Michael J. Uda
Uda Law Firm, P.C.
7 West Sixth Avenue
Power Block West, Suite 4H
Helena, MT 59601
(406) 457-5311
michaeluda@udalaw.com

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

IN THE MATTER OF NorthWestern Energy's Application for Interim and Final Approval of Revised Tariff No. QF-l, Qualifying Facility Power Purchase	))))	REGULATORY DIVISION DOCKET NO. D2016.5.39

Application of FLS Energy, Inc., for Rehearing on NorthWestern Energy's Motion for Emergency Suspension of the QF-1 Tariff for New Solar Qualifying Facilities with Nameplate Capacities Greater than 100 kW

I. INTRODUCTION

FLS Energy, Inc. ("FLS") is the developer of 14 advanced-stage, 3 MW AC solar photovoltaic projects in Montana (the "FLS Projects"), all of which are "qualifying facilities" ("QFs") under the Public Utilities Regulatory Policies Act ("PURPA"), 16 U.S.C. §§ 2601 *et seq.*, and all of which are eligible for the NorthWestern Energy ("NorthWestern") QF-1 Tariff. FLS respectfully requests that the Montana Public Service Commission (the "Commission") grant rehearing to consider new evidence relevant to NorthWestern Energy's Motion for Emergency Suspension of the QF-1 Tariff for New Solar Qualifying Facilities with Nameplate Capacities Greater than 100 kW ("the Emergency Motion").

FLS seeks to adduce evidence at rehearing which relates primarily to the interconnection status of the FLS Projects and to the terms of the power purchase agreements ("PPAs") negotiated by FLS and NorthWestern. This evidence shows, among other things: (1) that FLS had fully negotiated PPA terms with NorthWestern prior to the Commission's June 9 hearing on the Emergency Motion (the "June 9 Hearing"); (2) that FLS had executed PPAs for all of the FLS Projects prior to the Commission's June 16 work session (the "June 16 Work Session") and had electronically tendered 13 of the 14 executed PPAs to NorthWestern prior to the June 16 Work Session;[1] and (3) that although none of the FLS Projects have signed interconnection agreements, (a) FLS has nonetheless made a firm and unconditional commitment to sell the output of these projects to NorthWestern; and (b) FLS had *requested* interconnection agreements for seven of its 14 projects before the June 9 Hearing, and those projects *would have* had signed Interconnection Agreements in place before the June 16 Work Session if NorthWestern had met its legal obligation to provide Interconnection Agreements in a timely fashion. This evidence is highly relevant to the question of whether the relief voted on by the Commission in response to the Emergency Motion meets the goals of the Commission, and whether it would be lawful, fair, and reasonable.

FLS did not present this evidence at the June 9 Hearing because NorthWestern agreed prior to the hearing to modify the Emergency Motion—and at the hearing did modify the motion —to limit the emergency relief sought to solar projects that had not yet unconditionally committed to sell their output to NorthWestern pursuant to the terms of a fully negotiated PPA, without regard to interconnection status. Notwithstanding NorthWestern's modification of its motion, and with no notice to the public and affected parties, the Commission voted at the June

[1] The fourteenth executed PPA was inadvertently not tendered until the day of the June 16 Work Session. Affidavit of Casey James May ¶ 35.

16 Work Session to make interconnection status a determinative factor in a QF's ability to obtain a PPA based on the current QF-1 tariff.

The Commission and its staff acknowledged at the June 16 Work Session that it was making this decision without having any information on the interconnection status of pending solar projects such as the FLS Projects and thus without knowledge of the impact of its decision on affected parties. It would be arbitrary and capricious for the Commission to make a final decision without considering the highly relevant evidence FLS seeks to adduce. Fundamental fairness and due process require that FLS be given the opportunity to introduce its proffered evidence at this time and that the Commission issue a final order on the emergency motion only after having considered such evidence.

II. BACKGROUND

As discussed in the Comments submitted on June 6, FLS has been negotiating the terms of PPAs with NorthWestern under the QF-1 tariff since February 2016. (Affidavit of Casey May ¶ 33.) Prior to the June 9 Hearing, FLS and NorthWestern had already reached agreement on the terms of a model PPA that the parties intended to use for the purchase and sale of energy, capacity, and environmental attributes from FLS projects in Montana, of which 14 were in an advanced stage of development. Following the hearing, FLS executed and tendered to NorthWestern for execution PPAs for those projects conforming to the agreed upon terms. (*Id.* ¶ 34-35.)

On multiple occasions during the parties' PPA negotiations, NorthWestern represented to FLS that it would not seek to exclude the FLS Projects from eligibility for the current QF-1 Tariff. After the filing of the Emergency Motion and before the June 9 Hearing, FLS inquired of NorthWestern whether, despite these representations, it was seeking by its motion to exclude the

FLS Projects from such eligibility. NorthWestern represented to FLS that it was not seeking to include the FLS Projects in it motion and agreed (1) to modify its Emergency Motion to exclude those projects from its request for relief from the Commission; and (2) to execute PPAs for the FLS Projects based on the negotiated and agreed terms. Based on these representations and commitments by NorthWestern, FLS agreed not to intervene in opposition to the Emergency Motion, and not to seek PPAs for any additional projects under the current QF-1 rates, regardless of the outcome of the Emergency Motion. This required FLS to abandon numerous other projects it had planned to develop in Montana. FLS thus reasonably relied on the representations and commitments by NorthWestern to forego its legal rights to actively oppose NorthWestern's motion at the June 9 Hearing.

Based on this understanding and relying on NorthWestern's representations and commitments, FLS submitted comments on the Emergency Motion but did not intervene in the proceeding, did not cross-examine any of NorthWestern's witnesses, and did not present evidence in opposition to the Emergency Motion (as modified by NorthWestern). At the June 9 Hearing, NorthWestern's counsel did in fact modify the Emergency Motion and requested that the Commission modify the requested relief to allow NorthWestern to enter into QF-1 PPAs with the FLS Projects and a limited number of similarly situated projects by other developers. Transcript of June Hearing at 33:23. As noted, FLS and NorthWestern had reached agreement on all material terms of those PPAs, and NorthWestern acknowledged that it was legally obligated to enter into those contracts with FLS. *Id.* at 48:13-16.

Although NorthWestern's witnesses provided general testimony at the hearing about NorthWestern's interconnection queue, no party presented evidence about the interconnection status of any particular project, because it did not appear relevant at the time. Nor did the

Commission ask NorthWestern to provide any information about the interconnection status of the projects for which signed PPAs had been tendered to the utility.

In the June 16 Work Session, the Commission granted the Emergency Motion, with a substantial modification to the relief requested by NorthWestern at the June 9 Hearing. The Commission suspended the QF-1 tariff as requested. But rather than authorizing NorthWestern to execute the QF-1 PPAs for the FLS Projects (and other projects identified by NorthWestern), as the utility had requested, the Commission authorized execution of PPAs only with QFs that had submitted a signed PPA and executed an Interconnection Agreement ("IA") prior to June 16. *See* Notice of Commission Action at 2. The Commission appeared to derive this test from the standard for a legally enforceable obligation ("LEO") articulated in *Whitehall Wind,* Order No. 6444e, 2010 WL 10129008 ¶ 47 (May 10, 2010). The apparent intent of the amendment was to allow those QFs that are "past the point of no return" — those that have unconditionally committed to sell power to NorthWestern — to contract at current QF-1 rates. However, as was acknowledged in the June 16 Work Session, neither the Commission nor staff had any information about how many QFs would meet these criteria, or whether the test would accurately distinguish projects that are "past the point of no return" from those that are still contingent.

In fact, none of the FLS Projects that have tendered signed PPAs to NorthWestern satisfy this test, because they do not have signed Interconnection Agreements. This is not because of any lack of diligence on FLS's part. To the contrary, many of these projects have completed all the milestones necessary to get IAs, and requested IAs prior to the hearing on the Emergency Motion. What is more, NorthWestern was *legally obligated* to provide signed IAs for these projects before the June 16 Work Session. But NorthWestern failed to meet those deadlines and so FLS does not have IAs for these projects.

All but one of the FLS projects for which PPAs were tendered are far along in the interconnection process, with facilities study agreements executed by the time NorthWestern filed the Emergency Motion. On June 1 and June 8, 2016, FLS requested IAs for seven projects for which facilities studies had been completed.[2] (May Affid., Ex. A.) Pursuant to Section 3.5.7 of its Small Generator Interconnection Procedures, NorthWestern was obligated to return signed IAs for those projects within five business days. Northwestern has yet to deliver any of the requested IAs.[3] In fact, since the June 16 Work Session, NorthWestern has categorically refused to tender interconnection agreements for any more QF-1 projects, claiming that it "cannot execute a new Interconnection Agreement for any solar QF project between 100 kW and 3 MW in size seeking a contract at the standard long term rate." (May Affid., Ex. B.) Nothing said in the June 16 Work Session and nothing in the Notice of Commission Action remotely supports such a position by NorthWestern.

At the time of the June 16 Work Session, FLS's seven other advanced projects were at various stages of the interconnection process. For two projects, FLS had tendered to NorthWestern an executed facilities study agreement, had paid the $10,000 facilities study fee, and were awaiting the completed facilities study report and IA. May Affid. ¶ 21. As noted above, these FLS received these facilities study reports on June 17. For three other projects, FLS had tendered to NorthWestern an executed facilities study agreement and was awaiting the completed facilities study report and signed interconnection agreement, but did not realize that it had inadvertently failed to pay the facilities study fee. *Id.* ¶ 25. For one project, FLS had

[2] FLS submitted its request for IAs for six projects on June 1, and for the seventh project on June 8. FLS received draft facility study reports for two more projects on June 17, and requested IAs for those projects on July 1. May Affid. ¶ 21.

[3] Section 3.5.7 of FERC's Small Generator Interconnection Procedures requires that "Upon completion of the facilities study, and with the agreement of the Interconnection Customer to pay for Interconnection Facilities and Upgrades identified in the facilities study, the Transmission Provider shall provide the Interconnection Customer an executable interconnection agreement within five Business Days."

received a system impact study report but had not tendered an executed facilities study agreement. With respect to the last project, FLS had not executed a system impact study agreement. Exhibit A to Mr. May's affidavit summarizes the interconnection status of all 14 FLS projects for which PPAs were tendered to NorthWestern.

But even without signed IAs in place, FLS has made absolute and unconditional commitments to deliver energy and capacity from its projects. As detailed in the evidence proffered with this Motion for Rehearing, FLS already made significant investments in the interconnection of these projects, and has long had a good understanding of the likely interconnection costs. (May Affid. ¶ 26-32, Ex. A.) The lack of a signed IA from NorthWestern does not weaken FLS's commitment to paying these costs. Furthermore, certain terms of the PPAs for these projects—terms insisted upon by NorthWestern—require FLS to deliver energy and capacity from these projects on schedule, or pay significant damages. See May Affid. ¶¶ 33-40 (discussing terms); Ex. D Art. 1, Sec. 7.1-7.4, 7.4.2, 8.5 (Martin Solar PPA). And any difficulty or delay in obtaining interconnection does not (pursuant to terms insisted on by NorthWestern) excuse FLS's performance under these PPAs.

III. ARGUMENT

A. Standard for reconsideration

Under ARM 38.2.4805, the Commission may reopen a proceeding for the taking of additional evidence prior to issuing a decision. An applicant must specify the facts justifying its request for rehearing, and an explanation of why the proposed new evidence was not previously adduced. *Id.* Grounds for rehearing include material changes of fact or of law alleged to have occurred since the conclusion of the hearing, but other circumstances also may justify rehearing. *See, e.g.*, Docket No. D2014.7.58, *Procedural Order on Rehearing 7418b* (Apr. 13, 2016)

(rehearing to allow consideration of additional issues); *In re: Application of the Burlington N. R.R. Co. for Discontinuance of Its Agency Operations at Culbertson, Montana.*, Order No. 5929, 1989 WL 1781272 (Apr. 6, 1989) (rehearing to allow additional evidence where petitioners had been discouraged from attending public hearing).

B. The proposed additional evidence is relevant to the Emergency Motion, as amended by the Commission.

The evidence FLS seeks to introduce on rehearing consists of the Affidavit of Casey May, FLS Energy, and the following exhibits thereto:

- Ex. A: FLS emails requesting interconnection agreements
- Ex. B: June 28, 2016 email from NorthWestern Energy
- Ex. C: Summary of interconnection status for FLS projects
- Ex. D: Power Purchase Agreement between NorthWestern Energy and Martin Solar

This evidence relates to two topics relevant to the Commission's action on the Emergency Motion: (1) the efforts FLS has made to obtain interconnection for its Montana projects and their current interconnection status; and (2) FLS's unconditional commitment to sell energy and capacity from the Projects to NorthWestern. These issues bear on whether the relief voted on by the Commission—closing the QF-1 tariff to any QF above 100 kW that had not tendered a signed PPA to NorthWestern and obtained a signed IA by June 16—is legally appropriate and accomplishes the stated goals of the Commission.

The proffered evidence shows that none of the FLS Projects meets the test for QF-1 eligibility the Commission voted to approve, because none had a signed IA by June 16. It also shows that seven of these projects *would have had* IAs by then, but for NorthWestern's failure to provide signed IAs in a timely fashion. The proffered evidence also demonstrates that, despite not having signed IAs, FLS's projects meet the "touchstone" established by the Commission for

creating a legally enforceable obligation: an "unconditional commitment" to deliver energy and capacity. *Whitehall Wind, Order No. 6444e,* 2010 WL 10129008 ¶ 47 (May 10, 2010).

FLS had made that commitment with respect to all of the FLS Projects prior to the June 9 Hearing, and confirmed this commitment by executing PPAs for all the FLS Projects prior to the Commission's June 16 Work Session ("Work Session"). Therefore, FLS reasonably concluded that it was unaffected by the Emergency Motion as modified by NorthWestern. The Commission gave no hint, at the hearing or otherwise, that it was considering taking action beyond the scope of relief sought by NorthWestern.

C. FLS could not have presented this evidence at the hearing on the Emergency Motion.

FLS is justified in not having previously adduced this evidence at the June 9 Hearing for several reasons. ARM 38.2.4805(2). First, NorthWestern agreed prior to the June 9 Hearing to modify its request for relief to allow it to consummate its pending PPAs with FLS. Accordingly, FLS did not oppose the Emergency Motion and did not seek intervention when it filed its comments, so it could not have presented additional evidence or examined NorthWestern's witnesses at the June 9 Hearing.

Second, even if FLS had intervened or opposed the motion, FLS would have had no reason to present evidence on the interconnection status of its projects. This issue was not raised in the Emergency Motion or discussed at the June 9 Hearing, which FLS attended by phone. There was certainly no hint at the June 9 Hearing that the Commission might provide NorthWestern relief beyond what it was seeking through its motion (as amended), such that a project's interconnection status could determine its eligibility for a PPA under QF-1 rates. Not until the June 16 Work Session did the Commission introduce interconnection status as a relevant, and in fact dispositive, factor with respect to NorthWestern's requested emergency

relief. Moreover, FLS reasonably expected NorthWestern to fulfill its legal obligation to return signed IAs for seven projects in a timely fashion.

There was also no hint in the Emergency Motion or during the June 9 Hearing that it might matter whether an individual QF meets the *Whitehall Wind* LEO test. But the Commission does appear to have incorporated this test in the criteria for determining eligibility for QF-1 PPAs, making evidence relating to FLS's "unconditional commitment" to deliver energy and capacity highly relevant. Because this evidence only became relevant when the Commission amended the Emergency Motion, FLS is justified in not having adduced it before.

FLS also could not have adduced the June 28 email in which NorthWestern refuses to tender further Interconnection Agreements because of the Commission's June 16 vote, because that evidence came into existence after the hearing. This email demonstrated that the Commission's vote to suspend the QF-1 tariff already is having unintended consequences, even though no order has yet issued.

D. It would be unfair and unreasonable not to grant allow FLS the opportunity to present this evidence.

At the June 16 Work Session, the Commission voted to incorporate a test for QF-1 eligibility that had not been proposed or discussed by any party, or by the Commission in hearing on the motion. Under this test, none of FLS's Projects would be eligible for QF-1 PPAs because none of these projects had an IA on June 16. The effect of this action is to render all of the FLS Projects economically unviable and to cause FLS to lose all of the substantial investment it has made in reasonable reliance on the Commission current QF-1 Tariff and regulatory regime.

Moreover, NorthWestern was legally obligated to provide IAs for seven of FLS's projects before June 16. The only reason those projects do not meet the Commission's test for continued QF-1 eligibility is NorthWestern's failure to meet its legal obligations. And even

without signed IAs, there are many facts to indicate FLS's unconditional commitment to deliver power from these projects.

The Commission was unaware of these facts when it voted to approve the Amended Motion. Fairness and due process require that FLS have the opportunity to put evidence of these facts before the Commission so it can consider all the relevant facts before issuing a final order on NorthWestern's Emergency Motion.

For the reasons above, FLS respectfully requests the Commission grant its petition for rehearing and allow it to introduce the proffered evidence.[4]

Respectfully submitted,

UDA LAW FIRM, P.C.

By: _____
Michael J. Uda
Of Attorneys for FLS Energy, Inc.

[4] Since the Commission has advised parties to this proceeding that motions for reconsideration of the Commission's action on the Emergency Motion will not be timely until after the Commission has issued a written order on the motion, FLS is not making its arguments concerning the reasonableness and lawfulness of the Commission's action at this time, but reserves the right to make such arguments at the appropriate time.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Application of FLS Energy, Inc., for Rehearing on NorthWestern Energy's Motion for Emergency Suspension of the QF-1 Tariff for New Solar Qualifying Facilities with Nameplate Capacities Greater than 100 kW** in Docket No. 02016.5.39 has been: (1) hand-delivered, with an original and ten (10) copies, to the Montana Public Service Commission; (2) electronically filed with the Commission via the PSC's website at http://psc.mt.gov; and (3) sent by UPS ground to all parties of record to this case.

A courtesy copy has also been transmitted by electronic mail to the Commission staff.

Date: July 1, 2016

DEPARTMENT OF PUBLIC SERVICE REGULATION

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MONTANA

IN THE MATTER OF NorthWestern Energy's Application for Interim and Final Approval of Revised Tariff No. QF-l, Qualifying Facility Power Purchase	))))	REGULATORY DIVISION DOCKET NO. D2016.5.39

Affidavit of Casey James May

The undersigned, being duly sworn, deposes and says:

1. My name is Casey James May. I am a resident of North Carolina. I am over 21 years of age and competent to make this affidavit.

2. I am employed by FLS Energy, Inc. ("FLS") as the Senior Developer of Greenfield Assets. FLS is in the business of developing, financing, constructing, owning, and operating utility-scale solar photovoltaic facilities. My business address is 130 Roberts Street, Asheville, North Carolina 28801.

3. The purposes of my affidavit are: (1) to describe the historical background of how FLS became involved and invested in the Montana market and to outline the commitment FLS has made to developing its proposed Qualifying Facilities ("QF's") in the state; (2) to describe FLS's efforts to obtain interconnection agreements with NorthWestern Energy ("NorthWestern") for its solar QF projects in Montana, and the current interconnection status of each project for which FLS has tendered an executed power purchase agreement ("PPA") to NorthWestern; and (3) to describe the PPA provisions that unconditionally commit FLS to sell the output of its

Montana projects to NorthWestern even in the absence of Interconnection Agreements for those projects.

4. As the lead developer of greenfield QFs for FLS in North Carolina and Montana, it is my role to identify successful sites for QF development and shepherd those sites through the project life cycle until they are ready to be financed and constructed. Key to this responsibility is acting as the direct point of contact for interconnection with the purchasing utility. I collaborate with the utility to ensure that the selected locations will integrate well with the grid at the proposed location, file interconnection requests and communicate the company's decisions on which projects are candidates for additional diligence, ultimately leading to construction, and which ones need to be removed from the interconnection queue.

5. In my current position, I am responsible for all communication with the transmission side of the utility up to and including execution of an Interconnection Agreement. In addition, I lead FLS engagement efforts with local and state government officials and planning staff to ensure that any proposed projects are in conformity with land use and permitting guidelines.

6. I have been employed by FLS Energy since 2009. Between 2009 and 2012, I served as the Preconstruction Manager in our Operations department. There, I was responsible for overseeing all of our procurement and the competitive bidding efforts of our construction development team.

7. I joined the business development team of FLS Energy in 2012 and in 2013 became the Director of Federal Business Opportunities. In early 2015 I began serving as the Senior Greenfield Developer and have remained in a similar capacity since.

FLS's Solar Project Development Efforts in Montana

8. Prior to 2015, FLS's solar development activities had been mostly limited to its home state of North Carolina.

9. In January of 2015, FLS set a goal of developing projects in markets outside of the Carolinas. After lengthy strategic planning, FLS elected to devote considerable resources to developing solar projects in Montana. Montana provided a regulatory framework similar to what the company was familiar with in North Carolina, perceived regulatory stability, great solar resources (a lot of sunny days), and an avoided cost rate sufficient to obtain financing for potential projects.

10. Throughout this process, FLS has been sensitive to how we approach investment in new markets. FLS employees have immersed ourselves in Montana to cultivate relationships with our partners, stakeholders and the communities in which we hope to operate. FLS employees have made 13 individual trips to Montana since October of 2015 totaling 60 days on the ground on the part of our North Carolina based team.

11. FLS began site level diligence efforts on several of its proposed project sites in February of 2016, to facilitate early identification of any site-related challenges that might prevent FLS from ultimately being able to finance and construct the project. This was especially important in light of PPA terms insisted on by NorthWestern (discussed further below), which require FLS to pay substantial penalties for any project that did not achieve timely commercial operation. Soil testing, environmental surveys, wetlands reports, and habitat assessments all were contracted out to local Montana based companies.

FLS's Efforts to Obtain Interconnection for its QF Projects

12. FLS first contacted NorthWestern Energy regarding the interconnection and development of solar QF projects in Montana in June 2015. FLS contacted Autumn Mueller, NorthWestern's Coordinator of Generation and Transmission Interconnection, for guidance on the interconnection process. According to Ms. Mueller, the interconnection process was straightforward and transparent, as NorthWestern was obligated to follow FERC guidelines as described in the Small Generation Interconnection Procedures (SGIP).

13. Starting on November 13, 2015, FLS filed interconnection requests with NorthWestern for 30 projects in Montana. For each request, FLS paid NorthWestern a $5,000 System Impact Study deposit.

14. Prior to the issuance and execution of a System Impact Study, a developer is entitled to a Scoping Meeting to review the grid conditions of their proposed site with NorthWestern planning and engineering personnel. This meeting has been very helpful and effective in determining which projects have sufficient grid infrastructure in place to function in a cost effective manner. NWE does not make a recommendation on whether a project should proceed or provide any indication of what the potential interconnection costs may be at this time. The data provided is interpreted by the developer and they make a decision whether or not to proceed through the System Impact Study.

15. Of these initial 30 projects, FLS ceased development and voluntarily withdrew the interconnection request for 13 projects prior to the System Impact Study (SIS) because of potential grid interconnection problems identified by NorthWestern in project scoping meetings. One other project, Bear Gulch (#269), was inadvertently dropped from the queue prior to the SIS due to a clerical error. FLS resubmitted the interconnection request for this project on July 1,

2016. FLS received a partial refund of the deposits for the projects which were removed from the queue.

16. FLS continued to pursue interconnection agreements for each of its remaining Montana projects. A summary of the interconnection milestones and current interconnection status of each project for which FLS has tendered an executed power purchase agreement is included as **Exhibit A**.

17. FLS received System Impact Studies for nine projects on February 12, 2016. System Impact Studies for seven more projects were received on April 5-6, 2016.

18. FLS returned executed Facilities Study Agreements for seven projects to NorthWestern, along with $70,000 in required study deposits, on March 4, 2016. FLS subsequently received draft Facility Studies, including an estimate of project interconnection costs, for each of these projects.

19. After reviewing the draft studies and attending scoping meetings with NorthWestern, FLS requested Interconnection Agreements for six projects on June 1, 2016, and a seventh project on June 8. True and correct copies of the email communications reflecting these requests are attached as **Exhibit B**.

20. Pursuant to Section 3.5.7 of NorthWestern's FERC-approved Small Generator Interconnection Procedures, NorthWestern was obligated to provide FLS with executed Interconnection Agreements for these projects within five business days of FLS's request. NorthWestern did not meet this deadline, and in fact has not yet provided **any** of the Interconnection Agreements requested by FLS.

21. FLS returned executed Facility Study Agreements for two other projects, River Solar and Couch Solar, to NorthWestern on April 8, 2016, along with $20,000 in study deposits.

FLS received the Facility Studies for these two projects June 17th. A scoping meeting was held on June 29, 2016. FLS requested interconnection agreements for these projects on July 1, 2016.

22. On June 28, NorthWestern's transmission department informed FLS by email that it would no longer provide Interconnection Agreements for FLS projects seeking to contract under the QF-1 tariff as long as the Commission's "stay" of further contracting remained in effect. NorthWestern asserted that because of the Commission's June 16 Notice of Action in this matter, "NorthWestern cannot execute a new Interconnection Agreement for any solar QF project between 100 kW and 3 MW in size seeking a contract at the standard long term rate." A true and correct copy of this email is attached as **Exhibit C**.

23. FLS received System Impact Studies for seven additional projects on April 5 and 6, 2016. FLS subsequently dropped three of these projects from its development pipeline—two because of inadequate local infrastructure, and one because it was sufficiently close to another FLS project that it would be deemed an "aggregated facility" under the PPA provisions under negotiation with NorthWestern.

24. One additional project, Sage Creek (#239), was subject to a material modification review ("MMR") at the request of FLS. Because of a misinterpretation of the due date after the MMR results were returned, FLS did not return an executed Facility Study Agreement for this project to NorthWestern, and it was removed from NorthWestern's interconnection queue. FLS resubmitted an interconnection request for this project on July 1, 2016.

25. Facility Study Agreements for the remaining three projects were executed and returned to NorthWestern on April 28, 2016. However, due to an internal administrative error, FLS failed to transfer the required deposit funds for these projects by the due date. As a result, NorthWestern removed these projects from its interconnection queue on June 2. NorthWestern

did not provide any notice to FLS that the required funds had not been received prior to removing these projects from the queue. FLS resubmitted interconnection requests for these projects on July 1.

26. Based on feedback from NorthWestern Energy early in the interconnection process, FLS Energy had a clear understanding and expectation that both the execution of the Facility Study Agreements and the request for Interconnection Agreements would lead to the receipt of Interconnection Agreements.

27. By executing the Facilities Study agreements, FLS Energy expressed a willingness and expectation to pay these costs and a clear commitment and intention to construct these projects.

28. When FLS Energy requested the initial seven IA's on June 1 and June 8, it did so on the basis of final cost estimates included in the Facilities Studies for the relevant projects. The table below summarizes those projected interconnection costs:

Project	**Est. Interconnection Costs**
Martin	$ 94,861
Canyon Creek	$ 132,301
Valley View	$ 181,154
Malt	$ 123,184
Ulm	$ 272,524
Glass	$ 125,561
Fox Farm	$ 166,462
Total	**$ 1,096,047**
Average	**$ 156,578**

29. Based on the System Impact Studies, the estimated interconnection costs for seven of the other projects for which FLS has tendered PPAs are as follows:

Project	Est. Interconnection Costs
Couch	$ 338,060
Middle	$ 746,920
River	$ 375,521
Sage Creek	$ 556,412
Sypes Canyon	$ 160,447
Janney	$ 169,162
Total	**$ 2,346,522**
Average	**$ 391,087**

30. FLS is confident that these figures represent a reasonable estimate of interconnection costs for these projects. These costs are well within FLS's level of tolerance for interconnection costs, and FLS has made an informed decision to commit to the development of these projects.

31. FLS's standard practice is to remove non-viable projects from our development pipeline and the interconnection queue as early as reasonably possible to limit financial exposure. The primary reason for projects to be removed from the queue is interconnection cost estimates. The interconnection cost estimates received in the System Impact Studies, provided by NorthWestern, were evaluated and deemed to be reasonable and within the financial tolerance levels available for these project portfolio(s).

32. Among its Montana projects, FLS Energy has deemed it necessary to drop from its development pipeline only two projects that went as far as receiving System Impact Studies from NWE. FLS has not deliberately withdrawn any Montana project that has made it as far as the Facility Study stage.

FLS's PPAs with NorthWestern Energy

33. FLS and NorthWestern began negotiating the terms of a form PPA for FLS's projects in February 2016. FLS and NorthWestern reached agreement on all the material terms of the form PPA prior to the June 9 hearing on NorthWestern's Emergency Motion.

34. On June 15, 2016, FLS tendered executed copies of PPAs for the following 13 projects to NorthWestern via email:

Project	Project No.
Martin	215
Glass	219
Canyon Creek	221
Malt	222
Fox Farm	223
Ulm	231
Valley View	225
Couch	232
Middle	226
Janney	236
Sage Creek	239
Sypes Canyon	240
Bear Gulch	269

35. An executed PPA for another project, River Solar (#216), was tendered to NorthWestern by email on June 16. This PPA had been previously executed by FLS but inadvertently omitted from the email transmitting the other 13 PPAs on June 15.

36. Throughout contract negotiations, NorthWestern insisted on PPA terms that would obligate FLS to pay substantial monetary penalties for any project that failed to achieve commercial operation on schedule. A true and correct copy of the PPA for FLS's Martin Solar project, which is representative of the terms negotiated for all 14 FLS projects, is attached as **Exhibit D**.

37. For example, Article 7 of the PPA includes provisions related to the damages FLS must pay to NorthWestern in the event a project fails to achieve commercial operation in a timely fashion. If the project is late in achieving commercial operation by the date specified in the PPA, FLS must pay NorthWestern "delay damages" of $375 per day for each day commercial operation is delayed. (Art. 1, Sec. 7.4) FLS must provide a refundable cash deposit or a letter of credit to guarantee payment of these damages. (Sec. 7.1, 7.3) If the project fails to achieve commercial operation within 90 days after the deadline, NorthWestern may terminate the PPA and FLS must pay NorthWestern total damages of $33,750. (Sec. 7.4.2) In addition, if NorthWestern's cost for obtaining replacement energy on the market exceeds the contract price, FLS must compensate Northwestern for the additional cost of obtaining replacement energy. (Sec. 8.5)

38. Furthermore, under terms negotiated by NorthWestern, delays in obtaining interconnection and transmission service do not excuse FLS's timely delivery of energy and capacity. Section, Article 14.2 provides that "the inability or failure of Seller to arrange for, acquire or procure transmission services" is not an event of Force Majeure.

39. Because these contract provisions, once tendering an executed PPA for a particular project FLS would be obligated to deliver energy, capacity, and environmental attributes (i.e. renewable energy credits) from the project on time, regardless of any expense or difficulty incurred in achieving interconnection. Consequently FLS did not tender an executed PPA for any project it was not fully committed to developing, based on an informed judgment as to the likely interconnection costs and other potential impediments to the project.

40. Therefore, FLS made a firm and unconditional commitment to sell the output of a project to NorthWestern once it executed a PPA for that project, whether or not it also had an Interconnection Agreement in place.

FURTHER THE AFFIANT SAYETH NOT.

This the 1 day of July 2016.

Casey J. May

FLS Energy, Inc.

State of NC
County of Buncombe
Sworn and subscribed before me

This the 1 day of July 2016.

Michel D. Maurer
Notary Public

My commission expires: 1-16-2018

FLS Energy Current Montana Projects - Interconnection Status and Timelines

Project	Project No.	Interconnection Request Filed	SIS Agreement Executed	SIS Completed	FAC Agreement Received	FAC Agreement Executed	FAC Study Received	IA Requested	Est. Interconn. Costs ($)	Current status
Martin	215	11/13/15	12/9/15	2/12/16	3/3/16	3/8/16	5/11/16	6/1/2016	94,861	Awaiting executed IA from NorthWestern (due 6/8/16)
Glass	219	11/13/15	12/9/15	2/12/16	3/3/16	3/8/16	5/11/16	6/1/2016	125,561	Awaiting executed IA from NorthWestern (due 6/8/16)
Canyon Creek	221	11/13/15	12/9/15	2/12/16	3/3/16	3/8/16	5/11/16	6/1/2016	132,301	Awaiting executed IA from NorthWestern (due 6/8/16)
Malt	222	11/13/15	12/9/15	2/12/16	3/3/16	3/8/16	5/12/16	6/1/2016	123,184	Awaiting executed IA from NorthWestern (due 6/8/16)
Fox Farm	223	11/13/15	12/9/15	2/12/16	3/3/16	3/8/16	5/9/16	6/1/2016	166,462	Awaiting executed IA from NorthWestern (due 6/8/16)
Ulm	231	11/24/15	12/9/15	2/12/16	3/3/16	3/8/16	5/9/16	6/1/2016	272,524	Awaiting executed IA from NorthWestern (due 6/8/16)
Valley View	225	11/24/15	12/9/15	2/12/16	3/3/16	3/8/16	5/19/16	6/8/2016	181,154	Awaiting executed IA from NorthWestern (due 6/15/16)
River	216	11/13/15	12/9/15	2/12/16	4/19/16	4/8/16	6/17/16	7/1/2016	375,521	Scoping Mtg for FAC held 6/29 Awaiting final FAC from NWE
Couch	232	11/24/15	12/9/15	2/12/16	4/7/16	4/8/16	6/17/16	7/1/2016	338,060	Scoping Mtg for FAC held 6/29. Awaiting final FAC from NWE
Middle	226	11/24/2015 Refiled 7/1/2016	1/29/16	4/5/16	4/19/16	4/28/16	NA	NA	746,920	Dropped from queue by NWE; request refiled 7/1/16
Janney	236	12/23/2015 Refiled 7/1/2016	1/29/16	4/6/16	4/19/16	4/28/16	NA	NA	169,162	Dropped from queue by NWE; request refiled 7/1/16
Sage Creek	239	12/23/2015 Refiled 7/1/2016	1/29/16	4/6/16	4/19/16	NA	NA	NA	556,412	Dropped from queue by NWE; request refiled 7/1/16
Sypes Canyon	240	12/23/2015 Refiled 7/1/2016	1/29/16	4/6/16	4/19/16	4/28/16	NA	NA	160,447	Dropped from queue by NWE; request refiled 7/1/16
Bear Gulch	269	3/25/2016 Refiled 7/1/2016	NA	NA	NA	NA	NA	NA	--	Dropped from queue by NWE due to clerical error; resubmitted 7/1/16

Exhibit A

From: Casey May <cmay@flsenergy.com>
Sent: Wednesday, June 01, 2016 10:36 AM
To: Christie, Becki
Cc: Parker Sloan; Regional Planning; Thomas, Sherry J; Streeter, Doug; Sanchez, Rona; Hogge, Vernan G; Shuttlesworth, Dale K (Kevin); Badovinac, John (Brett); Krusemark, James S; Cook, Arnold M
Subject: RE: Martin Solar Facilities Study DRAFT Report

Becki,

We do not have any additional comments regarding the Facilities Study for project #215 – Martin Solar. We would like to move forward with requesting the IA for this project.

Thank you,

Casey May
Business Development
FLS Energy, Inc. | 130 Roberts St. | Asheville, NC | 28801
O 828.350.3993 | M 828.275.0919 | F 828.350.3997
cmay@flsenergy.com | Linked In

From: Christie, Becki [mailto:Becki.Christie@northwestern.com]
Sent: Wednesday, May 11, 2016 11:10 AM
To: Casey May <cmay@flsenergy.com>
Cc: Parker Sloan <psloan@flsenergy.com>; Regional Planning <RegionalPlanning@northwestern.com>; Thomas, Sherry J <Sherry.Thomas@northwestern.com>; Streeter, Doug <doug.streeter@northwestern.com>; Sanchez, Rona <Rona.Sanchez@northwestern.com>; Hogge, Vernan G <VERNAN.HOGGE@northwestern.com>; Shuttlesworth, Dale K (Kevin) <Kevin.Shuttlesworth@northwestern.com>; Badovinac, John (Brett) <Brett.Badovinac@northwestern.com>; Krusemark, James S <Jim.Krusemark@northwestern.com>; Cook, Arnold M <Arnold.Cook@northwestern.com>
Subject: Martin Solar Facilities Study DRAFT Report

Hello Casey,

Attached, please find the Martin Solar #215 Facilities Study DRAFT report. NorthWestern has scheduled a results meeting on Monday, May 16th to discuss the findings of this report.

Thank you,

Becki Christie
Transmission Analyst
Becki.Christie@northwestern.com
O 406-497-3440
C 406-490-3283
9 West Granite St. I Butte, MT 59701

Exhibit B

From: Casey May <cmay@flsenergy.com>
Sent: Wednesday, June 01, 2016 10:34 AM
To: Christie, Becki
Cc: Parker Sloan; Regional Planning; Thomas, Sherry J; Streeter, Doug; Sanchez, Rona; Hogge, Vernan G; Shuttlesworth, Dale K (Kevin); Badovinac, John (Brett); Krusemark, James S; Cook, Arnold M
Subject: RE: Glass Solar #219 Facilities Study DRAFT Report

Becki,

We do not have any additional comments regarding the Facilities Study for project #219 – Glass Solar. We would like to move forward with requesting the IA for this project.

Thank you,

Casey May
Business Development
FLS Energy, Inc. | 130 Roberts St. | Asheville, NC | 28801
O 828.350.3993 | M 828.275.0919 | F 828.350.3997
cmay@flsenergy.com | Linked In

From: Christie, Becki [mailto:Becki.Christie@northwestern.com]
Sent: Wednesday, May 11, 2016 11:14 AM
To: Casey May <cmay@flsenergy.com>
Cc: Parker Sloan <psloan@flsenergy.com>; Regional Planning <RegionalPlanning@northwestern.com>; Thomas, Sherry J <Sherry.Thomas@northwestern.com>; Streeter, Doug <doug.streeter@northwestern.com>; Sanchez, Rona <Rona.Sanchez@northwestern.com>; Hogge, Vernan G <VERNAN.HOGGE@northwestern.com>; Shuttlesworth, Dale K (Kevin) <Kevin.Shuttlesworth@northwestern.com>; Badovinac, John (Brett) <Brett.Badovinac@northwestern.com>; Krusemark, James S <Jim.Krusemark@northwestern.com>; Cook, Arnold M <Arnold.Cook@northwestern.com>
Subject: Glass Solar #219 Facilities Study DRAFT Report

Hello Casey,

Attached, please find the Glass Solar #219 Facilities Study DRAFT report. NorthWestern has scheduled a results meeting on Monday, May 16th to discuss the findings of this report.

Thank you,

Becki Christie
Transmission Analyst
Becki.Christie@northwestern.com
O 406-497-3440
C 406-490-3283
9 West Granite St. | Butte, MT 59701

From: Casey May <cmay@flsenergy.com>
Sent: Wednesday, June 01, 2016 10:33 AM
To: Christie, Becki
Cc: Parker Sloan; Regional Planning; Thomas, Sherry J; Streeter, Doug; Sanchez, Rona; Hogge, Vernan G; Shuttlesworth, Dale K (Kevin); Badovinac, John (Brett); Krusemark, James S; Cook, Arnold M
Subject: RE: Canyon Creek Solar #221 Facilities Study DRAFT Report

Becki,

We do not have any additional comments regarding the Facilities Study for project #221 – Canyon Creek Solar. We would like to move forward with requesting the IA for this project.

Thank you,

Casey May
Business Development
FLS Energy, Inc. | 130 Roberts St. | Asheville, NC | 28801
O 828.350.3993 | M 828.275.0919 | F 828.350.3997
cmay@flsenergy.com | Linked In

From: Christie, Becki [mailto:Becki.Christie@northwestern.com]
Sent: Wednesday, May 11, 2016 11:17 AM
To: Casey May <cmay@flsenergy.com>
Cc: Parker Sloan <psloan@flsenergy.com>; Regional Planning <RegionalPlanning@northwestern.com>; Thomas, Sherry J <Sherry.Thomas@northwestern.com>; Streeter, Doug <doug.streeter@northwestern.com>; Sanchez, Rona <Rona.Sanchez@northwestern.com>; Hogge, Vernan G <VERNAN.HOGGE@northwestern.com>; Shuttlesworth, Dale K (Kevin) <Kevin.Shuttlesworth@northwestern.com>; Badovinac, John (Brett) <Brett.Badovinac@northwestern.com>; Krusemark, James S <Jim.Krusemark@northwestern.com>; Cook, Arnold M <Arnold.Cook@northwestern.com>
Subject: Canyon Creek Solar #221 Facilities Study DRAFT Report

Hello Casey,

Attached, please find the Canyon Creek Solar #221 Facilities Study DRAFT report. NorthWestern has scheduled a results meeting on Monday, May 16th to discuss the findings of this report.

Thank you,

Becki Christie
Transmission Analyst
Becki.Christie@northwestern.com
O 406-497-3440
C 406-490-3283
9 West Granite St. I Butte, MT 59701

From: Casey May <cmay@flsenergy.com>
Sent: Wednesday, June 01, 2016 10:33 AM
To: Mueller, Autumn M
Cc: Schubert, William (BJ); McClafferty, Kimberly; Loomis, Chelsea; Lovell, Kelly L; Thomas, Sherry J; Christie, Becki; Streeter, Doug; Sanchez, Rona; Hogge, Vernan G; Shuttlesworth, Dale K (Kevin); Badovinac, John (Brett); Krusemark, James S; Cook, Arnold M; Laurandeau, Joshua
Subject: RE: Malt Solar #222 DRAFT Facilities Study Report

Autumn,

We do not have any additional comments regarding the Facilities Study for project #222 – Malt Solar. We would like to move forward with requesting the IA for this project.

Thank you,

Casey May
Business Development
FLS Energy, Inc. | 130 Roberts St. | Asheville, NC | 28801
O 828.350.3993 | M 828.275.0919 | F 828.350.3997
cmay@flsenergy.com | Linked In

From: Mueller, Autumn M [mailto:autumn.mueller@northwestern.com]
Sent: Thursday, May 12, 2016 1:49 PM
To: Casey May <cmay@flsenergy.com>
Cc: Casey May <cmay@flsenergy.com>; Schubert, William (BJ) <William.Schubert@northwestern.com>; McClafferty, Kimberly <Kimberly.McClafferty@northwestern.com>; Loomis, Chelsea <Chelsea.Loomis@northwestern.com>; Lovell, Kelly L <Kelly.Lovell@northwestern.com>; Thomas, Sherry J <Sherry.Thomas@northwestern.com>; Christie, Becki <Becki.Christie@northwestern.com>; Streeter, Doug <doug.streeter@northwestern.com>; Sanchez, Rona <Rona.Sanchez@northwestern.com>; Hogge, Vernan G <VERNAN.HOGGE@northwestern.com>; Shuttlesworth, Dale K (Kevin) <Kevin.Shuttlesworth@northwestern.com>; Badovinac, John (Brett) <Brett.Badovinac@northwestern.com>; Krusemark, James S <Jim.Krusemark@northwestern.com>; Cook, Arnold M <Arnold.Cook@northwestern.com>; Laurandeau, Joshua <Joshua.Laurandeau@northwestern.com>
Subject: Malt Solar #222 DRAFT Facilities Study Report

Hello Casey,

Attached, please find the Malt Solar #222 DRAFT Facilities Study report. A results meeting is scheduled for Monday, May 16, 2016 to discuss the findings of this report.

Thank you!!

Autumn Mueller
Coordinator, Generation and Transmission Interconnection
Autumn.Mueller@northwestern.com
O 406-497-3174

From: Casey May <cmay@flsenergy.com>
Sent: Wednesday, June 01, 2016 10:40 AM
To: Mueller, Autumn M; Parker Sloan
Cc: Schubert, William (BJ); McClafferty, Kimberly; Loomis, Chelsea; Lovell, Kelly L; Thomas, Sherry J; Christie, Becki; Streeter, Doug; Sanchez, Rona; Hogge, Vernan G; Shuttlesworth, Dale K (Kevin); Badovinac, John (Brett); Krusemark, James S; Cook, Arnold M
Subject: RE: Fox FarmSolar #223

Autumn,

We do not have any additional comments regarding the Facilities Study for project #223 – Fox Farm Solar. We would like to move forward with requesting the IA for this project.

Thank you,

Casey May
Business Development
FLS Energy, Inc. | 130 Roberts St. | Asheville, NC | 28801
O 828.350.3993 | M 828.275.0919 | F 828.350.3997
cmay@flsenergy.com | Linked In

From: Mueller, Autumn M [mailto:autumn.mueller@northwestern.com]
Sent: Monday, May 09, 2016 3:42 PM
To: Parker Sloan <psloan@flsenergy.com>
Cc: Casey May <cmay@flsenergy.com>; Schubert, William (BJ) <William.Schubert@northwestern.com>; McClafferty, Kimberly <Kimberly.McClafferty@northwestern.com>; Loomis, Chelsea <Chelsea.Loomis@northwestern.com>; Lovell, Kelly L <Kelly.Lovell@northwestern.com>; Thomas, Sherry J <Sherry.Thomas@northwestern.com>; Christie, Becki <Becki.Christie@northwestern.com>; Streeter, Doug <doug.streeter@northwestern.com>; Sanchez, Rona <Rona.Sanchez@northwestern.com>; Hogge, Vernan G <VERNAN.HOGGE@northwestern.com>; Shuttlesworth, Dale K (Kevin) <Kevin.Shuttlesworth@northwestern.com>; Badovinac, John (Brett) <Brett.Badovinac@northwestern.com>; Krusemark, James S <Jim.Krusemark@northwestern.com>; Cook, Arnold M <Arnold.Cook@northwestern.com>
Subject: Fox FarmSolar #223

Hello Parker,

Attached, please find the Fox Farm Solar #223 Facilities Study DRAFT report. NorthWestern will schedule a results meeting to discuss the findings of this report.

Thank you!!

Autumn Mueller
Coordinator, Generation and Transmission Interconnection
Autumn.Mueller@northwestern.com
O 406-497-3174
C 406-498-8316
F 406-497-3002
11 E. Park Street | Butte, MT 59701-9394

From: Casey May <cmay@flsenergy.com>
Sent: Wednesday, June 08, 2016 10:25 AM
To: Christie, Becki
Subject: RE: Valley View #225 Results Meeting - FAC Study Report- Draft

No. Thank you for following up. We will move forward with requesting the final FAC and draft IA.

Have a great day,
Casey

From: Christie, Becki [mailto:Becki.Christie@northwestern.com]
Sent: Wednesday, June 08, 2016 10:22 AM
To: Casey May <cmay@flsenergy.com>
Subject: FW: Valley View #225 Results Meeting - FAC Study Report- Draft

Hi Casey,

With your one question being answered below, do you still want to have the results meeting on Friday?

Thanks,

Becki Christie
Transmission Analyst
Becki.Christie@northwestern.com
O 406-497-3440
C 406-490-3283
9 West Granite St. I Butte, MT 59701

From: Badovinac, John (Brett)
Sent: Tuesday, June 07, 2016 4:07 PM
To: 'Casey May' <cmay@flsenergy.com>
Cc: Krusemark, James S <Jim.Krusemark@northwestern.com>; Christie, Becki <Becki.Christie@northwestern.com>; Rozinka, Steve <steve.rozinka@northwestern.com>; Church, Keith <Keith.Church@northwestern.com>
Subject: RE: Valley View #225 Results Meeting - FAC Study Report- Draft

Casey,
We just took a look at the estimate for the LTC controller upgrade and feel that this is an accurate estimate, if you want to discuss it you could give me a call.
Thanks Casey
Brett Badovinac
406-497-3166

From: Casey May [mailto:cmay@flsenergy.com]
Sent: Tuesday, June 07, 2016 7:45 AM
To: Christie, Becki; Mueller, Autumn M; Loomis, Chelsea; Schubert, William (BJ); Hogge, Vernan G; Sanchez, Rona; Shuttlesworth, Dale K (Kevin); Badovinac, John (Brett); Krusemark, James S; Cook, Arnold M; Shea, Rose E; Parker Sloan
Cc: Streeter, Doug; Munson, Dan L; Schmit, Michael J
Subject: RE: Valley View #225 Results Meeting - FAC Study Report- Draft

NorthWestern Transmission Team,

The only question that FLS Energy had regarding the Valley View #225 FAC was regarding the transformer upgrade. We would like for you to confirm that the pricing on the installation of the LTC controller is correct. Other than that, FLS Energy does not have any other questions regarding the report.

Thank you,

Casey May
Business Development
FLS Energy, Inc. | 130 Roberts St. | Asheville, NC | 28801
O 828.350.3993 | M 828.275.0919 | F 828.350.3997
cmay@flsenergy.com | Linked In

-----Original Appointment-----
From: Christie, Becki [mailto:Becki.Christie@northwestern.com]
Sent: Friday, June 03, 2016 1:15 PM
To: Mueller, Autumn M; Loomis, Chelsea; Schubert, William (BJ); Hogge, Vernan G; Sanchez, Rona; Shuttlesworth, Dale K (Kevin); Badovinac, John (Brett); Krusemark, James S; Cook, Arnold M; Shea, Rose E; Parker Sloan; Casey May
Cc: Streeter, Doug; Munson, Dan L; Schmit, Michael J
Subject: Canceled: Valley View #225 Results Meeting - FAC Study Report- Draft
When: Friday, June 03, 2016 3:00 PM-3:30 PM (UTC-07:00) Mountain Time (US & Canada).
Where: ZZ EB 1st Conf Rm (Large)
Importance: High

This meeting is scheduled for Friday, June 3, 2016 at 3:00 PM Mountain Time

This results meeting is scheduled to discuss the Facilities Study Report-Draft for Valley View Solar #225.
Attendance in person is not required, therefore, I am providing the below conference bridge:
US/Canada Dial In: (877) 820-7831
International Dial In: (720) 279-0026
Participant Passcode: 670907
Please feel free to forward this meeting planner to anyone else you feel should be included.
Thank you,

Becki Christie
Transmission Analyst
Becki.Christie@northwestern.com
O 406-497-3440
C 406-490-3283
9 West Granite St. I Butte, MT 59701
NorthWestern Energy
Delivering a Bright Future

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged information. No confidentiality or privilege is waived or lost by any mistransmission. If you receive this message in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender. You must not, directly or indirectly, use, disclose, distribute, print, or copy any part of this message if you are not the intended recipient. NorthWestern Corporation and its subsidiaries each reserve the right to monitor all e-mail communications through its network.

From: Casey May <cmay@flsenergy.com>
Sent: Wednesday, June 01, 2016 10:41 AM
To: Mueller, Autumn M; Parker Sloan
Cc: Schubert, William (BJ); McClafferty, Kimberly; Loomis, Chelsea; Lovell, Kelly L; Thomas, Sherry J; Christie, Becki; Streeter, Doug; Sanchez, Rona; Hogge, Vernan G; Shuttlesworth, Dale K (Kevin); Badovinac, John (Brett); Krusemark, James S; Cook, Arnold M
Subject: RE: Ulm Solar Facilities Study DRAT Report

Autumn,

We do not have any additional comments regarding the Facilities Study for project #231 – Ulm Solar. We would like to move forward with requesting the IA for this project.

Thank you,

Casey May
Business Development
FLS Energy, Inc. | 130 Roberts St. | Asheville, NC | 28801
O 828.350.3993 | M 828.275.0919 | F 828.350.3997
cmay@flsenergy.com | Linked In

From: Mueller, Autumn M [mailto:autumn.mueller@northwestern.com]
Sent: Monday, May 09, 2016 3:42 PM
To: Parker Sloan <psloan@flsenergy.com>
Cc: Casey May <cmay@flsenergy.com>; Schubert, William (BJ) <William.Schubert@northwestern.com>; McClafferty, Kimberly <Kimberly.McClafferty@northwestern.com>; Loomis, Chelsea <Chelsea.Loomis@northwestern.com>; Lovell, Kelly L <Kelly.Lovell@northwestern.com>; Thomas, Sherry J <Sherry.Thomas@northwestern.com>; Christie, Becki <Becki.Christie@northwestern.com>; Streeter, Doug <doug.streeter@northwestern.com>; Sanchez, Rona <Rona.Sanchez@northwestern.com>; Hogge, Vernan G <VERNAN.HOGGE@northwestern.com>; Shuttlesworth, Dale K (Kevin) <Kevin.Shuttlesworth@northwestern.com>; Badovinac, John (Brett) <Brett.Badovinac@northwestern.com>; Krusemark, James S <Jim.Krusemark@northwestern.com>; Cook, Arnold M <Arnold.Cook@northwestern.com>
Subject: Ulm Solar Facilities Study DRAT Report

Hello Parker,

Attached, please find the Ulm Solar #231 Facilities Study DRAFT report. NorthWestern will schedule a results meeting to discuss the findings of this report.

Thank you!!

Autumn Mueller
Coordinator, Generation and Transmission Interconnection
Autumn.Mueller@northwestern.com
O 406-497-3174
C 406-498-8316
F 406-497-3002
11 E. Park Street | Butte, MT 59701-9394

From: Mueller, Autumn M <autumn.mueller@northwestern.com>
Sent: Tuesday, June 28, 2016 4:52 PM
To: Casey May; Parker Sloan
Cc: Loomis, Chelsea; Christie, Becki
Subject: Couch Solar #232

Hello Casey and Parker,

On June 16, 2016, the Montana Public Service Commission issued a Notice of Commission Action which effectively stays, temporarily, further contracting under the QF-1 standard long term rate for solar QFs between 100 kW and 3 MW in size. The temporary stay will remain in place during the pendency of Commission proceedings to adjust the rate. NorthWestern has requested a significant reduction in the rate.

The stay affects not only the execution of Purchase Power Agreements, but Interconnection Agreements. As long as the stay is in place, NorthWestern cannot execute a new Interconnection Agreement for any solar QF project between 100 kW and 3 MW in size seeking a contract at the standard long term rate. Although NorthWestern cannot currently execute any new Interconnection Agreements for such facilities, it will complete all contracted for study work necessary to preserve queue position for a requested interconnection. If, for any reason, you do NOT want NorthWestern to complete your study work, you need to advise us of that fact, via email, as soon as possible. However, if you do later decide you want an interconnection, you will have to reapply, and your queue position will be determined as of that date.

Please contact me if you have any questions.

Thank you!!

Autumn Mueller
Coordinator, Generation and Transmission Interconnection
Autumn.Mueller@northwestern.com
O 406-497-3174
C 406-498-8316
F 406-497-3002
11 E. Park Street I Butte, MT 59701-9394

NorthWestern Energy
Delivering a Bright Future

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged information. No confidentiality or privilege is waived or lost by any mistransmission. If you receive this message in error, please immediately delete it and all copies of it from your system, destroy any hard copies of it and notify the sender. You must not, directly or indirectly, use, disclose, distribute, print, or copy any part of this message if you are not the intended recipient. NorthWestern Corporation and its subsidiaries each reserve the right to monitor all e-mail communications through its network.

Exhibit C

EXECUTION VERSION

QUALIFYING FACILITY
POWER PURCHASE AGREEMENT BETWEEN
NORTHWESTERN CORPORATION D/B/A
NORTHWESTERN ENERGY
AND
MARTIN SOLAR, LLC

DATED EFFECTIVE AS OF

_____

Exhibit D

EXECUTION VERSION

TABLE OF CONTENTS

PREAMBLE 1

RECITALS: 1

ARTICLE 1: DEFINITIONS 1

ARTICLE 2: RULES OF INTERPRETATION 8

ARTICLE 3: SELLER'S REPRESENTATIONS AND WARRANTIES 8

ARTICLE 4: CONDITIONS PRECEDENT TO ACCEPTANCE OF ENERGY 10

ARTICLE 5: PURCHASE AND SALE OF ENERGY AND ENVIRONMENTAL ATTRIBUTES 11

ARTICLE 6: OPERATIONS 14

ARTICLE 7: SECURITY & DAMAGES 18

ARTICLE 8: EVENTS OF DEFAULT AND TERMINATION 19

ARTICLE 9: INDEMNIFICATION AND LIABILITY 21

ARTICLE 10: INSURANCE 24

ARTICLE 11: NOTICES 25

ARTICLE 12: ASSIGNMENT AND OWNERSHIP 26

ARTICLE 13: TAXES 26

ARTICLE 14: FORCE MAJEURE 27

ARTICLE 15: CONFIDENTIALITY 28

ARTICLE 16: GENERAL PROVISIONS 29

ARTICLE 17: REGULATION BY THE MONTANA PUBLIC SERVICE COMMISSION 32

ARTICLE 18: LOCAL HIRING AND WAGE STANDARDS 32

PREAMBLE

This Qualifying Facility Power Purchase Agreement ("Agreement") is entered into effective as of the ____ day of June, 2016 ("*Effective Date*"), between Martin Solar, LLC, a North Carolina 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 a solar electric generation facility that is a "*Qualifying Facility*" pursuant to 18 C.F.R. §§ 292.201 *et seq.*, located in Lewis & Clark County, Montana, with a physical address to be determined, and project located at the coordinates of: 46.971227, -112.569355; and

WHEREAS, Seller wishes to sell, and NorthWestern is required to purchase the Energy and Environmental Attributes produced by Seller's Qualifying Facility in accordance with PURPA, the Commission's regulations and Schedule No. QF-1 of the NorthWestern Electric Tariff;

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.

"*Aggregated Facility*" means the Facility and one or more solar generating facilities other than the Facility located on one or more contiguous or non-contiguous sites at or near the Point of Interconnection: (i) under the common ownership of Seller or an Affiliate of Seller, or (ii) constructed or operated by the Seller or an Affiliate of Seller

"*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, 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, or (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.

"*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 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 that is not an Uncompensated Curtailment and therefore 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.

"*Contingency Reserves*" has the meaning set forth in NorthWestern's Electric Tariff, Schedule No. CR-1.

"*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 Development Security or Operational Security, as applicable.

"*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.

"*Development Security*" has the meaning set forth in Section 7.1, which security shall be in the form of Cash Security, Letter of Credit Security or other security acceptable to NorthWestern.

"*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 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, Test Energy and Capacity. 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 Attributes Price*" has the meaning set forth in Section 5.5.5.

"*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 18 months from the Effective Date, 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.

"*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.

"*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 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*

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) and "CP" means the Contract Price applicable during such month (expressed in $/MWh).

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.

"*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 the sum of the AC output ratings of the inverters to which the array is connected, as established in Exhibit A.

"*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 rates approved by the Commission at the Effective Date and 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.

"*Operational Security*" has the meaning set forth in Section 7.1, which security shall be in the form of Cash Security, Letter of Credit Security or other security acceptable to NorthWestern.

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

"*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.

"*Point of Interconnection*" has the meaning provided in the Generator Interconnection 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.

"*Replacement Price*" means the price at which NorthWestern, acting in a commercially reasonable manner, purchases for delivery at the Point of Interconnection replacement for Energy, Capacity and Environmental Attributes (if any) Seller is required to deliver under this Agreement, plus: (i) administrative costs reasonably incurred in purchasing such replacement Energy, and (ii) transmission charges, if any, reasonably incurred in causing replacement Energy to be delivered to the Point of Interconnection. If NorthWestern elects not to make such a purchase, the Replacement Price shall be the market price published by the Intercontinental

Exchange for such Energy not delivered, plus any additional cost or expense incurred as a result of Seller's failure to deliver, as determined by NorthWestern in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

"Remedial Action Plan" has the meaning set forth in Section 5.2.

"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; (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 inverter installed at the Facility to convert direct current from the Facility's solar panels to alternating current.

"Vintage" means with respect to Environmental Attributes the calendar year in which the Energy with which the Environmental Attributes are associated was generated.

"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;
(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 North Carolina 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 currently anticipated manufacturer and model of all major equipment. Notwithstanding the preceding sentence, the equipment may be changed or modified by Seller during the development of the Facility; provided that (i) Seller shall notify NorthWestern of any change in the manufacturer of the Units; and (ii) shall not increase the Nameplate Capacity in excess of 3MW AC without the prior written consent of NorthWestern. Seller shall not make any modification to the equipment described in Exhibit A, unless such change is allowed by the 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 operate the Facility in excess of 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: (i) the Facility will be designed, constructed and operated so that the Nameplate Capacity does not exceed 3MW AC; and (ii) Seller is not entering into this Agreement with the intent or purpose of owning, constructing or operating an Aggregated Facility in contravention of the 3MW AC limitation on contracts entered into pursuant to Schedule No. QF-1 of the NorthWestern Electric Tariff in effect on the date of this Agreement for Qualifying Facilities. Seller acknowledges that NorthWestern is not obligated to compensate Seller for the delivery of excess Energy when the Facility or an Aggregated Facility generates power in amounts above 3MW AC.

ARTICLE 4: CONDITIONS PRECEDENT TO ACCEPTANCE OF ENERGY

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 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.

4.2 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 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 twenty-five (25) years after 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 and panel array location and lease rights for Term of Agreement.	120 days from Effective Date.
5.2.2 Term sheet(s) evidencing commitment(s) for financing provided to NorthWestern.	300 days from Effective Date.
5.2.3 "Notice to Proceed" given by Seller to a general construction contractor.	300 days from Effective Date.
5.2.4 "Land Location" map providing the latitude and longitude of the panel array and each Unit sequentially in the order of the Facility layout.	140 days from Effective Date.
5.2.5 "Mechanical Completion" meaning that all of the Facility's Units and panel arrays have been installed, are mechanically and electrically sound, and ready for initial start-up, adjustment and testing.	450 days from Effective Date.

5.2.6 "Final Construction" substantial completion of final the Facility.	480 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. For each Contract Year, Seller intends to produce and deliver to NorthWestern, and NorthWestern intends to purchase, the applicable amount of MWh of Energy set forth in Exhibit D ("*ANEA*").

5.3.2 Failure to Deliver the ANEA in a Single Year. In any given Contract Year, if Seller fails to deliver eighty-five percent (85%) 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) = 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 Not Used.

5.5 Contract Price:

5.5.1 After Commercial Operation. Subsequent to the Commercial Operation Date, NorthWestern shall pay Seller for Energy and Capacity at the rate of $0.09273/kWh On-Peak and $0.05314/kWh Off-Peak in accordance with Schedule No. QF-1 of NorthWestern's Electric Tariff. 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 and Contingency Reserves. NorthWestern's Electric Tariff, specifically Schedule No. QF-1, requires Seller to provide Contingency Reserves, and Seller may either self-supply under terms acceptable to NorthWestern or accept payment adjustments by NorthWestern for such Contingency Reserves. Seller acknowledges that NorthWestern's Electric Tariff, specifically Schedule No. QF-1, requires the owner of a QF to provide wind integration services during the term of any power purchase agreement, but does not address such services for a solar QF. During the Term of the Agreement, Seller agrees to comply with integration service requirements authorized by the Commission for a solar QF. Payment to NorthWestern for Contingency Reserves and integration services shall result in an adjustment of the total monthly payment made to Seller to reflect the provision of those 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 Price. After the Facility has achieved the Commercial Operation Date, NorthWestern shall pay Seller the per MWh price identified in table 4-3 on page 4-8 of Volume 1 of the NorthWestern Energy 2015 Electricity Supply Resource Procurement Plan for Environmental Attributes Delivered (the *"Environmental Attributes Price"*). In accordance with such plan, the Environmental Attributes Price for Environmental Attributes with a 2016 Vintage will be sixty-five cents ($0.65) per MWh, escalating in accordance with the above-referenced plan (twenty-five cents ($.025) per MWh annually on January 1 of each year during the Term. The Environmental Attributes Price in 2036, and for the remainder of the Term, will be established pursuant to NorthWestern's then current renewable energy credit price forecast for Environmental Attributes, if any. Seller waives any right to receive any future compensation for the value of CO2 reduction associated with Seller's energy generation during the Term other than the price paid by NorthWestern for the Environmental Attributes, if any.

5.6 Payment Due Date. NorthWestern shall transmit payment and a payment statement to Seller for all undisputed amounts within 30 Business 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. Seller shall install, operate and maintain equipment that allows NorthWestern to access power production 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. If Seller conveys Environmental Attributes to NorthWestern, Seller shall assist NorthWestern with the registration of the Facility 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.

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. Seller is not entitled to compensation for Lost Production if Energy is curtailed due to any reason that qualifies as an Uncompensated Curtailment.

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, NorthWestern shall, within a reasonable time compensate Seller at the Contract Price for the Energy that would have been generated and delivered to NorthWestern.

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 needs 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 or panel array 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 qualified solar-energy-production 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 Thirty-Three Thousand Seven Hundred Fifty Dollars ($33,750) (the "*Development Security*"), which shall be returned or released upon the posting of the Operational Security. On or before the fifth (5th) Business Day following the Commercial Operation Date, Seller must provide NorthWestern with Default Security in an amount equal to Two Hundred One Thousand Dollars ($201,000) (the "*Operational Security*"). Seller shall maintain the Operational Security during the Term of the Agreement.

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 ten (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 three hundred seventy-five dollars ($375) per day for each day ("*Delay Damages*") from and including the Guaranteed Commercial Operation Date to the Commercial Operation Date. 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 (i) increase of the Nameplate Capacity of the Facility or operation of the Facility in excess of the Nameplate Capacity; or (ii) development of an Aggregated Facility, either of which causes the Nameplate Capacity to exceed 3MW AC 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 constitute 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.

8.5 Damages Upon Seller Event of Default. If this Agreement is terminated as a result of a Seller Event of Default, Seller shall pay NorthWestern the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for the Energy Seller was otherwise obligated to provide (as established in Section 5.3.1) for a period of 24 months from the date of termination.

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 THIS AGREEMENT, SUCH REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO SUCH SECTIONS. THE EXPRESS REMEDY OR MEASURE OF DAMAGES SET FORTH IN THIS AGREEMENT SHALL BE THE SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO SUCH SECTIONS. EACH PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY FOR THE SAME DAMAGE OR INJURY ARE WAIVED. 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); PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT BE CONSTRUED TO LIMIT A CLAIM BY SELLER FOR LOST PROFIT AS AN ACTUAL DAMAGE UPON A NORTHWESTERN EVENT OF DEFAULT. 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 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 One Million Dollars ($1,000,000) per MW of Capacity.

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. Within 10 days following execution of this Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within 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. Unless specifically permitted herein, telephone conversations do not constitute notice under this Agreement.

To Seller:

FLS Energy, Inc.
Attention: Patty Mandaro
130 Roberts Street
Asheville, NC 28801
Phone: (828) 233-8117
Fax: (828) 350-3997
Email: legal@flsenergy.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 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 NorthWestern's Obligations to Assignee. No assignment by Seller shall be effective, notwithstanding NorthWestern's consent thereto, to the extent that such assignment purports to extend, increase, or otherwise alter the obligations of NorthWestern under this Agreement, other than the substitution of the assignee for Seller.

12.5 Indemnity. Seller shall save, indemnify, and hold harmless NorthWestern from any and all losses resulting from assignee's failure effectively to assume all of the duties, liabilities and obligations of Seller under this Agreement.

12.6 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.

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 ten (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; provided, however, that in the case of significant and material physical damage to the Facility due to a Force Majeure event, if despite commercially reasonable efforts Seller cannot remedy the Force Majeure event within one hundred and eighty (180) days and Seller can demonstrate to NorthWestern its intention and ability to implement a commercially reasonable plan to remedy such Force Majeure event within an additional one-hundred and eighty days (180) days, or sooner if practicable, and Seller uses commercially reasonable efforts to implement such plan, then NorthWestern shall not have the right to terminate the Agreement until the expiration of such additional one hundred and eighty (180) days.

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 Dispute. 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 applicable 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 Electricity Service. This Agreement does not obligate NorthWestern to provide electricity service to Seller at the Facility. If Seller requires any services at the Facility, 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, D and E, 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

The requirements of this Article 18 are conditions precedent to NorthWestern's purchase of Environmental Attributes, pursuant to § 69-3-2005(3) MCA:

18.1 Seller will give, and require all contractors to 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. For the purpose of this Section 18.1, "work" consists of the performance of "construction services" or "non-construction services", as such terms are defined in §18-2-401 MCA, and applied pursuant to § 18-2-403 MCA et. seq. in determining compliance with Montana resident preference requirements.

18.2 Seller will pay, and 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.

Seller's failure to comply with the requirements set forth herein does not constitute a Seller Event of Default; provided, however, that any failure to give preference to Montana residence or pay standard prevailing wages during construction as required herein excuses any obligation of NorthWestern to purchase Environmental Attributes during the Term.

[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

BY:_____

ITS:_____

DATE:_____

MARTIN SOLAR, LLC

By: **FLS Energy, Inc.**

ITS: Member and Manager

BY:_____
Dale Freudenberger

ITS: CEO

DATE: 6-10-2016

Exhibit A: Detailed Facility Description

A. Facility Information

Developer Name:		FLS Energy, Inc
Facility Name:		Martin Solar, LLC
Facility Location:	Township:	14N
	Range:	08W
	Section:	14
	County Name:	Lewis & Clark
Nearest Community & Miles:		Lincoln

B. Energy Generation System Information

Total Facility Nameplate Capacity (kW AC):	3.00
Manufacturer:	Trina
Model:	TSM-PD14
Number of Generating Units Installed:	Approx. 13,333
Tower Height (if Wind):	NA
Tower Manufacturer (if wind):	NA
Federal Aviation Administration Case No.	Applied for 5/26/16
Latitude (turbine(s), center of project)	46.971N
Longitude (turbine(s), center of project)	112.569W

C. Interconnection Facilities

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

Transformer Description: Two 1,650KVA

22.86 kV / 13.2 kV grounded wye primary, 320 V wye secondary
6% Impedance (assumed)

Transformer Latitude	Pending final IA
Transformer Longitude	Pending final IA
Interconnection Equipment:	
Transmission System Description:	

Landers Fork Substation; Feeder#1 (Lincoln, 0417F)

D. Acknowledgement

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

Signed:	
Print Name:	Dale Freudenberger
Date:	6-10-2016
Facility Name:	Martin Solar, LLC
Federal Tax ID:	20-4307475
FERC ID (if applicable):	QF16-883-000

[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 (as defined within the Electric Tariff Schedule No. QF-1), 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): Forecast is pending final system design.

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: Scheduled outages are not anticipated at this time

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

The following constitute known conditions outside of Seller's control that may affect Energy generation. Weather conditions, acts of God, System self regulation

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: System will not produce post dusk and pre-dawn

Month	Start Date	Start Time	End Date	End Time
May	0	00:00 PM	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:	Dale Freudenberger
Date:	6-10-2016
Project Name:	Martin Solar, LLC
Facility Tax ID:	20-4307475

Exhibit C: Generation Interconnection Agreement

[INSERT INTERCONNECTION AGREEMENT UPON EXECUTION]

Exhibit D: ANEA

Exhibit D has been shared with Frank Bennett via separate Excel Spreadsheet

ANEA Production Forecast - Martin Solar

Year	Annual Production (kWh)	De-rate Factor
1	5,961,927	0.05%
2	5,958,947	
3	5,955,967	
4	5,952,989	
5	5,950,013	
6	5,947,038	
7	5,944,064	
8	5,941,092	
9	5,938,121	
10	5,935,152	
11	5,932,185	
12	5,929,219	
13	5,926,254	
14	5,923,291	
15	5,920,329	
16	5,917,369	
17	5,914,411	
18	5,911,453	
19	5,908,498	
20	5,905,543	
21	5,902,591	
22	5,899,639	
23	5,896,689	
24	5,893,741	
25	5,890,794	

Martin Solar
Approximately 30 Acres
Martin Dr
Martin POI
Martin
Google earth
© 2016 Google
900 ft
N