



Jon P. Christinidis  
(313) 235-7706  
christinidisj@dteenergy.com

April 6, 2010

Ms. Mary Jo Kunkle  
Executive Secretary  
Michigan Public Service Commission  
6545 Mercantile Way  
Lansing, Michigan 48909

Re: In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for The Detroit Edison Company to fully comply with Public Acts 286 and 295 of 2008  
MPSC Case No. U-15806-REC K (Paperless e-file)

Dear Ms. Kunkle:

Attached for electronic filing in the above-captioned matter is The Detroit Edison Company's Application For Ex Parte Approval Of Renewable Energy Credit Contract, and Affidavit of Kenneth D. Johnston. Also attached is a Proof of Service.

Very truly yours,

Jon P. Christinidis

JPC/kbt  
Attachment  
cc: Service list

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, )  
regarding the regulatory reviews, revisions, )  
determinations, and/or approvals necessary for ) Case No. U-15806-REC K  
The Detroit Edison Company to fully comply )  
with Public Acts 286 and 295 of 2008. )  
\_\_\_\_\_ )

**APPLICATION FOR EX PARTE APPROVAL  
OF RENEWABLE ENERGY CREDIT CONTRACT**

The Detroit Edison Company (“Detroit Edison”, “Company” or “Applicant”), a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office at One Energy Plaza, Detroit, Michigan 48226, hereby files this Application pursuant to the Rules of Practice and Procedure Before the Commission R460.17101 et seq., the Michigan Court Rules MCR 2.100 et seq., the Michigan Administrative Procedures Act (MCL 24.201 et seq.) and other Michigan law, including but not limited to, MCL 460.1 et seq., and MCL 460.1001, et seq., seeking the Michigan Public Service Commission’s (“Commission”) ex parte approval of the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract pursuant to 2008 PA 295 (MCL 460.1001 et. seq.), ex parte approval of the recovery of the Renewable Energy Credit costs through the Company’s Revenue Recovery Mechanism as an Incremental Cost of Compliance with the Renewable Energy Standards under the Company’s Renewable Energy Plan pursuant to 2008 PA 295, and ex parte approval of any additional approvals that the Commission may deem necessary under 2008 PA 295 or MCL 460.6j. In support of its request, Detroit Edison states as follows:

1. Detroit Edison is a wholly-owned subsidiary of DTE Energy Company, supplying retail electric service to customers located in Southeast Michigan, and is a public utility and Electric Provider subject to the jurisdiction of the Commission.

2. Applicant is presently serving its jurisdictional retail electric customers under rates and charges approved by the Commission.

3. On October 6, 2008, Governor Jennifer M. Granholm signed 2008 PA 295, the “clean, renewable, and efficient energy act,” into law. This Application is being filed in accordance with 2008 PA 295 (MCL 460.1001 et. seq.) and the Commission’s October 21, 2008, June 2, 2009 and August 25, 2009 Orders in Case No. U-15806 and December 4, 2008 Order in Case No. U-15800, implementing 2008 PA 295.

4. The “clean, renewable, and efficient energy act” requires Commission approval of certain types of contracts entered into by Electric Providers, like Detroit Edison, for purposes of 2008 PA 295, specifically including Renewable Energy Credit contracts. An Electric Provider includes “[a]ny person or entity that is regulated by the commission for the purpose of selling electricity to retail customers in this state.” (MCL 460.1005(a)(i)) A Renewable Energy Credit is defined by 2008 PA 295 to mean “a credit granted pursuant to section 41 that represents generated renewable energy.” (MCL 460.1011(d)). Renewable Energy means “electricity generated using a renewable energy system. (MCL 460.1011(a)) A Renewable Energy System means “a facility, electricity generation system, or set of electricity generation systems that use 1 or more renewable energy resources to generate electricity...” (MCL 460.1011(k)) A Renewable Energy Resource includes biomass, solar and solar thermal energy, wind energy, kinetic energy of moving water, geothermal energy, municipal solid waste, and landfill gas produced by municipal solid waste. (MCL 460.1011(i))

5. Renewable Energy Credit contracts are required to be approved by the Commission pursuant to MCL 460.1033(1)(b) and (3), which relevantly provide:

(1b) “At least 50% of the renewable energy credits shall be from renewable energy contracts that do not require transfer of ownership of the applicable renewable energy system to the electric provider or from contracts for the purchase of renewable energy credits without the associated renewable energy. A renewable energy contract or contract for the purchase of renewable energy credits under this subdivision shall be executed after a competitive bidding process conducted pursuant to guidelines issued by the commission...” (emphasis added)

(3) “An electric provider shall submit a contract entered into pursuant to subsection (1) to the commission for review and approval. If the commission approves the contract, it shall be considered to be consistent with the electric provider’s renewable energy plan. The commission shall not approve a contract based on an unsolicited proposal unless the commission determines that the unsolicited proposal provides opportunities that may not otherwise be available or commercially practical.” (emphasis added)

The Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract attached to and submitted with this Application for approval is a “*contract to purchase renewable energy credits without the associated renewable energy*” and requires that the Renewable Energy Credits (hereinafter “RECs”) arise from Renewable Energy generated by Renewable Energy Systems utilizing Renewable Energy Resources. (See Attachment 1 – Redacted Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract) For Renewable Energy Credit contracts, the Commission must determine whether the contract provides reasonable and prudent terms and conditions pursuant to MCL 460.1037 and complies with the retail rate impact limits under MCL 460.1045. MCL 460.1037 relevantly provides:

“If, after the effective date of this act, an electric provider whose rates are regulated by the commission enters a renewable energy contract or a contract to purchase renewable energy credits without the associated renewable energy, the commission shall determine whether the contract provides reasonable and prudent terms and conditions and complies with the retail rate impact limits under section 45. In making this determination, the commission shall consider the contract price

and term. If the contract is a renewable energy contract, the commission shall also consider at least all of the following...”

6. The Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract to purchase RECs without the associated renewable energy submitted with this Application provides reasonable and prudent terms and conditions and complies with the retail rate impact limits under section 45 as explained in the accompanying Affidavit of Kenneth D. Johnston. (Attachment 2 – Affidavit of Kenneth D. Johnston, Regulatory Consultant)

7. This Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract is consistent with the Company’s Renewable Energy Plan set forth and approved in MPSC Case No. U-15806 because the terms of the contract, from a timing, volume and pricing perspective, are consistent with the projected REC purchases set forth in Exhibit No. A-10 (JHB-6) in Case No. U-15806-RPS. The Company projected in Exhibit No. A-10 (JHB-6) that it would begin taking delivery of RECs and ACECs from third parties beginning in 2009 and the Company projected that it would purchase approximately 4.16 million RECs and ACECs throughout the 20-year plan period from third parties. Further, the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract pricing is well below that projected for RECs and ACECs in the Company’s Renewable Energy Plan as set forth in Exhibit No. A-10 (JHB-6) in Case No. U-15806-RPS. Specifically, the average REC price for all of the RECs to be delivered under the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract is \$7.75 per REC which is well below the projected 20-year average Renewable Energy Plan composite REC and ACEC price of \$15.66 per REC/ACEC and the projected 10-year average (Years 2009-2018) REC/ACEC price of \$13.86 per REC/ACEC as set forth on Exhibit No. A-10 (JHB-6), lines 6, 25, 46 and 61 in Case No. U-15806-RPS. The Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract also provides for the purchase of approximately 112,000

additional RECs, dependent on generation, at the same price of \$7.75 per REC. The total projected cost of RECs and ACECs from REC-only and ACEC-only contracts for the Company's Renewable Energy Plan was approximately \$65.2 million. The maximum cost of RECs from this Detroit Edison/Boyce Hydro Power, LLC REC contract combined with the two previously-approved REC contracts is \$50.9 million and therefore the Detroit Edison/Boyce Hydro Power, LLC REC contract is consistent with Detroit Edison's Renewable Energy Plan filed and approved in MPSC Case No. U-15806-RPS. The Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract is otherwise reasonable and prudent under MCL 460.1037 and consistent with the retail rate impact limits under MCL 460.1045. (See Attachment 2 - Affidavit Kenneth D. Johnston, Regulatory Consultant.)

8. On December 4, 2008, the Commission issued a Temporary Order in Case No. U-15800 pursuant to MCL 460.1191(1), which relevantly provides:

“Within 60 days after the effective date of this act, the commission shall issue a temporary order implementing this act, including but not limited to, all of the following:

- (a) Formats of renewable energy plans for various categories of electric providers.
- (b) Guidelines for requests for proposals under this act.”

The Commission's December 4, 2008 Order explains that:

“Under Section 37, all providers whose rates are regulated by the Commission must file renewable energy contracts or contracts to purchase RECs with or without the associated energy with the Commission for review and approval. The Commission intends to review and approve these submitted contracts on an expedited basis with a target of issuing the order within 30 calendar days from the date of filing of each contract.” (MPSC Case No. U-15800 Order dated December 4, 2008, p. 16) (emphasis added)

9. Attached for Commission approval is a redacted 7-year Renewable Energy Credit contract to purchase RECs without the associated renewable energy between Detroit Edison and

Boyce Hydro Power, LLC pursuant to 2008 PA 295 involving the provision of 210,000 firm RECs with associated renewable and environmental benefits, and the option for Detroit Edison to purchase additional RECs with associated renewable and environmental benefits from Boyce Hydro Power, LLC. The additional RECs are estimated at approximately 16,000 per year or 112,000 total RECS during the term of the contract. (See Attachment 1 – Redacted Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract)

10. A limited number of commercially sensitive terms and conditions in the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract have been redacted to maintain confidentiality, consistent with past practice at the Commission. For example, the Commission determined in MPSC Case No. U-11130 that executed wholesale power purchase agreements contain confidential information. As a result, the Commission limited disclosure of the confidential portions to the MPSC Staff only in order to “strike a proper balance between the public interest in disclosure and the protection of commercially sensitive information in a competitive environment.” MPSC Case No. U-11130, Order dated October 20, 1997 p. 13; Accord, MPSC Case No. U-11631, Order dated April 14, 1998; MPSC Case No. U-11804 Order dated December 21, 1998; MPSC Case No. U-11688 Order dated June 26, 1998; MPSC Case No. U-11661, Order dated June 26, 1998. In MPSC Case No. U-14626 the Commission approved multiple renewable energy contracts with various contract provisions redacted. (MPSC Case No. U-14626 Order dated October 18, 2005) More recently in 2009, the Commission approved a redacted Detroit Edison Renewable Energy Contract. (See MPSC Case No. U-15806 Order dated April 30, 2009, p. 11, “*The Commission understands the need...to keep commercially sensitive information confidential.*” See also MCL 460.1193(2) “*The Commission and a provider shall handle confidential business information under this act in a manner*

*consistent with state law and general rules of the Commission.”)* In order to maintain a reasonably competitive environment for the provision of renewable energy, advanced cleaner energy and related equipment, products and services (such as RECs and ACECs) to Detroit Edison and its customers, it is important to maintain the confidentiality of commercially sensitive information. Detroit Edison has therefore redacted portions of the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract.<sup>1</sup> (See Attachment 2 - Affidavit of Kenneth D. Johnston, Regulatory Consultant.) The original unredacted Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract is available for inspection by the MPSC and its Staff at the Company’s premises.

11. Detroit Edison developed its Request For Proposals (“RFP”) that resulted in the attached Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract to purchase RECs without the associated renewable energy in consultation with the MPSC Staff pursuant to the Temporary Order issued in Case No. U-15800. On December 23, 2008, Detroit Edison issued its RFP for Renewable Energy Credits and Advanced Cleaner Energy Credits from Existing Michigan Facilities. The RFP conformed to the guidelines for requests for proposals approved by the Commission under 2008 PA 295. In Case No. U-15800, Attachment D to the Commission’s December 4, 2008 Order specifically provided that the “bid evaluation process may include an assessment of both price and non-price factors.” The bidding criteria utilized by the Company were price, term, quantity, optional price, quantities, and exceptions to the Company’s terms and conditions. The scorecard and bid evaluation process utilized by the Company was consistent with Attachment D to the December 4, 2008 Temporary Order in MPSC Case No. U-15800, Exhibit No. A-33 (CCC-1) admitted in MPSC Case No. U-15806-

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<sup>1</sup> Detroit Edison reserves the right to redact different or additional terms and conditions in future contracts as circumstances and conditions warrant.

RPS, the scorecard admitted in Case No. U-15806 as Exhibit MSE-2. (See Attachment 2 - Affidavit of Kenneth D. Johnston, Regulatory Consultant.)

12. By the due date of January 23, 2009, Detroit Edison received a total of 43 combinations of terms and prices for RECs and ACECs from 11 suppliers. Of the 43 combinations, 37 were mutually exclusive since the proposals were from the same resource location and/or same resource type. Using the evaluation scorecard admitted as Exhibit MSE-2 in Case No. U-15806 and developed in consultation with the MPSC Staff, Detroit Edison selected four (4) suppliers, none of which are affiliated with Detroit Edison, to negotiate Renewable Energy Credit contracts. There are a total of 14 proposals evaluated in the scorecard due to the 3 location-specific proposals submitted by one of the suppliers, and separating REC and ACEC proposals from the same supplier. After completing the analysis in the evaluation scorecard, Detroit Edison entered into negotiations with four (4) suppliers representing five (5) proposals, starting with the lowest cost price per REC. Detroit Edison has previously completed negotiations with two (2) of these four (4) suppliers and has already received MPSC approval for those contracts. (See MPSC Case No. U-15806 Order dated December 1, 2009). The REC price initially submitted by Boyce Hydro Power, LLC (one of the four (4) selected suppliers) in response to the Company's December 4, 2008 RFP was greater than the average REC price of the two previously-approved REC contracts; however through a long process of negotiation just recently completed the price of RECs in this Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract (Attachment 1), was redacted to below the average REC prices of the two previously-approved REC contracts. (See Attachment 2 - Affidavit of Kenneth D. Johnston, Regulatory Consultant.)

13. The Company chose to enter into the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract set forth in Attachment 1 because in total this contract was consistent with Detroit Edison's Renewable Energy Plan and because the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract resulted from the lowest price conforming bids from qualified bidders through the Company's RFP process. (See Attachment 2 - Affidavit of Kenneth D. Johnston, Detroit Edison Regulatory Consultant)

14. Detroit Edison requests ex parte approval of the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract, and ex parte approval of the recovery of the REC costs of the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract through the Company's Revenue Recovery Mechanism as an Incremental Cost of Compliance with the Renewable Energy Standards under (and consistent with) the Company's Renewable Energy Plan pursuant to 2008 PA 295 and assurance that the full costs of the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract will be recovered through the Company's Revenue Recovery Mechanism surcharges.

15. The approvals and assurances requested in this Application will not result in "*an alteration or amendment in rates or rate schedules*" and "*will not result in an increase in the cost of service to customers*" because the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract is consistent with the planned activities, expenses and Revenue Recovery Mechanism surcharges described in Detroit Edison's Renewable Energy Plan approved in Case No. U-15806-RPS and therefore "*may be authorized and approved without notice or hearing.*" (MCL 460.6a(1)) Neither will there be any increase in Detroit Edison's PSCR factors or other charges for electric service resulting from the requested approvals. (See Attachment 2 -

Affidavit of Kenneth D. Johnston, Regulatory Consultant.) Thus, approval of this Application without notice or hearing is lawful and appropriate.

WHEREFORE, for the reasons stated above, Detroit Edison respectfully requests that the Commission expeditiously issue an *ex parte* order in this case that:

A. Consistent with 2008 PA 295, approves on an *ex parte* basis the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract in its entirety as consistent with Detroit Edison's Renewable Energy Plan and also approves on an *ex parte* basis the recovery of the REC costs through the Company's Revenue Recovery Mechanism as an Incremental Cost of Compliance with the Renewable Energy Standards under the Company's Renewable Energy Plan pursuant to 2008 PA 295 and provides assurance that the full costs of the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract will be recoverable through the Company's Revenue Recovery Mechanism surcharges;

B. Determines that the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract and related approvals and assurances will not result in an alteration or amendment in Detroit Edison's rates or rate schedules and will not result in an increase in the cost of service to Detroit Edison's customers and therefore may be authorized and approved without notice or hearing; and

C. Grants such further relief as the Commission may deem necessary or appropriate.

Respectfully submitted,

THE DETROIT EDISON COMPANY

By: \_\_\_\_\_

Legal Department  
Bruce R. Maters (P28080)  
Jon P. Christinidis (P47352)  
One Energy Plaza, 688 WCB  
Detroit, Michigan 48226  
(313) 235-7706

Dated: April 6, 2010

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**RENEWABLE ENERGY CREDIT**

**PURCHASE AGREEMENT**

**BETWEEN**

**THE DETROIT EDISON COMPANY**

**AND**

**BOYCE HYDRO POWER, LLC**

**March 16, 2010**

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## RENEWABLE ENERGY CREDIT PURCHASE AGREEMENT

This Renewable Energy Credit Purchase Agreement is made and entered into as of 16 March 2010 (the “**Effective Date**”) by and between **THE DETROIT EDISON COMPANY**, a Michigan corporation (“**Buyer**”), and **BOYCE HYDRO POWER, LLC**, a limited liability company (“**Supplier**”). Buyer and Supplier are referred to individually as a “Party” and collectively as the “Parties.” All capitalized terms are defined in Article 1 of this Agreement or as may be defined elsewhere in this Agreement.

**WHEREAS**, Buyer is an operating electric public utility, subject to the applicable rules and regulations of the MPSC and the FERC;

**WHEREAS**, Buyer is entitled to use Renewable Energy Credits to comply with the Clean, Renewable and Efficient Energy Act;

**WHEREAS**, Supplier owns and operates the Generating Facilities, which are four hydroelectric power plants located on the Tittabawassee River in Gladwin and Midland Counties, Michigan;

**WHEREAS**, as of the Approval Date and subject to this Agreement, the Generating Facilities are or shall be designated as Renewable Energy Systems with the MPSC and the Generating Facilities shall comply with the requirements of the Clean, Renewable and Efficient Energy Act and will produce Renewable Energy Credits in accordance with such requirements;

**WHEREAS**, Supplier is entitled to sell such Renewable Energy Credits as provided herein; and

**WHEREAS**, Supplier desires to sell to Buyer the Renewable Energy Credits as provided herein and Renewable Energy Benefits associated with the energy generated by the Generating Facilities and Buyer wishes to purchase such Renewable Energy Credits and Renewable Energy Benefits from Supplier, upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Supplier, intending to be legally bound, hereby agree as follows:

### 1. **DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set forth below:

- 1.1. “**Affiliate**” means, with respect to any Person, each Person that directly or indirectly, controls or is controlled by or is under common control with such Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and

policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

- 1.2. “After Tax Basis” means a basis such that any payment received or deemed to have been received by a Party (the “**Original Payment**”) under the terms of Section 16.1 of this Agreement, shall be supplemented by a further payment to such Party so that the sum of the two (2) payments shall equal the Original Payment, after taking into account (a) all Taxes that would result from the receipt or accrual of such payments, if legally required, and (b) any reduction in Taxes that would result from the deduction of the expense indemnified against, if legally permissible, calculated by reference to the highest federal and Michigan statutory Tax rates applicable to corporations doing business in Michigan and on a net present value basis by reference to the applicable federal rate then in effect under section 1274(d) of the Internal Revenue Code of 1986, as such law may be amended or superseded.
- 1.3. “Agreement” means this Renewable Energy Credit Purchase Agreement together with the Exhibits attached hereto, as such may be amended from time to time.
- 1.4. “Annual Payment” has the meaning ascribed to that term in Section 8.2.3.
- 1.5. “Annual Reconciliation” has the meaning ascribed to that term in Section 8.2.3.
- 1.6. “Approval Date” means the date by which both Buyer has obtained all Buyer Required Regulatory Approvals and Supplier has obtained all Supplier Required Regulatory Approvals.
- 1.7. “Billing Period” has the meaning ascribed to that term in Section 8.2.1.
- 1.8. “Business Day” means any day other than Saturday, Sunday and any day that is a Buyer Observed Holiday as set forth in Exhibit 6.
- 1.9. “Buyer” has the meaning set forth in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.10. “Buyer’s REC Account” means the account maintained by the MPSC Administrator for the purpose of tracking the production, sale, transfer, purchase and retirement of RECs by Buyer.
- 1.11. “Buyer’s Required Regulatory Approvals” means the approvals, consents, authorizations or permits of, or filing with, or notification to the Governmental Authorities listed on Exhibit 4.
- 1.12. “Clean, Renewable and Efficient Energy Act” means an act of the Michigan Legislature relating to energy and requiring certain providers of electric service to comply with standards for renewable energy, and providing for other matters relating thereto, codified as Michigan Revised Statutes, MCL

460.1007 to 460.1195, inclusive, as may be amended from time to time, and the regulations promulgated thereunder.

- 1.13. “Commodity Contract” has the meaning ascribed to that term in Section 27.12.
- 1.14. “Confidential Information” has the meaning ascribed to that term in Section 26.1.
- 1.15. “Contract Representative” of a Party means the individual designated by that Party in Exhibit 3 responsible for ensuring effective communication, coordination and cooperation between the Parties. A Party may change its Contract Representative by providing notice of such change to the other Party in accordance with the procedures set forth in Section 27.1.
- 1.16. “Contract Year” means each year beginning on January 1 and ending on December 31 of such year following the Approval Date; provided, however, that the first Contract Year shall commence on the Approval Date and end on the following December 31.
- 1.17. “Control Area” means an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (a) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s); (b) maintain scheduled interchange with the other Control Areas, within the limits of Good Utility Practices; (c) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practices; and (d) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practices.
- 1.18. “Control Area Operator” means a Person, and its agents and any successors thereto, that is responsible for the operation of electric transmission and/or distribution system(s) and for maintaining reliability of the electrical transmission system(s) within the Control Area. As of the Approval Date, the Control Area Operator is the Transmission Provider.
- 1.19. “Credit Rating” of a Person means the credit rating then assigned by a Relevant Rating Agency to the long-term, senior unsecured debt not enhanced by third party credit support, of that Person, or if not rated, as determined by Buyer.
- 1.20. “Cure Period” has the meaning ascribed to that term in Section 22.2.
- 1.21. “Defaulting Party” has the meaning ascribed to that term in Section 22.1.
- 1.22. “Delivered RECs” means the Base Firm RECs stated in Exhibit 7 and all Excess RECs that have been delivered by Supplier and awarded to Buyer

pursuant to the terms of this Agreement, in accordance with the Clean, Renewable and Efficient Energy Act and which have been properly recorded to Buyer's REC Account.

- 1.23. "Detroit Edison Company, The" means The Detroit Edison Company, a Michigan corporation and operating electric public utility, and any successor entity thereto, subject to the applicable rules of the MPSC and the FERC.
- 1.24. "Disclosing Party" has the meaning ascribed to that term in Section 26.1.
- 1.25. "Dispute" has the meaning ascribed to that term in Section 19.1.
- 1.26. "Effective Date" has the meaning ascribed to that term in the preamble of this Agreement.
- 1.27. "Emergency" means any circumstance or combination of circumstances or any condition of any of the Generating Facilities, the transmission or distribution system, or the transmission or distribution system of other electric utilities, which is (a) reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property or (b) is reasonably likely to adversely affect, degrade or impair transmission or distribution system reliability or system reliability of the transmission or distribution system of other electric utilities. Any curtailment of any of the Generating Facilities output by the Transmission Provider or the Control Area Operator shall be considered an Emergency, provided that any such curtailment of such Generating Facility output made solely for economic reasons shall not be considered an Emergency.
- 1.28. "Environmental Law" shall mean any federal, state, local or other law, common law, regulation, rule, ordinance, code, decree, judgment, binding directive, or judicial or administrative order relating to the protection, preservation or restoration of human health, the environment, or natural resources, including any law relating to the releases or threatened releases of Hazardous Substances into any medium (including ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport and handling of Hazardous Substances.
- 1.29. "EPT" means Eastern Standard Time or Eastern Daylight Time, whichever is then prevailing.
- 1.30. "Event of Default" has the meaning ascribed to that term in Section 22.1.
- 1.31. "EWG" means an exempt wholesale generator pursuant to the Public Utility Holding Company Act of 2005, as such Law may be amended or superseded.
- 1.32. "Excess RECs" means all RECs generated in excess of the amount of the Base Supply Amount stated in Exhibit 7, do not exceed 16,000 RECs in any Con-

tract Year and are uncommitted to a third party buyer as of the Effective Date.

- 1.33. “FERC” means the Federal Energy Regulatory Commission and any successor entity thereto.
- 1.34. “First Full Contract Year” means the first Contract Year that begins at the start of January and ends on the expiration of December.
- 1.35. “Force Majeure” has the meaning set forth in Article 18.
- 1.36. “Generating Facilities” means Supplier’s generating power plants, including any associated facilities and equipment, as further described in Exhibit 1 hereto.
- 1.37. “Generating Facility Sites” means the real property on which the Generating Facilities are located, as further described in Exhibit 1.
- 1.38. “Good Utility Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, whether or not the Party whose conduct at issue is a member of any relevant organization and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or should have been known, at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the region and industry. Good Utility Practice shall include compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.
- 1.39. “Governmental Authority” means, as to any Person, any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over such Person or its property or operations.
- 1.40. “Hazardous Substance” means (a) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, friable asbestos, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls (PCBs) in regulated concentrations, (b) any chemicals or other materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pol-

lutants”, “contaminants”, “pollutants” or words of similar import under any Environmental Law and (c) any other chemical or other material or substance, exposure to which is now or hereafter prohibited, limited or regulated as such under any Environmental Law, including the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., or any similar state statute, as such Laws may be amended or superseded.

- 1.41. “Indemnified Party” has the meaning provided in Section 16.1.
- 1.42. “Indemnifying Party” has the meaning provided in Section 16.1.
- 1.43. “Interconnect Agreement” means the generator interconnection and operating agreement that has been executed between Supplier and the Transmission Provider for each of the Generating Facilities.
- 1.44. “Invoice” means the monthly and annual statements described in Section 8.2.
- 1.45. “Law” means any federal, state, local or other law (including any Environmental Laws), common law, treaty, code, rule, ordinance, binding directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, which is binding on a Party or any of its property.
- 1.46. “Loss” means any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, Penalties, sanctions, Taxes, judgments, damages, losses or expenses imposed by a third party upon an Indemnified Party or incurred in connection with a claim by a third party against an Indemnified Party.
- 1.47. “Material Adverse Effect” means, with respect to a Party, a material adverse effect on the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate, or on the business, operations or financial condition of such Party.
- 1.48. “Meter” means any of the physical or electronic metering devices, data processing equipment and apparatus associated with the meters required for the computation of the RECs provided by Supplier to Buyer. Meters do not include any check meters Supplier may elect to install as contemplated by Section 8.1.1.
- 1.49. “Minimum Credit Rating” of a Person means that the Credit Rating of that Person is at least (a) BBB- (or its equivalent) as determined by Standard & Poor’s or (b) Baa3 (or its equivalent) as determined by Moody’s.
- 1.50. “MISO” means the Midwest Independent Transmission System Operator, Inc. and any successor entity thereto.
- 1.51. “Monthly Invoice” has the meaning ascribed to that term in Section 8.2.1.

- 1.52. “Moody’s” means Moody’s Investor Services, Inc, and any successor entity thereto.
- 1.53. “MPSC” means the Michigan Public Service Commission and any successor entity thereto.
- 1.54. “MPSC Administrator” means the Person appointed by the MPSC to administer the system of Renewable Energy Credits established pursuant to the Clean, Renewable and Efficient Energy Act.
- 1.55. “MPSC Approval” means an order of the MPSC approving this Agreement.
- 1.56. “NERC” means the North American Electric Reliability Council and any successor entity thereto.
- 1.57. “Non-Defaulting Party” means the Party other than the Defaulting Party.
- 1.58. “Operating Representative” of a Party means any of the individuals designated by that Party, as set forth in Exhibit 3, to transmit and receive routine operating and Emergency communications required under this Agreement. A Party may change any of its Operating Representatives by providing notice of the change to the other Party in accordance with the notice procedures set forth in Section 27.1.
- 1.59. “Operating Security” has the meaning ascribed to that term in Section 15.2.
- 1.60. “Party” or “Parties” means each entity set forth in the preamble of this Agreement and its permitted successor and assigns.
- 1.61. “Penalties” means any penalties, fines, damages, or sanctions attributable to this Agreement and actually imposed on a Party pursuant to an order issued by any Governmental Authority, the Transmission Provider or the Control Area Operator.
- 1.62. “Person” or “Persons” means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.
- 1.63. “Provisional Monthly Payment” has the meaning ascribed to that term in Section 8.2.1.
- 1.64. “Product” means all Delivered RECs and all Renewable Energy Benefits.
- 1.65. “Product Rates” has the meaning ascribed to that term in Section 4.1.
- 1.66. “QF” means a cogeneration or small power production facility which meets the criteria of a qualifying facility as defined in Title 18, Code of Federal Regulations, §§ 292.201 through 292.207.

- 1.67. “Qualified Financial Institution” means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof or foreign bank with a US branch office, with (i) a Credit Rating of at least (a) “A-” by S&P and “A3” by Moody’s, if such entity is rated by both S&P and Moody’s or (b) “A-” by S&P or “A3” by Moody’s, if such entity is rated by either S&P and Moody’s, but not both, and (ii) having a capital and surplus of at least \$1,000,000,000.
- 1.68. “REC Substitution Costs” has the meaning ascribed to that term in Section 3.3.1.
- 1.69. “Receiving Party” has the meaning ascribed to that term in Section 26.1.
- 1.70. “Relevant Rating Agency” means Moody’s and S&P.
- 1.71. “Renewable Energy Benefits” means any and all renewable and environmental attributes, emissions, reductions, credits, offsets, allowances or benefits, however entitled, (a) allocated, assigned, awarded, certified or otherwise transferred or granted to Supplier or Buyer by the MPSC Administrator or any Governmental Authority in any jurisdiction in connection with the Generating Facilities or (b) associated with the production of energy from the Generating Facilities or based in whole or in part on the Generating Facilities’ use of renewable resources for generation or because the Generating Facilities constitute renewable energy systems or the like or because the Generating Facilities do not produce greenhouse gasses, regulated emissions or other pollutants, whether any such credits, offsets, allowances or benefits exist now or in the future or whether they arise under existing Law or any future Law or whether such credit, offset, allowance or benefit or any Law, or the nature of such, is foreseeable or unforeseeable, but in all cases shall not mean RECs or Tax Credits. Renewable Energy Benefits includes such credits, offsets, allowance or benefits attributable to energy consumed by the Generating Facilities, such as station usage (including, parasitic load) or standby service.
- 1.72. “Renewable Energy Credit” or “REC” means a unit of credit granted pursuant to Sections 39(2)(b)-(e) and 41, of the Clean, Renewable and Efficient Energy Act.
- 1.73. “Renewable Energy System” means a “renewable energy system” as defined in the Clean, Renewable and Efficient Energy Act.
- 1.74. “Shortfall” means the amount, if any, by which the amount of Delivered RECs is less than the Yearly REC Amount in any Contract Year.
- 1.75. “Standard and Poor’s” or “S&P” means Standard and Poor’s Ratings Group, a division of McGraw Hill, Inc. and any successor entity thereto.
- 1.76. “Supplier” has the meaning set forth in the preamble of this Agreement and includes such Person’s permitted successors and assigns.

- 1.77. “Supplier’s Lenders” means any Persons, and their permitted successors and assignees, providing funding to Supplier in connection with any development, bridge, construction, permanent debt or tax equity financing or refinancing for any of the Generating Facilities.
- 1.78. “Supplier’s Required Regulatory Approvals” means the approvals, consents, authorizations or permits of, or filings with or notifications to the Governmental Authorities listed on Exhibit 5.
- 1.79. “Tax” or “Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.
- 1.80. “Tax Credits” means any state, local and/or federal production tax credit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities but in all cases shall not mean RECs.
- 1.81. “Term” has the meaning ascribed to that term in Section 2.2.
- 1.82. “Termination Amount” has the meaning ascribed to that term in Section 22.3.4.
- 1.83. “Transmission Provider” means MISO and any successor operator or owner of the transmission or distribution system used for the transmission or distribution of electric energy.
- 1.84. “Unpaid Amounts” means to a Party, with respect to an Event of Default and an associated early termination of this Agreement, the amounts that became payable to such Party prior to such early termination and which remain unpaid as of such early termination and which was required to be settled by delivery to such party on/or prior to such early termination date and which has not been so settled, an amount equal to the fair market value of that which was (or would have been) required to be delivered on/or prior to such early termination date plus interest.
- 1.85. “Yearly REC Amount” means the amount of Base Supply Amount RECs for each Contract Year stated in Exhibit 7, and up to the amount stated in the definition of Excess RECs, unless adjusted pursuant to Article 3. The quantity of Excess RECs up to the cap for Excess RECs will be determined by Sup-

plier's generation from its Generating Facilities for the applicable Contract Year.

## 2. **TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS**

- 2.1. **Effective Date.** This Agreement shall become effective on the Effective Date.
- 2.2. **Term.** Supplier's obligation to deliver Product, and Buyer's obligation to accept and pay for Product, under this Agreement shall commence on the Approval Date and shall continue until December 31, 2015, subject to earlier termination of this Agreement pursuant to the terms hereof (the "**Term**").
- 2.3. **Termination.**
- 2.3.1. **Mutual Agreement.** This Agreement may be terminated by written agreement of the Parties.
- 2.3.2. **For Cause.** This Agreement may be terminated at any time by the Non-Defaulting Party upon ten (10) Business Days' prior notice to the Defaulting Party if an Event of Default has occurred and is continuing after the applicable Cure Period (if any) set forth in Section 22.2 has expired.
- 2.3.3. **Optional Termination.**
- (a) This Agreement may be terminated in accordance with Article 14 in the event the MPSC approval is not obtained or is granted with conditions imposed on Buyer that are not reasonably acceptable to Buyer.
- (b) This Agreement may be terminated without liability for future performance at any time during the Term by Buyer if the MPSC determines that the RECs purchased under this Agreement are re-classified as RECs that qualify under MCL 460.1033(1)(a).
- 2.3.4 **Force Majeure.** This Agreement may be terminated by a Party if the other Party's obligations hereunder have been excused by the occurrence of an event of Force Majeure pursuant to Article 18 for longer than six (6) consecutive months.
- 2.4. **Effect of Termination - Survival of Obligations.** Any termination of this Agreement or expiration of the Term shall not release either Party from any applicable provisions of this Agreement with respect to:
- 2.4.1. The payment of any amounts owed to the other Party arising prior to or resulting from termination of, or on account of breach of, this Agreement;
- 2.4.2. Indemnity obligations contained in Section 3.5 and Article 16, which shall survive to the full extent of the statute of limitations period applicable to any third party claim;

- 2.4.3. Limitation of liability provisions contained in Article 17;
- 2.4.4. For a period of one (1) year after the termination date, the right to submit a payment dispute pursuant to Article 19;
- 2.4.5. The resolution of any dispute submitted pursuant to Article 19 prior to, or resulting from, termination; or
- 2.4.6. The confidentiality provisions contained in Article 26.

### 3. **RENEWABLE ENERGY CREDIT AMOUNTS AND SUBSTITUTION**

- 3.1. **Delivery Amount.** Subject to the other provisions of this Agreement, commencing on the Approval Date, Supplier shall sell and transfer to Buyer and Buyer shall purchase and accept from Supplier (a) all RECs stated in Exhibit 7 under the Base Supply Amount column attributable to the ownership or operation of, or production of energy by, the Generating Facilities on a monthly basis; and (b) all Excess RECs.
- 3.2. **Supply Amount.** For all RECs stated in Exhibit 7 the Supplier has the right to sell under the Clean, Renewable and Efficient Energy Act and shall be dedicated exclusively to Buyer for the Term of this Agreement. Supplier shall not, without Buyer's prior written consent (which Buyer may withhold in its sole discretion), (a) sell, divert, grant, transfer, or assign RECs stated in Exhibit 7 to any person other than Buyer or (b) provide Buyer RECs from any source other than the Generating Facilities, except as allowed for in Section 3.3.4.
- 3.3. **REC Substitution Costs.**
  - 3.3.1. If after the MPSC Administrator issues all the REC statements or certificates for a Contract Year, as of December 31 of such Contract Year, there is a Shortfall and to the extent the Shortfall for such Contract Year is not excused due to Force Majeure, then Supplier shall pay Buyer for the replacement costs of the RECs not delivered as a result of the Shortfall ("**REC Substitution Costs**").
  - 3.3.2. The REC Substitution Costs shall be reasonably determined by Buyer based on the cost of purchasing substitute RECs with a comparable expiration date or the cost of substituting RECs not delivered with RECs already in Buyer's REC Account. In the event that Buyer purchases substitute RECs or estimates the cost of substitute RECs, Supplier shall only be obligated to pay REC Substitution Costs incurred by Buyer or estimated by Buyer, under this Section 3.3.2, that exceed the Product Rates set forth in Article 4. In determining the weighted average costs of RECs in Buyer's REC Account, those RECs in Buyer's REC Account that are classified as RECs that qualify under MCL 460.1033(1)(a) will not be included in any weighted average cost calculation. Buyer shall not be required to actually purchase such substitu-

tion RECs in order to receive payment from Supplier for REC Substitution Costs. The Parties recognize and agree that the payment of REC Substitution Costs by Supplier pursuant to this Section 3.3 is an appropriate remedy and that any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement. The Parties further acknowledge and agree that the amount payable by Supplier pursuant to this Section 3.3 are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.

- 3.3.3. All information used by Buyer to establish REC Substitution Costs shall be verifiable by Supplier; and Buyer shall provide a copy of all such information to Supplier supporting calculations within fifteen (15) Business Days of the request by Supplier for such information and Supplier agrees to treat such information as Confidential Information pursuant to Article 26.
- 3.3.4. In order to avoid payment of REC Substitution Costs, prior to December 31 of any Contract Year during which Supplier reasonably expects a Shortfall to occur, Supplier may make arrangements with third parties to transfer RECs to Buyer to supply substitute RECs in lieu of those RECs that would not otherwise be delivered by Supplier hereunder during such Contract Year, as a result of such expected Shortfall, provided that (i) Supplier shall not be entitled to provide substitute RECs in an amount that would result in the sum of the Delivered RECs for such Contract Year being greater than the Yearly REC Amount, (ii) such arrangements are reasonably acceptable to Buyer, (iii) such substitute RECs have a comparable expiration date as the RECs that Supplier would have delivered to Buyer hereunder, (iv) such substitute RECs are transferred into Buyer's REC Account, and (v) Buyer shall be obligated to pay Supplier for such substitute RECs at the Product Rates set forth in Article 4. Buyer shall not be responsible for any costs for such substitute RECs incurred by Supplier in excess of the Product Rates set forth in Article 4. Buyer shall not unreasonably withhold its consent to substitute RECs offered from Supplier pursuant to this Section 3.3.4.
- 3.3.5. In the event that Supplier has paid REC Substitution Costs to Buyer pursuant to this Section 3.3 for three (3) consecutive Contract Years, Supplier shall have no further liability hereunder to pay REC Substitution Costs to Buyer after such 3rd Contract Year, provided that in such event Buyer, in its sole discretion, accepts Supplier's written offer to reduce the Yearly REC Amount. The reduced Yearly REC Amount for each Contract Year contained in such Supplier offer shall not be greater than or equal to ten percent (10%) of the Yearly REC Amount for that Contract Year. Supplier shall deliver such offer to Buyer within ten (10) months after the 2nd consecutive Contract Year during which Supplier has paid REC Substitution Costs to Buyer. If

Supplier does not offer to reduce the Yearly REC Amount pursuant to this Section 3.3.5 within ten (10) months after the 2nd consecutive Contract Year, Buyer may terminate this Agreement after such 3rd Contract Year upon sixty (60) days written notice to Supplier, provided that such written notice must be provided by Buyer within one hundred eighty (180) days after such 3rd Contract Year. If Buyer elects to terminate this Agreement pursuant to the foregoing sentence, then Supplier shall have no further liability hereunder to pay REC Substitution Costs to Buyer after the 3rd consecutive Contract Year during which Supplier has paid REC Substitution Costs. Notwithstanding the foregoing, if Buyer elects to accept such Supplier offer to reduce the Yearly REC Amount, then beginning with the Billing Period during which such reductions become effective Supplier's obligation to pay REC Substitution Costs to Buyer pursuant to this Section 3.3 shall be reinstated. If Buyer delivers a written notice to Supplier of Buyer's intent to terminate this Agreement pursuant to this Section 3.3.5, then Supplier may within thirty (30) days of receipt of such termination notice provide Buyer written notice that Supplier agrees to continue its obligation to pay REC Substitution Costs to Buyer pursuant to this Section 3.3 and upon Buyer's receipt of such notice (x) Buyer's termination notice shall automatically be deemed rescinded and (y) Supplier's obligation to pay REC Substitution Costs to Buyer pursuant to this Section 3.3 shall be reinstated.

#### 3.4. Adjustments to Yearly REC Amount.

##### 3.4.1. **[RESERVED]**

3.4.2. Reduction of Yearly REC Amount After First Full Contract Year. On or before August 30 of each Contract Year after the first full Contract Year, Supplier may propose a reduction in the Yearly REC Amount by providing written notice of such reduction to Buyer which Buyer may, in its sole discretion, accept such reduction in writing and shall not apply to the first or second Contract Years subsequent to the Contract Year Supplier provides notice of such a reduction. A reduction in the Yearly REC Amount shall in no event be made to assist, accommodate or otherwise allow for the sale of RECs or Renewable Energy Benefits to third parties.

3.5. Penalties. In the event that a Party's failure to perform any of its obligations under this Agreement causes the other Party to incur or suffer any Penalties, the Party responsible for such event shall indemnify and hold the other Party harmless from such Penalties in accordance with the indemnification provisions of Article 16.

## 4. **PRICE OF PRODUCT**

Price of Product. Supplier shall be paid for the Product based on the Delivered RECs at the rates specified in Exhibit 7 per one (1) Delivered REC ("**Product Rates**").

## 5. RENEWABLE ENERGY CREDITS

### 5.1. Delivery of Renewable Energy Credits.

- 5.1.1. All Delivered RECs are exclusively dedicated to and vested in Buyer. Supplier shall deliver to Buyer all RECs stated in Exhibit 7 and Excess RECs derived from the Generating Facilities. Supplier shall timely prepare and execute all documents and shall take all reasonable actions necessary under Michigan Law and applicable regulations and other requirements to cause the RECs to vest in Buyer, without further compensation, including, but not limited to, all actions necessary to register or certify the RECs or the Generating Facilities with the MPSC or any other Person, and to provide all production data and satisfy the reporting requirements of the MPSC.
- 5.1.2. Supplier and Buyer agree that all RECs awarded by the MPSC Administrator up to the Base Supply Amount set forth in Exhibit 7 plus the Excess RECs maximum amount shall be transferred to Buyer's REC Account.
- 5.1.3. On or before March 1 of each Contract Year, Supplier shall, as owner or operator of the Renewable Energy System providing the RECs hereunder, including all Base RECs and any Excess RECs stated in Exhibit 7, deliver to Buyer a written attestation for the prior Contract Year that the energy represented by the megawatt-hours used to certify renewable energy credits has not been and will not be included within a blended energy product certified to include a fixed percentage of renewable energy in any other state or jurisdiction as prohibited under Michigan Law.

- 5.2. Renewable Energy Benefits. All Renewable Energy Benefits for each REC purchased by Buyer from Seller shall be exclusively dedicated to and shall be vested in Buyer and Supplier hereby transfers to Buyer all Renewable Energy Benefits. Supplier shall take or cause to be taken all actions and do or cause to be done all things necessary, proper and advisable and as reasonably requested by Buyer to qualify for and for Supplier or Buyer to receive all available Renewable Energy Benefits and, if received by Supplier, to transfer Renewable Energy Benefits to Buyer, without further compensation. Supplier shall timely execute all documents and shall timely take all actions necessary under Michigan Law or other requirements to qualify for all available Renewable Energy Benefits and to cause Renewable Energy Benefits to vest in and be delivered to Buyer; provided however, that Buyer shall be responsible for any administrative setup fees related to any Renewable Energy Benefits.

## 6. TAX CREDITS

- 6.1. Supplier and Buyer agree that the Product Rates are not subject to adjustment or amendment if Supplier fails to receive any Tax Credits, or if such Tax Credits expire, are repealed or otherwise cease to apply to Supplier or

the Generation Facilities in whole or in part, or Supplier or its investors are unable to benefit from such Tax Credits.

**7. RENEWABLE ENERGY PORTFOLIO**

7.1. The Parties agree that Buyer may use the RECs in meeting its obligations pursuant to the Clean, Renewable and Efficient Energy Act and any subsequent federal standard. Supplier shall cooperate with Buyer in all respects, as it relates to this Agreement, to assist in Buyer's compliance with all applicable requirements set forth in the Clean, Renewable and Efficient Energy Act and shall provide all information reasonably requested by Buyer or otherwise necessary to allow the MPSC to determine compliance with such requirements.

**8. METERING, INVOICING AND PAYMENTS**

8.1. Metering. Supplier shall comply with all requirements for metering necessary to properly certify RECs and transfer such RECs to Buyer. Contemporaneously with its submission to the MPSC Administrator, Supplier shall provide Buyer with copies of all metering information submitted by Supplier to the MPSC Administrator in connection with the metering and certification of RECs for the Generating Facilities, sufficient to demonstrate that all RECs derived from the ownership or operation of, or production of energy by, the Generating Facilities are being transferred to the Buyer each Quarter. Within ten business days upon receipt, Supplier shall provide Buyer with copies of all information provided to Supplier by the MPSC Administrator regarding the submitted information above.

8.1.1. Meters. Supplier has or will install, operate and maintain Meters in good operating condition. The Meters shall be used for quantity measurements under this Agreement. Such equipment shall be bi-directional and shall be capable of measuring and reading instantaneous and hourly real and reactive energy and capacity. Supplier, at its expense, may install check meters.

8.1.2. Location. Meters shall be installed at the location reasonably determined by Buyer and Supplier to effectuate this Agreement.

8.1.3. Non-Interference. Supplier shall not undertake any action that may interfere with the operation of the Meters. Supplier shall be liable for all costs, expenses, and liabilities associated with any such interference with the Meters.

8.1.4. Meter Testing. Meters shall be tested at least once every calendar year by Buyer. Either Party may request a special test of Meters or check meters, but the testing Party shall bear the cost of such testing unless there is an inaccuracy outside the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.1, latest version), in which case the Party whose meters were found to be inaccurate shall be responsible for the costs of the special

testing. Meters installed pursuant to this Agreement shall be sealed and the seal broken only when the meters are to be adjusted, inspected or tested. Authorized representatives of both Parties shall have the right to be present at all routine or special tests and to inspect any readings, testing, adjustment or calibration of the Meters or check meters. Buyer's Operating Representative shall provide fifteen (15) days prior notice of routine Meter testing to Supplier's Operating Representative. If Supplier has installed check meters in accordance with Section 8.1.1, Supplier shall test and calibrate each such meter at least once every calendar year. Supplier's Operating Representative shall provide fifteen (15) days prior notice of routine check meter testing to Buyer's Operating Representative. In the event of special Meter testing, the Parties Operating Representatives shall notify each other with as much advance notice as practicable.

- 8.1.5. Metering Accuracy. If the Meters are registering but their accuracy is outside the limits established in ANSI C12.1, Buyer shall repair and recalibrate or replace the Meters. If as a result of any inaccuracy, there is a change in the amount of Delivered RECs, the relevant Party shall reimburse the other Party for any overpayment or underpayment pursuant to Section 8.2.3. Adjustments shall be made for the lesser of the period in which the inaccuracy existed or ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the Meters; however, the adjustment period shall not exceed ninety (90) days. If adjusted payments are required, Supplier shall render a statement describing the adjustments to Buyer within thirty (30) days of the date on which the inaccuracy was rectified. Additional payments to Supplier by Buyer shall be made within thirty (30) days of receipt of Supplier's statement. Any payments due Buyer pursuant to this Section shall accompany Supplier's statement.
- 8.1.6. Failure to Provide Information. In the event that the MPSC Administrator fails to certify RECs for the Generating Facilities due to a failure by the Supplier to provide any required information to the MPSC Administrator, such failure will be deemed an Event of Default by the Supplier.
- 8.1.7. Failed Meters. If the Meters fail to register, Supplier shall submit information to the MPSC Administrator as required based upon Supplier's check metering; provided, however, that if the accuracy of the check meters is subsequently determined to be outside the limits established in ANSI C12.1, Buyer shall adjust the payments to Supplier for the Delivered RECs calculated using the check meters for the lesser of the period in which the inaccuracy existed or ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the check meters; however, the adjustment period shall not exceed ninety (90)

days. If no such metering is available, payments shall be based upon the Parties' best estimate of the Delivered RECs. In such event, the Parties' estimated payments shall be in full satisfaction of payments due hereunder. If the Parties cannot agree on a best estimate of the Delivered RECs the dispute shall be resolved in accordance with Article 19. If as a result of any inaccuracy, there is a change in the amount of Delivered RECs, the relevant Party shall reimburse the other Party for any overpayment or underpayment pursuant to Section 8.2.3.

## 8.2. Invoices.

- 8.2.1. Monthly Invoicing. On or before the twentieth (20<sup>th</sup>) day following the end of each month during the Term following the MPSC Approval, Supplier shall send to Buyer an invoice ("**Monthly Invoice**") for such month (a "**Billing Period**") indicating the amount transferred to Buyer's REC Account and payable for such Billing Period (the "**Provisional Monthly Payment**"); provided however, that the first invoice to Buyer shall include all of the contracted for RECs that have been generated and transferred to Buyer's REC Account up to the applicable Billing Period. The Provisional Monthly Payment shall be calculated based upon the metering data from the Generating Facilities for such Billing Period and shall comply with this Section 8.2.
- 8.2.2. Monthly Invoice Calculation. On each Monthly Invoice, Supplier shall calculate the amounts as set forth in Exhibit 2A.
- 8.2.3. Annual Reconciliation. On or before the twentieth (20<sup>th</sup>) day following the date upon which the MPSC Administrator issues an annual REC statement covering a Contract Year during the Term, Supplier shall send to Buyer an invoice for such Contract Year (a "**Annual Reconciliation**") indicating the amounts payable for Delivered RECs during such year (the "**Annual Payment**"). The Annual Payment shall be calculated based upon the MPSC Administrator's annual REC statement.
- 8.2.4. Annual Reconciliation Calculation. On each Annual Reconciliation, Supplier shall calculate the amounts as set forth in Exhibit 2B.
- 8.2.5. Replacement REC Invoice Calculation. In addition to the requirements for Monthly Invoices set forth in this Section 8.2, if after the MPSC Administrator issues its annual REC statement for a Contract Year there is a Shortfall for such Contract Year, and such Shortfall is not excused due to Force Majeure, Buyer shall send to Supplier a yearly Invoice for such Contract Year, which shall include the calculations set forth in Exhibit 2C.
- 8.2.6. Method of Payment. Buyer shall remit the payment of any undisputed amounts by wire or electronic funds transfer or otherwise pursuant to the instructions stated in Exhibit 3. Payment will be made

on or before the 20th day following the end of each month or ten (10) Business Days from receipt of an Invoice during the Term.

8.2.7. Examination and Correction of Invoices. As soon as practicable, either Party shall notify the other Party in writing of any alleged error in Supplier's Invoice.

8.2.7.1. If a Party notifies the other Party of an alleged error in an Invoice, the Parties agree to make good faith efforts to reconcile the billing and mutually agree on the appropriate remedy, if any.

8.2.7.2. If a correction is determined to be required, Supplier shall provide an adjusted Invoice to Buyer. If such error results in an additional payment to Supplier, Buyer shall pay Supplier the amount of the adjusted Invoice within thirty (30) calendar days of the date of the receipt of adjusted Invoice. If such error resulted in a refund owed to Buyer, Supplier shall pay Buyer the amount of the adjusted Invoice within thirty (30) calendar days of the date of the statement or at Buyer's option, Buyer may offset such amount against a subsequent payment to Supplier.

8.2.7.3. If Supplier fails to provide Buyer with notice of any alleged error in an Invoice within twelve (12) months of its receipt of such Invoice, then Supplier shall be deemed to have waived all rights to object to such Invoice.

8.3. Overdue Amounts and Refunds. Overdue amounts and refunds of overpayments shall bear interest from and including, the due date or the date of overpayment, as the case may be, to the date of payment of such overdue amounts or refund at a rate calculated pursuant to 18 C.F.R. §35.19a, as such Law may be amended or superseded.

8.4. Access to Books and Records. Supplier agrees to make available for inspection upon five (5) Business Days written notice from Buyer its books and records for the purpose of allowing Buyer to verify the information contained within the invoices presented pursuant to this Article 8.

8.5. Parties Right to Net. Either Party shall have the right to net any undisputed amounts owed to the other Party under this Agreement.

8.6. Taxes. If Buyer is required to remit any Taxes, excluding federal, state, local, foreign income, or gross receipts taxes, imposed on or associated with the Delivered RECs or the transfer of RECs to Buyer's REC Account, the amount shall be deducted from any sums due to the Supplier. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any Tax. Except

as specified in this Section 8.6, each Party shall be obligated to pay any Taxes imposed on it as a result of entering into this Agreement or its performance hereunder, provided that each Party shall hold harmless the other Party from and against Taxes imposed on the other Party as a result of that Party's actions or inactions and that otherwise would not have occurred in the absence of this Agreement in accordance with Article 16.

## **9. FACILITY OPERATIONS AND MODIFICATIONS**

- 9.1. Modification. Without the prior written consent of Buyer, which shall not be unreasonably withheld or delayed, Supplier shall not be entitled to make any modification to the Generating Facilities that might (a) cause the Generating Facilities to lose status as a Renewable Energy System, (b) cause the renewable energy credits produced by the Generating Facilities not to qualify as RECs under the Clean, Renewable and Efficient Energy Act, (c) expose Buyer to any additional liability or increase its obligations under this Agreement, or (d) adversely affect Supplier's or Buyer's ability to perform its obligations under this Agreement or any Law or to any third party. Any such modifications shall be conducted in accordance with Good Utility Practice and all applicable Laws and reliability criteria, as such may be amended from time to time. Supplier shall ensure that the Generating Facilities are modified as may be required to maintain status as Renewable Energy Systems and cause the renewable energy credits produced by the Generating Facilities to qualify for RECs under the Clean, Renewable and Efficient Energy Act. Supplier shall provide notice to Buyer as soon as practicable prior to any such modification to any of the Generating Facilities describing such modifications and providing any additional information as may be required by Buyer. The foregoing shall at all times be subject to FERC consent and Approval.
- 9.2. Operation and Maintenance. Supplier, at all times shall cause the Generating Facilities to be operated, maintained and repaired in accordance with Good Utility Practice and to ensure (a) Supplier is capable of meeting its supply obligations over the Term, (b) the Generating Facilities are at all times Renewable Energy Systems, and (c) Supplier is at all times in compliance with all requirements of a renewable energy generator set forth in the Clean, Renewable and Efficient Energy Act.

## **10. EMERGENCY**

- 10.1. In the event of an Emergency, Buyer and Supplier shall promptly comply with any applicable requirements of any Governmental Authority, NERC, MISO, Control Area Operator, Transmission Provider, transmission operator, or any successor of any of them, regarding the reduced or increased generation of the Generating Facilities.
- 10.2. Each Party shall provide prompt oral and written notification to the other Party of any Emergency. If requested by the other Party, the Party declaring the Emergency shall provide a description in reasonable detail of the Emergency and any steps employed to cure it.

- 10.3. In the event of an Emergency, either Party may take reasonable and necessary action to prevent, avoid or mitigate injury, danger, damage or loss to its own equipment and facilities, or to expedite restoration of service; provided, however, that the Party taking such action shall give the other Party prior notice, if practicable, before taking any action. This Section shall not be construed to supersede Sections 10.1 and 10.2.

## 11. PLANNED OUTAGES

- 11.1. Supplier shall cause any non-forced outage of the Generating Facilities or reduction in the capability of the Generating Facilities to deliver Delivered RECs to be conducted so as to minimize the impact on the Delivered RECs delivered to Buyer hereunder.

## 12. REPORTS; OPERATIONAL LOG

- 12.1 Copies of Communications. Supplier shall promptly provide Buyer with copies of any orders, decrees, letters or other written communications to or from any Governmental Authority asserting or indicating that Supplier or any of the Generating Facilities are in violation of Laws that relate to Supplier or operation or maintenance of such Generating Facilities, which could have an adverse effect on Buyer; provided however, that Supplier shall not be obligated to provide any such communications to the extent such communications are designated as Critical Energy Infrastructure Information by the FERC. Supplier shall keep Buyer apprised of the status of any such matters.
- 12.2 Notices of Change in any of the Generating Facilities. In addition to any consent required pursuant to Section 9.2, Supplier shall provide notice to Buyer as soon as practicable prior to any temporary or permanent change to the performance, operating characteristics, or turbine/generators of any of the Generating Facilities. Such notice shall describe any changes, expected or otherwise, to the total capacity of such Generating Facilities, the rate of production and delivery of RECs, interconnection and transmission issues, and such additional information as may be required by Buyer.
- 12.3 Operations Log. Supplier shall maintain an operations log, which shall include the aggregate Delivered RECs by month for the Contract Year, planned and unplanned maintenance outages, circuit breaker trip operations, partial deratings of equipment, and any other significant event or information related to the operation of the Generating Facilities. The operations log shall be available for inspection by Buyer upon reasonable advance request.

## 13. COMPLIANCE

- 13.1. Each Party shall comply with all applicable Laws and shall, at its sole expense, maintain in full force and effect all relevant permits, authorizations, licenses and other authorizations material to the maintenance of its facilities and the performance of obligations under this Agreement. Each Party and its representatives shall comply with all relevant requirements of the Control

Area Operator, Transmission Provider and each Governmental Authority to ensure the safety of its employees and the public.

- 13.2. Buyer and Supplier shall perform, or cause to be performed, their obligations under this Agreement in all material respects in accordance with Good Utility Practices.

**14. APPROVALS**

14.1. Condition Precedent. Unless Buyer waives its rights to terminate this Agreement pursuant to Section 14.3, each Party's performance of its respective obligations under Articles 3, 4, 5, 8, 9, 10, 11, 12, 23 and 24 and Section 8.2 of this Agreement is subject to Buyer obtaining the MPSC Approval described in Section 14.2 in form and substance satisfactory to Buyer.

14.2. MPSC Approval.  
Buyer shall submit this Agreement to the MPSC for approval consistent with the Clean, Renewable and Efficient Energy Act and any other applicable statutory requirements.

14.3. Failure to Obtain Approval; Conditions of Approval. If the MPSC fails to grant approval or acceptance of this Agreement pursuant to Section 14.2, then either Party shall have the right to terminate this Agreement upon fourteen (14) days written notice to Supplier. If the MPSC grants the approval or acceptance of this Agreement and the conditions of such approval or acceptance are not reasonably acceptable to Buyer, then Buyer shall have the right to terminate this Agreement within thirty (30) days of such MPSC Approval or acceptance upon fourteen (14) days written notice to Supplier.

14.4. Cooperation. Each Party shall use reasonable efforts to obtain such required approvals and shall exercise due diligence and shall act in good faith to cooperate with and assist each other in acquiring each approval necessary to effectuate this Agreement. Further, each Party agrees to reasonably support each other in regulatory proceedings to obtain the requisite approvals necessary to effectuate this Agreement.

**15. CONTRACT PERFORMANCE SECURITY**

[REDACTED]

15.1. [REDACTED]

[REDACTED]

16. **INDEMNIFICATION**

16.1. Indemnification for Losses. A Party to this Agreement (the “**Indemnifying Party**”) shall indemnify, defend and hold harmless, on an After Tax Basis, the other Party, its parent and Affiliates, and each of their officers, directors, employees, attorneys, agents and successors and assigns (each an “**Indemnified Party**”) from and against any and all Losses arising out of relating to, or resulting from the Indemnifying Party’s breach of, or the performance or non-performance of its obligations under this Agreement (including reasonable attorneys’ fees and costs incurred in connection with the Renewable Standard); provided, however, that no Party shall be indemnified hereunder for any Loss to the extent resulting from its own negligence, fraud or willful misconduct.

16.1.1. In furtherance of the foregoing indemnification and not by way of limitation thereof, the Indemnifying Party hereby waives any defense it otherwise might have against the Indemnified Party under applicable workers’ compensation laws.

16.1.2. In claims against any Indemnified Party by an agent of the Indemnifying Party, or anyone directly or indirectly employed by them or anyone for whose acts the Indemnifying Party may be liable, the indemnification obligation under this Section 16 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Indemnifying Party or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

16.2. No Negation of Existing Indemnities; Survival. Each Party's indemnity obligations under this Agreement shall not be construed to negate, abridge or reduce other rights or obligations, which would otherwise exist at Law or in equity. The obligations contained herein shall survive any termination, cancellation, expiration, or suspension of this Agreement to the extent that any third party claim is commenced during the applicable statute of limitations period.

16.3. Indemnification Procedures.

16.3.1. Any Indemnified Party seeking indemnification under this Agreement for any Loss shall give the Indemnifying Party notice of such Loss promptly but in any event on or before thirty (30) days after the Indemnified Party's actual knowledge of such claim or action. Such notice shall describe the Loss in reasonable detail, and shall indicate the amount (estimated if necessary) of the Loss that has been, or may be sustained by, the Indemnified Party. To the extent that the Indemnifying Party will have been actually and materially prejudiced as a result of the failure to provide such notice, the Indemnified Party shall bear all responsibility for any additional costs or expenses incurred by the Indemnifying Party as a result of such failure to provide notice.

16.3.2. In any action or proceeding brought against an Indemnified Party by reason of any claim indemnifiable hereunder, the Indemnifying Party may, at its sole option, elect to assume the defense at the Indemnifying Party's expense, and shall have the right to control the defense thereof and to determine the settlement or compromise of any such action or proceeding. Notwithstanding the foregoing, an Indemnified Party shall in all cases be entitled to control its own defense in any action if it:

16.3.2.1. May result in injunctions or other equitable remedies with respect to the Indemnified Party which would affect its business or operations in any materially adverse manner;

16.3.2.2. May result in material liabilities which may not be fully indemnified hereunder; or

16.3.2.3. May have a Material Adverse Effect on the business or the financial condition of the Indemnified Party (including a Material Adverse Effect on the tax liabilities, earnings, ongoing business relationships or regulation of the Indemnified Party) even if the Indemnifying Party pays all indemnification amounts in full.

16.3.3. Subject to Section 16.3.2, neither Party may settle or compromise any claim for which indemnification is sought under this Agreement without the prior written consent of the other Party; provided, however, said consent shall not be unreasonably withheld or delayed.

## 17. LIMITATION OF LIABILITY

17.1. Responsibility for Damages. Notwithstanding anything under Section 16.1 to the contrary and except where caused by Buyer's sole negligence, Supplier shall be responsible for all physical damage to or destruction of the property, equipment and/or facilities owned by it, and Supplier hereby releases Buyer from any reimbursement for such damage or destruction.

17.2. Limitation on Damages. To the fullest extent permitted by Law and notwithstanding other provisions of this Agreement, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages and lost business opportunities), exemplary or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement. Notwithstanding the foregoing, REC Replacement Costs or payment made by either Party to satisfy Penalties or payments owing under Sections 3.3, 3.5, 8.6 or 25.6, shall not be considered special, indirect, incidental, multiple, punitive, consequential or incidental damages under this Section 17.2. In addition, this limitation on damages shall not apply with respect to claims brought by third parties for which a Party is entitled to indemnification under this Agreement.

17.3. Survival. The provisions of this Section 17 shall survive any termination, cancellation, expiration, or suspension of this Agreement.

## 18. FORCE MAJEURE

18.1. Excuse. Subject to Section 18.4, neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations under this Agreement (including any obligation to deliver or accept Product) if such delay or failure is due to an event of Force Majeure.

18.2. Definition. "Force Majeure" means, subject to Section 18.3, any of the following enumerated events that occur subsequent to the Effective Date and before the termination or expiration of the Term of this Agreement and that delays or prevents a Party's performance of its obligations under this Agreement, but only to the extent that (a) such event of Force Majeure is not attri-

butable to fault or negligence on the part of that Party, (b) such event of Force Majeure is caused by factors beyond that Party's reasonable control, (c) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences, and (d) such Party has satisfied the requirements of Section 18.4:

18.2.1. Acts of God such as storms, hurricanes, floods, lightning and earthquakes;

18.2.2. Sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;

18.2.3. War, riot, acts of a public enemy or other civil disturbance;

18.2.4. Strike, walkout, lockout or other significant labor dispute; or

18.2.5. Action or inaction of a Governmental Authority (excluding any change in Law).

18.3. Exclusions. None of the following shall constitute an event of Force Majeure:

18.3.1. Economic hardship of either Party;

18.3.2. The non-availability of the resource supply to generate electricity from any of the Generating Facilities; and.

18.3.3. A Party's failure to obtain any permit, license, consent, agreement or other approval from a Governmental Authority, except to the extent it is caused by an event listed in Sections 18.2.1 or 18.2.3.

18.4. Conditions. In addition to the conditions set forth in Section 18.2 above, a Party may rely on a claim of Force Majeure to excuse its performance only to the extent that such Party:

18.4.1. Provides prompt notice of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;

18.4.2. Exercises all reasonable efforts to continue to perform its obligations under this Agreement;

18.4.3. Expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem; provided, however, that settlement of strikes or other labor disputes

will be completely within the sole discretion of the Party affected by such strike or labor dispute;

18.4.4. Exercises all reasonable efforts to mitigate or limit damages to the other Party; and

18.4.5. Provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

## 19. DISPUTES

19.1. Dispute or Claim. Any cause of action, claim or dispute which either Party may have against the other arising out of or relating to this Agreement, including, but not limited to, the interpretation of the terms hereof or any Laws or regulations that affect this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity thereof (“**Dispute**”) shall be submitted in writing to the other Party. The written submission of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and appropriate supporting documentation.

19.2. Good Faith Resolution. The Parties agree to cooperate in good faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligations under this Agreement.

19.3. Informal Negotiation. The Parties shall first attempt in good faith to resolve any Dispute through informal negotiations by the Operating Representatives or Contract Representatives and senior management of each Party.

19.4. Litigation. In the event the Parties are unable to resolve any Dispute through the informal negotiations described in Section 19.3 within thirty (30) days of a Party’s receipt of written notice of such Dispute, then either Party may submit the Dispute for exclusive resolution by any federal or state court maintaining jurisdiction in, Lansing, Michigan. Any award or determination rendered may be entered in any court having jurisdiction.

19.5. Recovery Costs. In the event any action is brought at law or in equity in court to enforce any provision of this Agreement, or for damages by reason of any alleged breach of this Agreement, then the prevailing Party will be entitled to recover from the other Party all costs of the suit, including, court costs and the prevailing Party’s reasonable attorneys’ fees and related costs and expenses.

## 20. NATURE OF OBLIGATIONS

20.1. Relationship of the Parties. The provisions of this Agreement shall not be construed to create an association, trust, partnership, or joint venture; or impose a trust or partnership duty, obligation, or liability or agency relationship between the Parties.

20.2. No Public Dedication. By this Agreement, neither Party dedicates any part of its facilities nor the service provided under this Agreement to the public.

## 21. ASSIGNMENT

21.1. Buyer Assignment. Buyer may assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or in part, without Supplier's consent: (a) where such assignment does not occur by operation of Law, any successor to Buyer provided such successor is a public utility holding a certificate of public convenience and necessity granted by the MPSC; (b) a legally authorized governmental or quasi-governmental agency charged with providing retail electric service in Michigan; or (c) where such Person's Credit Rating, as published by at least one of the Relevant Rating Agencies, is equal or superior to the Minimum Credit Rating as of the time of assignment or delegation, and on the effective date of such assignment, Buyer's obligations for future performance terminates.

21.2. Supplier Assignment.

21.2.1. Supplier may, without the consent of Buyer (and without relieving itself from liability hereunder), transfer, pledge, encumber or collaterally assign this Agreement or the account, revenues or proceeds hereof to Supplier's Lenders in connection with any financing or other financial arrangements for any of the Generating Facilities. Additional provisions governing collateral assignments of this Agreement to Supplier's Lenders are set forth in Section 21.8. In addition, Supplier may, without the consent of Buyer (and without relieving itself from liability hereunder), transfer or assign this Agreement (including its rights and obligations hereunder) to any of its Affiliates in connection with a transfer of any of the Generating Facilities to such Affiliate; provided, that Supplier provides Buyer prior notice of any such transfer or assignment and, with respect to any transfer to an Affiliate of Supplier, (a) the creditworthiness of such Affiliate is equal to or superior to the creditworthiness of Supplier as of the Effective Date, as determined by Buyer in its reasonable discretion, and (b) such Affiliate enters into an assignment and assumption agreement, in form and substance satisfactory to Buyer.

21.2.2. In connection with Supplier's general assignment of this Agreement and rights and obligations hereunder to third parties (other than a collateral assignment to Supplier's Lenders, which shall be governed by the provisions of Sections 21.2.1 and 21.8), Supplier may only assign or novate this Agreement, in whole or in part, with Buyer's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed by Buyer.

21.2.3. Except as stated above, neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by Supplier, including by operation of Law, without the prior written consent of

Buyer which consent shall not be unreasonably withheld. Any assignment of this Agreement in violation of the foregoing shall be, at the option of Buyer, void.

- 21.3. Liability After Assignment. A Party's assignment or transfer of rights or obligations pursuant to this Article 21 (other than Section 21.2.1) shall relieve said Party from any liability and financial responsibility for the performance thereof arising after any such transfer or assignment, provided such transferee enters into an assignment and assumption agreement, pursuant to which such transferee assumes all of the assigning or transferring Party's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.
- 21.4. Transfers of Ownership. During the Term, Supplier shall not sell, transfer, assign or otherwise dispose of its ownership interest in any of the Generating Facilities to any third party absent (a) a transfer of this Agreement to such third party and (b) Supplier entering into an assignment and assumption agreement, with such third party pursuant to which such third party assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.
- 21.5. Successors and Assigns. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.
- 21.6. Collateral Assignment by Supplier. Without limiting the generality of Section 21.1, in connection with a collateral assignment of this Agreement to Supplier's Lenders, Supplier may, without the consent of Buyer, transfer, pledge, encumber or collaterally assign its rights and obligations under this Agreement or the account, revenues or proceeds hereof in connection with any financing or other financial arrangements for any of the Generating Facilities to Supplier's Lenders. In such event, Supplier shall provide written notice to Buyer of such transfer, pledge, encumbrance or assignment, including the address of Supplier's Lenders, and the following provisions shall apply:
- 21.6.1. The Parties shall not amend or modify this Agreement in any material respect without the prior written consent of the Supplier's Lenders;
- 21.6.2. Prior to exercising its right to terminate this Agreement as a result of an Event of Default by Supplier, Buyer shall give notice of such Event of Default by Supplier to any Supplier's Lenders which Buyer has been provided written notice of;
- 21.6.3. Supplier's Lenders shall have the right, but not the obligation, to cure an Event of Default on behalf of Seller in accordance with the provisions of this Agreement, provided that Supplier's Lenders shall be provided an additional forty-five (45) days, from the end of the Cure Period provided pursuant to Section 22.2, to effect a cure of such Event of Default;

21.6.4. A consent to assignment or other agreement, enforceable by Buyer, from each of Supplier's Lenders that:

21.6.4.1. Supplier's Lenders shall receive prior notice of and the right to approve material amendments to the Agreement, which approval shall not be unreasonably withheld, delayed, or conditioned;

21.6.4.2. If Supplier's Lenders directly or indirectly, take possession of, or title to any of the Generating Facilities (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), then Supplier's Lenders shall assume all of Supplier's obligations under this Agreement, provided that Supplier's Lenders shall have no personal liability for any monetary obligations of Seller under this Agreement which are due and owing to Buyer as of the assumption date; provided, however, that prior to such assumption, if Buyer advises Supplier's Lenders that Buyer will require that Supplier's Lenders cure (or cause to be cured) any Supplier Event of Default hereunder existing as of the possession date (irrespective of when such Event of Default occurred) in order to avoid the exercise by Buyer of Buyer's right to terminate the Agreement in respect of such Event of Default, then Supplier's Lenders at their option; and in their sole discretion, may elect to either: (i) cause such Event of Default to be cured; or (ii) not assume this Agreement; and

21.6.4.3. If Supplier's Lenders elect to sell or transfer any of the Generating Facilities (after directly or indirectly taking possession of, or title to, such Generating Facilities) or if the sale of any of the Generating Facilities occurs through the actions of Supplier's Lenders (including, a foreclosure sale where a third party is the buyer, or otherwise), then, as a condition of such sale or transfer, (a) Supplier's Lenders shall cause the buyer or transferee of such Generating Facilities to assume all of Supplier's obligations arising under this Agreement and (b) the buyer or transferee of such Generating Facilities shall (i) have creditworthiness that is equal to or superior to the creditworthiness of Supplier as of the Effective Date and (ii) have experience (or shall have entered into an agreement with a Person that has experience) in operating renewable energy generating facilities that is equivalent or superior to that of Supplier, or the operator of the Generating Facilities if Supplier is not the operator.

## 22. DEFAULT AND REMEDIES

- 22.1. Events of Default. Except to the extent excused due to an event of Force Majeure in accordance with Article 18 (except for Section 2.3.4), an event of default (“**Event of Default**”) shall be deemed to have occurred with respect to a Party (the “**Defaulting Party**”) upon the occurrence of one or more of the following events:
- 22.1.1. failure to comply with any material obligations imposed upon it by this Agreement;
  - 22.1.2. failure to make timely payments due under this Agreement;
  - 22.1.3. failure to comply with the material requirements of the Control Area Operator, Transmission Provider, Buyer, MISO, MPSC, NERC, or FERC where following such directions is required;
  - 22.1.4. in the case of Supplier, its failure at any time to qualify the Generating Facilities as Renewable Energy Systems or itself as a renewable energy producer or similar status under the Clean, Renewable and Efficient Energy Act;
  - 22.1.5. in the case of Supplier, its failure to install, operate, maintain or repair the Generating Facilities in accordance with Good Utility Practice;
  - 22.1.6. in the case of Supplier, its failure to comply with the provisions of Article 15;
  - 22.1.7. in the case of Supplier, its failure to deliver the Yearly REC Amount for two (2) consecutive Contract Years;
  - 22.1.8. in the case of Supplier, its failure to comply with the provisions of Article 21;
  - 22.1.9. in the case of Supplier, its failure to comply with the provisions of Article 25; and
  - 22.1.10. in the case of Supplier, if Supplier (a) becomes insolvent, files for or is forced into bankruptcy, (b) makes an assignment for the benefit of creditors, (c) is unable to pay its debts as they become due or (d) is subject to a similar action or proceeding.
- 22.2. Cure Period. Upon the occurrence of an Event of Default, other than pursuant to Sections 15.6 and 22.1.10, the Defaulting Party shall be entitled to a period of thirty (30) days from such occurrence (the “**Cure Period**”) to cure such Event of Default during which time the duties and obligations of the Non-Defaulting Party under this Agreement are suspended; provided, however, that in the case of an Event of Default under Sections 22.1.3, 22.1.4 or 22.1.5, with written notice from the Defaulting Party to the Non-Defaulting

Party, such Cure Period may be extended for an additional ninety (90) days if (a) Supplier can demonstrate to Buyer that such Event of Default was not capable of being cured within such thirty (30) day period and such Event of Default is capable of being cured within an additional ninety (90) day period, (b) the Defaulting Party is diligently and continuously proceeding to cure such Event of Default and (c) Supplier posts additional security in a form consistent with the provisions of Article 15, and in an amount acceptable to Buyer in its sole discretion.

22.3. Remedies. If an Event of Default is not cured by the Defaulting Party during the Cure Period, the Non-Defaulting Party shall be entitled to terminate this Agreement and preserve the economic equivalent of its rights under this Agreement (whether such rights were absolute or contingent). In determining its economic equivalent, the Non-Defaulting Party will consider any or all relevant information, including, without limitation, one or more of any of the following types of information:

22.3.1. quotations (either firm or indicative) for replacement obligations supplied by one or more third parties that may take into account the creditworthiness of the party making the determination at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Party making the determination and the third party providing the quotation;

22.3.2. information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; and

22.3.3. any information of the types described in Subsections 22.3.1 and 22.3.2 above from internal sources (including any of the Affiliates of the Party making the determination) if that information is of the same type used by the Party making the determination in the regular course of its business for the valuation of similar transactions.

22.3.4. The Non-Defaulting Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to Subsection 22.3.1 above and/or relevant market data pursuant to Subsection 22.3.2 above, unless the Non-Defaulting Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in Subsections 22.3.1, 22.3.2 and 22.3.3 above, the Non-Defaulting Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being used. Third parties supplying quotations pursuant to Subsection 22.3.1 above or market data pursuant to Subsection 22.3.2 above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information. In calculating a termina-

tion amount (“**Termination Amount**”), (1) Unpaid Amounts in respect of services or Product already provided or delivered are to be excluded but, without limitation, any payment or delivery that would, but for the early termination date, have been required after that early termination date is to be included and (2) supporting documentation acceptable in industry practice shall be provided by the party making the determination to support the amount charged. The Non-Defaulting Party will then net any Unpaid Amounts with the Termination Amount to produce the Settlement Amount. The Non-Defaulting Party may net any credit support it holds against the Settlement Amount.

22.3.5. The Non-Defaulting Party may, without prior notice to any person, set off any sum, or obligation (whether or not arising under this Agreement, whether matured or unmatured and irrespective of the currency, place of payment or booking office of the sum or obligation) owed by the Defaulting Party to the Non-Defaulting Party or to any Affiliate of the Non-Defaulting Party, against any sum or obligation (whether or not arising under this Agreement, whether matured or unmatured and irrespective of the currency, place of payment or booking office of the sum or obligation) owed by the Non-Defaulting Party or any Affiliate of the Non-Defaulting Party to the Defaulting Party, and, for this purpose, may convert one currency into another. If any sum or obligation is unascertained, the Non-Defaulting Party may in good faith estimate that sum or obligation and set off in respect of that estimate, subject to the Non-Defaulting Party or the Defaulting Party, as the case may be, accounting to the other Party when such sum or obligation is ascertained. The Non-Defaulting Party shall give notice to the Defaulting Party of any set-off effected, provided that the failure to provide such notice shall not affect the validity of any set-off effected. Nothing in this paragraph will be deemed to constitute or create a charge or other security interest. The right of set-off shall be without prejudice and in addition to any right of set-off, combination of accounts, lien, charge or other right to which any party is at any time otherwise entitled (whether by operation of law or otherwise). If any part of this Section 22.3 is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void or make unenforceable any other part of this setoff provision.

## **23. REPRESENTATIONS AND WARRANTIES OF SUPPLIER**

The Supplier represents and warrants to Buyer as follows:

23.1. Organization. Supplier is a limited liability company duly formed/organized, validly existing and in good standing under the laws of the State of Michigan and has all requisite power and authority to own, lease and/or operate its properties and to carry on its business as is now being conducted. Supplier is duly qualified or licensed to do business and is in good standing in each ju-

isdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.

- 23.2. Authority Relative to this Agreement. Supplier has full authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated herein and has taken all necessary actions necessary to authorize the execution, delivery and performance of this Agreement. No other proceedings or approvals on the part of Supplier are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Supplier enforceable in accordance with its terms except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.
- 23.3. Consents and Approvals; No Violation. Other than obtaining the Supplier's Required Regulatory Approvals as set out in Exhibit 5, the execution, delivery and performance of this Agreement by Supplier shall not (a) conflict with or result in any breach of any provision of the articles of formation/organization of Supplier; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Supplier or any of its Affiliates is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.
- 23.4. Availability of Funds. Supplier has, or will have, and shall maintain sufficient funds available to it to perform all obligations under this Agreement and to consummate the obligations contemplated pursuant thereto.
- 23.5. Permits, Authorizations Licenses, Grants etc. Supplier has obtained the permits, authorizations, licenses and grants listed in Exhibit 5, and that no other permits, authorizations, licenses or grants are required by Supplier to fulfill its obligations under this Agreement; provided however, that if the Generating Facilities have not been qualified as Renewable Energy Systems at the time this Agreement is executed, then Supplier will have performed all such acts to have commenced the process for certification and/or is diligently pursuing such qualifications.
- 23.6. Related Agreements. Supplier has entered into or will enter into all necessary and material agreements related to Supplier's obligations under this Agreement.
- 23.7. Certification. The Supplier has been and is in compliance with all requirements set forth in the Clean, Renewable and Efficient Energy Act to the ex-

tent such requirements of the Clean, Renewable and Efficient Energy Act are applicable to the Supplier's obligation to deliver contracted RECs to the Buyer.

- 23.8. Title. Supplier owns all Delivered RECs attributable to the Generating Facilities and has the right to sell such RECs to Buyer. Supplier will convey good title to the Delivered RECs to Buyer free and clear of any liens or other encumbrances or title defects, including any which would affect Buyer's ownership of any portion of such RECs or prevent the subsequent transfer of any portion of such RECs by Buyer to a third party.
- 23.9. Generating Facility Sites. Supplier either (a) owns the Generating Facility Sites or (b) has all necessary rights to operate the Generating Facilities on the Generating Facility Sites throughout the Term within the time frame contemplated under Section 2.2.

## 24. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Supplier as follows:

- 24.1. Organization; Qualification. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Buyer is duly qualified or licensed to do business as a corporation and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.
- 24.2. Authority Relative to this Agreement. Buyer has full corporate authority to execute and deliver this Agreement to which it is a party and to consummate the transactions contemplated herein. The execution and delivery of this Agreement has been duly and validly authorized by Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable in accordance with its terms except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights generally.
- 24.3. Consents and Approvals; No Violation. Other than obtaining the Buyer Required Regulatory Approvals as set out in Exhibit 4, the execution, delivery and performance of this Agreement by Buyer shall not (a) conflict with or result in any breach of any provision of the articles of organization of Buyer; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except (i) where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (ii) for those consents, authorizations, approvals, permits, filings and notices which become applicable to Buyer as a result of specific reg-

ulatory status of Buyer or as a result of any other facts that specifically relate to the business or activities in which Buyer is or proposes to be engaged, which consents, approvals, authorizations, permits, filings and notices have been obtained or made by Buyer; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

- 24.4. Related Agreements. Buyer warrants that it has entered into or will enter into all necessary and material agreements related to Buyer's obligations under this Agreement.

## 25. INSURANCE

- 25.1. General Requirements. Supplier shall maintain at all times, at its own expense, general/commercial liability, worker's compensation, and other forms of insurance relating to its property, operations and facilities in the manner and amounts set forth herein from the Effective Date of this Agreement. Supplier shall maintain coverage on all policies written on a "claims made" or "occurrence" basis. If converted to an occurrence form policy, the new policy shall be endorsed to provide coverage back to a retroactive date acceptable to Buyer.
- 25.2. Qualified Insurers. Every contract of insurance providing the coverage required herein shall be with an insurer or eligible surplus lines insurer qualified to do business in the State of Michigan and with the equivalent, on a continuous basis, of a "Best Rating" of "A" or better and shall include provisions or endorsements:
- 25.2.1. Stating that such insurance is primary insurance with respect to the interest of Buyer and that any insurance maintained by Buyer is excess and not contributory insurance required hereunder;
- 25.2.2. Stating that no reduction, cancellation or expiration of the policy shall be effective until ninety (90) days from the date notice thereof is actually received by Buyer; provided, that upon Supplier's receipt of any notice of reduction, cancellation or expiration, Supplier shall immediately provide notice thereof to Buyer; and
- 25.2.3. Naming Buyer as an additional insured on the general liability insurance and business interruption policies of Supplier as its interests may appear with respect to this Agreement.
- 25.3. Certificates of Insurance. Within thirty (30) days of the Effective Date, Supplier shall provide to Buyer, and shall continue to provide to Buyer within thirty (30) days of each anniversary of the Effective Date until the expiration of this Agreement, upon any change in coverage, or at the request of Buyer

not to exceed once each year, properly executed and current certificates of insurance with respect to all insurance policies required to be maintained by Supplier under this Agreement. Certificates of insurance shall provide the following information:

- 25.3.1. The name of insurance company, policy number and expiration date;
  - 25.3.2. The coverage required and the limits on each, including the amount of deductibles or self-insured retentions, which shall be for the account of Supplier maintaining such policy; and
  - 25.3.3. A statement indicating that Buyer shall receive at least ninety (90) days prior notice of cancellation or expiration of a policy or of a reduction of liability limits with respect to a policy.
- 25.4. Certified Copies of Insurance Policies. At Buyer's request, in addition to the foregoing certifications, Supplier shall deliver to Buyer a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company.
- 25.5. Inspection of Insurance Policies. Buyer shall have the right to inspect the original policies of insurance applicable to this Agreement at Supplier's place of business during regular business hours.
- 25.6. Supplier's Minimum Insurance Requirements.
- 25.6.1. Worker's Compensation. Worker's compensation insurance in accordance with statutory requirements including employer's liability insurance with limits of not less than five hundred thousand dollars (\$500,000) per occurrence.
  - 25.6.2. General Liability. General liability insurance including bodily injury, property damage, products/completed operations, contractual and personal injury liability with a combined single limit of at least one million dollars (\$1,000,000) per occurrence and at least two million dollars (\$2,000,000) annual aggregate.
  - 25.6.3. Automobile Liability. Automobile liability insurance including owned, non-owned and hired automobiles with combined bodily injury and property damage limits of at least one million dollars (\$1,000,000) per occurrence and at least one million dollars (\$1,000,000) aggregate.
  - 25.6.4. Business Interruption. Supplier will maintain business interruption insurance at the same levels it does as of the Effective Date, including without limitation, all deductibles and coverage amounts.
  - 25.6.5. Failure to Comply. If Supplier fails to comply with the provisions of this Article 25, Supplier shall save harmless and indemnify Buyer from any direct or indirect loss and liability, including attorneys' fees

and other costs of litigation, resulting from the injury or death of any person or damage to any property if Buyer would have been protected had Supplier complied with the requirements of this Article 25, in accordance with indemnification provisions of Article 16.

## 26. CONFIDENTIALITY

26.1. Confidential Information. “**Confidential Information**” means information provided by one Party (the “**Disclosing Party**”) to the other (the “**Receiving Party**”) in connection with the negotiation or performance of this Agreement that is clearly labeled or designated by the Disclosing Party as “confidential” or “proprietary” or with words of like meaning or, if disclosed orally, clearly identified as confidential with that status confirmed promptly thereafter in writing, excluding, however, information excluded as provided in Section 26.3.

26.2. Treatment of Confidential Information. The Receiving Party shall treat any Confidential Information with at least the same degree of care regarding its secrecy and confidentiality as the Receiving Party’s similar information is treated within the Receiving Party’s organization. The Receiving Party shall keep confidential and not disclose the Confidential Information of the Disclosing Party to third parties (except as stated hereinafter) nor use it for any purpose other than the performance under this Agreement, without the express prior written consent of the Disclosing Party. The Receiving Party further agrees that it shall restrict disclosure of Confidential Information as follows:

26.2.1. Disclosure shall be restricted solely to (a) its agents as may be necessary to enforce the terms of this Agreement, (b) its Affiliates, shareholders, directors, officers, employees, advisors, lenders and representatives as necessary, (c) any Governmental Authority in connection with seeking any regulatory approval, (d) to the extent required by applicable Law, (e) in the case of Buyer only, potential transferees of RECs obtained by Buyer and (f) potential assignees of this Agreement (together with their agents, advisors and representatives), as may be necessary in connection with any such assignment (which assignment or transfer shall be in compliance with Article 21) in each case after advising those agents of their obligations under this Article 26.

26.2.2. In the event that the Receiving Party is required by applicable Law to disclose any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt notice of such request or requirement in order to enable the Disclosing Party to seek an appropriate protective order or other remedy and to consult with the Disclosing Party with respect to the Disclosing Party taking steps to resist or narrow the scope of such request or legal process. The Receiving Party agrees not to oppose any action by the Disclosing Party to obtain a protective order or other appropriate remedy. In the absence of such protective order, and provided that

the Receiving Party is advised by its counsel that it is compelled to disclose the Confidential Information, the Receiving Party shall:

- 26.2.2.1. Furnish only that portion of the Confidential Information which the Receiving Party is advised by counsel is legally required; and
- 26.2.2.2. Use its commercially reasonable efforts, at the expense of the Disclosing Party, to ensure that all Confidential Information so disclosed will be accorded confidential treatment.

This Section 26.2.2 shall not apply to information disclosed as contemplated by Section 26.2.1(c).

- 26.3. Excluded Information. Confidential Information shall be deemed not to include the following:
  - 26.3.1. Information which is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party;
  - 26.3.2. Information which was available to the Receiving Party on a non-confidential basis prior to its disclosure by the Disclosing Party; and
  - 26.3.3. Information which becomes available to the Receiving Party on a non-confidential basis from a Person other than the Disclosing Party or its representative who is not otherwise bound by a confidentiality agreement with Disclosing Party or its agent or is otherwise not under any obligation to Disclosing Party or its agent not to disclose the information to the Receiving Party.
- 26.4. Injunctive Relief Due to Breach. The Parties agree that remedies at Law may be inadequate to protect each other in the event of a breach of this Article 26, and the Receiving Party hereby in advance agrees that the Disclosing Party shall be entitled to seek without proof of actual damages, temporary, preliminary and permanent injunctive relief from any Governmental Authority of competent jurisdiction restraining the Receiving Party from committing or continuing any breach of this Article 26.
- 26.5. Public Statements. The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement and the transactions contemplated hereby and Supplier shall not issue any such public announcement, statement or other disclosure without having first received the written consent of Buyer, except as may be required by Law. Notwithstanding the foregoing, Supplier acknowledges and agrees that Buyer may advertise, issue brochures or make other announcements, publications or releases regarding this Agreement and the Generating Facilities for educational, promotional or informational purposes. Supplier shall reasonably cooperate with Buyer regarding such activities, including provid-

ing Buyer with reasonable access to the Generating Facilities and authorizing the use of pictures of the Generating Facilities for such activities. It shall not be deemed a violation of this Article 26 to file this Agreement with the MPSC or FERC for approval or as required by applicable Law.

## 27. MISCELLANEOUS

### 27.1. Notices.

27.1.1. All notices hereunder shall, unless expressly specified otherwise, be in writing and shall be addressed, except as otherwise stated herein, to the Parties' Contract Representatives as set forth in Exhibit 3 or as modified from time to time by the receiving Party by notice to the other Party. Any changes to Exhibit 3 shall not constitute an amendment to this Agreement.

27.1.2. All notices or submittals required by this Agreement shall be sent either by hand-delivery, regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, overnight courier delivery, electronic mail or facsimile transmission. Such notices or submittals will be effective upon receipt by the addressee, except that notices or submittals transmitted by electronic mail or facsimile transmission shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 1600 EPT, and if transmitted after that time, on the following Business Day; provided, however, that if any notice or submittal is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. All oral notifications required under this Agreement shall be made to the receiving Party's Operating Representative and shall promptly be followed by notice as provided in the other provisions of this Section 27.1.

27.1.3. Notices of Force Majeure or an Event of Default pursuant to Article 18 or pursuant to Article 22, respectively, and notices of a change to Exhibit 3 shall be sent either by hand delivery, registered or certified U.S. mail (postage paid, return receipt requested), or overnight courier delivery, electronic mail or facsimile transmission. Such notices or submittals will be (i) preceded by a verbal communication to the applicable Contract Representative at the telephone number set forth in Exhibit 3 and (ii) effective upon receipt by the addressee; except that notices or submittals transmitted by electronic mail or facsimile transmission shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 1600 EPT, and if transmitted after that time, on the following Business Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

- 27.1.4. Any payments required to be made under this Agreement shall be made pursuant to the instructions in Exhibit 3, as such instructions may be changed by any Party from time to time by notice.
- 27.2. Merger. This Agreement contains the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations by the Parties with respect to such subject matter.
- 27.3. Counterparts. This Agreement may be executed in two (2) counterparts, both of which when taken together shall be deemed an original and constitute one and the same instrument.
- 27.4. Interpretation. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The words “include,” “includes” and “including” in this Agreement shall not be limiting and shall be deemed in all instances to be followed by the phrase “without limitation.” References to Articles and Sections herein are cross-references to Articles and Sections, respectively, in this Agreement, unless otherwise stated.
- 27.5. Headings. The headings or section titles contained in this Agreement are inserted solely for convenience and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner in the construction of this Agreement.
- 27.6. Severability. If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision or condition shall be deemed severed from this Agreement and all remaining terms, provisions and conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in good faith to replace such invalid, void or unenforceable provisions with valid and enforceable provisions which achieve the purpose intended by the Parties to the greatest extent permitted by law.
- 27.7. Waivers; Remedies Cumulative. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

- 27.8. Amendments. Amendments to this Agreement shall be mutually agreed upon by the Parties, produced in writing and shall be executed by an authorized representative of each Party. The Buyer may submit amendment(s) to the MPSC and FERC, as applicable, for filing, acceptance or approval.
- 27.9. Time is of the Essence. Time is of the essence to this Agreement and in the performance of all of the covenants, obligations and conditions hereof.
- 27.10. Choice of Law. This Agreement and the rights and obligations of the Parties shall be construed and governed by the Laws of the State of Michigan.
- 27.11. Further Assurances. The Parties hereto agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information which a Party, may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
- 27.12. Forward Contract. The Parties acknowledge and agree that this Agreement is a contract (other than a Commodity Contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into. “**Commodity Contract**” means (a) with respect to a futures commission merchant, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade; (b) with respect to a foreign futures commission merchant, foreign future; (c) with respect to a leverage transaction merchant, leverage transaction; (d) with respect to a clearing organization, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization; or (e) with respect to a commodity options dealer, commodity option.
- 27.13. No Third Party Beneficiaries. Except with respect to the rights of the Indemnified Party in Section 16.1 and Supplier’s Lenders in Section 21.8, (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (b) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their officers or duly authorized representatives on the date first stated above.

**BUYER:**

THE DETROIT EDISON COMPANY

By: *C. Conlen*  
Name: CHARLES L. CONLEN  
Title: DIRECTOR

**SUPPLIER:**

BOYCE HYDRO POWER, LLC

By: *Lee W. Mueller*  
Name: Lee W. Mueller  
Title: Co-Member Manager

By: *Stephen B. Hultberg*  
Name: Stephen B. Hultberg  
Title: Co-Member Manager

**EXHIBIT 1****DESCRIPTION OF GENERATING FACILITIES**

1. Name of Facilities:
  - (a) Sanford Hydroelectric Station  
Village of Sanford, Midland County, Michigan
  - (b) Edenville Hydroelectric Station  
Tobacco Township, Gladwin County, Michigan
  - (c) Smallwood Hydroelectric Station  
Hay Township, Gladwin, County, Michigan
  - (d) Secord Hydroelectric Station  
Secord Township, Gladwin County Michigan
  
2. Owner: Boyce Trust Hydro Property 2350, 3649, & 3650 LLCs
  
3. Operator: Boyce Hydro, LLC
  
4. Equipment:
  - (a) Type of Facility: Hydroelectric Generator
  - (b) Nameplate Capacity:
 

|            |                         |
|------------|-------------------------|
| Sanford:   | 3 units @ 1375 kva each |
| Edenville: | 2 units @ 3000 kva each |
| Smallwood: | 1 unit @ 1500 kva       |
| Secord:    | 1 unit @ 1500 kva       |
  - (c) Net Capacity
  
5. Description of Generating Facility Sites: Run of the river hydroelectric power stations

**EXHIBIT 2A**

**MONTHLY INVOICE PER GENERATING FACILITY**

Supplier Letterhead

Generating Facility:

Date:

Generating Facility ID:

Invoice Number:

Billing Period:

|                              | Base Firm Supply | Excess RECs | Total      |
|------------------------------|------------------|-------------|------------|
| Provisional REC Amount       | [REDACTED]       | [REDACTED]  | [REDACTED] |
| Product Rate                 | [REDACTED]       |             |            |
| Provisional Monthly Payment: | [REDACTED]       |             |            |

Payment due to [Supplier] on:

**EXHIBIT 2B**

**ANNUAL RECONCILIATION PER GENERATING FACILITY**

Supplier Letterhead

Generating Facility:  
Generating Facility ID:

Date:  
Invoice Number:  
For Contract  
Year:

| NET PAYMENT CALCULATION                                     | Base Firm Supply | Excess RECs | Total |
|---|------------------|-------------|-------|
| Annual Delivered RECs                                       |                  |             |       |
| Product Rate  |                  |             |       |
| Net Annual Amount   |                  |             |       |
| Total of Provisional Monthly Payments for the Contract Year |                  |             |       |
| <b>Net Excess (over) /Deficit (under) Payment</b>           |                  |             |       |

| EXCESS PAYMENT CALCULATION                 |  |
|--|--|
| If Excess Payment owing to Buyer, then:    |  |
| Amount Currently Due to Supplier by Buyer  |  |
| Excess Payment Amount                      |  |
| <b>Net Excess Payment After Deductions</b> |  |

Net Deficit Payment, if any, is due to [Supplier] on:

Net Excess Payment, if any, shall be deducted from any amounts owed to [Supplier] by [Buyer] as per the above calculations.

Any amount still in excess is due to [Buyer] on:

EXHIBIT 2C

REC SUBSTITUTION INVOICE

Supplier Letterhead

Generating Facility:  
Generating Facility ID:

Date:  
Invoice Number:  
Contract Year:  
Payment Due Date:

DELIVERED RECs DATA

| <b>Contract Year Data</b>            | <b>RECs</b> | <b>Yearly REC Amount</b> |
|--------------------------------------|-------------|--------------------------|
| Delivered RECs                       |             |                          |
| Yearly REC Amount                    |             |                          |
| Less Excused Adjustments:            |             |                          |
| Force Majeure                        |             |                          |
| Buyer Declared                       |             |                          |
| Emergencies                          |             |                          |
| <b>Annual Adjusted REC Shortfall</b> |             |                          |

| <b>REC SUBSTITUTION CALCULATION</b> |  |
|-------------------------------------|--|
| REC Substitution Cost               |  |
| Annual Adjusted REC Shortfall       |  |
| <b>TOTAL REC SUBSTITUTION COSTS</b> |  |

**EXHIBIT 3****NOTICES, BILLING AND PAYMENT INSTRUCTIONS****SUPPLIER:**

| <b>Contact</b>   | <b>Mailing Address</b>                             | <b>Phone</b>   | <b>E-mail</b>  |
|--|--|----------------|--|
| <b>Contract Representative</b>                                     |  |                |  |
| Lee W. Mueller, Architect<br>Co-Member Manager<br>Boyce Hydro, LLC | 4132 S. Rainbow Blvd., #247<br>Las Vegas, NV 89103 | (702) 367-7302 | <a href="mailto:lwmueller@boycehydrollc.com">lwmueller@boycehydrollc.com</a> |
| <b>Operating Representative</b>                                    |  |                |  |
| Frank O. Christie, P.E.<br>General Manager<br>Boyce Hydro, LLC     | 6000 S. M-30<br>P.O. Box 15<br>Edenville, MI 48620 | (989) 689-3161 | <a href="mailto:fchristie@boycehydrollc.com">fchristie@boycehydrollc.com</a> |
| <b>Operating Notifications</b>                                     |  |                |  |
| Frank O. Christie, P.E.<br>General Manager<br>Boyce Hydro, LLC     | 6000 S. M-30<br>P.O. Box 15<br>Edenville, MI 48620 | (989) 689-3161 | <a href="mailto:fchristie@boycehydrollc.com">fchristie@boycehydrollc.com</a> |
| <b>Invoices</b>  |  |                |  |
| Lee W. Mueller, Architect<br>Co-Member Manager<br>Boyce Hydro, LLC | 4132 S. Rainbow Blvd., #247<br>Las Vegas, NV 89103 | (702) 367-7302 | <a href="mailto:lwmueller@boycehydrollc.com">lwmueller@boycehydrollc.com</a> |

**Supplier:****PAYMENT INSTRUCTIONS****Payment Check:****OR**

Payment Wire Transfer:  
SEND TO: CHEMICAL BANK  
ACCOUNT MANAGER: JASON SEIGGREEN  
TELEPHONE NUMBER: 989-435-7753  
ADDRESS: 333 E. Main St., Midland, MI 48604  
ROUTING NUMBER: [REDACTED]  
ACCOUNT NUMBER: [REDACTED]  
ACCOUNT NAME: BOYCE HYDRO POWER LLC

BUYER:

| Contact                         | Mailing Address                      | Phone        | E-mail                   |
|---------------------------------|--------------------------------------|--------------|--------------------------|
| <b>Contract Representative</b>  |                                      |              |                          |
| Angela Wojtowicz                | 414 S. Main St., Ann Arbor, MI 48104 | 737-887-2087 | wojtowicza@dteenergy.com |
|                                 |                                      |              |                          |
|                                 |                                      |              |                          |
| <b>Operating Representative</b> |                                      |              |                          |
|                                 |                                      |              |                          |
|                                 |                                      |              |                          |
| <b>Operating Notifications</b>  |                                      |              |                          |
|                                 |                                      |              |                          |
|                                 |                                      |              |                          |
| <b>Invoices</b>                 |                                      |              |                          |
|                                 |                                      |              |                          |
|                                 |                                      |              |                          |
|                                 |                                      |              |                          |
|                                 |                                      |              |                          |
|                                 |                                      |              |                          |

Buyer:

PAYMENT INSTRUCTIONS

**Payment Check:**

**OR**

**Payment Wire Transfer:**

**EXHIBIT 4**

**BUYER'S REQUIRED REGULATORY APPROVALS**

1. MPSC Approval of this Agreement

**EXHIBIT 5**

**SUPPLIER'S REQUIRED REGULATORY APPROVALS**

1. MPSC certification of the Generating Facilities as Renewable Energy Systems
2. FERC having granted/accepted EWG, QF or such similar status of Supplier under applicable Law

**EXHIBIT 6****BUYER OBSERVED HOLIDAYS**

| <b><u>HOLIDAY</u></b>      | <b><u>DATE* – CALENDAR YEAR 2010</u></b> |
|----------------------------|--|
| New Year's Day             | January 1                                |
| Martin Luther King Jr. Day | January 18                               |
| Good Friday                | April 2                                  |
| Memorial Day               | May 31                                   |
| Independence Day           | July 5                                   |
| Labor Day                  | September 6                              |
| Thanksgiving Day           | November 25                              |
| Day After Thanksgiving Day | November 26                              |
| Christmas Eve Day          | December 23                              |
| Christmas Day              | December 24                              |
| New Year's Eve Day         | December 30                              |

**\* Note that the dates may change for certain holidays throughout the Term and that the foregoing schedule in respect of holiday dates relates solely to the Calendar Year 2010**

**EXHIBIT 7**  
**YEARLY REC AMOUNT**

**CONTRACT YEARS 1-7**

| Year | Base Supply Amount<br>(Firm Quantity) | Base Supply Amount<br>Price | Excess RECs<br>Price |
|------|---------------------------------------|-----------------------------|----------------------|
| 2009 | 30,000 RECS                           |                             |                      |
| 2010 | 30,000 RECS                           |                             |                      |
| 2011 | 30,000 RECS                           |                             |                      |
| 2012 | 30,000 RECS                           |                             |                      |
| 2013 | 30,000 RECS                           |                             |                      |
| 2014 | 30,000 RECS                           |                             |                      |
| 2015 | 30,000 RECS                           |                             |                      |

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

|   |   |                        |
|---|---|------------------------|
| In the matter, on the Commission's own      | ) |                        |
| motion, regarding the regulatory reviews,   | ) |                        |
| revisions, determinations, and/or approvals | ) | Case No. U-15806-REC K |
| necessary for The Detroit Edison Company    | ) |                        |
| to fully comply with Public Acts 286 and    | ) |                        |
| <u>295 of 2008.</u>                         | ) |                        |

**AFFIDAVIT OF KENNETH D. JOHNSTON**

STATE OF MICHIGAN     )  
   )ss.  
 COUNTY OF WAYNE     )

Kenneth D. Johnston, being first duly sworn, deposes and says:

1. I am a Regulatory Consultant in Regulatory Affairs for The Detroit Edison Company (Detroit Edison or Company). I have earned a Bachelor of Science Degree in Engineering from Lawrence Technological University and a Masters of Business Administration in Finance from the University of Michigan. In addition, I have completed advanced level mathematics and mechanical engineering courses at Lawrence Technological University. I have worked for Detroit Edison for over 26 years in various engineering-related, power/plant-related, customer-related, and regulatory-related areas.

2. As a Regulatory Consultant in Regulatory Affairs, I am responsible for coordinating, managing and providing expert testimony on various rate matters before the Michigan Public Service Commission (MPSC) and the Federal Energy Regulatory Commission (FERC). Subject matter includes Electric Choice (implementation cost recovery, rates, tariff administration, transition charges, energy efficiency, code of conduct, market priced power, and

program participation), transmission & ancillary services (rates, billing, energy scheduling, energy imbalance service), power supply cost recovery, rates for industrial send-out steam, wholesale-for-resale rates and renewable energy.

3. The recovery of the total Renewable Energy Credit (REC) expense associated with the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract submitted for Commission approval in this case are fully reflected in the Revenue Recovery Mechanism surcharges set forth in Exhibit No. A-24 (KDJ-5) in Detroit Edison's Renewable Energy Plan Case No. U-15806-RPS as approved by the Commission in its June 2, 2009 and August 25, 2009 Orders. As such, this Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract complies with the retail rate impact limits under MCL 460.1045 and, based on my experience and the above determinations, I believe that there will be no alteration or amendment in Detroit Edison rates or rate schedules nor will Commission approval of the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract increase the cost of service to Detroit Edison customers. As such, approval of the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract will not result in "*an alteration or amendment in rates or rate schedules*" and "*will not result in an increase in the cost of service to customers.*"

4. The Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract is consistent with Detroit Edison's Renewable Energy Plan approved by the Commission in MPSC Case No. U-15806-RPS and is otherwise reasonable and prudent based upon, among other things, the following Renewable Energy Credit contract pricing information. The total Renewable Energy Credit (hereinafter "REC") costs associated with the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract are consistent with the REC costs projected by the Company in the Company's March 4, 2009 Renewable Energy Plan filing in

Case No. U-15806-RPS. Specifically, the average REC price for all of the RECs to be delivered under the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract is \$7.75 per REC which is well below the projected 20-year average Renewable Energy Plan composite REC and ACEC price of \$15.66 per REC/ACEC and the projected 10-year average (Years 2009-2018) per REC/ACEC price of \$13.86 as set forth on Exhibit No. A-10 (JHB-6), lines 6, 25, 46 and 61 in Case No. U-15806-RPS. The total projected cost of RECs and ACECs from REC-only and ACEC-only contracts for the Company's Renewable Energy Plan was approximately \$65.2 million. The maximum cost of RECs from this Detroit Edison/Boyce Hydro Power, LLC REC contract combined with the two previously approved REC contracts is \$50.9 million.

5. From a volume and timing perspective, the firm purchase of 210,000 RECs and the additional purchase of 112,000 RECs through the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract are also consistent with Detroit Edison's Renewable Energy Plan, as set forth in Exhibit No. A-10 (JHB-6) in Case No. U-15806-RPS, which calls for Detroit Edison taking delivery of RECs and ACECs from third parties through REC-only and ACEC-only REC contracts beginning in 2009. For the 20-year Renewable Energy Plan period, the Company projected that it would obtain approximately 4.16 million RECs and ACECs from third parties through REC-only and ACEC-only contracts. The maximum number of RECs reflected in this contract (322,000) combined with the potential 3.85 million RECs from the two previously-approved contracts is consistent with the total projected number of RECs and ACECs to be obtained from third parties.

6. The Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract is the result of a Request for Proposal (RFP) that the Company issued on December 23, 2008 for Michigan-based RECs to address the Renewable Energy Credit Standard established in 2008 PA

295. The Company's RFP process which resulted in the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract submitted in this proceeding for Commission approval was conducted in accordance with the Guidelines for Competitive Request for Proposal for Renewable and Advanced Cleaner Energy which were issued as Attachment D to the December 4, 2008 Temporary Order in MPSC Case No. U-15800 and MCL 460.1033(1)(b).

7. The evaluation of the proposals received by the due date of January 9, 2009 from the December 23, 2008 RFP for Michigan-based RECs was performed in a manner consistent with Attachment D to the December 4, 2008 Temporary Order in MPSC Case No. U-15800, Exhibit No. A-33 (CLC-1) admitted in MPSC Case No. U-15806-RPS and the bid evaluation methodology developed in consultation with the MPSC Staff prior to issuance of the RFP. Detroit Edison received a total of 43 combinations of terms and prices for RECs and advanced cleaner energy credits (hereinafter "ACECs") from 11 suppliers in response to the RFP. Of the 43 combinations, 37 were mutually exclusive since the proposals were from the same resource location and/or same resource type. Using the evaluation scorecard admitted as Exhibit MSE-2 in Case No. U-15806 and developed in consultation with the MPSC Staff, Detroit Edison selected four (4) suppliers, none of which are affiliated with Detroit Edison, to negotiate Renewable Energy Credit contracts. There are a total of 14 proposals evaluated in the scorecard due to the 3 location-specific proposals submitted by one of the suppliers, and separating REC and ACEC proposals from the same supplier. After completing the analysis in the evaluation scorecard, Detroit Edison entered into negotiations with four (4) suppliers representing five (5) proposals, starting with the lowest cost price per REC.<sup>1</sup> In accordance with MCL

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<sup>1</sup> Detroit Edison previously filed an application requesting MPSC approval of two (2) Renewable Energy Credit Contracts on November 6, 2009 and the Commission issued an Order on December 1, 2009 in MPSC Case No. U-15806 granting the Company's request. The REC price initially submitted by Boyce Hydro Power, LLC (one of the four (4) selected suppliers) in response to the Company's December 4, 2008 RFP was greater than the average REC

460.1033(1)(b), the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract resulted from completed negotiations with qualified bidders with the lowest price conforming bids through the Company's RFP process.

8. The Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract will count toward the "[a]t least 50% of the Renewable Energy Credits" that shall be from renewable energy contracts that do not require transfer of ownership of the applicable renewable energy system to the electric provider or from contracts for the purchase of RECs without the associated renewable energy under MCL 460.1033(1)(b). Neither Detroit Edison nor DTE Energy is affiliated with Boyce Hydro Power, LLC or any of the facilities from which the RECs are to be generated.

9. In order to maintain a reasonably competitive environment for the provision of renewable energy, advanced cleaner energy and related equipment, products and services to Detroit Edison and its customers (such as RECs and ACECs) it is important to protect commercially sensitive information. Maintaining the confidentiality of the specific terms and conditions involved in acquiring renewable energy, advanced cleaner energy and related equipment, products and services, including RECs, will help ensure that the suppliers offer their best prices to Detroit Edison and thereby help Detroit Edison achieve the lowest reasonable cost for these items.

10. Accordingly, maintaining the confidentiality of various redacted provisions (including the price for firm and excess RECs, credit terms and account information) of the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract submitted in this

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price of the two previously-approved REC contracts however the negotiated price of RECs in this contract are well below the average REC prices of the two previously approved REC contracts.

case for Commission approval will help the Company provide Detroit Edison customers the lowest cost RECs consistent with 2008 PA 295.

11. Public disclosure of the redacted details in the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract will hamper the Company's ability to provide the lowest reasonable REC supply cost to its retail electric customers.

12. Based on my experience, I believe it is in the Company's, as well as its customers', best interest for such competitively sensitive information to remain confidential and undisclosed. Further, I believe it is in the Company's, as well as its customers', best interest for the Commission to grant the Company's request to approve the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract on an ex parte basis as being reasonable, prudent and consistent with the Company's Commission-approved Renewable Energy Plan and approve on an ex parte basis full recovery of the costs of the Detroit Edison/Boyce Hydro Power, LLC Renewable Energy Credit contract by Detroit Edison as an Incremental Cost of Compliance with the Renewable Energy Standard pursuant to 2008 PA 295.

Further, Affiant sayeth not.

---

KENNETH D. JOHNSTON

Subscribed and sworn to before  
me this 6th day of April, 2010.

---

Notary Public

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, )  
regarding the regulatory reviews, revisions, )  
determinations, and/or approvals necessary for )  
The Detroit Edison Company to fully comply )  
with Public Acts 286 and 295 of 2008. )  
\_\_\_\_\_ )

Case No. U-15806-REC K

**PROOF OF SERVICE**

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF WAYNE )

Estella R. Branson, being duly sworn, deposes and says that on the 6<sup>th</sup> day of April, 2010, a copy of The Detroit Edison Company's Application For Ex Parte Approval Of Renewable Energy Credit Contract and Affidavit of Kenneth D. Johnston in the above captioned matter was served upon the persons on the attached service list via e-mail.

\_\_\_\_\_  
Estella R. Branson

Subscribed and sworn to before  
me this 6<sup>th</sup> day of April, 2010.

\_\_\_\_\_  
Notary Public

**MPSC Case No. U-15806**  
**February 2010**  
**SERVICE LIST**

**ADMINISTRATIVE LAW JUDGE**

Hon. Barbara A. Stump, ALJ  
6545 Mercantile Way  
Lansing, MI 48911  
Stumpb1@michigan.gov

**ABATE**

Robert A.W. Strong  
Thomas Maier  
Clark Hill PLC  
151 South Old Woodward Avenue  
Suite 200  
Birmingham MI 48009-6179  
rstrong@clarkhill.com  
tmaier@clarkhill.com

James T. Selecky  
Brubaker & Associates, Inc.  
16690 Swingley ridge Road, Ste. 140  
Chesterfield, MO 63017  
jtselecky@consultbai.com

**CONSTELLATION NEWENERGY**

John M. Dempsey  
Dickinson Wright, PLLC  
215 Washington Square, Suite 200  
Lansing, MI 48933  
jdempsey@dickinsonwright.com  
Cynthia.A.Fonner@constellation.com

Jennifer L. Copeland  
Dickinson Wright PLLC  
301 E. Liberty, Suite 500  
Ann Arbor, MI 48104  
jcopland@dickinsonwright.com

**ENERGY MICHIGAN**

Eric J. Schneidewind, Esq.  
Varnum, Riddering & Schmidt  
201 N. Washington Square, Suite 810  
Lansing, MI 48933  
ejschneidewind@varnumlaw.com

**MICHIGAN ATTORNEY  
GENERAL**

Donald E. Erickson  
Assistant Attorney General  
Special Litigation Division  
525 W. Ottawa Street, 7<sup>th</sup> Floor  
Lansing, Michigan  
ericksond@michigan.gov

Michael J. McGarry, Sr.  
2131 Woodruff Road, Suite 2100 PMB 309  
Greenville, SC 29607  
mmcgarry@blueridgecs.com

Donna H. Mullinax, CPA, CIA  
Vice President/CFO Blue Ridge Consulting  
Services, Inc.  
114 Knightsridge Road  
Travelers Rest, SC 29690  
dmullinax@blueridgecs.com

**MICHIGAN COMMUNITY ACTION  
AGENCY ASSOCIATION**

Don L. Keskey  
Clark Hill PLC  
212 East Grand River Avenue  
Lansing, MI 48906  
dkeskey@clarkhill.com

**MICHIGAN SUSTAINABLE ENERGY  
COALITION**

Robert B. Nelson  
Jeremy J. Burchman  
Fraser, Trebilcock Davis & Dunlap, PC  
124 W. Allegan, Suite 1000  
Lansing, MI 48933  
rnelson@fraserlawfirm.com  
jburchman@fraserlawfirm.com

**MPSC STAFF**

Patricia S. Barone  
Assistant Attorney General  
6545 Mercantile Way, #15  
Lansing, MI 48911  
baronep@michigan.gov

**NEXTERA ENERGY RESOURCES, LLC**

Bruce Goodman  
333 Bridge St NW  
P.O. Box 352  
Grand Rapids, MI 49501  
bgoodman@varnumlaw.com

**NATURAL RESOURCES DEFENSE  
COUNCIL, MICHIGAN  
ENVIRONMENTAL COUNCIL ;  
ENVIRONMENTAL LAW & POLICY;  
ECOLOGY CENTER**

Christopher M. Bzdok  
Olson, Bzdok & Howard  
420 East Front Street  
Traverse City, MI 49686  
chris@envlaw.com

Robert Kelter  
Bradley Klein  
Environmental Law & Policy  
35 E. Wacker Drive, Suite 1300  
Chicago, IL 60601  
rkelter@elpc.org  
bklein@elpc.org

**RES NORTH AMERICA, LLC; NEW  
COVERT GENERATING COMPANY,  
LLC; LAFARGE MIDWEST, INC;  
MICHIGAN WHOLESALE POWER  
ASSOCIATION; AND LS POWER  
ASSOCIATES, LP**

Jon D. Kreucher  
Rodger A. Kershner  
Howard & Howard, PC  
450 W 4th St  
Royal Oak, MI 48067  
jkreucher@howardandhoward.com  
rkershner@howardandhoward.com

**THE DETROIT EDISON COMPANY**

Jon P. Christinidis  
Bruce R. Maters  
Michael J. Solo  
One Energy Plaza, 688 WCB  
Detroit, MI 48226  
christinidisj@dteenergy.com  
mpscfilings@dteenergy.com