

ENERGY PURCHASE AGREEMENT

BETWEEN

CONSUMERS ENERGY COMPANY

AND

ENERGY PURCHASE AGREEMENT

PART 1
COVERSHEET

This *Energy Purchase Agreement* (“EPA”) is made as of the following date: _____. The EPA, together with the exhibits, schedules and any written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties shall be referred to as the “Agreement.” The Parties to this EPA are the following:

Name (“Consumers Energy Company” or “Buyer”)

Name (“_____” or “Seller”)

All Notices: Consumers Energy Company

Street: 1945 W Parnall Road
City: Jackson State: MI Zip: 49201
Attn: Contract Strategies
Phone: 517-788-7264
Facsimile: 517-788-5882
Email : KEITH.TROYER@cmsenergy.com

All Notices: _____

Street: _____
City: _____ State: ____ Zip: _____
Attn: _____
Phone: _____
Facsimile: _____
Email : _____

Invoices:

Attn: Jenny Rickard
Phone: 517-788-0091
Email: JENNY.RICKARD@cmsenergy.com

Invoices:

Attn: _____
Phone: _____
Email: _____

Scheduling:

Attn: Outage Scheduler
Phone: 517-788-1919
Email: outagescheduler@cmsenergy.com

Scheduling:

Attn: _____
Phone: _____
Email: _____

Contract Characteristics

Plant Name: _____
Plant Type: _____
Plant Nameplate Capacity (MW_{AC}): _____
Plant Location: _____
Contract Capacity (MW_{AC}): _____
Expected Delivered Energy (MWh/year): _____
Expected Start Date: _____

Administrative Charge:
Nameplate Capacity up to 0.55 MW: _____ \$1/MWh for Delivered Energy
Nameplate Capacity greater than 0.55 MW: _____ \$1/MWh for Delivered Energy
_____ \$_____ per Billing Month

Other Contract Changes:

(Page intentionally left blank)

Terms and Conditions attached and all Exhibits are part of this Agreement. SELLER ACKNOWLEDGES HAVING READ SAID DEFINITIONS AND TERMS AND CONDITIONS AND AGREES TO SAID TERMS AND CONDITIONS.

Consumers Energy Company
1945 W. Parnall Road
Jackson, MI 49201
(Buyer)

(Seller)

By: _____
(Signature)

By: _____
(Signature)

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Review and Approvals		
Contracts		
Risk		
Legal		

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PART III
TERMS AND CONDITIONS

This Agreement is made and entered into as of the date identified in Part I, between the Buyer and Seller, both identified in Part I. Buyer and Seller are herein sometimes referred to individually as "Party" and collectively as "Parties", where appropriate.

WITNESSETH:

WHEREAS, Buyer owns electric facilities and is engaged in the generation, purchase, distribution and sale of electric energy in the State of Michigan, and

WHEREAS, Seller owns and operates, or intends to build the generating plant identified in Part I; and

WHEREAS, the Parties hereto anticipate that Seller will at times generate electric energy in excess of Seller's own requirements, and Buyer wishes to purchase such excess energy when it is available.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the Parties hereto agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings unless specifically stated otherwise in this Agreement:

"Bankrupt" – Means with respect to either Party, such Party (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition remains undismissed for a period of sixty (60) Days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

"Billing Month" – Means a calendar month. The first Billing Month shall commence with the Start Date and end on the last Day of the calendar month in which the Start Date occurs.

"Business Day" – Means a Calendar Day other than Saturday, Sunday or a Holiday.

"Calendar Day" or "Day" – Means the twenty- four (24) hour period beginning at 12:00 a.m. midnight Eastern Standard Time and ending at 11:59:59 p.m. Eastern Standard Time. The terms Day and Calendar Day may be used interchangeably and shall have the same meaning.

"Contract Capacity" – Means the amount of MW_{AC} identified in Part I.

"Delivered Energy" – Means the electric energy produced by the Plant and delivered by Seller at the Point of Delivery as such amount of electric energy delivered is determined on an hourly basis pursuant to Section 5, Metering, but not to exceed Contract Capacity during any hour.

"Effective Date" – Defined in Subsection 2.1, Effective Date and Term.

"Emergency" or "Emergencies" – A condition or conditions on the Buyer's distribution system which in the Buyer's sole judgment either has, or is likely to, result in significant imminent disruption of service to Seller, or imminent endangerment to life or property.

"Environmental Attribute(s)" – Means an instrument used to represent the environmental benefits associated with a fixed amount of electricity generation; excluding Renewable Energy Credits for the purpose of the Agreement. Environmental Attributes represent the general environmental benefits of renewable generation such as air pollution avoidance. The exact quantity of the environmental benefit (e.g. pounds of emission reductions of a given pollutant) may not be indicated by an Environmental Attribute, though it can be quantified separately in pollution trading markets and through engineering estimates. The Environmental Attribute represents all environmental benefits, whether or not trading markets for such pollutants or benefits exist.

"Exempt Operational Periods" – Those periods described in 18 CFR § 292.304(f) as in effect as of the date of this Agreement, wherein Buyer has notified Seller in a timely manner to cease delivery of electric energy hereunder during a specified period in which Seller would otherwise have electric energy available for delivery but, due to operational circumstances, purchases from Seller would in Buyer's reasonable judgment result in costs greater than those that would result if Buyer generated an equivalent amount of energy through its own facilities.

"Interconnection Agreement" – Means the agreement between Seller and the applicable electric distribution system owner and/or operator which describes the terms and conditions regarding the connection of Seller's Plant to such electric distribution system owner and/or operator.

"Joint Banking Day" – Means a Calendar Day on which the banks used by both Parties for financial settlement hereunder are open for business.

“Late Payment Interest Rate” – Means the lesser of (a) the per annum rate of interest equal to the prime lending rate as may be from time to time 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 (2%) percent or (b) the maximum rate permitted by applicable law.

“Locational Marginal Price” or “LMP” – Has the meaning ascribed to such term in the MISO Rules.

“MISO” – Means the Midcontinent Independent System Operator, Inc. including any successor thereto.

“MISO Rules” – Means the Open Access Transmission, Energy and Operating Reserve Markets Tariff, including all schedules or attachments thereto, of MISO, as amended from time to time, including any successor tariff or rate schedule approved by the Federal Energy Regulatory Commission, together with any applicable MISO Business Practice Manual as amended from time to time.

“Plant” – Means the generating facility identified in Part I, including, but not limited to: generating equipment, including auxiliary and back-up transformers; electric delivery facilities; fuel handling equipment; administrative structures; and such other necessary and related facilities, equipment and structures associated with the generation of electricity.

“Point of Delivery” – Means the location at which Seller shall deliver electric energy from the Plant to the applicable electric distribution or transmission system owner and/or operator as established in the Interconnection Agreement.

“Prudent Utility Practices” – Means the practices generally followed by the electric utility industry, as changed from time to time, which generally include, but are not limited to, engineering, operating, safety, reliability, equipment, and adherence to applicable industry codes, standards, regulations and laws.

“Renewable Energy Credit(s)” or “REC(s)” – Has the meaning specified in MCL460.1033.

“Start Date” – Defined in Subsection 4.2, Start Date.

2. GENERAL PROVISIONS

2.1 Effective Date and Term

This Agreement shall be effective on the Day and year it is made and entered into (“Effective Date”) and, unless terminated as provided in this Agreement, shall continue in effect for an initial term expiring one (1) year after the Start Date. Thereafter, this Agreement

shall automatically renew for subsequent one (1) month periods and shall continue in effect unless and until terminated by mutual agreement or by either Party giving the other Party at least one (1) month's written notice of termination, to be effective upon the expiration of the applicable one (1) month period.

2.2 "Qualifying Facility" Status of Facility and Seller's Warranty

Seller hereby represents to Buyer that the Plant has or will achieve qualifying status by the Start Date as a "cogeneration facility" or a "small power production facility" under 18 CFR §§ 292.201-292.207.

Seller will use commercially reasonable efforts to ensure that the Plant will maintain its status as a "Qualifying Facility" under the Public Utility Regulatory Policies Act of 1978, Public Law 95-617, 92 Stat 3117 and the implementing Federal Regulations promulgated thereunder as such are amended to the Effective Date of this Agreement and appear at 18 CFR §§ 292.101 through 292.602, throughout the term of this Agreement. In the event Seller fails to maintain such "Qualifying Facility" status, Buyer shall have the option of terminating this Agreement by giving Seller one thirty (30) Days written notice.

3. ENERGY TO BE SUPPLIED

3.1 Energy to be Furnished by Seller to Buyer

Subject to the terms and conditions of this Agreement, beginning with the Start Date and continuing until the termination of this Agreement, Seller agrees to sell and supply to Buyer, and Buyer agrees to accept and purchase from Seller all Delivered Energy that Seller supplies and/or delivers to Buyer under this Agreement. Compensation for such Delivered Energy shall be paid in accordance with Section 7, Compensation.

3.2 Permits and Laws

Seller shall secure all licenses and permits required by law, regulation or ordinance, including, but not limited to, those pertaining to the generation and sale of electric energy. Seller shall maintain all such licenses and permits throughout the term of this Agreement. In addition, Seller shall comply with all applicable ordinances, laws, orders, rules and regulations, including, but not limited to, those pertaining to the above licenses and permits made by any governmental authority or public regulatory body. At any time during the term of this Agreement, Buyer may request that Seller provide copies of any such licenses and permits, and Seller shall so provide them within five (5) Business Days.

3.3 Emission Allowances/Environmental Attributes

All emission allowances and Environmental Attributes, including, but not limited to, any greenhouse gas emission reductions, at any time allocated to Seller's Plant and associated with Delivered Energy are bundled with the Delivered Energy hereunder and cannot be separated by the Seller. Seller shall assign and/or execute any documents necessary to either (i) transfer ownership (to the extent owned by Seller; provided, however, that Seller shall take no action to circumvent Buyer's acquisition of such allowances pursuant to this Subsection 3.3), or (ii) designate Buyer as Seller's agent to acquire ownership, of any and all emission allowances and/or Environmental Attributes associated with Seller's Plant for Buyer. The foregoing emission allowances and Environmental Attributes may be used by Buyer to satisfy the requirements of any applicable ordinances, laws, orders, rules or regulations pertaining to emission allowances and Environmental Attributes made by any governmental authority or public regulatory body. Notwithstanding the foregoing, (i) all federal production tax credits, (ii) any and all state and federal investment tax credits which are generated by the Plant or attributed to the Plant or Delivered Energy, (iii) any and all ownership benefits accruing to the Seller pursuant to applicable state and federal tax laws and associated accounting rules that are established for the Plant, and (iv) all Renewable Energy Credits remain the property of the Seller.

3.4 MISO Registration

Seller shall not register the Plant with MISO during the term of this Agreement without the consent of Buyer, which consent shall not be unreasonably withheld. Buyer may require as a condition of its consent to such registration that prior to or simultaneously with such registration, this Agreement be amended to provide assurances satisfactory to Buyer that Buyer will not be exposed to additional charges as a consequence of implementing the provisions of this Agreement with such registration in effect.

4. PLANT CONSTRUCTION AND START DATE

4.1 Seller's Responsibility

Seller shall have sole responsibility for the planning, design, procurement, construction, start-up, testing, and licensing of the Plant subject to: (1) meeting all appropriate electrical and other applicable codes and regulations required by federal, state, municipal, or any other governmental agencies; and (2) obtaining all necessary authorizations and permits.

4.2 Start Date

The Start Date of this Agreement will be the first date on or after the Expected Start Date of this Agreement upon which all of the following conditions precedent have been satisfied:

- (i) Seller shall have obtained all necessary licenses, permits, certificates and approvals in accordance with Subsection 3.2, Permits and Laws;
- (ii) Seller shall have executed an Interconnection Agreement and received written authorization to operate Seller's Plant in parallel with electric system;
- (iii) Seller shall provide Buyer with evidence that the Plant is a Qualifying Facility, in accordance with Subsection 2.2, "Qualifying Facility" Status and Seller's Warranty.
- (iv) Seller shall maintain an electric service at the plant including any and all fees as defined in the Consumers Energy Company's rate book or other applicable tariff if the plant is connected to the Buyer's system.

Buyer shall provide written notice to Seller within five (5) Business Days of Seller having satisfied all of the above conditions precedent. Following receipt of the foregoing notice from Buyer, Seller may declare a Start Date (such date to be no earlier than the date upon which all of the above conditions precedent have been satisfied and the Expected Start Date) and shall provide written confirmation of such date to Buyer within ten (10) Days. If the Start Date fails to occur within one-hundred eighty (180) Days after the Expected Start Date, Buyer shall have the right to terminate this Agreement upon written notice to Seller, to be effective as of the date specified in such notice.

5. METERING

All electric energy associated with Delivered Energy that is delivered by Seller to the applicable electric distribution system owner and/or operator shall be metered at the billing meter installation(s) provided pursuant to the Interconnection Agreement and shall be separately metered from electric energy generated by generating facilities other than the Plant. To determine the amount of electric energy delivered, the metered values shall be adjusted for transformer losses and line losses, if applicable, between the metering location and the Point of Delivery.

6. OPERATION OF PLANT

6.1 Seller's Operating Obligations

Seller shall operate and maintain the Plant in accordance with Prudent Utility Practices and MISO (or any successor thereto) standards and tariff requirements which apply to generating units such as Seller's Plant.

6.2 Outages of Generating Equipment

Seller shall promptly provide to Buyer all material information relating to Plant outages and significant derates of Plant generating capacity which would affect Seller's ability to deliver electric energy from the Plant to the Point of Delivery. Such material information shall be sufficient for Buyer to determine and verify the severity and extent of such outages and derates, including at a minimum, the date and time when the outage or derate began, the cause of the outage or derate, and the anticipated date and time the outage or derate will end.

6.3 Communications

Seller shall cooperate with Buyer to enable Buyer to monitor, in real time, all electric energy generated by the Plant. If, after the start date of this agreement, any new real-time meter and related communications equipment is required to enable such monitoring by Buyer, Buyer shall pay for such equipment. If the applicable distribution system owner or operator requires a release by Seller or permission from Seller to disclose such real-time information or to install real-time meter and related communications equipment, Seller shall provide such release or grant such permission.

6.4 Emergencies and Exempt Operational Periods

Buyer shall not be obligated to accept electric energy or make payments based on electric energy delivered pursuant to Section 7, Compensation, for any electric energy which the Seller may have available at the Plant during Emergencies or Exempt Operational Periods after Buyer has given Seller timely notice of such Emergencies or Exempt Operational Periods but which Buyer does not accept and receive due to such Emergencies or Exempt Operational Periods.

7. COMPENSATION

7.1 Energy Payment

Commencing with the Start Date and continuing for the term of this Agreement, Buyer shall pay Seller the MISO's real-time LMP for the Company's load node (designated as "CONS.CETR") for Delivered Energy for the applicable Billing Month. When the LMP is a positive value, then Buyer shall pay Seller and when the LMP is a negative value, then

Seller shall pay Buyer. The Seller shall receive a monthly energy payment equal to the hourly real-time LMP for the Company's load node multiplied by the Delivered Energy for each hour of the applicable Billing Month.

In accordance with Subsection 6.4, Emergencies and Exempt Operational Periods, Buyer shall not be obligated to accept electric energy or make energy payments for electric energy which the Seller may have available at the Plant during Emergencies and Exempt Operational Periods.

7.2 Regulatory Disallowance

If the MPSC has indicated in an order that it is unlikely that Buyer will be permitted complete recovery from its customers of the energy charges to be paid pursuant to this Section, then Buyer shall have the right to require that the charges to be paid by Buyer under this Section be adjusted to the charges which the MPSC indicates Buyer can recover from its customers. Any such adjustment shall be effective no earlier than the date of such MPSC indication. Pending appellate review of such indication and final determination of the charges that may be recovered by Buyer pursuant to this Agreement, the amounts not paid to the Seller due to any such adjustment shall be placed by Buyer in an interest-bearing separate account with the administrative costs incurred by that account to be borne by the account. The balance in the separate account, less administrative costs, shall be paid to the appropriate Party upon the completion of appellate review which establishes the charges that Buyer will be permitted to recover from its customers. Future energy charges to be paid by Buyer shall be no greater than will be recoverable from Buyer's customers pursuant to such final appellate determination.

Seller shall refund to Buyer any portions of the energy charges paid by Buyer to Seller under this Agreement which Buyer is not permitted, for any reason, to recover from its customers through its electric rates, or at Buyer's sole option, Buyer shall offset said amounts against amounts owed Seller by Buyer as provided in Section 9, Billing.

The provisions of this Subsection 7.2 shall govern over any conflicting provisions of this Agreement.

8. EVENTS OF DEFAULT

An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(b) such Party becomes Bankrupt (whether voluntarily or involuntarily);

(c) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party 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.

9. BILLING

9.1 Billing Procedure

As soon as practicable after the end of each Billing Month, Buyer shall submit to Seller a statement ("Statement") which shall identify any amounts owed by Buyer or Seller pursuant to Section 7, Compensation, and Subsection 9.3, Administrative Charge, during such Billing Month. Such Statement shall use metered data obtained in accordance with Section 5, Metering. At least three (3) Days prior to the payment due date, the Parties will review the final billing data and confirm the final amount owed by Buyer or Seller, as applicable. If necessary, Buyer shall submit a revised Statement to Seller.

The net amount due shall be paid by the owing Party via electronic funds transfer of said amount by the last Joint Banking Day of the calendar month following the Billing Month. Any amounts not paid when due shall bear interest until paid at the Late Payment Interest Rate. Notwithstanding the previous sentence, in no event will either Party be required to pay interest on any amounts owed to the other Party as a result of adjustments made pursuant to the following paragraph.

If metered data is unavailable, Buyer may render a Statement based on its best estimate of the amount owed by Buyer or Seller to meet the payment deadline in the second paragraph of this Subsection 9.1. Such a Statement shall indicate that it represents a best estimate of the amount owed. If such an estimate is used, an adjustment shall be made if necessary to the next Billing Month Statement issued after the date upon which actual data is determined to correct the prior Billing Month estimate.

9.2 Disputes

Seller may, in good faith, dispute the correctness of any Statement or any adjustment to a Statement, rendered under this Agreement and Buyer may adjust any Statement for any arithmetic or computational error within three hundred sixty-five (365) Days of the date the Statement, or adjustment to a Statement, was rendered. Any Statement dispute or Statement adjustment shall be in writing and shall state the basis for the dispute or adjustment.

Payment of the disputed amount shall not be required until the dispute is fully resolved, including any associated appeals. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Late Payment Interest Rate from and including the due date to but excluding the date paid.

Inadvertent overpayments where Buyer pays Seller an amount greater than the Statement amount shall be returned within two (2) Business Days upon request or deducted by Buyer, with interest accrued at the Late Payment Interest Rate from and including the date of such overpayment to but excluding the date repaid. Any dispute with respect to a Statement is waived unless the other Party is notified in accordance with this Subsection 9.2 within three hundred sixty-five (365) Days after the Statement is rendered or any specific adjustment to the Statement is made.

9.3 Administrative Charge

Seller is responsible for reimbursement of the administrative costs incurred by the Buyer in administering this agreement in accordance with this Section. For all energy supplied by the Seller, the Administrative Charge identified in Part I of this Agreement will apply. The Administrative Charges may, all or in part, at the Buyer's sole discretion, be offset against amounts owed Seller by Buyer, or charged under a separate billing, as provided in this Section.

10. EARLY TERMINATION AFTER START DATE

10.1 Event of Default

If an Event of Default with respect to a Party (the "Defaulting Party") shall have occurred, the other Party (the "Non-Defaulting Party") shall have the right to terminate this Agreement upon thirty (30) Business Days' written notice to the Defaulting Party, as provided in Section 8, Events of Default.

10.2 Breach

A breach of this Agreement ("Breach") shall occur upon the failure of a Party to perform or observe any material term or condition of the Agreement of the applicable tariffs. Upon the failure of a Party in Breach of the Agreement to cure such Breach with ninety (30) Calendar Days of written notification of the Breach, the other Party shall have the right to terminate this Agreement upon written notice to the Party in Breach. Examples of a Breach of the Agreement include, but are not limited to:

- (i) Failure of either Party to comply with the terms and conditions of this Agreement;

- (ii) An attempted assignment of the Agreement by Seller without Buyer's consent;
- (iii) Failure of either Party to provide Buyer access rights, or Seller's attempt to revoke or terminate such access rights;
- (iv) Failure of either Party to provide information or data to the other Party as required under this agreement;
- (v) Delivered Energy exceeding Plant Nameplate Capacity MW_{AC} as identified in Part 1;
- (vi) Modification of the Plant equipment after the Start Date, without the written consent of Buyer.

10.3 False Representation

Upon written notice, the Buyer may terminate this Agreement in the event that any representation or warranty made by the Seller, including but not limited to false or misleading material respect when made or when deemed made or repeated.

Buyer shall have no obligation to enter into any subsequent agreement(s) with the Seller until such time that both, (1) any and all amounts owed to Buyer are paid, and the term of any previous agreements with said Plant has lapsed. Either Party's obligation to make payments already due associated with deliveries received prior to the date of termination of the Agreement will survive any termination initiated under Subsection 2.2, "Qualifying Facility" Status and Seller's Warranty or Section 10, Early Termination After Start Date.

11. INDEMNITY

The Seller shall indemnify, defend and hold Buyer and its officers, agents and employees harmless from any and all liability, claims, demands, costs, judgments, loss or damage, including attorney fees, attributable to or resulting from the maintenance, possession or operation of the Plant, except those caused solely by the negligence or willful misconduct of Buyer. Without limiting the foregoing, the Seller shall at Buyer's request, defend at Seller's expense any suit or proceeding brought against Buyer for any of the above-named reasons; provided that Buyer notifies Seller in writing of any such claim and promptly tenders to Seller the control and defense of any such claim with Seller's choice of counsel. Buyer shall cooperate with Seller, at Seller's expense, in defending such claim and Buyer may join in defense with counsel of its choice at its own expense. Buyer may not settle any such claim without Seller's prior written consent. Seller's indemnification shall not include damage and injuries occurring on

Buyer's own system after the Point of Delivery, unless the damage to or injuries occurring on such system are caused by the negligence or willful misconduct of the Seller.

Buyer shall indemnify, defend and hold the Seller, its officers, agents and employees harmless from any and all liability, claims, demands, costs, judgments, loss or damage, including attorney fees, resulting from damage or injuries occurring on Buyer's own system after the Point of Delivery, unless the damage or injuries on Buyer's system are caused by the negligence or willful misconduct of the Seller.

12. ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall first be referred in writing to a senior representative of each Party for resolution. If the senior representatives are unable to resolve the dispute within thirty (30) Days after the date of the written notice of referral, the Parties shall submit to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (in doing so the Parties are not agreeing to use the American Arbitration Association).

The Parties shall endeavor to agree upon and appoint one person to act as sole arbitrator. The arbitration shall be conducted before a single competent and disinterested arbitrator in accordance with the Commercial Rules of the American Arbitration Association. Such arbitrator shall have professional experience in energy related transactions, shall not be, or have previously been, employed by either Party, nor have a direct or indirect interest in either Party or the subject matter of the arbitration.

Such arbitration shall be held at any mutually agreed upon location. The award of the arbitration shall be final and binding on the Parties, the Parties shall abide by the award and perform in accordance with the terms and conditions of the award, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction.

At all times, pending the resolution of any disagreement, the Parties shall continue to perform their obligations pursuant to this Agreement.

13. CHANGES CONCERNING MISO

In the event that MISO ceases or modifies its operations such that such modifications have a material effect on this Agreement, then Seller and Buyer shall amend this Agreement to give effect to the original intent of Seller and Buyer.

14. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties. This Agreement shall not be assigned by a Party without the other Party's prior written consent, which consent shall not be unreasonably withheld, but provided that (i) any assignee shall expressly assume assignor's obligations under this Agreement; and (ii) no such assignment shall impair any security given by Seller under this Agreement. Any attempted assignment or transfer without such consent shall be void and not merely voidable.

15. GOVERNING LAW

This Agreement shall be deemed to be a Michigan contract and shall be construed in accordance with and governed by the laws of Michigan.

16. HEADINGS

The various headings set forth in this Agreement are not a part of this Agreement and shall not affect the construction or interpretation of this Agreement.

17. NOTICE TO PARTIES

Unless otherwise provided in this Agreement, any notice, consent or other communication required to be made under this Agreement shall be effective if it is in writing and delivered personally, by certified mail (postage prepaid and return receipt requested), reputable overnight delivery service, or other confirmable form of electronic delivery to the address set forth in Part I or to such other address as the receiving Party may designate in writing.

18. WAIVER

No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other Party, whether express or implied, shall not constitute a continuing waiver of, or consent to, or excuse any subsequent or different breach, nor in any way affect the validity of this Agreement or any part of it, or the right of any Party to thereafter enforce any provision of this Agreement.

19. NONSEVERABILITY

If any essential provision of this Agreement is declared invalid in whole or in part by any court or other tribunal of competent jurisdiction, then unless otherwise agreed by the

Parties, the entire Agreement shall be deemed void and inoperative. If any non-essential provision in this Agreement is held to be invalid or unenforceable, it shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity and enforceability of the remainder of the provision or provisions of this Agreement.

20. MISCELLANEOUS

20.1 No Third Party Beneficiaries

This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

20.2 Disclaimer of Joint Venture, Partnership and Agency

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

20.3 Variable Interest Entity

Seller shall supply Buyer with any information necessary for the Buyer to determine if the Seller is a variable interest entity as defined under U.S. Generally Accepted Accounting Principles, and to determine if this Agreement is a lease under U.S. Generally Accepted Accounting Principles.

If it is determined that the Seller is a variable interest entity and that Buyer will be required to include Seller in its consolidated financial statements or required to make certain disclosures, or that this Agreement is a lease, Buyer shall so notify Seller in writing. Within a time frame mutually agreed to by Buyer and Seller, Seller shall provide to Buyer written quarterly reports containing any and all financial data associated with the Seller and the Plant associated with this Agreement or any other information that the Buyer determines in its sole discretion is required to comply with the accounting treatment associated with these accounting standards or future applicable accounting standards. Such information may include, but shall not be limited to, nameplate capacity of the facility, megawatt-hours of electricity produced and used by the Plant, data supporting the economic life (both initial and remaining) of the Plant, the fair market value of the Plant, and any and all other costs (including costs of debt specific to the Plant) associated with the Seller.

Further, if it is determined that the Seller is a variable interest entity and that Buyer will be required to include Seller in its consolidated financial statements, Seller shall also provide the following on a quarterly basis:

(i) Quarterly financial statements prepared in accordance with generally accepted accounting principles;

(ii) Descriptions of the following obligations of Seller for the immediately preceding calendar quarter:

- (A) On-balance sheet obligations;
- (B) Purchase obligations;
- (C) Lease obligations and commitments;
- (D) Off-balance sheet commitments; and
- (E) Contingent obligations;
- (F) Total generating capacity;

(iii) All material contracts (or summaries if the original contracts are not immediately available) of Seller then in effect, together with any related agreements, if any, including, but not limited to:

- (A) Equity-related agreements;
- (B) Debt and other borrowings;
- (C) Material asset or stock acquisitions or dispositions;
- (D) Documents under which guarantees or indemnities have been provided;
- (E) Material supplier and customer contracts;
- (F) Related-party contracts;
- (G) Documents related to material hedging activities;
- (H) Contingent obligations and financial commitments;
- (I) Leasing arrangements and off-balance sheet obligations; and
- (J) Management and outsourcing contracts.

(iv) Business plans and financial projections.

21. ENTIRE AGREEMENT AND AMENDMENTS

This Agreement supersedes all previous representations, understandings, negotiations and agreements either written or oral between the Parties or their representatives and constitutes the entire agreement of the Parties. No amendments or changes to this Agreement shall be binding unless made in writing and duly executed by both Parties.

22. COUNTERPARTS AND ELECTRONIC DOCUMENTS

This Agreement may be executed and delivered in counterparts, including by a facsimile or an electronic transmission thereof, each of which shall be deemed an original. Any document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither Party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.