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December 21, 2018

VIA ELECTRONIC FILING

Ms. M. Lynn Jarvis, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

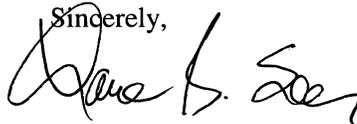
**RE: Duke Energy Carolinas, LLC's Testimony and Exhibits
Docket Nos. E-7, Sub 1181, SP-12478, Sub 0 and SP-12479, Sub 0**

Dear Ms. Jarvis:

Pursuant to the Commission's November 29, 2018 *Order Requiring Filing of Testimony and Scheduling Hearing (the "Order")*, I enclose Duke Energy Carolinas, LLC's ("DEC" or the "Company") Testimony and Exhibits of Greg D. Lewis, Manu Tewari and Veronica I. Williams for filing in connection with the referenced matter. Portions of Mr. Lewis' testimony and Lewis Confidential Exhibit No. 1 contain the Company's proprietary cost information. Public disclosure of this confidential information would allow competitors, vendors and other market participants to gain an undue advantage, which may ultimately result in harm to customers. Also, portions of Mr. Tewari's testimony contain commercially sensitive information of third parties that is subject to nondisclosure agreements which prevent DEC from disclosing such information to third parties.

Concurrent with this filing and pursuant to the Order, I am also providing the Commission an electronic version of the confidential present value of revenue requirements analysis, with formulas intact. This file is being emailed to Commission legal staff.

Thank you for your attention to this matter. If you have any questions, please let me know.

Sincerely,


Lawrence B. Somers

Enclosure

cc: Parties of Record
Dwight Allen, Esquire

OFFICIAL COPY

Dec 21 2018

CERTIFICATE OF SERVICE

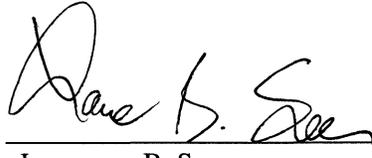
I certify that a copy of Duke Energy Carolinas, LLC's Testimony and Exhibits, in Docket Nos. E-7, Sub 1181, SP-12478, Sub 0, and SP-12479, Sub 0, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to the following parties of record:

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This is the 21st day of December, 2018.

By:



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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1181

In the Matter of)
Transfer of Certificates of Public)
Convenience and Necessity and Ownership)
Interests in Generating Facilities from)
Duke Energy Carolinas, LLC to)
Northbrook Carolina Hydro II, LLC and)
Northbrook Tuxedo, LLC)

**DIRECT TESTIMONY OF
GREGORY D. LEWIS**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Gregory D. Lewis, and my business address is 526 South Church
3 Street, Charlotte, North Carolina 28202.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by Duke Energy Carolinas, LLC (“Duke Energy Carolinas,”
6 “DEC” or the “Company”) and am currently on an interim assignment in the
7 Carolinas Regulated Renewables department. Duke Energy Carolinas is a
8 wholly owned, indirect subsidiary of Duke Energy Corporation (“Duke
9 Energy”).

10 **Q. WHAT ARE YOUR RESPONSIBILITIES IN YOUR INTERIM ROLE?**

11 A. I am currently on an Interim Assignment in a consulting capacity until my
12 pending retirement, which includes supporting the divestiture of the Bryson,
13 Franklin, Mission, Tuxedo, and Gaston Shoals hydroelectric generation
14 facilities (which I will collectively refer to as the “small hydro facilities”).

15 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL
16 BACKGROUND.**

17 A. I am a registered Professional Engineer in North Carolina, having received a
18 Bachelor of Science degree in Civil Engineering from Ohio State University
19 and a Master of Science degree in Mechanical Engineering from the University
20 of South Carolina. I have worked for Duke Energy for over thirty-seven years,
21 with the overwhelming majority of my responsibilities being focused in hydro
22 engineering, operations, maintenance, and program management. Immediately
23 prior to my current role, I served as Manager of Regional Services for the

1 Regulated Renewables Fleet at Duke Energy from January 2017 until June
2 2018. As Manager of Regional Services for the Regulated Renewables Fleet, I
3 had management responsibility for fleet engineering and technical support,
4 remote operating system support, hydro cybersecurity, and the vast majority of
5 hydro capital projects across the Company's North Carolina and South Carolina
6 hydroelectric generation facilities. I began my career at Duke Power in 1981
7 as an associate engineer in the Design Engineering department. Over the course
8 of my career, I then held positions of increasing responsibility, including
9 Program Manager for the "Hydrovision" rehabilitation and upgrade program,
10 support of due diligence assessments of various external hydro assets,
11 Technical Manager over hydro engineering and technical support, and Manager
12 of Regional Services.

13 I have also had the honor to serve in leadership roles for several
14 hydroelectric industry professional organizations. I served on the Executive
15 Committee of the CEATI Hydraulic Power Life Interest Group (a collaborative
16 group of 70 worldwide hydro utilities and owners) as Vice-Chair/Chair from
17 2014 to 2018 and have been an active technical contributor since 2004. I was
18 a member of the Board of Directors of the National Hydropower Association
19 from 2007 to 2010 and served as Treasurer of the Association and a member of
20 the Executive Committee in 2009-10. I also served on the Department of
21 Energy's Water Power Peer Review Panel as a subject matter expert in 2010,
22 2011, 2018, and in 2014 served as the chairman of the panel. I have also served

1 on the Advisory Board for Hydro Review magazine since 2008 and previously
2 served as a Board member for the Hydro Research Foundation.

3 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NORTH**
4 **CAROLINA UTILITIES COMMISSION?**

5 A. No.

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 A. The purpose of my testimony in this proceeding is to support DEC's
8 Application to Transfer Certificates of Public Convenience and Necessity
9 ("CPCN") and Ownership Interests in Generating Facilities from Duke Energy
10 Carolinas, LLC to Northbrook Carolina Hydro II, LLC and Northbrook
11 Tuxedo, LLC. Specifically, I will discuss how DEC reached the decision to sell
12 the small hydro facilities (which I will refer to as the "Transaction") and explain
13 the economic analysis the Company performed in making that decision. I will
14 also briefly describe each of the small hydro facilities and explain the capital
15 investments made at the small hydro facilities from 2015 to year-to-date
16 ("YTD") 2018.

17 **Q. PLEASE GENERALLY DESCRIBE THE SMALL HYDRO**
18 **FACILITIES THAT DEC IS PROPOSING TO SELL.**

19 A. The small hydro facilities are some of the oldest in DEC's portfolio, having
20 entered service more than ninety years ago. These small conventional hydro
21 plants have a relatively small generation contribution to DEC. In 2017, the
22 DEC Hydro fleet generated over 5,700 gigawatt hours ("GWh") of energy with
23 these five facilities contributing only 31.6 GWh, which is less than 0.6% of the

1 DEC Hydro generation. On a capacity basis these assets have a capacity of 18.7
 2 MWs, which is approximately 0.6% of total DEC hydro capacity and less than
 3 0.1% of DEC system capacity. These small stations were once an important part
 4 of the 1900's electrical system and they served their communities well;
 5 however, today, they represent a very small portion of Duke Energy Carolinas'
 6 generating system and their strategic importance has significantly diminished
 7 in serving DEC customers.

8 Below is a table showing more detail about the five small hydro
 9 facilities the company is proposing to sell to Northbrook Carolina Hydro II,
 10 LLC and Northbrook Tuxedo, LLC.

| Station | <i>Bryson</i> | <i>Franklin</i> | <i>Gaston Shoals</i> | <i>Mission</i> | <i>Tuxedo</i> |
|------------------------|-------------------------|-----------------------------------|--------------------------------------|--------------------------|-------------------------|
| Location | Swain Co, NC | Macon Co, NC | Cherokee Co, SC/ Cleveland Co, NC | Clay Co, NC | Henderson Co, NC |
| Commercial Date | 1925 | 1925 | 1908 | 1924 | 1920 |
| Capacity | 0.98 MW | 1.04 MW | 8.50 MW | 1.80 MW | 6.40 MW |
| River/Reservoir | Oconaluftee/Lake Ela | Little Tennessee/Lake Emory | Broad/Gaston Shoals | Hiwassee/Mission Lake | Green/Lake Summit |
| FERC License # | 2601 | 2603 | 2332 | 2619 | N/A; State Regulated |
| License Effective Date | 7/1/2011 | 9/1/2011 | 6/1/1996 | 10/1/2011 | |
| License Duration | 30 Years | 30 Years | 40 Years | 30 Years | |

11

12 **Q. WHY DID DEC EVALUATE SELLING THE SMALL HYDRO**
 13 **FACILITIES AND WHEN DID THE PROCESS START?**

14 A. Due to the significantly escalating compliance, safety, and maintenance costs
 15 associated with the small hydro facilities, DEC evaluated a potential sale and
 16 determined that divesting of these small hydro facilities is more economical
 17 than continued ownership and will result in net savings for customers over time.
 18 In addition, the Transaction will allow DEC to optimize its capital investments
 19 by focusing on higher priority generation facilities, and will eliminate the risk

1 for continued significant investment in the facilities, and thereby enhance
2 DEC's ability to provide continued affordable and reliable service to its
3 customers. In May 2017, DEC began the divesture process after receiving
4 internal approvals needed to proceed to the market test. Company witness
5 Tewari discusses the sale process in his testimony.

6 **Q. HAVE OTHER UTILITIES DIVESTED OF SMALL HYDRO ASSETS**
7 **IN RECENT YEARS?**

8 A. Yes. Other utilities, including First Energy, American Electric Power, Pacific
9 Gas & Electric, and Public Service of New Hampshire have divested of a
10 number of small hydro assets in recent years. Through my work in the hydro
11 industry, I am generally aware of the reasons for these sales and believe that
12 these other utilities were faced with similar factors as DEC was in making its
13 decision.

14 **Q. PLEASE DESCRIBE THE ECONOMIC ANALYSIS THAT DEC**
15 **PERFORMED IN REACHING THE DECISION THAT IT IS MORE**
16 **COST-BENEFICIAL FOR CUSTOMERS TO SELL THE SMALL**
17 **HYDRO FACILITIES TO NORTHBROOK, RATHER THAN DEC**
18 **CONTINUING TO OWN AND OPERATE THE UNITS.**

19 A. The Company performed a Present Value Revenue Requirement ("PVRR")
20 analysis to determine the benefits of divesting and purchasing back the power
21 of the small hydro facilities versus continuing operation and ownership. The
22 PVRR analysis was performed by the Company's Integrated Resource Planning
23 ("IRP") group and is similar to other analyses completed for project reviews.

1 The PVRR assessed future cost probabilities based on current and expected
2 regulatory requirements for equipment maintenance, dam safety, licensing
3 plans & risks, and operations & maintenance. This analysis considered the
4 difference in the present value of the anticipated future costs compared to the
5 present value of purchasing back the power from a third party. Using this
6 method, three different sensitivity scenarios were derived:

7 **Scenario 1:** Based on aggressively low and optimistic budget (Low Cost
8 Case)

9 **Scenario 2:** Based on planned work and most likely probability
10 outcomes (Probable Case)

11 **Scenario 3:** Some additional risk probability beyond Scenario 2 (Higher
12 Cost Case)

13 These three scenarios produced customer benefits ranging from approximately
14 **[BEGIN CONFIDENTIAL]** [REDACTED] **[END**
15 **CONFIDENTIAL]**. I am attaching a Confidential Summary Roll-up of the
16 PVRR analysis as Lewis Confidential Exhibit No. 1. The Company is also
17 providing the Commission a full electronic version of the confidential PVRR
18 analysis, with formulas intact. The analysis utilized subject matter experts,
19 including myself, to determine the future compliance obligations, safety
20 requirements, operating costs, risk probabilities, and future capital investment
21 compared to divesting and buying back the renewable generation from a third
22 party. By divesting the small hydro facilities, DEC will only be required to pay
23 for the power produced versus the long-term obligations of operations and
24 ownership. As the analysis shows, the sale of the small hydro units will provide
25 significant benefits to customers.

1 **Q. DO YOU BELIEVE THE COMPANY'S PVRR ANALYSIS WAS**
2 **APPROPRIATE AND SHOULD BE RELIED UPON BY THE**
3 **COMMISSION?**

4 A. Yes, the company's PVRR analysis should be relied upon by the Commission
5 because the analysis was an exhaustive review utilizing experts in dam safety,
6 licensing, and operations to forecast the future needs of these small hydro
7 facilities. The PVRR was performed by the IRP group and is similar to other
8 analyses completed for project reviews. This expert review of the small hydro
9 facilities resulted in a PVRR analysis that shows the customer benefit of
10 divestiture of the small hydro facilities versus continued ownership, including
11 ongoing financial obligations. Also, the Company utilized a multiple scenario
12 approach to provide a range, which again resulted in net benefits ranging
13 **[BEGIN CONFIDENTIAL]** [REDACTED] **[END**
14 **CONFIDENTIAL]**.

15 **Q. PLEASE DESCRIBE THE CAPITAL PROJECTS AT EACH OF THE**
16 **SMALL HYDRO FACILITIES FROM 2015 TO YEAR-TO-DATE,**
17 **NOVEMBER 2018.**

18 A. I'm attaching to my testimony Lewis Exhibit No. 2, which provides details of
19 the project list of actual capital expenditures from 2015 through year-to-date
20 November 2018, which total approximately \$17.4 million. These projects are
21 largely driven by compliance with license obligations, dam safety requirements,
22 and personnel safety.

1 I believe that a little perspective may be helpful to understand why there
2 have been numerous safety, environmental, and license compliance projects at
3 these small hydro facilities. These facilities were commissioned between 1908
4 and 1925, when many regulatory agencies did not even exist and societal norms
5 were quite different. As an example, by coincidence, the Ford Motor Company
6 produced the Model T across this same general timeframe from 1908 to 1927.
7 The safety features of that vehicle would not be close to meeting today's vehicle
8 safety requirements or expectations. Seat belts, safety glass, airbags, anti-lock
9 brakes, crumple zones, impact bumpers, padded dashboard or steering wheels,
10 front or side crash tests, whiplash protection, etc., were not part of the original
11 design. Indeed, retrofitting very old automobile designs to meet modern
12 National Transportation Safety Board ("NTSB") or Occupational Health and
13 Safety Administration ("OSHA") standards would certainly require significant
14 modifications and would be quite expensive.

15 Similarly, for old dam designs, there was not a Federal Energy
16 Regulatory Commission ("FERC") requiring certain factors of safety for
17 various aspects of dam construction. In fact, the FERC did not exist until 1977
18 and its predecessor, the Federal Power Commission, did not exist prior to 1930.
19 Additionally, there were no license compliance requirements since there were
20 not any FERC licenses. Furthermore, there was not an Environmental
21 Protection Agency, so original designs have had to be retrofitted through the
22 years to be compliant with modern environmental regulatory standards and
23 expectations. And, of course, as we learn more from emergent incidents or

1 accidents in all industries, regulations are constantly changing and improving
2 to mitigate the possibility of future issues. So regardless of their small
3 generating capability, their antiquated designs, and their lack of economies of
4 scale, small hydro facilities must also comply with continuously evolving
5 regulations, standards, and expectations.

6 **Q. FROM THE COMPLETE LIST YOU PROVIDED IN LEWIS EXHIBIT**
7 **NO. 2, PLEASE DISCUSS SOME EXAMPLES OF MAJOR CAPITAL**
8 **PROJECTS THAT WERE COMPLETED.**

9 A. Yes, I will describe eight of the projects I detail in Lewis Exhibit No. 2 to give
10 the Commission an idea of the projects at issue. All of these projects were
11 necessary to meet various regulatory, license, operational, and safety
12 requirements. We have discussed these projects in detail with the Public Staff,
13 and responded to data requests, since they filed their initial comments.

14 First, the Gaston Shoals Unit 6 turbine replacement and mechanism
15 rehabilitation was necessary to support operational compliance with lake level
16 restrictions and simultaneously meet minimum flow requirements. This
17 involved replacement of the worn turbine operating mechanism linkages to
18 provide accurate control of the discharge flows as well as replacement of the
19 original turbine. I'm attaching as Lewis Exhibit No. 3 illustrative photos of this
20 Gaston Shoals project. Looking at these photos, it is readily apparent that
21 replacement of these original components was necessary to enable continued
22 operation for the duration of the license. Furthermore, the design of this unit

1 results in more flexibility and output than the other available units, so it is the
2 preferred operating unit and typically runs continuously.

3 The Bryson left bulkhead stability project was necessary to comply with
4 modern dam safety regulations that required a higher factor of safety than the
5 original Bryson dam design. This involved anchoring the bulkhead to bedrock
6 so that it could withstand the Inflow Design Flood criteria, required by FERC.

7 The Franklin tainter gate replacement project was necessary to meet
8 modern dam safety requirements. After finding distortion in some of the gates'
9 original structural members, concerns were raised that the unusual original gate
10 design was inadequate for continued operation. This led to the decision to
11 remove the already 90-year-old gates and replace them with a new engineered
12 qualified design.

13 The Mission Unit 3 turbine/generator refurbishment was needed to
14 support operational license requirements. The new FERC License, issued in
15 2011, imposed stringent lake level and flow release requirements that could not
16 be met with existing controls and original aging equipment.

17 The Gaston Shoals Unit 4 wear ring and bushing replacement is a
18 routine replacement of aging equipment, that was installed in 1993. The normal
19 overhaul interval for this equipment is approximately 20 years.

20 The Bryson Unit 1 turbine/generator refurbishment was needed to
21 support operational license requirements. The new FERC License, issued in

1 2011, imposed stringent lake level and flow release requirements that could not
2 be met with existing controls and original aging equipment.

3 The Tuxedo access stairs project was necessary to ensure personnel
4 safety while performing routine inspections and maintenance of the wood stave
5 flume line that is on a very steep slope. I'm attaching to my testimony a photo
6 of the project as Lewis Exhibit No. 4. Slips and falls on sloped embankments,
7 within the industry, have resulted in serious employee injuries and this project
8 was necessary to mitigate the potential of future slip and fall injuries along the
9 flume line at Tuxedo.

10 Finally, the Gaston Shoals Big Bay Access Ramp project involves the
11 installation of a public boat launch ramp on the Gaston Shoals Reservoir. This
12 is required by the FERC license. Allowing and providing public access for
13 recreation on reservoirs is a very common requirement in the hydro licensing
14 process.

15 All of the projects listed in Lewis Exhibit No. 2 were initiated after
16 careful review of regulatory, license, operational and safety needs. Given the
17 circumstances dictated by the regulatory requirements and the obligation of
18 continued operation for the remaining duration of the license, I believe that each
19 of these projects, and their associated costs, were reasonable and prudent.

20 **Q. HOW DO THE 2017 AND 2018 SMALL HYDRO FACILITIES'**
21 **CAPITAL COSTS COMPARE TO THOSE FROM 2015 AND 2016?**

1 A. The capital costs in 2017 and 2018 were significantly lower than prior years.
2 After determining to move forward with the sale, the Company put some
3 projects on hold that could be temporarily delayed. Prospective buyers were
4 made aware during management presentations of projects that would need to be
5 completed in the near term.

6 **Q. WERE ANY OF THE CAPITAL PROJECTS INITIATED TO**
7 **“UPGRADE” THE UNITS?**

8 A. None of the projects were initiated for the primary purpose of upgrading the
9 units. Any upgrade was a secondary benefit of replacing aging, deteriorated
10 equipment with modern replacements as a means of reliably managing flows
11 and staying in compliance.

12 **Q. WHY IS DEC SEEKING COMMISSION APPROVAL TO TRANSFER**
13 **THE CPCNS ISSUED OR DEEMED TO HAVE BEEN ISSUED FOR**
14 **THE SMALL HYDRO FACILITIES TO NORTHBROOK?**

15 A. Commission approval of the Transaction will enable DEC to divest of these
16 facilities with significant, ongoing maintenance costs while providing relatively
17 small output when compared to the remainder of DEC’s generation portfolio.
18 DEC has determined that the divestiture of the small hydro facilities is more
19 economical than continued ownership and maintenance because it will make it
20 easier for DEC to optimize and prioritize its ongoing investments in higher
21 priority generation facilities, thereby resulting in net savings to customers over
22 time. For these reasons, and the reasons explained in the testimony of DEC’s
23 other witnesses and the application, we believe that the proposed sale of the

1 small hydro facilities is in the public convenience and necessity and should be
2 approved by the Commission.

3 **Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?**

4 A. Yes.

LEWIS EXHIBIT NO. 1
FILED UNDER SEAL

DOCKET NO. E-2, SUB 1181

Exhibit 2
Capital 2015-YTD Nov 2018

| Station | Project Description | 2015 Actuals | 2016 Actuals | 2017 Actuals | 2018 Actuals YTD Nov | Comment |
|---------------------|-------------------------------------|---------------------|---------------------|-------------------|----------------------|---|
| Bryson City Hydro | BY LEFT BULKHEAD STABILITY | 28,346.13 | 1,390,720.31 | 19,616.78 | | Replaced as a result of FERC Dam Safety requirement. |
| Bryson City Hydro | BY U1 TURB/GEN REFURB | 665,080.87 | 158,720.37 | | | Upgrades to meet the more stringent FERC license compliance requirements that were issued in 2011 |
| Bryson City Hydro | BRYSON RELICENSING | 138,163.26 | | | | License compliance commitment |
| Bryson City Hydro | BRYSON DRAGRAKE SYSTEM | 62,865.79 | | | | Requirement to ensure personnel safety while removing debris |
| Bryson City Hydro | Tainter gate replacement | 12,544.92 | | | | Replaced as a result of FERC Dam Safety requirement. |
| Bryson City Hydro | Bryson City FERC CIP Firewall Addn | | | 8,150.24 | | Compliance with cyber security |
| Bryson City Hydro | Acquire Bryson Property joining FER | 7,115.31 | | | | Small property purchase |
| Bryson City Hydro | TC EAST FORK SIRENS | 553.80 | | | | Dam safety requirement |
| Bryson City Hydro | MO U3 TURBINE/GEN REFURB | 177.10 | | | | Upgrades to meet the more stringent FERC license compliance requirements that were issued in 2011 |
| Bryson City Hydro | BRYSON TAILRACE FISHING ACCESS | (57.71) | | | | Correction from prior years |
| Bryson City Hydro | Bryson Tag Pro Project | (613.66) | | | | Correction from prior years |
| Franklin Hydro | Tainter gate replacement | 1,314,822.55 | | | | Replaced as a result of FERC Dam Safety requirement. |
| Franklin Hydro | FRANKLIN HEAD GATE REPLACEMENT | 169,152.34 | 190,676.79 | | | Routine replacement of aging equipment and dam safety requirement |
| Franklin Hydro | FRANKLIN RELICENSING | 146,622.24 | | | | License compliance commitment |
| Franklin Hydro | FRANKLIN CANOE PORTAGE | 10,714.12 | | | | License compliance commitment |
| Franklin Hydro | LAKE EMORY ACCESS @ FRANKLIN | (109.13) | | | | Correction from prior years |
| Franklin Hydro | Franklin Tag Pro Project | (757.34) | | | | Correction from prior years |
| Gaston Shoals Hydro | Unit 6 Turbine Replacement | 3,645,286.94 | 1,685,106.61 | 31,761.18 | | Project completed to support compliance with FERC license minimum flow & lake level requirements |
| Gaston Shoals Hydro | GS U4 Wear Ring and Bushing | 116,466.40 | 911,454.70 | | | Routine replacement of aging equipment |
| Gaston Shoals Hydro | GS Big Bay Ramp | | 452,129.91 | 11,394.08 | | License compliance commitment |
| Gaston Shoals Hydro | Replace Sand Gate Drives | | | 291,262.11 | 1,987.33 | Project for compliance with FERC license minimum flow & lake level requirements |
| Gaston Shoals Hydro | Gaston Shoals power pole upgrade | | 236,852.71 | 23,166.79 | | Project for compliance with FERC license minimum flow & lake level requirements |
| Gaston Shoals Hydro | GS Replace Sand Gate Drives | 133,042.56 | 93,722.28 | | | Project for compliance with FERC license minimum flow & lake level requirements |
| Gaston Shoals Hydro | Gaston Shoals Unit 5 Wear Rings | 189,412.34 | 14,903.52 | | | Routine replacement of aging equipment |
| Gaston Shoals Hydro | Automate GS Trash Gate | | | 201,968.87 | | Project completed for compliance with FERC license minimum flow & lake level requirements |
| Gaston Shoals Hydro | GS PH Crane Replacement | 181,731.91 | 4,912.18 | | | Replacement of aging crane for compliance with safety standards |
| Gaston Shoals Hydro | Install Automatic Neutral Grounds | | | 135,452.27 | 12,201.81 | For equipment protection and reliability purposes |
| Gaston Shoals Hydro | GS Left Non Overflow Retaining Wall | 84,327.48 | 8,845.71 | | | Dam safety requirement |
| Gaston Shoals Hydro | Purchase Skid Steer | | | | 70,098.79 | Equipment being transferred to 99 Islands Hydro |
| Gaston Shoals Hydro | GS Eng. of Automating Sandgates | | 48,144.36 | | | Project for compliance with FERC license minimum flow & lake level requirements |
| Gaston Shoals Hydro | Install Guardrail Fencing at Dam | | | 31,200.00 | | Safety & security |
| Gaston Shoals Hydro | Automation Contrls & Monitoring Sys | 28,697.88 | | | | Project completed to support compliance with FERC license minimum flow & lake level requirements |
| Gaston Shoals Hydro | GS Perimeter fencing | | 19,372.75 | | | Safety & security |
| Gaston Shoals Hydro | GASTON SHOALS Small Cap Tools | | 133,411.91 | 3,029.10 | (73,299.59) | Equipment/Tools for maintenance |
| Gaston Shoals Hydro | GS Router | 14,144.60 | 1,668.32 | (537.50) | | Routine replacement of aging equipment |
| Gaston Shoals Hydro | GS Communication Equipment | 1,845.72 | 267.87 | | | Routine replacement of aging equipment |
| Gaston Shoals Hydro | Unit 3 Wicket Gate Replacement | 1,571.01 | | | | Routine replacement of aging equipment |
| Gaston Shoals Hydro | GS Replace JEM Meters | 1,324.63 | | | | Routine replacement of aging equipment |
| Gaston Shoals Hydro | GS Motor House Bldg Replacement | (11.34) | | | | Correction from prior years |
| Missions Hydro | MO U3 TURBINE/GEN REFURB | 990,833.46 | 292,138.08 | | | Upgrades to meet the more stringent FERC license compliance requirements that were issued in 2011 |
| Missions Hydro | Relace Intake Gates and Hoist | | | | | Aging equipment replacement budgeted in 2018. Deferred due to pending sale |
| Missions Hydro | MISSION SPILL GATE DRIVE REPLACEMEN | 314,551.72 | 13,871.20 | | | Routine replacement of aging equipment and dam safety requirement |
| Missions Hydro | MISSION RELICENSING | 253,769.26 | | | | License compliance commitment |
| Missions Hydro | 20091 NP&L Hydro IT | | | | 17,628.93 | Error correction will be made in Dec business |
| Missions Hydro | Dam Failure EAP Siren and Camera | | | | | Dam safety requirement |
| Missions Hydro | Sump oil detection and skimming, NW | | 4,200.08 | 25,251.08 | | Support compliance |
| Missions Hydro | BY U1 TURB/GEN REFURB | 8,108.60 | 5,613.10 | | | Upgrades to meet the more stringent FERC license compliance requirements that were issued in 2011 |
| Missions Hydro | Mission FERC CIP Firewall Addition | | | 11,703.41 | | Compliance with cyber security |
| Missions Hydro | MISC. VALVE BLANKET | | 6,184.96 | (6,184.96) | | Correction from prior years |
| Missions Hydro | MISSION CANOE PORTAGE | (163.70) | | | | Correction from prior years |
| Missions Hydro | Mission Tag Pro Project | (645.62) | | | | Correction from prior years |
| Tuxedo Hydro | TU Access Stairs at Flume Line | 465,599.15 | | | | Requirement to ensure personnel safety while performing inspections/maintenance of pipeline that is on a very steep |
| Tuxedo Hydro | TU U2 Wicket Gate Bushing Replace | 393,292.57 | (3,227.86) | | | Routine replacement of aging equipment |
| Tuxedo Hydro | Wicket Gate & Wear Ring Replacement | | 15,829.77 | 19,771.06 | 338.87 | Aging equipment replacement. Deferred due to pending sale |
| Tuxedo Hydro | TU U1 TIV actuator replacement | | 247,018.85 | | | Routine replacement of aging equipment and dam safety requirement |
| Tuxedo Hydro | TU Surge Tank valve Operators | 77,924.94 | 147,077.86 | | | Routine replacement of aging equipment |
| Tuxedo Hydro | TU U2 Actuator and valve replacemen | | 218,063.14 | | | Routine replacement of aging equipment and dam safety requirement |
| Tuxedo Hydro | TU Roofing Replacement Surge Tank | | 160,426.67 | | | Routine replacement of aging equipment |
| Tuxedo Hydro | TU Replace Gov piping | | 138,360.06 | (61,207.12) | | Routine replacement of aging equipment |
| Tuxedo Hydro | TU02 Actuator and valve replacement | | | 113,829.65 | | Routine replacement of aging equipment and dam safety requirement |
| Tuxedo Hydro | TU Powerhouse Crane Replacement | 109,866.56 | (5,040.93) | | | Replacement of aging crane for compliance with safety standards |
| Tuxedo Hydro | TU Generator Breaker Replacement | 85,757.10 | (982.01) | | | Routine replacement of aging equipment |
| Tuxedo Hydro | TU Rip Rap to Dike | | 68,212.42 | 1,584.00 | | Dam safety requirement |
| Tuxedo Hydro | TU Surge Vent Line | 37,093.74 | (304.42) | | | Routine replacement of aging equipment |
| Tuxedo Hydro | TU Replace data network equipment | | 29,539.24 | (10,069.06) | | Routine replacement of aging equipment |
| Tuxedo Hydro | TUX U1 TIV actuator replacement | | | 18,225.70 | | Routine replacement of aging equipment and dam safety requirement |
| Tuxedo Hydro | TUXEDO Small Cap GMA | | | 3,232.65 | (2,384.59) | Routine replacement of aging equipment |
| Tuxedo Hydro | Remove Retired Power Poles | | | | 21,299.16 | Removal of power poles |
| Tuxedo Hydro | TU Equip & Tools | 5,559.04 | 10,853.10 | | | Equipment/Tools for maintenance |
| Tuxedo Hydro | Tuxedo Roofing Replacements - Surge | | | 10,397.17 | | Routine replacement of aging equipment |
| Tuxedo Hydro | TU Install drinking water well | | 5,803.00 | | | Routine replacement of aging equipment |
| Tuxedo Hydro | TU Communication Equipment | 1,854.37 | 269.10 | | | Routine replacement of aging equipment |
| Tuxedo Hydro | TU Dam Stability NP | | | | (13,673.06) | Correction from prior years |
| Tuxedo Hydro | Automation Contrls & Monitoring Sys | (0.02) | | | | Correction from prior years |
| | Total | 9,695,861.89 | 6,704,815.71 | 882,997.50 | 34,197.65 | |

GASTON SHOALS HYDRO UNIT 6 – ORIGINAL COMPONENTS AFTER MORE THAN 80 YEARS

Original Turbine from 1927



Severe cavitation on turbine band and wear ring areas



Severe cavitation on turbine band and wear ring areas



Separation of turbine bucket to crown attachment

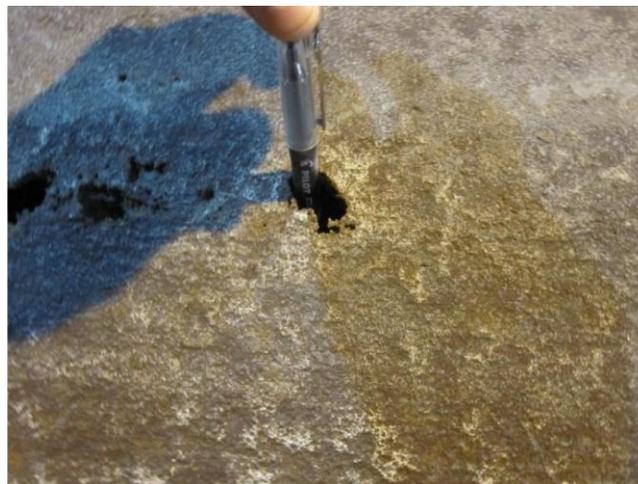


GASTON SHOALS HYDRO UNIT 6 – ORIGINAL COMPONENTS AFTER MORE THAN 80 YEARS

Original Wicket Gates in poor condition



Cavitation damage and holes in wicket gate bodies



Turbine bearing housing fit in poor condition



Headcover damage in cast iron pressure component



GASTON SHOALS HYDRO UNIT 6 – ORIGINAL COMPONENTS AFTER MORE THAN 80 YEARS

Original Wicket Gate Bell Housings (20) need replacement



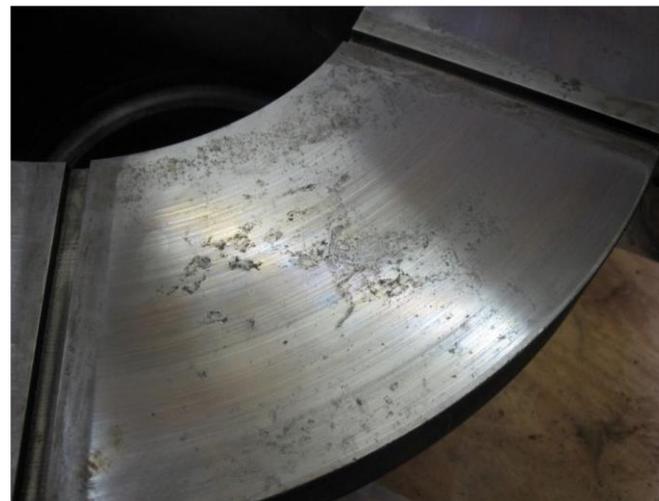
Turbine Bearing Cradle in poor condition



Turbine bearing in need of rehabilitation



Thrust bearing with damage to chilled face needs replacement





BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1181

In the Matter of)
Transfer of Certificates of Public)
Convenience and Necessity and Ownership)
Interests in Generating Facilities from)
Duke Energy Carolinas, LLC to)
Northbrook Carolina Hydro II, LLC and)
Northbrook Tuxedo, LLC)

**DIRECT TESTIMONY OF
MANU TEWARI**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Manu Tewari, and my business address is 550 South Tryon Street,
3 Charlotte, North Carolina 28202.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed as Corporate Development Director by Duke Energy Business
6 Services, LLC, which provides services to Duke Energy Carolinas, LLC
7 (“Duke Energy Carolinas,” “DEC” or the “Company”). Duke Energy Carolinas
8 is a wholly owned, indirect subsidiary of Duke Energy Corporation (“Duke
9 Energy”).

10 **Q. WHAT ARE YOUR RESPONSIBILITIES AS CORPORATE**
11 **DEVELOPMENT DIRECTOR?**

12 A. As Corporate Development Director, I am responsible for supporting Duke
13 Energy and its subsidiaries in a variety of transaction activities, including
14 acquisitions, divestitures, joint ventures, and corporate-level combinations.

15 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
16 **BACKGROUND.**

17 A. I have a Master in Business Administration degree from the McColl School of
18 Business at Queens University in Charlotte, and a Bachelor of Science degree
19 in Computer Science from Avadh University, India. I began my career at Duke
20 Energy in 2000 as IT Manager and since 2006, I have held a variety of
21 responsibilities in the Finance area. I joined Duke Energy’s Corporate
22 Development group in 2014 as Manager Corporate Development and was later
23 promoted to my current position as Director Corporate Development.

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NORTH**
2 **CAROLINA UTILITIES COMMISSION?**

3 A. No, I have not.

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5 A. The purpose of my testimony in this proceeding is to support DEC's
6 Application to Transfer Certificates of Public Convenience and Necessity and
7 Ownership Interests in Generating Facilities from Duke Energy Carolinas, LLC
8 to Northbrook Carolina Hydro II, LLC and Northbrook Tuxedo, LLC (which I
9 will collectively refer to as "Northbrook"). Specifically, I will discuss the
10 process Duke Energy Carolinas utilized to solicit and evaluate bids for the
11 purchase of the Bryson Hydroelectric Generation Facility, the Franklin
12 Hydroelectric Generation Facility, the Mission Hydroelectric Generation
13 Facility, the Tuxedo Hydroelectric Generation, and the Gaston Shoals
14 Hydroelectric Generation Facility (which I will refer to collectively as the
15 "hydro units"). I will also discuss why DEC selected Northbrook and describe
16 the terms of the Asset Purchase Agreement entered into by DEC and
17 Northbrook.

18 **Q. PLEASE DESCRIBE THE PROCESS THAT DEC UTILIZED TO**
19 **SOLICIT OFFERS FOR THE PURCHASE OF THE HYDRO UNITS.**

20 A. After DEC determined that it was more cost-effective to sell the hydro units
21 rather than to continue to own and operate them as Company witness Greg
22 Lewis discusses in his testimony, in August 2017, DEC assembled a core team
23 with resources from Corporate Development, Fossil Hydro Operations, Hydro

1 Licensing, and Purchase Power areas to develop a project plan and related
2 marketing material for the potential sale using a two-phase process: Phase 1 to
3 invite indicative non-binding offers and Phase 2 to invite binding offers to
4 negotiate a definitive Asset Purchase and Sales Agreement (APA).

5 At the launch of Phase 1, a high-level investment opportunity
6 presentation using public information was distributed to 45 potentially
7 interested parties in early October 2017. A Non-Disclosure Agreement was
8 executed with 25 interested parties prior to which DEC shared a detailed non-
9 public Confidential Information Memorandum (the "CIM"). The CIM covered
10 detailed asset specifications, operational metrics, hydrology, major
11 maintenance and avoided cost energy rates for the purchase power agreements.
12 Phase 1 of the process concluded on November 15, 2017 with the receipt of
13 non-binding offers from 11 interested parties.

14 **Q. PLEASE DISCUSS THE RESPONSES AND OFFERS THAT DEC**
15 **RECEIVED FOR PHASE 1.**

16 A. As noted previously, DEC received 11 non-binding offers as summarized
17 below:

18 **[BEGIN CONFIDENTIAL]**

| | | |
|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] |

| | | |
|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] |

1

2

[END CONFIDENTIAL]

3

Q. PLEASE DISCUSS THE PHASE 1 EVALUATION PROCESS.

4

A. DEC applied following criteria to evaluate phase 1 offers:

5

i. **Purchase price:** While maximizing proceeds from the sale was the primary objective, the buyer's ability to finance and close the transaction in a timely manner was considered a critical factor in DEC's evaluation of the bids.

6

7

8

ii. **Hydro operation capabilities:** DEC requested potential buyers to provide their experience in owning and operating small hydroelectric generation assets, a key consideration for the transfer of ownership of the hydro facilities.

9

10

11

12

iii. **Presence in the region:** DEC considered the ownership by potential buyers of other small hydro assets in the region and a firm understanding of the new owner's obligations under the Purchase Power contracts in the Carolinas to be a beneficial attribute that would ensure transaction certainty.

13

14

15

16

iv. **Ability to transact as a portfolio:** DEC does not divest generation assets on a regular basis. In rare occasions, when certain small assets are no longer core to serve customers, the most effective sale process is to bundle the

17

18

1 assets in a portfolio. The scale that this approach creates generates maximum
2 interest from potential buyers and minimizes ultimate transaction costs (i.e. data
3 room hosting, legal document preparation, etc.). As such, DEC's strong
4 preference was to sell the entire portfolio to one bidder.

5 Bidders [BEGIN CONFIDENTIAL] [REDACTED]
6 [REDACTED] [END CONFIDENTIAL] met all four of the
7 criteria described above, so they were invited to participate in Phase 2 of the
8 process. [BEGIN CONFIDENTIAL] [REDACTED] [END
9 CONFIDENTIAL] is a non-U.S. entity and [BEGIN CONFIDENTIAL]
10 [REDACTED] [END CONFIDENTIAL] has no presence in the region, which
11 caused both to be eliminated. Moreover, the ability of [BEGIN
12 CONFIDENTIAL] [REDACTED] [END
13 CONFIDENTIAL] to execute a transaction was considered limited, as the
14 megawatts in the portfolio were too small to justify a standalone hydro
15 operation business, especially given their lack of experience in operating such
16 assets in the Southeast region.

17 Following is a summary of evaluated offers results:

18 [BEGIN CONFIDENTIAL]

| | | | | | |
|------------|------------|------------|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

| | | | | | |
|------------|------------|------------|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

1

[END CONFIDENTIAL]

2

3 Q. WHAT DID DEC DO IN RESPONSE TO THE PHASE 1 OFFERS?

3

4 A. DEC invited [BEGIN CONFIDENTIAL] [REDACTED]

4

5 [REDACTED] [END CONFIDENTIAL] to Phase 2 of the process to

5

6 conduct more detailed and comprehensive diligence. The decision to move

6

7 these four bidders into Phase 2 created the right balance between the ability to

7

8 support the detailed due diligence effort (host management presentations,

8

9 provide responses to bidder questions, conduct site visits for each bidder) and

9

10 to ensure receipt of at least one binding offer from a bidder that met the criteria

10

11 described in the response to the prior question upon conclusion of the Phase 2

11

12 due diligence the process.

12

13 In December 2017, each of the four bidders was invited to attend a

13

14 management presentation held in DEC's Charlotte office. Following the

14

15 conclusion of the last of the four management presentations, DEC gave the

15

16 bidders access to a virtual data room containing approximately 600 documents

16

17 to assist the bidders in their detailed due diligence on the assets. DEC responded

17

1 to 287 questions from the bidders as part of the Q&A process. DEC hosted
2 bidders at each hydro site in order that each bidder could conduct visual
3 diligence.

4 **Q. PLEASE EXPLAIN WHY NORTHBROOK WAS SELECTED TO**
5 **PURCHASE THE HYDRO UNITS.**

6 A. On March 5, 2018 binding bid instructions were sent to the four Phase 2
7 bidders. [BEGIN CONFIDENTIAL] [REDACTED]
8 [END CONFIDENTIAL] subsequently dropped out of the process and did
9 not submit binding offers. On the binding bid due date of April 13, 2018,
10 [BEGIN CONFIDENTIAL] [REDACTED] [END
11 CONFIDENTIAL] submitted offers. In compliance with the binding bid
12 instructions, Northbrook submitted its binding offer, together with a markup
13 of the bid form Asset Purchase Agreement (APA) as required per the bid
14 instructions. [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]
15 submitted an indicative and non-conforming conditional offer with generalized
16 comments and no markup to the bid form APA. [BEGIN CONFIDENTIAL]
17 [REDACTED] [END CONFIDENTIAL] indicative offered Purchase Price was
18 [BEGIN CONFIDENTIAL] [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED] [END CONFIDENTIAL]

1 On April 19, 2018 Northbrook's binding bid summary was presented to
2 Duke Energy's Transaction Review Committee ("TRC") and, in accordance
3 with Duke Energy's Approval of Business Transactions policy, the CEO of
4 Duke Energy approved entering into a transaction with Northbrook on the terms
5 presented to the TRC. DEC and Northbrook subsequently signed a fully
6 negotiated APA on May 15, 2018, which I am attaching as Tewari Exhibit 1 to
7 my testimony.

8 **Q. PLEASE GENERALLY DESCRIBE THE PROCESS TO FINALIZE AN**
9 **ASSET PURCHASE AGREEMENT WITH NORTHBROOK.**

10 A. After DEC received management approval to negotiate the APA with
11 Northbrook, parties went through a 4-week negotiation process. In the initial
12 stage of the negotiations: 1) DEC provided an opportunity to Northbrook to
13 confirm value; 2) In response to Northbrook's election to enter into 5-year
14 power purchase agreements, for all assets, DEC committed to upload 5-year
15 power RPPA rate schedule in the virtual data room; 3) DEC counsel requested
16 Purchaser's disclosure of approvals; and 4) DEC requested comfort from
17 Northbrook that the purchasing entity will be favorably viewed by the FERC.
18 In response, Northbrook improved its purchase price offer from \$4.3 million to
19 \$4.75 million USD. Northbrook confirmed reviewing the 5-year PPA rates
20 DEC provided in the data room. As requested by DEC counsel, Northbrook
21 provided disclosure schedule of approvals. Northbrook further described that
22 Northbrook's ownership will be favorably viewed by the FERC as
23 Northbrook's wholly owned entity, Northbrook Power Management, LLC

1 (“NPM”), is a leading independent hydropower operations, maintenance and
2 asset management company in the U.S., providing services to both FERC
3 licensed and non-licensed facilities. Northbrook reiterated that in 2017 alone,
4 NPM has managed twenty-two facilities regulated by the FERC, and has
5 considerable experience, knowledge and necessary contacts with the FERC and
6 other federal and state resource agencies.

7 Subsequently, DEC asked Northbrook to clarify Northbrook’s APA
8 comments regarding purchaser’s ability to perform environmental sampling of
9 soil, water or air prior to closing of transaction. In response, Northbrook
10 withdrew their comment and responded that no further Environmental Phase II
11 investigations are planned, and Northbrook’s proposal is not conditioned on any
12 such investigations.

13 Finally, per DEC’s corporate credit guidelines, DEC asked Northbrook
14 to provide an acceptable form of credit support. Northbrook provided a
15 Commitment Letter of funding from Alliance Fund II, LP, assuring DEC that
16 sufficient funds will be available to close the transaction. Alliance Fund is a
17 large investment fund focused on renewable energy, and is an affiliate of the
18 purchaser. The parties entered into an APA on May 15, 2018.

19 **Q. PLEASE DESCRIBE THE MAJOR TERMS OF TEWARI EXHIBIT NO.**
20 **1, THE APA.**

21 A. Pursuant to the May 15, 2018 APA, DEC will sell and transfer the Facilities to
22 Northbrook for \$4,750,000. At the closing, Northbrook will assume all
23 liabilities arising out of or relating to ownership or operation of the purchased

1 assets, including pre-closing environmental liabilities. Following are the key
2 closing conditions for the transaction:

- 3 1. FERC License Transfer Approval to transfer each of the FERC Licenses
4 to the applicable Purchaser;
- 5 2. An order from the North Carolina Utilities Commission approving (i)
6 the establishment of a regulatory asset for the retail portion of any difference
7 between the sales proceeds and the net book value of the plants and (ii) the
8 transfer of the plant Certificates of Public Convenience and Necessity from the
9 Seller to the applicable Purchaser;
- 10 3. An order from the Public Service Commission of South Carolina (i)
11 granting permission to sell utility property and (ii) approving the establishment
12 of a regulatory asset for the retail portion of any difference between the sales
13 proceeds and the net book value of the plants.

14 In summary, approval of the requested accounting treatment is a
15 condition to closing the Transaction, and DEC would have no obligation to
16 consummate the sale if the accounting order is not approved.

17 **Q. IS THERE A DEADLINE TO CLOSE THE TRANSACTION WITH**
18 **NORTHBROOK?**

19 A. Per Section 9.01 of the APA, if the closing has not occurred before the date that
20 is twelve (12) months after signing, the APA may be terminated by either DEC
21 or Northbrook. As a result, the deadline for meeting all the closing conditions
22 described above is on or before May 15, 2019, or either party can terminate the
23 agreement.

1 **Q. IN SUMMARY, WHY DOES DEC BELIEVE THAT ITS PROCESS AND**
2 **DECISION TO SELL THE SMALL HYDRO FACILITIES TO**
3 **NORTHBROOK WAS APPROPRIATE?**

4 A. DEC conducted a thorough and competitive bidding process for the sale of the
5 small hydro facilities. Our evaluation determined that Northbrook was a
6 qualified purchaser with operational experience in the region, and offered the
7 best final bid. We negotiated an appropriate APA with Northbrook, which
8 includes this Commission's approval of the CPCN transfer and the Company's
9 requested accounting treatment as a key closing condition. For all the reasons
10 discussed in my testimony, as well as the testimony of the Company's other
11 witnesses and the application, we believe the Transaction is in the public
12 convenience and necessity and should be approved by the Commission as
13 proposed by the Company.

14 **Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?**

15 A. Yes.

ASSET PURCHASE AND SALE AGREEMENT

by and among

NORTHBROOK CAROLINA HYDRO II, LLC,

as Project Purchaser,

NORTHBROOK TUXEDO, LLC,

as Tuxedo Purchaser,

and

DUKE ENERGY CAROLINAS, LLC,

as Seller

Dated as of May 15, 2018

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| EXHIBIT E-4..... | Form of Mission Interconnection Agreement |
| EXHIBIT E-5..... | Form of Tuxedo Interconnection Agreement |
| EXHIBIT F-1..... | Form of Bryson Power Purchase Agreement |
| EXHIBIT F-2..... | Form of Franklin Power Purchase Agreement |
| EXHIBIT F-3..... | Form of Mission Power Purchase Agreement |
| EXHIBIT F-4..... | Form of Tuxedo Power Purchase Agreement |

ASSET PURCHASE AND SALE AGREEMENT

This ASSET PURCHASE AND SALE AGREEMENT is made as of May 15, 2018 (together with all annexes, schedules and exhibits attached hereto or delivered in connection herewith, this “Agreement”) by and among Northbrook Carolina Hydro II, LLC, a Delaware limited liability company (“Project Purchaser”), Northbrook Tuxedo, LLC, a Delaware limited liability company (“Tuxedo Purchaser” and, collectively with Project Purchaser, “Purchasers” and each a “Purchaser”) and Duke Energy Carolinas, LLC, a North Carolina limited liability company (“Seller” or “Company” and, collectively with Purchasers, the “Parties”, and each a “Party”).

WITNESSETH:

WHEREAS, Seller owns and operates (i) a hydroelectric station located on the Oconaluftee River in Swain County, North Carolina, FERC Project No. 2601 (the “Bryson Project”), (ii) a hydroelectric station located on the Little Tennessee River in Macon County, North Carolina, FERC Project No. 2603 (the “Franklin Project”), (iii) a hydroelectric station located on the Broad River in Cherokee County, South Carolina and Cleveland County, North Carolina, FERC Project No. 2332 (the “Gaston Shoals Project”), (iv) a hydroelectric station located on the Hiwassee River in Clay County, North Carolina, FERC Project No. 2619 (the “Mission Project”), and (v) a hydroelectric project located on the Green River in Henderson County, North Carolina, NID No. NC00311 (the “Tuxedo Project” and, collectively with the Bryson Project, the Franklin Project, the Gaston Shoals Project and the Mission Project, the “Projects”, and each, individually, a “Project”);

WHEREAS, Seller desires to sell, and Project Purchaser desire to purchase, all of Seller’s right, title and interest in and to the Bryson Project, the Franklin Project, the Gaston Shoals Project, and the Mission Project, and certain properties and assets associated therewith or ancillary thereto, on the terms and subject to the conditions set forth in this Agreement;

WHEREAS, Seller desires to sell, and Tuxedo Purchaser desire to purchase, all of Seller’s right, title and interest in and to the Tuxedo Project, and certain properties and assets associated therewith or ancillary thereto, on the terms and subject to the conditions set forth in this Agreement;

WHEREAS, contemporaneously with the execution and delivery of this Agreement, the Parties have executed and delivered a Renewable Power Purchase Agreement with respect to the Gaston Shoals Project (the “Gaston Shoals Power Purchase Agreement”), which Gaston Shoals Power Purchase Agreement shall not be effective until the Closing; and

WHEREAS, contemporaneously with the execution and delivery of this Agreement, Alliance Fund II, LP, a Delaware limited partnership and an Affiliate of Purchasers has executed and delivered a Commitment Letter to Seller.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Purchasers and Seller hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. As used in this Agreement, the following defined terms shall have the meanings indicated below:

“Access Agreement” means the access agreement substantially in the form of Exhibit A attached hereto, to be duly executed and delivered by Seller and Purchasers at the Closing, relating to access by Seller or any of its Affiliates to perform the GT Separation.

“Actions or Proceedings” means any action, suit, proceeding, arbitration or investigation by a Governmental or Regulatory Authority.

“Affiliate” means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of this definition, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or ownership interests, by Contract or otherwise, and specifically with respect to a corporation, partnership or limited liability company, means direct or indirect ownership of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

“Agreement” has the meaning ascribed thereto in the Preamble.

“Ancillary Agreements” means (i) the Bills of Sale, (ii) the Deeds, (iii) the Assignment and Assumption Agreement, (iv) the Interconnection Agreements, (v) the Power Purchase Agreements, (vi) the Access Agreement, (vii) the Easement Agreements, (viii) the Transition Services Agreement, and (ix) any additional agreements and instruments of sale, transfer, conveyance, assignment and assumption that may be executed and delivered by any Party or any Affiliate thereof at or in connection with the Closing, if any.

“Assignment and Assumption Agreement” means the Assignment and Assumption Agreement, substantially in the form of Exhibit B attached hereto, to be duly executed and delivered by Seller and Purchasers at the Closing.

“Assumed Liabilities” has the meaning ascribed thereto in Section 2.03.

“Bills of Sale” mean the Project Purchaser Bill of Sale and the Tuxedo Purchaser Bill of Sale.

“Books and Records” means all books and records and operating data in the possession of Seller and relating primarily to any of the Purchased Assets or the Assumed Liabilities, including, to the extent primarily relating thereto: deeds, easements, surveys, licenses, supplier lists, environmental monitoring results and studies, water flow reports or data, water quality reports or data, safety and maintenance manuals, operations manuals, engineering, safety or design plans, and hazardous waste disposal records; provided, however, that the Books and Records will not include (i) any items the transfer of which (A) is prohibited by Law, (B) would result in the loss of a privilege relating to such item under the Law in favor of Seller or any of its Affiliates, including the attorney-client and/or work product privileges, or (C) would cause Seller

or any of its Affiliates to breach a contractual confidentiality obligation, or (ii) any books and records that constitute Excluded Assets.

“Bryson Interconnection Agreement” means the Interconnection Agreement, substantially in the form of Exhibit E-1 attached hereto, to be duly executed and delivered by Seller and Project Purchaser at or prior to the Closing with respect to the Bryson Project.

“Bryson Power Purchase Agreement” means the Renewable Power Purchase Agreement, substantially in the form of Exhibit F-1 attached hereto, to be duly executed and delivered by Seller and Project Purchaser at or prior to the Closing with respect to the Bryson Project.

“Bryson Project” has the meaning ascribed thereto in the Recitals.

“Bryson Project Site” means the approximately 72-acre site upon which the Bryson Project is located in Swain County, North Carolina, as described in Section 2.01(a) of the Seller Disclosure Schedule.

“Business” means the business, as currently conducted, of owning, operating and maintaining the Projects, including generating, selling and delivering the output (including electric energy capacity, renewable attributes and ancillary services) from the Projects, as currently conducted by Seller on the date hereof.

“Business Day” means a day other than Saturday, Sunday or any day on which banks located in New York, New York are authorized or obligated to close.

“Casualty Loss” has the meaning ascribed thereto in Section 5.07.

“Claiming Party” has the meaning ascribed thereto in Section 8.05(b).

“Closing” has the meaning ascribed thereto in Section 2.05(a).

“Closing Date” means the day on which the Closing occurs.

“Code” means the Internal Revenue Code of 1986, as may be amended, modified, supplemented or replaced from time to time, and the rules and regulations promulgated thereunder.

“Company” has the meaning ascribed thereto in the Preamble.

“Company Contracts” has the meaning ascribed thereto in Section 3.10(a).

“Confidentiality Agreement” means that certain Confidentiality Agreement by and between Duke Energy Corporation and Northbrook Energy, LLC dated as of _____, 2017.

“Contract” means any written contract, agreement, lease, license, evidence of Indebtedness, mortgage, indenture, security agreement or other legally binding arrangement.

“Damage Cost” has the meaning ascribed thereto in Section 5.07.

“Deductible Amount” has the meaning ascribed thereto in Section 8.02(b).

“Deed” means, with respect to each parcel of Real Property, the Special Warranty Deed substantially in the form of Exhibit D attached hereto, to be duly executed and delivered by Seller at the Closing, and collectively, the “Deeds”.

“Easement Agreements” means easements for ingress, egress and regress over and across the Real Property to provide Seller perpetual post-Closing access to all existing electrical and other utility facilities, lines, equipment and/or rights-of-way, in each case, owned or maintained by Seller on the Real Property, to be in the form of Seller’s standard access easement agreement.

“Effective Date” means the date set forth in the first paragraph of this Agreement.

“Environmental Laws” means all applicable Laws, including rules of common law, and Orders with respect to pollution, preservation, or protection of the environment, natural resources or health and safety and shall include the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986; The Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; The Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; and state analogs.

“Environmental Liabilities” has the meaning ascribed thereto in Section 2.03(d).

“Excluded Assets” has the meaning ascribed thereto in Section 2.02.

“Excluded Liabilities” has the meaning ascribed thereto in Section 2.04.

“FERC” means the Federal Energy Regulatory Commission.

“FERC License Transfer Approval” means the approval issued by FERC under 16 U.S.C. § 801 and Part 9 of Title 18 of the Code of Federal Regulations with respect to the transactions contemplated hereby.

“FPA” means the Federal Power Act.

“Franklin Interconnection Agreement” means the Interconnection Agreement, substantially in the form of Exhibit E-2 attached hereto, to be duly executed and delivered by Seller and Project Purchaser at or prior to the Closing with respect to the Franklin Project.

“Franklin Power Purchase Agreement” means the Renewable Power Purchase Agreement, substantially in the form of Exhibit F-2 attached hereto, to be duly executed and delivered by Seller and Project Purchaser at or prior to the Closing with respect to the Franklin Project.

“Franklin Project” has the meaning ascribed thereto in the Recitals.

“Franklin Project Site” means the approximately 190-acre site upon which the Franklin Project is located in Macon County, North Carolina, as described in Section 2.01(a) of the Seller Disclosure Schedule.

“Fundamental Representations” has the meaning ascribed thereto in Section 8.01.

“GAAP” means generally accepted accounting principles in the United States, consistently applied throughout the specified period.

“Gaston Shoals Interconnection Agreement” means the Interconnection Agreement, substantially in the form of Exhibit E-3 attached hereto, to be duly executed and delivered by Seller and Project Purchaser at or prior to the Closing with respect to the Gaston Shoals Project.

“Gaston Shoals Power Purchase Agreement” has the meaning ascribed thereto in the Recitals.

“Gaston Shoals Project” has the meaning ascribed thereto in the Recitals.

“Gaston Shoals Project Site” means the approximate 633-acre site upon which the Gaston Shoals Project is located in Cherokee County, South Carolina and Cleveland County, North Carolina, as described in Section 2.01(a) of the Seller Disclosure Schedule.

“Gaston Shoals Transmission Assets” means the assets listed in Section 1.01(a) of the Seller Disclosure Schedule.

“Governmental or Regulatory Approval” means any authorization, consent, approval, ruling, tariff, rate, certification, waiver, exemption, filing, variance, Permit or Order of, or any notice to or registration by or with, any Governmental or Regulatory Authority.

“Governmental or Regulatory Authority” means any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any governmental authority, agency, department, board, commission or instrumentality of the United States, including FERC, the Federal Communications Commission, the North American Electric Reliability Corporation and any of its regional entities, NCUC, PSCSC, any state of the United States or any political subdivision thereof, and any tribunal, court or arbitrator(s) of competent jurisdiction.

“GT Separation” has the meaning ascribed thereto in Section 5.09.

“Hazardous Substance” means any material, waste or other substance that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, extremely hazardous, radioactive, or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law.

“Indebtedness” of any Person means, without duplication, any and all liabilities and obligations of such Person (a) for borrowed money or indebtedness issued or incurred in substitution or exchange for indebtedness for borrowed money, (b) evidenced by notes, bonds, debentures, mortgages or other debt instruments, debt securities or other similar instruments, (c) under capital leases or similar arrangements, and (d) in the nature of guarantees of the obligations described in clauses (a) through (c) above of any other Person or that is recourse to such Person or any of its assets.

“Independent Accountant” has the meaning ascribed thereto in Section 5.06(c).

“Intellectual Property” has the meaning ascribed thereto in Section 3.09.

“Interconnection Agreements” means each of the Bryson Interconnection Agreement, the Franklin Interconnection Agreement, the Gaston Shoals Interconnection Agreement, the Mission Interconnection Agreement and the Tuxedo Interconnection Agreement.

“Inventory” means any and all of the inventory items used exclusively for the Business including: consumables; lubricants, chemicals, fluids, lubricating oils, filters, fittings, connectors, seals, gaskets, hardware, wire and other similar materials; maintenance, shop and office supplies; public access area signs (but excluding any signs referencing “Duke”, “Duke Energy” or which include any other Intellectual Property of Seller or its Affiliates); and tools, special tools, or similar equipment; and similar items of moveable property located or held for use exclusively at any of the Project Sites.

“Knowledge of Purchaser” means the actual knowledge (as opposed to any constructive or imputed knowledge), without due inquiry, of those Persons listed in Section 1.01(b) of the Purchaser Disclosure Schedule.

“Knowledge of Seller” means the actual knowledge (as opposed to any constructive or imputed knowledge), without due inquiry, of those Persons listed in Section 1.01(c) of the Seller Disclosure Schedule.

“Laws” means all laws, statutes, rules, regulations, ordinances, codes, and other pronouncements having the effect of law of the United States or any state, county, city or other political subdivision thereof or of any Governmental or Regulatory Authority.

“Liabilities” means all Indebtedness, obligations and other liabilities of a Person (whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due).

“Liens” means any mortgage, deed of trust, pledge, assessment, security interest, lease, lien, adverse claim, levy, charge, easement, restrictive covenant, encroachment or other encumbrance, or any conditional sale contract, title retention contract or other contract to give any of the foregoing.

“Loss” means any and all damages, fines, Taxes, penalties, deficiencies, losses and expenses (including interest, court costs, reasonable fees of attorneys, accountants and other experts), whether involving claims solely between the Parties or by a third party against a Party, and excluding any punitive, special, indirect, exemplary, incidental, consequential or similar damages (including any damages on account of lost profits, loss of revenue, loss of production or diminution in value (based on multiple of earnings or otherwise) or other damages attributable to business interruption, whether by statute, in tort or under contract, under any indemnity provision or otherwise).

“Material Adverse Effect” means any change, event, effect or occurrence that is materially adverse to the business, financial condition, assets, or liabilities of any of the Projects, or the Business or the Purchased Assets taken as a whole; provided that a “Material Adverse Effect” shall not include changes, events, effects or occurrences (individually or taken together) resulting from or arising out of (a) any change generally affecting the national, regional, state or local (including legal or regulatory changes) (i) electric generating, transmission or distribution industry, (ii) wholesale or retail markets for electric power, or (iii) electrical transmission and distribution systems or standards (including regulatory standards) of any organization to which

the Projects are subjected or abide or rules of any independent system operator (or proposed rules or restructuring of any rules or operator); (b) any change in the design or pricing of the wholesale or retail electric power markets (including any either bilateral, NCUC or PSCSC, administered energy or ancillary services markets); (c) any change in the avoided cost of energy rate or the renewable energy credit rate which are, or following the Closing, would be applicable to any of the Projects; (d) any change in the financial, banking or securities markets or any change in the general international, national or regional economic conditions, including as a result of terrorist activity, acts of war or acts of public enemies; (e) changes in any industry standards, Laws, GAAP or regulatory accounting requirements or changes in the interpretation thereof as such relate to the Business, the Purchased Assets or the Assumed Liabilities; (f) strikes, work stoppages or other labor disturbances; (g) earthquakes, hurricanes, floods, acts of God or other natural disasters or attributable to seasonal fluctuations in the Business; (h) acts of war, terrorism, military action or the escalation thereof; (i) the announcement or pendency of the transactions contemplated hereby or any actions to be taken pursuant to or in accordance with this Agreement or consented to by Purchasers or (j) the failure or inability of the Company to meet any internal or public projections, forecasts or estimates of revenues or earnings or any change in the ability to further develop or expand any of the Project(s); provided, further that in the case of clauses (a)-(h), such term shall only be excluded to the extent any such change, event, effect or occurrence does not have a disproportionately adverse impact on the Projects, the Business or the Purchased Assets in relation to similar businesses or projects in the NCUC or the PSCSC.

“Mission Interconnection Agreement” means the Interconnection Agreement, substantially in the form of Exhibit E-4 attached hereto, to be duly executed and delivered by Seller and Project Purchaser at or prior to the Closing with respect to the Mission Project.

“Mission Power Purchase Agreement” means the Renewable Power Purchase Agreement, substantially in the form of Exhibit F-3 attached hereto, to be duly executed and delivered by Seller and Project Purchaser at or prior to the Closing with respect to the Mission Project.

“Mission Project” has the meaning ascribed thereto in the Recitals.

“Mission Project Site” means the approximately 115-acre site upon which the Mission Project is located in Clay County, North Carolina, as described in Section 2.01(a) of the Seller Disclosure Schedule.

“NCUC” means the North Carolina Utilities Commission and any successor governmental agency or commission.

“New Lake Summit Lease” means that certain Lake Summit Lease Agreement dated as of April 11, 2018, but not effective until the Closing, by and between Seller and Lake Summit Property Owners Association, Inc., a North Carolina non-profit corporation.

“Order” means any writ, judgment, order, decree, injunction or award issued, or otherwise put into effect by or under the authority of any court, administrative agency, or other Governmental or Regulatory Authority (in each such case whether preliminary or final) or any arbitrator.

“Overlap Period” means with respect to the Business, any taxable year or other period beginning on or before and ending after the Closing Date.

“Party” or “Parties” has the meaning ascribed thereto in the Preamble.

“Permits” means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents granted by any Governmental or Regulatory Authority, including Permits required under Environmental Law.

“Permitted Liens” means (a) any Lien for Taxes which are not yet due and payable, any Lien for Taxes for Real Property for the current year that are not yet delinquent, and any Lien for Taxes that are being contested in good faith, (b) any statutory Lien or builders’, mechanics’, carriers’, workers’, warehousemens’, repairers’ and other similar Liens and rights arising or incurred in the ordinary course of business (provided that Seller shall remain responsible for the removal of such Liens), (c) any imperfection of title or similar Lien which is not material in amount or does not materially detract from the value of or materially impair the use of the Purchased Asset affected by such Lien, (d) in the case of the Real Property, (i) easements, covenants, rights-of-way and other Liens or restrictions of record, (ii) any condition that a current, accurate survey or physical inspection may show and that does not create a Material Adverse Effect, and (iii) any easements or rights-of-way pursuant to the Easement Agreements, (e) zoning restrictions and other land use and environmental regulations by any Governmental or Regulatory Authorities, (f) any Lien that is released prior to the Closing, and (g) the Liens listed in Section 1.01(d) of the Seller Disclosure Schedule.

“Person” means any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, other business or similar entity or Governmental or Regulatory Authority.

“Power Purchase Agreements” means each of the Bryson Power Purchase Agreement, the Franklin Power Purchase Agreement, the Gaston Shoals Power Purchase Agreement, the Mission Power Purchase Agreement and the Tuxedo Power Purchase Agreement.

“Pre-Closing Period” means all taxable years or other taxable periods that end on or before the Closing Date and, with respect to any Overlap Period, the portion of such Overlap Period ending on and including the Closing Date; provided that for purposes of this Agreement, anything occurring outside of the ordinary course of business on the Closing Date but after the Closing shall not be treated as occurring in a Pre-Closing Period.

“Project” and “Projects” have the meaning ascribed thereto in the Recitals.

“Project Purchaser” has the meaning ascribed thereto in the Preamble.

“Project Purchaser Bill of Sale” means the Bill of Sale, substantially in the form of Exhibit C-1 attached hereto, to be duly executed and delivered by Seller at the Closing.

“Project Sites” means collectively, the Bryson Project Site, the Franklin Project Site, the Gaston Shoals Project Site, the Mission Project Site and the Tuxedo Project Site, and each a “Project Site”.

“PSCSC” means the Public Service Commission of South Carolina and any successor governmental agency or commission.

“Purchase Price” has the meaning ascribed thereto in Section 2.06.

“Purchased Assets” has the meaning ascribed thereto in Section 2.01.

“Purchased Contracts” has the meaning ascribed thereto in Section 2.01(d).

“Purchaser” and “Purchasers” have the meanings ascribed thereto in the Preamble.

“Purchaser Disclosure Schedule” has the meaning ascribed thereto in the introduction to Article IV.

“Purchaser Indemnified Parties” has the meaning ascribed thereto in Section 8.02(a)(i).

“Real Property” has the meaning ascribed thereto in Section 2.01(a).

“Refunding Mortgage Lien” means the lien of the First and Refunding Mortgage given to The Bank of New York Mellon Trust Company, N.A. (formally known as JPMorgan Chase Bank, N.A.), as described in the Seller Disclosure Schedule.

“Representatives” means, as to any Person, its officers, directors, employees, agents, partners, members, stockholders, counsel, accountants, financial advisors, financing sources, engineers, consultants and other advisors.

“Responding Party” has the meaning ascribed thereto in Section 8.05(b).

“Seller” has the meaning ascribed thereto in the Preamble.

“Seller Disclosure Schedule” has the meaning ascribed thereto in the introduction to Article III of this Agreement.

“Seller Indemnified Parties” has the meaning ascribed thereto in Section 8.02(a)(ii).

“Statements” has the meaning ascribed thereto in Section 3.12.

“Survey” or “Surveys” have the meaning ascribed thereto in Section 5.05(a).

“Tangible Personal Property” means all machinery, mobile or otherwise, equipment, vehicles, pumps, fittings, tools, furniture or furnishings, meter equipment and other tangible personal property (other than Inventory) located at any Project Site and owned or leased or purchased by the Company for use or consumption primarily at a Project Site.

“Tax” means any and all federal, state, provincial, local, foreign and other taxes, levies, fees, imposts, duties, and similar governmental charges (including any interest, fines, assessments, penalties or additions to tax imposed in connection therewith or with respect thereto, and whether payable directly or by withholding and whether or not requiring the filing of a Tax Return) including (a) taxes imposed on, or measured by, income, franchise, profits or gross receipts, and (b) ad valorem, value added, capital gains, sales, goods and services, use, real or personal property, capital stock, license, branch, payroll, estimated withholding, employment, social security (or similar), unemployment, compensation, utility, severance, production, excise,

stamp, occupation, premium, windfall profits, payment or fee in lieu of taxes (or any similar obligation), transfer and gains taxes, and customs duties.

“Tax Return” means any return, report, information return, declaration, claim for refund, election, disclosure, estimate, or other document, together with all schedules, attachments, amendments and supplements thereto (including all related or supporting information), supplied to or required to be supplied to any Governmental or Regulatory Authority responsible for the administration of Taxes.

“Termination Date” has the meaning ascribed thereto in Section 9.01(b)(i).

“Third-Party Claim” has the meaning ascribed thereto in Section 8.05(b).

“Title Company Affidavit” has the meaning ascribed thereto in Section 5.10.

“Transfer” has the meaning ascribed thereto in Section 5.11(c).

“Transfer Taxes” has the meaning ascribed thereto in Section 5.08.

“Transition Services Agreement” has the meaning ascribed thereto in Section 5.13.

“Transmission Assets” means the Gaston Shoals Transmission Assets and the Tuxedo Transmission Assets.

“Tuxedo Interconnection Agreement” means the Interconnection Agreement, substantially in the form of Exhibit E-5 attached hereto, to be duly executed and delivered by Seller and Tuxedo Purchaser at or prior to the Closing with respect to the Tuxedo Project.

“Tuxedo Power Purchase Agreement” means the Renewable Power Purchase Agreement, substantially in the form of Exhibit F-4 attached hereto, to be duly executed and delivered by Seller and Tuxedo Purchaser at or prior to the Closing with respect to the Tuxedo Project.

“Tuxedo Project” has the meaning ascribed thereto in the Recitals.

“Tuxedo Project Site” means the approximately 385-acre site upon which the Tuxedo Project is located in Henderson County, North Carolina, as described in Section 2.01(a) of the Seller Disclosure Schedule.

“Tuxedo Purchaser” has the meaning ascribed thereto in the Preamble

“Tuxedo Purchaser Bill of Sale” means a Bill of Sale, substantially in the form of Exhibit C-2 attached hereto, to be duly executed and delivered by Seller at the Closing.

“Tuxedo Switchyard Premises” means the real property upon which the Tuxedo Transmission Assets are located, as described in Section 1.01(e) of the Seller Disclosure Schedule.

“Tuxedo Transmission Assets” means the assets listed in Section 1.01(f) of the Seller Disclosure Schedule.

“U.S. Dollars” means the lawful currency of the United States.

Section 1.02 Certain Principles of Interpretation. In this Agreement, unless otherwise indicated, all words defined in the singular have the corresponding meaning in the plural and vice versa; words importing any gender include the other gender; references to statutes or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; references to “writing” include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words “including”, “includes” and “include” shall be deemed to be followed in each instance by the words “without limitation”; the words “shall” and “will” have the same meaning; references to articles, sections (or subdivisions of sections), exhibits, annexes or schedules are to articles, sections (or subdivisions of sections), exhibits, annexes or schedules of or to this Agreement; references to agreements and other contractual instruments shall be deemed to include all amendments, extensions and other modifications to such instruments (without, however, limiting any prohibition on any subsequent amendments, extensions and other modifications by the terms of this Agreement); references to Persons include their respective successors and permitted assigns and, in the case of Governmental or Regulatory Authorities, Persons succeeding to their respective functions and capacities; the phrase ordinary course of business refers to the Business and the Projects as currently conducted; and all accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP on a basis consistent with past practice of Seller.

ARTICLE II

PURCHASE AND SALE OF PURCHASED ASSETS; CLOSING

Section 2.01 Purchased Assets. Upon the terms and subject to the conditions contained in this Agreement, at the Closing, Seller shall sell, convey, grant, assign, transfer and deliver to Project Purchaser or Tuxedo Purchaser, as applicable, and Project Purchaser or Tuxedo Purchaser, as applicable, shall purchase, acquire and accept title to and ownership from Seller of, all of Seller’s right, title and interest in and to the following assets, properties and rights of Seller, used exclusively in the Business as presently conducted, but in each case excluding all Excluded Assets (collectively, the “Purchased Assets”), with good title, free and clear of all Liens, other than Permitted Liens:

- (a) All of Seller’s right, title and interest in and to the (i) real property (including easements and rights-of-way) exclusively related to the Business and (ii) the real property upon which the Gaston Shoals Transmission Assets are located, in each case, as described in Section 2.01(a) of the Seller Disclosure Schedule (the “Real Property”);
- (b) All Tangible Personal Property;
- (c) All Inventory;
- (d) All of Seller’s right, title and interest in and to those Contracts listed in Section 2.01(d) of the Seller Disclosure Schedule (the “Purchased Contracts”);
- (e) All Permits listed in Section 2.01(e) of the Seller Disclosure Schedule;
- (f) All Books and Records;

(g) All unexpired warranties, indemnities, and guarantees made or given by manufacturers, overhaulers, assemblers, refurbishers, vendors, service providers and other comparable third parties to the extent exclusively relating to the Purchased Assets, including the warranties and guarantees listed in Section 2.01(g) of the Seller Disclosure Schedule.

Section 2.02 Excluded Assets. Nothing in this Agreement shall constitute or be construed as conferring on either Purchaser, and neither Purchaser shall be entitled or required to purchase or acquire, and Seller shall not be required to sell, any right, title or interest in, to or under any assets, interests, properties, rights, licenses, Permits or Contracts, whether real, personal, or mixed, whether accrued, contingent, or otherwise, and whether owned, leased, licensed or contracted for, other than the Purchased Assets (collectively, the “Excluded Assets”), including:

(a) All of Seller’s cash, cash equivalents, bank deposits and, to the extent relating to the period prior to Closing, accounts receivable, trade or otherwise;

(b) The assets listed in Section 2.02(b) of the Seller Disclosure Schedule;

(c) The Transmission Assets;

(d) All rights and interests of Seller arising under this Agreement, the Ancillary Agreements or any other instrument or document executed and delivered pursuant to the terms of this Agreement or relating primarily to the Excluded Assets;

(e) (i) Seller's certificate of formation and other organizational, corporate, administrative and regulatory documents and materials, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications and taxpayer and other identification numbers, (ii) the minute books, equity transfer books and company seal, membership certificates and other documents relating to the organization, maintenance and existence of Seller and any other books, records or documents relating to the Excluded Assets or the Excluded Liabilities (iii) the general ledger, all tax returns and all related items of Seller, including, but not limited to, all invoices and supporting documentation for all revenues and expenses (except for any expenses relating to the Purchased Contracts), for all Pre-Closing Periods and (iv) any Permits or Governmental or Regulatory Approvals in the name of Seller remaining in existence post-Closing prior to either the transfer of such Permits or Governmental or Regulatory Approvals to Project Purchaser or Tuxedo Purchaser, as applicable, or withdrawal of the same;

(f) All Intellectual Property of Seller;

(g) All refunds or credits, if any, of Taxes due to Seller or otherwise with respect to the Purchased Assets for any Pre-Closing Period;

(h) Any Contract or Permit not listed on Section 2.01(d) or Section 2.01(e) of the Seller Disclosure Schedule, respectively;

(i) the Tuxedo Switchyard Premises; and

(j) Any right with respect to any communication or other correspondence (written or otherwise) and any records relating thereto between Seller or any of its Affiliates, on

the one hand, and any legal counsel on the other hand, and any attorney-client privilege, expectation of client confidence, or any other right to any evidentiary privilege with respect thereto, including with respect to the transactions set forth in this Agreement.

All references herein to the Purchased Assets shall be deemed not to include the Excluded Assets.

Section 2.03 Assumption of Liabilities. At the Closing, Purchasers shall assume and agree to pay, perform and discharge when due, and shall be liable with respect to, any and all Liabilities of Seller, other than the Excluded Liabilities, arising out of or relating to the ownership or operation of the Projects, the Project Sites, the Purchased Assets or the Business, but, except with respect to the Environmental Liabilities, only to the extent that such Liabilities arise out of or are related to the ownership or operation of the Projects, the Project Sites, the Purchased Assets or the Business after the Closing (collectively, the “Assumed Liabilities”), including the following:

- (a) All obligations of Seller arising out of or relating to the Purchased Contracts;
- (b) All Liabilities under those Permits listed in Section 2.01(e) of the Seller Disclosure Schedule;
- (c) All Liabilities with respect to the Purchased Assets under applicable Law or Orders arising out of or relating to the ownership or operation of the Projects;
- (d) All Liabilities under Environmental Laws arising out of or relating to the ownership or operation of the Projects, the Purchased Assets or the Real Property, whether arising out of or relating to facts, circumstances or conditions existing on, prior to, or after the Closing, including all such Liabilities arising out of or relating to any Permits (the “Environmental Liabilities”); and
- (e) All Liabilities for any Transfer Taxes for which either Purchaser is liable under Section 5.08.

Section 2.04 Excluded Liabilities. Neither Purchaser will assume, be deemed to have assumed, or be responsible for any of the following Liabilities or obligations of Seller (collectively, the “Excluded Liabilities”):

- (a) All Liabilities of Seller or any of its Affiliates arising out of or related to the ownership or operation of the Projects, the Project Sites, the Purchased Assets or the Business prior to the Closing other than the Environmental Liabilities;
- (b) All Liabilities of Seller or any of its Affiliates to the extent relating to any Excluded Assets;
- (c) All Taxes of Seller, including those relating to, imposed on, asserted against or attributable to (i) the income, assets or operations of the Business, (ii) the ownership of the Purchased Assets, or (iii) any Taxes for which the Company is otherwise liable;

(d) All Liabilities of Seller or any of its Affiliates for fees and expenses payable to lenders, brokers, financial advisors, legal counsel, accountants and other professionals engaged by Seller or any of its Affiliates in connection with this Agreement;

(e) All trade and other accounts payable of Seller and other obligations of Seller to pay suppliers and third parties;

(f) All Liabilities of Seller or any of its Affiliates thereof representing Indebtedness;

(g) All Liabilities arising out of, in respect of, or in connection with the failure by Seller or any of its Affiliates to comply with any Contract, Law, Governmental or Regulatory Approval or Order other than the Environmental Liabilities;

(h) All Liabilities of Seller or any of its Affiliates arising under or in connection with any employee benefit plan or other arrangement maintained by Seller or any of its Affiliates providing benefits to any present or former employee or other service provider of Seller or any of its Affiliates (or any relatives of any such present or former employee or service provider); and

(i) All Liabilities of Seller or any of its Affiliates with respect to (i) any present or former employees, officers, directors, retirees, independent contractors or consultants of Seller or any of its Affiliates of any kind or nature, including any Liabilities associated with any claims for salary, wages or other benefits, bonuses, accrued vacation, workers' compensation, severance, retention, termination or other similar payments and (ii) any claims of present or former employees of Seller or any of its Affiliates for personal injury or loss which occurred (or was caused by conditions existing) during such employee's employment with Seller or its applicable Affiliate.

Section 2.05 Closing.

(a) The closing of the transactions described in this Agreement (the "Closing") shall take place at the offices of Parker Poe Adams & Bernstein LLP, counsel to Seller, at Three Wells Fargo Center, 401 S. Tryon Street, Charlotte, North Carolina 28202, or at such other place as Purchasers and Seller shall mutually agree, at 10:00 A.M. Eastern time, on a date designated by Seller, provided that such date will be no later than five (5) Business Days after the last of the conditions to the Closing set forth in Articles VI and VII have been satisfied or waived (other than conditions which by their nature are to be satisfied on the Closing Date), or at such other time or date as the Parties may mutually agree. The Closing shall be effective for financial and accounting purposes as of 11:59 P.M. Eastern time on the Closing Date.

(b) At the Closing, (i) Purchasers shall pay the Purchase Price to Seller by wire transfer of immediately available funds in U.S. Dollars to such account(s) as Seller may direct by written notice delivered to Purchasers at least one (1) Business Day before the Closing Date, and (ii) each of Purchasers and Seller shall cause to be delivered to the other the documents and instruments required to be delivered under Articles VI and VII.

Section 2.06 Purchase Price. The purchase price payable at the Closing for the Purchased Assets shall be an amount equal to Four Million Seven Hundred and Fifty Thousand Dollars (\$4,750,000) (the "Purchase Price").

Section 2.07 Further Assurances; Post-Closing Cooperation.

(a) Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, each of the Parties shall execute and deliver such other documents and instruments, provide such materials and information, and take such other actions as may reasonably be necessary, proper or advisable, to the extent permitted by Law, to fulfill its obligations under this Agreement.

(b) For a period extending three (3) years after the Closing Date, each Party will afford the other Party, its counsel and its accountants, during normal business hours, reasonable access to the books, records and other data, documents or reports relating exclusively to the business or financial or operating condition of the Business in its possession with respect to periods prior to the Closing Date and the right to make copies and extracts therefrom, to the extent that such access may reasonably be required by the requesting Party in connection with (i) the preparation of Tax Returns or financial statements, (ii) compliance with the requirements of any Governmental or Regulatory Authority, or (iii) in connection with any actual or threatened Action or Proceeding.

(c) Notwithstanding anything to the contrary contained in this Section 2.07, if the Parties are in an adversarial relationship in any Action or Proceeding, the furnishing of information, documents or records and any access thereto in accordance with any provision of this Section 2.07 shall be subject to applicable rules relating to discovery.

Section 2.08 Certain Provisions Regarding Assignments. Notwithstanding anything in this Agreement or any Ancillary Agreement to the contrary, neither this Agreement nor any Ancillary Agreement will constitute an agreement to assign or transfer any interest in any Purchased Contract or any claim or right arising thereunder if such assignment or transfer without the consent of a third party would constitute a breach thereof or affect adversely the rights of Purchasers thereunder, and any such transfer or assignment will be made subject to such consent being obtained. In the event any such consent is not obtained prior to the Closing, Seller will continue to use commercially reasonable efforts to obtain any such consent after Closing, and Seller will cooperate with Purchasers in any lawful and economically feasible arrangement to provide that Project Purchaser or Tuxedo Purchaser, as applicable, will receive the interest of Seller in the benefits under any such Purchased Contract, provided that Purchasers will undertake to pay or satisfy the corresponding Assumed Liabilities for the enjoyment of such benefit to the extent Purchasers would have been responsible therefor if such consent had been obtained. Nothing in this Section 2.08 will be deemed a waiver by Project Purchaser or Tuxedo Purchaser, as applicable, of its right to receive prior to or at the Closing an effective assignment of all of the Purchased Assets, nor will this Section 2.08 be deemed to constitute an agreement to exclude from the Purchased Assets any assets described under Section 2.08.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchasers as follows, except as set forth in the disclosure schedule delivered by Seller to Purchasers concurrently with the execution and delivery of this Agreement (the "Seller Disclosure Schedule"):

Section 3.01 Legal Existence. Seller is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of North Carolina. Seller is qualified to do business and is in good standing in the states in which the conduct of the Business or locations of its assets and properties makes such qualification necessary, except where failure to be so qualified or to be in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or a material adverse effect on Seller's ability to perform its obligations hereunder. Seller has all requisite limited liability company power and authority to execute, deliver and perform its obligations under this Agreement, including to sell the Purchased Assets pursuant hereto, and the Ancillary Agreements to which it is a party.

Section 3.02 Authority. The execution and delivery by Seller of, and the performance by Seller of its obligations under, this Agreement and the Ancillary Agreements to which it is a party and the consummation by Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary limited liability company action on the part of Seller, with no other actions or proceedings on the part of Seller being necessary. This Agreement has been, and each of the Ancillary Agreements to which it is a party have been or will be, duly and validly executed and delivered by Seller and, assuming the due authorization, execution and delivery thereof by the other parties thereto, constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with their respective terms, except as the same may be limited by (a) bankruptcy, insolvency, reorganization, moratorium and other similar Laws of general application affecting the rights and remedies of creditors and (b) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).

Section 3.03 No Conflicts. The execution and delivery by Seller of, and the performance by Seller of its obligations under, this Agreement and each of the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the articles of organization of Seller or its other organizational documents;

(b) subject to obtaining the approvals, consents and actions, making the filings and giving the notices set forth in Section 3.04 of the Seller Disclosure Schedule, conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to the Company or the Purchased Assets (other than such conflicts, violations or breaches as would occur solely as a result of the identity or the legal or regulatory status of Purchasers or any of their respective Affiliates);

(c) except as set forth in Section 3.03(c) of the Seller Disclosure Schedule, (i) conflict with or result in a violation or breach of, (ii) constitute (with or without notice, lapse of time or both) a material default (or give rise to any right of termination, cancellation or acceleration) under, or (iii) conflict with or result in a violation or breach of, or give to any Person any right of termination, consent, cancellation, acceleration or modification in or with respect to, any Company Contract that is a Purchased Contract, material Permit or material Governmental or Regulatory Approval to which the Company is a party or by which any of its assets and properties, including the Purchased Assets is bound; or

(d) result in the creation or imposition of any Lien on the Purchased Assets, other than Permitted Liens.

Section 3.04 Governmental or Regulatory Approvals; Filings. Except as set forth in Section 3.04 of the Seller Disclosure Schedule, no Governmental or Regulatory Approval on the part of Seller is required in connection with the execution and delivery by Seller of this Agreement or the consummation of the transactions contemplated hereby, except (i) where the failure to obtain any such Governmental or Regulatory Approval would not reasonably be expected to have a material adverse effect on the Purchased Assets or the ability of Seller to perform its obligations hereunder, and (ii) those as would be required solely as a result of the identity or the legal or regulatory status of Purchasers or any of their respective Affiliates.

Section 3.05 Compliance with Laws. Except as set forth in Section 3.05 of the Seller Disclosure Schedule, the Business, the Projects, the Project Sites and the Purchased Assets are in compliance, in all material respects, with all applicable Orders and Laws.

Section 3.06 Legal Proceedings. Except as set forth in Section 3.06 of the Seller Disclosure Schedule, there are no material Actions or Proceedings pending or, to the Knowledge of Seller, threatened against the Business or the Purchased Assets.

Section 3.07 Real Property. The Company has good and indefeasible title to all Real Property, free and clear of all Liens other than Permitted Liens. Other than as set forth in Section 3.07(a) of the Seller Disclosure Schedule, the Company does not lease any real property from any party in connection with the Business. Except as set forth in Section 3.07(b) of the Seller Disclosure Schedule, the Company has not received any written notice from any Governmental or Regulatory Authority regarding the condemnation of any material portion of the Real Property, and there is no pending or, to the Knowledge of Seller, threatened actions of a similar nature in connection with any material Real Property. The Real Property is sufficient, in all material respects, for each Project to meet all requirements under its licenses and authorizations issued pursuant to the FPA or other applicable Orders and Laws.

Section 3.08 Personal Property. Except as set forth in Section 3.08 of the Seller Disclosure Schedule, the Company has good title to all Tangible Personal Property, free and clear of all Liens other than Permitted Liens. Except as set forth in Section 3.08 of the Seller Disclosure Schedule, no Tangible Personal Property is owned by any Affiliate of the Company or any third party.

Section 3.09 Intellectual Property. Seller possesses or has the right to use all material patents, trademarks, service marks, trade names, copyrights, domain names, trade secrets, know-how and all goodwill associated therewith (collectively, the “Intellectual Property”) that are necessary for the conduct of the Business. Seller has not received from any third party any claim in writing that Seller is infringing the Intellectual Property of a third party that is necessary for the conduct of the Business or exclusively related to the Projects, the Project Sites or the Purchased Assets, and, to the Knowledge of Seller, it is not otherwise infringing upon any material Intellectual Property of a third party that is necessary for the conduct of the Business or exclusively related to the Projects, the Project Sites or the Purchased Assets. To the Knowledge of Seller, no Person is materially infringing, violating, misappropriating or otherwise misusing any of Seller’s material Intellectual Property that is necessary for the conduct of the Business or

exclusively related to the Projects, the Project Sites or the Purchased Assets, and Seller has not made any such claims against any Person.

Section 3.10 Company Contracts. (a) Section 3.10 of the Seller Disclosure Schedule sets forth a true and complete list of all Contracts as of the date hereof to which the Company (or an Affiliate of the Company) is a party and by which any of its assets or properties relating primarily to the Projects, the Project Sites, the Purchased Assets or the Business is bound (collectively, the “Company Contracts”), excluding, for purposes of clarity, any Contracts between the Company, on the one hand, and any of the Company’s affiliates, on the other hand, including:

- (i) all Contracts for the purchase, exchange or sale of electric power or ancillary services;
- (ii) all Contracts for the transportation or transmission of electric power;
- (iii) all interconnection Contracts;
- (iv) all Contracts with any Governmental or Regulatory Authority but excluding Permits;
- (v) all Contracts that limit or purport to limit the ability of Seller to compete in any line of business or with any Person or in any geographic area or during any period of time;
- (vi) all long-term service or maintenance Contracts;
- (vii) all Contracts relating to Indebtedness or imposing Liens for borrowed money on the Purchased Assets;
- (viii) all Contracts representing guaranty or surety obligations or similar agreements;
- (ix) all material Contracts pursuant to which Intellectual Property is licensed;
- (x) except as described above, each other Contract (A) for the future sale or acquisition of any asset or property that would constitute Purchased Assets or (B) that grants a right or option to purchase any asset or property that would constitute Purchased Assets, other than any Contract relating to any asset or property with a value of less than \$10,000; and
- (xi) each other Contract requiring payments by or to the Company in excess of \$10,000 per annum.

(b) Each Company Contract that is a Purchased Contract constitutes a legal, valid and binding obligation of the Company, enforceable in accordance with its terms and, to the Knowledge of Seller, the other parties thereto. Neither the Company nor, to the Knowledge of Seller, any other party to any Company Contract that is a Purchased Contract is, in material violation or material breach of or in material default under any such Company Contract that is a Purchased Contract. At the time of the Closing, (i) the applicable Interconnection Agreement

provides for an interconnection with Seller's electrical system to enable the applicable Purchaser, to perform its obligations in accordance with the applicable Power Purchase Agreement; and (ii) provided that the applicable Purchaser continues to operate the applicable Project in a substantially similar manner as Seller had operated such Project prior to the Closing, including with respect to the name plate capacity of such Project, each of the Projects will be capable of operating in full compliance with the relevant Interconnection Agreement without further System (as such term is defined in the applicable Interconnection Agreement) Upgrades (as such term is defined in the applicable Interconnection Agreement).

(c) Seller (i) has provided or made available to Purchasers true, correct and complete copies of all Company Contracts that are Purchased Contracts in existence on the Effective Date and (ii) will provide or make available to Purchasers true, correct and complete copies of all Company Contracts that are not Excluded Contracts entered into after the Effective Date promptly following their execution.

Section 3.11 Taxes. Except as set forth in Section 3.11 of the Seller Disclosure Schedule, (i) with respect to the income or operations of the Business or ownership of the Purchased Assets all material Tax Returns required to be filed on or prior to date hereof have been timely filed or will be timely filed (in each case, taking into account any available extensions) in accordance with applicable Law, and all such Tax Returns are true, correct and complete in all material respects, and accurately reflect all material liability for Taxes of, or with respect to the income or operations of the Business or ownership of the Purchased Assets for the periods covered thereby, (ii) all material Taxes of, or with respect to the income or operations of the Business, or ownership of the Purchased Assets that are due and owing have been paid in full within the time required by Law to the appropriate Tax authority, (iii) there are no material audits, claims, assessments, levies, administrative or judicial proceedings pending, or proposed in writing with respect to the income or operations of the Business or ownership of the Purchased Assets by any Tax authority, (iv) the Company has timely withheld and paid to the appropriate Tax authority all material Taxes required to have been withheld and paid on or prior to the date hereof, in connection with amounts paid or owing to any employee, independent contractor, creditor, member or other third party providing services in connection with the Business, (v) no waiver or extension of any statute of limitations with respect to any material Tax filing or payment obligation pertaining to the Company or the income or operations of the Business or ownership of the Purchased Assets, is currently in effect, (vi) there are no Liens for Taxes upon any of the Purchased Assets other than Permitted Liens, (vii) the Company is not presently contesting material Tax liability with respect to the income or operations of the Business or ownership of the Purchased Assets before any court, tribunal or agency, and (viii) there are no Tax sharing, allocation, indemnification or similar agreements in effect as between any of the Company or any predecessor or Affiliate thereof and any other party under which Purchasers could be liable for any material Taxes or other claims of any party. It is agreed and understood that this Section 3.11 contains the sole and exclusive representations and warranties provided with respect to all matters relating to Taxes of or with respect to the Business and the Purchased Assets.

Section 3.12 Financial Information. True and correct copies of the unaudited operations and maintenance statement and the capital statement for the Projects for the years 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016 and the period from January 1, 2017 to October 31, 2017 are set forth in Section 3.12 of the Seller Disclosure Schedule (the

“Statements”). The Statements were prepared from the books and records of Seller, which books and records are correct and complete in all material respects.

Section 3.13 Environmental Matters. Except as set forth in Section 3.13(a) of the Seller Disclosure Schedule: (a) to the Knowledge of Seller, the Company and the Projects comply with applicable Environmental Laws, in all material respects; (b) the Company and the Projects possess and comply with all material Permits required under any Environmental Law for the operation of the Projects, and all such Permits are listed in Section 3.13(b) of the Seller Disclosure Schedule and are in full force and effect, for the benefit of the Projects; (c) since December 31, 2015, the Company has not received any written notice of violation of Environmental Laws by any Governmental or Regulatory Authority relating to the Projects; and (d) neither Seller nor its Affiliates have treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, released or exposed any Person to any Hazardous Substance on any Project Site or the Real Property other than in compliance in all material respects with applicable Environmental Laws. There are no Actions or Proceedings pending or, to the Knowledge of Seller, threatened against the Company with respect to the Purchased Assets, the Projects or the Project Sites, under any Environmental Law. This Section 3.13 and, to the extent applicable, Section 3.14(a) contains the sole and exclusive representations and warranties of Seller with respect to environmental, health and safety matters, including all matters arising under any Environmental Laws or related to Hazardous Substances.

Section 3.14 Permits and Regulatory Matters.

(a) Section 3.14(a) of the Seller Disclosure Schedule sets forth all Permits owned or held by the Company as of the date hereof. Such Permits constitute all Permits that are necessary or required for the ownership, occupancy, management and operation of the Projects, the Project Sites, the Purchased Assets or the Business as currently conducted.

(b) Except as set forth in Section 3.14(b) of the Seller Disclosure Schedule, all such Permits are in full force and effect, and, to the Knowledge of Seller, the Company is in compliance, in all material respects, with such Permits.

Section 3.15 Brokers. Other than as set forth in Section 3.15 of the Seller Disclosure Schedule, none of the Company nor any of its Affiliates has any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASERS

Except as set forth in the disclosure schedule delivered by Purchasers to Seller concurrently with the execution and delivery of this Agreement (the “Purchaser Disclosure Schedule”), each Purchaser hereby represents and warrants, jointly and severally, to Seller as follows:

Section 4.01 Legal Existence. Each Purchaser is a limited liability company duly formed, validly existing and in good standing under the Laws of the State of Delaware. Each Purchaser is qualified to do business and is in good standing in the states in which the conduct of

its business or locations of its assets and properties makes such qualification necessary, except where failure to be so qualified or to be in good standing would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on such Purchaser's ability to perform its obligations hereunder. Each Purchaser has all requisite limited liability company power and authority to execute, deliver and perform its obligations under this Agreement, including to purchase the applicable Purchased Assets pursuant hereto, and the Ancillary Agreements to which it is a party.

Section 4.02 Authority. The execution and delivery by each Purchaser of, and the performance by such Purchaser of its obligations under, this Agreement and the Ancillary Agreements to which it is a party and the consummation by such Purchaser of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action on the part of such Purchaser, with no other actions or proceedings on the part of such Purchaser being necessary. This Agreement has been, and each of the Ancillary Agreements to which it is a party has been or will be, duly and validly executed and delivered by each Purchaser and, assuming the due authorization, execution and delivery thereof by the other parties hereto, constitutes the legal, valid and binding obligation of such Purchaser enforceable against such Purchaser in accordance with their respective terms, except as the same may be limited by (a) bankruptcy, insolvency, reorganization, moratorium and other similar Laws of general application affecting the rights and remedies of creditors and (b) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law).

Section 4.03 No Conflicts. The execution and delivery by each Purchaser of, and the performance by it of its obligations under, this Agreement and each of the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the other organizational or constitutional documents of such Purchaser;

(b) subject to obtaining the approvals, consents and actions, making the filings and giving the notices set forth in Section 4.04 of the Purchaser Disclosure Schedule, conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to such Purchaser or any of its assets and properties; or

(c) except as set forth in Section 4.03 of the Purchaser Disclosure Schedule, (i) conflict with or result in a violation or breach of, (ii) constitute (with or without notice, lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, or (iii) require such Purchaser to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, any material Contract, material Permit or material Governmental or Regulatory Approval to which such Purchaser is a party or by which any of its assets and properties is bound.

Section 4.04 Governmental or Regulatory Approvals. Except as set forth in Section 4.04 of the Purchaser Disclosure Schedule, no Governmental or Regulatory Approval on the part of either Purchaser is required in connection with the execution and delivery by either Purchaser of this Agreement or the consummation of the transactions contemplated hereby, except where the failure to obtain any such Governmental or Regulatory Approval would not reasonably be

expected to have a material adverse effect on the ability of either Purchaser to perform its obligations hereunder.

Section 4.05 Legal Proceedings. There are no Actions or Proceedings pending or, to the Knowledge of Purchaser, threatened against either Purchaser or any of their respective assets or properties that would reasonably be expected to result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the purchase by either Purchaser of the Purchased Assets or the assumption of the Assumed Liabilities under this Agreement or the performance by either Purchaser of their respective obligations under this Agreement or the Ancillary Agreements to which it is a party.

Section 4.06 Investment Representations. Each Purchaser is an investor experienced (or owned or managed by Persons experienced) in evaluating investments and, in particular (either on its own or with advisors), power generation facilities and has the knowledge, experience and resources to enable it to evaluate and to bear the risks of the investment contemplated hereunder.

Section 4.07 Brokers. Neither Purchaser has any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the execution and delivery of this Agreement.

Section 4.08 Due Diligence Investigation. Each Purchaser or their respective respective Representatives have had the opportunity to conduct their own independent investigation, review and analysis of the Projects, the Project Sites, the Purchased Assets, the Business and the Assumed Liabilities, the results of operations, financial condition and prospects of the Business and the Projects as they have deemed necessary or advisable in connection with entering into this Agreement and the related documents and the transactions contemplated hereby and thereby. Each Purchaser and their respective Representatives have been provided with all requested access to the Projects, the Project Sites, the Purchased Assets, the Business and the Assumed Liabilities for such purpose. Each Purchaser has relied solely upon the results of the aforementioned investigation, review and analysis and the representations and warranties made by Seller in Article III in making its decision to purchase the Purchased Assets and assume the Assumed Liabilities, and has not relied on any other statements or advice from Seller, its Affiliates or Representatives.

Section 4.09 Funds. Purchasers have on the date hereof, and will have on the Closing Date, sufficient cash on hand (and has provided Seller with evidence thereof) to enable Purchasers to purchase the Purchased Assets at the Closing in accordance with the terms and conditions of this Agreement and to make all other necessary payments of fees and expenses in connection with the transactions contemplated hereby.

Section 4.10 Exon-Florio. Neither Purchaser is deemed a “foreign person” for purposes of Section 721 of the Defense Production Act of 1950, as amended, or any executive orders, rules or regulations relating thereto.

Section 4.11 Public Utility. Neither Purchaser is a “public utility” for purposes of the FPA.

Section 4.12 Reliance on Seller’s Representations and Warranties. In entering into this Agreement, Purchasers have relied solely upon their own independent review and analysis and

the representations, warranties and covenants contained in Article III or in any certificate delivered hereunder by Seller, and has not been induced by and has not relied upon any representations, warranties or statements, whether oral or written, express or implied, made by Seller or any of its Representatives, Affiliates or agents that are not expressly set forth in Article III of this Agreement or in any certificate delivered hereunder by Seller, and except as specifically set forth in Article III of this Agreement or in any certificate delivered hereunder by Seller, Seller does not make and has not made any representations or warranties of any kind, express or implied, written or oral, as to projections, forecasts or estimates of cash flows, yields or returns. Neither Seller nor any of its Representatives, Affiliates or agents shall have any liability or responsibility whatsoever to either Purchaser or their respective Representatives, shareholders, Affiliates or agents on any basis (including in contract or tort, under federal or state securities Laws or otherwise), resulting from the furnishing to Purchasers, or from Purchasers' use of, any information or documents, provided, however, that the foregoing is not intended to limit Seller's representations or warranties set forth in Article III of this Agreement or in any certificate delivered hereunder by Seller.

ARTICLE V

COVENANTS

Section 5.01 Investigation by Purchasers. From the date hereof until the Closing, Seller shall provide Purchasers and their Representatives with reasonable access, upon reasonable prior notice and during normal business hours, to the officers, employees, agents and accountants of the Business and the Business' assets, properties, books and records, but in each case only to the extent that such access does not unreasonably interfere with the business and operations of the Business or the Company; provided that (i) Seller shall not be required to furnish any such information where the furnishing of such information would violate any Law, Order, Company Contract, Permit or Governmental or Regulatory Approval applicable to Seller or any of its assets and properties, including the Projects, the Project Sites, the Purchased Assets, the Business and the Assumed Liabilities, (ii) each Purchaser and such Purchaser's Representatives shall comply with all applicable safety rules, regulations and procedures implemented by Seller, and (iii) neither Purchaser, nor any of their respective Representatives shall collect or analyze any environmental samples (including building materials, indoor and outdoor air, surface and ground water, and surface and subsurface soils), without the prior written authorization of Seller. Each Purchaser agrees to, jointly and severally, indemnify and hold harmless, release, and defend Seller and its Affiliates and Representatives from and against any and all Losses arising out of, resulting from or relating to, in whole or in part, the acts or omissions of either Purchaser or their respective Representatives arising under this Section 5.01 in connection with such Purchaser's inspection of the Projects, the Project Sites, the Purchased Assets and the Books and Records, including claims for personal injuries, property damage, and reasonable attorneys' fees and expenses.

Section 5.02 Conduct of Business. From the date hereof until the Closing, Seller shall conduct the Business and operate and maintain the Projects only in the ordinary course consistent with past practice. Without limiting the generality of the foregoing, Seller will use commercially reasonable efforts to (a) preserve intact the present business organization and reputation of the Business in all material respects, (b) maintain the Purchased Assets in good working order and condition, ordinary wear and tear excepted, and (c) maintain the goodwill of key Persons with

whom the Company otherwise has significant business relationships with respect to the Purchased Assets.

Section 5.03 Certain Restrictions. From the date hereof until the Closing, Seller shall refrain from taking any of the following actions, except, in each case, (i) with respect to those matters set forth in Section 5.03 of the Seller Disclosure Schedule, (ii) as expressly permitted or required by this Agreement, (iii) with Purchasers' prior consent (which shall not be unreasonably withheld, conditioned or delayed) or (iv) as required by Law:

(a) amending its articles of organization or limited liability company agreement, in any manner which could materially adversely impact Seller's ability to consummate the transactions contemplated by this Agreement;

(b) acquiring, disposing or removing from the Project Sites any asset of the Company (other than Inventory) with a value in excess of \$10,000.00 which would be included in the Purchased Assets, or incurring any Liens on the Purchased Assets, other than Permitted Liens;

(c) entering into or amending in any material respect, any Company Contract (or any Contract that if in existence on the date hereof would have been required to be disclosed on Section 3.10 of the Seller Disclosure Schedule) that is a Purchased Contract;

(d) incurring, assuming, guaranteeing or modifying any Indebtedness, except as would upon or after the Closing constitute an Excluded Liability;

(e) making capital expenditures or commitments with respect to the Business, the Purchased Assets, the Projects or the Project Sites for additions to property, plant or equipment constituting capital assets in an aggregate amount exceeding \$10,000.00;

(f) except as required by GAAP, making any change in any method of accounting or auditing practice with respect to the Business, the Purchased Assets, or the Projects;

(g) selling or transferring any Inventory except that Seller may consume Inventory in the ordinary course of business consistent with past practice;

(h) voluntarily taking any action constituting a failure to comply with any material Permit in any material respect required for the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets; or

(i) agreeing, authorizing or committing to do or engage in any of the foregoing.

Notwithstanding this Section 5.03, or any other provision herein, Seller may take commercially reasonable actions with respect to emergency situations.

Section 5.04 Governmental Approvals.

(a) Subject to the terms and conditions of this Agreement and applicable Law, each Party shall use its reasonable commercial efforts to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or advisable to obtain as promptly as

reasonably practicable all necessary or appropriate waivers, consents, approvals or authorizations of Governmental or Regulatory Authorities, including with respect to FERC, the NCUC and the PSCSC, and to satisfy all other conditions required in order to consummate the transactions contemplated by this Agreement (and, in such case, to proceed with the consummation of the transactions contemplated by this Agreement as expeditiously as possible). Following the Closing, Project Purchaser shall use its reasonable commercial efforts to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or advisable in order to have the Clean Water Act Section 401 Water Quality Certifications Project issued by the North Carolina Department of Environment and Natural Resources with respect to each of the Bryson Project, the Franklin Project and the Mission Project, issued in Project Purchaser's name as soon as practicable following the Closing.

(b) Except as set forth in Section 5.04(b) of the Purchaser Disclosure Schedule, from the date hereof until Closing, except as may be agreed in writing by Seller or as may be expressly permitted pursuant to this Agreement, each Purchaser shall not, and shall cause their Affiliates to not, and to not permit any of its subsidiaries to, acquire, develop or construct any electric generation or transmission facility, enter into any Contract with respect to any electric generation or transmission facility, or otherwise obtain control over any electric generation or transmission facility, or make any regulatory filing seeking to do any of the foregoing, in each case in the region in which any of the Projects are located, and in each case which could reasonably be expected to impact the ability of the Parties to secure all required government approvals to consummate the transactions hereunder, or take any action with any Governmental or Regulatory Authority relating to the foregoing, or agree, in writing or otherwise, to do any of the foregoing, in each case which could reasonably be expected to delay or prevent the consummation of the transactions contemplated hereby or result in the failure to satisfy any condition to consummation of the transactions contemplated hereby.

Section 5.05 Delivery of Surveys and Applicable Schedules; Supplemental Disclosure.

(a) Following the Effective Date but prior to the Closing, Seller shall, with respect to each Project Site, deliver to Purchasers a survey meeting ALTA standards and prepared by a licensed surveyor (a "Survey" and, collectively, the "Surveys") with respect to such Project Site, and dated within any time period prescribed by the title insurer to provide survey gap coverage. If following the Effective Date, a Survey for any Project Site is not available, Seller shall, at Seller's sole expense, use commercially reasonable efforts to cause a Survey of such Project Site to be prepared and shall cause copies of such Surveys to be delivered to Purchasers as soon as is reasonably practicable. Within a reasonable period of time following the completion of all of the Surveys and prior to the Closing, Seller shall prepare and deliver Sections 1.01(e) and 2.01(a) of the Seller Disclosure Schedule to Purchasers, which Schedules shall set forth the legal descriptions of the parcels comprising the Tuxedo Switchyard Premises and the Real Property, respectively.

(b) In addition to as provided in Section 5.05(a) above, Seller shall have the right from time to time prior to the Closing, to supplement or amend the Seller Disclosure Schedule with respect to any matter hereafter arising or discovered which if existing or known at the date of this Agreement would have been required to be set forth or described in the Seller Disclosure Schedule, except where the subject matter of such supplemental or amended disclosure would reasonably be expected to have a Material Adverse Effect. Any such

supplemental or amended disclosure shall be deemed to have cured any such breach of representation or warranty made in this Agreement and to have been disclosed as of the date of this Agreement for all purposes of this Agreement.

Section 5.06 Tax Matters.

(a) For purposes of this Agreement, all Taxes and Tax liabilities of, or with respect to, the income or operations of the Business or the ownership of the Purchased Assets that relate to the Overlap Period will be apportioned to Seller and Purchasers. Seller shall be liable for Taxes with respect to the income, assets or operations of the Business or the ownership of the Purchased Assets that are attributable to the portion of the Overlap Period ending on and including the Closing Date (other than any item attributable to a transaction occurring outside the ordinary course of business on the Closing Date but after the Closing) and Purchasers shall be liable for Taxes with respect to the income, assets or operations of the Business or the ownership of the Purchased Assets that are attributable to the portion of the Overlap Period beginning after the Closing Date. These Taxes and Tax liabilities shall be apportioned between Seller and Purchasers as follows: (i) in the case of Taxes (including, for the avoidance of doubt, property Taxes) other than income, sales and use and withholding Taxes, on a per diem basis; and (ii) in the case of income, sales and use and withholding Taxes, on a closing of the books basis as determined at the close of business on the Closing Date.

(b) Purchasers shall provide Seller with notice of any Taxes allocated to Sellers pursuant to Section 5.06(a). Seller shall pay Purchasers an amount equal to any Taxes allocated to Seller as provided for in the notice described in the preceding sentence within ten (10) Business Days following Purchaser's delivery of the required notice; provided that Seller shall not be required to make such payment to Purchasers prior to the date that is five (5) Business Days prior to the due date for such Taxes (including estimated payments). Purchasers shall promptly pay Seller an amount equal to any Taxes that are allocated to Purchasers pursuant to Section 5.06(a) to the extent such Taxes were paid by Seller prior to the Closing Date.

(c) Any Tax Return filed after the Closing with respect to Taxes of, or with respect to an Overlap Period shall be prepared by Purchasers in accordance with past practices relating to the Purchased Assets unless otherwise required by Law, and submitted (with copies of any relevant schedules, work papers, and other documentation then available) to Seller for its review and comment not less than twenty (20) days, or in the case of sales Taxes, such shorter period as is practicable, but in no event less than ten (10) days, prior to the due date for the filing of such Tax Return (taking into account any valid extensions). Seller shall have the option of providing to Purchasers, at any valid time at least five (5) days prior to the date such Tax Return is due to be filed (taking into account any valid extensions), written comments to the Overlap Period Tax Return, Purchasers shall consider such comments and the Parties shall use their reasonable efforts to resolve any disputed items. If the Parties cannot come to mutual agreement on any such Tax Return within the time periods specified in this Section 5.06(c), the Parties shall submit any disputes to a third-party accounting firm of national recognition jointly engaged by Seller and Purchasers, which may not be a firm used as the primary accounting firm for either Party (the "Independent Accountant"). The Independent Accountant shall be instructed to resolve such disagreement within thirty (30) days after such disagreement is submitted to it for resolution; provided that if any disputes have not been resolved by the due date for filing a Tax Return giving effect to all available valid extensions, Purchasers shall have the right to file any

such Tax Return in a manner determined by Purchasers, and the Tax Return will be amended if and to the extent necessary to reflect the resolution of any disputed item. The fees, costs and expenses of the Independent Accountant incurred shall be paid fifty percent (50%) by Seller and fifty percent (50%) by Purchasers.

(d) Following the Closing, Seller shall not make any Tax election, amend any Tax Return, or respond to any audit or inquiry by a taxing authority that could reasonably be expected to materially adversely affect the Tax liability of Purchasers or any of their Affiliates without the prior written consent of Purchasers, which consent shall not be unreasonably withheld or delayed.

(e) If Seller does not deliver to Purchasers the certification required by Section 6.03(b), Purchasers shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement (including the Purchase Price) such amount as it is required pursuant to Section 1445 of the Code to deduct and withhold with respect to the making of such payment.

Section 5.07 Casualty. If the Purchased Assets are damaged or destroyed by fire or other casualty prior to the Closing (a “Casualty Loss”), and the estimated cost of repairing, replacing or restoring the damaged or destroyed assets to a condition reasonably comparable in all material respects to its prior condition as estimated by a qualified firm reasonably acceptable to Seller and Purchasers (the “Damage Cost”) is:

(a) less than or equal to \$500,000, then if such casualty has not been repaired before Closing, (i) the Purchase Price shall be reduced by the amount of the Damage Cost, less any amounts expended by Seller prior to the Closing, and (ii) such Casualty Loss shall not be taken in account for all purposes of this Agreement, including determining whether the conditions set forth in Article VI of this Agreement have been satisfied; or

(b) greater than \$500,000, then either Seller or Purchasers may elect to terminate this Agreement in accordance with Article IX of this Agreement.

Section 5.08 Transfer Taxes. All transfer Taxes, including documentary, sales, use, stamp, registration, filing, recording, permit, license, authorization, controlling interest transfer and other similar Taxes and fees (including any penalties and interest) (“Transfer Taxes”) incurred in connection with this Agreement and the transactions contemplated hereby, if any, shall be paid by fifty percent (50%) by Purchasers and fifty percent (50%) by Seller, and the Party required by applicable Law shall file all necessary Tax Returns and other documentation with respect to any such Transfer Taxes, and, if required by applicable Law, the other Party shall, and shall cause its Affiliates to, join in the execution of any such Tax Returns and other documentation and shall cooperate to take such commercially reasonable actions as will minimize or reduce the amount of such Taxes. Seller and Purchasers shall promptly reimburse the other for any amount of Transfer Taxes which are paid by the other in excess of such Party’s fifty percent (50%) allocation thereof.

Section 5.09 Separation of Generation and Transmission Assets and Operations. Purchasers acknowledge that Seller and certain of Seller’s Affiliates are in the process of relocating certain equipment and assets included within the Excluded Assets of Seller from the Real Property, as described on Section 5.09 of the Seller Disclosure Schedule (the “GT

Separation”), which GT Separation will continue following the Closing Date. In connection with the GT Separation, within two (2) weeks following the Effective Date, each of Purchasers and Seller hereby agrees to appoint representatives to a transition team, which team shall work together in good faith to mutually develop a detailed work plan for the GT Separation, with such work plan to be completed by no later than forty-five (45) days following the Effective Date. The cost of the GT Separation shall be borne by Seller.

Section 5.10 Real Property Matters. Prior to and at the Closing, Seller shall reasonably cooperate with Purchasers by providing reasonably requested documentation in the possession, or under the control of, Seller in connection with Purchasers obtaining ALTA Owner’s Policies of Title Insurance with the deletion of the requirements described in Schedule B-I of the title commitments, the deletion of the “gap” exception and other standard exceptions and the attachment of any and all available, reasonable and customary endorsements required by Purchasers (obtained at Purchasers’ sole cost and expense) covering all of the Real Property effective as of the Closing Date, including executing customary affidavits required by Purchasers’ title insurance company, including the NCLTA Form Affidavit and Indemnity Form No. 1 (completed and filled in for factual accuracy) (the “Title Company Affidavit”); provided, however, that Seller shall not be required to provide any indemnities or guaranties in favor of the title insurance company, either Purchaser or any other party in connection with this Section 5.10 other than (a) a reasonable and customary “Non-Imputation Affidavit” and (b) the indemnity contained in the Title Company Affidavit. Notwithstanding anything herein to the contrary, Purchasers shall be responsible for all costs related to any title policy premiums.

Section 5.11 New Lake Summit Lease; Tuxedo Project Water Management.

(a) Following the Closing, Tuxedo Purchaser hereby covenants and agrees that it shall perform all of the obligations of “Lessor” under the New Lake Summit Lease to the fullest extent required under the New Lake Summit Lease, including, without limitation, the obligations set forth in Paragraphs 7 and 8 therein, and Tuxedo Purchaser also covenants and agrees that it shall continue to implement the obligations of Lessor (as defined in the New Lake Summit Lease) as specified in Paragraphs 7 and 8 of the New Lake Summit Lease (in such form as the New Lake Summit Lease exists as of the Closing) for a period of no less than five (5) years following the Closing, regardless of whether or not the New Lake Summit Lease is amended or terminated prior to that time.

(b) Following the Closing, unless (i) Lake Summit is more than 15 vertical feet below the Full Pond Elevation of 2,012.6 feet above mean sea level based on National Geodetic Vertical Datum 29; (ii) Tuxedo Project equipment or structures needed to provide generation flow releases are out of service; or (iii) other conditions beyond Tuxedo Purchaser’s control prevent generation flow releases from the Tuxedo Project, then in order to assist Seller in meeting its environmental compliance requirements during an ongoing Intense Drought (as such drought is defined in Paragraph 7(b) of the New Lake Summit Lease) or recovery from the same at Seller’s Rogers Energy Complex or other power generation facilities of Seller or Seller’s successor in interest to be located downstream of the Tuxedo Project in the future, Tuxedo Purchaser shall make scheduled flow releases from the Tuxedo Project at flow levels and flow durations as requested by Seller or Seller’s successor in interest with respect to power generation facilities located or to be located downstream of the Tuxedo Project. The Parties hereby agree that reasonable compensation to Tuxedo Purchaser for such required generation flow releases

from the Tuxedo Project to support the power generation facilities of Seller or Seller's successor in interest located or to be located downstream shall consist of payment by Seller or Seller's successor in interest to Tuxedo Purchaser for energy delivered to Seller or Seller's successor in interest during such periods at the Contract Price for On-Peak Energy (as set forth in Exhibit 2 to the Tuxedo RPPA), regardless of when such requested deliveries occur.

(c) If at any time following the Closing, Tuxedo Purchaser sells, assigns or otherwise transfers (including any change of control transaction) any of the underlying Purchased Assets relating to the Tuxedo Project that are necessary or appropriate for Tuxedo Purchaser to perform its obligations under this Section 5.11 (a "Transfer"), Tuxedo Purchaser shall require that, as a condition to such Transfer, the transferee assume, in whole or in part, as appropriate, the obligations of Tuxedo Purchaser as set forth in this Section 5.11.

Section 5.12 Notification of Certain Matters. Each Party shall give prompt notice to the other Party after becoming aware of (a) the occurrence, or failure to occur, of any event that causes, or would be reasonably likely to cause, any representation or warranty of the notifying Party contained in this Agreement to be untrue or inaccurate in any material respect at any time from the Effective Date to the Closing Date and (b) any failure of the notifying Party to comply with or satisfy, in any material respect, any covenant, condition or agreement to be complied with or satisfied by such Party under this Agreement.

Section 5.13 Transition Services Agreement. After the date of this Agreement, each of the Parties shall negotiate in good faith the terms, conditions and form of a transition services agreement (the "Transition Services Agreement") to be entered into at the Closing, and each of the Parties shall use its reasonable best efforts, negotiating in good faith, to finalize the form of the Transition Services Agreement no later than thirty (30) days after the date of this Agreement; provided, however, that (i) the terms of any transition services under the Transition Services Agreement shall be limited to three (3) months following the Closing Date, subject to extension for an additional one (1) month period upon mutual written agreement of the Parties, (ii) the fees for each such service shall be equal to Seller's or its Affiliates', as applicable, actual cost to provide such service consistent with Seller's or such Affiliates' practice for charging services to Affiliates, and (iii) such services shall be as mutually agreed to in the Transition Services Agreement by the Parties and shall expressly exclude any services that would violate any Law or any Contract (including any license) or would require Seller or any of its Affiliates to seek any consent, assignment or approval of any third party (including any Governmental or Regulatory Authority).

Section 5.14 Removal of Signs. As soon as reasonable practicable following the Closing, but in no event later than thirty (30) days after the Closing Date, Purchasers, at their sole cost and expense, shall cause any and all signs which reference "Duke", "Duke Energy" or any other Intellectual Property of Seller or its Affiliates to be removed from the Real Property.

ARTICLE VI

CONDITIONS TO OBLIGATIONS OF PURCHASERS

The obligation of Purchasers to consummate the transactions described in Article II are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in writing in whole or in part by Purchasers in their sole discretion):

Section 6.01 Representations and Warranties. The representations and warranties of Seller contained in Article III of this Agreement (other than the Fundamental Representations of Seller contained therein) shall be true and correct as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (or, to the extent such representations and warranties expressly relate to an earlier date, on and as of such earlier date), except where the failure of such representations and warranties to be true and correct (in each case disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect) would not reasonably be expected to have a Material Adverse Effect; and the Fundamental Representations made by Seller shall be true and correct in all respects as of the Closing Date (except to the extent such Fundamental Representations expressly relate to an earlier date, in which case such earlier date).

Section 6.02 Performance. Seller shall have performed and complied in all material respects with the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Seller at or before the Closing.

Section 6.03 Officers' Certificates. Seller shall have delivered to Purchasers (a) an officer's certificate, dated the Closing Date and executed in the name and on behalf of Seller, certifying that all of the conditions set forth in Sections 6.01 and 6.02 have been satisfied and (b) a certificate, dated the Closing Date, stating that Duke Energy Corporation is not a "foreign" person within the meaning of Section 1445 of the Code, which certificate shall set forth all information required by, and shall otherwise be executed in accordance with, Treasury Regulation Section 1.1445-2(b)(2).

Section 6.04 Orders and Laws. There shall not be in effect on the Closing Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement.

Section 6.05 Governmental or Regulatory Approvals. All Governmental or Regulatory Approvals set forth in Section 6.05 of the Purchaser Disclosure Schedule shall have been obtained, made or given, and shall be in full force and effect.

Section 6.06 Instruments of Transfer. At or prior to the Closing, Seller shall have executed and delivered to Purchasers (i) the Bills of Sale, (ii) the Assignment and Assumption Agreement, (iii) the Deeds and (iv) and such other instruments of transfer as shall be reasonably required and acceptable to Purchasers and Seller.

Section 6.07 Third-Party Consents. The consents (or waivers in lieu thereof) set forth in Section 6.07 of the Purchaser Disclosure Schedule shall have been obtained, made or given, and shall be in full force and effect.

Section 6.08 FERC License Transfer Approval. The FERC License Transfer Approval shall (i) have been duly issued; (ii) be in full force and effect; (iii) not have been reversed, stayed, enjoined, set aside, annulled or suspended and (iv) be final and no longer subject to rehearing or appeal.

Section 6.09 Interconnection Agreements. At or prior to the Closing, Seller shall have executed and delivered to the applicable Purchaser each of the Interconnection Agreements.

Section 6.10 Power Purchase Agreements. At or prior to the Closing, Seller shall have executed and delivered to the applicable Purchaser each of the Power Purchase Agreements (with no change to the rates for such Purchaser provided in the forms attached hereto).

Section 6.11 Access Agreement. At or prior to the Closing, Seller shall have executed and delivered to Purchasers the Access Agreement.

Section 6.12 Title Matters. Purchasers shall have received title insurance policies or “marked up” title commitments insuring the applicable Purchaser’s interest in the Real Property in form and substance consistent with Section 5.10 hereof, including reasonable assurance from the title insurer against loss or damage related to the post-Closing release of the Refunding Mortgage Lien.

Section 6.13 Surveys. In accordance with Section 5.05(a) herein, Seller shall have delivered or caused to be delivered to Purchasers copies of the Surveys along with Sections 1.01(e) and 2.01(a) of the Seller Disclosure Schedule.

Section 6.14 No Material Adverse Effect. Since the date hereof, there shall not have occurred and be continuing a Material Adverse Effect.

Section 6.15 Phase I Reports. Purchasers shall have received a third-party reliance letter in favor of Purchasers from Arcadis G&M of North Carolina, Inc. with respect to the Phase I environmental reports identified in the Seller Disclosure Schedule, in form reasonably satisfactory to Purchasers.

ARTICLE VII

CONDITIONS TO OBLIGATIONS OF SELLER

The obligation of Seller to consummate the transactions described in Article II are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in writing in whole or in part by Seller in its sole discretion):

Section 7.01 Representations and Warranties. The representations and warranties of Purchasers contained in Article IV of this Agreement (other than the Fundamental Representations of Purchasers contained therein) shall be true and correct as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (or, to the extent such representations and warranties expressly relate to an earlier date, on and as of such earlier date), except for failures of the representations and warranties to be true and correct which do not have material adverse effect on either Purchaser’s ability to perform its obligations hereunder; and the Fundamental Representations made by Purchasers shall be true and correct in all respects as of the Closing Date (except to the extent such Fundamental Representations expressly relate to an earlier date, in which case such earlier date).

Section 7.02 Performance. Each Purchaser shall have performed and complied in all material respects with the agreements, covenants and obligations required by this Agreement to be performed or complied with by such Purchaser at or before the Closing.

Section 7.03 Officer’s Certificates. Each Purchaser shall have delivered to Seller an officer's certificate, dated the Closing Date and executed in the name and on behalf of such

Purchaser, certifying that all of the conditions set forth in Sections 7.01 and 7.02 have been satisfied.

Section 7.04 Orders and Laws. There shall not be in effect on the Closing Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

Section 7.05 Governmental or Regulatory Approvals. All Governmental or Regulatory Approvals set forth in Section 7.05 of the Seller Disclosure Schedule shall have been obtained, made or given, and shall be in full force and effect.

Section 7.06 Third-Party Consents. The consents (or waivers in lieu thereof) set forth in Section 7.06 of the Seller Disclosure Schedule shall have been obtained, made or given, and shall be in full force and effect.

Section 7.07 FERC License Transfer Approval. The FERC License Transfer Approval shall (i) have been duly issued; (ii) be in full force and effect; (iii) not have been reversed, stayed, enjoined, set aside, annulled or suspended and (iv) be final and no longer subject to rehearing or appeal.

Section 7.08 Interconnection Agreements. At or prior to the Closing, the applicable Purchaser shall have executed and delivered to Seller each of the Interconnection Agreements.

Section 7.09 Power Purchase Agreements. At or prior to the Closing, the applicable Purchaser shall have executed and delivered to Seller each of the Power Purchase Agreements.

Section 7.10 Instruments of Transfer. At or prior to the Closing, each Purchaser shall have executed and delivered to Seller the Assignment and Assumption Agreement and such other instruments of transfer as shall be reasonably required.

Section 7.11 Access Agreement; Easement Agreements. At or prior to the Closing, each Purchaser shall have executed and delivered to Seller the Access Agreement and the applicable Purchaser shall have executed and delivered to Seller the applicable Easement Agreements.

Section 7.12 Surveys. In accordance with Section 5.05(a) herein, all of the Surveys shall have been completed and Seller shall have delivered or caused to be delivered to Purchasers copies of the Surveys along with Sections 1.01(e) and 2.01(a) of the Seller Disclosure Schedule.

ARTICLE VIII

INDEMNIFICATION; NO OTHER REPRESENTATIONS

Section 8.01 Survival. The representations, warranties, covenants and agreements of Purchasers and Seller contained in this Agreement will survive the Closing until the twelve (12) month anniversary of the Closing and no claims shall be made thereafter with respect to any breach thereof or indemnification for any breach thereof, except for (i) covenants and agreements (including obligations to indemnify) that are to be performed in whole or in part following the Closing, which shall survive for the period set forth therein or, if no such period is specified, indefinitely; (ii) the representations and warranties of Seller set forth in Section 3.01 (Legal

Existence), Section 3.02 (Authority), Section 3.15 (Brokers), Section 3.07 (Real Property), the first sentence of Section 3.08 (Personal Property), and Section 3.10 (Company Contracts), which shall survive the Closing for a period of three (3) years; (iii) the representations and warranties set forth in Section 3.11 (Taxes) which shall survive the Closing for a period of sixty (60) days following the expiration of the applicable statute of limitations; (iv) the representations and warranties of Purchasers set forth in Section 4.01 (Legal Existence), Section 4.02 (Authority), and Section 4.07 (Brokers), which shall survive the Closing for a period of three (3) years (the items in clauses (ii), (iii) and (iv) collectively, the “Fundamental Representations”), and (v) claims which are asserted in good faith prior to the end of the applicable periods set forth in clauses (i) through (iv) above, which shall survive until such claims have been satisfied or resolved as provided in this Article VIII.

Section 8.02 Indemnification.

(a) Subject to Sections 8.01 and 8.02(b) and the other limitations set forth in this Article VIII, from and after the Closing:

(i) Seller shall indemnify, defend and hold harmless Purchasers and their respective Affiliates and Representatives (collectively, the “Purchaser Indemnified Parties”) from and against all Losses actually incurred or suffered by the Purchaser Indemnified Parties arising out of, resulting from or relating to: (A) any breach of any representation or warranty of Seller contained in Article III of this Agreement; (B) any breach of any covenant or agreement of Seller contained in this Agreement; (C) the Excluded Liabilities; (D) the failure of Seller to have the Refunding Mortgage Lien released prior to the Closing.

(ii) Each Purchaser shall, jointly and severally, indemnify, defend and hold harmless Seller and its Affiliates and Representatives (collectively, the “Seller Indemnified Parties”) from and against all Losses actually incurred or suffered by the Seller Indemnified Parties arising out of, resulting from or relating to: (A) any breach of any representation or warranty of Purchasers contained in Article IV of this Agreement; (B) any breach of any covenant or agreement of either Purchaser contained in this Agreement; and (C) the Assumed Liabilities.

(b) Notwithstanding anything in this Agreement to the contrary, except in the case of any claim based upon (i) fraud and (ii) the breach of any Fundamental Representation, in each case, which shall not be subject to the limitations set forth in this Section 8.02(b), neither Party shall have any liability under Section 8.02(a)(i)(A) and Section 8.02(a)(ii)(A) for breaches of representations and warranties in this Agreement (i) until with respect to any claim, such claim involves Losses incurred by the Purchaser Indemnified Parties or the Seller Indemnified Parties, as applicable, in excess of \$10,000.00 and (ii) the aggregate amount of all such Losses exceeding such amount incurred by the Purchaser Indemnified Parties or the Seller Indemnified Parties, as applicable, equals or exceeds an amount equal to two percent (2%) of the Purchase Price (the “Deductible Amount”), in which event the indemnifying Party shall be liable for Losses only to the extent they are in excess of the Deductible Amount, and in no event shall the aggregate liability of the indemnifying Party arising out of or relating to breaches of representation or warranty (other than the Fundamental Representations) exceed an amount equal to thirty-five percent (35%) of the Purchase Price.

(c) Notwithstanding anything in this Agreement to the contrary, except in the case of any claim based upon fraud which shall not be subject to the limitations set forth in this Section 8.02(c), in no event shall the aggregate liability of the indemnifying Party arising out of or relating to breaches of representation or warranty exceed the Purchase Price.

(d) Notwithstanding anything in this Agreement to the contrary, there shall be no indemnification pursuant to this Agreement by any indemnifying Party hereunder for any special, incidental, punitive, exemplary, indirect, consequential or similar damages (including any damages on account of lost profits, loss of revenue, loss of production, diminution in value (based on multiple of earnings or otherwise) or other damages attributable to business interruption), whether by statute, in tort or under contract, under any indemnity provision or otherwise, except in connection with a Third-Party Claim.

(e) Seller shall have no Liability for any breach by Seller of this Agreement (or any certificates delivered pursuant to this Agreement) if either Purchaser had actual knowledge of such breach prior to the date hereof.

Section 8.03 Duty to Mitigate. A Party that becomes aware of a Loss for which it may seek indemnification under this Article VIII shall use commercially reasonable efforts to mitigate such Loss, including taking any actions reasonably requested by the other Party, and such other party shall not be liable for any Loss to the extent that it is attributable to the failure of the party seeking indemnification to comply with this Section 8.03.

Section 8.04 Exclusive Remedy; Reduction of Benefit.

(a) Purchasers and Seller acknowledge and agree that, subject to Section 8.07, from and after the Closing, except in the case of fraud, (i) the indemnification provisions in this Article VIII shall be the sole and exclusive remedy of the Purchaser Indemnified Parties and the Seller Indemnified Parties with respect to any breach of, or cause of action arising under this Agreement or any claims relating to or arising under Environmental Law, including common law and statutory remedies (including, remedies under CERCLA and any other Environmental Law); and (ii) each Purchaser expressly and knowingly releases and waives any right to seek any form of recourse other than the indemnification provisions in this Article VIII against Seller or its Affiliates with respect to claims relating to or arising under Environmental Laws, including common law and statutory remedies.

(b) Any obligation of either Purchaser to indemnify a Seller Indemnified Party or of Seller to indemnify a Purchaser Indemnified Party shall be reduced to the extent of the cash paid to the applicable indemnified party (net of any costs incurred to recover such amount) pursuant to (y) a warranty or indemnification from a third party or (z) insurance.

(c) It is the express intention of the Parties that the indemnification provided for in this Article VIII shall apply to direct claims between the Parties for a breach of this Agreement (whether or not involving a third party).

Section 8.05 Procedure With Respect to Third-Party Claims.

(a) No claim may be asserted pursuant to this Article VIII for breach of any representation, warranty, covenant or agreement contained herein unless written notice of such claim is delivered by the Party seeking indemnification on or prior to the date on which the

representation, warranty, covenant or agreement on which such claim is based ceases to survive as set forth in this Article VIII.

(b) If any Purchaser Indemnified Party or Seller Indemnified Party becomes subject to a pending or threatened claim of a third party (a "Third-Party Claim") and such Person (the "Claiming Party") believes it has a claim for indemnification against Purchasers or Seller, as applicable (the "Responding Party"), then the Claiming Party shall deliver to the Responding Party with reasonable promptness written notice of such Third-Party Claim. The Responding Party shall notify the Claiming Party as soon as practicable whether the Responding Party desires to defend the Claiming Party against such Third-Party Claim. The failure of the Claiming Party to so notify the Responding Party shall not relieve the Responding Party of liability hereunder except to the extent that the defense of such Third-Party Claim is prejudiced by the failure to give such notice. In the event that the Responding Party notifies the Claiming Party that it desires to defend the Third-Party Claim pursuant to this Section 8.05(b) and acknowledges its obligations to indemnify hereunder, the Responding Party shall have control of such defense and proceedings, including any settlement thereof.

(c) If the Responding Party notifies the Claiming Party that it desires to defend the Third-Party Claim pursuant to Section 8.05(b), then the Responding Party shall work diligently to defend the Third-Party Claim with counsel reasonably acceptable to the Claiming Party and shall not enter into any settlement or consent to the entering of any Order (i) that does not include as a term thereof the giving by each claimant or plaintiff to the Claiming Party a release from all liability in respect of such Third-Party Claim or (ii) that provides for any relief other than the payment of monetary damages as to which the Claiming Party shall be paid in full; provided, however, that if requested by the Responding Party, the Claiming Party shall, at the sole cost and expense of the Responding Party, reasonably cooperate with the Responding Party and its counsel in contesting any Third-Party Claim that the Responding Party elects to contest. The Claiming Party may elect to participate in such proceedings, negotiations or defense at any time at its own expense (provided, however, that the Responding Party shall pay the reasonable attorneys' fees of the Claiming Party if (i) the employment of separate counsel shall have been authorized in writing by the Responding Party in connection with the defense of such Third-Party Claim or (ii) the Claiming Party's counsel shall have advised the Claiming Party in writing, with a copy delivered to the Responding Party, that there is a conflict of interest that could make it inappropriate under applicable standards of professional conduct for the Responding Party and the Claiming Party to have common counsel).

(d) Until the Responding Party notifies the Claiming Party that the Responding Party desires to defend the Third-Party Claim pursuant to Section 8.05(b), the Claiming Party shall (upon reasonable prior notice to the Responding Party) have the right to undertake the defense of such Third-Party Claim; provided, however, that the Responding Party shall reimburse the Claiming Party for the costs of defending against such Third-Party Claim (including reasonable attorneys' fees and expenses) and shall remain otherwise responsible for any liability with respect to amounts arising from or related to such Third-Party Claim, in both cases to the extent it is ultimately determined that such Responding Party is liable with respect to such Third-Party Claim for a breach under this Agreement; and provided, further, that the Claiming Party shall not enter into settlement of any such Third-Party Claim without the prior written consent of the Responding Party which shall not be unreasonably withheld. The

Responding Party may elect to participate in such proceedings, negotiations or defense at any time at its own expense.

(e) Sections 8.05(a) through (d) apply only to indemnification relating to Third-Party Claims. A Party to this Agreement may assert an indemnity claim not related to a Third-Party Claim by providing notice to the other Party within the applicable time periods set forth in Section 8.01.

Section 8.06 Adjustment to Purchase Price. Any indemnification payments made pursuant to this Article VIII shall be treated, to the extent permitted by applicable Law, as an adjustment to the Purchase Price paid to Seller for federal, state and local income Tax purposes.

Section 8.07 Specific Performance. The Parties agree that, from and after the Closing, upon a breach or threatened breach of any of the terms of this Agreement by any Party, the remedies at law of the other Party for a breach or threatened breach of this Agreement may not be a sufficient remedy and that the Party shall be entitled to seek specific performance of the terms of this Agreement and immediate injunctive relief, without the necessity of proving the inadequacy of money damages as a remedy, in addition to any other remedy at law or in equity. The Parties further agree that a Party seeking the remedies provided for in this Section 8.07 shall not be required to provide any bond or other security in connection with such order or injunction. This Section 8.07 shall not in any respect constitute a waiver by either Party of its right to seek any other form of relief that may be available to either of them under this Agreement, from and after the Closing.

ARTICLE IX

TERMINATION

Section 9.01 Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time by written notice from either Party to the other Party (except for paragraph (a) below):

- (a) by mutual written consent of Purchasers and Seller;
- (b) by either Purchasers or Seller:

(i) if the Closing has not occurred (i) or before the date that is twelve (12) months after the Effective Date (the "Termination Date"); provided that the terminating Party is not in material breach under this Agreement;

(ii) at any time before the Closing, if any court of competent jurisdiction in the United States or other Governmental or Regulatory Authority shall have issued a final Order or enacted any Law or taken any other final action restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Order or Law or other action is or shall have become final and nonappealable; provided, however, that the Party seeking to terminate this Agreement pursuant to this Section 9.01(b)(i) shall have used commercially reasonable efforts to prevent the entry of and to remove such Order or final action; or

- (iii) pursuant to Section 5.07(b).

(c) at any time before the Closing, by Purchasers (provided that neither Purchaser is not in material breach under this Agreement) if (A) there has been a material breach by Seller of any representation, warranty, covenant or agreement contained in this Agreement or if any representation or warranty of Seller shall have become untrue, in either case such that the conditions set forth in Section 6.01 or 6.02 would not be satisfied, and (B) such breach is not curable by the Termination Date;

(d) at any time before the Closing, by Seller (provided that Seller is not in material breach under this Agreement) if (A) there has been a material breach by either Purchaser of any representation, warranty, covenant or agreement contained in this Agreement or if any representation or warranty of Purchaser shall have become untrue, in either case such that the conditions set forth in Section 7.01 or 7.02 would not be satisfied, and (B) such breach is not curable by the Termination Date; provided, however, that no cure period shall apply to Purchasers' obligation to pay the Purchase Price.

Section 9.02 Effect of Termination. If this Agreement is validly terminated pursuant to Section 9.01, this Agreement will forthwith become null and void and there will be no liability or obligation on the part of either Purchasers or Seller (or any of their respective Affiliates or Representatives) in respect of this Agreement; provided that the provisions set forth in Article X and each Purchaser's indemnification obligations set forth in Section 5.01 will continue to apply following any termination hereof; and provided, further, that each Party shall continue to be liable for any breach by such Party prior to the termination of this Agreement of any representation, warranty, covenant or agreement of such Party in this Agreement.

ARTICLE X

MISCELLANEOUS

Section 10.01 Entire Agreement. This Agreement, together with the Ancillary Agreements and the Confidentiality Agreement, supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof, and contains the sole and entire agreement between the Parties hereto with respect to the subject matter hereof. For clarity, the term "Confidential Information" in the Confidentiality Agreement shall be deemed to include this Agreement.

Section 10.02 Expenses.

(a) Except as otherwise specified in this Agreement, whether or not the transactions contemplated hereby are consummated, each Party shall pay its own costs and expenses incurred in connection with the negotiation and execution of this Agreement and the transactions contemplated hereby.

(b) Seller shall pay any filing fee or administrative charges incurred in connection with transferring from Seller to Purchasers, any Permits or other Governmental or Regulatory Approvals, including the FERC License Transfer Approval. Otherwise, each Party shall bear its own costs and expenses associated with obtaining other third-party approvals and consents.

Section 10.03 Announcements. Except as otherwise required by Law (including rules of any national securities exchange), each of Purchasers and Seller will, and will cause their Affiliates (as applicable) to, consult with the other regarding the timing and content of any press releases or public statements with respect to this Agreement or the transactions contemplated hereby.

Section 10.04 No Waiver. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

Section 10.05 Amendments. Any provision of this Agreement may be modified, supplemented or waived only by an instrument in writing duly executed by the Parties. Any such modification, supplement or waiver shall be for such period and subject to such conditions as shall be specified in the instrument effecting the same and shall be binding upon each of the Parties, and any such waiver shall be effective only in the specific instance and for the purposes for which given.

Section 10.06 Addresses for Notices. All notices and other communications required or permitted to be given or made under this Agreement shall be given or made in writing, by physical (including by mail or courier) or facsimile or electronic mail delivery to the address specified below or such other address as shall be designated in a notice in writing. Notices will be effective upon receipt.

If to Seller:

Duke Energy Carolinas, LLC
c/o Duke Energy Corporation
550 S. Tryon Street, DEC 45A
Charlotte, NC 28202
Attention: Greer Mendelow, Esq.
Facsimile No.: (980) 373-9962
Email: greer.mendelow@duke-energy.com

with a copy to:

Parker Poe Adams & Bernstein LLP
Three Wells Fargo Center
401 S. Tryon Street, Suite 3000
Charlotte, North Carolina 28202
Attention: Roy L. Smart, III
Facsimile No.: (704) 334-4706
Email: skipsmart@parkerpoe.com

If to either Purchaser:

Northbrook Carolina Hydro II, LLC

Northbrook Tuxedo, LLC
c/o North Sky Capital, LLC
33 South Sixth Street, Suite 4646
Minneapolis, MN 55402
Attention: Kyle Kroeger
Email: kkroeger@northskycapital.com

and

Northbrook Energy, LLC
14550 N. Frank Lloyd Wright Blvd.
Suite 210
Scottsdale, AZ 85260
Attention: John C. Ahlrichs
Email: cahlrichs@nbenergy.com

with a copy to:

Curt Whittaker
c/o Rath, Young & Pignatelli
One Capital Plaza, Box 1500
Concord, NH 03302
Email: mcw@rathlaw.com

Section 10.07 Captions. The captions and section headings appearing in this Agreement are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

Section 10.08 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.09 Assignment. The obligations of the Parties under this Agreement are not assignable without the prior written consent of the other Party, which such Party may withhold in its discretion.

Section 10.10 No Third-Party Beneficiary. The terms and provisions of this Agreement are intended solely for the benefit of each Party and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person other than any Person entitled to indemnity under Article VIII.

Section 10.11 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the Parties may execute this Agreement by signing any such counterpart.

Section 10.12 Governing Law. Except for matters relating to the Real Property, this Agreement shall be governed by, and construed in accordance with, the Laws of the State of

New York applicable to a contract executed and performed in such State, without giving effect to any choice of law or conflict of law rules or principles thereof that would require the application of the rules of another jurisdiction. Matters relating to the Real Property shall be governed by, and construed in accordance with, the Laws of the State of North Carolina, with respect to any Real Property located in North Carolina, and South Carolina, with respect to any Real Property located in South Carolina, in each case, as applicable to a contract executed and performed in such State, without giving effect to any choice of law rules or principles thereof that would require the application of the rules of another jurisdiction.

Section 10.13 Consent to Jurisdiction.

(a) For all purposes of this Agreement, and for all purposes of any Action or Proceeding arising out of or relating to the transactions contemplated hereby or for recognition or enforcement of any judgment, each Party submits to the exclusive jurisdiction of the courts of the State of New York and the federal courts of the United States sitting in New York County, the Borough of Manhattan, and hereby irrevocably and unconditionally agrees that any such Action or Proceeding shall be heard and determined in such New York court or, to the extent permitted by law, in such federal court. Each Party agrees that a final judgment in any such Action or Proceeding may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

(b) Each Party irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so:

(i) any objection which it may now or hereafter have to the laying of venue of any Action or Proceeding arising out of or relating to this Agreement or any related matter in any New York state or federal court located in New York County, the Borough of Manhattan; and

(ii) the defense of an inconvenient forum to the maintenance of such Action or Proceeding in any such court.

(c) Each Party irrevocably consents to service of process by registered mail, return receipt requested, as provided in Section 10.06. Nothing in this Agreement will affect the right of any Party hereto to serve process in any other manner permitted by law.

Section 10.14 Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY LEGAL ACTION TO ENFORCE OR INTERPRET THE PROVISIONS OF THIS AGREEMENT OR THAT OTHERWISE RELATES TO THIS AGREEMENT.

Section 10.15 Disclosure. Seller may, at its option, include in the Seller Disclosure Schedule items that are not material in order to avoid any misunderstanding, and any such inclusion, or any references to dollar amounts, shall not be deemed to be an acknowledgment or representation that such items are material, to establish any standard of materiality, to define further the meaning of such terms for purposes of this Agreement or to be deemed an admission by Seller that such item represents a material exception or fact, event, or circumstance or that such item would reasonably be expected to have a Material Adverse Effect. Information disclosed in any section of the Seller Disclosure Schedule, including the agreements and

documents referred to in the Seller Disclosure Schedule, shall constitute a disclosure for purposes of all other sections of the Seller Disclosure Schedule to the extent reasonably apparent, notwithstanding the lack of specific cross-reference thereto. In no event shall the inclusion of any matter in the Seller Disclosure Schedule be deemed or interpreted to broaden Seller's representations, warranties, covenants or agreements contained in this Agreement.

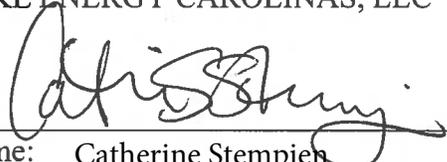
Section 10.16 DISCLAIMER. EXCEPT FOR AND SUBJECT TO THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE III THAT BY THE TERMS OF THIS AGREEMENT EXPRESSLY SURVIVE AFTER THE CLOSING DATE, (I) NONE OF SELLER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES HAS MADE OR IS MAKING ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING ANY IMPLIED REPRESENTATION OR WARRANTY AS TO THE CONDITION, VALUE, QUALITY, MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, APPARENT OR LATENT DEFECTS OF ANY TYPE, PROSPECTS (FINANCIAL OR OTHERWISE) OR RISKS OR OTHER INCIDENTS OF THE BUSINESS, THE PROJECTS, THE PROJECT SITES, THE PURCHASED ASSETS, ASSUMED LIABILITIES OR ANY PART THEREOF, AND (II) THE SALE OF THE PURCHASED ASSETS IS BEING MADE "AS IS, WHERE IS, WITH ALL FAULTS". NONE OF SELLER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES MAKES ANY REPRESENTATION OR WARRANTY REGARDING ANY FINANCIAL OR OTHER PROJECTIONS, FORECASTS, ESTIMATES, OR FORWARD LOOKING STATEMENTS OF ANY KIND OR NATURE WHATSOEVER RELATING TO THE BUSINESS, THE PROJECTS, THE PROJECT SITES, THE PURCHASED ASSETS OR THE ASSUMED LIABILITIES. NOTHING IN THE FOREGOING SHALL LIMIT ANY CLAIM, ACTION OR PROCEEDING WITH RESPECT TO FRAUD.

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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each Party hereto as of the date first above written.

SELLER:

DUKE ENERGY CAROLINAS, LLC

By 
Name: Catherine Stempien
Title: SVP, Corporate Development

PURCHASERS:

NORTHBROOK CAROLINA HYDRO II, LLC

By _____
Name:
Title:

NORTHBROOK TUXEDO, LLC

By _____
Name:
Title:

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each Party hereto as of the date first above written.

SELLER:

DUKE ENERGY CAROLINAS, LLC

By _____
Name:
Title:

PURCHASERS:

NORTHBROOK CAROLINA HYDRO II, LLC

By  _____
Name: Kyle Kroeger
Title: Authorized person

NORTHBROOK TUXEDO, LLC

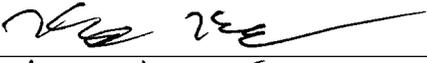
By  _____
Name: Kyle Kroeger
Title: Authorized person

EXHIBIT A
FORM OF ACCESS AGREEMENT

This Access Agreement (this “Agreement”) dated as of _____, 20__ (the “Effective Date”) is entered into by and among Duke Energy Carolinas, LLC, a North Carolina limited liability company (“Seller”), Northbrook Carolina Hydro II, LLC, a Delaware limited liability company (“Project Purchaser”), and Northbrook Tuxedo, LLC, a Delaware limited liability company (“Tuxedo Purchaser” and, collectively with Project Purchaser, “Purchasers”, and each a “Purchaser”), upon the terms and conditions set forth herein. Each of Seller and Purchasers are sometimes referred to individually as a “Party” and collectively as the “Parties.” Initially capitalized terms used in this Agreement and not otherwise defined in this Agreement shall have the respective meanings ascribed to them in that certain Asset Purchase and Sale Agreement, dated as of May 15, 2018 (the “Purchase Agreement”), by and among Seller and Purchasers.

Recitals

A. Project Purchaser has agreed to acquire certain of the assets of Seller relating to the Bryson Project, the Franklin Project, the Gaston Shoals Project and the Mission Project, pursuant to the terms of the Purchase Agreement, including, but not limited to, the Gaston Shoals Project Site.

B. Tuxedo Purchaser has agreed to acquire certain of the assets of Seller relating to the Tuxedo Project, including but not limited to the Tuxedo Project Site (and together with the Gaston Shoals Project Site, the “Property”).

C. In accordance with the Purchase Agreement, Seller and Seller’s Affiliates shall be entitled to continue the GT Separation and the activities described in Section 5.09 of the Seller Disclosure Schedule (the “GT Separation Activities”) following the Closing.

D. Pursuant to the Purchase Agreement, Purchasers and Seller have agreed to enter into this Agreement to set forth the terms and conditions upon which Seller and its Affiliates shall be permitted to enter upon, access and use the Property in connection with the GT Separation Activities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, the Parties hereby agree as follows:

Agreement

1. **Grant of License for Limited Purpose.** Each Purchaser hereby grants Seller a non-exclusive license (the “License”) to enter upon, access and use the Property during the GT Separation Period (as defined below) for the limited purpose of (a) performing the GT Separation Activities in accordance with the terms of this Agreement, (b) performing any restoration and repair activities in accordance with Section 6 below and (c) accessing the Tuxedo Transmission Assets and the Gaston Shoals Transmission Assets in connection with the operations and maintenance activities of Seller until such time that the GT Separation Activities are completed.

2. **GT Separation Period.** The License shall commence on the Effective Date and expire sixty (60) days after the later of (a) completion of all of the GT Separation Activities and (b) completion of all of the restoration and repair activities in accordance with Section 6 below (the “GT Separation Period”).
3. **Terms of Access.** The GT Separation Activities shall be performed during normal operating hours and Purchasers shall have the right to have a representative of Purchasers present during the performance of all GT Separation Activities. Purchasers shall have the right to impose reasonable restrictions and requirements on access to the Property as necessary for safety and security purposes, and the Parties shall mutually agree on the same. Seller shall use commercially reasonable efforts to perform the GT Separation Activities in such manner so as to minimize disruption to the operational activities of Purchasers and their respective Affiliates and minimize the possibility of injury to any personnel at the Property. The Parties agree to use commercially reasonable efforts to coordinate any outages or other disruptions affecting Seller’s operational activities resulting from the GT Separation Activities to the extent permitted by Law.
4. **GT Separation Activities.** The Parties shall cooperate to further clarify or define the scope of the GT Separation Activities, as may be required to achieve the GT Separation. Additionally, each Purchaser shall grant, and shall use commercially reasonable efforts to cause any other owners of any portion of the Property to grant, new easements (including temporary or permanent easements, as may be appropriate) or other access rights (or amend or relocate certain existing easements or other access rights) in favor of Seller as may be reasonably requested by Seller in connection with the GT Separation or to accommodate Seller’s operational activities with respect to the Tuxedo Transmission Assets and/or the Gaston Shoals Transmission Assets that may remain at or around the Property after the completion of the GT Separation.
5. **Standard of GT Separation Activities; Compliance with Laws.** Seller agrees to, and will cause its contractors, subcontractors (of any tier), agents, representatives, consultants, employees and servants (collectively, “Representatives”), to conduct the GT Separation Activities in compliance with all applicable Laws.
6. **Obligation to Restore.** If the Property is damaged in any manner as a result of any entry upon or use or occupancy of the Property or performance of any GT Separation Activities by Seller or any of its Representatives, Seller shall, at its sole cost and expense, promptly restore and repair the Property to substantially the same condition as existed prior to such entry, use, or occupancy or the performance of the GT Separation Activities, except as otherwise contemplated as part of the GT Separation Activities.
7. **Qualified Contractor.** Seller covenants and agrees that any person or entity, whether a direct employee of Seller or a Representative, that performs any portion of the GT Separation Activities will (i) possess any and all necessary licenses, certifications, and/or permits required by applicable Law to perform the portion of the GT Separation Activities in question, (ii) be qualified and skilled with respect to the GT Separation Activities to be performed by such person or entity and (iii) maintain the same insurance required to be maintained by Seller pursuant to the terms of this Agreement.

8. **GT Separation Costs.** Seller shall bear sole responsibility for all costs and expenses related to or associated with the GT Separation Activities.

9. **Release and Indemnification.** SELLER HEREBY COVENANTS AND AGREES TO RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS PURCHASERS, ANY AFFILIATE OF PURCHASERS AND EACH OF THEIR RESPECTIVE PARTNERS, DIRECTORS, OFFICERS, SHAREHOLDERS, MEMBERS, AGENTS, EMPLOYEES, AUDITORS, ADVISORS, COUNSEL, CONTRACTORS, SUBCONTRACTORS, LENDERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES AND ELECTED AND APPOINTED OFFICIALS (COLLECTIVELY, THE "**PURCHASER INDEMNITEES**") FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITIES OF EVERY KIND (INCLUDING, BUT NOT LIMITED TO, ALL EXPENSES OF LITIGATION, EXPENSES INCURRED IN ENFORCING THIS RELEASE AND INDEMNITY, COURT COSTS AND REASONABLE AND DOCUMENTED ATTORNEYS' FEES) (COLLECTIVELY, "**CLAIMS**") FOR (a) INJURY TO OR SICKNESS OR DEATH OF ANY PERSON OR (b) LOSS OR DAMAGE TO ANY PROPERTY OR (c) FOR ANY OTHER LOSS, LIABILITY OR DAMAGE OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, ANY CIVIL OR CRIMINAL FINES OR PENALTIES), IN EACH CASE, ATTRIBUTABLE TO THIRD PARTY CLAIMS DIRECTLY OR INDIRECTLY ARISING OR ALLEGED TO ARISE OUT OF, IN CONNECTION WITH (i) THE PERFORMANCE OF THE GT SEPARATION ACTIVITIES, (ii) SELLER'S ENTRY UPON, ACCESS, OR USE OF THE PROPERTY PURSUANT TO THE LICENSE AND ANY THIRD PARTY'S ENTRY UPON, ACCESS, OR USE OF THE PROPERTY PURSUANT TO THE LICENSE OR AT THE DIRECTION OF SELLER, AND (iii) SELLER'S BREACH OF THIS AGREEMENT.

10. **Limitation of Liability.** No Party shall be liable to another Party for any special, punitive, consequential, incidental or exemplary damages (including lost or anticipated revenues or profits relating to the same or losses upon a multiple of earnings and attorneys' fees) arising from any claim relating to this Agreement or the performance of or failure to perform such Party's obligations under this Agreement, whether such claim is based on warranty, contract, tort (including negligence or strict liability) or otherwise, and regardless of whether such damages are foreseeable or a Party is advised of the possibility or likelihood of such damages.

11. **Insurance.** Prior to and at all times during the performance of the GT Separation Activities, Seller shall provide (unless exempted by the last sentence of this Section 11) the insurance coverages described below, on industry typical policy and with limits not less than those shown below, all of which shall be provided at the sole cost and expense of Seller:

| <u>TYPE OF INSURANCE</u> | <u>MINIMUM LIMITS</u> |
|--|--------------------------------------|
| Commercial General Liability | Per Occurrence \$1,000,000 |
| Automobile Liability (All owned, Non-owned and Hired) | Combined Single Limit \$1,000,000 |

| | |
|-----------------------|-----------|
| Workers' Compensation | Statutory |
| Employer's Liability | \$100,000 |

Each of the insurance policies required to be maintained pursuant to this Section 11 shall, with respect to Seller's acts or omissions: (i) include Purchasers and the Purchaser Indemnitees as additional insureds, (ii) be primary to any insurance carried by Purchasers or the Purchaser Indemnitees (and that such Purchaser or the Purchaser Indemnitees insurance, if any, shall be excess and non-contributory), (iii) provide for waivers of subrogation in favor of Purchasers and the Purchaser Indemnitees, (iv) be effected under policies issued by insurers which have an Alfred M. Best Company, Inc. rating of A-/VI or better and (v) carry such endorsements as are appropriate or customary for the performance of the GT Separation Activities in question. Notwithstanding the foregoing, Seller may self-insure to meet its obligations in this Section 11 in lieu of the express requirements hereinabove.

12. **No Liens.** Seller shall not permit any mechanic's or other lien or security interest to be filed against the Property as a result of any activities by Seller or any of its agents, employees, servants, representatives, consultants, contractors, or subcontractors.

13. **Notices.** Any notice, demand, or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by facsimile, electronic mail or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to the Parties at the addresses specified below:

If to Purchasers, to:

Northbrook Carolina Hydro II, LLC
Northbrook Tuxedo, LLC
c/o North Sky Capital, LLC
33 South Sixth Street, Suite 4646
Minneapolis, MN 55402
Attention: Kyle Kroeger
Email: kkroeger@northskycapital.com

and

Northbrook Energy, LLC
14550 N. Frank Lloyd Wright Blvd.
Suite 210
Scottsdale, AZ 85260
Attention: John C. Ahlrichs
Email: cahlrichs@nbenergy.com

with a copy to:

Curt Whittaker

c/o Rath, Young & Pignatelli
One Capital Plaza, Box 1500
Concord, NH 03302
Email: mcw@rathlaw.com

If to Seller, to:

Duke Energy Carolinas, LLC
c/o Duke Energy Corporation
550 S. Tryon Street, DEC 45A
Charlotte, NC 28202
Attention: Greer Mendelow, Esq.
Facsimile No.: (980) 373-9962
Email: greer.mendelow@duke-energy.com

with a copy to:

Parker Poe Adams & Bernstein LLP
Three Wells Fargo Center
401 S. Tryon Street, Suite 3000
Charlotte, North Carolina 28202
Attention: Roy L. Smart, III
Facsimile No.: (704) 334-4706
Email: skipsmart@parkerpoe.com

Notice given by personal delivery, mail or overnight courier shall be effective upon physical receipt. Notice given by facsimile or electronic mail shall be effective as of the date of confirmed delivery if delivered before 5:00 P.M. Eastern Time on any Business Day or the next succeeding Business Day if confirmed delivery is after 5:00 P.M. Eastern Time on any Business Day or during any non-Business Day.

14. **Governing Law.** THIS AGREEMENT AND THE ACTIONS OF THE PARTIES HERETO SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED.

15. **Severability.** To the fullest extent permitted by Law, if any term or provision of this Agreement, or the application thereof to any person, entity or circumstances, shall to any extent be invalid or unenforceable in any jurisdiction, as to such jurisdiction, the remainder of this Agreement, or the application of such term or provision to the persons, entities or circumstances other than those as to which such term or provision is held invalid or unenforceable in such jurisdiction, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable Law and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable Law, the Parties hereby waive any provision of Law that renders any provision thereof prohibited or unenforceable in any respect.

16. **Entire Agreement.** This Agreement and the Purchase Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. Neither this Agreement nor any of the terms thereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought.

17. **Waiver.** Any right created under this Agreement may not be waived, except in a writing specifically referring to this Agreement and signed by the Party waiving the right. The failure of a Party to enforce strictly any provision of this Agreement shall not be deemed to act as a waiver of any provision, including the provision not so enforced.

18. **Relationship of the Parties; No Partnership.** The relationship of Purchasers and Seller under this Agreement is that of independent parties, each acting in its own best interests, and nothing contained in this Agreement shall be deemed or construed by the Parties or by any third party to create the relationship of landlord and tenant, of principal and agent, of partnership, or of joint venturer or of any association between Purchasers and Seller nor to grant any property interest in or to the Property to Seller, other than as otherwise expressly contemplated herein.

19. **Binding Effect.** The provisions of this Agreement shall be binding upon the Parties and their respective heirs, legal representatives, successors and permitted assigns, and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

20. **No Third-Party Beneficiaries.** This Agreement shall not inure to the benefit of any party other than Purchasers and Seller.

21. **Assignments.** The rights under this Agreement shall not be assignable or transferable by either Party without the prior written consent of the other Party, which consent may be granted or withheld in the other Party's sole discretion. Notwithstanding the foregoing, without the consent of Purchasers, Seller may assign its rights hereunder to any Person or Persons acquiring the Tuxedo Transmission Assets or the Gaston Shoals Transmission Assets.

22. **Time.** Times set forth in this Agreement for the performance of obligations shall be strictly construed, time being of the essence of this Agreement.

[Signature Page Follows]

SELLER:

DUKE ENERGY CAROLINAS, LLC

By: _____
Name: _____
Title: _____

PROJECT PURCHASER:

NORTHBROOK CAROLINA HYDRO II, LLC

By: _____
Name: _____
Title: _____

TUXEDO PURCHASER

NORTHBROOK TUXEDO, LLC

By: _____
Name: _____
Title: _____

**FORM OF
ASSIGNMENT AND ASSUMPTION AGREEMENT**

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement"), dated _____, 2018, is entered into by and among Duke Energy Carolinas, LLC, a North Carolina limited liability company ("Seller"), Northbrook Tuxedo, LLC, a Delaware limited liability company ("Tuxedo Purchaser"), and Northbrook Carolina Hydro II, LLC, a Delaware limited liability company ("Project Purchaser" and, collectively with Tuxedo Purchaser, "Purchasers").

WITNESSETH:

WHEREAS, Purchasers and Seller have entered into that certain Asset Purchase Agreement, dated as of May 15, 2018 (the "Purchase Agreement"); and

WHEREAS, pursuant to the Purchase Agreement, Seller has agreed to assign certain rights and obligations to Purchasers, and Purchasers has agreed to assume certain obligations of Seller as more fully set forth therein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Capitalized terms used herein and not otherwise defined herein will have the meanings ascribed to such terms in the Purchase Agreement.
2. Effective as of the date hereof and in accordance with, and subject to, the Purchase Agreement, Seller hereby assigns to Purchasers, and Purchasers hereby, jointly and severally, assume and agree to perform and discharge, the Assumed Liabilities.
3. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms of this Agreement, the terms of the Purchase Agreement will govern and control.
4. This Agreement will be governed by the laws of the State of New York without regard to conflicts of laws principles.
5. This Agreement may be executed in any number of counterparts (including by facsimile or other electronic transmission), each of which will be deemed an original, but such counterparts together will constitute one and the same instrument.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Assumption Agreement to be executed effective as of the date first set forth above.

SELLER:

DUKE ENERGY CAROLINAS, LLC

By: _____

Name: _____

Title: _____

PROJECT PURCHASER:

NORTHBROOK CAROLINA HYDRO II, LLC

By: _____

Name: _____

Title: _____

TUXEDO PURCHASER:

NORTHBROOK TUXEDO, LLC

By: _____

Name: _____

Title: _____

**FORM OF
BILL OF SALE AND ASSIGNMENT**

This BILL OF SALE AND ASSIGNMENT (this “Bill of Sale”), dated as of _____, 20__, by DUKE ENERGY CAROLINAS, LLC, a North Carolina limited liability company (“Seller”), is made in favor of NORTHBROOK CAROLINA HYDRO II, LLC, a Delaware limited liability company (“Project Purchaser”).

This Bill of Sale is executed and delivered pursuant to that certain Asset Purchase and Sale Agreement, dated as of May 15, 2018 by and among Seller, Project Purchaser, and Northbrook Tuxedo, LLC, a Delaware limited liability company (the “Purchase Agreement”), pursuant to which Seller has agreed to sell, convey, grant, assign, transfer and deliver certain of the Purchased Assets to Project Purchaser. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

NOW, THEREFORE, THIS INSTRUMENT WITNESSETH:

1. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells, conveys, grants, assigns, transfers and delivers to Project Purchaser all of Seller’s right, title and interest in and to the Purchased Assets relating to the Bryson Project, the Franklin Project, the Gaston Shoals Project, and the Mission Project, free and clear of all Liens other than Permitted Liens.

2. Nothing contained in this Bill of Sale shall in any way supersede, modify, replace, amend, rescind, waive, narrow or broaden any provision set forth in the Purchase Agreement or any of the rights, remedies or obligations arising therefrom. This Bill of Sale shall in all ways be governed by, and subject to, the Purchase Agreement. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms of this Bill of Sale, the terms of the Purchase Agreement will govern and control.

3. This Bill of Sale (a) shall be governed by and in accordance with the internal laws of the State of New York without regard to conflict of laws principles and (b) shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Capitalized terms used herein without definition shall have the respective meanings assigned to them in the Purchase Agreement.

[Signature Page Follow]

IN WITNESS WHEREOF, the undersigned has caused this Bill of Sale to be duly executed as of the date first written above.

DUKE ENERGY CAROLINAS, LLC

By: _____

Name: _____

Title: _____

[SIGNATURE PAGE TO BILL OF SALE]

**FORM OF
BILL OF SALE AND ASSIGNMENT**

This BILL OF SALE AND ASSIGNMENT (this "Bill of Sale"), dated as of _____, 20__, by DUKE ENERGY CAROLINAS, LLC, a North Carolina limited liability company ("Seller"), is made in favor of Northbrook Tuxedo, LLC, a Delaware limited liability company ("Tuxedo Purchaser").

This Bill of Sale is executed and delivered pursuant to that certain Asset Purchase and Sale Agreement, dated as of May 15, 2018 by and among Seller, Tuxedo Purchaser, and Northbrook Carolina Hydro II, LLC, a Delaware limited liability company (the "Purchase Agreement"), pursuant to which Seller has agreed to sell, convey, grant, assign, transfer and deliver certain of the Purchased Assets to Tuxedo Purchaser. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

NOW, THEREFORE, THIS INSTRUMENT WITNESSETH:

1. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells, conveys, grants, assigns, transfers and delivers to Tuxedo Purchaser all of Seller's right, title and interest in and to the Purchased Assets relating to the Tuxedo Project, free and clear of all Liens other than Permitted Liens.
2. Nothing contained in this Bill of Sale shall in any way supersede, modify, replace, amend, rescind, waive, narrow or broaden any provision set forth in the Purchase Agreement or any of the rights, remedies or obligations arising therefrom. This Bill of Sale shall in all ways be governed by, and subject to, the Purchase Agreement. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms of this Bill of Sale, the terms of the Purchase Agreement will govern and control.
3. This Bill of Sale (a) shall be governed by and in accordance with the internal laws of the State of New York without regard to conflict of laws principles and (b) shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Capitalized terms used herein without definition shall have the respective meanings assigned to them in the Purchase Agreement.

[Signature Page Follow]

IN WITNESS WHEREOF, the undersigned has caused this Bill of Sale to be duly executed as of the date first written above.

DUKE ENERGY CAROLINAS, LLC

By: _____

Name: _____

Title: _____

[SIGNATURE PAGE TO BILL OF SALE]

EXHIBIT D
FORM OF DEEDS

[See Attached]

| | |
|---------------------|--|
| Excise Tax \$ _____ | Tax Lot No./Parcel Identifier No.: _____ |
|---------------------|--|

Mail after recording to: Grantee

This instrument was prepared by: _____

Brief Description For The Index:

NORTH CAROLINA SPECIAL WARRANTY DEED

THIS DEED made this ____ day of _____, 20____, by and between:

| GRANTOR | GRANTEE |
|---|--|
| Duke Energy Carolinas, LLC, a North Carolina limited liability company Data & Document Management 550 South Tryon Street, DEC 22A Charlotte, North Carolina 28202 | _____ Tax bill mailing address: _____ _____ |

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that Grantor, for a valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto Grantee in fee simple, all that certain lot or parcel of land described in **Exhibit A** attached hereto (“**Property**”).

The Property was acquired by Grantor by instrument recorded in Book _____, at Page _____, _____ County Public Registry.

The Property does not include the primary residence of Grantor.

TO HAVE AND TO HOLD the Property and all privileges and appurtenances thereto belonging to Grantee in fee simple.

And Grantor covenants with Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, except for the exceptions hereinafter stated.

Title to the Property is subject to the following exceptions:

1. Ad valorem taxes for the year *[insert year of Closing]* and subsequent years;
2. Matters affecting title to the Property which would be shown on a current and accurate survey of the Property;
3. Easements, covenants, restrictions and conditions of record, and rights-of-way of public and private streets and roads;
4. All easements, restrictions and rights-of-way as may be apparent from an inspection of the Property;
5. Rights of any parties in possession of the Property, including, but not limited to, tenants under unrecorded leases or rental agreements;
6. All statutes, codes, laws, ordinances, orders, rules and regulations of any governmental authority applicable to the Property, including those relating to environmental regulations, zoning, subdivision, construction and land use;
7. All easements and rights-of-way pursuant to the *[insert reference to Easement Agreement]*; and
8. *[Insert the Liens listed in Section 1.01(d) of the Seller Disclosure Schedule]*.

[SIGNATURE PAGE(S) FOLLOW]

IN WITNESS WHEREOF, Grantor has hereunto set its hand and seal, the day and year first above written.

DUKE ENERGY CAROLINAS, LLC,
a North Carolina limited liability company

By: _____
Name: _____
Its: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public for _____ County, State of North Carolina, do hereby certify that _____ (“**Signatory**”), personally appeared before me this day and acknowledged that he/she is _____ of Duke Energy Carolinas, LLC, a North Carolina limited liability company, and that he/she, as _____, in such capacity and being authorized to do so, executed the foregoing instrument on behalf of the company.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)
_____(I have personal knowledge of the identity of the Signatory); or
_____(I have seen satisfactory evidence of the Signatory’s identity, by a current state or federal identification with the Signatory’s photograph in the form of:
(check one of the following)
___ a driver's license or
___ in the form of _____); or
_____(a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

WITNESS my hand and official stamp or seal this _____ day of _____, 20__.

Notary Public

Print Name: _____
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: _____

☞ [NOTARIAL STAMP-SEAL]

EXHIBIT A

Legal Description of Property

[To be inserted prior to closing]

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

**TITLE TO REAL ESTATE
(Limited Warranty)**

KNOW ALL MEN BY THESE PRESENTS, that **DUKE ENERGY CAROLINAS, LLC**, a North Carolina limited liability company (“Grantor”) in the State aforesaid, for and in consideration of the sum of \$_____ and other good and valuable consideration to it in hand paid by _____, a _____ (“Grantee”), in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell, and release unto the said Grantee, subject to the exceptions set forth on Exhibit B attached hereto (“Permitted Exceptions”), the following described property (the “Property”), to-wit:

**SEE EXHIBIT A ATTACHED HERETO
AND INCORPORATED HEREIN BY REFERENCE FOR LEGAL DESCRIPTION**

Property tax map number(s): _____

Address of Grantee: _____,
_____, South Carolina _____

This being the identical property conveyed to Grantor, by deed from _____, dated _____, and recorded _____ in Deed Book _____ at Page _____ in the _____ County Register of Deeds Office.

TOGETHER WITH, subject to the Permitted Exceptions, all and singular, the rights, members, hereditaments and appurtenances to the Property belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Permitted Exceptions, all and singular, the Property before mentioned unto the said Grantee and Grantee’s successors and assigns, forever.

And Grantor does hereby bind its and its heirs and assigns, to warrant and forever defend all and singular the Property unto the said Grantee, its successors and assigns, against Grantor and Grantor’s successors and assigns lawfully claiming or to claim the same or any part thereof.

[Signature page follows.]

Prepared by:

After recording, return to: Grantee

Parker Poe Adams & Bernstein LLP

Attn: _____

Exhibit A
Legal Description

[To be inserted prior to closing]

Exhibit B
Permitted Exceptions

1. Ad valorem taxes for the year [*insert year of Closing*] and subsequent years;
2. Matters affecting title to the Property which would be shown on a current and accurate survey of the Property;
3. Easements, covenants, restrictions and conditions of record, and rights-of-way of public and private streets and roads;
4. All easements, restrictions and rights-of-way as may be apparent from an inspection of the Property;
5. Rights of any parties in possession of the Property, including, but not limited to, tenants under unrecorded leases or rental agreements;
6. All statutes, codes, laws, ordinances, orders, rules and regulations of any governmental authority applicable to the Property, including those relating to environmental regulations, zoning, subdivision, construction and land use;
7. All easements and rights-of-way pursuant to the [*insert reference to Easement Agreement*]; and
8. [*Insert the Liens listed in Section 1.01(d) of the Seller Disclosure Schedule*].

EXHIBIT E-1
FORM OF BRYSON INTERCONNECTION AGREEMENT

[See Attached]

NORTH CAROLINA
FINAL INTERCONNECTION AGREEMENT
For State-Jurisdictional Generator Interconnections

Effective May 15, 2015

Docket No. E-100, Sub 101

Between

Duke Energy Carolinas, LLC

And

[Legal Entity on IR Application]

“Bryson Hydro or new name” Project

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This Interconnection Agreement (“Agreement”) is made and entered into this _____ day of _____, _____, by **Duke Energy Carolinas, LLC** (“Utility” or “Company”), and **[Legal Entity on IR Application]** (“Interconnection Customer” or “Customer”) each hereinafter sometimes referred to individually as “Party” or both referred to collectively as the “Parties.”

Utility Information

Utility: Duke Energy Carolinas, LLC
Attention: Wholesale Renewable Manager - Mail Code ST-14Q
Mailing Address: P. O. Box 1010
City: Charlotte State: NC Zip: 28201
Overnight Mailing Address: 400 S. Tryon Street
City: Charlotte State: NC Zip: 28202
Phone: (866) 233-2290 Fax: (980) 373-3238

Interconnection Customer Information

Name: **[Legal Entity on IR Application]**
Project Name: **[Bryson Hydro or new name]**
E911 Project Address: **Ela Dam Road, Bryson City, NC 28713**
Project County: **_Swain**
Attention: **[REDACTED]**
Customer Address: **[REDACTED]**
City: **[REDACTED]** State: **[REDACTED]** Zip: **[REDACTED]**
Phone: **[REDACTED]** Fax: **[REDACTED]**

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

Article 1. Scope and Limitations of Agreement

1.1 Applicability

This Agreement shall be used for all Interconnection Requests submitted under the North Carolina Interconnection Procedures except for those submitted under the 20 kW Inverter Process in Section 2 of the Interconnection Procedures.

1.2 Purpose

If an Interim Interconnection Agreement, this Agreement documents the Utility's ability to interconnect the Generating Facility and provides the Preliminary Estimated Interconnection Facilities Charge and the Preliminary Estimated System Upgrade Charge that was developed in the System Impact Study. Milestones have not been established and the Utility offers no estimate on when the required facilities might be installed.

If a Final Interconnection Agreement, this Agreement governs the terms and conditions under which the Interconnection Customer's Generating Facility will interconnect with, and operate in parallel with, the Utility's System.

1.3 No Agreement to Purchase or Deliver Power or RECs

This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power or Renewable Energy Certificates (RECs). The purchase or delivery of power, RECs that might result from the operation of the Generating Facility, and other services that the Interconnection Customer may require will be covered under separate agreements, if any. The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable Utility.

1.4 Limitations

Nothing in this Agreement is intended to affect any other agreement between the Utility and the Interconnection Customer.

1.5 Responsibilities of the Parties

1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.

1.5.2 The Interconnection Customer shall construct, interconnect, operate and maintain its Generating Facility and construct, operate, and maintain its Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, and in accordance with this Agreement, and with Good Utility Practice.

- 1.5.3 The Utility shall construct, operate, and maintain its System and Interconnection Facilities in accordance with this Agreement, and with Good Utility Practice.
- 1.5.4 The Interconnection Customer agrees to construct its facilities or systems in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriters' Laboratories, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. The Interconnection Customer agrees to design, install, maintain, and operate its Generating Facility so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the System or equipment of the Utility and any Affected Systems.
- 1.5.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Appendices to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. The Utility and the Interconnection Customer, as appropriate, shall provide Interconnection Facilities that adequately protect the Utility's System, personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of Interconnection Facilities shall be delineated in the Appendices to this Agreement.
- 1.5.6 The Utility shall coordinate with all Affected Systems to support the interconnection.

1.6 Parallel Operation Obligations

Once the Generating Facility has been authorized to commence parallel operation, the Interconnection Customer shall abide by all rules and procedures pertaining to the parallel operation of the Generating Facility in the applicable control area, including, but not limited to: 1) any rules and procedures concerning the operation of generation set forth in Commission-approved tariffs or by the applicable system operator(s) for the Utility's System and; 2) the Operating Requirements set forth in Appendix 5 of this Agreement.

1.7 Metering

The Interconnection Customer shall be responsible for the Utility's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Appendices 2 and 3 of this Agreement. The Interconnection Customer's metering

(and data acquisition, as required) equipment shall conform to applicable industry rules and Operating Requirements.

1.8 Reactive Power

1.8.1 The Interconnection Customer shall design its Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless the Utility has established different requirements that apply to all similarly situated generators in the control area on a comparable basis. The requirements of this paragraph shall not apply to wind generators.

1.8.2 The Utility is required to pay the Interconnection Customer for reactive power that the Interconnection Customer provides or absorbs from the Generating Facility when the Utility requests the Interconnection Customer to operate its Generating Facility outside the range specified in Article 1.8.1 or outside the range established by the Utility that applies to all similarly situated generators in the control area. In addition, if the Utility pays its own or affiliated generators for reactive power service within the specified range, it must also pay the Interconnection Customer.

1.8.3 Payments shall be in accordance with the Utility's applicable rate schedule then in effect unless the provision of such service(s) is subject to a regional transmission organization or independent system operator FERC-approved rate schedule. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb reactive power under this Agreement, the Parties agree to expeditiously file such rate schedule and agree to support any request for waiver of any prior notice requirement in order to compensate the Interconnection Customer from the time service commenced.

1.9 Capitalized Terms

Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 of the North Carolina Interconnection Procedures or the body of this Agreement.

Article 2. Inspection, Testing, Authorization, and Right of Access

2.1 Equipment Testing and Inspection

2.1.1 The Interconnection Customer shall test and inspect its Generating Facility and Interconnection Facilities prior to interconnection. The Interconnection Customer shall notify the Utility of such activities no fewer

than ten (10) Business Days (or as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a Business Day, unless otherwise agreed to by the Parties. The Utility may, at its own expense, send qualified personnel to the Generating Facility site to inspect the interconnection and observe the testing. The Interconnection Customer shall provide the Utility a written test report when such testing and inspection is completed.

- 2.1.2 The Utility shall provide the Interconnection Customer written acknowledgment that it has received the Interconnection Customer's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by the Utility of the safety, durability, suitability, or reliability of the Generating Facility or any associated control, protective, and safety devices owned or controlled by the Interconnection Customer or the quality of power produced by the Generating Facility.

2.2 Authorization Required Prior to Parallel Operation

- 2.2.1 The Utility shall use Reasonable Efforts to list applicable parallel operation requirements in Appendix 5 of this Agreement. Additionally, the Utility shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. The Utility shall make Reasonable Efforts to cooperate with the Interconnection Customer in meeting requirements necessary for the Interconnection Customer to commence parallel operations by the in-service date.
- 2.2.2 The Interconnection Customer shall not operate its Generating Facility in parallel with the Utility's System without prior written authorization of the Utility. The Utility will provide such authorization once the Utility receives notification that the Interconnection Customer has complied with all applicable parallel operation requirements. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.3 Right of Access

- 2.3.1 Upon reasonable notice, the Utility may send a qualified person to the premises of the Interconnection Customer at or immediately before the time the Generating Facility first produces energy to inspect the interconnection, and observe the commissioning of the Generating Facility (including any required testing), startup, and operation for a period of up to three (3) Business Days after initial start-up of the unit. In addition, the Interconnection Customer shall notify the Utility at least five (5) Business Days prior to conducting any on-site verification testing of the Generating Facility.

- 2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, the Utility shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.
- 2.3.3 Each Party shall be responsible for its own costs associated with following this Article.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective Date

This Agreement shall become effective upon execution by the Parties.

3.2 Term of Agreement

This Agreement shall become effective on the Effective Date and shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as the Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with Article 3.3 of this Agreement.

3.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

- 3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving the Utility 20 Business Days written notice and physically and permanently disconnecting the Generating Facility from the Utility's System.
- 3.3.2 The Utility may terminate this agreement for failure to comply with the requirements of Article 7.1.2 or Article 7.1.3.
- 3.3.3 Either Party may terminate this Agreement after Default pursuant to Article 7.6.
- 3.3.4 Upon termination of this Agreement, the Generating Facility will be disconnected from the Utility's System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.

3.3.5 The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination, including any remaining term requirements for payment of Charges that are billed under a monthly payment option as prescribed in Article 6.

3.3.6 The provisions of this article shall survive termination or expiration of this Agreement.

3.4 Temporary Disconnection

Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

3.4.1 Emergency Conditions

“Emergency Condition” shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of the Utility, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Utility’s System, the Utility’s Interconnection Facilities or the systems of others to which the Utility’s System is directly connected; or (3) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or the Interconnection Customer’s Interconnection Facilities.

Under Emergency Conditions, the Utility may immediately suspend interconnection service and temporarily disconnect the Generating Facility. The Utility shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer’s operation of the Generating Facility. The Interconnection Customer shall notify the Utility promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Utility’s System or any Affected Systems. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties’ facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Routine Maintenance, Construction, and Repair

The Utility may interrupt interconnection service or curtail the output of

the Generating Facility and temporarily disconnect the Generating Facility from the Utility's System when necessary for routine maintenance, construction, and repairs on the Utility's System. The Utility shall provide the Interconnection Customer with five (5) Business Day notice prior to such interruption. The Utility shall use Reasonable Efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

3.4.3 Forced Outages

During any forced outage, the Utility may suspend interconnection service to effect immediate repairs on the Utility's System. The Utility shall use Reasonable Efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, the Utility shall, upon request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

3.4.4 Adverse Operating Effects

The Utility shall notify the Interconnection Customer as soon as practicable if, based on Good Utility Practice, operation of the Generating Facility may cause disruption or deterioration of service to other customers served from the same electric system, or if operating the Generating Facility could cause damage to the Utility's System or Affected Systems. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon request. If, after notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time, the Utility may disconnect the Generating Facility. The Utility shall provide the Interconnection Customer with five (5) Business Day notice of such disconnection, unless the provisions of Article 3.4.1 apply.

3.4.5 Modification of the Generating Facility

The Interconnection Customer must receive written authorization from the Utility before making a Material Modification or any other change to the Generating Facility that may have a material impact on the safety or reliability of the Utility's System. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If the Interconnection Customer makes such modification without the Utility's prior written authorization, the latter shall have the right to temporarily disconnect the Generating Facility.

3.4.6 Reconnection

The Parties shall cooperate with each other to restore the Generating Facility,

Interconnection Facilities, and the Utility's System to their normal operating state as soon as reasonably practicable following a temporary or emergency disconnection.

Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades

4.1 Interconnection Facilities

4.1.1 The Interconnection Customer shall pay for the cost of the Interconnection Facilities itemized in Appendix 2 of this Agreement. The Utility shall provide a best estimate cost, including overheads, for the purchase and construction of its Interconnection Facilities and provide a detailed itemization of such costs. Costs associated with Interconnection Facilities may be shared with other entities that may benefit from such facilities by agreement of the Interconnection Customer, such other entities, and the Utility.

4.1.2 The Interconnection Customer shall be responsible for its share of all reasonable expenses, including overheads, associated with (1) owning, operating, maintaining, repairing, and replacing its own Interconnection Facilities, and (2) operating, maintaining, repairing, and replacing the Utility's Interconnection Facilities.

4.2 Distribution Upgrades

The Utility shall design, procure, construct, install, and own the Distribution Upgrades described in Appendix 6 of this Agreement. If the Utility and the Interconnection Customer agree, the Interconnection Customer may construct Distribution Upgrades that are located on land owned by the Interconnection Customer. The actual cost of the Distribution Upgrades, including overheads, on-going operations, maintenance, repair, and replacement, shall be directly assigned to the Interconnection Customer.

Article 5. Cost Responsibility for Network Upgrades

5.1 Applicability

No portion of this Article 5 shall apply unless the interconnection of the Generating Facility requires Network Upgrades.

5.2 Network Upgrades

The Utility shall design, procure, construct, install, and own the Network Upgrades described in Appendix 6 of this Agreement. If the Utility and the Interconnection Customer agree, the Interconnection Customer may construct

Network Upgrades that are located on land owned by the Interconnection Customer. Unless the Utility elects to pay for Network Upgrades, the actual cost of the Network Upgrades, including overheads, on-going operations, maintenance, repair, and replacement shall be borne by the Interconnection Customer.

Article 6. Billing, Payment, Milestones, and Financial Security

6.1 Billing and Payment Procedures and Final Accounting

- 6.1.1 The Interconnection Customer shall pay 100% of required Interconnection Facilities and any other charges as required in Appendix 2 pursuant to the milestones specified in Appendix 4.

The Interconnection Customer shall pay 100% of required Upgrades and any other charges as required in Appendix 6 pursuant to the milestones specified in Appendix 4.

Upon receipt of 100% of the foregoing pre-payment charges, the payment is not refundable due to cancellation of the Interconnection Request for any reason.

- 6.1.2 If implemented by the Utility or requested by the Interconnection Customer in writing within 15 Business Days of the Interconnection Facilities Delivery Date, the Utility shall provide the Interconnection Customer a final accounting report within 120 Business Days addressing any difference between (1) the Interconnection Customer's cost responsibility for the actual cost of such facilities or Upgrades, and (2) the Interconnection Customer's previous aggregate payments to the Utility for such facilities or Upgrades. If the Interconnection Customer's cost responsibility exceeds its previous aggregate payments, the Utility shall invoice the Interconnection Customer for the amount due and the Interconnection Customer shall make payment to the Utility within 20 Business Days. If the Interconnection Customer's previous aggregate payments exceed its cost responsibility under this Agreement, the Utility shall refund to the Interconnection Customer an amount equal to the difference within 20 Business Days of the final accounting report. If necessary and appropriate as a result of the final accounting, the Utility may also adjust the monthly charges set forth in Appendix 2 of the Interconnection Agreement.
- 6.1.3 The Utility shall also bill the Interconnection Customer for the costs associated with operating, maintaining, repairing and replacing the Utility's System Upgrades, as set forth in Appendix 6 of this Agreement. The Utility shall bill the Interconnection Customer for the costs of providing the Utility's Interconnection Facilities including the costs for on-

going operations, maintenance, repair and replacement of the Utility's Interconnection Facilities under a Utility rate schedule, tariff, rider or service regulation providing for extra facilities or additional facilities charges, as set forth in Appendix 2 of this Agreement, such monthly charges to continue throughout the entire life of the interconnection.

6.2 Milestones

The Parties shall agree on milestones for which each Party is responsible and list them in Appendix 4 of this Agreement. A Party's obligations under this provision may be extended by agreement, except for timing for Payment or Financial Security-related requirements set forth in the milestones, which shall adhere to Section 5.2.4 of the Standards. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure Event, it shall immediately notify the other Party of the reason(s) for not meeting the milestone and (1) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (2) request appropriate amendments to Appendix 4. The Party affected by the failure to meet a milestone shall not unreasonably withhold agreement to such an amendment unless (1) it will suffer significant uncompensated economic or operational harm from the delay, (2) the delay will materially affect the schedule of another Interconnection Customer with subordinate Queue Position, (3) attainment of the same milestone has previously been delayed, or (4) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

6.3 Financial Security Arrangements

Pursuant to the Interconnection Agreement Milestones Appendix 4, the Interconnection Customer shall provide the Utility a letter of credit or other financial security arrangement that is reasonably acceptable to the Utility and is consistent with the Uniform Commercial Code of North Carolina. Such security for payment shall be in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of the Utility's Interconnection Facilities and shall be reduced on a dollar-for-dollar basis for payments made to the Utility under this Agreement during its term. In addition:

- 6.3.1 The guarantee must be made by an entity that meets the creditworthiness requirements of the Utility, and contain terms and conditions that guarantee payment of any amount that may be due from the Interconnection Customer, up to an agreed-to maximum amount.
- 6.3.2 The letter of credit must be issued by a financial institution or insurer reasonably acceptable to the Utility and must specify a reasonable expiration date.
- 6.3.3 The Utility may waive the security requirements if its credit policies

show that the financial risks involved are de minimus, or if the Utility's policies allow the acceptance of an alternative showing of credit-worthiness from the Interconnection Customer.

Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default

7.1 Assignment

- 7.1.1 The Interconnection Customer shall notify the Utility of the pending sale of an existing Generation Facility in writing. The Interconnection Customer shall provide the Utility with information regarding whether the sale is a change of ownership of the Generation Facility to a new legal entity, or a change of control of the existing legal entity.
- 7.1.2 The Interconnection Customer shall promptly notify the Utility of the final date of sale and transfer date of ownership in writing. The purchaser of the Generation Facility shall confirm to the Utility the final date of sale and transfer date of ownership in writing
- 7.1.3 This Agreement shall not survive the transfer of ownership of the Generating Facility to a new legal entity owner. The new owner must complete a new Interconnection Request and submit it to the Utility within 20 Business Days of the transfer of ownership or the Utility's Interconnection Facilities shall be removed or disabled and the Generating Facility disconnected from the Utility's System. The Utility shall not study or inspect the Generating Facility unless the new owner's Interconnection Request indicates that a Material Modification has occurred or is proposed.
- 7.1.4 This Agreement shall survive a change of control of the Generating Facility' legal entity owner, where only the contact information in the Interconnection Agreement must be modified. The new owner must complete a new Interconnection Request and submit it to the Utility within 20 Business Days of the change of control and provide the new contact information. The Utility shall not study or inspect the Generating Facility unless the new owner's Interconnection Request indicates that a Material Modification has occurred or is proposed.
- 7.1.5 The Interconnection Customer shall have the right to assign this Agreement, without the consent of the Utility, for collateral security purposes to aid in providing financing for the Generating Facility, provided that the Interconnection Customer will promptly notify the Utility of any such assignment. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof.

7.1.6 Any attempted assignment that violates this article is void and ineffective.

7.2 Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, incidental, consequential, or punitive damages of any kind, except as authorized by this Agreement.

7.3 Indemnity

7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Article 7.2.

7.3.2 The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inaction of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.3.3 If an indemnified Party is entitled to indemnification under this Article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this Article, to assume the defense of such claim, such indemnified Party may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

7.3.4 If an indemnifying Party is obligated to indemnify and hold any indemnified Party harmless under this Article, the amount owing to the indemnified Party shall be the amount of such indemnified Party's actual loss, net of any insurance or other recovery.

7.3.5 Promptly after receipt by an indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article may apply, the indemnified Party shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's

indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

7.4 Consequential Damages

Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

7.5 Force Majeure

7.5.1 As used in this article, a Force Majeure Event shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of negligence or intentional wrongdoing.

7.5.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

7.6 Default

7.6.1 No Default shall exist where such failure to discharge an obligation (other than the payment of money or provision of Financial Security) is the result of a Force Majeure Event as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-

defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Article 7.6.2, the defaulting Party shall have five (5) Business Days from receipt of the Default notice within which to cure such Default.

- 7.6.2 If a Default is not cured as provided in this Article, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

Article 8. Insurance

- 8.1 The Interconnection Customer shall obtain and retain, for as long as the Generating Facility is interconnected with the Utility's System, liability insurance which protects the Interconnection Customer from claims for bodily injury and/or property damage. The amount of such insurance shall be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made. This insurance shall be primary for all purposes. The Interconnection Customer shall provide certificates evidencing this coverage as required by the Utility. Such insurance shall be obtained from an insurance provider authorized to do business in North Carolina. The Utility reserves the right to refuse to establish or continue the interconnection of the Generating Facility with the Utility's System, if such insurance is not in effect.
- 8.1.1 For an Interconnection Customer that is a residential customer of the Utility proposing to interconnect a Generating Facility no larger than 250 kW, the required coverage shall be a standard homeowner's insurance policy with liability coverage in the amount of at least \$100,000 per occurrence.
- 8.1.2 For an Interconnection Customer that is a non-residential customer of the Utility proposing to interconnect a Generating Facility no larger than 250 kW, the required coverage shall be comprehensive general liability insurance with coverage in the amount of at least \$300,000 per occurrence.
- 8.1.3 For an Interconnection Customer that is a non-residential customer of the Utility proposing to interconnect a Generating Facility greater than 250 kW, the required coverage shall be comprehensive general liability insurance with coverage in the amount of at least \$1,000,000 per occurrence.

- 8.1.4 An Interconnection Customer of sufficient credit-worthiness may propose to provide this insurance via a self-insurance program if it has a self-insurance program established in accordance with commercially acceptable risk management practices, and such a proposal shall not be unreasonably rejected.
- 8.2 The Utility agrees to maintain general liability insurance or self-insurance consistent with the Utility's commercial practice. Such insurance or self-insurance shall not exclude coverage for the Utility's liabilities undertaken pursuant to this Agreement.
- 8.3 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

Article 9. Confidentiality

- 9.1 Confidential Information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed Confidential Information regardless of whether it is clearly marked or otherwise designated as such.
- 9.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.
 - 9.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.
 - 9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.
 - 9.2.3 All information pertaining to a project will be provided to the new owner in the case of a change of control of the existing legal entity or a change of ownership to a new legal entity.

- 9.3 If information is requested by the Commission from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to the Commission within the time provided for in the request for information. In providing the information to the Commission, the Party may request that the information be treated as confidential and non-public in accordance with North Carolina law and that the information be withheld from public disclosure.

Article 10. Disputes

- 10.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this Article.
- 10.2 In the event of a dispute, either Party shall provide the other Party with a written notice of dispute. Such notice shall describe in detail the nature of the dispute.
- 10.3 If the dispute has not been resolved within 20 Business Days after receipt of the notice, either Party may contact the Public Staff for assistance in informally resolving the dispute. If the Parties are unable to informally resolve the dispute, either Party may then file a formal complaint with the Commission.
- 10.4 Each Party agrees to conduct all negotiations in good faith.

Article 11. Taxes

- 11.1 The Parties agree to follow all applicable tax laws and regulations, consistent with North Carolina and federal policy and revenue requirements.
- 11.2 Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the Utility's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

Article 12. Miscellaneous

12.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State of North Carolina, without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

12.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by

both Parties, or under Article 12.12 of this Agreement.

12.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

12.4 Waiver

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

12.4.2.1 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall, if requested, be provided in writing.

12.5 Entire Agreement

This Agreement, including all Appendices, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

12.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

12.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to

otherwise bind, the other Party.

12.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

12.9 Security Arrangements

Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. All Utilities are expected to meet basic standards for electric system infrastructure and operational security, including physical, operational, and cyber-security practices.

12.10 Environmental Releases

Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

12.11 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.11.2 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Utility be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection

Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

12.11.3 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

12.12 Reservation of Rights

The Utility shall have the right to make a unilateral filing with the Commission to modify this Agreement with respect to any rates, terms and conditions, charges, or classifications of service, and the Interconnection Customer shall have the right to make a unilateral filing with the Commission to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before the Commission in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties except to the extent that the Parties otherwise agree as provided herein.

Article 13. Notices

13.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement (Notice) shall be deemed properly given if delivered in person, delivered by recognized national courier service, sent by first class mail, postage prepaid, or sent electronically to the person specified below:

If to the Interconnection Customer:

Interconnection Customer: [Legal Entity on IR Application]

Attention: [Contact Name]

Customer Address: [Contact Address]

City: [Contact City] State: [Contact State] Zip: [Contact Zip]

Phone: [Contact Phone] Fax: [Contact Fax]

Email: [Contact Email]

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager - Mail Code ST-14Q

Mailing Address: P. O. Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290 Fax: (980) 373-3238

Email Address: DERContracts@duke-energy.com

13.2 Billing and Payment

Billings and payments shall be sent to the addresses set out below: If to the Interconnection Customer:

If to the Interconnection Customer:

Interconnection Customer: [Legal Entity on IR Application]

Attention: [Contact Name]

Customer Address: [Contact Address]

City: [Contact City] State: [Contact State] Zip: [Contact Zip]

Phone: [Contact Phone] Fax: [Contact Fax]

Email: [Contact Email]

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager - Mail Code ST-14Q

Mailing Address: P. O. Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290 Fax: (980) 373-3238

Email Address: DERContracts@duke-energy.com

13.3 Alternative Forms of Notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:

If to the Interconnection Customer:

Interconnection Customer: [Legal Entity on IR Application]

Attention: [Contact Name]

Customer Address: [Contact Address]

City: [Contact City] State: [Contact State] Zip: [Contact Zip]

Phone: [Contact Phone] Fax: [Contact Fax]

Email: [Contact Email]

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager - Mail Code ST-14Q

Mailing Address: P. O. Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290 Fax: (980) 373-3238

Email Address: DERContracts@duke-energy.com

13.4 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Interconnection Customer: [Legal Entity on IR Application]

Attention: [Contact Name]

Customer Address: [Contact Address]

City: [Contact City] State: [Contact State] Zip: [Contact Zip]

Phone: [Contact Phone] Fax: [Contact Fax]

Email: [Contact Email]

Utility's Operating Representative:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager - Mail Code ST-14Q

Mailing Address: P. O. Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290 Fax: (980) 373-3238

Email Address: DERContracts@duke-energy.com

13.5 Changes to the Notice Information

Either Party may change this information by giving five Business Days written notice prior to the effective date of the change.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For Duke Energy Carolinas, LLC

Name: _____

Print Name: _____

Title: _____

Date: _____

For [Legal Entity on IR Application]

Name: _____

Print Name: _____

Title: _____

Date: _____

Glossary of Terms

See Glossary of Terms, Attachment 1 to the North Carolina Interconnection Procedures.

Description and Costs of the Generating Facility, Interconnection Facilities, and Metering Equipment

FACILITY DESCRIPTION

Bryson Hydro is a hydroelectric facility located at **Ela Dam Road, Bryson City, NC 28713 in Swain County**. The project is or will be a Qualifying Facility as defined by the Federal Energy Regulatory Commission ("FERC") pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978. The project shall consist of a Leffel turbine and General Electric generator, and a Moody Brothers turbine and General Electric generator.

Bryson Hydro will own three (3) 2.4kV to 12.5kV, single (1) phase, 333-KVA Maloney step-up transformers and connect to the Company's Distribution System at approximately 12,470Y/7,200 volts.

CAPACITY COMMITMENT

The **Contract Capacity** is **980 kW_{AC}**. Contract Capacity shall mean the maximum continuous electrical output capability of the generator(s) at any time expressed on an alternating current basis at a power factor of approximately unity without consuming VARs supplied by Company as measured at the Point of Interconnection and shall be the maximum kW delivered to Company during any metering period.

INTERCONNECTION FACILITIES DELIVERY DATE

The Interconnection Facilities Delivery Date under this Agreement is _____, 20____, said date being the date the Company's System Upgrades are completed and the Interconnection Facilities are capable of being initially energized to allow interconnection by the Customer, provided however said date shall not be earlier than the Requested In-Service Date unless the Customer so requests.

INTERCONNECTION FACILITIES

The Company will furnish, install, own and maintain Interconnection Facilities to permit parallel operation of the Customer's Interconnection Facilities with the Company's Distribution System. The delivery voltage shall be three (3) phase, alternating, at a frequency of approximately sixty (60) hertz, and at approximately 12,470Y/7,200 volts.

The Company's Interconnection Facilities include 1) an overhead distribution tap line connecting the project to the Company's Distribution System, 2) a pole-mounted electronic recloser to serve as a disconnecting breaker, and 3) a 12-kV primary meter located at the delivery point.

Equipment for functions, including but not limited to, telemetry, control, and power quality monitoring will also be required and be installed at the generating facility. At this time, the cost of this equipment has not been determined. Upon installation of the equipment, the Interconnection Facilities Charges shown below will be recomputed based on actual cost and the executed IA will be amended to reflect the appropriate costs.

SYSTEM UPGRADES

The description and associated cost of the Company's System Upgrades is presented in Appendix 6.

CONTINGENCIES

Bryson Hydro will operate at unity Power Factor at the Point of Interconnection. The Company shall have the right to discontinue service if the Customer delivers reactive power that causes the Company to be unable to maintain proper voltage regulation, or creates safety, reliability, or other power quality problems. Suspension of service shall continue until such time as either a) adjustments have been made by the Customer to resolve the issue or b) a new interconnection study is performed and, if required, additional System Upgrades and/or Interconnection Facilities have been installed and charges adjusted accordingly.

Providing Interconnection Facilities and System Upgrades for **Bryson Hydro** is not contingent on the prior installation of any other generating facility which would be on the same distribution circuit, distribution substation or transmission circuit.

Providing System Upgrades and Interconnection Facilities is contingent on the Customer providing all required rights-of-way to the Company. Rights-of-way for overhead distribution lines are up to 50-feet wide, but may be a little as 30 feet wide, at the sole discretion of the Company. The right-of-way must be of equal widths on each side of the overhead pole line. Rights-of-way for underground lines are 20-feet wide. The right-of-way must be of equal width on each side of the underground line.

Providing System Upgrades and Interconnection Facilities is contingent on the Customer providing and maintaining a road, acceptable to the Company, throughout the life of the project, for the purpose of accessing the Company's facilities on the Customer's project site and accessing the Company's facilities that cross private property between the Customer's project and a public street.

INTERCONNECTION FACILITIES CHARGE

The Interconnection Facilities Charge, to be paid by the Customer each month, shall be **\$825.00** (Monthly Charge), which is 1.1% of the installed cost of said Interconnection

Facilities, which amount is \$75,000.00. The Monthly Charge begins on the Interconnection Facilities Delivery Date.

The charges are contingent upon the installation of the Company's facilities being underway by close of business on March 1, 2019. A delay beyond this date will result in revised charges based on then current study parameters, material costs, and labor rates.

The Interconnection Facilities Charge to be provided under this Agreement is subject to the rates, Service Regulations and conditions of the Company as the same are now on file with the North Carolina Utilities Commission and may be changed or modified from time to time upon approval by the Commission. Any such changes or modifications, including those which may result in increased charges for the Interconnection Facilities or System Upgrades to be provided by the Company, shall be made a part of this Agreement to the same effect as if fully set forth herein. The Interconnection Facilities Charge paid by the Interconnection Customer is calculated in accordance with the Extra Facilities Provisions of the Company's Service Regulations and is based on the installed cost of said Interconnection Facilities and System Upgrades.

Adverse conditions may be encountered on the project that are not contemplated in the original design and result in additional expense to the Company to provide Interconnection Facilities or System Upgrades. Customers will be charged for the additional expenses or, if the Customer has control of the involved property or conditions, the customer may elect to mitigate the adverse conditions. Examples of adverse conditions include: 1) encountering land having a composition such that standard construction equipment, materials, or methods cannot be used to install the Company's facilities, 2) encountering special requirements, fees, or permits of any entity, such as a railroad, municipality, or State/Federal agency or department, or 3) encountering and mitigating environmental requirements, etc.. Unforeseen adverse conditions will be billed to the customer as they are encountered.

FINANCIAL SECURITY REQUIREMENT

The financial security requirement is waived.

EARLY TERMINATION

If the Customer requests termination of this Interconnection Agreement before the expiration of five (5) years and another legal entity does not assume financial responsibility for the stated Interconnection Facility Charge by the date of the termination, the Customer shall pay the Company the lesser of 1) the Monthly Interconnection Facilities Charge of **\$825.00** multiplied by 60 payments less the monthly payments rendered or 2) Loss Due to

Early Retirement.

Loss Due to Early Retirement shall be calculated as the installed cost of facilities, including the cost for engineering design work that the Company has not been reimbursed for by the Interconnection Customer, and including purchased materials and equipment not yet installed, less accumulated depreciation, less any salvage value, plus removal cost, provided, however, this amount shall not be less than zero.

**One-line Diagram Depicting the Generating Facility,
Interconnection Facilities, Metering Equipment, and Upgrades**

This agreement will incorporate by reference the one-line diagram submitted by the Customer as part of the Interconnection Request, or as subsequently updated and provided to the Company.

Placeholder for the One-line diagram, which may be provided by the Company prior to execution of this Interconnection Agreement.

Milestones

Subject to revision as scope of project is developed. Some milestones may not apply.

[Legal Entity on IR Application] (Proj Name)

Requested Upgrade In-Service Date: _____

Requested Interconnection Facilities In-Service Date _____

For an Interim Interconnection Agreement, this Appendix 4 is null and void.

Critical milestones and responsibility as agreed to by the Parties:

The build-out schedule does not include contingencies for deployment of Utility personnel to assist in outage restoration efforts on the Utility's system or the systems of other utilities with whom the Utility has a mutual assistance agreement. Consequently, the Requested In-service date may be delayed to the extent outage restoration work interrupts the design, procurement and construction of the requested facilities.

| | Milestone | Completion Date | Responsible Party |
|----|--|--|-------------------|
| 1) | Executable Interconnection Agreement (IA) delivered to Customer | | Company |
| 2) | Signed IA returned to Company | | Customer |
| 3) | Deliver easements required for Company facilities to be installed on the project site | | Customer |
| 4) | Install additional Interconnection Facilities and/or modify existing Interconnection Facilities | | Company |
| 5) | Interconnection Facilities Delivery Date | Actual date the Company's facilities are capable of receiving power from the generating facility | Company |
| 6) | Final electrical approval for Customer's entire generating facility from appropriate jurisdictional inspection authority | | Customer |
| 7) | Company's Facilities Energized | | Company |

Signatures on next page

Agreed to for **Duke Energy Carolinas, LLC**

Name: _____

Print Name: _____

Date: _____

Agreed to for [**Legal Entity on IR Application**]

Name: _____

Print Name: _____

Date: _____

Additional Operating Requirements for the Utility's System and Affected Systems Needed to Support the Interconnection Customer's Needs

OBLIGATION OF THE COMPANY

The obligations of the Company in regard to service under this Interconnection Agreement are dependent upon its acquiring and retaining all necessary rights-of-way, privileges, franchises, and permits for such service and the Company shall not be liable to any Customer or applicant for power in the event it is delayed in, or is prevented from purchasing or delivering power by the failure to secure and retain such rights-of-way, rights, privileges, franchises and permits.

RIGHTS-OF-WAY AND EASEMENTS

Company is not obligated to install Interconnection Facilities or System Upgrades to receive electricity from Customer unless and until: (1) in cases where it is necessary to cross property to accept delivery of electricity from Customer, Customer conveys or causes to be conveyed to Company, without cost to Company, a right-of-way or easement, satisfactory to Company across such property which will provide for the construction, maintenance, and operation of Company's lines and facilities, necessary to receive electricity from Customer, and (2) any inspection certificates or permits that may be required by law in the local are furnished to Company.

PROCUREMENT

The initial delivery of electric power is dependent upon the Company securing from the manufacturers all necessary apparatus, equipment and material for the delivery of said power, and the Company shall not be required to receive said power until it shall have secured and installed such equipment, apparatus and material.

APPLICABLE RATE SCHEDULE

Service necessary for the delivery of the Customer's electricity into the Company's System under this agreement shall be furnished solely to the individual contracting Customer in a single enterprise, located entirely on a single, contiguous premise. Service hereunder shall be restricted to the Net Capacity of the Customer's Generating Facility which may be operated in parallel with the Company's System. Service necessary to supply the Customer's total load requirements other than Auxiliary Load, and service necessary to supply the Customer's Auxiliary Load when the Customer's Generating Facility is not operating, shall be billed on the applicable rate schedule(s) of the Company. Net Power delivered to the Company shall not offset or be substituted for power contracted for or which may be contracted for under any other schedule of the Company, except at the option of the Company under special terms and conditions expressed in writing in the contract with the Customer.

POWER FACTOR

When the average Monthly power factor of the power supplied by the Customer to the

Company is less or greater than unity, the Company may correct the energy, in kilowatt-hours, as appropriate. The Company reserves the right to install facilities necessary for the measurement of power factor and to adjust the Interconnection Facilities Charge accordingly, solely at the option of the Company.

CONTROL AND PROTECTION DEVICES

The Customer shall be responsible for providing suitable control and protective devices on its equipment to assure no disturbance to other customers of the Company or to the Company itself, and to protect the Interconnection Facilities and the Company's System from all loss or damage which could result from operation in parallel with the Company's System. The Customer shall be responsible for any costs incurred by the Company pursuant to the North Carolina Interconnection Procedures.

ADDITIONAL INTERCONNECTION FACILITIES OR SYSTEM UPGRADES

The Company reserves the right to require additional Interconnection Facilities or System Upgrades, furnished, installed, owned and maintained by the Company, at the Customer's expense, if the Customer's Generating Facility, despite compliance with the North Carolina Interconnection Procedures, causes safety, reliability, or power quality problems.

DISTRIBUTION CONSTRUCTION SPECIFICATIONS

To prevent or limit degradation of power quality and/or reliability in service to other Utility customers, the Utility requires that the Interconnection Customer's facilities shall at all times be compatible with the design, safety, quality and construction of the Utility's electrical facilities, where facilities include, without limitation, overhead distribution lines, underground cable terminations, transformers, and transformer connections. For purposes of the foregoing, "compatibility" shall mean that the Interconnection Customer's facilities shall be designed, constructed and operated such that the Utility's standards for similar facilities are considered "minimum" standards when the Interconnection Customer is designing, constructing and operating its own facilities. Upon completion of construction, the Utility may conduct a Medium Voltage Audit to insure compliance with these requirements, where failure to comply will result in the denial of service.

For purposes of the foregoing, the Utility permits Interconnection Customer to access, review, and reprint the Utility's Distribution Construction Specifications, to be used by the Interconnection Customer as minimum standards when designing, constructing and operating its facilities. Utility is not granting permission for the Interconnection Customer for all purposes, but only for the limited purpose of using the standards to assist the Interconnection Customer in meeting the minimum standards of compatibility with the Utility's system. The Interconnection Customer shall retain a professional engineer, licensed in the state where the facilities are being constructed, and shall instruct such engineer to meet the minimum standards set forth above. Further, this access is being granted solely for this project, and it is extended to the Interconnection Customer with the understanding that these designs and standards are the confidential property of the Utility.

INSPECTION

In order to ensure protection of the Company's System, the Company reserves the right, at its discretion, to inspect the Customer's Generating Facility at any time upon reasonable notice to the Customer in an effort to ensure compliance with the Operating Requirements. The Company reserves the right to disconnect electric service to the premises if the Company determines that the Customer's Generation Facility and equipment are not in compliance with the North Carolina Interconnection Procedures or Operating Requirements and is being operated in parallel with the Company's System.

COMMISSIONING

The Company will use Reasonable Efforts to notify the Customer of any testing requirements including, but not limited to, an anti-islanding test and single-phasing tests to confirm UL 1741 performance by the Generating Facility.

**Utility's Description of its Upgrades and
Best Estimate of Upgrade Costs**

SYSTEM UPGRADES

The Company will furnish, install, own and maintain System Upgrades to permit parallel operation of the Customer's Interconnection Facilities with the Company's System.

There are no System Upgrades required.

EXHIBIT E-2
FORM OF FRANKLIN INTERCONNECTION AGREEMENT

[See Attached]

NORTH CAROLINA
FINAL INTERCONNECTION AGREEMENT
For State-Jurisdictional Generator Interconnections

Effective May 15, 2015

Docket No. E-100, Sub 101

Between

Duke Energy Carolinas, LLC

And

[Legal Entity on IR Application]

“[Franklin Hydro or new name]” Project

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This Interconnection Agreement (“Agreement”) is made and entered into this _____ day of _____, _____, by **Duke Energy Carolinas, LLC** (“Utility” or “Company”), and **[Legal Entity on IR Application]** (“Interconnection Customer” or “Customer”) each hereinafter sometimes referred to individually as “Party” or both referred to collectively as the “Parties.”

Utility Information

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager - Mail Code ST-14Q

Mailing Address: P. O. Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290 Fax: (980) 373-3238

Interconnection Customer Information

Name: **[Legal Entity on IR Application]**

Project Name: **[Franklin Hydro or new name]**

E911 Project Address: **564 Clyde Downs Road, Franklin, NC 28734**

Project County: **_Macon**

Attention: **[REDACTED]**

Customer Address: **[REDACTED]**

City: **[REDACTED]** State: **[REDACTED]** Zip: **[REDACTED]**

Phone: **[REDACTED]** Fax: **[REDACTED]**

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

Article 1. Scope and Limitations of Agreement

1.1 Applicability

This Agreement shall be used for all Interconnection Requests submitted under the North Carolina Interconnection Procedures except for those submitted under the 20 kW Inverter Process in Section 2 of the Interconnection Procedures.

1.2 Purpose

If an Interim Interconnection Agreement, this Agreement documents the Utility's ability to interconnect the Generating Facility and provides the Preliminary Estimated Interconnection Facilities Charge and the Preliminary Estimated System Upgrade Charge that was developed in the System Impact Study. Milestones have not been established and the Utility offers no estimate on when the required facilities might be installed.

If a Final Interconnection Agreement, this Agreement governs the terms and conditions under which the Interconnection Customer's Generating Facility will interconnect with, and operate in parallel with, the Utility's System.

1.3 No Agreement to Purchase or Deliver Power or RECs

This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power or Renewable Energy Certificates (RECs). The purchase or delivery of power, RECs that might result from the operation of the Generating Facility, and other services that the Interconnection Customer may require will be covered under separate agreements, if any. The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable Utility.

1.4 Limitations

Nothing in this Agreement is intended to affect any other agreement between the Utility and the Interconnection Customer.

1.5 Responsibilities of the Parties

1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.

1.5.2 The Interconnection Customer shall construct, interconnect, operate and maintain its Generating Facility and construct, operate, and maintain its Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, and in accordance with this Agreement, and with Good Utility Practice.

- 1.5.3 The Utility shall construct, operate, and maintain its System and Interconnection Facilities in accordance with this Agreement, and with Good Utility Practice.
- 1.5.4 The Interconnection Customer agrees to construct its facilities or systems in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriters' Laboratories, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. The Interconnection Customer agrees to design, install, maintain, and operate its Generating Facility so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the System or equipment of the Utility and any Affected Systems.
- 1.5.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Appendices to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. The Utility and the Interconnection Customer, as appropriate, shall provide Interconnection Facilities that adequately protect the Utility's System, personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of Interconnection Facilities shall be delineated in the Appendices to this Agreement.
- 1.5.6 The Utility shall coordinate with all Affected Systems to support the interconnection.

1.6 Parallel Operation Obligations

Once the Generating Facility has been authorized to commence parallel operation, the Interconnection Customer shall abide by all rules and procedures pertaining to the parallel operation of the Generating Facility in the applicable control area, including, but not limited to: 1) any rules and procedures concerning the operation of generation set forth in ComFranklin-approved tariffs or by the applicable system operator(s) for the Utility's System and; 2) the Operating Requirements set forth in Appendix 5 of this Agreement.

1.7 Metering

The Interconnection Customer shall be responsible for the Utility's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Appendices 2 and 3 of this Agreement. The Interconnection Customer's metering

(and data acquisition, as required) equipment shall conform to applicable industry rules and Operating Requirements.

1.8 Reactive Power

1.8.1 The Interconnection Customer shall design its Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless the Utility has established different requirements that apply to all similarly situated generators in the control area on a comparable basis. The requirements of this paragraph shall not apply to wind generators.

1.8.2 The Utility is required to pay the Interconnection Customer for reactive power that the Interconnection Customer provides or absorbs from the Generating Facility when the Utility requests the Interconnection Customer to operate its Generating Facility outside the range specified in Article 1.8.1 or outside the range established by the Utility that applies to all similarly situated generators in the control area. In addition, if the Utility pays its own or affiliated generators for reactive power service within the specified range, it must also pay the Interconnection Customer.

1.8.3 Payments shall be in accordance with the Utility's applicable rate schedule then in effect unless the provision of such service(s) is subject to a regional transFranklin organization or independent system operator FERC-approved rate schedule. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb reactive power under this Agreement, the Parties agree to expeditiously file such rate schedule and agree to support any request for waiver of any prior notice requirement in order to compensate the Interconnection Customer from the time service commenced.

1.9 Capitalized Terms

Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 of the North Carolina Interconnection Procedures or the body of this Agreement.

Article 2. Inspection, Testing, Authorization, and Right of Access

2.1 Equipment Testing and Inspection

2.1.1 The Interconnection Customer shall test and inspect its Generating Facility and Interconnection Facilities prior to interconnection. The Interconnection Customer shall notify the Utility of such activities no fewer

than ten (10) Business Days (or as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a Business Day, unless otherwise agreed to by the Parties. The Utility may, at its own expense, send qualified personnel to the Generating Facility site to inspect the interconnection and observe the testing. The Interconnection Customer shall provide the Utility a written test report when such testing and inspection is completed.

- 2.1.2 The Utility shall provide the Interconnection Customer written acknowledgment that it has received the Interconnection Customer's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by the Utility of the safety, durability, suitability, or reliability of the Generating Facility or any associated control, protective, and safety devices owned or controlled by the Interconnection Customer or the quality of power produced by the Generating Facility.

2.2 Authorization Required Prior to Parallel Operation

- 2.2.1 The Utility shall use Reasonable Efforts to list applicable parallel operation requirements in Appendix 5 of this Agreement. Additionally, the Utility shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. The Utility shall make Reasonable Efforts to cooperate with the Interconnection Customer in meeting requirements necessary for the Interconnection Customer to commence parallel operations by the in-service date.
- 2.2.2 The Interconnection Customer shall not operate its Generating Facility in parallel with the Utility's System without prior written authorization of the Utility. The Utility will provide such authorization once the Utility receives notification that the Interconnection Customer has complied with all applicable parallel operation requirements. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.3 Right of Access

- 2.3.1 Upon reasonable notice, the Utility may send a qualified person to the premises of the Interconnection Customer at or immediately before the time the Generating Facility first produces energy to inspect the interconnection, and observe the comFranklning of the Generating Facility (including any required testing), startup, and operation for a period of up to three (3) Business Days after initial start-up of the unit. In addition, the Interconnection Customer shall notify the Utility at least five (5) Business Days prior to conducting any on-site verification testing of the Generating Facility.

- 2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, the Utility shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.
- 2.3.3 Each Party shall be responsible for its own costs associated with following this Article.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective Date

This Agreement shall become effective upon execution by the Parties.

3.2 Term of Agreement

This Agreement shall become effective on the Effective Date and shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as the Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with Article 3.3 of this Agreement.

3.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

- 3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving the Utility 20 Business Days written notice and physically and permanently disconnecting the Generating Facility from the Utility's System.
- 3.3.2 The Utility may terminate this agreement for failure to comply with the requirements of Article 7.1.2 or Article 7.1.3.
- 3.3.3 Either Party may terminate this Agreement after Default pursuant to Article 7.6.
- 3.3.4 Upon termination of this Agreement, the Generating Facility will be disconnected from the Utility's System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.

3.3.5 The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination, including any remaining term requirements for payment of Charges that are billed under a monthly payment option as prescribed in Article 6.

3.3.6 The provisions of this article shall survive termination or expiration of this Agreement.

3.4 Temporary Disconnection

Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

3.4.1 Emergency Conditions

“Emergency Condition” shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of the Utility, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Utility’s System, the Utility’s Interconnection Facilities or the systems of others to which the Utility’s System is directly connected; or (3) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or the Interconnection Customer’s Interconnection Facilities.

Under Emergency Conditions, the Utility may immediately suspend interconnection service and temporarily disconnect the Generating Facility. The Utility shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer’s operation of the Generating Facility. The Interconnection Customer shall notify the Utility promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Utility’s System or any Affected Systems. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties’ facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Routine Maintenance, Construction, and Repair

The Utility may interrupt interconnection service or curtail the output of

the Generating Facility and temporarily disconnect the Generating Facility from the Utility's System when necessary for routine maintenance, construction, and repairs on the Utility's System. The Utility shall provide the Interconnection Customer with five (5) Business Day notice prior to such interruption. The Utility shall use Reasonable Efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

3.4.3 Forced Outages

During any forced outage, the Utility may suspend interconnection service to effect immediate repairs on the Utility's System. The Utility shall use Reasonable Efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, the Utility shall, upon request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

3.4.4 Adverse Operating Effects

The Utility shall notify the Interconnection Customer as soon as practicable if, based on Good Utility Practice, operation of the Generating Facility may cause disruption or deterioration of service to other customers served from the same electric system, or if operating the Generating Facility could cause damage to the Utility's System or Affected Systems. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon request. If, after notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time, the Utility may disconnect the Generating Facility. The Utility shall provide the Interconnection Customer with five (5) Business Day notice of such disconnection, unless the provisions of Article 3.4.1 apply.

3.4.5 Modification of the Generating Facility

The Interconnection Customer must receive written authorization from the Utility before making a Material Modification or any other change to the Generating Facility that may have a material impact on the safety or reliability of the Utility's System. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If the Interconnection Customer makes such modification without the Utility's prior written authorization, the latter shall have the right to temporarily disconnect the Generating Facility.

3.4.6 Reconnection

The Parties shall cooperate with each other to restore the Generating Facility,

Interconnection Facilities, and the Utility's System to their normal operating state as soon as reasonably practicable following a temporary or emergency disconnection.

Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades

4.1 Interconnection Facilities

4.1.1 The Interconnection Customer shall pay for the cost of the Interconnection Facilities itemized in Appendix 2 of this Agreement. The Utility shall provide a best estimate cost, including overheads, for the purchase and construction of its Interconnection Facilities and provide a detailed itemization of such costs. Costs associated with Interconnection Facilities may be shared with other entities that may benefit from such facilities by agreement of the Interconnection Customer, such other entities, and the Utility.

4.1.2 The Interconnection Customer shall be responsible for its share of all reasonable expenses, including overheads, associated with (1) owning, operating, maintaining, repairing, and replacing its own Interconnection Facilities, and (2) operating, maintaining, repairing, and replacing the Utility's Interconnection Facilities.

4.2 Distribution Upgrades

The Utility shall design, procure, construct, install, and own the Distribution Upgrades described in Appendix 6 of this Agreement. If the Utility and the Interconnection Customer agree, the Interconnection Customer may construct Distribution Upgrades that are located on land owned by the Interconnection Customer. The actual cost of the Distribution Upgrades, including overheads, on-going operations, maintenance, repair, and replacement, shall be directly assigned to the Interconnection Customer.

Article 5. Cost Responsibility for Network Upgrades

5.1 Applicability

No portion of this Article 5 shall apply unless the interconnection of the Generating Facility requires Network Upgrades.

5.2 Network Upgrades

The Utility shall design, procure, construct, install, and own the Network Upgrades described in Appendix 6 of this Agreement. If the Utility and the Interconnection Customer agree, the Interconnection Customer may construct

Network Upgrades that are located on land owned by the Interconnection Customer. Unless the Utility elects to pay for Network Upgrades, the actual cost of the Network Upgrades, including overheads, on-going operations, maintenance, repair, and replacement shall be borne by the Interconnection Customer.

Article 6. Billing, Payment, Milestones, and Financial Security

6.1 Billing and Payment Procedures and Final Accounting

- 6.1.1 The Interconnection Customer shall pay 100% of required Interconnection Facilities and any other charges as required in Appendix 2 pursuant to the milestones specified in Appendix 4.

The Interconnection Customer shall pay 100% of required Upgrades and any other charges as required in Appendix 6 pursuant to the milestones specified in Appendix 4.

Upon receipt of 100% of the foregoing pre-payment charges, the payment is not refundable due to cancellation of the Interconnection Request for any reason.

- 6.1.2 If implemented by the Utility or requested by the Interconnection Customer in writing within 15 Business Days of the Interconnection Facilities Delivery Date, the Utility shall provide the Interconnection Customer a final accounting report within 120 Business Days addressing any difference between (1) the Interconnection Customer's cost responsibility for the actual cost of such facilities or Upgrades, and (2) the Interconnection Customer's previous aggregate payments to the Utility for such facilities or Upgrades. If the Interconnection Customer's cost responsibility exceeds its previous aggregate payments, the Utility shall invoice the Interconnection Customer for the amount due and the Interconnection Customer shall make payment to the Utility within 20 Business Days. If the Interconnection Customer's previous aggregate payments exceed its cost responsibility under this Agreement, the Utility shall refund to the Interconnection Customer an amount equal to the difference within 20 Business Days of the final accounting report. If necessary and appropriate as a result of the final accounting, the Utility may also adjust the monthly charges set forth in Appendix 2 of the Interconnection Agreement.
- 6.1.3 The Utility shall also bill the Interconnection Customer for the costs associated with operating, maintaining, repairing and replacing the Utility's System Upgrades, as set forth in Appendix 6 of this Agreement. The Utility shall bill the Interconnection Customer for the costs of providing the Utility's Interconnection Facilities including the costs for on-

going operations, maintenance, repair and replacement of the Utility's Interconnection Facilities under a Utility rate schedule, tariff, rider or service regulation providing for extra facilities or additional facilities charges, as set forth in Appendix 2 of this Agreement, such monthly charges to continue throughout the entire life of the interconnection.

6.2 Milestones

The Parties shall agree on milestones for which each Party is responsible and list them in Appendix 4 of this Agreement. A Party's obligations under this provision may be extended by agreement, except for timing for Payment or Financial Security-related requirements set forth in the milestones, which shall adhere to Section 5.2.4 of the Standards. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure Event, it shall immediately notify the other Party of the reason(s) for not meeting the milestone and (1) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (2) request appropriate amendments to Appendix 4. The Party affected by the failure to meet a milestone shall not unreasonably withhold agreement to such an amendment unless (1) it will suffer significant uncompensated economic or operational harm from the delay, (2) the delay will materially affect the schedule of another Interconnection Customer with subordinate Queue Position, (3) attainment of the same milestone has previously been delayed, or (4) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

6.3 Financial Security Arrangements

Pursuant to the Interconnection Agreement Milestones Appendix 4, the Interconnection Customer shall provide the Utility a letter of credit or other financial security arrangement that is reasonably acceptable to the Utility and is consistent with the Uniform Commercial Code of North Carolina. Such security for payment shall be in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of the Utility's Interconnection Facilities and shall be reduced on a dollar-for-dollar basis for payments made to the Utility under this Agreement during its term. In addition:

- 6.3.1 The guarantee must be made by an entity that meets the creditworthiness requirements of the Utility, and contain terms and conditions that guarantee payment of any amount that may be due from the Interconnection Customer, up to an agreed-to maximum amount.
- 6.3.2 The letter of credit must be issued by a financial institution or insurer reasonably acceptable to the Utility and must specify a reasonable expiration date.
- 6.3.3 The Utility may waive the security requirements if its credit policies

show that the financial risks involved are de minimus, or if the Utility's policies allow the acceptance of an alternative showing of credit-worthiness from the Interconnection Customer.

Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default

7.1 Assignment

- 7.1.1 The Interconnection Customer shall notify the Utility of the pending sale of an existing Generation Facility in writing. The Interconnection Customer shall provide the Utility with information regarding whether the sale is a change of ownership of the Generation Facility to a new legal entity, or a change of control of the existing legal entity.
- 7.1.2 The Interconnection Customer shall promptly notify the Utility of the final date of sale and transfer date of ownership in writing. The purchaser of the Generation Facility shall confirm to the Utility the final date of sale and transfer date of ownership in writing
- 7.1.3 This Agreement shall not survive the transfer of ownership of the Generating Facility to a new legal entity owner. The new owner must complete a new Interconnection Request and submit it to the Utility within 20 Business Days of the transfer of ownership or the Utility's Interconnection Facilities shall be removed or disabled and the Generating Facility disconnected from the Utility's System. The Utility shall not study or inspect the Generating Facility unless the new owner's Interconnection Request indicates that a Material Modification has occurred or is proposed.
- 7.1.4 This Agreement shall survive a change of control of the Generating Facility' legal entity owner, where only the contact information in the Interconnection Agreement must be modified. The new owner must complete a new Interconnection Request and submit it to the Utility within 20 Business Days of the change of control and provide the new contact information. The Utility shall not study or inspect the Generating Facility unless the new owner's Interconnection Request indicates that a Material Modification has occurred or is proposed.
- 7.1.5 The Interconnection Customer shall have the right to assign this Agreement, without the consent of the Utility, for collateral security purposes to aid in providing financing for the Generating Facility, provided that the Interconnection Customer will promptly notify the Utility of any such assignment. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof.

7.1.6 Any attempted assignment that violates this article is void and ineffective.

7.2 Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or oFranklin in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, incidental, consequential, or punitive damages of any kind, except as authorized by this Agreement.

7.3 Indemnity

7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Article 7.2.

7.3.2 The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inaction of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.3.3 If an indemnified Party is entitled to indemnification under this Article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this Article, to assume the defense of such claim, such indemnified Party may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

7.3.4 If an indemnifying Party is obligated to indemnify and hold any indemnified Party harmless under this Article, the amount owing to the indemnified Party shall be the amount of such indemnified Party's actual loss, net of any insurance or other recovery.

7.3.5 Promptly after receipt by an indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article may apply, the indemnified Party shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's

indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

7.4 Consequential Damages

Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

7.5 Force Majeure

7.5.1 As used in this article, a Force Majeure Event shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of negligence or intentional wrongdoing.

7.5.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

7.6 Default

7.6.1 No Default shall exist where such failure to discharge an obligation (other than the payment of money or provision of Financial Security) is the result of a Force Majeure Event as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-

defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Article 7.6.2, the defaulting Party shall have five (5) Business Days from receipt of the Default notice within which to cure such Default.

- 7.6.2 If a Default is not cured as provided in this Article, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

Article 8. Insurance

- 8.1 The Interconnection Customer shall obtain and retain, for as long as the Generating Facility is interconnected with the Utility's System, liability insurance which protects the Interconnection Customer from claims for bodily injury and/or property damage. The amount of such insurance shall be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made. This insurance shall be primary for all purposes. The Interconnection Customer shall provide certificates evidencing this coverage as required by the Utility. Such insurance shall be obtained from an insurance provider authorized to do business in North Carolina. The Utility reserves the right to refuse to establish or continue the interconnection of the Generating Facility with the Utility's System, if such insurance is not in effect.
- 8.1.1 For an Interconnection Customer that is a residential customer of the Utility proposing to interconnect a Generating Facility no larger than 250 kW, the required coverage shall be a standard homeowner's insurance policy with liability coverage in the amount of at least \$100,000 per occurrence.
- 8.1.2 For an Interconnection Customer that is a non-residential customer of the Utility proposing to interconnect a Generating Facility no larger than 250 kW, the required coverage shall be comprehensive general liability insurance with coverage in the amount of at least \$300,000 per occurrence.
- 8.1.3 For an Interconnection Customer that is a non-residential customer of the Utility proposing to interconnect a Generating Facility greater than 250 kW, the required coverage shall be comprehensive general liability insurance with coverage in the amount of at least \$1,000,000 per occurrence.

- 8.1.4 An Interconnection Customer of sufficient credit-worthiness may propose to provide this insurance via a self-insurance program if it has a self-insurance program established in accordance with commercially acceptable risk management practices, and such a proposal shall not be unreasonably rejected.
- 8.2 The Utility agrees to maintain general liability insurance or self-insurance consistent with the Utility's commercial practice. Such insurance or self-insurance shall not exclude coverage for the Utility's liabilities undertaken pursuant to this Agreement.
- 8.3 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

Article 9. Confidentiality

- 9.1 Confidential Information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed Confidential Information regardless of whether it is clearly marked or otherwise designated as such.
- 9.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.
 - 9.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.
 - 9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.
 - 9.2.3 All information pertaining to a project will be provided to the new owner in the case of a change of control of the existing legal entity or a change of ownership to a new legal entity.

- 9.3 If information is requested by the ComFranklin from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to the ComFranklin within the time provided for in the request for information. In providing the information to the ComFranklin, the Party may request that the information be treated as confidential and non-public in accordance with North Carolina law and that the information be withheld from public disclosure.

Article 10. Disputes

- 10.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this Article.
- 10.2 In the event of a dispute, either Party shall provide the other Party with a written notice of dispute. Such notice shall describe in detail the nature of the dispute.
- 10.3 If the dispute has not been resolved within 20 Business Days after receipt of the notice, either Party may contact the Public Staff for assistance in informally resolving the dispute. If the Parties are unable to informally resolve the dispute, either Party may then file a formal complaint with the ComFranklin.
- 10.4 Each Party agrees to conduct all negotiations in good faith.

Article 11. Taxes

- 11.1 The Parties agree to follow all applicable tax laws and regulations, consistent with North Carolina and federal policy and revenue requirements.
- 11.2 Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the Utility's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

Article 12. Miscellaneous

12.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State of North Carolina, without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

12.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by

both Parties, or under Article 12.12 of this Agreement.

12.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

12.4 Waiver

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

12.4.2.1 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall, if requested, be provided in writing.

12.5 Entire Agreement

This Agreement, including all Appendices, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

12.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

12.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to

otherwise bind, the other Party.

12.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

12.9 Security Arrangements

Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. All Utilities are expected to meet basic standards for electric system infrastructure and operational security, including physical, operational, and cyber-security practices.

12.10 Environmental Releases

Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

12.11 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.11.2 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Utility be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection

Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

12.11.3 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

12.12 Reservation of Rights

The Utility shall have the right to make a unilateral filing with the ComFranklin to modify this Agreement with respect to any rates, terms and conditions, charges, or classifications of service, and the Interconnection Customer shall have the right to make a unilateral filing with the ComFranklin to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before the ComFranklin in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties except to the extent that the Parties otherwise agree as provided herein.

Article 13. Notices

13.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement (Notice) shall be deemed properly given if delivered in person, delivered by recognized national courier service, sent by first class mail, postage prepaid, or sent electronically to the person specified below:

If to the Interconnection Customer:

Interconnection Customer: [Legal Entity on IR Application]

Attention: [Contact Name]

Customer Address: [Contact Address]

City: [Contact City] State: [Contact State] Zip: [Contact Zip]

Phone: [Contact Phone] Fax: [Contact Fax]

Email: [Contact Email]

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager - Mail Code ST-14Q

Mailing Address: P. O. Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290 Fax: (980) 373-3238

Email Address: DERContracts@duke-energy.com

13.2 Billing and Payment

Billings and payments shall be sent to the addresses set out below: If to the Interconnection Customer:

If to the Interconnection Customer:

Interconnection Customer: [Legal Entity on IR Application]

Attention: [Contact Name]

Customer Address: [Contact Address]

City: [Contact City] State: [Contact State] Zip: [Contact Zip]

Phone: [Contact Phone] Fax: [Contact Fax]

Email: [Contact Email]

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager - Mail Code ST-14Q

Mailing Address: P. O. Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290 Fax: (980) 373-3238

Email Address: DERContracts@duke-energy.com

13.3 Alternative Forms of Notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:

If to the Interconnection Customer:

Interconnection Customer: [Legal Entity on IR Application]

Attention: [Contact Name]

Customer Address: [Contact Address]

City: [Contact City] State: [Contact State] Zip: [Contact Zip]

Phone: [Contact Phone] Fax: [Contact Fax]

Email: [Contact Email]

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager - Mail Code ST-14Q

Mailing Address: P. O. Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290 Fax: (980) 373-3238

Email Address: DERContracts@duke-energy.com

13.4 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Interconnection Customer: [Legal Entity on IR Application]

Attention: [Contact Name]

Customer Address: [Contact Address]

City: [Contact City] State: [Contact State] Zip: [Contact Zip]

Phone: [Contact Phone] Fax: [Contact Fax]

Email: [Contact Email]

Utility's Operating Representative:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager - Mail Code ST-14Q

Mailing Address: P. O. Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290 Fax: (980) 373-3238

Email Address: DERContracts@duke-energy.com

13.5 Changes to the Notice Information

Either Party may change this information by giving five Business Days written notice prior to the effective date of the change.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For Duke Energy Carolinas, LLC

Name: _____

Print Name: _____

Title: _____

Date: _____

For [Legal Entity on IR Application]

Name: _____

Print Name: _____

Title: _____

Date: _____

Glossary of Terms

See Glossary of Terms, Attachment 1 to the North Carolina Interconnection Procedures.

Description and Costs of the Generating Facility, Interconnection Facilities, and Metering Equipment

FACILITY DESCRIPTION

Franklin Hydro is a hydroelectric facility located at 564 Clyde Downs Road, Franklin, NC 28734 in Macon County. The project is or will be a Qualifying Facility as defined by the Federal Energy Regulatory ComFranklin ("FERC") pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978. The project shall consist of two (2) James Leffel turbines and two (2) Westinghouse generators rated at 520 kW each.

Franklin Hydro will own three (3) Westinghouse step-up transformers and connect to the Company's Distribution System at approximately 12,470Y/7200 volts.

CAPACITY COMMITMENT

The **Contract Capacity** is **1,040 kW_{AC}**. Contract Capacity shall mean the maximum continuous electrical output capability of the generator(s) at any time expressed on an alternating current basis at a power factor of approximately unity without consuming VARs supplied by Company as measured at the Point of Interconnection and shall be the maximum kW delivered to Company during any metering period.

INTERCONNECTION FACILITIES DELIVERY DATE

The Interconnection Facilities Delivery Date under this Agreement is _____, 20____, said date being the date the Company's System Upgrades are completed and the Interconnection Facilities are capable of being initially energized to allow interconnection by the Customer, provided however said date shall not be earlier than the Requested In-Service Date unless the Customer so requests.

INTERCONNECTION FACILITIES

The Company will furnish, install, own and maintain Interconnection Facilities to permit parallel operation of the Customer's Interconnection Facilities with the Company's Distribution System. The delivery voltage shall be three (3) phase, alternating, at a frequency of approximately sixty (60) hertz, and at approximately 34,500Y/19,900 volts.

The Company's Interconnection Facilities include 1) an overhead distribution tap line connecting the project to the Company's Distribution System, 2) a pole-mounted electronic recloser to serve as a disconnecting breaker, and 3) a 34.5-kV primary meter located at the delivery point.

Equipment for functions, including but not limited to, telemetry, control, and power quality

monitoring will also be required and be installed at the generating facility. At this time, the cost of this equipment has not been determined. Upon installation of the equipment, the Interconnection Facilities Charges shown below will be recomputed based on actual cost and the executed IA will be amended to reflect the appropriate costs.

SYSTEM UPGRADES

The description and associated cost of the Company's System Upgrades is presented in Appendix 6.

CONTINGENCIES

Franklin Hydro will operate at unity Power Factor at the Point of Interconnection. The Company shall have the right to discontinue service if the Customer delivers reactive power that causes the Company to be unable to maintain proper voltage regulation, or creates safety, reliability, or other power quality problems. Suspension of service shall continue until such time as either a) adjustments have been made by the Customer to resolve the issue or b) a new interconnection study is performed and, if required, additional System Upgrades and/or Interconnection Facilities have been installed and charges adjusted accordingly.

Providing Interconnection Facilities and System Upgrades for **Franklin Hydro** is not contingent on the prior installation of any other generating facility which would be on the same distribution circuit, distribution substation or transFranklin circuit.

Providing System Upgrades and Interconnection Facilities is contingent on the Customer providing all required rights-of-way to the Company. Rights-of-way for overhead distribution lines are up to 50-feet wide, but may be a little as 30 feet wide, at the sole discretion of the Company. The right-of-way must be of equal widths on each side of the overhead pole line. Rights-of-way for underground lines are 20-feet wide. The right-of-way must be of equal width on each side of the underground line.

Providing System Upgrades and Interconnection Facilities is contingent on the Customer providing and maintaining a road, acceptable to the Company, throughout the life of the project, for the purpose of accessing the Company's facilities on the Customer's project site and accessing the Company's facilities that cross private property between the Customer's project and a public street.

INTERCONNECTION FACILITIES CHARGE

The Interconnection Facilities Charge, to be paid by the Customer each month, shall be **\$825.00** (Monthly Charge), which is 1.1% of the installed cost of said Interconnection Facilities, which amount is \$75,000.00. The Monthly Charge begins on the

Interconnection Facilities Delivery Date.

The charges are contingent upon the installation of the Company's facilities being underway by close of business on March 1, 2019. A delay beyond this date will result in revised charges based on then current study parameters, material costs, and labor rates.

The Interconnection Facilities Charge to be provided under this Agreement is subject to the rates, Service Regulations and conditions of the Company as the same are now on file with the North Carolina Utilities ComFranklin and may be changed or modified from time to time upon approval by the ComFranklin. Any such changes or modifications, including those which may result in increased charges for the Interconnection Facilities or System Upgrades to be provided by the Company, shall be made a part of this Agreement to the same effect as if fully set forth herein. The Interconnection Facilities Charge paid by the Interconnection Customer is calculated in accordance with the Extra Facilities Provisions of the Company's Service Regulations and is based on the installed cost of said Interconnection Facilities and System Upgrades.

Adverse conditions may be encountered on the project that are not contemplated in the original design and result in additional expense to the Company to provide Interconnection Facilities or System Upgrades. Customers will be charged for the additional expenses or, if the Customer has control of the involved property or conditions, the customer may elect to mitigate the adverse conditions. Examples of adverse conditions include: 1) encountering land having a composition such that standard construction equipment, materials, or methods cannot be used to install the Company's facilities, 2) encountering special requirements, fees, or permits of any entity, such as a railroad, municipality, or State/Federal agency or department, or 3) encountering and mitigating environmental requirements, etc.. Unforeseen adverse conditions will be billed to the customer as they are encountered.

FINANCIAL SECURITY REQUIREMENT

The financial security requirement is waived.

EARLY TERMINATION

If the Customer requests termination of this Interconnection Agreement before the expiration of five (5) years and another legal entity does not assume financial responsibility for the stated Interconnection Facility Charge by the date of the termination, the Customer shall pay the Company the lesser of 1) the Monthly Interconnection Facilities Charge of **\$825.00** multiplied by 60 payments less the monthly payments rendered or 2) Loss Due to Early Retirement.

Loss Due to Early Retirement shall be calculated as the installed cost of facilities, including the cost for engineering design work that the Company has not been reimbursed for by the Interconnection Customer, and including purchased materials and equipment not yet installed, less accumulated depreciation, less any salvage value, plus removal cost, provided, however, this amount shall not be less than zero.

**One-line Diagram Depicting the Generating Facility,
Interconnection Facilities, Metering Equipment, and Upgrades**

This agreement will incorporate by reference the one-line diagram submitted by the Customer as part of the Interconnection Request, or as subsequently updated and provided to the Company.

Placeholder for the One-line diagram, which may be provided by the Company prior to execution of this Interconnection Agreement.

Milestones

Subject to revision as scope of project is developed. Some milestones may not apply.

[Legal Entity on IR Application] (Proj Name)

Requested Upgrade In-Service Date: _____

Requested Interconnection Facilities In-Service Date _____

For an Interim Interconnection Agreement, this Appendix 4 is null and void.

Critical milestones and responsibility as agreed to by the Parties:

The build-out schedule does not include contingencies for deployment of Utility personnel to assist in outage restoration efforts on the Utility's system or the systems of other utilities with whom the Utility has a mutual assistance agreement. Consequently, the Requested In-service date may be delayed to the extent outage restoration work interrupts the design, procurement and construction of the requested facilities.

| | Milestone | Completion Date | Responsible Party |
|----|--|--|-------------------|
| 1) | Executable Interconnection Agreement (IA) delivered to Customer | | Company |
| 2) | Signed IA returned to Company | | Customer |
| 3) | Deliver easements required for Company facilities to be installed on the project site | | Customer |
| 4) | Install additional Interconnection Facilities and/or modify existing Interconnection Facilities | | Company |
| 5) | Interconnection Facilities Delivery Date | Actual date the Company's facilities are capable of receiving power from the generating facility | Company |
| 6) | Final electrical approval for Customer's entire generating facility from appropriate jurisdictional inspection authority | | Customer |
| 7) | Company's Facilities Energized | | Company |

Signatures on next page

Agreed to for **Duke Energy Carolinas, LLC**

Name: _____

Print Name: _____

Date: _____

Agreed to for [**Legal Entity on IR Application**]

Name: _____

Print Name: _____

Date: _____

Additional Operating Requirements for the Utility's System and Affected Systems Needed to Support the Interconnection Customer's Needs

OBLIGATION OF THE COMPANY

The obligations of the Company in regard to service under this Interconnection Agreement are dependent upon its acquiring and retaining all necessary rights-of-way, privileges, franchises, and permits for such service and the Company shall not be liable to any Customer or applicant for power in the event it is delayed in, or is prevented from purchasing or delivering power by the failure to secure and retain such rights-of-way, rights, privileges, franchises and permits.

RIGHTS-OF-WAY AND EASEMENTS

Company is not obligated to install Interconnection Facilities or System Upgrades to receive electricity from Customer unless and until: (1) in cases where it is necessary to cross property to accept delivery of electricity from Customer, Customer conveys or causes to be conveyed to Company, without cost to Company, a right-of-way or easement, satisfactory to Company across such property which will provide for the construction, maintenance, and operation of Company's lines and facilities, necessary to receive electricity from Customer, and (2) any inspection certificates or permits that may be required by law in the local are furnished to Company.

PROCUREMENT

The initial delivery of electric power is dependent upon the Company securing from the manufacturers all necessary apparatus, equipment and material for the delivery of said power, and the Company shall not be required to receive said power until it shall have secured and installed such equipment, apparatus and material.

APPLICABLE RATE SCHEDULE

Service necessary for the delivery of the Customer's electricity into the Company's System under this agreement shall be furnished solely to the individual contracting Customer in a single enterprise, located entirely on a single, contiguous premise. Service hereunder shall be restricted to the Net Capacity of the Customer's Generating Facility which may be operated in parallel with the Company's System. Service necessary to supply the Customer's total load requirements other than Auxiliary Load, and service necessary to supply the Customer's Auxiliary Load when the Customer's Generating Facility is not operating, shall be billed on the applicable rate schedule(s) of the Company. Net Power delivered to the Company shall not offset or be substituted for power contracted for or which may be contracted for under any other schedule of the Company, except at the option of the Company under special terms and conditions expressed in writing in the contract with the Customer.

POWER FACTOR

When the average Monthly power factor of the power supplied by the Customer to the

Company is less or greater than unity, the Company may correct the energy, in kilowatt-hours, as appropriate. The Company reserves the right to install facilities necessary for the measurement of power factor and to adjust the Interconnection Facilities Charge accordingly, solely at the option of the Company.

CONTROL AND PROTECTION DEVICES

The Customer shall be responsible for providing suitable control and protective devices on its equipment to assure no disturbance to other customers of the Company or to the Company itself, and to protect the Interconnection Facilities and the Company's System from all loss or damage which could result from operation in parallel with the Company's System. The Customer shall be responsible for any costs incurred by the Company pursuant to the North Carolina Interconnection Procedures.

ADDITIONAL INTERCONNECTION FACILITIES OR SYSTEM UPGRADES

The Company reserves the right to require additional Interconnection Facilities or System Upgrades, furnished, installed, owned and maintained by the Company, at the Customer's expense, if the Customer's Generating Facility, despite compliance with the North Carolina Interconnection Procedures, causes safety, reliability, or power quality problems.

DISTRIBUTION CONSTRUCTION SPECIFICATIONS

To prevent or limit degradation of power quality and/or reliability in service to other Utility customers, the Utility requires that the Interconnection Customer's facilities shall at all times be compatible with the design, safety, quality and construction of the Utility's electrical facilities, where facilities include, without limitation, overhead distribution lines, underground cable terminations, transformers, and transformer connections. For purposes of the foregoing, "compatibility" shall mean that the Interconnection Customer's facilities shall be designed, constructed and operated such that the Utility's standards for similar facilities are considered "minimum" standards when the Interconnection Customer is designing, constructing and operating its own facilities. Upon completion of construction, the Utility may conduct a Medium Voltage Audit to insure compliance with these requirements, where failure to comply will result in the denial of service.

For purposes of the foregoing, the Utility permits Interconnection Customer to access, review, and reprint the Utility's Distribution Construction Specifications, to be used by the Interconnection Customer as minimum standards when designing, constructing and operating its facilities. Utility is not granting perFranklin for the Interconnection Customer for all purposes, but only for the limited purpose of using the standards to assist the Interconnection Customer in meeting the minimum standards of compatibility with the Utility's system. The Interconnection Customer shall retain a professional engineer, licensed in the state where the facilities are being constructed, and shall instruct such engineer to meet the minimum standards set forth above. Further, this access is being granted solely for this project, and it is extended to the Interconnection Customer with the understanding that these designs and standards are the confidential property of the Utility.

INSPECTION

In order to ensure protection of the Company's System, the Company reserves the right, at its discretion, to inspect the Customer's Generating Facility at any time upon reasonable notice to the Customer in an effort to ensure compliance with the Operating Requirements. The Company reserves the right to disconnect electric service to the premises if the Company determines that the Customer's Generation Facility and equipment are not in compliance with the North Carolina Interconnection Procedures or Operating Requirements and is being operated in parallel with the Company's System.

COMMISSIONING

The Company will use Reasonable Efforts to notify the Customer of any testing requirements including, but not limited to, an anti-islanding test and single-phasing tests to confirm UL 1741 performance by the Generating Facility.

**Utility's Description of its Upgrades and
Best Estimate of Upgrade Costs**

SYSTEM UPGRADES

The Company will furnish, install, own and maintain System Upgrades to permit parallel operation of the Customer's Interconnection Facilities with the Company's System.

There are no System Upgrades required.

EXHIBIT E-3
FORM OF GASTON SHOALS INTERCONNECTION AGREEMENT

[See Attached]

**SOUTH CAROLINA
GENERATOR INTERCONNECTION AGREEMENT**

For State-Jurisdictional Interconnections

Duke Energy Carolinas Inc.

Effective 04/26/2016

Approved: Docket No. 2015-362-E, Order No. 2016- 191

Between

Duke Energy Carolinas, LLC

And

[Legal Entity on IR Application]

Project Name: "Gaston Shoals Hydro or new name"

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This Interconnection Agreement (“Agreement”) is made and entered into this ____ day of _____, 20__, by **Duke Energy Carolinas, LLC** (“Utility”), and [**Legal Entity on IR Application**] (“Interconnection Customer”) each hereinafter sometimes referred to individually as “Party” or both referred to collectively as the “Parties.”

Utility Information

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager – Mail code ST-14Q

Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290

Email: DERContracts@duke-energy.com

Interconnection Customer Information

Name: [**Legal Entity on IR Application**]

Project: **Gaston Shoals Hydro**

E911 Address: Proj Address

Project County: Proj County

Attention: Contact Name

Contact Address: Contact Address

City: Contact City State: Contact State Zip: Contact Zip

Phone: Contact Phone Fax: Contact Fax

Email Address: Contact Email

Interconnection Request ID No: CHKLIST-**xxxxx**

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

Article 1. **Scope and Limitations of Agreement**

1.1 Applicability

This Agreement shall be used for all Interconnection Requests submitted under the South Carolina Generator Interconnection Procedures except for those submitted under the 20 kW Inverter Process in Section 2 of the Standard.

1.2 Purpose

This Agreement governs the terms and conditions under which the Interconnection Customer's Generating Facility will interconnect with, and operate in parallel with, the Utility's System.

1.3 No Agreement to Purchase or Deliver Power or RECs

This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power or Renewable Energy Certificates (RECs). The purchase or delivery of power, RECs that might result from the operation of the Generating Facility, and other services that the Interconnection Customer may require will be covered under separate agreements, if any. The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable Utility.

1.4 Limitations

Nothing in this Agreement is intended to affect any other agreement between the Utility and the Interconnection Customer.

1.5 Responsibilities of the Parties

1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.

1.5.2 The Interconnection Customer shall construct, interconnect, operate and maintain its Generating Facility and construct, operate, and maintain its Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, and in accordance with this Agreement, and with Good Utility Practice.

- 1.5.3 The Utility shall construct, operate, and maintain its System and Interconnection Facilities in accordance with this Agreement, and with Good Utility Practice.
- 1.5.4 The Interconnection Customer agrees to construct its facilities or systems in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, National Electrical Code, the American National Standards Institute, IEEE, Underwriters' Laboratories, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. The Interconnection Customer agrees to design, install, maintain, and operate its Generating Facility so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the System or equipment of the Utility and any Affected Systems.
- 1.5.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Appendices to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. The Utility and the Interconnection Customer, as appropriate, shall provide Interconnection Facilities that adequately protect the Utility's System, personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of Interconnection Facilities shall be delineated in the Appendices to this Agreement.
- 1.5.6 The Utility shall coordinate with all Affected Systems to support the interconnection.
- 1.5.7 The Interconnection Customer is responsible for reviewing the NERC registration requirements, registering when applicable and complying with the applicable Electric Reliability Organization (ERO) reliability standards.

1.6 Disconnect Switch Required

The interconnection Customer shall install a manual load-break disconnect switch or safety switch as a clear visible indication of switch position between the Utility System and the Interconnection Customer. The switch must have padlock provisions for locking in the open position. The switch must be visible to, and accessible to Utility personnel. The switch must be in visible sight of where the Utilities' interconnection

facilities meet the Interconnection Customer's facilities. The switch must be labeled "Generator Disconnect Switch." The switch may isolate the Interconnection Customer and its associated load from the Utility's System or disconnect only the Generator from the Utility's System and shall be accessible to the Utility at all times. The Utility, in its sole discretion, determines if the switch is suitable.

1.7 Parallel Operation Obligations

Once the Generating Facility has been authorized to commence parallel operation, the Interconnection Customer shall abide by all rules and procedures pertaining to the parallel operation of the Generating Facility in the applicable control area, including, but not limited to: 1) any rules and procedures concerning the operation of generation set forth in Commission-approved tariffs or by the applicable system operator(s) for the Utility's System and; 2) the Operating Requirements set forth in Appendix 5 of this Agreement.

1.8 Metering

The Interconnection Customer shall be responsible for the Utility's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Appendices 2 and 3 of this Agreement. The Interconnection Customer's metering (and data acquisition, as required) equipment shall conform to applicable industry rules and Operating Requirements.

1.9 Reactive Power

1.9.1 The Interconnection Customer shall design its Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless the Utility has established different requirements that apply to all similarly situated generators in the control area on a comparable basis. The requirements of this paragraph shall not apply to wind generators.

1.9.2 The Utility is required to pay the Interconnection Customer for reactive power that the Interconnection Customer provides or absorbs from the Generating Facility when the Utility requests the Interconnection Customer to operate its Generating Facility outside the range specified in Article 1.8.1 or the range established by the Utility that applies to all similarly situated generators in the control area. In addition, if the Utility pays its own or affiliated generators

for reactive power service within the specified range, it must also pay the Interconnection Customer.

- 1.9.3 Payments shall be in accordance with the Utility's applicable rate schedule then in effect unless the provision of such service(s) is subject to a regional transmission organization or independent system operator FERC-approved rate schedule. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb reactive power under this Agreement, the Parties agree to expeditiously file such rate schedule and agree to support any request for waiver of any prior notice requirement in order to compensate the Interconnection Customer from the time service commenced.

1.10 Capitalized Terms

Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 of the South Carolina Generator Interconnection Procedures or the body of this Agreement.

Article 2. **Inspection, Testing, Authorization, and Right of Access**

2.1 Equipment Testing and Inspection

2.1.1 The Interconnection Customer shall test and inspect its Generating Facility and Interconnection Facilities prior to interconnection. The Interconnection Customer shall notify the Utility of such activities no fewer than ten (10) Business Days (or as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a Business Day, unless otherwise agreed to by the Parties. The Utility may, at the Interconnection Customer's expense, send qualified personnel to the Generating Facility site to inspect the interconnection and observe the testing. The Interconnection Customer shall provide the Utility a written test report when such testing and inspection is completed.

2.1.2 The Utility shall provide the Interconnection Customer written acknowledgment that it has received the Interconnection Customer's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by the Utility of the safety, durability, suitability, or reliability of the Generating Facility or any associated control, protective, and safety devices owned or controlled by the Interconnection Customer or the quality of power produced by the Generating Facility. If determined necessary by the Utility for safe and reliable operation of the Interconnection Facilities

and/or Generating Facility, the Utility may also initiate its own inspection and testing activities at the Interconnection Customer's expense prior to authorizing parallel operation of the Generating Facility.

2.2 Authorization Required Prior to Parallel Operation

2.2.1 The Utility shall use Reasonable Efforts to list applicable parallel operation requirements in Appendix 5 of this Agreement. Additionally, the Utility shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. The Utility shall make Reasonable Efforts to cooperate with the Interconnection Customer in meeting requirements necessary for the Interconnection Customer to commence parallel operations by the in-service date.

2.2.2 The Interconnection Customer shall not operate its Generating Facility in parallel with the Utility's System without prior written authorization of the Utility. The Utility will provide such authorization once the Utility receives notification that the Interconnection Customer has complied with all applicable parallel operation requirements, including but not limited to additional Operating Requirements presented in Appendix 5 of this Agreement. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.3 Right of Access

2.3.1 Upon reasonable notice, the Utility may send a qualified person to the premises of the Interconnection Customer at or immediately before the time the Generating Facility first produces energy to inspect the interconnection, and observe the commissioning of the Generating Facility (including any required testing), startup, and operation for a period of up to three (3) Business Days after initial start-up of the unit. In addition, the Interconnection Customer shall notify the Utility at least five (5) Business Days prior to conducting any on-site verification testing of the Generating Facility.

2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, the Utility shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.

2.3.3 Each Party shall be responsible for its own costs associated with following this Article.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective Date

This Agreement shall become effective upon execution by the Parties.

3.2 Term of Agreement

This Agreement shall become effective on the Effective Date and shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as the Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with Article 3.3 of this Agreement.

3.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving the Utility 20 Business Days written notice and physically and permanently disconnecting the Generating Facility from the Utility's System.

3.3.2 The Utility may terminate this Agreement for failure to comply with the requirements of Article 7.1.2 or Article 7.1.3.

3.3.3 Either Party may terminate this Agreement after Default pursuant to Article 7.6.

3.3.4 Upon termination of this Agreement, the Generating Facility will be disconnected from the Utility's System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.

3.3.5 The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination, including any remaining term requirements for payment of Charges that are billed under a monthly payment option as prescribed in Article 6.

3.3.6 The provisions of this article shall survive termination or expiration of this Agreement.

3.4 Temporary Disconnection

Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

3.4.1 Isolating or Disconnecting the Generating Facility

The Utility may isolate the Interconnection Customer's premises and/or Generating Facility from the Utility's System when necessary in order to construct, install, repair, replace, remove, investigate or inspect any of the Utility's equipment or part of Utility's System; or if the Utility determines that isolation of the Interconnection Customer's premises and/or Generating Facility from the Utility's System is necessary because of emergencies, forced outages, force majeure or compliance with prudent electrical practices. Whenever feasible, the Utility shall give the Interconnection Customer reasonable notice of the isolation of the Interconnection Customer's premises and/or Generating Facility from the Utility's System.

Notwithstanding any other provision of this Agreement, if at any time the Utility determines that the continued operation of the Generating Facility may endanger either (1) the Utility's personnel or other persons or property or (2) the integrity or safety of the Utility's System, or otherwise cause unacceptable power quality problems for other electric consumers, the Utility shall have the right to isolate the Interconnection Customer's premises and/or Generating Facility from the Utility's System.

3.4.2 Emergency Conditions

Under Emergency Conditions, the Utility may immediately suspend interconnection service and temporarily disconnect the Generating Facility. The Utility shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer's operation of the Generating Facility. The Interconnection Customer shall notify the Utility promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Utility's System or any Affected Systems. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and

operations, its anticipated duration, and the necessary corrective action.

3.4.3 Routine Maintenance, Construction, and Repair

The Utility may interrupt interconnection service or curtail the output of the Generating Facility and temporarily disconnect the Generating Facility from the Utility's System when necessary for routine maintenance, construction, and repairs on the Utility's System. The Utility shall make best efforts to provide the Interconnection Customer reasonable notice prior to such interruption. The Utility shall use Reasonable Efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

3.4.4 Forced Outages

During any forced outage, the Utility may suspend interconnection service to effect immediate repairs on the Utility's System. The Utility shall use Reasonable Efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, the Utility shall, upon request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

3.4.5 Adverse Operating Effects

The Utility shall notify the Interconnection Customer as soon as practicable if, based on Good Utility Practice, operation of the Generating Facility may cause disruption or deterioration of service to other customers served from the same electric system, or if operating the Generating Facility could cause damage to the Utility's System or Affected Systems. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon request. If, after notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time, the Utility may disconnect the Generating Facility. The Utility shall make best efforts to provide the Interconnection Customer reasonable notice of such disconnection, unless the provisions of Article 3.4.1 apply.

3.4.6 Failure to Maintain Compliance with Operating Requirements

The Utility may disconnect from the Utility's System any Generating Facility determined to be malfunctioning, or not in compliance with this Standard or Operating Requirements. The Interconnection

Customer must provide proof of compliance with this Agreement or Operating Requirements before the Generating Facility will be reconnected.

3.4.7 Modification of the Generating Facility

The Interconnection Customer must receive written authorization from the Utility before making any Material Modification or any other change to the Generating Facility that may have a material impact on the safety or reliability of the Utility's System. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If the Interconnection Customer makes such modification without the Utility's prior written authorization, the latter shall have the right to temporarily disconnect the Generating Facility.

3.4.8 Reconnection

The Parties shall cooperate with each other to restore the Generating Facility, Interconnection Facilities, and the Utility's System to their normal operating state as soon as reasonably practicable following a temporary or emergency disconnection.

Article 4. **Cost Responsibility for Interconnection Facilities and Distribution Upgrades**

4.1 Interconnection Facilities

4.1.1 The Interconnection Customer shall pay for the cost of the Interconnection Facilities itemized in Appendix 2 of this Agreement. The Utility shall provide a best estimate cost, including overheads, for the purchase and construction of its Interconnection Facilities and provide a detailed itemization of such costs. Costs associated with Interconnection Facilities may be shared with other entities that may benefit from such facilities by agreement of the Interconnection Customer, such other entities, and the Utility.

4.1.2 The Interconnection Customer shall be responsible for its share of all reasonable expenses, including overheads, associated with (1) owning, operating, maintaining, repairing, and replacing its own Interconnection Facilities, and (2) operating, maintaining, repairing, and replacing the Utility's Interconnection Facilities.

4.2 Distribution Upgrades

The Utility shall design, procure, construct, install, and own the Distribution Upgrades described in Appendix 6 of this Agreement. The actual cost of the Distribution Upgrades, including overheads, on-going operations, maintenance, repair, and replacement, shall be directly assigned to the Interconnection Customer.

Article 5. **Cost Responsibility for Network Upgrades**

5.1 Applicability

No portion of this Article 5 shall apply unless the interconnection of the Generating Facility requires Network Upgrades.

5.2 Network Upgrades

The Utility shall design, procure, construct, install, and own the Network Upgrades described in Appendix 6 of this Agreement. The cost of the Network Upgrades, including overheads, on-going operations, maintenance, repair, and replacement shall be borne by the Interconnection Customer.

Article 6. **Billing, Payment, Milestones, and Financial Security**

6.1 Billing and Payment Procedures and Final Accounting

The Interconnection Customer shall pay 100% of required Interconnection Facilities, and any other charges as required in Appendix 2 pursuant to the milestones specified in Appendix 4. The Interconnection Customer shall pay 100% of required Upgrades and any other charges as required in Appendix 6 pursuant to the milestones specified in Appendix 4. Upon receipt of 100% of the foregoing pre-payment charges, the payment is not refundable due to cancellation of the Interconnection Request for any reason.

6.1.1 If implemented by the Utility or requested by the Interconnection Customer in writing within 15 Business Days of the Utility completing the construction and installation of the Utility's Interconnection Facilities and/or Upgrades described in the Appendices to this Agreement, the Utility shall provide the Interconnection Customer a final accounting report within 60 Business Days addressing any difference between (1) the Interconnection Customer's cost responsibility for the actual cost of such facilities or Upgrades, and (2) the Interconnection Customer's previous aggregate payments to the Utility for such facilities or

Upgrades. If the Interconnection Customer's cost responsibility exceeds its previous aggregate payments, the Utility shall invoice the Interconnection Customer for the amount due and the Interconnection Customer shall make payment to the Utility within 20 Business Days. If the Interconnection Customer's previous aggregate payments exceed its cost responsibility under this Agreement, the Utility shall refund to the Interconnection Customer an amount equal to the difference within 20 Business Days of the final accounting report. If necessary and appropriate as a result of the final accounting, the Utility may also adjust the monthly charges set forth in Appendix 2 of the Interconnection Agreement.

- 6.1.2 The Utility shall bill the Interconnection Customer for the costs associated with operating, maintaining, repairing and replacing the Utility's System Upgrades, as set forth in Appendix 6 of this Agreement. The Utility shall bill the Interconnection Customer for the costs of commissioning and inspection of the Interconnection Customer's Interconnection Facilities and for providing the Utility's Interconnection Facilities including the costs for on-going operations, maintenance, repair and replacement of the Utility's Interconnection Facilities under a Utility rate schedule, tariff, rider or service regulation providing for extra facilities or additional facilities charges, as set forth in Appendix 2 of this Agreement, such monthly charges to continue throughout the entire life of the interconnection.

6.2 Milestones

The Parties shall agree on milestones for which each Party is responsible and list them in Appendix 4 of this Agreement. A Party's obligations under this provision may be extended by agreement, except for timing for Payment or Financial Security-related requirements set forth in the milestones, which shall adhere to Section 5.2.4 of the Standards. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure Event, it shall immediately notify the other Party of the reason(s) for not meeting the milestone and (1) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (2) request appropriate amendments to Appendix 4. The Party affected by the failure to meet a milestone shall not unreasonably withhold agreement to such an amendment unless (1) it will suffer significant uncompensated economic or operational harm from the delay, (2) the delay will materially affect the schedule of another Interconnection Customer with subordinate Queue Position, (3) attainment of the same milestone has previously been delayed, or (4) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

6.3 Financial Security Arrangements

Pursuant to the Interconnection Agreement Milestones Appendix 4, the Interconnection Customer shall provide the Utility a letter of credit or other financial security arrangement that is reasonably acceptable to the Utility and is consistent with the Uniform Commercial Code of South Carolina. Such security for payment shall be in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of the Utility's Interconnection Facilities and Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to the Utility under this Agreement during its term. In addition:

- 6.3.1 The guarantee must be made by an entity that meets the creditworthiness requirements of the Utility, and contain terms and conditions that guarantee payment of any amount that may be due from the Interconnection Customer, up to an agreed-to maximum amount.
- 6.3.2 The letter of credit must be issued by a financial institution or insurer reasonably acceptable to the Utility and must specify a reasonable expiration date.
- 6.3.3 The Utility may waive the security requirements if its credit policies show that the financial risks involved are de minimus, or if the Utility's policies allow the acceptance of an alternative showing of credit-worthiness from the Interconnection Customer.

Article 7. **Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default**

7.1 Assignment

- 7.1.1 The Interconnection Customer shall notify the Utility of the pending sale of an existing Generation Facility in writing. The Interconnection Customer shall provide the Utility with information regarding whether the sale is a change of ownership of the Generation Facility to a new legal entity, or a change of control of the existing legal entity.
- 7.1.2 The Interconnection Customer shall promptly notify the Utility of the final date of sale and transfer date of ownership in writing. The purchaser of the Generation Facility shall confirm to the Utility the final date of sale and transfer date of ownership in writing.
- 7.1.3 This Agreement shall not survive the transfer of ownership of the Generating Facility to a new legal entity owner. The new owner

must complete a new Interconnection Request and submit it to the Utility within 20 Business Days of the transfer of ownership or the Utility's Interconnection Facilities shall be removed or disabled and the Generating Facility disconnected from the Utility's System. The Utility shall not study or inspect the Generating Facility unless the new owner's Interconnection Request indicates that a Material Modification has occurred or is proposed.

7.1.4 This Agreement shall survive a change of control of the Generating Facility' legal entity owner, where only the contact information in the Interconnection Agreement must be modified. The new owner must complete a new Interconnection Request and submit it to the Utility within 20 Business Days of the change of control and provide the new contact information. The Utility shall not study or inspect the Generating Facility unless the new owner's Interconnection Request indicates that a Material Modification has occurred or is proposed.

7.1.5 The Interconnection Customer shall have the right to assign this Agreement, without the consent of the Utility, for collateral security purposes to aid in providing financing for the Generating Facility, provided that the Interconnection Customer will promptly notify the Utility of any such assignment. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof.

7.1.6 Any attempted assignment that violates this article is void and ineffective.

7.2 Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, incidental, consequential, or punitive damages of any kind, except as authorized by this Agreement.

7.3 Indemnity

7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Article 7.2.

- 7.3.2 The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inaction of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.
- 7.3.3 If an indemnified Party is entitled to indemnification under this Article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this Article, to assume the defense of such claim, such indemnified Party may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.
- 7.3.4 If an indemnifying Party is obligated to indemnify and hold any indemnified Party harmless under this Article, the amount owing to the indemnified Party shall be the amount of such indemnified Party's actual loss, net of any insurance or other recovery.
- 7.3.5 Promptly after receipt by an indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article may apply, the indemnified Party shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

7.4 Consequential Damages

Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

7.5 Force Majeure

- 7.5.1 As used in this article, a Force Majeure Event shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of negligence or intentional wrongdoing.
- 7.5.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

7.6 Default

- 7.6.1 No Default shall exist where such failure to discharge an obligation (other than the payment of money or provision of Financial Security) is the result of a Force Majeure Event as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Article 7.6.2, the defaulting Party shall have five (5) Business Days from receipt of the Default notice within which to cure such Default.
- 7.6.2 If a Default is not cured as provided in this Article, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and

remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

Article 8. Insurance

- 8.1 The Interconnection Customer shall obtain and retain, for as long as the Generating Facility is interconnected with the Utility's System, liability insurance which protects the Interconnection Customer from claims for bodily injury and/or property damage. The amount of such insurance shall be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made. This insurance shall be primary for all purposes. The Interconnection Customer shall provide certificates evidencing this coverage as required by the Utility. Such insurance shall be obtained from an insurance provider authorized to do business in South Carolina. The Utility reserves the right to refuse to establish or continue the interconnection of the Generating Facility with the Utility's System, if such insurance is not in effect.
- 8.1.1 For an Interconnection Customer that is a residential customer of the Utility proposing to interconnect a Generating Facility no larger than 250 kW, the required coverage shall be a standard homeowner's insurance policy with liability coverage in the amount of at least \$100,000 per occurrence.
- 8.1.2 For an Interconnection Customer that is a non-residential customer of the Utility proposing to interconnect a Generating Facility no larger than 250 kW, the required coverage shall be comprehensive general liability insurance with coverage in the amount of at least \$300,000 per occurrence.
- 8.1.3 For an Interconnection Customer that is a non-residential customer of the Utility proposing to interconnect a Generating Facility greater than 250 kW, the required coverage shall be comprehensive general liability insurance with coverage in the amount of at least \$1,000,000 per occurrence.
- 8.1.4 An Interconnection Customer of sufficient credit-worthiness may propose to provide this insurance via a self-insurance program if it has a self-insurance program established in accordance with commercially acceptable risk management practices, and such a proposal shall not be unreasonably rejected.
- 8.2 The Utility agrees to maintain general liability insurance or self-insurance consistent with the Utility's commercial practice. Such insurance or self-

insurance shall not exclude coverage for the Utility's liabilities undertaken pursuant to this Agreement.

- 8.3 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

Article 9. **Confidentiality**

- 9.1 Confidential Information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed Confidential Information regardless of whether it is clearly marked or otherwise designated as such.

- 9.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.

9.1.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.

9.1.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

9.1.3 All information pertaining to a project will be provided to the new owner in the case of a change of control of the existing legal entity or a change of ownership to a new legal entity.

- 9.3 If information is requested by the Commission from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to the

Commission within the time provided for in the request for information. In providing the information to the Commission, the Party may request that the information be treated as confidential and non-public in accordance with South Carolina law and that the information be withheld from public disclosure.

Article 10. **Disputes**

- 10.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this Article.
- 10.2 In the event of a dispute, either Party shall provide the other Party with a written notice of dispute. Such notice shall describe in detail the nature of the dispute.
- 10.3 If the dispute has not been resolved within 20 Business Days after receipt of the notice, either Party may contact the Office of Regulatory Staff for assistance in informally resolving the dispute. If the Parties are unable to informally resolve the dispute, either Party may then file a formal complaint with the Commission.
- 10.4 Each Party agrees to conduct all negotiations in good faith.

Article 11. **Taxes**

- 11.1 The Parties agree to follow all applicable tax laws and regulations, consistent with South Carolina and federal policy and revenue requirements.
- 11.2 Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the Utility's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

Article 12. **Miscellaneous**

12.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State of South Carolina, without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

12.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties, or under Article 12.12 of this Agreement.

12.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

12.4 Waiver

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

12.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall, if requested, be provided in writing.

12.5 Entire Agreement

This Agreement, including all Appendices, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

12.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

12.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

12.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

12.9 Security Arrangements

Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. All Utilities are expected to meet basic standards for electric system infrastructure and operational security, including physical, operational, and cyber-security practices.

12.10 Environmental Releases

Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

12.11 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this

Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.11.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Utility be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

12.11.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

12.12 Reservation of Rights

The Utility shall have the right to make a unilateral filing with the Commission to modify this Agreement with respect to any rates, terms and conditions, charges, or classifications of service, and the Interconnection Customer shall have the right to make a unilateral filing with the Commission to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before the Commission in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties except to the extent that the Parties otherwise agree as provided herein.

Article 13. **Notices**

13.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement (Notice) shall be deemed properly given if delivered in person, delivered by recognized national courier service, sent by first class mail, postage prepaid, or sent electronically to the person specified below:

If to the Interconnection Customer:

Interconnection Customer: [Legal Entity on IR Application]

Attention: Contact Name

Address: Contact Address

City: Contact City State: Contact State Zip: Contact Zip

E-Mail Address: Contact Email

Phone: Contact Phone Fax: Contact Fax

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager – Mail Code ST14Q

Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

E-Mail Address: DERContracts@duke-energy.com

Phone: (866) 233- 2290

13.2 Billing and Payment

Billings and payments shall be sent to the addresses set out below: If to the Interconnection Customer:

Interconnection Customer: [Legal Entity on IR Application]

Attention: Contact Name

Address: Contact Address

City: Contact City State: Contact State Zip: Contact Zip

E-Mail Address: Contact Email

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager- Mail Code ST-14Q

Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

E-Mail Address: DERContracts@duke-energy.com

13.3 Alternative Forms of Notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:

If to the Interconnection Customer:

Interconnection Customer: [Legal Entity on IR Application]

Attention: Contact Name

Address: Contact Address

City: Contact City State: Contact State Zip: Contact Zip

Phone: Contact Phone Fax: Contact Fax

E-Mail Address: Contact Email

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager- Mail Code ST-14Q

Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233- 2290

E-Mail Address: DERContracts@duke-energy.com

13.4 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Interconnection Customer: [Legal Entity on IR Application]

Attention: Contact Name

Address: Contact Address

City: Contact City State: Contact State Zip: Contact Zip

Phone: Contact Phone Fax: Contact Fax

E-Mail Address: Contact Email

Utility's Operating Representative:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manger- Mail Code ST-14Q

Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233- 2290

E-Mail Address: DERContracts@duke-energy.com

13.5 Changes to the Notice Information

Either Party may change this information by giving five Business Days written notice prior to the effective date of the change.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For Duke Energy Carolinas, LLC

Name: _____

Print Name: _____

Title: _____

Date: _____

For [Legal Entity on IR Application]

Name: _____

Print Name: _____

Title: _____

Date: _____

Glossary of Terms

See Glossary of Terms, Attachment 1 to the South Carolina Generator Interconnection Procedures.

Description and Costs of the Generating Facility, Interconnection Facilities, and Metering Equipment

Gaston Shoals Hydro, a hydro-electric generating facility with storage, is a Qualifying Facility as defined by the Federal Energy Regulatory Commission ("FERC") pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978.

Gaston Shoals Hydro is located at 437 Dravo Road, Blacksburg, South Carolina, 29702 in Cherokee County.

The project consists of: a single 1,500 kVA, 44-kV/480-volt, three-phase Auxiliary transformer, two 5,040 kVA, 44-kV/2.4-kV, three-phase Generator Step-Up (GSU) transformers, Unit 3: inoperable, Unit 4: American Hydro turbine and 1.8 MVA General Electric synchronous generator, Unit 5: American Hydro turbine and 1.8 MVA General Electric synchronous generator, Unit 6: American Hydro turbine and 3.125 MVA General Electric synchronous generator

CAPACITY COMMITMENT

The **Contract Capacity**, based on the generator nameplate capacity, is **8,500 kW_{AC}**. Contract Capacity is the maximum continuous electrical output authorized for delivery to the Company's System expressed on an alternating current basis as measured at the Point of Interconnection, except if System conditions permit and subject to meeting operating requirements, the output limit may be exceeded.

POINT OF INTERCONNECTION and DELIVERY POINT

The Point of Interconnection (POI) is located at the three sets of disconnects adjacent to the 44kV bus on the power plant side of the 44 kV bus.

The delivery point and point of change of ownership is located at the Point of Interconnection. Duke will own the disconnects, the 44 kV bus, and all facilities and equipment on the transmission system side of the 44 kV bus.

METERING FACILITIES

The Company's metering facilities are comprised of three six-channel meters totalized to render billing as for a single delivery. Slip-on CTs will be installed on the HV bushings of the two GSUs and the Unit Auxiliary Transformer. Potential measurements will be taken from the 44-kV bus pots. The metering facilities must be installed and functional before permission to operate for commissioning can be granted.

RELAYING FACILITIES

The Company's relaying facilities will be relocated from the powerhouse to the Company's E-houses in the switchyard at the Company's expense. The relocation is

not required to be completed before the facility is permitted to deliver energy to the Company's System. The relocation is not addressed in the milestones in Appendix 4, as the task has no bearing on the Requested Interconnection Facilities In-Service Date.

ACCESS

Access by the Company to the Customer's powerhouse for the purpose of relocating the Company's relaying equipment and to the substation to access the Company's equipment and metering facilities will be provided subject to the terms and conditions of a Joint Access Agreement. Access to the powerhouse will terminate after all Company equipment has been removed. (The land for the entire substation site will be conveyed to the Customer, including the land the Company's transmission facilities reside on.)

INTERCONNECTON FACILITIES

The Company shall furnish, install, own and maintain **Interconnection Facilities** to permit parallel operation of the Customer's Interconnection Facilities with the Company's Transmission System. The Interconnection Facilities are comprised of the metering facilities described above.

The **Interconnection Facilities Delivery Date** under this Agreement is _____, 20_____.

The installed cost for the Interconnection Facilities is **\$30,000.00**.

INTERCONNECTION FACILITIES CHARGE

The **Interconnection Facilities Charge** for the Interconnection Facilities, calculated in accordance with the Extra Facilities Provisions of the Company's Service Regulations, to be paid by the Customer each month, shall be **\$510.00 (Monthly Charge)** and is based on a 1.7% multiplier applied to the installed cost of **\$30,000.00** for the Interconnection Facilities.

Billing of the Monthly Charge shall begin on the **Interconnection Facilities Delivery Date**.

The Customer's obligation to pay the Monthly Charge shall continue throughout the term of this Interconnection Agreement (including any renewal thereof) and shall be subject to the early termination provisions.

The Interconnection Facilities Charge to be provided under this Agreement is subject to the rates, Service Regulations and conditions of the Company as the same are now on file with the South Carolina Office of Regulatory Staff and may be changed or modified from time to time upon approval by the Commission. Any such changes or modifications, including those which may result in changes to the charges for the

Interconnection Facilities to be provided by the Company, shall be made a part of this Agreement to the same effect as if fully set forth herein.

ADVERSE CONDITIONS

If Adverse Conditions are encountered on the project that result in additional expense to the Company to provide Interconnection Facilities, Customer shall be charged for such additional expenses or, if the Customer has control over the condition, the Customer may elect to mitigate the adverse conditions. Examples of such Adverse Conditions include: 1) encountering land having a composition such that standard construction equipment, materials, or methods cannot be used to install the Company's facilities, 2) encountering special requirements, fees, or permits of any municipality, or State/Federal agency or department, or 3) encountering and mitigating environmental requirements, etc. Adverse Conditions shall be billed to the customer as they are encountered.

FINANCIAL SECURITY REQUIREMENT

The Financial Security Requirement is waived.

CONTINGENCIES

Changes in the Customer's equipment or design shall be evaluated under the provisions for Modifications in the South Carolina Generator Interconnection Procedures. Imminent Customer changes may result in changes in scope, cost and timelines specified in this Agreement.

Providing Interconnection Facilities for the Customer is not contingent on the prior installation of any System Upgrades for any other generating facility, load customer or Company system improvement project.

Providing Interconnection Facilities is contingent on the Customer providing roads, acceptable to the Company, for the purpose of accessing the Company's facilities on the Customer's project site and accessing the Company's off-site facilities as required by the Company.

EARLY TERMINATION

If the Customer requests termination of this Interconnection Agreement before the fulfillment of the initial 60 payments of the Monthly Charge and another legal entity does not assume financial responsibility for the stated Monthly Charge by the date of the termination, the Customer shall pay the Company the lesser of 1) the Monthly Charge multiplied by 60 payments less the monthly payments rendered during the initial 60 month term of the Interconnection Agreement or 2) the estimated cost of Loss Due to Early Retirement of the Interconnection Facilities.

Loss Due to Early Retirement shall be calculated as the installed cost of facilities, including the cost for engineering design work that the Company has not been reimbursed for by the Interconnection Customer, less accumulated depreciation, less any salvage value, plus removal cost, provided; however, this amount shall not be less than zero.

**One-line Diagram Depicting the Generating Facility,
Interconnection Facilities, Metering Equipment, and Upgrades**

This agreement will incorporate by reference the one-line diagram submitted by the Customer on _____, dated _____, with file name "_____" as part of the Interconnection Request, or as subsequently updated and provided to the Company.

Placeholder for One-line diagram provided by the Company.

Milestones

Subject to revision as scope of project is developed. Some milestones may not apply.

[**Legal Entity on IR Application**] Project; **Gaston Shoals Hydro**

Requested Upgrade In-Service Date: _____

Requested Interconnection Facilities In-Service Date: _____

Critical milestones and responsibility as agreed to by the Parties:

The Customer's failure to meet a milestone may result in extensions by the Company of the Requested In-Service Dates. Extension of the Requested In-Service Dates may exceed the Customer's delay in meeting a milestone completion date.

The Milestone schedule does not include contingencies for deployment of Utility personnel to assist in outage restoration efforts on the Utility's system or the systems of other utilities with whom the Utility has a mutual assistance agreement. Consequently, the Requested In-Service Dates may be delayed to the extent outage restoration work interrupts the design, procurement and construction of the requested facilities.

| | Milestone Highlights: | Completion Date (COB) | Responsible Party |
|---|---|------------------------------|--------------------------|
| 1 | Executable Interconnection Agreement (IA) delivered to Customer | | Company |
| 2 | Signed IA returned to Company | | Customer |
| 3 | Countersigned IA returned to Customer | | Company |
| 4 | Joint Access Agreement executed for Customer's access to Company's switchyard. | | |
| 5 | Joint Access Agreement executed for Company's access to Customer's powerhouse and switchyard. | | |
| 6 | Project to install billing | | Company |

| | | | |
|----|--|--|----------|
| | metering begun by the Company's Transmission Project Management Department | | |
| 7 | Project to relocate Company's relaying equipment begun by the Company's Transmission Project Management Department | | |
| 8 | Project to install billing metering completed by the Company's Transmission Project Management Department | | |
| 9 | Requested Upgrade In-Service date and Requested Interconnection Facilities In-Service Date | | Company |
| 10 | Interconnection Facilities Delivery Date | Actual date the Company's facilities are capable of receiving power from the generating facility | Company |
| 11 | Final electrical approval for Customer's substation from appropriate jurisdictional inspection authority | | Customer |
| 12 | Customer's substation energized | | Company |
| 13 | Final electrical approval for Customer's entire generating facility from appropriate jurisdictional inspection authority | | Customer |
| 14 | "Permission to Operate for Commissioning" Letter (For generating at reduced power for the sole purpose of commissioning. Contingent on fulfilling all requirements for interconnection and | | Company |

| | | | |
|----|--|--|----------------------|
| | operation at reduced output) | | |
| 15 | Customer's generating facility energized and begins generation at reduced power for Commissioning purposes | | Customer |
| 16 | Customer completes commissioning of Generating Facility | | Customer |
| 17 | All Company required commissioning and testing successfully completed | | Company and Customer |
| 18 | Permission to Operate at Continuous and Full Output" Letter issued to Customer (contingent on fulfilling all requirements for interconnection and continuous operation at full output) | | Company |
| 19 | Customer declares Commercial Operation | | Customer |

Agreed to by:

For the Utility, **Duke Energy Carolinas, LLC**

Name: _____ Date _____

Print Name: _____

For the Interconnection Customer, **[Legal Entity on IR Application]**

Name: _____ Date _____

Print Name: _____

Additional Operating Requirements for the Utility's System and Affected Systems Needed to Support the Interconnection Customer's Needs

Obligations of the Company

The obligations of the Company in regard to service under this Interconnection Agreement are dependent upon its acquiring and retaining all necessary rights-of-way, privileges, franchises, and permits for such service and the Company shall not be liable to any Customer or applicant for power in the event it is delayed in, or is prevented from purchasing or delivering power by the failure to secure and retain such rights-of-way, rights, privileges, franchises and permits.

Rights-of-way and Easements

Company is not obligated to install Interconnection Facilities or System Upgrades to receive electricity from Customer unless and until: (1) in cases where it is necessary to cross property to accept delivery of electricity from Customer, Customer conveys or causes to be conveyed to Company, without cost to Company, a right-of-way or easement, satisfactory to Company across such property which will provide for the construction, maintenance, and operation of Company's lines and facilities, necessary to receive electricity from Customer, and (2) any inspection certificates or permits that may be required by law in the local are furnished to Company.

Procurement

The initial delivery of electric power is dependent upon the Company securing from the manufacturers all necessary apparatus, equipment and material for the delivery of said power, and the Company shall not be required to receive said power until it shall have secured and installed such equipment, apparatus and material.

Applicable Rate Schedule

Service necessary for the delivery of the Customer's electricity into the Company's System under this agreement shall be furnished solely to the individual contracting Customer in a single enterprise, located entirely on a single, contiguous premise. Service hereunder shall be restricted to the Net Capacity of the Customer's Generating Facility which may be operated in parallel with the Company's System. Service necessary to supply the Customer's total load requirements other than Auxiliary Load, and service necessary to supply the Customer's Auxiliary Load when the Customer's Generating Facility is not operating, shall be billed on the applicable rate schedule(s) of the Company or negotiated schedule. Net Power delivered to the Company shall not offset or be substituted for power contracted for or which may be contracted for under any other schedule of the Company, except at the option of the Company under special terms and conditions expressed in writing in the contract with the Customer.

Designated Electrical Operating Representative

The Customer shall provide an operator that is available at all hours to communicate with the Company as needed to receive instructions regarding the Generating Facility's output and operating requirements and to report operational issues. Meeting this requirement via an off-site operator is acceptable if these functions can be effectively carried out from a remote location.

Requirements in the "Duke Electric Transmission Facility Connection Requirements"

The Generating Facility is required to comply with the requirements in the "Duke Electric Transmission Facility Connection Requirements" document dated October 1, 2017.

Operating Requirements

The Customer shall be required to comply with a voltage range, a voltage schedule, reactive power output schedule or instructions from the Company's system operator. The Company shall exercise Reasonable Efforts to provide the Customer with such schedules at least one (1) day in advance, and may make changes to such schedules as necessary to maintain the reliability of the Company's System. The Customer shall operate the Generating Facility to maintain the specified output voltage at the Point of Interconnection.

If Interconnection Customer is unable to maintain the specified voltage at the Point of Interconnection, it shall promptly notify the Company's system operator. If the Customer fails to comply with such schedule(s) or instructions, the Company shall have the right to discontinue service and suspend purchases until the Customer is in compliance.

Effective as of the Interconnection Facilities Delivery Date, until such time as other requirements are provided, the Company requires the **Gaston Shoals Hydro** Generating Facility to operate within a voltage range, and not a power factor range, with the voltage regulator in automatic mode controlling voltage, within the voltage parameters specified in the "Duke Electric Transmission Facility Connection Requirements"

Reactive Support Capability

The Generating Facility shall have the capability to provide reactive support to the Company's System as specified in the "Duke Electric Transmission Facility Connection Requirements" document.

Interconnection Customer's Control and Protection Devices

The Customer shall be responsible for providing suitable control and protective devices on its equipment to assure no disturbance to other customers of the Company or to the Company itself, and to protect the Interconnection Facilities and the Company's System from all loss or damage which could result from operation in parallel with the Company's

System. The Customer shall be responsible for any costs incurred by the Company pursuant to the South Carolina Generator Interconnection Procedures.

Additional Interconnection Facilities or System Upgrades

The Company reserves the right to require additional Interconnection Facilities or System Upgrades, furnished, installed, owned and maintained by the Company, at the Customer's expense, if the Customer's Generating Facility, despite compliance with the South Carolina Generator Interconnection Procedures, causes safety, reliability, or power quality problems.

Inspection

In order to ensure protection of the Company's System, the Company reserves the right, at its discretion, to inspect the Customer's Generating Facility at any time upon reasonable notice to the Customer in an effort to ensure compliance with the Operating Requirements.

Commissioning

The Company will use Reasonable Efforts to notify the Customer of any testing requirements.

Disconnection for Failure to Comply

The Company reserves the right to disconnect electric service to the premises if the Company determines that the Customer's Generation Facility and equipment are not in compliance with the South Carolina Generator Interconnection Procedures or Operating Requirements and is being operated in parallel with the Company's System.

**Utility's Description of its Upgrades
and Best Estimate of Upgrade Costs**

SYSTEM UPGRADES

The Company will furnish, install, own and maintain System Upgrades to permit parallel operation of the Customer's Interconnection Facilities with the Company's System.

There are no required System Upgrades.

EXHIBIT E-4
FORM OF MISSION INTERCONNECTION AGREEMENT

[See Attached]

NORTH CAROLINA
FINAL INTERCONNECTION AGREEMENT
For State-Jurisdictional Generator Interconnections

Effective May 15, 2015

Docket No. E-100, Sub 101

Between

Duke Energy Carolinas, LLC

And

[Legal Entity on IR Application]

“[Mission Hydro or new name]” Project

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This Interconnection Agreement (“Agreement”) is made and entered into this _____ day of _____, _____, by **Duke Energy Carolinas, LLC** (“Utility” or “Company”), and **[Legal Entity on IR Application]** (“Interconnection Customer” or “Customer”) each hereinafter sometimes referred to individually as “Party” or both referred to collectively as the “Parties.”

Utility Information

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager - Mail Code ST-14Q

Mailing Address: P. O. Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290 Fax: (980) 373-3238

Interconnection Customer Information

Name: **[Legal Entity on IR Application]**

Project Name: **[Mission Hydro or new name]**

E911 Project Address: Mission **Dam Road, Hayesville, NC 28904**

Project County: **_Clay**

Attention: **[REDACTED]**

Customer Address: **[REDACTED]**

City: **[REDACTED]** State: **[REDACTED]** Zip: **[REDACTED]**

Phone: **[REDACTED]** Fax: **[REDACTED]**

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

Article 1. Scope and Limitations of Agreement

1.1 Applicability

This Agreement shall be used for all Interconnection Requests submitted under the North Carolina Interconnection Procedures except for those submitted under the 20 kW Inverter Process in Section 2 of the Interconnection Procedures.

1.2 Purpose

If an Interim Interconnection Agreement, this Agreement documents the Utility's ability to interconnect the Generating Facility and provides the Preliminary Estimated Interconnection Facilities Charge and the Preliminary Estimated System Upgrade Charge that was developed in the System Impact Study. Milestones have not been established and the Utility offers no estimate on when the required facilities might be installed.

If a Final Interconnection Agreement, this Agreement governs the terms and conditions under which the Interconnection Customer's Generating Facility will interconnect with, and operate in parallel with, the Utility's System.

1.3 No Agreement to Purchase or Deliver Power or RECs

This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power or Renewable Energy Certificates (RECs). The purchase or delivery of power, RECs that might result from the operation of the Generating Facility, and other services that the Interconnection Customer may require will be covered under separate agreements, if any. The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable Utility.

1.4 Limitations

Nothing in this Agreement is intended to affect any other agreement between the Utility and the Interconnection Customer.

1.5 Responsibilities of the Parties

1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.

1.5.2 The Interconnection Customer shall construct, interconnect, operate and maintain its Generating Facility and construct, operate, and maintain its Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, and in accordance with this Agreement, and with Good Utility Practice.

- 1.5.3 The Utility shall construct, operate, and maintain its System and Interconnection Facilities in accordance with this Agreement, and with Good Utility Practice.
- 1.5.4 The Interconnection Customer agrees to construct its facilities or systems in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriters' Laboratories, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. The Interconnection Customer agrees to design, install, maintain, and operate its Generating Facility so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the System or equipment of the Utility and any Affected Systems.
- 1.5.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Appendices to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. The Utility and the Interconnection Customer, as appropriate, shall provide Interconnection Facilities that adequately protect the Utility's System, personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of Interconnection Facilities shall be delineated in the Appendices to this Agreement.
- 1.5.6 The Utility shall coordinate with all Affected Systems to support the interconnection.

1.6 Parallel Operation Obligations

Once the Generating Facility has been authorized to commence parallel operation, the Interconnection Customer shall abide by all rules and procedures pertaining to the parallel operation of the Generating Facility in the applicable control area, including, but not limited to: 1) any rules and procedures concerning the operation of generation set forth in Commission-approved tariffs or by the applicable system operator(s) for the Utility's System and; 2) the Operating Requirements set forth in Appendix 5 of this Agreement.

1.7 Metering

The Interconnection Customer shall be responsible for the Utility's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Appendices 2 and 3 of this Agreement. The Interconnection Customer's metering

(and data acquisition, as required) equipment shall conform to applicable industry rules and Operating Requirements.

1.8 Reactive Power

1.8.1 The Interconnection Customer shall design its Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless the Utility has established different requirements that apply to all similarly situated generators in the control area on a comparable basis. The requirements of this paragraph shall not apply to wind generators.

1.8.2 The Utility is required to pay the Interconnection Customer for reactive power that the Interconnection Customer provides or absorbs from the Generating Facility when the Utility requests the Interconnection Customer to operate its Generating Facility outside the range specified in Article 1.8.1 or outside the range established by the Utility that applies to all similarly situated generators in the control area. In addition, if the Utility pays its own or affiliated generators for reactive power service within the specified range, it must also pay the Interconnection Customer.

1.8.3 Payments shall be in accordance with the Utility's applicable rate schedule then in effect unless the provision of such service(s) is subject to a regional transmission organization or independent system operator FERC-approved rate schedule. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb reactive power under this Agreement, the Parties agree to expeditiously file such rate schedule and agree to support any request for waiver of any prior notice requirement in order to compensate the Interconnection Customer from the time service commenced.

1.9 Capitalized Terms

Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 of the North Carolina Interconnection Procedures or the body of this Agreement.

Article 2. Inspection, Testing, Authorization, and Right of Access

2.1 Equipment Testing and Inspection

2.1.1 The Interconnection Customer shall test and inspect its Generating Facility and Interconnection Facilities prior to interconnection. The Interconnection Customer shall notify the Utility of such activities no fewer

than ten (10) Business Days (or as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a Business Day, unless otherwise agreed to by the Parties. The Utility may, at its own expense, send qualified personnel to the Generating Facility site to inspect the interconnection and observe the testing. The Interconnection Customer shall provide the Utility a written test report when such testing and inspection is completed.

- 2.1.2 The Utility shall provide the Interconnection Customer written acknowledgment that it has received the Interconnection Customer's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by the Utility of the safety, durability, suitability, or reliability of the Generating Facility or any associated control, protective, and safety devices owned or controlled by the Interconnection Customer or the quality of power produced by the Generating Facility.

2.2 Authorization Required Prior to Parallel Operation

- 2.2.1 The Utility shall use Reasonable Efforts to list applicable parallel operation requirements in Appendix 5 of this Agreement. Additionally, the Utility shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. The Utility shall make Reasonable Efforts to cooperate with the Interconnection Customer in meeting requirements necessary for the Interconnection Customer to commence parallel operations by the in-service date.
- 2.2.2 The Interconnection Customer shall not operate its Generating Facility in parallel with the Utility's System without prior written authorization of the Utility. The Utility will provide such authorization once the Utility receives notification that the Interconnection Customer has complied with all applicable parallel operation requirements. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.3 Right of Access

- 2.3.1 Upon reasonable notice, the Utility may send a qualified person to the premises of the Interconnection Customer at or immediately before the time the Generating Facility first produces energy to inspect the interconnection, and observe the commissioning of the Generating Facility (including any required testing), startup, and operation for a period of up to three (3) Business Days after initial start-up of the unit. In addition, the Interconnection Customer shall notify the Utility at least five (5) Business Days prior to conducting any on-site verification testing of the Generating Facility.

- 2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, the Utility shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.
- 2.3.3 Each Party shall be responsible for its own costs associated with following this Article.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective Date

This Agreement shall become effective upon execution by the Parties.

3.2 Term of Agreement

This Agreement shall become effective on the Effective Date and shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as the Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with Article 3.3 of this Agreement.

3.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

- 3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving the Utility 20 Business Days written notice and physically and permanently disconnecting the Generating Facility from the Utility's System.
- 3.3.2 The Utility may terminate this agreement for failure to comply with the requirements of Article 7.1.2 or Article 7.1.3.
- 3.3.3 Either Party may terminate this Agreement after Default pursuant to Article 7.6.
- 3.3.4 Upon termination of this Agreement, the Generating Facility will be disconnected from the Utility's System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.

3.3.5 The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination, including any remaining term requirements for payment of Charges that are billed under a monthly payment option as prescribed in Article 6.

3.3.6 The provisions of this article shall survive termination or expiration of this Agreement.

3.4 Temporary Disconnection

Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

3.4.1 Emergency Conditions

“Emergency Condition” shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of the Utility, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Utility’s System, the Utility’s Interconnection Facilities or the systems of others to which the Utility’s System is directly connected; or (3) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or the Interconnection Customer’s Interconnection Facilities.

Under Emergency Conditions, the Utility may immediately suspend interconnection service and temporarily disconnect the Generating Facility. The Utility shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer’s operation of the Generating Facility. The Interconnection Customer shall notify the Utility promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Utility’s System or any Affected Systems. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties’ facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Routine Maintenance, Construction, and Repair

The Utility may interrupt interconnection service or curtail the output of

the Generating Facility and temporarily disconnect the Generating Facility from the Utility's System when necessary for routine maintenance, construction, and repairs on the Utility's System. The Utility shall provide the Interconnection Customer with five (5) Business Day notice prior to such interruption. The Utility shall use Reasonable Efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

3.4.3 Forced Outages

During any forced outage, the Utility may suspend interconnection service to effect immediate repairs on the Utility's System. The Utility shall use Reasonable Efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, the Utility shall, upon request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

3.4.4 Adverse Operating Effects

The Utility shall notify the Interconnection Customer as soon as practicable if, based on Good Utility Practice, operation of the Generating Facility may cause disruption or deterioration of service to other customers served from the same electric system, or if operating the Generating Facility could cause damage to the Utility's System or Affected Systems. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon request. If, after notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time, the Utility may disconnect the Generating Facility. The Utility shall provide the Interconnection Customer with five (5) Business Day notice of such disconnection, unless the provisions of Article 3.4.1 apply.

3.4.5 Modification of the Generating Facility

The Interconnection Customer must receive written authorization from the Utility before making a Material Modification or any other change to the Generating Facility that may have a material impact on the safety or reliability of the Utility's System. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If the Interconnection Customer makes such modification without the Utility's prior written authorization, the latter shall have the right to temporarily disconnect the Generating Facility.

3.4.6 Reconnection

The Parties shall cooperate with each other to restore the Generating Facility,

Interconnection Facilities, and the Utility's System to their normal operating state as soon as reasonably practicable following a temporary or emergency disconnection.

Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades

4.1 Interconnection Facilities

4.1.1 The Interconnection Customer shall pay for the cost of the Interconnection Facilities itemized in Appendix 2 of this Agreement. The Utility shall provide a best estimate cost, including overheads, for the purchase and construction of its Interconnection Facilities and provide a detailed itemization of such costs. Costs associated with Interconnection Facilities may be shared with other entities that may benefit from such facilities by agreement of the Interconnection Customer, such other entities, and the Utility.

4.1.2 The Interconnection Customer shall be responsible for its share of all reasonable expenses, including overheads, associated with (1) owning, operating, maintaining, repairing, and replacing its own Interconnection Facilities, and (2) operating, maintaining, repairing, and replacing the Utility's Interconnection Facilities.

4.2 Distribution Upgrades

The Utility shall design, procure, construct, install, and own the Distribution Upgrades described in Appendix 6 of this Agreement. If the Utility and the Interconnection Customer agree, the Interconnection Customer may construct Distribution Upgrades that are located on land owned by the Interconnection Customer. The actual cost of the Distribution Upgrades, including overheads, on-going operations, maintenance, repair, and replacement, shall be directly assigned to the Interconnection Customer.

Article 5. Cost Responsibility for Network Upgrades

5.1 Applicability

No portion of this Article 5 shall apply unless the interconnection of the Generating Facility requires Network Upgrades.

5.2 Network Upgrades

The Utility shall design, procure, construct, install, and own the Network Upgrades described in Appendix 6 of this Agreement. If the Utility and the Interconnection Customer agree, the Interconnection Customer may construct

Network Upgrades that are located on land owned by the Interconnection Customer. Unless the Utility elects to pay for Network Upgrades, the actual cost of the Network Upgrades, including overheads, on-going operations, maintenance, repair, and replacement shall be borne by the Interconnection Customer.

Article 6. Billing, Payment, Milestones, and Financial Security

6.1 Billing and Payment Procedures and Final Accounting

6.1.1 The Interconnection Customer shall pay 100% of required Interconnection Facilities and any other charges as required in Appendix 2 pursuant to the milestones specified in Appendix 4.

The Interconnection Customer shall pay 100% of required Upgrades and any other charges as required in Appendix 6 pursuant to the milestones specified in Appendix 4.

Upon receipt of 100% of the foregoing pre-payment charges, the payment is not refundable due to cancellation of the Interconnection Request for any reason.

6.1.2 If implemented by the Utility or requested by the Interconnection Customer in writing within 15 Business Days of the Interconnection Facilities Delivery Date, the Utility shall provide the Interconnection Customer a final accounting report within 120 Business Days addressing any difference between (1) the Interconnection Customer's cost responsibility for the actual cost of such facilities or Upgrades, and (2) the Interconnection Customer's previous aggregate payments to the Utility for such facilities or Upgrades. If the Interconnection Customer's cost responsibility exceeds its previous aggregate payments, the Utility shall invoice the Interconnection Customer for the amount due and the Interconnection Customer shall make payment to the Utility within 20 Business Days. If the Interconnection Customer's previous aggregate payments exceed its cost responsibility under this Agreement, the Utility shall refund to the Interconnection Customer an amount equal to the difference within 20 Business Days of the final accounting report. If necessary and appropriate as a result of the final accounting, the Utility may also adjust the monthly charges set forth in Appendix 2 of the Interconnection Agreement.

6.1.3 The Utility shall also bill the Interconnection Customer for the costs associated with operating, maintaining, repairing and replacing the Utility's System Upgrades, as set forth in Appendix 6 of this Agreement. The Utility shall bill the Interconnection Customer for the costs of providing the Utility's Interconnection Facilities including the costs for on-

going operations, maintenance, repair and replacement of the Utility's Interconnection Facilities under a Utility rate schedule, tariff, rider or service regulation providing for extra facilities or additional facilities charges, as set forth in Appendix 2 of this Agreement, such monthly charges to continue throughout the entire life of the interconnection.

6.2 Milestones

The Parties shall agree on milestones for which each Party is responsible and list them in Appendix 4 of this Agreement. A Party's obligations under this provision may be extended by agreement, except for timing for Payment or Financial Security-related requirements set forth in the milestones, which shall adhere to Section 5.2.4 of the Standards. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure Event, it shall immediately notify the other Party of the reason(s) for not meeting the milestone and (1) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (2) request appropriate amendments to Appendix 4. The Party affected by the failure to meet a milestone shall not unreasonably withhold agreement to such an amendment unless (1) it will suffer significant uncompensated economic or operational harm from the delay, (2) the delay will materially affect the schedule of another Interconnection Customer with subordinate Queue Position, (3) attainment of the same milestone has previously been delayed, or (4) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

6.3 Financial Security Arrangements

Pursuant to the Interconnection Agreement Milestones Appendix 4, the Interconnection Customer shall provide the Utility a letter of credit or other financial security arrangement that is reasonably acceptable to the Utility and is consistent with the Uniform Commercial Code of North Carolina. Such security for payment shall be in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of the Utility's Interconnection Facilities and shall be reduced on a dollar-for-dollar basis for payments made to the Utility under this Agreement during its term. In addition:

- 6.3.1 The guarantee must be made by an entity that meets the creditworthiness requirements of the Utility, and contain terms and conditions that guarantee payment of any amount that may be due from the Interconnection Customer, up to an agreed-to maximum amount.
- 6.3.2 The letter of credit must be issued by a financial institution or insurer reasonably acceptable to the Utility and must specify a reasonable expiration date.
- 6.3.3 The Utility may waive the security requirements if its credit policies

show that the financial risks involved are de minimus, or if the Utility's policies allow the acceptance of an alternative showing of credit-worthiness from the Interconnection Customer.

Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default

7.1 Assignment

- 7.1.1 The Interconnection Customer shall notify the Utility of the pending sale of an existing Generation Facility in writing. The Interconnection Customer shall provide the Utility with information regarding whether the sale is a change of ownership of the Generation Facility to a new legal entity, or a change of control of the existing legal entity.
- 7.1.2 The Interconnection Customer shall promptly notify the Utility of the final date of sale and transfer date of ownership in writing. The purchaser of the Generation Facility shall confirm to the Utility the final date of sale and transfer date of ownership in writing
- 7.1.3 This Agreement shall not survive the transfer of ownership of the Generating Facility to a new legal entity owner. The new owner must complete a new Interconnection Request and submit it to the Utility within 20 Business Days of the transfer of ownership or the Utility's Interconnection Facilities shall be removed or disabled and the Generating Facility disconnected from the Utility's System. The Utility shall not study or inspect the Generating Facility unless the new owner's Interconnection Request indicates that a Material Modification has occurred or is proposed.
- 7.1.4 This Agreement shall survive a change of control of the Generating Facility' legal entity owner, where only the contact information in the Interconnection Agreement must be modified. The new owner must complete a new Interconnection Request and submit it to the Utility within 20 Business Days of the change of control and provide the new contact information. The Utility shall not study or inspect the Generating Facility unless the new owner's Interconnection Request indicates that a Material Modification has occurred or is proposed.
- 7.1.5 The Interconnection Customer shall have the right to assign this Agreement, without the consent of the Utility, for collateral security purposes to aid in providing financing for the Generating Facility, provided that the Interconnection Customer will promptly notify the Utility of any such assignment. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof.

7.1.6 Any attempted assignment that violates this article is void and ineffective.

7.2 Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, incidental, consequential, or punitive damages of any kind, except as authorized by this Agreement.

7.3 Indemnity

7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Article 7.2.

7.3.2 The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inaction of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.3.3 If an indemnified Party is entitled to indemnification under this Article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this Article, to assume the defense of such claim, such indemnified Party may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

7.3.4 If an indemnifying Party is obligated to indemnify and hold any indemnified Party harmless under this Article, the amount owing to the indemnified Party shall be the amount of such indemnified Party's actual loss, net of any insurance or other recovery.

7.3.5 Promptly after receipt by an indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article may apply, the indemnified Party shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's

indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

7.4 Consequential Damages

Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

7.5 Force Majeure

7.5.1 As used in this article, a Force Majeure Event shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of negligence or intentional wrongdoing.

7.5.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

7.6 Default

7.6.1 No Default shall exist where such failure to discharge an obligation (other than the payment of money or provision of Financial Security) is the result of a Force Majeure Event as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-

defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Article 7.6.2, the defaulting Party shall have five (5) Business Days from receipt of the Default notice within which to cure such Default.

- 7.6.2 If a Default is not cured as provided in this Article, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

Article 8. Insurance

- 8.1 The Interconnection Customer shall obtain and retain, for as long as the Generating Facility is interconnected with the Utility's System, liability insurance which protects the Interconnection Customer from claims for bodily injury and/or property damage. The amount of such insurance shall be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made. This insurance shall be primary for all purposes. The Interconnection Customer shall provide certificates evidencing this coverage as required by the Utility. Such insurance shall be obtained from an insurance provider authorized to do business in North Carolina. The Utility reserves the right to refuse to establish or continue the interconnection of the Generating Facility with the Utility's System, if such insurance is not in effect.
- 8.1.1 For an Interconnection Customer that is a residential customer of the Utility proposing to interconnect a Generating Facility no larger than 250 kW, the required coverage shall be a standard homeowner's insurance policy with liability coverage in the amount of at least \$100,000 per occurrence.
- 8.1.2 For an Interconnection Customer that is a non-residential customer of the Utility proposing to interconnect a Generating Facility no larger than 250 kW, the required coverage shall be comprehensive general liability insurance with coverage in the amount of at least \$300,000 per occurrence.
- 8.1.3 For an Interconnection Customer that is a non-residential customer of the Utility proposing to interconnect a Generating Facility greater than 250 kW, the required coverage shall be comprehensive general liability insurance with coverage in the amount of at least \$1,000,000 per occurrence.

- 8.1.4 An Interconnection Customer of sufficient credit-worthiness may propose to provide this insurance via a self-insurance program if it has a self-insurance program established in accordance with commercially acceptable risk management practices, and such a proposal shall not be unreasonably rejected.
- 8.2 The Utility agrees to maintain general liability insurance or self-insurance consistent with the Utility's commercial practice. Such insurance or self-insurance shall not exclude coverage for the Utility's liabilities undertaken pursuant to this Agreement.
- 8.3 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

Article 9. Confidentiality

- 9.1 Confidential Information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed Confidential Information regardless of whether it is clearly marked or otherwise designated as such.
- 9.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.
 - 9.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.
 - 9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.
 - 9.2.3 All information pertaining to a project will be provided to the new owner in the case of a change of control of the existing legal entity or a change of ownership to a new legal entity.

- 9.3 If information is requested by the Commission from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to the Commission within the time provided for in the request for information. In providing the information to the Commission, the Party may request that the information be treated as confidential and non-public in accordance with North Carolina law and that the information be withheld from public disclosure.

Article 10. Disputes

- 10.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this Article.
- 10.2 In the event of a dispute, either Party shall provide the other Party with a written notice of dispute. Such notice shall describe in detail the nature of the dispute.
- 10.3 If the dispute has not been resolved within 20 Business Days after receipt of the notice, either Party may contact the Public Staff for assistance in informally resolving the dispute. If the Parties are unable to informally resolve the dispute, either Party may then file a formal complaint with the Commission.
- 10.4 Each Party agrees to conduct all negotiations in good faith.

Article 11. Taxes

- 11.1 The Parties agree to follow all applicable tax laws and regulations, consistent with North Carolina and federal policy and revenue requirements.
- 11.2 Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the Utility's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

Article 12. Miscellaneous

12.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State of North Carolina, without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

12.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by

both Parties, or under Article 12.12 of this Agreement.

12.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

12.4 Waiver

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

12.4.2.1 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall, if requested, be provided in writing.

12.5 Entire Agreement

This Agreement, including all Appendices, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

12.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

12.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to

otherwise bind, the other Party.

12.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

12.9 Security Arrangements

Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. All Utilities are expected to meet basic standards for electric system infrastructure and operational security, including physical, operational, and cyber-security practices.

12.10 Environmental Releases

Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

12.11 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.11.2 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Utility be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection

Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

12.11.3 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

12.12 Reservation of Rights

The Utility shall have the right to make a unilateral filing with the Commission to modify this Agreement with respect to any rates, terms and conditions, charges, or classifications of service, and the Interconnection Customer shall have the right to make a unilateral filing with the Commission to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before the Commission in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties except to the extent that the Parties otherwise agree as provided herein.

Article 13. Notices

13.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement (Notice) shall be deemed properly given if delivered in person, delivered by recognized national courier service, sent by first class mail, postage prepaid, or sent electronically to the person specified below:

If to the Interconnection Customer:

Interconnection Customer: [Legal Entity on IR Application]

Attention: [Contact Name]

Customer Address: [Contact Address]

City: [Contact City] State: [Contact State] Zip: [Contact Zip]

Phone: [Contact Phone] Fax: [Contact Fax]

Email: [Contact Email]

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager - Mail Code ST-14Q

Mailing Address: P. O. Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290 Fax: (980) 373-3238

Email Address: DERContracts@duke-energy.com

13.2 Billing and Payment

Billings and payments shall be sent to the addresses set out below: If to the Interconnection Customer:

If to the Interconnection Customer:

Interconnection Customer: [Legal Entity on IR Application]

Attention: [Contact Name]

Customer Address: [Contact Address]

City: [Contact City] State: [Contact State] Zip: [Contact Zip]

Phone: [Contact Phone] Fax: [Contact Fax]

Email: [Contact Email]

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager - Mail Code ST-14Q

Mailing Address: P. O. Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290 Fax: (980) 373-3238

Email Address: DERContracts@duke-energy.com

13.3 Alternative Forms of Notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:

If to the Interconnection Customer:

Interconnection Customer: [Legal Entity on IR Application]

Attention: [Contact Name]

Customer Address: [Contact Address]

City: [Contact City] State: [Contact State] Zip: [Contact Zip]

Phone: [Contact Phone] Fax: [Contact Fax]

Email: [Contact Email]

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager - Mail Code ST-14Q

Mailing Address: P. O. Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290 Fax: (980) 373-3238

Email Address: DERContracts@duke-energy.com

13.4 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Interconnection Customer: [Legal Entity on IR Application]

Attention: [Contact Name]

Customer Address: [Contact Address]

City: [Contact City] State: [Contact State] Zip: [Contact Zip]

Phone: [Contact Phone] Fax: [Contact Fax]

Email: [Contact Email]

Utility's Operating Representative:

Utility: Duke Energy Carolinas, LLC

Attention: Wholesale Renewable Manager - Mail Code ST-14Q

Mailing Address: P. O. Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290 Fax: (980) 373-3238

Email Address: DERContracts@duke-energy.com

13.5 Changes to the Notice Information

Either Party may change this information by giving five Business Days written notice prior to the effective date of the change.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For Duke Energy Carolinas, LLC

Name: _____

Print Name: _____

Title: _____

Date: _____

For [Legal Entity on IR Application]

Name: _____

Print Name: _____

Title: _____

Date: _____

Glossary of Terms

See Glossary of Terms, Attachment 1 to the North Carolina Interconnection Procedures.

Description and Costs of the Generating Facility, Interconnection Facilities, and Metering Equipment

FACILITY DESCRIPTION

Mission Hydro is a hydroelectric facility located at Mission Dam Road, Hayesville, NC 28904 in Clay County. The project is or will be a Qualifying Facility as defined by the Federal Energy Regulatory Commission ("FERC") pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978. The project shall consist of three (3) S. Morgan Smith turbines and General Electric generators.

Mission Hydro will own six (6) General Electric step-up transformers and connect to the Company's Distribution System at approximately 34,500Y/19,900 volts.

CAPACITY COMMITMENT

The **Contract Capacity** is **1,800 kW_{AC}**. Contract Capacity shall mean the maximum continuous electrical output capability of the generator(s) at any time expressed on an alternating current basis at a power factor of approximately unity without consuming VARs supplied by Company as measured at the Point of Interconnection and shall be the maximum kW delivered to Company during any metering period.

INTERCONNECTION FACILITIES DELIVERY DATE

The Interconnection Facilities Delivery Date under this Agreement is _____, 20____, said date being the date the Company's System Upgrades are completed and the Interconnection Facilities are capable of being initially energized to allow interconnection by the Customer, provided however said date shall not be earlier than the Requested In-Service Date unless the Customer so requests.

INTERCONNECTION FACILITIES

The Company will furnish, install, own and maintain Interconnection Facilities to permit parallel operation of the Customer's Interconnection Facilities with the Company's Distribution System. The delivery voltage shall be three (3) phase, alternating, at a frequency of approximately sixty (60) hertz, and at approximately 34,500Y/19,900 volts.

The Company's Interconnection Facilities include 1) an overhead distribution tap line connecting the project to the Company's Distribution System, 2) a pole-mounted electronic recloser to serve as a disconnecting breaker, and 3) a 34.5-kV primary meter located at the delivery point.

Equipment for functions, including but not limited to, telemetry, control, and power quality

monitoring will also be required and be installed at the generating facility. At this time, the cost of this equipment has not been determined. Upon installation of the equipment, the Interconnection Facilities Charges shown below will be recomputed based on actual cost and the executed IA will be amended to reflect the appropriate costs.

SYSTEM UPGRADES

The description and associated cost of the Company's System Upgrades is presented in Appendix 6.

CONTINGENCIES

Mission Hydro will operate at unity Power Factor at the Point of Interconnection. The Company shall have the right to discontinue service if the Customer delivers reactive power that causes the Company to be unable to maintain proper voltage regulation, or creates safety, reliability, or other power quality problems. Suspension of service shall continue until such time as either a) adjustments have been made by the Customer to resolve the issue or b) a new interconnection study is performed and, if required, additional System Upgrades and/or Interconnection Facilities have been installed and charges adjusted accordingly.

Providing Interconnection Facilities and System Upgrades for **Mission Hydro** is not contingent on the prior installation of any other generating facility which would be on the same distribution circuit, distribution substation or transmission circuit.

Providing System Upgrades and Interconnection Facilities is contingent on the Customer providing all required rights-of-way to the Company. Rights-of-way for overhead distribution lines are up to 50-feet wide, but may be a little as 30 feet wide, at the sole discretion of the Company. The right-of-way must be of equal widths on each side of the overhead pole line. Rights-of-way for underground lines are 20-feet wide. The right-of-way must be of equal width on each side of the underground line.

Providing System Upgrades and Interconnection Facilities is contingent on the Customer providing and maintaining a road, acceptable to the Company, throughout the life of the project, for the purpose of accessing the Company's facilities on the Customer's project site and accessing the Company's facilities that cross private property between the Customer's project and a public street.

INTERCONNECTION FACILITIES CHARGE

The Interconnection Facilities Charge, to be paid by the Customer each month, shall be **\$935.00** (Monthly Charge), which is 1.1% of the installed cost of said Interconnection Facilities, which amount is \$85,000.00. The Monthly Charge begins on the

Interconnection Facilities Delivery Date.

The charges are contingent upon the installation of the Company's facilities being underway by close of business on March 1, 2019. A delay beyond this date will result in revised charges based on then current study parameters, material costs, and labor rates.

The Interconnection Facilities Charge to be provided under this Agreement is subject to the rates, Service Regulations and conditions of the Company as the same are now on file with the North Carolina Utilities Commission and may be changed or modified from time to time upon approval by the Commission. Any such changes or modifications, including those which may result in increased charges for the Interconnection Facilities or System Upgrades to be provided by the Company, shall be made a part of this Agreement to the same effect as if fully set forth herein. The Interconnection Facilities Charge paid by the Interconnection Customer is calculated in accordance with the Extra Facilities Provisions of the Company's Service Regulations and is based on the installed cost of said Interconnection Facilities and System Upgrades.

Adverse conditions may be encountered on the project that are not contemplated in the original design and result in additional expense to the Company to provide Interconnection Facilities or System Upgrades. Customers will be charged for the additional expenses or, if the Customer has control of the involved property or conditions, the customer may elect to mitigate the adverse conditions. Examples of adverse conditions include: 1) encountering land having a composition such that standard construction equipment, materials, or methods cannot be used to install the Company's facilities, 2) encountering special requirements, fees, or permits of any entity, such as a railroad, municipality, or State/Federal agency or department, or 3) encountering and mitigating environmental requirements, etc.. Unforeseen adverse conditions will be billed to the customer as they are encountered.

FINANCIAL SECURITY REQUIREMENT

The financial security requirement is waived.

EARLY TERMINATION

If the Customer requests termination of this Interconnection Agreement before the expiration of five (5) years and another legal entity does not assume financial responsibility for the stated Interconnection Facility Charge by the date of the termination, the Customer shall pay the Company the lesser of 1) the Monthly Interconnection Facilities Charge of **\$935.00** multiplied by 60 payments less the monthly payments rendered or 2) Loss Due to Early Retirement.

Loss Due to Early Retirement shall be calculated as the installed cost of facilities, including the cost for engineering design work that the Company has not been reimbursed for by the Interconnection Customer, and including purchased materials and equipment not yet installed, less accumulated depreciation, less any salvage value, plus removal cost, provided, however, this amount shall not be less than zero.

**One-line Diagram Depicting the Generating Facility,
Interconnection Facilities, Metering Equipment, and Upgrades**

This agreement will incorporate by reference the one-line diagram submitted by the Customer as part of the Interconnection Request, or as subsequently updated and provided to the Company.

Placeholder for the One-line diagram, which may be provided by the Company prior to execution of this Interconnection Agreement.

Milestones

Subject to revision as scope of project is developed. Some milestones may not apply

[Legal Entity on IR Application] (Proj Name)

Requested Upgrade In-Service Date: _____

Requested Interconnection Facilities In-Service Date _____

For an Interim Interconnection Agreement, this Appendix 4 is null and void.

Critical milestones and responsibility as agreed to by the Parties:

The build-out schedule does not include contingencies for deployment of Utility personnel to assist in outage restoration efforts on the Utility's system or the systems of other utilities with whom the Utility has a mutual assistance agreement. Consequently, the Requested In-service date may be delayed to the extent outage restoration work interrupts the design, procurement and construction of the requested facilities.

| | Milestone | Completion Date | Responsible Party |
|----|--|--|-------------------|
| 1) | Executable Interconnection Agreement (IA) delivered to Customer | | Company |
| 2) | Signed IA returned to Company | | Customer |
| 3) | Deliver easements required for Company facilities to be installed on the project site | | Customer |
| 4) | Install additional Interconnection Facilities and/or modify existing Interconnection Facilities | | Company |
| 5) | Interconnection Facilities Delivery Date | Actual date the Company's facilities are capable of receiving power from the generating facility | Company |
| 6) | Final electrical approval for Customer's entire generating facility from appropriate jurisdictional inspection authority | | Customer |
| 7) | Company's Facilities Energized | | Company |

Signatures on next page

Agreed to for **Duke Energy Carolinas, LLC**

Name: _____

Print Name: _____

Date: _____

Agreed to for [**Legal Entity on IR Application**]

Name: _____

Print Name: _____

Date: _____

Additional Operating Requirements for the Utility's System and Affected Systems Needed to Support the Interconnection Customer's Needs

OBLIGATION OF THE COMPANY

The obligations of the Company in regard to service under this Interconnection Agreement are dependent upon its acquiring and retaining all necessary rights-of-way, privileges, franchises, and permits for such service and the Company shall not be liable to any Customer or applicant for power in the event it is delayed in, or is prevented from purchasing or delivering power by the failure to secure and retain such rights-of-way, rights, privileges, franchises and permits.

RIGHTS-OF-WAY AND EASEMENTS

Company is not obligated to install Interconnection Facilities or System Upgrades to receive electricity from Customer unless and until: (1) in cases where it is necessary to cross property to accept delivery of electricity from Customer, Customer conveys or causes to be conveyed to Company, without cost to Company, a right-of-way or easement, satisfactory to Company across such property which will provide for the construction, maintenance, and operation of Company's lines and facilities, necessary to receive electricity from Customer, and (2) any inspection certificates or permits that may be required by law in the local are furnished to Company.

PROCUREMENT

The initial delivery of electric power is dependent upon the Company securing from the manufacturers all necessary apparatus, equipment and material for the delivery of said power, and the Company shall not be required to receive said power until it shall have secured and installed such equipment, apparatus and material.

APPLICABLE RATE SCHEDULE

Service necessary for the delivery of the Customer's electricity into the Company's System under this agreement shall be furnished solely to the individual contracting Customer in a single enterprise, located entirely on a single, contiguous premise. Service hereunder shall be restricted to the Net Capacity of the Customer's Generating Facility which may be operated in parallel with the Company's System. Service necessary to supply the Customer's total load requirements other than Auxiliary Load, and service necessary to supply the Customer's Auxiliary Load when the Customer's Generating Facility is not operating, shall be billed on the applicable rate schedule(s) of the Company. Net Power delivered to the Company shall not offset or be substituted for power contracted for or which may be contracted for under any other schedule of the Company, except at the option of the Company under special terms and conditions expressed in writing in the contract with the Customer.

POWER FACTOR

When the average Monthly power factor of the power supplied by the Customer to the

Company is less or greater than unity, the Company may correct the energy, in kilowatt-hours, as appropriate. The Company reserves the right to install facilities necessary for the measurement of power factor and to adjust the Interconnection Facilities Charge accordingly, solely at the option of the Company.

CONTROL AND PROTECTION DEVICES

The Customer shall be responsible for providing suitable control and protective devices on its equipment to assure no disturbance to other customers of the Company or to the Company itself, and to protect the Interconnection Facilities and the Company's System from all loss or damage which could result from operation in parallel with the Company's System. The Customer shall be responsible for any costs incurred by the Company pursuant to the North Carolina Interconnection Procedures.

ADDITIONAL INTERCONNECTION FACILITIES OR SYSTEM UPGRADES

The Company reserves the right to require additional Interconnection Facilities or System Upgrades, furnished, installed, owned and maintained by the Company, at the Customer's expense, if the Customer's Generating Facility, despite compliance with the North Carolina Interconnection Procedures, causes safety, reliability, or power quality problems.

DISTRIBUTION CONSTRUCTION SPECIFICATIONS

To prevent or limit degradation of power quality and/or reliability in service to other Utility customers, the Utility requires that the Interconnection Customer's facilities shall at all times be compatible with the design, safety, quality and construction of the Utility's electrical facilities, where facilities include, without limitation, overhead distribution lines, underground cable terminations, transformers, and transformer connections. For purposes of the foregoing, "compatibility" shall mean that the Interconnection Customer's facilities shall be designed, constructed and operated such that the Utility's standards for similar facilities are considered "minimum" standards when the Interconnection Customer is designing, constructing and operating its own facilities. Upon completion of construction, the Utility may conduct a Medium Voltage Audit to insure compliance with these requirements, where failure to comply will result in the denial of service.

For purposes of the foregoing, the Utility permits Interconnection Customer to access, review, and reprint the Utility's Distribution Construction Specifications, to be used by the Interconnection Customer as minimum standards when designing, constructing and operating its facilities. Utility is not granting permission for the Interconnection Customer for all purposes, but only for the limited purpose of using the standards to assist the Interconnection Customer in meeting the minimum standards of compatibility with the Utility's system. The Interconnection Customer shall retain a professional engineer, licensed in the state where the facilities are being constructed, and shall instruct such engineer to meet the minimum standards set forth above. Further, this access is being granted solely for this project, and it is extended to the Interconnection Customer with the understanding that these designs and standards are the confidential property of the Utility.

INSPECTION

In order to ensure protection of the Company's System, the Company reserves the right, at its discretion, to inspect the Customer's Generating Facility at any time upon reasonable notice to the Customer in an effort to ensure compliance with the Operating Requirements. The Company reserves the right to disconnect electric service to the premises if the Company determines that the Customer's Generation Facility and equipment are not in compliance with the North Carolina Interconnection Procedures or Operating Requirements and is being operated in parallel with the Company's System.

COMMISSIONING

The Company will use Reasonable Efforts to notify the Customer of any testing requirements including, but not limited to, an anti-islanding test and single-phasing tests to confirm UL 1741 performance by the Generating Facility.

**Utility's Description of its Upgrades and
Best Estimate of Upgrade Costs**

SYSTEM UPGRADES

The Company will furnish, install, own and maintain System Upgrades to permit parallel operation of the Customer's Interconnection Facilities with the Company's System.

There are no System Upgrades required.

EXHIBIT E-5
FORM OF TUXEDO INTERCONNECTION AGREEMENT

[See Attached]

NORTH CAROLINA
FINAL INTERCONNECTION AGREEMENT
For State-Jurisdictional Generator Interconnections

Effective May 15, 2015

Docket No. E-100, Sub 101

Between

Duke Energy Carolinas, LLC

And

[Legal Entity on IR Application]

“Tuxedo Hydro or new name” Project

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Appendix 1 – Glossary of Terms

Appendix 2 – Description and Costs of the Generating Facility, Interconnection Facilities, and Metering Equipment

Appendix 3 – One-line Diagram Depicting the Generating Facility, Interconnection Facilities, Metering Equipment, and Upgrades

Appendix 4 – Milestones

Appendix 5 – Additional Operating Requirements for the Utility’s System and Affected Systems Needed to Support the Interconnection Customer’s Needs

Appendix 6 – Utility’s Description of its Upgrades and Best Estimate of Upgrade Costs

This Interconnection Agreement (“Agreement”) is made and entered into this _____ day of _____, _____, by **Duke Energy Carolinas, LLC** (“Utility” or “Company”), and **[Legal Entity on IR Application]** (“Interconnection Customer” or “Customer”) each hereinafter sometimes referred to individually as “Party” or both referred to collectively as the “Parties.”

Utility Information

Utility: Duke Energy Carolinas, LLC

Attention: Customer Owned Generation - Mail Code ST-14Q

Mailing Address: P O Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233- 2290

Interconnection Customer Information

Name: **[Legal Entity on IR Application]**

Project Name: **Tuxedo Hydro**

Legal Entity Address:

Attention: _____

E911 Address: _____

City: _____ State: ____ Zip: _____

Phone: _____ Fax: _____

County: _____

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

Article 1. Scope and Limitations of Agreement

1.1 Applicability

This Agreement shall be used for all Interconnection Requests submitted under the North Carolina Interconnection Procedures except for those submitted under the 20 kW Inverter Process in Section 2 of the Interconnection Procedures.

1.2 Purpose

If an Interim Interconnection Agreement, this Agreement documents the Utility's ability to interconnect the Generating Facility and provides the Preliminary Estimated Interconnection Facilities Charge and the Preliminary Estimated System Upgrade Charge that was developed in the System Impact Study. Milestones have not been established and the Utility offers no estimate on when the required facilities might be installed.

If a Final Interconnection Agreement, this Agreement governs the terms and conditions under which the Interconnection Customer's Generating Facility will interconnect with, and operate in parallel with, the Utility's System.

1.3 No Agreement to Purchase or Deliver Power or RECs

This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power or Renewable Energy Certificates (RECs). The purchase or delivery of power, RECs that might result from the operation of the Generating Facility, and other services that the Interconnection Customer may require will be covered under separate agreements, if any. The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable Utility.

1.4 Limitations

Nothing in this Agreement is intended to affect any other agreement between the Utility and the Interconnection Customer.

1.5 Responsibilities of the Parties

1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.

1.5.2 The Interconnection Customer shall construct, interconnect, operate and maintain its Generating Facility and construct, operate, and maintain its Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, and in accordance with this Agreement, and with Good Utility Practice.

1.5.3 The Utility shall construct, operate, and maintain its System and Interconnection Facilities in accordance with this Agreement, and with Good Utility Practice.

- 1.5.4 The Interconnection Customer agrees to construct its facilities or systems in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriters' Laboratories, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. The Interconnection Customer agrees to design, install, maintain, and operate its Generating Facility so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the System or equipment of the Utility and any Affected Systems.
- 1.5.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Appendices to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. The Utility and the Interconnection Customer, as appropriate, shall provide Interconnection Facilities that adequately protect the Utility's System, personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of Interconnection Facilities shall be delineated in the Appendices to this Agreement.
- 1.5.6 The Utility shall coordinate with all Affected Systems to support the interconnection.

1.6 Parallel Operation Obligations

Once the Generating Facility has been authorized to commence parallel operation, the Interconnection Customer shall abide by all rules and procedures pertaining to the parallel operation of the Generating Facility in the applicable control area, including, but not limited to: 1) any rules and procedures concerning the operation of generation set forth in Commission-approved tariffs or by the applicable system operator(s) for the Utility's System and; 2) the Operating Requirements set forth in Appendix 5 of this Agreement.

1.7 Metering

The Interconnection Customer shall be responsible for the Utility's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Appendices 2 and 3 of this Agreement. The Interconnection Customer's metering (and data acquisition, as required) equipment shall conform to applicable industry rules and Operating Requirements.

1.8 Reactive Power

- 1.8.1 The Interconnection Customer shall design its Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless the Utility has established different requirements that apply to all similarly situated generators in the control area on a comparable basis. The requirements of this paragraph shall not apply to wind generators.
- 1.8.2 The Utility is required to pay the Interconnection Customer for reactive power that the Interconnection Customer provides or absorbs from the Generating Facility when the Utility requests the Interconnection Customer to operate its Generating Facility outside the range specified in Article 1.8.1 or outside the range established by the Utility that applies to all similarly situated generators in the control area. In addition, if the Utility pays its own or affiliated generators for reactive power service within the specified range, it must also pay the Interconnection Customer.
- 1.8.3 Payments shall be in accordance with the Utility's applicable rate schedule then in effect unless the provision of such service(s) is subject to a regional transmission organization or independent system operator FERC-approved rate schedule. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb reactive power under this Agreement, the Parties agree to expeditiously file such rate schedule and agree to support any request for waiver of any prior notice requirement in order to compensate the Interconnection Customer from the time service commenced.

1.9 Capitalized Terms

Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 of the North Carolina Interconnection Procedures or the body of this Agreement.

Article 2. Inspection, Testing, Authorization, and Right of Access

2.1 Equipment Testing and Inspection

- 2.1.1 The Interconnection Customer shall test and inspect its Generating Facility and Interconnection Facilities prior to interconnection. The Interconnection Customer shall notify the Utility of such activities no fewer than ten (10) Business Days (or as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a Business Day, unless otherwise agreed to by the Parties. The Utility may,

at its own expense, send qualified personnel to the Generating Facility site to inspect the interconnection and observe the testing. The Interconnection Customer shall provide the Utility a written test report when such testing and inspection is completed.

- 2.1.2 The Utility shall provide the Interconnection Customer written acknowledgment that it has received the Interconnection Customer's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by the Utility of the safety, durability, suitability, or reliability of the Generating Facility or any associated control, protective, and safety devices owned or controlled by the Interconnection Customer or the quality of power produced by the Generating Facility.

2.2 Authorization Required Prior to Parallel Operation

- 2.2.1 The Utility shall use Reasonable Efforts to list applicable parallel operation requirements in Appendix 5 of this Agreement. Additionally, the Utility shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. The Utility shall make Reasonable Efforts to cooperate with the Interconnection Customer in meeting requirements necessary for the Interconnection Customer to commence parallel operations by the in-service date.
- 2.2.2 The Interconnection Customer shall not operate its Generating Facility in parallel with the Utility's System without prior written authorization of the Utility. The Utility will provide such authorization once the Utility receives notification that the Interconnection Customer has complied with all applicable parallel operation requirements. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.3 Right of Access

- 2.3.1 Upon reasonable notice, the Utility may send a qualified person to the premises of the Interconnection Customer at or immediately before the time the Generating Facility first produces energy to inspect the interconnection, and observe the commissioning of the Generating Facility (including any required testing), startup, and operation for a period of up to three (3) Business Days after initial start-up of the unit. In addition, the Interconnection Customer shall notify the Utility at least five (5) Business Days prior to conducting any on-site verification testing of the Generating Facility.
- 2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, the Utility shall have

access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.

- 2.3.3 Each Party shall be responsible for its own costs associated with following this Article.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective Date

This Agreement shall become effective upon execution by the Parties.

3.2 Term of Agreement

This Agreement shall become effective on the Effective Date and shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as the Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with Article 3.3 of this Agreement.

3.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving the Utility 20 Business Days written notice and physically and permanently disconnecting the Generating Facility from the Utility's System.

3.3.2 The Utility may terminate this agreement for failure to comply with the requirements of Article 7.1.2 or Article 7.1.3.

3.3.3 Either Party may terminate this Agreement after Default pursuant to Article 7.6.

3.3.4 Upon termination of this Agreement, the Generating Facility will be disconnected from the Utility's System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.

3.3.5 The termination of this Agreement shall not relieve either Party of its

liabilities and obligations, owed or continuing at the time of the termination, including any remaining term requirements for payment of Charges that are billed under a monthly payment option as prescribed in Article 6.

3.3.6 The provisions of this article shall survive termination or expiration of this Agreement.

3.4 Temporary Disconnection

Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

3.4.1 Emergency Conditions

“Emergency Condition” shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of the Utility, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Utility’s System, the Utility’s Interconnection Facilities or the systems of others to which the Utility’s System is directly connected; or (3) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or the Interconnection Customer’s Interconnection Facilities.

Under Emergency Conditions, the Utility may immediately suspend interconnection service and temporarily disconnect the Generating Facility. The Utility shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer’s operation of the Generating Facility. The Interconnection Customer shall notify the Utility promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Utility’s System or any Affected Systems. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties’ facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Routine Maintenance, Construction, and Repair

The Utility may interrupt interconnection service or curtail the output of the Generating Facility and temporarily disconnect the Generating Facility from the Utility’s System when necessary for routine

maintenance, construction, and repairs on the Utility's System. The Utility shall provide the Interconnection Customer with five (5) Business Day notice prior to such interruption. The Utility shall use Reasonable Efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

3.4.3 Forced Outages

During any forced outage, the Utility may suspend interconnection service to effect immediate repairs on the Utility's System. The Utility shall use Reasonable Efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, the Utility shall, upon request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

3.4.4 Adverse Operating Effects

The Utility shall notify the Interconnection Customer as soon as practicable if, based on Good Utility Practice, operation of the Generating Facility may cause disruption or deterioration of service to other customers served from the same electric system, or if operating the Generating Facility could cause damage to the Utility's System or Affected Systems. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon request. If, after notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time, the Utility may disconnect the Generating Facility. The Utility shall provide the Interconnection Customer with five (5) Business Day notice of such disconnection, unless the provisions of Article 3.4.1 apply.

3.4.5 Modification of the Generating Facility

The Interconnection Customer must receive written authorization from the Utility before making a Material Modification or any other change to the Generating Facility that may have a material impact on the safety or reliability of the Utility's System. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If the Interconnection Customer makes such modification without the Utility's prior written authorization, the latter shall have the right to temporarily disconnect the Generating Facility.

3.4.6 Reconnection

The Parties shall cooperate with each other to restore the Generating Facility, Interconnection Facilities, and the Utility's System to their normal operating state as soon as reasonably practicable following a temporary or emergency disconnection.

Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades

4.1 Interconnection Facilities

4.1.1 The Interconnection Customer shall pay for the cost of the Interconnection Facilities itemized in Appendix 2 of this Agreement. The Utility shall provide a best estimate cost, including overheads, for the purchase and construction of its Interconnection Facilities and provide a detailed itemization of such costs. Costs associated with Interconnection Facilities may be shared with other entities that may benefit from such facilities by agreement of the Interconnection Customer, such other entities, and the Utility.

4.1.2 The Interconnection Customer shall be responsible for its share of all reasonable expenses, including overheads, associated with (1) owning, operating, maintaining, repairing, and replacing its own Interconnection Facilities, and (2) operating, maintaining, repairing, and replacing the Utility's Interconnection Facilities.

4.2 Distribution Upgrades

The Utility shall design, procure, construct, install, and own the Distribution Upgrades described in Appendix 6 of this Agreement. If the Utility and the Interconnection Customer agree, the Interconnection Customer may construct Distribution Upgrades that are located on land owned by the Interconnection Customer. The actual cost of the Distribution Upgrades, including overheads, on-going operations, maintenance, repair, and replacement, shall be directly assigned to the Interconnection Customer.

Article 5. Cost Responsibility for Network Upgrades

5.1 Applicability

No portion of this Article 5 shall apply unless the interconnection of the Generating Facility requires Network Upgrades.

5.2 Network Upgrades

The Utility shall design, procure, construct, install, and own the Network Upgrades described in Appendix 6 of this Agreement. If the Utility and the Interconnection Customer agree, the Interconnection Customer may construct Network Upgrades that are located on land owned by the Interconnection Customer. Unless the Utility elects to pay for Network Upgrades, the actual cost of the Network Upgrades, including overheads, on-going operations, maintenance, repair, and replacement shall be borne by the Interconnection Customer.

Article 6. Billing, Payment, Milestones, and Financial Security

6.1 Billing and Payment Procedures and Final Accounting

- 6.1.1 The Interconnection Customer shall pay 100% of required Interconnection Facilities and any other charges as required in Appendix 2 pursuant to the milestones specified in Appendix 4.

The Interconnection Customer shall pay 100% of required Upgrades and any other charges as required in Appendix 6 pursuant to the milestones specified in Appendix 4.

Upon receipt of 100% of the foregoing pre-payment charges, the payment is not refundable due to cancellation of the Interconnection Request for any reason.

- 6.1.2 If implemented by the Utility or requested by the Interconnection Customer in writing within 15 Business Days of the Interconnection Facilities Delivery Date, the Utility shall provide the Interconnection Customer a final accounting report within 120 Business Days addressing any difference between (1) the Interconnection Customer's cost responsibility for the actual cost of such facilities or Upgrades, and (2) the Interconnection Customer's previous aggregate payments to the Utility for such facilities or Upgrades. If the Interconnection Customer's cost responsibility exceeds its previous aggregate payments, the Utility shall invoice the Interconnection Customer for the amount due and the Interconnection Customer shall make payment to the Utility within 20 Business Days. If the Interconnection Customer's previous aggregate payments exceed its cost responsibility under this Agreement, the Utility shall refund to the Interconnection Customer an amount equal to the difference within 20 Business Days of the final accounting report. If necessary and appropriate as a result of the final accounting, the Utility may also adjust the monthly charges set forth in Appendix 2 of the Interconnection Agreement.
- 6.1.3 The Utility shall also bill the Interconnection Customer for the costs associated with operating, maintaining, repairing and replacing the Utility's System Upgrades, as set forth in Appendix 6 of this Agreement. The Utility shall bill the Interconnection Customer for the costs of providing the Utility's Interconnection Facilities including the costs for ongoing operations, maintenance, repair and replacement of the Utility's Interconnection Facilities under a Utility rate schedule, tariff, rider or service regulation providing for extra facilities or additional facilities charges, as set forth in Appendix 2 of this Agreement, such monthly charges to continue throughout the entire life of the interconnection.

6.2 Milestones

The Parties shall agree on milestones for which each Party is responsible and list them in Appendix 4 of this Agreement. A Party's obligations under this provision may be extended by agreement, except for timing for Payment or Financial Security-related requirements set forth in the milestones, which shall adhere to Section 5.2.4 of the Standards. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure Event, it shall immediately notify the other Party of the reason(s) for not meeting the milestone and (1) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (2) request appropriate amendments to Appendix 4. The Party affected by the failure to meet a milestone shall not unreasonably withhold agreement to such an amendment unless (1) it will suffer significant uncompensated economic or operational harm from the delay, (2) the delay will materially affect the schedule of another Interconnection Customer with subordinate Queue Position, (3) attainment of the same milestone has previously been delayed, or (4) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

6.3 Financial Security Arrangements

Pursuant to the Interconnection Agreement Milestones Appendix 4, the Interconnection Customer shall provide the Utility a letter of credit or other financial security arrangement that is reasonably acceptable to the Utility and is consistent with the Uniform Commercial Code of North Carolina. Such security for payment shall be in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of the Utility's Interconnection Facilities and shall be reduced on a dollar-for-dollar basis for payments made to the Utility under this Agreement during its term. In addition:

- 6.3.1 The guarantee must be made by an entity that meets the creditworthiness requirements of the Utility, and contain terms and conditions that guarantee payment of any amount that may be due from the Interconnection Customer, up to an agreed-to maximum amount.
- 6.3.2 The letter of credit must be issued by a financial institution or insurer reasonably acceptable to the Utility and must specify a reasonable expiration date.
- 6.3.3 The Utility may waive the security requirements if its credit policies show that the financial risks involved are de minimus, or if the Utility's policies allow the acceptance of an alternative showing of creditworthiness from the Interconnection Customer.

Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default

7.1 Assignment

- 7.1.1 The Interconnection Customer shall notify the Utility of the pending sale of an existing Generation Facility in writing. The Interconnection Customer shall provide the Utility with information regarding whether the sale is a change of ownership of the Generation Facility to a new legal entity or a change of control of the existing legal entity.
- 7.1.2 The Interconnection Customer shall promptly notify the Utility of the final date of sale and transfer date of ownership in writing. The purchaser of the Generation Facility shall confirm to the Utility the final date of sale and transfer date of ownership in writing
- 7.1.3 This Agreement shall not survive the transfer of ownership of the Generating Facility to a new legal entity owner. The new owner must complete a new Interconnection Request and submit it to the Utility within 20 Business Days of the transfer of ownership or the Utility's Interconnection Facilities shall be removed or disabled and the Generating Facility disconnected from the Utility's System. The Utility shall not study or inspect the Generating Facility unless the new owner's Interconnection Request indicates that a Material Modification has occurred or is proposed.
- 7.1.4 This Agreement shall survive a change of control of the Generating Facility owner, where only the contact information in the Interconnection Agreement must be modified. The new owner must complete a new Interconnection Request and submit it to the Utility within 20 Business Days of the change of control and provide the new contact information. The Utility shall not study or inspect the Generating Facility unless the new owner's Interconnection Request indicates that a Material Modification has occurred or is proposed.
- 7.1.5 The Interconnection Customer shall have the right to assign this Agreement, without the consent of the Utility, for collateral security purposes to aid in providing financing for the Generating Facility, provided that the Interconnection Customer will promptly notify the Utility of any such assignment. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof.
- 7.1.6 Any attempted assignment that violates this article is void and ineffective.

7.2 Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or

expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, incidental, consequential, or punitive damages of any kind, except as authorized by this Agreement.

7.3 Indemnity

7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Article 7.2.

7.3.2 The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inaction of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.3.3 If an indemnified Party is entitled to indemnification under this Article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this Article, to assume the defense of such claim, such indemnified Party may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

7.3.4 If an indemnifying Party is obligated to indemnify and hold any indemnified Party harmless under this Article, the amount owing to the indemnified Party shall be the amount of such indemnified Party's actual loss, net of any insurance or other recovery.

7.3.5 Promptly after receipt by an indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article may apply, the indemnified Party shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

7.4 Consequential Damages

Other than as expressly provided for in this Agreement, neither Party shall be

liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

7.5 Force Majeure

7.5.1 As used in this article, a Force Majeure Event shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of negligence or intentional wrongdoing.

7.5.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

7.6 Default

7.6.1 No Default shall exist where such failure to discharge an obligation (other than the payment of money or provision of Financial Security) is the result of a Force Majeure Event as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Article 7.6.2, the defaulting Party shall have five (5) Business Days from receipt of the Default notice within which to cure such Default.

- 7.6.2 If a Default is not cured as provided in this Article, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

Article 8. Insurance

- 8.1 The Interconnection Customer shall obtain and retain, for as long as the Generating Facility is interconnected with the Utility's System, liability insurance which protects the Interconnection Customer from claims for bodily injury and/or property damage. The amount of such insurance shall be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made. This insurance shall be primary for all purposes. The Interconnection Customer shall provide certificates evidencing this coverage as required by the Utility. Such insurance shall be obtained from an insurance provider authorized to do business in North Carolina. The Utility reserves the right to refuse to establish or continue the interconnection of the Generating Facility with the Utility's System, if such insurance is not in effect.
- 8.1.1 For an Interconnection Customer that is a residential customer of the Utility proposing to interconnect a Generating Facility no larger than 250 kW, the required coverage shall be a standard homeowner's insurance policy with liability coverage in the amount of at least \$100,000 per occurrence.
- 8.1.2 For an Interconnection Customer that is a non-residential customer of the Utility proposing to interconnect a Generating Facility no larger than 250 kW, the required coverage shall be comprehensive general liability insurance with coverage in the amount of at least \$300,000 per occurrence.
- 8.1.3 For an Interconnection Customer that is a non-residential customer of the Utility proposing to interconnect a Generating Facility greater than 250 kW, the required coverage shall be comprehensive general liability insurance with coverage in the amount of at least \$1,000,000 per occurrence.
- 8.1.4 An Interconnection Customer of sufficient credit-worthiness may propose to provide this insurance via a self-insurance program if it has a self-insurance program established in accordance with commercially

acceptable risk management practices, and such a proposal shall not be unreasonably rejected.

- 8.2 The Utility agrees to maintain general liability insurance or self-insurance consistent with the Utility's commercial practice. Such insurance or self-insurance shall not exclude coverage for the Utility's liabilities undertaken pursuant to this Agreement.
- 8.3 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

Article 9. Confidentiality

- 9.1 Confidential Information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed Confidential Information regardless of whether it is clearly marked or otherwise designated as such.
- 9.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.
 - 9.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.
 - 9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.
 - 9.2.3 All information pertaining to a project will be provided to the new owner in the case of a change of control of the existing legal entity or a change of ownership to a new legal entity.
- 9.3 If information is requested by the Commission from one of the Parties that is

otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to the Commission within the time provided for in the request for information. In providing the information to the Commission, the Party may request that the information be treated as confidential and non-public in accordance with North Carolina law and that the information be withheld from public disclosure.

Article 10. Disputes

- 10.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this Article.
- 10.2 In the event of a dispute, either Party shall provide the other Party with a written notice of dispute. Such notice shall describe in detail the nature of the dispute.
- 10.3 If the dispute has not been resolved within 20 Business Days after receipt of the notice, either Party may contact the Public Staff for assistance in informally resolving the dispute. If the Parties are unable to informally resolve the dispute, either Party may then file a formal complaint with the Commission.
- 10.4 Each Party agrees to conduct all negotiations in good faith.

Article 11. Taxes

- 11.1 The Parties agree to follow all applicable tax laws and regulations, consistent with North Carolina and federal policy and revenue requirements.
- 11.2 Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the Utility's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

Article 12. Miscellaneous

12.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State of North Carolina, without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

12.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties, or under Article 12.12 of this Agreement.

12.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

12.4 Waiver

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

12.4.2.1 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall, if requested, be provided in writing.

12.5 Entire Agreement

This Agreement, including all Appendices, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

12.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

12.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

12.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

12.9 Security Arrangements

Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. All Utilities are expected to meet basic standards for electric system infrastructure and operational security, including physical, operational, and cyber-security practices.

12.10 Environmental Releases

Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

12.11 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.11.2 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Utility be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by

this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

12.11.3 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

12.12 Reservation of Rights

The Utility shall have the right to make a unilateral filing with the Commission to modify this Agreement with respect to any rates, terms and conditions, charges, or classifications of service, and the Interconnection Customer shall have the right to make a unilateral filing with the Commission to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before the Commission in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties except to the extent that the Parties otherwise agree as provided herein.

Article 13. Notices

13.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement (Notice) shall be deemed properly given if delivered in person, delivered by recognized national courier service, sent by first class mail, postage prepaid, or sent electronically to the person specified below:

If to the Interconnection Customer:

Interconnection Customer: [Legal Entity on IR Application]

Attention: _____

Customer Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Customer Owned Generation - Mail Code ST-14Q

Mailing Address: P O Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290

Email Address: DERContracts@duke-energy.com

13.2 Billing and Payment

Billings and payments shall be sent to the addresses set out below: If to the Interconnection Customer:

If to the Interconnection Customer:

Interconnection Customer: [Legal Entity on IR Application]

Attention: _____

Customer Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Customer Owned Generation - Mail Code ST-14Q

Mailing Address: P O Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290

Email Address: DERContracts@duke-energy.com

13.3 Alternative Forms of Notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:

If to the Interconnection Customer:

Interconnection Customer: [Legal Entity on IR Application]

Attention: _____

Customer Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Customer Owned Generation - Mail Code ST-14Q

Mailing Address: P O Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290

Email Address: DERContracts@duke-energy.com

13.4 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Interconnection Customer: [Legal Entity on IR Application]

Attention: _____

Customer Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

Utility's Operating Representative:

Utility: Duke Energy Carolinas, LLC

Attention: Customer Owned Generation - Mail Code ST-14Q

Mailing Address: P O Box 1010

City: Charlotte State: NC Zip: 28201

Overnight Mailing Address: 400 S. Tryon Street

City: Charlotte State: NC Zip: 28202

Phone: (866) 233-2290

Email Address: DERContracts@duke-energy.com

13.5 Changes to the Notice Information

Either Party may change this information by giving five Business Days written notice prior to the effective date of the change.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For Duke Energy Carolinas, LLC

Name: _____

Print Name: _____

Title: _____

Date: _____

For [Legal Entity on IR Application]

Name: _____

Print Name: _____

Title: _____

Date: _____

Glossary of Terms

See Glossary of Terms, Attachment 1 to the North Carolina Interconnection Procedures.

Description and Costs of the Generating Facility, Interconnection Facilities, and Metering Equipment

Tuxedo Hydro, a hydro-electric generating facility with storage, is a Qualifying Facility as defined by the Federal Energy Regulatory Commission ("FERC") pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978.

Tuxedo Hydro is located at Pot Shoals Road, Flat Rock, North Carolina, 28731, in Henderson County.

The project consists of an America Hydro turbine & 3.2 MW_{AC} synchronous generator and a General Electric turbine & 3.2 MW_{AC} synchronous generator and two 5,625 kVA, 3-phase, 44/6.6 kV PowerCast Transformers.

CAPACITY COMMITMENT

The **Contract Capacity**, based on the maximum net dependable capacity for the rehabilitated turbines and generators, is **6,400 kW_{AC}**. Contract Capacity is the maximum continuous electrical output authorized for delivery to the Company's System expressed on an alternating current basis as measured at the Point of Interconnection, except if System conditions permit and subject to meeting operating requirements, the output limit may be exceeded.

POINT OF INTERCONNECTION and DELIVERY POINT

The Point of Interconnection (POI) will be the disconnects adjacent to the 44kV bus on the power plant side of the 44 kV bus.

The delivery point and point of change of ownership is located at the Point of Interconnection. Duke will own the disconnects, the 44 kV bus, and all facilities and equipment on the transmission system side of the 44 kV bus.

METERING FACILITIES

The Company's metering facilities are comprised of two six-channel meters totalized to render billing as for a single delivery. Slip-on CTs will be installed over the bushings on the Customer's two breakers just on the plant-side of the disconnects. Potential measurements will be taken from the 44-kV bus pots. The metering facilities must be installed and functional before permission to operate for commissioning can be granted.

RELAYING FACILITIES

The Company's relaying facilities will be relocated from the powerhouse to the Company's E-houses in the switchyard at the Company's expense. The relocation is not required to be completed before the facility is permitted to deliver energy to the Company's System. The relocation is not addressed in the milestones in Appendix 4, as the task has no bearing on the Requested Interconnection Facilities In-Service Date.

ACCESS

Access by the Customer to the Company's switchyard for maintenance, repair and replacement activities of the Customer's facilities will be provided, if required, subject to the terms and conditions of a Joint Access Agreement. (The land under the facilities retained by the Company will not be conveyed to the Customer. The land under the facilities purchased by the Customer will be conveyed to the Customer.)

Access by the Company to the Customer's powerhouse for the purpose of relocating the Company's relaying equipment and access to the Company's metering CTs on the Customer's breakers will be provided subject to the terms and conditions of a Joint Access Agreement. Access to the powerhouse will terminate after all Company equipment has been removed.

INTERCONNECTON FACILITIES

The Company shall furnish, install, own and maintain **Interconnection Facilities** to permit parallel operation of the Customer's Interconnection Facilities with the Company's Transmission System. The Interconnection Facilities are comprised of the metering facilities described above.

The **Interconnection Facilities Delivery Date** under this Agreement is _____, 20_____.

The installed cost for the Interconnection Facilities is **\$25,000.00**.

INTERCONNECTION FACILITIES CHARGE

The **Interconnection Facilities Charge** for the Interconnection Facilities, calculated in accordance with the Extra Facilities Provisions of the Company's Service Regulations, to be paid by the Customer each month, shall be **\$275.00 (Monthly Charge)** and is based on a 1.1% multiplier applied to the installed cost of **\$25,000.00** for the Interconnection Facilities.

Billing of the Monthly Charge shall begin on the Interconnection Facilities Delivery Date.

The Customer's obligation to pay the Monthly Charge shall continue throughout the term of this Interconnection Agreement (including any renewal thereof) and shall be subject to the early termination provisions.

The Interconnection Facilities Charge to be provided under this Agreement is subject to the rates, Service Regulations and conditions of the Company as the same are now on file with the North Carolina Utilities Commission and may be changed or modified from time to time upon approval by the Commission. Any such changes or modifications, including those which may result in changes to the charges for the Interconnection Facilities to be provided by the Company, shall be made a part of this Agreement to the same effect as if fully set forth herein.

ADVERSE CONDITIONS

If Adverse Conditions are encountered on the project that result in additional expense to the Company to provide Interconnection Facilities, Customer shall be charged for such additional expenses or, if the Customer has control over the condition, the Customer may elect to mitigate the adverse conditions. Examples of such Adverse Conditions include: 1) encountering land having a composition such that standard construction equipment, materials, or methods cannot be used to install the Company's facilities, 2) encountering special requirements, fees, or permits of any municipality, or State/Federal agency or department, or 3) encountering and mitigating environmental requirements, etc. Adverse Conditions shall be billed to the customer as they are encountered.

FINANCIAL SECURITY REQUIREMENT

The Financial Security Requirement is waived.

CONTINGENCIES

Changes in the Customer's equipment or design shall be evaluated under the provisions for Modifications in the North Carolina Interconnection Procedures. Imminent Customer changes may result in changes in scope, cost and timelines specified in this Agreement..

Providing Interconnection Facilities for the Customer is not contingent on the prior installation of any System Upgrades for any other generating facility, load customer or Company system improvement project.

Providing Interconnection Facilities is contingent on the Customer providing roads, acceptable to the Company, for the purpose of accessing the Company's facilities on the Customer's project site and accessing the Company's off-site facilities as required by the Company.

EARLY TERMINATION

If the Customer requests termination of this Interconnection Agreement before the fulfillment of the initial 60 payments of the Monthly Charge and another legal entity does not assume financial responsibility for the stated Monthly Charge by the date of the termination, the Customer shall pay the Company the lesser of 1) the Monthly Charge multiplied by 60 payments less the monthly payments rendered during the initial 60 month term of the Interconnection Agreement or 2) the estimated cost of Loss Due to Early Retirement of the Interconnection Facilities.

Loss Due to Early Retirement shall be calculated as the installed cost of facilities, including the cost for engineering design work that the Company has not been reimbursed for by the Interconnection Customer, less accumulated depreciation, less any salvage value, plus removal cost, provided; however, this amount shall not be less than zero.

Interconnection Agreement
Appendix 3

**One-line Diagram Depicting the Generating Facility,
Interconnection Facilities, Metering Equipment, and Upgrades**

This agreement will incorporate by reference the One-Line Diagram, titled _____, sealed by a licensed Professional Engineer on _____, and provided by the Company.

Placeholder for One-line diagram provided by the Company.

Milestones

Subject to revision as scope of project is developed. Some milestones may not apply.

[Legal Entity on IR Application]

Requested Upgrade In-Service Date: _____

Requested Interconnection Facilities In-Service Date _____

For an Interim Interconnection Agreement, this Appendix 4 is null and void.

The Customer's failure to meet a milestone may result in extensions by the Company of the Requested In-Service Dates. Extension of the Requested In-Service Dates may exceed the Customer's delay in meeting a milestone completion date.

The Milestone schedule does not include contingencies for deployment of Utility personnel to assist in outage restoration efforts on the Utility's system or the systems of other utilities with whom the Utility has a mutual assistance agreement. Consequently, the Requested In-Service Dates may be delayed to the extent outage restoration work interrupts the design, procurement and construction of the requested facilities.

Critical milestones and responsibilities as agreed to by the Parties:

| | Milestone Highlights: | Completion Date (COB) | Responsible Party |
|---|--|------------------------------|--------------------------|
| 1 | Executable Interconnection Agreement (IA) delivered to Customer | | Company |
| 2 | Signed IA returned to Company | | Customer |
| 3 | Countersigned IA returned to Customer | | Company |
| 4 | Joint Access Agreement executed for Customer's access to Company's switchyard. | | |

| | | | |
|----|--|--|----------|
| 5 | Joint Access Agreement executed for Company's access to Customer's powerhouse and switchyard. | | |
| 6 | Project to install billing metering begun by the Company's Transmission Project Management Department | | Company |
| 7 | Project to relocate Company's relaying equipment begun by the Company's Transmission Project Management Department | | |
| 8 | Project to install billing metering completed by the Company's Transmission Project Management Department | | |
| 9 | Requested Upgrade In-Service Date and Requested Interconnection Facilities In-Service Date | | Company |
| 10 | Interconnection Facilities Delivery Date | Actual date the Company's facilities are capable of receiving power from the generating facility | Company |
| 11 | Final electrical approval for Customer's substation from appropriate jurisdictional inspection authority | | Customer |
| 12 | Customer's substation energized | | Company |
| 13 | Final electrical approval for Customer's entire | | Customer |

| | | | |
|----|---|--|----------------------|
| | generating facility from appropriate jurisdictional inspection authority | | |
| 14 | “Permission to Operate for Commissioning” Letter (For generating at reduced power for the sole purpose of commissioning. Contingent on fulfilling all requirements for interconnection and operation at reduced output) | | Company |
| 15 | Customer’s generating facility energized and begins generation at reduced power for Commissioning purposes | | Customer |
| 16 | Customer completes commissioning of Generating Facility | | Customer |
| 17 | All Company required commissioning and testing successfully completed | | Company and Customer |
| 18 | Permission to Operate at Continuous and Full Output” Letter issued to Customer (contingent on fulfilling all requirements for interconnection and continuous operation at full output) | | Company |
| 19 | Customer declares Commercial Operation | | Customer |

Signatures on next page

Milestones

Agreed to for **Duke Energy Carolinas, LLC**

Name: _____

Print Name: _____

Date: _____

Agreed to for [**Legal Entity on IR Application**]

Name: _____

Print Name: _____

Date: _____

Additional Operating Requirements for the Utility's System and Affected Systems Needed to Support the Interconnection Customer's Needs

Obligations of the Company

The obligations of the Company in regard to service under this Interconnection Agreement are dependent upon its acquiring and retaining all necessary rights-of-way, privileges, franchises, and permits for such service and the Company shall not be liable to any Customer or applicant for power in the event it is delayed in, or is prevented from purchasing or delivering power by the failure to secure and retain such rights-of-way, rights, privileges, franchises and permits.

Rights-of-way and Easements

Company is not obligated to install Interconnection Facilities or System Upgrades to receive electricity from Customer unless and until: (1) in cases where it is necessary to cross property to accept delivery of electricity from Customer, Customer conveys or causes to be conveyed to Company, without cost to Company, a right-of-way or easement, satisfactory to Company across such property which will provide for the construction, maintenance, and operation of Company's lines and facilities, necessary to receive electricity from Customer, and (2) any inspection certificates or permits that may be required by law in the local are furnished to Company.

Procurement

The initial delivery of electric power is dependent upon the Company securing from the manufacturers all necessary apparatus, equipment and material for the delivery of said power, and the Company shall not be required to receive said power until it shall have secured and installed such equipment, apparatus and material.

Applicable Rate Schedule

Service necessary for the delivery of the Customer's electricity into the Company's System under this agreement shall be furnished solely to the individual contracting Customer in a single enterprise, located entirely on a single, contiguous premise. Service hereunder shall be restricted to the Net Capacity of the Customer's Generating Facility which may be operated in parallel with the Company's System. Service necessary to supply the Customer's total load requirements other than Auxiliary Load, and service necessary to supply the Customer's Auxiliary Load when the Customer's Generating Facility is not operating, shall be billed on the applicable rate schedule(s) of the Company or negotiated schedule. Net Power delivered to the Company shall not offset or be substituted for power contracted for or which may be contracted for under any other schedule of the Company, except at the option of the Company under special terms and

conditions expressed in writing in the contract with the Customer.

Designated Electrical Operating Representative

The Customer shall provide an operator that is available at all hours to communicate with the Company as needed to receive instructions regarding the Generating Facility's output and operating requirements and to report operational issues. Meeting this requirement via an off-site operator is acceptable if these functions can be effectively carried out from a remote location.

Requirements in the "Duke Electric Transmission Facility Connection Requirements"

The Generating Facility is required to comply with the requirements in the "Duke Electric Transmission Facility Connection Requirements" document dated October 1, 2017.

Operating Requirements

The Customer shall be required to comply with a voltage range, a voltage schedule, reactive power output schedule or instructions from the Company's system operator. The Company shall exercise Reasonable Efforts to provide the Customer with such schedules at least one (1) day in advance, and may make changes to such schedules as necessary to maintain the reliability of the Company's System. The Customer shall operate the Generating Facility to maintain the specified output voltage at the Point of Interconnection.

If Interconnection Customer is unable to maintain the specified voltage at the Point of Interconnection, it shall promptly notify the Company's system operator. If the Customer fails to comply with such schedule(s) or instructions, the Company shall have the right to discontinue service and suspend purchases until the Customer is in compliance.

Effective as of the Interconnection Facilities Delivery Date, until such time as other requirements are provided, the Company requires the **Tuxedo Hydro** Generating Facility to operate within a voltage range, and not a power factor range, with the voltage regulator in automatic mode controlling voltage, within the voltage parameters specified in the "Duke Electric Transmission Facility Connection Requirements"

Reactive Support Capability

The Generating Facility shall have the capability to provide reactive support to the Company's System as specified in the "Duke Electric Transmission Facility Connection Requirements" document.

Interconnection Customer's Control and Protection Devices

The Customer shall be responsible for providing suitable control and protective devices on its equipment to assure no disturbance to other customers of the Company or to the

Company itself, and to protect the Interconnection Facilities and the Company's System from all loss or damage which could result from operation in parallel with the Company's System. The Customer shall be responsible for any costs incurred by the Company pursuant to the North Carolina Interconnection Procedures.

Additional Interconnection Facilities or System Upgrades

The Company reserves the right to require additional Interconnection Facilities or System Upgrades, furnished, installed, owned and maintained by the Company, at the Customer's expense, if the Customer's Generating Facility, despite compliance with the North Carolina Interconnection Procedures, causes safety, reliability, or power quality problems.

Inspection

In order to ensure protection of the Company's System, the Company reserves the right, at its discretion, to inspect the Customer's Generating Facility at any time upon reasonable notice to the Customer in an effort to ensure compliance with the Operating Requirements.

Commissioning

The Company will use Reasonable Efforts to notify the Customer of any testing requirements.

Disconnection for Failure to Comply

The Company reserves the right to disconnect electric service to the premises if the Company determines that the Customer's Generation Facility and equipment are not in compliance with the North Carolina Interconnection Procedures or Operating Requirements and is being operated in parallel with the Company's System.

**Utility's Description of its Upgrades and
Best Estimate of Upgrade Costs**

SYSTEM UPGRADES

The Company shall furnish, install, own and maintain **System Upgrades** to permit parallel operation of the Customer's Interconnection Facilities with the Company's System.

There are no required System Upgrades.

EXHIBIT F-1
FORM OF BRYSON POWER PURCHASE AGREEMENT

[See Attached]



RENEWABLE POWER PURCHASE AGREEMENT

Buyer: Duke Energy Carolinas, LLC

Overnight Mail: 400 South Tryon Street
Mail Code: ST 13A
Charlotte, North Carolina 28202
Regular Mail: PO Box 1010
Mail Code: ST 13A
Charlotte, NC 28201-1010
Attn.: Wholesale Renewable Manager
DERContracts@duke-energy.com

*With Additional Notices of Events of Default
Or Potential Event of Default to:*
Overnight Mail: 550 S. Tryon St.
Charlotte, North Carolina 28202
Regular Mail: P.O. Box 1321, DEC45
Charlotte, North Carolina 28201-1321
Attn.: VP Commercial Legal Support

Seller: _____

This Renewable Power Purchase Agreement, including Exhibits 1-3 hereto, which are incorporated into and made part hereof (collectively, the "Agreement"), is made and entered into by and between Bryson (the "Seller") and Duke Energy Carolinas, LLC (the "Buyer") under the terms specified herein. Buyer and Seller may be referred to individually as a "Party" and collectively as the "Parties." Notwithstanding anything set forth herein, neither this Agreement nor any transaction contemplated hereunder will be effective **unless and until both Parties have executed** and delivered this Agreement, and the later of such date shall be the "Effective Date" of this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES AND MUTUAL COVENANTS SET FORTH HEREIN, FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY OF WHICH IS ACKNOWLEDGED, AND INTENDING TO BE BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:

1. **Definitions**

Unless defined in the body of the Agreement, any capitalized term herein shall have the meaning set forth below:

- 1.1. "AAA" is defined in Section 23.2.1.
- 1.2. "Abandon(s)" means the relinquishment of control or possession of the Facility and/or cessation of operations of or at the Facility by Seller. "Abandon" excludes cessation of generation to comply with Prudent Utility Practices or due to maintenance or repair of the Facility (including Maintenance Outages and Planned Outage), provided that such maintenance or repair activities are being performed in a Commercially Reasonable Manner and with Prudent Utility Practice.
- 1.3. "Account" means a Party's electronic account with the Tracking System.
- 1.4. "Act" means the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard, N.C. Gen. Stat. 62-133.8, including all rules promulgated by the Commission associated therewith, as each may be amended or modified from time-to-time, and any successor renewable energy standards, statutes, regulations, or rules.
- 1.5. "Affiliate" means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and policies, or otherwise have control of an entity, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer the term Affiliate does not include any subsidiaries or affiliates whose activities are subject to the oversight or regulation of any state commission(s) and/or federal energy regulatory commission.
- 1.6. "Agreement" is defined in the introductory paragraph hereof.
- 1.7. "Assignment" is defined in Section 24.1.
- 1.8. "Back-Up Tapes" is defined in Section 16.3.
- 1.9. "Bankrupt" means, with respect to a Party or its credit support provider, that such Party or its credit support provider: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors; (c) has such a petition filed against it as debtor and such petition is not stayed, withdrawn, or dismissed within thirty (30) Business Days of such filing; (d) seeks or has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; (e) has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (f) is unable to pay its debts as they fall due or admits in writing of its inability to pay its debts generally as they become due; and/or (g) otherwise becomes bankrupt or insolvent (however evidenced).
- 1.10. "Billing Meter" is defined in Section 10.
- 1.11. "Billing Period" is defined in Section 11.
- 1.12. "Business Day" means any day on which the Federal Reserve member banks in New York City are open for business. A Business Day shall run from 8:00 a.m. to 5:00 p.m. Eastern Prevailing Time.
- 1.13. "Buyer" shall have the meaning specified in the first paragraph of this Agreement

- 1.14. "Capacity" means and includes the electric generation capability and ability of the Facility and all associated characteristics and attributes, inclusive of the ability to contribute to peak system demands, as well as reserve requirements.
- 1.15. "Certificate" means the electronic instrument created and issued by the Tracking System.
- 1.16. "Change of Control" means a transaction or series of related transactions (by way of merger, consolidation, sale of stock or assets, or otherwise) with any person, entity or "group" (within the meaning of Section 13(d)(3) of the U.S. Securities Exchange Act of 1934) of persons pursuant to which such person, entity, or group would acquire (i) 50% or more of the voting interests in Seller or (ii) substantially all of the assets of Seller.
- 1.17. "Commencement Date" is defined in Section 3.1.
- 1.18. "Commercially Reasonable Manner" or "Commercially Reasonable" means, with respect to a given goal or requirement, the manner, efforts and resources a reasonable person in the position of the promisor would use, in the exercise of its reasonable business discretion and industry practice, so as to achieve that goal or requirement, which in no event shall be less than the level of efforts and resources standard in the industry for comparable companies with respect to comparable products. Factors used to determine whether a goal or requirement has been performed in a "Commercially Reasonable Manner" may include, but shall not be limited to, any specific factors or considerations identified in the Agreement as relevant to such goal or requirement.
- 1.19. "Commission" means the North Carolina Utilities Commission or any successor thereto.
- 1.20. "Contract Price" is defined in Section 4.4.
- 1.21. "Contract Quantity" is defined in Section 4.3.
- 1.22. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, and other similar third party transaction costs and expenses, and other costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated transaction(s), and all reasonable attorneys' fees and other legal expenses incurred by the Non-Defaulting Party in connection with the termination.
- 1.23. "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating.
- 1.24. "Defaulting Party" is defined in Section 19.
- 1.25. "Delivery Period" is defined in Section 4.1.
- 1.26. "Delivery Point" means the point of interconnection between the Facility and the System on the high side (Buyer or Transmission Provider side) of the System.
- 1.27. "Dispatch Down" means any reduction or cessation of Energy generation by the Facility in response to an order or instruction by or direct action taken by the System Operator.
- 1.28. "Disputes" is defined in Section 23.1.
- 1.29. "Early Termination Date" is defined in Section 20.1.
- 1.30. "Effective Date" is defined in the introductory paragraph hereto.
- 1.31. "Emergency Condition" means, no matter the cause: (a) any urgent, abnormal, operationally unstable, dangerous, or public safety condition that is existing on the System or any portion

thereof; (b) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is likely to result in any of the following: (i) loss or damage to the Facility or the System, (ii) disruption of generation by the Facility, (iii) disruption of service or stability on, to or of the System, or (iv) condition that may result in endangerment of human life or public safety; or (c) any circumstance that requires action by the System Operator to comply with standing NERC regulations or standards, including without limitation actions to respond to, prevent, limit, or manage loss or damage to the Facility, loss or damage to the System, disruption of generation by the Facility, disruption of service on the System, an abnormal condition on the System, and/or endangerment to human life or safety. An Emergency Condition will be an excuse to Seller's performance only if such condition is not due to Seller's negligence, willful misconduct, and/or Seller's failure to perform as required under this Agreement.

- 1.32. "Energy" means three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh, as the case may be.
- 1.33. "EPT" or "Eastern Prevailing Time" means the time in effect in the Eastern Time Zone of the United States of America, whether it be Eastern Standard Time or Eastern Daylight Savings Time.
- 1.34. "Event of Default" is defined in Section 19.
- 1.35. "Expected Annual Output" means the quantity of Energy identified in Exhibit 1.
- 1.36. "Facility" means Seller's hydro-electric generating facility located on the Oconaluftee River in Swain County, NC, near Bryson City, NC, as further identified in Exhibit 3.
- 1.37. "FERC" means the Federal Energy Regulatory Commission or any successor thereto.
- 1.38. "Force Majeure" is defined in Section 14.1.
- 1.39. "GAAP" is defined in Section 9.1.
- 1.40. "Gains" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.41. "Governmental Authority" means any federal, state or local government, legislative body, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory authority or instrumentality or authorized arbitral body, including, without limitation, the Commission.
- 1.42. "Interconnection Agreement" means the separate interconnection and transmission service agreement (or agreements) to be negotiated and executed between Seller and the Transmission Provider concerning the interconnection of the Facility with the System, upgrade to the System to accommodate the Facility's interconnection with and operation in parallel with the System, and the requirements for transmission service.
- 1.43. "Interconnection Instruction" means any order, action, signal, requirement, demand, and/or direction, howsoever provided or implemented by the System Operator due to, in response

to, or to address any condition relating to any service and/or obligation occurring under the Interconnection Agreement.

- 1.44. "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%); and, (b) the maximum rate permitted by applicable law.
- 1.45. "kW" means kilowatt.
- 1.46. "kWh" means kilowatt-hour.
- 1.47. "Letter(s) of Credit" means one or more irrevocable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank, which is not an Affiliate of Seller, which has and maintains a Credit Rating of at least A- from S&P and A3 from Moody's, for the Security Period, permitting Buyer to draw the entire amount if either such amount is owed or such Letter of Credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date, and is otherwise acceptable in all respects to Buyer in its sole discretion.
- 1.48. "Lien" means any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right of way, restriction, equity, or encumbrance of any nature whatsoever.
- 1.49. "Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic loss or loss of economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.50. "Maintenance Outage" means the temporary operational removal of the Facility from service to perform work on specific components of the Facility, at a time when the Facility must be removed from service before the next Planned Outage in the interest of safety or the prevention of injury or damage to or undue wear and tear on the Facility or any component thereof.
- 1.51. "Moody's" means Moody's Investors Service, Inc. or any successor-rating agency thereto.
- 1.52. "MW" means megawatt.
- 1.53. "MWh" means megawatt-hour.
- 1.54. "Nameplate Capacity Rating" means the installed nameplate capacity rating of the Facility set forth in Exhibit 3.
- 1.55. "NERC" means the North American Electric Reliability Corporation. For purposes of this Agreement, NERC includes any applicable regional entity with delegated authority from NERC, such as the SERC Reliability Corporation (SERC).
- 1.56. "Net Settlement Amount" is defined in Section 20.3.

- 1.57. "New Renewable Energy Facility" is defined in the Act.
- 1.58. "Non-Defaulting Party" is defined in Section 20.1.
- 1.59. "Party" or "Parties" is defined in the introductory paragraph hereto.
- 1.60. "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security that is acceptable to Buyer in its sole discretion, in each case that meets the requirements set forth in this Agreement (including, without limitation, Section 5) provided by Seller to Buyer for the benefit of Buyer pursuant to this Agreement, as credit support, adequate assurances, and security to secure Seller's performance under this Agreement.
- 1.61. "Permit" means any permit, license, registration, filing, certificate of occupancy, certificate of public convenience and necessity, approval, variance or any authorization from or by any Governmental Authority and pursuant to any Requirements of Law.
- 1.62. "Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.
- 1.63. "Planned Outage" means the temporary operational removal of the Facility from service to perform work on specific components in accordance with a pre-planned operations schedule, such as for a planned annual overhaul, inspections, or testing of specific equipment of the Facility.
- 1.64. "Posting Cap" is defined in Section 5.1.
- 1.65. "Product" means the Capacity of the Facility, Energy generated by the Facility, and subject to the satisfaction of the condition precedent set forth in Section 3.4 the RECs associated with the Energy generated by the Facility.
- 1.66. "Protected Information" is defined in Section 16.1
- 1.67. "Prudent Utility Practice" means those practices, methods, equipment, specifications, standards of safety, and performance, as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgment and in light of the facts known at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices; (ii) are in accordance with generally accepted standards of safety, performance, dependability, efficiency, and economy in the United States; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the United States; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy generation and utility industry.
- 1.68. "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended, and as such may be amended from time to time.
- 1.69. "PURPA Fuel Requirements" means the requirements set forth in 18 C.F.R. § 292.204 OR 205, as may be amended and/or restated.
- 1.70. "Qualifying Facility" means an electric generating facility that has been registered and certified by FERC as generator that qualifies for and meets the requirements set forth in PURPA, as it may be amended, and associated rules, regulations, orders.

- 1.71. "REA Reporting Rights" means the right of the reporting person or entity to report that it owns the Renewable Energy Attributes to any Governmental Authority or other party under any compliance, voluntary, trading, or reporting program, public or private and to any person, customers, or potential customers for, including without limitation, purposes of compliance, marketing, publicity, advertising, or otherwise.
- 1.72. "Regulatory Event" is defined in Section 15.1.
- 1.73. "Renewable Energy Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation of Energy by the Facility, the use of such Energy, or such Energy's displacement of conventional Energy generation, including any and all renewable or environmental characteristics and benefits of the Energy generated by the Facility. Renewable Energy Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs), ozone depleting substances, ozone, and non-methane volatile organic compounds that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change (UNIPCC), by law, or otherwise by science or in the voluntary markets to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) any credit, allowance or instrument issued or issuable pursuant to a state implementation plan under regulations promulgated by the Environmental Protection Agency under the Clean Air Act and (4) the reporting rights to any of the foregoing, including, without limitation, REA Reporting Rights and any and all renewable and/or environmental characteristics and benefits of the Energy generated by the Facility. Renewable Energy Attributes do not include: (i) any Energy or Capacity of the Facility; (ii) investment tax credits, production tax credits, or other tax credits, cash grants in lieu of tax credits associated with the construction, ownership or operation of the Facility, or (iii) any adverse wildlife or environmental impacts.
- 1.74. "Renewable Energy Certificate(s)" or "REC(s)" means and, notwithstanding anything to the contrary set forth in the Act includes, all of the Renewable Energy Attributes and REA Reporting Rights associated with one (1) megawatt hour (MWh) of Energy generated by the Facility. The REC represents all title to and claim over all of the Renewable Energy Attributes and REA Reporting Rights associated with in any manner with the Energy generated by the Facility.
- 1.75. "Renewable Energy Resource" is defined in the Act.
- 1.76. "Required Approval" is defined in Section 6.
- 1.77. "Requirements of Law" means any federal, state, and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment, decree or Permit enacted, adopted, issued or promulgated by any Governmental Authority, including, without limitation, (i) the Act, (ii) those pertaining to the creation and delivery of the Product, (iii) those pertaining to electrical, building, zoning, occupational safety, health requirements or to pollution or protection of the environment, and (iv) principles of common law under which a person may be held liable for the release or discharge of any hazardous substance into the environment or any other environmental damage.
- 1.78. "Security Period" is defined in Section 5.5.
- 1.79. "Seller" shall have the meaning specified in the first paragraph of this Agreement.
- 1.80. "S&P" means Standard & Poor's Ratings Services, Inc. or any successor-rating agency

thereto.

- 1.81. "Station Power" means the Energy generated by the Facility and, whether metered or unmetered, used on-site to supply the Facility's auxiliary load and parasitic load and/or for powering the electric generation equipment.
- 1.82. "System" means the transmission, distribution, and generation facilities that are owned, directed, managed, interconnected, controlled, or operated by Buyer and/or the Transmission Provider, including, without limitation, facilities to provide retail or wholesale service, substations, circuits, reinforcements, meters, extensions, or equipment associated with or connected to any interconnected facility or customer.
- 1.83. "System Operator" means the operators of the System that have the responsibilities for ensuring that the System as a whole or any part thereof operates safely, efficiently, and reliably, including without limitation the responsibilities to comply with any applicable operational or reliability requirements, the responsibilities to balance generation supply with customer load, the responsibilities to comply with any other regulatory obligation including least cost dispatch and System optimization, and the responsibilities to provide dispatch and curtailment instructions to generators supplying Energy to the System. The System Operator includes any person or entity delivering any such instructions or signals to Seller or taking any action relating to, due to, in response to, or to address such instructions.
- 1.84. "System Operator Instruction" means any order, action, requirement, demand, or direction delivered to Seller in a non-discriminatory manner by the System Operator (or its designee), in its sole discretion, in response to, anticipation of, or otherwise based in any manner on an Emergency Condition or Force Majeure event that has occurred or would occur if the order, action, requirement, demand, or direction is not ordered or implemented, including any order, action, requirement, demand or direction to operate, manage, and/or otherwise maintain safe and reliable operations of the System and those undertaken and implemented by the System Operator in accordance with Prudent Utility Practice based on relevant System factors and considerations including, without limitation, any and all operating characteristics, maintenance requirements, operational limitations, reliability (including, without limitation, standing NERC regulations or standards), safety, dispatch, constraints, discharge, emissions limitations, compliance requirements, communications, resource ramp-up and ramp-down constraints and implementation, and any other System considerations. A System Operator instruction may include, without limitation, an order or action to: (i) interconnect, disconnect, integrate, operate in parallel, or synchronize with the System, (ii) increase (based on generator characteristics and Prudent Utility Practices), reduce, or cease generation output to comply with standing NERC regulations or standards; (iii) respond to any transmission, distribution, or delivery limitations or interruptions; (iv) perform or cease performing any activity so as to operate in accordance with System limitations, including, without limitation, operational constraints that would require the System Operator to force offline or reduce generation output from reliability generators to accommodate generation by the Facility; and, (v) suspend or interrupt any operational activity. With regard to providing instructions in a non-discriminatory manner, a System Operator instruction in response to an Emergency Condition, Force Majeure event, or operational condition relating specifically to or created by the Facility shall not be deemed or considered discriminatory.
 - 1.84.1. For purposes of this Agreement, a System Operator Instruction shall not include any Interconnection Instruction.
- 1.85. "Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.
- 1.86. "Term" is defined in Section 3.1.

- 1.87. "Tracking System" means the verification system that accounts for the generation, sale, purchase, and/or retirement of renewable energy and credits, which will be the North Carolina Renewable Energy Tracking System, administered by the Commission pursuant to the Act.
- 1.88. "Transmission Provider" means the entity or division within Duke Energy Carolinas, LLC that will provide interconnection and/or electric distribution or transmission service to enable delivery of Energy generated by the Facility to Buyer, and any such entity or division will include any successor or replacement thereto, including without limitation, a consolidated control area or a regional transmission organization.
- 1.89. "Vintage" means the moment when the MWh of Energy is generated by the Facility, and therefore, when the REC associated with that MWh of Energy is generated by the Facility.

2. **Interpretation**

- 2.1. **Intent**. Unless a different intention clearly appears, the following terms and phrases shall be interpreted as follows: (a) the singular includes the plural and vice versa; (b) the reference to any Person includes such Person's legal and/or permitted successors and assignees, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (c) the reference to any gender includes the other gender and the neuter; (d) reference to any document, including this Agreement, refers to such document as it may be amended, amended and restated, modified, replaced or superseded from time to time in accordance with its terms, or any successor document(s) thereto; (e) reference to any section or exhibit means such section or exhibit of this Agreement unless otherwise indicated; (f) "hereunder", "hereof", "hereto", "herein", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular section or other provision; (g) "including" (and with correlative meaning "include"), means "including without limitation" and when following any statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope; (h) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (i) reference to any Requirements of Law refers to such Requirements of Law as it may be amended, modified, replaced or superseded from time to time, or any successor Requirements of Law thereto; and (j) all exhibits and attachments to this Agreement are hereby incorporated into this Agreement. Other terms used, but not defined in Section 1 or in the body of the Agreement, shall have meanings as commonly used in the English language and, where applicable, in the electric utility industry. 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.

3. **Term and Termination**

- 3.1. **Term**. This Agreement shall be effective as of the Effective Date and shall remain in full force and effect until the fifth ("5th") year after the Commencement Date as set forth in Section 3.3 below ("Term"), unless terminated earlier pursuant to the provisions of this Agreement.
- 3.2. **Termination and Survival**. This Agreement may be terminated earlier than the expiration of the Term as provided for herein. If this Agreement is terminated earlier than the expiration

of the Term for any reason, including, without limitation, whether by its terms, mutual agreement, early termination, and/or event of default, such termination shall not relieve any Party of any obligation accrued or accruing prior to the effectiveness of such termination. Furthermore, any obligations, limitations, exclusions and duties which by their nature or the express terms of this Agreement extend beyond the expiration or termination of this Agreement, including, without limitation, provisions relating to compliance requirements, accounting, billing, billing adjustments, limitations or liabilities, dispute resolution, Performance Assurance, and any other provisions necessary to interpret or enforce the respective rights and obligations of the Parties hereunder, shall survive the expiration or early termination of this Agreement.

- 3.3. Conditions Precedent to Commencement of Deliveries. Deliveries under this Agreement will commence the first day of the month following satisfaction of the conditions precedents set forth below in Sections 3.3.1 through 3.3.3 (the "Commencement Date").

3.3.1. Closing conditions are satisfied in the Asset Purchase Agreement.

3.3.2. Interconnection Agreement has been fully executed and accepted by the Transmission Provider for performance under this Agreement.

3.3.3. All approvals and certifications that the Facility is a Qualifying Facility.

- 3.4. Condition Precedent to Parties' Obligations Regarding Sale and Purchase of RECs. It is a condition precedent to: (i) the obligations of Seller to sell and deliver RECs to Buyer under this Agreement; (ii) for Seller to comply with the RECs-related obligations set forth in this Agreement; and, (iii) the obligations of Buyer to receive and purchase RECs from Seller under this Agreement, that: (a) the Commission has approved and certified that the Facility, when owned by the Seller, shall be certified as a New Renewable Energy Facility under the Act and (b) Buyer can use the Product (inclusive of the REC component) generated by the Facility to comply with the Act. If the Commission finds that the Facility, upon ownership by Seller, is eligible for certification as a New Renewable Facility and that Buyer can use the Product (inclusive of RECs) to comply with the Act, then upon satisfaction of Section 3.3.1, the Seller shall register and certify the Facility with the Commission as a New Renewable Energy Facility. Subject to Section 3.3, upon receiving certification from the Commission that the Facility is approved as a New Renewable Energy Facility, the Seller shall sell and deliver RECs to Buyer in accordance with and in compliance with the requirements set forth in this Agreement, and Buyer shall purchase such RECs in accordance with this Agreement; *provided however*, Buyer shall have no obligation to purchase RECs from the Facility or from Seller for any period during which such certification is not granted by the Commission. If the Commission finds that the Facility, upon ownership by Seller, is not eligible for certification as a New Renewable Facility and/or that Buyer cannot use the Product (inclusive of RECs) to comply with the Act, then subject to Section 3.3, Buyer and Seller shall be: (i) relieved of any obligation to purchase and sell RECs under this Agreement and (ii) all term and conditions relating to RECs, certification as a New Renewable Energy Facility, and compliance with the Act shall be null and void and shall have no force or effect on either Party.

4. Purchase and Sale Obligations

- 4.1. Delivery Period. The "Delivery Period" for the Product to be generated by the Facility and sold by Seller to Buyer shall be for all hours starting at 12:00:01 AM EPT as of the Commencement Date through the end of the Term, unless this Agreement is terminated earlier pursuant to its terms and conditions.

- 4.2. Vintage. The RECs shall be of the same Vintage as the Energy generated by the Facility and

the RECs shall arise due to the generation of Energy by the Facility.

- 4.3. Contract Quantity. The "Contract Quantity" will be one hundred percent (100%) of the Capacity and Energy produced by the Facility and, subject to satisfaction of Section 3.4, one hundred percent (100%) of the associated RECs produced by the Facility, in case of each of the foregoing less that associated with Station Power.
 - 4.3.1. Seller shall sell and deliver the Contract Quantity of the Product exclusively and solely to Buyer.
 - 4.3.2. Buyer shall have full and exclusive rights to the Product (inclusive of all components), and will be entitled to full and exclusive use of the Product (inclusive of all components) for its purposes and in its sole and exclusive discretion.
 - 4.3.3. The estimated monthly and annual Energy production of the Facility during the Delivery Period is set forth in Exhibit 1 hereto.
- 4.4. Contract Price. The "Contract Price" for the Product shall be fixed for the Delivery Period as set forth in Exhibit 2.
- 4.5. Energy Delivery. Seller shall deliver the Contract Quantity of the Energy component of the Product at the Delivery Point and Seller shall be fully responsible for all costs, charges, expenses, and requirements associated with delivering the Energy to the Delivery Point. Buyer will have no obligation to pay for any Energy not delivered to the Delivery Point.
- 4.6. REC Delivery. Subject to satisfaction of Section 3.4, Seller shall deliver to Buyer's Account the Contract Quantity of the REC component of the Product in the form of Certificates. Seller agrees that in addition to representing the attributes and characteristics under the Tracking System's operating rules and requirements, the Certificate will also represent the REC, Renewable Energy Attributes, and REA Reporting Rights as defined in this Agreement. No later than fourteen (14) calendar days after the meter data is delivered to Seller's Account, Seller shall review the meter data and complete all acts necessary to create the Certificates in the Tracking System and shall transfer the Certificates into Buyer's Account. Each Party shall establish an Account with the Tracking System for the creation, transfer, and/or receipt of the Certificates. Seller agrees to establish the Account for the Facility prior to the Commencement Date.
- 4.7. Payment for Product. Buyer agrees to pay Seller for the Product generated and delivered in accordance with this Agreement by Seller to Buyer in accordance with the pricing set forth in Exhibit 2. Seller agrees that to the extent Buyer has already paid for the Product prior to Seller transferring the REC component of the Product in the manner noted above, Buyer shall have ownership of the REC component of the Product, and Seller shall hold the same in trust for Buyer until the transfer is completed as provided for herein. Buyer shall not be obligated to pay for, and shall receive a full refund with respect to, any RECs for which the Certificates are not delivered to Buyer's Account.
- 4.8. Transfer. In no event shall Seller procure or have the right to procure the Product or any component of the Product from any source other than the Facility for sale and delivery pursuant to this Agreement. Title to and risk of loss to the Product sold and delivered hereunder shall transfer from Seller to Buyer after completion of delivery at the Delivery Point and after completion of transfer of the REC component of the Product. Seller shall be responsible for any costs and charges imposed on or associated with the Product and the delivery of the Product at the Delivery Point and upon completion of transfer of the REC component. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after the Delivery Point and after completion of transfer of the REC.

5. **Credit and Related Provisions.**

- 5.1. **Adequate Assurances.** Buyer may, from time to time, request in writing that Seller provide Buyer with Performance Assurance in an amount reasonably determined by Buyer relative to Seller's performance obligations under this Agreement, if at any time Buyer has reasonable grounds for insecurity concerning Seller's ability to perform any of its obligations under this Agreement; *provided, however*, such amount shall not exceed \$6,506 (the "Posting Cap"). Expressly without limiting the generality of the foregoing, reasonable grounds for insecurity include, but are not limited to, knowledge that (i) Seller or its guarantor or any direct or indirect parent company is defaulting under other material contracts or transactions (including, without limitation, contracts or transactions with third parties); or, (ii) any imminent or threatened material adverse change in the financial condition of Seller or its guarantor. Upon receipt of such notice, Seller shall have five (5) Business Days to provide such Performance Assurance to Buyer. In the event that Seller fails to provide the required amount of such Performance Assurance to Buyer within five (5) Business Days of receipt of notice, then Buyer may declare such failure an Event of Default and exercise any or all other remedies provided for hereunder or pursuant to law or equity. Seller shall be required to refresh or replenish the required amount of Performance Assurance at Buyer's request up to the Posting Cap, including, without limitation, where Buyer has exercised its right to draw upon any Performance Assurance.
- 5.2. **Financial Disclosures.** If Buyer has reasonable grounds to request Performance Assurance or if Buyer requests Performance Assurance, in each case as set forth in Section 5.1, then Seller shall timely provide to Buyer financial information of Seller, to the extent such information is not publicly available, as follows: (i) within sixty (60) days after the end of each fiscal quarter of each fiscal year that this Agreement is effective, a copy of Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter signed and verified by an authorized officer of Seller attesting to their accuracy; and, (ii) within one hundred and twenty (120) days after the end of each fiscal year that this Agreement is effective a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year. The statements shall be prepared in accordance with generally accepted accounting principles.
- 5.3. **Netting.** If an Event of Default has not occurred and a Party is required to pay an amount to the other Party under this Agreement, then such amounts shall be netted and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. All outstanding obligations to make payment under this Agreement or any other agreement between the Parties may be netted, offset, set off, or recouped therefrom, and payment shall be owed as set forth above. Unless Buyer notifies Seller in writing (except in connection with a liquidation and termination), all amounts netted pursuant to this section shall not take into account or include any Performance Assurance which may be in effect to secure Seller's performance under this Agreement. The netting set forth above shall be without prejudice and in addition to any and all rights, liens, setoffs, recoupments, counterclaims and other remedies and defenses (to the extent not expressly herein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement.
- 5.4. **Set-off.** In addition to any rights of set-off a Party may have as a matter of law or otherwise, and subject to applicable law, upon the occurrence of an Event of Default the Non-Defaulting Party shall have the right (but shall not be obligated to) without prior notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party under this Agreement and any other agreement between

the Parties (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligations of the Non-Defaulting Party owing to the Defaulting Party under this Agreement and any other agreement between the Parties (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation). If any such obligation is unascertained, the Non-Defaulting Party may in a Commercially Reasonable Manner estimate that obligation and set-off in respect of the estimate, subject to the relevant Party providing an accounting and true-up to the other Party after the amount of the obligation is ascertained.

- 5.5. Performance Assurance Requirements. Seller shall ensure that any Performance Assurance required pursuant to Section 5.1 remains in full force, effect, outstanding, in the required amount, and for the duration required by this Agreement. All applicable Performance Assurance, as the amount thereof may be increased, decreased, and/or replenished pursuant to the terms of this Agreement, shall remain in full force, effect, and outstanding for the benefit of Buyer until one-hundred and fifty (150) days following the later of: (a) the end of the Term or (b) the date on which Seller has fully satisfied all obligations to Buyer under this Agreement (the "Security Period"). If at any time any Performance Assurance fails to meet any of the requirements under this Agreement, Seller shall replace such Performance Assurance with alternative Performance Assurance that meets each of the requirements under this Agreement. Seller will be solely responsible for any and all costs incurred with providing and maintaining any Performance Assurance to the full amount required by this Agreement. If Seller fails to replace, renew, or otherwise maintain the required Performance Assurance as and when required by this Agreement, then Buyer: (a) shall be entitled to draw and retain hereunder the full amount of the Performance Assurance; (b) shall not be obligated to make any further payments to Seller until Seller shall have provided Buyer with the replacement Performance Assurance; and, (c) shall be entitled to give Seller notice of an Event of Default and pursue the termination rights and remedies provided for in this Agreement.
- 5.6. Grant of Security Interest. To secure its obligations and liabilities under this Agreement to Buyer, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of netting and set-off against), and assignment of, all present and future Performance Assurance, including, without limitation, cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer; and, furthermore Seller agrees to take such actions as Buyer reasonably requires to perfect Buyer's first-priority security interest in, and lien on (and right of netting, recoupment, and set-off against), such Performance Assurance and any and all products and proceeds resulting therefrom or from the liquidation thereof, including without limitation proceeds of insurance. Upon or any time after the occurrence, or deemed occurrence, of an Event of Default or upon an Early Termination Date, Buyer (if it is the Non-Defaulting Party) may do any one or more of the following with respect to Seller (if it is the Defaulting Party): (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of netting, recoupment, and set-off against any and all property of Seller in the possession of Buyer or its agent; (iii) draw on any outstanding applicable forms of Performance Assurance provided for the benefit of Buyer; and, (iv) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

6. Seller Compliance Requirements.

- 6.1. Required Approvals. Seller shall maintain and comply with all permits, authorizations, certifications, and/or approvals from any Governmental Authority, and under any Requirements of Law, including, without limitation, from the Commission and FERC for Seller to own, operate, and maintain the Facility and sell and deliver the Product to Buyer.
 - 6.2. Seller Covenants. Seller covenants to Buyer that it shall comply with all of the requirements of the Act and other Requirements of Law applicable to Seller, the Facility, and/or Seller's obligations under the Agreement. Without limiting the generality of the foregoing, Seller represents and warrants to Buyer as of the Effective Date of this Agreement and throughout the Term of this Agreement that Seller has obtained all applicable certifications and/or approvals necessary for Seller to perform under this Agreement. Seller agrees and acknowledges that Buyer has entered into this Agreement in reliance upon the representations and warranties set forth in this section. In the event of a breach or failure of or relating to any of the foregoing covenants and warranties, including without limitation for being false or misleading in any respect, then this Agreement will terminate upon Buyer providing Seller with a five (5) Business Days written notice. Seller will indemnify and hold Buyer harmless for any breach or failure relating to any of the foregoing covenants and warranties, notwithstanding anything else to the contrary in this Agreement.
 - 6.3. Seller Requirements. Seller agrees and acknowledges that the Act requires Buyer to make certain filings and/or submissions relating to Buyer's obligations under the Act. Within twenty (20) Business Days of a written request from Buyer, Seller agrees to provide Buyer with all information, documents, and affidavits from a duly authorized representative of Seller certifying that the Facility fully complies with PURPA, including without limitation, the PURPA Fuel Requirements and that the Facility and/or the Product complies with the Act and the requirements of the Tracking System. If Seller fails to promptly provide Buyer with such documentation, and Buyer is unable to use the Product for compliance in the calendar year that Buyer desires to use such Product for compliance purposes, then Seller shall be liable to Buyer for cover cost damages as set forth in Section 21 and Seller will also reimburse Buyer for any payments previously made by Buyer for such Product.
7. Seller's Facility Requirements.
- 7.1. Seller Requirements. Seller covenants (except to the extent expressly set forth in this Agreement) that: the Facility shall be operated, controlled, and maintained at Seller's sole cost and expense; the Facility shall be operated (inclusive, without limitation, of control, metering equipment, and personnel and staffing levels), controlled, and maintained by Seller to perform as required by this Agreement and in compliance with all applicable Requirements of Law and Prudent Utility Practice; the Facility shall be capable of supplying the Product in a safe and reliable manner consistent with the requirements of each applicable Requirements of Law and Prudent Utility Practice; and, that all contracts, agreements, arrangements, and/or Permits (including, without limitation, those necessary or prudent for the ownership and operation of the Facility, such as land use permits, site plan approvals, real property titles and easements, environmental compliance and authorizations, grading and building permits,) shall be timely obtained and maintained by Seller, at Seller's sole cost and expense. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility. Seller shall interconnect, operate, and maintain the Facility in accordance with Prudent Utility Practice. Seller shall be responsible for all costs, charges, and expenses associated with generating, scheduling, and delivering the Energy to Buyer.
 - 7.2. Seller Responsibilities. Notwithstanding any provision of this Agreement to the contrary, the

Seller agrees that: (a) Buyer shall have no responsibility whatsoever for any costs and/or Taxes relating to the maintenance, ownership, or operation of the Facility (including but not limited to any financing costs, and any costs and/or Taxes imposed by any Governmental Authority on or with respect to emissions from or relating to the Facility, and including but not limited to costs and/or Taxes related to any emissions allowances *inter alia* for oxides for sulfur dioxide or nitrogen, carbon dioxide, and mercury), all of which shall be entirely at Seller's sole cost and expense; and, (b) any risk as to the availability of production tax benefits, investment tax credits, grants or any other incentives relating to the design, development, construction, maintenance, ownership, or operation of the Facility shall be borne entirely by Seller.

7.2.1. No Exclusions. If any production or investment tax credit, grants, subsidy, or any other similar incentives or benefit relating, directly or indirectly, to the Facility is unavailable or becomes unavailable at any time during the Term of this Agreement, Seller agrees that such event or circumstance will not: (a) constitute a Force Majeure or Regulatory Event; (b) excuse or otherwise diminish Seller's obligations hereunder in any way; and, (c) give rise to any right by Seller to terminate or avoid performance under this Agreement. Seller agrees that it will solely and fully bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive any such tax treatment or otherwise qualify for any preferential or accelerated depreciation, accounting, reporting, or tax treatment.

7.3. Transmission Provider. Seller agrees and acknowledges that the Interconnection Agreement is (and will be) a separate agreement (or agreements) between Seller and Transmission Provider, and will exclusively govern all requirements and obligations between Seller and Transmission Provider. Only the Interconnection Agreement will govern all obligations and liabilities set forth in the Interconnection Agreement, and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible for under the Interconnection Agreement. Seller shall comply with all Interconnection Instructions.

7.3.1. Nothing in the Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on the other hand, nor any alleged event of default thereunder, shall affect, alter, or modify the Parties' rights, duties, obligation, and liabilities under this Agreement. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider, and the terms of this Agreement are not (and will not) be binding upon the Transmission Provider. Seller agrees and acknowledges that Seller's performance under this Agreement depends on Seller's performance under the Interconnection Agreement, and Seller hereby grants Buyer the right and entitlement to obtain information from the Transmission Provider in regards to Seller's performance under the Interconnection Agreement.

7.4. System Operations. Seller agrees and acknowledges that the System Operator will be solely responsible for its functions, and that nothing in this Agreement will be construed to create any rights between Seller and the System Operator. Seller agrees that it is obligated to engage in interconnected operations with Buyer and the System, and Seller agrees to fully comply with all System Operator Instructions.

8. Facility Performance Requirements

8.1. Planned Outages. No later than fifteen (15) Business Days prior to the end of each year during the Term, Seller shall provide to Buyer a Planned Outage schedule for the upcoming year. Seller shall provide Buyer with reasonable advance notice of any material change in the Planned Outage schedule. Seller shall determine the number and extent of Planned

Outages in a Commercially Reasonable Manner recognizing that it is the intent of the Parties to maximize production of the Facility and to such extent Seller shall be excused from providing the Product during such Planned Outage(s).

- 8.2. Maintenance Outages. If Seller needs or desires to schedule a Maintenance Outage of the Facility, Seller shall notify Buyer, as far in advance as reasonable and practicable under the circumstances, of such proposed Maintenance Outage, and the Parties shall plan such outage to mutually accommodate the reasonable requirements of Seller and delivery expectations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of output of the Facility that will not be available, and the expected completion date of the outage. Buyer may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall comply with such requests to reschedule a Maintenance Outage. If rescheduled, Seller shall notify Buyer of any subsequent changes in the output that will not be available to Buyer and any changes in the Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.
- 8.3. Notice. Seller shall promptly provide to Buyer an oral report of all outages, Emergency Conditions, de-ratings, major limitations, or restrictions affecting the Facility, which report shall include the cause of such restriction, amount of generation from the Facility that will not be available because of such restriction, and the expected date that the Facility will return to normal operations. Seller shall update such report as necessary to advise Buyer of any material changed circumstances relating to the aforementioned restrictions. As soon as practicable, all oral reports shall be confirmed in writing. Seller shall promptly dispatch personnel to perform the necessary repairs or corrective action in an expeditious and safe manner in accordance with Prudent Utility Practice.
- 8.4. Performance. Seller shall act in a Commercially Reasonable Manner to generate the Product and to minimize the occurrence, extent, and duration of any event adversely affecting the generation of the Product, in each case consistent with Prudent Utility Practice.
- 8.5. System Operator Instructions. Seller shall take all steps needed to implement and comply with all System Operator Instructions and shall cooperate with Buyer in the implementation of all aspects of all System Operator Instructions. Seller hereby agrees to indemnify and hold Buyer harmless from any impact to the Facility as a result of taking any action to implement or effectuate any System Operator Instruction. All Seller losses for a Dispatch Down due to any System Operator Instruction shall be borne solely and entirely by Seller, including, without limitation, for any losses arising due to the lost or reduced generation by the Facility, lost tax benefits, lost investment tax credits, grants or any other incentives or monetary opportunity relating to the design, development, generation, construction, maintenance, ownership, or operation of the Facility. Seller shall also immediately and fully comply with all Interconnection Instructions provided pursuant to the independent and separate Interconnection Agreement with the Transmission Operator.

9. Information Requirements

- 9.1. Accounting Information. Generally Accepted Accounting Principles ("GAAP") and SEC rules can require Buyer to evaluate various aspects of its economic relationship with Seller, e.g., whether or not Buyer must consolidate Seller's financial information. To evaluate if certain GAAP requirements are applicable, Buyer may need access to Seller's financial records and personnel in a timely manner. In the event that Buyer determines that consolidation or other incorporation of Seller's financial information is necessary under GAAP, Buyer shall require the following for each calendar quarter during the term of this Agreement, within ninety (90) days after quarter end: (a) complete financial statements, including notes, for

such quarter on a GAAP basis; and, (b) financial schedules underlying the financial statements. Seller shall grant Buyer access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with GAAP standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002). Any information provided to Buyer pursuant to this section shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed, as required by GAAP, on an aggregate basis with other similar entities for which Buyer has power purchase agreements.

- 9.2. Other Information. Seller shall provide to Buyer all information, instruments, documents, statements, certificates, and records relating to this Agreement and/or the Facility as requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements determined by Buyer to fulfill any Requirements of Law, regulatory reporting requirements or otherwise relating to any request by any Governmental Authority. Seller will, at its own expense, provide Buyer with all information requested by Buyer to register, verify, or otherwise obtain Commission or any other third party recognition of the Product for use by Buyer, and at Buyer's request Seller shall register, verify, or otherwise validate or obtain Commission and/or any other third party recognition of the Product for use by Buyer.

9.2.1. Information Under the Act. Seller agrees and acknowledges that the Act requires Seller to make certain filings and/or submissions, including, without limitation, to maintain registration and certification of the Facility under the Act and to use the Product for compliance under the Act. Seller shall provide Buyer, for informational purposes only, a copy of any report, certification or filing that Seller submits to the Commission within a reasonable time after making such submission, but in any event no later than five (5) Business Days after such submission. Notwithstanding anything to the contrary, Seller agrees and acknowledges that it shall be solely responsible for timely complying with all requirements under the Act.

10. Metering

- 10.1. Billing Meter. In the Interconnection Agreement between Seller and Transmission Provider, Seller shall arrange with the Transmission Provider to construct and install such meters and metering equipment as are necessary to measure the Energy delivered and received in accordance with the terms and conditions of this Agreement (the "Billing Meter"). Buyer shall provide to Seller the reasonable allowable accuracy limits relating to the performance of the Billing Meter, and Seller shall arrange with Transmission Provider to install and operate a Billing Meter that meets the allowable accuracy limits. Seller shall be responsible for paying the Transmission Provider for all costs relating to the Billing Meter, including, without limitation, its procurement, installation, operation, calibration, and maintenance. Seller shall ensure in its arrangement with the Transmission Provider for the Billing Meter to include communication equipment that enables Buyer to access and read the meter from a remote location. Seller hereby grants Buyer rights to physically access the Billing Meter. Seller shall provide Buyer (at Seller's cost) with appropriate telephonic/electronic communication to allow Buyer to remotely read the meter. Seller may, at its own expense, install and maintain additional metering equipment for purposes of monitoring, recording or transmitting data relating to its sale of Energy from the Facility, so long as such equipment does not interfere with the Billing Meter. Seller shall arrange with the Transmission Provider to test the Billing Meter at regular intervals. Seller shall also arrange for either Party to have the right to request and obtain, at reasonable intervals and under reasonable circumstances, additional/special tests of the Billing Meter. The Party making such request for the test shall incur the costs associated with such test.

11. **Billing Period and Payment**

- 11.1. **Billing Period.** Subject to Seller authorizing Transmission Provider to provide Buyer with electronic access to the Billing Meter, Buyer shall read/obtain data from the Billing Meter at regular intervals, which shall be not less than twenty-seven (27) consecutive days and not more than thirty-three (33) consecutive days (each, a "Billing Period"). Within twenty-five (25) days after reading/obtaining data from the Billing Meter, Buyer shall provide Seller with an invoice detailing the amount of Product (Energy and an equal amount of RECs subject to satisfaction of Section 3.4 delivered during the relevant Billing Period and the associated amount owed by Buyer to Seller for the Product, subject to Seller cooperating with Buyer and providing Buyer with such information and/or data that Buyer may request to accurately prepare the invoice. Buyer shall pay Seller the invoiced amounts for each Billing Period, subject to Seller having transferred (or caused to be transferred) the REC Certificates from Seller's Account to Buyer's Account in the Tracking System. Payment by Buyer shall be due by the later of thirty (30) days after the invoice date or fifteen (15) days after Buyer receives notification that the Seller has transferred the REC Certificates into Buyer's Account. If such amounts are not paid by the deadline, they shall accrue interest at the Interest Rate from the applicable due date until the date paid. Amounts not paid by such deadline shall accrue interest at the Interest Rate from the original due date until the date paid in accordance with this Agreement.
- 11.2. **Meter Malfunction.** In the event the Billing Meter fails to register accurately within the allowable accuracy limits as set forth above, then for purposes of preparing (or adjusting) any affected invoice Buyer shall adjust the amount of measured Energy for the period of time the Billing Meter was shown to be in error. If the time the Billing Meter became inaccurate can be determined, then the adjustment to the amount of measured Energy shall be made for the entire time from the time that the Billing Meter became inaccurate until the recalibration of the Billing Meter. If the time the Billing Meter became inaccurate cannot be determined, then the Billing Meter shall be deemed to have failed to register accurately for fifty percent (50%) of the time since the date of the last calibration of the Billing Meter.
- 11.3. **Out-of-Service.** If the Billing Meter is out of service, then for purposes of preparing any affected invoice, the Parties shall negotiate in good faith to determine an estimate of the amount of Energy delivered during the relevant Billing Period. Seller's meter, if any, may be used to establish such estimate if both Parties agree. If within twenty (20) days after the date that the Billing Meter is read as set forth above the Parties have not reached agreement regarding an estimate of the amount of Energy delivered during the relevant Billing Period, then the amount of Energy delivered during the relevant Billing Period shall be determined in a Commercially Reasonable Manner.
- 11.4. **Errors.** If any overcharge or undercharge in any form whatsoever shall at any time be found for an invoice, and such invoice has been paid, the Party that has been paid the overcharge shall refund the amount of the overcharge to the other Party, and the Party that has been undercharged shall pay the amount of the undercharge to the other Party, within forty-five (45) days after final determination thereof; provided, however, that no retroactive adjustment shall be made for any overcharge or undercharge unless written notice of the same is provided to the other Party within a period of twenty-four (24) months from the date of the invoice in which such overcharge or undercharge was first included. Any such adjustments shall be made with interest calculated at the Interest Rate from the date that the undercharge or overcharge actually occurred.

- 11.5. Invoice/Payment Dispute. If a Party in good faith reasonably disputes the amount set forth in an invoice, charge, statement, or computation, or any adjustment thereto, such Party shall provide to the other Party a written explanation specifying in detail the basis for such dispute. The Party disputing the invoice, if it has not already done so, shall pay the undisputed portion of such amount no later than the applicable due date. If the Parties are thereafter unable to resolve the dispute through the exchange of additional documentation, then the Parties shall pursue resolution of such dispute according to the dispute resolution and remedy provisions set forth in this Agreement. Notwithstanding any other provision of this Agreement to the contrary, if any invoice, statement charge, or computation is found to be inaccurate, then a correction shall be made and payment (with applicable interest) shall be made in accordance with such correction; provided, however, no adjustment shall be made with respect to any invoice, statement, charge, computation or payment hereunder unless a Party provides written notice to the other Party questioning the accuracy thereof within twenty-four (24) months after the date of such invoice, statement, charge, computation, or payment.

12. Audit Rights

- 12.1. Process. Buyer shall have the right, at its sole expense and during normal business hours, without Seller requiring any compensation from Buyer, to examine and copy the records of Seller to verify the accuracy of any invoice, statement, charge or computation made hereunder or to otherwise verify Seller's performance under this Agreement, including, without limitation, verifying that the delivered Product complies with the Agreement.
- 12.2. Survival. All audit rights shall survive the expiration or termination of this Agreement for a period of twenty-four (24) months after the expiration or termination. Seller shall retain any and all documents (including, without limitation, paper, written, and electronic) and/or any other records relating to this Agreement and the Facility for a period of twenty-four (24) months after the termination or expiration of this Agreement.

13. Taxes

- 13.1. Seller. Seller shall be liable for and shall pay Buyer, or Seller shall reimburse Buyer if Buyer has paid or cause to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising prior its delivery to and at the Delivery Point (including ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Seller shall indemnify, defend, and hold harmless Buyer from any liability for such Taxes, including related audit and litigation expenses.
- 13.2. Buyer. Buyer shall be liable for and shall pay Seller, or Buyer shall reimburse Seller if Seller has paid or caused to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising after the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Buyer shall indemnify, defend, and hold harmless Seller from any liability for such Taxes, including related audit and litigation expenses.
- 13.3. Remittances. In the event Seller is required by any Requirements of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may request reimbursement of such payment from Buyer by sending Buyer an invoice and Buyer shall include such reimbursement in the next monthly invoice and Buyer shall remit payment thereof.

Conversely, if Buyer is required by any Requirements of Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums otherwise due to Seller under this Agreement. Any refunds or remittances associated with such Taxes shall be administered in accordance with Section 11.1.

- 13.4. Documentation. A Party, upon written request of the other Party, shall promptly provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from any Tax. Nothing herein shall obligate a Party to pay or be liable to pay any Taxes from which it is exempt pursuant to applicable law.

14. **Force Majeure**

- 14.1. Definition. "Force Majeure" means: (A) war, riots, floods, hurricanes, tornadoes, earthquakes, lightning, ice-storms, excessive winds, and other such extreme weather events and natural calamities; (B) explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of the Party; (C) insurrection, rebellion, nationwide strikes; (D) an act of god or other such significant and material event or circumstance which prevents one Party from performing a material and significant obligation hereunder, which such event or circumstance was not anticipated as of the Effective Date, is not within the Commercially Reasonable control of, or the result of the negligence of such claiming Party, and which, by the exercise of Commercially Reasonable Efforts, the claiming Party is unable to overcome or avoid or cause to be avoided and, (E) delays in obtaining goods or services from any subcontractor or supplier caused solely by the occurrence of any of the events described in the immediately preceding subparts (A) through (D). The acts, events or conditions listed in subparts (A) through (E) above shall only be deemed a Force Majeure if and to the extent they actually and materially delay or prevent the performance of a Party's obligations under this Agreement and: (i) are beyond the reasonable control of the Party, (ii) are not the result of the willful misconduct or negligent act or omission of such Party (or any person over whom that Party has control), (iii) are not an act, event or condition that reasonably could have been anticipated, or the risk or consequence of which such Party has assumed under the Agreement; and, (iv) cannot be prevented, avoided, or otherwise overcome by the prompt exercise of Commercially Reasonable diligence by the Party (or any Person over whom that Party has control).

- 14.1.1. Notwithstanding anything to the contrary herein, Force Majeure will not include the following: (a) any strike or labor dispute of the employees of either Party or any subcontractor that is not part of a nationwide strike or labor dispute; (b) any difficulty in obtaining or maintaining sufficient or appropriately skilled personnel to perform the work in accordance with the requirements of this Agreement; (c) normal wear and tear or obsolescence of any equipment; (d) Buyer's inability to economically use or resell the Product delivered and purchased hereunder; (e) Seller's ability to sell the Product (or any component of the Product) at a more advantageous price; (f) loss by Seller of any contractual arrangement; (g) any Regulatory Event; (h) loss or failure of Seller's supply of the Product or inability to generate the Product that is not caused by an independent Force Majeure event; (i) the cost or availability or unavailability of fuel, water, wind, or motive force, as applicable, to operate the Facility; (j) economic hardship, including, without limitation, lack of money or financing or Seller's inability to economically generate the Product or operate the Facility; (k) any breakdown or malfunction of Facility equipment (including any serial equipment defect) that is not directly caused by an independent event of Force

Majeure; (l) the imposition upon Seller of costs or taxes allocated to Seller hereunder or Seller's failure to obtain or qualify for any tax incentive, preference, or credit; (m) delay or failure of Seller to obtain or perform any Permit; (n) any delay, alleged breach of contract, or failure under any other agreement or arrangement between Seller and another entity, including without limitation, an agent or sub-contractor of Seller (except as a direct result of an event of Force Majeure defined in 14.1(E)); (o) Seller's failure to obtain, or perform under, the Interconnection Agreement or its other contracts and obligations to Transmission Provider; or (p) increased cost of electricity, steel, materials, equipment, labor, or transportation.

- 14.2. Event. If either Party is rendered unable by Force Majeure to carry out, in whole or in part, any material obligation hereunder, such Party shall provide notice and reasonably full details of the event to the other Party as soon as reasonably practicable after becoming aware of the occurrence of the event (but in no event later than three (3) Business Days of the initial occurrence of the event of Force Majeure). Such notice may be given orally but shall be confirmed in writing as soon as practicable thereafter (and in any event within ten (10) days of the initial occurrence of the event of Force Majeure); provided however, a reasonable delay in providing such notice shall not preclude a Party from claiming Force Majeure but only so long as such delay does not prejudice or adversely affect the other Party.
- 14.3. Effect. Subject to the terms and conditions of this Section 14, for as long as the event of Force Majeure is continuing, the specific obligations of the Party that are demonstrably and specifically adversely affected by the Force Majeure event shall be suspended to the extent and for the duration made necessary by the Force Majeure will not be deemed to be an Event of Default, and performance and termination of this Agreement will be governed exclusively by this Section 14. Notwithstanding anything to the contrary in this Agreement, Force Majeure will *not* be applicable to and will *not* be available as an excuse to Seller's performance of the obligations set forth in Sections 19.3 through and including 19.18.
- 14.4. Remedy. The Party claiming Force Majeure shall act in a Commercially Reasonable Manner to remedy the Force Majeure as soon as practicable and shall keep the other Party advised as to the continuance of the Force Majeure event. If a bona fide Force Majeure event persists for a continuous period of ninety (90) days, then the Party not claiming Force Majeure shall have the right, in its sole and unfettered discretion, to terminate this Agreement upon giving the other Party ten (10) Business Days advance written notice.
- 14.5. Termination. Unless otherwise agreed upon by the Parties in writing and in each Party's sole discretion, upon the expiration of the periods set forth above in Sections 14.4, this Agreement may be terminated without any further notice and further opportunity to cure any non-performance. Upon termination becoming effective pursuant to a Force Majeure under this Section 14, neither Party will have any liability to the other Party or recourse against the other Party, other than for amounts arising prior to termination. Notwithstanding the claimed existence of a Force Majeure event or any other provisions of this Agreement, nothing herein shall relieve any Party from exercising any right or remedy provided under this Agreement with respect to any liability or obligation of the other Party that is not excused or suspended by the Force Majeure event, including, without limitation, the right to liquidate and early terminate the Agreement for any Event of Default not excused by the Force Majeure event. Nothing herein shall be construed so as to obligate any Party to settle any strike, work stoppage or other labor dispute or disturbance or to make significant capital expenditures, except in the sole discretion of the Party experiencing such difficulty.

15. Change in Law

15.1. Regulatory Event. A "Regulatory Event" means one or more of the following events:

15.1.1. Illegality. After the Effective Date, due to the adoption of, or change in, any applicable Requirements of Law or in the interpretation thereof by any Governmental Authority with competent jurisdiction, it becomes unlawful for a Party to perform any material obligation under this Agreement.

15.1.2. Adverse Government Action. After the Effective Date, there occurs any adverse material change in any applicable Requirements of Law (including material change regarding a Party's obligation to sell, deliver, purchase, or receive the Product) and any such occurrence renders illegal or unenforceable any material performance or requirement under this Agreement.

15.2. Process. Upon the occurrence of a Regulatory Event the Party affected by the Regulatory Event may notify the other Party in writing of the occurrence of a Regulatory Event, together with details and explanation supporting the occurrence of a Regulatory Event. Upon receipt of such notice, the Parties agree to undertake, during the thirty (30) days immediately following receipt of the notice, to negotiate such modifications to reform this Agreement to remedy the Regulatory Event and attempt to give effect to the original intention of the Parties. Upon the expiration of the 30-day period, if the Parties are unable to agree upon modifications to the Agreement that are acceptable to each Party, in each Party's sole discretion, then either Party shall have the right, in such Party's sole discretion, to terminate this Agreement with a 30-day advance written notice.

16. Confidentiality

16.1. Protected Information. Except as otherwise set forth in this Agreement, neither Party shall, without the other Party's prior written consent, disclose any term of this Agreement or any information relating to this Agreement, or any discussion or documents exchanged between the Parties in connection with this Agreement (such information, the "Protected Information") to any third person (other than the Party's employees, affiliates, counsel, and accountants, and current and prospective lenders and investors in the Facility if Buyer is given at least ten (10) Business Days advance written notice of such disclosure and to whom such disclosure is being made, who have a need to know such information, have agreed to keep such terms confidential for the Term, and for whom the Party shall be liable in the event of a breach of such confidentiality obligation), at any time during the Term or for five (5) years after the expiration or early termination of this Agreement. Each Party shall be entitled to all remedies available at law or in equity (including but not limited to specific performance and/or injunctive relief,) to enforce, or seek relief in connection with, this confidentiality obligation. Notwithstanding any other provision of this Agreement, a violation of any confidentiality obligations shall be an Event of Default hereunder, and any claim related to or arising out of any confidentiality obligations herein may be brought directly in any state or federal court of competent jurisdiction in Mecklenburg County, North Carolina, in accordance with Section 26.5 of this Agreement, and shall not be subject to dispute resolution or arbitration pursuant to Section 23 of this Agreement.

16.2. Non-Confidential Information. Protected Information does not include information: (i) that is or becomes available to the public other than by disclosure of receiving Party in breach of this Agreement; (ii) known to receiving Party prior to its disclosure; (iii) available to receiving Party from a third party who is not bound to keep such information confidential; or, (iv) independently developed by the receiving Party without reliance upon the Protected

Information. Notwithstanding anything to the contrary herein, in no event will Protected Information include the concept of constructing or providing energy from a power plant, using any specific fuel source, in any specific location.

- 16.3. Return of Confidential Information. After expiration or early termination of this Agreement, and upon request of disclosing Party, receiving Party shall either (i) return the Protected Information, including all copies, or (ii) destroy the Protected Information, including all copies, and present written assurances of the destruction to disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Protected Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by Receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, "Back-Up Tapes"). Notwithstanding the terms of this Agreement, in no event shall Receiving Party be required to destroy Protected Information stored on Back-Up Tapes; provided, however, any Protected Information not returned or destroyed pursuant to this Section shall be kept confidential for the duration of its existence. Furthermore, the receiving party may retain one (1) copy of such Protected Information in receiving Party's files solely for audit and compliance purposes for the duration of its existence; provided, however, such Protected Information shall be kept confidential for the duration of its existence in accordance with the terms of this Agreement.
- 16.4. Required Disclosures. Notwithstanding the confidentiality requirements set forth herein, a Party may, subject to the limitations set forth herein, disclose Protected Information to comply with the Act, request of any Governmental Authority, applicable Requirements of Law, or any exchange, control area or System operator rule, in response to a court order, or in connection with any court or regulatory proceeding. Such disclosure shall not terminate the obligations of confidentiality unless the Protected Information falls within one of the exclusions of this Agreement. To the extent the disclosure of Protected Information is requested or compelled as set forth above, the receiving Party agrees to give disclosing Party reasonable notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any Confidential Information. Such notice by the receiving Party shall give disclosing Party an opportunity, at disclosing Party's discretion and sole cost, to seek a protective order or similar relief, and the receiving Party shall not oppose such request or relief. If such protective order or other appropriate remedy is not sought and obtained within at least thirty (30) days of receiving Party's notice, receiving Party shall disclose only that portion of the Protected Information that is required or necessary in the opinion of receiving Party's legal counsel; provided, however, receiving Party shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to any Confidential Information so disclosed.
- 16.5. Regulatory Disclosures by Buyer. This Section 16.5 will apply notwithstanding anything to the contrary in this Agreement. Seller acknowledges that Buyer is regulated by various regulatory and market monitoring entities. Buyer is permitted, in its sole discretion, to disclose or to retain and not destroy (in case of a future disclosure need as determined by Buyer in its sole discretion) any information (including Protected Information) to any regulatory commission (inclusive of the NCUC, SCPSC, FERC), NERC, market monitor, office of regulatory staff, and/or public staff, or any other regulator or legislative body without providing prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for any such disclosures or retentions in its sole discretion. In the event of the establishment of any docket or proceeding before any regulatory commission, public service commission, public utility commission, or other agency, tribunal, or court having jurisdiction over Buyer, the Protected Information shall automatically be governed solely by the rules and procedures governing

such docket or proceeding to the extent such rules or procedures are additional to, different from, or inconsistent with this Agreement. In regulatory proceedings in all state and federal jurisdictions in which Buyer does business, Buyer will from time-to-time be required to produce Protected Information, and Buyer may do so without prior notice to Seller or consent from Seller, using Buyer's business judgment, and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion. When a request for disclosure of information, including Protected Information, is made to Buyer, Buyer may disclose the information, including Protected Information, without prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Duke seeks for such disclosures in its sole discretion. Seller further acknowledges that Buyer is required by law or regulation to report certain information that could embody Protected Information from time-to-time, and Buyer may from time-to-time make such reports, without providing prior notice to Seller or consent from Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion.

17. Mutual Representations and Warranties

17.1. As of the Effective Date and throughout the Term, each Party represents and warrants to the other Party that:

- 17.1.1. It is duly organized, validly existing and in good standing under the Requirements of Law of the jurisdiction of its organization or formation and has all requisite power and authority to execute and enter into this Agreement;
- 17.1.2. It has all authorizations under the Requirements of Law (including but not limited to the Required Approvals), necessary for it to legally perform its obligations and consummate the transactions contemplated hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party becomes due;
- 17.1.3. The execution, delivery, and performance of this Agreement will not conflict with or violate any Requirements of Law or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;
- 17.1.4. This Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and such Party has all rights necessary to perform its obligations to the other Party in accordance with the terms and conditions of this Agreement;
- 17.1.5. It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether or not this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the representations, advice or recommendations of the other Party in so doing, is capable of assessing the merits of this Agreement, and understands and accepts the terms, conditions, and risks of this Agreement for fair consideration on an arm's length basis;
- 17.1.6. No Event of Default or event which with notice or lapse of time, or both, would become an Event of Default, has occurred with respect to such Party, and that such Party is not Bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- 17.1.7. There is no pending, or to its knowledge, threatened legal proceeding at law or

equity against it or any Affiliate, that materially adversely affects its ability to perform its obligations under this Agreement;

- 17.1.8. It is a "forward contract merchant" and this Agreement constitutes a "forward contract" as such terms are defined in the United States Bankruptcy Code;
- 17.1.9. It is an "eligible commercial entity" within the Commodity Exchange Act;
- 17.1.10. It is an "eligible contract participant" within the Commodity Exchange Act; and;
- 17.1.11. Each person who executes this Agreement on behalf of such Party has full and complete authority to do so, and that such Party will be bound by such execution.

18. Seller Representations and Warranties to Buyer

- 18.1. For all Product and every aspect thereof, Seller represents, warrants, and reaffirms to Buyer as a continuing warranty and representation that:
 - 18.1.1. No Product (including any REC component of the Product subject to satisfaction of Section 3.4) has been, or will be, sold, retired, claimed, represented as part of any electricity output, use, or sale, or otherwise used to satisfy any renewable energy, efficiency, emissions, and/or offset obligation under the Act, or under any voluntary or mandatory standard, marketplace, or jurisdiction, or otherwise;
 - 18.1.2. All Product will meet the specifications and requirements in this Agreement, including subject to satisfaction of Section 3.4 compliance with the Act;
 - 18.1.3. Each unit of the Product will be and was generated during the applicable Vintage;
 - 18.1.4. Seller has provided and conveyed and will provide and convey to Buyer all Capacity rights associated with the Facility and all Energy produced by the Facility;
 - 18.1.5. Subject to satisfaction of Section 3.4, Seller has provided and conveyed and will provide and convey to Buyer all Renewable Energy Attributes and REA Reporting Rights associated with all Energy generated by the Facility as part of the Product being delivered to Buyer;
 - 18.1.6. Subject to satisfaction of Section 3.4, Seller holds all the rights to all the Product from the Facility, Seller has the right to sell the Product to Buyer, and Seller agrees to convey and does convey to Buyer all rights and good title to the Product free and clear of any Liens, encumbrances, or title defects;
 - 18.1.7. Subject to satisfaction of Section 3.4, Seller has not and will not double sell, double claim or any manner otherwise double count the Product (including, without limitation, any Capacity of the Facility or any REC, Renewable Energy Attributes, or REA Reporting Rights) in any manner (including, for example, by issuing a press release or otherwise claiming that Seller is creating any environmental benefit, using a renewable energy source, or selling renewable energy to any person other than exclusively to and for the benefit of Buyer); Seller will not claim for itself any of the Renewable Energy Attributes, "green energy", "clean energy", "carbon-free energy" or other rights sold to Buyer, in any public communication concerning the output of the Facility, the Facility or the RECs;
 - 18.1.8. Subject to satisfaction of Section 3.4, Seller shall at all times be fully compliant with the requirements of the Federal Trade Commission's "Green Guides," 77 F.R. 62122, 16 C.F.R. Part 260, as amended or restated, and;
 - 18.1.9. Seller has not and will not in any manner interfere with, encumber or otherwise

impede Buyer's use, transfer, and sale of any Product.

19. **Events of Default**

An "Event of Default" means with respect to the non-performing Party (such Party, the "Defaulting Party"), the occurrence of any one or more of the following, each of which, individually, shall constitute a separate Event of Default:

- 19.1. The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after the Defaulting Party's receipt of written notice; *provided, however*, a Party will have two (2) Business Days to remedy any failure to make payment required under Section 21;
- 19.2. Any covenant or warranty made by Seller under Section 6.2 (Seller Covenant) is false or misleading in any respect when made or when deemed made or repeated;
- 19.3. Any representation or warranty made by a Party under Section 17 and elsewhere in this Agreement (except Section 18 which is a separate Event of Default) is false or misleading in any material respect when made or when deemed made or repeated;
- 19.4. Any representation or warranty made by Seller under Section 18 (Seller Representations and Warranties to Buyer) is false or misleading in any respect when made or when deemed made or repeated;
- 19.5. Seller Abandons the Facility;
- 19.6. Seller fails to obtain or maintain the Facility's registration or certification as a Qualifying Facility under PURPA;
- 19.7. Subject to satisfaction of Section 3.4, Seller fails to maintain the Facility's registration as a New Renewable Energy Facility, and such failure is not cured within five (5) Business Days of Seller's failure to have maintained such registration;
- 19.8. Seller fails to fully comply with the PURPA Fuel Requirements;
- 19.9. delivers or attempts to deliver to Buyer any Product (or any component thereof) that was not generated by the Facility;
- 19.10. Seller delivers or attempts to deliver any Product (or component thereof) to any entity or person other than to the Buyer;
- 19.11. Seller fails to promptly and fully comply with a System Operator Instruction;
- 19.12. Seller fails to provide, replenish, renew, or replace the Performance Assurance and/or otherwise fails to fully comply with the requirements of this Agreement, including without limitation, Section 5, and any such failure is not cured within two (2) Business Days;
- 19.13. A Party fails to fully comply with the confidentiality obligations set forth in Section 16;
- 19.14. Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and: (i) at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or (ii) the creditworthiness of the party or the resulting, surviving, transferee or successor entity is weaker than that of Seller prior to such action; or (iii) the benefits of any guaranty fail to extend to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement;
- 19.15. An assignment by or Change of Control with respect to Seller, other than in compliance

with Section 24;

- 19.16. A Party becomes Bankrupt;
- 19.17. Seller transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another Person in violation of the terms and conditions of this Agreement;
- 19.18. Seller violates the publicity obligates set forth in Section 26.10; and
- 19.19. Except to the extent constituting a separate Event of Default (in which case the provisions applicable to that separate Event of Default shall apply), the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within twenty (20) days after the Defaulting Party's receipt of written notice.

20. **Early Termination.**

- 20.1. **Early Termination Date.** If an Event of Default with respect to a Defaulting Party has occurred and is continuing, then the other Party (such Party, the "Non-Defaulting Party") shall have the right, in its sole discretion and upon written notice to the Defaulting Party, to pursue any or all of the following remedies: (a) withhold payments due to the Defaulting Party under this Agreement; (b) suspend performance under this Agreement; and/or (c) designate a day (which day shall be no earlier than the day such notice is effective and shall be no later than twenty (20) days after the delivery of such notice is effective) as an early termination date to accelerate all amounts owing between the Parties, liquidate, net, recoup, set-off, and early terminate this Agreement and any other agreement between the Parties (such day, the "Early Termination Date").
- 20.2. **Effectiveness of Default and Remedies.** Where an Event of Default is specified herein and is governed by a system of law which does not permit termination to take place upon or after the occurrence of the relevant Event of Default in accordance with the terms of this Agreement, an Event of Default and Early Termination Date shall be deemed to have occurred immediately upon any such event and no prior written notice shall be required. All of the remedies and provisions set forth in this section shall be without prejudice to any other right of the Non-Defaulting Party to accelerate amounts owed, net, recoup, setoff, liquidate, and early terminate this Agreement.
- 20.3. **Net Settlement Amount.** If the Non-Defaulting Party establishes an Early Termination Date, then the Non-Defaulting Party shall calculate its Gains or Losses and Costs resulting from the termination as of the Early Termination Date in a Commercially Reasonable Manner. The Non-Defaulting Party shall aggregate such Gains or Losses and Costs with respect to the liquidation of the termination and any other amounts due under this Agreement and any other agreement between the Parties into a single net amount expressed in U.S. dollars (the "Net Settlement Amount"). The Non-Defaulting Party shall then notify the Defaulting Party of the Net Settlement Amount. The Defaulting Party shall pay the Non-Defaulting Party the full amount of the Net Settlement Amount within two (2) Business Days of delivery to the Defaulting Party of the notice of the Net Settlement Amount that the Defaulting Party is liable for.
- 20.4. **Payment.** Any Net Settlement Amount will be due and payable only to the Non-Defaulting Party from and by the Defaulting Party. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Net Settlement Amount will be deemed to be zero and no payment will be due or payable. The Non-Defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the Defaulting Party for economic benefits accruing to

the Non-Defaulting Party as a result of the Defaulting Party's default. The Non-Defaulting Party shall be entitled to recover any Net Settlement Amount by netting or set-off or to otherwise pursue recovery of damages. Additionally, Buyer will be entitled to recover any Net Settlement Amount by drawing upon any Performance Assurance or by netting or set-off, or to otherwise pursue recovery of damages.

20.5. Survival. This Section 20 will survive any expiration or termination of this Agreement.

21. Cover Costs.

21.1. Exclusive Remedies. Except as otherwise set forth in this Agreement, the remedies set forth in this Section shall be a Party's exclusive remedies prior to termination for the other Party's failure to deliver the Product or to receive the Product pursuant to and in accordance with this Agreement.

21.2. Seller's Failure to Deliver. If Seller fails to deliver Product that complies with the requirements set forth in this Agreement or fails to deliver all or part of the Contract Quantity (each will be deemed as a failure to deliver for purposes of calculating damages), and such failure is not excused by Buyer's failure to perform, then Buyer shall elect in its sole discretion: (i) to terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Buyer shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) to require Seller to pay Buyer within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Seller failed to deliver to Buyer multiplied by two (2) times the per unit Contract Price.

21.3. Buyer's Failure to Accept Delivery. If Buyer fails to receive all or part of the Contract Quantity that Seller attempted to deliver to Buyer in accordance with this Agreement, and such failure by Buyer is not excused by Seller's failure to perform, then Seller shall elect in its sole discretion either to: (i) terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Seller shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) require Buyer to pay Seller within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Buyer failed to receive multiplied by two (2) times the per unit Contract Price.

21.4. Event of Default. Any failure by Seller to pay amounts due under this Section 21 will be an Event of Default under Section 19.1.

21.5. Survival. This Section 21 will survive any expiration or termination of this Agreement.

22. Limitation of Liabilities & Liquidated Damages.

22.1. Reasonableness. THE EXPRESS REMEDIES AND MEASURES OF DAMAGES, INCLUDING WITHOUT LIMITATION DETERMINATION OF LIQUIDATED DAMAGES, COVER COSTS, AND NET SETTLEMENT AMOUNT DAMAGES PROVIDED FOR IN THIS AGREEMENT (i) ARE REASONABLE AND SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH THE EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, AND (ii) UNLESS OTHERWISE STATED IN SUCH PROVISIONS, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS, AND ALL OTHER

REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY PROVISION OF THIS AGREEMENT PROVIDES FOR, OR IS DEEMED TO CONSTITUTE OR INCLUDE, LIQUIDATED DAMAGES, THE PARTIES STIPULATE AND AGREE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO ESTIMATE OR DETERMINE, THE LIQUIDATED AMOUNTS ARE A REASONABLE APPROXIMATION OF AND METHODOLOGY TO DETERMINE THE ANTICIPATED HARM OR LOSS TO THE PARTY, AND OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT. THE PARTIES FURTHER STIPULATE AND AGREE THAT ANY PROVISIONS FOR LIQUIDATED DAMAGES ARE NOT INTENDED AS, AND SHALL NOT BE DEEMED TO CONSTITUTE, A PENALTY, AND EACH PARTY HEREBY WAIVES THE RIGHT TO CONTEST SUCH PROVISIONS AS AN UNREASONABLE PENALTY OR AS UNENFORCEABLE FOR ANY REASON.

- 22.2. Limitation. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, (i) THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED; AND (ii) NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, STRICT LIABILITY, ANY TORT, CONTRACT, OR OTHERWISE.
- 22.3. Damages Stipulation. Each Party expressly agrees and stipulates that the terms, conditions, and payment obligations set forth in Sections 20 and 21 are a reasonable methodology to approximate or determine harm or loss, each Party acknowledges the difficulty of determining actual damages or loss, and each Party hereby waives the right to contest such damages and payments as unenforceable, as an unreasonable penalty, or otherwise for any reason. The Parties further acknowledge and agree that damages and payments determined under Sections 20 and 21 are direct damages, will be deemed to be a direct loss, and will not be excluded from liability or recovery under the Limitations of Liabilities provisions of this Section 22.
- 22.4. Survival. This Section 22 will survive any expiration or termination of this Agreement.

23. Disputes and Arbitration

- 23.1. Resolution by the Parties. The Parties shall attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, "Dispute(s)") promptly by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. A Party may give the other Party written notice of a Dispute that has not been resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within ten (10) Business Days after delivery of the notice, the receiving Party shall respond with (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within twenty (20) Business Days after delivery of the initial notice, the executives of both Parties shall meet at Buyer's offices, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. At the request of either Party, the Parties shall enter into a confidentiality agreement to cover any Dispute and discussions related thereto.

23.2. Demand for Arbitration.

23.2.1. If a Dispute has not been resolved by negotiation within thirty (30) Business Days of the disputing Party's initial notice, the Parties shall fully and finally settle the Dispute by binding arbitration administered by the American Arbitration Association ("AAA"), or such other nationally recognized arbitration association or organization as the Parties may mutually agree. The Arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules then in effect, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. To the extent the AAA Rules conflict with any provision of Section 23 of this Agreement, the terms of this Agreement shall govern and control.

23.2.2. Either Party may serve the demand for arbitration on the other Party; provided, however, no demand for arbitration shall be made or permitted after the date when the institution of a civil action based on the Dispute would be barred by the applicable statute of limitations or repose.

23.2.3. All arbitration proceedings shall take place in Charlotte, North Carolina.

23.2.4. A single arbitrator will arbitrate all Disputes where the amount in controversy is less than five-hundred thousand U.S. dollars (\$500,000), and will be selected by the Parties or by the AAA if the Parties cannot agree to the arbitrator. Such arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry. The cost of the arbitrator(s) shall be borne equally by the Parties.

23.2.5. A panel of three (3) arbitrators will conduct the proceeding when the amount in controversy is equal to or more than five hundred thousand U.S. dollars (\$500,000). If the Parties have not so agreed on such three (3) arbitrator(s) on or before thirty (30) days following the delivery of a demand for Arbitration to the other Party, then each Party, by notice to the other Party, may designate one arbitrator (who shall not be a current or former officer, director, employee or agent of such Party or any of its Affiliates). The two (2) arbitrators designated as provided in the immediately preceding sentence shall endeavor to designate promptly a third (3rd) arbitrator.

23.2.6. If either Party fails to designate an initial arbitrator on or before forty five (45) days following the delivery of an arbitration notice to the other Party, or if the two (2) initially designated arbitrators have not designated a third (3rd) arbitrator within thirty (30) days of the date for designation of the two (2) arbitrators initially designated, any Party may request the AAA to designate the remaining arbitrator(s) pursuant to its Commercial Arbitration Rules. Such third (3rd) arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry.

23.2.7. If any arbitrator resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, the Party entitled to designate that arbitrator shall designate a successor.

23.3. Discovery. Either Party may apply to the arbitrators for the privilege of conducting discovery. The right to conduct discovery shall be granted by the arbitrators in their sole discretion with a view to avoiding surprise and providing reasonable access to necessary information or to information likely to be presented during the course of the arbitration, provided that such discovery period shall not exceed sixty (60) Business Days.

23.4. Binding Nature. The arbitrator(s)' decision shall be by majority vote (or by the single

- arbitrator if a single arbitrator is used) and shall be issued in a writing that sets forth in separately numbered paragraphs all of the findings of fact and conclusions of law necessary for the decision. Findings of fact and conclusions of law shall be separately designated as such. The arbitrator(s) shall not be entitled to deviate from the construct, procedures or requirements of this Agreement. The award rendered by the arbitrator(s) in any arbitration shall be final and binding upon the Parties, and judgment may be entered on the award in accordance with applicable law in any court of competent jurisdiction.
- 23.5. Consolidation. No arbitration arising under the Agreement shall include, by consolidation, joinder, or any other manner, any Person not a party to the Agreement unless (a) such Person is substantially involved in a common question of fact directly relating to the Dispute; provided however, such Person will not include any Governmental Authority, (b) the presence of the Person is required if complete relief is to be accorded in the arbitration, and (c) the Person has consented to be included.
- 23.6. Mediation. At any time prior or subsequent to a Party initiating arbitration, the Parties may mutually agree to (but are not obligated to) attempt to resolve their Dispute by non-binding mediation, using a mediator selected by mutual agreement. The mediation shall be completed within thirty (30) Business Days from the date on which the Parties agree to mediate. Unless mutually agreed by the parties, any mediation agreed to by the Parties shall not delay arbitration. The Parties shall pay their own costs associated with mediation and shall share any mediator's fee equally. The mediation shall be held in Charlotte, North Carolina, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court of competent jurisdiction.
- 23.7. Remedies. Except for Disputes regarding confidentiality arising under Section 16 of this Agreement, the procedures specified in this Section 23 shall be the sole and exclusive procedures for the resolution of Disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party may file a judicial claim or action on issues of statute of limitations or repose or to seek injunctive relief, sequestration, garnishment, attachment, or an appointment of a receiver, subject to and in accordance with the provisions of Section 26.5 (Venue/Consent to Jurisdiction). Preservation of these remedies does not limit the power of the arbitrator(s) to grant similar remedies, and despite such actions, the Parties shall continue to participate in and be bound by the dispute resolution procedures specified in this Section 23.
- 23.8. Settlement Discussions. All negotiations and discussion concerning Disputes between the Parties pursuant to this Section 23 are to be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and settlement privilege. No statement of position or offers of settlement made in the course of the dispute resolution process can be or will be offered into evidence for any purpose, nor will any such statements or offers of settlement be used in any manner against any Party. Further, no statement of position or offers of settlement will constitute an admission or waiver of rights by either Party. At the request of either Party, any such statements or offers, and all copies thereof, shall be promptly returned to the Party providing the same.
- 23.9. Survival. This Section 23 will survive any expiration or termination of this Agreement.

24. Assignment

- 24.1. Limitation. Except as set forth below in Section 24.2 with respect to pledging as collateral security, Seller shall not assign, pledge, and/or encumber (collectively, "Assignment") this Agreement, any rights or obligations under the Agreement, or any portion hereunder, without Buyer's prior written consent. Seller shall give Buyer at least thirty (30) days prior written notice of any requested Assignment. Subject to Seller providing Buyer with information demonstrating to Buyer, in Buyer's sole Commercially Reasonable discretion, that Seller's proposed assignee has the technical, engineering, financial, and operational capabilities to perform under this Agreement, Buyer may not unreasonably withhold its consent; *provided, however*, that any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall deliver to Buyer such tax, credit, Performance Assurance in the required amount, and enforceability assurance as the Buyer may request in its sole Commercially Reasonable discretion. Notwithstanding anything to the contrary herein, Buyer may pledge, encumber, or assign this Agreement to any person, including any affiliate or subsidiary of Buyer, whether or not an Affiliate, without any restriction.
- 24.2. Pledge. Seller may, without prior consent of Buyer but with no less than ten (10) Business Days prior written notice to Buyer, pledge as collateral security this Agreement to a financing party in connection with any loan, lease, or other debt or equity financing arrangement for the Facility. Any pledge of this Agreement as collateral security will not relieve Seller of any obligation or liability under this Agreement, and it will not create any rights, including any third party beneficiary rights, for any person under this Agreement.
- 24.3. Change of Control. Any Change of Control of Seller (however this Change of Control occurs) shall require the prior written consent of Buyer, which shall not be unreasonably withheld or delayed. Seller shall give Buyer at least thirty (30) days prior written notice of any such requested consent to a Change of Control.
- 24.4. Delivery of Assurances & Voidable. Any Assignment or Change of Control will not relieve Seller of its obligations hereunder, unless Buyer agrees in writing in advance to waive the Seller's continuing obligations under this Agreement. In case of a permitted Assignment and/or Change of Control, such requesting party or parties shall agree in writing to assume all obligations of Seller and to be bound by the terms and conditions of this Agreement and shall deliver to Buyer such tax, credit, performance, and enforceability assurances as Buyer may request, in its sole Commercially Reasonable discretion. Further, Buyer's consent to any Assignment may be conditioned on and subject to Seller's proposed assignee having first obtained all approvals that may be required by any Requirements of Law and from all applicable Governmental Authorities. Any sale, transfer, Change of Control, and/or Assignment of any interest in the Facility or in the Agreement made without fully satisfying the requirements of this Agreement shall be null and void and will be an Event of Default hereunder with Seller as the Defaulting Party.
- 24.5. Cost Recovery. Without limiting Buyer's rights under this Section 24, to the extent Buyer agrees to a request from Seller for an Assignment, Change of Control, or other changes in administering this Agreement, Seller shall pay Buyer ten thousand dollars (\$10,000) prior to Buyer processing Seller's request.
25. Notices.
- 25.1. Process. All notices, requests, or invoices shall be in writing and shall be sent to the address of the applicable Party as specified on the first page of this Agreement. A Party may change its information for receiving notices by sending written notice to the other Party. Notices shall be delivered by hand, certified mail (postage prepaid and return receipt requested), or sent by overnight mail or courier. This section shall be applicable whenever words such as "notify," "submit," "give," or similar language are used in the

context of giving notice to a Party.

- 25.2. Receipt of Notices. Hand delivered notices shall be deemed delivered by the close of the Business Day on which it was hand delivered. Notices provided by certified mail (postage prepaid and return receipt requested), mail delivery or courier service, or by overnight mail or courier service will be deemed received on the date of delivery recorded by the delivery service or on the tracking receipt, as applicable. Notwithstanding anything to the contrary, if the day on which any notice is delivered or received is not a Business Day or is after 5:00 p.m. EPT on a Business Day, then it shall be deemed to have been received on the next following Business Day.

26. Miscellaneous.

- 26.1. Costs. Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs and fees associated with negotiating or disputing or taking any other action with respect to this Agreement, including, without limitation, attorney cost, except that the cost of the arbitrator(s) will be allocated equally between the Parties as provided in Section 23.
- 26.2. Access. Upon reasonable prior notice, Seller shall provide to Buyer and its authorized agents (including contractors and sub-contractors), employees, auditors, and inspectors reasonable access to the Facility to: (i) tour or otherwise view the Facility; (ii) ascertain the status of the Facility with respect to construction, start-up and testing, or any other obligation of Seller under this Agreement; and, (iii) read meters and perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this Agreement or to otherwise audit and/or verify Seller's performance under this Agreement. Upon reasonable prior notice, Seller shall provide to Buyer and its guests or customers reasonable access to the Facility to only tour or otherwise view the Facility. While at the Facility, the foregoing agents, employees, auditors, inspectors, guests, and customer shall observe such reasonable safety precautions as may be required by Seller, conduct themselves in a manner that will not interfere with the operation of the Facility, and adhere to Seller's reasonable rules and procedures applicable to Facility visitors. Seller shall have the right to have a representative of Seller present during such access.
- 26.3. Safe Harbor and Waiver of Section 366. Each Party agrees that it will not assert, and waives any right to assert, that the other Party is performing hereunder as a "utility," as such term is used in 11 U.S.C. Section 366. Further, each Party hereby waives any right to assert and agrees that it will not assert that 11 U.S.C. Section 366 applies to this Agreement or any transaction hereunder in any bankruptcy proceeding. In any such proceeding each Party further waives the right to assert and agrees that it will not assert that the other Party is a provider of last resort with respect to this Agreement or any transaction hereunder or to otherwise limit contractual rights to accelerate amounts owed, net, recoup, set-off, liquidate, and/or early terminate. Without limiting the generality of the foregoing or the binding nature of any other provision of this Agreement on permitted successors and assigns, this provision is intended to be binding upon all successors and assigns of the Parties, including, without limitation, judgment lien creditors, receivers, estates in possession, and trustees thereof.
- 26.4. Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW, AND, IF APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA.

- 26.5. Venue/Consent to Jurisdiction. Except for Disputes that are subject to Arbitration as provided herein, any judicial action, suit, or proceedings arising out of, resulting from, or in any way relating to, this Agreement, or any alleged breach or default under the same or the warranties and representations contained in the same, shall be brought only in a state or federal court of competent jurisdiction located in Mecklenburg County, North Carolina. The Parties hereto irrevocably consent to the jurisdiction of any federal or state court within in Mecklenburg County, North Carolina and hereby submit to venue in such courts. Without limiting the generality of the foregoing, the Parties waive and agree not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) such Party is not subject to the jurisdiction of the state or federal Courts within North Carolina; or (ii) such suit, action, or proceeding is brought in an inconvenient forum; or (iii) the venue of such suit, action, or proceeding is improper. The exclusive forum for any litigation between them under this Agreement that is not subject to Arbitration shall occur in federal or state court within in Mecklenburg County, North Carolina.
- 26.6. Limitation of Duty to Buy. If this Agreement is terminated due to a default by Seller, neither Seller, nor any affiliate and/or successor of Seller, nor any affiliate and/or successor to the Facility, including without limitation owner and/or operator of the Facility will require or seek to require Buyer to purchase any output (Energy or otherwise) from the Facility under any Requirements of Law (including without limitation PURPA) or otherwise for any period that would have been covered by the Term of this Agreement had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, and on behalf of any successor to the Seller or successor to the Facility, hereby agrees to the terms and conditions in the above sentence, and hereby waives its right to dispute the above sentence. Seller authorizes the Buyer to record notice of the foregoing in the real estate records.
- 26.7. Entire Agreement and Amendments. This Agreement represents the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, binding documents, representations and agreements, whether written or oral. No amendment, modification, or change to this Agreement shall be enforceable unless agreed upon in a writing that is executed by the Parties.
- 26.8. Drafting. Each Party agrees that it (and/or its counsel) has completely read, fully understands, and voluntarily accepts every provision, term, and condition of this Agreement. Each Party agrees that this Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties, and no Party shall have any provision hereof construed against such Party by reason of such Party drafting, negotiating, or proposing any provision hereof, or execution of this Agreement. Each Party irrevocably waives the benefit of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific language in a contract.
- 26.9. Headings. All section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- 26.10. Publicity.
- 26.10.1. Limitation on Seller. Seller shall not make any announcement or release any information concerning or otherwise relating to this Agreement to any member of the public, press, Person, official body, or otherwise without Buyer's prior written consent, which shall not be unreasonably withheld; provided, however, any content approved by Buyer shall be limited to the non-confidential facts of the Agreement and will not imply, directly or indirectly, any endorsement, partnership, support, or testimonial of Seller by Buyer.

- 26.10.2. Limitation on the Parties. Neither Party shall make any use of the other Party's name, logo, likeness in any publication, promotional material, news release, or similar issuance or material without the other Party's prior review, approval, and written consent. Seller agrees and acknowledges that any reference or likeness to "Duke" shall be a prohibited use of Buyer's name, logo, likeness. Seller agrees and acknowledges that any direct or indirect implication of any endorsement, partnership, support, or testimonial of Seller by Buyer is prohibited, and any such use, endorsement, partnership, support, and/or testimonial will be an Event of Default under this Agreement. Subject to the foregoing, either Party may disclose to the public general information in connection with the Party's respective business activities; *provided, however*, no such disclosure or publicity by Seller will directly or indirectly imply any endorsement, partnership, support, or testimonial of Seller by Buyer.
- 26.11. Waiver. No waiver by any Party of any of its rights with respect to the other Party or with respect to any matter or default arising in connection with this Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver under this Agreement will be effective only if it is in writing that has been duly executed by an authorized representative of the waiving Party.
- 26.12. Partnership and Beneficiaries. Nothing contained in this Agreement shall be construed or constitute any Party as the employee, agent, partner, joint venture, or contractor of any other Party. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns. No other person or entity, including, without limitation, a financing or collateral support provider, will be a direct or indirect beneficiary of or under this Agreement, and will not have any direct or indirect cause of action or claim under or in connection with this Agreement.
- 26.13. Severability. Any provision or section hereof that is declared or rendered unlawful by any applicable court of law, or deemed unlawful because of a statutory change, shall not, to the extent practicable, affect other lawful obligations under this Agreement.
- 26.14. Counterparts. This Agreement may be executed in counterparts, including facsimiles hereof, and each such executed document will be deemed to be an original document and together will complete execution and effectiveness of this Agreement.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

DUKE ENERGY CAROLINAS, LLC

BY: _____
NAME: _____
TITLE: _____
DATE: _____

BY: _____
NAME: _____
TITLE: _____
DATE: _____

Exhibit 1

Estimated Monthly Energy Production of the Facility

| <u>Month</u> | <u>Estimated Facility Energy Production (MWh)</u> |
|--------------|---|
| January | 448 |
| February | 450 |
| March | 524 |
| April | 586 |
| May | 584 |
| June | 566 |
| July | 498 |
| August | 415 |
| September | 267 |
| October | 147 |
| November | 158 |
| December | 357 |
| Total | 5,000 |

Exhibit 2
Contract Price

| | <u>Contract Price</u> |
|-----------------|-----------------------|
| On-Peak Energy | \$39.99/MWh |
| Off-Peak Energy | \$32.42/MWh |
| REC Price | \$4/MWh |

On-Peak Energy shall be Energy which is delivered to Buyer at the Delivery Point during On-Peak Hours. Off-Peak Energy shall be Energy delivered to Buyer at the Delivery Point during Off-Peak Hours.

ON-PEAK HOURS

Monday through Friday, beginning at 1 PM and ending at 9 PM during Summer Months and beginning at 6 AM and ending at 1 PM during Non-Summer Months.

OFF-PEAK HOURS

All other weekday hours, all Saturday and Sunday hours, and all hours of the following holidays: New Year's Day, Memorial Day, Good Friday, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.

SUMMER MONTHS

June 1 through September 30

NON-SUMMER MONTHS

October 1 through May 31

7. Delivery Point Diagram (include Delivery Point, metering, Facility substation): TBD

EXHIBIT F-2
FORM OF FRANKLIN POWER PURCHASE AGREEMENT

[See Attached]



RENEWABLE POWER PURCHASE AGREEMENT

Buyer: Duke Energy Carolinas, LLC

Overnight Mail: 400 South Tryon Street
Mail Code: ST 13A
Charlotte, North Carolina 28202
Regular Mail: PO Box 1010
Mail Code: ST 13A
Charlotte, NC 28201-1010
Attn.: Wholesale Renewable Manager
DERContracts@duke-energy.com

*With Additional Notices of Events of Default
Or Potential Event of Default to:*
Overnight Mail: 550 S. Tryon St.
Charlotte, North Carolina 28202
Regular Mail: P.O. Box 1321, DEC45
Charlotte, North Carolina 28201-1321
Attn.: VP Commercial Legal Support

Seller: _____

This Renewable Power Purchase Agreement, including Exhibits 1-3 hereto, which are incorporated into and made part hereof (collectively, the "Agreement"), is made and entered into by and between Franklin (the "Seller") and Duke Energy Carolinas, LLC (the "Buyer") under the terms specified herein. Buyer and Seller may be referred to individually as a "Party" and collectively as the "Parties." Notwithstanding anything set forth herein, neither this Agreement nor any transaction contemplated hereunder will be effective **unless and until both Parties have executed** and delivered this Agreement, and the later of such date shall be the "Effective Date" of this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES AND MUTUAL COVENANTS SET FORTH HEREIN, FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY OF WHICH IS ACKNOWLEDGED, AND INTENDING TO BE BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:

1. **Definitions**

Unless defined in the body of the Agreement, any capitalized term herein shall have the meaning set forth below:

- 1.1. "AAA" is defined in Section 23.2.1.
- 1.2. "Abandon(s)" means the relinquishment of control or possession of the Facility and/or cessation of operations of or at the Facility by Seller. "Abandon" excludes cessation of generation to comply with Prudent Utility Practices or due to maintenance or repair of the Facility (including Maintenance Outages and Planned Outage), provided that such maintenance or repair activities are being performed in a Commercially Reasonable Manner and with Prudent Utility Practice.
- 1.3. "Account" means a Party's electronic account with the Tracking System.
- 1.4. "Act" means the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard, N.C. Gen. Stat. 62-133.8, including all rules promulgated by the Commission associated therewith, as each may be amended or modified from time-to-time, and any successor renewable energy standards, statutes, regulations, or rules.
- 1.5. "Affiliate" means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and policies, or otherwise have control of an entity, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer the term Affiliate does not include any subsidiaries or affiliates whose activities are subject to the oversight or regulation of any state commission(s) and/or federal energy regulatory commission.
- 1.6. "Agreement" is defined in the introductory paragraph hereof.
- 1.7. "Assignment" is defined in Section 24.1.
- 1.8. "Back-Up Tapes" is defined in Section 16.3.
- 1.9. "Bankrupt" means, with respect to a Party or its credit support provider, that such Party or its credit support provider: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors; (c) has such a petition filed against it as debtor and such petition is not stayed, withdrawn, or dismissed within thirty (30) Business Days of such filing; (d) seeks or has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; (e) has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (f) is unable to pay its debts as they fall due or admits in writing of its inability to pay its debts generally as they become due; and/or (g) otherwise becomes bankrupt or insolvent (however evidenced).
- 1.10. "Billing Meter" is defined in Section 10.
- 1.11. "Billing Period" is defined in Section 11.
- 1.12. "Business Day" means any day on which the Federal Reserve member banks in New York City are open for business. A Business Day shall run from 8:00 a.m. to 5:00 p.m. Eastern Prevailing Time.
- 1.13. "Buyer" shall have the meaning specified in the first paragraph of this Agreement

- 1.14. "Capacity" means and includes the electric generation capability and ability of the Facility and all associated characteristics and attributes, inclusive of the ability to contribute to peak system demands, as well as reserve requirements.
- 1.15. "Certificate" means the electronic instrument created and issued by the Tracking System.
- 1.16. "Change of Control" means a transaction or series of related transactions (by way of merger, consolidation, sale of stock or assets, or otherwise) with any person, entity or "group" (within the meaning of Section 13(d)(3) of the U.S. Securities Exchange Act of 1934) of persons pursuant to which such person, entity, or group would acquire (i) 50% or more of the voting interests in Seller or (ii) substantially all of the assets of Seller.
- 1.17. "Commencement Date" is defined in Section 3.1.
- 1.18. "Commercially Reasonable Manner" or "Commercially Reasonable" means, with respect to a given goal or requirement, the manner, efforts and resources a reasonable person in the position of the promisor would use, in the exercise of its reasonable business discretion and industry practice, so as to achieve that goal or requirement, which in no event shall be less than the level of efforts and resources standard in the industry for comparable companies with respect to comparable products. Factors used to determine whether a goal or requirement has been performed in a "Commercially Reasonable Manner" may include, but shall not be limited to, any specific factors or considerations identified in the Agreement as relevant to such goal or requirement.
- 1.19. "Commission" means the North Carolina Utilities Commission or any successor thereto.
- 1.20. "Contract Price" is defined in Section 4.4.
- 1.21. "Contract Quantity" is defined in Section 4.3.
- 1.22. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, and other similar third party transaction costs and expenses, and other costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated transaction(s), and all reasonable attorneys' fees and other legal expenses incurred by the Non-Defaulting Party in connection with the termination.
- 1.23. "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating.
- 1.24. "Defaulting Party" is defined in Section 19.
- 1.25. "Delivery Period" is defined in Section 4.1.
- 1.26. "Delivery Point" means the point of interconnection between the Facility and the System on the high side (Buyer or Transmission Provider side) of the System.
- 1.27. "Dispatch Down" means any reduction or cessation of Energy generation by the Facility in response to an order or instruction by or direct action taken by the System Operator.
- 1.28. "Disputes" is defined in Section 23.1.
- 1.29. "Early Termination Date" is defined in Section 20.1.
- 1.30. "Effective Date" is defined in the introductory paragraph hereto.
- 1.31. "Emergency Condition" means, no matter the cause: (a) any urgent, abnormal, operationally unstable, dangerous, or public safety condition that is existing on the System or any portion

thereof; (b) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is likely to result in any of the following: (i) loss or damage to the Facility or the System, (ii) disruption of generation by the Facility, (iii) disruption of service or stability on, to or of the System, or (iv) condition that may result in endangerment of human life or public safety; or (c) any circumstance that requires action by the System Operator to comply with standing NERC regulations or standards, including without limitation actions to respond to, prevent, limit, or manage loss or damage to the Facility, loss or damage to the System, disruption of generation by the Facility, disruption of service on the System, an abnormal condition on the System, and/or endangerment to human life or safety. An Emergency Condition will be an excuse to Seller's performance only if such condition is not due to Seller's negligence, willful misconduct, and/or Seller's failure to perform as required under this Agreement.

- 1.32. "Energy" means three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh, as the case may be.
- 1.33. "EPT" or "Eastern Prevailing Time" means the time in effect in the Eastern Time Zone of the United States of America, whether it be Eastern Standard Time or Eastern Daylight Savings Time.
- 1.34. "Event of Default" is defined in Section 19.
- 1.35. "Expected Annual Output" means the quantity of Energy identified in Exhibit 1.
- 1.36. "Facility" means Seller's hydro-electric generating facility located on the Little Tennessee River in Macon County, NC, near Franklin, NC, as further identified in Exhibit 3.
- 1.37. "FERC" means the Federal Energy Regulatory Commission or any successor thereto.
- 1.38. "Force Majeure" is defined in Section 14.1.
- 1.39. "GAAP" is defined in Section 9.1.
- 1.40. "Gains" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.41. "Governmental Authority" means any federal, state or local government, legislative body, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory authority or instrumentality or authorized arbitral body, including, without limitation, the Commission.
- 1.42. "Interconnection Agreement" means the separate interconnection and transmission service agreement (or agreements) to be negotiated and executed between Seller and the Transmission Provider concerning the interconnection of the Facility with the System, upgrade to the System to accommodate the Facility's interconnection with and operation in parallel with the System, and the requirements for transmission service.
- 1.43. "Interconnection Instruction" means any order, action, signal, requirement, demand, and/or direction, howsoever provided or implemented by the System Operator due to, in response

to, or to address any condition relating to any service and/or obligation occurring under the Interconnection Agreement.

- 1.44. "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%); and, (b) the maximum rate permitted by applicable law.
- 1.45. "kW" means kilowatt.
- 1.46. "kWh" means kilowatt-hour.
- 1.47. "Letter(s) of Credit" means one or more irrevocable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank, which is not an Affiliate of Seller, which has and maintains a Credit Rating of at least A- from S&P and A3 from Moody's, for the Security Period, permitting Buyer to draw the entire amount if either such amount is owed or such Letter of Credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date, and is otherwise acceptable in all respects to Buyer in its sole discretion.
- 1.48. "Lien" means any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right of way, restriction, equity, or encumbrance of any nature whatsoever.
- 1.49. "Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic loss or loss of economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.50. "Maintenance Outage" means the temporary operational removal of the Facility from service to perform work on specific components of the Facility, at a time when the Facility must be removed from service before the next Planned Outage in the interest of safety or the prevention of injury or damage to or undue wear and tear on the Facility or any component thereof.
- 1.51. "Moody's" means Moody's Investors Service, Inc. or any successor-rating agency thereto.
- 1.52. "MW" means megawatt.
- 1.53. "MWh" means megawatt-hour.
- 1.54. "Nameplate Capacity Rating" means the installed nameplate capacity rating of the Facility set forth in Exhibit 3.
- 1.55. "NERC" means the North American Electric Reliability Corporation. For purposes of this Agreement, NERC includes any applicable regional entity with delegated authority from NERC, such as the SERC Reliability Corporation (SERC).
- 1.56. "Net Settlement Amount" is defined in Section 20.3.

- 1.57. "New Renewable Energy Facility" is defined in the Act.
- 1.58. "Non-Defaulting Party" is defined in Section 20.1.
- 1.59. "Party" or "Parties" is defined in the introductory paragraph hereto.
- 1.60. "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security that is acceptable to Buyer in its sole discretion, in each case that meets the requirements set forth in this Agreement (including, without limitation, Section 5) provided by Seller to Buyer for the benefit of Buyer pursuant to this Agreement, as credit support, adequate assurances, and security to secure Seller's performance under this Agreement.
- 1.61. "Permit" means any permit, license, registration, filing, certificate of occupancy, certificate of public convenience and necessity, approval, variance or any authorization from or by any Governmental Authority and pursuant to any Requirements of Law.
- 1.62. "Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.
- 1.63. "Planned Outage" means the temporary operational removal of the Facility from service to perform work on specific components in accordance with a pre-planned operations schedule, such as for a planned annual overhaul, inspections, or testing of specific equipment of the Facility.
- 1.64. "Posting Cap" is defined in Section 5.1.
- 1.65. "Product" means the Capacity of the Facility, Energy generated by the Facility, and subject to the satisfaction of the condition precedent set forth in Section 3.4 the RECs associated with the Energy generated by the Facility.
- 1.66. "Protected Information" is defined in Section 16.1
- 1.67. "Prudent Utility Practice" means those practices, methods, equipment, specifications, standards of safety, and performance, as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgment and in light of the facts known at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices; (ii) are in accordance with generally accepted standards of safety, performance, dependability, efficiency, and economy in the United States; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the United States; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy generation and utility industry.
- 1.68. "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended, and as such may be amended from time to time.
- 1.69. "PURPA Fuel Requirements" means the requirements set forth in 18 C.F.R. § 292.204 OR 205, as may be amended and/or restated.
- 1.70. "Qualifying Facility" means an electric generating facility that has been registered and certified by FERC as generator that qualifies for and meets the requirements set forth in PURPA, as it may be amended, and associated rules, regulations, orders.

- 1.71. "REA Reporting Rights" means the right of the reporting person or entity to report that it owns the Renewable Energy Attributes to any Governmental Authority or other party under any compliance, voluntary, trading, or reporting program, public or private and to any person, customers, or potential customers for, including without limitation, purposes of compliance, marketing, publicity, advertising, or otherwise.
- 1.72. "Regulatory Event" is defined in Section 15.1.
- 1.73. "Renewable Energy Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation of Energy by the Facility, the use of such Energy, or such Energy's displacement of conventional Energy generation, including any and all renewable or environmental characteristics and benefits of the Energy generated by the Facility. Renewable Energy Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs), ozone depleting substances, ozone, and non-methane volatile organic compounds that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change (UNIPCC), by law, or otherwise by science or in the voluntary markets to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) any credit, allowance or instrument issued or issuable pursuant to a state implementation plan under regulations promulgated by the Environmental Protection Agency under the Clean Air Act and (4) the reporting rights to any of the foregoing, including, without limitation, REA Reporting Rights and any and all renewable and/or environmental characteristics and benefits of the Energy generated by the Facility. Renewable Energy Attributes do not include: (i) any Energy or Capacity of the Facility; (ii) investment tax credits, production tax credits, or other tax credits, cash grants in lieu of tax credits associated with the construction, ownership or operation of the Facility, or (iii) any adverse wildlife or environmental impacts.
- 1.74. "Renewable Energy Certificate(s)" or "REC(s)" means and, notwithstanding anything to the contrary set forth in the Act includes, all of the Renewable Energy Attributes and REA Reporting Rights associated with one (1) megawatt hour (MWh) of Energy generated by the Facility. The REC represents all title to and claim over all of the Renewable Energy Attributes and REA Reporting Rights associated with in any manner with the Energy generated by the Facility.
- 1.75. "Renewable Energy Resource" is defined in the Act.
- 1.76. "Required Approval" is defined in Section 6.
- 1.77. "Requirements of Law" means any federal, state, and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment, decree or Permit enacted, adopted, issued or promulgated by any Governmental Authority, including, without limitation, (i) the Act, (ii) those pertaining to the creation and delivery of the Product, (iii) those pertaining to electrical, building, zoning, occupational safety, health requirements or to pollution or protection of the environment, and (iv) principles of common law under which a person may be held liable for the release or discharge of any hazardous substance into the environment or any other environmental damage.
- 1.78. "Security Period" is defined in Section 5.5.
- 1.79. "Seller" shall have the meaning specified in the first paragraph of this Agreement.
- 1.80. "S&P" means Standard & Poor's Ratings Services, Inc. or any successor-rating agency

thereto.

- 1.81. "Station Power" means the Energy generated by the Facility and, whether metered or unmetered, used on-site to supply the Facility's auxiliary load and parasitic load and/or for powering the electric generation equipment.
- 1.82. "System" means the transmission, distribution, and generation facilities that are owned, directed, managed, interconnected, controlled, or operated by Buyer and/or the Transmission Provider, including, without limitation, facilities to provide retail or wholesale service, substations, circuits, reinforcements, meters, extensions, or equipment associated with or connected to any interconnected facility or customer.
- 1.83. "System Operator" means the operators of the System that have the responsibilities for ensuring that the System as a whole or any part thereof operates safely, efficiently, and reliably, including without limitation the responsibilities to comply with any applicable operational or reliability requirements, the responsibilities to balance generation supply with customer load, the responsibilities to comply with any other regulatory obligation including least cost dispatch and System optimization, and the responsibilities to provide dispatch and curtailment instructions to generators supplying Energy to the System. The System Operator includes any person or entity delivering any such instructions or signals to Seller or taking any action relating to, due to, in response to, or to address such instructions.
- 1.84. "System Operator Instruction" means any order, action, requirement, demand, or direction delivered to Seller in a non-discriminatory manner by the System Operator (or its designee), in its sole discretion, in response to, anticipation of, or otherwise based in any manner on an Emergency Condition or Force Majeure event that has occurred or would occur if the order, action, requirement, demand, or direction is not ordered or implemented, including any order, action, requirement, demand or direction to operate, manage, and/or otherwise maintain safe and reliable operations of the System and those undertaken and implemented by the System Operator in accordance with Prudent Utility Practice based on relevant System factors and considerations including, without limitation, any and all operating characteristics, maintenance requirements, operational limitations, reliability (including, without limitation, standing NERC regulations or standards), safety, dispatch, constraints, discharge, emissions limitations, compliance requirements, communications, resource ramp-up and ramp-down constraints and implementation, and any other System considerations. A System Operator instruction may include, without limitation, an order or action to: (i) interconnect, disconnect, integrate, operate in parallel, or synchronize with the System, (ii) increase (based on generator characteristics and Prudent Utility Practices), reduce, or cease generation output to comply with standing NERC regulations or standards; (iii) respond to any transmission, distribution, or delivery limitations or interruptions; (iv) perform or cease performing any activity so as to operate in accordance with System limitations, including, without limitation, operational constraints that would require the System Operator to force offline or reduce generation output from reliability generators to accommodate generation by the Facility; and, (v) suspend or interrupt any operational activity. With regard to providing instructions in a non-discriminatory manner, a System Operator instruction in response to an Emergency Condition, Force Majeure event, or operational condition relating specifically to or created by the Facility shall not be deemed or considered discriminatory.
 - 1.84.1. For purposes of this Agreement, a System Operator Instruction shall not include any Interconnection Instruction.
- 1.85. "Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.
- 1.86. "Term" is defined in Section 3.1.

- 1.87. "Tracking System" means the verification system that accounts for the generation, sale, purchase, and/or retirement of renewable energy and credits, which will be the North Carolina Renewable Energy Tracking System, administered by the Commission pursuant to the Act.
- 1.88. "Transmission Provider" means the entity or division within Duke Energy Carolinas, LLC that will provide interconnection and/or electric distribution or transmission service to enable delivery of Energy generated by the Facility to Buyer, and any such entity or division will include any successor or replacement thereto, including without limitation, a consolidated control area or a regional transmission organization.
- 1.89. "Vintage" means the moment when the MWh of Energy is generated by the Facility, and therefore, when the REC associated with that MWh of Energy is generated by the Facility.

2. **Interpretation**

- 2.1. **Intent**. Unless a different intention clearly appears, the following terms and phrases shall be interpreted as follows: (a) the singular includes the plural and vice versa; (b) the reference to any Person includes such Person's legal and/or permitted successors and assignees, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (c) the reference to any gender includes the other gender and the neuter; (d) reference to any document, including this Agreement, refers to such document as it may be amended, amended and restated, modified, replaced or superseded from time to time in accordance with its terms, or any successor document(s) thereto; (e) reference to any section or exhibit means such section or exhibit of this Agreement unless otherwise indicated; (f) "hereunder", "hereof", "hereto", "herein", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular section or other provision; (g) "including" (and with correlative meaning "include"), means "including without limitation" and when following any statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope; (h) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (i) reference to any Requirements of Law refers to such Requirements of Law as it may be amended, modified, replaced or superseded from time to time, or any successor Requirements of Law thereto; and (j) all exhibits and attachments to this Agreement are hereby incorporated into this Agreement. Other terms used, but not defined in Section 1 or in the body of the Agreement, shall have meanings as commonly used in the English language and, where applicable, in the electric utility industry. 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.

3. **Term and Termination**

- 3.1. **Term**. This Agreement shall be effective as of the Effective Date and shall remain in full force and effect until the fifth ("5th") year after the Commencement Date as set forth in Section 3.3 below ("Term"), unless terminated earlier pursuant to the provisions of this Agreement.
- 3.2. **Termination and Survival**. This Agreement may be terminated earlier than the expiration of the Term as provided for herein. If this Agreement is terminated earlier than the expiration

of the Term for any reason, including, without limitation, whether by its terms, mutual agreement, early termination, and/or event of default, such termination shall not relieve any Party of any obligation accrued or accruing prior to the effectiveness of such termination. Furthermore, any obligations, limitations, exclusions and duties which by their nature or the express terms of this Agreement extend beyond the expiration or termination of this Agreement, including, without limitation, provisions relating to compliance requirements, accounting, billing, billing adjustments, limitations or liabilities, dispute resolution, Performance Assurance, and any other provisions necessary to interpret or enforce the respective rights and obligations of the Parties hereunder, shall survive the expiration or early termination of this Agreement.

- 3.3. Conditions Precedent to Commencement of Deliveries. Deliveries under this Agreement will commence the first day of the month following satisfaction of the conditions precedents set forth below in Sections 3.3.1 through 3.3.3 (the "Commencement Date").

3.3.1. Closing conditions are satisfied in the Asset Purchase Agreement.

3.3.2. Interconnection Agreement has been fully executed and accepted by the Transmission Provider for performance under this Agreement.

3.3.3. All approvals and certifications that the Facility is a Qualifying Facility.

- 3.4. Condition Precedent to Parties' Obligations Regarding Sale and Purchase of RECs. It is a condition precedent to: (i) the obligations of Seller to sell and deliver RECs to Buyer under this Agreement; (ii) for Seller to comply with the RECs-related obligations set forth in this Agreement; and, (iii) the obligations of Buyer to receive and purchase RECs from Seller under this Agreement, that: (a) the Commission has approved and certified that the Facility, when owned by the Seller, shall be certified as a New Renewable Energy Facility under the Act and (b) Buyer can use the Product (inclusive of the REC component) generated by the Facility to comply with the Act. If the Commission finds that the Facility, upon ownership by Seller, is eligible for certification as a New Renewable Facility and that Buyer can use the Product (inclusive of RECs) to comply with the Act, then upon satisfaction of Section 3.3.1, the Seller shall register and certify the Facility with the Commission as a New Renewable Energy Facility. Subject to Section 3.3, upon receiving certification from the Commission that the Facility is approved as a New Renewable Energy Facility, the Seller shall sell and deliver RECs to Buyer in accordance with and in compliance with the requirements set forth in this Agreement, and Buyer shall purchase such RECs in accordance with this Agreement; *provided however*, Buyer shall have no obligation to purchase RECs from the Facility or from Seller for any period during which such certification is not granted by the Commission. If the Commission finds that the Facility, upon ownership by Seller, is not eligible for certification as a New Renewable Facility and/or that Buyer cannot use the Product (inclusive of RECs) to comply with the Act, then subject to Section 3.3, Buyer and Seller shall be: (i) relieved of any obligation to purchase and sell RECs under this Agreement and (ii) all term and conditions relating to RECs, certification as a New Renewable Energy Facility, and compliance with the Act shall be null and void and shall have no force or effect on either Party.

4. Purchase and Sale Obligations

- 4.1. Delivery Period. The "Delivery Period" for the Product to be generated by the Facility and sold by Seller to Buyer shall be for all hours starting at 12:00:01 AM EPT as of the Commencement Date through the end of the Term, unless this Agreement is terminated earlier pursuant to its terms and conditions.

- 4.2. Vintage. The RECs shall be of the same Vintage as the Energy generated by the Facility and

the RECs shall arise due to the generation of Energy by the Facility.

- 4.3. Contract Quantity. The "Contract Quantity" will be one hundred percent (100%) of the Capacity and Energy produced by the Facility and, subject to satisfaction of Section 3.4, one hundred percent (100%) of the associated RECs produced by the Facility, in case of each of the foregoing less that associated with Station Power.
 - 4.3.1. Seller shall sell and deliver the Contract Quantity of the Product exclusively and solely to Buyer.
 - 4.3.2. Buyer shall have full and exclusive rights to the Product (inclusive of all components), and will be entitled to full and exclusive use of the Product (inclusive of all components) for its purposes and in its sole and exclusive discretion.
 - 4.3.3. The estimated monthly and annual Energy production of the Facility during the Delivery Period is set forth in Exhibit 1 hereto.
- 4.4. Contract Price. The "Contract Price" for the Product shall be fixed for the Delivery Period as set forth in Exhibit 2.
- 4.5. Energy Delivery. Seller shall deliver the Contract Quantity of the Energy component of the Product at the Delivery Point and Seller shall be fully responsible for all costs, charges, expenses, and requirements associated with delivering the Energy to the Delivery Point. Buyer will have no obligation to pay for any Energy not delivered to the Delivery Point.
- 4.6. REC Delivery. Subject to satisfaction of Section 3.4, Seller shall deliver to Buyer's Account the Contract Quantity of the REC component of the Product in the form of Certificates. Seller agrees that in addition to representing the attributes and characteristics under the Tracking System's operating rules and requirements, the Certificate will also represent the REC, Renewable Energy Attributes, and REA Reporting Rights as defined in this Agreement. No later than fourteen (14) calendar days after the meter data is delivered to Seller's Account, Seller shall review the meter data and complete all acts necessary to create the Certificates in the Tracking System and shall transfer the Certificates into Buyer's Account. Each Party shall establish an Account with the Tracking System for the creation, transfer, and/or receipt of the Certificates. Seller agrees to establish the Account for the Facility prior to the Commencement Date.
- 4.7. Payment for Product. Buyer agrees to pay Seller for the Product generated and delivered in accordance with this Agreement by Seller to Buyer in accordance with the pricing set forth in Exhibit 2. Seller agrees that to the extent Buyer has already paid for the Product prior to Seller transferring the REC component of the Product in the manner noted above, Buyer shall have ownership of the REC component of the Product, and Seller shall hold the same in trust for Buyer until the transfer is completed as provided for herein. Buyer shall not be obligated to pay for, and shall receive a full refund with respect to, any RECs for which the Certificates are not delivered to Buyer's Account.
- 4.8. Transfer. In no event shall Seller procure or have the right to procure the Product or any component of the Product from any source other than the Facility for sale and delivery pursuant to this Agreement. Title to and risk of loss to the Product sold and delivered hereunder shall transfer from Seller to Buyer after completion of delivery at the Delivery Point and after completion of transfer of the REC component of the Product. Seller shall be responsible for any costs and charges imposed on or associated with the Product and the delivery of the Product at the Delivery Point and upon completion of transfer of the REC component. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after the Delivery Point and after completion of transfer of the REC.

5. **Credit and Related Provisions.**

- 5.1. **Adequate Assurances.** Buyer may, from time to time, request in writing that Seller provide Buyer with Performance Assurance in an amount reasonably determined by Buyer relative to Seller's performance obligations under this Agreement, if at any time Buyer has reasonable grounds for insecurity concerning Seller's ability to perform any of its obligations under this Agreement; *provided, however*, such amount shall not exceed \$6,458 (the "Posting Cap"). Expressly without limiting the generality of the foregoing, reasonable grounds for insecurity include, but are not limited to, knowledge that (i) Seller or its guarantor or any direct or indirect parent company is defaulting under other material contracts or transactions (including, without limitation, contracts or transactions with third parties); or, (ii) any imminent or threatened material adverse change in the financial condition of Seller or its guarantor. Upon receipt of such notice, Seller shall have five (5) Business Days to provide such Performance Assurance to Buyer. In the event that Seller fails to provide the required amount of such Performance Assurance to Buyer within five (5) Business Days of receipt of notice, then Buyer may declare such failure an Event of Default and exercise any or all other remedies provided for hereunder or pursuant to law or equity. Seller shall be required to refresh or replenish the required amount of Performance Assurance at Buyer's request up to the Posting Cap, including, without limitation, where Buyer has exercised its right to draw upon any Performance Assurance.
- 5.2. **Financial Disclosures.** If Buyer has reasonable grounds to request Performance Assurance or if Buyer requests Performance Assurance, in each case as set forth in Section 5.1, then Seller shall timely provide to Buyer financial information of Seller, to the extent such information is not publicly available, as follows: (i) within sixty (60) days after the end of each fiscal quarter of each fiscal year that this Agreement is effective, a copy of Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter signed and verified by an authorized officer of Seller attesting to their accuracy; and, (ii) within one hundred and twenty (120) days after the end of each fiscal year that this Agreement is effective a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year. The statements shall be prepared in accordance with generally accepted accounting principles.
- 5.3. **Netting.** If an Event of Default has not occurred and a Party is required to pay an amount to the other Party under this Agreement, then such amounts shall be netted and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. All outstanding obligations to make payment under this Agreement or any other agreement between the Parties may be netted, offset, set off, or recouped therefrom, and payment shall be owed as set forth above. Unless Buyer notifies Seller in writing (except in connection with a liquidation and termination), all amounts netted pursuant to this section shall not take into account or include any Performance Assurance which may be in effect to secure Seller's performance under this Agreement. The netting set forth above shall be without prejudice and in addition to any and all rights, liens, setoffs, recoupments, counterclaims and other remedies and defenses (to the extent not expressly herein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement.
- 5.4. **Set-off.** In addition to any rights of set-off a Party may have as a matter of law or otherwise, and subject to applicable law, upon the occurrence of an Event of Default the Non-Defaulting Party shall have the right (but shall not be obligated to) without prior notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party under this Agreement and any other agreement between

the Parties (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligations of the Non-Defaulting Party owing to the Defaulting Party under this Agreement and any other agreement between the Parties (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation). If any such obligation is unascertained, the Non-Defaulting Party may in a Commercially Reasonable Manner estimate that obligation and set-off in respect of the estimate, subject to the relevant Party providing an accounting and true-up to the other Party after the amount of the obligation is ascertained.

- 5.5. Performance Assurance Requirements. Seller shall ensure that any Performance Assurance required pursuant to Section 5.1 remains in full force, effect, outstanding, in the required amount, and for the duration required by this Agreement. All applicable Performance Assurance, as the amount thereof may be increased, decreased, and/or replenished pursuant to the terms of this Agreement, shall remain in full force, effect, and outstanding for the benefit of Buyer until one-hundred and fifty (150) days following the later of: (a) the end of the Term or (b) the date on which Seller has fully satisfied all obligations to Buyer under this Agreement (the "Security Period"). If at any time any Performance Assurance fails to meet any of the requirements under this Agreement, Seller shall replace such Performance Assurance with alternative Performance Assurance that meets each of the requirements under this Agreement. Seller will be solely responsible for any and all costs incurred with providing and maintaining any Performance Assurance to the full amount required by this Agreement. If Seller fails to replace, renew, or otherwise maintain the required Performance Assurance as and when required by this Agreement, then Buyer: (a) shall be entitled to draw and retain hereunder the full amount of the Performance Assurance; (b) shall not be obligated to make any further payments to Seller until Seller shall have provided Buyer with the replacement Performance Assurance; and, (c) shall be entitled to give Seller notice of an Event of Default and pursue the termination rights and remedies provided for in this Agreement.
- 5.6. Grant of Security Interest. To secure its obligations and liabilities under this Agreement to Buyer, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of netting and set-off against), and assignment of, all present and future Performance Assurance, including, without limitation, cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer; and, furthermore Seller agrees to take such actions as Buyer reasonably requires to perfect Buyer's first-priority security interest in, and lien on (and right of netting, recoupment, and set-off against), such Performance Assurance and any and all products and proceeds resulting therefrom or from the liquidation thereof, including without limitation proceeds of insurance. Upon or any time after the occurrence, or deemed occurrence, of an Event of Default or upon an Early Termination Date, Buyer (if it is the Non-Defaulting Party) may do any one or more of the following with respect to Seller (if it is the Defaulting Party): (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of netting, recoupment, and set-off against any and all property of Seller in the possession of Buyer or its agent; (iii) draw on any outstanding applicable forms of Performance Assurance provided for the benefit of Buyer; and, (iv) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

6. Seller Compliance Requirements.

- 6.1. Required Approvals. Seller shall maintain and comply with all permits, authorizations, certifications, and/or approvals from any Governmental Authority, and under any Requirements of Law, including, without limitation, from the Commission and FERC for Seller to own, operate, and maintain the Facility and sell and deliver the Product to Buyer.
 - 6.2. Seller Covenants. Seller covenants to Buyer that it shall comply with all of the requirements of the Act and other Requirements of Law applicable to Seller, the Facility, and/or Seller's obligations under the Agreement. Without limiting the generality of the foregoing, Seller represents and warrants to Buyer as of the Effective Date of this Agreement and throughout the Term of this Agreement that Seller has obtained all applicable certifications and/or approvals necessary for Seller to perform under this Agreement. Seller agrees and acknowledges that Buyer has entered into this Agreement in reliance upon the representations and warranties set forth in this section. In the event of a breach or failure of or relating to any of the foregoing covenants and warranties, including without limitation for being false or misleading in any respect, then this Agreement will terminate upon Buyer providing Seller with a five (5) Business Days written notice. Seller will indemnify and hold Buyer harmless for any breach or failure relating to any of the foregoing covenants and warranties, notwithstanding anything else to the contrary in this Agreement.
 - 6.3. Seller Requirements. Seller agrees and acknowledges that the Act requires Buyer to make certain filings and/or submissions relating to Buyer's obligations under the Act. Within twenty (20) Business Days of a written request from Buyer, Seller agrees to provide Buyer with all information, documents, and affidavits from a duly authorized representative of Seller certifying that the Facility fully complies with PURPA, including without limitation, the PURPA Fuel Requirements and that the Facility and/or the Product complies with the Act and the requirements of the Tracking System. If Seller fails to promptly provide Buyer with such documentation, and Buyer is unable to use the Product for compliance in the calendar year that Buyer desires to use such Product for compliance purposes, then Seller shall be liable to Buyer for cover cost damages as set forth in Section 21 and Seller will also reimburse Buyer for any payments previously made by Buyer for such Product.
7. Seller's Facility Requirements.
- 7.1. Seller Requirements. Seller covenants (except to the extent expressly set forth in this Agreement) that: the Facility shall be operated, controlled, and maintained at Seller's sole cost and expense; the Facility shall be operated (inclusive, without limitation, of control, metering equipment, and personnel and staffing levels), controlled, and maintained by Seller to perform as required by this Agreement and in compliance with all applicable Requirements of Law and Prudent Utility Practice; the Facility shall be capable of supplying the Product in a safe and reliable manner consistent with the requirements of each applicable Requirements of Law and Prudent Utility Practice; and, that all contracts, agreements, arrangements, and/or Permits (including, without limitation, those necessary or prudent for the ownership and operation of the Facility, such as land use permits, site plan approvals, real property titles and easements, environmental compliance and authorizations, grading and building permits,) shall be timely obtained and maintained by Seller, at Seller's sole cost and expense. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility. Seller shall interconnect, operate, and maintain the Facility in accordance with Prudent Utility Practice. Seller shall be responsible for all costs, charges, and expenses associated with generating, scheduling, and delivering the Energy to Buyer.
 - 7.2. Seller Responsibilities. Notwithstanding any provision of this Agreement to the contrary, the

Seller agrees that: (a) Buyer shall have no responsibility whatsoever for any costs and/or Taxes relating to the maintenance, ownership, or operation of the Facility (including but not limited to any financing costs, and any costs and/or Taxes imposed by any Governmental Authority on or with respect to emissions from or relating to the Facility, and including but not limited to costs and/or Taxes related to any emissions allowances *inter alia* for oxides for sulfur dioxide or nitrogen, carbon dioxide, and mercury), all of which shall be entirely at Seller's sole cost and expense; and, (b) any risk as to the availability of production tax benefits, investment tax credits, grants or any other incentives relating to the design, development, construction, maintenance, ownership, or operation of the Facility shall be borne entirely by Seller.

7.2.1. No Exclusions. If any production or investment tax credit, grants, subsidy, or any other similar incentives or benefit relating, directly or indirectly, to the Facility is unavailable or becomes unavailable at any time during the Term of this Agreement, Seller agrees that such event or circumstance will not: (a) constitute a Force Majeure or Regulatory Event; (b) excuse or otherwise diminish Seller's obligations hereunder in any way; and, (c) give rise to any right by Seller to terminate or avoid performance under this Agreement. Seller agrees that it will solely and fully bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive any such tax treatment or otherwise qualify for any preferential or accelerated depreciation, accounting, reporting, or tax treatment.

7.3. Transmission Provider. Seller agrees and acknowledges that the Interconnection Agreement is (and will be) a separate agreement (or agreements) between Seller and Transmission Provider, and will exclusively govern all requirements and obligations between Seller and Transmission Provider. Only the Interconnection Agreement will govern all obligations and liabilities set forth in the Interconnection Agreement, and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible for under the Interconnection Agreement. Seller shall comply with all Interconnection Instructions.

7.3.1. Nothing in the Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on the other hand, nor any alleged event of default thereunder, shall affect, alter, or modify the Parties' rights, duties, obligation, and liabilities under this Agreement. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider, and the terms of this Agreement are not (and will not) be binding upon the Transmission Provider. Seller agrees and acknowledges that Seller's performance under this Agreement depends on Seller's performance under the Interconnection Agreement, and Seller hereby grants Buyer the right and entitlement to obtain information from the Transmission Provider in regards to Seller's performance under the Interconnection Agreement.

7.4. System Operations. Seller agrees and acknowledges that the System Operator will be solely responsible for its functions, and that nothing in this Agreement will be construed to create any rights between Seller and the System Operator. Seller agrees that it is obligated to engage in interconnected operations with Buyer and the System, and Seller agrees to fully comply with all System Operator Instructions.

8. Facility Performance Requirements

8.1. Planned Outages. No later than fifteen (15) Business Days prior to the end of each year during the Term, Seller shall provide to Buyer a Planned Outage schedule for the upcoming year. Seller shall provide Buyer with reasonable advance notice of any material change in the Planned Outage schedule. Seller shall determine the number and extent of Planned

Outages in a Commercially Reasonable Manner recognizing that it is the intent of the Parties to maximize production of the Facility and to such extent Seller shall be excused from providing the Product during such Planned Outage(s).

- 8.2. Maintenance Outages. If Seller needs or desires to schedule a Maintenance Outage of the Facility, Seller shall notify Buyer, as far in advance as reasonable and practicable under the circumstances, of such proposed Maintenance Outage, and the Parties shall plan such outage to mutually accommodate the reasonable requirements of Seller and delivery expectations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of output of the Facility that will not be available, and the expected completion date of the outage. Buyer may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall comply with such requests to reschedule a Maintenance Outage. If rescheduled, Seller shall notify Buyer of any subsequent changes in the output that will not be available to Buyer and any changes in the Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.
- 8.3. Notice. Seller shall promptly provide to Buyer an oral report of all outages, Emergency Conditions, de-ratings, major limitations, or restrictions affecting the Facility, which report shall include the cause of such restriction, amount of generation from the Facility that will not be available because of such restriction, and the expected date that the Facility will return to normal operations. Seller shall update such report as necessary to advise Buyer of any material changed circumstances relating to the aforementioned restrictions. As soon as practicable, all oral reports shall be confirmed in writing. Seller shall promptly dispatch personnel to perform the necessary repairs or corrective action in an expeditious and safe manner in accordance with Prudent Utility Practice.
- 8.4. Performance. Seller shall act in a Commercially Reasonable Manner to generate the Product and to minimize the occurrence, extent, and duration of any event adversely affecting the generation of the Product, in each case consistent with Prudent Utility Practice.
- 8.5. System Operator Instructions. Seller shall take all steps needed to implement and comply with all System Operator Instructions and shall cooperate with Buyer in the implementation of all aspects of all System Operator Instructions. Seller hereby agrees to indemnify and hold Buyer harmless from any impact to the Facility as a result of taking any action to implement or effectuate any System Operator Instruction. All Seller losses for a Dispatch Down due to any System Operator Instruction shall be borne solely and entirely by Seller, including, without limitation, for any losses arising due to the lost or reduced generation by the Facility, lost tax benefits, lost investment tax credits, grants or any other incentives or monetary opportunity relating to the design, development, generation, construction, maintenance, ownership, or operation of the Facility. Seller shall also immediately and fully comply with all Interconnection Instructions provided pursuant to the independent and separate Interconnection Agreement with the Transmission Operator.

9. Information Requirements

- 9.1. Accounting Information. Generally Accepted Accounting Principles ("GAAP") and SEC rules can require Buyer to evaluate various aspects of its economic relationship with Seller, e.g., whether or not Buyer must consolidate Seller's financial information. To evaluate if certain GAAP requirements are applicable, Buyer may need access to Seller's financial records and personnel in a timely manner. In the event that Buyer determines that consolidation or other incorporation of Seller's financial information is necessary under GAAP, Buyer shall require the following for each calendar quarter during the term of this Agreement, within ninety (90) days after quarter end: (a) complete financial statements, including notes, for

such quarter on a GAAP basis; and, (b) financial schedules underlying the financial statements. Seller shall grant Buyer access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with GAAP standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002). Any information provided to Buyer pursuant to this section shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed, as required by GAAP, on an aggregate basis with other similar entities for which Buyer has power purchase agreements.

- 9.2. Other Information. Seller shall provide to Buyer all information, instruments, documents, statements, certificates, and records relating to this Agreement and/or the Facility as requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements determined by Buyer to fulfill any Requirements of Law, regulatory reporting requirements or otherwise relating to any request by any Governmental Authority. Seller will, at its own expense, provide Buyer with all information requested by Buyer to register, verify, or otherwise obtain Commission or any other third party recognition of the Product for use by Buyer, and at Buyer's request Seller shall register, verify, or otherwise validate or obtain Commission and/or any other third party recognition of the Product for use by Buyer.

9.2.1. Information Under the Act. Seller agrees and acknowledges that the Act requires Seller to make certain filings and/or submissions, including, without limitation, to maintain registration and certification of the Facility under the Act and to use the Product for compliance under the Act. Seller shall provide Buyer, for informational purposes only, a copy of any report, certification or filing that Seller submits to the Commission within a reasonable time after making such submission, but in any event no later than five (5) Business Days after such submission. Notwithstanding anything to the contrary, Seller agrees and acknowledges that it shall be solely responsible for timely complying with all requirements under the Act.

10. Metering

- 10.1. Billing Meter. In the Interconnection Agreement between Seller and Transmission Provider, Seller shall arrange with the Transmission Provider to construct and install such meters and metering equipment as are necessary to measure the Energy delivered and received in accordance with the terms and conditions of this Agreement (the "Billing Meter"). Buyer shall provide to Seller the reasonable allowable accuracy limits relating to the performance of the Billing Meter, and Seller shall arrange with Transmission Provider to install and operate a Billing Meter that meets the allowable accuracy limits. Seller shall be responsible for paying the Transmission Provider for all costs relating to the Billing Meter, including, without limitation, its procurement, installation, operation, calibration, and maintenance. Seller shall ensure in its arrangement with the Transmission Provider for the Billing Meter to include communication equipment that enables Buyer to access and read the meter from a remote location. Seller hereby grants Buyer rights to physically access the Billing Meter. Seller shall provide Buyer (at Seller's cost) with appropriate telephonic/electronic communication to allow Buyer to remotely read the meter. Seller may, at its own expense, install and maintain additional metering equipment for purposes of monitoring, recording or transmitting data relating to its sale of Energy from the Facility, so long as such equipment does not interfere with the Billing Meter. Seller shall arrange with the Transmission Provider to test the Billing Meter at regular intervals. Seller shall also arrange for either Party to have the right to request and obtain, at reasonable intervals and under reasonable circumstances, additional/special tests of the Billing Meter. The Party making such request for the test shall incur the costs associated with such test.

11. **Billing Period and Payment**

- 11.1. **Billing Period.** Subject to Seller authorizing Transmission Provider to provide Buyer with electronic access to the Billing Meter, Buyer shall read/obtain data from the Billing Meter at regular intervals, which shall be not less than twenty-seven (27) consecutive days and not more than thirty-three (33) consecutive days (each, a "Billing Period"). Within twenty-five (25) days after reading/obtaining data from the Billing Meter, Buyer shall provide Seller with an invoice detailing the amount of Product (Energy and an equal amount of RECs subject to satisfaction of Section 3.4 delivered during the relevant Billing Period and the associated amount owed by Buyer to Seller for the Product, subject to Seller cooperating with Buyer and providing Buyer with such information and/or data that Buyer may request to accurately prepare the invoice. Buyer shall pay Seller the invoiced amounts for each Billing Period, subject to Seller having transferred (or caused to be transferred) the REC Certificates from Seller's Account to Buyer's Account in the Tracking System. Payment by Buyer shall be due by the later of thirty (30) days after the invoice date or fifteen (15) days after Buyer receives notification that the Seller has transferred the REC Certificates into Buyer's Account. If such amounts are not paid by the deadline, they shall accrue interest at the Interest Rate from the applicable due date until the date paid. Amounts not paid by such deadline shall accrue interest at the Interest Rate from the original due date until the date paid in accordance with this Agreement.
- 11.2. **Meter Malfunction.** In the event the Billing Meter fails to register accurately within the allowable accuracy limits as set forth above, then for purposes of preparing (or adjusting) any affected invoice Buyer shall adjust the amount of measured Energy for the period of time the Billing Meter was shown to be in error. If the time the Billing Meter became inaccurate can be determined, then the adjustment to the amount of measured Energy shall be made for the entire time from the time that the Billing Meter became inaccurate until the recalibration of the Billing Meter. If the time the Billing Meter became inaccurate cannot be determined, then the Billing Meter shall be deemed to have failed to register accurately for fifty percent (50%) of the time since the date of the last calibration of the Billing Meter.
- 11.3. **Out-of-Service.** If the Billing Meter is out of service, then for purposes of preparing any affected invoice, the Parties shall negotiate in good faith to determine an estimate of the amount of Energy delivered during the relevant Billing Period. Seller's meter, if any, may be used to establish such estimate if both Parties agree. If within twenty (20) days after the date that the Billing Meter is read as set forth above the Parties have not reached agreement regarding an estimate of the amount of Energy delivered during the relevant Billing Period, then the amount of Energy delivered during the relevant Billing Period shall be determined in a Commercially Reasonable Manner.
- 11.4. **Errors.** If any overcharge or undercharge in any form whatsoever shall at any time be found for an invoice, and such invoice has been paid, the Party that has been paid the overcharge shall refund the amount of the overcharge to the other Party, and the Party that has been undercharged shall pay the amount of the undercharge to the other Party, within forty-five (45) days after final determination thereof; provided, however, that no retroactive adjustment shall be made for any overcharge or undercharge unless written notice of the same is provided to the other Party within a period of twenty-four (24) months from the date of the invoice in which such overcharge or undercharge was first included. Any such adjustments shall be made with interest calculated at the Interest Rate from the date that the undercharge or overcharge actually occurred.

- 11.5. Invoice/Payment Dispute. If a Party in good faith reasonably disputes the amount set forth in an invoice, charge, statement, or computation, or any adjustment thereto, such Party shall provide to the other Party a written explanation specifying in detail the basis for such dispute. The Party disputing the invoice, if it has not already done so, shall pay the undisputed portion of such amount no later than the applicable due date. If the Parties are thereafter unable to resolve the dispute through the exchange of additional documentation, then the Parties shall pursue resolution of such dispute according to the dispute resolution and remedy provisions set forth in this Agreement. Notwithstanding any other provision of this Agreement to the contrary, if any invoice, statement charge, or computation is found to be inaccurate, then a correction shall be made and payment (with applicable interest) shall be made in accordance with such correction; provided, however, no adjustment shall be made with respect to any invoice, statement, charge, computation or payment hereunder unless a Party provides written notice to the other Party questioning the accuracy thereof within twenty-four (24) months after the date of such invoice, statement, charge, computation, or payment.

12. Audit Rights

- 12.1. Process. Buyer shall have the right, at its sole expense and during normal business hours, without Seller requiring any compensation from Buyer, to examine and copy the records of Seller to verify the accuracy of any invoice, statement, charge or computation made hereunder or to otherwise verify Seller's performance under this Agreement, including, without limitation, verifying that the delivered Product complies with the Agreement.
- 12.2. Survival. All audit rights shall survive the expiration or termination of this Agreement for a period of twenty-four (24) months after the expiration or termination. Seller shall retain any and all documents (including, without limitation, paper, written, and electronic) and/or any other records relating to this Agreement and the Facility for a period of twenty-four (24) months after the termination or expiration of this Agreement.

13. Taxes

- 13.1. Seller. Seller shall be liable for and shall pay Buyer, or Seller shall reimburse Buyer if Buyer has paid or cause to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising prior its delivery to and at the Delivery Point (including ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Seller shall indemnify, defend, and hold harmless Buyer from any liability for such Taxes, including related audit and litigation expenses.
- 13.2. Buyer. Buyer shall be liable for and shall pay Seller, or Buyer shall reimburse Seller if Seller has paid or caused to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising after the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Buyer shall indemnify, defend, and hold harmless Seller from any liability for such Taxes, including related audit and litigation expenses.
- 13.3. Remittances. In the event Seller is required by any Requirements of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may request reimbursement of such payment from Buyer by sending Buyer an invoice and Buyer shall include such reimbursement in the next monthly invoice and Buyer shall remit payment thereof.

Conversely, if Buyer is required by any Requirements of Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums otherwise due to Seller under this Agreement. Any refunds or remittances associated with such Taxes shall be administered in accordance with Section 11.1.

- 13.4. Documentation. A Party, upon written request of the other Party, shall promptly provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from any Tax. Nothing herein shall obligate a Party to pay or be liable to pay any Taxes from which it is exempt pursuant to applicable law.

14. Force Majeure

- 14.1. Definition. "Force Majeure" means: (A) war, riots, floods, hurricanes, tornadoes, earthquakes, lightning, ice-storms, excessive winds, and other such extreme weather events and natural calamities; (B) explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of the Party; (C) insurrection, rebellion, nationwide strikes; (D) an act of god or other such significant and material event or circumstance which prevents one Party from performing a material and significant obligation hereunder, which such event or circumstance was not anticipated as of the Effective Date, is not within the Commercially Reasonable control of, or the result of the negligence of such claiming Party, and which, by the exercise of Commercially Reasonable Efforts, the claiming Party is unable to overcome or avoid or cause to be avoided and, (E) delays in obtaining goods or services from any subcontractor or supplier caused solely by the occurrence of any of the events described in the immediately preceding subparts (A) through (D). The acts, events or conditions listed in subparts (A) through (E) above shall only be deemed a Force Majeure if and to the extent they actually and materially delay or prevent the performance of a Party's obligations under this Agreement and: (i) are beyond the reasonable control of the Party, (ii) are not the result of the willful misconduct or negligent act or omission of such Party (or any person over whom that Party has control), (iii) are not an act, event or condition that reasonably could have been anticipated, or the risk or consequence of which such Party has assumed under the Agreement; and, (iv) cannot be prevented, avoided, or otherwise overcome by the prompt exercise of Commercially Reasonable diligence by the Party (or any Person over whom that Party has control).

- 14.1.1. Notwithstanding anything to the contrary herein, Force Majeure will not include the following: (a) any strike or labor dispute of the employees of either Party or any subcontractor that is not part of a nationwide strike or labor dispute; (b) any difficulty in obtaining or maintaining sufficient or appropriately skilled personnel to perform the work in accordance with the requirements of this Agreement; (c) normal wear and tear or obsolescence of any equipment; (d) Buyer's inability to economically use or resell the Product delivered and purchased hereunder; (e) Seller's ability to sell the Product (or any component of the Product) at a more advantageous price; (f) loss by Seller of any contractual arrangement; (g) any Regulatory Event; (h) loss or failure of Seller's supply of the Product or inability to generate the Product that is not caused by an independent Force Majeure event; (i) the cost or availability or unavailability of fuel, water, wind, or motive force, as applicable, to operate the Facility; (j) economic hardship, including, without limitation, lack of money or financing or Seller's inability to economically generate the Product or operate the Facility; (k) any breakdown or malfunction of Facility equipment (including any serial equipment defect) that is not directly caused by an independent event of Force

Majeure; (l) the imposition upon Seller of costs or taxes allocated to Seller hereunder or Seller's failure to obtain or qualify for any tax incentive, preference, or credit; (m) delay or failure of Seller to obtain or perform any Permit; (n) any delay, alleged breach of contract, or failure under any other agreement or arrangement between Seller and another entity, including without limitation, an agent or sub-contractor of Seller (except as a direct result of an event of Force Majeure defined in 14.1(E)); (o) Seller's failure to obtain, or perform under, the Interconnection Agreement or its other contracts and obligations to Transmission Provider; or (p) increased cost of electricity, steel, materials, equipment, labor, or transportation.

- 14.2. Event. If either Party is rendered unable by Force Majeure to carry out, in whole or in part, any material obligation hereunder, such Party shall provide notice and reasonably full details of the event to the other Party as soon as reasonably practicable after becoming aware of the occurrence of the event (but in no event later than three (3) Business Days of the initial occurrence of the event of Force Majeure). Such notice may be given orally but shall be confirmed in writing as soon as practicable thereafter (and in any event within ten (10) days of the initial occurrence of the event of Force Majeure); provided however, a reasonable delay in providing such notice shall not preclude a Party from claiming Force Majeure but only so long as such delay does not prejudice or adversely affect the other Party.
- 14.3. Effect. Subject to the terms and conditions of this Section 14, for as long as the event of Force Majeure is continuing, the specific obligations of the Party that are demonstrably and specifically adversely affected by the Force Majeure event shall be suspended to the extent and for the duration made necessary by the Force Majeure will not be deemed to be an Event of Default, and performance and termination of this Agreement will be governed exclusively by this Section 14. Notwithstanding anything to the contrary in this Agreement, Force Majeure will *not* be applicable to and will *not* be available as an excuse to Seller's performance of the obligations set forth in Sections 19.3 through and including 19.18.
- 14.4. Remedy. The Party claiming Force Majeure shall act in a Commercially Reasonable Manner to remedy the Force Majeure as soon as practicable and shall keep the other Party advised as to the continuance of the Force Majeure event. If a bona fide Force Majeure event persists for a continuous period of ninety (90) days, then the Party not claiming Force Majeure shall have the right, in its sole and unfettered discretion, to terminate this Agreement upon giving the other Party ten (10) Business Days advance written notice.
- 14.5. Termination. Unless otherwise agreed upon by the Parties in writing and in each Party's sole discretion, upon the expiration of the periods set forth above in Sections 14.4, this Agreement may be terminated without any further notice and further opportunity to cure any non-performance. Upon termination becoming effective pursuant to a Force Majeure under this Section 14, neither Party will have any liability to the other Party or recourse against the other Party, other than for amounts arising prior to termination. Notwithstanding the claimed existence of a Force Majeure event or any other provisions of this Agreement, nothing herein shall relieve any Party from exercising any right or remedy provided under this Agreement with respect to any liability or obligation of the other Party that is not excused or suspended by the Force Majeure event, including, without limitation, the right to liquidate and early terminate the Agreement for any Event of Default not excused by the Force Majeure event. Nothing herein shall be construed so as to obligate any Party to settle any strike, work stoppage or other labor dispute or disturbance or to make significant capital expenditures, except in the sole discretion of the Party experiencing such difficulty.

15. Change in Law

15.1. Regulatory Event. A "Regulatory Event" means one or more of the following events:

15.1.1. Illegality. After the Effective Date, due to the adoption of, or change in, any applicable Requirements of Law or in the interpretation thereof by any Governmental Authority with competent jurisdiction, it becomes unlawful for a Party to perform any material obligation under this Agreement.

15.1.2. Adverse Government Action. After the Effective Date, there occurs any adverse material change in any applicable Requirements of Law (including material change regarding a Party's obligation to sell, deliver, purchase, or receive the Product) and any such occurrence renders illegal or unenforceable any material performance or requirement under this Agreement.

15.2. Process. Upon the occurrence of a Regulatory Event the Party affected by the Regulatory Event may notify the other Party in writing of the occurrence of a Regulatory Event, together with details and explanation supporting the occurrence of a Regulatory Event. Upon receipt of such notice, the Parties agree to undertake, during the thirty (30) days immediately following receipt of the notice, to negotiate such modifications to reform this Agreement to remedy the Regulatory Event and attempt to give effect to the original intention of the Parties. Upon the expiration of the 30-day period, if the Parties are unable to agree upon modifications to the Agreement that are acceptable to each Party, in each Party's sole discretion, then either Party shall have the right, in such Party's sole discretion, to terminate this Agreement with a 30-day advance written notice.

16. Confidentiality

16.1. Protected Information. Except as otherwise set forth in this Agreement, neither Party shall, without the other Party's prior written consent, disclose any term of this Agreement or any information relating to this Agreement, or any discussion or documents exchanged between the Parties in connection with this Agreement (such information, the "Protected Information") to any third person (other than the Party's employees, affiliates, counsel, and accountants, and current and prospective lenders and investors in the Facility if Buyer is given at least ten (10) Business Days advance written notice of such disclosure and to whom such disclosure is being made, who have a need to know such information, have agreed to keep such terms confidential for the Term, and for whom the Party shall be liable in the event of a breach of such confidentiality obligation), at any time during the Term or for five (5) years after the expiration or early termination of this Agreement. Each Party shall be entitled to all remedies available at law or in equity (including but not limited to specific performance and/or injunctive relief,) to enforce, or seek relief in connection with, this confidentiality obligation. Notwithstanding any other provision of this Agreement, a violation of any confidentiality obligations shall be an Event of Default hereunder, and any claim related to or arising out of any confidentiality obligations herein may be brought directly in any state or federal court of competent jurisdiction in Mecklenburg County, North Carolina, in accordance with Section 26.5 of this Agreement, and shall not be subject to dispute resolution or arbitration pursuant to Section 23 of this Agreement.

16.2. Non-Confidential Information. Protected Information does not include information: (i) that is or becomes available to the public other than by disclosure of receiving Party in breach of this Agreement; (ii) known to receiving Party prior to its disclosure; (iii) available to receiving Party from a third party who is not bound to keep such information confidential; or, (iv) independently developed by the receiving Party without reliance upon the Protected

Information. Notwithstanding anything to the contrary herein, in no event will Protected Information include the concept of constructing or providing energy from a power plant, using any specific fuel source, in any specific location.

- 16.3. Return of Confidential Information. After expiration or early termination of this Agreement, and upon request of disclosing Party, receiving Party shall either (i) return the Protected Information, including all copies, or (ii) destroy the Protected Information, including all copies, and present written assurances of the destruction to disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Protected Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by Receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, "Back-Up Tapes"). Notwithstanding the terms of this Agreement, in no event shall Receiving Party be required to destroy Protected Information stored on Back-Up Tapes; provided, however, any Protected Information not returned or destroyed pursuant to this Section shall be kept confidential for the duration of its existence. Furthermore, the receiving party may retain one (1) copy of such Protected Information in receiving Party's files solely for audit and compliance purposes for the duration of its existence; provided, however, such Protected Information shall be kept confidential for the duration of its existence in accordance with the terms of this Agreement.
- 16.4. Required Disclosures. Notwithstanding the confidentiality requirements set forth herein, a Party may, subject to the limitations set forth herein, disclose Protected Information to comply with the Act, request of any Governmental Authority, applicable Requirements of Law, or any exchange, control area or System operator rule, in response to a court order, or in connection with any court or regulatory proceeding. Such disclosure shall not terminate the obligations of confidentiality unless the Protected Information falls within one of the exclusions of this Agreement. To the extent the disclosure of Protected Information is requested or compelled as set forth above, the receiving Party agrees to give disclosing Party reasonable notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any Confidential Information. Such notice by the receiving Party shall give disclosing Party an opportunity, at disclosing Party's discretion and sole cost, to seek a protective order or similar relief, and the receiving Party shall not oppose such request or relief. If such protective order or other appropriate remedy is not sought and obtained within at least thirty (30) days of receiving Party's notice, receiving Party shall disclose only that portion of the Protected Information that is required or necessary in the opinion of receiving Party's legal counsel; provided, however, receiving Party shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to any Confidential Information so disclosed.
- 16.5. Regulatory Disclosures by Buyer. This Section 16.5 will apply notwithstanding anything to the contrary in this Agreement. Seller acknowledges that Buyer is regulated by various regulatory and market monitoring entities. Buyer is permitted, in its sole discretion, to disclose or to retain and not destroy (in case of a future disclosure need as determined by Buyer in its sole discretion) any information (including Protected Information) to any regulatory commission (inclusive of the NCUC, SCPSC, FERC), NERC, market monitor, office of regulatory staff, and/or public staff, or any other regulator or legislative body without providing prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for any such disclosures or retentions in its sole discretion. In the event of the establishment of any docket or proceeding before any regulatory commission, public service commission, public utility commission, or other agency, tribunal, or court having jurisdiction over Buyer, the Protected Information shall automatically be governed solely by the rules and procedures governing

such docket or proceeding to the extent such rules or procedures are additional to, different from, or inconsistent with this Agreement. In regulatory proceedings in all state and federal jurisdictions in which Buyer does business, Buyer will from time-to-time be required to produce Protected Information, and Buyer may do so without prior notice to Seller or consent from Seller, using Buyer's business judgment, and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion. When a request for disclosure of information, including Protected Information, is made to Buyer, Buyer may disclose the information, including Protected Information, without prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Duke seeks for such disclosures in its sole discretion. Seller further acknowledges that Buyer is required by law or regulation to report certain information that could embody Protected Information from time-to-time, and Buyer may from time-to-time make such reports, without providing prior notice to Seller or consent from Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion.

17. Mutual Representations and Warranties

17.1. As of the Effective Date and throughout the Term, each Party represents and warrants to the other Party that:

17.1.1. It is duly organized, validly existing and in good standing under the Requirements of Law of the jurisdiction of its organization or formation and has all requisite power and authority to execute and enter into this Agreement;

17.1.2. It has all authorizations under the Requirements of Law (including but not limited to the Required Approvals), necessary for it to legally perform its obligations and consummate the transactions contemplated hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party becomes due;

17.1.3. The execution, delivery, and performance of this Agreement will not conflict with or violate any Requirements of Law or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;

17.1.4. This Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and such Party has all rights necessary to perform its obligations to the other Party in accordance with the terms and conditions of this Agreement;

17.1.5. It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether or not this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the representations, advice or recommendations of the other Party in so doing, is capable of assessing the merits of this Agreement, and understands and accepts the terms, conditions, and risks of this Agreement for fair consideration on an arm's length basis;

17.1.6. No Event of Default or event which with notice or lapse of time, or both, would become an Event of Default, has occurred with respect to such Party, and that such Party is not Bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

17.1.7. There is no pending, or to its knowledge, threatened legal proceeding at law or

equity against it or any Affiliate, that materially adversely affects its ability to perform its obligations under this Agreement;

- 17.1.8. It is a "forward contract merchant" and this Agreement constitutes a "forward contract" as such terms are defined in the United States Bankruptcy Code;
- 17.1.9. It is an "eligible commercial entity" within the Commodity Exchange Act;
- 17.1.10. It is an "eligible contract participant" within the Commodity Exchange Act; and;
- 17.1.11. Each person who executes this Agreement on behalf of such Party has full and complete authority to do so, and that such Party will be bound by such execution.

18. Seller Representations and Warranties to Buyer

- 18.1. For all Product and every aspect thereof, Seller represents, warrants, and reaffirms to Buyer as a continuing warranty and representation that:
 - 18.1.1. No Product (including any REC component of the Product subject to satisfaction of Section 3.4) has been, or will be, sold, retired, claimed, represented as part of any electricity output, use, or sale, or otherwise used to satisfy any renewable energy, efficiency, emissions, and/or offset obligation under the Act, or under any voluntary or mandatory standard, marketplace, or jurisdiction, or otherwise;
 - 18.1.2. All Product will meet the specifications and requirements in this Agreement, including subject to satisfaction of Section 3.4 compliance with the Act;
 - 18.1.3. Each unit of the Product will be and was generated during the applicable Vintage;
 - 18.1.4. Seller has provided and conveyed and will provide and convey to Buyer all Capacity rights associated with the Facility and all Energy produced by the Facility;
 - 18.1.5. Subject to satisfaction of Section 3.4, Seller has provided and conveyed and will provide and convey to Buyer all Renewable Energy Attributes and REA Reporting Rights associated with all Energy generated by the Facility as part of the Product being delivered to Buyer;
 - 18.1.6. Subject to satisfaction of Section 3.4, Seller holds all the rights to all the Product from the Facility, Seller has the right to sell the Product to Buyer, and Seller agrees to convey and does convey to Buyer all rights and good title to the Product free and clear of any Liens, encumbrances, or title defects;
 - 18.1.7. Subject to satisfaction of Section 3.4, Seller has not and will not double sell, double claim or any manner otherwise double count the Product (including, without limitation, any Capacity of the Facility or any REC, Renewable Energy Attributes, or REA Reporting Rights) in any manner (including, for example, by issuing a press release or otherwise claiming that Seller is creating any environmental benefit, using a renewable energy source, or selling renewable energy to any person other than exclusively to and for the benefit of Buyer); Seller will not claim for itself any of the Renewable Energy Attributes, "green energy", "clean energy", "carbon-free energy" or other rights sold to Buyer, in any public communication concerning the output of the Facility, the Facility or the RECs;
 - 18.1.8. Subject to satisfaction of Section 3.4, Seller shall at all times be fully compliant with the requirements of the Federal Trade Commission's "Green Guides," 77 F.R. 62122, 16 C.F.R. Part 260, as amended or restated, and;
 - 18.1.9. Seller has not and will not in any manner interfere with, encumber or otherwise

impede Buyer's use, transfer, and sale of any Product.

19. **Events of Default**

An "Event of Default" means with respect to the non-performing Party (such Party, the "Defaulting Party"), the occurrence of any one or more of the following, each of which, individually, shall constitute a separate Event of Default:

- 19.1. The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after the Defaulting Party's receipt of written notice; *provided, however*, a Party will have two (2) Business Days to remedy any failure to make payment required under Section 21;
- 19.2. Any covenant or warranty made by Seller under Section 6.2 (Seller Covenant) is false or misleading in any respect when made or when deemed made or repeated;
- 19.3. Any representation or warranty made by a Party under Section 17 and elsewhere in this Agreement (except Section 18 which is a separate Event of Default) is false or misleading in any material respect when made or when deemed made or repeated;
- 19.4. Any representation or warranty made by Seller under Section 18 (Seller Representations and Warranties to Buyer) is false or misleading in any respect when made or when deemed made or repeated;
- 19.5. Seller Abandons the Facility;
- 19.6. Seller fails to obtain or maintain the Facility's registration or certification as a Qualifying Facility under PURPA;
- 19.7. Subject to satisfaction of Section 3.4, Seller fails to maintain the Facility's registration as a New Renewable Energy Facility, and such failure is not cured within five (5) Business Days of Seller's failure to have maintained such registration;
- 19.8. Seller fails to fully comply with the PURPA Fuel Requirements;
- 19.9. delivers or attempts to deliver to Buyer any Product (or any component thereof) that was not generated by the Facility;
- 19.10. Seller delivers or attempts to deliver any Product (or component thereof) to any entity or person other than to the Buyer;
- 19.11. Seller fails to promptly and fully comply with a System Operator Instruction;
- 19.12. Seller fails to provide, replenish, renew, or replace the Performance Assurance and/or otherwise fails to fully comply with the requirements of this Agreement, including without limitation, Section 5, and any such failure is not cured within two (2) Business Days;
- 19.13. A Party fails to fully comply with the confidentiality obligations set forth in Section 16;
- 19.14. Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and: (i) at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or (ii) the creditworthiness of the party or the resulting, surviving, transferee or successor entity is weaker than that of Seller prior to such action; or (iii) the benefits of any guaranty fail to extend to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement;
- 19.15. An assignment by or Change of Control with respect to Seller, other than in compliance

with Section 24;

- 19.16. A Party becomes Bankrupt;
- 19.17. Seller transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another Person in violation of the terms and conditions of this Agreement;
- 19.18. Seller violates the publicity obligates set forth in Section 26.10; and
- 19.19. Except to the extent constituting a separate Event of Default (in which case the provisions applicable to that separate Event of Default shall apply), the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within twenty (20) days after the Defaulting Party's receipt of written notice.

20. **Early Termination.**

- 20.1. **Early Termination Date.** If an Event of Default with respect to a Defaulting Party has occurred and is continuing, then the other Party (such Party, the "Non-Defaulting Party") shall have the right, in its sole discretion and upon written notice to the Defaulting Party, to pursue any or all of the following remedies: (a) withhold payments due to the Defaulting Party under this Agreement; (b) suspend performance under this Agreement; and/or (c) designate a day (which day shall be no earlier than the day such notice is effective and shall be no later than twenty (20) days after the delivery of such notice is effective) as an early termination date to accelerate all amounts owing between the Parties, liquidate, net, recoup, set-off, and early terminate this Agreement and any other agreement between the Parties (such day, the "Early Termination Date").
- 20.2. **Effectiveness of Default and Remedies.** Where an Event of Default is specified herein and is governed by a system of law which does not permit termination to take place upon or after the occurrence of the relevant Event of Default in accordance with the terms of this Agreement, an Event of Default and Early Termination Date shall be deemed to have occurred immediately upon any such event and no prior written notice shall be required. All of the remedies and provisions set forth in this section shall be without prejudice to any other right of the Non-Defaulting Party to accelerate amounts owed, net, recoup, setoff, liquidate, and early terminate this Agreement.
- 20.3. **Net Settlement Amount.** If the Non-Defaulting Party establishes an Early Termination Date, then the Non-Defaulting Party shall calculate its Gains or Losses and Costs resulting from the termination as of the Early Termination Date in a Commercially Reasonable Manner. The Non-Defaulting Party shall aggregate such Gains or Losses and Costs with respect to the liquidation of the termination and any other amounts due under this Agreement and any other agreement between the Parties into a single net amount expressed in U.S. dollars (the "Net Settlement Amount"). The Non-Defaulting Party shall then notify the Defaulting Party of the Net Settlement Amount. The Defaulting Party shall pay the Non-Defaulting Party the full amount of the Net Settlement Amount within two (2) Business Days of delivery to the Defaulting Party of the notice of the Net Settlement Amount that the Defaulting Party is liable for.
- 20.4. **Payment.** Any Net Settlement Amount will be due and payable only to the Non-Defaulting Party from and by the Defaulting Party. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Net Settlement Amount will be deemed to be zero and no payment will be due or payable. The Non-Defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the Defaulting Party for economic benefits accruing to

the Non-Defaulting Party as a result of the Defaulting Party's default. The Non-Defaulting Party shall be entitled to recover any Net Settlement Amount by netting or set-off or to otherwise pursue recovery of damages. Additionally, Buyer will be entitled to recover any Net Settlement Amount by drawing upon any Performance Assurance or by netting or set-off, or to otherwise pursue recovery of damages.

20.5. Survival. This Section 20 will survive any expiration or termination of this Agreement.

21. Cover Costs.

21.1. Exclusive Remedies. Except as otherwise set forth in this Agreement, the remedies set forth in this Section shall be a Party's exclusive remedies prior to termination for the other Party's failure to deliver the Product or to receive the Product pursuant to and in accordance with this Agreement.

21.2. Seller's Failure to Deliver. If Seller fails to deliver Product that complies with the requirements set forth in this Agreement or fails to deliver all or part of the Contract Quantity (each will be deemed as a failure to deliver for purposes of calculating damages), and such failure is not excused by Buyer's failure to perform, then Buyer shall elect in its sole discretion: (i) to terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Buyer shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) to require Seller to pay Buyer within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Seller failed to deliver to Buyer multiplied by two (2) times the per unit Contract Price.

21.3. Buyer's Failure to Accept Delivery. If Buyer fails to receive all or part of the Contract Quantity that Seller attempted to deliver to Buyer in accordance with this Agreement, and such failure by Buyer is not excused by Seller's failure to perform, then Seller shall elect in its sole discretion either to: (i) terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Seller shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) require Buyer to pay Seller within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Buyer failed to receive multiplied by two (2) times the per unit Contract Price.

21.4. Event of Default. Any failure by Seller to pay amounts due under this Section 21 will be an Event of Default under Section 19.1.

21.5. Survival. This Section 21 will survive any expiration or termination of this Agreement.

22. Limitation of Liabilities & Liquidated Damages.

22.1. Reasonableness. THE EXPRESS REMEDIES AND MEASURES OF DAMAGES, INCLUDING WITHOUT LIMITATION DETERMINATION OF LIQUIDATED DAMAGES, COVER COSTS, AND NET SETTLEMENT AMOUNT DAMAGES PROVIDED FOR IN THIS AGREEMENT (i) ARE REASONABLE AND SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH THE EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, AND (ii) UNLESS OTHERWISE STATED IN SUCH PROVISIONS, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS, AND ALL OTHER

REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY PROVISION OF THIS AGREEMENT PROVIDES FOR, OR IS DEEMED TO CONSTITUTE OR INCLUDE, LIQUIDATED DAMAGES, THE PARTIES STIPULATE AND AGREE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO ESTIMATE OR DETERMINE, THE LIQUIDATED AMOUNTS ARE A REASONABLE APPROXIMATION OF AND METHODOLOGY TO DETERMINE THE ANTICIPATED HARM OR LOSS TO THE PARTY, AND OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT. THE PARTIES FURTHER STIPULATE AND AGREE THAT ANY PROVISIONS FOR LIQUIDATED DAMAGES ARE NOT INTENDED AS, AND SHALL NOT BE DEEMED TO CONSTITUTE, A PENALTY, AND EACH PARTY HEREBY WAIVES THE RIGHT TO CONTEST SUCH PROVISIONS AS AN UNREASONABLE PENALTY OR AS UNENFORCEABLE FOR ANY REASON.

- 22.2. Limitation. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, (i) THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED; AND (ii) NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, STRICT LIABILITY, ANY TORT, CONTRACT, OR OTHERWISE.
- 22.3. Damages Stipulation. Each Party expressly agrees and stipulates that the terms, conditions, and payment obligations set forth in Sections 20 and 21 are a reasonable methodology to approximate or determine harm or loss, each Party acknowledges the difficulty of determining actual damages or loss, and each Party hereby waives the right to contest such damages and payments as unenforceable, as an unreasonable penalty, or otherwise for any reason. The Parties further acknowledge and agree that damages and payments determined under Sections 20 and 21 are direct damages, will be deemed to be a direct loss, and will not be excluded from liability or recovery under the Limitations of Liabilities provisions of this Section 22.
- 22.4. Survival. This Section 22 will survive any expiration or termination of this Agreement.

23. Disputes and Arbitration

- 23.1. Resolution by the Parties. The Parties shall attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, "Dispute(s)") promptly by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. A Party may give the other Party written notice of a Dispute that has not been resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within ten (10) Business Days after delivery of the notice, the receiving Party shall respond with (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within twenty (20) Business Days after delivery of the initial notice, the executives of both Parties shall meet at Buyer's offices, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. At the request of either Party, the Parties shall enter into a confidentiality agreement to cover any Dispute and discussions related thereto.

23.2. Demand for Arbitration.

23.2.1. If a Dispute has not been resolved by negotiation within thirty (30) Business Days of the disputing Party's initial notice, the Parties shall fully and finally settle the Dispute by binding arbitration administered by the American Arbitration Association ("AAA"), or such other nationally recognized arbitration association or organization as the Parties may mutually agree. The Arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules then in effect, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. To the extent the AAA Rules conflict with any provision of Section 23 of this Agreement, the terms of this Agreement shall govern and control.

23.2.2. Either Party may serve the demand for arbitration on the other Party; provided, however, no demand for arbitration shall be made or permitted after the date when the institution of a civil action based on the Dispute would be barred by the applicable statute of limitations or repose.

23.2.3. All arbitration proceedings shall take place in Charlotte, North Carolina.

23.2.4. A single arbitrator will arbitrate all Disputes where the amount in controversy is less than five-hundred thousand U.S. dollars (\$500,000), and will be selected by the Parties or by the AAA if the Parties cannot agree to the arbitrator. Such arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry. The cost of the arbitrator(s) shall be borne equally by the Parties.

23.2.5. A panel of three (3) arbitrators will conduct the proceeding when the amount in controversy is equal to or more than five hundred thousand U.S. dollars (\$500,000). If the Parties have not so agreed on such three (3) arbitrator(s) on or before thirty (30) days following the delivery of a demand for Arbitration to the other Party, then each Party, by notice to the other Party, may designate one arbitrator (who shall not be a current or former officer, director, employee or agent of such Party or any of its Affiliates). The two (2) arbitrators designated as provided in the immediately preceding sentence shall endeavor to designate promptly a third (3rd) arbitrator.

23.2.6. If either Party fails to designate an initial arbitrator on or before forty five (45) days following the delivery of an arbitration notice to the other Party, or if the two (2) initially designated arbitrators have not designated a third (3rd) arbitrator within thirty (30) days of the date for designation of the two (2) arbitrators initially designated, any Party may request the AAA to designate the remaining arbitrator(s) pursuant to its Commercial Arbitration Rules. Such third (3rd) arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry.

23.2.7. If any arbitrator resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, the Party entitled to designate that arbitrator shall designate a successor.

23.3. Discovery. Either Party may apply to the arbitrators for the privilege of conducting discovery. The right to conduct discovery shall be granted by the arbitrators in their sole discretion with a view to avoiding surprise and providing reasonable access to necessary information or to information likely to be presented during the course of the arbitration, provided that such discovery period shall not exceed sixty (60) Business Days.

23.4. Binding Nature. The arbitrator(s)' decision shall be by majority vote (or by the single

- arbitrator if a single arbitrator is used) and shall be issued in a writing that sets forth in separately numbered paragraphs all of the findings of fact and conclusions of law necessary for the decision. Findings of fact and conclusions of law shall be separately designated as such. The arbitrator(s) shall not be entitled to deviate from the construct, procedures or requirements of this Agreement. The award rendered by the arbitrator(s) in any arbitration shall be final and binding upon the Parties, and judgment may be entered on the award in accordance with applicable law in any court of competent jurisdiction.
- 23.5. Consolidation. No arbitration arising under the Agreement shall include, by consolidation, joinder, or any other manner, any Person not a party to the Agreement unless (a) such Person is substantially involved in a common question of fact directly relating to the Dispute; provided however, such Person will not include any Governmental Authority, (b) the presence of the Person is required if complete relief is to be accorded in the arbitration, and (c) the Person has consented to be included.
- 23.6. Mediation. At any time prior or subsequent to a Party initiating arbitration, the Parties may mutually agree to (but are not obligated to) attempt to resolve their Dispute by non-binding mediation, using a mediator selected by mutual agreement. The mediation shall be completed within thirty (30) Business Days from the date on which the Parties agree to mediate. Unless mutually agreed by the parties, any mediation agreed to by the Parties shall not delay arbitration. The Parties shall pay their own costs associated with mediation and shall share any mediator's fee equally. The mediation shall be held in Charlotte, North Carolina, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court of competent jurisdiction.
- 23.7. Remedies. Except for Disputes regarding confidentiality arising under Section 16 of this Agreement, the procedures specified in this Section 23 shall be the sole and exclusive procedures for the resolution of Disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party may file a judicial claim or action on issues of statute of limitations or repose or to seek injunctive relief, sequestration, garnishment, attachment, or an appointment of a receiver, subject to and in accordance with the provisions of Section 26.5 (Venue/Consent to Jurisdiction). Preservation of these remedies does not limit the power of the arbitrator(s) to grant similar remedies, and despite such actions, the Parties shall continue to participate in and be bound by the dispute resolution procedures specified in this Section 23.
- 23.8. Settlement Discussions. All negotiations and discussion concerning Disputes between the Parties pursuant to this Section 23 are to be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and settlement privilege. No statement of position or offers of settlement made in the course of the dispute resolution process can be or will be offered into evidence for any purpose, nor will any such statements or offers of settlement be used in any manner against any Party. Further, no statement of position or offers of settlement will constitute an admission or waiver of rights by either Party. At the request of either Party, any such statements or offers, and all copies thereof, shall be promptly returned to the Party providing the same.
- 23.9. Survival. This Section 23 will survive any expiration or termination of this Agreement.

24. Assignment

- 24.1. Limitation. Except as set forth below in Section 24.2 with respect to pledging as collateral security, Seller shall not assign, pledge, and/or encumber (collectively, "Assignment") this Agreement, any rights or obligations under the Agreement, or any portion hereunder, without Buyer's prior written consent. Seller shall give Buyer at least thirty (30) days prior written notice of any requested Assignment. Subject to Seller providing Buyer with information demonstrating to Buyer, in Buyer's sole Commercially Reasonable discretion, that Seller's proposed assignee has the technical, engineering, financial, and operational capabilities to perform under this Agreement, Buyer may not unreasonably withhold its consent; *provided, however*, that any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall deliver to Buyer such tax, credit, Performance Assurance in the required amount, and enforceability assurance as the Buyer may request in its sole Commercially Reasonable discretion. Notwithstanding anything to the contrary herein, Buyer may pledge, encumber, or assign this Agreement to any person, including any affiliate or subsidiary of Buyer, whether or not an Affiliate, without any restriction.
- 24.2. Pledge. Seller may, without prior consent of Buyer but with no less than ten (10) Business Days prior written notice to Buyer, pledge as collateral security this Agreement to a financing party in connection with any loan, lease, or other debt or equity financing arrangement for the Facility. Any pledge of this Agreement as collateral security will not relieve Seller of any obligation or liability under this Agreement, and it will not create any rights, including any third party beneficiary rights, for any person under this Agreement.
- 24.3. Change of Control. Any Change of Control of Seller (however this Change of Control occurs) shall require the prior written consent of Buyer, which shall not be unreasonably withheld or delayed. Seller shall give Buyer at least thirty (30) days prior written notice of any such requested consent to a Change of Control.
- 24.4. Delivery of Assurances & Voidable. Any Assignment or Change of Control will not relieve Seller of its obligations hereunder, unless Buyer agrees in writing in advance to waive the Seller's continuing obligations under this Agreement. In case of a permitted Assignment and/or Change of Control, such requesting party or parties shall agree in writing to assume all obligations of Seller and to be bound by the terms and conditions of this Agreement and shall deliver to Buyer such tax, credit, performance, and enforceability assurances as Buyer may request, in its sole Commercially Reasonable discretion. Further, Buyer's consent to any Assignment may be conditioned on and subject to Seller's proposed assignee having first obtained all approvals that may be required by any Requirements of Law and from all applicable Governmental Authorities. Any sale, transfer, Change of Control, and/or Assignment of any interest in the Facility or in the Agreement made without fully satisfying the requirements of this Agreement shall be null and void and will be an Event of Default hereunder with Seller as the Defaulting Party.
- 24.5. Cost Recovery. Without limiting Buyer's rights under this Section 24, to the extent Buyer agrees to a request from Seller for an Assignment, Change of Control, or other changes in administering this Agreement, Seller shall pay Buyer ten thousand dollars (\$10,000) prior to Buyer processing Seller's request.
25. Notices.
- 25.1. Process. All notices, requests, or invoices shall be in writing and shall be sent to the address of the applicable Party as specified on the first page of this Agreement. A Party may change its information for receiving notices by sending written notice to the other Party. Notices shall be delivered by hand, certified mail (postage prepaid and return receipt requested), or sent by overnight mail or courier. This section shall be applicable whenever words such as "notify," "submit," "give," or similar language are used in the

context of giving notice to a Party.

- 25.2. Receipt of Notices. Hand delivered notices shall be deemed delivered by the close of the Business Day on which it was hand delivered. Notices provided by certified mail (postage prepaid and return receipt requested), mail delivery or courier service, or by overnight mail or courier service will be deemed received on the date of delivery recorded by the delivery service or on the tracking receipt, as applicable. Notwithstanding anything to the contrary, if the day on which any notice is delivered or received is not a Business Day or is after 5:00 p.m. EPT on a Business Day, then it shall be deemed to have been received on the next following Business Day.

26. Miscellaneous.

- 26.1. Costs. Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs and fees associated with negotiating or disputing or taking any other action with respect to this Agreement, including, without limitation, attorney cost, except that the cost of the arbitrator(s) will be allocated equally between the Parties as provided in Section 23.
- 26.2. Access. Upon reasonable prior notice, Seller shall provide to Buyer and its authorized agents (including contractors and sub-contractors), employees, auditors, and inspectors reasonable access to the Facility to: (i) tour or otherwise view the Facility; (ii) ascertain the status of the Facility with respect to construction, start-up and testing, or any other obligation of Seller under this Agreement; and, (iii) read meters and perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this Agreement or to otherwise audit and/or verify Seller's performance under this Agreement. Upon reasonable prior notice, Seller shall provide to Buyer and its guests or customers reasonable access to the Facility to only tour or otherwise view the Facility. While at the Facility, the foregoing agents, employees, auditors, inspectors, guests, and customer shall observe such reasonable safety precautions as may be required by Seller, conduct themselves in a manner that will not interfere with the operation of the Facility, and adhere to Seller's reasonable rules and procedures applicable to Facility visitors. Seller shall have the right to have a representative of Seller present during such access.
- 26.3. Safe Harbor and Waiver of Section 366. Each Party agrees that it will not assert, and waives any right to assert, that the other Party is performing hereunder as a "utility," as such term is used in 11 U.S.C. Section 366. Further, each Party hereby waives any right to assert and agrees that it will not assert that 11 U.S.C. Section 366 applies to this Agreement or any transaction hereunder in any bankruptcy proceeding. In any such proceeding each Party further waives the right to assert and agrees that it will not assert that the other Party is a provider of last resort with respect to this Agreement or any transaction hereunder or to otherwise limit contractual rights to accelerate amounts owed, net, recoup, set-off, liquidate, and/or early terminate. Without limiting the generality of the foregoing or the binding nature of any other provision of this Agreement on permitted successors and assigns, this provision is intended to be binding upon all successors and assigns of the Parties, including, without limitation, judgment lien creditors, receivers, estates in possession, and trustees thereof.
- 26.4. Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW, AND, IF APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA.

- 26.5. Venue/Consent to Jurisdiction. Except for Disputes that are subject to Arbitration as provided herein, any judicial action, suit, or proceedings arising out of, resulting from, or in any way relating to, this Agreement, or any alleged breach or default under the same or the warranties and representations contained in the same, shall be brought only in a state or federal court of competent jurisdiction located in Mecklenburg County, North Carolina. The Parties hereto irrevocably consent to the jurisdiction of any federal or state court within in Mecklenburg County, North Carolina and hereby submit to venue in such courts. Without limiting the generality of the foregoing, the Parties waive and agree not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) such Party is not subject to the jurisdiction of the state or federal Courts within North Carolina; or (ii) such suit, action, or proceeding is brought in an inconvenient forum; or (iii) the venue of such suit, action, or proceeding is improper. The exclusive forum for any litigation between them under this Agreement that is not subject to Arbitration shall occur in federal or state court within in Mecklenburg County, North Carolina.
- 26.6. Limitation of Duty to Buy. If this Agreement is terminated due to a default by Seller, neither Seller, nor any affiliate and/or successor of Seller, nor any affiliate and/or successor to the Facility, including without limitation owner and/or operator of the Facility will require or seek to require Buyer to purchase any output (Energy or otherwise) from the Facility under any Requirements of Law (including without limitation PURPA) or otherwise for any period that would have been covered by the Term of this Agreement had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, and on behalf of any successor to the Seller or successor to the Facility, hereby agrees to the terms and conditions in the above sentence, and hereby waives its right to dispute the above sentence. Seller authorizes the Buyer to record notice of the foregoing in the real estate records.
- 26.7. Entire Agreement and Amendments. This Agreement represents the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, binding documents, representations and agreements, whether written or oral. No amendment, modification, or change to this Agreement shall be enforceable unless agreed upon in a writing that is executed by the Parties.
- 26.8. Drafting. Each Party agrees that it (and/or its counsel) has completely read, fully understands, and voluntarily accepts every provision, term, and condition of this Agreement. Each Party agrees that this Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties, and no Party shall have any provision hereof construed against such Party by reason of such Party drafting, negotiating, or proposing any provision hereof, or execution of this Agreement. Each Party irrevocably waives the benefit of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific language in a contract.
- 26.9. Headings. All section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- 26.10. Publicity.
- 26.10.1. Limitation on Seller. Seller shall not make any announcement or release any information concerning or otherwise relating to this Agreement to any member of the public, press, Person, official body, or otherwise without Buyer's prior written consent, which shall not be unreasonably withheld; provided, however, any content approved by Buyer shall be limited to the non-confidential facts of the Agreement and will not imply, directly or indirectly, any endorsement, partnership, support, or testimonial of Seller by Buyer.

- 26.10.2. Limitation on the Parties. Neither Party shall make any use of the other Party's name, logo, likeness in any publication, promotional material, news release, or similar issuance or material without the other Party's prior review, approval, and written consent. Seller agrees and acknowledges that any reference or likeness to "Duke" shall be a prohibited use of Buyer's name, logo, likeness. Seller agrees and acknowledges that any direct or indirect implication of any endorsement, partnership, support, or testimonial of Seller by Buyer is prohibited, and any such use, endorsement, partnership, support, and/or testimonial will be an Event of Default under this Agreement. Subject to the foregoing, either Party may disclose to the public general information in connection with the Party's respective business activities; *provided, however*, no such disclosure or publicity by Seller will directly or indirectly imply any endorsement, partnership, support, or testimonial of Seller by Buyer.
- 26.11. Waiver. No waiver by any Party of any of its rights with respect to the other Party or with respect to any matter or default arising in connection with this Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver under this Agreement will be effective only if it is in writing that has been duly executed by an authorized representative of the waiving Party.
- 26.12. Partnership and Beneficiaries. Nothing contained in this Agreement shall be construed or constitute any Party as the employee, agent, partner, joint venture, or contractor of any other Party. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns. No other person or entity, including, without limitation, a financing or collateral support provider, will be a direct or indirect beneficiary of or under this Agreement, and will not have any direct or indirect cause of action or claim under or in connection with this Agreement.
- 26.13. Severability. Any provision or section hereof that is declared or rendered unlawful by any applicable court of law, or deemed unlawful because of a statutory change, shall not, to the extent practicable, affect other lawful obligations under this Agreement.
- 26.14. Counterparts. This Agreement may be executed in counterparts, including facsimiles hereof, and each such executed document will be deemed to be an original document and together will complete execution and effectiveness of this Agreement.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

DUKE ENERGY CAROLINAS, LLC

BY: _____

NAME: _____

TITLE: _____

DATE: _____

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Exhibit 1

Estimated Monthly Energy Production of the Facility

| <u>Month</u> | <u>Estimated Facility Energy Production (MWh)</u> |
|--------------|---|
| January | 455 |
| February | 704 |
| March | 854 |
| April | 815 |
| May | 679 |
| June | 418 |
| July | 276 |
| August | 242 |
| September | 163 |
| October | 102 |
| November | 121 |
| December | 171 |
| Total | 5,000 |

Exhibit 2
Contract Price

| | <u>Contract Price</u> |
|-----------------|-----------------------|
| On-Peak Energy | \$39.99/MWh |
| Off-Peak Energy | \$32.42/MWh |
| REC Price | \$4/MWh |

On-Peak Energy shall be Energy which is delivered to Buyer at the Delivery Point during On-Peak Hours. Off-Peak Energy shall be Energy delivered to Buyer at the Delivery Point during Off-Peak Hours.

ON-PEAK HOURS

Monday through Friday, beginning at 1 PM and ending at 9 PM during Summer Months and beginning at 6 AM and ending at 1 PM during Non-Summer Months.

OFF-PEAK HOURS

All other weekday hours, all Saturday and Sunday hours, and all hours of the following holidays: New Year's Day, Memorial Day, Good Friday, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.

SUMMER MONTHS

June 1 through September 30

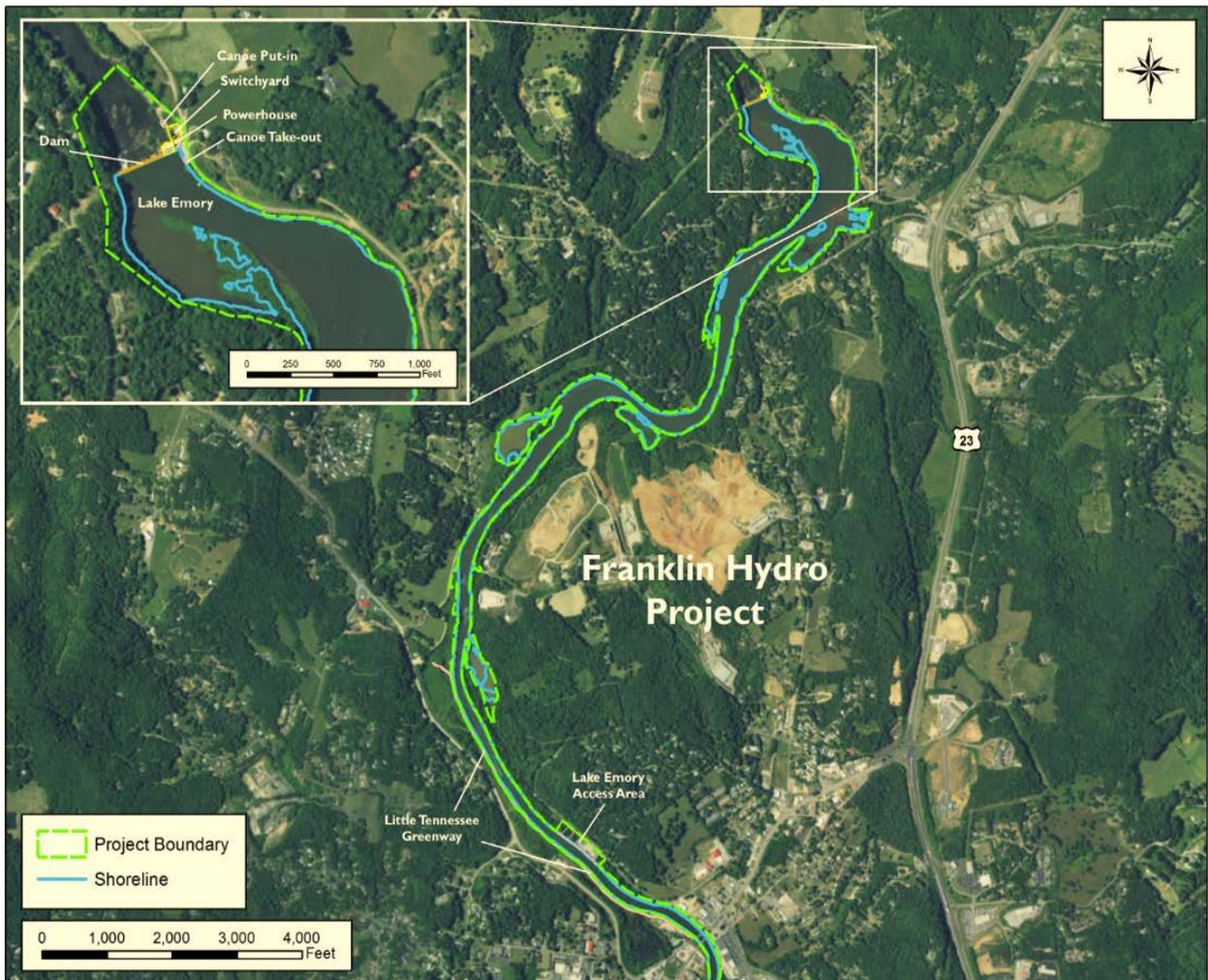
NON-SUMMER MONTHS

October 1 through May 31

Exhibit 3

Facility Information

1. Facility Name: Franklin
2. Facility Address: 564 Clyde Downs Road, Franklin, NC 28734
3. Description of Facility: Facility consists of concrete-gravity structure adjoining a reinforced concrete, water-retaining powerhouse and includes six spillway bays with Tainter gates and three uncontrolled ogee spillway sections. The Dam is 463 feet long and 35.5 feet high. Facility operates in run of river mode.
4. Nameplate Capacity Rating: 1.04 MW
5. Fuel Type/Generation Type: Hydro
6. Site Map:



7. Delivery Point Diagram (include Delivery Point, metering, Facility substation): TBD

EXHIBIT F-3
FORM OF MISSION POWER PURCHASE AGREEMENT

[See Attached]



RENEWABLE POWER PURCHASE AGREEMENT

Buyer: Duke Energy Carolinas, LLC

Overnight Mail: 400 South Tryon Street
Mail Code: ST 13A
Charlotte, North Carolina 28202
Regular Mail: PO Box 1010
Mail Code: ST 13A
Charlotte, NC 28201-1010
Attn.: Wholesale Renewable Manager
DERContracts@duke-energy.com

*With Additional Notices of Events of Default
Or Potential Event of Default to:*
Overnight Mail: 550 S. Tryon St.
Charlotte, North Carolina 28202
Regular Mail: P.O. Box 1321, DEC45
Charlotte, North Carolina 28201-1321
Attn.: VP Commercial Legal Support

Seller: _____

This Renewable Power Purchase Agreement, including Exhibits 1-3 hereto, which are incorporated into and made part hereof (collectively, the "Agreement"), is made and entered into by and between Mission (the "Seller") and Duke Energy Carolinas, LLC (the "Buyer") under the terms specified herein. Buyer and Seller may be referred to individually as a "Party" and collectively as the "Parties." Notwithstanding anything set forth herein, neither this Agreement nor any transaction contemplated hereunder will be effective **unless and until both Parties have executed** and delivered this Agreement, and the later of such date shall be the "Effective Date" of this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES AND MUTUAL COVENANTS SET FORTH HEREIN, FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY OF WHICH IS ACKNOWLEDGED, AND INTENDING TO BE BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:

1. **Definitions**

Unless defined in the body of the Agreement, any capitalized term herein shall have the meaning set forth below:

- 1.1. "AAA" is defined in Section 23.2.1.
- 1.2. "Abandon(s)" means the relinquishment of control or possession of the Facility and/or cessation of operations of or at the Facility by Seller. "Abandon" excludes cessation of generation to comply with Prudent Utility Practices or due to maintenance or repair of the Facility (including Maintenance Outages and Planned Outage), provided that such maintenance or repair activities are being performed in a Commercially Reasonable Manner and with Prudent Utility Practice.
- 1.3. "Account" means a Party's electronic account with the Tracking System.
- 1.4. "Act" means the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard, N.C. Gen. Stat. 62-133.8, including all rules promulgated by the Commission associated therewith, as each may be amended or modified from time-to-time, and any successor renewable energy standards, statutes, regulations, or rules.
- 1.5. "Affiliate" means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and policies, or otherwise have control of an entity, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer the term Affiliate does not include any subsidiaries or affiliates whose activities are subject to the oversight or regulation of any state commission(s) and/or federal energy regulatory commission.
- 1.6. "Agreement" is defined in the introductory paragraph hereof.
- 1.7. "Assignment" is defined in Section 24.1.
- 1.8. "Back-Up Tapes" is defined in Section 16.3.
- 1.9. "Bankrupt" means, with respect to a Party or its credit support provider, that such Party or its credit support provider: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors; (c) has such a petition filed against it as debtor and such petition is not stayed, withdrawn, or dismissed within thirty (30) Business Days of such filing; (d) seeks or has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; (e) has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (f) is unable to pay its debts as they fall due or admits in writing of its inability to pay its debts generally as they become due; and/or (g) otherwise becomes bankrupt or insolvent (however evidenced).
- 1.10. "Billing Meter" is defined in Section 10.
- 1.11. "Billing Period" is defined in Section 11.
- 1.12. "Business Day" means any day on which the Federal Reserve member banks in New York City are open for business. A Business Day shall run from 8:00 a.m. to 5:00 p.m. Eastern Prevailing Time.
- 1.13. "Buyer" shall have the meaning specified in the first paragraph of this Agreement

- 1.14. "Capacity" means and includes the electric generation capability and ability of the Facility and all associated characteristics and attributes, inclusive of the ability to contribute to peak system demands, as well as reserve requirements.
- 1.15. "Certificate" means the electronic instrument created and issued by the Tracking System.
- 1.16. "Change of Control" means a transaction or series of related transactions (by way of merger, consolidation, sale of stock or assets, or otherwise) with any person, entity or "group" (within the meaning of Section 13(d)(3) of the U.S. Securities Exchange Act of 1934) of persons pursuant to which such person, entity, or group would acquire (i) 50% or more of the voting interests in Seller or (ii) substantially all of the assets of Seller.
- 1.17. "Commencement Date" is defined in Section 3.1.
- 1.18. "Commercially Reasonable Manner" or "Commercially Reasonable" means, with respect to a given goal or requirement, the manner, efforts and resources a reasonable person in the position of the promisor would use, in the exercise of its reasonable business discretion and industry practice, so as to achieve that goal or requirement, which in no event shall be less than the level of efforts and resources standard in the industry for comparable companies with respect to comparable products. Factors used to determine whether a goal or requirement has been performed in a "Commercially Reasonable Manner" may include, but shall not be limited to, any specific factors or considerations identified in the Agreement as relevant to such goal or requirement.
- 1.19. "Commission" means the North Carolina Utilities Commission or any successor thereto.
- 1.20. "Contract Price" is defined in Section 4.4.
- 1.21. "Contract Quantity" is defined in Section 4.3.
- 1.22. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, and other similar third party transaction costs and expenses, and other costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated transaction(s), and all reasonable attorneys' fees and other legal expenses incurred by the Non-Defaulting Party in connection with the termination.
- 1.23. "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating.
- 1.24. "Defaulting Party" is defined in Section 19.
- 1.25. "Delivery Period" is defined in Section 4.1.
- 1.26. "Delivery Point" means the point of interconnection between the Facility and the System on the high side (Buyer or Transmission Provider side) of the System.
- 1.27. "Dispatch Down" means any reduction or cessation of Energy generation by the Facility in response to an order or instruction by or direct action taken by the System Operator.
- 1.28. "Disputes" is defined in Section 23.1.
- 1.29. "Early Termination Date" is defined in Section 20.1.
- 1.30. "Effective Date" is defined in the introductory paragraph hereto.
- 1.31. "Emergency Condition" means, no matter the cause: (a) any urgent, abnormal, operationally unstable, dangerous, or public safety condition that is existing on the System or any portion

thereof; (b) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is likely to result in any of the following: (i) loss or damage to the Facility or the System, (ii) disruption of generation by the Facility, (iii) disruption of service or stability on, to or of the System, or (iv) condition that may result in endangerment of human life or public safety; or (c) any circumstance that requires action by the System Operator to comply with standing NERC regulations or standards, including without limitation actions to respond to, prevent, limit, or manage loss or damage to the Facility, loss or damage to the System, disruption of generation by the Facility, disruption of service on the System, an abnormal condition on the System, and/or endangerment to human life or safety. An Emergency Condition will be an excuse to Seller's performance only if such condition is not due to Seller's negligence, willful misconduct, and/or Seller's failure to perform as required under this Agreement.

- 1.32. "Energy" means three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh, as the case may be.
- 1.33. "EPT" or "Eastern Prevailing Time" means the time in effect in the Eastern Time Zone of the United States of America, whether it be Eastern Standard Time or Eastern Daylight Savings Time.
- 1.34. "Event of Default" is defined in Section 19.
- 1.35. "Expected Annual Output" means the quantity of Energy identified in Exhibit 1.
- 1.36. "Facility" means Seller's hydro-electric generating facility impounding the Hiwassee River, located in Clay County, NC, near Hayesville, NC, as further identified in Exhibit 3.
- 1.37. "FERC" means the Federal Energy Regulatory Commission or any successor thereto.
- 1.38. "Force Majeure" is defined in Section 14.1.
- 1.39. "GAAP" is defined in Section 9.1.
- 1.40. "Gains" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.41. "Governmental Authority" means any federal, state or local government, legislative body, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory authority or instrumentality or authorized arbitral body, including, without limitation, the Commission.
- 1.42. "Interconnection Agreement" means the separate interconnection and transmission service agreement (or agreements) to be negotiated and executed between Seller and the Transmission Provider concerning the interconnection of the Facility with the System, upgrade to the System to accommodate the Facility's interconnection with and operation in parallel with the System, and the requirements for transmission service.
- 1.43. "Interconnection Instruction" means any order, action, signal, requirement, demand, and/or direction, howsoever provided or implemented by the System Operator due to, in response

to, or to address any condition relating to any service and/or obligation occurring under the Interconnection Agreement.

- 1.44. "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%); and, (b) the maximum rate permitted by applicable law.
- 1.45. "kW" means kilowatt.
- 1.46. "kWh" means kilowatt-hour.
- 1.47. "Letter(s) of Credit" means one or more irrevocable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank, which is not an Affiliate of Seller, which has and maintains a Credit Rating of at least A- from S&P and A3 from Moody's, for the Security Period, permitting Buyer to draw the entire amount if either such amount is owed or such Letter of Credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date, and is otherwise acceptable in all respects to Buyer in its sole discretion.
- 1.48. "Lien" means any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right of way, restriction, equity, or encumbrance of any nature whatsoever.
- 1.49. "Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic loss or loss of economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.50. "Maintenance Outage" means the temporary operational removal of the Facility from service to perform work on specific components of the Facility, at a time when the Facility must be removed from service before the next Planned Outage in the interest of safety or the prevention of injury or damage to or undue wear and tear on the Facility or any component thereof.
- 1.51. "Moody's" means Moody's Investors Service, Inc. or any successor-rating agency thereto.
- 1.52. "MW" means megawatt.
- 1.53. "MWh" means megawatt-hour.
- 1.54. "Nameplate Capacity Rating" means the installed nameplate capacity rating of the Facility set forth in Exhibit 3.
- 1.55. "NERC" means the North American Electric Reliability Corporation. For purposes of this Agreement, NERC includes any applicable regional entity with delegated authority from NERC, such as the SERC Reliability Corporation (SERC).
- 1.56. "Net Settlement Amount" is defined in Section 20.3.

- 1.57. "New Renewable Energy Facility" is defined in the Act.
- 1.58. "Non-Defaulting Party" is defined in Section 20.1.
- 1.59. "Party" or "Parties" is defined in the introductory paragraph hereto.
- 1.60. "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security that is acceptable to Buyer in its sole discretion, in each case that meets the requirements set forth in this Agreement (including, without limitation, Section 5) provided by Seller to Buyer for the benefit of Buyer pursuant to this Agreement, as credit support, adequate assurances, and security to secure Seller's performance under this Agreement.
- 1.61. "Permit" means any permit, license, registration, filing, certificate of occupancy, certificate of public convenience and necessity, approval, variance or any authorization from or by any Governmental Authority and pursuant to any Requirements of Law.
- 1.62. "Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.
- 1.63. "Planned Outage" means the temporary operational removal of the Facility from service to perform work on specific components in accordance with a pre-planned operations schedule, such as for a planned annual overhaul, inspections, or testing of specific equipment of the Facility.
- 1.64. "Posting Cap" is defined in Section 5.1.
- 1.65. "Product" means the Capacity of the Facility, Energy generated by the Facility, and subject to the satisfaction of the condition precedent set forth in Section 3.4 the RECs associated with the Energy generated by the Facility.
- 1.66. "Protected Information" is defined in Section 16.1
- 1.67. "Prudent Utility Practice" means those practices, methods, equipment, specifications, standards of safety, and performance, as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgment and in light of the facts known at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices; (ii) are in accordance with generally accepted standards of safety, performance, dependability, efficiency, and economy in the United States; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the United States; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy generation and utility industry.
- 1.68. "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended, and as such may be amended from time to time.
- 1.69. "PURPA Fuel Requirements" means the requirements set forth in 18 C.F.R. § 292.204 OR 205, as may be amended and/or restated.
- 1.70. "Qualifying Facility" means an electric generating facility that has been registered and certified by FERC as generator that qualifies for and meets the requirements set forth in PURPA, as it may be amended, and associated rules, regulations, orders.

- 1.71. "REA Reporting Rights" means the right of the reporting person or entity to report that it owns the Renewable Energy Attributes to any Governmental Authority or other party under any compliance, voluntary, trading, or reporting program, public or private and to any person, customers, or potential customers for, including without limitation, purposes of compliance, marketing, publicity, advertising, or otherwise.
- 1.72. "Regulatory Event" is defined in Section 15.1.
- 1.73. "Renewable Energy Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation of Energy by the Facility, the use of such Energy, or such Energy's displacement of conventional Energy generation, including any and all renewable or environmental characteristics and benefits of the Energy generated by the Facility. Renewable Energy Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs), ozone depleting substances, ozone, and non-methane volatile organic compounds that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change (UNIPCC), by law, or otherwise by science or in the voluntary markets to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) any credit, allowance or instrument issued or issuable pursuant to a state implementation plan under regulations promulgated by the Environmental Protection Agency under the Clean Air Act and (4) the reporting rights to any of the foregoing, including, without limitation, REA Reporting Rights and any and all renewable and/or environmental characteristics and benefits of the Energy generated by the Facility. Renewable Energy Attributes do not include: (i) any Energy or Capacity of the Facility; (ii) investment tax credits, production tax credits, or other tax credits, cash grants in lieu of tax credits associated with the construction, ownership or operation of the Facility, or (iii) any adverse wildlife or environmental impacts.
- 1.74. "Renewable Energy Certificate(s)" or "REC(s)" means and, notwithstanding anything to the contrary set forth in the Act includes, all of the Renewable Energy Attributes and REA Reporting Rights associated with one (1) megawatt hour (MWh) of Energy generated by the Facility. The REC represents all title to and claim over all of the Renewable Energy Attributes and REA Reporting Rights associated with in any manner with the Energy generated by the Facility.
- 1.75. "Renewable Energy Resource" is defined in the Act.
- 1.76. "Required Approval" is defined in Section 6.
- 1.77. "Requirements of Law" means any federal, state, and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment, decree or Permit enacted, adopted, issued or promulgated by any Governmental Authority, including, without limitation, (i) the Act, (ii) those pertaining to the creation and delivery of the Product, (iii) those pertaining to electrical, building, zoning, occupational safety, health requirements or to pollution or protection of the environment, and (iv) principles of common law under which a person may be held liable for the release or discharge of any hazardous substance into the environment or any other environmental damage.
- 1.78. "Security Period" is defined in Section 5.5.
- 1.79. "Seller" shall have the meaning specified in the first paragraph of this Agreement.
- 1.80. "S&P" means Standard & Poor's Ratings Services, Inc. or any successor-rating agency

thereto.

- 1.81. "Station Power" means the Energy generated by the Facility and, whether metered or unmetered, used on-site to supply the Facility's auxiliary load and parasitic load and/or for powering the electric generation equipment.
- 1.82. "System" means the transmission, distribution, and generation facilities that are owned, directed, managed, interconnected, controlled, or operated by Buyer and/or the Transmission Provider, including, without limitation, facilities to provide retail or wholesale service, substations, circuits, reinforcements, meters, extensions, or equipment associated with or connected to any interconnected facility or customer.
- 1.83. "System Operator" means the operators of the System that have the responsibilities for ensuring that the System as a whole or any part thereof operates safely, efficiently, and reliably, including without limitation the responsibilities to comply with any applicable operational or reliability requirements, the responsibilities to balance generation supply with customer load, the responsibilities to comply with any other regulatory obligation including least cost dispatch and System optimization, and the responsibilities to provide dispatch and curtailment instructions to generators supplying Energy to the System. The System Operator includes any person or entity delivering any such instructions or signals to Seller or taking any action relating to, due to, in response to, or to address such instructions.
- 1.84. "System Operator Instruction" means any order, action, requirement, demand, or direction delivered to Seller in a non-discriminatory manner by the System Operator (or its designee), in its sole discretion, in response to, anticipation of, or otherwise based in any manner on an Emergency Condition or Force Majeure event that has occurred or would occur if the order, action, requirement, demand, or direction is not ordered or implemented, including any order, action, requirement, demand or direction to operate, manage, and/or otherwise maintain safe and reliable operations of the System and those undertaken and implemented by the System Operator in accordance with Prudent Utility Practice based on relevant System factors and considerations including, without limitation, any and all operating characteristics, maintenance requirements, operational limitations, reliability (including, without limitation, standing NERC regulations or standards), safety, dispatch, constraints, discharge, emissions limitations, compliance requirements, communications, resource ramp-up and ramp-down constraints and implementation, and any other System considerations. A System Operator instruction may include, without limitation, an order or action to: (i) interconnect, disconnect, integrate, operate in parallel, or synchronize with the System, (ii) increase (based on generator characteristics and Prudent Utility Practices), reduce, or cease generation output to comply with standing NERC regulations or standards; (iii) respond to any transmission, distribution, or delivery limitations or interruptions; (iv) perform or cease performing any activity so as to operate in accordance with System limitations, including, without limitation, operational constraints that would require the System Operator to force offline or reduce generation output from reliability generators to accommodate generation by the Facility; and, (v) suspend or interrupt any operational activity. With regard to providing instructions in a non-discriminatory manner, a System Operator instruction in response to an Emergency Condition, Force Majeure event, or operational condition relating specifically to or created by the Facility shall not be deemed or considered discriminatory.
 - 1.84.1. For purposes of this Agreement, a System Operator Instruction shall not include any Interconnection Instruction.
- 1.85. "Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.
- 1.86. "Term" is defined in Section 3.1.

- 1.87. "Tracking System" means the verification system that accounts for the generation, sale, purchase, and/or retirement of renewable energy and credits, which will be the North Carolina Renewable Energy Tracking System, administered by the Commission pursuant to the Act.
- 1.88. "Transmission Provider" means the entity or division within Duke Energy Carolinas, LLC that will provide interconnection and/or electric distribution or transmission service to enable delivery of Energy generated by the Facility to Buyer, and any such entity or division will include any successor or replacement thereto, including without limitation, a consolidated control area or a regional transmission organization.
- 1.89. "Vintage" means the moment when the MWh of Energy is generated by the Facility, and therefore, when the REC associated with that MWh of Energy is generated by the Facility.

2. **Interpretation**

- 2.1. **Intent.** Unless a different intention clearly appears, the following terms and phrases shall be interpreted as follows: (a) the singular includes the plural and vice versa; (b) the reference to any Person includes such Person's legal and/or permitted successors and assignees, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (c) the reference to any gender includes the other gender and the neuter; (d) reference to any document, including this Agreement, refers to such document as it may be amended, amended and restated, modified, replaced or superseded from time to time in accordance with its terms, or any successor document(s) thereto; (e) reference to any section or exhibit means such section or exhibit of this Agreement unless otherwise indicated; (f) "hereunder", "hereof", "hereto", "herein", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular section or other provision; (g) "including" (and with correlative meaning "include"), means "including without limitation" and when following any statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope; (h) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (i) reference to any Requirements of Law refers to such Requirements of Law as it may be amended, modified, replaced or superseded from time to time, or any successor Requirements of Law thereto; and (j) all exhibits and attachments to this Agreement are hereby incorporated into this Agreement. Other terms used, but not defined in Section 1 or in the body of the Agreement, shall have meanings as commonly used in the English language and, where applicable, in the electric utility industry. 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.

3. **Term and Termination**

- 3.1. **Term.** This Agreement shall be effective as of the Effective Date and shall remain in full force and effect until the fifth ("5th") year after the Commencement Date as set forth in Section 3.3 below ("Term"), unless terminated earlier pursuant to the provisions of this Agreement.
- 3.2. **Termination and Survival.** This Agreement may be terminated earlier than the expiration of the Term as provided for herein. If this Agreement is terminated earlier than the expiration

of the Term for any reason, including, without limitation, whether by its terms, mutual agreement, early termination, and/or event of default, such termination shall not relieve any Party of any obligation accrued or accruing prior to the effectiveness of such termination. Furthermore, any obligations, limitations, exclusions and duties which by their nature or the express terms of this Agreement extend beyond the expiration or termination of this Agreement, including, without limitation, provisions relating to compliance requirements, accounting, billing, billing adjustments, limitations or liabilities, dispute resolution, Performance Assurance, and any other provisions necessary to interpret or enforce the respective rights and obligations of the Parties hereunder, shall survive the expiration or early termination of this Agreement.

- 3.3. Conditions Precedent to Commencement of Deliveries. Deliveries under this Agreement will commence the first day of the month following satisfaction of the conditions precedents set forth below in Sections 3.3.1 through 3.3.3 (the "Commencement Date").

3.3.1. Closing conditions are satisfied in the Asset Purchase Agreement.

3.3.2. Interconnection Agreement has been fully executed and accepted by the Transmission Provider for performance under this Agreement.

3.3.3. All approvals and certifications that the Facility is a Qualifying Facility.

- 3.4. Condition Precedent to Parties' Obligations Regarding Sale and Purchase of RECs. It is a condition precedent to: (i) the obligations of Seller to sell and deliver RECs to Buyer under this Agreement; (ii) for Seller to comply with the RECs-related obligations set forth in this Agreement; and, (iii) the obligations of Buyer to receive and purchase RECs from Seller under this Agreement, that: (a) the Commission has approved and certified that the Facility, when owned by the Seller, shall be certified as a New Renewable Energy Facility under the Act and (b) Buyer can use the Product (inclusive of the REC component) generated by the Facility to comply with the Act. If the Commission finds that the Facility, upon ownership by Seller, is eligible for certification as a New Renewable Facility and that Buyer can use the Product (inclusive of RECs) to comply with the Act, then upon satisfaction of Section 3.3.1, the Seller shall register and certify the Facility with the Commission as a New Renewable Energy Facility. Subject to Section 3.3, upon receiving certification from the Commission that the Facility is approved as a New Renewable Energy Facility, the Seller shall sell and deliver RECs to Buyer in accordance with and in compliance with the requirements set forth in this Agreement, and Buyer shall purchase such RECs in accordance with this Agreement; *provided however*, Buyer shall have no obligation to purchase RECs from the Facility or from Seller for any period during which such certification is not granted by the Commission. If the Commission finds that the Facility, upon ownership by Seller, is not eligible for certification as a New Renewable Facility and/or that Buyer cannot use the Product (inclusive of RECs) to comply with the Act, then subject to Section 3.3, Buyer and Seller shall be: (i) relieved of any obligation to purchase and sell RECs under this Agreement and (ii) all term and conditions relating to RECs, certification as a New Renewable Energy Facility, and compliance with the Act shall be null and void and shall have no force or effect on either Party.

4. Purchase and Sale Obligations

- 4.1. Delivery Period. The "Delivery Period" for the Product to be generated by the Facility and sold by Seller to Buyer shall be for all hours starting at 12:00:01 AM EPT as of the Commencement Date through the end of the Term, unless this Agreement is terminated earlier pursuant to its terms and conditions.

- 4.2. Vintage. The RECs shall be of the same Vintage as the Energy generated by the Facility and

the RECs shall arise due to the generation of Energy by the Facility.

- 4.3. Contract Quantity. The "Contract Quantity" will be one hundred percent (100%) of the Capacity and Energy produced by the Facility and, subject to satisfaction of Section 3.4, one hundred percent (100%) of the associated RECs produced by the Facility, in case of each of the foregoing less that associated with Station Power.
 - 4.3.1. Seller shall sell and deliver the Contract Quantity of the Product exclusively and solely to Buyer.
 - 4.3.2. Buyer shall have full and exclusive rights to the Product (inclusive of all components), and will be entitled to full and exclusive use of the Product (inclusive of all components) for its purposes and in its sole and exclusive discretion.
 - 4.3.3. The estimated monthly and annual Energy production of the Facility during the Delivery Period is set forth in Exhibit 1 hereto.
- 4.4. Contract Price. The "Contract Price" for the Product shall be fixed for the Delivery Period as set forth in Exhibit 2.
- 4.5. Energy Delivery. Seller shall deliver the Contract Quantity of the Energy component of the Product at the Delivery Point and Seller shall be fully responsible for all costs, charges, expenses, and requirements associated with delivering the Energy to the Delivery Point. Buyer will have no obligation to pay for any Energy not delivered to the Delivery Point.
- 4.6. REC Delivery. Subject to satisfaction of Section 3.4, Seller shall deliver to Buyer's Account the Contract Quantity of the REC component of the Product in the form of Certificates. Seller agrees that in addition to representing the attributes and characteristics under the Tracking System's operating rules and requirements, the Certificate will also represent the REC, Renewable Energy Attributes, and REA Reporting Rights as defined in this Agreement. No later than fourteen (14) calendar days after the meter data is delivered to Seller's Account, Seller shall review the meter data and complete all acts necessary to create the Certificates in the Tracking System and shall transfer the Certificates into Buyer's Account. Each Party shall establish an Account with the Tracking System for the creation, transfer, and/or receipt of the Certificates. Seller agrees to establish the Account for the Facility prior to the Commencement Date.
- 4.7. Payment for Product. Buyer agrees to pay Seller for the Product generated and delivered in accordance with this Agreement by Seller to Buyer in accordance with the pricing set forth in Exhibit 2. Seller agrees that to the extent Buyer has already paid for the Product prior to Seller transferring the REC component of the Product in the manner noted above, Buyer shall have ownership of the REC component of the Product, and Seller shall hold the same in trust for Buyer until the transfer is completed as provided for herein. Buyer shall not be obligated to pay for, and shall receive a full refund with respect to, any RECs for which the Certificates are not delivered to Buyer's Account.
- 4.8. Transfer. In no event shall Seller procure or have the right to procure the Product or any component of the Product from any source other than the Facility for sale and delivery pursuant to this Agreement. Title to and risk of loss to the Product sold and delivered hereunder shall transfer from Seller to Buyer after completion of delivery at the Delivery Point and after completion of transfer of the REC component of the Product. Seller shall be responsible for any costs and charges imposed on or associated with the Product and the delivery of the Product at the Delivery Point and upon completion of transfer of the REC component. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after the Delivery Point and after completion of transfer of the REC.

5. **Credit and Related Provisions.**

- 5.1. **Adequate Assurances.** Buyer may, from time to time, request in writing that Seller provide Buyer with Performance Assurance in an amount reasonably determined by Buyer relative to Seller's performance obligations under this Agreement, if at any time Buyer has reasonable grounds for insecurity concerning Seller's ability to perform any of its obligations under this Agreement; *provided, however*, such amount shall not exceed \$9,084 (the "Posting Cap"). Expressly without limiting the generality of the foregoing, reasonable grounds for insecurity include, but are not limited to, knowledge that (i) Seller or its guarantor or any direct or indirect parent company is defaulting under other material contracts or transactions (including, without limitation, contracts or transactions with third parties); or, (ii) any imminent or threatened material adverse change in the financial condition of Seller or its guarantor. Upon receipt of such notice, Seller shall have five (5) Business Days to provide such Performance Assurance to Buyer. In the event that Seller fails to provide the required amount of such Performance Assurance to Buyer within five (5) Business Days of receipt of notice, then Buyer may declare such failure an Event of Default and exercise any or all other remedies provided for hereunder or pursuant to law or equity. Seller shall be required to refresh or replenish the required amount of Performance Assurance at Buyer's request up to the Posting Cap, including, without limitation, where Buyer has exercised its right to draw upon any Performance Assurance.
- 5.2. **Financial Disclosures.** If Buyer has reasonable grounds to request Performance Assurance or if Buyer requests Performance Assurance, in each case as set forth in Section 5.1, then Seller shall timely provide to Buyer financial information of Seller, to the extent such information is not publicly available, as follows: (i) within sixty (60) days after the end of each fiscal quarter of each fiscal year that this Agreement is effective, a copy of Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter signed and verified by an authorized officer of Seller attesting to their accuracy; and, (ii) within one hundred and twenty (120) days after the end of each fiscal year that this Agreement is effective a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year. The statements shall be prepared in accordance with generally accepted accounting principles.
- 5.3. **Netting.** If an Event of Default has not occurred and a Party is required to pay an amount to the other Party under this Agreement, then such amounts shall be netted and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. All outstanding obligations to make payment under this Agreement or any other agreement between the Parties may be netted, offset, set off, or recouped therefrom, and payment shall be owed as set forth above. Unless Buyer notifies Seller in writing (except in connection with a liquidation and termination), all amounts netted pursuant to this section shall not take into account or include any Performance Assurance which may be in effect to secure Seller's performance under this Agreement. The netting set forth above shall be without prejudice and in addition to any and all rights, liens, setoffs, recoupments, counterclaims and other remedies and defenses (to the extent not expressly herein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement.
- 5.4. **Set-off.** In addition to any rights of set-off a Party may have as a matter of law or otherwise, and subject to applicable law, upon the occurrence of an Event of Default the Non-Defaulting Party shall have the right (but shall not be obligated to) without prior notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party under this Agreement and any other agreement between

the Parties (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligations of the Non-Defaulting Party owing to the Defaulting Party under this Agreement and any other agreement between the Parties (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation). If any such obligation is unascertained, the Non-Defaulting Party may in a Commercially Reasonable Manner estimate that obligation and set-off in respect of the estimate, subject to the relevant Party providing an accounting and true-up to the other Party after the amount of the obligation is ascertained.

- 5.5. Performance Assurance Requirements. Seller shall ensure that any Performance Assurance required pursuant to Section 5.1 remains in full force, effect, outstanding, in the required amount, and for the duration required by this Agreement. All applicable Performance Assurance, as the amount thereof may be increased, decreased, and/or replenished pursuant to the terms of this Agreement, shall remain in full force, effect, and outstanding for the benefit of Buyer until one-hundred and fifty (150) days following the later of: (a) the end of the Term or (b) the date on which Seller has fully satisfied all obligations to Buyer under this Agreement (the "Security Period"). If at any time any Performance Assurance fails to meet any of the requirements under this Agreement, Seller shall replace such Performance Assurance with alternative Performance Assurance that meets each of the requirements under this Agreement. Seller will be solely responsible for any and all costs incurred with providing and maintaining any Performance Assurance to the full amount required by this Agreement. If Seller fails to replace, renew, or otherwise maintain the required Performance Assurance as and when required by this Agreement, then Buyer: (a) shall be entitled to draw and retain hereunder the full amount of the Performance Assurance; (b) shall not be obligated to make any further payments to Seller until Seller shall have provided Buyer with the replacement Performance Assurance; and, (c) shall be entitled to give Seller notice of an Event of Default and pursue the termination rights and remedies provided for in this Agreement.
- 5.6. Grant of Security Interest. To secure its obligations and liabilities under this Agreement to Buyer, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of netting and set-off against), and assignment of, all present and future Performance Assurance, including, without limitation, cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer; and, furthermore Seller agrees to take such actions as Buyer reasonably requires to perfect Buyer's first-priority security interest in, and lien on (and right of netting, recoupment, and set-off against), such Performance Assurance and any and all products and proceeds resulting therefrom or from the liquidation thereof, including without limitation proceeds of insurance. Upon or any time after the occurrence, or deemed occurrence, of an Event of Default or upon an Early Termination Date, Buyer (if it is the Non-Defaulting Party) may do any one or more of the following with respect to Seller (if it is the Defaulting Party): (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of netting, recoupment, and set-off against any and all property of Seller in the possession of Buyer or its agent; (iii) draw on any outstanding applicable forms of Performance Assurance provided for the benefit of Buyer; and, (iv) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

6. Seller Compliance Requirements.

- 6.1. Required Approvals. Seller shall maintain and comply with all permits, authorizations, certifications, and/or approvals from any Governmental Authority, and under any Requirements of Law, including, without limitation, from the Commission and FERC for Seller to own, operate, and maintain the Facility and sell and deliver the Product to Buyer.
 - 6.2. Seller Covenants. Seller covenants to Buyer that it shall comply with all of the requirements of the Act and other Requirements of Law applicable to Seller, the Facility, and/or Seller's obligations under the Agreement. Without limiting the generality of the foregoing, Seller represents and warrants to Buyer as of the Effective Date of this Agreement and throughout the Term of this Agreement that Seller has obtained all applicable certifications and/or approvals necessary for Seller to perform under this Agreement. Seller agrees and acknowledges that Buyer has entered into this Agreement in reliance upon the representations and warranties set forth in this section. In the event of a breach or failure of or relating to any of the foregoing covenants and warranties, including without limitation for being false or misleading in any respect, then this Agreement will terminate upon Buyer providing Seller with a five (5) Business Days written notice. Seller will indemnify and hold Buyer harmless for any breach or failure relating to any of the foregoing covenants and warranties, notwithstanding anything else to the contrary in this Agreement.
 - 6.3. Seller Requirements. Seller agrees and acknowledges that the Act requires Buyer to make certain filings and/or submissions relating to Buyer's obligations under the Act. Within twenty (20) Business Days of a written request from Buyer, Seller agrees to provide Buyer with all information, documents, and affidavits from a duly authorized representative of Seller certifying that the Facility fully complies with PURPA, including without limitation, the PURPA Fuel Requirements and that the Facility and/or the Product complies with the Act and the requirements of the Tracking System. If Seller fails to promptly provide Buyer with such documentation, and Buyer is unable to use the Product for compliance in the calendar year that Buyer desires to use such Product for compliance purposes, then Seller shall be liable to Buyer for cover cost damages as set forth in Section 21 and Seller will also reimburse Buyer for any payments previously made by Buyer for such Product.
7. Seller's Facility Requirements.
- 7.1. Seller Requirements. Seller covenants (except to the extent expressly set forth in this Agreement) that: the Facility shall be operated, controlled, and maintained at Seller's sole cost and expense; the Facility shall be operated (inclusive, without limitation, of control, metering equipment, and personnel and staffing levels), controlled, and maintained by Seller to perform as required by this Agreement and in compliance with all applicable Requirements of Law and Prudent Utility Practice; the Facility shall be capable of supplying the Product in a safe and reliable manner consistent with the requirements of each applicable Requirements of Law and Prudent Utility Practice; and, that all contracts, agreements, arrangements, and/or Permits (including, without limitation, those necessary or prudent for the ownership and operation of the Facility, such as land use permits, site plan approvals, real property titles and easements, environmental compliance and authorizations, grading and building permits,) shall be timely obtained and maintained by Seller, at Seller's sole cost and expense. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility. Seller shall interconnect, operate, and maintain the Facility in accordance with Prudent Utility Practice. Seller shall be responsible for all costs, charges, and expenses associated with generating, scheduling, and delivering the Energy to Buyer.
 - 7.2. Seller Responsibilities. Notwithstanding any provision of this Agreement to the contrary, the

Seller agrees that: (a) Buyer shall have no responsibility whatsoever for any costs and/or Taxes relating to the maintenance, ownership, or operation of the Facility (including but not limited to any financing costs, and any costs and/or Taxes imposed by any Governmental Authority on or with respect to emissions from or relating to the Facility, and including but not limited to costs and/or Taxes related to any emissions allowances *inter alia* for oxides for sulfur dioxide or nitrogen, carbon dioxide, and mercury), all of which shall be entirely at Seller's sole cost and expense; and, (b) any risk as to the availability of production tax benefits, investment tax credits, grants or any other incentives relating to the design, development, construction, maintenance, ownership, or operation of the Facility shall be borne entirely by Seller.

7.2.1. No Exclusions. If any production or investment tax credit, grants, subsidy, or any other similar incentives or benefit relating, directly or indirectly, to the Facility is unavailable or becomes unavailable at any time during the Term of this Agreement, Seller agrees that such event or circumstance will not: (a) constitute a Force Majeure or Regulatory Event; (b) excuse or otherwise diminish Seller's obligations hereunder in any way; and, (c) give rise to any right by Seller to terminate or avoid performance under this Agreement. Seller agrees that it will solely and fully bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive any such tax treatment or otherwise qualify for any preferential or accelerated depreciation, accounting, reporting, or tax treatment.

7.3. Transmission Provider. Seller agrees and acknowledges that the Interconnection Agreement is (and will be) a separate agreement (or agreements) between Seller and Transmission Provider, and will exclusively govern all requirements and obligations between Seller and Transmission Provider. Only the Interconnection Agreement will govern all obligations and liabilities set forth in the Interconnection Agreement, and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible for under the Interconnection Agreement. Seller shall comply with all Interconnection Instructions.

7.3.1. Nothing in the Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on the other hand, nor any alleged event of default thereunder, shall affect, alter, or modify the Parties' rights, duties, obligation, and liabilities under this Agreement. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider, and the terms of this Agreement are not (and will not) be binding upon the Transmission Provider. Seller agrees and acknowledges that Seller's performance under this Agreement depends on Seller's performance under the Interconnection Agreement, and Seller hereby grants Buyer the right and entitlement to obtain information from the Transmission Provider in regards to Seller's performance under the Interconnection Agreement.

7.4. System Operations. Seller agrees and acknowledges that the System Operator will be solely responsible for its functions, and that nothing in this Agreement will be construed to create any rights between Seller and the System Operator. Seller agrees that it is obligated to engage in interconnected operations with Buyer and the System, and Seller agrees to fully comply with all System Operator Instructions.

8. Facility Performance Requirements

8.1. Planned Outages. No later than fifteen (15) Business Days prior to the end of each year during the Term, Seller shall provide to Buyer a Planned Outage schedule for the upcoming year. Seller shall provide Buyer with reasonable advance notice of any material change in the Planned Outage schedule. Seller shall determine the number and extent of Planned

Outages in a Commercially Reasonable Manner recognizing that it is the intent of the Parties to maximize production of the Facility and to such extent Seller shall be excused from providing the Product during such Planned Outage(s).

- 8.2. Maintenance Outages. If Seller needs or desires to schedule a Maintenance Outage of the Facility, Seller shall notify Buyer, as far in advance as reasonable and practicable under the circumstances, of such proposed Maintenance Outage, and the Parties shall plan such outage to mutually accommodate the reasonable requirements of Seller and delivery expectations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of output of the Facility that will not be available, and the expected completion date of the outage. Buyer may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall comply with such requests to reschedule a Maintenance Outage. If rescheduled, Seller shall notify Buyer of any subsequent changes in the output that will not be available to Buyer and any changes in the Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.
- 8.3. Notice. Seller shall promptly provide to Buyer an oral report of all outages, Emergency Conditions, de-ratings, major limitations, or restrictions affecting the Facility, which report shall include the cause of such restriction, amount of generation from the Facility that will not be available because of such restriction, and the expected date that the Facility will return to normal operations. Seller shall update such report as necessary to advise Buyer of any material changed circumstances relating to the aforementioned restrictions. As soon as practicable, all oral reports shall be confirmed in writing. Seller shall promptly dispatch personnel to perform the necessary repairs or corrective action in an expeditious and safe manner in accordance with Prudent Utility Practice.
- 8.4. Performance. Seller shall act in a Commercially Reasonable Manner to generate the Product and to minimize the occurrence, extent, and duration of any event adversely affecting the generation of the Product, in each case consistent with Prudent Utility Practice.
- 8.5. System Operator Instructions. Seller shall take all steps needed to implement and comply with all System Operator Instructions and shall cooperate with Buyer in the implementation of all aspects of all System Operator Instructions. Seller hereby agrees to indemnify and hold Buyer harmless from any impact to the Facility as a result of taking any action to implement or effectuate any System Operator Instruction. All Seller losses for a Dispatch Down due to any System Operator Instruction shall be borne solely and entirely by Seller, including, without limitation, for any losses arising due to the lost or reduced generation by the Facility, lost tax benefits, lost investment tax credits, grants or any other incentives or monetary opportunity relating to the design, development, generation, construction, maintenance, ownership, or operation of the Facility. Seller shall also immediately and fully comply with all Interconnection Instructions provided pursuant to the independent and separate Interconnection Agreement with the Transmission Operator.

9. Information Requirements

- 9.1. Accounting Information. Generally Accepted Accounting Principles ("GAAP") and SEC rules can require Buyer to evaluate various aspects of its economic relationship with Seller, e.g., whether or not Buyer must consolidate Seller's financial information. To evaluate if certain GAAP requirements are applicable, Buyer may need access to Seller's financial records and personnel in a timely manner. In the event that Buyer determines that consolidation or other incorporation of Seller's financial information is necessary under GAAP, Buyer shall require the following for each calendar quarter during the term of this Agreement, within ninety (90) days after quarter end: (a) complete financial statements, including notes, for

such quarter on a GAAP basis; and, (b) financial schedules underlying the financial statements. Seller shall grant Buyer access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with GAAP standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002). Any information provided to Buyer pursuant to this section shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed, as required by GAAP, on an aggregate basis with other similar entities for which Buyer has power purchase agreements.

- 9.2. Other Information. Seller shall provide to Buyer all information, instruments, documents, statements, certificates, and records relating to this Agreement and/or the Facility as requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements determined by Buyer to fulfill any Requirements of Law, regulatory reporting requirements or otherwise relating to any request by any Governmental Authority. Seller will, at its own expense, provide Buyer with all information requested by Buyer to register, verify, or otherwise obtain Commission or any other third party recognition of the Product for use by Buyer, and at Buyer's request Seller shall register, verify, or otherwise validate or obtain Commission and/or any other third party recognition of the Product for use by Buyer.

9.2.1. Information Under the Act. Seller agrees and acknowledges that the Act requires Seller to make certain filings and/or submissions, including, without limitation, to maintain registration and certification of the Facility under the Act and to use the Product for compliance under the Act. Seller shall provide Buyer, for informational purposes only, a copy of any report, certification or filing that Seller submits to the Commission within a reasonable time after making such submission, but in any event no later than five (5) Business Days after such submission. Notwithstanding anything to the contrary, Seller agrees and acknowledges that it shall be solely responsible for timely complying with all requirements under the Act.

10. Metering

- 10.1. Billing Meter. In the Interconnection Agreement between Seller and Transmission Provider, Seller shall arrange with the Transmission Provider to construct and install such meters and metering equipment as are necessary to measure the Energy delivered and received in accordance with the terms and conditions of this Agreement (the "Billing Meter"). Buyer shall provide to Seller the reasonable allowable accuracy limits relating to the performance of the Billing Meter, and Seller shall arrange with Transmission Provider to install and operate a Billing Meter that meets the allowable accuracy limits. Seller shall be responsible for paying the Transmission Provider for all costs relating to the Billing Meter, including, without limitation, its procurement, installation, operation, calibration, and maintenance. Seller shall ensure in its arrangement with the Transmission Provider for the Billing Meter to include communication equipment that enables Buyer to access and read the meter from a remote location. Seller hereby grants Buyer rights to physically access the Billing Meter. Seller shall provide Buyer (at Seller's cost) with appropriate telephonic/electronic communication to allow Buyer to remotely read the meter. Seller may, at its own expense, install and maintain additional metering equipment for purposes of monitoring, recording or transmitting data relating to its sale of Energy from the Facility, so long as such equipment does not interfere with the Billing Meter. Seller shall arrange with the Transmission Provider to test the Billing Meter at regular intervals. Seller shall also arrange for either Party to have the right to request and obtain, at reasonable intervals and under reasonable circumstances, additional/special tests of the Billing Meter. The Party making such request for the test shall incur the costs associated with such test.

11. **Billing Period and Payment**

- 11.1. **Billing Period.** Subject to Seller authorizing Transmission Provider to provide Buyer with electronic access to the Billing Meter, Buyer shall read/obtain data from the Billing Meter at regular intervals, which shall be not less than twenty-seven (27) consecutive days and not more than thirty-three (33) consecutive days (each, a "Billing Period"). Within twenty-five (25) days after reading/obtaining data from the Billing Meter, Buyer shall provide Seller with an invoice detailing the amount of Product (Energy and an equal amount of RECs subject to satisfaction of Section 3.4 delivered during the relevant Billing Period and the associated amount owed by Buyer to Seller for the Product, subject to Seller cooperating with Buyer and providing Buyer with such information and/or data that Buyer may request to accurately prepare the invoice. Buyer shall pay Seller the invoiced amounts for each Billing Period, subject to Seller having transferred (or caused to be transferred) the REC Certificates from Seller's Account to Buyer's Account in the Tracking System. Payment by Buyer shall be due by the later of thirty (30) days after the invoice date or fifteen (15) days after Buyer receives notification that the Seller has transferred the REC Certificates into Buyer's Account. If such amounts are not paid by the deadline, they shall accrue interest at the Interest Rate from the applicable due date until the date paid. Amounts not paid by such deadline shall accrue interest at the Interest Rate from the original due date until the date paid in accordance with this Agreement.
- 11.2. **Meter Malfunction.** In the event the Billing Meter fails to register accurately within the allowable accuracy limits as set forth above, then for purposes of preparing (or adjusting) any affected invoice Buyer shall adjust the amount of measured Energy for the period of time the Billing Meter was shown to be in error. If the time the Billing Meter became inaccurate can be determined, then the adjustment to the amount of measured Energy shall be made for the entire time from the time that the Billing Meter became inaccurate until the recalibration of the Billing Meter. If the time the Billing Meter became inaccurate cannot be determined, then the Billing Meter shall be deemed to have failed to register accurately for fifty percent (50%) of the time since the date of the last calibration of the Billing Meter.
- 11.3. **Out-of-Service.** If the Billing Meter is out of service, then for purposes of preparing any affected invoice, the Parties shall negotiate in good faith to determine an estimate of the amount of Energy delivered during the relevant Billing Period. Seller's meter, if any, may be used to establish such estimate if both Parties agree. If within twenty (20) days after the date that the Billing Meter is read as set forth above the Parties have not reached agreement regarding an estimate of the amount of Energy delivered during the relevant Billing Period, then the amount of Energy delivered during the relevant Billing Period shall be determined in a Commercially Reasonable Manner.
- 11.4. **Errors.** If any overcharge or undercharge in any form whatsoever shall at any time be found for an invoice, and such invoice has been paid, the Party that has been paid the overcharge shall refund the amount of the overcharge to the other Party, and the Party that has been undercharged shall pay the amount of the undercharge to the other Party, within forty-five (45) days after final determination thereof; provided, however, that no retroactive adjustment shall be made for any overcharge or undercharge unless written notice of the same is provided to the other Party within a period of twenty-four (24) months from the date of the invoice in which such overcharge or undercharge was first included. Any such adjustments shall be made with interest calculated at the Interest Rate from the date that the undercharge or overcharge actually occurred.

- 11.5. Invoice/Payment Dispute. If a Party in good faith reasonably disputes the amount set forth in an invoice, charge, statement, or computation, or any adjustment thereto, such Party shall provide to the other Party a written explanation specifying in detail the basis for such dispute. The Party disputing the invoice, if it has not already done so, shall pay the undisputed portion of such amount no later than the applicable due date. If the Parties are thereafter unable to resolve the dispute through the exchange of additional documentation, then the Parties shall pursue resolution of such dispute according to the dispute resolution and remedy provisions set forth in this Agreement. Notwithstanding any other provision of this Agreement to the contrary, if any invoice, statement charge, or computation is found to be inaccurate, then a correction shall be made and payment (with applicable interest) shall be made in accordance with such correction; provided, however, no adjustment shall be made with respect to any invoice, statement, charge, computation or payment hereunder unless a Party provides written notice to the other Party questioning the accuracy thereof within twenty-four (24) months after the date of such invoice, statement, charge, computation, or payment.

12. Audit Rights

- 12.1. Process. Buyer shall have the right, at its sole expense and during normal business hours, without Seller requiring any compensation from Buyer, to examine and copy the records of Seller to verify the accuracy of any invoice, statement, charge or computation made hereunder or to otherwise verify Seller's performance under this Agreement, including, without limitation, verifying that the delivered Product complies with the Agreement.
- 12.2. Survival. All audit rights shall survive the expiration or termination of this Agreement for a period of twenty-four (24) months after the expiration or termination. Seller shall retain any and all documents (including, without limitation, paper, written, and electronic) and/or any other records relating to this Agreement and the Facility for a period of twenty-four (24) months after the termination or expiration of this Agreement.

13. Taxes

- 13.1. Seller. Seller shall be liable for and shall pay Buyer, or Seller shall reimburse Buyer if Buyer has paid or cause to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising prior its delivery to and at the Delivery Point (including ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Seller shall indemnify, defend, and hold harmless Buyer from any liability for such Taxes, including related audit and litigation expenses.
- 13.2. Buyer. Buyer shall be liable for and shall pay Seller, or Buyer shall reimburse Seller if Seller has paid or caused to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising after the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Buyer shall indemnify, defend, and hold harmless Seller from any liability for such Taxes, including related audit and litigation expenses.
- 13.3. Remittances. In the event Seller is required by any Requirements of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may request reimbursement of such payment from Buyer by sending Buyer an invoice and Buyer shall include such reimbursement in the next monthly invoice and Buyer shall remit payment thereof.

Conversely, if Buyer is required by any Requirements of Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums otherwise due to Seller under this Agreement. Any refunds or remittances associated with such Taxes shall be administered in accordance with Section 11.1.

- 13.4. Documentation. A Party, upon written request of the other Party, shall promptly provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from any Tax. Nothing herein shall obligate a Party to pay or be liable to pay any Taxes from which it is exempt pursuant to applicable law.

14. Force Majeure

- 14.1. Definition. "Force Majeure" means: (A) war, riots, floods, hurricanes, tornadoes, earthquakes, lightning, ice-storms, excessive winds, and other such extreme weather events and natural calamities; (B) explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of the Party; (C) insurrection, rebellion, nationwide strikes; (D) an act of god or other such significant and material event or circumstance which prevents one Party from performing a material and significant obligation hereunder, which such event or circumstance was not anticipated as of the Effective Date, is not within the Commercially Reasonable control of, or the result of the negligence of such claiming Party, and which, by the exercise of Commercially Reasonable Efforts, the claiming Party is unable to overcome or avoid or cause to be avoided and, (E) delays in obtaining goods or services from any subcontractor or supplier caused solely by the occurrence of any of the events described in the immediately preceding subparts (A) through (D). The acts, events or conditions listed in subparts (A) through (E) above shall only be deemed a Force Majeure if and to the extent they actually and materially delay or prevent the performance of a Party's obligations under this Agreement and: (i) are beyond the reasonable control of the Party, (ii) are not the result of the willful misconduct or negligent act or omission of such Party (or any person over whom that Party has control), (iii) are not an act, event or condition that reasonably could have been anticipated, or the risk or consequence of which such Party has assumed under the Agreement; and, (iv) cannot be prevented, avoided, or otherwise overcome by the prompt exercise of Commercially Reasonable diligence by the Party (or any Person over whom that Party has control).

- 14.1.1. Notwithstanding anything to the contrary herein, Force Majeure will not include the following: (a) any strike or labor dispute of the employees of either Party or any subcontractor that is not part of a nationwide strike or labor dispute; (b) any difficulty in obtaining or maintaining sufficient or appropriately skilled personnel to perform the work in accordance with the requirements of this Agreement; (c) normal wear and tear or obsolescence of any equipment; (d) Buyer's inability to economically use or resell the Product delivered and purchased hereunder; (e) Seller's ability to sell the Product (or any component of the Product) at a more advantageous price; (f) loss by Seller of any contractual arrangement; (g) any Regulatory Event; (h) loss or failure of Seller's supply of the Product or inability to generate the Product that is not caused by an independent Force Majeure event; (i) the cost or availability or unavailability of fuel, water, wind, or motive force, as applicable, to operate the Facility; (j) economic hardship, including, without limitation, lack of money or financing or Seller's inability to economically generate the Product or operate the Facility; (k) any breakdown or malfunction of Facility equipment (including any serial equipment defect) that is not directly caused by an independent event of Force

Majeure; (l) the imposition upon Seller of costs or taxes allocated to Seller hereunder or Seller's failure to obtain or qualify for any tax incentive, preference, or credit; (m) delay or failure of Seller to obtain or perform any Permit; (n) any delay, alleged breach of contract, or failure under any other agreement or arrangement between Seller and another entity, including without limitation, an agent or sub-contractor of Seller (except as a direct result of an event of Force Majeure defined in 14.1(E)); (o) Seller's failure to obtain, or perform under, the Interconnection Agreement or its other contracts and obligations to Transmission Provider; or (p) increased cost of electricity, steel, materials, equipment, labor, or transportation.

- 14.2. Event. If either Party is rendered unable by Force Majeure to carry out, in whole or in part, any material obligation hereunder, such Party shall provide notice and reasonably full details of the event to the other Party as soon as reasonably practicable after becoming aware of the occurrence of the event (but in no event later than three (3) Business Days of the initial occurrence of the event of Force Majeure). Such notice may be given orally but shall be confirmed in writing as soon as practicable thereafter (and in any event within ten (10) days of the initial occurrence of the event of Force Majeure); provided however, a reasonable delay in providing such notice shall not preclude a Party from claiming Force Majeure but only so long as such delay does not prejudice or adversely affect the other Party.
- 14.3. Effect. Subject to the terms and conditions of this Section 14, for as long as the event of Force Majeure is continuing, the specific obligations of the Party that are demonstrably and specifically adversely affected by the Force Majeure event shall be suspended to the extent and for the duration made necessary by the Force Majeure will not be deemed to be an Event of Default, and performance and termination of this Agreement will be governed exclusively by this Section 14. Notwithstanding anything to the contrary in this Agreement, Force Majeure will *not* be applicable to and will *not* be available as an excuse to Seller's performance of the obligations set forth in Sections 19.3 through and including 19.18.
- 14.4. Remedy. The Party claiming Force Majeure shall act in a Commercially Reasonable Manner to remedy the Force Majeure as soon as practicable and shall keep the other Party advised as to the continuance of the Force Majeure event. If a bona fide Force Majeure event persists for a continuous period of ninety (90) days, then the Party not claiming Force Majeure shall have the right, in its sole and unfettered discretion, to terminate this Agreement upon giving the other Party ten (10) Business Days advance written notice.
- 14.5. Termination. Unless otherwise agreed upon by the Parties in writing and in each Party's sole discretion, upon the expiration of the periods set forth above in Sections 14.4, this Agreement may be terminated without any further notice and further opportunity to cure any non-performance. Upon termination becoming effective pursuant to a Force Majeure under this Section 14, neither Party will have any liability to the other Party or recourse against the other Party, other than for amounts arising prior to termination. Notwithstanding the claimed existence of a Force Majeure event or any other provisions of this Agreement, nothing herein shall relieve any Party from exercising any right or remedy provided under this Agreement with respect to any liability or obligation of the other Party that is not excused or suspended by the Force Majeure event, including, without limitation, the right to liquidate and early terminate the Agreement for any Event of Default not excused by the Force Majeure event. Nothing herein shall be construed so as to obligate any Party to settle any strike, work stoppage or other labor dispute or disturbance or to make significant capital expenditures, except in the sole discretion of the Party experiencing such difficulty.

15. Change in Law

15.1. Regulatory Event. A "Regulatory Event" means one or more of the following events:

15.1.1. Illegality. After the Effective Date, due to the adoption of, or change in, any applicable Requirements of Law or in the interpretation thereof by any Governmental Authority with competent jurisdiction, it becomes unlawful for a Party to perform any material obligation under this Agreement.

15.1.2. Adverse Government Action. After the Effective Date, there occurs any adverse material change in any applicable Requirements of Law (including material change regarding a Party's obligation to sell, deliver, purchase, or receive the Product) and any such occurrence renders illegal or unenforceable any material performance or requirement under this Agreement.

15.2. Process. Upon the occurrence of a Regulatory Event the Party affected by the Regulatory Event may notify the other Party in writing of the occurrence of a Regulatory Event, together with details and explanation supporting the occurrence of a Regulatory Event. Upon receipt of such notice, the Parties agree to undertake, during the thirty (30) days immediately following receipt of the notice, to negotiate such modifications to reform this Agreement to remedy the Regulatory Event and attempt to give effect to the original intention of the Parties. Upon the expiration of the 30-day period, if the Parties are unable to agree upon modifications to the Agreement that are acceptable to each Party, in each Party's sole discretion, then either Party shall have the right, in such Party's sole discretion, to terminate this Agreement with a 30-day advance written notice.

16. Confidentiality

16.1. Protected Information. Except as otherwise set forth in this Agreement, neither Party shall, without the other Party's prior written consent, disclose any term of this Agreement or any information relating to this Agreement, or any discussion or documents exchanged between the Parties in connection with this Agreement (such information, the "Protected Information") to any third person (other than the Party's employees, affiliates, counsel, and accountants, and current and prospective lenders and investors in the Facility if Buyer is given at least ten (10) Business Days advance written notice of such disclosure and to whom such disclosure is being made, who have a need to know such information, have agreed to keep such terms confidential for the Term, and for whom the Party shall be liable in the event of a breach of such confidentiality obligation), at any time during the Term or for five (5) years after the expiration or early termination of this Agreement. Each Party shall be entitled to all remedies available at law or in equity (including but not limited to specific performance and/or injunctive relief,) to enforce, or seek relief in connection with, this confidentiality obligation. Notwithstanding any other provision of this Agreement, a violation of any confidentiality obligations shall be an Event of Default hereunder, and any claim related to or arising out of any confidentiality obligations herein may be brought directly in any state or federal court of competent jurisdiction in Mecklenburg County, North Carolina, in accordance with Section 26.5 of this Agreement, and shall not be subject to dispute resolution or arbitration pursuant to Section 23 of this Agreement.

16.2. Non-Confidential Information. Protected Information does not include information: (i) that is or becomes available to the public other than by disclosure of receiving Party in breach of this Agreement; (ii) known to receiving Party prior to its disclosure; (iii) available to receiving Party from a third party who is not bound to keep such information confidential; or, (iv) independently developed by the receiving Party without reliance upon the Protected

Information. Notwithstanding anything to the contrary herein, in no event will Protected Information include the concept of constructing or providing energy from a power plant, using any specific fuel source, in any specific location.

- 16.3. Return of Confidential Information. After expiration or early termination of this Agreement, and upon request of disclosing Party, receiving Party shall either (i) return the Protected Information, including all copies, or (ii) destroy the Protected Information, including all copies, and present written assurances of the destruction to disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Protected Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by Receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, "Back-Up Tapes"). Notwithstanding the terms of this Agreement, in no event shall Receiving Party be required to destroy Protected Information stored on Back-Up Tapes; provided, however, any Protected Information not returned or destroyed pursuant to this Section shall be kept confidential for the duration of its existence. Furthermore, the receiving party may retain one (1) copy of such Protected Information in receiving Party's files solely for audit and compliance purposes for the duration of its existence; provided, however, such Protected Information shall be kept confidential for the duration of its existence in accordance with the terms of this Agreement.
- 16.4. Required Disclosures. Notwithstanding the confidentiality requirements set forth herein, a Party may, subject to the limitations set forth herein, disclose Protected Information to comply with the Act, request of any Governmental Authority, applicable Requirements of Law, or any exchange, control area or System operator rule, in response to a court order, or in connection with any court or regulatory proceeding. Such disclosure shall not terminate the obligations of confidentiality unless the Protected Information falls within one of the exclusions of this Agreement. To the extent the disclosure of Protected Information is requested or compelled as set forth above, the receiving Party agrees to give disclosing Party reasonable notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any Confidential Information. Such notice by the receiving Party shall give disclosing Party an opportunity, at disclosing Party's discretion and sole cost, to seek a protective order or similar relief, and the receiving Party shall not oppose such request or relief. If such protective order or other appropriate remedy is not sought and obtained within at least thirty (30) days of receiving Party's notice, receiving Party shall disclose only that portion of the Protected Information that is required or necessary in the opinion of receiving Party's legal counsel; provided, however, receiving Party shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to any Confidential Information so disclosed.
- 16.5. Regulatory Disclosures by Buyer. This Section 16.5 will apply notwithstanding anything to the contrary in this Agreement. Seller acknowledges that Buyer is regulated by various regulatory and market monitoring entities. Buyer is permitted, in its sole discretion, to disclose or to retain and not destroy (in case of a future disclosure need as determined by Buyer in its sole discretion) any information (including Protected Information) to any regulatory commission (inclusive of the NCUC, SCPSC, FERC), NERC, market monitor, office of regulatory staff, and/or public staff, or any other regulator or legislative body without providing prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for any such disclosures or retentions in its sole discretion. In the event of the establishment of any docket or proceeding before any regulatory commission, public service commission, public utility commission, or other agency, tribunal, or court having jurisdiction over Buyer, the Protected Information shall automatically be governed solely by the rules and procedures governing

such docket or proceeding to the extent such rules or procedures are additional to, different from, or inconsistent with this Agreement. In regulatory proceedings in all state and federal jurisdictions in which Buyer does business, Buyer will from time-to-time be required to produce Protected Information, and Buyer may do so without prior notice to Seller or consent from Seller, using Buyer's business judgment, and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion. When a request for disclosure of information, including Protected Information, is made to Buyer, Buyer may disclose the information, including Protected Information, without prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Duke seeks for such disclosures in its sole discretion. Seller further acknowledges that Buyer is required by law or regulation to report certain information that could embody Protected Information from time-to-time, and Buyer may from time-to-time make such reports, without providing prior notice to Seller or consent from Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion.

17. Mutual Representations and Warranties

17.1. As of the Effective Date and throughout the Term, each Party represents and warrants to the other Party that:

17.1.1. It is duly organized, validly existing and in good standing under the Requirements of Law of the jurisdiction of its organization or formation and has all requisite power and authority to execute and enter into this Agreement;

17.1.2. It has all authorizations under the Requirements of Law (including but not limited to the Required Approvals), necessary for it to legally perform its obligations and consummate the transactions contemplated hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party becomes due;

17.1.3. The execution, delivery, and performance of this Agreement will not conflict with or violate any Requirements of Law or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;

17.1.4. This Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and such Party has all rights necessary to perform its obligations to the other Party in accordance with the terms and conditions of this Agreement;

17.1.5. It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether or not this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the representations, advice or recommendations of the other Party in so doing, is capable of assessing the merits of this Agreement, and understands and accepts the terms, conditions, and risks of this Agreement for fair consideration on an arm's length basis;

17.1.6. No Event of Default or event which with notice or lapse of time, or both, would become an Event of Default, has occurred with respect to such Party, and that such Party is not Bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

17.1.7. There is no pending, or to its knowledge, threatened legal proceeding at law or

equity against it or any Affiliate, that materially adversely affects its ability to perform its obligations under this Agreement;

- 17.1.8. It is a "forward contract merchant" and this Agreement constitutes a "forward contract" as such terms are defined in the United States Bankruptcy Code;
- 17.1.9. It is an "eligible commercial entity" within the Commodity Exchange Act;
- 17.1.10. It is an "eligible contract participant" within the Commodity Exchange Act; and;
- 17.1.11. Each person who executes this Agreement on behalf of such Party has full and complete authority to do so, and that such Party will be bound by such execution.

18. Seller Representations and Warranties to Buyer

- 18.1. For all Product and every aspect thereof, Seller represents, warrants, and reaffirms to Buyer as a continuing warranty and representation that:
 - 18.1.1. No Product (including any REC component of the Product subject to satisfaction of Section 3.4) has been, or will be, sold, retired, claimed, represented as part of any electricity output, use, or sale, or otherwise used to satisfy any renewable energy, efficiency, emissions, and/or offset obligation under the Act, or under any voluntary or mandatory standard, marketplace, or jurisdiction, or otherwise;
 - 18.1.2. All Product will meet the specifications and requirements in this Agreement, including subject to satisfaction of Section 3.4 compliance with the Act;
 - 18.1.3. Each unit of the Product will be and was generated during the applicable Vintage;
 - 18.1.4. Seller has provided and conveyed and will provide and convey to Buyer all Capacity rights associated with the Facility and all Energy produced by the Facility;
 - 18.1.5. Subject to satisfaction of Section 3.4, Seller has provided and conveyed and will provide and convey to Buyer all Renewable Energy Attributes and REA Reporting Rights associated with all Energy generated by the Facility as part of the Product being delivered to Buyer;
 - 18.1.6. Subject to satisfaction of Section 3.4, Seller holds all the rights to all the Product from the Facility, Seller has the right to sell the Product to Buyer, and Seller agrees to convey and does convey to Buyer all rights and good title to the Product free and clear of any Liens, encumbrances, or title defects;
 - 18.1.7. Subject to satisfaction of Section 3.4, Seller has not and will not double sell, double claim or any manner otherwise double count the Product (including, without limitation, any Capacity of the Facility or any REC, Renewable Energy Attributes, or REA Reporting Rights) in any manner (including, for example, by issuing a press release or otherwise claiming that Seller is creating any environmental benefit, using a renewable energy source, or selling renewable energy to any person other than exclusively to and for the benefit of Buyer); Seller will not claim for itself any of the Renewable Energy Attributes, "green energy", "clean energy", "carbon-free energy" or other rights sold to Buyer, in any public communication concerning the output of the Facility, the Facility or the RECs;
 - 18.1.8. Subject to satisfaction of Section 3.4, Seller shall at all times be fully compliant with the requirements of the Federal Trade Commission's "Green Guides," 77 F.R. 62122, 16 C.F.R. Part 260, as amended or restated, and;
 - 18.1.9. Seller has not and will not in any manner interfere with, encumber or otherwise

impede Buyer's use, transfer, and sale of any Product.

19. **Events of Default**

An "Event of Default" means with respect to the non-performing Party (such Party, the "Defaulting Party"), the occurrence of any one or more of the following, each of which, individually, shall constitute a separate Event of Default:

- 19.1. The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after the Defaulting Party's receipt of written notice; *provided, however*, a Party will have two (2) Business Days to remedy any failure to make payment required under Section 21;
- 19.2. Any covenant or warranty made by Seller under Section 6.2 (Seller Covenant) is false or misleading in any respect when made or when deemed made or repeated;
- 19.3. Any representation or warranty made by a Party under Section 17 and elsewhere in this Agreement (except Section 18 which is a separate Event of Default) is false or misleading in any material respect when made or when deemed made or repeated;
- 19.4. Any representation or warranty made by Seller under Section 18 (Seller Representations and Warranties to Buyer) is false or misleading in any respect when made or when deemed made or repeated;
- 19.5. Seller Abandons the Facility;
- 19.6. Seller fails to obtain or maintain the Facility's registration or certification as a Qualifying Facility under PURPA;
- 19.7. Subject to satisfaction of Section 3.4, Seller fails to maintain the Facility's registration as a New Renewable Energy Facility, and such failure is not cured within five (5) Business Days of Seller's failure to have maintained such registration;
- 19.8. Seller fails to fully comply with the PURPA Fuel Requirements;
- 19.9. delivers or attempts to deliver to Buyer any Product (or any component thereof) that was not generated by the Facility;
- 19.10. Seller delivers or attempts to deliver any Product (or component thereof) to any entity or person other than to the Buyer;
- 19.11. Seller fails to promptly and fully comply with a System Operator Instruction;
- 19.12. Seller fails to provide, replenish, renew, or replace the Performance Assurance and/or otherwise fails to fully comply with the requirements of this Agreement, including without limitation, Section 5, and any such failure is not cured within two (2) Business Days;
- 19.13. A Party fails to fully comply with the confidentiality obligations set forth in Section 16;
- 19.14. Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and: (i) at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or (ii) the creditworthiness of the party or the resulting, surviving, transferee or successor entity is weaker than that of Seller prior to such action; or (iii) the benefits of any guaranty fail to extend to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement;
- 19.15. An assignment by or Change of Control with respect to Seller, other than in compliance

with Section 24;

- 19.16. A Party becomes Bankrupt;
- 19.17. Seller transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another Person in violation of the terms and conditions of this Agreement;
- 19.18. Seller violates the publicity obligates set forth in Section 26.10; and
- 19.19. Except to the extent constituting a separate Event of Default (in which case the provisions applicable to that separate Event of Default shall apply), the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within twenty (20) days after the Defaulting Party's receipt of written notice.

20. **Early Termination.**

- 20.1. **Early Termination Date.** If an Event of Default with respect to a Defaulting Party has occurred and is continuing, then the other Party (such Party, the "Non-Defaulting Party") shall have the right, in its sole discretion and upon written notice to the Defaulting Party, to pursue any or all of the following remedies: (a) withhold payments due to the Defaulting Party under this Agreement; (b) suspend performance under this Agreement; and/or (c) designate a day (which day shall be no earlier than the day such notice is effective and shall be no later than twenty (20) days after the delivery of such notice is effective) as an early termination date to accelerate all amounts owing between the Parties, liquidate, net, recoup, set-off, and early terminate this Agreement and any other agreement between the Parties (such day, the "Early Termination Date").
- 20.2. **Effectiveness of Default and Remedies.** Where an Event of Default is specified herein and is governed by a system of law which does not permit termination to take place upon or after the occurrence of the relevant Event of Default in accordance with the terms of this Agreement, an Event of Default and Early Termination Date shall be deemed to have occurred immediately upon any such event and no prior written notice shall be required. All of the remedies and provisions set forth in this section shall be without prejudice to any other right of the Non-Defaulting Party to accelerate amounts owed, net, recoup, setoff, liquidate, and early terminate this Agreement.
- 20.3. **Net Settlement Amount.** If the Non-Defaulting Party establishes an Early Termination Date, then the Non-Defaulting Party shall calculate its Gains or Losses and Costs resulting from the termination as of the Early Termination Date in a Commercially Reasonable Manner. The Non-Defaulting Party shall aggregate such Gains or Losses and Costs with respect to the liquidation of the termination and any other amounts due under this Agreement and any other agreement between the Parties into a single net amount expressed in U.S. dollars (the "Net Settlement Amount"). The Non-Defaulting Party shall then notify the Defaulting Party of the Net Settlement Amount. The Defaulting Party shall pay the Non-Defaulting Party the full amount of the Net Settlement Amount within two (2) Business Days of delivery to the Defaulting Party of the notice of the Net Settlement Amount that the Defaulting Party is liable for.
- 20.4. **Payment.** Any Net Settlement Amount will be due and payable only to the Non-Defaulting Party from and by the Defaulting Party. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Net Settlement Amount will be deemed to be zero and no payment will be due or payable. The Non-Defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the Defaulting Party for economic benefits accruing to

the Non-Defaulting Party as a result of the Defaulting Party's default. The Non-Defaulting Party shall be entitled to recover any Net Settlement Amount by netting or set-off or to otherwise pursue recovery of damages. Additionally, Buyer will be entitled to recover any Net Settlement Amount by drawing upon any Performance Assurance or by netting or set-off, or to otherwise pursue recovery of damages.

20.5. Survival. This Section 20 will survive any expiration or termination of this Agreement.

21. Cover Costs.

21.1. Exclusive Remedies. Except as otherwise set forth in this Agreement, the remedies set forth in this Section shall be a Party's exclusive remedies prior to termination for the other Party's failure to deliver the Product or to receive the Product pursuant to and in accordance with this Agreement.

21.2. Seller's Failure to Deliver. If Seller fails to deliver Product that complies with the requirements set forth in this Agreement or fails to deliver all or part of the Contract Quantity (each will be deemed as a failure to deliver for purposes of calculating damages), and such failure is not excused by Buyer's failure to perform, then Buyer shall elect in its sole discretion: (i) to terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Buyer shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) to require Seller to pay Buyer within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Seller failed to deliver to Buyer multiplied by two (2) times the per unit Contract Price.

21.3. Buyer's Failure to Accept Delivery. If Buyer fails to receive all or part of the Contract Quantity that Seller attempted to deliver to Buyer in accordance with this Agreement, and such failure by Buyer is not excused by Seller's failure to perform, then Seller shall elect in its sole discretion either to: (i) terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Seller shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) require Buyer to pay Seller within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Buyer failed to receive multiplied by two (2) times the per unit Contract Price.

21.4. Event of Default. Any failure by Seller to pay amounts due under this Section 21 will be an Event of Default under Section 19.1.

21.5. Survival. This Section 21 will survive any expiration or termination of this Agreement.

22. Limitation of Liabilities & Liquidated Damages.

22.1. Reasonableness. THE EXPRESS REMEDIES AND MEASURES OF DAMAGES, INCLUDING WITHOUT LIMITATION DETERMINATION OF LIQUIDATED DAMAGES, COVER COSTS, AND NET SETTLEMENT AMOUNT DAMAGES PROVIDED FOR IN THIS AGREEMENT (i) ARE REASONABLE AND SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH THE EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, AND (ii) UNLESS OTHERWISE STATED IN SUCH PROVISIONS, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS, AND ALL OTHER

REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY PROVISION OF THIS AGREEMENT PROVIDES FOR, OR IS DEEMED TO CONSTITUTE OR INCLUDE, LIQUIDATED DAMAGES, THE PARTIES STIPULATE AND AGREE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO ESTIMATE OR DETERMINE, THE LIQUIDATED AMOUNTS ARE A REASONABLE APPROXIMATION OF AND METHODOLOGY TO DETERMINE THE ANTICIPATED HARM OR LOSS TO THE PARTY, AND OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT. THE PARTIES FURTHER STIPULATE AND AGREE THAT ANY PROVISIONS FOR LIQUIDATED DAMAGES ARE NOT INTENDED AS, AND SHALL NOT BE DEEMED TO CONSTITUTE, A PENALTY, AND EACH PARTY HEREBY WAIVES THE RIGHT TO CONTEST SUCH PROVISIONS AS AN UNREASONABLE PENALTY OR AS UNENFORCEABLE FOR ANY REASON.

- 22.2. Limitation. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, (i) THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED; AND (ii) NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, STRICT LIABILITY, ANY TORT, CONTRACT, OR OTHERWISE.
- 22.3. Damages Stipulation. Each Party expressly agrees and stipulates that the terms, conditions, and payment obligations set forth in Sections 20 and 21 are a reasonable methodology to approximate or determine harm or loss, each Party acknowledges the difficulty of determining actual damages or loss, and each Party hereby waives the right to contest such damages and payments as unenforceable, as an unreasonable penalty, or otherwise for any reason. The Parties further acknowledge and agree that damages and payments determined under Sections 20 and 21 are direct damages, will be deemed to be a direct loss, and will not be excluded from liability or recovery under the Limitations of Liabilities provisions of this Section 22.
- 22.4. Survival. This Section 22 will survive any expiration or termination of this Agreement.

23. Disputes and Arbitration

- 23.1. Resolution by the Parties. The Parties shall attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, "Dispute(s)") promptly by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. A Party may give the other Party written notice of a Dispute that has not been resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within ten (10) Business Days after delivery of the notice, the receiving Party shall respond with (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within twenty (20) Business Days after delivery of the initial notice, the executives of both Parties shall meet at Buyer's offices, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. At the request of either Party, the Parties shall enter into a confidentiality agreement to cover any Dispute and discussions related thereto.

23.2. Demand for Arbitration.

23.2.1. If a Dispute has not been resolved by negotiation within thirty (30) Business Days of the disputing Party's initial notice, the Parties shall fully and finally settle the Dispute by binding arbitration administered by the American Arbitration Association ("AAA"), or such other nationally recognized arbitration association or organization as the Parties may mutually agree. The Arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules then in effect, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. To the extent the AAA Rules conflict with any provision of Section 23 of this Agreement, the terms of this Agreement shall govern and control.

23.2.2. Either Party may serve the demand for arbitration on the other Party; provided, however, no demand for arbitration shall be made or permitted after the date when the institution of a civil action based on the Dispute would be barred by the applicable statute of limitations or repose.

23.2.3. All arbitration proceedings shall take place in Charlotte, North Carolina.

23.2.4. A single arbitrator will arbitrate all Disputes where the amount in controversy is less than five-hundred thousand U.S. dollars (\$500,000), and will be selected by the Parties or by the AAA if the Parties cannot agree to the arbitrator. Such arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry. The cost of the arbitrator(s) shall be borne equally by the Parties.

23.2.5. A panel of three (3) arbitrators will conduct the proceeding when the amount in controversy is equal to or more than five hundred thousand U.S. dollars (\$500,000). If the Parties have not so agreed on such three (3) arbitrator(s) on or before thirty (30) days following the delivery of a demand for Arbitration to the other Party, then each Party, by notice to the other Party, may designate one arbitrator (who shall not be a current or former officer, director, employee or agent of such Party or any of its Affiliates). The two (2) arbitrators designated as provided in the immediately preceding sentence shall endeavor to designate promptly a third (3rd) arbitrator.

23.2.6. If either Party fails to designate an initial arbitrator on or before forty five (45) days following the delivery of an arbitration notice to the other Party, or if the two (2) initially designated arbitrators have not designated a third (3rd) arbitrator within thirty (30) days of the date for designation of the two (2) arbitrators initially designated, any Party may request the AAA to designate the remaining arbitrator(s) pursuant to its Commercial Arbitration Rules. Such third (3rd) arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry.

23.2.7. If any arbitrator resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, the Party entitled to designate that arbitrator shall designate a successor.

23.3. Discovery. Either Party may apply to the arbitrators for the privilege of conducting discovery. The right to conduct discovery shall be granted by the arbitrators in their sole discretion with a view to avoiding surprise and providing reasonable access to necessary information or to information likely to be presented during the course of the arbitration, provided that such discovery period shall not exceed sixty (60) Business Days.

23.4. Binding Nature. The arbitrator(s)' decision shall be by majority vote (or by the single

- arbitrator if a single arbitrator is used) and shall be issued in a writing that sets forth in separately numbered paragraphs all of the findings of fact and conclusions of law necessary for the decision. Findings of fact and conclusions of law shall be separately designated as such. The arbitrator(s) shall not be entitled to deviate from the construct, procedures or requirements of this Agreement. The award rendered by the arbitrator(s) in any arbitration shall be final and binding upon the Parties, and judgment may be entered on the award in accordance with applicable law in any court of competent jurisdiction.
- 23.5. Consolidation. No arbitration arising under the Agreement shall include, by consolidation, joinder, or any other manner, any Person not a party to the Agreement unless (a) such Person is substantially involved in a common question of fact directly relating to the Dispute; provided however, such Person will not include any Governmental Authority, (b) the presence of the Person is required if complete relief is to be accorded in the arbitration, and (c) the Person has consented to be included.
- 23.6. Mediation. At any time prior or subsequent to a Party initiating arbitration, the Parties may mutually agree to (but are not obligated to) attempt to resolve their Dispute by non-binding mediation, using a mediator selected by mutual agreement. The mediation shall be completed within thirty (30) Business Days from the date on which the Parties agree to mediate. Unless mutually agreed by the parties, any mediation agreed to by the Parties shall not delay arbitration. The Parties shall pay their own costs associated with mediation and shall share any mediator's fee equally. The mediation shall be held in Charlotte, North Carolina, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court of competent jurisdiction.
- 23.7. Remedies. Except for Disputes regarding confidentiality arising under Section 16 of this Agreement, the procedures specified in this Section 23 shall be the sole and exclusive procedures for the resolution of Disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party may file a judicial claim or action on issues of statute of limitations or repose or to seek injunctive relief, sequestration, garnishment, attachment, or an appointment of a receiver, subject to and in accordance with the provisions of Section 26.5 (Venue/Consent to Jurisdiction). Preservation of these remedies does not limit the power of the arbitrator(s) to grant similar remedies, and despite such actions, the Parties shall continue to participate in and be bound by the dispute resolution procedures specified in this Section 23.
- 23.8. Settlement Discussions. All negotiations and discussion concerning Disputes between the Parties pursuant to this Section 23 are to be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and settlement privilege. No statement of position or offers of settlement made in the course of the dispute resolution process can be or will be offered into evidence for any purpose, nor will any such statements or offers of settlement be used in any manner against any Party. Further, no statement of position or offers of settlement will constitute an admission or waiver of rights by either Party. At the request of either Party, any such statements or offers, and all copies thereof, shall be promptly returned to the Party providing the same.
- 23.9. Survival. This Section 23 will survive any expiration or termination of this Agreement.

24. Assignment

- 24.1. Limitation. Except as set forth below in Section 24.2 with respect to pledging as collateral security, Seller shall not assign, pledge, and/or encumber (collectively, "Assignment") this Agreement, any rights or obligations under the Agreement, or any portion hereunder, without Buyer's prior written consent. Seller shall give Buyer at least thirty (30) days prior written notice of any requested Assignment. Subject to Seller providing Buyer with information demonstrating to Buyer, in Buyer's sole Commercially Reasonable discretion, that Seller's proposed assignee has the technical, engineering, financial, and operational capabilities to perform under this Agreement, Buyer may not unreasonably withhold its consent; *provided, however*, that any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall deliver to Buyer such tax, credit, Performance Assurance in the required amount, and enforceability assurance as the Buyer may request in its sole Commercially Reasonable discretion. Notwithstanding anything to the contrary herein, Buyer may pledge, encumber, or assign this Agreement to any person, including any affiliate or subsidiary of Buyer, whether or not an Affiliate, without any restriction.
- 24.2. Pledge. Seller may, without prior consent of Buyer but with no less than ten (10) Business Days prior written notice to Buyer, pledge as collateral security this Agreement to a financing party in connection with any loan, lease, or other debt or equity financing arrangement for the Facility. Any pledge of this Agreement as collateral security will not relieve Seller of any obligation or liability under this Agreement, and it will not create any rights, including any third party beneficiary rights, for any person under this Agreement.
- 24.3. Change of Control. Any Change of Control of Seller (however this Change of Control occurs) shall require the prior written consent of Buyer, which shall not be unreasonably withheld or delayed. Seller shall give Buyer at least thirty (30) days prior written notice of any such requested consent to a Change of Control.
- 24.4. Delivery of Assurances & Voidable. Any Assignment or Change of Control will not relieve Seller of its obligations hereunder, unless Buyer agrees in writing in advance to waive the Seller's continuing obligations under this Agreement. In case of a permitted Assignment and/or Change of Control, such requesting party or parties shall agree in writing to assume all obligations of Seller and to be bound by the terms and conditions of this Agreement and shall deliver to Buyer such tax, credit, performance, and enforceability assurances as Buyer may request, in its sole Commercially Reasonable discretion. Further, Buyer's consent to any Assignment may be conditioned on and subject to Seller's proposed assignee having first obtained all approvals that may be required by any Requirements of Law and from all applicable Governmental Authorities. Any sale, transfer, Change of Control, and/or Assignment of any interest in the Facility or in the Agreement made without fully satisfying the requirements of this Agreement shall be null and void and will be an Event of Default hereunder with Seller as the Defaulting Party.
- 24.5. Cost Recovery. Without limiting Buyer's rights under this Section 24, to the extent Buyer agrees to a request from Seller for an Assignment, Change of Control, or other changes in administering this Agreement, Seller shall pay Buyer ten thousand dollars (\$10,000) prior to Buyer processing Seller's request.
25. Notices.
- 25.1. Process. All notices, requests, or invoices shall be in writing and shall be sent to the address of the applicable Party as specified on the first page of this Agreement. A Party may change its information for receiving notices by sending written notice to the other Party. Notices shall be delivered by hand, certified mail (postage prepaid and return receipt requested), or sent by overnight mail or courier. This section shall be applicable whenever words such as "notify," "submit," "give," or similar language are used in the

context of giving notice to a Party.

- 25.2. Receipt of Notices. Hand delivered notices shall be deemed delivered by the close of the Business Day on which it was hand delivered. Notices provided by certified mail (postage prepaid and return receipt requested), mail delivery or courier service, or by overnight mail or courier service will be deemed received on the date of delivery recorded by the delivery service or on the tracking receipt, as applicable. Notwithstanding anything to the contrary, if the day on which any notice is delivered or received is not a Business Day or is after 5:00 p.m. EPT on a Business Day, then it shall be deemed to have been received on the next following Business Day.

26. Miscellaneous.

- 26.1. Costs. Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs and fees associated with negotiating or disputing or taking any other action with respect to this Agreement, including, without limitation, attorney cost, except that the cost of the arbitrator(s) will be allocated equally between the Parties as provided in Section 23.
- 26.2. Access. Upon reasonable prior notice, Seller shall provide to Buyer and its authorized agents (including contractors and sub-contractors), employees, auditors, and inspectors reasonable access to the Facility to: (i) tour or otherwise view the Facility; (ii) ascertain the status of the Facility with respect to construction, start-up and testing, or any other obligation of Seller under this Agreement; and, (iii) read meters and perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this Agreement or to otherwise audit and/or verify Seller's performance under this Agreement. Upon reasonable prior notice, Seller shall provide to Buyer and its guests or customers reasonable access to the Facility to only tour or otherwise view the Facility. While at the Facility, the foregoing agents, employees, auditors, inspectors, guests, and customer shall observe such reasonable safety precautions as may be required by Seller, conduct themselves in a manner that will not interfere with the operation of the Facility, and adhere to Seller's reasonable rules and procedures applicable to Facility visitors. Seller shall have the right to have a representative of Seller present during such access.
- 26.3. Safe Harbor and Waiver of Section 366. Each Party agrees that it will not assert, and waives any right to assert, that the other Party is performing hereunder as a "utility," as such term is used in 11 U.S.C. Section 366. Further, each Party hereby waives any right to assert and agrees that it will not assert that 11 U.S.C. Section 366 applies to this Agreement or any transaction hereunder in any bankruptcy proceeding. In any such proceeding each Party further waives the right to assert and agrees that it will not assert that the other Party is a provider of last resort with respect to this Agreement or any transaction hereunder or to otherwise limit contractual rights to accelerate amounts owed, net, recoup, set-off, liquidate, and/or early terminate. Without limiting the generality of the foregoing or the binding nature of any other provision of this Agreement on permitted successors and assigns, this provision is intended to be binding upon all successors and assigns of the Parties, including, without limitation, judgment lien creditors, receivers, estates in possession, and trustees thereof.
- 26.4. Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW, AND, IF APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA.

- 26.5. Venue/Consent to Jurisdiction. Except for Disputes that are subject to Arbitration as provided herein, any judicial action, suit, or proceedings arising out of, resulting from, or in any way relating to, this Agreement, or any alleged breach or default under the same or the warranties and representations contained in the same, shall be brought only in a state or federal court of competent jurisdiction located in Mecklenburg County, North Carolina. The Parties hereto irrevocably consent to the jurisdiction of any federal or state court within in Mecklenburg County, North Carolina and hereby submit to venue in such courts. Without limiting the generality of the foregoing, the Parties waive and agree not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) such Party is not subject to the jurisdiction of the state or federal Courts within North Carolina; or (ii) such suit, action, or proceeding is brought in an inconvenient forum; or (iii) the venue of such suit, action, or proceeding is improper. The exclusive forum for any litigation between them under this Agreement that is not subject to Arbitration shall occur in federal or state court within in Mecklenburg County, North Carolina.
- 26.6. Limitation of Duty to Buy. If this Agreement is terminated due to a default by Seller, neither Seller, nor any affiliate and/or successor of Seller, nor any affiliate and/or successor to the Facility, including without limitation owner and/or operator of the Facility will require or seek to require Buyer to purchase any output (Energy or otherwise) from the Facility under any Requirements of Law (including without limitation PURPA) or otherwise for any period that would have been covered by the Term of this Agreement had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, and on behalf of any successor to the Seller or successor to the Facility, hereby agrees to the terms and conditions in the above sentence, and hereby waives its right to dispute the above sentence. Seller authorizes the Buyer to record notice of the foregoing in the real estate records.
- 26.7. Entire Agreement and Amendments. This Agreement represents the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, binding documents, representations and agreements, whether written or oral. No amendment, modification, or change to this Agreement shall be enforceable unless agreed upon in a writing that is executed by the Parties.
- 26.8. Drafting. Each Party agrees that it (and/or its counsel) has completely read, fully understands, and voluntarily accepts every provision, term, and condition of this Agreement. Each Party agrees that this Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties, and no Party shall have any provision hereof construed against such Party by reason of such Party drafting, negotiating, or proposing any provision hereof, or execution of this Agreement. Each Party irrevocably waives the benefit of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific language in a contract.
- 26.9. Headings. All section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- 26.10. Publicity.
- 26.10.1. Limitation on Seller. Seller shall not make any announcement or release any information concerning or otherwise relating to this Agreement to any member of the public, press, Person, official body, or otherwise without Buyer's prior written consent, which shall not be unreasonably withheld; provided, however, any content approved by Buyer shall be limited to the non-confidential facts of the Agreement and will not imply, directly or indirectly, any endorsement, partnership, support, or testimonial of Seller by Buyer.

- 26.10.2. Limitation on the Parties. Neither Party shall make any use of the other Party's name, logo, likeness in any publication, promotional material, news release, or similar issuance or material without the other Party's prior review, approval, and written consent. Seller agrees and acknowledges that any reference or likeness to "Duke" shall be a prohibited use of Buyer's name, logo, likeness. Seller agrees and acknowledges that any direct or indirect implication of any endorsement, partnership, support, or testimonial of Seller by Buyer is prohibited, and any such use, endorsement, partnership, support, and/or testimonial will be an Event of Default under this Agreement. Subject to the foregoing, either Party may disclose to the public general information in connection with the Party's respective business activities; *provided, however*, no such disclosure or publicity by Seller will directly or indirectly imply any endorsement, partnership, support, or testimonial of Seller by Buyer.
- 26.11. Waiver. No waiver by any Party of any of its rights with respect to the other Party or with respect to any matter or default arising in connection with this Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver under this Agreement will be effective only if it is in writing that has been duly executed by an authorized representative of the waiving Party.
- 26.12. Partnership and Beneficiaries. Nothing contained in this Agreement shall be construed or constitute any Party as the employee, agent, partner, joint venture, or contractor of any other Party. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns. No other person or entity, including, without limitation, a financing or collateral support provider, will be a direct or indirect beneficiary of or under this Agreement, and will not have any direct or indirect cause of action or claim under or in connection with this Agreement.
- 26.13. Severability. Any provision or section hereof that is declared or rendered unlawful by any applicable court of law, or deemed unlawful because of a statutory change, shall not, to the extent practicable, affect other lawful obligations under this Agreement.
- 26.14. Counterparts. This Agreement may be executed in counterparts, including facsimiles hereof, and each such executed document will be deemed to be an original document and together will complete execution and effectiveness of this Agreement.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

DUKE ENERGY CAROLINAS, LLC

BY: _____

NAME: _____

TITLE: _____

DATE: _____

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Exhibit 1

Estimated Monthly Energy Production of the Facility

| <u>Month</u> | <u>Estimated Facility Energy Production (MWh)</u> |
|--------------|---|
| January | 651 |
| February | 639 |
| March | 693 |
| April | 785 |
| May | 764 |
| June | 653 |
| July | 551 |
| August | 590 |
| September | 579 |
| October | 324 |
| November | 280 |
| December | 491 |
| Total | 7,000 |

Exhibit 2
Contract Price

| | <u>Contract Price</u> |
|-----------------|-----------------------|
| On-Peak Energy | \$39.99/MWh |
| Off-Peak Energy | \$32.42/MWh |
| REC Price | \$4/MWh |

On-Peak Energy shall be Energy which is delivered to Buyer at the Delivery Point during On-Peak Hours. Off-Peak Energy shall be Energy delivered to Buyer at the Delivery Point during Off-Peak Hours.

ON-PEAK HOURS

Monday through Friday, beginning at 1 PM and ending at 9 PM during Summer Months and beginning at 6 AM and ending at 1 PM during Non-Summer Months.

OFF-PEAK HOURS

All other weekday hours, all Saturday and Sunday hours, and all hours of the following holidays: New Year's Day, Memorial Day, Good Friday, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.

SUMMER MONTHS

June 1 through September 30

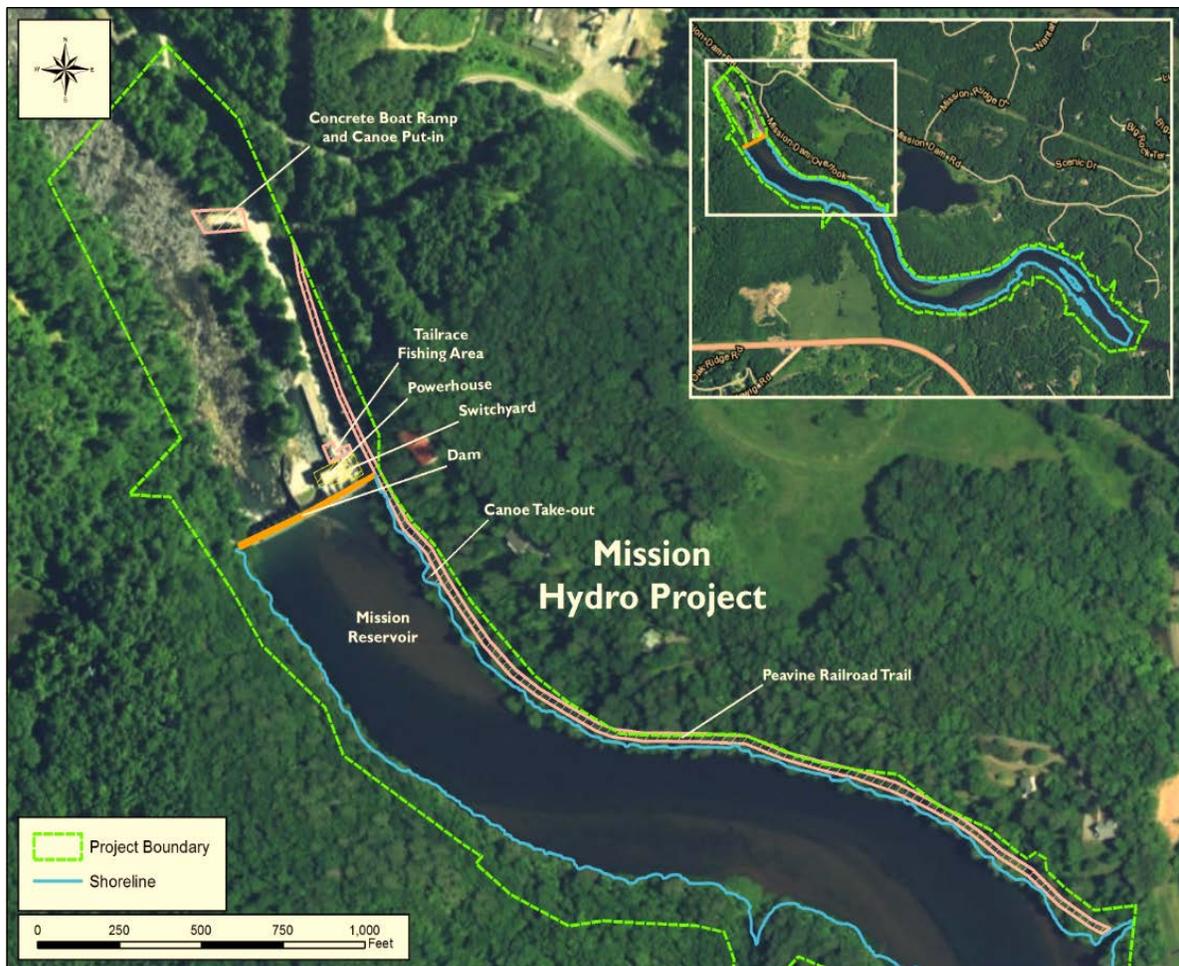
NON-SUMMER MONTHS

October 1 through May 31

Exhibit 3

Facility Information

1. Facility Name: Mission
2. Facility Address: Mission Dam Road, Hayesville, NC 28904
3. Description of Facility: The Facility has three generating units. Dam was constructed as an Ambursen slab and buttress structure. Non-overflow sections were converted to gravity structures. Dam consists of power house intake structure, multiple bulkhead sections, and seven ogee spillways sections. Facility operates in run of river mode.
4. Nameplate Capacity Rating: 1.80 MW
5. Fuel Type/Generation Type: Hydro
6. Site Map:



7. Delivery Point Diagram (include Delivery Point, metering, Facility substation): TBD

EXHIBIT F-4
FORM OF TUXEDO POWER PURCHASE AGREEMENT

[See Attached]



RENEWABLE POWER PURCHASE AGREEMENT

Buyer: Duke Energy Carolinas, LLC

Overnight Mail: 400 South Tryon Street
Mail Code: ST 13A
Charlotte, North Carolina 28202
Regular Mail: PO Box 1010
Mail Code: ST 13A
Charlotte, NC 28201-1010
Attn.: Wholesale Renewable Manager
DERContracts@duke-energy.com

*With Additional Notices of Events of Default
Or Potential Event of Default to:*
Overnight Mail: 550 S. Tryon St.
Charlotte, North Carolina 28202
Regular Mail: P.O. Box 1321, DEC45
Charlotte, North Carolina 28201-1321
Attn.: VP Commercial Legal Support

Seller: _____

This Renewable Power Purchase Agreement, including Exhibits 1-3 hereto, which are incorporated into and made part hereof (collectively, the "Agreement"), is made and entered into by and between Tuxedo (the "Seller") and Duke Energy Carolinas, LLC (the "Buyer") under the terms specified herein. Buyer and Seller may be referred to individually as a "Party" and collectively as the "Parties." Notwithstanding anything set forth herein, neither this Agreement nor any transaction contemplated hereunder will be effective **unless and until both Parties have executed** and delivered this Agreement, and the later of such date shall be the "Effective Date" of this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES AND MUTUAL COVENANTS SET FORTH HEREIN, FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY OF WHICH IS ACKNOWLEDGED, AND INTENDING TO BE BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:

1. **Definitions**

Unless defined in the body of the Agreement, any capitalized term herein shall have the meaning set forth below:

- 1.1. "AAA" is defined in Section 23.2.1.
- 1.2. "Abandon(s)" means the relinquishment of control or possession of the Facility and/or cessation of operations of or at the Facility by Seller. "Abandon" excludes cessation of generation to comply with Prudent Utility Practices or due to maintenance or repair of the Facility (including Maintenance Outages and Planned Outage), provided that such maintenance or repair activities are being performed in a Commercially Reasonable Manner and with Prudent Utility Practice.
- 1.3. "Account" means a Party's electronic account with the Tracking System.
- 1.4. "Act" means the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard, N.C. Gen. Stat. 62-133.8, including all rules promulgated by the Commission associated therewith, as each may be amended or modified from time-to-time, and any successor renewable energy standards, statutes, regulations, or rules.
- 1.5. "Affiliate" means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and policies, or otherwise have control of an entity, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer the term Affiliate does not include any subsidiaries or affiliates whose activities are subject to the oversight or regulation of any state commission(s) and/or federal energy regulatory commission.
- 1.6. "Agreement" is defined in the introductory paragraph hereof.
- 1.7. "Assignment" is defined in Section 24.1.
- 1.8. "Back-Up Tapes" is defined in Section 16.3.
- 1.9. "Bankrupt" means, with respect to a Party or its credit support provider, that such Party or its credit support provider: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors; (c) has such a petition filed against it as debtor and such petition is not stayed, withdrawn, or dismissed within thirty (30) Business Days of such filing; (d) seeks or has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; (e) has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (f) is unable to pay its debts as they fall due or admits in writing of its inability to pay its debts generally as they become due; and/or (g) otherwise becomes bankrupt or insolvent (however evidenced).
- 1.10. "Billing Meter" is defined in Section 10.
- 1.11. "Billing Period" is defined in Section 11.
- 1.12. "Business Day" means any day on which the Federal Reserve member banks in New York City are open for business. A Business Day shall run from 8:00 a.m. to 5:00 p.m. Eastern Prevailing Time.
- 1.13. "Buyer" shall have the meaning specified in the first paragraph of this Agreement

- 1.14. "Capacity" means and includes the electric generation capability and ability of the Facility and all associated characteristics and attributes, inclusive of the ability to contribute to peak system demands, as well as reserve requirements.
- 1.15. "Certificate" means the electronic instrument created and issued by the Tracking System.
- 1.16. "Change of Control" means a transaction or series of related transactions (by way of merger, consolidation, sale of stock or assets, or otherwise) with any person, entity or "group" (within the meaning of Section 13(d)(3) of the U.S. Securities Exchange Act of 1934) of persons pursuant to which such person, entity, or group would acquire (i) 50% or more of the voting interests in Seller or (ii) substantially all of the assets of Seller.
- 1.17. "Commencement Date" is defined in Section 3.1.
- 1.18. "Commercially Reasonable Manner" or "Commercially Reasonable" means, with respect to a given goal or requirement, the manner, efforts and resources a reasonable person in the position of the promisor would use, in the exercise of its reasonable business discretion and industry practice, so as to achieve that goal or requirement, which in no event shall be less than the level of efforts and resources standard in the industry for comparable companies with respect to comparable products. Factors used to determine whether a goal or requirement has been performed in a "Commercially Reasonable Manner" may include, but shall not be limited to, any specific factors or considerations identified in the Agreement as relevant to such goal or requirement.
- 1.19. "Commission" means the North Carolina Utilities Commission or any successor thereto.
- 1.20. "Contract Price" is defined in Section 4.4.
- 1.21. "Contract Quantity" is defined in Section 4.3.
- 1.22. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, and other similar third party transaction costs and expenses, and other costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated transaction(s), and all reasonable attorneys' fees and other legal expenses incurred by the Non-Defaulting Party in connection with the termination.
- 1.23. "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating.
- 1.24. "Defaulting Party" is defined in Section 19.
- 1.25. "Delivery Period" is defined in Section 4.1.
- 1.26. "Delivery Point" means the point of interconnection between the Facility and the System on the high side (Buyer or Transmission Provider side) of the System.
- 1.27. "Dispatch Down" means any reduction or cessation of Energy generation by the Facility in response to an order or instruction by or direct action taken by the System Operator.
- 1.28. "Disputes" is defined in Section 23.1.
- 1.29. "Early Termination Date" is defined in Section 20.1.
- 1.30. "Effective Date" is defined in the introductory paragraph hereto.
- 1.31. "Emergency Condition" means, no matter the cause: (a) any urgent, abnormal, operationally unstable, dangerous, or public safety condition that is existing on the System or any portion

thereof; (b) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is likely to result in any of the following: (i) loss or damage to the Facility or the System, (ii) disruption of generation by the Facility, (iii) disruption of service or stability on, to or of the System, or (iv) condition that may result in endangerment of human life or public safety; or (c) any circumstance that requires action by the System Operator to comply with standing NERC regulations or standards, including without limitation actions to respond to, prevent, limit, or manage loss or damage to the Facility, loss or damage to the System, disruption of generation by the Facility, disruption of service on the System, an abnormal condition on the System, and/or endangerment to human life or safety. An Emergency Condition will be an excuse to Seller's performance only if such condition is not due to Seller's negligence, willful misconduct, and/or Seller's failure to perform as required under this Agreement.

- 1.32. "Energy" means three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh, as the case may be.
- 1.33. "EPT" or "Eastern Prevailing Time" means the time in effect in the Eastern Time Zone of the United States of America, whether it be Eastern Standard Time or Eastern Daylight Savings Time.
- 1.34. "Event of Default" is defined in Section 19.
- 1.35. "Expected Annual Output" means the quantity of Energy identified in Exhibit 1.
- 1.36. "Facility" means Seller's hydro-electric generating facility, damming the Green River, is located in Henderson County, NC, near Flat Rock, NC, as further identified in Exhibit 3.
- 1.37. "FERC" means the Federal Energy Regulatory Commission or any successor thereto.
- 1.38. "Force Majeure" is defined in Section 14.1.
- 1.39. "GAAP" is defined in Section 9.1.
- 1.40. "Gains" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.41. "Governmental Authority" means any federal, state or local government, legislative body, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory authority or instrumentality or authorized arbitral body, including, without limitation, the Commission.
- 1.42. "Interconnection Agreement" means the separate interconnection and transmission service agreement (or agreements) to be negotiated and executed between Seller and the Transmission Provider concerning the interconnection of the Facility with the System, upgrade to the System to accommodate the Facility's interconnection with and operation in parallel with the System, and the requirements for transmission service.
- 1.43. "Interconnection Instruction" means any order, action, signal, requirement, demand, and/or direction, howsoever provided or implemented by the System Operator due to, in response

to, or to address any condition relating to any service and/or obligation occurring under the Interconnection Agreement.

- 1.44. "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%); and, (b) the maximum rate permitted by applicable law.
- 1.45. "kW" means kilowatt.
- 1.46. "kWh" means kilowatt-hour.
- 1.47. "Letter(s) of Credit" means one or more irrevocable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank, which is not an Affiliate of Seller, which has and maintains a Credit Rating of at least A- from S&P and A3 from Moody's, for the Security Period, permitting Buyer to draw the entire amount if either such amount is owed or such Letter of Credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date, and is otherwise acceptable in all respects to Buyer in its sole discretion.
- 1.48. "Lien" means any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right of way, restriction, equity, or encumbrance of any nature whatsoever.
- 1.49. "Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic loss or loss of economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.50. "Maintenance Outage" means the temporary operational removal of the Facility from service to perform work on specific components of the Facility, at a time when the Facility must be removed from service before the next Planned Outage in the interest of safety or the prevention of injury or damage to or undue wear and tear on the Facility or any component thereof.
- 1.51. "Moody's" means Moody's Investors Service, Inc. or any successor-rating agency thereto.
- 1.52. "MW" means megawatt.
- 1.53. "MWh" means megawatt-hour.
- 1.54. "Nameplate Capacity Rating" means the installed nameplate capacity rating of the Facility set forth in Exhibit 3.
- 1.55. "NERC" means the North American Electric Reliability Corporation. For purposes of this Agreement, NERC includes any applicable regional entity with delegated authority from NERC, such as the SERC Reliability Corporation (SERC).
- 1.56. "Net Settlement Amount" is defined in Section 20.3.

- 1.57. "New Renewable Energy Facility" is defined in the Act.
- 1.58. "Non-Defaulting Party" is defined in Section 20.1.
- 1.59. "Party" or "Parties" is defined in the introductory paragraph hereto.
- 1.60. "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security that is acceptable to Buyer in its sole discretion, in each case that meets the requirements set forth in this Agreement (including, without limitation, Section 5) provided by Seller to Buyer for the benefit of Buyer pursuant to this Agreement, as credit support, adequate assurances, and security to secure Seller's performance under this Agreement.
- 1.61. "Permit" means any permit, license, registration, filing, certificate of occupancy, certificate of public convenience and necessity, approval, variance or any authorization from or by any Governmental Authority and pursuant to any Requirements of Law.
- 1.62. "Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.
- 1.63. "Planned Outage" means the temporary operational removal of the Facility from service to perform work on specific components in accordance with a pre-planned operations schedule, such as for a planned annual overhaul, inspections, or testing of specific equipment of the Facility.
- 1.64. "Posting Cap" is defined in Section 5.1.
- 1.65. "Product" means the Capacity of the Facility, Energy generated by the Facility, and subject to the satisfaction of the condition precedent set forth in Section 3.4 the RECs associated with the Energy generated by the Facility.
- 1.66. "Protected Information" is defined in Section 16.1
- 1.67. "Prudent Utility Practice" means those practices, methods, equipment, specifications, standards of safety, and performance, as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgment and in light of the facts known at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices; (ii) are in accordance with generally accepted standards of safety, performance, dependability, efficiency, and economy in the United States; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the United States; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy generation and utility industry.
- 1.68. "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended, and as such may be amended from time to time.
- 1.69. "PURPA Fuel Requirements" means the requirements set forth in 18 C.F.R. § 292.204 OR 205, as may be amended and/or restated.
- 1.70. "Qualifying Facility" means an electric generating facility that has been registered and certified by FERC as generator that qualifies for and meets the requirements set forth in PURPA, as it may be amended, and associated rules, regulations, orders.

- 1.71. "REA Reporting Rights" means the right of the reporting person or entity to report that it owns the Renewable Energy Attributes to any Governmental Authority or other party under any compliance, voluntary, trading, or reporting program, public or private and to any person, customers, or potential customers for, including without limitation, purposes of compliance, marketing, publicity, advertising, or otherwise.
- 1.72. "Regulatory Event" is defined in Section 15.1.
- 1.73. "Renewable Energy Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation of Energy by the Facility, the use of such Energy, or such Energy's displacement of conventional Energy generation, including any and all renewable or environmental characteristics and benefits of the Energy generated by the Facility. Renewable Energy Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs), ozone depleting substances, ozone, and non-methane volatile organic compounds that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change (UNIPCC), by law, or otherwise by science or in the voluntary markets to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) any credit, allowance or instrument issued or issuable pursuant to a state implementation plan under regulations promulgated by the Environmental Protection Agency under the Clean Air Act and (4) the reporting rights to any of the foregoing, including, without limitation, REA Reporting Rights and any and all renewable and/or environmental characteristics and benefits of the Energy generated by the Facility. Renewable Energy Attributes do not include: (i) any Energy or Capacity of the Facility; (ii) investment tax credits, production tax credits, or other tax credits, cash grants in lieu of tax credits associated with the construction, ownership or operation of the Facility, or (iii) any adverse wildlife or environmental impacts.
- 1.74. "Renewable Energy Certificate(s)" or "REC(s)" means and, notwithstanding anything to the contrary set forth in the Act includes, all of the Renewable Energy Attributes and REA Reporting Rights associated with one (1) megawatt hour (MWh) of Energy generated by the Facility. The REC represents all title to and claim over all of the Renewable Energy Attributes and REA Reporting Rights associated with in any manner with the Energy generated by the Facility.
- 1.75. "Renewable Energy Resource" is defined in the Act.
- 1.76. "Required Approval" is defined in Section 6.
- 1.77. "Requirements of Law" means any federal, state, and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment, decree or Permit enacted, adopted, issued or promulgated by any Governmental Authority, including, without limitation, (i) the Act, (ii) those pertaining to the creation and delivery of the Product, (iii) those pertaining to electrical, building, zoning, occupational safety, health requirements or to pollution or protection of the environment, and (iv) principles of common law under which a person may be held liable for the release or discharge of any hazardous substance into the environment or any other environmental damage.
- 1.78. "Security Period" is defined in Section 5.5.
- 1.79. "Seller" shall have the meaning specified in the first paragraph of this Agreement.
- 1.80. "S&P" means Standard & Poor's Ratings Services, Inc. or any successor-rating agency

thereto.

- 1.81. "Station Power" means the Energy generated by the Facility and, whether metered or unmetered, used on-site to supply the Facility's auxiliary load and parasitic load and/or for powering the electric generation equipment.
- 1.82. "System" means the transmission, distribution, and generation facilities that are owned, directed, managed, interconnected, controlled, or operated by Buyer and/or the Transmission Provider, including, without limitation, facilities to provide retail or wholesale service, substations, circuits, reinforcements, meters, extensions, or equipment associated with or connected to any interconnected facility or customer.
- 1.83. "System Operator" means the operators of the System that have the responsibilities for ensuring that the System as a whole or any part thereof operates safely, efficiently, and reliably, including without limitation the responsibilities to comply with any applicable operational or reliability requirements, the responsibilities to balance generation supply with customer load, the responsibilities to comply with any other regulatory obligation including least cost dispatch and System optimization, and the responsibilities to provide dispatch and curtailment instructions to generators supplying Energy to the System. The System Operator includes any person or entity delivering any such instructions or signals to Seller or taking any action relating to, due to, in response to, or to address such instructions.
- 1.84. "System Operator Instruction" means any order, action, requirement, demand, or direction delivered to Seller in a non-discriminatory manner by the System Operator (or its designee), in its sole discretion, in response to, anticipation of, or otherwise based in any manner on an Emergency Condition or Force Majeure event that has occurred or would occur if the order, action, requirement, demand, or direction is not ordered or implemented, including any order, action, requirement, demand or direction to operate, manage, and/or otherwise maintain safe and reliable operations of the System and those undertaken and implemented by the System Operator in accordance with Prudent Utility Practice based on relevant System factors and considerations including, without limitation, any and all operating characteristics, maintenance requirements, operational limitations, reliability (including, without limitation, standing NERC regulations or standards), safety, dispatch, constraints, discharge, emissions limitations, compliance requirements, communications, resource ramp-up and ramp-down constraints and implementation, and any other System considerations. A System Operator instruction may include, without limitation, an order or action to: (i) interconnect, disconnect, integrate, operate in parallel, or synchronize with the System, (ii) increase (based on generator characteristics and Prudent Utility Practices), reduce, or cease generation output to comply with standing NERC regulations or standards; (iii) respond to any transmission, distribution, or delivery limitations or interruptions; (iv) perform or cease performing any activity so as to operate in accordance with System limitations, including, without limitation, operational constraints that would require the System Operator to force offline or reduce generation output from reliability generators to accommodate generation by the Facility; and, (v) suspend or interrupt any operational activity. With regard to providing instructions in a non-discriminatory manner, a System Operator instruction in response to an Emergency Condition, Force Majeure event, or operational condition relating specifically to or created by the Facility shall not be deemed or considered discriminatory.
 - 1.84.1. For purposes of this Agreement, a System Operator Instruction shall not include any Interconnection Instruction.
- 1.85. "Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.
- 1.86. "Term" is defined in Section 3.1.

- 1.87. "Tracking System" means the verification system that accounts for the generation, sale, purchase, and/or retirement of renewable energy and credits, which will be the North Carolina Renewable Energy Tracking System, administered by the Commission pursuant to the Act.
- 1.88. "Transmission Provider" means the entity or division within Duke Energy Carolinas, LLC that will provide interconnection and/or electric distribution or transmission service to enable delivery of Energy generated by the Facility to Buyer, and any such entity or division will include any successor or replacement thereto, including without limitation, a consolidated control area or a regional transmission organization.
- 1.89. "Vintage" means the moment when the MWh of Energy is generated by the Facility, and therefore, when the REC associated with that MWh of Energy is generated by the Facility.

2. Interpretation

- 2.1. Intent. Unless a different intention clearly appears, the following terms and phrases shall be interpreted as follows: (a) the singular includes the plural and vice versa; (b) the reference to any Person includes such Person's legal and/or permitted successors and assignees, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (c) the reference to any gender includes the other gender and the neuter; (d) reference to any document, including this Agreement, refers to such document as it may be amended, amended and restated, modified, replaced or superseded from time to time in accordance with its terms, or any successor document(s) thereto; (e) reference to any section or exhibit means such section or exhibit of this Agreement unless otherwise indicated; (f) "hereunder", "hereof", "hereto", "herein", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular section or other provision; (g) "including" (and with correlative meaning "include"), means "including without limitation" and when following any statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope; (h) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (i) reference to any Requirements of Law refers to such Requirements of Law as it may be amended, modified, replaced or superseded from time to time, or any successor Requirements of Law thereto; and (j) all exhibits and attachments to this Agreement are hereby incorporated into this Agreement. Other terms used, but not defined in Section 1 or in the body of the Agreement, shall have meanings as commonly used in the English language and, where applicable, in the electric utility industry. 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.

3. Term and Termination

- 3.1. Term. This Agreement shall be effective as of the Effective Date and shall remain in full force and effect until the fifth ("5th") year after the Commencement Date as set forth in Section 3.3 below ("Term"), unless terminated earlier pursuant to the provisions of this Agreement.
- 3.2. Termination and Survival. This Agreement may be terminated earlier than the expiration of the Term as provided for herein. If this Agreement is terminated earlier than the expiration

of the Term for any reason, including, without limitation, whether by its terms, mutual agreement, early termination, and/or event of default, such termination shall not relieve any Party of any obligation accrued or accruing prior to the effectiveness of such termination. Furthermore, any obligations, limitations, exclusions and duties which by their nature or the express terms of this Agreement extend beyond the expiration or termination of this Agreement, including, without limitation, provisions relating to compliance requirements, accounting, billing, billing adjustments, limitations or liabilities, dispute resolution, Performance Assurance, and any other provisions necessary to interpret or enforce the respective rights and obligations of the Parties hereunder, shall survive the expiration or early termination of this Agreement.

- 3.3. Conditions Precedent to Commencement of Deliveries. Deliveries under this Agreement will commence the first day of the month following satisfaction of the conditions precedents set forth below in Sections 3.3.1 through 3.3.3 (the "Commencement Date").

3.3.1. Closing conditions are satisfied in the Asset Purchase Agreement.

3.3.2. Interconnection Agreement has been fully executed and accepted by the Transmission Provider for performance under this Agreement.

3.3.3. All approvals and certifications that the Facility is a Qualifying Facility.

- 3.4. Condition Precedent to Parties' Obligations Regarding Sale and Purchase of RECs. It is a condition precedent to: (i) the obligations of Seller to sell and deliver RECs to Buyer under this Agreement; (ii) for Seller to comply with the RECs-related obligations set forth in this Agreement; and, (iii) the obligations of Buyer to receive and purchase RECs from Seller under this Agreement, that: (a) the Commission has approved and certified that the Facility, when owned by the Seller, shall be certified as a New Renewable Energy Facility under the Act and (b) Buyer can use the Product (inclusive of the REC component) generated by the Facility to comply with the Act. If the Commission finds that the Facility, upon ownership by Seller, is eligible for certification as a New Renewable Facility and that Buyer can use the Product (inclusive of RECs) to comply with the Act, then upon satisfaction of Section 3.3.1, the Seller shall register and certify the Facility with the Commission as a New Renewable Energy Facility. Subject to Section 3.3, upon receiving certification from the Commission that the Facility is approved as a New Renewable Energy Facility, the Seller shall sell and deliver RECs to Buyer in accordance with and in compliance with the requirements set forth in this Agreement, and Buyer shall purchase such RECs in accordance with this Agreement; *provided however*, Buyer shall have no obligation to purchase RECs from the Facility or from Seller for any period during which such certification is not granted by the Commission. If the Commission finds that the Facility, upon ownership by Seller, is not eligible for certification as a New Renewable Facility and/or that Buyer cannot use the Product (inclusive of RECs) to comply with the Act, then subject to Section 3.3, Buyer and Seller shall be: (i) relieved of any obligation to purchase and sell RECs under this Agreement and (ii) all term and conditions relating to RECs, certification as a New Renewable Energy Facility, and compliance with the Act shall be null and void and shall have no force or effect on either Party.

4. Purchase and Sale Obligations

- 4.1. Delivery Period. The "Delivery Period" for the Product to be generated by the Facility and sold by Seller to Buyer shall be for all hours starting at 12:00:01 AM EPT as of the Commencement Date through the end of the Term, unless this Agreement is terminated earlier pursuant to its terms and conditions.
- 4.2. Vintage. The RECs shall be of the same Vintage as the Energy generated by the Facility and

the RECs shall arise due to the generation of Energy by the Facility.

- 4.3. Contract Quantity. The "Contract Quantity" will be one hundred percent (100%) of the Capacity and Energy produced by the Facility and, subject to satisfaction of Section 3.4, one hundred percent (100%) of the associated RECs produced by the Facility, in case of each of the foregoing less that associated with Station Power.
 - 4.3.1. Seller shall sell and deliver the Contract Quantity of the Product exclusively and solely to Buyer.
 - 4.3.2. Buyer shall have full and exclusive rights to the Product (inclusive of all components), and will be entitled to full and exclusive use of the Product (inclusive of all components) for its purposes and in its sole and exclusive discretion.
 - 4.3.3. The estimated monthly and annual Energy production of the Facility during the Delivery Period is set forth in Exhibit 1 hereto.
- 4.4. Contract Price. The "Contract Price" for the Product shall be fixed for the Delivery Period as set forth in Exhibit 2.
- 4.5. Energy Delivery. Seller shall deliver the Contract Quantity of the Energy component of the Product at the Delivery Point and Seller shall be fully responsible for all costs, charges, expenses, and requirements associated with delivering the Energy to the Delivery Point. Buyer will have no obligation to pay for any Energy not delivered to the Delivery Point.
- 4.6. REC Delivery. Subject to satisfaction of Section 3.4, Seller shall deliver to Buyer's Account the Contract Quantity of the REC component of the Product in the form of Certificates. Seller agrees that in addition to representing the attributes and characteristics under the Tracking System's operating rules and requirements, the Certificate will also represent the REC, Renewable Energy Attributes, and REA Reporting Rights as defined in this Agreement. No later than fourteen (14) calendar days after the meter data is delivered to Seller's Account, Seller shall review the meter data and complete all acts necessary to create the Certificates in the Tracking System and shall transfer the Certificates into Buyer's Account. Each Party shall establish an Account with the Tracking System for the creation, transfer, and/or receipt of the Certificates. Seller agrees to establish the Account for the Facility prior to the Commencement Date.
- 4.7. Payment for Product. Buyer agrees to pay Seller for the Product generated and delivered in accordance with this Agreement by Seller to Buyer in accordance with the pricing set forth in Exhibit 2. Seller agrees that to the extent Buyer has already paid for the Product prior to Seller transferring the REC component of the Product in the manner noted above, Buyer shall have ownership of the REC component of the Product, and Seller shall hold the same in trust for Buyer until the transfer is completed as provided for herein. Buyer shall not be obligated to pay for, and shall receive a full refund with respect to, any RECs for which the Certificates are not delivered to Buyer's Account.
- 4.8. Transfer. In no event shall Seller procure or have the right to procure the Product or any component of the Product from any source other than the Facility for sale and delivery pursuant to this Agreement. Title to and risk of loss to the Product sold and delivered hereunder shall transfer from Seller to Buyer after completion of delivery at the Delivery Point and after completion of transfer of the REC component of the Product. Seller shall be responsible for any costs and charges imposed on or associated with the Product and the delivery of the Product at the Delivery Point and upon completion of transfer of the REC component. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after the Delivery Point and after completion of transfer of the REC.

5. **Credit and Related Provisions.**

- 5.1. **Adequate Assurances.** Buyer may, from time to time, request in writing that Seller provide Buyer with Performance Assurance in an amount reasonably determined by Buyer relative to Seller's performance obligations under this Agreement, if at any time Buyer has reasonable grounds for insecurity concerning Seller's ability to perform any of its obligations under this Agreement; *provided, however*, such amount shall not exceed \$29,000 (the "Posting Cap"). Expressly without limiting the generality of the foregoing, reasonable grounds for insecurity include, but are not limited to, knowledge that (i) Seller or its guarantor or any direct or indirect parent company is defaulting under other material contracts or transactions (including, without limitation, contracts or transactions with third parties); or, (ii) any imminent or threatened material adverse change in the financial condition of Seller or its guarantor. Upon receipt of such notice, Seller shall have five (5) Business Days to provide such Performance Assurance to Buyer. In the event that Seller fails to provide the required amount of such Performance Assurance to Buyer within five (5) Business Days of receipt of notice, then Buyer may declare such failure an Event of Default and exercise any or all other remedies provided for hereunder or pursuant to law or equity. Seller shall be required to refresh or replenish the required amount of Performance Assurance at Buyer's request up to the Posting Cap, including, without limitation, where Buyer has exercised its right to draw upon any Performance Assurance.
- 5.2. **Financial Disclosures.** If Buyer has reasonable grounds to request Performance Assurance or if Buyer requests Performance Assurance, in each case as set forth in Section 5.1, then Seller shall timely provide to Buyer financial information of Seller, to the extent such information is not publicly available, as follows: (i) within sixty (60) days after the end of each fiscal quarter of each fiscal year that this Agreement is effective, a copy of Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter signed and verified by an authorized officer of Seller attesting to their accuracy; and, (ii) within one hundred and twenty (120) days after the end of each fiscal year that this Agreement is effective a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year. The statements shall be prepared in accordance with generally accepted accounting principles.
- 5.3. **Netting.** If an Event of Default has not occurred and a Party is required to pay an amount to the other Party under this Agreement, then such amounts shall be netted and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. All outstanding obligations to make payment under this Agreement or any other agreement between the Parties may be netted, offset, set off, or recouped therefrom, and payment shall be owed as set forth above. Unless Buyer notifies Seller in writing (except in connection with a liquidation and termination), all amounts netted pursuant to this section shall not take into account or include any Performance Assurance which may be in effect to secure Seller's performance under this Agreement. The netting set forth above shall be without prejudice and in addition to any and all rights, liens, setoffs, recoupments, counterclaims and other remedies and defenses (to the extent not expressly herein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement.
- 5.4. **Set-off.** In addition to any rights of set-off a Party may have as a matter of law or otherwise, and subject to applicable law, upon the occurrence of an Event of Default the Non-Defaulting Party shall have the right (but shall not be obligated to) without prior notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party under this Agreement and any other agreement between

the Parties (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligations of the Non-Defaulting Party owing to the Defaulting Party under this Agreement and any other agreement between the Parties (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation). If any such obligation is unascertained, the Non-Defaulting Party may in a Commercially Reasonable Manner estimate that obligation and set-off in respect of the estimate, subject to the relevant Party providing an accounting and true-up to the other Party after the amount of the obligation is ascertained.

- 5.5. Performance Assurance Requirements. Seller shall ensure that any Performance Assurance required pursuant to Section 5.1 remains in full force, effect, outstanding, in the required amount, and for the duration required by this Agreement. All applicable Performance Assurance, as the amount thereof may be increased, decreased, and/or replenished pursuant to the terms of this Agreement, shall remain in full force, effect, and outstanding for the benefit of Buyer until one-hundred and fifty (150) days following the later of: (a) the end of the Term or (b) the date on which Seller has fully satisfied all obligations to Buyer under this Agreement (the "Security Period"). If at any time any Performance Assurance fails to meet any of the requirements under this Agreement, Seller shall replace such Performance Assurance with alternative Performance Assurance that meets each of the requirements under this Agreement. Seller will be solely responsible for any and all costs incurred with providing and maintaining any Performance Assurance to the full amount required by this Agreement. If Seller fails to replace, renew, or otherwise maintain the required Performance Assurance as and when required by this Agreement, then Buyer: (a) shall be entitled to draw and retain hereunder the full amount of the Performance Assurance; (b) shall not be obligated to make any further payments to Seller until Seller shall have provided Buyer with the replacement Performance Assurance; and, (c) shall be entitled to give Seller notice of an Event of Default and pursue the termination rights and remedies provided for in this Agreement.
- 5.6. Grant of Security Interest. To secure its obligations and liabilities under this Agreement to Buyer, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of netting and set-off against), and assignment of, all present and future Performance Assurance, including, without limitation, cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer; and, furthermore Seller agrees to take such actions as Buyer reasonably requires to perfect Buyer's first-priority security interest in, and lien on (and right of netting, recoupment, and set-off against), such Performance Assurance and any and all products and proceeds resulting therefrom or from the liquidation thereof, including without limitation proceeds of insurance. Upon or any time after the occurrence, or deemed occurrence, of an Event of Default or upon an Early Termination Date, Buyer (if it is the Non-Defaulting Party) may do any one or more of the following with respect to Seller (if it is the Defaulting Party): (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of netting, recoupment, and set-off against any and all property of Seller in the possession of Buyer or its agent; (iii) draw on any outstanding applicable forms of Performance Assurance provided for the benefit of Buyer; and, (iv) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

6. Seller Compliance Requirements.

- 6.1. Required Approvals. Seller shall maintain and comply with all permits, authorizations, certifications, and/or approvals from any Governmental Authority, and under any Requirements of Law, including, without limitation, from the Commission and FERC for Seller to own, operate, and maintain the Facility and sell and deliver the Product to Buyer.
 - 6.2. Seller Covenants. Seller covenants to Buyer that it shall comply with all of the requirements of the Act and other Requirements of Law applicable to Seller, the Facility, and/or Seller's obligations under the Agreement. Without limiting the generality of the foregoing, Seller represents and warrants to Buyer as of the Effective Date of this Agreement and throughout the Term of this Agreement that Seller has obtained all applicable certifications and/or approvals necessary for Seller to perform under this Agreement. Seller agrees and acknowledges that Buyer has entered into this Agreement in reliance upon the representations and warranties set forth in this section. In the event of a breach or failure of or relating to any of the foregoing covenants and warranties, including without limitation for being false or misleading in any respect, then this Agreement will terminate upon Buyer providing Seller with a five (5) Business Days written notice. Seller will indemnify and hold Buyer harmless for any breach or failure relating to any of the foregoing covenants and warranties, notwithstanding anything else to the contrary in this Agreement.
 - 6.3. Seller Requirements. Seller agrees and acknowledges that the Act requires Buyer to make certain filings and/or submissions relating to Buyer's obligations under the Act. Within twenty (20) Business Days of a written request from Buyer, Seller agrees to provide Buyer with all information, documents, and affidavits from a duly authorized representative of Seller certifying that the Facility fully complies with PURPA, including without limitation, the PURPA Fuel Requirements and that the Facility and/or the Product complies with the Act and the requirements of the Tracking System. If Seller fails to promptly provide Buyer with such documentation, and Buyer is unable to use the Product for compliance in the calendar year that Buyer desires to use such Product for compliance purposes, then Seller shall be liable to Buyer for cover cost damages as set forth in Section 21 and Seller will also reimburse Buyer for any payments previously made by Buyer for such Product.
7. Seller's Facility Requirements.
- 7.1. Seller Requirements. Seller covenants (except to the extent expressly set forth in this Agreement) that: the Facility shall be operated, controlled, and maintained at Seller's sole cost and expense; the Facility shall be operated (inclusive, without limitation, of control, metering equipment, and personnel and staffing levels), controlled, and maintained by Seller to perform as required by this Agreement and in compliance with all applicable Requirements of Law and Prudent Utility Practice; the Facility shall be capable of supplying the Product in a safe and reliable manner consistent with the requirements of each applicable Requirements of Law and Prudent Utility Practice; and, that all contracts, agreements, arrangements, and/or Permits (including, without limitation, those necessary or prudent for the ownership and operation of the Facility, such as land use permits, site plan approvals, real property titles and easements, environmental compliance and authorizations, grading and building permits,) shall be timely obtained and maintained by Seller, at Seller's sole cost and expense. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility. Seller shall interconnect, operate, and maintain the Facility in accordance with Prudent Utility Practice. Seller shall be responsible for all costs, charges, and expenses associated with generating, scheduling, and delivering the Energy to Buyer.
 - 7.2. Seller Responsibilities. Notwithstanding any provision of this Agreement to the contrary, the

Seller agrees that: (a) Buyer shall have no responsibility whatsoever for any costs and/or Taxes relating to the maintenance, ownership, or operation of the Facility (including but not limited to any financing costs, and any costs and/or Taxes imposed by any Governmental Authority on or with respect to emissions from or relating to the Facility, and including but not limited to costs and/or Taxes related to any emissions allowances *inter alia* for oxides for sulfur dioxide or nitrogen, carbon dioxide, and mercury), all of which shall be entirely at Seller's sole cost and expense; and, (b) any risk as to the availability of production tax benefits, investment tax credits, grants or any other incentives relating to the design, development, construction, maintenance, ownership, or operation of the Facility shall be borne entirely by Seller.

7.2.1. No Exclusions. If any production or investment tax credit, grants, subsidy, or any other similar incentives or benefit relating, directly or indirectly, to the Facility is unavailable or becomes unavailable at any time during the Term of this Agreement, Seller agrees that such event or circumstance will not: (a) constitute a Force Majeure or Regulatory Event; (b) excuse or otherwise diminish Seller's obligations hereunder in any way; and, (c) give rise to any right by Seller to terminate or avoid performance under this Agreement. Seller agrees that it will solely and fully bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive any such tax treatment or otherwise qualify for any preferential or accelerated depreciation, accounting, reporting, or tax treatment.

7.3. Transmission Provider. Seller agrees and acknowledges that the Interconnection Agreement is (and will be) a separate agreement (or agreements) between Seller and Transmission Provider, and will exclusively govern all requirements and obligations between Seller and Transmission Provider. Only the Interconnection Agreement will govern all obligations and liabilities set forth in the Interconnection Agreement, and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible for under the Interconnection Agreement. Seller shall comply with all Interconnection Instructions.

7.3.1. Nothing in the Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on the other hand, nor any alleged event of default thereunder, shall affect, alter, or modify the Parties' rights, duties, obligation, and liabilities under this Agreement. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider, and the terms of this Agreement are not (and will not) be binding upon the Transmission Provider. Seller agrees and acknowledges that Seller's performance under this Agreement depends on Seller's performance under the Interconnection Agreement, and Seller hereby grants Buyer the right and entitlement to obtain information from the Transmission Provider in regards to Seller's performance under the Interconnection Agreement.

7.4. System Operations. Seller agrees and acknowledges that the System Operator will be solely responsible for its functions, and that nothing in this Agreement will be construed to create any rights between Seller and the System Operator. Seller agrees that it is obligated to engage in interconnected operations with Buyer and the System, and Seller agrees to fully comply with all System Operator Instructions.

8. Facility Performance Requirements

8.1. Planned Outages. No later than fifteen (15) Business Days prior to the end of each year during the Term, Seller shall provide to Buyer a Planned Outage schedule for the upcoming year. Seller shall provide Buyer with reasonable advance notice of any material change in the Planned Outage schedule. Seller shall determine the number and extent of Planned

Outages in a Commercially Reasonable Manner recognizing that it is the intent of the Parties to maximize production of the Facility and to such extent Seller shall be excused from providing the Product during such Planned Outage(s).

- 8.2. Maintenance Outages. If Seller needs or desires to schedule a Maintenance Outage of the Facility, Seller shall notify Buyer, as far in advance as reasonable and practicable under the circumstances, of such proposed Maintenance Outage, and the Parties shall plan such outage to mutually accommodate the reasonable requirements of Seller and delivery expectations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of output of the Facility that will not be available, and the expected completion date of the outage. Buyer may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall comply with such requests to reschedule a Maintenance Outage. If rescheduled, Seller shall notify Buyer of any subsequent changes in the output that will not be available to Buyer and any changes in the Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.
- 8.3. Notice. Seller shall promptly provide to Buyer an oral report of all outages, Emergency Conditions, de-ratings, major limitations, or restrictions affecting the Facility, which report shall include the cause of such restriction, amount of generation from the Facility that will not be available because of such restriction, and the expected date that the Facility will return to normal operations. Seller shall update such report as necessary to advise Buyer of any material changed circumstances relating to the aforementioned restrictions. As soon as practicable, all oral reports shall be confirmed in writing. Seller shall promptly dispatch personnel to perform the necessary repairs or corrective action in an expeditious and safe manner in accordance with Prudent Utility Practice.
- 8.4. Performance. Seller shall act in a Commercially Reasonable Manner to generate the Product and to minimize the occurrence, extent, and duration of any event adversely affecting the generation of the Product, in each case consistent with Prudent Utility Practice.
- 8.5. System Operator Instructions. Seller shall take all steps needed to implement and comply with all System Operator Instructions and shall cooperate with Buyer in the implementation of all aspects of all System Operator Instructions. Seller hereby agrees to indemnify and hold Buyer harmless from any impact to the Facility as a result of taking any action to implement or effectuate any System Operator Instruction. All Seller losses for a Dispatch Down due to any System Operator Instruction shall be borne solely and entirely by Seller, including, without limitation, for any losses arising due to the lost or reduced generation by the Facility, lost tax benefits, lost investment tax credits, grants or any other incentives or monetary opportunity relating to the design, development, generation, construction, maintenance, ownership, or operation of the Facility. Seller shall also immediately and fully comply with all Interconnection Instructions provided pursuant to the independent and separate Interconnection Agreement with the Transmission Operator.

9. Information Requirements

- 9.1. Accounting Information. Generally Accepted Accounting Principles ("GAAP") and SEC rules can require Buyer to evaluate various aspects of its economic relationship with Seller, e.g., whether or not Buyer must consolidate Seller's financial information. To evaluate if certain GAAP requirements are applicable, Buyer may need access to Seller's financial records and personnel in a timely manner. In the event that Buyer determines that consolidation or other incorporation of Seller's financial information is necessary under GAAP, Buyer shall require the following for each calendar quarter during the term of this Agreement, within ninety (90) days after quarter end: (a) complete financial statements, including notes, for

such quarter on a GAAP basis; and, (b) financial schedules underlying the financial statements. Seller shall grant Buyer access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with GAAP standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002). Any information provided to Buyer pursuant to this section shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed, as required by GAAP, on an aggregate basis with other similar entities for which Buyer has power purchase agreements.

- 9.2. Other Information. Seller shall provide to Buyer all information, instruments, documents, statements, certificates, and records relating to this Agreement and/or the Facility as requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements determined by Buyer to fulfill any Requirements of Law, regulatory reporting requirements or otherwise relating to any request by any Governmental Authority. Seller will, at its own expense, provide Buyer with all information requested by Buyer to register, verify, or otherwise obtain Commission or any other third party recognition of the Product for use by Buyer, and at Buyer's request Seller shall register, verify, or otherwise validate or obtain Commission and/or any other third party recognition of the Product for use by Buyer.

9.2.1. Information Under the Act. Seller agrees and acknowledges that the Act requires Seller to make certain filings and/or submissions, including, without limitation, to maintain registration and certification of the Facility under the Act and to use the Product for compliance under the Act. Seller shall provide Buyer, for informational purposes only, a copy of any report, certification or filing that Seller submits to the Commission within a reasonable time after making such submission, but in any event no later than five (5) Business Days after such submission. Notwithstanding anything to the contrary, Seller agrees and acknowledges that it shall be solely responsible for timely complying with all requirements under the Act.

10. Metering

- 10.1. Billing Meter. In the Interconnection Agreement between Seller and Transmission Provider, Seller shall arrange with the Transmission Provider to construct and install such meters and metering equipment as are necessary to measure the Energy delivered and received in accordance with the terms and conditions of this Agreement (the "Billing Meter"). Buyer shall provide to Seller the reasonable allowable accuracy limits relating to the performance of the Billing Meter, and Seller shall arrange with Transmission Provider to install and operate a Billing Meter that meets the allowable accuracy limits. Seller shall be responsible for paying the Transmission Provider for all costs relating to the Billing Meter, including, without limitation, its procurement, installation, operation, calibration, and maintenance. Seller shall ensure in its arrangement with the Transmission Provider for the Billing Meter to include communication equipment that enables Buyer to access and read the meter from a remote location. Seller hereby grants Buyer rights to physically access the Billing Meter. Seller shall provide Buyer (at Seller's cost) with appropriate telephonic/electronic communication to allow Buyer to remotely read the meter. Seller may, at its own expense, install and maintain additional metering equipment for purposes of monitoring, recording or transmitting data relating to its sale of Energy from the Facility, so long as such equipment does not interfere with the Billing Meter. Seller shall arrange with the Transmission Provider to test the Billing Meter at regular intervals. Seller shall also arrange for either Party to have the right to request and obtain, at reasonable intervals and under reasonable circumstances, additional/special tests of the Billing Meter. The Party making such request for the test shall incur the costs associated with such test.

11. **Billing Period and Payment**

- 11.1. **Billing Period.** Subject to Seller authorizing Transmission Provider to provide Buyer with electronic access to the Billing Meter, Buyer shall read/obtain data from the Billing Meter at regular intervals, which shall be not less than twenty-seven (27) consecutive days and not more than thirty-three (33) consecutive days (each, a "Billing Period"). Within twenty-five (25) days after reading/obtaining data from the Billing Meter, Buyer shall provide Seller with an invoice detailing the amount of Product (Energy and an equal amount of RECs subject to satisfaction of Section 3.4 delivered during the relevant Billing Period and the associated amount owed by Buyer to Seller for the Product, subject to Seller cooperating with Buyer and providing Buyer with such information and/or data that Buyer may request to accurately prepare the invoice. Buyer shall pay Seller the invoiced amounts for each Billing Period, subject to Seller having transferred (or caused to be transferred) the REC Certificates from Seller's Account to Buyer's Account in the Tracking System. Payment by Buyer shall be due by the later of thirty (30) days after the invoice date or fifteen (15) days after Buyer receives notification that the Seller has transferred the REC Certificates into Buyer's Account. If such amounts are not paid by the deadline, they shall accrue interest at the Interest Rate from the applicable due date until the date paid. Amounts not paid by such deadline shall accrue interest at the Interest Rate from the original due date until the date paid in accordance with this Agreement.
- 11.2. **Meter Malfunction.** In the event the Billing Meter fails to register accurately within the allowable accuracy limits as set forth above, then for purposes of preparing (or adjusting) any affected invoice Buyer shall adjust the amount of measured Energy for the period of time the Billing Meter was shown to be in error. If the time the Billing Meter became inaccurate can be determined, then the adjustment to the amount of measured Energy shall be made for the entire time from the time that the Billing Meter became inaccurate until the recalibration of the Billing Meter. If the time the Billing Meter became inaccurate cannot be determined, then the Billing Meter shall be deemed to have failed to register accurately for fifty percent (50%) of the time since the date of the last calibration of the Billing Meter.
- 11.3. **Out-of-Service.** If the Billing Meter is out of service, then for purposes of preparing any affected invoice, the Parties shall negotiate in good faith to determine an estimate of the amount of Energy delivered during the relevant Billing Period. Seller's meter, if any, may be used to establish such estimate if both Parties agree. If within twenty (20) days after the date that the Billing Meter is read as set forth above the Parties have not reached agreement regarding an estimate of the amount of Energy delivered during the relevant Billing Period, then the amount of Energy delivered during the relevant Billing Period shall be determined in a Commercially Reasonable Manner.
- 11.4. **Errors.** If any overcharge or undercharge in any form whatsoever shall at any time be found for an invoice, and such invoice has been paid, the Party that has been paid the overcharge shall refund the amount of the overcharge to the other Party, and the Party that has been undercharged shall pay the amount of the undercharge to the other Party, within forty-five (45) days after final determination thereof; provided, however, that no retroactive adjustment shall be made for any overcharge or undercharge unless written notice of the same is provided to the other Party within a period of twenty-four (24) months from the date of the invoice in which such overcharge or undercharge was first included. Any such adjustments shall be made with interest calculated at the Interest Rate from the date that the undercharge or overcharge actually occurred.

11.5. Invoice/Payment Dispute. If a Party in good faith reasonably disputes the amount set forth in an invoice, charge, statement, or computation, or any adjustment thereto, such Party shall provide to the other Party a written explanation specifying in detail the basis for such dispute. The Party disputing the invoice, if it has not already done so, shall pay the undisputed portion of such amount no later than the applicable due date. If the Parties are thereafter unable to resolve the dispute through the exchange of additional documentation, then the Parties shall pursue resolution of such dispute according to the dispute resolution and remedy provisions set forth in this Agreement. Notwithstanding any other provision of this Agreement to the contrary, if any invoice, statement charge, or computation is found to be inaccurate, then a correction shall be made and payment (with applicable interest) shall be made in accordance with such correction; provided, however, no adjustment shall be made with respect to any invoice, statement, charge, computation or payment hereunder unless a Party provides written notice to the other Party questioning the accuracy thereof within twenty-four (24) months after the date of such invoice, statement, charge, computation, or payment.

12. Audit Rights

- 12.1. Process. Buyer shall have the right, at its sole expense and during normal business hours, without Seller requiring any compensation from Buyer, to examine and copy the records of Seller to verify the accuracy of any invoice, statement, charge or computation made hereunder or to otherwise verify Seller's performance under this Agreement, including, without limitation, verifying that the delivered Product complies with the Agreement.
- 12.2. Survival. All audit rights shall survive the expiration or termination of this Agreement for a period of twenty-four (24) months after the expiration or termination. Seller shall retain any and all documents (including, without limitation, paper, written, and electronic) and/or any other records relating to this Agreement and the Facility for a period of twenty-four (24) months after the termination or expiration of this Agreement.

13. Taxes

- 13.1. Seller. Seller shall be liable for and shall pay Buyer, or Seller shall reimburse Buyer if Buyer has paid or cause to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising prior its delivery to and at the Delivery Point (including ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Seller shall indemnify, defend, and hold harmless Buyer from any liability for such Taxes, including related audit and litigation expenses.
- 13.2. Buyer. Buyer shall be liable for and shall pay Seller, or Buyer shall reimburse Seller if Seller has paid or caused to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising after the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Buyer shall indemnify, defend, and hold harmless Seller from any liability for such Taxes, including related audit and litigation expenses.
- 13.3. Remittances. In the event Seller is required by any Requirements of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may request reimbursement of such payment from Buyer by sending Buyer an invoice and Buyer shall include such reimbursement in the next monthly invoice and Buyer shall remit payment thereof.

Conversely, if Buyer is required by any Requirements of Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums otherwise due to Seller under this Agreement. Any refunds or remittances associated with such Taxes shall be administered in accordance with Section 11.1.

- 13.4. Documentation. A Party, upon written request of the other Party, shall promptly provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from any Tax. Nothing herein shall obligate a Party to pay or be liable to pay any Taxes from which it is exempt pursuant to applicable law.

14. Force Majeure

- 14.1. Definition. "Force Majeure" means: (A) war, riots, floods, hurricanes, tornadoes, earthquakes, lightning, ice-storms, excessive winds, and other such extreme weather events and natural calamities; (B) explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of the Party; (C) insurrection, rebellion, nationwide strikes; (D) an act of god or other such significant and material event or circumstance which prevents one Party from performing a material and significant obligation hereunder, which such event or circumstance was not anticipated as of the Effective Date, is not within the Commercially Reasonable control of, or the result of the negligence of such claiming Party, and which, by the exercise of Commercially Reasonable Efforts, the claiming Party is unable to overcome or avoid or cause to be avoided and, (E) delays in obtaining goods or services from any subcontractor or supplier caused solely by the occurrence of any of the events described in the immediately preceding subparts (A) through (D). The acts, events or conditions listed in subparts (A) through (E) above shall only be deemed a Force Majeure if and to the extent they actually and materially delay or prevent the performance of a Party's obligations under this Agreement and: (i) are beyond the reasonable control of the Party, (ii) are not the result of the willful misconduct or negligent act or omission of such Party (or any person over whom that Party has control), (iii) are not an act, event or condition that reasonably could have been anticipated, or the risk or consequence of which such Party has assumed under the Agreement; and, (iv) cannot be prevented, avoided, or otherwise overcome by the prompt exercise of Commercially Reasonable diligence by the Party (or any Person over whom that Party has control).

- 14.1.1. Notwithstanding anything to the contrary herein, Force Majeure will not include the following: (a) any strike or labor dispute of the employees of either Party or any subcontractor that is not part of a nationwide strike or labor dispute; (b) any difficulty in obtaining or maintaining sufficient or appropriately skilled personnel to perform the work in accordance with the requirements of this Agreement; (c) normal wear and tear or obsolescence of any equipment; (d) Buyer's inability to economically use or resell the Product delivered and purchased hereunder; (e) Seller's ability to sell the Product (or any component of the Product) at a more advantageous price; (f) loss by Seller of any contractual arrangement; (g) any Regulatory Event; (h) loss or failure of Seller's supply of the Product or inability to generate the Product that is not caused by an independent Force Majeure event; (i) the cost or availability or unavailability of fuel, water, wind, or motive force, as applicable, to operate the Facility; (j) economic hardship, including, without limitation, lack of money or financing or Seller's inability to economically generate the Product or operate the Facility; (k) any breakdown or malfunction of Facility equipment (including any serial equipment defect) that is not directly caused by an independent event of Force

Majeure; (l) the imposition upon Seller of costs or taxes allocated to Seller hereunder or Seller's failure to obtain or qualify for any tax incentive, preference, or credit; (m) delay or failure of Seller to obtain or perform any Permit; (n) any delay, alleged breach of contract, or failure under any other agreement or arrangement between Seller and another entity, including without limitation, an agent or sub-contractor of Seller (except as a direct result of an event of Force Majeure defined in 14.1(E)); (o) Seller's failure to obtain, or perform under, the Interconnection Agreement or its other contracts and obligations to Transmission Provider; or (p) increased cost of electricity, steel, materials, equipment, labor, or transportation.

- 14.2. Event. If either Party is rendered unable by Force Majeure to carry out, in whole or in part, any material obligation hereunder, such Party shall provide notice and reasonably full details of the event to the other Party as soon as reasonably practicable after becoming aware of the occurrence of the event (but in no event later than three (3) Business Days of the initial occurrence of the event of Force Majeure). Such notice may be given orally but shall be confirmed in writing as soon as practicable thereafter (and in any event within ten (10) days of the initial occurrence of the event of Force Majeure); provided however, a reasonable delay in providing such notice shall not preclude a Party from claiming Force Majeure but only so long as such delay does not prejudice or adversely affect the other Party.
- 14.3. Effect. Subject to the terms and conditions of this Section 14, for as long as the event of Force Majeure is continuing, the specific obligations of the Party that are demonstrably and specifically adversely affected by the Force Majeure event shall be suspended to the extent and for the duration made necessary by the Force Majeure will not be deemed to be an Event of Default, and performance and termination of this Agreement will be governed exclusively by this Section 14. Notwithstanding anything to the contrary in this Agreement, Force Majeure will *not* be applicable to and will *not* be available as an excuse to Seller's performance of the obligations set forth in Sections 19.3 through and including 19.18.
- 14.4. Remedy. The Party claiming Force Majeure shall act in a Commercially Reasonable Manner to remedy the Force Majeure as soon as practicable and shall keep the other Party advised as to the continuance of the Force Majeure event. If a bona fide Force Majeure event persists for a continuous period of ninety (90) days, then the Party not claiming Force Majeure shall have the right, in its sole and unfettered discretion, to terminate this Agreement upon giving the other Party ten (10) Business Days advance written notice.
- 14.5. Termination. Unless otherwise agreed upon by the Parties in writing and in each Party's sole discretion, upon the expiration of the periods set forth above in Sections 14.4, this Agreement may be terminated without any further notice and further opportunity to cure any non-performance. Upon termination becoming effective pursuant to a Force Majeure under this Section 14, neither Party will have any liability to the other Party or recourse against the other Party, other than for amounts arising prior to termination. Notwithstanding the claimed existence of a Force Majeure event or any other provisions of this Agreement, nothing herein shall relieve any Party from exercising any right or remedy provided under this Agreement with respect to any liability or obligation of the other Party that is not excused or suspended by the Force Majeure event, including, without limitation, the right to liquidate and early terminate the Agreement for any Event of Default not excused by the Force Majeure event. Nothing herein shall be construed so as to obligate any Party to settle any strike, work stoppage or other labor dispute or disturbance or to make significant capital expenditures, except in the sole discretion of the Party experiencing such difficulty.

15. Change in Law

15.1. Regulatory Event. A "Regulatory Event" means one or more of the following events:

15.1.1. Illegality. After the Effective Date, due to the adoption of, or change in, any applicable Requirements of Law or in the interpretation thereof by any Governmental Authority with competent jurisdiction, it becomes unlawful for a Party to perform any material obligation under this Agreement.

15.1.2. Adverse Government Action. After the Effective Date, there occurs any adverse material change in any applicable Requirements of Law (including material change regarding a Party's obligation to sell, deliver, purchase, or receive the Product) and any such occurrence renders illegal or unenforceable any material performance or requirement under this Agreement.

15.2. Process. Upon the occurrence of a Regulatory Event the Party affected by the Regulatory Event may notify the other Party in writing of the occurrence of a Regulatory Event, together with details and explanation supporting the occurrence of a Regulatory Event. Upon receipt of such notice, the Parties agree to undertake, during the thirty (30) days immediately following receipt of the notice, to negotiate such modifications to reform this Agreement to remedy the Regulatory Event and attempt to give effect to the original intention of the Parties. Upon the expiration of the 30-day period, if the Parties are unable to agree upon modifications to the Agreement that are acceptable to each Party, in each Party's sole discretion, then either Party shall have the right, in such Party's sole discretion, to terminate this Agreement with a 30-day advance written notice.

16. Confidentiality

16.1. Protected Information. Except as otherwise set forth in this Agreement, neither Party shall, without the other Party's prior written consent, disclose any term of this Agreement or any information relating to this Agreement, or any discussion or documents exchanged between the Parties in connection with this Agreement (such information, the "Protected Information") to any third person (other than the Party's employees, affiliates, counsel, and accountants, and current and prospective lenders and investors in the Facility if Buyer is given at least ten (10) Business Days advance written notice of such disclosure and to whom such disclosure is being made, who have a need to know such information, have agreed to keep such terms confidential for the Term, and for whom the Party shall be liable in the event of a breach of such confidentiality obligation), at any time during the Term or for five (5) years after the expiration or early termination of this Agreement. Each Party shall be entitled to all remedies available at law or in equity (including but not limited to specific performance and/or injunctive relief,) to enforce, or seek relief in connection with, this confidentiality obligation. Notwithstanding any other provision of this Agreement, a violation of any confidentiality obligations shall be an Event of Default hereunder, and any claim related to or arising out of any confidentiality obligations herein may be brought directly in any state or federal court of competent jurisdiction in Mecklenburg County, North Carolina, in accordance with Section 26.5 of this Agreement, and shall not be subject to dispute resolution or arbitration pursuant to Section 23 of this Agreement.

16.2. Non-Confidential Information. Protected Information does not include information: (i) that is or becomes available to the public other than by disclosure of receiving Party in breach of this Agreement; (ii) known to receiving Party prior to its disclosure; (iii) available to receiving Party from a third party who is not bound to keep such information confidential; or, (iv) independently developed by the receiving Party without reliance upon the Protected

Information. Notwithstanding anything to the contrary herein, in no event will Protected Information include the concept of constructing or providing energy from a power plant, using any specific fuel source, in any specific location.

- 16.3. Return of Confidential Information. After expiration or early termination of this Agreement, and upon request of disclosing Party, receiving Party shall either (i) return the Protected Information, including all copies, or (ii) destroy the Protected Information, including all copies, and present written assurances of the destruction to disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Protected Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by Receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, "Back-Up Tapes"). Notwithstanding the terms of this Agreement, in no event shall Receiving Party be required to destroy Protected Information stored on Back-Up Tapes; provided, however, any Protected Information not returned or destroyed pursuant to this Section shall be kept confidential for the duration of its existence. Furthermore, the receiving party may retain one (1) copy of such Protected Information in receiving Party's files solely for audit and compliance purposes for the duration of its existence; provided, however, such Protected Information shall be kept confidential for the duration of its existence in accordance with the terms of this Agreement.
- 16.4. Required Disclosures. Notwithstanding the confidentiality requirements set forth herein, a Party may, subject to the limitations set forth herein, disclose Protected Information to comply with the Act, request of any Governmental Authority, applicable Requirements of Law, or any exchange, control area or System operator rule, in response to a court order, or in connection with any court or regulatory proceeding. Such disclosure shall not terminate the obligations of confidentiality unless the Protected Information falls within one of the exclusions of this Agreement. To the extent the disclosure of Protected Information is requested or compelled as set forth above, the receiving Party agrees to give disclosing Party reasonable notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any Confidential Information. Such notice by the receiving Party shall give disclosing Party an opportunity, at disclosing Party's discretion and sole cost, to seek a protective order or similar relief, and the receiving Party shall not oppose such request or relief. If such protective order or other appropriate remedy is not sought and obtained within at least thirty (30) days of receiving Party's notice, receiving Party shall disclose only that portion of the Protected Information that is required or necessary in the opinion of receiving Party's legal counsel; provided, however, receiving Party shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to any Confidential Information so disclosed.
- 16.5. Regulatory Disclosures by Buyer. This Section 16.5 will apply notwithstanding anything to the contrary in this Agreement. Seller acknowledges that Buyer is regulated by various regulatory and market monitoring entities. Buyer is permitted, in its sole discretion, to disclose or to retain and not destroy (in case of a future disclosure need as determined by Buyer in its sole discretion) any information (including Protected Information) to any regulatory commission (inclusive of the NCUC, SCPSC, FERC), NERC, market monitor, office of regulatory staff, and/or public staff, or any other regulator or legislative body without providing prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for any such disclosures or retentions in its sole discretion. In the event of the establishment of any docket or proceeding before any regulatory commission, public service commission, public utility commission, or other agency, tribunal, or court having jurisdiction over Buyer, the Protected Information shall automatically be governed solely by the rules and procedures governing

such docket or proceeding to the extent such rules or procedures are additional to, different from, or inconsistent with this Agreement. In regulatory proceedings in all state and federal jurisdictions in which Buyer does business, Buyer will from time-to-time be required to produce Protected Information, and Buyer may do so without prior notice to Seller or consent from Seller, using Buyer's business judgment, and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion. When a request for disclosure of information, including Protected Information, is made to Buyer, Buyer may disclose the information, including Protected Information, without prior notice to the Seller or consent from the Seller, using Buyer's business judgment and the appropriate level of confidentiality Duke seeks for such disclosures in its sole discretion. Seller further acknowledges that Buyer is required by law or regulation to report certain information that could embody Protected Information from time-to-time, and Buyer may from time-to-time make such reports, without providing prior notice to Seller or consent from Seller, using Buyer's business judgment and the appropriate level of confidentiality Buyer seeks for such disclosures in its sole discretion.

17. Mutual Representations and Warranties

17.1. As of the Effective Date and throughout the Term, each Party represents and warrants to the other Party that:

17.1.1. It is duly organized, validly existing and in good standing under the Requirements of Law of the jurisdiction of its organization or formation and has all requisite power and authority to execute and enter into this Agreement;

17.1.2. It has all authorizations under the Requirements of Law (including but not limited to the Required Approvals), necessary for it to legally perform its obligations and consummate the transactions contemplated hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party becomes due;

17.1.3. The execution, delivery, and performance of this Agreement will not conflict with or violate any Requirements of Law or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;

17.1.4. This Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and such Party has all rights necessary to perform its obligations to the other Party in accordance with the terms and conditions of this Agreement;

17.1.5. It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether or not this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the representations, advice or recommendations of the other Party in so doing, is capable of assessing the merits of this Agreement, and understands and accepts the terms, conditions, and risks of this Agreement for fair consideration on an arm's length basis;

17.1.6. No Event of Default or event which with notice or lapse of time, or both, would become an Event of Default, has occurred with respect to such Party, and that such Party is not Bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

17.1.7. There is no pending, or to its knowledge, threatened legal proceeding at law or

equity against it or any Affiliate, that materially adversely affects its ability to perform its obligations under this Agreement;

- 17.1.8. It is a "forward contract merchant" and this Agreement constitutes a "forward contract" as such terms are defined in the United States Bankruptcy Code;
- 17.1.9. It is an "eligible commercial entity" within the Commodity Exchange Act;
- 17.1.10. It is an "eligible contract participant" within the Commodity Exchange Act; and;
- 17.1.11. Each person who executes this Agreement on behalf of such Party has full and complete authority to do so, and that such Party will be bound by such execution.

18. Seller Representations and Warranties to Buyer

- 18.1. For all Product and every aspect thereof, Seller represents, warrants, and reaffirms to Buyer as a continuing warranty and representation that:
 - 18.1.1. No Product (including any REC component of the Product subject to satisfaction of Section 3.4) has been, or will be, sold, retired, claimed, represented as part of any electricity output, use, or sale, or otherwise used to satisfy any renewable energy, efficiency, emissions, and/or offset obligation under the Act, or under any voluntary or mandatory standard, marketplace, or jurisdiction, or otherwise;
 - 18.1.2. All Product will meet the specifications and requirements in this Agreement, including subject to satisfaction of Section 3.4 compliance with the Act;
 - 18.1.3. Each unit of the Product will be and was generated during the applicable Vintage;
 - 18.1.4. Seller has provided and conveyed and will provide and convey to Buyer all Capacity rights associated with the Facility and all Energy produced by the Facility;
 - 18.1.5. Subject to satisfaction of Section 3.4, Seller has provided and conveyed and will provide and convey to Buyer all Renewable Energy Attributes and REA Reporting Rights associated with all Energy generated by the Facility as part of the Product being delivered to Buyer;
 - 18.1.6. Subject to satisfaction of Section 3.4, Seller holds all the rights to all the Product from the Facility, Seller has the right to sell the Product to Buyer, and Seller agrees to convey and does convey to Buyer all rights and good title to the Product free and clear of any Liens, encumbrances, or title defects;
 - 18.1.7. Subject to satisfaction of Section 3.4, Seller has not and will not double sell, double claim or any manner otherwise double count the Product (including, without limitation, any Capacity of the Facility or any REC, Renewable Energy Attributes, or REA Reporting Rights) in any manner (including, for example, by issuing a press release or otherwise claiming that Seller is creating any environmental benefit, using a renewable energy source, or selling renewable energy to any person other than exclusively to and for the benefit of Buyer); Seller will not claim for itself any of the Renewable Energy Attributes, "green energy", "clean energy", "carbon-free energy" or other rights sold to Buyer, in any public communication concerning the output of the Facility, the Facility or the RECs;
 - 18.1.8. Subject to satisfaction of Section 3.4, Seller shall at all times be fully compliant with the requirements of the Federal Trade Commission's "Green Guides," 77 F.R. 62122, 16 C.F.R. Part 260, as amended or restated, and;
 - 18.1.9. Seller has not and will not in any manner interfere with, encumber or otherwise

impede Buyer's use, transfer, and sale of any Product.

19. **Events of Default**

An "Event of Default" means with respect to the non-performing Party (such Party, the "Defaulting Party"), the occurrence of any one or more of the following, each of which, individually, shall constitute a separate Event of Default:

- 19.1. The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after the Defaulting Party's receipt of written notice; *provided, however*, a Party will have two (2) Business Days to remedy any failure to make payment required under Section 21;
- 19.2. Any covenant or warranty made by Seller under Section 6.2 (Seller Covenant) is false or misleading in any respect when made or when deemed made or repeated;
- 19.3. Any representation or warranty made by a Party under Section 17 and elsewhere in this Agreement (except Section 18 which is a separate Event of Default) is false or misleading in any material respect when made or when deemed made or repeated;
- 19.4. Any representation or warranty made by Seller under Section 18 (Seller Representations and Warranties to Buyer) is false or misleading in any respect when made or when deemed made or repeated;
- 19.5. Seller Abandons the Facility;
- 19.6. Seller fails to obtain or maintain the Facility's registration or certification as a Qualifying Facility under PURPA;
- 19.7. Subject to satisfaction of Section 3.4, Seller fails to maintain the Facility's registration as a New Renewable Energy Facility, and such failure is not cured within five (5) Business Days of Seller's failure to have maintained such registration;
- 19.8. Seller fails to fully comply with the PURPA Fuel Requirements;
- 19.9. delivers or attempts to deliver to Buyer any Product (or any component thereof) that was not generated by the Facility;
- 19.10. Seller delivers or attempts to deliver any Product (or component thereof) to any entity or person other than to the Buyer;
- 19.11. Seller fails to promptly and fully comply with a System Operator Instruction;
- 19.12. Seller fails to provide, replenish, renew, or replace the Performance Assurance and/or otherwise fails to fully comply with the requirements of this Agreement, including without limitation, Section 5, and any such failure is not cured within two (2) Business Days;
- 19.13. A Party fails to fully comply with the confidentiality obligations set forth in Section 16;
- 19.14. Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and: (i) at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or (ii) the creditworthiness of the party or the resulting, surviving, transferee or successor entity is weaker than that of Seller prior to such action; or (iii) the benefits of any guaranty fail to extend to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement;
- 19.15. An assignment by or Change of Control with respect to Seller, other than in compliance

with Section 24;

- 19.16. A Party becomes Bankrupt;
- 19.17. Seller transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another Person in violation of the terms and conditions of this Agreement;
- 19.18. Seller violates the publicity obligates set forth in Section 26.10; and
- 19.19. Except to the extent constituting a separate Event of Default (in which case the provisions applicable to that separate Event of Default shall apply), the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within twenty (20) days after the Defaulting Party's receipt of written notice.

20. **Early Termination.**

- 20.1. **Early Termination Date.** If an Event of Default with respect to a Defaulting Party has occurred and is continuing, then the other Party (such Party, the "Non-Defaulting Party") shall have the right, in its sole discretion and upon written notice to the Defaulting Party, to pursue any or all of the following remedies: (a) withhold payments due to the Defaulting Party under this Agreement; (b) suspend performance under this Agreement; and/or (c) designate a day (which day shall be no earlier than the day such notice is effective and shall be no later than twenty (20) days after the delivery of such notice is effective) as an early termination date to accelerate all amounts owing between the Parties, liquidate, net, recoup, set-off, and early terminate this Agreement and any other agreement between the Parties (such day, the "Early Termination Date").
- 20.2. **Effectiveness of Default and Remedies.** Where an Event of Default is specified herein and is governed by a system of law which does not permit termination to take place upon or after the occurrence of the relevant Event of Default in accordance with the terms of this Agreement, an Event of Default and Early Termination Date shall be deemed to have occurred immediately upon any such event and no prior written notice shall be required. All of the remedies and provisions set forth in this section shall be without prejudice to any other right of the Non-Defaulting Party to accelerate amounts owed, net, recoup, setoff, liquidate, and early terminate this Agreement.
- 20.3. **Net Settlement Amount.** If the Non-Defaulting Party establishes an Early Termination Date, then the Non-Defaulting Party shall calculate its Gains or Losses and Costs resulting from the termination as of the Early Termination Date in a Commercially Reasonable Manner. The Non-Defaulting Party shall aggregate such Gains or Losses and Costs with respect to the liquidation of the termination and any other amounts due under this Agreement and any other agreement between the Parties into a single net amount expressed in U.S. dollars (the "Net Settlement Amount"). The Non-Defaulting Party shall then notify the Defaulting Party of the Net Settlement Amount. The Defaulting Party shall pay the Non-Defaulting Party the full amount of the Net Settlement Amount within two (2) Business Days of delivery to the Defaulting Party of the notice of the Net Settlement Amount that the Defaulting Party is liable for.
- 20.4. **Payment.** Any Net Settlement Amount will be due and payable only to the Non-Defaulting Party from and by the Defaulting Party. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Net Settlement Amount will be deemed to be zero and no payment will be due or payable. The Non-Defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the Defaulting Party for economic benefits accruing to

the Non-Defaulting Party as a result of the Defaulting Party's default. The Non-Defaulting Party shall be entitled to recover any Net Settlement Amount by netting or set-off or to otherwise pursue recovery of damages. Additionally, Buyer will be entitled to recover any Net Settlement Amount by drawing upon any Performance Assurance or by netting or set-off, or to otherwise pursue recovery of damages.

20.5. Survival. This Section 20 will survive any expiration or termination of this Agreement.

21. Cover Costs.

21.1. Exclusive Remedies. Except as otherwise set forth in this Agreement, the remedies set forth in this Section shall be a Party's exclusive remedies prior to termination for the other Party's failure to deliver the Product or to receive the Product pursuant to and in accordance with this Agreement.

21.2. Seller's Failure to Deliver. If Seller fails to deliver Product that complies with the requirements set forth in this Agreement or fails to deliver all or part of the Contract Quantity (each will be deemed as a failure to deliver for purposes of calculating damages), and such failure is not excused by Buyer's failure to perform, then Buyer shall elect in its sole discretion: (i) to terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Buyer shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) to require Seller to pay Buyer within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Seller failed to deliver to Buyer multiplied by two (2) times the per unit Contract Price.

21.3. Buyer's Failure to Accept Delivery. If Buyer fails to receive all or part of the Contract Quantity that Seller attempted to deliver to Buyer in accordance with this Agreement, and such failure by Buyer is not excused by Seller's failure to perform, then Seller shall elect in its sole discretion either to: (i) terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Seller shall calculate its termination payment in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) require Buyer to pay Seller within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Buyer failed to receive multiplied by two (2) times the per unit Contract Price.

21.4. Event of Default. Any failure by Seller to pay amounts due under this Section 21 will be an Event of Default under Section 19.1.

21.5. Survival. This Section 21 will survive any expiration or termination of this Agreement.

22. Limitation of Liabilities & Liquidated Damages.

22.1. Reasonableness. THE EXPRESS REMEDIES AND MEASURES OF DAMAGES, INCLUDING WITHOUT LIMITATION DETERMINATION OF LIQUIDATED DAMAGES, COVER COSTS, AND NET SETTLEMENT AMOUNT DAMAGES PROVIDED FOR IN THIS AGREEMENT (i) ARE REASONABLE AND SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH THE EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, AND (ii) UNLESS OTHERWISE STATED IN SUCH PROVISIONS, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS, AND ALL OTHER

REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY PROVISION OF THIS AGREEMENT PROVIDES FOR, OR IS DEEMED TO CONSTITUTE OR INCLUDE, LIQUIDATED DAMAGES, THE PARTIES STIPULATE AND AGREE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO ESTIMATE OR DETERMINE, THE LIQUIDATED AMOUNTS ARE A REASONABLE APPROXIMATION OF AND METHODOLOGY TO DETERMINE THE ANTICIPATED HARM OR LOSS TO THE PARTY, AND OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT. THE PARTIES FURTHER STIPULATE AND AGREE THAT ANY PROVISIONS FOR LIQUIDATED DAMAGES ARE NOT INTENDED AS, AND SHALL NOT BE DEEMED TO CONSTITUTE, A PENALTY, AND EACH PARTY HEREBY WAIVES THE RIGHT TO CONTEST SUCH PROVISIONS AS AN UNREASONABLE PENALTY OR AS UNENFORCEABLE FOR ANY REASON.

- 22.2. Limitation. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, (i) THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED; AND (ii) NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, STRICT LIABILITY, ANY TORT, CONTRACT, OR OTHERWISE.
- 22.3. Damages Stipulation. Each Party expressly agrees and stipulates that the terms, conditions, and payment obligations set forth in Sections 20 and 21 are a reasonable methodology to approximate or determine harm or loss, each Party acknowledges the difficulty of determining actual damages or loss, and each Party hereby waives the right to contest such damages and payments as unenforceable, as an unreasonable penalty, or otherwise for any reason. The Parties further acknowledge and agree that damages and payments determined under Sections 20 and 21 are direct damages, will be deemed to be a direct loss, and will not be excluded from liability or recovery under the Limitations of Liabilities provisions of this Section 22.
- 22.4. Survival. This Section 22 will survive any expiration or termination of this Agreement.

23. Disputes and Arbitration

- 23.1. Resolution by the Parties. The Parties shall attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, "Dispute(s)") promptly by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. A Party may give the other Party written notice of a Dispute that has not been resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within ten (10) Business Days after delivery of the notice, the receiving Party shall respond with (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within twenty (20) Business Days after delivery of the initial notice, the executives of both Parties shall meet at Buyer's offices, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. At the request of either Party, the Parties shall enter into a confidentiality agreement to cover any Dispute and discussions related thereto.

23.2. Demand for Arbitration.

23.2.1. If a Dispute has not been resolved by negotiation within thirty (30) Business Days of the disputing Party's initial notice, the Parties shall fully and finally settle the Dispute by binding arbitration administered by the American Arbitration Association ("AAA"), or such other nationally recognized arbitration association or organization as the Parties may mutually agree. The Arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules then in effect, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. To the extent the AAA Rules conflict with any provision of Section 23 of this Agreement, the terms of this Agreement shall govern and control.

23.2.2. Either Party may serve the demand for arbitration on the other Party; provided, however, no demand for arbitration shall be made or permitted after the date when the institution of a civil action based on the Dispute would be barred by the applicable statute of limitations or repose.

23.2.3. All arbitration proceedings shall take place in Charlotte, North Carolina.

23.2.4. A single arbitrator will arbitrate all Disputes where the amount in controversy is less than five-hundred thousand U.S. dollars (\$500,000), and will be selected by the Parties or by the AAA if the Parties cannot agree to the arbitrator. Such arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry. The cost of the arbitrator(s) shall be borne equally by the Parties.

23.2.5. A panel of three (3) arbitrators will conduct the proceeding when the amount in controversy is equal to or more than five hundred thousand U.S. dollars (\$500,000). If the Parties have not so agreed on such three (3) arbitrator(s) on or before thirty (30) days following the delivery of a demand for Arbitration to the other Party, then each Party, by notice to the other Party, may designate one arbitrator (who shall not be a current or former officer, director, employee or agent of such Party or any of its Affiliates). The two (2) arbitrators designated as provided in the immediately preceding sentence shall endeavor to designate promptly a third (3rd) arbitrator.

23.2.6. If either Party fails to designate an initial arbitrator on or before forty five (45) days following the delivery of an arbitration notice to the other Party, or if the two (2) initially designated arbitrators have not designated a third (3rd) arbitrator within thirty (30) days of the date for designation of the two (2) arbitrators initially designated, any Party may request the AAA to designate the remaining arbitrator(s) pursuant to its Commercial Arbitration Rules. Such third (3rd) arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry.

23.2.7. If any arbitrator resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, the Party entitled to designate that arbitrator shall designate a successor.

23.3. Discovery. Either Party may apply to the arbitrators for the privilege of conducting discovery. The right to conduct discovery shall be granted by the arbitrators in their sole discretion with a view to avoiding surprise and providing reasonable access to necessary information or to information likely to be presented during the course of the arbitration, provided that such discovery period shall not exceed sixty (60) Business Days.

23.4. Binding Nature. The arbitrator(s)' decision shall be by majority vote (or by the single

- arbitrator if a single arbitrator is used) and shall be issued in a writing that sets forth in separately numbered paragraphs all of the findings of fact and conclusions of law necessary for the decision. Findings of fact and conclusions of law shall be separately designated as such. The arbitrator(s) shall not be entitled to deviate from the construct, procedures or requirements of this Agreement. The award rendered by the arbitrator(s) in any arbitration shall be final and binding upon the Parties, and judgment may be entered on the award in accordance with applicable law in any court of competent jurisdiction.
- 23.5. Consolidation. No arbitration arising under the Agreement shall include, by consolidation, joinder, or any other manner, any Person not a party to the Agreement unless (a) such Person is substantially involved in a common question of fact directly relating to the Dispute; provided however, such Person will not include any Governmental Authority, (b) the presence of the Person is required if complete relief is to be accorded in the arbitration, and (c) the Person has consented to be included.
- 23.6. Mediation. At any time prior or subsequent to a Party initiating arbitration, the Parties may mutually agree to (but are not obligated to) attempt to resolve their Dispute by non-binding mediation, using a mediator selected by mutual agreement. The mediation shall be completed within thirty (30) Business Days from the date on which the Parties agree to mediate. Unless mutually agreed by the parties, any mediation agreed to by the Parties shall not delay arbitration. The Parties shall pay their own costs associated with mediation and shall share any mediator's fee equally. The mediation shall be held in Charlotte, North Carolina, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court of competent jurisdiction.
- 23.7. Remedies. Except for Disputes regarding confidentiality arising under Section 16 of this Agreement, the procedures specified in this Section 23 shall be the sole and exclusive procedures for the resolution of Disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party may file a judicial claim or action on issues of statute of limitations or repose or to seek injunctive relief, sequestration, garnishment, attachment, or an appointment of a receiver, subject to and in accordance with the provisions of Section 26.5 (Venue/Consent to Jurisdiction). Preservation of these remedies does not limit the power of the arbitrator(s) to grant similar remedies, and despite such actions, the Parties shall continue to participate in and be bound by the dispute resolution procedures specified in this Section 23.
- 23.8. Settlement Discussions. All negotiations and discussion concerning Disputes between the Parties pursuant to this Section 23 are to be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and settlement privilege. No statement of position or offers of settlement made in the course of the dispute resolution process can be or will be offered into evidence for any purpose, nor will any such statements or offers of settlement be used in any manner against any Party. Further, no statement of position or offers of settlement will constitute an admission or waiver of rights by either Party. At the request of either Party, any such statements or offers, and all copies thereof, shall be promptly returned to the Party providing the same.
- 23.9. Survival. This Section 23 will survive any expiration or termination of this Agreement.

24. Assignment

- 24.1. Limitation. Except as set forth below in Section 24.2 with respect to pledging as collateral security, Seller shall not assign, pledge, and/or encumber (collectively, "Assignment") this Agreement, any rights or obligations under the Agreement, or any portion hereunder, without Buyer's prior written consent. Seller shall give Buyer at least thirty (30) days prior written notice of any requested Assignment. Subject to Seller providing Buyer with information demonstrating to Buyer, in Buyer's sole Commercially Reasonable discretion, that Seller's proposed assignee has the technical, engineering, financial, and operational capabilities to perform under this Agreement, Buyer may not unreasonably withhold its consent; *provided, however*, that any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall deliver to Buyer such tax, credit, Performance Assurance in the required amount, and enforceability assurance as the Buyer may request in its sole Commercially Reasonable discretion. Notwithstanding anything to the contrary herein, Buyer may pledge, encumber, or assign this Agreement to any person, including any affiliate or subsidiary of Buyer, whether or not an Affiliate, without any restriction.
- 24.2. Pledge. Seller may, without prior consent of Buyer but with no less than ten (10) Business Days prior written notice to Buyer, pledge as collateral security this Agreement to a financing party in connection with any loan, lease, or other debt or equity financing arrangement for the Facility. Any pledge of this Agreement as collateral security will not relieve Seller of any obligation or liability under this Agreement, and it will not create any rights, including any third party beneficiary rights, for any person under this Agreement.
- 24.3. Change of Control. Any Change of Control of Seller (however this Change of Control occurs) shall require the prior written consent of Buyer, which shall not be unreasonably withheld or delayed. Seller shall give Buyer at least thirty (30) days prior written notice of any such requested consent to a Change of Control.
- 24.4. Delivery of Assurances & Voidable. Any Assignment or Change of Control will not relieve Seller of its obligations hereunder, unless Buyer agrees in writing in advance to waive the Seller's continuing obligations under this Agreement. In case of a permitted Assignment and/or Change of Control, such requesting party or parties shall agree in writing to assume all obligations of Seller and to be bound by the terms and conditions of this Agreement and shall deliver to Buyer such tax, credit, performance, and enforceability assurances as Buyer may request, in its sole Commercially Reasonable discretion. Further, Buyer's consent to any Assignment may be conditioned on and subject to Seller's proposed assignee having first obtained all approvals that may be required by any Requirements of Law and from all applicable Governmental Authorities. Any sale, transfer, Change of Control, and/or Assignment of any interest in the Facility or in the Agreement made without fully satisfying the requirements of this Agreement shall be null and void and will be an Event of Default hereunder with Seller as the Defaulting Party.
- 24.5. Cost Recovery. Without limiting Buyer's rights under this Section 24, to the extent Buyer agrees to a request from Seller for an Assignment, Change of Control, or other changes in administering this Agreement, Seller shall pay Buyer ten thousand dollars (\$10,000) prior to Buyer processing Seller's request.
25. Notices.
- 25.1. Process. All notices, requests, or invoices shall be in writing and shall be sent to the address of the applicable Party as specified on the first page of this Agreement. A Party may change its information for receiving notices by sending written notice to the other Party. Notices shall be delivered by hand, certified mail (postage prepaid and return receipt requested), or sent by overnight mail or courier. This section shall be applicable whenever words such as "notify," "submit," "give," or similar language are used in the

context of giving notice to a Party.

- 25.2. Receipt of Notices. Hand delivered notices shall be deemed delivered by the close of the Business Day on which it was hand delivered. Notices provided by certified mail (postage prepaid and return receipt requested), mail delivery or courier service, or by overnight mail or courier service will be deemed received on the date of delivery recorded by the delivery service or on the tracking receipt, as applicable. Notwithstanding anything to the contrary, if the day on which any notice is delivered or received is not a Business Day or is after 5:00 p.m. EPT on a Business Day, then it shall be deemed to have been received on the next following Business Day.

26. Miscellaneous.

- 26.1. Costs. Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs and fees associated with negotiating or disputing or taking any other action with respect to this Agreement, including, without limitation, attorney cost, except that the cost of the arbitrator(s) will be allocated equally between the Parties as provided in Section 23.
- 26.2. Access. Upon reasonable prior notice, Seller shall provide to Buyer and its authorized agents (including contractors and sub-contractors), employees, auditors, and inspectors reasonable access to the Facility to: (i) tour or otherwise view the Facility; (ii) ascertain the status of the Facility with respect to construction, start-up and testing, or any other obligation of Seller under this Agreement; and, (iii) read meters and perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this Agreement or to otherwise audit and/or verify Seller's performance under this Agreement. Upon reasonable prior notice, Seller shall provide to Buyer and its guests or customers reasonable access to the Facility to only tour or otherwise view the Facility. While at the Facility, the foregoing agents, employees, auditors, inspectors, guests, and customer shall observe such reasonable safety precautions as may be required by Seller, conduct themselves in a manner that will not interfere with the operation of the Facility, and adhere to Seller's reasonable rules and procedures applicable to Facility visitors. Seller shall have the right to have a representative of Seller present during such access.
- 26.3. Safe Harbor and Waiver of Section 366. Each Party agrees that it will not assert, and waives any right to assert, that the other Party is performing hereunder as a "utility," as such term is used in 11 U.S.C. Section 366. Further, each Party hereby waives any right to assert and agrees that it will not assert that 11 U.S.C. Section 366 applies to this Agreement or any transaction hereunder in any bankruptcy proceeding. In any such proceeding each Party further waives the right to assert and agrees that it will not assert that the other Party is a provider of last resort with respect to this Agreement or any transaction hereunder or to otherwise limit contractual rights to accelerate amounts owed, net, recoup, set-off, liquidate, and/or early terminate. Without limiting the generality of the foregoing or the binding nature of any other provision of this Agreement on permitted successors and assigns, this provision is intended to be binding upon all successors and assigns of the Parties, including, without limitation, judgment lien creditors, receivers, estates in possession, and trustees thereof.
- 26.4. Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW, AND, IF APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA.

- 26.5. Venue/Consent to Jurisdiction. Except for Disputes that are subject to Arbitration as provided herein, any judicial action, suit, or proceedings arising out of, resulting from, or in any way relating to, this Agreement, or any alleged breach or default under the same or the warranties and representations contained in the same, shall be brought only in a state or federal court of competent jurisdiction located in Mecklenburg County, North Carolina. The Parties hereto irrevocably consent to the jurisdiction of any federal or state court within in Mecklenburg County, North Carolina and hereby submit to venue in such courts. Without limiting the generality of the foregoing, the Parties waive and agree not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) such Party is not subject to the jurisdiction of the state or federal Courts within North Carolina; or (ii) such suit, action, or proceeding is brought in an inconvenient forum; or (iii) the venue of such suit, action, or proceeding is improper. The exclusive forum for any litigation between them under this Agreement that is not subject to Arbitration shall occur in federal or state court within in Mecklenburg County, North Carolina.
- 26.6. Limitation of Duty to Buy. If this Agreement is terminated due to a default by Seller, neither Seller, nor any affiliate and/or successor of Seller, nor any affiliate and/or successor to the Facility, including without limitation owner and/or operator of the Facility will require or seek to require Buyer to purchase any output (Energy or otherwise) from the Facility under any Requirements of Law (including without limitation PURPA) or otherwise for any period that would have been covered by the Term of this Agreement had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, and on behalf of any successor to the Seller or successor to the Facility, hereby agrees to the terms and conditions in the above sentence, and hereby waives its right to dispute the above sentence. Seller authorizes the Buyer to record notice of the foregoing in the real estate records.
- 26.7. Entire Agreement and Amendments. This Agreement represents the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, binding documents, representations and agreements, whether written or oral. No amendment, modification, or change to this Agreement shall be enforceable unless agreed upon in a writing that is executed by the Parties.
- 26.8. Drafting. Each Party agrees that it (and/or its counsel) has completely read, fully understands, and voluntarily accepts every provision, term, and condition of this Agreement. Each Party agrees that this Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties, and no Party shall have any provision hereof construed against such Party by reason of such Party drafting, negotiating, or proposing any provision hereof, or execution of this Agreement. Each Party irrevocably waives the benefit of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific language in a contract.
- 26.9. Headings. All section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- 26.10. Publicity.
- 26.10.1. Limitation on Seller. Seller shall not make any announcement or release any information concerning or otherwise relating to this Agreement to any member of the public, press, Person, official body, or otherwise without Buyer's prior written consent, which shall not be unreasonably withheld; provided, however, any content approved by Buyer shall be limited to the non-confidential facts of the Agreement and will not imply, directly or indirectly, any endorsement, partnership, support, or testimonial of Seller by Buyer.

- 26.10.2. Limitation on the Parties. Neither Party shall make any use of the other Party's name, logo, likeness in any publication, promotional material, news release, or similar issuance or material without the other Party's prior review, approval, and written consent. Seller agrees and acknowledges that any reference or likeness to "Duke" shall be a prohibited use of Buyer's name, logo, likeness. Seller agrees and acknowledges that any direct or indirect implication of any endorsement, partnership, support, or testimonial of Seller by Buyer is prohibited, and any such use, endorsement, partnership, support, and/or testimonial will be an Event of Default under this Agreement. Subject to the foregoing, either Party may disclose to the public general information in connection with the Party's respective business activities; *provided, however*, no such disclosure or publicity by Seller will directly or indirectly imply any endorsement, partnership, support, or testimonial of Seller by Buyer.
- 26.11. Waiver. No waiver by any Party of any of its rights with respect to the other Party or with respect to any matter or default arising in connection with this Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver under this Agreement will be effective only if it is in writing that has been duly executed by an authorized representative of the waiving Party.
- 26.12. Partnership and Beneficiaries. Nothing contained in this Agreement shall be construed or constitute any Party as the employee, agent, partner, joint venture, or contractor of any other Party. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns. No other person or entity, including, without limitation, a financing or collateral support provider, will be a direct or indirect beneficiary of or under this Agreement, and will not have any direct or indirect cause of action or claim under or in connection with this Agreement.
- 26.13. Severability. Any provision or section hereof that is declared or rendered unlawful by any applicable court of law, or deemed unlawful because of a statutory change, shall not, to the extent practicable, affect other lawful obligations under this Agreement.
- 26.14. Counterparts. This Agreement may be executed in counterparts, including facsimiles hereof, and each such executed document will be deemed to be an original document and together will complete execution and effectiveness of this Agreement.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

DUKE ENERGY CAROLINAS, LLC

BY: _____

NAME: _____

TITLE: _____

DATE: _____

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Exhibit 1

Estimated Monthly Energy Production of the Facility

| <u>Month</u> | <u>Estimated Facility Energy Production (MWh)</u> |
|--------------|---|
| January | 2165 |
| February | 1714 |
| March | 2166 |
| April | 2324 |
| May | 1952 |
| June | 1603 |
| July | 1656 |
| August | 1357 |
| September | 1380 |
| October | 1322 |
| November | 1774 |
| December | 2387 |
| Total | 21,800 |

Exhibit 2
Contract Price

| | <u>Contract Price</u> |
|-----------------|-----------------------|
| On-Peak Energy | \$39.05/MWh |
| Off-Peak Energy | \$31.73/MWh |
| REC Price | \$4/MWh |

On-Peak Energy shall be Energy which is delivered to Buyer at the Delivery Point during On-Peak Hours. Off-Peak Energy shall be Energy delivered to Buyer at the Delivery Point during Off-Peak Hours.

ON-PEAK HOURS

Monday through Friday, beginning at 1 PM and ending at 9 PM during Summer Months and beginning at 6 AM and ending at 1 PM during Non-Summer Months.

OFF-PEAK HOURS

All other weekday hours, all Saturday and Sunday hours, and all hours of the following holidays: New Year's Day, Memorial Day, Good Friday, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.

SUMMER MONTHS

June 1 through September 30

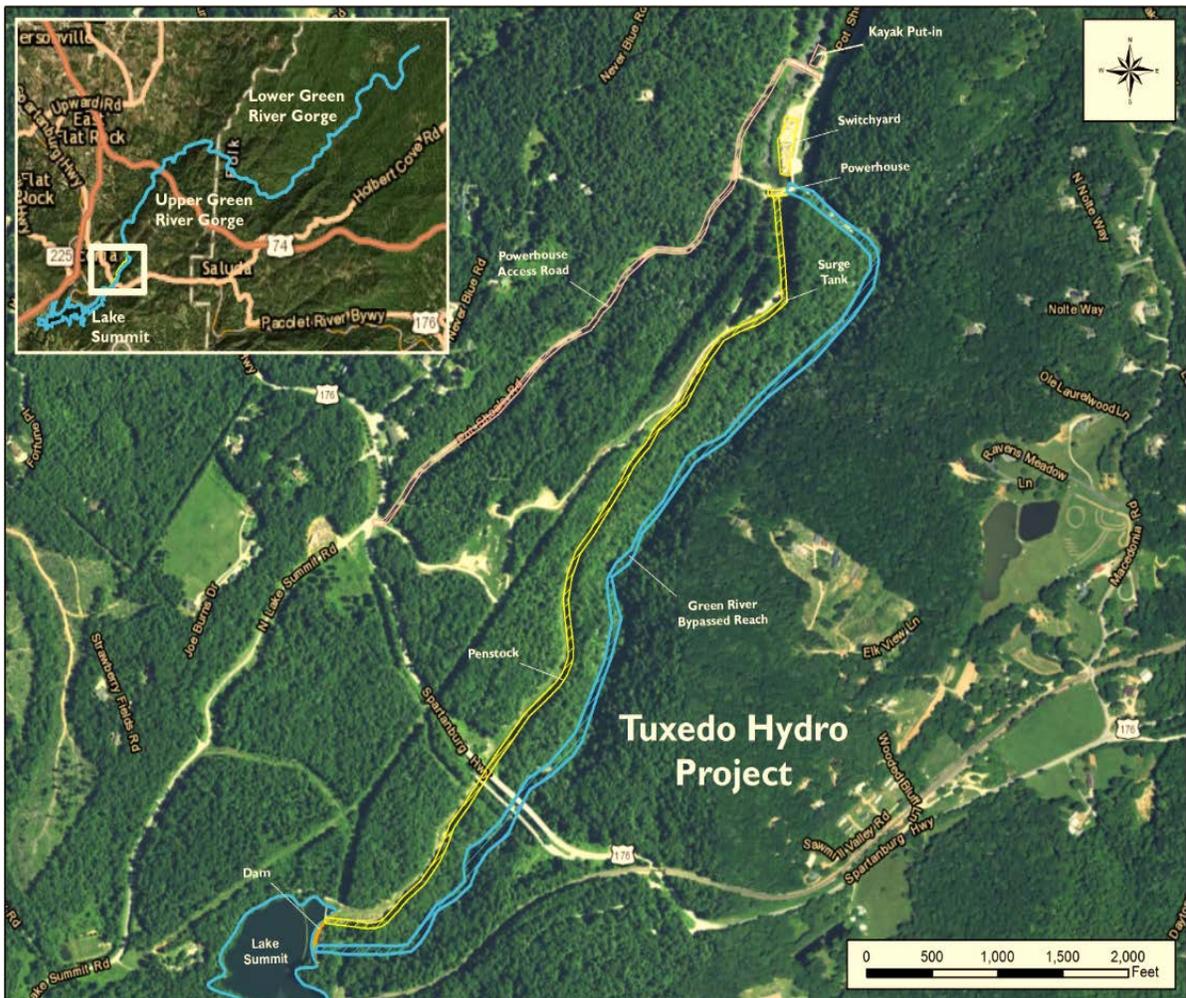
NON-SUMMER MONTHS

October 1 through May 31

Exhibit 3

Facility Information

1. Facility Name: Tuxedo
2. Facility Address: Pot Shoals Road, Flat Rock, NC 28731
3. Description of Facility: The 290 acre Lake Summit is formed by the damming of the Green River by the Tuxedo Dam, located near Flat Rock, NC. Tuxedo Dam consists of a 200 ft saddle dike, a single arch dam, and an intake bulkhead. Facility operates in storage mode with a voluntary lake level band.
4. Nameplate Capacity Rating: 6.40 MW
5. Fuel Type/Generation Type: Hydro
6. Site Map:



7. Delivery Point Diagram (include Delivery Point, metering, Facility substation): TBD

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 1181

In the Matter of)
Transfer of Certificates of Public)
Convenience and Necessity and Ownership)
Interests in Generating Facilities from)
Duke Energy Carolinas, LLC to)
Northbrook Carolina Hydro II, LLC and)
Northbrook Tuxedo, LLC)

**DIRECT TESTIMONY OF
VERONICA I. WILLIAMS**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Veronica I. Williams, and my business address is 550 South Tryon
3 Street, Charlotte, North Carolina.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am a Rates and Regulatory Strategy Manager for Duke Energy Carolinas, LLC
6 (“Duke Energy Carolinas”, “DEC”, or the “Company”). Duke Energy
7 Carolinas is a wholly-owned subsidiary of Duke Energy Corporation (“Duke
8 Energy”).

9 **Q. WHAT ARE YOUR RESPONSIBILITIES AS BUSINESS
10 DEVELOPMENT MANAGER?**

11 A. I am responsible for providing regulatory support for retail and wholesale rates
12 and providing guidance on Renewable Energy and Energy Efficiency Portfolio
13 Standard (“REPS”) compliance and cost recovery for Duke Energy Carolinas
14 and Duke Energy Progress, LLC (“Duke Energy Progress” or “DEP”).

15 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL
16 BACKGROUND.**

17 A. I received a Bachelor of Science degree in Business from the University of
18 North Carolina at Charlotte. I am a certified public accountant licensed in the
19 state of North Carolina. I began my career with Duke Power Company (“Duke
20 Power”) (now known as Duke Energy Carolinas) as an internal auditor and
21 subsequently worked in various departments in the finance organization. I
22 joined the Rates Department in 2001.

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NORTH**
2 **CAROLINA UTILITIES COMMISSION?**

3 A. Yes. I most recently provided testimony in Docket No. E-2, Sub 1175 regarding
4 Duke Energy Progress' 2017 REPS compliance report and application for
5 approval of its REPS cost recovery rider, and in Docket No. E-7, Sub 1162
6 regarding Duke Energy Carolinas' 2017 REPS compliance report and
7 application for approval of its REPS cost recovery rider.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A. The purpose of my testimony in this proceeding is to support DEC's
10 Application to Transfer Certificates of Public Convenience and Necessity and
11 Ownership Interests in Generating Facilities from Duke Energy Carolinas, LLC
12 to Northbrook Carolina Hydro II, LLC and Northbrook Tuxedo, LLC. I will
13 specifically discuss the accounting order requested by the Company in
14 connection with the sale of the Bryson, Franklin, Mission, Tuxedo, and Gaston
15 Shoals hydroelectric generation facilities (which, I will collectively refer to as
16 the "Facilities" or "hydro units") and the basis for the deferral request.

17 **Q. PLEASE DISCUSS THE DEFERRAL ACCOUNTING THAT DEC HAS**
18 **REQUESTED.**

19 A. The Company has asked the Commission for an accounting order for regulatory
20 and financial accounting purposes authorizing DEC to establish a regulatory
21 asset for the estimated loss on the disposition of the hydro units. The loss is
22 calculated as the difference between the sale proceeds of \$4.75 million and the
23 net book value of the Facilities of \$42 million, \$0.2 million of plant material

1 and operating supplies, \$1.4 million of legal and transaction-related costs, and
2 \$1.6 million of transmission-related work required by the sale. The North
3 Carolina retail allocable portion of the total estimated loss of \$40 million is
4 approximately \$27 million.

5 DEC proposed to amortize the regulatory asset over a period of time and
6 at the approved return, as determined in the next general rate case. At the time
7 the regulatory asset is approved by the Commission, the cost of the Facilities
8 will be removed from plant in service, the appropriate amounts reflecting the
9 sale will be recorded as assets held for sale, depreciation of the assets will cease,
10 and the estimated loss will be recorded in the regulatory asset approved by the
11 Commission.

12 **Q. WHAT WOULD BE THE CONSEQUENCES TO THE COMPANY IF**
13 **THE COMMISSION DID NOT APPROVE THE REQUESTED**
14 **ACCOUNTING TREATMENT?**

15 A. Absent the accounting treatment requested, DEC would be forced to write off
16 the North Carolina retail allocation of approximately \$27 million for the loss
17 associated with the sale of the facilities if DEC were to nonetheless complete
18 the Transaction. In order to avoid that result, approval of the requested
19 accounting treatment is a condition to closing the Transaction, so DEC would
20 have no obligation to close on the sale if the accounting order is not approved.

21 **Q. WHAT DEFERRAL STANDARD DOES DEC RECOMMEND THAT**
22 **THE COMMISSION APPLY TO ITS REQUEST?**

1 A. It is the Company's position that the two-prong test the Commission sometimes
2 utilizes of considering (1) whether the costs in question are unusual or
3 extraordinary in nature and (2) whether absent deferral the costs would have a
4 material impact on the company's financial condition should not apply to the
5 Company's request in this docket. This transaction is unique. In a previous
6 case in Docket No. E-7, Sub 828¹, the Commission considered deferral and
7 amortization of costs related to another unique set of facts – work performed to
8 establish the GridSouth Regional Transmission Organization, which had been
9 curtailed as a result of a change in FERC regulatory policy. In that case, the
10 Commission noted that it “had generally decided requests for deferral and
11 amortization of specific costs items by examining whether the costs in question
12 are unusual and material and whether allowing the deferral and amortization
13 request is equitable, taking into account the equities for both shareholders and
14 customers.” The Commission also decided that the costs in question were
15 “clearly unusual and not part of the ordinary cost of providing service,” and
16 further noted that the amounts at issue were “clearly material,” citing
17 comparable past deferrals ranging from approximately \$15 million to \$40
18 million. However, the Commission's analysis went beyond the limited question
19 of materiality. The Commission noted that the nature and scope of the exact
20 terms and conditions of the deferral and amortization of any item of cost are
21 committed to the Commission's sound discretion, This includes the

¹ The Commission's Dec 20, 2007, *Order Approving Stipulation and Deciding Non-Settled Issues* in Docket No. E-7, Sub 828.

1 consideration of equitable treatment for both shareholders and customers,
2 which is an important question in the current case.

3 The Company respectfully submits that the net costs (i.e., loss) associated with
4 the potential sale of the hydro units qualify for deferral consistent with the tests
5 previously applied by the Commission in similar situations and such tests are
6 still relevant today. The sale of generating assets by the regulated utility is
7 certainly unusual and not part of the conduct of its ordinary course of business,
8 and would not normally be reflected in any given general rate case. The loss
9 associated with this sale is not immaterial in the context of other deferrals and
10 costs itemized in general rate case proceedings. Finally, allowing the deferral
11 and amortization of the prudently-incurred costs required to achieve the future
12 benefits of lower costs of service provides an equitable balancing of the
13 interests of customers and the Company's shareholders. Although the sale of
14 the hydro units was conducted through a bid process, the sale of the units will
15 result in a loss. Notwithstanding the loss from the sale, the testimony of
16 Company witness Lewis demonstrates that the transaction will produce net
17 benefits to customers over time as compared to DEC continuing to own and
18 operate the units as it has done in the past. It is clear that customers received
19 the benefits of the units while they were in service and under regulation.
20 Because customers received the benefits of the units under regulation, it is
21 appropriate that the loss resulting from the sale should be included in the
22 Company's cost of service and recovered over a reasonable period of time. This
23 is particularly true because customers will receive an ongoing benefit due to

1 decreased cost of service in the future. If the units were to be sold at a gain, the
2 Commission would expect that customers receive the benefit of all, or at least
3 a portion, of the gain because the cost of the units was included in rates while
4 the units were in service and under regulation. The same regulatory policy
5 should be followed when the units are sold at a loss, particularly when the sale
6 produces net benefits to customers over time.

7 **Q. DOES DEC BELIEVE THAT THE COMMISSION SHOULD GRANT**
8 **THE DEFERRAL TREATMENT IT HAS REQUESTED?**

9 A. Yes. This is a one-time event that is not part of the ordinary course of doing
10 business. The costs the Company seeks to defer and amortize have been
11 prudently incurred and are material in amount. The transaction, once
12 completed, will result in overall cost savings for customers. Absent a deferral
13 and reasonable amortization period, the Company would be denied recovery of
14 costs that benefitted customers and will continue to benefit customers in the
15 future. Further, allowing deferral of the costs provides the necessary balancing
16 of equities between customers and shareholders, which is consistent with the
17 regulatory compact.

18 **Q. WHEN DOES DEC PROPOSE THAT THE AMORTIZATION**
19 **PERIOD SHOULD BEGIN?**

20 A. In its comments filed on September 4, 2018 in this docket, the Public Staff
21 supports DEC's request to establish a regulatory asset because of the benefits
22 to customers resulting from the overall transaction. The Public Staff, however,
23 recommends that the Commission require DEC to begin amortization in the

1 month in which the Transaction closes, subject to reevaluation and adjustment
2 in the next general rate case. In addition, the Public Staff recommends that the
3 amortization period for the regulatory asset be set at approximately 20 years,
4 which it asserts is the average remaining book life of the Facilities, but which
5 should be subject to reevaluation and adjustment in the Company's next general
6 rate case. (*Id.* at pp. 10, 12). Because depreciation on these assets is currently
7 approved in rates, DEC agrees that it would be reasonable and appropriate in
8 this instance to recognize amortization expense at the level of depreciation
9 currently approved in rates until the time of its next general rate case, at which
10 time DEC would address the appropriate amortization period for the remaining
11 regulatory asset balance. As such, the Company proposes approval of the
12 regulatory asset, with amortization beginning at the time the regulatory asset is
13 recorded on the books, at a rate equivalent to the remaining 20-year life of the
14 assets. Once established, the Company would plan to address the proper
15 amortization period for the then-remaining regulatory asset balance in its next
16 general rate case.

17 **Q. WHAT COSTS RELATED TO THE HYDRO UNITS WERE**
18 **INCLUDED IN DEC'S LAST GENERAL RATE CASE, DOCKET NO.**
19 **E-7, SUB 1146?**

20 A. Net plant balances were updated through December 31, 2017, and reflected in
21 the revenue requirement in the Company's general rate case in Docket No. E-
22 7, Sub 1146. Capital expenditures incurred and closed to plant in service
23 through December 31, 2017 would have been included in the costs approved in

1 the rate case. The Company's capital expenditures on the hydro units for the
2 period 2015-2017 are detailed in the testimony of Company witness Lewis and
3 on Lewis Exhibit No. 2 filed in this current docket. More than 95% of the 2015-
4 2017 capital costs shown would have been included in net plant in rate base in
5 the previous general rate case. The remaining capital costs were mostly
6 associated with a project that was suspended pending the sale.

7 **Q. DESPITE THE FACT THAT THESE COSTS FOR THE HYDRO UNITS**
8 **WERE CONSIDERED AND APPROVED DURING THE COMPANY'S**
9 **LAST GENERAL RATE CASE, WHAT IS YOUR UNDERSTANDING**
10 **OF THE PUBLIC STAFF'S RECOMMENDATION TO THE**
11 **COMMISSION REGARDING ADDITIONAL FUTURE REVIEW OF**
12 **THESE COSTS?**

13 A. In its comments, the Public Staff stated that it supports the transaction because
14 of the substantial customer benefits it would provide, but indicated that it had
15 questions about capital projects at the hydro units totaling approximately \$18
16 million that were incurred and completed by DEC in 2015-2017, as well as
17 approximately \$865,000 budgeted or invested in 2018. The Company updated
18 the information it provided to the Public Staff subsequent to the time the Public
19 Staff filed its initial comments, which revised the total expenditures for the
20 period 2015-2017 to approximately \$17.3 million. In its comments, the Public
21 Staff argued that the Commission should allow the Public Staff to investigate
22 these projects further and that the question of whether it is reasonable for DEC
23 to recover the full \$27 million loss due to Transaction should "be preserved as

1 an open issue until DEC's next general rate case when the reasonableness of
2 recovery of the deferred costs will be addressed." (Public Staff Comments at
3 p. 5). Although the Public Staff acknowledged that it and the Commission
4 recently completed their investigations of the Company's retail electric rates
5 and charges in the general rate case completed in Docket No. E-7, Sub 1146, it
6 nonetheless asserted that the Commission should allow the Public Staff the
7 ability to review the reasonableness and prudence of capital costs related to the
8 hydro units again in the next rate case, because the Company's sale of the hydro
9 units was "new information."

10 **Q. DO YOU AGREE THAT THE POTENTIAL SALE OF THE HYDRO**
11 **UNITS CONSTITUTES NEW INFORMATION?**

12 A. No, I do not. The Company first met with the Public Staff to discuss the
13 proposed sale of the Facilities on August 23, 2017 - - two days before DEC filed
14 its general rate case application in Docket No. E-7, Sub 1146. Subsequent
15 meetings were held with the Public Staff to discuss the proposed sale on
16 February 6, 2018 and on May 9, 2018, both while the general rate case was
17 pending. In addition to these meetings, the Company has responded to
18 numerous formal and informal data requests from the Public Staff regarding the
19 proposed sale of the hydro units. Subsequent to the filing of the Public Staff's
20 comments, the Company also discussed and provided additional detail
21 regarding the capital projects at issue as requested by the Public Staff.

22 **Q. DOES THE COMPANY BELIEVE IT IS APPROPRIATE FOR THE**
23 **COMMISSION TO APPROVE THE PUBLIC STAFF'S REQUESTED**

1 **CONDITION TO ALLOW YET ANOTHER PRUDENCE REVIEW OF**
2 **THE HYDRO UNITS' ALREADY-APPROVED CAPITAL COSTS IN**
3 **THE NEXT RATE CASE?**

4 A. No. The Public Staff was well aware of the proposed sale of the hydro units
5 before and during the last rate case. The Company believes that the Public Staff
6 had an adequate opportunity to investigate the capital costs at issue. As
7 Company witness Lewis explains in his testimony, these were reasonable and
8 prudent capital investments made by the Company to ensure the safe and
9 reliable operation of the hydro units and to comply with Federal Energy
10 Regulatory Commission license requirements over the past 36 months. If the
11 Public Staff had any questions about, or even challenges to, the reasonableness
12 and prudence of such investments, its opportunity to raise them was in the Sub
13 1146 rate case proceeding. Furthermore, the Public Staff received ample detail
14 in this current proceeding, both written and provided in comprehensive
15 discussions with the Company, to ascertain the reasonableness of the capital
16 costs. The Commission's Orders have meaning and bring certainty to the
17 regulatory process. Commission Orders are reviewed and relied upon by other
18 regulatory bodies, financial analysts and potential investors. Issues previously
19 resolved by the Commission following review and hearing should not be
20 subject to second guessing, except in the most extraordinary circumstances.

21 To allow the Public Staff to have the ability to review the incurrence of
22 these costs yet again in the next general rate case through some sort of hindsight
23 analysis - - especially when the Public Staff has agreed with the Company's

1 decision to sell the assets for the benefit of customers - - would inject
2 unprecedented and impermissible uncertainty into the determination and
3 recovery of just and reasonable costs. Finally, DEC's requested accounting
4 order would not preclude the Commission or parties from addressing the
5 reasonableness of the deferred costs arising from the Transaction itself (*i.e.*,
6 legal and transaction-related costs) in the next general rate proceedings filed by
7 DEC.

8 **Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?**

9 A. Yes.