



DOCKET NO. D2015.8.64

QF Petition from Greycliff Wind Prime, LLC
to Set Terms and Conditions

Before the Public Service Commission
of the State of Montana

**NORTHWESTERN ENERGY'S
ADDITIONAL RESPONSE
TESTIMONY AND EXHIBITS**

November 19, 2015

1 Department of Public Service Regulation
2 Montana Public Service Commission
3 Docket No. D2015.8.64
4 QF Petition to Set Terms and Conditions
5 Greycliff Wind Prime, LLC
6

7
8
9 **PREFILED ADDITIONAL RESPONSE TESTIMONY**
10 **OF BLEAU J. LAFAVE**
11 **ON BEHALF OF NORTHWESTERN ENERGY**
12

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1 **Witness Information**

2 **Q. Please state your name and business address.**

3 **A.** My name is Bleau J. LaFave. My business address is 3010 West 69th
4 Street, Sioux Falls, South Dakota 57108.

5
6 **Q. Are you the same Bleau J. LaFave who submitted prefiled response**
7 **testimony in this docket?**

8 **A.** Yes, I am.

9
10 **Q. What is the purpose of this additional response testimony?**

11 **A.** The purpose of this testimony is to provide a description of the non-price
12 terms in a proposed power purchase agreement (“PPA”) which should be
13 changed and the non-price terms which must be added. It will also
14 provide details on the contract revisions that will be required if Greycliff
15 Wind Prime, LLC (“Greycliff”) elects the avoided cost rate that includes a
16 carbon adder.

17
18 **Contract Terms**

19 **Q. Are the terms of the contract proposed by Greycliff to NorthWestern**
20 **in July of 2015, and attached to its Petition as Exhibit 3, reasonable**
21 **terms and conditions that NorthWestern would accept? If no, why?**

22 **A.** No. Although this contract is similar to the Community Renewable Energy
23 Project (“CREP”) contract signed with Greycliff earlier this year, there have

1 been several changes made to the document and some items that remain
2 in the agreement that are not acceptable for a Qualifying Facility (“QF”)
3 PPA.

4

5 **Q. What terms should be changed or give NorthWestern pause?**

6 **A.** In my opinion, the following issues and proposed contractual requirements
7 require consideration prior to execution of any QF PPA with Greycliff.
8 These are not the only terms NorthWestern considers to be at issue, but
9 they are the most concerning to NorthWestern.

10

11 1. Section 5.3.2 – ANEA. Prior negotiated CREP and QF PPAs set
12 the Annual Net Energy Amount (“ANEA”) threshold at 75-85%.
13 Greycliff appears to be asking for an unreasonably low standard of
14 65%, which is not acceptable to NorthWestern. For clarification,
15 Greycliff references “seventy-five percent” in the contract, but then
16 also uses the numerical “(65%)” in the same sentence, so its intent
17 is not clear. NorthWestern will not agree to 65%.

18

19 2. Section 6.7.1 – Curtailment Right. Greycliff proposes an exception
20 to the general curtailment right and references federal law to
21 support the proposed exception. If the proposed exception is
22 appropriately allowed by federal law, the PPA needs to be clarified
23 as it relates to compensated and uncompensated curtailments.

1 The curtailment provision is always a point of contention in these
2 contracts and thus requires discussion with Greycliff.

3

4 3. Section 6.7.4 - Creditable Hours. In the 2015 CREP PPA, this was
5 a negotiated term to achieve a CREP project, not a unilateral right.
6 This provision should not be included in any QF contracts.

7

8 4. Section 9.5.2. Greycliff substantially changed the provisions related
9 to remedies and damages. NorthWestern will not accept the
10 proposed revisions of 9.5.2 as drafted by Greycliff.

11

12 5. Section 16.8 – Obligation to Provide Electrical Service. Relying on
13 numerous federal regulations, Greycliff requires NorthWestern to
14 provide house power to the facility. NorthWestern will not accept
15 this provision as revised by Greycliff.

16

17 **Q. Do you have any other concerns with the QF PPA proposed by**
18 **Greycliff?**

19 **A.** Yes. NorthWestern periodically incorporates updates to its standard QF
20 PPA forms. The PPA proposed by Greycliff does not include these
21 updated provisions.

22

1 **Q. If the parties can agree on a price or the Montana Public Service**
2 **Commission (“Commission”) determines the appropriate avoided**
3 **cost rate for this project, how should the terms of the contract be**
4 **finalized?**

5 **A.** NorthWestern has successfully negotiated two CREP PPA contracts with
6 Greycliff. If Greycliff is willing, NorthWestern can enter into negotiations to
7 finalize the contract and bring any unresolved terms to the Commission.
8 Attached as Exhibit__(BJL-2) is a proposed QF PPA that NorthWestern
9 believes should be a starting point for any such negotiations. If the parties
10 proceed to negotiations as suggested above, any final QF PPA agreed to
11 by the parties would be subject to Commission approval.

12
13 **Q. In Exhibit__(BJL-2), how are the environmental attributes of the**
14 **Greycliff project treated?**

15 **A.** As noted in my prefiled response testimony, given that Greycliff’s
16 proposed PPA provided that all environmental attributes were to be
17 conveyed to NorthWestern, Exhibit__(BJL-2) similarly reflects such intent.
18 If Greycliff decides that it will not convey the environmental attributes to
19 NorthWestern and therefore wishes to accept the avoided cost rate
20 proposed in my prefiled response testimony that does not incorporate a
21 carbon adder, revisions must be made to Exhibit__(BJL-2), including but
22 not limited to Sections 5.5 and 5.10.

23

1 **Q. How does Exhibit__(BJL-2) treat the wind integration costs that**
2 **Greycliff must pay NorthWestern related to this project?**

3 **A.** Exhibit__(BJL-2) provides at Section 5.5.3 that Greycliff must pay the wind
4 integration rate, which includes regulation and ancillary services, on a
5 monthly basis. As detailed in Exhibit__(BJL-1) attached to my prefiled
6 response testimony, the wind integration rate is estimated to be \$2.00 per
7 megawatt-hour levelized over 25 years. This amounts to \$193,325.48 on
8 an annual basis or \$16,110 per kilowatt-month.

9

10 **Q. Does this conclude your additional response testimony?**

11 **A.** Yes, it does.

QUALIFYING FACILITY
POWER PURCHASE AGREEMENT BETWEEN
NORTHWESTERN CORPORATION D/B/A
NORTHWESTERN ENERGY
AND
GREYCLIFF WIND PRIME, LLC

DATED EFFECTIVE AS OF

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PREAMBLE

This Qualifying Facility Power Purchase Agreement (“Agreement”) is entered into effective as of the ____ day of _____, 20__ (“Effective Date”), between Greycliff Wind Prime, LLC, a Montana limited liability company (“Seller”) and NorthWestern Corporation d/b/a NorthWestern Energy, a Delaware corporation (“NorthWestern”). Seller and NorthWestern are collectively referred to as “Parties” or individually as a “Party” herein.

RECITALS

WHEREAS, Seller intends to construct, own, maintain, and operate an electric generation facility that is a “Qualifying Facility” pursuant to 18 C.F.R. §§ 292.201 *et seq.*, located in _____ County, Montana, with a physical address of _____; and

WHEREAS, Seller wishes to sell, and NorthWestern is required to purchase the Energy and Environmental Attributes produced by Seller’s Facility in accordance with PURPA, Order No. _____ resolving Commission Docket No. D2015.8.64 and the Commission’s regulations because of Seller’s status as a Qualifying Facility;

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

ARTICLE 1: DEFINITIONS

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

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, creates, owns, controls, or is controlled by, or is under common control with, such Person, and for this Agreement “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power and/or the power to direct or cause the direction of the management and policies of such Person, whether through direct or indirect ownership of voting securities or by contract or otherwise.

“Agreement” has the meaning set forth in the Preamble.

“Annual Net Energy Amount” or “ANEA” means the Energy that Seller intends to produce and deliver to NorthWestern during each Contract Year as set forth in Section 5.3.1 below.

“As-Built Supplement” shall be a supplement to Exhibit A, delivered to NorthWestern by Seller promptly upon completion of construction of the Facility, describing the Facility as actually built, and including all original equipment manufacturer and balance of plant contractor commissioning certificates and reports.

“Bankrupt” means with respect to any Person, such Person (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed

or commenced against it, which petition is not dismissed within 60 days of its filing (ii) is insolvent or otherwise makes an assignment or any general arrangement for the benefit of creditors, (iii) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (iv) is generally unable to pay its debts as they become due.

"Billing Period" means the period of time from one meter reading to the next, which shall occur approximately every 31 days.

"Business Day" means any day except a Saturday, Sunday, or any other day on which banks in Montana are authorized or obligated to close.

"Capacity" means the electrical output potential a machine or system can produce or carry under specified conditions, generally expressed in kW or MW.

"Cash Security" means Default Security deposited by Seller in a non-interest bearing account established by NorthWestern in a federally insured banking institution.

"Claims First Made Basis" means the type of an insurance policy that pays only those claims that occur and are filed/reported during the period covered by the policy.

"Commercial Operation" means: (i) one hundred percent (100%) of the Nameplate Capacity of the Facility is installed and each Unit is tested and commissioned by the original equipment manufacturer; (ii) all equipment and facilities necessary to connect the Facility with the NorthWestern System are installed, tested and commissioned in accordance with the requirements of the Generator Interconnection Agreement; (iii) Seller has satisfied all conditions precedent set forth in Articles 4.1 and 4.2 of this Agreement; and (iv) Seller has delivered to NorthWestern the As-built Supplement and the Facility is capable of providing Energy and the associated Capacity to the Point of Interconnection consistent with Prudent Utility Practice.

"Commercial Operation Date" means the day commencing at 12:01 a.m., prevailing Mountain Time, following the day on which NorthWestern provides written confirmation (including electronic communication) to Seller that the Facility has achieved Commercial Operation.

"Commission" means the Montana Public Service Commission.

"Compensated Curtailment" means a curtailment of Energy (excluding Uncompensated Curtailments) that entitles Seller to payment for Lost Production.

"Confidential Information" has the meaning set forth in Section 15.1.

"Contest" means, with respect to either Party, a challenge of (i) any Governmental Approval or any act or omission by a Governmental Agency or (ii) the amount or validity of any claim pursued by or against such Party in good faith and by appropriate legal, administrative, or other proceedings.

"Contract Price" shall have the meaning set forth in Section 5.5.

“*Contract Year*” means the period commencing at 12:00 am on the first day of the first month immediately following the Commercial Operation Date and ending at 11:59 p.m. on the day prior to the same date of each subsequent year during the Term of this Agreement.

“*Default Security*” means the Cash Deposit Security or Letter of Credit Security in the amount set forth in Section 7.1 for a potential or actual default of this Agreement.

“*Defined Tasks*” means the defined tasks listed in Section 5.2.

“*Delay Damages*” means the agreed liquidated damages payable to NorthWestern if Seller fails to achieve Commercial Operation by the Guaranteed Commercial Operation Date as set forth in Section 7.4.

“*Distribution Upgrades*” has the meaning set forth in NorthWestern’s Open Access Transmission Tariff.

“*ED*” has the meaning set forth in Section 5.3.2.

“*Effective Date*” has the meaning set forth in the Preamble.

“*Emergency Condition*” means any condition or situation that in the judgment of NorthWestern, Seller or Transmission Provider (i) endangers or might endanger life or property;(ii) adversely affects or might adversely affect the reliability of the NorthWestern System or its ability, or the ability of any other entity associated with the interconnected transmission system, to maintain safe and reliable electric service or otherwise pose a threat to public safety; or (iii) constitutes an “emergency” under the GIA.

“*Energy*” means the amount of electrical energy delivered by Seller to NorthWestern pursuant to this Agreement, as determined by NorthWestern’s billing meter located at the Point of Interconnection and installed pursuant to the GIA, including any adjustment for losses.

“*Environmental Attributes*” means any and all 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 and the production of Energy and Test Energy. The term “*Environmental Attributes*” does not include any federal, state, or local incentive or production or investment tax attributes or other non-environmental benefits.

“*Environmental Law*” means any applicable Law, rulings, order, administrative interpretations, and other Governmental Agency restrictions and requirements related to the discharge of air pollutants, water pollutants or process waste water, or otherwise relating to the environment, avian or protected species or hazardous substances, as amended from time to time.

“*Environmental Liability*” means any and all liability arising under, resulting from or imposed by any Environmental Law.

“*Facility*” means the electric generation facility and interconnection facilities which are owned, controlled, or operated by Seller, or its successors or assigns, described in Exhibit A of this Agreement (as finally described in the As-Built Supplement).

“*FERC*” means the Federal Energy Regulatory Commission or any successor government agency.

“*Forced Outage*” means any condition at the Facility requiring immediate removal of the Facility or any Unit from service, resulting from immediate mechanical, electrical or hydraulic control system trips and operator initiated trips in response to Facility conditions.

“*Force Majeure*” has the meaning set forth in Section 14.1.

“*Forecast*” has the meaning set forth in Section 6.10.

“*Generator Interconnection Agreement*” or “*GIA*” means all agreements between Seller and the Transmission Provider(s) substantially in the form of the Transmission Provider’s Standard Large or Small Generator Interconnection Agreement, to be attached to this Agreement as Exhibit C.

“*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.

“*Governmental Approvals*” shall mean all permits, authorizations, licenses, orders, consents, waivers, exceptions, exemptions, variances or other approvals required by Law or a Governmental Agency for the development, construction, operation and maintenance of the Facility.

“*Guaranteed Commercial Operation Date*” means _____, provided that such date may be extended as the result of Force Majeure.

“*In-Service Date*” means the date on which the Facility first delivers Energy to the Transmission Provider.

“*Integration/Regulation Services*” has the meaning set forth in Section 5.5.5.

“*kW*” means kilowatt(s).

“*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.

“*Lender*” means any Person providing money or extending credit to Seller for (i) the construction, term or permanent financing of the Facility; (ii) working capital or other ordinary business requirements of the Facility; and (iii) any development financing, bridge financing or credit support with respect to Seller or the Facility.

“*Letter of Credit*” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody’s, in the amount set forth in Section 7.1 and in a form acceptable to NorthWestern and satisfying the requirements of Section 7.3.

“*Letter of Credit Security*” means Letter(s) of Credit posted and maintained by Seller and drawable on by NorthWestern in an amount of the Default Security during the applicable period under the Agreement.

“*Long-Term Firm Point-to-Point Transmission Service*” has the meaning set forth in NorthWestern’s Open Access Transmission Tariff.

“*Lost Production*” means for any applicable period the quantity, if any, of Energy Seller could have produced and delivered to NorthWestern at the Point of Interconnection during such period calculated using data from the SCADA System and based on actual measurements during the applicable time as recorded by the Facility’s measurement instrumentation, but that was not produced and delivered as a result of a Compensated Curtailment.

“*Lost Production Damages*” means the amount of compensation, if any, Seller is entitled to receive as a result of a Compensated Curtailment, calculated as follows:

$$LPD = LP * (CP + PTC)$$

Where “LPD” means the Lost Production Damages in respect to any applicable calendar month (expressed in dollars).

“LP” means the aggregate quantity of Lost Production during such month (expressed in MWh).

“CP” means the Contract Price applicable during such month (expressed in \$/MWh).

“PTC” means the amount, if any, which would result in Seller receiving the value of Production Tax Credits lost by Seller as a result of Lost Production, on an after-tax basis during the initial 120 calendar months following the Commercial Operation Date, calculated in accordance with Exhibit E. Lost Production Damages shall be reduced by any amount received by Seller from Transmission Provider or any other Person to compensate Seller for losses or damages arising from a Compensated Curtailment.

“*Mechanical Availability*” means the percentage of time that the Facility is capable of producing Energy during a Contract Year and is calculated as follows:

$$\{[(H \times N) - (\text{Sum of Downtime Hours for } N \text{ Units})] / (H \times N)\} \times 100$$

expressed as a percent where H is the number of hours in the Contract Year and N is the number of individual generating Units in the Facility. Downtime hours (calculated in 15 minute increments) for each individual Unit includes all minutes in which the Unit is not in “run” status, or is in “run” status but faulted (including any delay in resetting a fault), with the exception of minutes that a Unit is unavailable due to (i) an event of Force Majeure; (ii) a curtailment ordered by the Transmission Provider; (iii) a NorthWestern Event of Default; and (iv) an outage scheduled at least 90 days in advance with NorthWestern’s written consent, up to 240 hours per unit per Contract Year.

“*Mechanical Availability Guarantee*” means minimum Mechanical Availability required to be achieved by the Facility annually as set forth in Section 5.4.

“*Moody’s*” means Moody’s Investor Services, Inc., or its successor.

“*MW*” means megawatt(s).

“*MWh*” means megawatt hours.

“*Nameplate Capacity*” means the maximum rated generating output of the Facility under specific conditions designated by the original equipment manufacturer and for the purposes of this Agreement, the Nameplate Capacity of the Facility is 26MW.

“*Network Integration Transmission Service*” has the meaning set forth in NorthWestern’s Open Access Transmission Tariff.

“*Network Resource*” has the meaning set forth in NorthWestern’s Open Access Transmission Tariff.

“*Network Upgrades*” has the meaning set forth in NorthWestern’s Open Access Transmission Tariff.

“*NorthWestern’s Electric Tariff*” means those rules and regulations approved by the Commission, as amended from time to time during the Term of this Agreement, governing the relationship between NorthWestern and the owner of a Qualifying Facility.

“*NorthWestern Event of Default*” has the meaning set forth in Section 8.2.

“*NorthWestern’s Balancing Authority Area*” means the collection of generation, transmission, and distribution infrastructure, in addition to the load-resource balance NorthWestern is responsible for maintaining as a member of the Western Electricity Coordinating Council.

“*NorthWestern System*” means all transmission and distribution facilities owned by NorthWestern.

“*Other Party Group*” has the meaning set forth in Section 10.2.

“*Pending Facility Transaction*” means (i) the issuance by Seller or any of its Affiliates of a request for proposals or the response by Seller or any of its Affiliates to a request for proposal or similar process for the purchase or sale to any unaffiliated third party of equity interests in Seller or the Facility; (ii) the commencement by Seller or any of its Affiliates of substantive negotiations with any unaffiliated third party with respect to the sale of equity interests in Seller or the Facility; (iii) the execution by Seller or any of its Affiliates of any letter of intent, memorandum of understanding or similar document, whether or not legally binding, which contemplates the sale or lease to an unaffiliated third party of any equity interests in Seller or the Facility, provided, however, that a Pending Facility Transaction does not include (i) any financing, refinancing or replacing of the Facility debt by Seller or any of its Affiliates; (ii) any transaction between and among Affiliates of Seller; and (iii) any transaction in which NorthWestern declined to exercise its Pending Facility Transaction rights.

“*Person*” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Agency, or other entity.

“*PFT Notice*” has the meaning set forth in Section 12.7.

“*Point of Interconnection*” has the meaning provided in the Generator Interconnection Agreement.

“*PTCs*” means production tax credits under section 45 of the U.S. Internal Revenue Code as in effect on the date of this Agreement.

“*Prudent Utility Practices*” means any of the practices, methods, and acts, which, in the exercise of reasonable judgment in the light of the facts (including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry prior thereto) known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety, and expedition, taking into account the fact that Prudent Utility Practice is not intended to be limited to the optimum practice, methods, or acts to the exclusion of all others, but rather to be a spectrum of possible practices, methods, or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. Prudent Utility Practice includes due regard for manufacturers’ warranties and requirements of governmental agencies of competent jurisdiction.

“*PURPA*” means the Public Utility Regulatory Policies Act.

“*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 292.210, as amended from time to time and the regulations established by FERC, 18 C.F.R. Part 292.

“*Remedial Action Plan*” has the meaning set forth in Section 5.2.

“*ROFO*” has the meaning set forth in Section 12.6.

“*ROFO Notice*” has the meaning set forth in Section 12.6.

“*S&P*” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“*SCADA System*” means supervisory control and data acquisition system monitoring and controlling the performance of the Units and the Facility.

“*Seller Event of Default*” has the meaning set forth in Section 8.1.

“*Site*” means the real property on which the Facility will be located, as described generally in Exhibit A.

“*Taxes*” has the meaning set forth in Section 13.1.

“*Term*” has the meaning set forth in Section 5.1.

“*Test Energy*” means any Energy produced and delivered by Seller to NorthWestern after the In-Service Date and prior to the Commercial Operation Date.

“*Transmission Authority*” means any independent service organization or other Person that may be created or become operational subsequent to the date of this Agreement which acquires jurisdiction over NorthWestern, the NorthWestern System or the Transmission Provider’s System, and that is empowered or authorized to plan, coordinate, operate, regulate or otherwise manage any or all of the Transmission Provider’s System or the NorthWestern System.

“*Transmission Provider(s)*” means any entity or entities transmitting or transporting Energy on behalf of Seller.

“*Transmission Provider’s System*” means the facilities owned, controlled or operated by the Transmission Provider by which the Transmission Provider provides transmission service for the Energy and associated Capacity at and from the Point of Interconnection.

“*Uncompensated Curtailment*” means a curtailment arising out of or resulting from: (i) Seller’s scheduled outages of the Facility, a Forced Outage of the Facility or any part thereof; (ii) during light loading periods pursuant to Section 6.7.4 if interruption of Energy deliveries during light loading periods is allowed by Section 210 of PURPA, FERC’s regulations implementing PURPA, and Montana Administrative Rules Title 38, Chapter 5, Subchapter 19; (iii) a request of the Transmission Provider under the GIA; (iv) an Emergency Condition or event of Force Majeure of the Facility or the NorthWestern System; or (v) an order of a Governmental Agency for any reason.

“*Unit*” means any one wind turbine generator installed at the Facility.

“*WREGIS*” means the Western Renewable Energy Generation Information System or any successor entity thereto.

ARTICLE 2: RULES OF INTERPRETATION

Unless otherwise required by the context in which any term appears:

- (i) Capitalized terms used in this Agreement shall have the meanings specified in Article 1 and the text of applicable Sections;
- (ii) The singular shall include the plural and vice versa;
- (iii) References to "articles," "sections," "schedules," or "exhibits" shall be to Articles, Sections, Schedules or Exhibits hereof;
- (iv) All references to a particular Person shall include a reference to such Person’s successors and permitted assigns;
- (v) All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied;

- (vi) References to this Agreement shall include a reference to all schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time;
- (vii) The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation" and shall not be construed to mean that the examples given are an exclusive list of the topics covered;
- (viii) The masculine shall include the feminine and neuter and vice versa; and
- (ix) The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

ARTICLE 3: SELLER'S REPRESENTATIONS AND WARRANTIES

- 3.1 No Warranty by NorthWestern. Seller represents that in entering into this Agreement and in undertaking the obligations set forth herein (i) Seller has investigated and determined that it is capable of performing hereunder and has not relied on the advice, experience, or expertise of NorthWestern; and (ii) all professionals or experts, including but not limited to, engineers, attorneys, or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller. Any review, acceptance or failure to review Seller's design, specifications, equipment or facilities shall not be an endorsement or a confirmation by NorthWestern and NorthWestern makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.
- 3.2 Organization. Seller represents it is a limited liability company duly organized and validly existing under the laws of Montana and authorized to conduct business in the State of Montana; Seller has the requisite power and authority to enter into this Agreement, including all regulatory approvals; and Seller has taken all action required to authorize the execution and performance of this Agreement.
- 3.3 QF Status. Seller represents and warrants that the Facility is a Qualifying Facility and that Seller will maintain the Facility's QF status throughout the Term of this Agreement. At any given time during the Term of this Agreement, NorthWestern may require Seller to provide evidence satisfactory to NorthWestern, in its reasonable discretion, establishing the Facility's QF qualification.
- 3.4 FERC Licenses or Approvals. Seller warrants that Seller will procure and maintain all licenses or approvals, including any exemption from licensing, from FERC for the Facility and the delivery and sale of Energy under this Agreement. Seller will take such steps as may be required to maintain a valid FERC license or approval for the Facility during the Term of this Agreement.
- 3.5 Construction of Facility. Seller represents and warrants that it will construct the Facility in conformance with Prudent Utility Practice and the specification set forth in Exhibit A, including but not limited to the Nameplate Capacity, and the manufacturers and models of all major equipment. Seller shall notify NorthWestern of any change in the manufacturer of the Units and shall not increase or decrease the Nameplate Capacity without the prior written consent of NorthWestern. Seller shall not make any

modification to the equipment described in Exhibit A, unless the same change is made to the equipment listed under its GIA. Upon completion of the Facility, Seller shall deliver to NorthWestern the As-Built Supplement to Exhibit A.

- 3.6 Operation of Facility. Seller warrants that it will maintain and operate the Facility in accordance with the terms and conditions of this Agreement, Prudent Utility Practice, NorthWestern's Electric Tariffs, and the Law and shall not increase the Nameplate Capacity without the prior written consent of NorthWestern.
- 3.7 No Environmental Liability. Seller represents and warrants that: (i) no portion of the Site and the improvements thereon has ever been used, to the knowledge of Seller, by previous or current owners or operators or Seller to generate, manufacture, refine, transport, treat, store, handle or dispose of toxic material, hazardous substances, solid waste or hazardous wastes, as the terms are defined in any applicable Environmental Law, and Seller shall not use any of the Site for such purposes; (ii) to the knowledge of Seller, the Site does not contain, through the action or inaction of previous owners or operators or Seller, asbestos, urea formaldehyde foam insulation, PCBs, other toxic materials, hazardous substances, or any other chemical, material, or substance exposure to which may or could pose a health hazard whether or not the substance is prohibited, limited or regulated by any Governmental Agency, whether used in the Facility or stored on the Site; (iii) Seller has not received a summons, citation, directive, letter, or other communication, written or oral, from any Governmental Agency concerning the existence of any condition on or affecting the Site which currently violates, or which, with the passage of time will violate, any applicable Environmental Law, or which otherwise indicates that Seller may be subject to any potential Environmental Liability with respect to the Site or the Facility and (iv) Seller, the Facility and the Site are not subject to any existing or pending investigation or inquiry by any Governmental Agency or to any remedial obligations under any applicable Environmental Law.
- 3.8 Maximum Output. Seller represents and warrants that the Facility will be designed, constructed and operated so that the Nameplate Capacity does not exceed 26MW. Seller acknowledges that NorthWestern is not obligated to compensate Seller for the delivery of excess Energy when the Facility generates power in amounts above the Nameplate Capacity.

ARTICLE 4: CONDITIONS PRECEDENT

- 4.1 In-Service Conditions Precedent. Prior to the In-Service Date, and as a condition of NorthWestern's acceptance of Energy from Seller and NorthWestern's obligation to pay for Energy:
- 4.1.1 Governmental Approvals. Seller shall submit satisfactory evidence to NorthWestern that Governmental Approvals necessary for the construction and operation of the Facility have been obtained from each applicable Governmental Agency.
- 4.1.2 Seller Certificate. Seller shall provide NorthWestern a certificate, executed by an officer of Seller, confirming that: (i) the Facility is capable of commencing Energy production; (ii) the transmission and interconnection facilities necessary to

deliver and transform such Energy for delivery to NorthWestern at the Point of Interconnection are installed and operational; (iii) all Governmental Approvals, including QF status, necessary for Seller to produce and deliver Energy to NorthWestern have been received and are valid; and (iv) the Transmission Service Provider and Transmission Authority (if applicable) has approved commencement of delivery of Energy pursuant to the Generator Interconnection Agreement.

- 4.1.3 Engineers' Certificates. NorthWestern has received a certificate from a professional engineer, addressed to and in a form acceptable to NorthWestern, indicating the Facility is constructed in a manner consistent with Prudent Utility Practice, and is ready and able to generate electric power in accordance with the terms and conditions of this Agreement. The engineer's certificate must be delivered by an engineer licensed to practice in the State of Montana, who has no economic relationship with Seller (other than the relationship with Seller to provide such certificate) and who is not a representative of Seller's Facility design engineer or the manufacturer of any equipment installed at the Facility.
- 4.1.4 Insurance. Seller shall submit written proof to NorthWestern of all insurance required by Article 10.
- 4.1.5 Security Requirements. Seller shall have provided Default Security in the amount and at the time and in the manner set forth in Section 7.1 below.
- 4.1.6 Interconnection Agreements. Seller shall have entered into the Generator Interconnection Agreement with the Transmission Provider in accordance with Section 6.2 of this Agreement.
- 4.1.7 Written Acceptance. Seller shall have requested and received written confirmation from NorthWestern that all conditions precedent to acceptance of Energy have been fulfilled. NorthWestern shall confirm satisfaction of the in-service conditions precedent within 10 Business Days of receipt of the certificates required hereunder, or identify in writing NorthWestern's refusal to confirm satisfaction and the specific reasons for the refusal.
- 4.1.8 Firm Network Integration Transmission Service Approval. NorthWestern shall have secured firm Network Integration Transmission Service rights for the Facility in accordance with Section 6.3 of this Agreement, upon terms and conditions acceptable to each Party in its sole discretion, including but not limited to: (i) no curtailment of Energy delivery due to congestion; (ii) no transmission system upgrade costs assigned to the Facility; and (iii) with reasonable assurance of completion of required transmission system upgrades by the Guaranteed Commercial Operation Date.

This Agreement is subject to termination in accordance with Section 8.4 if the condition precedent set forth in this Section 4.1.8 is not waived or satisfied by the Parties on or before _____.

- 4.2 Commercial Operation Conditions Precedent. Following the In-Service Date, but prior to Commercial Operation and as a condition of NorthWestern's obligation to pay for Energy at the Contract Price set forth in Section 5.5.1, Seller shall provide a certificate, executed by an officer of Seller, to NorthWestern, certifying that the conditions to

Commercial Operation set forth in the definition of “Commercial Operation” herein have been satisfied, and NorthWestern has confirmed in writing all conditions of Commercial Operation are satisfied (which confirmation shall not be unreasonably withheld or delayed). NorthWestern shall confirm Commercial Operation within 10 Business Days of receipt of Seller’s certificate, or identify in writing NorthWestern’s refusal to confirm Commercial Operation and the specific reasons for the refusal.

ARTICLE 5: PURCHASE AND SALE OF ENERGY AND ENVIRONMENTAL ATTRIBUTES

- 5.1 Term. This Agreement shall be effective at 12:01 a.m. prevailing Mountain Time on the Effective Date and shall remain in effect for a term of 25 years following the first day of the first month immediately following the Commercial Operation Date, unless earlier terminated pursuant to Article 8 (“Term”).
- 5.2 Defined Tasks. In order to meet the Guaranteed Commercial Operation Date, Seller shall use commercially reasonable effort to accomplish certain tasks as follows:

Tasks	Scheduled Date
5.2.1 “Land lease” documentation evidencing preliminary Unit location and lease rights for Term of Agreement.	90 days from Effective Date.
5.2.2 Proof of “financing” documentation provided to NorthWestern.	120 days from Effective Date.
5.2.3 “Notice to Proceed” given by Seller to a general construction contractor.	140 days from Effective Date.
5.2.4 “Land Location” map providing the latitude and longitude of each Unit sequentially in the order of the Facility layout.	140 days from Effective Date.
5.2.5 “First Unit Construction”, meaning substantial completion of first Unit.	200 days from Effective Date.
5.2.6 “Final Unit Construction” substantial completion of final Unit.	300 days from Effective Date.

Seller shall proceed with development of the Facility in accordance with the schedule set forth above for the completion of the Defined Tasks. Seller shall provide NorthWestern with monthly reports describing its progress toward completion of the described Defined Tasks and completion of the Facility.

Seller acknowledges and agrees that it is the intent of the Defined Tasks to ensure that the Facility begins delivery of Energy to NorthWestern by the Guaranteed Commercial Operation Date. If, for reasons other than an event of Force Majeure, Seller fails to achieve any of the Defined Tasks by the applicable schedule date, Seller shall submit to NorthWestern, within 10 Business Days of such missed Defined Task scheduled date, a remedial action plan (“Remedial Action Plan”) that sets forth a detailed description of Seller’s proposed course of action to promptly achieve the missed Defined Task and all subsequent Defined Tasks by the Guaranteed Commercial Operation Date. Seller’s

failure to accomplish any Defined Tasks by the applicable scheduled dates will not constitute a Seller Event of Default if Seller complies with the requirements of the Remedial Action Plan and achieves Commercial Operation by the Guaranteed Commercial Operation Date.

Upon completion of the Facility, Seller shall deliver to NorthWestern the As-built Supplement to Exhibit A.

5.3 Purchase and Sale of Energy. Subject to the terms and conditions of this Agreement, Seller shall deliver to the Point of Interconnection and sell to NorthWestern, and NorthWestern shall purchase from Seller, on and after the In-Service Date and for the remaining Term of this Agreement, all of the Energy output of the Facility.

5.3.1 Annual Net Energy Amount. Seller intends to produce and deliver to NorthWestern a minimum of 78,783MWh MWh of Energy (“*ANEA*”) in each Contract Year.

5.3.2 Failure to Deliver the ANEA in a Single Year. In any given Contract Year, if Seller fails to deliver seventy-five percent (75%) of the ANEA, Seller shall pay NorthWestern an amount equal to the ANEA minus the actual Energy delivered during the Contract Year (“*ED*”), then times the annual average of daily on-peak and off-peak Mid-Columbia Index prices for energy published by the Intercontinental Exchange minus the Contract Price set forth in Section 5.5 (for this Section 5.3.2, the “*Price*”), provided however, that no payment will be made if the calculation results in an amount less than zero. With respect to the foregoing calculation, the ANEA shall be reduced pro rata to reflect those hours during the measurement year when Seller was prevented from delivering Energy by (i) an event of Force Majeure; or (ii) a curtailment ordered by NorthWestern or the Transmission Provider.

Section 5.3.2 formulaic representation:

$(ANEA-ED) * (Price - Contract Price) = \text{Failure to deliver payment}$

If the Mid-Columbia Index prices for energy cease to be published by the Intercontinental Exchange, the Parties will substitute a comparable annual average daily on-peak and off-peak price established or published by a Governmental Agency or Person which most closely represents NorthWestern’s actual cost for the purchase of energy.

5.4 Mechanical Availability Guarantee. The Facility shall achieve a minimum Mechanical Availability of 75% for each Contract Year. Within 45 days after the end of each Contract Year, Seller shall provide documentation in a form acceptable to NorthWestern to demonstrate the Mechanical Availability of the Facility for the applicable Contract Year. Each contract year Seller shall pay NorthWestern, as liquidated damages \$1,500 per one percentage point (1%) that the Mechanical Availability Guarantee exceeds the actual Mechanical Availability.

5.5 Contract Price:

5.5.1 After Commercial Operation. Subsequent to the Commercial Operation Date, NorthWestern shall pay Seller for Energy, Environmental Attributes and Capacity delivered at the levelized rate of \$_____ per MWh [**adjusted for**

- Transmission Provider System upgrades].** The value of the Capacity is specifically included within the Contract Price.
- 5.5.2 Test Energy. After the In-Service Date and prior to the Commercial Operation Date, NorthWestern shall pay Seller an amount equal to fifty percent (50%) of the Contract Price times the Test Energy delivered to NorthWestern at the Point of Interconnection.
- 5.5.3 Integration/Regulation Services. NorthWestern shall provide integration, regulation and all other required ancillary services ("*Integration/Regulation Services*") after the In-Service Date and during the Term of this Agreement. Seller will be assessed charges for Integration/Regulation Services at the levelized rate of \$16,110 per month. NorthWestern will invoice Seller or adjust the total monthly payment made to Seller to reflect the charges for Integration/Regulation Services.
- 5.5.4 Lost Production. NorthWestern shall compensate Seller for Lost Production in accordance with Section 6.7.3 of this Agreement.
- 5.5.5 Environmental Attributes. The value of the Environmental Attributes is specifically included within the Contract Price.
- 5.6 Payment Due Date. NorthWestern shall transmit payment and a payment statement to Seller for all undisputed amounts within 30 days following the Billing Period meter readings. NorthWestern's payment statement shall include the amount of Energy delivered to the Point of Interconnection 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. Any payment disputes between the Parties shall be governed by Section 16.1 of this Agreement.
- 5.7 Payment Default. Should either Party fail to pay the other Party any undisputed amounts 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 on the average of the beginning and ending monthly-unpaid undisputed balances and shall be calculated monthly at the one-month London Interbank Offered Rate posted on the date of payment calculation.
- 5.8 Title and Risk of Loss. Title to and risk of loss with respect to Energy delivered to NorthWestern by Seller in accordance with this Agreement shall pass from Seller to NorthWestern when the same is delivered by Seller at the Point of Interconnection. Until title passes, Seller shall be in exclusive control of the Energy and shall be responsible for any damage or injury caused thereby. After title to Energy transfers, NorthWestern shall be in exclusive control of such Energy and shall be responsible for any damage or injury caused thereby.
- 5.9 Sales for Resale. All Energy delivered to NorthWestern shall be sales for resale, with NorthWestern reselling such Energy for use in satisfying retail energy requirements. NorthWestern shall provide Seller with documentation reasonably requested by Seller to evidence that the deliveries of Energy hereunder are sales for resale.
- 5.10 Environmental Attributes. NorthWestern shall receive all right, title and interest in the Environmental Attributes. Seller shall, from time to time, execute, acknowledge and

deliver such further instruments and take such other action as may be reasonably requested in order to vest title and all rights to the Environmental Attributes purchased under this Agreement in NorthWestern, including any rights associated with any renewable energy tracking system that may be established to monitor or track such Environmental Attributes.

ARTICLE 6: OPERATIONS

- 6.1 Annual Operating Plan. Every year Seller shall provide NorthWestern with an annual operating plan, substantially in the form of Exhibit B, identifying the timing and duration of proposed Facility maintenance and all other activities that could impact the reliability or Energy output of the Facility. Seller shall provide updates to the annual operating plan whenever the maintenance or outage schedule is revised. For the first Contract Year, Seller shall provide the annual operating plan no later than 30 days before the Commercial Operation Date. Beginning with the first February after the Commercial Operation Date, by February 15 of each year, Seller shall provide NorthWestern with an annual operating plan for the upcoming generation year of May through April. Such operating plan shall include processes and procedures for providing NorthWestern with monthly and quarterly projected Energy output, as well as mutually agreeable processes and procedures for scheduling Energy delivery to NorthWestern on an hourly basis. Seller shall use commercially reasonable efforts to accommodate any NorthWestern request to defer or reschedule maintenance to the extent such request is consistent with Prudent Utility Practices.
- 6.2 Interconnection Agreements. Seller is responsible for all costs to deliver the Energy to the Point of Interconnection. Seller shall execute the GIA with the Transmission Provider. If the Transmission Provider is NorthWestern's separate transmission function, this Agreement shall do nothing to modify or otherwise amend the obligations, rights, and remedies of the Parties as specified in the GIA, and to the extent any terms or conditions in the GIA contravene or contradict the terms and conditions of this Agreement, the terms and conditions of the GIA shall control and be binding on the Parties. Upon completion of the GIA and the interconnection agreement with a Transmission Authority, if any, such document(s) will be appended to this Agreement as Exhibit C.
- 6.3 Transmission Service.
- 6.3.1 NorthWestern System. If the Facility is directly interconnected to the NorthWestern System, NorthWestern will designate the Facility as a Network Resource for the delivery of Energy from the Facility to serve NorthWestern's load. NorthWestern shall request Network Integration Transmission Service within 30 days after the Effective Date and shall provide for Network Integration Transmission Service during the Term of the Agreement. NorthWestern will designate Network Integration Transmission Service rights to begin on the GCOD unless Seller provides notice in writing of an earlier Commercial Operation Date. Seller shall provide NorthWestern with 30 days' written notice of any change in the anticipated Commercial Operation Date. Prior to receiving firm Network Integration Transmission Service, Energy and Capacity under this Agreement may be required to be delivered on an as-available basis. If delivery of Energy is

restricted before final Network Upgrades or Distribution Upgrades are completed, the curtailment will be considered an Uncompensated Curtailment.

- 6.3.2 Outside NorthWestern's System. If the Facility is not directly interconnected to the NorthWestern System at any time during the Term of this Agreement, Seller shall arrange for and purchase Long-Term Firm Point-to-Point Transmission Service from the Transmission Provider(s) to a point of receipt on the NorthWestern System, and any necessary arrangements related thereto for the Term of this Agreement. Upon request by NorthWestern, Seller shall assign the Long-Term Firm Point-to-Point Transmission Service for the Term of this Agreement to NorthWestern along with any rights related thereto. Notwithstanding the foregoing, nothing in this Agreement affects Seller's ownership of any interconnection facilities set forth in a separate interconnection agreement, and NorthWestern in no way accepts any responsibility for maintenance, liability, or ownership responsibilities related thereto. Seller is responsible for the cost and expense of all transmission services and upgrades outside of NorthWestern's System.
- 6.4 Metering. Metering of the Facility shall occur in the manner described in the GIA. The meters and associated measuring and recording equipment installed pursuant to the GIA shall permit an accurate determination of the quantities of the hourly Energy delivered under this Agreement and shall be used for all quantity measurements under this Agreement. If any meters are found upon testing to be inaccurate by more than the allowance identified in the GIA, applicable tariff or otherwise outside the parameters of the selected device manufacturer's performance standards, the meter will be adjusted, repaired, replaced or recalibrated at Seller's expense. If the meter fails to register or if the measurement is found upon testing to be inaccurate by more than the allowance identified in the GIA or applicable tariff or otherwise outside the parameters of the selected device manufacturer's performance standards, the Parties will re-compute any amount due for the period of the inaccuracy.
- 6.5 Telemetry and Anemometer Equipment. Seller shall install, operate and maintain a commercially standard fiber-optic network and anemometer (or similar) equipment that allows NorthWestern to access power production and meteorological data from the Facility on a real-time basis as it becomes available through the SCADA System. All SCADA System inputs will be provided to NorthWestern, at Seller's expense, at the Point of Interconnection.
- 6.6 WREGIS. Seller shall assist NorthWestern with the registration of the Units in WREGIS under NorthWestern's WREGIS account. Seller hereby assigns registration rights to NorthWestern. For the Term of this Agreement NorthWestern shall assume the responsibilities of registering the Unit(s) and submitting annual registration data updates.
- 6.7 Curtailments.
- 6.7.1 Curtailment Right. NorthWestern may curtail the delivery of Energy from the Facility at any time and for any reason deemed sufficient by NorthWestern in its sole discretion. Seller is not entitled to compensation for Lost Production Damages if Energy is curtailed due to any reason that qualifies as an Uncompensated Curtailment. Seller is entitled to compensation for Lost

Production Damages, if Energy is curtailed due to any reason that qualifies as a Compensated Curtailment.

- 6.7.2 Curtailment Procedure. To curtail Energy, NorthWestern shall give Seller prior notice, including the maximum allowable Energy to be delivered to the Point of Interconnection during any period of curtailment (which may, in NorthWestern's discretion, be zero MWh) and when such curtailment will begin and end. If the duration is not known, the curtailment will terminate upon notice from NorthWestern to Seller. Notice of a curtailment may be given in writing or via phone and promptly confirmed in writing. Upon receipt of notice of the curtailment, Seller shall operate the Facility so as to ensure that the amount of Energy delivered to the Point of Interconnection during the curtailment period will not exceed the maximum allowable Energy specified by NorthWestern in the notice. NorthWestern may change the maximum amount of Energy allowed and the duration of any curtailment by providing reasonable notice to Seller.

The Parties acknowledge there may be circumstances in which a Governmental Agency or the Transmission Provider will curtail deliveries of Energy from the Facility in accordance with the Law, NorthWestern's Electric Tariff or as a result of an Emergency Condition.

- 6.7.3 Lost Production Payment. In the event the delivery of Energy is curtailed due to a reason that qualifies as a Compensated Curtailment, and such curtailment results in Lost Production, Seller shall be entitled to Lost Production Damages on a monthly basis as its sole and exclusive remedy and NorthWestern's sole and exclusive liability. Seller shall provide to NorthWestern relevant data and supporting documentation so that NorthWestern can verify the calculation of Lost Production. Lost Production must be calculated using data from the SCADA System and based on actual measurements during the applicable time as recorded by the Facility's measurement instrumentation. NorthWestern is not obligated to arrange alternative transmission services during any such event.

Seller is not entitled to compensation for Lost Production if Energy is curtailed due to any reason that qualifies as an Uncompensated Curtailment. NorthWestern is not obligated to arrange alternative transmission services during any such event.

- 6.7.4 Light Loading Periods. NorthWestern is not obligated to accept or pay for Energy from Seller if, due to operational circumstances, purchases from Seller will result in costs greater than those which NorthWestern would incur if it did not make such purchases. This Section 6.7.4 is only applicable in the case of light loading periods in which NorthWestern must cut back base-load generation in order to purchase the Seller's production followed by an immediate need to utilize less efficient generating capacity to meet a sudden high peak. Power purchase agreements that are "take or pay" are expressly included as "base-load" for these purposes if they have high start-up costs, a lag in re-start times, and other peak-load contracts would have to be relied upon in the interim while the base-load contracts were curtailed or "cut back" from generation, awaiting start-up.

NorthWestern shall give 30 days' written notice to Seller and the Commission of any period in which NorthWestern expects that curtailment pursuant to this

Section 6.7.4 may be necessary. During such period, if NorthWestern curtails Seller, 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, or was not otherwise allowed as an Uncompensated Curtailment by Section 210 of PURPA, FERC's regulations implementing PURPA, and Montana Administrative Rules Title 38, Chapter 5, Subchapter 19, the curtailment shall be deemed a Compensated Curtailment and NorthWestern shall, within a reasonable time compensate Seller for Lost Production Damages.

- 6.8 No Obligation to Accept Energy-System Emergency. Notwithstanding anything herein to the contrary, NorthWestern is not obligated to pay for Energy during any Emergency Condition, or outage that affects delivery from the Facility to the Point of Interconnection, including planned and unplanned transmission outages. NorthWestern is not obligated to arrange alternative transmission services to alleviate any such event.
- 6.9 Forced Outages. If Seller is providing forecasting services in accordance with Section 6.10 of this Agreement, notification of Forced Outages is not required; provided that if NorthWestern's operational requirements change during the Term of the Agreement, the Parties agree to develop new notification standards. If NorthWestern provides forecasting services, Seller shall notify NorthWestern of any Forced Outage affecting any Unit at the Facility. Such notice must include the existence, nature and expected duration of the Forced Outage. Such notice shall be given as soon as practical, but in no event later than thirty (30) minutes after the Forced Outage occurs (unless the delay is due to efforts to control immediate danger to person or property).
- 6.10 Forecasting. Commencing on the In-Service Date and for each subsequent month during the Term, Seller will provide to NorthWestern (or NorthWestern will receive from its forecasting vendor, at Seller's expense, per the terms of this Section 6.10) a forecast of expected Energy output for each month (each, a "Forecast") on or before the date that is 5 Business Days prior to the beginning of such month. The Forecast shall be provided by a service provider reasonably acceptable to NorthWestern and must include day-ahead and intra-hour updates; provided that NorthWestern may, with the advance written consent of Seller and at Seller's expense, add forecasting services for Seller's Facility to NorthWestern's existing contract with a forecasting vendor. In the event Seller does not so provide such Forecast, NorthWestern may deduct from the amount required by Section 5.5.1 the actual cost to obtain the Forecast.

Unless otherwise agreed by the Parties, Seller shall provide all Forecasts in a commercially reasonable manner and in compliance with the Law and applicable tariff requirements, in a format satisfying the requirements of NorthWestern or the Transmission Authority. If necessary during the Term, NorthWestern and Seller shall negotiate commercially reasonable changes to the requirements and procedures set forth above, as necessary to comply with applicable tariff or requirements of the Transmission Authority and to accommodate changes to the respective generation technology of the parties and the operating and scheduling procedures of NorthWestern.

ARTICLE 7: SECURITY & DAMAGES

- 7.1 Security Requirements. Seller shall provide NorthWestern with commercially reasonable documentation to determine Seller's creditworthiness. Such documentation must include, at a minimum, the last 2 years of audited financial statements including any notes to the financials of Seller and Seller's Affiliates, or the last 2 years of financial statements from a guarantor on behalf of the Seller, documentation that Seller is current on existing debt obligations, has not been a debtor in a bankruptcy proceeding within the preceding 2 years, and that neither Seller nor any Affiliate has defaulted on a power purchase agreement within the preceding 2 years. Upon receipt of this information, NorthWestern will review the information provided and, if necessary, request additional information or will provide written confirmation or rejection of a determination that Seller has acceptable creditworthiness, in NorthWestern's sole discretion. In lieu of providing evidence of acceptable creditworthiness, or if Seller is not creditworthy, Seller must provide NorthWestern with Default Security, within 5 Business Days after the Effective Date of this Agreement, in an amount equal to \$250,000 within 15 days of the execution of the Agreement and an additional \$750,000 within 15 days of First Unit Construction. Seller shall maintain the Default Security in the amount of \$1,000,000 during the Term of the Agreement, unless and until Seller provides evidence of acceptable creditworthiness as set forth above.
- 7.2 Restoration and Retention of Default Security. To the extent that NorthWestern makes any draw or receives any payment from the Default Security, Seller shall, within 10 Business Days, restore the Default Security to its full required value. In the event this Agreement is terminated due to a Seller Event of Default, NorthWestern may retain any Cash Security until satisfaction of Seller's obligations hereunder.
- 7.3 Default Security Requirements. A Letter of Credit provided by Seller to satisfy the obligation to deliver and maintain Default Security must meet the following minimum requirements:
- 7.3.1 The form of the Letter of Credit must be acceptable to NorthWestern;
 - 7.3.2 The Letter of Credit must be issued by a United States commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's;
 - 7.3.3 The Letter of Credit must require Seller to provide a minimum of 30 days advance written notice prior to any expiration, non-renewal or early termination, with a right for NorthWestern to immediately draw the full value of the letter of credit if Seller fails to provide a substitute form of Default Security meeting the requirements of this Agreement within 15 days of the written notice required herein and may retain the funds until satisfaction of Seller's obligations hereunder.

Costs of a Letter of Credit shall be borne by the Seller for such Letter of Credit.

If Seller delivers Cash Security to satisfy its Default Security obligation, NorthWestern will exercise reasonable care to assure the safe custody of the collateral to the extent required by applicable law, exercising at least the same degree of care as it would exercise with respect to its own property. NorthWestern shall provide Seller, upon

request, documentation reflecting the deposit of the Cash Security and other reasonable information needed by Seller for its own accounting and tax preparation. NorthWestern has no obligation to Seller for the performance of any investment of the Cash Security, and is not assuming any fiduciary duty to Seller to earn or maximize interest or a return on the Cash Security or the investment of such funds.

7.4 Delay Damages. The Parties acknowledge and agree that if the Facility fails to achieve the Guaranteed Commercial Operation Date, NorthWestern will incur damages that are impossible to calculate with reasonable certainty and that the liquidated damages provided for below are a reasonable and appropriate approximation of those damages:

7.4.1 If the Facility fails to achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay to NorthWestern damages in an amount equal to \$20 per MWh times the amount of Energy expected to have been produced from and including the Guaranteed Commercial Operation Date to the Commercial Operation Date ("*Delay Damages*"). NorthWestern may deduct the amount of liquidated damages from the Default Security at any time after the Guaranteed Commercial Operation Date.

7.4.2 If the Facility fails to achieve Commercial Operation within 90 days after the Guaranteed Commercial Operation Date, this Agreement may be terminated by NorthWestern and upon such termination the accrual of Delay Damages will terminate. Seller shall be liable for Delay Damages accrued prior to the termination of this Agreement.

ARTICLE 8: EVENTS OF DEFAULT AND TERMINATION

8.1 Seller Event of Default:

8.1.1 Any of the following constitute a Seller Event of Default and, upon occurrence, no cure period is applicable:

- (i) Seller is Bankrupt;
- (ii) Seller's failure to achieve Commercial Operation by the end of the period set forth in Section 7.4.2;
- (iii) Seller's actual fraud, intentional misrepresentation, willful misconduct or the unauthorized sale or diversion of Energy by Seller to a third party;
- (iv) Seller's failure to pay Delay Damages pursuant to Section 7.4, if such failure is not cured within 10 days after the date such payment was due;
or
- (v) Notwithstanding anything herein to the contrary, Seller's increase of the Nameplate Capacity of the Facility without the prior authorization of NorthWestern.

8.1.2 Except as otherwise set forth in Section 8.1.1, any of the following constitute a Seller Event of Default upon occurrence, but is subject to cure within 30 days after the date of written notice from NorthWestern to Seller:

- (i) Seller's failure to deliver Default Security as required by Article 7 of this Agreement and the failure to maintain such Default Security during the Term of this Agreement;
- (ii) Seller's breach of the GIA or interconnection agreement with the Transmission Authority, if any;
- (iii) Seller's failure to make any payment required by this Agreement; or
- (iv) Seller's failure to comply with any material obligation under this Agreement, including but not limited to maintaining the Facility's QF status or valid FERC license or exemption.

8.2 NorthWestern Event of Default:

8.2.1. Any of the following constitutes a NorthWestern Event of Default and, upon occurrence, no cure period is applicable:

- (i) NorthWestern is Bankrupt; or
- (ii) NorthWestern's actual fraud, intentional misrepresentation or willful misconduct.

8.2.2. Any of the following constitute a NorthWestern Event of Default upon occurrence, but is subject to cure within 30 days after the date of written notice from Seller to NorthWestern:

- (i) NorthWestern's failure to make any payment required by this Agreement; or
- (ii) NorthWestern's failure to comply with any material obligation under this Agreement.

8.3 Lender's Right to Cure a Seller Event of Default. Seller shall provide NorthWestern with written notice identifying Seller's Lender, including contact information. Following receipt of such notice, NorthWestern agrees to provide notice of a Seller's Event of Default to the Lender. NorthWestern further agrees to accept a cure of a Seller's Event of Default performed by the Lender, provided the cure is accomplished within the applicable cure period set forth by this Agreement.

8.4 Termination. Upon the occurrence of a Seller's Event of Default or NorthWestern Event of Default, which has not been cured within the specified cure period, if applicable, the non-defaulting Party may terminate this Agreement upon written notice to the defaulting Party.

In the event this Agreement is terminated due to a Seller Event of Default and, subsequent to such termination Seller, its successors or assigns desires to sell NorthWestern energy from the Facility, NorthWestern, in its sole discretion, may require Seller to ratify this Agreement and sell such energy during the remaining Term pursuant to the terms and conditions herein, including but not limited to the Contract Price. This paragraph survives the termination of this Agreement.

Notwithstanding anything in this Agreement to the contrary, this Agreement shall terminate automatically, with no liability of any kind for nonperformance hereunder, written notice or any action by either Party, if the firm transmission condition precedent set forth in Section 4.1.8 is not satisfied or waived by the Parties on or before _____.

ARTICLE 9: INDEMNIFICATION AND LIABILITY

- 9.1 General 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 negligent or intentional act, error 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.
- 9.2 Environmental Indemnity. Seller agrees to defend, indemnify and hold NorthWestern and its officers, directors, employees, agents, and representatives, and their respective successors and assigns, from and against all claims, actions, demands, losses, liabilities, damages, judgments, penalties, injuries, and expenses arising from or related to any Environmental Liability concerning Seller, the Facility or the Site, including, but not limited to, (i) any claim for personal injury, bodily injury or property damage by any Person arising out of, resulting from or caused by any violation of any applicable Environmental Law by Seller or concerning the Facility or the Site; (ii) any assessment, fine, penalty, lien, or other imposition by any Governmental Agency; and (iii) any liability, losses, or remedial costs suffered because a Governmental Agency finds NorthWestern to be a responsible party, owner or operator of the Facility or Site, except, in each case, to the extent that the claim, assessment, fine, penalty, loan, imposition, liability, loss or remediated costs are due to NorthWestern's negligence or intentional acts or omissions.
- 9.3 Indemnification Procedure. Whenever any suit or other proceeding which involves any matter for which the indemnification provisions of this Agreement are applicable, the indemnifying party shall, upon receipt of timely notice of the institution of such suit or other proceedings, assume the defense thereof and defend the same at its own expense and shall pay any and all costs, charges, attorneys' fees and other expenses and any and all judgments that may be incurred by or obtained against the indemnified party in such suits or other proceedings, and if any judgment or other lien is placed upon or obtained against the property of the indemnified party as a result of such suits or other proceedings, the indemnifying party shall at once cause the same to be released and discharged by giving bond or otherwise.
- 9.4 Fines:

- 9.4.1 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, Environmental Laws or Governmental Approvals shall be the sole responsibility of such non-complying Party.
- 9.4.2 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, Environmental Law 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.
- 9.4.3 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.
- 9.4.4 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.
- 9.5 Limitations of Liability, Remedies and Damages:
- 9.5.1 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.
- 9.5.2 IF AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS SET FORTH IN THIS AGREEMENT, SUCH REMEDY OR MEASURE OF DAMAGES 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. 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 9.1 IS OBLIGATED TO INDEMNIFY AGAINST THIRD PARTY CLAIMS) IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES IS WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 9.6 Survival. The provisions of this Article 9 shall survive the termination of this Agreement.
- 9.7 Insurance Obligation. The provisions of this Article 9 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 10: INSURANCE

- 10.1 Required Coverage: Seller, at its own expense, must procure, prior to the commencement of any physical construction at the Site, and 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:
- 10.1.1. If Seller has one or more employees, Workers' Compensation insurance providing statutory benefits in accordance with the laws and regulations of the State of Montana.
- 10.1.2. If Seller has one or more employees, Employer's Liability - \$500,000 - each accident; \$500,000 disease - policy limit; and \$500,000 disease - each employee.
- 10.1.3. 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.

- 10.1.4. 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.
- 10.1.5. Umbrella/Excess Liability insurance at a minimum of Five Million Dollars (\$5,000,000).
- 10.2 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 this Article 10, 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 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.
- 10.3 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 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.
- 10.4 Proof of Insurance. Upon commencement of construction at the Site, 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 90 days thereafter, Seller shall provide certification of all insurance required in this Agreement, executed by the insurer or by an authorized representative.
- 10.5 Self-Insurance. Notwithstanding the foregoing, Seller may self-insure to meet the minimum insurance requirements of Sections 10.1.1 through 10.1.5, 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 11: NOTICES

- 11.1 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.

Greycliff Wind Prime, LLC
c/o National Renewable Solutions, LLC
328 Barry Avenue South, Suite 100
Wayzata, MN 55391
Attn: Patrick Pelstring
Fax: (952) 473-7507 Email: ppelstring@natrs.com

With a copy to:

Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402
Attn: Norm Jones
Fax: (612) 604-6905
Email: njones@winthrop.com

To NorthWestern:

NorthWestern Energy
Attention: Frank Bennett
40 East Broadway
Butte, MT 59701-9394
Phone: (406) 497-2536
Fax: (406) 497-2629
Email: frank.bennett@northwestern.com

Day-Ahead Scheduling Notices:

Email: lisa.barkell@northwestern.com

Seller shall notify NorthWestern's Day-Ahead Scheduling desk at the email in this Section at a minimum of 72 hours before the start of preplanned scheduling changes including Commercial Operation notices, maintenance outages, and other planned reductions or resumptions in Facility output.

With a copy to:

Legal Department
NorthWestern Energy
208 North Montana Avenue, Suite 205
Helena, MT 59601
Fax: (406) 443-8979

ARTICLE 12: ASSIGNMENT AND OWNERSHIP

- 12.1 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 that Seller's consent is not required for a NorthWestern assignment in connection with a merger, consolidation or corporate reorganization involving substantially all of the assets of NorthWestern, provided such merger, consolidation or corporate reorganization is approved by the Commission. Consent to assignment will not be withheld unreasonably.

Seller expressly acknowledges and agrees that NorthWestern may reasonably refuse to consent to any proposed assignment to maintain the eligibility of the Facility to qualify as a QF.

- 12.2 Lender Assignment. Without NorthWestern's consent, Seller may, upon notice to NorthWestern, assign, transfer, pledge or encumber this Agreement or any revenues or proceeds to any Lender as collateral for financing with respect to the development, construction or operation of the Facility.
- 12.3 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.
- 12.4 Obligations to Assignee. No assignment shall be effective, notwithstanding consent thereto, to the extent that such assignment purports to extend, increase, or otherwise alter the obligations of the non-assigning Party under this Agreement, other than the substitution of the assignee for the assigning Party.
- 12.5 Validity. Any attempted or purported assignment, assumption or transfer by a Party made other than in accordance with this Article 12, whether made voluntarily or by operation of law, shall be void and of no effect.
- 12.6. Right of First Offer. At any time after the Commercial Operation Date, if Seller offers to convey the Facility or a majority of the limited liability interests in Seller to an unaffiliated third party, Seller shall simultaneously offer NorthWestern a right of first offer (the "*ROFO*"). Seller shall provide notice to NorthWestern identifying: (i) the buyer, (ii) the nature and terms of the transaction, and (iii) the minimum price Seller is willing to accept to proceed with the contemplated transaction (the "*ROFO Notice*").

Seller shall allow NorthWestern sixty (60) days after the ROFO Notice to investigate the proposed transaction and conduct due diligence. Within such period, NorthWestern shall: (i) exercise its ROFO rights on substantially comparable terms to the proposed transaction; or (ii) terminate its ROFO rights.

If NorthWestern exercises its ROFO rights, the Parties have an additional one hundred twenty (120) day period to sign definitive agreements on terms no less favorable to NorthWestern than those contained in the ROFO Notice. Seller shall cooperate in all respects necessary for NorthWestern to exercise its ROFO rights.

If NorthWestern does not exercise its ROFO rights, Seller may close its proposed transaction with the identified prospective buyer, provided, however, that such transaction has an aggregate value of not less than the minimum price set forth in the ROFO Notice and the transaction is closed not more than nine (9) months following expiration of NorthWestern's right to exercise its ROFO rights.

- 12.7 Notice of Pending Facility Transfer. To the extent Seller proposes a Pending Facility Transaction after the Commercial Operation Date that does not otherwise trigger NorthWestern's ROFO rights, Seller shall give NorthWestern at least ninety (90) days prior notice of such Pending Facility Transaction (a "*PFT Notice*") in order to provide NorthWestern with an opportunity to discuss and negotiate with Seller the possible sale of the Facility to NorthWestern. Any PFT Notice shall include a fair summary of Seller's

plans with respect to the Facility in connection with the proposed Pending Facility Transaction, to the extent then known by Seller. Seller is not obligated to sell and NorthWestern is not obligated to purchase the Facility following any PFT Notice, provided, however, that issuance of a PFT Notice does not relieve Seller of its obligations to provide a ROFO Notice if and when applicable pursuant to this Section.

ARTICLE 13: TAXES

- 13.1 Taxes. All taxes, fees, levies, assessments, penalties, licenses, or charges imposed by any Governmental Agency (collectively "*Taxes*") on or with respect to the Facility, the Site and the production of Energy prior to the Point of Interconnection are the responsibility of and shall be paid by Seller. NorthWestern shall pay or cause to be paid all Taxes on or with respect to the Energy at and after the Point of Interconnection. Any sales, 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. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, the Party responsible for such Taxes shall reimburse the Party that paid such Taxes. Such reimbursement shall be made by the responsible Party on or before 60 days after (i) such invoices are received, or (ii) such Taxes are actually paid and proper documentation thereof is furnished, whichever is later.
- 13.2 Tax Credits and Incentives. Seller shall be entitled to all: (i) federal and state production tax credits, investment tax credits, and any other tax credits which are or will be generated by the Facility due to the Facility's prime mover, and (ii) any cash payments or grants of money relating in any way to the development, construction, or operation of the Facility. NorthWestern is not obligated to Seller if the Facility does not qualify for any of the tax credits or incentives described in this section.
- 13.3 Provision of Information. The Parties may provide information concerning the Facility to any requesting taxing authority.

ARTICLE 14: FORCE MAJEURE

- 14.1 Force Majeure. The term "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which is not within the reasonable control or the result of an act or omission of the claiming Party, and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid. Events of Force Majeure include acts of God or the public enemy, war, whether declared or not, blockade, insurrection, riot, civil disturbance, public disorders, rebellion, violent demonstrations, sabotage or terrorist action; any effect of unusual natural elements including fire, earthquakes, floods, severe wind conditions, lightning, tornadoes, unusually severe storms, or similar cataclysmic occurrences or other unusual natural calamities; explosion, accident or epidemic; general strikes, lockouts or other collective or industrial action by workers or employees, or other labor difficulties (other than by employees of a Party, a Party's Affiliates or contractors/suppliers); accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to or adjuncts of shipping or navigation or quarantine; air crash, shipwreck or train wreck.

- 14.2 Exclusions. Notwithstanding anything in the Agreement to the contrary, Force Majeure does not include: changes in market conditions or changes in the availability or the lack of funds or project financing; the inability or failure of Seller to arrange for, acquire or procure transmission services; any waiting period or other period of time that is usual and necessary in connection with any Governmental Agency action; customary inclement weather affecting construction, start-up, operation, or decommissioning of the Facility; and the unavailability of equipment, repairs or spare parts for the Facility, except to the extent due to an independent event of Force Majeure.
- 14.3 Notice. In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party suffering the event shall, as soon as practicable, but no later than 10 days after the occurrence of the event, notify the other Party in writing of the nature, cause, date of commencement thereof, and the anticipated extent of any delay or interruption in performance. A Party failing to deliver notification of a Force Majeure event within the 10 day period does not preclude such Party from claiming Force Majeure thereunder, but no extension of time to perform shall be granted for any period in which the Party failed to provide notice.
- 14.4 Performance. The performance of any obligation required hereunder shall be excused, in whole or in part, during the continuation of any event of Force Majeure suffered by the Party whose performance is hindered in respect thereof. Prior to the Commercial Operation Date, the time for performance of any obligation that has been delayed due to the occurrence of an event of Force Majeure shall be extended on an equitable basis subject to mutual agreement of the Parties. Each Party suffering a Force Majeure event shall take, or cause to be taken, all commercially reasonable action as may be necessary to overcome or mitigate the effects of any event of Force Majeure and to resume performance hereunder as soon as practicable under the circumstances.
- 14.5 Limitation on Effect of Force Majeure. In no event will any delay or failure of performance caused by any condition or event of Force Majeure extend this Agreement beyond its stated Term. NorthWestern may terminate this Agreement if Seller fails to remedy Seller's failure to perform, due to an event of Force Majeure, within 180 days after the occurrence of the event.

ARTICLE 15: CONFIDENTIALITY

- 15.1 Confidential Information. The Parties may develop certain information, processes, know-how, techniques and procedures concerning the Facility the Parties consider confidential and proprietary (and marked as such), and may disclose to each other certain information and data (the "*Confidential Information*"). The Parties expressly agree that any information regarding production from the Facility is not Confidential Information. Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the "*Disclosing Party*") may make such Confidential Information available to the other (each, a "*Receiving Party*") subject to the provisions of this Article 15.
- 15.2 Non-Disclosure of Confidential Information. Upon receiving Confidential Information, the Receiving Party shall:

- 15.2.1 Treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except Lenders, as required by Law or upon request of a Governmental Agency, subject to the restrictions set forth herein;
 - 15.2.2 Restrict access to such Confidential Information to only those employees, subcontractors, suppliers, vendors, and advisors whose access is reasonably necessary for the development, construction, operation or maintenance of the Facility or the purposes of this Agreement; and
 - 15.2.3 Use such Confidential Information solely for the development, construction, operation or maintenance of the Facility or for the purposes of this Agreement.
- 15.3 Exclusions. The restrictions of this Article 15 do not apply to:
- 15.3.1 Release of Confidential Information to a Governmental Agency required for obtaining any approval, making any required filing or to the Commission as set forth in Article 17;
 - 15.3.2 Information which is, or becomes, publicly known or available other than through the action of the Receiving Party in violation of this Agreement;
 - 15.3.3 Information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party, provided that the person or persons developing such information have not had access to any Confidential Information;
 - 15.3.4 Information which is received from a third party which is not known (after reasonable inquiry) by Receiving Party to be prohibited from being disclosed by such Person pursuant to a contractual, fiduciary or legal obligation; and
 - 15.3.5 Information which is, in the reasonable written opinion of counsel of the Receiving Party, required to be disclosed pursuant to Law; provided, however, that the Receiving Party, prior to such disclosure, shall provide reasonable advance notice to the Disclosing Party of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure.
- Notwithstanding the foregoing, Seller may disclose Confidential Information to lenders and any other financial institutions expressing an interest in providing equity or debt financing or refinancing and/or credit support to Seller, and the agent or trustee of any of them.
- 15.4 Publicity. In no way limiting the foregoing, Seller shall not issue a press or publicity release without the prior written approval of NorthWestern. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain Governmental Approvals relating to the Facility or as are necessary in order to fulfill such Party's obligations under this Agreement.
- 15.5 Survival. The obligations of the Parties under this Article 15 shall survive the expiration or termination of this Agreement.

ARTICLE 16: GENERAL PROVISIONS

16.1 Disputes:

16.1.1 Payment Disputes. In the event of a dispute regarding an invoice, NorthWestern shall pay the undisputed amount to Seller pursuant to the terms of this Agreement and NorthWestern shall further notify Seller of the amount(s) in dispute and the basis for the dispute. Any billing dispute shall be governed by the terms of Section 16.1.2. When the billing dispute has been resolved, NorthWestern shall pay the amount owed within 10 Business Days of the date of such resolution.

16.1.2 Dispute Resolution. When a dispute has arisen and negotiations between the parties have reached an impasse, either party may give the other party written notice of the dispute. In the event such notice is given, the parties shall attempt to resolve the dispute promptly by negotiations between representatives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for the matter. Within 10 Business Days after delivery of the notice, the receiving party shall submit to the other a written response. Thereafter, the representatives shall confer in person or by telephone promptly to attempt to resolve the dispute. All reasonable requests for information made by one party to the other will be honored.

If the dispute has not been resolved by negotiation between the representatives within 30 days of the notice, or if the parties have failed to confer within 20 days after delivery of the notice, the parties shall endeavor to settle the dispute by non-binding mediation. The mediation shall consist of both parties agreeing to one neutral mediator, providing the mediator with simultaneous, non-shared written position statements, and daylong mediation at the chosen mediator's desired location.

Should the mediation not lead to settlement of the dispute, then either party may proceed to a court of competent jurisdiction. All negotiations and proceedings pursuant to this process are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by Law.

16.2 Choice of Law and Venue:

16.2.1 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.

16.2.2 Venue for any claim or action arising from this Agreement shall be resolved in federal or state courts of competent jurisdiction situated within the State of Montana.

16.3 Governmental Approvals. Copies of all Governmental Approvals obtained by Seller for the operation of the Facility shall be provided to NorthWestern upon request or as specifically required under this Agreement.

- 16.4 Entire Agreement. This Agreement, including all Exhibits hereto, 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.
- 16.5 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.
- 16.6 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.
- 16.7 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.
- 16.8 No Obligation to Provide Electric Service. This Agreement does not obligate NorthWestern to provide electricity service to Seller at the Facility. If Seller requires any services at the Facility, Seller shall receive such service in accordance with the appropriate service provider's electrical tariffs as existing or, as may be established from time to time and, on file with and authorized by the Commission. NorthWestern, if it is the electrical service provider, 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.
- 16.9 Seller Financing. NorthWestern will make reasonable efforts to accommodate Seller's request for collateral assignment consents and to execute certifications, representations and supply information for the purpose of assisting Seller in obtaining Facility financing; provided, however, that in responding to any such request, NorthWestern is not obligated to provide any consent or enter into any agreement that adversely affects NorthWestern's rights, benefits, risks or obligations under this Agreement. Seller is responsible for all reasonable cost and expense associated with NorthWestern's efforts under this Section 16.9.
- 16.10 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.
- 16.11 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, (i) such term or provision shall be fully severable, (ii) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (iii) 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 here from

and (iv) 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.

- 16.12 PURPA Repeal. This Agreement will not terminate upon the repeal of the PURPA, unless such termination is mandated by state or federal law.
- 16.13 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
- 16.14 Counterparts. This Agreement may be signed in counterparts each of which shall be an original and all of which together shall constitute one and the same instrument. The delivery of an executed counterpart by facsimile or electronic mail shall be deemed to be valid delivery thereof.
- 16.15 Exhibits. This Agreement includes Exhibits A, B, C, and D, 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 17: Regulation by the Montana Public Service Commission

Seller acknowledges that NorthWestern, as a public utility, is subject to regulation by the Commission and that NorthWestern may be required to submit information, data or documents regarding this Agreement, Seller, or the Facility. 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 Commission as part of complying with any portion of an Commission request, order or other regulatory proceeding, regardless of whether Seller has requested a protective order from Commission, until such time as a protective order is issued that relieves NorthWestern of its legal obligations to provide information requested by the Commission. To the extent Seller wishes to seek a protective order for this Agreement or any other information to be submitted to the Commission, Seller shall be solely responsible for preparing and otherwise requesting any such protective order from the Commission. NorthWestern shall have no obligation to participate in, cooperate with, or in any way assist Seller in seeking any protective order.

Article 18: Local Hiring and Wage Standards

- 18.1 Seller will give preference to the employment of bona fide Montana residents as defined in §18-2-401 MCA, in the performance of all work on the Facility so long as Montana residents have substantially the same qualifications to those of nonresidents.
- 18.2 Seller will require all contractors to pay the standard prevailing rate of wages for heavy construction, as provided in §18-2-414 MCA during the construction phase of the Facility.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Qualified Facility Power Purchase Agreement to be executed on the date first written above.

NORTHWESTERN ENERGY

SELLER

BY: _____

BY: _____

ITS: _____

ITS: _____

DATE: _____

DATE: _____

Exhibit A: Detailed Facility Description

A. Facility Information

Developer Name: _____

Facility Name: _____

Facility Location: Township: _____

Range: _____

Section: _____

County Name: _____

Nearest Community & Miles: _____

B. Energy Generation System Information

Total Facility Nameplate Capacity (kW): _____

Manufacturer: _____

Model: _____

Number of Generating Units Installed: _____

Tower Height (if Wind): _____

Tower Manufacturer (if wind): _____

Federal Aviation Administration Case No. _____

Latitude (turbine(s), center of project) _____

Longitude (turbine(s), center of project) _____

C. Interconnection Facilities

(Attach multiple sections if more than one substation is planned for Facility.)

Transformer Description: _____

Transformer Latitude _____
Transformer Longitude _____
Interconnection Equipment: _____
Transmission System Description: _____

D. Acknowledgement

I solemnly affirm the foregoing are true to the best of my knowledge, information, and belief.

Signed: _____
Print Name: _____
Date: _____
Facility Name: _____
Federal Tax ID: _____
FERC ID (if applicable): _____

[INCLUDE PROJECT MAP]

Exhibit B: Annual Operating Plan

1. Energy Forecast

Facility is to provide estimate of average hourly generation expected for peak and off-peak hours, during each month. The table below incorporates the total expected net output of the Facility and an explanation of expected variation if there are multiple Units.

Explanation of variation (if any): _____

Month	Hourly Estimate On Peak aMW	Hourly Estimate Off-Peak aMW
May	0.0	0.0
Jun	0.0	0.0
Jul	0.0	0.0
Aug	0.0	0.0
Sep	0.0	0.0
Oct	0.0	0.0
Nov	0.0	0.0
Dec	0.0	0.0
Jan	0.0	0.0
Feb	0.0	0.0
Mar	0.0	0.0
Apr	0.0	0.0

2. Maintenance/Outage Schedule

Facility to provide estimate of any maintenance scheduled.

Description: _____

Month	Start Date	Start Time	End Date	End Time
May	0	00:00 AM	0	00:00 AM
Jun	0	00:00 AM	0	00:00 AM
Jul	0	00:00 AM	0	00:00 AM
Aug	0	00:00 AM	0	00:00 AM
Sep	0	00:00 AM	0	00:00 AM
Oct	0	00:00 AM	0	00:00 AM
Nov	0	00:00 AM	0	00:00 AM
Dec	0	00:00 AM	0	00:00 AM
Jan	0	00:00 AM	0	00:00 AM

NorthWestern Energy QF PPA

Feb	0	00:00 AM	0	00:00 AM
Mar	0	00:00 AM	0	00:00 AM
Apr	0	00:00 AM	0	00:00 AM

The following constitute known conditions outside of Seller's control that may affect Energy generation. _____

3. Environmental Restrictions Schedule

The Facility expects the Facility will not produce Energy during the time periods set forth below due to the following environmental restrictions.

Description: _____

Month	Start Date	Start Time	End Date	End Time
May	0	00:00 AM	0	00:00 AM
Jun	0	00:00 AM	0	00:00 AM
Jul	0	00:00 AM	0	00:00 AM
Aug	0	00:00 AM	0	00:00 AM
Sep	0	00:00 AM	0	00:00 AM
Oct	0	00:00 AM	0	00:00 AM
Nov	0	00:00 AM	0	00:00 AM
Dec	0	00:00 AM	0	00:00 AM
Jan	0	00:00 AM	0	00:00 AM
Feb	0	00:00 AM	0	00:00 AM
Mar	0	00:00 AM	0	00:00 AM
Apr	0	00:00 AM	0	00:00 AM

4. Project Developer Acknowledgement

I solemnly affirm the contents of the foregoing are true to the best of my knowledge, information, and belief.

Signed: _____

Print Name: _____

Date: _____

Project Name: _____

Facility Tax ID: _____

Exhibit C: Generation Interconnection Agreement

[INSERT INTERCONNECTION AGREEMENT UPON EXECUTION]

Exhibit D: Production Tax Credit Value Calculation

For purposes of determining the value of PTCs included in Lost Production Damages, the following calculations shall be used:

1. PTC value equals:

$$(\text{PTC Rate} \times d)$$

Where "PTC Rate" means the PTC rate established by the Internal Revenue Service and applicable to the Lost Production (currently \$0.023/kWh) and "d" equals a tax gross-up factor.

2. The tax gross-up factor equals $1/(1-c)$ where "c" equals the maximum combined federal and state marginal tax rate at the applicable time.
3. The combined federal and state marginal tax rate will be calculated as follows:

$$c = a(1-b) + b$$

Where "a" means the highest statutory marginal corporate federal income tax rate for the highest income bracket that is in effect for the relevant tax year (currently 35%) and "b" means the highest marginal statutory corporate or individual state income tax rates for the highest income bracket that are in effect for the relevant tax year for the members of Seller.

For example, if the applicable state tax rate is 6.75% then:

$$c = 0.35 (1-0.0675) + 0.0675 = .393875 \text{ or } 39.3875\%$$

4. Using the values in paragraph 3, if Lost Production totaled 100,000 kWh, then the PTC value would equal:

$$d = 1/(1-c) = 1/(1 - .393875) = 1.649825$$

$$\text{PTC value} = \text{PTC rate} \times d = \$0.023 \times 1.649825 \times 100,000\text{kWh}$$

$$= \$3,794.60$$

CERTIFICATE OF SERVICE

I hereby certify that an original and ten copies of NorthWestern Energy's Additional Response Testimony and Exhibits in Docket No. D2015.8.64 have been hand delivered to the Montana Public Service Commission with three copies to the Montana Consumer Counsel this date. It has also been e-filed on the PSC website, emailed to counsel of record, and mailed to the remainder of the service list as follows:

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Date: November 19, 2015



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