

ENERGY PURCHASE AGREEMENT
BETWEEN CONSUMERS ENERGY COMPANY
AND
[COUNTERPARTY]

ENERGY PURCHASE AGREEMENT

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ENERGY PURCHASE AGREEMENT
BETWEEN CONSUMERS ENERGY COMPANY
AND
[COUNTERPARTY]

AGREEMENT, herein called "Agreement," made and entered into as of the ____ day of _____, 200_, between Consumers Energy Company, a Michigan corporation, One Energy Plaza, Jackson, Michigan, 49201 herein called "Consumers," and _____, a Michigan corporation, _____, Michigan, _____, herein called "Seller." Consumers and Seller are hereinafter sometimes referred to individually as "Party" and collectively as "Parties" where appropriate.

WITNESSETH:

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

WHEREAS, Seller owns and operates a _____ plant, known as the ____ Plant, with a generator design capacity name-plate rating not to exceed _____ kW located at _____, _____ County, Michigan, and

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

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

1. Definitions

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

"Billing Month" – A calendar month. The first Billing Month shall commence with the Commercial Operation Date and end on the last day of the calendar month in which the Commercial Operation Date occurs.

"Commercial Energy" – All electric energy delivered by Seller from the Plant to Consumers up to Contract Capacity on an hourly basis, as determined pursuant to Section 5, Metering.

"Commercial Operation Date" – The first day, on or after _____, when Seller has provided satisfactory proof to Consumers that Seller has obtained "Qualifying Facility" status in accordance with Subsection 2.2, Qualifying Status of Facility and Seller's Warranty, and the Plant is permitted to operate in parallel with Consumers' Distribution System in accordance with requirements in the Interconnection Agreement.

"Contract Capacity" – _____ kW which is the maximum rate at which electric energy will be delivered to Consumers pursuant to this Agreement.

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

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

"Interconnection Agreement" – That agreement that describes the terms and conditions regarding the connection of the Seller's Plant to the electric transmission facilities of an electric transmission or an electric distribution system owner and/or operator.

"MISO" – The Midwest Independent Transmission System Operator, including any successor thereto and subdivisions thereof.

"Plant" – The _____ Plant located at _____, _____ County, Michigan. The _____ Plant is a _____ facility with an electric generator design capacity nameplate rating not to exceed _____ kW.

"Point of Delivery" – Defined in Section 4, Point of Delivery.

2. General Provisions

2.1 Effective Date and Term

This Agreement shall be effective on the day and year it is made and entered into and, unless terminated as provided in this Agreement, shall continue in effect for an initial term expiring one (1) month after the Commercial Operation Date. Thereafter, this Agreement shall automatically renew for subsequent one (1) month periods and shall continue in effect unless and until terminated by mutual agreement or by either Party giving the other Party at least one (1) months' written notice of termination, to be effective upon the expiration of the applicable one (1) month period.

2.2 Qualifying Status of Facility and Seller's Warranty

Seller hereby represents to Consumers that the Plant will have qualifying status as a "cogeneration facility" or a "small power production facility" under 18 CFR §§ 292.201-292.207. Prior to the Commercial Operation Date, Seller shall furnish to Consumers evidence satisfactory to Consumers that such "Qualifying Facility" status has been obtained. In the event that Seller fails to furnish said evidence to Consumers prior to said Commercial Operation Date, this Agreement shall

automatically terminate as of said Commercial Operation Date and Seller shall reimburse Consumers for any costs incurred by Consumers for which Seller is liable pursuant to this Agreement.

Seller will use its best efforts to ensure that the Plant will maintain its status as a "Qualifying Facility" under the Public Utility Regulatory Policies Act of 1978, Public Law 95-617, 92 Stat 3117 and the implementing Federal Regulations promulgated thereunder as such are amended to the effective date of this Agreement and appear at 18 CFR §§ 292.101 through 292.602, throughout the term of this Agreement. In the event Seller fails to maintain such "Qualifying Facility" status, Consumers shall have the option of terminating this Agreement by giving Seller one hundred eighty (180) days written notice.

2.3 Notice of Commercial Operation Date

Consumers shall notify Seller orally of the Commercial Operation Date and shall provide written confirmation of the said Commercial Operation Date to Seller within ten (10) days after such Commercial Operation Date.

If the Commercial Operation Date fails to occur on or before _____, Consumers may, at its option, terminate this Agreement by giving Seller written notice thereof.

3. Energy to be Delivered

3.1 Energy to be Furnished by Seller to Consumers

Subject to the terms and conditions hereof, Seller shall deliver to Consumers and Consumers shall accept from Seller, all Commercial Energy which Seller may have available from the Plant in excess of Seller's own requirements beginning on the Commercial Operation Date and continuing until the termination of this Agreement.

3.2 Character of Energy

All electric energy which Seller shall deliver to Consumers hereunder shall be alternating current, three (3) phase and sixty (60) Hertz.

3.3 Permits and Laws

The Seller shall secure and maintain all licenses and permits required by law or ordinance pertaining to the generation and purchase of electric energy in accordance with this Agreement and shall comply with all applicable ordinances, laws, orders, rules and regulations pertaining thereto made by any governmental authority or public regulatory body. At any time during the term of this Agreement, Consumers may request that Seller provide copies of any such licenses and permits.

3.4 Emission Allowances/Environmental Attributes

All emissions allowances at any time allocated to the Plant are bundled with the Commercial Energy hereunder and cannot be separated by the Seller. All environmental attributes at any time allocated to or associated with the Plant are bundled with the Commercial Energy hereunder and cannot be separated by the Seller. Seller shall assign and/or execute any other documents necessary to transfer ownership of any and all emission allowances and/or environmental attributes (such as renewable energy certificates) associated with the Plant to Consumers. Notwithstanding the foregoing, (i) all federal production tax credits, (ii) any and all state and federal investment tax credits which are generated by the Plant or attributed to the Plant or Commercial Energy, and (iii) any and all ownership benefits accruing to the Seller pursuant to applicable state and federal tax laws and associated accounting rules that are established for the Plant, remain the property of the Seller.

3.5 MISO Registration

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

4. Point of Delivery

The Point of Delivery for all electric energy to be furnished by Seller hereunder shall be at the Point of Delivery as defined in the Interconnection Agreement between Seller and (a) Consumers, or (b) Michigan Electric Transmission Company (or any successor thereto), as applicable.

5. Metering

All electric energy delivered by Seller to Consumers shall be metered pursuant to the Interconnection Agreement. To determine the amount of Commercial Energy delivered, the metered values shall be adjusted for transformer losses and transmission line losses, if any, between the metering location and the Point of Delivery.

6. Emergencies and Exempt Operational Periods

Consumers shall not be obligated to accept electric energy or make energy payments pursuant to Section 7, Compensation for Energy Delivered, for any electric energy which the Seller may have available at the Plant during Emergencies or Exempt Operational Periods but which Consumers does not accept and receive due to such Emergencies or Exempt Operational Periods.

7. Compensation for Energy Delivered

7.1 Energy Charge

The charges to be paid for all Commercial Energy delivered shall be the hourly real-time locational marginal price for the CONS.CETR commercial pricing node as established by MISO less \$5/MWh (the "LMP Price"). When the LMP Price is a positive value, then Consumers shall pay Seller and when the LMP Price is a negative value, then Seller shall pay Consumers.

In accordance with Section 6, Emergencies and Exempt Operational Periods, Consumers shall not be obligated to accept electric energy or make energy payments for electric energy which the Seller may have available at the Plant during Emergencies and Exempt Operational Periods.

7.2 Regulatory Disallowance

If the Michigan Public Service Commission has indicated in an order that it is unlikely that Consumers will be permitted complete recovery from its customers of the energy charges to be paid pursuant to Section 7, Compensation for Energy Delivered, then Consumers shall have the right to require that the charges to be paid by Consumers under Subsection 7.1, Energy Charge, be adjusted to the charges which the Michigan Public Service Commission indicates Consumers can recover from its customers. Any such adjustment shall be effective no earlier than the date of such Michigan Public Service Commission indication. Pending appellate review of such indication and final determination of the charges that may be recovered by Consumers pursuant to this Agreement, the amounts not paid to the Seller due to any such adjustment shall be placed by Consumers in an interest-bearing separate account with the administrative costs incurred by that account to be borne by the account. The balance in the separate account, less administrative costs, shall be paid to the appropriate Party upon the completion of appellate review which establishes the charges that Consumers will be permitted to recover from its customers. Future energy charges to be paid by Consumers shall be no greater than will be recoverable from Consumers' customers pursuant to such final appellate determination.

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

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

8. Administrative Charge

Beginning with the Commercial Operation Date and continuing for the remaining term of this Agreement, Seller shall pay Consumers each Billing Month in which Commercial Energy is delivered to Consumers an administrative charge to compensate Consumers for administrative costs incurred in administering this Agreement. The amount of the administrative charge shall be one-tenth of a cent (0.1 cent) per kilowatthour for all electric energy delivered to Consumers during any Billing Month. The administrative charge shall be no less than the base rate minimum and no more than the base rate maximum as established below in this Section 8. Beginning with the Commercial Operation Date and each April thereafter during the term of this Agreement, said base rates shall be adjusted by the year to year change in value for the month of January of the Consumer Price Index-Urban Wage Earners and Clerical Workers as published by the Bureau of Labor and Statistics or any succeeding publication, as calculated by the following formulas:

$$\text{MIN}_{CY} = \text{MIN}_{91} \times \frac{\text{CPI}_{CY}}{\text{CPI}_{91}}$$

$$\text{MAX}_{CY} = \text{MAX}_{91} \times \frac{\text{CPI}_{CY}}{\text{CPI}_{91}}$$

Where:

MIN_{cy} = The Minimum base rate for the current year.

MAX_{cy} = The maximum base rate for the current year.

MIN_{91} = \$200.00

MAX_{91} = \$2,000.00

CPI_{cy} = The Consumer Price Index-Urban Wage Earners and Clerical Workers for the month of January of the current year.

CPI_{91} = The Consumer Price Index-Urban Wage Earners and Clerical Workers for the month of January 1991.

For the purpose of implementing the above formula, if the Commercial Operation Date occurs in a month of a calendar year prior to April, the CPI_{cy} for the previous year shall be used.

The above administrative charges shall be offset against amounts owed Seller by Consumers as provided in Section 9, Billing.

9. Billing

As soon as practicable after the end of each Billing Month, Consumers shall render a statement to Seller which shall identify the amount owed by Consumers for Commercial Energy delivered during such Billing Month. Such statement shall also identify, as an offset to the amount

owed by Consumers to Seller, the administrative charge referred to in Section 8, Administrative Charge, plus any applicable offset pursuant to Subsection 7.2 hereof. The net amount due Seller shall be paid by Consumers within twenty (20) calendar days after the date of such statement.

If the amount owed by Consumers for Commercial Energy delivered during any Billing Month is less than the minimum administrative charge, Seller shall owe Consumers the difference and payment shall be made to Consumers within twenty (20) days of receipt of Consumers' invoice.

10. Indemnity

The Seller shall assume all responsibility for, and indemnify, defend and save Consumers and its officers, agents and employees harmless from any and all liability, claims, demands, costs, judgments, loss or damage, including attorney fees, attributable to or resulting from the installation/ construction, maintenance, possession or operation of the Plant, except those caused solely by the negligence of Consumers. Without limiting the foregoing, the Seller shall at Consumers' request, defend at Seller's expense any suit or proceeding brought against Consumers for any of the above-named reasons. Seller's indemnification shall not include damage and injuries occurring on Consumers' own system after the Point of Delivery, unless the damage or injuries to such system would not have occurred but for the operation of the Plant or is caused by the sole negligence of the Seller.

Consumers shall indemnify, defend and hold the Seller, its officers, agents and employees harmless from any liability, claims, demands, costs, judgments, loss or damage, including attorney fees, resulting from damage or injuries occurring on Consumers' own system after the Point of Delivery, unless the damage or injuries on Consumers' system would not have occurred but for the operation of the Plant or is caused by the sole negligence of the Seller.

11. Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective Parties hereto. This Agreement shall not be assigned by a Party without the other Party's prior written consent, which consent shall not be unreasonably withheld, but provided that (i) any assignee shall expressly assume assignor's obligations hereunder; and (ii) unless expressly agreed to by the other Party, no assignment shall relieve the assignor of its obligations hereunder in the event its assignee fails to perform. Any attempted assignment or transfer without such consent shall be void and not merely voidable.

12. Governing Law

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

13. Headings

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

14. Notice to Parties

Unless otherwise provided in this Agreement, any notice, consent or other communication required to be made under this Agreement shall be in writing and shall be delivered to the address set forth below or such other address as the receiving Party may designate in writing.

Consumers Energy Company
1945 W Parnall Road
Jackson, Michigan 49201
Attention: David F. Ronk, Director
Transactions and Resource Planning

All notices shall be effective when received.

15. Waiver

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

16. Entire Agreement and Amendments

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

CONSUMERS ENERGY COMPANY

By _____

[COUNTERPARTY]

By _____