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DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Petition of
Hydrodynamics, Inc., against NorthWestern
Energy to set terms and conditions for Flint
Creek Pursuant to 69-3-601 through - 604,
MCA

REGULATORY DIVISION
Docket No. _____

IN THE MATTER OF the Petition of
NorthWestern Energy for a Declaratory Ruling
on the Applicability of 18 C.F.R. § 292.304(f)
and ARM 38.5.1903(1) to Contracts with
Qualifying Facilities

REGULATORY DIVISION
Docket No. D2011.7.57

**PETITION PURSUANT TO 69-3-603, MCA, AND COMMENT ON NWE'S PETITION
FOR DECLARATORY RULING**

I. INTRODUCTION

Hydrodynamics, Inc., ("Hydrodynamics") hereby files this Petition pursuant to Montana Code Annotated ("M.C.A.") §§ 69-3-601 through -604 to have the Montana Public Service Commission ("Commission") set terms and conditions for a power purchase and sale agreement ("PPA") for the Flint Creek Hydroelectric, LLC project (the "Flint Creek project"). Granite County is the owner of the Flint Creek Project, which Hydrodynamics will construct and operate. The Flint Creek project has been unable to successfully negotiate a PPA with NorthWestern Energy ("NWE") and requests expedited consideration of its Petition to resolve this impasse with

NWE. The Flint Creek project has met all of the Commission criteria for creating a legally enforceable obligation (“LEO”) for its Flint Creek project as a Qualifying Facility or “QF.”

A significant issue in the negotiations is NWE’s apparent belief that it may curtail Flint Creek under conditions not contemplated by 18 C.F.R. § 292.304(f) and A.R.M. § 38.5.1903(1). This same curtailment language is the basis for NWE’s petition for declaratory ruling in Docket D2011.7.57. Under NWE’s new “interpretation” of A.R.M. § 38.5.1903(1) (in reality, nothing more than an attempt to amend the existing regulation without actually doing so), it is virtually impossible for the Flint Creek project to determine if the project would generate any revenue at all. Although NWE later amended its proposed PPA for the Flint Creek project to excise the offending curtailment language, since NWE contends that this curtailment language is consistent with existing federal and state law, Hydrodynamics has no assurance that NWE will not attempt to impose its unlawful interpretation of 18 C.F.R. § 292.304(f) and A.R.M. § 38.5.1903(1) on Flint Creek or other future Hydrodynamics’ projects. To the extent the Commission chooses to resolve NWE’s curtailment proposals in Docket D2011.7.57, Hydrodynamics requests that its legal argument, contained in Section II. E of this Petition also be entered into the record as comments in response to NWE’s Petition for Declaratory Ruling in Docket D2011.7.57. However, the issues as described by NWE in that docket, and as noticed by the Commission, do not address all of the issues either with respect to NWE’s unlawful curtailment provision, or with respect to other contractual language that Hydrodynamics believes is plainly biased in NWE’s favor.

For the Commission’s convenience, Hydrodynamics hereby submits the version of the executed power purchase agreement (“PPA”), that was signed by Roger Kirk, President of Hydrodynamics, the entity that will construct and operate the Flint Creek project (attached hereto

as Exhibit 1). Hydrodynamics respectfully requests that the Commission: (1) find that Flint Creek has incurred a legally enforceable obligation; (2) rule that NWE's proposed contract terms are unreasonable or unlawful; and (3) order NWE to execute the Flint Creek project's proposed PPA as set forth in Exhibit 1.

The Flint Creek project also wishes to note its objection to NWE's use of a Petition for Declaratory Ruling as the mechanism to resolve the appropriateness of its proposed curtailment language. First, there are material facts which are unlikely to be properly adduced when parties are limited to written comments and not properly subject to cross-examination at hearing. Counsel for the Flint Creek project is unaware of any jurisdiction anywhere resolving such a critical, life-or-death issue as curtailments based solely on written comments. Second, NWE seeks not to request clarification of the scope of the rule; it is plainly seeking to rewrite the rule in a manner inconsistent with years of prior Commission and NWE practice.

II. PETITION

A. Jurisdiction and Parties

1. Under M.C.A. § 69-3-603(1), if a QF and a utility are unable to agree to terms and conditions for a PPA, either party may petition the Commission, and "the commission shall require the utility to purchase the electricity under rates and conditions established under the provisions of subsection (2)." Hydrodynamics seeks Commission intervention to establish the appropriate terms and conditions for its Flint Creek project no later than the time frame set forth in M.C.A. § 69-3-603(2). However, Flint Creek also believes expedited consideration is in order given the Federal Energy Regulatory Commission's ("FERC") deadlines in the Flint Creek Project's hydroelectric permit and threat to financing based on those deadlines.

2. The Commission has jurisdiction over this dispute pursuant to M.C.A. §§ 69-3-601 through -604. As is set forth below, NWE has attempted: (1) to impose on QFs a different interpretation of permitted “light loading” curtailments than that which is contemplated by federal and state law; (2) to impose additional unreasonable contractual provisions limiting NWE’s damages and permitting NWE to cancel Flint Creek’s PPA even if Flint Creek is taking reasonable steps to remedy a force majeure situation; and (3) to substantially delay, and impede the timely construction of Hydrodynamics’ Flint Creek project such that it imperils the Flint Creek project’s ability to timely finance its construction activities in order to comply with its FERC hydroelectric license deadlines. NWE’s negotiation tactics, as well as its refusal to enter into a reasonable contract with Hydrodynamics have damaged and are continuing to damage Hydrodynamics and the Flint Creek Project.

3. NorthWestern Corporation d/b/a NorthWestern Energy is a Delaware Corporation and owns and operates the largest publicly regulated utility in Montana. NWE is subject to Commission jurisdiction as a Montana public utility.

4. Hydrodynamics is a Montana corporation that operates principally in Montana. Hydrodynamics’ Flint Creek project, a 2 MW hydroelectric facility located on Flint Creek below the Georgetown Dam, is a qualifying facility under the Public Utility Regulatory Policies Act of 1978, Section 210, 16 U.S.C. § 824-a3 (“PURPA”). Hydrodynamics has filed the appropriate QF Certification Form 556 with the Federal Energy Regulatory Commission (“FERC”). Hydrodynamics has negotiated 5 years and attempted for approximately the last six months to finalize an agreement with NWE. On information and belief, NWE has engaged in numerous tactics designed to prevent these negotiations from succeeding.

B. Service on Parties and Contact Information

5. Hydrodynamics’ attorney’s contact information is as follows:

Michael J. Uda
Uda Law Firm, P.C.
7 West 6th Avenue, Suite 4E
Helena, MT 59601
Telephone: (406) 457-5311
Email: muda@mthelena.com

6. Hydrodynamics' contact information is as follows:

Roger Kirk
Ben Singer
Hydrodynamics, Inc.
521 E. Peach, Suite 2B
Bozeman, MT 59715
Telephone: (406) 587-5086
E-mail: bensinger@hydrodynamics.biz

7. NWE's contact information is as follows:

NorthWestern Corporation d/b/a NorthWestern Energy
40 East Broadway
Butte, MT 59701

NorthWestern Energy
Suite 205
208 N. Montana
Suite 205
Helena, MT 59601
Telephone: (406) 443-8903
Facsimile: (406) 443-8979

8. Please direct all future correspondence, pleadings, and all other documents to the
aforementioned addresses.

C. Allegations

9. The Commission decided in Order 6444c to adopt a "bright line" test for whether
a QF had established an LEO so as to remove the uncertainty from QFs attempting to obtain
contracts from Montana utilities. *See In the Matter of Whitehall Wind*, Docket No. D2002.8.100,
Order 6444e, at p. 11, ¶ 46 (June 4, 2010). The Commission also felt that the test for

establishing an LEO set forth in *Whitehall Wind* struck the proper balance between ratepayer interests and those of prospective QF developers. *Id.* That test, adopted in WHW, is as follows:

To establish an LEO, a QF must tender an executed power purchase agreement to the utility with a price term consistent with the utility's avoided costs, with specified beginning and ending dates, and with sufficient guarantees to ensure performance during the term of the contract, and an executed interconnection agreement. The executed contract demonstrates an unconditional commitment. If the utility also executes the contract, the utility would be able to enforce the obligations undertaken by the QF. Interconnection expenses may be so high as to derail an otherwise feasible project. Only by acknowledging and agreeing to an interconnection agreement can a QF demonstrate that it is prepared to proceed despite any interconnection obstacles. Further, an interconnection agreement requires that a QF have sufficiently defined its project and made adequate progress that the project would be more than a mere speculative, paper proposal.

Id. at ¶ 47.

10. Hydrodynamics has complied with the Commission test by sending an executable PPA for the Flint Creek project to NWE, with a specified beginning and ending date, with the price term set consistent with NWE's current avoided cost tariff, signed by Mr. Kirk of Hydrodynamics.¹ See Exhibit 1 hereto. The Flint Creek project has also completed an interconnection agreement, attached hereto as Exhibit 2. The Flint Creek project thus has an LEO under Commission precedent.

11. Hydrodynamics negotiated with NWE on behalf of the Flint Creek project for five years and Hydrodynamics believed only in the past few months that the negotiations would finally result in a PPA. However, in April of 2011, NWE proposed inserting "curtailment" language into the Flint Creek PPA which is inconsistent with any existing QF PPA of which counsel for Hydrodynamics is aware. This language, as will be discussed further below, runs

¹ Mr. Kirk did not make copies of the signed PPA he sent to Mr. Frank Bennett of NWE. Instead, he sent an original and a signed copy to Mr. Frank Bennett of NWE and asked that NWE execute both copies and return one to Mr. Kirk for his records. NWE neither executed nor returned the signed originals to Mr. Kirk. See Affidavit of Roger Kirk, Exhibit 3, ¶ 2.

afoul of PURPA and the State's mini-PURPA. Attached hereto as Exhibit 3 is the affidavit of Roger Kirk, President of Hydrodynamics, who provides details of how this curtailment provision only recently showed up in PPA negotiations between Hydrodynamics and NWE, and the impossibility of obtaining financing for the Flint Creek project under NWE's proposed curtailment language. See Exhibit 3, ¶¶ 4-5.² Mr. Kirk's affidavit also includes as Attachment 1 thereto, the June 23, 2011 letter to Frank Bennett of NWE, and as Attachment 2 thereto, a June 7, 2011 letter from the Granite County Commission on NWE's proposed PPA for the Flint Creek project. Mr. Kirk's affidavit further includes the curtailment language used for years by NWE and its predecessor, Montana Power Company, in QF contracts. See Exhibit 3, Attachment 3 thereto.

12. Attached hereto is NWE's July 15, 2011, response to Hydrodynamics LEO letter which is attached hereto as Exhibit "4." Although NWE removed the offending curtailment language from the last iteration of its draft PPA, nonetheless since NWE is a apparently of the belief (as expressed in its Petition for Declaratory Ruling in Docket D2011.7.57) that its proposed curtailment language is consistent with existing federal and state law, there is no assurance that NWE will not attempt to impose economic curtailments on Flint Creek regardless of the presence of this language in the PPA proposed by NWE for the Flint Creek project. For this reason, Hydrodynamics needs the Commission's intervention to assure that Hydrodynamics can finance the Flint Creek project and that NWE's proposed curtailment language will not be imposed in any manner on the Flint Creek project.

13. NWE's behavior in conducting QF negotiations is particularly troubling given that it is proceeding apace with seeking approval for a build own transfer ("BOT") agreement

² Hydrodynamics expressly hereby incorporates Mr. Kirk's affidavit and the attachments to it into this Petition as though those allegations were completely set forth herein.

with a 40 Megawatt (“MW”) wind project to be constructed by Compass Wind, referred to as “Spion Kop.” NWE will own Spion Kop once it is constructed. Neither the Spion Kop BOT contract nor the alternative PPA language with Spion Kop (which NWE may utilize to purchase power from Spion Kop should the BOT contract not be consummated), contain curtailment provisions similar to those which NWE is attempting to impose on QFs. Such obvious discrimination against QFs is patently prohibited by PURPA and Montana’s mini-PURPA.

14. NWE does not absorb its own legal expenses – ratepayers do. NWE thus has little incentive to avoid legal squabbles over unreasonable PPA provisions. Small QF projects – and these are the only ones with a hope of obtaining a PPA in Montana – have to absorb their own legal costs, and thus every legal maneuver by NWE which is unjust or unreasonable causes these projects to be delayed or to give up. NWE is undoubtedly aware of this dynamic, which is why it does not hesitate to raise new barriers to entry. NWE has made it clear it intends to own its own projects rather than do PPAs with QFs, which is essentially what occurred with Spion Kop.

15. NWE’s lack of incentive to avoid legal squabbles with its competitor QFs is a significant factor in Hydrodynamics’ concern with the limitation on remedies provision proposed by NWE in Section 11.3.b of the proposed PPA:

THE EXPRESS REMEDY OR MEASURE OF DAMAGES SET FORTH IN THIS AGREEMENT SHALL BE THE SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO SUCH SECTIONS. EACH PARTY’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY FOR THE SAME DAMAGE OR INJURY ARE WAIVED. UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THAT PARTY OR BY ANY CUSTOMER OR ANY PURCHASER OF THAT PARTY, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY

PROVISION OR OTHERWISE (EXCEPT TO THE EXTENT THAT AN INDEMNIFYING PARTY PURSUANT TO THE PROVISIONS OF SECTION 12.1 HEREOF IS OBLIGATED TO INDEMNIFY AGAINST THIRD PARTY CLAIMS NOT ARISING OUT OF CONTRACTS WITH THE INDEMNIFIED PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES).

See Exhibit 4.

Hydrodynamics believes that limiting a QF's remedies in the fashion suggested may limit damages inappropriately in situations where intentional or other torts might apply to NWE's conduct. Like any company or entity, NWE should be required to pay for the consequences of its behavior – not just reimburse the QF for money that would have been owed anyway if NWE had not engaged in the unlawful behavior.

16. Hydrodynamics further contends that the proposed force majeure language contained in Article 10 of the draft PPA tendered by NWE to Hydrodynamics for the Flint Creek project is unreasonable and impedes financing the project. *See Exhibit 4.* The language of Article 10 of NWE's proposed PPA permits NWE to terminate the contract after 180 days even though Flint Creek is diligently and in good faith attempting to remedy the problem that caused the outage. Furthermore, the force majeure language of Article 10 expressly excludes from the definition of force majeure situations where, without any fault or negligence by the Flint Creek project, equipment simply fails because of ordinary wear and tear or "flaws randomly experienced." Also, Article 10 further excludes from the definition of force majeure situations where equipment is simply unavailable to the Flint Creek project, even though Flint Creek has done nothing to cause the unavailability of that equipment. There are other flaws in Article 10 that need the Commission's intervention as these flaws will undermine efforts by the Flint Creek project to obtain financing.

17. There are other PPA issues which are problematic for the Flint Creek project. NWE also proposes to pay interest on payment defaults at the London Interbank Offered Rate “posted on the date of payment calculation.” See Exhibit 4, Article 8.4. On information and belief, the London Interbank Offered Rate is substantially lower than that offered elsewhere by local banking institutions, and creates an incentive on the part of NWE to withhold payments from the Flint Creek project. See Exhibit 4.

E. Legal Comments on NWE’s Unlawful Curtailment Provision/Legal Comments on Petition in D2011.7.57

18. The United States Supreme Court stated in *American Paper Inst. Inc., v. American Elec. Power Serv. Corp.*, 461 U.S. 402, 405 (1983), that PURPA’s purpose was to “encourage the development of cogeneration and small power production facilities.” Citing *FERC v. Mississippi*, 456 U.S. 742 (1982). “Congress believed that increased use of these sources of energy would reduce the demand for traditional fossil fuels,” and it recognized that electric utilities had traditionally been “reluctant to purchase power from, and sell power to, the nontraditional facilities.” *Id.* Congress also provided that rates for purchases by utilities from QFs: “(1) shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and (2) shall not discriminate against qualifying cogenerators or qualifying small power producers. PURPA § 210(b), 16 U.S.C. § 824a-3(b). Congress also provided that “[no] such rule prescribed under subsection (a) of this section shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.” *Id.*

19. FERC thereafter adopted rules implementing PURPA pursuant to the Congressional directive, including a discussion of the “avoided cost” principle which implements the statutory phrase “incremental cost to the electric utility of alternative electric energy.” More specifically, FERC adopted 18 C.F.R. §§ 292.304(b) (5) and 18 C.F.R. 292.304(d), to encourage

the development of cogeneration and renewable technologies. 18 C.F.R. § 292.304(b) (5) states:

(5) In the case in which the rates for purchases are based upon estimates of avoided costs over the specific term of the contract or other legally enforceable obligation, the rates for such purchases do not violate this subpart if the rates for such purchases differ from avoided costs at the time of delivery.

18 C.F.R. § 292.304(d) states:

(d) Purchases as available or pursuant to a legally enforceable obligation. Each qualifying facility shall have the option either:

(1) To provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or

(2) To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity over a specified term, in which case the rates for such purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:

(i) The avoided costs calculated at the time of delivery; or

(ii) The avoided costs calculated at the time the obligation is incurred.

20. In FERC's Notice of Proposed Rulemaking, FERC Order 69, 45 Fed. Reg. 12214, 12224 (Feb. 25, 1980) (hereafter "FERC Order 69"), FERC clarified its intention in adopting 18 C.F.R. §§ 292.304(b) and (d). FERC stated:

Paragraphs (b)(5) and (d) are intended to reconcile the requirement that the rates for purchases equal the utilities' avoided cost with the need for qualifying facilities to be able to enter into contractual commitments based, by necessity, on estimates of future avoided costs. Some of the comments received regarding this section stated that, if the avoided cost of energy at the time it is supplied is less than the price provided in the contract or obligation, the purchasing utility would be required to pay a rate for purchases that would subsidize the qualifying facility at the expense of the utility's other ratepayers. The Commission recognizes this possibility but is cognizant that in other cases, the required rate will turn out to be lower than the avoided cost at the time of the purchase. The Commission does not believe that the reference in the statute to the incremental cost of alternative energy was intended to require a minute-by-minute evaluation of costs which would be checked against rates established in long term rates established in contracts between qualifying facilities and electric

utilities.

Many commenters have stressed the need for certainty with regard to return on investment in new technologies. The Commission agrees with these latter arguments, and believes that, in the long run, "overestimations" and "underestimations" of avoided costs will balance out.

Paragraph (b)(5) addressed the situation in which a qualifying facility has entered into a contract with an electric utility, or where the qualifying facility has agreed to obligate itself to deliver at a future date energy and capacity to the electric utility. The import of this section is to ensure that a qualifying facility which has obtained the certainty of an arrangement is not deprived of the benefits of its commitment as a result of changed circumstances.

21. The import of the aforementioned sections is that FERC recognized that avoided costs may vary over time from the price established at the time that a contract or "legally enforceable" obligation is incurred, and that this variance from a utility's cost of energy at any point in time does not violate the principle of avoided costs. FERC also explicitly recognized the need for long term rates that will permit financing of QFs, and that QFs necessarily need a prospective rate that permits such financing.

22. Thus, the "just and reasonable determination" that FERC had in mind is one which permits long-term financing of contracts based on stable rates that do not vary by the minute, but also do not exceed the utility's prospective avoided costs over the anticipated length of a QF PPA. As will be demonstrated below, this is particularly true with respect to the curtailment language proposed by NWE in this proceeding, which completely violates the avoided cost principle in several ways: (1) by applying to situations where NWE is not experiencing a "light loading curtailment" (i.e., a "negative avoided cost" situation), (2) by discriminating against QFs by requiring curtailment language NWE does not propose to use with respect to Compass Wind's Spion Kop project which NWE has also recommended that the Commission use as the basis for

avoided costs for new QF projects; and (3) failing to adjust NWE's proposed avoided cost upward to account for the curtailments that will not take place with Spion Kop as NWE's proposed "avoidable" resource. FERC has made it clear that any avoided cost determination that pays less than the avoided cost to a new qualifying facility is inconsistent with PURPA: "However, State laws or regulations which would provide rates lower than the federal standard would fail to provide the requisite encouragement of these technologies and must yield to federal law." FERC Order 69 at 12221

23. NWE proposed curtailment language thus simultaneously chills development of renewable energy technologies, discriminates against QFs, and would pay QFs less than NWE's full avoided cost. NWE has offered the proposed language of its curtailment provision as follows:

No Obligation to Accept Energy: Northwestern shall not be obligated to accept or pay for Energy from Seller during any period in which, due to operational circumstances, the acceptance of Energy from Seller and Similarly-Situated Suppliers of energy to NorthWestern is expected to result in NorthWestern system costs greater than those which NorthWestern would incur if it did not accept such deliveries, including periods in which NorthWestern generated an equivalent amount of energy itself. For illustrative purposes only, and without limiting the circumstances under which NorthWestern might be relieved of the obligation to accept or pay for Energy from Seller under this section, an example of such a period is a period when NorthWestern would be forced to shut down a base load or intermediate load plant in order to accept deliveries of Energy from Seller and such base load or intermediate load plant could not then be restarted and brought up to its rated output to meet the next period's peak load and NorthWestern would consequently be required to utilize costly or less efficient generation with faster start-up or purchase higher-priced energy to meet the demand that could have been met by the base load or intermediate load plant but for such purchases from Seller. During periods in which NorthWestern is purchasing energy both from Seller and from Similarly-Situated Suppliers, the implementation of any curtailments of deliveries of energy is subject to the sole discretion of NorthWestern; provided, however, as between Seller and such

Similarly-Situated Suppliers, such curtailments shall be made on a non-discriminatory basis in accordance with the NorthWestern Energy Curtailment Protocol attached hereto as Exhibit C.

("Curtailment Provision").

24. NorthWestern did not include Exhibit C in its petition. That Exhibit explains further how NWE intends to implement the foregoing language:

NorthWestern omitted to include the aforementioned Exhibit C, and it reads as follows:

Advance Notice

For each delivery month, NorthWestern will determine whether curtailment pursuant to Section 4.1 of the PPAQF may be necessary. The determination will be made as follows:

NorthWestern will calculate its Forecasted Total Available Resources for on-peak hours and off-peak hours. "Forecasted Total Available Resources" is defined as the sum of the generating capacity of all of NorthWestern's owned, leased, and contracted generating assets available for energy supply, plus existing energy purchases, minus existing energy sales for the applicable period.

The Forecasted Total Available Resources will be compared with NorthWestern's Forecasted Hourly Supply Load for the applicable month. If the Forecasted Total Available Resources exceed the Forecasted Hourly Default Supply Load in any hour, a curtailment pursuant to Section 4.1 of the PPAQF may be necessary and NorthWestern will provide Advance Notice to the Seller. Such Advance Notice will be provided at least one month in advance of any hour subject to curtailment.

Notice of Curtailment

During any period for which NorthWestern has previously provided Advance Notice of curtailment, Seller's generation may be curtailed as follows.

For each scheduling hour, NorthWestern will determine its Total Available Resources and Hourly Scheduled Supply Load. "Total Available Resources" is defined as the sum of the expected generation for NorthWestern's owned, leased, and contracted generating assets available for energy supply at their expected generation levels plus day-ahead or longer-term energy purchases minus day-ahead or longer-term energy sales. "Hourly Scheduled Supply Load" is defined as NorthWestern's estimate of its Supply obligation for the scheduling hour as determined 60 minutes in advance of the beginning of the scheduling hour.

If the Total Available Resources exceed the Hourly Scheduled Supply Load, a curtailment *may* be deemed to be operationally necessary. *A determination of the amount of scheduled energy purchases to be curtailed and the Sellers to whom the curtailment procedures will apply is subject to the sole discretion of*

NorthWestern. NorthWestern will provide a Notice of Curtailment to *each Seller from whom purchases of electricity are to be curtailed* by email at least 40 minutes in advance of the beginning of the scheduling hour directing Seller to limit its generating capacity to the amount specified for that hour.

For any hour for which it is given a Notice of Curtailment, Seller is responsible to limit its generating capacity to the amount specified by NorthWestern for that hour. In the event that Seller generates and delivers energy in excess of the amount specified, the price paid by NorthWestern to the Seller for the excess energy will be \$0.

Documentation

For each hour that a curtailment occurs, NorthWestern will document the Total Available Resources and the Hourly Scheduled Supply Load that were used to determine that the curtailment was operationally necessary. NorthWestern will provide the documentation to the Seller for any hours that were curtailed in the prior month as part of the regular monthly settlement process.

(Emphasis added).

25. Although NWE references the appropriate rule, 18 C.F.R. § 292.304, NWE has badly misconstrued the meaning of 18 C.F.R. § 292.304(f). FERC clearly intended “operational circumstances” permitting curtailment to be limited to circumstances where the utility must back down *base load generation* that the utility cannot thereafter restart in time to meet its load obligations, necessitating the purchase of power more expensive than the base load generation reduced in order to accommodate purchases from QFs. 18 C.F.R. § 292.304(f) states in full:

(f) *Periods during which purchases not required.* (1) Any electric utility which gives notice pursuant to paragraph (f) (2) of this section will not be required to purchase electric energy or capacity during any period during which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases, but instead generated an equivalent amount of energy itself.

(2) Any electric utility seeking to invoke paragraph (f)(1) of this section must notify, in accordance with applicable State law or regulation, each affected qualifying facility in time for the qualifying facility to cease the delivery of energy or capacity to the electric utility.

(3) Any electric utility which fails to comply with the provisions of paragraph (f)(2) of this section will be required to pay the same rate for such purchase of

energy or capacity as would be required had the period described in paragraph (f)(1) of this section not occurred.

(4) A claim by an electric utility that such a period has occurred or will occur is subject to such verification by its State regulatory authority as the State regulatory authority determines necessary or appropriate, either before or after the occurrence.

26. Order 69, in discussing C.F.R. § 292.304(f), clearly limits a utility's authority to undertake "light loading" curtailments to a very narrow set of circumstances:

This section was intended to deal with a certain condition which can occur during light loading periods. If a utility operating only base load units during these periods were forced to cut back output from the units in order to accommodate purchases from qualifying facilities, these base load units might not be able to increase their output level rapidly when the system demand later increased. As a result, the utility would be required to utilize less efficient, higher cost units with faster start-up to meet the demand that would have been supplied by the less expensive base load unit had it been permitted to operate at a constant output.

The result of such a transaction would be that rather than avoiding costs as a result of the purchase from a qualifying facility, the purchasing electric utility would incur greater costs than it would have had it not purchased energy or capacity from the qualifying facility. A strict application of the avoided cost principle set forth in this section would assess these additional costs as negative avoided costs which must be reimbursed by the qualifying facility. In order to avoid the anomalous result of forcing a qualifying utility to pay an electric utility for purchasing its output, the Commission proposed that an electric utility be required to identify periods during which this situation would occur, so that the qualifying facility could cease delivery of electricity during those periods.

Many of the comments received reflected a suspicion that electric utilities would abuse this paragraph to circumvent their obligation to purchase from qualifying facilities. In order to minimize that possibility, the Commission has revised this paragraph to provide that any electric utility which seeks to cease purchasing from qualifying facilities must notify each affected qualifying facility prior to the occurrence of such a period in time for the qualifying facility to cease delivery of energy or capacity to the electric utility. The notification can be accomplished in any reasonable manner determined by the State regulatory authority. Any claim by an electric utility that such a light loading period will occur or has occurred is subject to such verification by its State regulatory authority as the State authority determines necessary or appropriate either before or after its occurrence. Moreover, any electric utility which fails to provide adequate notice or which incorrectly identifies such a period will be required to reimburse the qualifying facility for energy or capacity

supplied as if such a light loading period had not occurred. The section has also been modified to clarify that such periods must be due to operational circumstances.

The Commission does not intend that this paragraph override contractual or other legally enforceable obligations incurred by the electric utility to purchase from a qualifying facility. In such arrangements, the established rate is based on the recognition that the value of the purchase will vary with the changes in the utility's operating costs. These variations ordinarily are taken into account, and the resulting rate represents the average value of the purchase over the duration of the obligation. The occurrence of such periods may similarly be taken into account in determining rates for purchases.

FERC Order 69, at 12227-28 (Emphasis added).

27. NWE's interpretation of 18 C.F.R. § 292.304(f) is plainly inconsistent with FERC's stated intent in adopting that regulation. FERC never intended to permit a utility to implement "light loading" curtailment whenever its hourly generation, regardless of the source of that generation, exceeds its hourly load. Indeed, FERC was clear that the "operational circumstances" to which it referred only occurs in situations where utility base load generation must be curtailed to the point where it must be shut down to accommodate QF purchases, and then later the utility's baseload generation cannot restart in time in order to avoid purchasing more expensive generation to serve the utility's system needs. Under such circumstances, the utility would indeed be experiencing "negative avoided costs," and thus curtailment would be justified. Furthermore, FERC was aware that avoided costs might vary over the length of a legally enforceable obligation incurred by a QF such that the long-term rate for a QF project would be adjusted prospectively to average short term fluctuations in a utility's system costs over the length of the QF's long term rate.

28. Furthermore, FERC did not intend to interfere with long term investment in QFs by permitting a utility the discretion to curtail QF output whenever a utility experienced a surplus of supply. Note that NWE is not requiring itself to curtail its own baseload generation at all

under its formula as expressed in Exhibit “C,” nor is NWE required to curtail intermediate generation before it curtails QF generation. Indeed, in NWE’s “discretion” it can apparently curtail QFs even if NWE has made resource acquisition decisions subsequent to entering into PPAs with QFs that NWE believes will result in an excess of hour ahead generation resources to meet hour ahead load. Such an interpretation of 18 C.F.R. § 292.304 does violence to the plain language of the rule as adopted by FERC. NWE offers no reasonable explanation of how or why NWE’s proposed curtailment language is consistent with FERC policy.

29. In point of fact, NWE’s curtailment policy prevents the precise sort of long-term commitment needed to finance generation projects that FERC expressly required in adopting its PURPA regulations. No lending institution will provide debt service to a project with a PPA that contains a provision which undercuts the revenue stream from that project. Further, NWE’s proposed curtailment provisions may also result in a substantial understating of NWE’s own avoided costs, since the Spion Kop project BOT and PPAs would have to contain the same curtailment language in order to not discriminate against QFs. Therefore, if NWE intends to curtail Spion Kop on a non-discriminatory basis, the capacity factor and thus the acquisition or PPA price would have to be adjusted upward to account for a lower number of hours from which return on investment could be recovered. Thus, NWE’s use of this curtailment language for QFs but not its own resources substantially understates NWE’s actual avoided costs in violation of FERC Rule 18 C.F.R. § 292.304. Alternatively, in the event NWE does *not* intend to curtail Spion Kop on a non-discriminatory basis with QFs, NWE’s proposed curtailment of QFs would violate PURA’s proscription on discrimination against QFs. NWE’s proposed curtailment language thus either violates the avoided cost principles of PURPA or the anti-discrimination

provisions of PURPA. In either event, NWE's proposed curtailment language is plainly illegal under PURPA.

30. NWE's proposed curtailment language substantially impedes the development of QFs in favor of NWE building its own projects. In addition, NWE's curtailment language undercuts a stable, long-term avoided cost rate which FERC has repeatedly explained is consistent with PURPA and a right of QFs. The Commission must resist NWE's invitation to error.

31. Nor does NWE's proposal square with the plain language of A.R.M. § 38.5.1903(1), which expressly requires "each utility to purchase *any* energy and capacity made available by a qualifying facility" except under three circumstances:

- (i) during system emergencies if such purchase would contribute to the emergency,
- (ii) as stipulated in the contract between the utility and the qualifying facility;
- (iii) if, due to operational circumstances purchases from a qualifying facility will result in costs greater than those which the utility would incur if it did not make such purchase. *This provision is only applicable in the case of light loading periods in which the utility must cut back base load generation in order to purchase the qualifying facility's production followed by an immediate need to utilize less efficient generating capacity to meet a sudden high peak. Any utility seeking to invoke this exception must notify each affected qualifying facility and the commission one month prior to the time it intends to invoke this provision. Failure to properly notify the qualifying facilities and the commission or incorrect identification of such period will result in reimbursement to the qualifying facility by the utility in an amount equal to that amount due had the qualifying facility's production been purchased.*

(Emphasis added).

32. It is plain from even a cursory review of NWE's proposed curtailment language and its "policy" as reflected in Exhibit "C," that NWE's proposed curtailment language is significantly broader than the Commission's rule. First, the Commission rule makes it clear there are only three conditions in which NWE's right not to purchase

output from QFs is triggered. First, as stated above, NWE's proposed curtailment language contemplates curtailment in many situations other than those where NWE is required to curtail base load generation which it cannot then restart to meet its system obligations. Indeed, NWE does not even propose that it be required to reduce its base load generation during light loading periods (or any other generation for that matter), prior to implementing these curtailments. Second, NWE's proposed policy does not appear to contemplate notification to the Commission a month prior to implementing such curtailments and allowing the Commission and its staff to verify NWE's claim of "light loading curtailment."

33. Regulations, like statutes, must be interpreted according to their plain language. As the Montana Supreme Court stated in *Powell County v. Country Village, LLC*, 2009 Mont. ___, ¶ 15, 352 Mont. 291, ¶ 15, 217 P.3d 508, ¶ 15 (2009):

Statutes and regulations must be interpreted in accordance with the plain language of the provision. *Shelby Distributors, LLC v. Mont. Dept. of Revenue*, 2009 MT 80, ¶ 18, 349 Mont. 489, 206 P.3d 89; *Barnard v. Liberty Northwest Ins. Corp.*, 2008 Mt. 254, ¶ 17, 345 Mont. 81, 189 P.3d 1196. In addition, when possible all provisions of a statute or regulation must be read together to give meaning to all. *Stave v. Brendal*, 2009 Mt. 236, ¶ 18, 351 Mont. 395, 212 P.3d 448: "When possible, we interpret statutes to give effect to the Legislature's intent. We will also read and construe the statute as a whole to avoid an absurd result and to give effect to a statute's purpose." *Brendal*, ¶ 18.

34. The regulation could not be clearer that the Commission rule proscribes curtailments under the multitude of situations NWE claims may trigger "light loading" curtailments of QF generation. A.R.M. § 38.5.1903(1) requires a utility to buy *any* output from QFs unless there is a light loading situation as described the rules, there is a system emergency, or the QF obligates itself consensually to permit NWE not to buy its output in additional situations. Indeed, NWE and its predecessor, Montana Power Company, always interpreted A.R.M. § 38.5.1903(1) in the

manner stated herein by the Flint Creek project and included such provisions verbatim in PPAs with QFs. *See* Exhibit 3, Attachment 3. For NWE to now claim that its proposed curtailment language is consistent with A.R.M. § 38.5.1903(1) is little more than opportunism.

35. In a similar situation, the Supreme Court of West Virginia found that the West Virginia Public Service Commission could not reinterpret its regulation regarding the definition of “purchased gas” to include “transported gas” in order to contravene the plain language of the rule:

The ALJ and the PSC did not explain why the change in the marketplace with respect to the volume of transported gas justifies Hope's “interpretation” of Rule 30-C, as opposed to an amendment to the rule. *A statute, or an administrative rule, may not, under the guise of “interpretation,” be modified, revised, amended or rewritten. State v. General Daniel Morgan Post. No. 548, 144 W. Va. 137, 145, 107 S.E.2d 353, 358 (1959) (involving a statute).*

Consumer Advocate Div. of Pub. Serv. Com'n v. West Virginia Pub. Serv. Com'n, 182 W.Va. 152, 156, 386 S.E.2d 650, 654 (Emphasis Added).

The Commission here is no freer than the Western Virginia Commission to “interpret” away the plain meaning of a regulation, particularly one which the Commission has required NWE since 1981 to distribute to prospective QFs. *See* A.R.M. § 38.5.1903(8). If the Commission wishes to adopt such a drastic departure from its present rule consistent with NWE's request, the Commission would have to *amend its existing rule to reflect such a change*. To do otherwise would be unlawful. Put plainly, a declaratory ruling petition is not the proper vehicle for attempting to amend regulations; a notice of intent to adopt or amend a rule is the appropriate vehicle under the Montana Administrative Procedure Act.³

³ Even if the Commission attempted to amend A.R.M. § 38.5.1903(1) to be consistent with NWE's new “interpretation,” such a revision to the existing rule would plainly violate PURPA as explained above.

36. Nor should the Commission be dissuaded by the provision of A.R.M. § 38.5.1903(1) that permits QFs and NWE to agree to other sorts of curtailments. Certainly, QFs have the opportunity to bind themselves to a curtailment provision which is broader than the Commission's rules. However, the QFs who have not agreed to such additional restrictions on their right to sell power to NWE have every right to rely on the Commission's existing QF rules.

37. The cases cited by NWE do not support its broad interpretation of 18 C.F.R. § 292.304(f) or address the Montana specific regulation in A.R.M. § 38.5.1903(1). Indeed the California Public Utility Commission ("CPUC") decisions approving tariffs offered by the state's three major utilities do not even come close to supporting NWE's interpretation of 18 C.F.R. § 292.304(f). The very language cited from those tariffs refers only to situations where Edison would be forced

to shut down baseload or intermediate load plants in order to accept deliveries from Seller and such base load or intermediate load plants could not then be restarted and brought up to their rated output to meet the next day's peak load and Edison would be required to utilize costly or less efficient generation with faster startup or make an expensive emergency purchase of capacity to meet the demand that could have been met by the baseload or intermediate load plants but for such purchase from Seller, even if such purchases from Seller were at a price of zero (0).

38. Furthermore, the CPUC has never approved any language remotely like that which NWE is suggesting for Montana QFs. In implementing PURPA, the CPUC in 1982 essentially adopted staff's recommendation that curtailment of QF generation be permitted only for "conditions of emergency, maintenance or minimum load." *In re Commission Rules Regarding Electric Utility Purchases of Electric Power from Cogeneration and Small Power Production Facilities*, 8 CPUC 2d 20, 1982 WL 196903 (Cal P.U.C.), Decision No. 82-01-193 (January 21, 1982). Furthermore, the CPUC stated that although the utilities interpreted 18 C.F.R. § 18 C.F.R. 292.304(f) more liberally than FERC intended, "The language of the

regulation expressly limits its application to periods when the choice is between a QF and self-generation. There is no recognition of economy energy purchases.” *Id.* at p. 33. And the CPUC further noted that permitting a utility to curtail when energy prices were lower than the contract rate with the QF would be unfair unless the utility would also pay a higher price to the QF when the contract rate was less than current prices for energy. *Id.* The CPUC expressly limited a utility’s right to curtail to situations where the utility’s avoided cost was negative. *Id.*

39. The Commission will also recall that California has gone through several different iterations of its utility regulation paradigm, including deregulating energy supply and putting its generation in the hands of an independent non-utility entity, in this case the California Independent System Operator (“CAISO”). The applicability of California’s regulatory decisions under an entirely different structure is therefore highly dubious. However, to the extent the Commission believes any California authority applicable to Montana, the Commission should also consider the CPUC’s recent decision with respect to imposing economic curtailment on non-QF renewable generators. *Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program*, Rulemaking 08-08-009, April 20, 2011 (hereafter “CPUC Order at ___”).

40. The CPUC found economic curtailment of non-QF renewables reasonable in light of the CAISO’s new real time programming and scheduling system Market Redesign and Technology Upgrade (“MRTU”), a system that uses Local Marginal Prices as price signals reflecting electricity supply and demand in multiple locations: “We reach this conclusion because MRTU has the potential of significantly changing the way generation resources are scheduled, dispatched and located. RPS contracts must reasonably reflect the CAISO’s new

economic approach. Failure to do so could undermine the ability of MRTU to optimally use price signals for those economic purposes.” CPUC Order at 17.

41. The CPUC limited its approval to the Pacific Gas and Electric (“PG&E”) and Southern California Edison (“SCE”) proposals.⁴ CPUC Order at 15. PG&E’s proforma curtailment language for renewable generator provides for economic curtailment up to five percent of a renewable project’s expected generation per year, with PG&E *paying the full price for the curtailed energy*. However, PG&E does not pay for any tax benefits lost, including production tax credits (“PTCs”). The CPUC made it clear that such economic curtailment by PG&E would equal no more than five percent of the renewable generator’s expected generation for the year, regardless of whether the curtailment was caused by PG&E. CPUC Order *passim* at 16-18.

42. SCE’s pro forma contract for renewable generators provides for economic curtailment without compensation (and without reimbursement for lost PTCs) up to a pre-determined, negotiated number of hours capped at between 50 and 200 per year. Economic curtailment in excess of the cap is to be compensated by SCE at the contract price plus the value of any lost PTCs. CPUC Order at 16-17.

43. Perhaps most relevant to this proceeding, the CPUC stated “[a]ll parties agree, however, that the proposals by both PG&E and SCE (as modified) are financeable because, by establishing specific limits, each bounds the developer’s economic curtailment risk.” CPUC Order at 18. In contrast, NWE’s proposed curtailment language provides complete uncertainty for lenders, and thus impedes the ability of QF developers to obtain financing.

⁴ San Diego Gas and Electric did not propose economic curtailment language in its pro forma contract but was directed by the CPUC to do so.

44. In summary, the CPUC has never adopted the sort of economic curtailment language sought by NWE here. Indeed, the CPUC is and has always been sensitive to the notion that an unlimited right to curtail would significantly impede the development of renewable resources. Also significant is the notion that the CAISO is an independent operator and it, rather than the utilities, makes the determination if a reliability problem requires curtailment. Finally, the CPUC decisions collectively represent a decision to only permit curtailment whenever the utility's own resources must be backed down past minimum operating levels such that they cannot be restarted in time to meet system peaks. NWE is not limiting its proposal to such situations.

45. The decision by the Hawaii Public Service Commission ("HPSC") offered by NWE in support of its petition is not persuasive. The HPSC Feed In Tariff ("FIT") program is not based on avoided costs or PURPA, but rather is based on the cost of production of the facility plus a return on that investment for various technologies:

As part of the Hawaii Clean Energy Initiative, the HECO Companies and the state of Hawaii entered a comprehensive agreement designed to move the state away from its dependence on foreign fuels and toward indigenously produced renewable energy and an ethic of energy efficiency. *Included in the agreement is a commitment by the HECO Companies to implement FITs to dramatically accelerate the addition of renewable energy from new sources and to encourage increased development of alternative energy projects.*

Under the general principles set forth by the commission, for the initial FIT there will be rates for photovoltaic, concentrated solar power, onshore wind, and in-line hydropower projects. There also will be a baseline FIT rate to encourage other renewable technologies. *Existing renewable producer options - net energy metering, competitive bidding, negotiated power purchase agreements, Schedule Q power purchases from small qualifying facilities, and avoided cost offerings under the Public Utility Regulatory Policies Act of 1978 - will continue as additional and complementary mechanisms to provide multiple avenues for the procurement of renewable energy.*

The FIT rates will be based on the costs, including a reasonable profit, of a typical project. The rates will be differentiated by technology or resource, size,

and interconnection costs; and will be levelized. The HECO Companies will file FITs that include specific rates in the next phase of this proceeding.

In Re Feed in Tariffs, 277 P.U.R.4th 256, 2009 WL 3756418 (Hawai'i P.U.C.), Docket 2008-0273, Synopsys (emphasis added) (hereafter "HPSC Order at __").

46. The Hawaiian FIT program is complicated, but suffice it to say that conditions for electric utilities in Hawaii are significantly different than those in Montana. "As isolated island grids, the HECO Companies' systems have no export outlet for excess energy, and, as such, where conditions with excess energy begin to develop, curtailment is required." HPSC Order at 38.

47. Further note that although the HPSC may have approved the curtailment language for FIT for the Hawaiian Electric Company ("HECO") in Honolulu, even the language NWE chose to quote does not provide HECO the discretion to economically curtail that NWE seeks here with respect to PURPA projects:

[C]onditions when curtailment of energy delivery by the Seller may be implemented by the Company may include when, during excess energy conditions, the Company would have to (i) cycle off-line any Base Load Unit, or (ii) remove one or more components of a combined cycle unity (such as shutting off one combustion turbine) or one combustion turbine and the steam turbine of a dual-train combined cycle unit (consisting of two combustion turbines and one steam turbine) in order to purchase energy from the Seller. The Company shall not curtail pursuant to this Section 6(b) of the Agreement solely as a consequence of the Company's filed Avoided Energy Cost Data being lower than the applicable energy payment rate paid to the Seller under this Agreement.

NWE Petition at pp. 13-14.

48. Thus, no "economic" curtailment of the sort NWE is seeking through its petition is permissible under the HECO curtailment language that NWE cites. Rather, HECO must be in a position where it has to cycle off base load units or remove a component of a combined cycle unit in order to curtail energy from a FIT project. In contrast, NWE proposes to curtail QFs on

a pro rata basis without an operational circumstance that would require idling any generation, and has the discretion to do so whenever NWE contends it would pay less for other generation. The HECO tariff does not permit HECO such broad discretion.

49. Furthermore, the HPSC has made specific pronouncements about the ability of Hawaiian utilities to curtail *QFs* (as opposed to FIT projects) under “light loading conditions” as set forth by PURPA. In 1986, HECO requested the ability to curtail *QFs* whenever the avoided cost fell below HECO’s Minimum Purchase Rate (“MPR”). After considering the FERC NOPR’s language discussing the purpose of 18 C.F.R. § 292.304(f) as cited herein, the HPSC stated:

Based on the FERC’s analysis of § 292.303(f), we find, for the reasons stated therein, that HECO’s interpretation of Rule 6-74-24 that it can curtail the purchase of energy when its avoided cost is below the MPR is in error because Rule 6-74-24 was promulgated only for those special conditions or operational circumstances when the electric utility’s loads are light and temporarily needs no *QF* energy. FERC made clear that it is not the Commission’s intent that Rule 6-74-24 “override contractual or other legally enforceable obligations incurred by the electric utility to purchase from a qualifying facility.” We also agree with the reasons stated by FERC in the adoption of Rule (sic) 292.303(f).

In Re Hawaiian Electric Company, Inc., Docket No. 5703, Order 8970, 81 P.U.R.4th 419, 424, 1986 WL 215111 (November 14, 1986). In other words, HECO is not permitted either then or now to implement the sort of economic curtailment sought by NWE, a proposal that the HPSC found inconsistent with the stated limited purpose of 18 C.F.R. § 292.304(f).

50. Nor does the Florida Public Service Commission’s decision, *In Re Florida Power Corporation*, Docket No, 941101-EQ, Order No. PSC-95-1133-FOF EQ, p. 6, support NWE’s position that Florida Power Corporation (“FPC”) is permitted to curtail output from *QFs* under conditions remotely similar to that which is proposed by NWE in its petition for declaratory

ruling:

State and federal regulations do not dictate any specific actions a utility must take to mitigate the need for curtailment. Nevertheless, FPC's curtailment plan does provide that before it asks QFs to curtail deliveries of energy during minimum load emergencies, FPC will take four steps to lessen the need for, or the severity of, curtailments. They are: (1) minimizing off-system energy purchases; (2) maximizing economic off-system sales; (3) making maximum use of voluntary QF output reductions; and (4) reducing Florida Power's own units to minimum reliable generation levels. We find that the actions FPC will take under its plan to lessen the need for curtailment are reasonable.

51. NWE is proposing nothing similar to the FPC program: it is not committing to minimizing off-system energy purchases, maximizing off-system sales, making maximum use of voluntary QF curtailments, or reducing its own units to minimum reliable generation levels. While FPC's curtailment proposal might be acceptable under 18 C.F.R. § 292.304(f), NWE's is plainly inconsistent with that regulation.

52. In summary, NWE has no legal authority that any jurisdiction anywhere would or has approved a contract provision under PURPA that remotely grants a utility the sort of untrammelled discretion to curtail that NWE seeks here. The Commission should not be misled; there is an enormous difference in regulatory regimes in California, Hawaii and Florida from that extent in Montana. Even then no utility has been permitted by any regulatory commission anywhere to adopt language as broad and devastating to potential QFs as that proposed by NWE.

53. Another potential issue is whether NWE intends to apply its new interpretation of "light loading curtailments" to executed QF contracts. However, there is concern because NWE alleges in its Petition that its interpretation is consistent with 18 C.F.R. § 292.304 and A.R.M. § 38.5.1903(1). If NWE does attempt to impose this language on existing QFs who have different curtailment language in their contracts (*see* Attachment 3 to Exhibit 3 hereto), such an attempt will spawn litigation with existing QFs. NWE, nor its predecessor Montana Power Company,

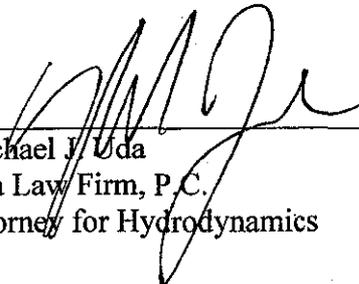
has ever adopted such a broad interpretation of "light loading curtailments," and the Commission should see NWE's recent "interpretation" as nothing more than a gambit which is plainly inconsistent with the plain language of the federal and state rule governing the permissible circumstances of such curtailments.

III. PRAYER FOR RELIEF

The Commission should: (1) find that NWE's proposed contract provisions are unlawful and unreasonable; (2) find that the Flint Creek project has incurred a legally enforceable obligation; (3) order NWE to enter into the PPA proposed by the Flint Creek project, and (4) order such other relief as the Commission finds just and reasonable.

RESPECTFULLY SUBMITTED THIS 18 DAY OF AUGUST, 2011.

By:



Michael J. Uda
Uda Law Firm, P.C.
Attorney for Hydrodynamics

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Petition* was served, postage prepaid, via first class U.S. mail on this ____ day of August, 2011, upon the following:

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Northwestern Energy
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Jodi Janecek
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THE ORIGINAL WAS HAND-DELIVERED TO THE FOLLOWING:

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Cathleen N. Uda

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POWER PURCHASE AGREEMENT
for Qualifying Facilities
Version 1

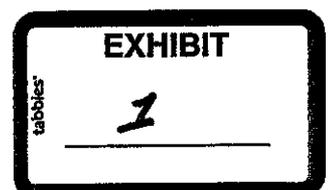
by and between

NORTHWESTERN ENERGY,
as Buyer

and

Flint Creek Hydroelectric, LLC,
as Seller

dated as of June 22, 2011



Power Purchase Agreement

THIS POWER PURCHASE AGREEMENT ("Agreement") is entered into this _____, 20[] ("Effective Date"), by and between Flint Creek Hydroelectric LLC, a Montana Limited Liability Corporation ("Seller") and **NorthWestern Corporation d/b/a NorthWestern Energy**, a Delaware corporation authorized to do business in Montana ("NorthWestern"). Seller and NorthWestern are sometimes referred to in this Agreement collectively as "Parties" and individually as "Party."

RECITALS:

- A. Seller is developing a Hydro turbine facility referred to as Flint Creek Hydro, which is rated at 2,000 kilowatts of electric generation capacity, that is a "Qualifying Facility" pursuant to 18 C.F.R. §§ 292.201 *et seq.*, located in _Granite County Montana _____ ("Facility").
- B. Seller wishes to sell electric energy produced from the Facility to NorthWestern at the rates provided in NorthWestern's Electric Tariff, Schedule No. QF-1, approved and on file with the Montana Public Service Commission ("MPSC" or "Commission"), and NorthWestern wishes to buy such energy.

In consideration of the mutual covenants and agreements herein contained, as well as other good and valuable consideration, the sufficiency of which is expressly acknowledged and accepted, the Parties hereto agree as follows:

Article 1 Definitions

As used in this Agreement and the Appendices attached hereto, the following terms, whether in the singular or plural, shall have the following meanings:

- 1.1 Affiliate means any entity that controls, is controlled by, or is under common control with a Party.
- 1.2 Billing Period means the period of time from one meter reading to the next, which shall occur approximately each 31 days.
- 1.3 Business Day means a day other than Saturday, Sunday or any other day on which banks located in Montana are authorized or obligated to close.
- 1.4 Commercial Operation Date means the date on which NorthWestern receives notice from Seller that Commercial Operation has been achieved and the last of the conditions set forth in Section 3.2 has been fulfilled.
- 1.5 Commercial Operation means that Facility construction and testing has been completed, the Generator Interconnection Agreement has been Executed, and the Facility is capable of delivering Energy continuously to the Point of Interconnection.
- 1.6 Contest means, with respect to either Party, a contest of (a) any Governmental Approval or any act or omission by governmental agencies or (b) the amount or validity of any claim

pursued by or against such person in good faith and by appropriate legal, administrative, or other proceedings.

- 1.7 Contingency Reserves has the meaning set forth in NorthWestern's Electric Tariff, Schedule No. CR-1.
- 1.8 Delay Damages has the meaning set forth in Section 3.4 of this Agreement.
- 1.9 Effective Date means the execution date of this Agreement, as indicated above.
- 1.10 Energy means the amount of electrical energy expressed in kilowatt-hours (kWh) received by NorthWestern and provided by Seller pursuant to this Agreement, as determined by the billing meter located at the Point of Interconnection, including any adjustment for losses.
- 1.11 Energy Rate means \$51.15 per MWh light load hours and \$99.41 per MWh heavy load hours.
- 1.12 Environmental Attributes means any credits, credit certificates, rights, powers, privileges or similar items such as those for greenhouse gas reduction, green certificates or the generation of green power or renewable energy, or for satisfying renewable portfolio standards or similar renewable energy mandates, or offsets of emissions of greenhouse gases, in each case created by any governmental agency and/or independent certification board or group generally recognized in the electric power generation industry, and generated by or associated with the Facility. The term "Environmental Attributes" does not include any federal, state, or local incentive or production tax attributes or other non-environmental benefits.
- 1.13 Executed refers to an agreement that is either (i) executed by the parties thereto or (ii) has been filed with and approved by FERC.
- 1.14 Extended Delay Damages has the meaning set forth in Section 3.4 of this Agreement.
- 1.15 Facility means the electric generation facility which is owned, controlled, or operated by Seller, or its successors or assigns, as described in the Recitals, and which is the subject of this Agreement, including all interconnection equipment located on Seller's side of the Point of Interconnection. Special interconnection requirements may be set forth in the Generator Interconnection Agreement.
- 1.16 FERC means the Federal Energy Regulatory Commission.
- 1.17 Generator Interconnection Agreement means that agreement between Seller and the transmission provider attached hereto as Exhibit A.
- 1.18 Governmental Agency means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States or of any foreign country or of any state, county, city or other political subdivision thereof, in each case having legal jurisdiction over the matter or person in question or the Facility.
- 1.19 Governmental Approval means any and all licenses, permits or approvals necessary for the construction or operation of the Facility and issued by federal, state or local authorities, including, without limitation, evidence of compliance with Subpart B, 18 C.F.R. §§ 292.201, et seq., as a Qualifying Facility.

- 1.20 Guaranteed Commercial Operation Date means November 1st 2012, provided that such date may be extended as the result of Force Majeure.
- 1.21 Initial Capacity Determination means the maximum amount of Energy the Facility will produce in any hour as reasonably determined by NorthWestern based upon the information provided by Seller in Article 3.
- 1.22 Law means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States or of any foreign country or of any state, county, city or other political subdivision thereof or of any other Governmental Agency.
- 1.23 Nameplate Capacity means the maximum rated output of the Facility under specific conditions designated by the manufacturer. For the purposes of this Agreement, the Nameplate Capacity of the Facility shall be 2 MW.
- 1.24 Point of Interconnection has the meaning given in the Generator Interconnection Agreement.
- 1.25 Prudent Electrical Practice means those practices, methods and equipment that are commonly used in the utility industry and electrical engineering and operations to operate electric equipment lawfully and with safety, dependability, efficiency and economy and in accordance with all applicable codes and regulations.
- 1.26 Qualifying Facility or QF means a cogeneration or small power production facility which meets the criteria as defined in Title 18 C.F.R., Sections 292.201 through 292.207, as amended from time to time.
- 1.27 QF Rate means the rate provided in the appropriate Option selected from NorthWestern's Electric Tariff, Schedule No. QF-1, approved and on file with the Montana Public Service Commission.
- 1.28 Wind Integration has the meaning set forth in NorthWestern's Electric Tariff, Schedule No. WI-1.

Article 2
Purchase and Sale of Energy and Environmental Attributes

- 2.1 Term: This Agreement shall be effective at 12:00 a.m. Mountain Standard Time ("MST") on the Effective Date and shall remain in effect for a term of 25 years, unless earlier terminated pursuant to its terms.
- 2.2 Purchase and Sale of Electricity [and Environmental Attributes]: Subject to the terms and conditions of this Agreement, Seller shall sell to NorthWestern, and NorthWestern shall purchase from Seller, on and after the Commercial Operation Date and for the term of this Agreement, all of the Energy output of the Facility and all of the Environmental Attributes related to or associated with the operation of the Facility.
- 2.3 Purchase Price: NorthWestern shall pay Seller for Energy and Environmental Attributes received under this Agreement at the QF Rate plus \$6.41/MWh for the year 2011 escalated at 2.5% annually to a value of \$9.99 during the year 2029 for the RECs.

Article 3
Commercial Operation

- 3.1 **Commercial Operation:** Seller shall cause the Facility to achieve Commercial Operation on or prior to the Guaranteed Commercial Operation Date.
- 3.2 **Conditions to Commercial Operation:** Notwithstanding anything herein to the contrary, Commercial Operation shall not be deemed to have been achieved, and NorthWestern shall have no obligation to purchase Energy hereunder, until all of the following have occurred:
- 3.2.1 Seller has submitted to NorthWestern a certificate by an authorized officer of Seller certifying that all Governmental Approvals have been obtained.
- 3.2.2 Seller has provided to NorthWestern manufacturer's documentation that establishes the Nameplate Capacity of each individual generation unit that is included within the Facility.
- 3.2.3 Seller has provided to NorthWestern an executed Engineer's Certification of Design and Construction Adequacy substantially in the form attached hereto as Exhibit B.
- 3.2.4 Seller has provided to NorthWestern written proof of insurance consistent with the requirements of Article 13 of this Agreement.
- 3.2.5 Seller has provided to NorthWestern a certificate by an authorized officer of Seller certifying that Seller has Executed a Generator Interconnection Agreement with NorthWestern's transmission department.
- 3.2.6 Seller has provided to NorthWestern written proof of its status as a Qualifying Facility.
- 3.3 **Initial Capacity Determination:** Commercial Operation shall not be deemed to have been achieved until NorthWestern has made the Initial Capacity Determination pursuant to Section 3.9.
- 3.4 **Failure to Achieve Commercial Operation:** The Parties acknowledge that the damages NorthWestern will incur if the Facility does not achieve Commercial Operation by the Guaranteed Commercial Operation Date are difficult or impossible to predict with certainty, and that the Delay Damages and Extended Delay Damages are an appropriate approximation of such damages.
- 3.5 **Delay Damages:** If Commercial Operation occurs after the Guaranteed Commercial Operation Date, but on or prior to the day which is one hundred eighty (180) days after the Guaranteed Commercial Operation Date, Seller shall pay Delay Damages for each day the Facility has not achieved Commercial Operation.
- 3.5.1 **Calculation of Delay Damages:** The Delay Damages shall be an amount equal to one hundred dollars (\$100.00) per MW per day for each day after the Commercial Operation Date that the Facility has not yet achieved Commercial Operation, for each MW below Nameplate Capacity.
- 3.5.2 **Right to Terminate; Extended Delay Damages:** If the Commercial Operation Date does not occur within one hundred eighty (180) days after the Guaranteed Commercial Operation Date, NorthWestern shall have the right, but not the obligation, to terminate this Agreement upon written notice to Seller. In the event that

NorthWestern does not exercise this termination right, Seller shall pay Extended Delay Damages for each day the Facility has not achieved Commercial Operation.

- 3.5.3 Calculation of Extended Delay Damages: The Extended Delay Damages shall be an amount equal to two hundred dollars (\$200.00) per MW per day for each day beginning one hundred and eighty-one (181) days after the Guaranteed Commercial Operation Date that the Facility has not yet achieved Commercial Operation, for each MW below Nameplate Capacity.
- 3.5.4 Payment of Delay Damages and Extended Delay Damages: If the Facility does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall make periodic payments to NorthWestern of all accrued Delay Damages and/or Extended Delay Damages, beginning on the tenth (10th) Business Day after the Guaranteed Commercial Operation Date and recurring each tenth (10th) Business Day (each, a "Delay Payment Date", and such ten-day periods, each, a "Delay Payment Period") until Commercial Operation is achieved or this Agreement is terminated. Payments of Delay Damages or Extended Delay Damages shall be made by wire transfer or ACH transfer pursuant to wire instructions provided by NorthWestern.
- 3.6 Delay Security: Within thirty (30) days after the Effective Date, Seller shall post a surety bond, letter of credit or other form of security that is acceptable to NorthWestern ("Delay Security") in the amount of \$ 36,000. Failure to post this Delay Security in the time specified above shall be a material breach of this Agreement and NorthWestern shall have the right to terminate this Agreement upon written notice to Seller.
- 3.6.1 NorthWestern shall release any remaining Delay Security posted hereunder after all calculated Delay Damages and Extended Delay Damages are paid in full to NorthWestern and upon the earlier of: (a) thirty (30) days after the Commercial Operation Date or (b) thirty (30) days after the termination of this Agreement. No interest shall accrue or be paid on released funds.
- 3.6.2 NorthWestern may draw on the Delay Security for payment of Delay Damages or Extended Delay Damages accrued during a Delay Payment Period. If NorthWestern chooses to draw on the Delay Security, NorthWestern shall notify Seller at least five (5) days prior to the Delay Payment Date of NorthWestern's intent to do so and of the amount to be drawn. Seller's obligation to pay Delay Damages or Extended Delay Damages for any Delay Payment Period shall be reduced in an amount equal to the amount drawn by NorthWestern on the Delay Security.
- 3.6.3 If the Delay Security is fully drawn down for payment of Delay Damages and/or Extended Delay Damages, Seller shall post a new Delay Security in the amount set forth above within ten (10) days of the day that Seller becomes aware that the Delay Security is exhausted.
- 3.7 Annual Operating Plan: Seller shall provide NorthWestern with an annual operating plan and an engineer's certification of operations and maintenance, including the timing and duration of proposed Facility maintenance and all other activities that could impact the reliability and or Energy output of the Facility. Seller shall specifically provide NorthWestern with such operational plan for each upcoming generation year (May through April), no later than the immediately preceding February. Such operational plan shall include, without limitation, processes and procedures for providing NorthWestern with monthly and quarterly

projected Energy output, as well as processes and procedures for scheduling Energy delivery to NorthWestern on an hourly basis.

- 3.8 Wind Integration and Contingency Reserves: If Seller has selected Options 1 or 2 under the QF-1 Tariff, it must provide wind integration services and contingency reserves for the term of this Agreement and may either self-supply under terms acceptable to NorthWestern or accept payment adjustments by NorthWestern for those services in accordance with the Wind Integration Tariff (WI-1) and Contingency Reserves Tariff (CR-1). Payment to NorthWestern under WI-1 and/or CR-1 shall result in an adjustment of the total monthly payment made to Seller to reflect the provision of those services.”
- 3.9 Generator Interconnection Agreement: Seller acknowledges that an Executed Generator Interconnection Agreement with transmission provider is a condition precedent to Commercial Operation of the Facility. This Agreement shall do nothing to modify or otherwise amend the obligations, rights, and remedies of the Parties as specified in the Generator Interconnection Agreement. To the extent any terms or conditions in the Generator Interconnection Agreement contravene or contradict the terms and conditions of this Agreement, the terms and conditions of the Generator Interconnection Agreement shall control and be binding on the Parties.
- 3.10 Metering: Metering of the Facility shall occur in the manner described in the Generator Interconnection Agreement.
- 3.11 Initial Capacity Determination: Promptly after the Effective Date, Seller shall submit sufficient verifiable data, consistent with Prudent Electrical Practice, to demonstrate the Energy capacity of the Facility, to enable NorthWestern to make the Initial Capacity Determination. Such data shall include, without limitation, the installed Nameplate Capacity of the Facility’s individual generators, equipment specifications, resource characteristics, and normal and/or average operating design conditions. Upon receipt of this data, NorthWestern shall review it within a commercially reasonable time period and, if necessary, request additional data from Seller. Seller shall exercise commercially reasonable efforts to provide such additional data promptly to NorthWestern. NorthWestern shall make the Initial Capacity Determination within a reasonable time after receiving all requested data.

Article 4 **Curtailment**

- 4.1 No Obligation to Accept Energy: Northwestern shall not be obligated to accept or pay for Energy from Seller during any period in which, due to operational circumstances, the acceptance of Energy from Seller and similarly situated suppliers of energy to NorthWestern is expected to result in Northwestern system costs greater than those which NorthWestern would incur if it did not accept such deliveries, including periods in which NorthWestern generated an equivalent amount of energy itself. For illustrative purposes only, and without limiting the circumstances under which NorthWestern might be relieved of the obligation to accept or pay for Energy from Seller under this section, an example of such a period is a period when NorthWestern would be forced to shut down a base load or intermediate load plant in order to accept deliveries of Energy from Seller and such base load or intermediate load plant could not then be restarted and brought up to its rated output to meet the next period’s peak load and NorthWestern would consequently be required to utilize costly or less efficient generation with faster start-up or purchase higher-priced energy to meet the demand that could have been met by the base load or intermediate load plant but for such purchases from Seller. During periods in which NorthWestern is purchasing energy both from Seller and from similarly-situated suppliers, the implementation of any curtailments of

deliveries of energy is subject to the sole discretion of NorthWestern. Notwithstanding the terms of this Article 4.1, nothing herein shall be construed to add to, modify, or otherwise alter any of the duties or rights currently provided for in ARM 38.5.1903(1)(3), and this Article should be construed consistently with this administrative regulation.

- 4.2 Notice of Curtailment; Compensation. NorthWestern shall give one (1) month's written notice to Seller of any period in which NorthWestern expects that curtailment pursuant to Section 4.1 may be necessary. During such period, if NorthWestern curtails Seller pursuant to Section 4.1, NorthWestern shall document such curtailment and promptly provide such documentation to Seller. In the event that NorthWestern later determines that the curtailment was not operationally necessary, NorthWestern shall within a reasonable time compensate Seller at the Energy Rate for the Energy that would have been generated and delivered to NorthWestern.
- 4.3 System Emergency: Notwithstanding anything herein to the contrary, Seller acknowledges that pursuant to the Generator Interconnection Agreement, transmission provider may require Seller, without reimbursement, to interrupt or reduce deliveries of Energy if such delivery of Energy could adversely affect transmission provider's ability to perform such activities as are necessary to safely and reliably operate and maintain its transmission system. Seller and NorthWestern acknowledge that such curtailments are governed solely by the provisions of the Generator Interconnection Agreement and not by this Agreement.
- 4.4 Compensation: In the event that deliveries of Energy from Seller are curtailed at the request of NorthWestern for reasons other than those specified in Section 4.1 or 4.3, then Seller shall be compensated at the Energy Rate for the Energy that would have been generated and delivered to NorthWestern.

Article 5 Termination

- 5.1 NorthWestern's Right to Terminate: NorthWestern shall have the right to terminate this Agreement immediately if (i) any Seller Event of Default has occurred and is continuing after the expiration of any applicable cure period; or (ii) because of a change in ownership, operation, size, or otherwise, the Federal Energy Regulatory Commission determines that Seller is not a Qualifying Facility, provided that such changes would have invalidated Seller as a Qualifying Facility under the law as it exists as of the effective date of this Agreement.
- 5.2 Seller Events of Default: Each of the following shall be a Seller Event of Default under this Agreement: (i) failure by Seller to make any payment due under this Agreement, including a payment of Delay Damages or Extended Delay Damages, and such failure has not been cured within ten (10) days of Seller's receipt of notice from NorthWestern; (ii) Seller fails to post or maintain the Delay Security, and such failure has not been cured within five (5) days of Seller's receipt of notice from NorthWestern; or (iii) Seller, subject to the provisions of Article 11.1 hereof, fails to perform any other material obligation of Seller under this Agreement, and such failure has not been cured within thirty (30) days after Seller's receipt of notice from NorthWestern.
- 5.3 Seller's Right to Terminate: Seller shall have the right to terminate this Agreement immediately if any NorthWestern Event of Default has occurred and is continuing after the expiration of any applicable cure period.
- 5.4 NorthWestern Events of Default: Each of the following shall be a NorthWestern Event of Default under this Agreement: (i) failure by NorthWestern to make any payment due under

this Agreement, and such failure has not been cured within ten (10) days of NorthWestern's receipt of notice from Seller; and (ii) NorthWestern fails to perform any other material obligation of NorthWestern under this Agreement, and such failure has not been cured within thirty (30) days after NorthWestern's receipt of notice from Seller.

- 5.5 Repeal of QF Requirements: The repeal or cancellation of NorthWestern's obligation to purchase power from a Qualifying Facility shall not give rise to a right to terminate pursuant to this Agreement.
- 5.6 Documentation of QF Status: NorthWestern has the right at all times to request and inspect all documents related to Seller's status as a Qualifying Facility, and Seller shall provide such documentation to NorthWestern promptly after receiving such a request.
- 5.7 Effect of Termination: Upon termination of this Agreement, both Parties are relieved of their obligations under this Agreement as of the date of termination; but all obligations, rights to performances, and rights to payments incurred before such date, including but not limited to Delay Damages and Extended Delay Damages, shall remain in effect until fully satisfied.

Article 6 **Seller's Representations & Warranties**

As of the Effective Date, Seller hereby represents and warrants as follows:

- 6.1 QF Status: The Facility is a Qualifying Facility, as that term is defined in Title 18, C.F.R., Sections 292.201 through 292.207 and is in compliance with all of the statutory, regulatory and other requirements necessary to maintain Qualifying Facility status.
- 6.2 Existence and Authorization: It is a [Limited Liability Corporation] in good standing and validly existing under the laws of the State of [Montana], is duly registered, licensed, and authorized to conduct business in the State of Montana, and that it (i) has all power and authority to execute, deliver and perform this Agreement; and (ii) has all requisite power and authority to own its properties and to carry on its business as it is now being conducted and as it is presently proposed to be conducted.
- 6.3 Consents; No Violation: The execution, delivery and performance of its obligations under this Agreement by Seller do not and shall not:
- (i) as to execution and delivery but not performance, require any consent or approval of Seller's members, managers or guarantors which has not been obtained and each such consent or approval that has been obtained is in full force and effect;
 - (ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award applicable to Seller or any provision of the organizational documents of Seller, the violation of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;
 - (iii) result in a breach of, or constitute a default under, any provision of the organizational documents of Seller;
 - (iv) result in a breach of or constitute a default under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties

or assets may be bound or affected, the breach or default of which could reasonably be expected to have an adverse effect on the ability of Seller to perform its obligations under this Agreement; or

(v) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

- 6.4 **No Litigation:** There is no pending or, to the best of Seller's knowledge, threatened action or proceeding affecting Seller before any court, Governmental Agency or arbitrator that could reasonably be expected to materially and adversely affect the financial condition or operations of Seller or the ability of Seller to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.
- 6.5 **Binding Obligation:** This Agreement constitutes the valid and binding obligation of Seller, enforceable in accordance with its terms, subject to applicable law.
- 6.6 **No Reliance:** Seller represents and warrants to NorthWestern that in entering into this Agreement and the undertaking by Seller of the obligations set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of NorthWestern in connection with its obligations under this Agreement.

Article 7 **Covenants of Seller**

Seller hereby covenants and agrees as follows:

- 7.1 **Operation of Facility:** It shall operate the Facility in material compliance with all applicable federal, state and local governmental regulations and Prudent Electrical Practices.
- 7.2 **Permits, Contracts and Legal Requirements:** It shall comply with and keep in effect all permits and approvals obtained from any governmental bodies that relate to the operation and ownership of the Facility. Seller shall promptly pay, observe and perform, subject to any applicable notice and cure periods therein, all obligations, agreements, easements, conditions, covenants and the provisions of all leases, licenses, operating, management and other material contracts affecting or relating to the Facility or the use and operation thereof.
- 7.3 **Insurance:** It shall obtain and maintain during the term of this Agreement such insurance coverage as indicated in Article 13, below.

Article 8 **NorthWestern's Representations, Warranties and Disclaimers**

As of the Effective Date, NorthWestern hereby represents and warrants as follows:

- 8.1 **Existence and Authorization:** NorthWestern represents and warrants it is a duly authorized and validly existing Delaware corporation in good standing and registered, licensed, and authorized to do business in Montana, and that it is authorized to enter into and perform its obligations under this Agreement.

8.2 **No Violation:** The execution, delivery and performance of its obligations under this Agreement by NorthWestern do not and shall not:

(i) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award applicable to NorthWestern or any provision of the organizational documents of NorthWestern, the violation of which could reasonably be expected to have a material adverse effect on the ability of NorthWestern to perform its obligations under this Agreement;

(ii) result in a breach of or constitute a default under any provision of the organizational documents of NorthWestern;

(iii) result in a breach of or constitute a default under any agreement relating to the management or affairs of NorthWestern or any indenture or loan or credit agreement or any other agreement, lease, or instrument to which NorthWestern is a party or by which NorthWestern or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have an adverse effect on the ability of NorthWestern to perform its obligations under this Agreement.

8.3 **Disclaimers:** Any review, acceptance or failure by NorthWestern to review Seller's design, specifications, equipment or facilities shall not constitute an endorsement or confirmation by NorthWestern, and NorthWestern makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, without limitation, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.

Article 9

Payments, Method of Payment, Adjustments and Statements

9.1 **Compensation for Energy Received:** During the term of this Agreement, NorthWestern shall pay Seller for all Energy actually received in accordance with this Article 9.

9.2 **Tariff:** NorthWestern's payments for Energy to Seller under this Agreement shall be calculated as follows: (x) total megawatt-hours delivered at the Point of Interconnection during the Billing Period multiplied by (y) the Energy Rate less (z) any applicable charges for Wind Integration or Contingency Reserves (as provided in Section 3.9).

9.3 **Payment:** NorthWestern shall transmit payment and a payment statement to Seller for all undisputed amounts within thirty (30) Business Days following the Billing Period meter readings. NorthWestern's payment statement shall include the amount of Energy delivered to NorthWestern's system during the Billing Period and the amount due to Seller. Payments hereunder shall be made in immediately available funds by wire transfer or ACH transfer.

9.4 **Payment Default:** Should either Party fail to pay the other Party in full when due, the unpaid Party may either: (i) deduct like amounts, adjusted for interest, from future payments to the other Party hereunder or (ii) demand payment of unpaid balances, adjusted for interest, in future statements. Interest shall be assessed monthly at rates provided by Montana law for interest on judgments.

Article 10

NorthWestern Energy Charges

No Obligation to Provide Electricity Service. This Agreement does not obligate NorthWestern to provide electricity service to Seller at the Facility. If Seller requires any services at the Facility from NorthWestern, Seller shall receive such service in accordance with NorthWestern's applicable

electric tariffs as existing or, as may be established from time to time and, on file with and authorized by the Montana Public Service Commission. NorthWestern may require as a condition of such service that Seller execute a separate agreement covering the sale of electricity by NorthWestern to Seller at the Point of Interconnection.

Article 11 **Force Majeure**

- 11.1 **Force Majeure:** Seller shall not be responsible or liable for a delay in performance of its obligation to achieve Commercial Operation by the Guaranteed Commercial Operation Date, or deemed in breach of such obligation if delay or failure to perform is due solely to circumstances which are beyond the reasonable control of Seller and which could not reasonably have been anticipated, including but not limited to acts of God; unusually severe weather conditions; strikes or other labor difficulties; war; riots; requirements, actions or failures to act on the part of any Governmental Agency preventing performance; accident; fire, wear and tear or flaws randomly experienced in power generation materials and equipment and their assembly and operation (which circumstances shall constitute "Force Majeure"); provided that:
- 11.1.1 Seller must give NorthWestern, within forty-eight (48) hours of the occurrence, written notice describing the particulars of the occurrence;
- 11.1.2 the Force Majeure event was not caused by or connected with any negligent or intentional acts, errors, or omissions, or failure to comply with any law, rule, regulation, order or ordinance or for any breach or default of this Agreement; and
- 11.1.3 the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure event.
- 11.2 **Best Efforts:** Seller shall use its best efforts to remedy its inability to perform and keep NorthWestern fully informed as to such efforts during the continuance of the Force Majeure event.
- 11.3 **Resumption of Performance:** When Seller is able to resume full performance of its obligations under this Agreement, Seller shall give NorthWestern prompt written notice to that effect.
- 11.4 **Exclusions:** The term "Force Majeure" shall not include changes in market conditions or governmental action that affect the demand for Seller's products. In addition, Force Majeure does not include unavailability of equipment, inability to obtain Governmental Approvals, labor strikes or slowdowns following the Commercial Operation Date or failure or unavailability of transmission or distribution capability, unless same is caused by an occurrence which would otherwise constitute Force Majeure under this Article 11.
- 11.5 **No Extension of Term:** In no event will any condition of Force Majeure extend the term of this Agreement. If any condition of Force Majeure delays Seller's performance for a time period greater than one hundred eighty (180) days, NorthWestern may terminate this Agreement, except that this Agreement shall not terminate or otherwise lapse at such date where Seller has used and is then using at the expiration of the 180 day period reasonable diligence in correcting or curing the condition of Force Majeure.

Article 12
Indemnification

12.1 **Indemnity**: Each Party shall indemnify, defend and hold the other Party and its officers, directors, affiliates, agents, employees, contractors and subcontractors, harmless from and against any and all claims, to the extent caused by any act or omission of the indemnifying Party or the indemnifying Party's own officers, directors, affiliates, agents, employees, contractors or subcontractors or to the extent such claims arise out of or are in any manner connected with the performance of this Agreement by such indemnifying Party. In the event that any loss or damage with respect to any claim is caused by the negligence of both NorthWestern and Seller, including their respective officers, directors, affiliates, agents, employees, contractors or subcontractors, such loss or damage shall be borne by NorthWestern and Seller in the proportion that their respective negligence bears to the total negligence causing such loss or damage.

12.2 **Fines**.

(a) Any fines, penalties or other costs incurred by either Party or such Party's agents, employees or subcontractors for non-compliance by such Party, its agents, employees or subcontractors with the requirements of any Laws or Governmental Approvals shall not be reimbursed by the other Party but shall be the sole responsibility of such non-complying Party.

(b) If such fines, penalties or other costs are assessed against NorthWestern by any Governmental Agency or court of competent jurisdiction due to the non-compliance by Seller with any Laws or Governmental Approvals, Seller shall indemnify and hold harmless NorthWestern against any and all losses, liabilities, damages and claims suffered or incurred because of the failure of Seller to comply therewith, subject to refund in the event that Seller or NorthWestern prevails in any Contest described below. Seller shall also reimburse NorthWestern for any and all legal or other expenses (including attorneys' fees) reasonably incurred by NorthWestern in connection with such losses, liabilities, damages and claims.

(c) If such fines, penalties or other costs are assessed against Seller by any Governmental Agency or court of competent jurisdiction due to the non-compliance by NorthWestern with any Laws or Governmental Approvals, NorthWestern shall indemnify and hold harmless Seller against any and all losses, liabilities, damages and claims suffered or incurred because of the failure of NorthWestern to comply therewith, subject to refund in the event that NorthWestern or Seller prevails in any Contest described below. NorthWestern shall also reimburse Seller for any and all legal or other expenses (including attorneys' fees) reasonably incurred by Seller in connection with such losses, liabilities, damages and claims.

(d) In the case of Section 12.2(b) and (c), either Party shall, upon written notice to the other Party, have the right to reasonably Contest in the name of either or both Parties, as required, or to require the other Party to reasonably Contest, the assessment of such fines, penalties or costs and such Contesting Party shall be responsible for any costs and expenses (including the costs and expenses of the other Party) relating to such Contest.

12.3 **Limitations of Liability, Remedies and Damages**.

(a) Each Party acknowledges and agrees that in no event shall any partner, shareholder, member, manager, owner, officer, director, employee or Affiliate of either Party be personally liable to the other Party for any payments, obligations, or performance due under this Agreement or any breach or failure of performance of either Party and the sole

recourse for payment or performance of the obligations under this Agreement shall be against Seller or NorthWestern and each of their respective assets and not against any other entity, except for such liability as expressly assumed by an assignee pursuant to an assignment of this Agreement in accordance with the terms hereof.

(b) The remedies for any breach of any obligation of either party set forth herein shall be any legal and/or equitable relief available to the non-breaching party under Montana law.

12.4 Survival: The provisions of this Article 12 shall survive the termination of this Agreement.

12.5 Insurance Obligation: The provisions of this Article 12 shall not be construed so as to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.

Article 13 **Insurance**

13.1 Required Coverages: Seller, at its own expense, must maintain in force throughout the period of this Agreement the following minimum insurance coverages that are placed with an insurer that has an A.M. Best rating of A- VII or better:

13.1.1 Workers' Compensation insurance providing statutory benefits in accordance with the laws and regulations of the state.

13.1.2 Employer's Liability - \$500,000 each accident; \$500,000 disease - policy limit; and \$500,000 disease – each employee

13.1.3 Commercial General Liability insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) general aggregate and One Million Dollars (\$1,000,000) products/completed operations aggregate. General Liability & General Aggregate limits are to be on a "Per Project/Per Location" basis.

13.1.4 Comprehensive Automobile Liability insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.

13.1.5 Umbrella/Excess Liability insurance at a minimum of Ten Million Dollars (\$10,000,000).

13.2 Additional Insured: The Commercial General Liability insurance, Comprehensive Automobile insurance, and Umbrella/Excess Liability insurance policies shall name NorthWestern, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insureds. Before commencing any deliveries under this Agreement, Seller shall deliver to NorthWestern in accordance with Article 13, an insurance certificate evidencing the required coverage, limits and additional

insured provisions as required by this Agreement. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the Other Party Group, insurance coverage shall be primary and non-contributory, and provide thirty (30) days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition. A copy of the cancellation clause endorsement as noted above shall be attached to the insurance certificate.

- 13.3 Continuing Coverage: The Commercial General Liability insurance and Comprehensive Automobile Liability insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.
- 13.4 Proof of Insurance: Within ten (10) days following execution of this Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, Seller shall provide certification of all insurance required in this Agreement, executed by the insurer or by an authorized representative.
- 13.5 Self-Insurance: Notwithstanding the foregoing, Seller may self-insure to meet the minimum insurance requirements of Sections 13.1.1 through 13.1.3. to the extent it maintains a self-insurance program; any self-insured retention over One Million Dollars (\$1,000,000) must be preapproved by NorthWestern.

Article 14 **Notices**

Any notice provided for in this Agreement, or served, given or made in connection with this Agreement, shall be in writing and shall be deemed properly served, given or made, if delivered in person or sent by facsimile, courier service, email, or registered, first class certified U.S. mail, postage prepaid, addressed to the intended recipient at the address set forth below. Telephone conversations do not constitute notice under this Agreement.

To Seller:

Flint Creek Hydroelectric, LLC
Roger Kirk
521 E Peach STE 2B
Bozeman MT 59715
Phone: 406-587-5086
Fax: 406-587-0056
Email: roger@hydrodynamics.biz

To NorthWestern:

NorthWestern Energy
Frank Bennett
Energy Supply
40 East Broadway
Butte, MT 59701-9394
Phone: (406) 497-2536
Fax: (406) 497-2629

Email: frank.bennett@northwestern.com

With a copy to:

Legal Department
NorthWestern Energy
208 North Montana Avenue
Helena, MT 59601
Fax: (406) 443-8979
Email: andrew.mclain@northwestern.com

Article 15
Assignment and Ownership

- 15.1 **Assignment Prohibited:** Neither Party shall either voluntarily or by operation of law assign or transfer its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party, except for the sole purpose of providing a security interest to acquire financing for the Facility. Consent to assignment will not be withheld unreasonably.
- 15.2 **Assumption of Liabilities:** No assignment by Seller shall be effective, notwithstanding NorthWestern's consent thereto, unless the assignee under such assignment agrees in writing to unconditionally assume all of the duties, liabilities, and obligations of Seller under this Agreement.
- 15.3 **NorthWestern's Obligations to Assignee:** No assignment by Seller shall be effective, notwithstanding NorthWestern's consent thereto, to the extent that such assignment purports to extend, increase, or otherwise alter the obligations of NorthWestern under this Agreement, other than the substitution of the assignee for Seller.
- 15.4 **Indemnity:** Seller shall save, indemnify, and hold harmless NorthWestern for any and all losses resulting from assignee's failure effectively to assume all of the duties, liabilities and obligations of Seller under this Agreement.
- 15.5 **Validity:** Any attempted or purported assignment, assumption or transfer by a Party made other than in accordance with this Article 15, whether made voluntarily or by operation of law, shall be void and of no effect.

Article 16
Taxes

- 16.1 **No Liability for Seller Taxes:** Any production or excise taxes attributable to the Energy purchases from the Facility, including but not limited to ad valorem taxes the energy production license tax and the wholesale energy transaction tax, that are levied against NorthWestern shall be reimbursed by Seller. Seller shall pay NorthWestern the amount of such assessment or levy within thirty (30) days of presentation of documentation provided by NorthWestern to Seller showing the amount.
- 16.2 **Provision of Information:** The Parties shall provide information concerning the Facility to any requesting taxing authority.

Article 17
General Provisions

- 17.1 **Choice of Law:**

- 17.1.1 This Agreement shall be construed and interpreted in accordance with the laws of the State of Montana or the United States, as applicable, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.
- 17.1.2 Venue for any claim or action arising from this Agreement shall be determined in a manner consistent with applicable Montana or Federal law.
- 17.2 Governmental Approvals: Copies of all Governmental Approvals obtained by Seller for the operation of the Facility shall be provided to NorthWestern upon request.
- 17.3 Entire Agreement: This Agreement, including all Exhibits hereto, together with NorthWestern's Schedule QF-1 Tariff, constitutes the entire understanding between the Parties and supersedes any and all previous understandings or agreements between the Parties with respect to the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
- 17.4 No Third Party Beneficiaries; No Dedication to Public Use. Nothing in this Agreement shall be construed to create any rights in, or grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation or understanding established under this Agreement. Neither Party, by this Agreement, dedicates any part of the Facility to the public, nor does this Agreement affect the status of NorthWestern as an independent public utility corporation, or Seller as an individual or entity.
- 17.5 Several Liability: Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective.
- 17.6 No Partnership: Nothing contained herein shall be deemed to create an association, joint venture, partnership or principal/agent relationship between the Parties hereto or to impose any partnership obligation or liability on either Party. Neither Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.
- 17.7 Seller Financing: No documents shall be provided by NorthWestern, nor shall NorthWestern be required to make any warranties or representations to assist the Seller in obtaining financing.
- 17.8 Modification or Amendment. No modification, amendment or waiver of any provision of this Agreement shall be valid unless it is in writing and signed by both Parties.
- 17.9 Severability. If any term or provision of this Agreement or the application thereof to any Person or circumstance is held to be illegal, invalid or unenforceable under any present or future Law or by any Governmental Agency, (a) such term or provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) the Parties shall negotiate in good faith to enter into such modifications of this Agreement as may be necessary to preserve the economic and other benefits of this Agreement to the affected Party to the greatest extent possible and permissible.

- 17.10 Captions: All indexes, titles, subject headings, Article titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of this Agreement.
- 17.11 Exhibits: This Agreement includes Exhibits A and B which are attached, and incorporated by reference herein. Exhibits may from time to time be changed in writing upon mutual agreement of the Parties.

Article 18
Regulation by the Montana Public Service Commission

Seller acknowledges that NorthWestern, as a public utility, is subject to regulation by the Montana Public Service Commission ("MPSC") and that NorthWestern may be required to submit information, data or documents regarding this Agreement, Seller, or the Facility, including, but not limited to, a copy of this Agreement, together with any other documentation associated herewith, to the MPSC as part of regular regulatory proceedings. To the extent Seller wishes to seek a protective order for this Agreement or any other information to be submitted to the MPSC, Seller shall be solely responsible for preparing and otherwise requesting any such protective order from the MPSC. Seller acknowledges that, notwithstanding anything herein to the contrary, NorthWestern may submit a copy of this Agreement and any other information related herewith to the MPSC as part of complying with any portion of an MPSC request, order or other regulatory proceeding, regardless of whether Seller has requested a protective order from MPSC, until such time as a protective order is issued that relieves NorthWestern of its legal obligations to provide information requested by the MPSC. NorthWestern shall have no obligation to participate in, cooperate with, or in any way assist Seller in seeking any protective order.

IN WITNESS WHEREOF, each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to sign this Agreement.

Flint Creek Hydroelectric LLC

**NORTHWESTERN CORPORATION
d/b/a NORTHWESTERN ENERGY**

By: Roger Kirk
Title: President

By:
Title:

Exhibit A

QF Generator Interconnection Agreement

Exhibit B

Qualifying Facility QF-1 Facility Completion Certificate

A. Project Information

Developer Name: _____

QF-1 Facility Name: _____

Facility Location; Township, Range, and Sections:

B. QF-1 Energy Generation System Information

(Attach multiple sections if more than one turbine used in Facility.)

Total Facility Nameplate Capacity (kW): _____

Turbine Manufacturer: _____

Turbine Model: _____

Number of this Turbine installed: _____

Tower Height if Wind: _____

Tower Manufacturer: _____

C. Electrical Hardware and Installation Compliance and Inspection

Initial your confirmation that all system hardware is in compliance with all applicable performance and safety standards including: county and local codes, the National Electric Code, Montana State interconnection standards if applicable. _____

Electrical Permit #: _____

Issued by (County or Municipality Name): _____

Master Electrician Name: _____

Electrician's License #: _____

Inspection Date: _____

Electrician's Statement: I solemnly affirm under penalties of perjury that I am a contractor licensed in _____, and have met the requirements of the local codes authority regarding system safety and reliability and that all the contents of the Electrical Hardware and Installation Compliance and Inspection section are true to the best of my knowledge, information, and belief.

Signed (Electrical Contractor):

Dated:

Name (Print):

Company:

D. QF-1 Facility Developer Acknowledgement

I solemnly affirm under penalties of perjury that I am the QF-1 Facility Owner or Developer, and have met the requirements of completion and construction of the QF-1 Facilities Power

Purchase Contract, and that the contents of the foregoing completion certificate are true to the best of my knowledge, information, and belief.

Signed (Owner or Developer):

Print Owner or Developer Name:

Date:

QF-1 Facility Name:

QF-1 Facility Tax ID:

**SMALL GENERATOR
INTERCONNECTION AGREEMENT (SGIA)**

Between

North Western Corporation

And

Flint Creek Hydroelectric, LLC

(For Generating Facilities No Larger Than 20 MW)



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Attachment 2 – Description and Costs of the Small Generating Facility, Interconnection Facilities, and Metering Equipment

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Attachment 5 – Additional Operating Requirements for the Transmission Provider's Transmission System and Affected Systems Needed to Support the Interconnection Customer's Needs

Attachment 6 – Transmission Provider description of its upgrades and best estimates of upgrade costs.

This Interconnection Agreement ("Agreement") is made and entered into this 4 day of APR, 2011, by and between Flint Creek Hydroelectric LLC, a corporation organized and existing under the laws of the State of Montana ("Interconnection Customer"), and NorthWestern Corporation, a corporation organized and existing under the laws of the State of Delaware ("Transmission Provider and Transmission Owner"). Interconnection Customer and Transmission Provider each may be referred to as a "Party" or collectively as the "Parties."

Transmission Provider Information

Transmission Provider: NorthWestern Energy
Attention: Coordinator Generation and Transmission Interconnection
Address: 40 East Broadway
City: Butte State: Montana Zip: 59701
Phone: (406) 497-3174 Fax: (406) 497-3002

Interconnection Customer Information

Interconnection Customer: Flint Creek Hydroelectric LLC
Attention: Ben Singer
Address: 521 East Peach, Suite 2B
City: Bozeman State: Montana Zip: 59715
Phone: (406) 587-5086 Fax: (406) 587-0056

Interconnection Customer Application No: Project #61

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

Article 1. Scope and Limitations of Agreement

- 1.1 This Agreement shall be used for all Interconnection Requests submitted under the Small Generator Interconnection Procedures (SGIP) except for those submitted under the 10 kW Inverter Process contained in SGIP Attachment 5.
- 1.2 This Agreement governs the terms and conditions under which the Interconnection Customer's Small Generating Facility will interconnect with, and operate in parallel with, the Transmission Provider's Transmission System.
- 1.3 This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power. The purchase or delivery of power and other services that the Interconnection Customer may require will be covered under separate agreements, if any. The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable Transmission Provider.
- 1.4 Nothing in this Agreement is intended to affect any other agreement between the

Small Generator Interconnection Agreement (SGIA)

Transmission Provider and the Interconnection Customer.

1.5 Responsibilities of the Parties

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

1.6 Parallel Operation Obligations

Once the Small Generating Facility has been authorized to commence parallel operation,

the Interconnection Customer shall abide by all rules and procedures pertaining to the parallel operation of the Small Generating Facility in the applicable control area, including, but not limited to; 1) the rules and procedures concerning the operation of generation set forth in the Tariff or by the applicable system operator(s) for the Transmission Provider's Transmission System and; 2) the Operating Requirements set forth in Attachment 5 of this Agreement.

1.7 Metering

The Interconnection Customer shall be responsible for the Transmission Provider's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Attachments 2 and 3 of this Agreement. The Interconnection Customer's metering (and data acquisition, as required) equipment shall conform to applicable industry rules and Operating Requirements.

1.8 Reactive Power

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

1.8.2 The Transmission Provider is required to pay the Interconnection Customer for reactive power that the Interconnection Customer provides or absorbs from the Small Generating Facility when the Transmission Provider requests the Interconnection Customer to operate its Small Generating Facility outside the range specified in article 1.8.1. In addition, if the Transmission Provider pays its own or affiliated generators for reactive power service within the specified range, it must also pay the Interconnection Customer.

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

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

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

2.1 Equipment Testing and Inspection

2.1.1 The Interconnection Customer shall test and inspect its Small Generating Facility and Interconnection Facilities prior to interconnection. The Interconnection Customer shall notify the Transmission Provider of such activities no fewer than five Business Days (or as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a Business Day. The Transmission Provider may, at its own expense, send qualified personnel to the Small Generating Facility site to inspect the interconnection and observe the testing. The Interconnection Customer shall provide the Transmission Provider a written test report when such testing and inspection is completed.

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

2.2 Authorization Required Prior to Parallel Operation

2.2.1 The Transmission Provider shall use Reasonable Efforts to list applicable parallel operation requirements in Attachment 5 of this Agreement. Additionally, the Transmission Provider shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. The Transmission Provider shall make Reasonable Efforts to cooperate with the Interconnection Customer in meeting requirements necessary for the Interconnection Customer to commence parallel operations by the in-service date.

2.2.2 The Interconnection Customer shall not operate its Small Generating Facility in parallel with the Transmission Provider's Transmission System without prior written authorization of the Transmission Provider. The Transmission Provider will provide such authorization once the Transmission Provider receives notification that the Interconnection Customer has complied with all applicable parallel operation requirements. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.3 Right of Access

2.3.1 Upon reasonable notice, the Transmission Provider may send a qualified person to

the premises of the Interconnection Customer at or immediately before the time the Small Generating Facility first produces energy to inspect the interconnection, and observe the commissioning of the Small Generating Facility (including any required testing), startup, and operation for a period of up to three Business Days after initial start-up of the unit. In addition, the Interconnection Customer shall notify the Transmission Provider at least five Business Days prior to conducting any on-site verification testing of the Small Generating Facility.

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

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

3.1 Effective Date

This Agreement shall become effective upon execution by the Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by the FERC. The Transmission Provider shall promptly file this Agreement with the FERC upon execution, if required.

3.2 Term of Agreement

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

3.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this Agreement (if required), which notice has been accepted for filing by FERC.

3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving the Transmission Provider 20 Business Days written notice.

3.3.2 Either Party may terminate this Agreement after Default pursuant to article 7.6.

- 3.3.3 Upon termination of this Agreement, the Small Generating Facility will be disconnected from the Transmission Provider's Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this SGIA or such non-terminating Party otherwise is responsible for these costs under this SGIA.
- 3.3.4 The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination
- 3.3.5 This provisions of this article shall survive termination or expiration of this Agreement.

3.4 Temporary Disconnection

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

- 3.4.1 Emergency Conditions -- "Emergency Condition" shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of the Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Transmission System, the Transmission Provider's Interconnection Facilities or the Transmission Systems of others to which the Transmission System is directly connected; or (3) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Small Generating Facility or the Interconnection Customer's Interconnection Facilities. Under Emergency Conditions, the Transmission Provider may immediately suspend interconnection service and temporarily disconnect the Small Generating Facility. The Transmission Provider shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer's operation of the Small Generating Facility. The Interconnection Customer shall notify the Transmission Provider promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Transmission Provider's Transmission System or any Affected Systems. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Routine Maintenance, Construction, and Repair

The Transmission Provider may interrupt interconnection service or curtail the output of the Small Generating Facility and temporarily disconnect the Small Generating Facility from the Transmission Provider's Transmission System when

necessary for routine maintenance, construction, and repairs on the Transmission Provider's Transmission System. The Transmission Provider shall provide the Interconnection Customer with five Business Days notice prior to such interruption. The Transmission Provider shall use Reasonable Efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

3.4.3 Forced Outages

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

3.4.4 Adverse Operating Effects

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

3.4.5 Modification of the Small Generating Facility

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

3.4.6 Reconnection

The Parties shall cooperate with each other to restore the Small Generating Facility, Interconnection Facilities, and the Transmission Provider's Transmission System to their normal operating state as soon as reasonably practicable following a temporary disconnection.

Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades

4.1 Interconnection Facilities

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

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

4.2 Distribution Upgrades

The Transmission Provider shall design, procure, construct, install, and own the Distribution Upgrades described in Attachment 6 of this Agreement. If the Transmission Provider and the Interconnection Customer agree, the Interconnection Customer may construct Distribution Upgrades that are located on land owned by the Interconnection Customer. The actual cost of the Distribution Upgrades, including overheads, shall be directly assigned to the Interconnection Customer.

Article 5. Cost Responsibility for Network Upgrades

5.1 Applicability

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

5.2 Network Upgrades

The Transmission Provider or the Transmission Owner shall design, procure, construct, install, and own the Network Upgrades described in Attachment 6 of this Agreement. If the Transmission Provider and the Interconnection Customer agree, the Interconnection Customer may construct Network Upgrades that are located on land owned by the Interconnection Customer. Unless the Transmission Provider elects to pay for Network Upgrades, the actual cost of the Network Upgrades, including overheads, shall be borne initially by the Interconnection Customer. No Network upgrades are necessary for interconnection of project facilities or this agreement.

5.2.1 Repayment of Amounts Advanced for Network Upgrades

The Interconnection Customer shall be entitled to a cash repayment, equal to the total amount paid to the Transmission Provider and Affected System operator, if any, for Network Upgrades, including any tax gross-up or other tax-related payments associated with the Network Upgrades, and not otherwise refunded to the Interconnection Customer, to be paid to the Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Transmission Provider's Tariff and Affected System's Tariff for transmission services with respect to the Small Generating Facility. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. § 35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which the Interconnection Customer receives a repayment of such payment pursuant to this subparagraph. The Interconnection Customer may assign such repayment rights to any person.

5.2.1.1 Notwithstanding the foregoing, the Interconnection Customer, the Transmission Provider, and any applicable Affected System operators may adopt any alternative payment schedule that is mutually agreeable so long as the Transmission Provider and said Affected System operators take one of the following actions no later than five years from the Commercial Operation Date: (1) return to the Interconnection Customer any amounts advanced for Network Upgrades not previously repaid, or (2) declare in writing that the Transmission Provider or any applicable Affected System operators will continue to provide payments to the Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for Network Upgrades not previously repaid; however, full reimbursement shall not extend beyond twenty (20) years from the commercial operation date.

5.2.1.2 If the Small Generating Facility fails to achieve commercial operation, but it or another generating facility is later constructed and requires use of the Network Upgrades, the Transmission Provider and Affected System operator shall at that time reimburse the Interconnection Customer for the amounts advanced for the Network Upgrades. Before any such reimbursement can occur, the Interconnection Customer, or the entity that ultimately constructs the generating facility, if different, is responsible for identifying the entity to which reimbursement must be made.

5.3 Special Provisions for Affected Systems

Unless the Transmission Provider provides, under this Agreement, for the repayment of amounts advanced to any applicable Affected System operators for Network Upgrades,

the Interconnection Customer and Affected System operator shall enter into an agreement that provides for such repayment. The agreement shall specify the terms governing payments to be made by the Interconnection Customer to Affected System operator as well as the repayment by Affected System operator.

5.4 Rights Under Other Agreements

Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that the Interconnection Customer shall be entitled to, now or in the future, under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain cash reimbursements or transmission credits for transmission service that is not associated with the Small Generating Facility.

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

6.1 Billing and Payment Procedures and Final Accounting

6.1.1 The Transmission Provider shall bill the Interconnection Customer for the design, engineering, construction, and procurement costs of Interconnection Facilities and Upgrades contemplated by this Agreement on a monthly basis, or as otherwise agreed by the Parties. The Interconnection Customer shall pay each bill within 30 calendar days of receipt, or as otherwise agreed to by the Parties.

6.1.2 Within three months of completing the construction and installation of the Transmission Provider's Interconnection Facilities and/or Upgrades described in the Attachments to this Agreement, the Transmission Provider shall provide the Interconnection Customer with a final accounting report of any difference between (1) the Interconnection Customer's cost responsibility for the actual cost of such facilities or Upgrades, and (2) the Interconnection Customer's previous aggregate payments to the Transmission Provider for such facilities or Upgrades. If the Interconnection Customer's cost responsibility exceeds its previous aggregate payments, the Transmission Provider shall invoice the Interconnection Customer for the amount due and the Interconnection Customer shall make payment to the Transmission Provider within 30 calendar days. If the Interconnection Customer's previous aggregate payments exceed its cost responsibility under this Agreement, the Transmission Provider shall refund to the Interconnection Customer an amount equal to the difference within 30 calendar days of the final accounting report.

6.2 Milestones

The Parties shall agree on milestones for which each Party is responsible and list them in Attachment 4 of this Agreement. A Party's obligations under this provision may be

extended by agreement. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure Event, it shall immediately notify the other Party of the reason(s) for not meeting the milestone and (1) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (2) requesting appropriate amendments to Attachment 4. The Party affected by the failure to meet a milestone shall not unreasonably withhold agreement to such an amendment unless it will suffer significant uncompensated economic or operational harm from the delay, (2) attainment of the same milestone has previously been delayed, or (3) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

6.3 Financial Security Arrangements

At least 20 Business Days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of the Transmission Provider's Interconnection Facilities and Upgrades, the Interconnection Customer shall provide the Transmission Provider, at the Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to the Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction where the Point of Interconnection is located. Such security for payment shall be in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of the Transmission Provider's Interconnection Facilities and Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to the Transmission Provider under this Agreement during its term. In addition:

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

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

7.1 Assignment

This Agreement may be assigned by either Party upon 15 Business Days prior written notice and opportunity to object by the other Party; provided that:

- 7.1.1 Either Party may assign this Agreement without the consent of the other Party to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement, provided that the Interconnection Customer

promptly notifies the Transmission Provider of any such assignment;

7.1.2 The Interconnection Customer shall have the right to assign this Agreement, without the consent of the Transmission Provider, for collateral security purposes to aid in providing financing for the Small Generating Facility, provided that the Interconnection Customer will promptly notify the Transmission Provider of any such assignment.

7.1.3 Any attempted assignment that violates this article is void and ineffective. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same financial, credit, and insurance obligations as the Interconnection Customer. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

7.2 Limitation of Liability

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

7.3 Indemnity

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

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

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

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

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

7.4 Consequential Damages

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

7.5 Force Majeure

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

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

Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

7.6 Default

- 7.6.1 No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a Force Majeure Event as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in article 7.6.2, the defaulting Party shall have 60 calendar days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within 60 calendar days, the defaulting Party shall commence such cure within 20 calendar days after notice and continuously and diligently complete such cure within six months from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.
- 7.6.2 If a Default is not cured as provided in this article, or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

Article 8. Insurance

- 8.1 The Interconnection Customer shall, at its own expense, maintain in force general liability insurance without any exclusion for liabilities related to the interconnection undertaken pursuant to this Agreement. The amount of such insurance shall be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made. The Interconnection Customer shall obtain additional insurance only if necessary as a function of owning and operating a generating facility. Such insurance shall be obtained from an insurance provider authorized to do business in the State where the interconnection is located. Certification that such insurance is in effect shall be provided upon request of the Transmission Provider, except that the Interconnection Customer shall show proof of insurance to the Transmission Provider no later than ten Business Days prior to the anticipated commercial operation date. An Interconnection Customer of sufficient credit-worthiness may propose to self-insure for such liabilities, and such a proposal shall not be unreasonably rejected.

- 8.2 The Transmission Provider agrees to maintain general liability insurance or self-insurance consistent with the Transmission Provider's commercial practice. Such insurance or self-insurance shall not exclude coverage for the Transmission Provider's liabilities undertaken pursuant to this Agreement.
- 8.3 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

Article 9. Confidentiality

- 9.1 Confidential Information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed Confidential Information regardless of whether it is clearly marked or otherwise designated as such.
- 9.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.
- 9.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.
- 9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.
- 9.3 Notwithstanding anything in this article to the contrary, and pursuant to 18 CFR § 1b.20, if FERC, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC, within the time provided for in the request for information. In providing the information to FERC, the Party may, consistent with 18 CFR § 388.112, request that the information be treated as confidential and non-public by FERC and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this Agreement prior to the release of the Confidential Information to FERC. The Party shall notify the other

Party to this Agreement when it is notified by FERC that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR § 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

Article 10. Disputes

- 10.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this article.
- 10.2 In the event of a dispute, either Party shall provide the other Party with a written Notice of Dispute. Such Notice shall describe in detail the nature of the dispute.
- 10.3 If the dispute has not been resolved within two Business Days after receipt of the Notice, either Party may contact FERC's Dispute Resolution Service (DRS) for assistance in resolving the dispute.
- 10.4 The DRS will assist the Parties in either resolving their dispute or in selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the Parties in resolving their dispute. DRS can be reached at 1-877-337-2237 or via the internet at <http://www.ferc.gov/legal/adr.asp>.
- 10.5 Each Party agrees to conduct all negotiations in good faith and will be responsible for one-half of any costs paid to neutral third-parties.
- 10.6 If neither Party elects to seek assistance from the DRS, or if the attempted dispute resolution fails, then either Party may exercise whatever rights and remedies it may have in equity or law consistent with the terms of this Agreement.

Article 11. Taxes

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

Article 12. Miscellaneous

12.1 Governing Law, Regulatory Authority, and Rules

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

12.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties, or under article 12.12 of this Agreement.

12.3 No Third-Party Beneficiaries

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

12.4 Waiver

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

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

12.5 Entire Agreement

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

12.6 Multiple Counterparts

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

12.7 No Partnership

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

12.8 Severability

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

12.9 Security Arrangements

Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. FERC expects all Transmission Providers, market participants, and Interconnection Customers interconnected to electric systems to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities are expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

12.10 Environmental Releases

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

12.11 Subcontractors

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

12.11.1 The creation of any subcontract relationship shall not relieve the

hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Transmission Provider be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

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

12.12 Reservation of Rights

The Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and the Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement under any applicable provision of the Federal Power Act and FERC's rules and regulations; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations, except to the extent that the Parties otherwise agree as provided herein.

Article 13. Notices

13.1 General

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

If to the Interconnection Customer:

Interconnection Customer: Flint Creek Hydroelectric LLC
Attention: Ben Singer
Address: 521 East Peach, Suite 2B
City: Bozeman State: Montana Zip: 59715
Phone: (406) 587-5086 Fax: (406) 587-0056

If to the Transmission Provider:

Transmission Provider:

NorthWestern Energy
Attention: Coordinator Generation and Transmission Interconnection
Address: 40 East Broadway
City: Butte State: Montana Zip: 59701
Phone: (406) 497-3174 Fax: (406) 497-3002

13.2 Billing and Payment

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

Interconnection Customer: Flint Creek Hydroelectric LLC
Attention: Ben Singer
Address: 521 East Peach, Suite 2B
City: Bozeman State: Montana Zip: 59715

Transmission Provider:

NorthWestern Energy
Attention: Coordinator Generation and Transmission Interconnection
Address: 40 East Broadway
City: Butte State: Montana Zip: 59701
Phone: (406) 497-3174 Fax: (406) 497-3002

13.3 Alternative Forms of Notice

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

If to the Interconnection Customer:

Interconnection Customer: Flint Creek Hydroelectric LLC
Attention: Ben Singer
Address: 521 East Peach, Suite 2B
City: Bozeman State: Montana Zip: 59715
Phone: (406) 587-5086 Fax: (406) 587-0056

If to the Transmission Provider:

Transmission Provider:

NorthWestern Energy
Attention: Coordinator Generation and Transmission Interconnection
Address: 40 East Broadway
City: Butte State: Montana Zip: 59701
Phone: (406) 497-3174 Fax: (406) 497-3002

13.4 Designated Operating Representative

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

Interconnection Customer's Operating Representative:

Interconnection Customer: Flint Creek Hydroelectric LLC
Attention: Ben Singer
Address: 521 East Peach, Suite 2B
City: Bozeman State: Montana Zip: 59715
Phone: (406) 587-5086 Fax: (406) 587-0056

Transmission Provider's Operating Representative:

Transmission Provider:
NorthWestern Energy
Attention: Coordinator Generation and Transmission Interconnection
Address: 40 East Broadway
City: Butte State: Montana Zip: 59701
Phone: (406) 497-3174 Fax: (406) 497-3002

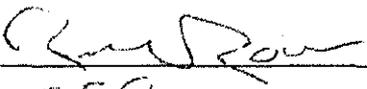
13.5 Changes to the Notice Information

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

Article 14. Signatures

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

For the Transmission Provider

Name: 
Title: CEO
Date: 4-5-11

For the Interconnection Customer

Name: 
Title: President, FOUNT CREEK HYDROELECTRIC, LLC
Date: 3/28/2011

Glossary of Terms

Affected System – An electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Applicable Laws and Regulations – All duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Business Day – Monday through Friday, excluding Federal Holidays.

Default – The failure of a breaching Party to cure its breach under the Small Generator Interconnection Agreement.

Distribution System – The Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which Distribution Systems operate differ among areas.

Distribution Upgrades – The additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Small Generating Facility and render the transmission service necessary to effect the Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Good Utility Practice – Any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts 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 be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority – 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 the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include the Interconnection Customer, the Interconnection Provider, or any Affiliate thereof.

Interconnection Customer – Any entity, including the Transmission Provider, the Transmission Owner or any of the affiliates or subsidiaries of either, that proposes to interconnect its Small

Generating Facility with the Transmission Provider's Transmission System.

Interconnection Facilities – The Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Small Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Small Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

Interconnection Request – The Interconnection Customer's request, in accordance with the Tariff, to interconnect a new Small Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Small Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Material Modification – A modification that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Network Upgrades – Additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Small Generating Facility interconnects with the Transmission Provider's Transmission System to accommodate the interconnection of the Small Generating Facility with the Transmission Provider's Transmission System. Network Upgrades do not include Distribution Upgrades.

Operating Requirements – Any operating and technical requirements that may be applicable due to Regional Transmission Organization, Independent System Operator, control area, or the Transmission Provider's requirements, including those set forth in the Small Generator Interconnection Agreement.

Party or Parties – The Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Interconnection – The point where the Interconnection Facilities connect with the Transmission Provider's Transmission System.

Reasonable Efforts – With respect to an action required to be attempted or taken by a Party under the Small Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Small Generating Facility – The Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

Tariff – The Transmission Provider or Affected System's Tariff through which open access transmission service and Interconnection Service are offered, as filed with the FERC, and as

amended or supplemented from time to time, or any successor tariff.

Transmission Owner – The entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Small Generator Interconnection Agreement to the extent necessary.

Transmission Provider – The public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

Transmission System – The facilities owned, controlled or operated by the Transmission Provider or the Transmission Owner that are used to provide transmission service under the Tariff.

Upgrades – The required additions and modifications to the Transmission Provider's Transmission System at or beyond the Point of Interconnection. Upgrades may be Network Upgrades or Distribution Upgrades. Upgrades do not include Interconnection Facilities.

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

Interconnection Facilities, Network Upgrades and Distribution Upgrades

Executive Summary

NorthWestern Energy ("NWE") has completed a Distribution System Facility Study for the Small Generator Interconnection Request ("SGIR") submitted regarding the Flint Creek Hydroelectric LLC Flint Creek ("Flint Creek") Project, located near Georgetown Lake, Montana.

The request to add 2 MW of three phase 4160-volt hydroelectric generation to the existing 24.9 kV distribution system fed from the NWE's Philipsburg substation as proposed is not feasible without necessary modifications to the distribution system. This Distribution System Facility study outlines the modifications and requirements necessary to connect this generation to the Philipsburg distribution system.

This study does not address the impacts of Flint Creek generation on NWE's transmission system, which must be considered under separate review.

Study Parameters

In analyzing the Flint Creek project, NWE utilized "PSS/Adept" software to conduct the System Facility Study with the proposed generation addition connected at the old Flint Creek Powerhouse site, which is fed from the 25-3 feeder out of the Philipsburg substation. Load flow, voltage study, short circuit, and protective device coordination studies were performed.

Generation and Interconnection Data

The proposed generation and interconnection data used in this System Facility Study is based on the information received from the Interconnection Customer. The study results may change if there are changes to Flint Creek's queue position or to the interconnection specifications provided by them to NWE. Any variation in the interconnect specifications must be reported to NWE, so a thorough review and/or study can be conducted by NWE. Such review and/or study

may yield results different from this analysis, and different mitigation actions may be required.

Throughout the application process, NWE has identified the following project information:

- **Project Name** – Hydrodynamic's Flint Creek
- **Location** – Flint Creek Powerhouse near Georgetown Lake, Montana
- **Proposed Commercial Operation Date** – 2008
- **Generation Request** – Maximum 2 MW from a synchronous micro turbine
- **Assumptions** - Synchronous hydro generator with 4,160-volt output
- **Voltage at Interconnection Point** – Three phase 4,160 volt
- **Facilities** – Connection to the 25-3 feeder from the Philipsburg Substation
- **Generator Characteristics**

Hangzhou Cheerup Electro Mechanic Equipment Co.,Ltd.

Model No.:SF2000-14/1730

System frequency f_N (HZ): 60

Rated voltage U_N (kV): 4.16

Power factor $\cos \delta_N$: 0.80 (lagging)

Rated speed n_N (r/min): 514.3

Rated efficiency η (%): 95

Length of stator core L (mm): 560

Outer diameter of stator core D_a (mm): 1730

Inner diameter of stator core D_i (mm): 1430

Number of stator slots Z : 144

Magnetic density in teeth B_z (T): 15.4

Magnetic density in yoke B_j (T): 12.5

Magnetic density in air space B_a (T): 6.98

Short-circuit ratio K_c : 1.02

Direct-axis synchronizing reactance X_d : 1.1334

Quadrature-axis synchronizing reactance X_q : 0.6714

Direct-axis transient reactance X_d' : 0.2268

Quadrature-axis transient reactance X_q' : 0.1487

Direct-axis subtransient reactance X_d'' : 0.1413

Quadrature-axis subtransient reactance X_q'' : 0.2268

Negative-sequence reactance X_2 : 0.1450

Zero-sequence reactance X_0 : 0.06051

Time constant of field winding when stator winding in open circuit T_{d0}' : 2.5816

T_{q0}' : 0.0970

Time constant of field winding when stator winding in short circuit T_{d}' : 0.5167

Time constant of damping winding when stator winding open circuit and field winding in short circuit T_{d0}'' : 0.03074

Time constant of stator winding when field winding in short circuit T_a : 0.05271

Rated field voltage U_f (V): 84.0

Rated field current I_{fN} (A): 290

No-load field voltage I_f (V): 28
No-load field current I_{f0} (A): 140

- **Interconnection Transformer** – Customer supplied 4.16 kV – 24.9 kV step-up
 - 2500/2800 kVA
 - 24940Y-4160 delta
 - 55/66 degree C rise
 - Oil filled
 - 60 Hz
 - W/Taps 2x2 ½ % above and below,
 - Imp 5.7%
 - HV BIL 125 KV
 - LV BIL 75 KV
 - Losses: No load 4000
 - Copper 21000

Steady-State Power Flow Analysis

A review of the power flow impact to the local area was conducted for this request. The customer will supply a 24.9 kV to 4.16 kV step-down transformer on site in order to connect this generation. The existing Philipsburg Substation and the 25-3 distribution feeder has adequate capacity to accommodate the 2 MW Flint Creek generation request. Provisions for NWE to monitor the generation status, output, and voltage will be required. This will necessitate the customer to provide a full-time dedicated communication line for NWE's use.

Once connected, the Flint Creek generator will have the ability to greatly affect NWE's 24.9 kV distribution system voltage, frequency, and fault duty levels. NWE will mandate the interconnection customer to meet all the interconnection requirements established by IEEE 1547 "Standard for Interconnecting Distributed Resources with Electric Power Systems", as well as "NorthWestern Energy Interconnection Test Specifications And Requirements For Generation On Distribution Systems" which is attached as Appendix A to this document. This will necessitate close communication and cooperation between the utility and the interconnection customer during interconnection, proof testing, commissioning and subsequent operation.

Of major concern is the assurance that the existence of the Flint Creek generator will not create an islanding situation where the interconnection customer will continue online generation when NWE's distribution system has tripped offline for any reason. The system interconnection will have to be constructed with fail-safe controls that take the generator offline within 10 cycles whenever upstream protective devices open up. NWE will place the burden of proof testing on the customer to ensure that the interconnection protection interface will prevent any chance of generation islanding. If this is not possible with the customer's proposed relay protection

scheme, a transfer-trip communication and relay scheme will be required at the customer's expense to communicate between the customer's facilities and NWE's upstream protective devices.

It is very likely that during light load conditions, power from the Flint Creek generator will back feed through the 24.9kV distribution system and onto NWE's 50kV transmission system. To adequately protect the distribution system voltage regulation, the 24.9kV feeder regulators at the Philipsburg substation will need to be changed out and replaced with units capable of detecting and adjusting to reverse power flow conditions.

It should be recognized that the 25-3 feeder from the Philipsburg Substation serves approximately 240 miles of power lines beyond the substation feeder breaker. This represents a huge exposure to nature and other potential forces that can affect the feeder reliability. Any generation customer who wants to connect to this feeder should be made aware of the historic reliability of this system. This feeder has exhibited the following reliability over the past few years:

Table 1. Historic Reliability of Philipsburg Substation Feeder 25-3

Philipsburg Substation Feeder 25-3	2007	2006	2005
Number of outages	119	69	68
System Average Interruption Duration Index (minutes)	2287	716	249
System Average Interruption Frequency Index	4.8	4.9	2.4

Fault Duty Analysis

A complete study to re-engineer the protective device coordination scheme was required on this feeder. Fault study analysis indicates that up to a 53% increase in fault duty on sections of the distribution system will be introduced with the addition of the Flint Creek generation. The study also shows that a large portion of the distribution feeder protective device coordination scheme will have to be re-applied to accommodate this increase in available fault duty. Results indicate that one electronic recloser must be added and two distribution reclosers will have to be upgraded to handle the increased fault duty introduced by the generator. In addition, nine fuse locations will have to be upgraded to sectionalizers due to increased fault duty.

Conclusions

The results of this study indicate that the addition of Flint Creek's 2 MW electric generation to NWE's 24.9 kV distribution system fed from the Philipsburg Substation is not feasible without system improvements. These improvements include:

- Change out Philipsburg Substation regulators to accommodate reverse power flow conditions
- Generator monitoring by NWE through a dedicated communication line provided by the customer
- Addition of one electronically controlled reclosers
- Changeout of two hydraulic reclosers
- Changeout of nine sectionalizing fuses to electronic sectionalizers
- Modifying out a number of existing protective device relay settings and fuses
- Addition of a transfer-trip relay coordination scheme if the customer cannot guarantee and proof test ongoing anti-islanding operation
- Close coordination between the customer and NWE during proof and commission testing of the generator

A good faith cost estimates for the project interconnection is shown below. All cost estimates shown are per thousand denominated 2008 US dollars.

Table 2. Good Faith cost estimates for 2 MW generation interconnection (low end)

Good Faith Cost Estimates	\$ Cost
24.9 kV premise breaker and associated distribution make ready work	\$41,000
Flint Creek primary recording metering	\$26,600
Implementation of new feeder protective devices and coordination scheme	\$30,800
Relay/SOCC/Communication upgrades	\$12,700
Proof and Commission testing	\$3,800
Substation Regulator changeout for reverse power flow	\$53,000
Total Estimate	\$167,900

If the customer cannot meet the requirements of by IEEE 1547 "*Standard for Interconnecting Distributed Resources with Electric Power Systems*", as well as "*NorthWestern Energy Interconnection Test Specifications And Requirements For Generation On Distribution Systems*", an alternate trip scheme involving transfer-trip with NWE's protective devices will be required. Below is an estimate for this option.

Table 3. Good Faith cost estimates for 2 MW generation interconnection (high end)

Good Faith Cost Estimates	\$ Cost
24.9 kV premise breaker and associated distribution make ready work	\$41,000
Flint Creek primary recording metering	\$26,600
Implementation of new feeder protective devices and coordination scheme	\$30,800
Relay/SOCC/Communication upgrades	\$12,700
Proof and Commission testing	\$3,800
Substation Regulator changeout for reverse power flow	\$53,000
Transfer-Trip communication and relay scheme	\$500,000
Total Estimate	\$667,900

Attachment 4

Milestones

In-Service Date: October 1, 2011

Critical milestones and responsibility as agreed to by the Parties:

	Milestone/Date	Responsible Party
1	Customer will provide security to the Transmission Provider in accordance with Article 6.3 by June 1, 2011	Interconnection Customer
2	Transmission Provider will receive written authorization from the Interconnection Customer to proceed with design and procurement by July 1, 2011.	Interconnection Customer
3	Transmission Provider will receive written authorization from the Interconnection Customer to proceed with construction by July 1, 2011.	Interconnection Customer
4	Transmission Provider's Interconnection Facilities In-Service Date: February 1, 2012	Transmission Provider
5	Transmission Provider's Network Upgrades In -Service Date: February 1, 2012	Transmission Provider
6	Interconnection Customer's Interconnection Facilities In-Service Date: February 1, 2012	Interconnection Customer
7	Initial Synchronization Date: May 1, 2012	Transmission Provider and Interconnection Customer
8	Commercial Operation Date: May 1, 2012	Transmission Provider and Interconnection Customer

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

Interconnection Details

The proposed generator and interconnection information includes:

- Project Name – Flint creek
- Size (Rating) – 2 MW
- Generator Type – Hydro
- Interconnection Type – Qualifying Facility (QF) – Network Resource
- Facilities – Synchronous Hydro Generator with 4,160-Volt Output
- Power Factor – 0.90 leading to 0.90 lagging at the Point of Interconnection
- Point of Change of Ownership – The Interconnection Customer will install, own, operation and maintain all electric facilities downstream of the Point of Interconnection. This will include the underground riser, cables, conduits, transformers, switchgear, and protective devices downstream that the Interconnection Customer requires. All facilities, owned by the Interconnection Customer must meet all applicable national, state and local construction and safety codes. The Point of Change of Ownership between NorthWestern Energy's distribution system and the Interconnection Customer Interconnection Facilities is the Point of Interconnection.
- Point of Interconnection – The point where the Interconnection Customer's 24.9kV cable terminations bolt onto NorthWestern Energy's primary metering load side disconnects.

Power System Stabilizers:

Each Interconnected Unit shall meet the power system stabilizer (PSS) requirements of the WECC. The Generating Party shall cause the applicable PSS, if equipped, to be in service and properly calibrated as required by the WECC Policy Statement on Power System Stabilizers attached hereto as Exhibit A.

General:

Applicable Reliability Standards should include Regional Reliability Standards, for example the WECC Automatic Voltage Regulators (AVR) Standard.

Please note that the National or Regional Reliability *Councils* have been changed to National or Regional Reliability *Organizations*.

Must meet applicable NERC and WECC Standards.

Interconnection Customer Obligations:

Notification of Change in Generation Level. Whenever generation changes by an amount greater than or equal to five (5) megawatts, the NWE's transmission operator will be notified immediately at the phone number provided below. Such notification will be given for both planned and unplanned changes in generation levels. NorthWestern Energy, Transmission Operator, Phone: 406-497-4252.

Notification of Change of Generation On-Line/Off-Line Status.

NWE's transmission operator will be notified at the phone number provided above as to when the generation is going off-line and as to when the generation will be coming on-line. Reasons for either event will also be given. At least 48 hours advance notification will be given for planned events. For unplanned events, notification will be given as soon as possible.

Voltage and Frequency Response. Each Interconnected Unit shall be capable, at all times (including during an Electric Disturbance), of continuous operation at 0.95 to 1.05 per unit (pu) voltage of nominal voltage (69 kV), as measured at the Point of Interconnection, and at 59.5 to 60.5 Hz, and shall be kept online and in operation during frequency deviations beyond the range of 59.5 to 60.5 Hz to the extent required by the Applicable Reliability Standards. Each interconnected unit shall be tested and able to perform to the specifications outlined in Exhibit C – "NorthWestern Energy Test Specifications and Performance Requirements for Generation on Distribution System" if the project is connected on the NorthWestern Energy distribution system.

Switching and Tagging Rules:

Whenever disconnecting an Interconnected Unit from NWE's Electric System, the Generating Party shall perform such disconnection in accordance with Good Utility Practice and in compliance with NWE's transmission facility clearance procedures attached hereto as Exhibit B as may be amended, reasonably and without discrimination to the Generating Party, by NWE in its sole discretion from time to time. To switch on the NorthWestern Energy Transmission System, all personnel must be on the NWE qualified switchman list. If NWE amends its transmission facility clearance procedures, it will notify the Generating Party as soon as practicable thereafter, and provide to the Generating Party a new Exhibit B to this Agreement.

Attachment 6

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

Please refer to Attachment 2 for Facilities Study detail including upgrades and costs.

Michael J. Uda
Uda Law Firm, P.C.
7 West 6th Avenue, Suite 4E
Helena, MT 59601
Telephone: (406) 457-5311
Email: muda@mthelena.com

Attorney for Complainant Hydrodynamics, Inc.

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Petition of
Hydrodynamics, Inc., against NorthWestern
Energy to set terms and conditions for Flint
Creek Pursuant to 69-3-601 through - 604,
MCA

IN THE MATTER OF the Petition of
NorthWestern Energy for a Declaratory Ruling
on the Applicability of 18 C.F.R. § 292.304(f)
and ARM 38.5.1903(1) to Contracts with
Qualifying Facilities

REGULATORY DIVISION
Docket No. _____

REGULATORY DIVISION
Docket No. D2011.7.57

AFFIDAVIT OF ROGER KIRK

STATE OF MONTANA)
 : SS.
County of Gallatin)

Affiant, Roger Kirk, of Bozeman, Montana, being first duly sworn upon oath, deposes
and states as follows:_____

1. I am the President of Hydrodynamics, Inc., which will build and operate the Flint Creek
Hydroelectric, LLC project (the "Flint Creek Project"). Granite County is the owner of the

license issued by the Federal Energy Regulatory Commission ("FERC") to the Flint Creek project and will be the owner of the physical assets of the Flint Creek Project. I am the President of Hydrodynamics, Inc., with a business address of 521 E. Peach Street, Suite 2B, Bozeman, MT, 59715. I have personal knowledge of all facts contained in this Affidavit.

2. On or about June 23, 2011 I sent a letter to Mr. Frank Bennett of North Western Energy ("NWE") informing him that the Flint Creek project had incurred a legally enforceable obligation ("LEO") by signing a proposed Power Purchase Agreement ("PPA") that included: (a) the current QF-1 rate as based on NWE's current QF-1 tariff; (b) A specified beginning and ending date; (c) sufficient guarantees to ensure performance. I further provided NWE with a copy of the Flint Creek project's ICA and a signed PPA. See Attachment "1," hereto. I did not keep copies of the PPAs I signed and sent to Mr. Bennett. However, Exhibit "1" to Hydrodynamics' Petition is the PPA that I personally executed and sent to Mr. Bennett. I had requested that NWE sign two PPA originals and return one executed PPA to me and NWE neither signed nor returned the executed originals to me.

3. I also included in my letter to Mr. Bennett a June 7, 2011, letter from the Granite County Commission, insisting upon changes to NWE's proposed PPA. See Attachment "2," hereto. The draft PPA I executed and sent to Mr. Bennett included many of the changes proposed by Granite County.

4. I have attempted now for approximately five years to get a reasonable PPA for the Flint Creek project from NWE. In response, NWE has delayed, stalled, and offered draft PPAs that were so one-sided that they were unfinanceable because it is impossible to determine how much revenue, if any, the project would be paid. From speaking to credible lending institutions, I believe the curtailment language is unfinanceable. The curtailment language which NWE is

proposing to use in its Petition for Declaratory Ruling, Docket D2011.7.57, did not show up in our draft PPAs until April, 2011 after years of attempting to negotiate a PPA with NWE. In the June 23, 2011 letter to Mr. Bennett, I had proposed a limitation on the curtailment language NWE had proposed in Article 4, limiting its application to those circumstances spelled out in A.R.M. § 38.5.1903(1). Soon after, NWE filed its Petition for Declaratory Ruling. The Commission should understand that NWE's proposed curtailment language is a "deal killer" from the perspective of the Flint Creek project.

5. The Flint Creek project needs the assistance of the Montana Public Service Commission to require NWE to sign our proposed PPA. Although the proposed curtailment language is a significant concern, Granite County and Hydrodynamics believe it is not the only problematic provision for the Flint Creek project. Although the last iteration of the NWE PPA, sent to me on July 15, 2011, removes the offending curtailment language, the concern is that NWE will nonetheless attempt to impose it on the Flint Creek project as NWE claims the provision is consistent with current federal and state law. No lending institution will offer loans if there is a risk that NWE will do so.

6. I have also attached to my affidavit a curtailment provision that exists in my prior PPAs with NWE. That language simply parrots the rule, and I did not become aware of NWE's new curtailment language until April of 2011. See Attachment "3," hereto.

7. The Flint Creek project needs the Commission's assistance if the Flint Creek project is to be built, and it needs that assistance soon. The Flint Creek project has deadlines for construction and completion of the project in order to comply with its Federal Energy Regulatory Commission license. Further delays significantly imperil existing financing necessary to ensure those deadlines are met.

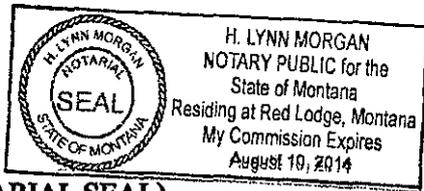
8. Further, affiant says not.

DATED this 29th day of July, 2011.

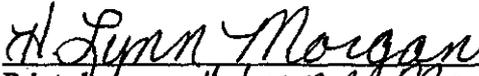


Roger Kirk

SUBSCRIBED AND SWORN to before me this 29 day of July, 2011, by Roger Kirk.



(NOTARIAL SEAL)



Printed name: H. LYNN MORGAN
Notary Public for the State of Montana
Residing at: Red Lodge
My commission expires: 8-10-2014

Flint Creek Hydroelectric, LLC

521 East Peach STE 2B
Bozeman, MT 59715
(406) 587-5086 phone
(406) 587-0056 fax
email: ben@hydrodynamics.biz

June 23rd, 2011

Frank Bennett
Energy Supply
Northwestern Energy
40 East Broadway Street
Butte, MT 59701.

RE: Execution of contracts for the Lower South Fork and Flint Creek Hydroelectric Projects under the QF-1 Tariff

Dear Mr. Bennett:

We have reached the point where we must execute these agreements. Significant major equipment has already been purchased. We have consulted with Granite County regarding the agreement. Please find enclosed their directives to us. The County requires changes to protect their long term financial interest in the project. We have therefore modified the contract accordingly and are hereby submitting it. We are attaching the LSF contract as well, with similar provisions.

We are now ready to proceed with construction and have already sent all funds required to NW for the interconnects.

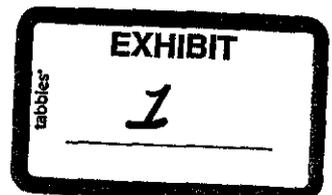
We believe we have incurred a legally enforceable obligation and are sending the executed power purchase agreement package to you that includes the following.

- Executed Agreement
 - Priced in accordance with QF-1 tariff
 - Specified beginning and ending dates.
 - Sufficient guarantees to ensure performance
 - Included executed interconnection agreement

Please execute the enclosed contracts and send a copy of each back to us.

Respectfully,

Roger Kirk



**Office of
The Board of County Commissioners
Granite County**

Post Office Box 925, Philipsburg, Montana 59858-0925
Office Telephone 406-859-7022 Office Fax 406-859-3817 Web Site www.co.granite.mt.us

Clifford Nelson, Chairman
25 Nelson Lane
Philipsburg, MT 59858

Maureen Connor, Commissioner
P. O. Box 6
Philipsburg, MT 59858

Scott C. Adler, Commissioner
750 Frontage Road West
Drummond, Montana 59832

June 7, 2011

Roger Kirk
Hydrodynamics, Inc.
521 E. Peach, Ste 2B
Bozeman, MT 59715

Re: NWE PPA for Flint Creek Hydroelectric, LLC

Dear Roger,

Flint Creek Hydroelectric LLC ("Flint Creek") asked Granite County, as the holder of the FERC license for the Flint Creek Power Project (the "Project"), to review the Power Purchase Agreement ("PPA") that NWE sent to Flint Creek pursuant to which NWE proposes to purchase power from the Project. The County has reviewed the document and we have the following concerns that we would like you to bring to NWE's attention:

1. Limitation of Remedies: Paragraph 12.3(b) is unacceptable in that it appears to be an unreasonable limitation of remedies given that this type of project requires a significant investment of capital to get it off the ground. The County's concern is that if NWE wrongfully terminated the PPA, then Seller's ability to be made whole would be unreasonably impaired. Presumably in such circumstances NWE would argue that the measure of damages would be the amount of power that it should otherwise have purchased from the facility but for the breach. If termination occurred in year 20, maybe that remedy would be acceptable, but certainly not if the termination occurred in year 5, for example, particularly if several of those years had been low water years. A wrongful termination of this agreement by NWE in fact risks the entire project given the capital intensive character of the improvements required to produce energy at the site. Accordingly, the County believes that either party should be able to pursue any remedy provided for under Montana law for breaches of contracts of a like nature.
2. QF Status: Paragraph 6.1 of the PPA requires Seller to warrant that it is a QF as now defined in law, and as it may be defined in the future. Obviously, all the County can do is warrant that it is a QF under the law as existed when applied for QF status. It strikes the County as unreasonable for NWE to require that Seller warrant that it would be a QF under

EXHIBIT

tabbles

2

any conceivable change in the law, which is what the County reads the words "as amended from time to time" to require. This same overreaching is contained in Paragraph 5.1. Again, the County has no difficulty in warranting that it is a QF under existing law, and that it will not change anything that would sacrifice that status under existing law. However, the County cannot represent that future statutory and/or administrative changes will not change the definitional framework of a QF. Finally, the County notes that the language in Paragraphs 6.1 and 5.1 is in tension with the provisions of Paragraph 5.5. Under the latter provision, it is recognized that the agreement will not terminate if there is a change in the laws under which NWE is no longer required to purchase energy from QF's. It is difficult to see any meaningful distinction between a change in the law that simply specifies that NWE need to purchase power, and one that changes the definition of a QF in a way that never triggers the obligation.

To remedy this problem, the County suggests deleting the words "as amended from time to time" from paragraph 6.1 and adding words to the end of Paragraph 5.1 to allow termination if FERC determines that the Project is not a QF under the laws that existed when it was granted QF status.

3. Termination: The County thinks that, in general, the provisions of Paragraph 5.2 are unacceptable. The applicable cure period referenced in Paragraph 5.2iii of 30 days may be too short for some problems. Language should be added that requires Seller to promptly begin to cure and continue to do so with due diligence and as long as Seller continues diligently to pursue a cure, then NWE cannot terminate. The County acknowledges that changes in the definitional section of Force Majeure, as detailed hereinafter, would cure this problem.

4. Force Majeure: Paragraph 11.1 provides an extremely narrow set of circumstances under which a force majeure condition could apply, that being basically a delay to the start-up date. However, a force majeure condition could also arise after operations begin. The County does not see any sensible reason to exclude downtimes that arise from or flaws randomly experienced in power generation materials and equipment and their assembly and operation. The present language seems to suggest that if you are shipped a defective piece of equipment, the replacement or repair of which causes you to miss your start-up date or otherwise not operate for Paragraph 5.1's 30 day period, then you cannot claim this as a force majeure event, even though it would be beyond your reasonable control. Similarly, 11.4 would seem to exclude from a force majeure event the case where you order equipment in a timely manner, but the supplier has issues. As turbines, for example, are not off-the-shelf items that you can buy anywhere; this requirement just seems so unfair that it is unacceptable.

Furthermore even wear and tear can constitute a force majeure where it results in precipitous and unanticipated breakdowns or malfunctions. As the Agreement already excludes those instances in which such downtime arises through our negligence or your negligence, such downtimes are beyond a simple failure to repair and maintain as required. For these reasons, there is no sensible reason to exclude wear and tear resulting in precipitous and unanticipated breakdowns or malfunctions, or flaws randomly experienced in power generation materials and equipment and their assembly and operation from force majeure events. The County would anticipate that you ordinarily should be able to remedy these problems within 180 days. However, construction seasons are short in this area, and

depending upon the glitch and the lead times associated with procuring replacements, the County sees no reason to set such a drop dead date. The County believes that the sensible and fair thing to do is provide that the 180 day period is extended so long as we acted with reasonable diligence in correcting the problem, and still continue to act with reasonable diligence at the end of this nominal 180 day period, to the date at which the problem is corrected.

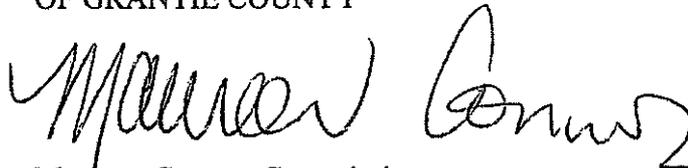
5. Curtailment. The County thinks it understands, generally, NWE's reason for wanting Paragraph 4.I. That being said, the language is squishy and the illustrative examples are not particularly helpful. Understandably, NWE will have a lot of discretion in the application of this provision. Thus, the County suggests adding a paragraph to this section requiring that NWE cannot take any action that is inconsistent with ARM 38.5.1902(1)(3) or impose any obligations on Seller inconsistent with same. That is the law, and we cannot understand why NWE would find it unacceptable to simply state it is not attempting to vary any requirements set forth in this administrative regulation.

The County understands that you may have other issues with the PPA that you are pursuing independently with NWE.

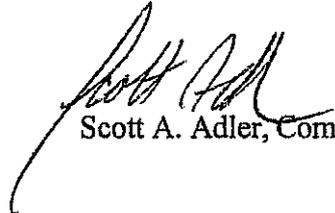
Please call if you wish to discuss any of the matters addressed in this letter.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
OF GRANTIE COUNTY

A handwritten signature in black ink, appearing to read "Maureen Connor", written in a cursive style.

Maureen Connor, Commissioner

A handwritten signature in black ink, appearing to read "Scott A. Adler", written in a cursive style.

Scott A. Adler, Commissioner

- 12.6 Adjustments to statements required as a result of corrected measurements made to inaccurate meters shall be made pursuant to Subsection 4.4.
- 12.7 The location of the metering equipment shall not necessarily signify location of division of ownership of facilities or Point of Interconnection.

Section 13

Availability, Delivery Reductions
and Interruptions

- 13.1 Seller shall use its best efforts to limit the outages of the Project during the Company's expected peak load periods. Such peak periods shall reasonably be determined by the Company. Seller shall, in addition, use its best efforts to provide Capacity during the peak load months on the Company's electric system and schedule Facility maintenance for other months.
- 13.2 At Company's request Seller shall, within thirty (30) minutes of such request, make all reasonable effort to deliver power at an average rate of delivery equal to Capacity during periods of Emergency. In the event that Seller has previously scheduled an outage coincident with an Emergency, Seller shall make all reasonable efforts to reschedule the outage.
- 13.3 Company shall not be obligated to pay for and accept deliveries from Seller, and may require Seller to interrupt or reduce deliveries of Capacity and Energy:
- 13.3.1 During the occurrence of Emergencies and operating conditions requiring such interruption or reduction in order to maintain Company's Electric System Integrity, as reasonably determined by Company, or as otherwise required by Prudent Electrical Practice; and
- 13.3.2 If due to operational circumstances the Company reasonably anticipates that purchases from Seller will result in costs greater than those which the Company would incur if it did not make such purchases hereunder. This provision is only applicable in the case of light loading periods in which the Company must reduce base-load generation in order to purchase Seller's production followed by an immediate need to utilize less efficient generating capacity to meet a sudden high peak. This provision may be invoked only under the following conditions: (i) Upon 24 hours notice given by Company to Seller; (ii) If the need for Company to invoke this provision arises substantially as the result of the amounts of production the Company is required to purchase from all Qualifying



Facilities (QFs) as a class; (iii) If the Company interrupts or reduces deliveries of Capacity and Energy from all QFs in order, such that the facility with the most recent operation date is interrupted or reduced first, and the facility with the oldest operation date is interrupted or reduced last. Interruptions or reductions of Seller's production shall be limited to the amounts necessary for the Company to avoid costs greater than those which the Company would incur if it did not make such purchases hereunder; provided that the cumulative total of such interruptions or reductions shall not exceed 750 hours per Contract Year. During such periods of interruption or reduction of Seller's production under this Subsection 13.3.2, Company may, at its sole discretion, offer to Seller the right to continue its production at a rate fixed for the duration of such period based upon the then prevailing rate for purchase by Company of nonfirm energy from other utilities from which Company can make such nonfirm energy purchases; and Seller shall, at its sole discretion, determine and inform the Company prior to the beginning of such periods, if it desires to continue its production at such rate. Any period of interruption or reduction of Seller's production under this Subsection 13.3.2 shall, in each instance, be for a duration of not less than twelve (12) consecutive hours.

- 13.4 The Company may, upon reasonable notice, whenever advance notice can reasonably be given, require Seller to interrupt or reduce deliveries of Capacity and Energy as reasonably required to allow Company to install, maintain, repair, replace, remove or inspect equipment on any part of Company's system affected by Seller's Facility, and the Company shall not be obligated to compensate Seller for lost production during such required interruptions or reductions as long as the periods adversely affecting Seller's ability to produce Capacity and Energy do not cumulatively exceed 72 hours in any Contract Year. The Company will make reasonable efforts to coordinate such interruptions or reductions with Seller so as to minimize the adverse effects on Seller. If interruptions or reductions under this Subsection 13.4 cumulatively exceed 72 hours in any Contract Year, then the Company will compensate the Seller for lost production for all hours in excess of 72 hours in any Contract Year in the same manner as if Seller had been able to produce Capacity and Energy during such periods of interruption or reduction.
- 13.5 The Company shall endeavor to correct, within a reasonable period, the conditions on its system which necessitate the interruption or reduction of output required under Subsection 13.3.1. The interruption or reduction of output shall be limited to the period of time such a condition