify all permits necessary or anticipated with regard to siting and commercial operation of the resource. These would include, but are not limited to, construction activities, environmental, wastewater, solid waste, air quality, water rights, etc. Identify the progress associated with the acquisition of the permits.

Provide schedule for the following: site acquisition, permitting, construction, and commercial operation. Include a separate schedule for each major project activity.

Describe the arrangements and commitments (contracts, letters of intent, memoranda of understanding) that have been made, if any, for the construction of the project. Include measures that have been taken to assure that the schedule will be met (purchase of equipment with long lead times, incentives, etc.)

Identify the term associated with the proposed resource falling with the range of 5-20 years for existing resources and 5 - 20 years for new resources.

Form 12 – Representation Authorization

Black Hills Colorado Electric, LLC

Notice of Customer Voluntary Written Consent

The FERC Standards of Conduct Regulations 18 CFR Part 358.5(b)(4) states that a non-affiliated transmission customer may voluntarily consent, in writing, to allow the Transmission Provider to share the non-affiliated customer’s information with a Marketing or Energy Affiliate. The Transmission Provider must post notice on the OASIS or Internet website of that consent along with a statement that it did not provide any preferences, either operational or rate-related, in exchange for that voluntary consent.

Signature of this form by the Customer serves as notice of voluntary written consent allowing the Merchant Function of Black Hills Colorado Electric, LLC to engage in non-public transmission/interconnection-related discussions associated with the possible [_____] between Black Hills Colorado Electric, LLC in connection with the 2019 Request for Proposals. Black Hills Colorado Electric, LLC will maintain and protect the confidentiality of all information received from the Transmission Function of Black Hills Colorado Electric, LLC pertaining to the Customer’s transmission/interconnection facilities.

Customer: _____

Signed: _____

Print Name: _____

Title: _____

Date: _____

Contract or Project Name: _____

Please submit a signed written consent letter to the Bid Submittal site Transmission Provider and a copy to the Merchant Function below:

Transmission Provider

Black Hills Colorado Transmission (BHCT)

Merchant Function

Black Hills Power as agent for Black Hills Colorado Electric

Form 13-Exceptions to Model PPA

Set forth any exceptions or changes required to the Model PPA either in the bid form or in a redlined version of the Model PPA. If any such exceptions affect the bid pricing, please explain and indicate the effect on price with and without the requested change.

Form 14 – Construction Milestones

A detailed development and construction milestone table will be developed to support the Model PPA. Bidders should insert the proposed date for each milestone shown here as would be found on the detailed Development Schedule provided with the proposal. The milestones should be based on the requirements to achieve the commercial operation date. See the Model PPA for defined terms. Complete as applicable or indicate n/a.

_____ Seller shall establish the Security Fund in accordance with Section 11.1 of the Model PPA.

_____ Seller shall have provided Company with a letter of intent, terms sheet or other written evidence from a lender of its intent to finance construction of the Facility.

_____ Seller shall provide Black Hills with a copy of the executed Facility EPC, or other general contractor, agreements.

_____ 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).

_____ Seller shall provide Black Hills with copies, as applicable, of executed Facility operating agreements, electric transmission or interconnection agreements, and natural gas transportation or interconnection agreements.

_____ 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.

_____ Seller shall have achieved closing on financing for the Facility or provided Black Hills with proof of financial capability to construct the Facility.

_____ Seller shall provide Black Hills with evidence of complying with that insurance coverage required prior to the Commercial Operation Date.

_____ Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformation facilities.

_____ The turbine(s)/generator(s) shall have been delivered to, and installed at, the Site.

_____ The step-up transformer shall have been delivered to, and installed
at, the Site.

_____ Seller shall have the natural gas line and all other necessary fuel
supply interconnection facilities in place, and capable of delivering
fuel to the CTs for operation.

_____ Seller shall demonstrate that the Facility has the required Network
Resource designation.

_____ Seller shall have constructed Seller's Interconnection Facilities and
such facilities are capable of being energized and delivering energy.

_____ Commercial Operation Date is achieved. (Commercial Operation
Milestone)

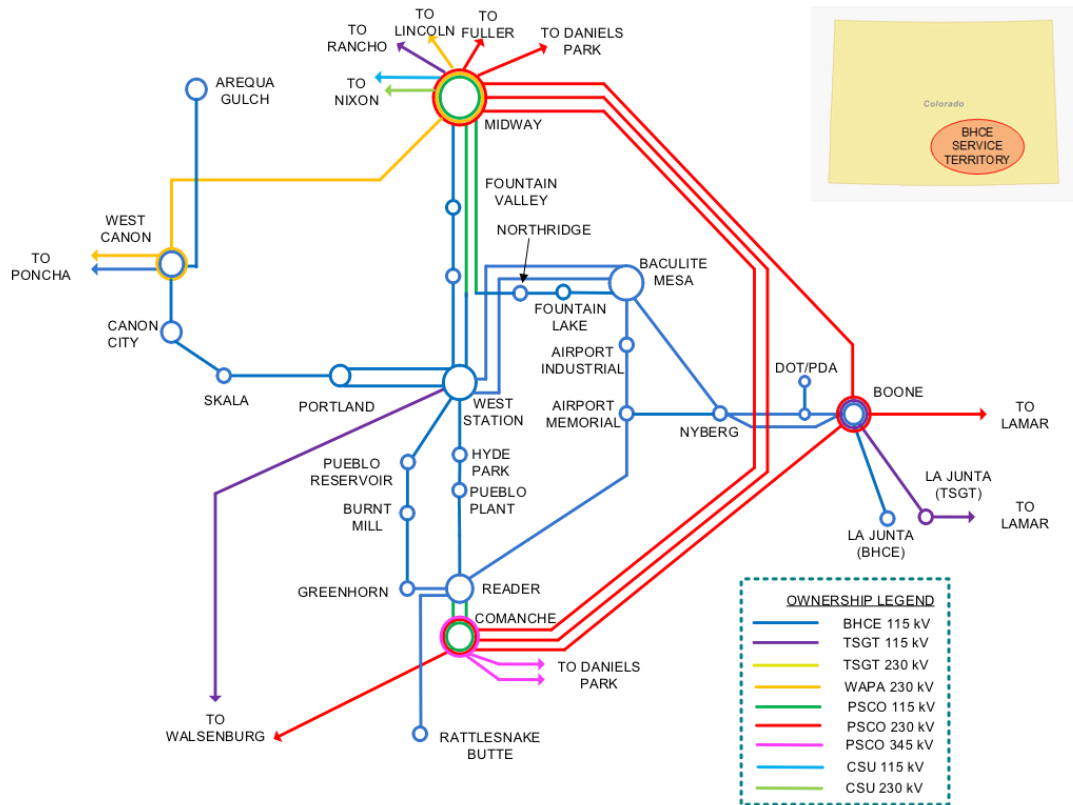
ENERGY PROFILE BY HOUR (MWh)

Month	HE1	HE2	HE3	HE4	HE5	HE6	HE7	HE8	HE9	HE10	HE11	HE12	HE13	HE14	HE15	HE16	HE17	HE18	HE19	HE20	HE21	HE22	HE23	HE24
Jan																								
Feb																								
Mar																								
Apr																								
May																								
Jun																								
July																								
Aug																								
Sept																								
Oct																								
Nov																								
Dec																								

HE = Hour Ending

Attachment B

System Map



Attachment C

General Planning
 Assumptions

The planning assumptions shown on the Table below will underlie the evaluation of proposals received in response to the 2019 Renewable Advantage. Note that the following is not a complete listing of all assumptions that will be applied in the evaluation process. In addition, the assumptions noted below represent “base case” assumptions. Sensitivity analysis will be performed in which certain of these assumptions are altered.

General Planning Assumptions

Item	Assumptions
Capacity credit for solar at 200 MW	23%; See Section 8 of ERP Amendment
Capacity credit for wind at 200 MW	19%; See Section 8 of ERP Amendment
CO ₂ price forecast	See Section 14 of ERP Amendment
Cost of integrating renewable resources	See Section 8 of ERP Amendment
DSM forecast	See Section 7 of ERP Amendment
Financial parameters	Appendix F of 120-Day Report filed in Proceeding No. 16A-0426E
General inflation rate	Appendix F of 120-Day Report filed in Proceeding No. 16A-0426E
Interconnection costs applied to bids	Estimated during Evaluation Process
Load forecast	See Section 7 of ERP Amendment
Market prices	Confidential ABB 2019 WECC Fall Reference Case
Natural gas prices	Confidential ABB 2019 WECC Fall Reference Case
Owned unit operating characteristics and costs	See Table 5-1 of 2016 ERP Report; and Section 7 of ERP Amendment

Owned unit retirement dates	See Table 5.1 of 2016 ERP Report
Planning period	24 years
Planning reserve margin	15% minimum
Power purchase contracts	Varies by resource
Renewable resource options considered	See Section 8 of ERP Amendment
Resource Acquisition Period	4 years
Seasonal firm market purchases	Confidential ABB 2019 WECC Fall Reference Case and Section 12 of ERP Amendment
Spinning reserve requirement	WECC Requirements

Attachment D

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE COLORADO
PROCEEDING NO. 19A-____E**

**IN THE MATTER OF THE APPLICATION OF BLACK HILLS COLORADO
ELECTRIC, LLC CONCERNING: (1) A COMPETITIVE SOLICITATION FOR UP
TO 200 MW OF RENEWABLE ENERGY OUTSIDE OF AN ELECTRIC RESOURCE
PLAN; AND (2) A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR THE RENEWABLE GENERATION FACILITY OR FACILITIES ACQUIRED
AS A RESULT OF THE COMPETITIVE SOLICITATION.**

BIDDER HIGHLY CONFIDENTIAL NONDISCLOSURE AGREEMENT

I, _____, state that I am employed by a bidder in Black Hills Colorado Electric, LLC's 2019 RFP process.

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

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

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

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

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

The Highly Confidential Information I receive may only be used or disclosed to assist the bidder to identify modeling errors or omissions concerning its Potential Resource so that the modeling errors or omissions may be corrected before the 2019 RFP competitive acquisition process is completed.

I will not disclose or disseminate any Highly Confidential Information I receive to any third party other than to those who are specifically authorized to review such Highly Confidential Information and who have signed this highly confidential nondisclosure

agreement. At the conclusion of the 2019 RFP competitive acquisition process, I agree to return all Highly Confidential Information to Black Hills Colorado Electric, LLC.

Name

Title

Employer or Firm

Business Address

Bidder Represented

Date

Signature

Attachment E

Large Generator Interconnection Request Form

(This Large Generator Interconnection Request Form is not a required bid submittal form. This form is included in the RFP for informational purposes only.)

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

1. The undersigned Interconnection Customer submits this request to interconnect its Large Generating Facility with Transmission Provider's Transmission System pursuant to a Tariff.
2. This Interconnection Request is for (check one):
 A proposed new Large Generating Facility.
 An increase in the generating capacity or a Material Modification of an existing Generating Facility.
3. The type of interconnection service requested (check one):
 Energy Resource Interconnection Service
 Network Resource Interconnection Service
4. Check here only if Interconnection Customer requesting Network Resource Interconnection Service also seeks to have its Generating Facility studied for Energy Resource Interconnection Service.
5. Interconnection Customer provides the following information:
 - a. Address or location or the proposed new Large Generating Facility site (to the extent known) or, in the case of an existing Generating Facility, the name and specific location of the existing Generating Facility;
 - b. Maximum summer at degrees C and winter at degrees C megawatt electrical output of the proposed new Large Generating Facility or the amount of megawatt increase in the generating capacity of an existing Generating Facility;
 - c. General description of the equipment configuration;
 - d. Commercial Operation Date (Day, Month, and Year);
 - e. Name, address, telephone number, and e-mail address of Interconnection Customer's contact person;

- f. Approximate location of the proposed Point of Interconnection (optional); and
 - g. Interconnection Customer Data
6. Applicable deposit amount as specified in the LGIP.
7. Evidence of Site Control as specified in the LGIP (check one)
 Is attached to this Interconnection Request
 Will be provided at a later date in accordance with this LGIP
8. This Interconnection Request shall be submitted to the representative indicated below:

FERC Tariff and Admin Department
Black Hills Corp.
PO BOX 1400
Rapid City, SD 57709-1400
9. Representative of Interconnection Customer to contact: [To be completed by

Interconnection Customer]
10. This Interconnection Request is submitted by:

Name of Interconnection Customer: _____

By (signature): _____

Name (type or print): _____

Title: _____

Date: _____

**Attachment A to Appendix 1 to LGIA
 Interconnection Request**

LARGE GENERATING FACILITY DATA

UNIT RATINGS

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

COMBINED TURBINE-GENERATOR-EXCITER INERTIA DATA

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

REACTANCE DATA (PER UNIT-RATED KVA)

	DIRECT AXIS	QUADRATURE AXIS
Synchronous – saturated	X _{dv} _____	X _{qv} _____
Synchronous – unsaturated	X _{di} _____	X _{qi} _____
Transient – saturated	X' _{dv} _____	X' _{qv} _____
Transient – unsaturated	X' _{di} _____	X' _{qi} _____
Subtransient – saturated	X'' _{dv} _____	X'' _{qv} _____
Subtransient – unsaturated	X'' _{di} _____	X'' _{qi} _____
Negative Sequence – saturated	X _{2v} _____	
Negative Sequence – unsaturated	X _{2i} _____	
Zero Sequence – saturated	X _{0v} _____	
Zero Sequence – unsaturated	X _{0i} _____	
Leakage Reactance	X _{lm} _____	

FIELD TIME CONSTANT DATA (SEC)

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

ARMATURE TIME CONSTANT DATA (SEC)

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

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

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

ARMATURE WINDING RESISTANCE DATA (PER UNIT)

Positive R_1 _____
Negative R_2 _____
Zero R_0 _____

Rotor Short Time Thermal Capacity $I_2^2t =$ _____

Field Current at Rated kVA, Armature Voltage and PF = ____amps

Field Current at Rated kVA and Armature Voltage, 0 PF = ____amps

Three Phase Armature Winding Capacitance = ____ microfarad

Field Winding Resistance = _____ ohms _____°C

Armature Winding Resistance (Per Phase) = ____ohms ____°C

CURVES

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

GENERATOR STEP-UP TRANSFORMER DATA RATINGS

Capacity Self-cooled/
 Maximum
 Nameplate
_____ / _____ kVA

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

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

Fixed Taps Available _____

Present Tap Setting _____

IMPEDANCE

Positive Z_1 (on self-cooled kVA rating) _____% _____ X/R

Zero Z_0 (on self-cooled kVA rating) _____% _____ X/R

EXCITATION SYSTEM DATA

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

GOVERNOR SYSTEM DATA

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

WIND GENERATORS

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

Elevation: _____ Single Phase _____ Three Phase

Inverter manufacturer, model name, number, and version:

List of adjustable setpoints for the protective equipment or software:

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

INDUCTION GENERATORS

- (*) Field Volts: _____
- (*) Field Amperes: _____
- (*) Motoring Power (kW): _____
- (*) Neutral Grounding Resistor (If Applicable): _____
- (*) I_2^2t or K (Heating Time Constant): _____
- (*) Rotor Resistance: _____
- (*) Stator Resistance: _____
- (*) Stator Reactance: _____
- (*) Rotor Reactance: _____
- (*) Magnetizing Reactance: _____

- (* Short Circuit Reactance: _____
- (* Exciting Current: _____
- (* Temperature Rise: _____
- (* Frame Size: _____
- (* Design Letter: _____
- (* Reactive Power Required In Vars (No Load): _____
- (* Reactive Power Required In Vars (Full Load): _____
- (* Total Rotating Inertia, H: _____ Per Unit on KVA Base

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

ATTACHMENT F

MODEL ENERGY PURCHASE AGREEMENT

BLACK HILLS COLORADO ELECTRIC, LLC (“BLACK HILLS”)

These model terms are designed to provide bidders with guidance on specific terms and general concepts that will be important in evaluating resource bids and establishing the associated energy purchase agreement. The contract terms applicable to a successful bid will be contained in the final energy purchase agreement with the successful bidder. Terms or concepts in the model Energy Purchase Agreement that are not applicable to a successful bid will be eliminated. This model Energy Purchase Agreement assumes resources interconnected directly with Black Hills’ transmission system. Additional provisions will be required for proposals involving a facility that will not be interconnected to the Company’s transmission system.

Bidders should provide specific exceptions to any applicable model term the bidder does not want to accept. The exception should include a price impact on the bid if the exception is rejected by Black Hills.

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ENERGY PURCHASE AGREEMENT

BETWEEN

BLACK HILLS COLORADO ELECTRIC, LLC

AND

[_____]

This ENERGY PURCHASE AGREEMENT (“Energy Purchase Agreement” or “Agreement”) is made as of the Effective Date, by and between [_____] (“Seller”), a [jurisdiction][entity type], with a principal place of business at [_____], and **BLACK HILLS COLORADO ELECTRIC, LLC** (“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 [____] MW (the “Expected Nameplate Capacity Rating”), and which is further defined below as the “Facility”;

WHEREAS Seller intends to locate the Facility near _____, [Colorado], and to interconnect the Facility with the Interconnection Provider’s System [*at the _____ side of the generator step-up transformer at the _____ 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; 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 provided in the rules

promulgated by the COPUC set forth in 4 CCR 723-1 or 4 CCR 723-3, as applicable, or 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 Applicable Law shall be to such Applicable 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.

Where this Agreement qualifies a Party's discretion, determination, option or the like with the word, "sole," it shall mean, among other things, that such discretion, determination, option or the like will not be held to any reasonableness requirement or standard.

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 any 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 possession or 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, cessation of all or substantially all 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.

"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 any and all present and future federal, state and local laws, statutes, acts, enactments, policy, treaties, international agreements, codes, ordinances, permits, judgments, injunctions, awards, decrees, rules, regulations, interpretations, determinations, requirements, writs, or orders 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(s) of a majority of the ownership interests in Seller, whether voluntary or by operation of law; or any consolidation or merger of Seller or such owner with or into another person, 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, greenhouse gas 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.

“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 _____ in Exhibit A.

“Commercial Operation Year” means any consecutive twelve (12) month period (or longer period not to exceed thirteen (13) months for the first Commercial Operation Year) during the Term of this Energy Purchase Agreement, commencing with the Commercial Operation Date or any anniversary of the first Day of the calendar month immediately following the Commercial Operation Date, and ending on the next anniversary of the first Day of the calendar month immediately following the Commercial Operation Date.

“Committed Renewable Energy” means an amount of Renewable Energy equal to [_____] MWh, as may be adjusted pursuant to Section 7.2, subject to a [___%] decrease per Commercial Operation Year after the first Commercial Operation Year to account for degradation of the components of the Facility.

“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.

“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 (excluding any Tax Benefits derived from a higher tax credit rate under Section 45 or Section 48

of the Internal Revenue Code of 1986, as amended, but for the step-down in such tax credit); 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.

“Damages Cap” means a cumulative amount equal to \$125/kW of the Expected Nameplate Capacity Rating.

“Day” means a calendar day.

“Deemed Generated Renewable Energy” means the quantity of electric energy, expressed in MWh, that Seller reasonably calculates (taking into account historical generation levels and wind or solar resources during the period of curtailment) that 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 or for any period of delay in achieving the Commercial Operation Date for which Black Hills is liable pursuant to Section 14.4(B).

“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 \$25/kW of the Expected Nameplate Capacity Rating.

“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 (a) 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, (b) that could adversely affect the reliability of the Black Hills system or generation supply, (c) that could adversely affect the reliability of any interconnected system, or (d) 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 “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” has the meaning set forth in the preamble.

“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: Seller’s equipment, buildings, all of the generation facilities, including generators, turbines or solar panels (as applicable), 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 Applicable Law, 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 fifteen (15) 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 timely 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 and timely 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 of the same type 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.

"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 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.

“Investment Grade Credit Rating” shall have the meaning set forth in Section 11.1.

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

“kW” means kilowatt.

“kWh” means kilowatt hour.

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

“Major Components” means significant components of the Facility due to cost or importance, including if applicable, solar panels, inverters, wind turbines, step-up transformers, project substations or radial transmission lines.

“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 Operation” 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 (meeting the requirements set forth in Section 13.5), maintenance records, results of inspections, outages and availability (including weather-related curtailment), any meteorological data, control settings, 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 “Party Representatives” shall have the meaning set forth in Section 13.10.

“Period” shall have the meaning set forth in Section 12.1.

“Point of Delivery” means [the Electric Interconnection Point][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, as specified in Exhibit B to this Energy Purchase Agreement][*Choose applicable provision*].

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

“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 electric energy for the 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 or reduction of the Facility’s generation that is required for inspection, or preventive or corrective maintenance.

“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 on the Facility side of 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.

“Tax Benefits” means any and all: (A) production tax credits or investment tax credits 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 tax credits that may be available to Seller with respect to the Facility under 26 U.S.C. § 45 or 26 U.S.C. § 48, or any substantially equivalent tax credit that provides Seller with a tax credit based on investment in or energy production from any portion of the Facility; (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.

“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 [_____] anniversary of the first Day of the calendar month immediately following 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 [*number and make of wind turbines OR capacity and type of solar panels (e.g., single-axis tracking, bifacial); including any battery MW/MWh if applicable*], and associated equipment having a designed maximum output (nameplate rating) in aggregate of approximately [___] 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 [*short name for facility*]. The Facility is located in [_____] County near [_____] [Colorado]. 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.

[(C) *Other technology-specific requirements based on bid*]

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 accept a Commercial Operation Date under this Energy Purchase Agreement that is earlier than one month prior to Commercial Operation Milestone.

4.2 Construction Milestones. In order to achieve the Commercial Operation Date by the Commercial Operation Milestone, Seller shall make 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 _____, 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 Law 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 Major Components, any EPC agreement for the Facility, Facility operating agreements, and electric transmission, distribution and/or

interconnection agreements for the Facility, and all amendments to any of the foregoing. Information that is commercially sensitive, confidential or proprietary may be redacted from the documents provided to Black Hills pursuant to this paragraph, and any such agreements to which Black Hills is not a party, whether or not redacted, shall be deemed the Confidential Information of Seller. 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 and shall advise Black Hills of any problems or issues of which Seller is aware that may materially affect Seller's ability to timely meet the Construction Milestones.

4.6 Black Hills' 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 or as any confirmation or agreement that Seller is in compliance with this Agreement or Applicable Law.

4.7 Governmental Approvals and Permits. Seller shall 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. Black Hills shall have the right to inspect and obtain, and Seller shall provide on request, copies of all Applicable Permits held by Seller and any filings, applications or notices related thereto. Seller will give Black Hills 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, together with the certification specifying Committed Renewable Energy required pursuant to Section 7.2. 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 and the Committed Renewable Energy as set forth in the certification pursuant to Section 7.2 is accepted, 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 and stating any objection to the certified Committed Renewable Energy. 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, or that it objects to the certified Committed Renewable Energy, 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 and the certified Committed Renewable Energy. 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 and the certified Committed Renewable Energy has been accepted or deemed accepted by Black Hills. 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, any procurement or installation agreement for Major Components, and any

manufacturers' warranties, in each case for the commencement of Commercial Operation of the Facility;

(B) An officer of Seller, familiar with the Facility has provided a list of the generation equipment and other Major Components, showing the make, model, serial number and designed nameplate capacity of each such piece of generation equipment and Major Component;

(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 to Black Hills' satisfaction;

(D) Seller has provided to Black Hills an independent professional engineer's certification 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 and provided to Black Hills 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 any 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 Fund meeting the requirements of Article 11 has 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 certifying (i) that 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) that 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) that Seller is in compliance with the terms and conditions of this Energy Purchase Agreement in all material respects, and (iv) to the matters required to be certified pursuant to 4 CCR 723-3668(c); 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. [*This provision is not applicable for any Facility not interconnected with the Black Hills system.*]

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 for its reasonable third-party costs and expenses (including reasonable fees and expenses of counsel) incurred by Seller 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 deliver the Renewable Energy and Test Energy 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 and beyond the Point of Delivery.

(C) In the event that during the Term, Black Hills enters into any regional transmission organization or other organized market, Black Hills shall be the market participant for (or similar authorized party to schedule and deliver) the Renewable Energy and Test Energy thereunder and is hereby authorized to contact the relevant transmission authority and to schedule Renewable Energy and Test Energy with the transmission authority or other applicable party. Seller shall cooperate reasonably with Black Hills and execute such additional documents and instruments as may be reasonably necessary to effect the foregoing.

5.2 Electric Metering Devices.

(A) 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.

(B) 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. Seller shall provide reasonable access to all Electric Metering Devices to Black Hills during normal business hours of Seller and upon at least one Business Day's prior notice.

(C) 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 (or one percent (1%) if not identified therein), 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 5 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.

5.4 Availability Reporting. Seller shall provide accurate and timely updates on the current availability of the Facility to Black Hills' GDPM in accordance with Black Hills' requirements that may be communicated to Seller from time to time.

ARTICLE 6. CONDITIONS PRECEDENT

6.1 Regulatory Approval.

(A) No later than forty-five (45) 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 forty-five (45) Days following the date of this Energy Purchase Agreement, Black Hills shall be deemed to have waived its rights under this Section 6.1(A).

(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 shall have the right to terminate this Energy Purchase Agreement upon notice to Seller, without any further financial or other obligation to Seller as a result of such termination, at any time within nine (9) months following the date of Black Hills' filing of its application for approval, if (i) COPUC or FERC issues a final, non-appealable order either denying approval of this Energy Purchase Agreement or approving it with conditions unsatisfactory to Black Hills in its sole discretion, or (ii) fails to issue within such time a final, non-appealable order approving this Energy Purchase Agreement without conditions unsatisfactory to Black Hills in its sole discretion. Absent such notice of termination by Black Hills on or before the referenced date, Black Hills shall be deemed to have waived its 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 following ninety (90) Days after the date of this Energy Purchase Agreement, if the foregoing matters have not been confirmed to Black Hills' reasonable satisfaction.

6.3 Board Approval. This Energy Purchase Agreement is subject to review and approval by Black Hills' Board of Directors. Black Hills shall submit this Energy Purchase Agreement to its Board of Directors for consideration as promptly as practicable at a regularly scheduled board meeting. In the event that the Black Hills Board of Directors fails to affirmatively approve this Energy Purchase Agreement at such meeting and Black Hills has not otherwise waived this condition in writing, 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 ten (10) Days following such board meeting.

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. Concurrently with delivery of the Notice of Commercial Operation, Seller shall deliver a certification of a professional engineer or qualified consultant retained by Seller certifying to (A) the median amount of Renewable Energy generation expected to be achieved by the Facility in the first Commercial Operation Year (*i.e.*, the "P50" generation level), subject to any objection of such amount by Black Hills as set forth in Section 4.8, and (B) the maximum output of the entire Facility. Upon Black Hills' acceptance or deemed acceptance of the certified Committed Renewable Energy, the Committed Renewable Energy for the first Commercial Operation Year shall be deemed adjusted to such certified amount for all purposes under this Agreement. Seller covenants to deliver at least the Committed Renewable Energy to the Point of Delivery in each Commercial Operation Year, prorated for any partial years.

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 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. Subject to Section 8.2, 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 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 curtail such delivery for any reason and in its sole discretion.

7.5 Tax Benefits. If for any reason, Seller does not receive the Tax Benefits for any period or generally, 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 or Section 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 the first Commercial Operation Year, up to and including one hundred twenty percent (120%) of the Committed Renewable Energy (prorated for any Commercial Operation Year that is not 365 Days in length), at an energy payment rate of \$[_____] per MWh delivered (the “Energy Payment Rate”). For all Renewable Energy delivered by Seller to Black Hills at the Point of Delivery in a Commercial Operation Year, which is in excess of one hundred twenty percent (120%) of the Committed Renewable Energy (prorated), Black Hills shall pay Seller at an energy payment rate equal to seventy five percent (75%) of the Energy Payment Rate. In each Commercial Operation Year after the first Commercial Operation Year, the Energy Payment Rate shall [remain the same as in the prior Commercial Operation Year][increase by ____ percent (_%) of the Energy Payment Rate in effect in the immediately preceding Commercial Operation Year].*[Choose appropriate clause for flat rate or escalating.]* 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 (c) 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, subject to the last sentence of this Section 8.2. 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 or for other reason arising under Applicable Law.

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 **Reactive Power Service Compensation.** The Parties recognize that, although Seller's obligation to provide reactive power service from the Facility to Interconnection Provider's System and any compensation Seller receives for such reactive power service are to be set forth in the Interconnection Agreement, the compensation that Seller receives from Black Hills under this Energy Purchase Agreement includes full compensation for the fixed and variable costs associated with providing such reactive power service. Therefore, Seller shall credit Black Hills monthly, as a separate line item reduction to Seller's invoice, for any compensation that Seller receives, apart from that provided under this Energy Purchase Agreement, for the provision of reactive power service from the Facility during the Term of this Energy Purchase Agreement. Such credit shall differentiate, if possible, between compensation provided for the fixed costs and the variable costs of providing reactive power service.

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 thirtieth (30th) 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 thirtieth (30th) Day following receipt of the billing invoice. If the amount due is not paid on or before the due date, interest shall accrue on the unpaid balance and shall be added to the next billing statement. Such interest shall accrue at a rate equal to prime 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 due date shall be deemed the next Business Day after the calculated due date, and interest shall begin to accrue on the following 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 from the due date 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, including start date and duration (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 fifteen (15) 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. Black Hills shall be entitled 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. Such forecast shall include Seller's assumptions and methods for calculating the hourly expected energy output 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 except in case of Emergency (in which case Black Hills shall provide notice as promptly as practicable), 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 such reasonable safety precautions as may be required by Seller and communicated by Seller in advance in writing 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 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 and hereby does 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 Black Hills from time to time, at no cost to Black Hills, (i) Seller shall deliver or cause to be delivered to Black Hills such attestations or certifications of all Clean Power Attributes and Renewable Energy Credits, and (ii) Seller shall provide full cooperation in connection with Black Hills' 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 may be further set forth 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. Seller shall establish, fund, and maintain during the Term a Security Fund pursuant to the provisions of this Article 11, as follows:

(A) No later than five (5) Business Days following the execution of this Energy Purchase Agreement, Seller shall establish the Security Fund at a level of \$15/kW of the Expected Nameplate Capacity Rating, which shall be comprised of one or more of the permitted forms under Section 11.1(E).

(B) No later than thirty (30) Days after 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 \$125/kW of the Expected Nameplate Capacity Rating, which shall be comprised of one or more of the permitted forms under Section 11.1(E).

(C) 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 Default or indemnification obligations of Seller under this Energy Purchase Agreement. Without limiting the foregoing, 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, 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.

(D) Within five (5) Business Days after drawing on the Security Fund, Black Hills shall provide a written notice or invoice to Seller notifying Seller of the amount drawn and specifying the amount owed and basis for such draw. Seller shall replenish the Security Fund to the full amount required under this Section 11.1 within fifteen (15) Days following any draw on the Security Fund by Black Hills.

(E) 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. Notwithstanding the foregoing, the form of Security Fund set forth under the following subsection (3) shall in no event be acceptable prior to COD.

(1) An irrevocable standby letter of credit or a performance bond, in the form of Exhibit F or other form and substance reasonably acceptable to Black Hills, from an Issuer with an unsecured bond rating equivalent to A- or Aa3 (as applicable) 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- or Aa3, the Issuer must not be on credit watch by any 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-five (365) Days. Seller shall cause the renewal or extension of the security for additional consecutive terms of three hundred and sixty-five (365) 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 11. 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. Seller hereby grants to Black Hills a present and continuing first priority security interest in and lien on (and right to net against) any Security Fund in the form of this Section 11.1(E)(2), and Seller shall enter into any additional deposit control or other agreements as reasonably required by Black Hills to perfect such security interest, in form acceptable to Black Hills.

(3) A guarantee, substantially in the form of Exhibit H or other form and substance reasonably satisfactory to Black Hills from an Issuer with a senior, unsecured long term debt rating equivalent to BBB- or Baa3 (as applicable) 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); provided, that if such Issuer's rating is exactly BBB- or Baa3, such Issuer must not be on credit watch from any rating agency (collectively, "Investment Grade Credit Rating").

(F) 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(E)(1) or Section 11.1(E)(2) no later than fifteen (15) 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.

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 filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor that is not stayed or dismissed within thirty (30) Days of filing;

(5) 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;

(6) Seller's actual fraud or material intentional misrepresentation or misconduct in connection with this Energy Purchase Agreement and/or the construction or operation of the Facility, or any failure or breach of any representation or warranty of Seller that was false when made and has a material adverse effect on Seller's ability to perform its obligations under this Agreement;

(7) Seller's failure to establish and maintain the Security Fund strictly in accordance with Article 11; and/or

(8) 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.

(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 or any Lender Consent:

(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; and/or

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

(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 without notice from Black Hills, 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; provided, however, that such period may be extended for an additional forty-five (45) Day period to achieve the Commercial Operation Date if, 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 (collectively, the "COD Grace Period"). This provision would allow for a total cure period of ninety (90) Days if all conditions of this paragraph were met. Notwithstanding the foregoing, Delay Damages under Section 12.4(A) shall

begin accruing on the first Day after the Commercial Operation Milestone regardless of the COD Grace Period.

(D) 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 and any Lender Consent; provided, that if Seller can demonstrate that such default is not reasonably susceptible to cure within such thirty (30)-Day period, and Seller has begun and diligently pursued cure during such period, the period to cure may be extended as reasonably necessary, but in no event longer than ninety (90) Days:

(1) Seller's failure to meet its obligations with respect to the peak production availability requirements of Section 10.9; and/or

(2) Any material breach of any covenant or obligation of Seller, or any material failure or breach of any representation or warranty of Seller, not otherwise specified in this Section 12.1, or the failure of any representation or warranty of Seller to remain true at any time during the Term, as if made or repeated at such time during the Term, if such failure would reasonably be expected to result in a material adverse effect on Black Hills or on Seller's ability to perform its obligations under this Agreement.

(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 on or after the first 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 or solar resources below eighty-five percent (85%) of the projected wind or solar 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 thirty (30) Days, Seller commences to cure such default within thirty (30) Days and then diligently pursues such cure to completion as soon as practicable thereafter), and (ii) as a result of such efforts, during 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 generating capacity 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), subject in all respects to the terms and conditions of the Interconnection Agreement. 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, if any, 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, including any additional cure period set forth in the Lender Consent.

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 (either individually or together with its Affiliates) 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;

(4) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Black Hills as debtor that is not stayed or dismissed within thirty (30) Days of filing;

(5) Black Hills' actual fraud or material intentional misrepresentation or intentional misconduct in connection with this Energy Purchase Agreement, or any failure or breach of any representation or warranty of Black Hills that was false when made and has a material adverse effect on Black Hills' ability to perform its obligations under this Agreement; and/or

(6) 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.

(B) 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: Black Hills' failure to make any undisputed 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).

(C) 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; provided, that if Black Hills can demonstrate that such default is not reasonably susceptible to cure within such thirty (30)-Day period, and Black Hills has begun and diligently pursued cure during such period, the period to cure may be extended as reasonably necessary, but in no event longer than ninety (90) Days: any material breach of any covenant or obligation of Black Hills, or any material failure or breach of any representation or warranty of Black Hills, not otherwise specified in this Section 12.3, or the failure of any representation or warranty of Black Hills to remain true at any time during the Term, as if made or repeated at such time during the Term, if such failure would reasonably be expected to result in a material adverse effect on Seller or on Black Hills' ability to perform its obligations under this Agreement.

12.4 Damages Prior to Termination. Upon the occurrence of an Event of Default, and subject 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, and be a condition to, the effective cure of such Event of Default.

(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

\$250 per MW of
Expected Nameplate
Capacity Rating per Day

(2) Delay Damages associated with a delay in achieving the Commercial Operation Milestone shall begin to accrue on the first Day following the Commercial Operation Milestone, notwithstanding the COD Grace Period and shall continue accruing until the occurrence of one of the following events: (i) the Commercial Operation Date is achieved, (ii) the Delay Damages Cap is met from cumulative payment of Delay Damages, or (iii) this Energy Purchase Agreement is terminated. 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 for such delay 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 Seller's delay 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 liquidated damages and do not constitute a penalty. 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.

(B) Actual Damages. For all Events of Default other than an Event of Default pursuant to Section 12.1(C), the non-defaulting Party shall be entitled to receive from the defaulting Party all of the actual 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.

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, no later than 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 for any Event of Default

other than an Event of Default of Seller under Section 12.1(C), 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. Upon the termination of this Agreement under this Section 12.5 for an Event of Default of Seller under Section 12.1(C), Seller shall pay to Black Hills liquidated damages in the amount of \$125/kW of the Expected Nameplate Capacity Rating, less any Delay Damages previously paid by Seller to Black Hills, which shall be Black Hills' exclusive remedy and Seller's sole liability for a termination of this Agreement for an Event of Default of Seller under Section 12.1(C). Notwithstanding anything to the contrary in this Agreement, liquidated damages payable under this Section 12.5 for termination for an Event of Default of Seller pursuant to Section 12.1(C) are not Delay Damages and are not subject to the Delay Damages Cap.

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 after COD, 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 or Tax Investor, 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 at least 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 (if applicable) 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 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 Tax Investor, or any nominee or transferee thereof, may foreclose and/or take possession of and operate the Facility in accordance with its rights under the Financing Documents, and Black Hills shall relinquish its right to operate when the Facility Lender or Tax Investor, or any nominee or transferee thereof, requests such relinquishment upon reasonable advance notice.

(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), the exclusivity of liquidated damages for a termination by Black Hills under Section 12.5 for an Event of Default of Seller under Section 12.1(C), 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 of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.9 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 an adequate remedy is not otherwise reasonably available, 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 timely paid by Seller.

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; provided, that nothing in the foregoing shall limit or prohibit the Party claiming damages from including any expenses incurred as a result of making such commercially reasonable efforts in the damages resulting from the other Party's performance or non-performance.

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 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices. Such representative may, at the option of each Party, be the same person as that Party's representative or alternate representative on the 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' designated representatives on the Operating Committee 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 shall keep complete and accurate records, including Operating Records, and all other data required 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 Black Hills' SCADA system. Upon request from Black Hills, Seller shall also provide this information plus maximum gust speed, each on a historical hourly basis in a CSV format or an Excel spreadsheet or other format reasonably requested by Black Hills. Seller shall also maintain the Facility so that it is capable of interfacing with and reacting to Company's GDPM. In the event that Black Hills reasonably concludes that Seller is not providing data required by this Section 13.6, then upon Notice from Black Hills, Seller shall, at Seller's expense, take those actions necessary to fully comply with this Section 13.6. 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, billing 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, or, at Black Hills' option, in electronic format, in which case Seller shall provide this information electronically to Black Hills within fifteen (15) Days following Black Hills' request.

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, and I 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 16.4(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

“Party Representatives”), and (ii) the Party Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute expeditiously. In the event the Party 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. Subject to the foregoing, the term Force Majeure shall include 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; 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) increased costs, adverse economic consequences that may be incurred through the performance of such Party’s obligations, or the inability by Seller to procure or timely 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; or (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 a period of ninety (90) consecutive Days or any one hundred fifty (150) non-consecutive Days (with

respect to Force Majeure occurring prior to COD) or for a period of one hundred eighty (180) consecutive Days or any two hundred seventy (270) non-consecutive Days (with respect to Force Majeure occurring after COD), the Party not claiming Force Majeure may, at any time following the end of such 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 the periods set forth in this Section 14.3, 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 Other Excused Delays.

(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 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, without double-counting any Force Majeure extension, for a period of time equal to the period of time between (i) the Commercial Operation Milestone and (ii) the Day following COD that the Delay Condition(s) have been corrected, unless the parties mutually agree that the Delay Condition(s) require 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 any Tax Benefits, except in situations where the Seller can establish that the failure to meet the Commercial Operation Milestone: (i) was the sole cause of the Facility’s failure to qualify for (and not merely a delay in qualifying for) such Tax Benefits, and (ii) was proximately caused by Black Hills’ willful misconduct or gross negligence in its performance of this Agreement without any negligence, willful misconduct or breach of this Agreement by Seller, and which could not have been avoided or overcome by the commercially reasonable efforts of Seller. If Black Hills is liable for damages pursuant to the immediately preceding sentence, then the measure of such damages with respect to such Tax Benefits shall be the Curtailment Tax Benefits.

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 valid separate legal entity, duly organized, validly existing and in good standing under Applicable Law. Seller is qualified to do business in the State in which the Facility is located 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. 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 organizational action, and does not and will not:

(1) require any consent or approval by any governing corporate or management 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, bylaws or equivalent, 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; or (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 Law 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. Throughout the Term, Seller promptly shall disclose to Black Hills (i) any violation of Applicable Law or regulations arising out of the construction or operation of the Facility and remediate any Environmental Contamination identified at the Site, (ii) the presence of Environmental Contamination at the Facility or on the Site, including any alleged to exist by any Governmental Authority having jurisdiction over the Site, or (iii) the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to any 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, and 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 a supplier of Major Components 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 any supplier of Major Components 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 any Major Component 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 a Major Components 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 limited liability company 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 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. No later than commencement of construction and thereafter at least five (5) Days prior to each applicable expiration date, Seller shall provide Black Hills with an insurance certificate acceptable to Black Hills evidencing that insurance coverages for the Facility are in force and 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).

16.2 Policy Requirements. All policies shall be written on an occurrence basis, except as provided in Section 16.4. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by 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.

16.3 No Implied Limitation. Seller's liability under this Energy Purchase Agreement is not limited to the amount of insurance coverage required herein.

16.4 Term and Modification of Insurance.

(A) All insurance required under this Energy Purchase Agreement shall cover occurrences during the Term, and for a period of two (2) years after the Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this Energy Purchase Agreement and such insurance shall be maintained or caused to be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of six (6) years after the Term.

(B) Black Hills shall have the 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.

16.5 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. In addition, Seller shall indemnify, defend and hold harmless Black Hills’ Indemnified Parties from and against any and all claims and losses related to or arising out of any Environmental Contamination or Hazardous Materials at the Site and any illegal disposal of Hazardous Materials in connection with the Site or the Facility. 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 17 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 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified 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 (A) 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); (B) claims or losses related to Environmental Contamination or Hazardous Materials; (C) Seller's representations, warranties and covenants under Article 15; or (D) 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 lesser 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 Applicable Law. Each Party shall at all times comply with all Applicable Law, except for any non-compliance that, 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. Each Party shall promptly disclose to the other Party any violation of any Applicable Law arising out of the Facility and/or performance of this Energy Purchase Agreement. 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 Applicable Law. Each Party assumes the risk of changes in Applicable Laws following the date hereof, that affect such Party's costs of ownership and operation of its assets, and its performance of this Energy Purchase Agreement, except as otherwise specifically set forth herein.

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 its rights or delegate its obligations under this Energy Purchase Agreement or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned 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 or such security shall be replaced by the assignee in the form and amount required pursuant to Section 11.1 prior to the effectiveness of such assignment; and (iv) the assignee must first obtain such approvals as may be required by all applicable regulatory bodies. For all purposes of this Article 19, a Change of Control shall be deemed an assignment.

(A) Seller's consent shall not be required for Black Hills to assign this Energy Purchase Agreement to an Affiliate of Black Hills or to any successor in interest to all or any substantial portion of Black Hills' electric service territory.

(B) Black Hills' consent shall not be required for Seller to assign this Energy Purchase Agreement for collateral purposes to the Facility Lender or Tax Investor. Seller

shall notify Black Hills, pursuant to Section 13.1, of any such assignment to the Facility Lender or Tax Investor 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 pursuant to an agreement between Black Hills and such Facility Lender or Tax Investor (generally, a "Lender Consent"). The Lender Consent shall include the provisions set forth on Exhibit I 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. Notwithstanding anything to the contrary in this Agreement, in any instance hereunder that requires Black Hills to provide notice to the Facility Lender or Tax Investor, the failure of Seller or the Facility Lender or Tax Investor to timely provide correct notice information to Black Hills shall operate as a complete excuse of such notice obligation of Black Hills and a complete defense against any claim of breach or default of Black Hills to provide such notice.

19.3 Notice of Any Facility Lender and Tax Investor Action. Within three (3) Business Days following Seller's receipt of each written notice from any Facility Lender or Tax Investor of a default under the Financing Documents or otherwise, or Facility Lender's or Tax Investor's intent to exercise any remedies under any Financing Document or otherwise, Seller shall deliver a copy of such notice to Black Hills.

19.4 Transfer Without Consent is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in Seller, the Facility or 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.

19.5 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 and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Facility, or any components or appurtenances thereof (including ad valorem taxes on the Facility), and all *ad valorem* taxes relating to the Facility, and any taxes imposed prior to the Point of Delivery with respect to the products and services to be sold and delivered to Black Hills hereunder, whether calculated based upon cost, value, labor, capital, production, savings, green attributes or other parameters.

(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 and costs incurred by Seller or its agents, employees or contractors arising from noncompliance by Seller, its employees, or subcontractors with any provision of this Energy Purchase Agreement, or any contractual obligation, permit or requirements of Applicable 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 Applicable 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. Neither Party shall seek (nor support any third party seeking) any prospective or retroactive change to the rates or terms of service under this Energy Purchase Agreement pursuant to Section 205, 206 or 306 of the Federal Power Act.

(B) 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”), as interpreted in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1*, 128 S. Ct. 2733 (2008).

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.

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

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

20.9 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; provided, that the Exhibits attached hereto may be changed according to the provisions of Section 13.9. Time is of the essence in the performance of the Parties' respective obligations hereunder.

20.11 Binding Effect. This Energy Purchase Agreement, as it may be amended from time to time pursuant to this Article 20, 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; Waiver of Jury Trial. 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. SELLER AND BLACK HILLS EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS ENERGY PURCHASE AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF SELLER AND BLACK HILLS RELATED HERETO AND EXPRESSLY AGREE TO HAVE ANY DISPUTES THAT ARE LITIGATED IN A COURT OF COMPETENT JURISDICTION BE ADJUDICATED BY A JUDGE OF THE COURT, WITHOUT A JURY.

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 term 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. 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.

(A) For purposes hereof, "Confidential Information" means

(1) information specifically designated as Confidential Information in this Agreement; and

(2) written information delivered by one Party to the other from time to time during the Term, which information is labeled prominently as "Confidential," "Proprietary" or the like and specifically references this Agreement.

Provided, however, that "Confidential Information" shall not include information that (x) is publicly available as of the date hereof, or becomes publicly

available during the Term through no fault of the recipient Party; (y) can be documented as independently developed by the recipient Party; and/or (z) is disclosed to the recipient Party from an ultimate source other than the protected Party, without breach of this Agreement by the recipient Party.

(B) The receiving Party shall (i) maintain the confidentiality of all Confidential Information of the disclosing Party, using the same degree of care used by the recipient Party to protect its own Confidential Information (and in any event not less than a reasonable degree of care), and (ii) shall use Confidential Information only in connection with its performance of this 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.

(C) In the event that Confidential Information is disclosed to the COPUC, its staff, interveners or consumer counsel in any regulatory or administrative proceedings before the COPUC, the disclosing Party shall submit such Confidential Information in accordance with applicable COPUC confidentiality rules and procedures. In the event that Confidential Information must otherwise be disclosed by Applicable Law, the Party requested or required to make a disclosure shall notify the non-disclosing Party sufficiently in advance to allow the non-disclosing Party a reasonable opportunity to obtain a protective order or seek other remedies, prior to disclosure by the Party requested or required to make such disclosure.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Energy Purchase Agreement as of the Effective Date.

SELLER

By: _____

Name: _____

Title: _____

Date: _____

**BLACK HILLS COLORADO ELECTRIC,
LLC**

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

CONSTRUCTION MILESTONES

[To be adjusted for the specific project]

- [Date] Seller shall have demonstrated that the Facility has the required network resource designation in accordance with Section 6.2 of the Agreement.
- [Date] Seller shall have provided Black Hills with documentation that all Applicable Permits have been obtained or will be obtained by the Commercial Operation Milestone.
- [Date] Seller shall have provided Company with a redacted copy of the executed EPC agreement and other general contractor agreements for the Facility.
- [Date] Seller shall have commenced construction.
- [Date] Seller shall have laid the foundation for all Facility buildings, towers and step-up transformation facilities and completed any civil engineering work.
- [Date] The [wind turbines and collection systems][solar panels and inverters] and the step-up transformer shall have been installed at the Site and shall be mechanically complete.
- [Date] Seller's Interconnection Facilities shall have been constructed and such facilities are capable of being energized.
- [Date] The Facility has achieved Commercial Operation (Commercial Operation Milestone)

EXHIBIT B

FACILITY DESCRIPTION and SITE MAPS

[This Exhibit shall include a description of the Facility and all material components thereof, including map, aerial pictures, one-line diagram, Point of Delivery and (if different) the Interconnection Point.]

The address of the Facility is: [_____]

Seller is developing the [Project name] in [County], [State]. The project is located on [several contiguous parcels/one parcel] of private land totaling approximately [__] acres. This proposed project is located approximately [description of project location]. The project lies within [number] 7.5-minute U.S. Geological Survey Quadrangles: [list].

The development of this project includes the installation of [number and type of solar panels or wind turbines] [__] MW/kW [wind turbine generators / solar panels], with an expected nameplate capacity of [__] MW.

The following Figure 1 contains a site plan of the [Project name].

[Additional bid specific requirements to be included.]

EXHIBIT C
NOTICE ADDRESSES

Seller	Company
Notices: [Seller] Address: _____	Notices: Black Hills Colorado Electric, LLC [105 South Victoria Avenue Pueblo, Colorado 81003]
Attention: _____	Attention: _____
Phone: _____	Phone: _____
Fax: _____	Fax: _____
Email: _____	Email: _____
With a copy to: [Address]	With a copy to: [Address]
Attention: _____	Attention: _____
Email: _____	Email: _____
Fax: _____	Fax: _____
Operating Committee Representative:	Operating Committee Representative:
[Name]	[Name]
[Email]	[Email]

EXHIBIT D
INSURANCE COVERAGE

Type of Insurance	Minimum Limits of Coverage
Commercial General Liability (CGL) and commercial umbrella	\$10,000,000 combined single limit each occurrence and the aggregate, where applicable. If CGL insurance contains a general aggregate limit, it shall apply separately to the Facility.

[Note: the above minimum limits of coverage may be achieved with any combination of CGL and umbrella or excess liability coverage.]

CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (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 (for ongoing operations) and endorsement CG 20 37 (for completed operations), or a substitute providing equivalent coverage in each case, 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 and noncontributing with insurance afforded by these policies.

Type of Insurance	Minimum Limits of Coverage
Business Automobile Liability	\$2,000,000 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.

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.

Type of Insurance	Minimum Limits of Coverage
Employers Liability	\$2,000,000 each accident for bodily injury by accident, or \$2,000,000 each employee for bodily injury by disease.

Type of Insurance	Minimum Limits of Coverage
Builder's Risk	Replacement value of the Facility

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

Type of Insurance	Minimum Limits of Coverage
Environmental Impairment Liability	\$5,000,000 each occurrence.

Type of Insurance	Minimum Limits of Coverage
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.

Type of Insurance	Minimum Limits of Coverage
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.
--	--

Business Interruption insurance shall cover loss of revenues or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on commercially reasonable terms as determined by Black Hills, subject to a commercially reasonable deductible that shall be the responsibility of Seller. Notwithstanding any other provision of this 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**

[Bid specific]

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]

BENEFICIARY:

APPLICANT:

[INSERT NAME OF SELLER]

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 US\$ _____ (_____ 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 SCHEDULE "A" ("SIGHT DRAFT"), DRAWN ON ISSUER AND ACCOMPANIED BY THIS LETTER OF CREDIT OR A FACSIMILE OR ELECTRONIC COPY HEREOF. ALL SIGHT DRAFT(S) MUST BE SIGNED ON BEHALF OF BENEFICIARY AND THE SIGNATOR MUST INDICATE HIS OR HER TITLE OR OTHER OFFICIAL CAPACITY. NO OTHER DOCUMENTS WILL BE REQUIRED TO BE PRESENTED. ISSUER WILL EFFECT PAYMENT UNDER THIS LETTER OF CREDIT ON THE NEXT BUSINESS DAY AFTER PRESENTMENT OF THE SIGHT DRAFT(S). ISSUER IRREVOCABLY AND UNCONDITIONALLY UNDERTAKES TO PAY, AND SHALL PAY, 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 BY HAND DELIVERY,

GUARANTEED OVERNIGHT DELIVERY SERVICE, OR BY FACSIMILE 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 "EPA"). NOTWITHSTANDING ANY REFERENCE IN THIS LETTER OF CREDIT TO THE EPA OR ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS, OR REFERENCES IN THE EPA 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 OR CERTIFIED MAIL THAT IT ELECTS NOT TO EXTEND THIS LETTER OF CREDIT FOR SUCH ADDITIONAL PERIOD. NOTICE OF NON-EXTENSION WILL BE GIVEN BY ISSUER TO BENEFICIARY AT BENEFICIARY'S ADDRESS SET FORTH HEREIN OR AT SUCH OTHER ADDRESS AS BENEFICIARY MAY DESIGNATE TO ISSUER IN WRITING AT ISSUER'S LETTERHEAD ADDRESS.

THIS LETTER OF CREDIT IS FREELY TRANSFERABLE BY BENEFICIARY IN WHOLE OR IN PART, AND THE NUMBER OF TRANSFERS IS UNLIMITED. ISSUER 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 SCHEDULE "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 AND REVISIONS THERETO, INCLUDING THE SUPPLEMENT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS FOR ELECTRONIC PRESENTATION (THE "UCP"), EXCEPT TO THE EXTENT THAT THE TERMS HEREOF ARE INCONSISTENT WITH THE PROVISIONS OF THE UCP, INCLUDING BUT NOT LIMITED TO ARTICLES 14(B) AND 36 OF THE UCP, IN WHICH CASE THE TERMS OF THIS LETTER OF CREDIT SHALL GOVERN. WITH RESPECT TO ARTICLE 14(B) OF THE UCP, ISSUER SHALL HAVE A REASONABLE AMOUNT OF TIME, NOT TO EXCEED THREE (3) BANKING DAYS FOLLOWING THE DATE OF ISSUER'S RECEIPT OF DOCUMENTS FROM THE 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 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: _____

SCHEDULE "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]

**SCHEDULE "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

RIGHT OF FIRST OFFER AGREEMENT

This Right of First Offer Agreement (“Agreement”) is made and entered into as _____ (the “Effective Date”), by and between (i) _____, a _____ (“Owner”), and _____, a _____ (“Parent”) (Owner and Parent, either, a “Seller”), and (ii) Black Hills Colorado Electric, LLC, a Delaware limited liability 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.”

Background

A. Owner and Company have entered into that certain Energy Purchase Agreement on or about the Effective Date (the “EPA”), pursuant to which, and among other things, Owner (i) will develop, design and construct the Facility and (ii) sell and deliver to Company at the Point of Delivery the Renewable Energy produced by the Facility.

B. Parent owns 100% of the voting equity securities in the Owner (the “Interest”).

C. In accordance with the terms of the EPA, the Parties desire to enter into this Agreement to, among other things, provide Company with a right of first offer to purchase the Facility or the Interest.

D. Capitalized terms used but not otherwise defined in this Agreement have the meanings given to such terms in the EPA.

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:

Agreement

1. Right of First Offer. At any time after the Commercial Operation Date:

(a) If Owner proposes to sell all or substantially all of, or a majority undivided interest in, the assets that comprise the Facility (the “Assets”) to an unaffiliated third party (except for any assignment to a Facility Lender as security under the Financing Documents as permitted under the EPA), Owner shall first offer to sell the Assets to Company via written notice to Company.

(b) If Parent proposes to sell a majority of the Interest in Owner (a “Controlling Interest”) to an unaffiliated third party, Parent shall first offer to sell the Majority Stake to Company via written notice to Company (in either case of (a) or (b), a “ROFO Notice”).

2. ROFO Notice. Any ROFO Notice provided by Owner or Parent, as the case may be (a “Selling Party”), shall describe the proposed transaction, including the minimum price, status of title to the Site, status of the Facility, current ownership of the Assets and Interest, liabilities to be assumed and other terms which the Selling Party will require as conditions to consummating a proposed sale of the Assets or the Controlling Interest, as the case may be (a “Transaction”).

3. Diligence Period. Upon Company’s receipt of the ROFO Notice, Company will have 60 Days to investigate the Transaction and conduct due diligence (the “Diligence Period”). The Selling Party will reasonably assist Company in its due diligence of the Transaction which will include, among other things and at a minimum, physical inspections, surveys and operating tests of the Facility and the Site, and reviews of the Selling Party’s applicable contracts, books and records, and interviews of personnel. No later than the expiration of the Diligence Period, Company may elect to purchase the Assets or the Controlling Interest, as the case may be, on substantially the same terms as set forth in the ROFO Notice by provide written notice of the same to Owner. If Company fails to notify Owner of Company’s election by the expiration of the Diligence Period, Company will be deemed to have rejected the Transaction.

4. Purchase and Sale. If Company elects to purchase the Assets or the Controlling Interest, as the case may be, the Company and the Selling Party shall negotiate and execute a definitive contract for the transaction (a “PSA”). The PSA will include the price and other terms set forth in the ROFO Notice and such other terms and conditions as Company and the Selling Party may agree on, including those contemplated Schedule A to this Agreement. In the event that Company and the Selling Party cannot agree on an executable form of PSA, (a) the issue shall be submitted to “baseball” arbitration in Denver, Colorado before one arbitrator appointed by the Judicial Arbitration and Mediation Services, Inc. (JAMS), whereby each party will submit to the arbitrator a form of proposed PSA, and the arbitrator will be required to select one of the two forms to be used as the PSA in the transaction, without compromise, as the arbitral award, based on the arbitrator’s determination of the form that best effectuates the Parties’ intentions as set forth in this Agreement and otherwise best reflects reasonable and customary terms for similar transactions in the electric generation industry and (b) the party whose form PSA is rejected shall pay the fees and costs of JAMS for the arbitration.

5. ROFO Expiration or Rejection. If Company rejects or is deemed to have rejected the Transaction, the Selling Party may offer and close the Transaction on terms no more favorable to the Selling Party than that set forth in the ROFO Notice at any time within the 12-month period following the date of Company’s rejection or deemed rejection of the Transaction, so long as the third-party buyer agrees to be bound by the terms and conditions of this Agreement. If the Selling Party fails to close the Transaction within such 12-month period, the Transaction will again be subject to the right of first offer set forth in Section 1 of this Agreement.

6. Cooperation; Good Faith Efforts. The Selling Party shall cooperate in all respects as reasonably necessary for Company to exercise its rights herein, and Owner shall operate the Facility in the ordinary course of business following the date of issuance of a ROFO Notice.

7. Other Transactions.

(a) Parent and Owner shall give Company at least ninety (90) Days' prior written notice ("Other Transaction Notice") of an Other Transaction that does not otherwise trigger Company's rights under Section 1 of this Agreement in order to provide Company with an opportunity to discuss and negotiate with Parent or Owner a potential sale of the Assets or the Interest to Company. Any Other Transaction Notice shall include a reasonable summary of the Other Transaction and how the Other Transaction would affect the ownership of the Facility, including the economic benefits thereof, and the direct and indirect control of Owner. Notwithstanding anything to the contrary contained herein, issuance of an Other Transaction Notice shall not relieve Owner of its obligation to provide Company with its right of first offer in accordance with Section 1.

(b) For purposes of this Agreement, an "Other Transaction" means any transaction or arrangement whereby an unaffiliated third party would obtain direct or indirect ownership, beneficial ownership of the economic benefits of the Facility, or control of the Facility, the Assets, the Interest or Owner, that Owner or any of its direct or indirect Affiliates may be considering, proposing, or negotiating with an unaffiliated third party, including without limitation any the following agreements, transactions, arrangements: (i) a sale lease back arrangement arising from or related to the Facility; (ii) a sale of the Owner's accounts receivables arising from the Facility; (iii) a sale of a majority of the voting equity securities in Parent or in a direct or indirect Affiliate that controls Parent; (iv) any voting, control, profit-sharing or similar arrangement with respect to the Facility, the Interest or the Assets; or (v) any option or other right to any of the foregoing or any Transaction.

8 Confidentiality. During the term of this Agreement and until the earlier of (i) the execution of a PSA or (ii) the 3rd anniversary of the termination of this Agreement, Company shall treat any information contained in the ROFO Notice, or that it obtains regarding a Transaction or Other Transaction, as Confidential Information in accordance with Section 20.17 of the EPA, unless and only to the extent that such information is not Confidential Information in accordance with such section of the EPA.

9. Termination. This Agreement will terminate in its entirety if: (a) the EPA is terminated for any reason or (b) the Company and a Selling Party mutually executes a PSA.

10. General Terms.

(a) Notices. All notices, requests, demands, instructions or other communications required or permitted to be given hereunder ("Notices") will be in writing and addressed to the Parties at their respective addresses set forth below and marked to the designated Party's attention. Notices shall either be hand delivered or mailed first-class or by overnight delivery, postage prepaid, to the representative of the other Party. If mailed, the Notice must be simultaneously sent by facsimile, electronic mail or other electronic means. Any Notice will be deemed to have been received by 5 P.M. Mountain Time on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such time in which case it

shall be deemed received on the following Business Day). A Party will 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 Parties 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: _____

(b) 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”). 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.

(c) Entire Agreement; 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. In the event of any conflict between this Agreement and the EPA, the EPA will control.

(d) Successors and Assigns. This Agreement may not be assigned by a Seller without the prior written consent of Company; provided, however, that a Seller may assign to any Affiliate of such Seller upon Notice to (but without requiring the consent of) Company. No assignment shall release Company or either Seller from its obligations hereunder. Subject to the foregoing, this Agreement 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 Interest.

(e) Severability. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, (i) 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 (ii) the Parties shall thereupon amend this Agreement to legally and most closely embody the spirit and intent of the invalid provision.

(f) 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.

(g) Counterparts. This Agreement may be executed in counterparts, all of which shall constitute one agreement binding on each of the Parties 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, LLC,**
a Delaware limited liability company

By: _____

Title:

Owner: _____,

By: _____

_____, [Manager]

Parent: _____, [LLC],
a _____ [limited liability company]

By: _____

_____, [Manager]

Schedule A

PSA PROVISIONS

Any PSA will include provisions based on the following:

1. The parties will agree that the transactions contemplated in the PSA will close on the Day as may be specified by Company, not more than 180 Days following execution of the PSA (or such longer period as may be required for the Colorado Public Utility Commission (the “PUC”) to act thereon).
2. Owner will agree to operate the Facility, and Owner and Company will agree to perform the EPA, in the ordinary course of business pending the closing of the transactions contemplated under the PSA.
3. If the PSA is for an asset purchase and to the extent that Owner owns the Site, Owner will agree to convey the Site to Company via special warranty deed, free and clear of all mortgages, deeds of trust, UCC-1s, and other liens materially adverse to Company’s ownership and operation thereof.
4. The parties will agree that all revenues and expenses of the Facility will be prorated as of the date of closing.
5. The Selling Party will agree to provide customary comprehensive representations, warranties and indemnities to Company regarding its legal right to execute and perform the PSA, ownership of the securities being sold under the PSA (if applicable), title, physical condition, vendors, employees, operations, finances, contracts, maintenance and other relevant matters pertaining to the Facility, in each case, unqualified by its knowledge but subject to such factual exceptions as the selling party may disclose. Absent fraud, the parties will agree that the selling party’s liability for any misrepresentations of its representations and warranties will not exceed 100% of the purchase price.
6. The Selling Party will agree to a reasonable escrow to secure its representations, warranties, and covenants under the PSA.
7. If the PSA is for an asset purchase, Company shall assume all material contracts of Owner related to the Facility that are reviewed and approved by Company (such approval not to be unreasonably withheld) during the due diligence period.
8. The parties will agree that Company’s obligation to close the transactions contemplated under the PSA will be conditioned upon (i) approval by the PUC, (ii) counterparty consent under all material contracts requiring such consent, (iii) receipt by Company of all necessary permits to own and operate the Facility, and (iv) that there is no material casualty or condemnation of the Facility prior to closing.
9. The PSA will be governed by Colorado law. Venue for any dispute under the PSA will be in the Colorado District Court for the county in which the Facility is located.

EXHIBIT H
FORM OF GUARANTY

This Guaranty ("Guaranty") is executed and delivered as of this ____ day of _____, 20__ by _____, a _____ ("Guarantor"), in favor of Black Hills Colorado Electric, LLC, a Delaware limited liability 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 owned or 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, as a primary obligation of Guarantor (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. This

Guaranty shall survive termination of the EPA to the extent necessary to enforce and complete the rights, duties and obligations of Black Hills and Seller thereunder.

2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to [_____] (US \$[____]), 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 promptly 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 will 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 obligations of Seller under the EPA, or Guarantor's performance of the Obligations, 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 those Obligations, 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 Facility, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by 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 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 or any internal governing document of

Guarantor. 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. Financial Statements. If requested by Black Hills, Guarantor shall deliver financial statements as described below, which in all cases shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles:

(a) Within one hundred-twenty (120) days following the end of each fiscal year that any Obligations are outstanding, a copy of its quarterly report containing its consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and

(b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year that any Obligations are outstanding, a copy of its quarterly report containing its consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year and: (i) certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission ("SEC") rules and regulations, if Guarantor is an SEC reporting company; or (ii) certified by the chief financial officer, treasurer or any assistant treasurer of Guarantor (or any employee of Guarantor designated by any of the foregoing) as being fairly stated in all materials respects (subject to normal year end audit adjustments) if Guarantor is not an SEC reporting company.

(c) For the purposes of the requirement in this Section 11, if Guarantor's financial statements are publicly available electronically on the website of the Guarantor or the SEC, then Guarantor shall be deemed to have met this requirement.

12. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

13. 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.

14. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of Black Hills and Guarantor.

15. 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.

16. 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]

EXHIBIT I

LENDER CONSENT PROVISIONS

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

1. Seller and Company will neither modify nor terminate the 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 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, any bankruptcy stay is removed, or possession is otherwise obtained by or on behalf of the Facility Lender.
4. Neither the Facility Lender nor any other participant in the Facility Debt shall be obligated to perform or be liable for any obligation of Seller under the 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.
5. Upon the exercise of the Facility Lender's rights and remedies that results in a successor owner or operator of the Facility, the Facility Lender shall require and cause the successor (i) to assume all of Seller's obligations under the Energy Purchase Agreement, both prospective and accrued, (ii) cure any then-existing defaults that are capable of cure by performance or the payment of money damages, (iii) to have substantial experience in the operation of power generation facilities akin to the Facility, either directly, through its affiliates or through an operator acceptable to the Company, and (iv) to enjoy (together with its parents and affiliates) an Investment Grade Credit Rating or other creditworthiness satisfactory to the Company. In the event that the Facility Lender or its successor assumes the Energy Purchase Agreement in accordance with this paragraph 5, 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.
6. Upon any rejection or other 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 substantially 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.