RECEIVED 2020 JUL 29 2:52 PM (E)

Formal Case No. 1017: Fourth Standard Offer Service Working Group Meeting
1325 G Street, N.W., Suite 800
Washington, D.C. 20005

PUBLIC SERVICE COMMISSION
District of Columbia
Your Energy. Your Voice.

FORMAL CASE NO. 1017, IN THE MATTER OF THE DEVELOPMENT AND DESIGNATION OF STANDARD OFFER SERVICE IN THE DISTRICT OF COLUMBIA

FOURTH STANDARD OFFER SERVICE WORKING GROUP MEETING
REGARDING LONG-TERM RENEWABLE ENERGY PPAs
MEETING MINUTES

July 17, 2020
1:00 to 3:00 pm

Meeting Commencement

The *Formal Case No. 1017* Fourth Standard Offer Service Working Group held a virtual meeting on Friday, July 17, 2020, at 1:00 p.m. via video conferencing.

Attendees

Commission staff and its consultant, Bates White, the Potomac Electric Power Company (Pepco), the Office of the People's Counsel (OPC), Department of Energy & Environment (DOEE), the Office of the Attorney General, the Sierra Club, American Wind Energy Association (AWEA), Orsted, Apartment and Office Building Association of Metropolitan Washington, and PJM.

Issue Discussed

Finalization of Pepco's draft request for proposals (RFP) and power purchase agreement (PPA) for the Standard Offer Service (SOS) Long-Term Renewable Energy PPA pilot project.

DOEE's comments and Pepco's response to DOEE's comments on the Pepco's draft RFP and PPA (see Attachments Nos. 1 and 2)

OPC's comments on Pepco's PPA including the PPA itself (see Attachment No. 3)

Pepco's draft RFP (see Attachment No. 4)

Adjournment

The Working Group Meeting adjourned at 3:58 p.m.

Synopsis of Issues Discussed

RFP Document Review

Section 1, Introduction. Staff raised a concern with footnote 2 regarding how the PJM Interconnection region is defined since the Commission's Renewable Energy Portfolio Standard ("RPS") rules (Chapter 29 of Title 15 of the DCMR) require a Tier 1 resource to be located within the PJM Interconnection region. Section 2999.1 of Chapter 29 contains definitions for "PJM Interconnection region" and "Adjacent PJM state". Staff recommends using the definitions already adopted by the Commission to ensure that all Renewable Energy Credits ("REC") from this renewable energy facility built pursuant to the RFP qualify as Tier 1 RECs under the Commission's rules. Pepco clarified that Staff wants to add a reference to the rules in the RFP.

Section 4.2, Eligible Proposal Size and Term; Final Agreement Requirements. DOEE commented that, while providing a target volume in MWh is an excellent approach, it might be worthwhile to also set a minimum and maximum volume in MW to frame what should qualify as a conforming proposal. DOEE clarifies that, having a target amount of production in MWh representing five (5) percent of SOS load makes sense but is concerned about variability from year-to-year and whether putting a range around the target amount on proposals would be helpful. Staff questioned the magnitude of the range and, although DOEE does not have a specific recommendation, it believes a range would help to clarify to bidders what is expected. AWEA believed that either a minimum or a range is sufficient and that a specific target does not need to be met to the exact MW. Staff pointed out that DOEE cited a target volume of 154,000 MWhs but that Commission Order No. 19897 provided a 158,000 MWh figure. Pepco wanted to double-check whether the estimated annual electricity is 154,000 MWh or 158,000 MWh. Pepco noted that, since this pilot project was initiated, the amount of SOS annual usage has changed. The Sierra Club wondered if the sales effects of COVID-19 should not be considered in determining the full DC SOS load. Pepco clarified that the MWh number provided in the Order No. 19897 is a 3-year average, covering 2017 through 2019. Staff wanted clarification regarding whether to use the 158,000 MWh number from the Commission's Order, or the updated 154,000 MWh figure. OPC preferred some form of average of recent years, instead of a single year of load. OPC simply wanted to verify the calculated number. Pepco indicated that it will accept a 3-year average. OPC understood that the average amount will fluctuate. The footnote should be rewritten to clarify how the 154,000 MWh estimate was calculated so everybody is clear about why this figure is different from the original 158,000 MWh figure. Pepco noted that, since it is a long-term contract, there must be a final amount stated, but is willing to revise the footnote.

The Working Group then discussed the bidder requirement of having and maintaining a minimum aggregate renewable capacity of 1,000 MW, excluding the new facility to be built pursuant to the PPA. DOEE wants the RFP structured to allow the most bids with the lowest prices. If the language is sufficient to not rule out competitive bidders, there is no issue, according to DOEE. Staff was concerned that the 1,000 MW amount is quite large and that smaller companies would not qualify as bidders. Pepco notes that a number of development companies have that level of capacity. Pepco asserts that for corporate projects this is a common requirement, but Pepco was not, however, able to provide an example of a public sector project that required such a minimum.

DOEE questioned the number of companies in PJM that can meet the 1,000 MW qualification and suggested that Pepco provide a list of qualifying companies to ensure proper response to the RFP. Pepco clarified that the 1,000 MW is an aggregated number that could be derived from multiple projects in the United States. AWEA stated there are companies that have developed well more than 1,000 MW but do not currently own or operate that capacity anymore. AWEA suggested 200 MW as a more appropriate level. OPC agreed that the current limit could limit the number of potential bids. The Sierra Club noted that we want competition and this requirement would limit bids and the risks that this requirement seeks to protect against may be small. Bates White commented that in public sector PPAs there is often proof of experience from bidders, but there are not typically as stringent as this 1,000 MW requirement and that such a requirement would disqualify potential bidders. PJM noted that this project was intended to encourage more renewable development within the PJM footprint. PJM also observed that there are many projects in the PJM queue but that most will not ultimately be developed. Pepco is amenable to lowering the limit but wants to see support for any new recommended amount. Staff noted that the District cannot compete with corporate PPAs such as Google and Amazon. Staff suggests that the Working Group should be looking at examples of cities which are entering into PPAs. DOEE agreed to provide a copy of the Philadelphia PPA as an example.

Section 4.3, Generation Technology. The Working Group addressed the requirement for a new facility, given that wind projects typically exceed 50 MW in size. AWEA agreed with the requirement that the renewable energy facility be a new facility. AWEA also noted that there have been several projects built in the Eastern PJM area that are 70 MW or less. AWEA stated that, in its view, the requirement that this be a new facility raises no concerns. Orsted concurred noting that additionality is one of the drivers of the PPA. OPC also favored a new facility. Staff asked DOEE if existing facilities would be any cheaper than a new facility. DOEE did not have an answer at this time but did not believe there is a huge difference in cost. The group generally accepts that the RFP should require a new renewable facility. Participants also noted that Commission Order No. 19897 referenced the need to reduce greenhouse gas emissions, which would necessitate the construction of a new facility. Regarding the minimum size of the project, the Working Group consensus was to accept the 10 MW limit for all projects.

Staff solicited suppliers' opinions regarding the requirement for experience in all phases of the project lifecycle. AWEA felt that the bidders should have flexibility in responding and that experience in all phases is not necessary. Staff noted that developers may also specialize in operations and maintenance and that teaming with the third parties should be allowed. Bates White believed that the specific bidders are unlikely to have the full range of experience required under this section of the RFP. Accordingly, Bates White viewed this requirement as overly restrictive. Bates White believed, however, that the proposal bidding team should have experience at every level. Pepco asserted that the intent is to have bidders explain who is responsible for each phase of the lifecycle. Based on the discussion, Pepco was asked to revise the language in this section.

Section 4.4, Geographic Location of Facilities. DOEE had previously argued that the term "PJM footprint" is somewhat ambiguous, due to local distribution service territories differing from PJM-operated transmission facility locations. This being especially true in Illinois and Indiana. It needs to be determined whether the renewable energy facility must be physically located in the PJM

footprint. AWEA notes the District's language is unique, as most states allow delivery into PJM from any facility in a state that is located in PJM, regardless of the facility's location. DOEE stated that this is a different case than the PJM operating interconnection lines. PJM agrees with Staff that the intent of the CleanEnergy Omnibus Amendment Act of 2018 (CleanEnergy Act) was to encourage projects within the PJM footprint. So, the physical location of the project must be within the PJM footprint. Staff noted that, based on the CleanEnergy Act, renewable energy generators located in PJM adjacent states can no longer qualify as Tier 1 resources. Staff cautions that the renewable energy facility built pursuant to the RFP must qualify as a Tier 1 resource consistent with the CleanEnergy Act. DOEE indicates that they have brought this issue up before, and that, while the renewable energy facility must be located such that the facility qualifies as a Tier 1 resource consistent with the applicable statute, in their view, the location chosen by the PJM Interconnection region should include the PJM transmission area and not be limited to the PJM distribution utilities' service territory areas.

Section 4.7, Energy. DOEE provided written comments describing the agency's concerns with this issue. However, prior to the WG meeting, DOEE and Pepco met and resolved DOEE's concerns. Pepco agreed to revise this section consistent with its discussions with DOEE.

Section 5.2, Quantity. The possibility of a proposal including output from multiple facilities was discussed. Pepco noted that the contract would be complex if there are multiple facilities in different geographic areas. The Company asserted that, if including output from multiple facilities was allowed, then each facility should have a separate contract. Pepco asserted that there could be acceptance of separate bids, but that the bundling of projects into a single contract would result in management issues. Pepco explained that two facilities should sign two contracts rather than one. Under the RFP, Pepco explained that the Company may award a contract to two separate facilities to meet the total target. In addition, Pepco noted that, given the minimum of 10 MWs, multiple projects may be needed to reach this target. DOEE asked for clarification regarding the awarding of multiple bid acceptances and whether the RFP clearly provides for this scenario. Pepco asserted that the RFP allows for accepting multiple projects under multiple contracts. DOEE asked that Pepco add language to clarify that the RFP provides for multiple winning bids. Pepco agreed to make this revision.

Section 5.3, Proposal Pricing. Pepco and DOEE reached agreement regarding the clarification of the "be designed to recover" language in this section. Pepco will revise this section accordingly.

AWEA asked for clarification regarding further cost escalators. AWEA asserts that having a price for the duration of the agreement is sufficient but, by contrast, having a single price set for each year for the duration of the PPA is unnecessary. DOEE did not want to restrict escalators, as long as they are known. AWEA agreed to provide language to allow escalators. Pepco asserted that there could be potential financial consequences, as escalators are not as common in utility PPAs. Pepco notes, however, that bids will be evaluated based on the levelized price if an escalator is included. Staff noted that AWEA can provide escalator language for the WG's assessment.

Section 6.4, Completion and Accuracy of Proposal. The group adopted Pepco's proposed change.

Section 7.1, Evaluation. The Working Group discussed whether it is typical for a bidder (developer) to perform a "resource study." The renewable energy suppliers represented in the Working Group stated that this is, in fact, the case. DOEE wanted clarification on the wording in the RFP to specify the costs that will be borne by the supplier. The Working Group consensus was that the language contained in Pepco's reply comments provided sufficient clarification, but this language might be tweaked slightly for more clarity.

DOEE asked how common is it to perform an independent assessment of the facility. AWEA commented that such an assessment does not necessarily need to done by an independent, third party but can, instead, be performed internally. The Sierra Club noted that for a solar facility the assessment does not need to be performed by a third-party, as there are public sources available. The Sierra Club noted that sometimes an annual evaluation has been performed.

Section 8, Credit Support; Security for Performance. Parties generally agreed that BBB+ is not minimum investment grade, BBB- is. Staff asked developers whether requiring BBB+ credit rating would exclude bids. AWEA said that it will need to confer with members and will follow up. DOEE asked if developers not meeting that level of credit rating would need to provide more performance assurance. OPC asked if BBB+ requirement is for normal market conditions or if that requirement can change as market conditions change. DOEE noted that, in their experience, the lower the rating, the more performance assurance needs to be provided. DOEE did not have problem with using BBB+ as a threshold. In DOEE's experience, there is a graduated approach in general for different credit ratings, as those closer to the investment grade limit would be required to have more assurances. Bates White noted that the definition of investment grade as BBB- or higher is common, while BBB+ is a bit odd of a requirement, but still acceptable. There is a graduated approach for unsecured credit in most cases, according to Bates White. Staff asked DOEE whether Philadelphia uses the same credit rating threshold. DOEE promised to follow up.

Regarding whether the performance assurance should use MWh or MW, the Sierra Club indicated that the capacity factor is much lower for solar. AWEA asked that the performance assurance be measured in MWh so that solar and wind are put on a more level playing field. Pepco then asked for clarity regarding why the MWh value is preferred, as MW is more common in PPAs. If Pepco believes MW is more customary, Pepco should then consider this difference in capacity factor between solar and wind in its alternative language. Pepco agreed to propose some alternative language based on this discussion.

Section 9, Role of Independent Evaluator (IE). Staff began the discussion by indicated that the Working Group had not discussed the role of the independent evaluator in detail previously. Staff, accordingly, sought the Working Group's view on the IE's role. OPC indicated that it wanted an approach similar to the SOS evaluator process to be employed.

Staff explained that currently for Whole Full Requirements Service Agreement process for the SOS procurement, Pepco, OPC, and Staff are present on the bid day with the independent market monitor to assure the integrity of the bid process. It was not clear whether the renewable energy suppliers bidding on the PPA will be using the same process.

Staff asked who will be ranking the proposals and how did New Jersey handle the off-shore wind projects. AWEA did not know. Bates White noted that the consultant was hired by the New Jersey Board of Public Utilities (BPU) and worked with Staff. Bates White notes that only the BPU reviewed the bids and that it would be rare for a Working Group to review bids. OPC agrees with the process of the Commission handling the selection and oversight, and have the Commission inform the Working Group after the selection. DOEE commented that, if the Independent Evaluator is involved in selection, then details of PPA terms will be negotiated. DOEE wondered whether Pepco will handle those negotiations, and then have the IE validate. Pepco clarified that the selection/ranking would not be made by the IE. Pepco believed that the IE is present to certify the bidding process occurs as intended and that the IE would not be selecting the winning bids, according to Pepco. OPC believed that the role of the IE is to verify the selection process undertaken by Pepco and that bids were evaluated fairly. The Working Group members agreed that Pepco will be reviewing and selecting bids. Pepco believed the IE would review the bid process after it occurs, and AWEA agreed with this approach. DOEE asked if the IE would be selected by the Commission or by Pepco. Staff noted that the role of the IE would be similar to the independent market monitor that is selected by the Commission and works for the Commission. DOEE clarified that the Scope of Work would be developed by the Commission. Pepco promised to reword this section and have the group review the new language. Staff indicated that Pepco and Staff may need to discuss further about details for IE process.

PPA Document Review

Article 1.1, Definitions. DOEE asked if the term, "SCADA system," is telemetry required that is different than what PJM uses to interconnect and monitor. Pepco believed it is the same.

Article 2, Term. Pepco noted that the Commission and parties would be notified in the case of termination.

Article 4, Purchase and Sale of Products. OPC and DOEE asked for more details regarding how the storage component of a potential facility would be deployed. AWEA wondered if the Working Group wants to hold the bidder accountable to the plan for storage deployment. OPC confirmed that this is their belief. AWEA questioned whether the developer would be precluded from using the storage component in another facet, assuming all of the deliverables are met. Pepco agreed to add the storage language as proposed in its comments.

Article 7, Metering. Pepco stated that the Company may add more language about accessing the PJM telemetry data. Pepco confirmed that there would be no additional telemetry installed beyond industry standard for interconnections.

Article 12, Events of Default; Remedies. The Working Group discussed the delay damage amounts. OPC asked if the payments would be repaid to ratepayers and how will the costs be booked. Pepco stated that liquidated damages would go into the project cost and would be passed along to the customer. OPC asked that some reporting language be added to this clause. Pepco stated the IE would be involved with reviewing this clause. AWEA observed that normally damages would be treated as Pepco described, but AWEA wanted to check with its members before following up on this specific clause. DOEE asked Pepco to use standard language, as a general matter, in the PPA as much as possible. DOEE noted that the Working Group needs to be aware that the finer details of the PPA are subject to negotiation with the bidders in order to ensure that ratepayers receive the lowest prices. AWEA will provide follow-up information with respect to clauses, 12.5, Damages on Termination, and 12.6, Right of First Offer.

Article 14, Credit and Collateral Requirements. Sierra Club asserted that the issue of Grant of Security Interest has been discussed previously. According to Pepco, the Company would already have assurances for financing and that providing a lien would not serve much purpose. Pepco also believed that the Pepco would not be facing financial risk directly from the developer, as money is not being forwarded in advance. Pepco asserted this article provides more protection to the customers. AWEA remained skeptical of this provision as Pepco would be made whole regardless. Staff asserted that it would like to see examples from Pepco.

Article 17, Miscellaneous. With regard to clause 17.10, Assignment, Staff asked about the assignment of the contract to a new party meeting credit rating requirements. Pepco noted that this clause provides the same limit for the main credit rating provision and that whatever the limit is in the main provision should be mirrored here. Regarding clause 17.16, Bankruptcy Considerations, the Working Group members believed Pepco's response in its reply comments is acceptable.

Schedule 6.13, Availability Calculations. DOEE noted that it typically sees Availability Damages clauses as the replacement cost instead of the full contract price language as written. AWEA agreed that this seems a bit excessive. Bates White stated that Pepco can set penalties as the Company sees fit. Bates White noted, however, that the damages actually incurred seem to be the full replacement cost and that damages are typically stated as net cost (i.e., costs over and above the PPA price). Pepco felt that the language proffered is standard and provides the sufficient protections. Pepco noted that the PPA is subject to negotiation so each specific provision is not written in concrete. AWEA asserted that the replacement value recommended by DOEE makes sense. Staff and OPC echoed the desire of using common practice language in the PPA to the extent possible so that potential bidders are encouraged to bid.

Staff proposed the following dates for finalizing the meeting minutes:

A.	**Drafts Circulated to Participants:**	**July 21, 2020**
B.	**Comments from Participants to Staff:**	**July 24, 2020**
C.	**Minutes Filed with Commission:**	**July 29, 2020**

Follow-up information from Working Group members should be submitted by July 29, 2020.

ATTACHMENT A

Comments Regarding Potomac Electric Power Company Draft "2020 Solicitation for New Photovoltaic Solar and Onshore Wind Power Supply Generation"

A number of the comments below (marked *) were previously made by DOEE in its November 12, 2019 comments filed in FC1017.

In addition to the specific recommendations made below, DOEE suggests generally that the RFP should request information about the nature and operation of any energy storage systems included in a Proposal, and explain how a proposal including storage will be evaluated (i.e. what benefits from storage is Pepco seeking).

1. Introduction

Through the issuance of this Request for Proposal ("**RFP**"), Potomac Electric Power Company ("Pepco")[1] is soliciting proposals (each, a "**Proposal**") for long-term renewable energy and associated environmental attributes from photovoltaic solar and/or wind utility-scale power generating facilities (each, a "**Facility**") located within the PJM Interconnection, LLC ("**PJM**") region.[2]

[2] PJM is the regional transmission organization that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia, or the region covered by PJM as the context requires.

COMMENT: Specify "onshore" wind in first sentence and indicate that energy storage can also be part of the proposal.

Pepco agrees to specify "onshore wind" in the first sentence and to add a sentence stating that proposals may pair such generation with energy storage systems,

*** COMMENT:** The footnote should be changed to more accurately specify the permitted locations of eligible Facilities. Specifically, the footnote should say that for the purposes of the RFP, "located within the PJM Interconnection" means projects that are directly connected to transmission facilities operated by PJM, or to high-voltage lines operated by electric cooperatives that directly connect to PJM operated transmission facilities. There can be confusion in the boundaries of the PJM system between the geographic footprints of distribution companies where PJM serves load vs. the locations of transmission lines operated by PJM which extend outside utility service territories. This is especially important to defining which wind projects in Illinois and Indiana are eligible. The unique treatments of cooperatives may also need clarification.

Pepco agrees.

4.2 Eligible Proposal Size and Term; Final Agreement Requirements

Pepco is seeking energy and environmental attributes on commercially reasonable terms from one or more wind or solar Facilities for an annual target amount of 154,000 MWh.[3] The targeted MWh amount equates roughly to a 50 MW wind Facility or a 70 MW solar

> Facility. Additionally, solar Facilities proposed in response to this RFP must be at least 20 MW in size.
>
> [3]154,000 MWh represents approximately 5% of Pepco DC Standard Offer Service Load.

COMMENT: Setting a target volume is an excellent approach. It might be worthwhile, however, to also set a minimum and maximum volume to frame what would qualify as a conforming proposal. If no minimum or maximum is set, there should be a dimension of the evaluation that favors proposals within some range of the annual target amount, and that range should be disclosed in the RFP.

Pepco is following PSC Order No. 19897, directing Pepco to procure renewable energy through long-term power purchase agreements for electricity generated by solar or wind power facilities located within PJM with a target quantity of five (5) percent of the SOS. Pepco believes the minimum capacity limits are sufficient.

COMMENT: The lower size limit on projects put forward by Pepco in a draft discussed in the working group was 10 MW. Many solar projects under development in the PJM region are nominally 20 MW in size and using the 10 MW limit would assure that projects rated slightly less would not be disqualified.

Pepco is open to using the 10 MW limit for all projects.

*** COMMENT:** While it is highly unlikely that a wind projects smaller than 10 MW could be developed, the lower threshold on project size should apply to all Bidders.

> At all times during the Contract Term, winning Bidders (or their Affiliates) must own or operate wind or solar electricity–generating assets that have a nameplate capacity of not less than one thousand (1,000) MW in the aggregate in the United States (excluding the Facility).

COMMENT: The requirement for all Bidders to be owners or operators of a minimum of 1,000 MW of other U.S. renewable capacity, and to remain so for the term of the contract should be eliminated. Some Bidders are likely to be development firms that transfer projects to long-term owners and operators sometime between securing a PPA and the Commercial Operation Date. Restricting such developers from bidding might eliminate attractive projects from consideration. It may even be problematic for Bidders who are currently project owners to commit that the size of their U.S. portfolio will remaining above 1,000 MW for 20 years. Asset transfers and corporate restructurings should not be considered default under the PPA, if they are otherwise acceptable.

Pepco is open to reducing the 1000 MW minimum but is opposed to eliminating this requirement. Pepco believes that a requirement of ownership **or** operation of 1000 MW of renewable energy capacity either directly or through affiliates is consistent with a level of

experience and ongoing operations and maintenance capability that will ensure timely commercial operation and on-going delivery of renewable energy to Pepco for SOS customers.

4.3 Generation Technology

Proposals are limited to new wind energy Facilities and/or new photovoltaic solar energy Facilities. A Facility is considered new if it is not in commercial operation as of the date the Final Agreement is executed. Facilities in the PJM queue are eligible to bid if they are not energized yet.

COMMENT: Specify "onshore" wind.

Pepco agrees.

COMMENT: DOEE does not oppose limiting the procurement to new Facilities, but all parties should recognize that new wind projects tend to be much larger than 50 MW (the target procurement size). This implies that wind projects responding to this RFP may need to secure commitments from additional buyers to be able to bring their projects online or that Proposals may be limited to projects with additional phases that can be added to existing or otherwise committed projects. Permitting Proposals from existing wind projects would expand the universe of potential wind offers. Note that D.C.'s Department of General Services signed a 20-year PPA with an existing wind power project.

Limiting the procurement to new facilities is required by Order No 19897 in FC 1017 (paragraph 34, page 11) - "Consistent with the District's goal to reduce GHG emissions, we believe that currently operational generation facilities cannot be the subject of these PPAs as it is the Commission's goal to facilitate the development of new renewable energy generation within PJM"

The Bidder must demonstrate that it owns the property where it plans to construct the Facility or has leased the property with sufficient rights for the duration of the term of the Final Agreement.

COMMENT: Wording regarding site control should be modified to conform to the language in Section 5.4 of the RFP. The Bidder should not need to own or have leased the property for the project at the time of the Proposal. Section 5.4 of the RFP uses better language indicating that the Bidder should provide evidence of its site control efforts and a plan for achieving full control.

Pepco agrees to modify the language regarding site control to conform with language used in Section 5.4.

The Bidder must demonstrate it has relevant experience and expertise satisfactory to develop, finance, construct, and operate its proposed generation facility.

COMMENT: The Bidder should not be required to have demonstrated experience in all phases of the project lifecycle (e.g. developers do not need to have operating experience). The language in Section 4.3 should be modified to support the bid evaluation language in Section 7 which asks that a Bidder demonstrate a plan to operate the equipment (such plan may involve securing an appropriate third party).

Pepco disagrees and believes that the language as written in the RFP provides protections for District of Columbia ratepayers.

4.4 Geographic Location of Facilities

Bidders must propose to provide energy and RECs from a Facility that is physically located in the PJM region and subject to all PJM rules and regulations.

*** COMMENT:** The same clarification of the "PJM region" recommended for the Introduction, should be included here.

Pepco agrees.

4.7 Energy

All energy from the Facility must be delivered in accordance with PJM requirements to one of the PJM hubs listed on Attachment D. Bidders must demonstrate that their interconnection and transmission upgrades are sufficient to ensure full delivery to PJM. In evaluating Proposals in which the energy from the Facility is not delivered to Pepco's PJM zone, Pepco will consider the cost and availability of transmission to move the energy from the delivery point specified by the Bidder to Pepco's PJM zone.

*** COMMENT:** The language in this section is confusing and should be clarified. Energy from the Facility will be physically delivered to the PJM grid at the Facility's point of interconnection. As part of approving interconnection to its system, PJM will require that interconnection facilities and transmission system upgrades are built such that the energy from the project can be absorbed into the PJM transmission grid. By reviewing the interconnection application for energy and capacity injection values, it will be clear if a Bidder has attempted to bid more capacity into this RFP than its interconnection application provides for.

There is no need for Pepco to "consider the cost and availability of transmission to move the energy from the delivery point specified by the Bidder to Pepco's PJM zone." This is not a physically or financially meaningful evaluation.

When requesting delivery to a PJM hub, Pepco is requesting that the pricing point for the PPA be a PJM hub (though the eligible pricing hubs are yet to be listed in Attachment D). A PJM hub is a collection of PJM pricing nodes over which an average locational marginal price (LMP) is computed. While a Facility's physical point of interconnection corresponds to a single LMP

node, by requesting pricing at a hub, Pepco is simplifying its evaluation of pricing proposals, since hub prices tend to be more stable over time than individual nodal prices.

Pepco agrees that metering will take place at the Interconnection Point and is open to discussion of this language.

5.1 General

Bidders may submit more than one Proposal for a designated Facility, provided that each Proposal uses a different portion of that Facility. Bidders may also submit separate Proposals for different Facilities. A Bidder that is submitting multiple Proposals must clearly indicate whether Pepco can select more than one Proposal, or whether such Proposals are mutually exclusive.

*** COMMENT:** It should be clarified that a 15-year and a 20-year price offer can be made as part of a single Proposal. This may be implied by the language above but should be clarified. Further, Bidders should be encouraged to offer both prices without needing to pay an additional $5,000 bid fee.

Pepco will clarify that a 15-year and a 20-year price offer can be made as part of a single Proposal without needing to pay and additional bid fee.

5.2 Quantity

A Proposal may pertain to the entire nameplate capacity of a single Facility or a portion of a single Facility that produces a variable output that targets the annual MWh production provided in Section 4.2.

COMMENT: The wording of this section should be modified to allow a Proposal to include the output of multiple facilities. This may be particularly useful in attracting the best solar proposals (e.g. a 20 MW solar project and a 50 MW solar project might be combined into a compelling total offer).

Pepco disagrees. Pepco believes that the construction of a "virtual" Facility from multiple, separate projects may lead to additional and unnecessary complexity. Bidders will be permitted to offer combined bids (i.e., a lower price if multiple separate projects are selected).

5.3 Proposal Pricing

Pricing must be designed to recover all costs associated with the Facility and the Proposal including, but not limited to, the cost of generation, cost of facilities, congestion, cost of network upgrades, transmission, operation, maintenance, and if applicable, all costs associated with energy storage. Prices (in $/MWh) must be fixed for the term of the Final Agreement.

COMMENT: The wording of this section is confusing and should be modified. Rather than say that the Proposal price should "be designed to recover" various costs associated with the Facility, this section should specify what is received under the Proposal – in the case of this PPA, energy delivered at a Delivery Point and priced at a PJM Hub, plus environmental attributes registered in GATS.

The point of this language is to convey that Pepco will pay a fixed price for energy and renewable attributes. All other costs of the project, including those mentioned in Section 5.3, will be borne by the supplier.

*** COMMENT:** DOEE presumes that the intent of the final sentence is that a single fixed price will be applicable for the entire 15- or 20-year term with no escalators or adjustments. If this is the intent, the wording should clarify this. If this is not the intent (e.g. if different prices for each year of the contract will be considered) that should be clarified instead.

Pepco will clarify that the intent of the final sentence is that a single fixed price will be applicable for the entire 15- or 20-year term with no escalators or adjustments.

5.4 Proposal Contents

- Financing Plan: Bidders should describe how they plan to finance the Facility. Bidders should identify all sources of capital (both debt and equity) and provide evidence of commitments from financing parties. Bidders should list all state and federal tax credits included in their pricing and describe plans for acquiring those credits. Pricing must not be contingent on future receipt of any State and/or Federal tax credits or other incentives.

*** COMMENT:** "Evidence of commitments from financing parties" should not be required at the time of the Proposal. Some Bidders may be able to offer a commitment to financing (e.g. if they are an asset-owing corporate entity), but some may not. The existence of financing commitments or demonstrated experience in arranging financing should be included in the Non-Price Factor Evaluation in Section 7.

Pepco will add the word "any" before "evidence of commitments". Such evidence will be considered along with other information on financing.

6.4 Completion and Accuracy of Proposal

A Bidder's Proposal must be complete in all respects upon submission.

COMMENT: The bid process should include a "right to cure" any deficiencies in a Proposal within a brief, specified time frame. The Proposal Form in the RFP is not very detailed with

respect to content, so Proposals should not be rejected for incompleteness without the opportunity to provide further information.

Pepco agrees to the following change: "A Bidder's Proposal must be complete in all **material** respects upon submission."

7.1 Evaluation

- Bidder-supplied resource study which accurately reflects operations from verifiable third-party.

- Demonstrated ability to internally finance Facility or evidence of good faith commitment from financing institution/financial backer.

COMMENT: The meaning of "Bidder-supplied resource study" is not clear. This item be reworded.

Independent assessment of renewable resources for the Facility (e.g., a wind resource study) and anticipated Facility output.

*** COMMENT:** See the comment above for Section 5.4. The evaluation of financing plans is an important non-price factor, but complete commitments to financing at the time of Proposal submission should not be required. See above edit.

8. CREDIT SUPPORT; SECURITY FOR PERFORMANCE

If Bidder (or Bidder's guarantor, if any) is rated at or above investment grade and provides a guaranty, Bidder shall have no requirement to provide performance assurance ("Performance Assurance"). Performance Assurance may be in the form of cash, a letter of credit, or other security in a form acceptable to Pepco. If during the term of the Final Agreement, Bidder (or Bidder's guarantor, if any) is no longer rated at or above investment grade, Bidder must post Performance Assurance. For purposes of the Final Agreement, "investment grade" shall mean at least two of the following three credit ratings: "BBB+" or better from Standard & Poor's Rating Group ("S&P"), "BBB+" or better from Fitch Investor Service, Inc. ("Fitch"), or "Baa1" or better from Moody's Investor Services, Inc. ("Moody's").

The amount of Performance Assurance will be based upon the term length of the Final Agreement. Performance Assurance will be equal to $150,000 per MW of capacity under contract for fifteen years, and equal to $200,000 per MW of capacity under contract for 20 years. The amount of required Performance Assurance will decline annually during commercial operation.

COMMENT: Pepco's use of the term "investment grade" is inconsistent with its standard definition, and Pepco should reword this section. In typical usage, "investment grade" is a rating of BBB-/Baa3 or above. DOEE does not oppose, however, Pepco requiring Performance Assurance from an entity with a rating below BBB+/Baa1.

For the purposes of this agreement "investment grade" is as defined and consistent with how it is defined in the PPA.

COMMENT: The amount of required Performance Assurance should be made proportional to the PPA annual contract volume in MWh, not to the facility capacity in MW. Tying the amount of Performance Assurance to the facility's capacity disadvantages solar projects relative to wind projects. As noted in Section 4.2 of the RFP, a solar project that produces the annual target of 154,000 MWh would be roughly 70 MW, while a wind project would likely by 50 MW. So, a solar facility would be required to post more Performance Assurance.

Pepco disagrees. Performance assurance based on MW capacity are regularly used in power purchase agreements, including renewable energy power purchase agreements.

9. ROLE OF INDEPENDENT EVALUATOR

An Independent Evaluator ("IE") will be selected by the Commission to monitor and evaluate the RFP process. The IE shall certify that the solicitation process was fair to all qualified Bidders and provide a report to the Commission on the evaluation process. As part of its evaluation, the IE shall perform market benchmarking analyses for both energy and RECs, which shall be included in the evaluation report.

*** COMMENT:** While the wording of this section need not be changed in the RFP, Pepco provide should provide a proposed scope of work for the Independent Evaluator for review by the working group and approval by the Commission.

Pepco is open to considering specific scopes of work that are proposed by and discussed among the working group, subject to Commission approval.

ATTACHMENT B - Proposal Form

COMMENT: As noted above, the proposal form should request additional information on storage equipment and an operating plan for storage, if the Proposal includes a project with storage.

Pepco agrees.

10. Entity providing credit support on behalf of Bidder (if applicable)

COMMENT: This should be an optional element, since the identity of the ultimate project owner may not be known at the time the Proposal is submitted. (it already says "If applicable)

11. Current senior unsecured debt rating (if applicable)

COMMENT: This should be an optional element, since the identity of the ultimate project owner may not be known at the time the Proposal is submitted.

14. Please provide copies of Bidder's annual reports for the three most recent fiscal years and quarterly reports for the most recent quarter ended, if applicable.

*** COMMENT:** Alternative forms of financial statements should be allowed since all Bidders may not be publicly traded companies with annual and quarterly reports.

Pepco agrees and will modify the language to accept the provision of unaudited financial statements.

32 Delivery Point to Pepco

COMMENT: As noted in a comment for Section 4.7, the physical point of delivery will be the Facility point of interconnection to the PJM transmission system. The pricing point will be a PJM hub specified by the Bidder from the list of eligible PJM Hubs listed in Attachment D. The Proposal Form should have blanks for both pieces of information.

Pepco agrees.

PROPOSAL TERMS

COMMENT: The PPA has a quantity obligation (Article 4.2) specified as a percentage of Facility output. DOEE suggests that this percentage be requested in the Proposal Terms.

Pepco agrees.

ATTACHMENT B

Comments Regarding Potomac Electric Power Company Draft "RENEWABLE ENERGY PURCHASE AGREEMENT"

The comments below do not constitute a review of all terms and conditions of the PPA relative to standard commercial terms for these types of contracts, nor do they identify any important missing provisions. DOEE's consultant CRI notes, based on its experience, that Pepco's proposed language does differ in many respects from commercial PPA contract language it has examined in other transactions. Adherence to standard commercial terms can be very important to assuring cost-effective project financing. DOEE recommends, therefore, that the working group assure that reviews of the PPA by solar and wind developers and project owners are solicited in finalizing this PPA and that any recommendations from those parties be accorded significant weight. This is especially since Pepco has indicated it plans to substantially limit negotiation of PPA terms.

ARTICLE 1. - DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following capitalized terms, when used in this Agreement, shall have the meanings set forth below:

"Buyer Energy Limit" shall mean _____ MWh.

COMMENT: The RFP as currently written does not indicate that there shall be a Buyer Energy Limit. In the PPA Article 4.2 is states that Pepco is not required to purchase energy above this limit. If Pepco anticipates such a limit, it should be spelled out in the RFP. If Pepco does not expect to invoke such a limit it should be removed from the PPA. Also note that the period of time is not specified in the Buyer Energy Limit (i.e. is it a limit in MWh per day, month or year?)

Pepco agrees and will specify in the RFP that there is a Buyer Energy Limit that is in terms of MWh per year.

"Facility Commercial Operation" means the condition of the Facility once it has achieved the following:

(d) the computer monitoring system for the Facility shall have been installed and tested and shall be fully operational.

COMMENT: The meaning of "computer monitoring system" should be clarified. Note that this term is not used elsewhere in the PPA.

Pepco agrees and will replace the phrase "computer monitoring system" with the phrase "SCADA system."

"Delivery Point" means the PJM hub identified in Exhibit B.

"Interconnection Point" means the physical point of interconnection between the Electrical Interconnection Facilities and the electrical transmission system of the Transmitting Utility.

COMMENT: DOEE suggests that Pepco review, and potentially revise, the uses of "Delivery Point" vs. "Interconnection Point" throughout the PPA. Article 4.2, for example, calls for Facility output to be metered at the Delivery Point. Metering would take place at the Interconnection Point.

Pepco agrees that metering will take place at the Interconnection Point. Article 4.2 will be modified accordingly.

"Electrical Interconnection Facilities" means the equipment and facilities required to safely and reliably interconnect the Facility to the PJM Transmission System or the transmission system of another Transmitting Utility in whose territory the Facility is located, as applicable, including transformers and all switching, metering, communications, control and safety equipment, including the facilities described in Exhibit A.

COMMENT: DOEE presumes that the inclusion of "another Transmitting Utility" is meant to cover high-voltage distribution lines owned by coops that might be physical points of interconnection. It should be clarified, however, that such a Transmitting Utility cannot be located outside the PJM system.

Pepco agrees to clarify this language.

"Investment Grade" for the purposes of this agreement shall mean at least two of the following three Credit Ratings: "BBB+" or better from S&P, "BBB+" or better from Fitch, or "Baa1" or better from Moody's.

COMMENT: Pepco's use of the term "investment grade" is inconsistent with the standard definition, of that term, and Pepco should reword this section. In typical usage, "investment grade" is a rating of BBB-/Baa3 or above. DOEE does not object to Pepco requiring Performance Assurance from an entity with a rating below BBB+/Baa1.

For the purposes of this agreement "investment grade" is as defined.

"PJM Transmission System" means the system of transmission lines and associated facilities that have been placed under PJM's operational control.

COMMENT: This is a good definition in connection with eligible Facilities. See comments made on the RFP, although some clarity around certain facilities operated by coops may be needed.

Acknowledged

ARTICLE 2. - TERM

2.3 Early Termination for Failure to Issue Construction Notice to Proceed.

COMMENT: The $5,000,000 NTP Termination Fee should be validated with industry representatives as standard commercial terms.

Pepco believes the specified amount is appropriate and will continue to consider appropriate amounts based upon the Facility and industry standards.

ARTICLE 4. PURCHASE AND SALE OF PRODUCTS

COMMENT: There should be provisions in the PPA covering the operation of storage. The project owner's decisions about operating storage could have impacts on the value of the delivered energy to Pepco.

Pepco will include in the RFP a requirement that proposals including storage describe how the storage will be used to deliver the contracted amount of energy.

ARTICLE 7. METERING

7.6 **Telemetry**. Seller shall transmit to Buyer, via a dedicated data line reasonably acceptable to Buyer and paid for by Seller, all telemetry data measured by the Facility Meter, including MW, MVAR, MWh, MVARh, isolation breaker open/closed status, interconnection bus voltage and amp flow. Without limiting the foregoing, all such telemetry equipment shall comply with PJM requirements for PJM transmission owners.

COMMENT: The need for the dedicated line is not clear to DOEE. Pepco should provide specifications and cost estimates for this requirement and justify its inclusion in the PPA.

Pepco will confer with PJM regarding telemetry requirements.

ARTICLE 12. EVENTS OF DEFAULT; REMEDIES

12.4 **Delay Damages**. In the event the Initial Delivery Date does not occur on or prior to the Guaranteed Initial Delivery Date, for each day beginning with the day after the Guaranteed Initial Delivery Date through and including the date on which the Initial Delivery Date occurs, Seller shall pay liquidated damages in the amount of $0.20 per kW of Buyer's Percentage of the Facility Nameplate Rating per day ("Delay Damages"). Delay Damages shall be paid by Seller within thirty (30) days after the end of the month in which the Delay Damages accrue. The Parties acknowledge and agree that (a) calculation of actual damages that Buyer would suffer as a result of a delay in the Initial Delivery Date would be difficult or impossible to ascertain; (b) obtaining an adequate remedy may be difficult; and (c) the amount of Delay Damages constitutes a fair and reasonable approximation of the damages Buyer will incur as a result of delay in the Initial Delivery Date and is not intended as, nor shall it be deemed, a penalty. Subject to Section 14.5 [Calling on Security] and excluding Buyer's right to terminate as a result of a Seller Event of Default under Section 12.2(a) [Additional Seller Events of Default], the

rights set forth pursuant to this Section 12.4 shall be Buyer's exclusive remedy for Seller's delay in achieving the Guaranteed Initial Delivery Date.

COMMENT: The delay damages appear to pay Pepco the full retail PPA price for undelivered volumes. This should be revised to pay Pepco's "replacement cost" for deficient deliveries, where replacement cost is normally understood to be the difference between the Buyer's cost of acquiring similar supplies less the PPA price, thereby making the Buyer "whole". Note that the damages due under 12.5 (a) are replacement cost less PPA price, which is that commercially reasonable standard. Also note that the Performance Assurance requirements of Schedule 14.2 are approximately $10 per MWh, which is clearly intended as a proxy for the excess cost of replacement.

Pepco disagrees. This is standard contract language. Delay damages are typically calculated using a kW or MW amount and are liquidated. This provides certainty to developers and their financing partners.

12.5 Damages on Termination. (d) The Parties acknowledge and agree that: (i) Energy supplied from a [wind][solar] energy generating resource has an inherent value greater than the value of other forms of Energy; (ii) the inherent value of Energy supplied from a [wind][solar] energy generating resource is a primary reason Buyer is entering into this Agreement; (iii) in the event of termination of this Agreement based on a Seller Event of Default, Buyer will likely be required to replace the Energy that would have been provided hereunder with Energy supplied from another [wind][solar] energy generating resource; and (iv) in the event of termination of this Agreement by Seller based on a Buyer Event of Default, Seller will likely sell the Energy that would have been sold hereunder to a Party seeking Energy supplied from a [wind][solar] energy generating resource.

COMMENT: This is an unusual contract clause that does not appear to expand or limit the damages specified in paragraphs (a), (b) and (c) of this section. DOEE requests that Pepco provide an explanation of its value and necessity.

Pepco uses this clause to ensure agreement among the parties regarding certain facts relating to renewable energy in the event of future disputes.

12.6 Right of First Offer. If Seller or any Seller Affiliate seeks to enter into an agreement to sell any of the Energy or Environmental Attributes generated by a [wind][solar] energy generating project on the approximate location of the Facility at any time after the Agreement has been terminated by Buyer due to a Seller Event of Default, or pursuant to Sections 2.3 or 11.4, but prior to one hundred eighty days after such termination, Buyer shall have a right of first offer for any proposed sale of Energy or Environmental Attributes (or both) by Seller or Seller Affiliate. Buyer shall have thirty (30) days to submit a purchase offer after its receipt of written notice from Seller of the intention of Seller (or an Affiliate of Seller) to seek to enter into an agreement for any such Energy or Environmental Attributes and Seller and its Affiliates shall negotiate a

purchase agreement with Buyer in good faith. If no agreement is executed within forty-five (45) days following Buyer's delivery to Seller of such purchase offer, Seller and its Affiliates may negotiate with third parties for the sale of such Energy or Environmental Attributes; provided, however, such agreement may not be on terms more favorable to the new buyer than the terms set forth in Buyer's proposed purchase offer.

COMMENT: This is an unusual contract clause. DOEE requests that Pepco provide an explanation of its value and necessity.

This clause is customary in utility PPAs. It provides some protection for a utility where a seller might seek to breach the PPA in order to enter into a new agreement with another entity at a higher price.

ARTICLE 14. CREDIT AND COLLATERAL REQUIREMENTS

14.2 Grant of Security Interest. To secure its obligations under this Agreement, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of set-off against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer, provided, however, that such interest may be junior to an interest granted by Seller in such collateral or proceeds for purposes of financing the development, construction or operation of the Facility. Seller agrees to take such action as reasonably required to perfect in favor of Buyer such security interest in, and lien on (and right of set-off against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

COMMENT: This is an unusual contract clause. DOEE requests that Pepco provide an explanation of its value and necessity.

Pepco requires this language to remain in place. The grant of security interest is simply protecting Pepco's interest in cash collateral and helps to prevent any defense that the counterparty, trustee of the bankrupt estate, and or any creditors/third party to the counterparty from asserting that Pepco does not have an interest in that cash. Because cash could be clawed back or defined for other benefits outside of the Company's -interests, this language gives Pepco additional protection.

ARTICLE 17. MISCELLANEOUS

17.10 Assignment.

(a)(ii) a Party may transfer or assign this Agreement to any Person whose creditworthiness is equal to or higher than that of the transferring Party, provided, however, that in the case of an assignment by Seller, the assignee must also own substantially all of the assets of the Facility necessary to perform Seller's obligations under this Agreement.

COMMENT: This wording should be adjusted to permit transfers to a Party meeting the minimum requirement of BBB+/Baa1. The initial project owner should not be limited in transferring ownership to another party on account of the initial project owner's strong credit rating.

Pepco agrees to adjust the language in the Assignment section of the agreement to permit transfers to a Party meeting the minimum requirement of BBB+/Baa1.

17.16 Bankruptcy Considerations. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code and that each of Seller and Buyer is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

COMMENT: The operation of the PPA under bankruptcy is a complex legal and accounting matter. While DOEE is not in position to analyze those implications, DOEE's consultant observes that this clause, by itself, is likely not strong enough to support this contract being a "forward contract", if indeed Pepco is trying to achieve that interpretation.

This language is customary in power purchase agreements (PPAs). Pepco recognizes that the determination as to whether a PPA is a forward contract in bankruptcy will be made by the bankruptcy court, but parties routinely state their agreement that the PPA is a forward contract.

SCHEDULE 6.13 AVAILABILITY CALCULATIONS

1. Availability Damages. For any Period in which Seller does not maintain the Guaranteed Availability Percentage, Seller shall pay to Buyer liquidated damages ("Availability Damages") in an amount equal to (a) the Contract Price multiplied by (b) the Guaranteed Availability Percentage minus the Availability Percentage for such Period, multiplied by (c) the Delivered Energy for such Period divided by the Availability Percentage, multiplied by the Guaranteed Availability Percentage;

COMMENT: DOEE notes that its consultant, CRI, had been asked during the working group phase of this proceeding, to provide suggestions on Project Availability language. CRI provided those suggestions in a memo the working group dated July 12, 2019, and a number of those suggestions are reflected in the PPA language. This calculation in 6.13 as currently written, however, implies that the Seller must pay the Buyer the full Contract Price times any deficiency in delivered volumes due to lower than required availability. This should be revised to cover any premium above the PPA price that Pepco experiences in replacing deficient deliveries. This is the common contractual meaning of "replacement costs" and actual damages. Note that the damages due under 12.5 (a) are replacement cost less PPA price, which is commercially

reasonable. Also note that the Performance Assurance requirements of Schedule 14.2 are approximately $10 per MWh which is clearly derived from a notion of a premium that may be experienced in replacing volumes.

Pepco disagrees. This is standard contract language. As with delay damages, availability damages are typically calculated using a fixed price and paid as liquidated damages. This construct provides certainty to developers and their financing parties.

RENEWABLE ENERGY PURCHASE AGREEMENT

between

POTOMAC ELECTRIC POWER COMPANY

(“Buyer”)

and

_____

(“Seller”)

Dated as of [date]

RENEWABLE ENERGY PURCHASE AGREEMENT

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

SCHEDULES AND EXHIBITS

Exhibit A	Facility Description
Exhibit B	Delivery Point

Schedule 6.1	Milestone Schedule
Schedule 6.13	Availability Calculations
Schedule 8.1	Contract Price
Schedule 14.1	Form of Letter of Credit
Schedule 14.3	Form of Guaranty
Schedule 15.1	Seller Delayed Permits
Schedule 17.1	Notice Information

RENEWABLE ENERGY PURCHASE AGREEMENT

THIS RENEWABLE ENERGY PURCHASE AGREEMENT (this "Agreement"), is made and entered into as of _____ ("Effective Date"), by and between _____, a _____, hereinafter referred to as "Seller" and Potomac Electric Power Company, a District of Columbia corporation, hereinafter referred to as "Buyer" (each hereinafter referred to individually as "Party" and collectively as "Parties").

WITNESSETH:

WHEREAS, Seller plans to own and operate a [*wind*][*solar*] energy generating Facility with an aggregate total nameplate capacity rating of [_] MW (the "Facility Nameplate Rating"), located in _____; and

WHEREAS, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive, Energy and Environmental Attributes generated by the Facility (collectively, the "Products"); and

WHEREAS, Buyer intends to use the Products purchased under this Agreement in accordance with Order No. 19897, issued on April 12, 2019, and Order No. 20327, issued on April 9, 2020, in Formal Case No. 1017 by the Public Service Commission of the District of Columbia.

NOW, THEREFORE, and in consideration of the foregoing, and of the mutual promises, covenants, and conditions set forth herein, and other good and valuable consideration, the Parties hereto, intending to be legally bound by the terms and conditions set forth in this Agreement, hereby agree as follows:

ARTICLE 1.
DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following capitalized terms, when used in this Agreement, shall have the meanings set forth below:

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the preamble hereto.

"Availability Damages" has the meaning set forth in Schedule 6.13.

"Availability Percentage" has the meaning set forth in Schedule 6.13.

"Bankrupt" means, with respect to any entity, such entity: (a) voluntarily 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

Commented [HW1]: The comments below do not constitute a review of all terms and conditions of the PPA relative to standard commercial terms for these types of contracts, nor do they identify any important missing provisions. DOEE's consultant CRI notes, based on its experience, that Pepco's proposed language does differ in many respects from commercial PPA contract language it has examined in other transactions. Adherence to standard commercial terms can be very important to assuring cost-effective project financing. DOEE recommends, therefore, that the working group assure that reviews of the PPA by solar and wind developers and project owners are solicited in finalizing this PPA and that any recommendations from those parties be accorded significant weight. This is especially since Pepco has indicated it plans to substantially limit negotiation of PPA terms.

Commented [AM2R1]: OPC agrees with CRI o/b/o DOEE as language consistency is vitally important.

filed or commenced against it by its creditors and such petition is not dismissed within ninety (90) days of the filing or commencement; (b) makes an assignment or any general arrangement for the benefit of creditors; (c) otherwise becomes insolvent, however evidenced; (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (e) is generally unable to pay its debts as they fall due.

"Business Day" means any day except a Saturday, Sunday or a day that PJM declares to be a holiday, as posted on the PJM website. A Business Day shall begin at 8:00 am and end at 5:00 pm EPT.

"Buyer" has the meaning set forth in the preamble hereto.

"Buyer Energy Limit" shall mean _____ MWh.

"Buyer's Indemnitees" has the meaning set forth in Section 10.1 [Seller's Indemnification].

"Buyer's Percentage" means ___ percent (____) of the Facility Nameplate Rating, which shall not be less than ___ MW.

"Confidential Information" means any information in any form designated by a Party as confidential pursuant to Section 16.2 [Designation of Confidential Information], whether such information was disclosed prior to or after the Effective Date; *provided*, *however*, that Confidential Information shall not include Unrestricted Information.

"Contract Price" means the price for the Energy delivered to the Delivery Point for Buyer's account and RECs transferred to Buyer, as set out on Schedule 8.1.

"Contract Term" has the meaning set forth in Section 2.1 [Term].

"Contract Year" shall mean the twelve (12) month period commencing on the Initial Delivery Date and each anniversary thereafter during the Services Term.

"Credit Rating" means, with respect to any Person, the rating then assigned to such Person's senior unsecured long-term debt obligations (not supported by third-party credit enhancements) by a Rating Agency or, if such Person does not have a rating for its senior unsecured long-term debt, then the "Issuer Credit Rating" for such Person established by S&P.

"DCPSC" means the District of Columbia Public Service Commission.

"Defaulting Party" has the meaning set forth in Section 12.1 [Events of Default].

"Delay Damages" has the meaning set forth in Section 12.4 [Delay Damages].

"Delivered Energy" shall mean the amount of Energy delivered by the Facility to Buyer in each Contract Year to the Delivery Point.

"Delivery Point" means the PJM hub identified in Exhibit B.

Commented [HW3]: The RFP as currently written does not indicate that there shall be a Buyer Energy Limit. In the PPA Article 4.2 is states that Pepco is not required to purchase energy above this limit. If Pepco anticipates such a limit, it should be spelled out in the RFP. If Pepco does not expect to invoke such a limit it should be removed from the PPA. Also note that the period of time is not specified in the Buyer Energy Limit (i.e. is it a limit in MWh per day, month or year?)

Commented [AM4R3]: As agreed to by the WG the up to% should be included in the buyer's percentage area or not to exceed 5%.

Commented [HW5]: DOEE suggests that Pepco review, and potentially revise, the uses of "Delivery Point" vs. "Interconnection Point" throughout the PPA. Article 4.2, for example, calls for Facility output to be metered at the Delivery Point. Metering would take place at the Interconnection Point.

Commented [AM6R5]: Would it be delivery point/ interconnection point?

"Disclosing Party" has the meaning set forth in Section 16.1 [Non-Disclosure of Confidential Information].

"Eastern Prevailing Time" or "EPT" means Eastern Standard Time or Eastern Daylight Saving Time, whichever is in effect on any particular date.

"Effective Date" has the meaning set forth in the preamble hereto.

"Electrical Interconnection Facilities" means the equipment and facilities required to safely and reliably interconnect the Facility to the PJM Transmission System or the transmission system of another Transmitting Utility in whose territory the Facility is located, as applicable, including transformers and all switching, metering, communications, control and safety equipment, including the facilities described in Exhibit A.

Commented [HW7]: DOEE presumes that the inclusion of "another Transmitting Utility" is meant to cover high-voltage distribution lines owned by coops that might be physical points of interconnection. It should be clarified, however, that such a Transmitting Utility cannot be located outside the PJM system.

Commented [AM8R7]: Clarify by adding within the PJM footprint

"Emergency" means: (a) an abnormal system condition requiring manual or automatic action to maintain system frequency or voltage or to prevent loss of firm load, equipment damage or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; (b) system recovery from an abnormal condition that resulted in loss of firm load or equipment damage; or (c) a condition that requires implementation of "emergency procedures" (as defined by PJM or any Transmitting Utility).

"Energy" means three-phase, 60- cycle alternating current electric energy.

"Environmental Attributes" means Renewable Energy Credits and any and all other (whether known or unknown) federal, regional, state and other credits, certificates, benefits, emission reductions, carbon credits, offsets and allowances that are attributable, now or in the future, however entitled or named, attributable to or associated with the Facility or the Energy produced by the Facility, including: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility's displacement of fossil fuel derived or other conventional energy generation arising under existing or future applicable Law; (b) any environmental certificates issued by PJM under the GATS in connection with Energy delivered to Buyer; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Energy delivered to Buyer from the Facility; *provided*, *however*, that Environmental Attributes shall not include: (i) production tax credits based on energy production from any portion of the Facility; (ii) any investment tax credits or other tax credits associated with the construction or ownership of the Facility; (iii) any state, federal or private cash payments or grants relating in any way to the construction or ownership of the Facility or the output thereof; or (iv) accelerated depreciation benefits related to the Facility's status as a generator of renewable energy.

"Event of Default" has the meaning set forth in Sections 12.1 [Events of Default] and 12.2 [Additional Seller Events of Default].

"Facility" means the [*wind*][*solar*]-energy generating facility, including the Electrical Interconnection Facilities and any other ancillary facilities and equipment, as more particularly described in Exhibit A.

"Facility Commercial Operation" means the condition of the Facility once it has achieved the following:

(a) ninety-five percent (95%) of the Facility Nameplate Rating shall have been fully commissioned and shall be operational;

(b) all performance testing of the Electrical Interconnection Facilities shall have been successfully completed in accordance with the PJM Agreements;

(c) the Facility shall be operating and able to produce and deliver Energy to the Interconnection Point: (i) pursuant to the terms of this Agreement, the Interconnection Agreement, and all applicable Laws; and (ii) in accordance with Good Utility Practice; and

(d) the computer monitoring system for the Facility shall have been installed and tested and shall be fully operational.

Commented [HW9]: The meaning of "computer monitoring system" should be clarified. Note that this term is not used elsewhere in the PPA.

Commented [AM10R9]: And what the system's functionalities are so anyone picking up the doc can understand what the system is utilized for and its importance

"Facility Commercial Operation Date" means the first date as of which: (a) Facility Commercial Operation has occurred; and (b) Seller shall have delivered to Buyer written certification of an authorized officer of Seller certifying that the Facility has achieved Facility Commercial Operation, which shall incorporate a certification of Facility Commercial Operation by a third party independent engineer experienced with such certifications for projects similar to the Facility.

"Facility Lender" means any Person(s), other than Affiliates of Seller, that provide construction, working capital or term debt financing for the Facility (including any agent(s) thereof).

"Facility Meter" means the revenue quality electricity generation meter, to be located at the metering point shown on Exhibit A, which shall register all Energy produced by the Facility and delivered to the Interconnection Point.

"Facility Nameplate Rating" has the meaning set forth in the Recitals hereto.

"Facility Site" means the property on which the Facility is located, as more particularly described in Exhibit A.

"FERC" means the Federal Energy Regulatory Commission.

"Financing Assignment" shall mean the consent to collateral assignment between Buyer, Seller and Facility Lender, in a form reasonably satisfactory to Buyer, Seller and Facility Lender.

"Fitch" means Fitch Investor Service, Inc.

"Force Majeure Event" means an event or circumstance that: (a) prevents a Party from performing its obligations under this Agreement; (b) was not foreseeable by such Party; (c) was not within the reasonable control of, or the result of the negligence of, such Party; and (d) such Party is unable to mitigate or avoid or cause to be avoided with the exercise of due diligence. Force

Majeure shall include, provided that the criteria in the first sentence are met, riot, insurrection, war (declared or not), mobilization, explosion, labor dispute, fire, flood, earthquake, storm, lightning, tsunami, backwater caused by flood, vandalism, act of the public enemy, terrorism, epidemic, civil disturbances, strike, labor disturbances, work slowdown or stoppage, blockades, sabotage, labor or material shortage, national emergency, the amendment, adoption or repeal of or other change in, or the interpretation or application of, any applicable Law, and any action or inaction by any Governmental Authority. Notwithstanding the foregoing, under no circumstance shall a Force Majeure Event be based on: (i) Seller's ability to sell a Product at a price greater than that received under the terms of this Agreement; (ii) Buyer's ability to purchase a Product at a price lower than paid under the terms of this Agreement; (iii) delays or nonperformance by suppliers, vendors or other third parties with whom a Party has contracted; (iv) any other economic hardship or changes in market conditions affecting the economics of one of the Parties but not the other.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time.

"GATS Operating Rules" means the operating rules for the GATS (including successor versions), as published by PJM Environmental Information Services, Inc.

"Generator Attribute Tracking System" or "GATS" means the system (or its successor) operated by PJM Environmental Information Services, Inc. in accordance with the GATS Operating Rules to provide environmental and emissions attributes reporting and tracking services to its subscribers.

"Good Utility Practice" means the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry (in the case of Buyer) or the [*wind*][*solar*] industry (in the case of Seller) during the relevant time period, and any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the region.

"Governmental Authority" means any federal, state, local, municipal or other governmental or quasi-governmental authority, agency, department, board, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive, together or individually, exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over a Party, the Facility, the Products to be delivered hereunder or this Agreement.

"Guaranteed Initial Delivery Date" means June 1, 2024; *provided*, *however*, that the Guaranteed Initial Delivery Date shall be extended on a day-for-day basis for up to six (6) months to the extent that the Initial Delivery Date is delayed as a result of a Force Majeure Event.

"Guaranteed Availability Percentage" has the meaning set forth in Schedule 6.13.

"Guarantor" means any Person that: (a) guarantees Seller's financial obligations under this Agreement pursuant to a Guaranty; (b) is an Affiliate of Seller; (c) has a Credit Rating from at least two (2) of the Rating Agencies; (d) has no Credit Rating from any Rating Agency less than the Minimum Acceptable Credit Rating; and (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction.

"Guaranty" means a Guaranty Agreement (a) in favor of Buyer; (b) executed and delivered by a Guarantor to Buyer; and (c) in the form of Schedule 14.3.

"Indemnified Person" has the meaning set forth in Section 10.3(a) [Defense of Indemnified Claims].

"Indemnifying Party" has the meaning set forth in Section 10.3(a) [Defense of Indemnified Claims].

"Initial Delivery Date" means the date on which the conditions set forth in Section 3.2 [Initial Delivery Date] have been satisfied or waived in writing by Buyer.

"Investment Grade" shall mean at least two of the following three Credit Ratings: "BBB+" or better from S&P, "BBB+" or better from Fitch, or "Baa1" or better from Moody's.

"Instructed Operation" means a mandatory direction by a Transmitting Utility to meet an Emergency or a transmission system reliability need, including voltage support.

"Interconnection Agreement" means an agreement between Seller and the Transmitting Utility (which may be Buyer or an Affiliate of Buyer) in whose territory the Facility is located regarding interconnection of the Facility to the transmission system of the Transmitting Utility.

"Interconnection Point" means the physical point of interconnection between the Electrical Interconnection Facilities and the electrical transmission system of the Transmitting Utility.

"Interest Rate" means, as of any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate published in *The Wall Street Journal* under "Money Rates" on such day (or, if such rate is not published on such date, the rate published on the most recent preceding date on which such rate is published), plus two percent (2%); and (b) the maximum rate permitted by applicable Law.

"Invoice" has the meaning set forth in Section 8.2 [Billing].

"kW" means kilowatt.

"Law" means any statute, law, treaty, convention, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction issued, adopted, administered or implemented by a court or Governmental Authority, including any of the foregoing that are enacted, amended or issued after the Effective Date, and any binding interpretations of any of the foregoing.

Commented [HW11]: Pepco's use of the term "investment grade" is inconsistent with the standard definition, of that term, and Pepco should reword this section. In typical usage, "investment grade" is a rating of BBB-/Baa3 or above. DOEE does not object to Pepco requiring Performance Assurance from an entity with a rating below BBB+/Baa1.

Commented [HW12]: DOEE suggests that Pepco review, and potentially revise, the uses of "Delivery Point" vs. "Interconnection Point" throughout the PPA. Article 4.2, for example, calls for Facility output to be metered at the Delivery Point. Metering would take place at the Interconnection Point.

Commented [AM13R12]: Same comment as before clarifying the difference or use one term to avoid confusion

"Letter of Credit" means an irrevocable standby letter of credit in favor of Buyer issued by a Qualified Institution, in the form of Schedule 14.1 or such other form as may be acceptable to Buyer.

"Lien" means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever, including any sale-leaseback arrangement, conditional sale or other title retention agreement and any financing lease having substantially the same effect as any of the foregoing.

"Market Participant" has the meaning set forth in the PJM Operating Agreement.

"Milestone Schedule" has the meaning set forth in Section 6.1 [Seller Covenants].

"Minimum Acceptable Credit Rating" means a Credit Rating equal to or better than (a) "BBB-" by S&P; (b) "BBB-" by Moody's; and (c) "Baa3" by Fitch.

"Monthly Settlement Date" has the meaning set forth in Section 8.2 [Billing].

"Moody's" means Moody's Investor Services, Inc.

"MW" means megawatt.

"MWh" means megawatt-hour.

"NERC" means the North American Electric Reliability Council, or any other Person designated by FERC to perform its functions.

"Non-Defaulting Party" has the meaning set forth in Section 12.3 [General Remedies].

"NTP Termination Fee" has the meaning set forth in Section 2.3 [Early Termination for Failure to Issue Construction Notice To Proceed].

"NTP Termination Right" has the meaning set forth in Section 2.3 [Early Termination for Failure to Issue Construction Notice To Proceed].

"Party" or "Parties" has the meaning set forth in the preamble hereto.

"Performance Assurance" means collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Buyer, in each case in accordance with Article 14 unless otherwise approved by Buyer.

"Performance Assurance Amount" has the meaning set forth in Schedule 14.2.

"Permit" means any permit, authorization, license, order, consent, waiver, exception, exemption, variance or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with, any Governmental Authority required to authorize action, including any of the foregoing relating to the ownership, siting, construction, operation, use or maintenance of the Facility under any applicable Law.

"Person" means an individual, partnership, joint venture, corporation, limited liability company, trust, association, unincorporated organization or Governmental Authority.

"PJM" means PJM Interconnection, LLC., or its successor.

"PJM Agreements" means the PJM Tariff, the PJM Operating Agreement, and any other applicable PJM bylaws, procedures, manuals or documents.

"PJM Member" means any entity satisfying the requirements of PJM to conduct business with PJM.

"PJM Operating Agreement" means the Operating Agreement of PJM.

"PJM Tariff" means the Open Access Transmission Tariff of PJM.

"PJM Transmission System" means the system of transmission lines and associated facilities that have been placed under PJM's operational control.

Commented [HW14]: This is a good definition in connection with eligible Facilities. See comments made on the RFP, although some clarity around certain facilities operated by coops may be needed.

"Products" has the meaning set forth in the Recitals hereto.

"PSC Approval" means an order issued by the DCPSC approving the terms of this Agreement without modification and authorizing Buyer to recover all of its costs incurred hereunder, which order shall be in form and substance reasonably acceptable to Buyer.

"PSC Approval Deadline" means the date that is six (6) months after the date on which Buyer files this Agreement with the DCPSC seeking PSC Approval.

"Qualified Institution" means a U.S. commercial bank (or a foreign bank with a U.S. branch) having total assets of at least $10 billion dollars ($10,000,000,000.00) and a Credit Rating equal to or better than "A-" by S&P and an equivalent Credit Rating by Moody's or Fitch.

"Rating Agency" or "Rating Agencies" shall mean, individually or collectively, S&P, Moody's and Fitch.

"Receiving Party" has the meaning set forth in Section 16.1 [Non-Disclosure of Confidential Information].

"Regional Reliability Entity" means the organization designated by NERC responsible for establishing and implementing reliability criteria and protocols for the Facility.

"Regulatory Charges" has the meaning set forth in Section 9.2 [Regulatory Charges].

"Renewable Energy Credit" or "REC" shall have the meaning set forth in the RPS Rules and RPS Act.

"Renewable Energy Portfolio Standard" shall have the meaning set forth in the RPS Act.

"RPS Act" shall mean the Renewable Energy Portfolio Standard Act of 2004, effective April 12, 2005 (D.C. Law 15–340; D.C. Official Code §§ 34–1431 et seq.), as amended.

"RPS Rules" means the DCPSC's Rules and Procedures to Implement the Renewable Energy Portfolio Standard.

"S&P" means Standard & Poor's Ratings Group, a division of McGraw Hill, Inc.

"Seller" has the meaning set forth in the preamble hereto.

"Seller's Indemnitees" has the meaning set forth in Section 10.2 [Buyer's Indemnification].

"Services Term" means the period commencing on the Initial Delivery Date and ending [fifteen (15) years][twenty (20) years] thereafter.

"Tier One Renewable Source" shall have the meaning ascribed to it in the RPS Act.

"Transmitting Utility" means any utility (including its control area operator) that transmits Energy from the Interconnection Point to the Delivery Point.

"Unrestricted Information" means any information disclosed by one Party to the other Party that: (a) is or becomes part of the public domain without fault of the Receiving Party; (b) was received by the Receiving Party from a Person under no obligation to the Disclosing Party with respect to maintaining the confidentiality thereof; or (c) was already in the Receiving Party's possession and not subject to confidentiality restrictions at the time the information was made available by the Disclosing Party.

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

(a) the singular shall include the plural and vice versa;

(b) references to Articles, Sections, Schedules or Exhibits shall be to Articles, Sections, Schedules or Exhibits of this Agreement, unless otherwise specified;

(c) all references to a particular Person in any capacity shall be deemed to refer also to such Person's successors and permitted assigns in such capacity;

(d) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection thereof;

(e) 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;

(f) all accounting terms not specifically defined herein shall be construed in accordance with GAAP;

(g) references to this Agreement shall include a reference to all schedules and exhibits hereto, each of which shall be incorporated by reference into this Agreement;

(h) references to any agreement, document or instrument, including the PJM Agreements, shall be construed to refer to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;

(i) the masculine shall include the feminine and neuter and vice versa;

(j) references to a Law shall be construed to refer to such Law as the same may be amended, modified, supplemented or restated from time to time;

(k) the term "month" shall mean a calendar month unless otherwise indicated, and a "day" shall be a twenty-four (24) hour period beginning at 12:00:01 am and ending at 12:00:00 midnight; *provided, however*, that a "day" may be twenty-three (23) or twenty-five (25) hours on those days on which daylight savings time begins or ends;

(l) unless expressly provided otherwise in this Agreement, where this Agreement requires the consent, approval or similar action by a Party, such consent, approval, or action shall be made or given in such Party's sole discretion;

(m) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Good Utility Practice or the PJM Agreements, shall have such meaning in this Agreement, or (ii) do not have well-known and generally accepted meaning in Good Utility Practice or the PJM Agreements but have well-known technical or trade meanings shall have such recognized meanings; and

(n) all references to dollars are to U.S. dollars.

ARTICLE 2.
TERM

2.1 Term. The term of this Agreement (the "Contract Term") will commence upon the Effective Date and, unless earlier terminated pursuant to the express provisions of this Agreement, will continue until the end of the Services Term; *provided, however*, that all provisions of this Agreement which must, in order to give full force and effect to the rights and obligations of the Parties, survive termination or expiration of this Agreement, shall so survive, including Articles 10 [Indemnification], 12 [Events of Default; Remedies], 13 [Dispute Resolution] and 16 [Confidentiality].

2.2 Termination Rights Regarding PSC Approval. Either Party may terminate this Agreement without liability upon thirty (30) days' advance written notice if PSC Approval does not occur on or before the PSC Approval Deadline, provided that such terminating Party must deliver a notice of termination no later than ten (10) days after the PSC Approval Deadline. Buyer shall notify Seller whether any order issued by the DCPSC approving the terms of this Agreement

is in form and substance acceptable to Buyer no later than five (5) Business Days after issuance of such order.

2.3 Early Termination for Failure to Issue Construction Notice to Proceed. In the event that Seller has not issued a final notice to proceed under an engineering, procurement, and construction contract, or a similar notice to begin on-site construction of the Facility within two hundred seventy (270) days after the construction notice to proceed date set forth in the Milestone Schedule (which period shall not be extended for any reason, including the occurrence of a Force Majeure Event), Buyer may elect in its sole discretion to terminate this Agreement upon thirty (30) days' prior written notice to Seller (the "NTP Termination Right") pursuant to this Section 2.3. Buyer's NTP Termination Right shall expire (and no longer apply) three hundred and ninety-five (395) days after the construction notice to proceed date set forth in the Milestone Schedule. Upon Buyer's exercise of the NTP Termination Right, neither Party shall have any financial or other liability to the other Party arising out of such termination, except that Seller shall pay to Buyer liquidated damages in an amount equal to [five million dollars ($5,000,000.00)] (the "NTP Termination Fee"). If the NTP Termination Fee is not otherwise paid by Seller when due and owing, Buyer has the right to draw on and retain for its sole benefit the Seller's Performance Assurance in an amount equal to the NTP Termination Fee.

Commented [HW15]: The $5,000,000 NTP Termination Fee should be validated with industry representatives as standard commercial terms.

Commented [AM16R15]: If this occurs will the Commission and stakeholders be notified? If not, why not?

ARTICLE 3.
CONDITIONS PRECEDENT

3.1 PSC Approval. Seller shall have no obligation to deliver or sell Products and Buyer shall have no obligation to accept or purchase Products prior to receipt of PSC Approval. Buyer shall file this Agreement before the DCPSC and seek PSC Approval promptly following the Effective Date.

3.2 Initial Delivery Date. The Initial Delivery Date shall occur upon the satisfaction or waiver in writing by Buyer of the following conditions precedent:

(a) the Facility Commercial Operation Date shall have occurred or will occur simultaneously with the Initial Delivery Date;

(b) Seller shall have obtained (and demonstrated possession of) all Permits required for the lawful operation of the Facility and for Seller to perform its obligations under this Agreement, including Permits related to environmental matters;

(c) no Seller default or Event of Default shall be occurring;

(d) Seller shall be a PJM Member and shall have entered into all required PJM Agreements required for the performance of Seller's obligations in connection with the Facility and this Agreement, which agreements shall be in full force and effect or Seller shall have entered into an agreement with a Market Participant that will perform all of Seller's PJM-related obligations in connection with the Facility and this Agreement;

(e) the Facility shall have been qualified and certified by the DCPSC as a Tier One Renewable Source;

(f) Seller shall have made all filings and applications required for accreditation of the Facility in GATS and for the registration, origination and transfer of Environmental Attributes from the Facility that are eligible for origination, registration and transfer under GATS;

(g) Seller shall have entered into all agreements and made all filings and other arrangements necessary for the transmission and delivery of the Energy associated with Buyer's Percentage of the Facility from the Facility to the Delivery Point;

(h) Seller shall have obtained all necessary authorizations from FERC to sell Energy at market-based rates as contemplated by this Agreement and shall be in compliance with such authorization;

(i) Seller shall have delivered a Guaranty or other required Performance Assurance, as required pursuant to Article 14 [Credit and Collateral Requirements];

(j) Seller shall have obtained all rights to the Facility Site necessary for performance of its obligations under the Agreement for the Services Term;

(k) PSC Approval shall have occurred and shall have become final and nonappealable; and

(l) Seller shall have provided Buyer with written evidence that all of the preceding conditions have been satisfied.

ARTICLE 4.
PURCHASE AND SALE OF PRODUCTS

Commented [HW17]: There should be provisions in the PPA covering the operation of storage. The project owner's decisions about operating storage could have impacts on the value of the delivered energy to Pepco.

Commented [AM18R17]: Are storage capabilities going to be dealt with like NEM units and dispatched accordingly?

4.1 Purchase and Sale Obligation. Subject to Seller's rights pursuant to Section 4.3 [Limitations on Seller's Obligation to Sell], during the Services Term Seller shall: (a) deliver and sell Buyer's Percentage of all Products produced by, or associated with, the Facility to Buyer; and (b) not offer, deliver, sell or make available to any Person other than Buyer, Buyer's Percentage of all Products produced by, or associated with, the Facility. Subject to the rights of the Parties pursuant to Section 4.3 [Limitations on Seller's Obligation to Sell] and 4.4 [Limitations on Buyer's Obligation to Purchase], during the Services Term Buyer shall: (i) have the exclusive right to purchase and receive Buyer's Percentage of all Products produced by, or associated with, the Facility; and (ii) accept and purchase Buyer's Percentage of all Products produced by, or associated with, the Facility and delivered to Buyer in accordance with the terms and conditions of this Agreement.

4.2 Quantity. The quantity of Energy required to be delivered by Seller to Buyer shall be equal to Buyer's Percentage of the Energy produced by the Facility and metered at the Delivery Point. The quantity of RECs required to be delivered by Seller to Buyer shall be equal to Buyer's

Percentage of the Energy produced by the Facility and metered at the Delivery Point. For the avoidance of doubt, Energy that may be stored by Seller in any device capable of storing Energy will not be part of the Products until the Energy is delivered to Buyer at the Delivery Point.

4.3 Limitations on Seller's Obligation to Sell. Notwithstanding anything to the contrary set forth herein, Seller may sell any or all Energy produced by the Facility to Persons other than Buyer to the extent it is unable to deliver Buyer's Percentage of such Energy to the Delivery Point due to a Force Majeure Event or an Instructed Operation; *provided*, *however*, that during any such period, Seller shall remain obligated to deliver and sell Buyer's Percentage of Environmental Attributes produced by or associated with the Facility to Buyer. For purposes of this provision, Buyer shall purchase the Environmental Attributes at a price determined by taking the average of two price quotes for comparable Environmental Attributes with the same vintage generated by a similar [*wind*][*solar*] energy generating facility in the same state as the Facility, with each such price quote to be obtained from a nationally recognized broker (with one broker selected by Seller and the other broker selected by Buyer).

4.4 Limitations on Buyer's Obligation to Purchase. Notwithstanding anything to the contrary set forth in this Agreement: (a) Buyer shall not be obligated to accept delivery of any Energy from Seller under this Agreement to the extent it is unable to do so due to a Force Majeure Event or an Instructed Operation; (b) Buyer shall have no obligation to purchase any Energy or Environmental Attributes generated by the Facility prior to the Initial Delivery Date; (c) Buyer is purchasing only Energy and Environmental Attributes from the Facility, and is not purchasing capacity, ancillary services, or any other product of the Facility, which shall remain the property of Seller; (d) Buyer shall not be obligated to purchase Energy in excess of the Buyer Energy Limit, and Seller shall retain the right to sell any such excess Energy and associated Environmental Attributes to third parties; and (e) Buyer's obligation to make purchases of Energy pursuant to this Agreement is expressly conditioned on the delivery and sale by Seller, in accordance with the terms of this Agreement, of RECs in an amount corresponding to the Energy from the Facility delivered by Seller.

4.5 Origination of RECs. RECs provided by Seller to Buyer hereunder shall be required to originate from Energy produced by the Facility.

ARTICLE 5.
SCHEDULING AND DELIVERY OF PRODUCTS

5.1 Delivery of Energy. Seller shall be solely responsible for arranging, scheduling with PJM and other Transmitting Utilities, and delivering Energy from the Facility to be delivered hereunder to the Delivery Point. As between the Parties, Seller shall be solely responsible for any and all costs and charges (including penalties) incurred in connection therewith, whether imposed pursuant to standards or provisions established by FERC, any other Governmental Authority or any Transmitting Utility, including transmission costs, scheduling costs, imbalance costs, congestion costs, operating reserve charges (day-ahead and balancing), any losses between the Interconnection Point and the Delivery Point, and the cost of firm transmission rights. Buyer shall arrange, schedule with PJM and be responsible for transmission of Energy from the Delivery Point and shall, as between the Parties, be solely responsible for any and all costs and charges (including penalties) incurred in connection therewith, whether imposed pursuant to standards or provisions

established by FERC, any other Governmental Authority or PJM, including transmission costs, scheduling costs, imbalance costs, congestion costs and the cost of firm transmission rights.

5.2 Delivery of Environmental Attributes. Seller shall: (a) take all actions necessary to register, certify and transfer Environmental Attributes from Seller to Buyer in accordance with GATS and applicable Law; and (b) bear all costs associated therewith, including program fees and registration fees. Seller shall comply with the RPS Act and RPS Rules in connection with Seller's transfer of RECs to Buyer hereunder.

5.3 Title and Risk of Loss.

(a) Title to, and risk of loss (including risks and costs associated with any transmission outages or curtailment up to and at the Delivery Point) related to, Energy sold by Seller to Buyer pursuant to this Agreement shall pass and transfer from Seller to Buyer upon delivery thereof for Buyer's account at the Delivery Point. Seller covenants that it shall have good and marketable title to all Energy delivered to Buyer at the Delivery Point and that it has the right to, and will, sell and deliver such Energy to Buyer free and clear of all Liens.

(b) Title to, and risk of loss related to, Environmental Attributes sold by Seller to Buyer pursuant to this Agreement shall pass and transfer from Seller to Buyer upon the completion of the recordation of transfer and physical or electronic delivery of such Environmental Attributes to Buyer in definitive form in accordance with GATS Operating Rules or other applicable Law. Seller shall transfer certificates into Buyer's GATS account(s) as necessary to transfer Environmental Attributes to Buyer under GATS. Seller covenants that it shall have good and marketable title to all Environmental Attributes delivered to Buyer and that it has the right to, and will, sell and deliver such Environmental Attributes to Buyer free and clear of all Liens.

ARTICLE 6.
SELLER COVENANTS

6.1 Construction, Progress Reports and Facility Commercial Operation. Seller shall construct the Facility in accordance with the specifications set forth in Exhibit A. The milestone schedule for development, construction and completion of the Facility anticipated as of the Effective Date is set forth in Schedule 6.1 (the "Milestone Schedule"). Seller shall prepare and submit to Buyer written progress reports, in a form reasonably satisfactory to Buyer, describing the status of development and construction of the Facility and all milestones, including the status of each of the conditions precedent to the Initial Delivery Date set forth in Section 3.2 [Initial Delivery Date]. Such progress reports shall be submitted: (a) on a quarterly basis commencing no later than two (2) years prior to Seller's anticipated Initial Delivery Date; and (b) on a weekly basis commencing forty-five (45) days prior to Seller's anticipated Initial Delivery Date. In addition to such progress reports, Seller shall promptly provide to Buyer any written reports regarding the status of development of the Facility that are delivered to Facility Lenders or their representatives.

6.2 Compliance with Law and Utility Requirements. Seller shall comply with, and cause the Facility to comply with: (a) Good Utility Practice; (b) all applicable requirements of Law; and (c) all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by the DCPSC, any other Governmental Authority, any Transmitting Utility, NERC and/or any Regional Reliability Entity, including, in each case, all practices, requirements, rules, procedures and standards related to Seller's construction, ownership, operation and maintenance of the Facility and its performance of its obligations under this Agreement (including obligations related to the generation, scheduling and transmission of Energy), whether such requirements were imposed prior to or after the Effective Date. Seller shall be solely responsible for registering as the "Generator Operator" of the Facility with NERC and any applicable Regional Reliability Entities.

6.3 Permits. Seller shall maintain in full force and effect all Permits necessary for it to perform its obligations under this Agreement, including all Permits necessary to operate and maintain the Facility.

6.4 Maintenance of Facility. To the extent required to achieve the Initial Delivery Date, and at all times during the Services Term, Seller shall maintain the Facility in accordance with Good Utility Practice.

6.5 Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement.

6.6 Planned Outages. Seller shall not schedule a planned outage of the Facility or any portion thereof between June 15 and September 15 during any Contract

Year. No later than thirty (30) days prior to Seller's anticipated Initial Delivery Date, Seller shall deliver to Buyer a schedule of planned maintenance for the Facility for the following twelve (12) month period, which schedule shall: (a) be updated by Seller by each March 31 and September 30 to cover the twelve (12) month period following such update; (b) be consistent with the requirements of Good Utility Practice and the Interconnection Agreement; (c) indicate the planned commencement and completion dates for each planned maintenance during the period covered thereby, as well as the affected portion(s) of the Facility; and (d) be in form and substance reasonably acceptable to Buyer. To the extent Seller is required by any Transmitting Utility to provide information regarding maintenance, outages or availability of the Facility, Seller shall, simultaneous with the submission thereof to such Transmitting Utility, deliver a copy thereof to Buyer.

6.7 PJM Membership. Seller shall, at all times during the Services Term, either: (a) be a member in good standing of PJM and be qualified as a PJM "Market Seller" pursuant to the PJM Agreements; or (b) have entered into an agreement with a Market Participant that will perform all of Seller's PJM-related obligations in connection with the Facility and this Agreement.

6.8 Market-Based Rate Authority. Seller shall, at all times during the Services Term, maintain all necessary authorization from FERC to sell Energy at market-based rates as contemplated by this Agreement.

6.9 Forecasts. Commencing thirty (30) days prior to the anticipated Initial Delivery Date, and throughout the Services Term, Seller shall prepare and deliver to Buyer on a monthly basis and in a form reasonably acceptable to Buyer, twelve (12) month rolling forecasts of Energy production by the Facility, which forecasts shall be prepared in good faith and in accordance with Good Utility Practice based on historical performance, maintenance schedules, Seller's generation projections and other relevant data and considerations.

6.10 Tier One Renewable Source. Seller shall be solely responsible for certifying the Facility as a Tier One Renewable Source under the RPS Act and maintaining such certification during the Services Term.

6.11 Compliance Reporting. To the extent Buyer is subject to any certification or compliance reporting requirement with respect to the Products produced by Seller and delivered to Buyer hereunder, Seller shall provide any information in its possession (or, if not in Seller's possession, available to it and not reasonably available to Buyer) reasonably necessary to permit Buyer to comply with any such reporting requirement.

6.12 Initial Delivery Date. Subject to Section 12.4 [Delay Damages], Seller shall achieve the Initial Delivery Date no later than the Guaranteed Initial Delivery Date. Seller shall provide Buyer with notice of (i) the expected occurrence of the Initial Delivery Date no later than thirty (30) days prior thereto; and (ii) the actual Initial Delivery Date no later than five (5) Business Days prior thereto.

6.13 Facility Guarantees. Seller guarantees that the Facility shall maintain the Availability Percentage required under Schedule 6.13, and shall pay Availability Damages, if any are due pursuant to Schedule 6.13.

6.14 Facility Design and Costs. As between Buyer and Seller, Seller (including its contractors and subcontractors) is solely responsible for all Facility design and all costs of installing, developing, financing, operating, maintaining and, to the extent applicable, removing the Facility from the Facility Site. Nothing in this Agreement or the Buyer's review of Seller's reports, nor its monitoring of the development and construction the Facility, shall be construed as endorsement by Buyer of the design, engineering, construction or testing of the Facility nor as any express or implied warranty as to the performance, safety, durability, or reliability of the Facility.

6.15 No Milestone Schedule Adjustment Expected at Effective Date. Seller represents and warrants to Buyer that, as of the Effective Date, (i) none of Seller's existing or potential contractors or subcontractors has provided oral or written notice to Seller that its ability to provide equipment, supplies, or services to Seller has been adversely affected by the disease designated as COVID-19 or 2019-nCoV acute respiratory disease or the virus designated as SARS-CoV-2, 2019 novel coronavirus or 2019-nCoV to the extent that an adjustment to the Milestone Schedule is reasonably likely; and (ii) Seller has no factual or legal basis to claim any Force Majeure Event.

6.16 No Interference with Buyer's Products. Unless Buyer has agreed in writing, Seller shall not monetize or otherwise secure the benefits of the Energy and Environmental Attributes of the Facility on behalf of any other Person if such action interferes with the qualification, scheduling or transfer of the Products to Buyer as provided in this Agreement.

6.17 Insurance. Seller shall maintain at its sole expense, commencing with the Effective Date and continuing through the Contract Term, insurance for the Facility (including commercial general liability insurance) customarily maintained for facilities of similar type and size in the state in which the Facility is located, but no less than a commercially reasonable business would obtain for a facility of similar value and operation. Seller shall provide certificates of insurance or other reasonable evidence of such insurance coverage acceptable to Buyer upon request. Failure to obtain and maintain the required insurance shall constitute a breach of the Agreement and Seller will be liable for any and all costs, liabilities, damages, and penalties (including attorneys' fees, court, and settlement expenses) resulting to Buyer from such breach, unless a written waiver of the specific insurance requirement is provided to Seller by Buyer and such failure may constitute on Event of Default in accordance with Section 12.2 [Additional Seller Events of Default]. Failure of Seller to provide insurance as herein required or failure of Buyer to require evidence of insurance or to notify Seller of any breach by Seller of the requirements of this Section shall not be deemed to be a waiver by Buyer of any of the terms and conditions of this Agreement, nor shall they be deemed to be a waiver of the obligation of Seller to defend, indemnify, and hold harmless Buyer as required herein. The obligation to procure and maintain any insurance required is a separate responsibility of Seller and independent of the duty to furnish a copy or certificate of such insurance policies. Notwithstanding any provision of this Agreement, none of the requirements contained herein as to insurance coverage to be maintained by Seller are intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by Seller under this Agreement, any other agreement with Buyer or its Affiliates, or otherwise provided by Law.

6.18 Ownership of Renewable Assets. At all times during the Contract Term, Seller or its Affiliates shall own or operate wind or solar electricity generating assets that have a nameplate capacity of not less than one thousand (1,000) MW in the aggregate in the United States (excluding the Facility). Seller shall promptly notify Buyer in writing upon any breach of this covenant.

6.19 Facility Site Visits; Publicity. During the Contract Term, Buyer may request permission from Seller to visit the Facility site during normal business hours to monitor the construction, start-up, testing, and operation of the Facility at the Site and to verify compliance with this Agreement. Seller shall accommodate Buyer's reasonable requests for such visits, provided that Buyer shall comply with Seller's safety policies and instructions during any such visit to the Facility. Upon request by Buyer, Seller shall use reasonable efforts to permit Buyer to take photographs of the Facility, which photographs, if approved by Seller, may be used by Buyer for publicity purposes and internal communications. No Party shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of the other Party, which approval shall not be unreasonably withheld. The preceding sentence shall not apply to communications or other filings with Governmental Authorities by Buyer, including any filings with the DCPSC.

ARTICLE 7.
METERING

7.1 Metering. All electric metering associated with the Facility, including the Facility Meter and any other real-time meters, billing meters and back-up meters, shall be installed, operated, maintained and tested in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Transmitting Utility in whose territory the

Interconnection Point is located and any applicable Regional Reliability Entity. The Facility Meter shall be used for the registration, recording and transmission of information regarding the Energy output of the Facility. As between the Parties, Seller shall be responsible for the operation, maintenance, and calibration of the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility in accordance with the Interconnection Agreement, Good Utility Practice and any applicable requirements and standards issued by NERC, the Transmitting Utility in whose territory the Interconnection Point is located and any applicable Regional Reliability Entity. Seller shall provide Buyer with a copy of all metering, testing and calibration information and documents regarding the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility promptly following receipt thereof by Seller.

7.2 Measurements. Readings of the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility by the Transmitting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; *provided*, *however*, that Seller, at the direction of Buyer and at Buyer's expense, shall cause the Facility Meter to be tested by the Transmitting Utility in whose territory the Facility is located, and if the Facility Meter is out of service or is determined to be registering inaccurately by more than two percent (2%): (a) measurement of Energy produced by the Facility shall be adjusted in accordance with the filed tariff of such Transmitting Utility; and (b) Seller shall reimburse Buyer for the cost of such test of the Facility Meter.

7.3 Testing and Calibration. Buyer shall have the right to have a representative(s) present during any testing or calibration of the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility.

7.4 Audit of Facility Meter. Buyer shall have access to the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility and the right to audit all information and test data related to such meters.

7.5 Notice of Malfunction. Seller shall provide Buyer with prompt notice of any malfunction or other failure of the Facility Meter or other telemetry equipment necessary to accurately report the quantity of Energy being produced by the Facility.

7.6 Telemetry. Seller shall transmit to Buyer, via a dedicated data line reasonably acceptable to Buyer and paid for by Seller, all telemetry data measured by the Facility Meter, including MW, MVAR, MWh, MVARh, isolation breaker open/closed status, interconnection bus voltage and amp flow. Without limiting the foregoing, all such telemetry equipment shall comply with PJM requirements for PJM transmission owners.

Commented [HW19]: The need for the dedicated line is not clear to DOEE. Pepco should provide specifications and cost estimates for this requirement and justify its inclusion in the PPA.

ARTICLE 8.
BILLING AND PAYMENT

8.1 Price for Energy and RECs. Buyer shall pay the Contract Price for all Energy delivered to the Delivery Point for Buyer's account in accordance with Section 5.1 [Delivery of Energy] and all RECs transferred to Buyer in accordance with Section 5.2 [Delivery of Environmental Attributes]. Buyer shall not be obligated to make any other payments to Seller for

any Energy or Environmental Attributes delivered or required to be delivered by Seller to Buyer pursuant to this Agreement.

8.2 Billing. Unless otherwise agreed to by the Parties, on or before the fifteenth (15th) day of each month (or the first Business Day thereafter), Seller shall deliver to Buyer, via electronic transmission or other means agreed to by the Parties, an invoice ("Invoice") that sets forth: (a) the net amount due from one Party to the other for all Products delivered by Seller to Buyer pursuant to the terms of this Agreement as of the end of the immediately preceding calendar month; and (b) any other credits, charges and liabilities due pursuant to the terms of this Agreement, including any adjustments and outstanding amounts due pursuant to prior Invoices. All Invoices to Buyer shall include the supporting documentation reasonably necessary to demonstrate how the Invoice amounts were calculated, including information from PJM to substantiate all calculations of the Energy delivered by Seller to the Delivery Point and GATS documentation of REC transfers to Buyer, and any additional information reasonably requested by Buyer. Buyer shall pay to Seller or Seller shall pay to Buyer, as the case may be, the total amount due pursuant to such Invoice no later than the final Business Day of the month during which such Invoice is issued (such day, the "Monthly Settlement Date").

8.3 Payment. All payments shall be made by "Electronic Funds Transfer" (EFT) via "Automated Clearing House" (ACH), to a bank designated in writing by the Party to which payment is owed, by 11:59:59 pm EPT on the Monthly Settlement Date. Payment of an Invoice shall not be deemed an admission or waiver with respect to any matter related to such Invoice or the charges reflected therein.

8.4 Interest. Interest on delinquent amounts (including amounts determined to be owed as a result of the resolution of a billing dispute) shall be calculated at the Interest Rate (a) from the original due date (or, for amounts not properly invoiced, the date that would have been the due date if such amounts were properly invoiced) to the date of payment; or (b) in the case of reimbursement obligations, from the date an overpayment was received until the date of reimbursement.

8.5 Set-Off. Each of Buyer and Seller shall have the right to set off any undisputed amounts owed by the other Party pursuant to this Agreement against any undisputed amounts that it owes to such Party pursuant to this Agreement.

8.6 Billing Disputes. Either Party may, in good faith, dispute any amount charged or paid pursuant to an Invoice within twelve (12) months of the date of such Invoice by providing a written statement setting forth the basis of such dispute. Each Party shall remain obligated to pay any undisputed amounts pending resolution of a billing dispute. Failure by a Party to deliver notice of a billing dispute within the time period set forth herein shall be deemed a waiver of such Party's right to dispute such Invoice. The Parties shall continue to perform under this Agreement during the period of any billing dispute but shall not be precluded from exercising any other remedy available under this Agreement. A billing dispute shall be subject to the provisions of Article 13 [Dispute Resolution]. Any amount determined to be owed as a result of the resolution of a billing dispute shall be paid within fifteen (15) days of such resolution, along with accrued interest in accordance with Section 8.4 [Interest].

8.7 PJM Accounting Procedures. Each of Buyer and Seller shall comply with all applicable PJM accounting procedures in connection with invoicing and settlement for amounts due under this Agreement.

ARTICLE 9.
TAXES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Regulatory Charges. Seller shall pay or cause to be paid all taxes, fees and other charges imposed by any Governmental Authority ("Regulatory Charges") on or with respect to the Products arising before and at delivery thereof in accordance with this Agreement, including ad valorem taxes, taxes related to the operation or maintenance of the Facility, and other taxes attributable to the Facility or interests in land associated with the Facility. Buyer shall pay or cause to be paid all Regulatory Charges on or with respect to the Products being delivered to Buyer hereunder after delivery thereof in accordance with this Agreement (other than ad valorem, franchise or income taxes related to the sale of the Products, which shall be the responsibility of Seller). In the event a Party is required by Law to pay Regulatory Charges which are the other Party's responsibility hereunder: (a) the Party that is assessed such Regulatory Charges shall notify the Party responsible for payment (which notice shall include supporting documentation) of such assessment; (b) the assessed Party shall timely pay such Regulatory Charges; and (c) the responsible Party shall reimburse the assessed Party in full no later than the next Monthly Settlement Date, with interest at the Interest Rate from and including the date on which the assessed Party paid such Regulatory Charges until (but excluding) the date on which the responsible Party reimburses the assessed Party. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Regulatory Charges from which it is exempt under the Law; *provided, however*, that an exempt Party shall bear the responsibility of proving upon request its exemption as necessary to avoid the unjust imposition of Regulatory Charges on the other Party.

ARTICLE 10.
INDEMNIFICATION

10.1 Seller's Indemnification. Seller shall indemnify, hold harmless and defend Buyer, its Affiliates and their respective officers, directors, employees, agents, contractors, subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Buyer's Indemnitees") from and against any and all claims, liabilities, costs, losses, damages and expenses, including reasonable attorney and expert fees and disbursements, actually incurred for: (a) damage to property or injury to, or death of, any person; and (b) any penalties or fines imposed by Governmental Authorities, in any such case to the extent directly caused by the gross negligence or willful misconduct of Seller and/or its officers, directors, employees, agents, contractors, subcontractors or invitees, and arising out of, or connected with, Seller's performance under this Agreement, Seller's exercise of rights under this Agreement or Seller's breach of this Agreement.

10.2 Buyer's Indemnification. Buyer shall indemnify, hold harmless and defend Seller, its Affiliates and their respective officers, directors, employees, agents, contractors,

subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Seller's Indemnitees") from and against any and all claims, liabilities, costs, losses, damages and expenses, including reasonable attorney and expert fees and disbursements, actually incurred for: (a) damage to property or injury to, or death of, any person; and (b) any penalties or fines imposed by Governmental Authorities, in any such case to the extent directly caused by the gross negligence or willful misconduct of Buyer and/or its officers, directors, employees, agents, contractors, subcontractors or invitees arising out of or connected with Buyer's performance under this Agreement, Buyer's exercise of rights under this Agreement or Buyer's breach of this Agreement.

10.3 Defense of Indemnified Claims.

(a) Within a reasonable time after receipt by a Person (the "Indemnified Person") of any claim as to which the indemnification provided for in Section 10.1 [Seller's Indemnification] or 10.2 [Buyer's Indemnification] may apply, such Indemnified Person shall notify the indemnifying Party (the "Indemnifying Party") in writing of such fact; *provided, however*, that delay in notifying the Indemnifying Party shall not relieve such Indemnifying Party of its indemnification obligations except to the extent that it is materially prejudiced by such delay.

(b) The Indemnifying Party shall diligently, competently and in good faith control and conduct the defense, with counsel reasonably satisfactory to the Indemnified Person, of any claim as to which the indemnification provided for in Section 10.1 [Seller's Indemnification] or 10.2 [Buyer's Indemnification] applies; *provided, however*, that the Indemnifying Party may not settle or compromise any such claim without the Indemnified Person's consent, unless the terms of such settlement or compromise unconditionally release the Indemnified Person(s) from any and all liability with respect thereto and do not impose any obligations on any Indemnified Person.

(c) An Indemnified Person shall have the right, at its option (but not the obligation), to be represented by advisory counsel of its own selection and at its own expense and to monitor the progress and handling of an indemnified claim. An Indemnified Person shall also have the right, at its option (but not the obligation), to assume the defense of any such claim with counsel of its own choosing at its sole cost and expense; *provided, however*, that an Indemnified Person shall have the right to assume the defense of, and to settle or compromise, any such indemnified claim at the Indemnifying Party's expense if: (i) the Indemnifying Party fails to acknowledge, in writing, its responsibility to assume the defense of such claim; (ii) the Indemnifying Party fails to diligently, competently and in good faith control and conduct the defense of such claim with counsel reasonably satisfactory to the Indemnified Person; (iii) there is an apparent conflict of interest between the Indemnifying Party and the Indemnified Person with respect to such claim; or (iv) such Indemnified Person shall have reasonably concluded that there are legal defenses available to it which

are different from, additional to, or inconsistent with, those available to the Indemnifying Party.

(d) The Indemnifying Party's obligations to indemnify, defend and hold each Indemnified Person harmless shall not be reduced or limited by reason of any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party or any of its subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 11.
FORCE MAJEURE EVENTS

11.1 Excused Performance. Notwithstanding anything in this Agreement to the contrary, a Party shall be excused from performing its obligations under this Agreement (other than the obligation to make payments when due) and shall not be liable for damages due to its failure to perform such obligations during any period that such Party is unable to perform due to a Force Majeure Event; *provided*, *however*, that the Party claiming a Force Majeure Event shall (a) have the burden of proving the existence and consequences of such Force Majeure Event; and (b) act expeditiously to resume performance. The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by the Force Majeure Event.

11.2 Notification. A Party unable to perform under this Agreement due to a Force Majeure Event shall: (a) provide prompt written notice of such Force Majeure Event to the other Party (in no event later than ten (10) days after the Party has knowledge, or should have reasonably known, of the occurrence of the Force Majeure Event), which notice shall include a description of the Force Majeure Event and its effect on performance under this Agreement, and an estimate of the expected duration of such Party's inability to perform due to the Force Majeure Event; and (b) provide prompt notice to the other Party when performance resumes.

11.3 No Extension of Term. In no event will any delay or failure of performance caused by any Force Majeure Event extend this Agreement beyond the Services Term.

11.4 Right to Terminate. In the event that any delay or failure of performance caused by a Force Majeure Event continues for an uninterrupted period of one hundred eighty (180) days or longer, the Party not claiming the Force Majeure Event may, upon not less than thirty (30) days' advance written notice, terminate this Agreement without liability to the other Party.

ARTICLE 12.
EVENTS OF DEFAULT; REMEDIES

12.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any undisputed payment required to be made pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice thereof is received;

(b) any representation or warranty made by such Party herein shall be false in any material respect and shall remain uncured for a period of thirty (30) days after written notice thereof is received; *provided* that if such Party cannot cure the default within thirty (30) days in spite of a diligent, good faith effort to do so, then such Party shall have a longer cure period not to exceed ninety (90) days in the aggregate to effect such cure;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) days after written notice thereof is received; *provided* that if such Party cannot cure the default within thirty (30) days in spite of a diligent, good faith effort to do so, then such Party shall have a longer cure period not to exceed one hundred twenty (120) days in the aggregate to effect such cure;

(d) such Party becomes Bankrupt;

(e) such Party assigns this Agreement or any rights, interests or obligations hereunder without the prior written consent of the other Party when such consent is required; and

(f) any Permit necessary for a Party to be able to perform as contemplated by this Agreement is not received, expires or is revoked or suspended and is not renewed or reinstated within a reasonable period following the expiration, revocation or suspension thereof, by reason of the action or inaction of such Party and such expiration, revocation or suspension creates a material adverse impact on the other Party.

12.2 Additional Seller Events of Default. Any of the following events shall constitute an Event of Default of Seller:

(a) the failure by Seller to achieve the Initial Delivery Date no later than one hundred eighty (180) days after the Guaranteed Initial Delivery Date, including any extensions for Force Majeure Events;

(b) the failure by Seller to deliver to Buyer in accordance with this Agreement any Products required to be delivered hereunder or the delivery or sale of any such Products to any Person other than Buyer if not expressly permitted under this Agreement;

(c) PJM shall have declared such Party to be in default of any provision of the PJM Agreements if such default is not remedied within thirty (30) days after the declaration is made;

(d) the failure by Seller to provide a Guaranty or other Performance Assurance, as required by Article 14 [Credit and Collateral Requirements];

(e) the failure by Seller to comply with Section 6.7 [PJM Membership] or 6.8 [Market-Based Rate Authority] if such failure is not remedied as soon as practicable (and no more than thirty (30) days) after Seller becomes aware of such failure;

(f) the failure by Seller to obtain and maintain insurance as required under Section 6.17 [Insurance] if such failure is not remedied within five (5) Business Days after written notice thereof is received;

(g) except as permitted by Section 17.10 [Assignment], the transfer by Seller of all or substantially all of its assets to another Person without the prior written consent of Buyer; and

(h) the failure by Seller to maintain the Availability Requirement, as required under Section 6.13 [Facility Guarantees].

12.3 General Remedies. If an Event of Default has occurred and is continuing with respect to a Defaulting Party, the other Party (the "Non-Defaulting Party") shall have the right to (a) suspend performance under this Agreement, and/or (b) exercise any remedies available at law or in equity, including termination of this Agreement. Without limiting the generality of the foregoing, upon a Seller Event of Default, Buyer shall have the right to exercise its remedies under any Guaranty or other Performance Assurance.

12.4 Delay Damages. In the event the Initial Delivery Date does not occur on or prior to the Guaranteed Initial Delivery Date, for each day beginning with the day after the Guaranteed Initial Delivery Date through and including the date on which the Initial Delivery Date occurs, Seller shall pay liquidated damages in the amount of $0.20 per kW of Buyer's Percentage of the Facility Nameplate Rating per day ("Delay Damages"). Delay Damages shall be paid by Seller within thirty (30) days after the end of the month in which the Delay Damages accrue. The Parties acknowledge and agree that (a) calculation of actual damages that Buyer would suffer as a result of a delay in the Initial Delivery Date would be difficult or impossible to ascertain; (b) obtaining an adequate remedy may be difficult; and (c) the amount of Delay Damages constitutes a fair and reasonable approximation of the damages Buyer will incur as a result of delay in the Initial Delivery Date and is not intended as, nor shall it be deemed, a penalty. Subject to Section 14.5 [Calling on Security] and excluding Buyer's right to terminate as a result of a Seller Event of Default under Section 12.2(a) [Additional Seller Events of Default], the rights set forth pursuant to this Section 12.4 shall be Buyer's exclusive remedy for Seller's delay in achieving the Guaranteed Initial Delivery Date.

12.5 Damages on Termination.

(a) Upon a termination of this Agreement by Buyer based on a Seller Event of Default, Buyer shall be entitled to recover the net present value of (a) the replacement cost of Energy and Environmental Attributes supplied from a [*wind*][*solar*] energy generating resource less (b) the cost of Energy and Environmental Attributes that Buyer would have incurred at the Contract

Commented [HW20]: The delay damages appear to pay Pepco the full retail PPA price for undelivered volumes. This should be revised to pay Pepco's "replacement cost" for deficient deliveries, where replacement cost is normally understood to be the difference between the Buyer's cost of acquiring similar supplies less the PPA price, thereby making the Buyer "whole". Note that the damages due under 12.5 (a) are replacement cost less PPA price, which is that commercially reasonable standard. Also note that the Performance Assurance requirements of Schedule 14.2 are approximately $10 per MWh, which is clearly intended as a proxy for the excess cost of replacement.

Commented [AM21R20]: Will these liquidated damage payments be credited to ratepayers who assuredly would be paying losses incurred to the Company? How will these costs be booked by the Company should they occur?

Price, with all Energy delivered to the Delivery Point, during all hours of the Services Term (or the remainder thereof).

(b) Upon a termination of this Agreement by Seller based on a Buyer Event of Default, Seller shall be entitled to recover the net present value of (a) the price of Energy and Environmental Attributes at the Contract Price less (b) the market price of Energy at the Delivery Point and Environmental Attributes supplied from a [*wind*][*solar*] energy generating resource during all hours of the Services Term (or the remainder thereof) under a long-term contract for the Services Term (or the remainder thereof).

(c) All calculations under this Section 12.5 shall be determined in a commercially reasonable manner, and may include reference to one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs, all of which should be calculated for the remaining Services Term and include the value of Environmental Attributes. For the avoidance of doubt, the Non-Defaulting Party shall not be required to enter into a replacement transaction in order to establish the amounts owed under this Agreement.

(d) The Parties acknowledge and agree that: (i) Energy supplied from a [*wind*][*solar*] energy generating resource has an inherent value greater than the value of other forms of Energy; (ii) the inherent value of Energy supplied from a [*wind*][*solar*] energy generating resource is a primary reason Buyer is entering into this Agreement; (iii) in the event of termination of this Agreement based on a Seller Event of Default, Buyer will likely be required to replace the Energy that would have been provided hereunder with Energy supplied from another [*wind*][*solar*] energy generating resource; and (iv) in the event of termination of this Agreement by Seller based on a Buyer Event of Default, Seller will likely sell the Energy that would have been sold hereunder to a Party seeking Energy supplied from a [*wind*][*solar*] energy generating resource.

Commented [HW22]: This is an unusual contract clause that does not appear to expand or limit the damages specified in paragraphs (a), (b) and (c) of this section. DOEE requests that Pepco provide an explanation of its value and necessity.

12.6 Right of First Offer. If Seller or any Seller Affiliate seeks to enter into an agreement to sell any of the Energy or Environmental Attributes generated by a [wind][solar] energy generating project on the approximate location of the Facility at any time after the Agreement has been terminated by Buyer due to a Seller Event of Default, or pursuant to Sections 2.3 or 11.4, but prior to one hundred eighty days after such termination, Buyer shall have a right of first offer for any proposed sale of Energy or Environmental Attributes (or both) by Seller or Seller Affiliate. Buyer shall have thirty (30) days to submit a purchase offer after its receipt of written notice from Seller of the intention of Seller (or an Affiliate of Seller) to seek to enter into an agreement for any such Energy or Environmental Attributes and Seller and its Affiliates shall negotiate a purchase agreement with Buyer in good faith. If no agreement is executed within forty-five (45) days

following Buyer's delivery to Seller of such purchase offer, Seller and its Affiliates may negotiate with third parties for the sale of such Energy or Environmental Attributes; *provided, however*, such agreement may not be on terms more favorable to the new buyer than the terms set forth in Buyer's proposed purchase offer.

Commented [HW23]: This is an unusual contract clause. DOEE requests that Pepco provide an explanation of its value and necessity.

12.7 Cumulative Remedies. The remedies provided for in this Article 12 shall be without prejudice and in addition to any right of set-off, combination of accounts, Lien or other right to which any Party is at any time otherwise entitled (whether by operation of Law, contract or otherwise).

12.8 Facility Lender's Right to Cure. In connection with any financing or refinancing of the Facility by Seller, Buyer shall use good faith efforts to work with Seller and the Facility Lender to agree upon a Financing Assignment of this Agreement, including with respect to: (i) Buyer's notice of any Seller Event of Default to such Facility Lender; and (ii) Buyer's acceptance of a cure of any Seller Event of Default by the Facility Lender, so long as the cure is accomplished within the applicable cure periods set forth in this Agreement or the Financing Assignment.

12.9 Exclusion of Consequential Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE, PROVIDED THAT THE FOREGOING EXCLUSION SHALL NOT PRECLUDE RECOVERY BY A PARTY OF ANY LIQUIDATED DAMAGES EXPRESSLY PROVIDED HEREIN, NOR SHALL IT BE CONSTRUED TO LIMIT RECOVERY BY AN INDEMNIFIED PERSON UNDER ANY INDEMNITY PROVISION IN RESPECT OF A THIRD PARTY CLAIM OR WITH RESPECT TO THE GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT OF A PARTY.

12.10 Liquidated Damages. The Parties acknowledge and agree that: (a) Buyer shall be damaged by Seller's failure to meet its obligations as specified in Sections 2.3 [Early Termination for Failure to Issue Construction Notice to Proceed], 6.13 [Facility Guarantees] and 12.4 [Delay Damages]; (b) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom; (c) any sums that would be creditable or payable under those sections are in the nature of liquidated damages, and not a penalty, and are fair and reasonable; and (d) each payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from each such failure.

ARTICLE 13.
DISPUTE RESOLUTION

13.1 Informal Dispute Resolution. Before initiating legal action pursuant to Section 13.2 [Formal Dispute Resolution], a Party aggrieved by a dispute hereunder shall provide written notice to the other Party setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. The Parties shall use good faith and reasonable commercial efforts to informally resolve such dispute. Such efforts shall last for a period of at least thirty (30) days from the date that the notice of the dispute is first delivered from one Party to the other Party. Any amounts

determined to be owed as a result of informal dispute resolution pursuant to this Section 13.1 shall be paid within three (3) Business Days of such resolution.

13.2 Formal Dispute Resolution. After the requirements of Section 13.1 [Informal Dispute Resolution] have been satisfied, either Party may initiate legal action in accordance with Sections 17.11 [Governing Law] and 17.13 [Jurisdiction and Venue].

ARTICLE 14.
CREDIT AND COLLATERAL REQUIREMENTS

14.1 Credit Support. If Seller (or Seller's Guarantor, if any) is rated at or above Investment Grade and provides a Guaranty, Seller shall have no requirement to provide Performance Assurance. If during the Contract Term, Seller (or Seller's Guarantor, if any) is no longer rated at or above Investment Grade, Seller must post, within five (5) Business Days, Performance Assurance equal to the Performance Assurance Amount.

14.2 Grant of Security Interest. To secure its obligations under this Agreement, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of set-off against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer, *provided*, *however*, that such interest may be junior to an interest granted by Seller in such collateral or proceeds for purposes of financing the development, construction or operation of the Facility. Seller agrees to take such action as reasonably required to perfect in favor of Buyer such security interest in, and lien on (and right of set-off against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Commented [HW24]: This is an unusual contract clause. DOEE requests that Pepco provide an explanation of its value and necessity.

14.3 Remedies. Upon or any time after the occurrence of an Event of Default caused by Seller, Buyer may do any one or more of the following: (i) exercise any of the rights and remedies of Buyer with respect to all collateral, including any such rights and remedies under Law then in effect; (ii) exercise its rights of set-off against any and all property of Seller in the possession of Buyer, whether held in connection with this Agreement or any other agreement(s) between Buyer and Seller for the provision of Energy or Environmental Attributes; (iii) draw on any outstanding Performance Assurance or Guaranty issued for Buyer's benefit; and (iv) liquidate all collateral security held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral security realized upon the exercise of such rights or remedies to reduce Seller's obligation under this Agreement or any other agreement(s) between Buyer and Seller for the provision of Energy or Environmental Attributes (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

14.4 Forms of Performance Assurance. At Seller's choice, the following are deemed to be acceptable methods for posting Performance Assurance, if required:

(a) Cash. Buyer shall not be entitled to hold Performance Assurance in the form of cash; rather, Performance Assurance in the form of cash shall be held in any major U.S. commercial bank, or a foreign bank with a U.S.

branch office, and that has assets of at least $10 billion dollars ($10,000,000,000.00) and a Credit Rating of at least "A" by S&P or "A2" by Moody's ("Qualified Institution"). Buyer will pay to Seller on the first Business Day of each calendar quarter the amount of interest it receives based upon the applicable overnight repurchase interest rate from the Qualified Institution on any Performance Assurance in the form of cash posted by Seller.

(b) Letter of Credit. A Letter of Credit shall state that it shall renew automatically for successive one year periods unless Buyer receives written notice from the issuing financial institution at least ninety (90) days prior to the expiration date stated in the Letter of Credit that the issuing financial institution elects not to extend the Letter of Credit. If Buyer receives notice from the issuing financial institution that the Letter of Credit will not be extended, Seller will be required to provide a substitute Letter of Credit from an alternative bank or financial institution. The receipt of the substitute Letter of Credit must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least ten (10) Business Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit as required herein, then Buyer will have the right to draw on the expiring Letter of Credit and to hold the amount as collateral. Seller shall have the right to amend its Letter of Credit to reflect any reduction of Performance Assurance under this Agreement.

14.5 Calling on Security. Buyer may call upon any Guaranty or the Performance Assurance posted by Seller if Seller fails to pay amounts due to Buyer pursuant to this Agreement, including any damages that may be due hereunder, or any other agreement(s) between Buyer and Seller for the provision of Energy and Environmental Attributes after written notice of default is provided to Seller and any applicable cure period set forth in this Agreement ends. Within thirty (30) days of the Facility Commercial Operation Date, Seller shall replenish the Performance Assurance to the extent reduced by the amount of any draws prior to the Facility Commercial Operation Date and thereafter shall have no obligation to replenish the Performance Assurance.

14.6 Release of Security. Promptly following the end of the Contract Term or the earlier termination of this Agreement and the satisfaction of all of Seller's obligations hereunder, Buyer shall promptly release any Performance Assurance held by it to Seller.

14.7 No Limit of Liability. Except to the extent expressly stated in this Agreement, the required amounts of any cash or Letters of Credit shall not be deemed to be a limitation of Seller's liability.

ARTICLE 15.
REPRESENTATIONS AND WARRANTIES

15.1 Representations and Warranties. Each Party hereby represents and warrants to the other Party as of the Effective Date that:

(a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to transact business in each jurisdiction in which its operations or the ownership of its properties require it to be qualified;

(b) it has all Permits necessary for it to legally perform its obligations under this Agreement except: (i) in the case of Buyer, PSC Approval; and (ii) in the case of Seller, those Permits identified on Schedule 15.1, each of which Seller anticipates will be obtained by Seller in the ordinary course of its development and construction of the Facility;

(c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation or order applicable to it, the violation of which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement;

(d) it has full power and authority to carry on its business as now conducted and to enter into, and carry out its obligations under, this Agreement;

(e) the execution and delivery of this Agreement and performance or compliance with any provision hereof will not result in the creation or imposition of any Lien upon its properties (except as expressly contemplated in favor of Buyer pursuant to this Agreement), the creation or imposition of which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement;

(f) this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency or other similar laws relating to or affecting the enforcement of creditors' rights generally and general equitable principles (regardless of whether such enforceability is considered in a proceeding at law or in equity);

(g) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(h) there are no pending or, to its knowledge threatened actions, suits or proceedings against it or any of its Affiliates before any court or

Governmental Authority that could reasonably be expected to materially adversely affect its ability to perform its obligations under this Agreement;

(i) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance will occur as a result of its entering into or performing its obligations under this Agreement; and

(j) it is not relying upon the advice or recommendations of the other Party in entering into this Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of this Agreement and its rights and obligations hereunder, and the other Party is not acting as a fiduciary for or advisor to it in respect of this Agreement.

15.2 Disclaimer of Implied Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, THERE ARE NO WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

ARTICLE 16.
CONFIDENTIALITY

16.1 Non-Disclosure of Confidential Information. Neither Party (a "Receiving Party") shall disclose any Confidential Information of the other Party (the "Disclosing Party") obtained pursuant to, or in connection with, the execution or performance of this Agreement to any Person other than an officer, director, employee, agent, lender, equity investor, representative or consultant of the Receiving Party without the express prior written consent of the Disclosing Party.

16.2 Designation of Confidential Information. A Party seeking to classify any material as Confidential Information must specifically designate such material as confidential prior to disclosing it to the Receiving Party. A Disclosing Party may not seek confidential treatment of any material unless such material was designated as confidential at the time of disclosure to the Receiving Party.

16.3 Disclosure to DCPSC. The Parties acknowledge and understand that all or portions of this Agreement may be made public by the DCPSC in connection with the DCPSC's review of this Agreement. The Parties further acknowledge that materials deemed confidential may be provided to the DCPSC at any time. The Parties shall use reasonable efforts in cooperation with each other to seek confidential treatment of any portion of this Agreement, consistent with the provisions of this Article 16.

16.4 Other Permitted Disclosures. Notwithstanding Section 16.1 [Non-Disclosure of Confidential Information], either Party may:

(a) produce Confidential Information in response to a subpoena, discovery request or other compulsory process issued by a Governmental Authority upon reasonable prior notice to the Disclosing Party; *provided*, *however*, that prior to such disclosure the Receiving Party must use reasonable efforts

in cooperation with the Disclosing Party to seek confidential treatment of such Confidential Information;

(b) disclose whatever information FERC requires it to disclose in connection with the filing of quarterly or annual reports and may make such disclosure without notification to the Disclosing Party; and/or

(c) disclose Confidential Information to its Affiliates and their officers, directors, employees, agents, lenders, equity investors, representatives and consultants; *provided*, *however*, that such Affiliates, officers, directors, employees, agents, lenders, equity investors, representatives and consultants must be bound by the confidentiality obligations set forth in this Article 16; *and provided further*, that in no event shall a document or information be disclosed in violation of the FERC Code of Conduct or Standards of Conduct requirements.

16.5 Audits. Any independent auditor performing an audit on behalf of a Party pursuant to Section 17.7 [Audit] shall be required to execute a confidentiality agreement with the Party being audited requiring that any Confidential Information disclosed in connection with such audit be treated as confidential pursuant to this Article 16.

16.6 Equitable Relief. The Parties agree that monetary damages may be inadequate to compensate a Disclosing Party for a Receiving Party's breach of its obligations under this Article 16. Each Receiving Party accordingly agrees that a Disclosing Party shall be entitled to equitable relief, by way of injunction or otherwise, if the Receiving Party breaches or threatens to breach its obligations under this Article 16, which equitable relief shall be granted without bond or proof of damages, and the Receiving Party shall not plead in defense that there would be an adequate remedy at law.

16.7 Survival. The confidentiality provisions of this Article 16 shall survive any termination of this Agreement for a period of three (3) years.

ARTICLE 17.
MISCELLANEOUS

17.1 Notices. Whenever this Agreement requires or permits delivery of a notice or requires a Party to notify the other Party, all notices, requests, statements or payments shall be made to the Parties in writing using the contact information set out in Schedule 17.1, as updated from time to time by each Party by providing written notice to the other Party. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is sent by facsimile (and confirmed) or hand delivered. Notice by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt. Notices sent by electronic messaging system will be deemed received on the date the electronic message is received (it being agreed that the burden of proving receipt will be on the sender and will not be met by automatic out-of-office or similar replies).

17.2 Joint Preparation. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, negotiation or drafting hereof.

17.3 No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party to this Agreement. This Agreement shall not impart any rights enforceable by any Person other than a Party or a permitted successor or assignee thereof.

17.4 Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

17.5 Headings. The headings used in this Agreement are for convenience and reference purposes only and shall have no bearing on the interpretation hereof.

17.6 Records. Each Party shall keep and maintain all books and records as may be necessary or useful in performing or verifying any calculations made pursuant to this Agreement or in verifying such Party's performance hereunder, including operating logs, Facility output data, meter readings and financial records, all in accordance with Good Utility Practice. Each Party shall provide such books and records to the other Party within fifteen (15) days of a written request for such information. All records shall be retained by each Party for at least three (3) years following the year in which such records were created.

17.7 Audit. Each Party shall have the right, upon at least three (3) Business Days' prior written notice, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement, including records necessary to verify that Buyer has received and is receiving Buyer's Percentage of Products produced by the Facility. If any such examination reveals any inaccuracy in any Invoice, the necessary adjustments in such Invoice and the payments thereof will be made in accordance with Sections 8.1 [Price for Energy and RECs] and 8.6 [Billing Disputes].

17.8 Successors. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

17.9 No Dedication. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's property or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent Person.

17.10 Assignment.

(a) Neither Party shall assign this Agreement or delegate its rights or obligations hereunder without the prior written consent of the other Party; *provided*, *however*, that:

(i) a Party may collaterally assign this Agreement or any accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; and

(ii) a Party may transfer or assign this Agreement to any Person whose creditworthiness ~~is equal to or higher than that of the transferring~~meets the minimum credit standards of BBB+/Baa1 ~~Party~~, *provided*, *however*, that in the case of an assignment by Seller, the assignee must also own substantially all of the assets of the Facility necessary to perform Seller's obligations under this Agreement.

Commented [HW25]: This wording should be adjusted to permit transfers to a Party meeting the minimum requirement of BBB+/Baa1. The initial project owner should not be limited in transferring ownership to another party on account of the initial project owner's strong credit rating.

(b) Any consent required by Section 17.10(a) shall not be unreasonably withheld, conditioned or delayed; *provided*, *however*, that neither Party shall be required to consent to any assignment or transfer that would require it to accept any limitation of its rights under this Agreement or expansion of the liability, risks or obligations imposed on it under this Agreement.

(c) It shall be a condition of any assignment, transfer, delegation or other disposition of this Agreement that: (a) all Letters of Credit and Guaranties required pursuant to Article 14 [Security] shall remain in place in favor of Buyer notwithstanding such assignment, transfer, delegation or disposition; or (b) replacement Letters of Credit and Guaranties in form and substance acceptable to Buyer shall have been provided prior to such assignment, transfer, delegation or disposition.

17.11 Governing Law. This Agreement and the rights and obligations of the Parties shall be governed by and construed, enforced and performed in accordance with the laws of the District of Columbia, without regard to principles of conflicts of law, or, if and to the extent applicable, federal law.

17.12 No Partnership or Joint Venture. This Agreement is not intended to create, nor shall it be construed to create, any partnership or joint venture relationship between Buyer and Seller, and neither Party hereto shall have the power to bind or obligate the other Party. Neither Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise. Each Party retains full control over the employment, direction, compensation and discharge of its employees, and will be solely responsible for all compensation of such employees, including social security, withholding and worker's compensation responsibilities.

17.13 Jurisdiction and Venue. Except for matters subject to the exclusive or primary jurisdiction of FERC, the DCPSC or the appellate courts having jurisdiction over the DCPSC or FERC matters, all disputes hereunder shall be resolved in the federal or state courts of the District of Columbia. Each Party hereby irrevocably submits to the *in personam* jurisdiction of such courts for such purpose. Each Party hereby waives its respective rights to any jury trial with respect to any litigation arising under or in connection with this Agreement.

17.14 Amendments and Future Treatment. Each Party agrees that it will not assert or defend itself on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not be amended, modified, terminated, discharged or supplemented, nor shall any provision hereof be waived, unless mutually agreed, in writing, by the Parties. Furthermore, the Parties expressly agree that no amendment of this Agreement that imposes costs for which Buyer may seek recovery from its ratepayers shall be enforceable absent specific DCPSC approval of such amendment and Buyer's right to recover such costs through its rates. The rates, terms and conditions contained in this Agreement are not subject to change under Section 205 or 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of the Parties to the proposed change, the standard of review for any avoidance, breach, rejection, termination or other cessation of performance of, or changes to, any portion of this Agreement over which FERC has jurisdiction, whether proposed by a Party, a non-Party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as such standard may be subsequently clarified by the Supreme Court of the United States or inferior courts.

17.15 Modification of PJM Agreements. Notwithstanding Section 1.2(h) [Interpretation]: (a) if the PJM Agreements are amended or modified so that any Schedule or Section reference herein to such agreement is changed, such Schedule or Section reference shall be deemed to automatically (and without any action by the Parties) refer to the new or successive Schedule or Section in such PJM Agreement that replaces the provision originally referred to in this Agreement; and (b) if any provision of any of the PJM Agreements referenced herein, or any other PJM rule relating to the implementation of this Agreement, is changed materially from that in effect on the Effective Date, both Parties shall cooperate to make conforming changes to this Agreement to fulfill the purposes of this Agreement; *provided*, *however*, that neither Party shall be obligated to agree to any change that diminishes the benefits of this Agreement to such Party.

17.16 Bankruptcy Considerations. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code and that each of Seller and Buyer is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

Commented [HW26]: The operation of the PPA under bankruptcy is a complex legal and accounting matter. While DOEE is not in position to analyze those implications, DOEE's consultant observes that this clause, by itself, is likely not strong enough to support this contract being a "forward contract", if indeed Pepco is trying to achieve that interpretation

17.17 Delay and Waiver. Except as otherwise provided in this Agreement, no delay or omission to exercise any right, power or remedy accruing to a Party upon any breach or default by the other Party shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement, and any waiver of any provision or condition of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing.

17.18 Further Assurances. Each Party shall deliver or cause to be delivered to the other Party such instruments, documents, statements, certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested.

17.19 Entire Agreement. This Agreement, including the Exhibits and Schedules hereto, embodies the entire agreement and understanding of the Parties in respect of the subject matter hereof. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the matters contemplated by this Agreement.

17.20 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. The Parties agree that the Agreement may be executed by electronic signature.

17.21 Obligation of Good Faith. In carrying out its rights, obligations and duties under this Agreement, each Party shall act reasonably and in accordance with the principles of good faith and fair dealing.

[*remainder of page intentionally left blank*]

IN WITNESS WHEREOF, this Agreement is executed by the respective Parties on the dates set forth below and shall be effective as of the date first written above.

Seller	**Buyer**
By: _____	**By:** _____
Name: _____	**Name**: _____
Title: _____	**Title:** _____

EXHIBIT A

FACILITY DESCRIPTION

EXHIBIT B

DELIVERY POINT

SCHEDULE 6.1

MILESTONE SCHEDULE

[additional details to be supplied]

Milestone	**Expected Completion Date**
Construction Notice to Proceed	[•]
[additional milestones to be specified by Seller]	
Substantial Completion	[•]
Commercial Operation	[•]

SCHEDULE 6.13

AVAILABILITY CALCULATIONS

1. Availability Damages. For any Period in which Seller does not maintain the Guaranteed Availability Percentage, Seller shall pay to Buyer liquidated damages ("Availability Damages") in an amount equal to (a) the Contract Price multiplied by (b) the Guaranteed Availability Percentage minus the Availability Percentage for such Period, multiplied by (c) the Delivered Energy for such Period divided by the Availability Percentage, multiplied by the Guaranteed Availability Percentage; *provided however*, that the first determination of the Availability Percentage of the Facility shall be calculated twenty-four (24) months after the Initial Delivery Date (the "First Availability Calculation Date"). Commencing on the First Availability Calculation Date (or the first Business Day thereafter) and continuing on or before the fifteenth (15th) day of each Period (or the first Business Day thereafter) thereafter during the Services Term, Seller shall provide Buyer with the Availability Percentage calculated for the preceding Period along with any supporting documentation reasonably required for Buyer to independently confirm Seller's Availability Percentage calculation.

2. Availability Requirement. Seller shall maintain an Availability Percentage equal to or greater than the average of the Guaranteed Availability Percentage over two Periods (as defined below) (the "Availability Requirement").

3. Definitions.

The Availability Percentage of the Facility shall be calculated as follows:

$$AP = 100 * \sum \text{(of all Units)} [(AH - TOH) / AH] * UWP$$

Where:

AH = Available Hours

AP = Availability Percentage

TOH = Total Outage Hours

UWP = Unit Weighted Percentage

For purposes of this Schedule 6.13, the following capitalized terms shall be defined as follows. Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

"Availability Damages" shall have the meaning set forth in Section 1 of this Schedule 6.13.

"Available Hours" means the result of the Total Period Hours less the Force Majeure Event Hours.

Commented [HW27]: DOEE notes that its consultant, CRI, had been asked during the working group phase of this proceeding, to provide suggestions on Project Availability language. CRI provided those suggestions in a memo the working group dated July 12, 2019, and a number of those suggestions are reflected in the PPA language. This calculation in 6.13 as currently written, however, implies that the Seller must pay the Buyer the full Contract Price times any deficiency in delivered volumes due to lower than required availability. This should be revised to cover any premium above the PPA price that Pepco experiences in replacing deficient deliveries. This is the common contractual meaning of "replacement costs" and actual damages. Note that the damages due under 12.5 (a) are replacement cost less PPA price, which is commercially reasonable. Also note that the Performance Assurance requirements of Schedule 14.2 are approximately $10 per MWh which is clearly derived from a notion of a premium that may be experienced in replacing volumes.

"Equivalent Forced Outage Hours" means the total number of equivalent hours in a Period that represents an immediate reduction in output or capacity or removal from service, in whole or in part, of a Unit by reason of an emergency or threatened emergency, unanticipated failure or other cause beyond the control of Seller; *provided*, *however*, that any Force Majeure Event Hours shall not be counted as Equivalent Forced Outage Hours. Neither (a) a reduction in output or removal from service of a Unit or the Facility in response to changes in market conditions nor (b) a reduction by Seller brought about by any Instructed Operation shall constitute Equivalent Forced Outage Hours.

"Equivalent Maintenance Outage Hours" means the total number of equivalent hours in a Period that represents the scheduled removal from service, in whole or in part, of a Unit in order to perform necessary repairs on specific components of the Unit.

"Equivalent Planned Outage Hours" means the total number of equivalent hours in a Period that represents the scheduled removal from service, in whole or in part, of a Unit for inspection, maintenance or repair.

"First Availability Calculation Date" shall have the meaning set forth above in Section 1 of this Schedule 6.13.

"Force Majeure Event Hours" means the total number of hours in a Period during which either Seller or Buyer has declared a Force Majeure Event for one or more Units. Force Majeure Event Hours shall include the hours during which one or more Units is not operating due to a Serial Defect.

"Guaranteed Availability Percentage" shall mean ninety percent (90%).

"Period" means the immediately preceding period of twelve (12) consecutive months for which the Availability Percentage is being calculated.

"Serial Defect" shall mean a manufacturing, material or design defect of a substantially identical nature that has occurred to fifteen percent (15%) or more of the Units of the Facility.

"Total Outage Hours" means the sum of Equivalent Forced Outage Hours, Equivalent Maintenance Outage Hours and Equivalent Planned Outage Hours for a Period.

"Total Period Hours" means the total number of hours in a Period.

"Unit" means each [wind turbine][solar] generation unit forming a part of the Facility, as described in Exhibit A.

"Unit Weighted Percentage" means, for each Unit, the portion of the Facility Nameplate Rating represented by the nameplate rating of such Unit, expressed as a percentage.

[***additions for solar***]

"Guaranteed Availability Percentage" shall mean the amounts set forth in the following table for the applicable Contract Year in the Services Term.

Contract Year	Guaranteed Availability Percentage
1	90%
2	95%
3	95%
4	95%
5	95%
6	95%
7	95%
8	95%
9	95%
10	95%
11	95%
12	95%
13	95%
14	95%
15	95%
16	95%
17	95%
18	95%
19	95%
20	95%

For purposes of all calculations under this Schedule 6.13, hours shall be those hours in which the plane of array irradiance conditions are 50 W/m2 or greater. Data will be collected as hourly averages for all installed plane of array sensors at the Facility.

SCHEDULE 8.1

CONTRACT PRICE

SCHEDULE 14.1

FORM OF LETTER OF CREDIT

Irrevocable Letter of Credit No.: _____

Issue Date: _____

Expiry Date: _____ (the "Expiry Date")

Beneficiary: Potomac Electric Power Company ("Beneficiary")
c/o Pepco Holdings, Inc.
701 Ninth St., NW
Washington, DC 20068

Amount: US$ _____

We hereby issue in your favor our Irrevocable Letter of Credit No: _____ (the "Letter of Credit") for the account of _____ ("Applicant") for an amount or amounts not to exceed in the aggregate _____ Dollars (US$_____) available by your draft(s) at sight on the bank of _____ ("Issuer") located at _____ [ADDRESS], effective _____ [DATE] and initially expiring at our counters on _____ [DATE] or any automatically extended expiry date, as provided herein (the "Expiry Date"). This Letter of Credit is available in one or more drafts up to the aggregate amount set forth herein.

This Letter of Credit is presentable and payable at our counters, and we hereby engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be honored on presentation if accompanied by the required documents pursuant to the terms of this Letter of Credit.

The below mentioned document(s) must be presented on or before the Expiry Date of this Letter of Credit in accordance with the terms and conditions of this Letter of Credit.

1. Your signed and dated certification by an authorized officer, reading as follows:

   "The amount of this drawing, US$ [AMOUNT], being made under the bank of _____ [ISSUER NAME], Letter of Credit number _____, represents an amount due and payable to Beneficiary from Applicant or an affiliate of Applicant pursuant to Section _____ of the Renewable Energy Purchase Agreement dated as of _____ between Beneficiary and _____."

2. The original of this Letter of Credit and any amendments.

If presentation of any drawing is made on a Business Day (as herein defined) and such presentation is made on or before 1:00 pm New York time, Issuer shall satisfy such drawing

request on the next Business Day. If the drawing is received after 1:00 pm New York time, Issuer will satisfy such drawing request on the second following Business Day.

It is a condition of this Letter of Credit that it will be automatically extended without amendment for one year from the initial expiration date hereof, or any future expiration date occurring thereafter, unless at least ninety (90) days prior to any expiration date we notify you at the above address by registered mail, overnight courier, or hand delivered courier that we elect not to consider this Letter of Credit renewed for any such period.

This Letter of Credit may be terminated upon the earlier of (a) Issuer's receipt of Beneficiary's written certification that they have received payment in full of all sums owing to Beneficiary under the Renewable Energy Purchase Agreement dated _____ between Beneficiary and _____, and that Issuer is subsequently authorized to cancel this Letter of Credit; (b) Issuer's receipt of a written release from Beneficiary releasing Issuer from its obligations under this Letter of Credit; or (c) the Expiry Date, or any automatically extended expiry date, provided notice has been given as set forth in the immediately preceding paragraph.

The term "Business Day" as used herein means any day other than a Saturday, a Sunday or a day on which banking institutions located in the City of New York are required or authorized by law to be closed.

Applicant's filing of a bankruptcy, receivership or other debtor-relief petition, and/or Applicant's discharge thereunder, shall in no way affect the liability of Issuer under this Letter of Credit and, notwithstanding any such filing by, or on behalf of, Applicant or any resultant discharge thereunder, Issuer shall remain liable to Beneficiary for the full amount of Issuer's obligations herein to Beneficiary, not to exceed the available undrawn amount of this Letter of Credit.

Additional terms and conditions:

1. All commissions and other banking charges will be borne by Applicant.

2. This Letter of Credit may not be transferred or assigned.

3. This Letter of Credit is irrevocable.

4. This Letter of Credit is subject to the International Standby Practices of the International Chamber of Commerce Publication No. 590 ("ISP98") or such later revision(s) of ISP98 as may be hereafter adopted. As to matters not governed by ISP98, this Letter of Credit shall be governed by, and construed in accordance with, the laws of the State of New York, including, to the extent not inconsistent with ISP98, the Uniform Commercial Code as in effect in the State of New York. This Letter of Credit may not be amended, changed or modified without the express written consent of Beneficiary and Issuer.

5. This Letter of Credit is irrevocable and any rights granted to Beneficiary hereunder cannot be deemed to be waived, modified or revoked prior to its expiration without the prior written consent of Beneficiary.

6. A failure to make any partial drawings at any time shall not impair or reduce the availability of this Letter of Credit in any subsequent period or our obligation to honor your subsequent demands for payment made in accordance with the terms of this Letter of Credit, as long as the combined amount of all partial drawings does not exceed the aggregate amount of this Letter of Credit.

Authorized Signature:

_____
[NAME AND TITLE]

SCHEDULE 14.2

PERFORMANCE ASSURANCE AMOUNTS[1]

The amount of Performance Assurance during the Contract Term shall be equal to the dollar amount specified in the following table for the number of years and the applicable year of the Services Term:

15-year Services Term:

Beginning of Contract	$23,700,000
14 Years Remaining	$22,200,000
13 Years Remaining	$20,600,000
12 Years Remaining	$19,000,000
11 Years Remaining	$17,400,000
10 Years Remaining	$15,800,000
9 Years Remaining	$14,300,000
8 Years Remaining	$12,700,000
7 Years Remaining	$11,100,000
6 Years Remaining	$9,500,000
5 Years Remaining	$7,900,000
4 Years Remaining	$6,400,000
3 Years Remaining	$4,800,000
2 Years Remaining	$3,200,000
1 Years Remaining	$1,600,000

[1] ***Note: Performance Assurance to be adjusted based on size of contracted project.***

20-year Services Term:

Beginning of Contract	$31,600,000
19 Years Remaining	$30,100,000
18 Years Remaining	$28,500,000
17 Years Remaining	$26,900,000
16 Years Remaining	$25,300,000
15 Years Remaining	$23,700,000
14 Years Remaining	$22,200,000
13 Years Remaining	$20,600,000
12 Years Remaining	$19,000,000
11 Years Remaining	$17,400,000
10 Years Remaining	$15,800,000
9 Years Remaining	$14,300,000
8 Years Remaining	$12,700,000
7 Years Remaining	$11,100,000
6 Years Remaining	$9,500,000
5 Years Remaining	$7,900,000
4 Years Remaining	$6,400,000
3 Years Remaining	$4,800,000
2 Years Remaining	$3,200,000
1 Years Remaining	$1,600,000

SCHEDULE 14.3

FORM OF GUARANTY

THIS GUARANTY AGREEMENT (this "Guaranty") is made and entered into as of this ____ day of _____ 20__, by _____ (the "Guarantor"), with an address at _____, in favor of Potomac Electric Power Company ("Pepco") (the "Creditor"), with an address at 701 Ninth Street NW, Washington DC 20068 in consideration of the Renewable Energy Purchase Agreement (the "REPA") between Pepco and _____ (the "Supplier") dated _____. Guarantor is the _____ of Supplier. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the REPA.

Whereas, Supplier and Guarantor are Affiliates, Guarantor will therefore benefit by Supplier entering into the REPA with Creditor and Guarantor desires Creditor to enter into the REPA with Supplier and to extend credit to Supplier thereunder.

1. Guaranty of Obligations.

(a) The Guarantor hereby irrevocably and unconditionally guarantees, with effect from the date hereof, the prompt and complete payment when due of all of Supplier's payment obligations under the REPA, whether on scheduled payment dates, when due upon demand, upon declaration of termination or otherwise, in accordance with the terms of the REPA and giving effect to any applicable grace period, and all reasonable out-of-pocket costs and expenses incurred by Creditor in the enforcement of the Guarantor's obligations or collection under this Guaranty, including reasonable attorney's fees and expenses (collectively, the "Obligations").

(b) The limitations on liabilities of the Supplier set forth in the REPA shall also apply to the liabilities of the Guarantor hereunder.

2. Nature of Guaranty; Waivers.

(a) This is a guaranty of payment and not of collection and the Creditor shall not be required, as a condition of the Guarantor's liability, to pursue any rights which may be available to it with respect to any other Person who may be liable for the payment of the Obligations. This is not a performance guaranty and the Guarantor is not obligated to provide power under the REPA or this Guaranty.

(b) This Guaranty is an absolute, unconditional, irrevocable (subject to the provisions of Section 12 of this Guaranty) and continuing guaranty and will remain in full force and effect until all of the Obligations have been indefeasibly paid in full, or until the REPA has been terminated, whichever comes later. This Guaranty will not be affected by any surrender, exchange, acceptance, compromise or release by the Creditor of any other party, or any other guaranty or any security held by it for any of the Obligations, by any failure of the Creditor to take any steps to perfect or maintain its lien or security interest in or to preserve its rights to any security or other collateral for any of the Obligations or any guaranty, or by any irregularity, unenforceability or invalidity of any of the Obligations (other than any irregularity, unenforceability or invalidity of any of the obligations under the REPA resulting from the conduct of the Creditor) or any part thereof.

(c) Except as to any claims, defenses, or rights of set-off of Supplier in respect of its obligations under the REPA, all of which are expressly reserved under this Guaranty, the Guarantor's obligations hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim the Guarantor may have against Supplier or the Creditor, including: (i) any change in the corporate existence (including its charter or other governing agreement, Laws, rules, regulations or powers), structure or ownership of Supplier or the Guarantor; (ii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Supplier or its assets; (iii) the invalidity or unenforceability in whole or in part of the REPA; or (iv) any provision of applicable Law or regulations purporting to prohibit payment by Supplier of amounts to be paid by it under the REPA (other than any Law or regulation that eliminates or nullifies the obligations under the REPA).

(d) Guarantor waives notice of acceptance of this Guaranty, diligence, presentment, notice of dishonor and protest and any requirement that at any time any Person exhaust any right to take any action against Supplier or its assets or any other guarantor or Person, provided, however, that any failure of Creditor to give notice will not discharge, alter or diminish in any way Guarantor's obligations under this Guaranty. The Guarantor waives all defenses based on suretyship or impairment of collateral or any other defenses that would constitute a legal or equitable discharge of Guarantor's obligations, except any claims or defenses of Supplier in respect of its obligations under the REPA.

(e) The Creditor at any time and from time to time, without notice to or the consent of the Guarantor, and without impairing or releasing, discharging or modifying the Guarantor's liabilities hereunder, may (i) to the extent permitted by the REPA, change the manner, place, time or terms of payment or performance of, or other terms relating to, any of the Obligations; (ii) to the extent permitted by the REPA, renew, substitute, modify, amend or alter, or grant consents or waivers relating to any of the Obligations, or any other guaranties for any Obligations; (iii) settle, compromise or deal with any other Person, including Supplier, with respect to any Obligations in such manner as the Creditor deems appropriate in its sole discretion; (iv) substitute, exchange or release any security provided pursuant to the REPA; or (v) take such actions and exercise such remedies hereunder as Creditor deems appropriate.

3. Representations and Warranties. The Guarantor hereby represents and warrants that:

(a) it is a _____, duly organized, validly existing and in good standing under the Laws of the jurisdiction of its [formation, organization, incorporation] and has the power and authority to conduct the business in which it is currently engaged and enter into and perform its obligations under this Guaranty;

(b) it has the power and authority and the legal right to execute and deliver, and to perform its obligations under, this Guaranty, and has taken all necessary actions to authorize its execution, delivery and performance of this Guaranty;

(c) this Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms, except as affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting the

enforcement of creditors' rights generally, general equitable principles and an implied covenant of good faith and fair dealing;

(d) the execution, delivery and performance of this Guaranty will not violate any provision of any requirement of Law or contractual obligation of the Guarantor (except to the extent that any such violation would not reasonably be expected to have a material adverse effect on the Guarantor or this Guaranty);

(e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority and no consent of any other Person (including, without limitation, any stockholder, member, equity holder or creditor of the Guarantor) is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty, other than any which have been obtained or made prior to the date hereof and remain in full force and effect; and

(f) no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Guarantor, threatened by or against the Guarantor that would have a material adverse effect on this Guaranty.

4. Repayments or Recovery from the Creditor. If any demand is made at any time upon the Creditor for the repayment or recovery of any amount received by it in payment or on account of any of the Obligations, including but not limited to upon the bankruptcy, insolvency, dissolution or reorganization of the Supplier, and if the Creditor repays all or any part of such amount by reason of any judgment, decree or order of any court or administrative body or by reason of any settlement or compromise of any such demand, the Guarantor (subject to Sections 2 (c) and (d) of this Guaranty) will be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never been received originally by the Creditor. The provisions of this Section will be and remain effective notwithstanding any contrary action which may have been taken by the Guarantor in reliance upon such payment, and any such contrary action so taken will be without prejudice to the Creditor's rights hereunder and will be deemed to have been conditioned upon such payment having become final and irrevocable.

5. Enforceability of Obligations. No modification, limitation or discharge of the Obligations of Supplier arising out of or by virtue of any bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state Law will affect, modify, limit or discharge the Guarantor's liability in any manner whatsoever and this Guaranty will remain and continue in full force and effect and will be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted. The Guarantor waives all rights and benefits which might accrue to it by reason of any such proceeding and will be liable to the full extent hereunder, irrespective of any modification, limitation or discharge of the liability of Supplier that may result from any such proceeding.

6. Subrogation. Guarantor will not exercise any rights which it may acquire by way of subrogation under this Guaranty by any payment made hereunder or otherwise, until all the Obligations guaranteed hereunder have been paid in full or otherwise satisfied. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all the Obligations guaranteed hereunder shall not have been paid in full or otherwise such amount shall

be held in trust for the benefit of the Creditor and shall forthwith be paid to the Creditor to be credited and applied to the Obligations.

7. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to the addresses for the Creditor and the Guarantor set forth below or to such other address as one may give to the other in writing for such purpose:

All communications to Creditor shall be directed to:

Attn:
Phone:
Fax:

With a copy to:

or such other address as the Creditor shall from time to time specify to Guarantor.

All communications to Guarantor shall be directed to:
Attn:
Phone:
Fax:

With a copy to:

or such other address as the Guarantor shall from time to time specify to Creditor.

8. Preservation of Rights. Except as provided by any applicable statute of limitations, no delay or omission on the Creditor's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Creditor's action or inaction impair any such right or power.

9. Illegality. In case any one or more of the provisions contained in this Guaranty should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

10. Amendments. No modification, amendment or waiver of any provision of this Guaranty nor consent to any departure by the Guarantor therefrom, will be effective unless made in a writing signed by the Creditor, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Guarantor in any case will entitle the Guarantor to any other or further notice or demand in the same, similar or other circumstance.

11. Entire Agreement. This Guaranty (including the documents and instruments referred to herein) constitutes the entire agreement between the parties hereto and supersedes all

other prior agreements and understandings, both written and oral, between the Guarantor and the Creditor with respect to the subject matter hereof.

12. Successors and Assigns. This Guaranty is binding upon and inures to the benefit of the Guarantor and the Creditor and their respective successors and permitted assigns. Neither party may assign this Guaranty in whole or in part without the other's prior written consent, which consent will not be unreasonably withheld or delayed, except that: (i) Creditor may at any time assign this Guaranty without Guarantor's consent, in the same manner, on the same terms and to the same Persons as Creditor assigns the REPA in accordance with Section 17.10 of the REPA.

13. Interpretation. In this Guaranty, unless the Creditor and the Guarantor otherwise agree in writing, the singular includes the plural and the plural the singular; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and references to sections or exhibits are to those of this Guaranty unless otherwise indicated. Section headings in this Guaranty are included for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose.

14. Governing Law.

(a) This Guaranty has been delivered to and accepted by the Creditor. THIS GUARANTY WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE CREDITOR AND THE GUARANTOR DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ITS CONFLICT OF LAWS RULES.

(b) The Guarantor hereby irrevocably consents to the non-exclusive jurisdiction of any federal court in the State of New York, but in the event that the Guarantor and the Creditor determine in good faith that jurisdiction does not lay with such court or that such court refuses to exercise jurisdiction or venue over the Guarantor and the Creditor or any claims made pursuant to this Guaranty, then the Guarantor and the Creditor agree to submit to the non-exclusive jurisdiction of the New York state courts; provided that nothing contained in this Guaranty will prevent the Creditor from bringing any action, enforcing any award or judgment or exercising any rights against the Guarantor individually, against any security or against any property of the Guarantor within any other county, state or other foreign or domestic jurisdiction. The Guarantor and the Creditor acknowledge and agree that the venue provided above is the most convenient forum for both the Creditor and the Guarantor. The Guarantor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Guaranty.

15. WAIVER OF JURY TRIAL. THE GUARANTOR AND CREDITOR IRREVOCABLY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS GUARANTY, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS GUARANTY OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE GUARANTOR AND CREDITOR ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

16. Term. This Guaranty shall survive termination of the REPA and remain in full force and effect until all amounts due hereunder, including all of the Obligations, have been indefeasibly paid or performed in full.

17. Stay of Acceleration Ineffective with Respect to Guarantor. If acceleration of the time for payment of any amount payable by Supplier under the REPA is stayed upon the insolvency, bankruptcy or reorganization of Supplier, all such amounts otherwise subject to acceleration or required to be paid upon an early termination pursuant to the terms of the REPA shall nonetheless be payable by the Guarantor hereunder on written demand by Creditor.

18. The Guarantor acknowledges that it has read and understands all of the provisions of this Guaranty, and has been advised by counsel as necessary or appropriate.

[Guarantor]

By:_____
Name:
Title:

SCHEDULE 15.1

SELLER DELAYED PERMITS

Permit	Issuing Agency	Status

SCHEDULE 17.1

NOTICE INFORMATION

Any notices required under this Agreement shall be made as follows (as updated by the Parties from time to time):

Buyer:	Seller:
All Notices: Potomac Electric Power Company C/O Pepco Holdings, Inc. 701 Ninth Street, NW Washington, DC 20068 Attn: E-mail: Facsimile: Duns: Federal Tax ID Number: 51-0084283 **Invoices:** Attn: Phone: E-mail: Facsimile: **With additional Notices of an Event of Default to:** Pepco Holdings, Inc. Attn: General Counsel 701 Ninth St., NW Washington, DC 20068 Phone: E-mail: Facsimile:	**All Notices:** **Invoices:** **Electronic Funds Transfer:** BNK: Fed-ABA: ACH-ABA ACCT Name: ACCT No: **With additional Notices of an Event of Default to:**

Dennis P. Jamouneau
Assistant General Counsel

EP9628
701 Ninth Street NW
Washington, DC 20068-0001

Office 202.872.3034
Fax 202.331.6767
pepco.com
djamouneau@pepcoholdings.com

May 21, 2020

Ms. Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission
of the District of Columbia
1325 G Street N.W., Suite 800
Washington, DC 20005

Re: Formal Case No. 1017

Dear Ms. Westbrook-Sedgwick:

Enclosed please find drafts of the Request for Proposal and Renewable Energy Purchase Agreement, as directed by Order No. 20237 (paragraphs 43 and 44), issued by the Public Service Commission of the District of Columbia on April 9, 2020. Please note these documents, as provided herein, align with Pepco's accounting and credit requirements. Accordingly, any material changes to the language by any party will require reconsideration and assessment by Pepco's accounting and credit departments.

Please contact me if you have any questions. Thank you.

Sincerely,

/s/ *Dennis P. Jamouneau*
Dennis P. Jamouneau

Enclosures

cc: All Parties in Formal Case No. 1017

2020 Solicitation for New Photovoltaic Solar and Onshore Wind Power Supply Generation

POTOMAC ELECTRIC POWER COMPANY

ISSUE DATE: September x, 2020

POTOMAC ELECTRIC POWER COMPANY

2020 Solicitation for New Photovoltaic Solar and Onshore Wind Power Supply Generation

Table of Contents

POTOMAC ELECTRIC POWER COMPANY

2020 Solicitation for New Photovoltaic Solar and Onshore Wind Power Supply Generation

1. INTRODUCTION

Through the issuance of this Request for Proposal ("**RFP**"), Potomac Electric Power Company ("Pepco")[1] is soliciting proposals (each, a "**Proposal**") for long-term renewable energy and associated environmental attributes from photovoltaic solar and/or wind utility-scale power generating facilities (each, a "**Facility**") located within the PJM Interconnection, LLC ("**PJM**") region.[2] Environmental attributes ("**Environmental Attributes**") include Renewable Energy Credits ("**RECs**") and any and all other federal, regional, state and other credits, certificates, benefits, emission reductions, offsets and allowances that are attributable, now or in the future, to the Facility or the energy produced by the Facility. This RFP is directed by, and issued in accordance with, Order No. 19897, dated April 12, 2019, and Order No. 20327, dated April 9, 2020, in Formal Case No. 1017 by the Public Service Commission of the District of Columbia ("**Commission**").

Proposals from bidders (each, a "**Bidder**") will be evaluated based on the factors outlined in this RFP.

2. SCHEDULE

The overall schedule for this RFP is set forth below. All dates subsequent to the Proposal due date are estimated except for the Commercial Operation Date.

EVENT	DATE/DEADLINE
Issuance of RFP by Pepco for Wind and/or Solar Generating Facility	September 18, 2020
Pre-Proposal Meeting	November 2, 2020
Notice of Intent to Bid Due	November 16, 2020
Complete Proposals Due	January 8, 2021
Bidder Short-List Notification and Commencement of Negotiations	February 26, 2021
Contract Execution and Submittal to Commission for Approval	May 1, 2021
Commission Approval	August 1, 2021
Commercial Operation Date	June 1, 2024

[1] Pepco, a subsidiary of Exelon Corporation, is a regulated electric distribution utility company operating in the District of Columbia and Maryland.

[2] PJM is the regional transmission organization that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia, or the region covered by PJM as the context requires.

3. SCHEDULE OVERVIEW

3.1 Pre-Proposal Meeting

Pepco will hold a meeting via conference call for all interested Bidders (the "**Pre-Proposal Meeting**") on November 2, 2020. The purpose of the Pre-Proposal Meeting will be to provide Bidders and their representatives the opportunity to discuss the RFP, the draft Pro Forma Final Agreement (the "**Final Agreement**") and any additional requirements for the RFP with Pepco. The RFP, the Final Agreement, and other related documents, are available upon request by email to the RFP Coordinator at: XXX@DC.com. Specific details of the Pre-Proposal Meeting, including time, and dial-in information will be provided by the RFP Coordinator.

3.2 Notice of Intent to Bid

On or before November 16, 2020, each Bidder intending to submit a Proposal shall deliver to Pepco a Notice of Intent to Bid for each such Proposal in the form of Attachment A (a "**Notice of Intent to Bid**"). All Notices of Intent to Bid must be received by Pepco via email on or before 5:00 PM (Eastern) on November 16, 2020. Receipt of a Notice of Intent to Bid does not obligate a Bidder to submit a Proposal.

3.3 Proposals

On or before 5:00 PM (Eastern) January 8, 2021, each Bidder intending to participate in the RFP shall deliver its Proposal(s) to Pepco in the form of Attachment B along with all relevant attachments (the "**Proposal Form**"). Proposals that are incomplete, or otherwise do not satisfy all requirements of this RFP shall not be considered. Pepco shall have no duty to inform any Bidder of any deficiency in its Proposal(s). Submission of a Proposal constitutes a Bidder's agreement to and acceptance of all terms and conditions of this RFP.

3.4 Bid Clarifications

During the Proposal evaluation process, Pepco may contact Bidders to request additional information or clarifications of Bidder Proposals. Failure to respond promptly to inquiries may result in disqualification of the Bidder or rejection of a Proposal.

3.5 Bidder Short-List and Final Selection

Pepco expects to inform Bidders of selection for final contractual negotiations on or before February 26, 2021. After negotiations, Pepco anticipates seeking Commission approval of agreement(s) on May 1, 2021.

4. ELIGIBILITY REQUIREMENTS

To be eligible for participation in this RFP, Proposals and Bidders must meet the following criteria.

4.1 Bidder Requirements

A Bidder is not required to be a registered member of PJM prior to submission of a Proposal in response to this RFP. However, a Bidder must be a PJM member prior to the commencement of commercial operation of any Facility identified in any Proposal submitted in response to this RFP. Upon commencement of commercial operations, a Bidder must be qualified as a market buyer and market seller in good standing and in compliance with all applicable requirements of PJM. In addition, a Bidder must be authorized by the Federal Energy Regulatory Commission ("**FERC**") to make sales of energy, capacity and ancillary services at market-based rates at commercial operation. At no time will Pepco assume the responsibility of the PJM member for a Facility. Affiliates of Pepco may participate as Bidders.

4.2 Eligible Proposal Size and Term; Final Agreement Requirements

Pepco is seeking energy and environmental attributes on commercially reasonable terms from one or more wind or solar Facilities for an annual target amount of 154,000 MWh.[3] The targeted MWh amount equates roughly to a 50 MW wind Facility or a 70 MW solar Facility. Additionally, solar Facilities proposed in response to this RFP must be at least 20 MW in size.

Winning Bidders will be required to sign the Final Agreement. Bidders may propose a term of agreement that is fifteen (15) years or twenty (20) years. A draft Pro Forma Final Agreement is provided with this RFP and is included as Attachment C. In its submission, a Bidder may propose edits to the Pro Forma Final Agreement in redline form. Edits that propose to allocate excessive risk to Pepco will not be considered. The final, signed, Final Agreement must reflect pay-for-performance terms, including among other things, guarantees regarding achievement of commercial operation date, Facility availability, and Facility performance as well as providing for liquidated damages for failure to meet performance and operations targets and performance assurance in the amounts specified therein. At all times during the Contract Term, winning Bidders (or their Affiliates) must own or operate wind or solar electricity–generating assets that have a nameplate capacity of not less than one thousand (1,000) MW in the aggregate in the United States (excluding the Facility).

[3] 154,000 MWh represents approximately 5% of Pepco DC Standard Offer Service Load.

4.3 Generation Technology

Proposals are limited to new wind energy Facilities and/or new photovoltaic solar energy Facilities. A Facility is considered new if it is not in commercial operation as of the date the Final Agreement is executed. Facilities in the PJM queue are eligible to bid if they are not energized yet. The Bidder must provide delivery profile schedules of wind and solar energy generation with each Proposal.

Proposals may pair new wind and/or solar generation with energy storage systems, providing the Bidder with several proposal options as delineated in Table 1. If a Bidder proposes energy storage system pairing as an option to a Proposal, the Bidder must provide documentation of how the storage system will store some or all of the energy produced by a wind or solar generation Facility, and the Bidder should provide two generation profiles, one with energy storage and one without.

The generation unit shall comply with all PJM and FERC interconnection requirements for generation facilities.

Table 1 – Proposal Options

Proposal Options	No. of Generation Profiles
Wind	1
Wind and Storage	2
Solar	1
Solar and Storage	2

The Bidder must demonstrate that it owns the property where it plans to construct the Facility or has leased the property with sufficient rights for the duration of the term of the Final Agreement. The Bidder must detail the proposed interconnection of the Facility, describe what rights the Bidder has acquired for interconnection, and provide a detailed plan and timeline for the acquisition of any additional necessary rights, if applicable.

The Bidder must demonstrate it has relevant experience and expertise satisfactory to develop, finance, construct, and operate its proposed generation facility.

4.4 Geographic Location of Facilities

Bidders must propose to provide energy and RECs from a Facility that is physically located in the PJM region and subject to all PJM rules and regulations.

4.5 Commencement of Service and Commercial Operation

Per Order No. 20327, service under the Final Agreement executed pursuant to this RFP will commence on June 1, 2024 (the "**Commercial Operation Date**") and will continue for the term of the Final Agreement. A Facility must commence

commercial operation no later than June 1, 2024, pursuant to the requirements outlined in this RFP.

4.6 Delivered RECs

Pepco is seeking to purchase RECs attributable to the output of one or more identified facilities. The RECs attributable to the output of the Facility or Facilities must be tracked through the PJM-EIS Generation Attributes Tracking System **("GATS")**. Any benefits derived from the RECs after delivery to Pepco shall inure solely to the benefit of Pepco and not to the seller.

4.7 Energy

All energy from the Facility must be delivered in accordance with PJM requirements to one of the PJM hubs listed on Attachment D. Bidders must demonstrate that their interconnection and transmission upgrades are sufficient to ensure full delivery to PJM. In evaluating Proposals in which the energy from the Facility is not delivered to Pepco's PJM zone, Pepco will consider the cost and availability of transmission to move the energy from the delivery point specified by the Bidder to Pepco's PJM zone.

5. PROPOSAL REQUIREMENTS

5.1 General

Bidders may submit more than one Proposal for a designated Facility, provided that each Proposal uses a different portion of that Facility. Bidders may also submit separate Proposals for different Facilities. A Bidder that is submitting multiple Proposals must clearly indicate whether Pepco can select more than one Proposal, or whether such Proposals are mutually exclusive.

5.2 Quantity

A Proposal may pertain to the entire nameplate capacity of a single Facility or a portion of a single Facility that produces a variable output that targets the annual MWh production provided in Section 4.2.

5.3 Proposal Pricing

Pricing must be designed to recover all costs associated with the Facility and the Proposal including, but not limited to, the cost of generation, cost of facilities, congestion, cost of network upgrades, transmission, operation, maintenance, and if applicable, all costs associated with energy storage. Prices (in $/MWh) must be fixed for the term of the Final Agreement.

5.4 Proposal Contents

In addition to the Proposal Form, the Bidder should provide the following information in order to assist the evaluators in reviewing their Proposal;

- **Project Description:** The Bidder should provide a complete description of the Facility, including size, location, a resource study by an established third-party evaluator, and a P(50) 8760 generation profile with net hourly output in Microsoft Excel. Bidders should provide a construction timeline with major milestones highlighted. Bidders should provide description of major equipment used and plans for acquiring such equipment.

- **Experience of Company and Key Personnel:** Bidder should provide full business information, including contact names and addresses and resumes of key personnel highlighting experience with projects of similar size, location, and generating technology.

- **Site Control:** Bidder must provide evidence of current status of site control efforts and detailed plan to achieve full site control to support proposed COD.

- **Interconnection Status:** Bidders should detail the Facility's interconnection point on the PJM system and describe the Bidder's plan for achieving interconnection and required deliverability. Bidders should provide a copy of any interconnection studies from PJM.

- **Permitting Plan:** Bidders should list all state and federal regulatory agency approvals, permits, or other authorizations required and already obtained and provide a strategy – including a timeline – for acquiring those approvals.

- **Financing Plan:** Bidders should describe how they plan to finance the Facility. Bidders should identify all sources of capital (both debt and equity) and provide evidence of commitments from financing parties. Bidders should list all state and federal tax credits included in their pricing and describe plans for acquiring those credits. Pricing must not be contingent on future receipt of any State and/or Federal tax credits or other incentives.

- **Edits to Final Agreement:** Bidders should provide redline edits to the Pro Forma Final Agreement. In light of the Commission's approval of the Pro Forma Final Agreement,[4] substantive edits to provisions of the Pro Forma Final Agreement that are not specific to the Facility are discouraged. Bidders are encouraged to make specific edits rather than marking items to be discussed. Edits that shift excessive risk to Pepco or ratepayers will not be considered.

Bidders are encouraged to provide any other information which they believe will provide evidence of the Facility's viability and their ability to deliver the Facility on time as proposed.

[4] *To be inserted: Reference to DC PSC approval.*

5.5 Term

Proposals shall be for terms of fifteen (15) years or twenty (20) years.

5.6 Effectiveness of Proposals

Each Proposal must remain open for acceptance from the date of submittal through August 1, 2021, unless the Bidder has been otherwise notified that the Proposal has been rejected.

5.7 Availability

Proposal for solar facilities must be based on an availability guarantee of 90% during the first contract year and 95% in all other contract years, with damages due to Pepco based upon the Contract Price as provided in the Final Agreement. Proposals for wind facilities must be based on an availability guarantee of 90%.

6. SUBMISSION OF PROPOSALS

6.1 Submission Requirements

A Bidder's Proposal, in PDF format, must be e-mailed to the RFP Coordinator (XXX@DC.com) on or before 5:00 PM (Eastern) on January 8, 2021.

6.2 Proposal Fee

Each Bidder shall submit a non-refundable $5,000 fee ("**Proposal Fee**") for each Proposal submitted under this RFP, which will be used to offset the cost of the evaluation of proposals and oversight of the process by the Independent Evaluator. Payment of the Proposal Fee is due upon submission of the Proposal. Payment information, including wiring instructions, will be provided through the RFP Coordinator to all Bidders who have provided a Notice of Intent to Bid.

6.3 Ownership of Material

All documents submitted in connection with this RFP shall, upon submission thereof, become the property of Pepco. Pepco is under no obligation to return such materials to the Bidder.

6.4 Completion and Accuracy of Proposal

A Bidder's Proposal must be complete in all respects upon submission. The Bidder is responsible for the accuracy of all information delivered in its Proposal and related materials. If any information in a Proposal is no longer true or accurate, Bidder shall immediately notify Pepco of the changed information. The Bidder risks disqualification from the RFP at any time if delivered information is incorrect or incomplete.

7. PROPOSAL EVALUATION PROCESS

Pepco, in consultation with an Independent Evaluator, will evaluate each Proposal based on the criteria outlined in this RFP. The RFP evaluation criteria and evaluation process are designed to result in a fair, unbiased review of all Proposals. Bids that do not comport with the requirements set forth in this RFP may be rejected.

7.1 Evaluation

Proposals in this evaluation will be subject to both a price factor evaluation ("**Price Factor Evaluation**") and a non-price factor evaluation ("**Non-Price Factor Evaluation**"). Although the primary factor under the RFP will be price, non-price factors will be considered. Non-price factors are primarily considered in order to determine the viability of the proposed Facility and the ability of the Bidder to deliver a Facility with the proposed level of price and performance.

(a) The most significant non-price factors will be the extent of conformance to the Pro Forma Final Agreement, particularly with respect to the factors below;

- Proposed Bidder edits to Pro Forma Final Agreement do not shift excessive risk to Pepco.
- Proposed contractual structure, redline or otherwise, contains provisions related to: Liability Caps, Default/Termination Rights, Performance Guarantees, Remedies for Non-Performance, and Security/Collateral.
- Interconnection, siting and permitting requirements and issues.
- Facility has obtained or demonstrated a plan to obtain site control.
- Facility has demonstrated plan to obtain permits.
- Facility has demonstrated progress toward interconnection.
- Interconnection is in line with the Commercial Operation Date set forth in this RFP.

(b) Bidder experience;

- Bidder has demonstrated experience with projects of similar size and technology as the Facility.
- Bidder has demonstrated experience with projects in same geographical region as the Facility.

(c) Operation date and development/operations plan, including equipment contracts;

- Construction plan in line with commercial operation on or before June 1, 2024.

- Bidder-supplied resource study which accurately reflects operations from verifiable third-party.

- Bidder demonstrates plan to obtain major equipment.

- Bidder financial qualifications, requirements and credit support.

- Demonstrated ability to internally finance Facility or evidence of good faith commitment from financing institution/financial backer.

7.2 Non-Interference by Bidders

Neither Bidder nor anyone acting on a Bidder's behalf may seek to influence any of the following: The District of Columbia Government officials, Commission Staff, Independent Evaluator, or Pepco's evaluation of Proposals in any way. Attempts to do so will be grounds for disqualification from the bidding process.

8. CREDIT SUPPORT; SECURITY FOR PERFORMANCE

If Bidder (or Bidder's guarantor, if any) is rated at or above investment grade and provides a guaranty, Bidder shall have no requirement to provide performance assurance ("**Performance Assurance**"). Performance Assurance may be in the form of cash, a letter of credit, or other security in a form acceptable to Pepco. If during the term of the Final Agreement, Bidder (or Bidder's guarantor, if any) is no longer rated at or above investment grade, Bidder must post Performance Assurance. For purposes of the Final Agreement, "investment grade" shall mean at least two of the following three credit ratings: "BBB+" or better from Standard & Poor's Rating Group ("S&P"), "BBB+" or better from Fitch Investor Service, Inc. ("Fitch"), or "Baa1" or better from Moody's Investor Services, Inc. ("Moody's").

The amount of Performance Assurance will be based upon the term length of the Final Agreement. Performance Assurance will be equal to $150,000 per MW of capacity under contract for fifteen years, and equal to $200,000 per MW of capacity under contract for 20 years. The amount of required Performance Assurance will decline annually during commercial operation.

Any letter of credit must be 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 the equivalent credit rating from Moody's or Fitch, and a minimum of $10 billion in assets. The letter of credit must be in a form acceptable to Pepco, in whose favor the letter of credit is issued.

9. ROLE OF INDEPENDENT EVALUATOR

An Independent Evaluator ("**IE**") will be selected by the Commission to monitor and evaluate the RFP process. The IE shall certify that the solicitation process was fair to all qualified Bidders and provide a report to the Commission on the evaluation process. As part of its evaluation, the IE shall perform market benchmarking analyses for both energy and RECs, which shall be included in the evaluation report.

10. COMMISSION APPROVAL

Final Agreements ready for review, approval, and execution will be submitted by Pepco to the Commission on or before May 1, 2021. Bidders selected to submit Final Agreements must cooperate with Pepco in the Commission submission and approval process, which may involve, among other things, providing both pre-filed and live witness testimony and/or interviews from the Bidders. Any and all costs incurred by Bidders in the Commission approval process will be the sole responsibility of the Bidder.

11. CONFIDENTIALITY

Pepco will take reasonable precautions and use reasonable efforts to protect any proprietary or confidential information contained in a Proposal, provided that the Bidder has clearly identified such information as proprietary and/or confidential on the page on which it appears. However, Bidders acknowledge that Pepco may be required to make such proprietary and/or confidential information available to the Commission, the IE, court or other governmental agencies having jurisdiction over the services and products related to this RFP. In making such disclosure, Pepco will use reasonable efforts, by, among other things, limiting disclosure to generic information (number of responsive Proposals and range of prices, contract lengths, and energy and REC quantities) and refraining to disclose the identity of any Bidder or provide Bidder-specific information so long as such information otherwise continues to be confidential. Pepco will not be required to appeal or challenge any determination by the Commission, a court or other governmental entity on the confidentiality or proprietary status of any information provided pursuant to this RFP.

12. NON-DISCRIMINATION POLICY

Both Pepco and Bidder(s) agree not to discriminate or otherwise grant preferences based on race, color, religion, creed, sex, sexual orientation, gender identity, national origin, ancestry, age, disability or other protected status in accordance with legal requirements.

13. GENERAL DISCLAIMER AND RESERVATION

Each Bidder is responsible for its costs incurred in responding to this RFP and any costs incurred negotiating a Final Agreement and subsequent Commission approval or other proceedings.

Pepco has prepared the information provided in this RFP to assist potential Bidders in deciding whether to respond.

Pepco does not make any representations or warranties regarding the information in the RFP and does not purport that the RFP contains all information needed for Bidders to determine whether to submit a Proposal.

Bidders participating in this RFP shall not have legal recourse or claims against Pepco, the IE, the Commission or Commission Staff, due to Pepco's rejection, in whole or in part, of their Proposal(s), for failure to reach agreement, for failure to obtain Commission approval, or for any reason whatsoever related to such parties' acts or omissions arising out of or in connection with the RFP process or in connection with the rejection of a Proposal, or failure of an agreement to achieve Commission approval.

Pepco reserves the right to modify, cancel or withdraw this RFP and to revise the schedule specified in the RFP if, in Pepco's sole discretion, such changes are necessary or beneficial to Pepco. To the extent reasonably possible, Pepco will inform Bidders that have filed a Notice of Intent to Bid of any such change. The disclaimers and reservations of rights set forth in this paragraph are limited by the obligation of Pepco to operate in good faith and within Pepco's obligations as governed by law, regulations, rules, and orders of the Commission and other regulatory agencies.

Bidders are not permitted to announce or release any information regarding this RFP or the Commission evaluation process without prior written approval of the Commission, which the Commission may withhold in its sole discretion. Each Bidder understands and agrees that Pepco does not participate in, nor does it allow, Bidders to utilize media releases of any kind to publicize Bidder's business relationship with Pepco. Each Bidder shall not use any trade name, trademark, service mark or any other information that identifies Pepco in such Bidder's sales, marketing and publicity activities without Pepco's express prior written consent. Successful Bidders agree to cooperate with Pepco in preparation of any press release announcing the results of this RFP.

Nothing in this RFP limits Pepco's right, and Pepco expressly reserves its right, to enter into one or more bilateral contracts for energy and RECs outside of this RFP process.

ATTACHMENT A

Notice of Intent to Bid Form

Our organization intends to submit a Proposal in response to the Potomac Electric Power Company Request for Proposals for wind or solar-generated energy and Renewable Energy Credits:

NAME OF BIDDER: _____
Address: _____
_____
_____
_____
_____

Contact Name: _____
Title: _____
Phone: _____
Email: _____

Alternate Contact Name: _____
Title: _____
Phone: _____
Email:

Description of Planned Facility(ies). Include nameplate rating of Facility(ies). _____

Please return Notice of Intent to Bid electronically no later than 5:00 PM Eastern Time on November 16, 2020 to the following e-mail address: XXX@DC.com. Include "NOTICE OF INTENT TO BID" as the subject for the electronic submittal.

ATTACHMENT B

Proposal Form

BIDDER INFORMATION		
1.	Company Name	
2	Primary Contact Name	
3.	Address	
4.	Telephone	
5.	Email	
6.	Form of organization of Bidder (i.e., corporation, limited liability company, partnership, etc.)	
7.	Jurisdiction of formation of Bidder	
8.	Ultimate parent company of Bidder	
9.	Please attach a summary of Bidder's background and experience in wind/solar energy projects	
10.	Entity providing credit support on behalf of Bidder (if applicable)	
	Name	
	Address	
	Type of Relationship	
11.	Current senior unsecured debt rating	
	S&P	
	Moody's	
	Fitch	
	Dun & Bradstreet #	
12.	Bank references	
	Name of institution	
	Contact name and title	
	Address	
	Telephone	
13.	As a separate attachment, please list all lawsuits, regulatory proceedings, or arbitrations in which the Bidder or its affiliates or predecessors have been or are engaged that could affect the Bidder's performance of its Proposal. Identify the parties involved and the final resolution or present status of such matters.	

14.	Please provide copies of Bidder's annual reports for the three most recent fiscal years and quarterly reports for the most recent quarter ended, if applicable.	
FACILITY AND DELIVERY POINT INFORMATION		
15.	Name of Facility	
16.	Planned Facility	
17.	Location	
	City, County and State	
	Map Coordinates (longitude and latitude)	
	PJM Delivery Point (name and Pnode)	
18.	Description of Facility and wind/solar generation equipment	
19.	Site control (lease, own, site purchase pending, etc.)	
20.	Please attach a copy of all leases, easements or other ownership documentation	
21.	Please describe any known environmental issues	
22.	Please list and describe all city, county, state and federal permits required for Proposal, including status, duration and timeline.	
23.	Nameplate capacity of Facility(ies)	
25.	Percentage of nameplate capacity of Facility(ies) dedicated to Proposal	
26.	Interconnection status of Facility(ies) including PJM queue number	
PROPOSAL TERMS		
27.	Proposed contract term(s)	
28.	Expected date for commencement of service	
29.	Delivered Energy/REC amount	
31.	Proposal price(s) per MWh	
32	Delivery Point to Pepco	

Proposal Form should be submitted electronically, in PDF format no later than 5:00 PM Eastern Time on January 8, 2021 to the following e-mail address: XXX@DC.com. Include "PROPOSAL" as the subject for the electronic submittal.

ATTACHMENT C

Pro Forma Final Agreement

[*to be attached*]

ATTACHMENT D

Eligible PJM Hubs

[*to be provided*]

RENEWABLE ENERGY PURCHASE AGREEMENT

between

POTOMAC ELECTRIC POWER COMPANY

("Buyer")

and

_____

("Seller")

Dated as of [date]

RENEWABLE ENERGY PURCHASE AGREEMENT

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

SCHEDULES AND EXHIBITS

Exhibit A	Facility Description
Exhibit B	Delivery Point

Schedule 6.1	Milestone Schedule
Schedule 6.13	Availability Calculations
Schedule 8.1	Contract Price
Schedule 14.1	Form of Letter of Credit
Schedule 14.3	Form of Guaranty
Schedule 15.1	Seller Delayed Permits
Schedule 17.1	Notice Information

RENEWABLE ENERGY PURCHASE AGREEMENT

THIS RENEWABLE ENERGY PURCHASE AGREEMENT (this "Agreement"), is made and entered into as of _____ ("Effective Date"), by and between _____, a _____, hereinafter referred to as "Seller" and Potomac Electric Power Company, a District of Columbia corporation, hereinafter referred to as "Buyer" (each hereinafter referred to individually as "Party" and collectively as "Parties").

WITNESSETH:

WHEREAS, Seller plans to own and operate a [*wind*][*solar*] energy generating Facility with an aggregate total nameplate capacity rating of [_] MW (the "Facility Nameplate Rating"), located in _____; and

WHEREAS, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive, Energy and Environmental Attributes generated by the Facility (collectively, the "Products"); and

WHEREAS, Buyer intends to use the Products purchased under this Agreement in accordance with Order No. 19897, issued on April 12, 2019, and Order No. 20327, issued on April 9, 2020, in Formal Case No. 1017 by the Public Service Commission of the District of Columbia.

NOW, THEREFORE, and in consideration of the foregoing, and of the mutual promises, covenants, and conditions set forth herein, and other good and valuable consideration, the Parties hereto, intending to be legally bound by the terms and conditions set forth in this Agreement, hereby agree as follows:

ARTICLE 1.
DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following capitalized terms, when used in this Agreement, shall have the meanings set forth below:

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the preamble hereto.

"Availability Damages" has the meaning set forth in Schedule 6.13.

"Availability Percentage" has the meaning set forth in Schedule 6.13.

"Bankrupt" means, with respect to any entity, such entity: (a) voluntarily 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 by its creditors and such petition is not dismissed within ninety (90) days of the filing or commencement; (b) makes an assignment or any general arrangement for the benefit of creditors; (c) otherwise becomes insolvent, however evidenced; (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (e) is generally unable to pay its debts as they fall due.

"Business Day" means any day except a Saturday, Sunday or a day that PJM declares to be a holiday, as posted on the PJM website. A Business Day shall begin at 8:00 am and end at 5:00 pm EPT.

"Buyer" has the meaning set forth in the preamble hereto.

"Buyer Energy Limit" shall mean _____ MWh.

"Buyer's Indemnitees" has the meaning set forth in Section 10.1 [Seller's Indemnification].

"Buyer's Percentage" means ___ percent (____) of the Facility Nameplate Rating, which shall not be less than ___ MW.

"Confidential Information" means any information in any form designated by a Party as confidential pursuant to Section 16.2 [Designation of Confidential Information], whether such information was disclosed prior to or after the Effective Date; *provided, however,* that Confidential Information shall not include Unrestricted Information.

"Contract Price" means the price for the Energy delivered to the Delivery Point for Buyer's account and RECs transferred to Buyer, as set out on Schedule 8.1.

"Contract Term" has the meaning set forth in Section 2.1 [Term].

"Contract Year" shall mean the twelve (12) month period commencing on the Initial Delivery Date and each anniversary thereafter during the Services Term.

"Credit Rating" means, with respect to any Person, the rating then assigned to such Person's senior unsecured long-term debt obligations (not supported by third-party credit enhancements) by a Rating Agency or, if such Person does not have a rating for its senior unsecured long-term debt, then the "Issuer Credit Rating" for such Person established by S&P.

"DCPSC" means the District of Columbia Public Service Commission.

"Defaulting Party" has the meaning set forth in Section 12.1 [Events of Default].

"Delay Damages" has the meaning set forth in Section 12.4 [Delay Damages].

"Delivered Energy" shall mean the amount of Energy delivered by the Facility to Buyer in each Contract Year to the Delivery Point.

"Delivery Point" means the PJM hub identified in Exhibit B.

"Disclosing Party" has the meaning set forth in Section 16.1 [Non-Disclosure of Confidential Information].

"Eastern Prevailing Time" or "EPT" means Eastern Standard Time or Eastern Daylight Saving Time, whichever is in effect on any particular date.

"Effective Date" has the meaning set forth in the preamble hereto.

"Electrical Interconnection Facilities" means the equipment and facilities required to safely and reliably interconnect the Facility to the PJM Transmission System or the transmission system of another Transmitting Utility in whose territory the Facility is located, as applicable, including transformers and all switching, metering, communications, control and safety equipment, including the facilities described in Exhibit A.

"Emergency" means: (a) an abnormal system condition requiring manual or automatic action to maintain system frequency or voltage or to prevent loss of firm load, equipment damage or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; (b) system recovery from an abnormal condition that resulted in loss of firm load or equipment damage; or (c) a condition that requires implementation of "emergency procedures" (as defined by PJM or any Transmitting Utility).

"Energy" means three-phase, 60- cycle alternating current electric energy.

"Environmental Attributes" means Renewable Energy Credits and any and all other (whether known or unknown) federal, regional, state and other credits, certificates, benefits, emission reductions, carbon credits, offsets and allowances that are attributable, now or in the future, however entitled or named, attributable to or associated with the Facility or the Energy produced by the Facility, including: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility's displacement of fossil fuel derived or other conventional energy generation arising under existing or future applicable Law; (b) any environmental certificates issued by PJM under the GATS in connection with Energy delivered to Buyer; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Energy delivered to Buyer from the Facility; *provided, however*, that Environmental Attributes shall not include: (i) production tax credits based on energy production from any portion of the Facility; (ii) any investment tax credits or other tax credits associated with the construction or ownership of the Facility; (iii) any state, federal or private cash payments or grants relating in any way to the construction or ownership of the Facility or the output thereof; or (iv) accelerated depreciation benefits related to the Facility's status as a generator of renewable energy.

"Event of Default" has the meaning set forth in Sections 12.1 [Events of Default] and 12.2 [Additional Seller Events of Default].

"Facility" means the [*wind*][*solar*]-energy generating facility, including the Electrical Interconnection Facilities and any other ancillary facilities and equipment, as more particularly described in Exhibit A.

"Facility Commercial Operation" means the condition of the Facility once it has achieved the following:

(a) ninety-five percent (95%) of the Facility Nameplate Rating shall have been fully commissioned and shall be operational;

(b) all performance testing of the Electrical Interconnection Facilities shall have been successfully completed in accordance with the PJM Agreements;

(c) the Facility shall be operating and able to produce and deliver Energy to the Interconnection Point: (i) pursuant to the terms of this Agreement, the Interconnection Agreement, and all applicable Laws; and (ii) in accordance with Good Utility Practice; and

(d) the computer monitoring system for the Facility shall have been installed and tested and shall be fully operational.

"Facility Commercial Operation Date" means the first date as of which: (a) Facility Commercial Operation has occurred; and (b) Seller shall have delivered to Buyer written certification of an authorized officer of Seller certifying that the Facility has achieved Facility Commercial Operation, which shall incorporate a certification of Facility Commercial Operation by a third party independent engineer experienced with such certifications for projects similar to the Facility.

"Facility Lender" means any Person(s), other than Affiliates of Seller, that provide construction, working capital or term debt financing for the Facility (including any agent(s) thereof).

"Facility Meter" means the revenue quality electricity generation meter, to be located at the metering point shown on Exhibit A, which shall register all Energy produced by the Facility and delivered to the Interconnection Point.

"Facility Nameplate Rating" has the meaning set forth in the Recitals hereto.

"Facility Site" means the property on which the Facility is located, as more particularly described in Exhibit A.

"FERC" means the Federal Energy Regulatory Commission.

"Financing Assignment" shall mean the consent to collateral assignment between Buyer, Seller and Facility Lender, in a form reasonably satisfactory to Buyer, Seller and Facility Lender.

"Fitch" means Fitch Investor Service, Inc.

"Force Majeure Event" means an event or circumstance that: (a) prevents a Party from performing its obligations under this Agreement; (b) was not foreseeable by such Party; (c) was not within the reasonable control of, or the result of the negligence of, such Party; and (d) such Party is unable to mitigate or avoid or cause to be avoided with the exercise of due diligence. Force

Majeure shall include, provided that the criteria in the first sentence are met, riot, insurrection, war (declared or not), mobilization, explosion, labor dispute, fire, flood, earthquake, storm, lightning, tsunami, backwater caused by flood, vandalism, act of the public enemy, terrorism, epidemic, civil disturbances, strike, labor disturbances, work slowdown or stoppage, blockades, sabotage, labor or material shortage, national emergency, the amendment, adoption or repeal of or other change in, or the interpretation or application of, any applicable Law, and any action or inaction by any Governmental Authority. Notwithstanding the foregoing, under no circumstance shall a Force Majeure Event be based on: (i) Seller's ability to sell a Product at a price greater than that received under the terms of this Agreement; (ii) Buyer's ability to purchase a Product at a price lower than paid under the terms of this Agreement; (iii) delays or nonperformance by suppliers, vendors or other third parties with whom a Party has contracted; (iv) any other economic hardship or changes in market conditions affecting the economics of one of the Parties but not the other.

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time.

"GATS Operating Rules" means the operating rules for the GATS (including successor versions), as published by PJM Environmental Information Services, Inc.

"Generator Attribute Tracking System" or "GATS" means the system (or its successor) operated by PJM Environmental Information Services, Inc. in accordance with the GATS Operating Rules to provide environmental and emissions attributes reporting and tracking services to its subscribers.

"Good Utility Practice" means the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry (in the case of Buyer) or the [*wind*][*solar*] industry (in the case of Seller) during the relevant time period, and any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the region.

"Governmental Authority" means any federal, state, local, municipal or other governmental or quasi-governmental authority, agency, department, board, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive, together or individually, exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over a Party, the Facility, the Products to be delivered hereunder or this Agreement.

"Guaranteed Initial Delivery Date" means June 1, 2024; *provided*, *however*, that the Guaranteed Initial Delivery Date shall be extended on a day-for-day basis for up to six (6) months to the extent that the Initial Delivery Date is delayed as a result of a Force Majeure Event.

"Guaranteed Availability Percentage" has the meaning set forth in Schedule 6.13.

"Guarantor" means any Person that: (a) guarantees Seller's financial obligations under this Agreement pursuant to a Guaranty; (b) is an Affiliate of Seller; (c) has a Credit Rating from at least two (2) of the Rating Agencies; (d) has no Credit Rating from any Rating Agency less than the Minimum Acceptable Credit Rating; and (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction.

"Guaranty" means a Guaranty Agreement (a) in favor of Buyer; (b) executed and delivered by a Guarantor to Buyer; and (c) in the form of Schedule 14.3.

"Indemnified Person" has the meaning set forth in Section 10.3(a) [Defense of Indemnified Claims].

"Indemnifying Party" has the meaning set forth in Section 10.3(a) [Defense of Indemnified Claims].

"Initial Delivery Date" means the date on which the conditions set forth in Section 3.2 [Initial Delivery Date] have been satisfied or waived in writing by Buyer.

"Investment Grade" shall mean at least two of the following three Credit Ratings: "BBB+" or better from S&P, "BBB+" or better from Fitch, or "Baa1" or better from Moody's.

"Instructed Operation" means a mandatory direction by a Transmitting Utility to meet an Emergency or a transmission system reliability need, including voltage support.

"Interconnection Agreement" means an agreement between Seller and the Transmitting Utility (which may be Buyer or an Affiliate of Buyer) in whose territory the Facility is located regarding interconnection of the Facility to the transmission system of the Transmitting Utility.

"Interconnection Point" means the physical point of interconnection between the Electrical Interconnection Facilities and the electrical transmission system of the Transmitting Utility.

"Interest Rate" means, as of any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate published in *The Wall Street Journal* under "Money Rates" on such day (or, if such rate is not published on such date, the rate published on the most recent preceding date on which such rate is published), plus two percent (2%); and (b) the maximum rate permitted by applicable Law.

"Invoice" has the meaning set forth in Section 8.2 [Billing].

"kW" means kilowatt.

"Law" means any statute, law, treaty, convention, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction issued, adopted, administered or implemented by a court or Governmental Authority, including any of the foregoing that are enacted, amended or issued after the Effective Date, and any binding interpretations of any of the foregoing.

"Letter of Credit" means an irrevocable standby letter of credit in favor of Buyer issued by a Qualified Institution, in the form of Schedule 14.1 or such other form as may be acceptable to Buyer.

"Lien" means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever, including any sale-leaseback arrangement, conditional sale or other title retention agreement and any financing lease having substantially the same effect as any of the foregoing.

"Market Participant" has the meaning set forth in the PJM Operating Agreement.

"Milestone Schedule" has the meaning set forth in Section 6.1 [Seller Covenants].

"Minimum Acceptable Credit Rating" means a Credit Rating equal to or better than (a) "BBB-" by S&P; (b) "BBB-" by Moody's; and (c) "Baa3" by Fitch.

"Monthly Settlement Date" has the meaning set forth in Section 8.2 [Billing].

"Moody's" means Moody's Investor Services, Inc.

"MW" means megawatt.

"MWh" means megawatt-hour.

"NERC" means the North American Electric Reliability Council, or any other Person designated by FERC to perform its functions.

"Non-Defaulting Party" has the meaning set forth in Section 12.3 [General Remedies].

"NTP Termination Fee" has the meaning set forth in Section 2.3 [Early Termination for Failure to Issue Construction Notice To Proceed].

"NTP Termination Right" has the meaning set forth in Section 2.3 [Early Termination for Failure to Issue Construction Notice To Proceed].

"Party" or "Parties" has the meaning set forth in the preamble hereto.

"Performance Assurance" means collateral in the form of cash, Letter(s) of Credit, or other security acceptable to Buyer, in each case in accordance with Article 14 unless otherwise approved by Buyer.

"Performance Assurance Amount" has the meaning set forth in Schedule 14.2.

"Permit" means any permit, authorization, license, order, consent, waiver, exception, exemption, variance or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with, any Governmental Authority required to authorize action, including any of the foregoing relating to the ownership, siting, construction, operation, use or maintenance of the Facility under any applicable Law.

"Person" means an individual, partnership, joint venture, corporation, limited liability company, trust, association, unincorporated organization or Governmental Authority.

"PJM" means PJM Interconnection, LLC., or its successor.

"PJM Agreements" means the PJM Tariff, the PJM Operating Agreement, and any other applicable PJM bylaws, procedures, manuals or documents.

"PJM Member" means any entity satisfying the requirements of PJM to conduct business with PJM.

"PJM Operating Agreement" means the Operating Agreement of PJM.

"PJM Tariff" means the Open Access Transmission Tariff of PJM.

"PJM Transmission System" means the system of transmission lines and associated facilities that have been placed under PJM's operational control.

"Products" has the meaning set forth in the Recitals hereto.

"PSC Approval" means an order issued by the DCPSC approving the terms of this Agreement without modification and authorizing Buyer to recover all of its costs incurred hereunder, which order shall be in form and substance reasonably acceptable to Buyer.

"PSC Approval Deadline" means the date that is six (6) months after the date on which Buyer files this Agreement with the DCPSC seeking PSC Approval.

"Qualified Institution" means a U.S. commercial bank (or a foreign bank with a U.S. branch) having total assets of at least $10 billion dollars ($10,000,000,000.00) and a Credit Rating equal to or better than "A-" by S&P and an equivalent Credit Rating by Moody's or Fitch.

"Rating Agency" or "Rating Agencies" shall mean, individually or collectively, S&P, Moody's and Fitch.

"Receiving Party" has the meaning set forth in Section 16.1 [Non-Disclosure of Confidential Information].

"Regional Reliability Entity" means the organization designated by NERC responsible for establishing and implementing reliability criteria and protocols for the Facility.

"Regulatory Charges" has the meaning set forth in Section 9.2 [Regulatory Charges].

"Renewable Energy Credit" or "REC" shall have the meaning set forth in the RPS Rules and RPS Act.

"Renewable Energy Portfolio Standard" shall have the meaning set forth in the RPS Act.

"RPS Act" shall mean the Renewable Energy Portfolio Standard Act of 2004, effective April 12, 2005 (D.C. Law 15–340; D.C. Official Code §§ 34–1431 et seq.), as amended.

"RPS Rules" means the DCPSC's Rules and Procedures to Implement the Renewable Energy Portfolio Standard.

"S&P" means Standard & Poor's Ratings Group, a division of McGraw Hill, Inc.

"Seller" has the meaning set forth in the preamble hereto.

"Seller's Indemnitees" has the meaning set forth in Section 10.2 [Buyer's Indemnification].

"Services Term" means the period commencing on the Initial Delivery Date and ending [fifteen (15) years][twenty (20) years] thereafter.

"Tier One Renewable Source" shall have the meaning ascribed to it in the RPS Act.

"Transmitting Utility" means any utility (including its control area operator) that transmits Energy from the Interconnection Point to the Delivery Point.

"Unrestricted Information" means any information disclosed by one Party to the other Party that: (a) is or becomes part of the public domain without fault of the Receiving Party; (b) was received by the Receiving Party from a Person under no obligation to the Disclosing Party with respect to maintaining the confidentiality thereof; or (c) was already in the Receiving Party's possession and not subject to confidentiality restrictions at the time the information was made available by the Disclosing Party.

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

(a) the singular shall include the plural and vice versa;

(b) references to Articles, Sections, Schedules or Exhibits shall be to Articles, Sections, Schedules or Exhibits of this Agreement, unless otherwise specified;

(c) all references to a particular Person in any capacity shall be deemed to refer also to such Person's successors and permitted assigns in such capacity;

(d) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection thereof;

(e) 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;

(f) all accounting terms not specifically defined herein shall be construed in accordance with GAAP;

(g) references to this Agreement shall include a reference to all schedules and exhibits hereto, each of which shall be incorporated by reference into this Agreement;

(h) references to any agreement, document or instrument, including the PJM Agreements, shall be construed to refer to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;

(i) the masculine shall include the feminine and neuter and vice versa;

(j) references to a Law shall be construed to refer to such Law as the same may be amended, modified, supplemented or restated from time to time;

(k) the term "month" shall mean a calendar month unless otherwise indicated, and a "day" shall be a twenty-four (24) hour period beginning at 12:00:01 am and ending at 12:00:00 midnight; *provided*, *however*, that a "day" may be twenty-three (23) or twenty-five (25) hours on those days on which daylight savings time begins or ends;

(l) unless expressly provided otherwise in this Agreement, where this Agreement requires the consent, approval or similar action by a Party, such consent, approval, or action shall be made or given in such Party's sole discretion;

(m) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Good Utility Practice or the PJM Agreements, shall have such meaning in this Agreement, or (ii) do not have well-known and generally accepted meaning in Good Utility Practice or the PJM Agreements but have well-known technical or trade meanings shall have such recognized meanings; and

(n) all references to dollars are to U.S. dollars.

ARTICLE 2.
TERM

2.1 Term. The term of this Agreement (the "Contract Term") will commence upon the Effective Date and, unless earlier terminated pursuant to the express provisions of this Agreement, will continue until the end of the Services Term; *provided*, *however*, that all provisions of this Agreement which must, in order to give full force and effect to the rights and obligations of the Parties, survive termination or expiration of this Agreement, shall so survive, including Articles 10 [Indemnification], 12 [Events of Default; Remedies], 13 [Dispute Resolution] and 16 [Confidentiality].

2.2 Termination Rights Regarding PSC Approval. Either Party may terminate this Agreement without liability upon thirty (30) days' advance written notice if PSC Approval does not occur on or before the PSC Approval Deadline, provided that such terminating Party must deliver a notice of termination no later than ten (10) days after the PSC Approval Deadline. Buyer shall notify Seller whether any order issued by the DCPSC approving the terms of this Agreement

is in form and substance acceptable to Buyer no later than five (5) Business Days after issuance of such order.

2.3 Early Termination for Failure to Issue Construction Notice to Proceed. In the event that Seller has not issued a final notice to proceed under an engineering, procurement, and construction contract, or a similar notice to begin on-site construction of the Facility within two hundred seventy (270) days after the construction notice to proceed date set forth in the Milestone Schedule (which period shall not be extended for any reason, including the occurrence of a Force Majeure Event), Buyer may elect in its sole discretion to terminate this Agreement upon thirty (30) days' prior written notice to Seller (the "NTP Termination Right") pursuant to this Section 2.3. Buyer's NTP Termination Right shall expire (and no longer apply) three hundred and ninety-five (395) days after the construction notice to proceed date set forth in the Milestone Schedule. Upon Buyer's exercise of the NTP Termination Right, neither Party shall have any financial or other liability to the other Party arising out of such termination, except that Seller shall pay to Buyer liquidated damages in an amount equal to [five million dollars ($5,000,000.00)] (the "NTP Termination Fee"). If the NTP Termination Fee is not otherwise paid by Seller when due and owing, Buyer has the right to draw on and retain for its sole benefit the Seller's Performance Assurance in an amount equal to the NTP Termination Fee.

ARTICLE 3.
CONDITIONS PRECEDENT

3.1 PSC Approval. Seller shall have no obligation to deliver or sell Products and Buyer shall have no obligation to accept or purchase Products prior to receipt of PSC Approval. Buyer shall file this Agreement before the DCPSC and seek PSC Approval promptly following the Effective Date.

3.2 Initial Delivery Date. The Initial Delivery Date shall occur upon the satisfaction or waiver in writing by Buyer of the following conditions precedent:

(a) the Facility Commercial Operation Date shall have occurred or will occur simultaneously with the Initial Delivery Date;

(b) Seller shall have obtained (and demonstrated possession of) all Permits required for the lawful operation of the Facility and for Seller to perform its obligations under this Agreement, including Permits related to environmental matters;

(c) no Seller default or Event of Default shall be occurring;

(d) Seller shall be a PJM Member and shall have entered into all required PJM Agreements required for the performance of Seller's obligations in connection with the Facility and this Agreement, which agreements shall be in full force and effect or Seller shall have entered into an agreement with a Market Participant that will perform all of Seller's PJM-related obligations in connection with the Facility and this Agreement;

(e) the Facility shall have been qualified and certified by the DCPSC as a Tier One Renewable Source;

(f) Seller shall have made all filings and applications required for accreditation of the Facility in GATS and for the registration, origination and transfer of Environmental Attributes from the Facility that are eligible for origination, registration and transfer under GATS;

(g) Seller shall have entered into all agreements and made all filings and other arrangements necessary for the transmission and delivery of the Energy associated with Buyer's Percentage of the Facility from the Facility to the Delivery Point;

(h) Seller shall have obtained all necessary authorizations from FERC to sell Energy at market-based rates as contemplated by this Agreement and shall be in compliance with such authorization;

(i) Seller shall have delivered a Guaranty or other required Performance Assurance, as required pursuant to Article 14 [Credit and Collateral Requirements];

(j) Seller shall have obtained all rights to the Facility Site necessary for performance of its obligations under the Agreement for the Services Term;

(k) PSC Approval shall have occurred and shall have become final and nonappealable; and

(l) Seller shall have provided Buyer with written evidence that all of the preceding conditions have been satisfied.

ARTICLE 4.
PURCHASE AND SALE OF PRODUCTS

4.1 Purchase and Sale Obligation. Subject to Seller's rights pursuant to Section 4.3 [Limitations on Seller's Obligation to Sell], during the Services Term Seller shall: (a) deliver and sell Buyer's Percentage of all Products produced by, or associated with, the Facility to Buyer; and (b) not offer, deliver, sell or make available to any Person other than Buyer, Buyer's Percentage of all Products produced by, or associated with, the Facility. Subject to the rights of the Parties pursuant to Section 4.3 [Limitations on Seller's Obligation to Sell] and 4.4 [Limitations on Buyer's Obligation to Purchase], during the Services Term Buyer shall: (i) have the exclusive right to purchase and receive Buyer's Percentage of all Products produced by, or associated with, the Facility; and (ii) accept and purchase Buyer's Percentage of all Products produced by, or associated with, the Facility and delivered to Buyer in accordance with the terms and conditions of this Agreement.

4.2 Quantity. The quantity of Energy required to be delivered by Seller to Buyer shall be equal to Buyer's Percentage of the Energy produced by the Facility and metered at the Delivery Point. The quantity of RECs required to be delivered by Seller to Buyer shall be equal to Buyer's

Percentage of the Energy produced by the Facility and metered at the Delivery Point. For the avoidance of doubt, Energy that may be stored by Seller in any device capable of storing Energy will not be part of the Products until the Energy is delivered to Buyer at the Delivery Point.

4.3 Limitations on Seller's Obligation to Sell. Notwithstanding anything to the contrary set forth herein, Seller may sell any or all Energy produced by the Facility to Persons other than Buyer to the extent it is unable to deliver Buyer's Percentage of such Energy to the Delivery Point due to a Force Majeure Event or an Instructed Operation; *provided, however*, that during any such period, Seller shall remain obligated to deliver and sell Buyer's Percentage of Environmental Attributes produced by or associated with the Facility to Buyer. For purposes of this provision, Buyer shall purchase the Environmental Attributes at a price determined by taking the average of two price quotes for comparable Environmental Attributes with the same vintage generated by a similar [*wind*][*solar*] energy generating facility in the same state as the Facility, with each such price quote to be obtained from a nationally recognized broker (with one broker selected by Seller and the other broker selected by Buyer).

4.4 Limitations on Buyer's Obligation to Purchase. Notwithstanding anything to the contrary set forth in this Agreement: (a) Buyer shall not be obligated to accept delivery of any Energy from Seller under this Agreement to the extent it is unable to do so due to a Force Majeure Event or an Instructed Operation; (b) Buyer shall have no obligation to purchase any Energy or Environmental Attributes generated by the Facility prior to the Initial Delivery Date; (c) Buyer is purchasing only Energy and Environmental Attributes from the Facility, and is not purchasing capacity, ancillary services, or any other product of the Facility, which shall remain the property of Seller; (d) Buyer shall not be obligated to purchase Energy in excess of the Buyer Energy Limit, and Seller shall retain the right to sell any such excess Energy and associated Environmental Attributes to third parties; and (e) Buyer's obligation to make purchases of Energy pursuant to this Agreement is expressly conditioned on the delivery and sale by Seller, in accordance with the terms of this Agreement, of RECs in an amount corresponding to the Energy from the Facility delivered by Seller.

4.5 Origination of RECs. RECs provided by Seller to Buyer hereunder shall be required to originate from Energy produced by the Facility.

ARTICLE 5.
SCHEDULING AND DELIVERY OF PRODUCTS

5.1 Delivery of Energy. Seller shall be solely responsible for arranging, scheduling with PJM and other Transmitting Utilities, and delivering Energy from the Facility to be delivered hereunder to the Delivery Point. As between the Parties, Seller shall be solely responsible for any and all costs and charges (including penalties) incurred in connection therewith, whether imposed pursuant to standards or provisions established by FERC, any other Governmental Authority or any Transmitting Utility, including transmission costs, scheduling costs, imbalance costs, congestion costs, operating reserve charges (day-ahead and balancing), any losses between the Interconnection Point and the Delivery Point, and the cost of firm transmission rights. Buyer shall arrange, schedule with PJM and be responsible for transmission of Energy from the Delivery Point and shall, as between the Parties, be solely responsible for any and all costs and charges (including penalties) incurred in connection therewith, whether imposed pursuant to standards or provisions

established by FERC, any other Governmental Authority or PJM, including transmission costs, scheduling costs, imbalance costs, congestion costs and the cost of firm transmission rights.

5.2 Delivery of Environmental Attributes. Seller shall: (a) take all actions necessary to register, certify and transfer Environmental Attributes from Seller to Buyer in accordance with GATS and applicable Law; and (b) bear all costs associated therewith, including program fees and registration fees. Seller shall comply with the RPS Act and RPS Rules in connection with Seller's transfer of RECs to Buyer hereunder.

5.3 Title and Risk of Loss.

(a) Title to, and risk of loss (including risks and costs associated with any transmission outages or curtailment up to and at the Delivery Point) related to, Energy sold by Seller to Buyer pursuant to this Agreement shall pass and transfer from Seller to Buyer upon delivery thereof for Buyer's account at the Delivery Point. Seller covenants that it shall have good and marketable title to all Energy delivered to Buyer at the Delivery Point and that it has the right to, and will, sell and deliver such Energy to Buyer free and clear of all Liens.

(b) Title to, and risk of loss related to, Environmental Attributes sold by Seller to Buyer pursuant to this Agreement shall pass and transfer from Seller to Buyer upon the completion of the recordation of transfer and physical or electronic delivery of such Environmental Attributes to Buyer in definitive form in accordance with GATS Operating Rules or other applicable Law. Seller shall transfer certificates into Buyer's GATS account(s) as necessary to transfer Environmental Attributes to Buyer under GATS. Seller covenants that it shall have good and marketable title to all Environmental Attributes delivered to Buyer and that it has the right to, and will, sell and deliver such Environmental Attributes to Buyer free and clear of all Liens.

ARTICLE 6.
SELLER COVENANTS

6.1 Construction, Progress Reports and Facility Commercial Operation. Seller shall construct the Facility in accordance with the specifications set forth in Exhibit A. The milestone schedule for development, construction and completion of the Facility anticipated as of the Effective Date is set forth in Schedule 6.1 (the "Milestone Schedule"). Seller shall prepare and submit to Buyer written progress reports, in a form reasonably satisfactory to Buyer, describing the status of development and construction of the Facility and all milestones, including the status of each of the conditions precedent to the Initial Delivery Date set forth in Section 3.2 [Initial Delivery Date]. Such progress reports shall be submitted: (a) on a quarterly basis commencing no later than two (2) years prior to Seller's anticipated Initial Delivery Date; and (b) on a weekly basis commencing forty-five (45) days prior to Seller's anticipated Initial Delivery Date. In addition to such progress reports, Seller shall promptly provide to Buyer any written reports regarding the status of development of the Facility that are delivered to Facility Lenders or their representatives.

6.2 Compliance with Law and Utility Requirements. Seller shall comply with, and cause the Facility to comply with: (a) Good Utility Practice; (b) all applicable requirements of Law; and (c) all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by the DCPSC, any other Governmental Authority, any Transmitting Utility, NERC and/or any Regional Reliability Entity, including, in each case, all practices, requirements, rules, procedures and standards related to Seller's construction, ownership, operation and maintenance of the Facility and its performance of its obligations under this Agreement (including obligations related to the generation, scheduling and transmission of Energy), whether such requirements were imposed prior to or after the Effective Date. Seller shall be solely responsible for registering as the "Generator Operator" of the Facility with NERC and any applicable Regional Reliability Entities.

6.3 Permits. Seller shall maintain in full force and effect all Permits necessary for it to perform its obligations under this Agreement, including all Permits necessary to operate and maintain the Facility.

6.4 Maintenance of Facility. To the extent required to achieve the Initial Delivery Date, and at all times during the Services Term, Seller shall maintain the Facility in accordance with Good Utility Practice.

6.5 Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement.

6.6 Planned Outages. Seller shall not schedule a planned outage of the Facility or any portion thereof between June 15 and September 15 during any Contract Year. No later than thirty (30) days prior to Seller's anticipated Initial Delivery Date, Seller shall deliver to Buyer a schedule of planned maintenance for the Facility for the following twelve (12) month period, which schedule shall: (a) be updated by Seller by each March 31 and September 30 to cover the twelve (12) month period following such update; (b) be consistent with the requirements of Good Utility Practice and the Interconnection Agreement; (c) indicate the planned commencement and completion dates for each planned maintenance during the period covered thereby, as well as the affected portion(s) of the Facility; and (d) be in form and substance reasonably acceptable to Buyer. To the extent Seller is required by any Transmitting Utility to provide information regarding maintenance, outages or availability of the Facility, Seller shall, simultaneous with the submission thereof to such Transmitting Utility, deliver a copy thereof to Buyer.

6.7 PJM Membership. Seller shall, at all times during the Services Term, either: (a) be a member in good standing of PJM and be qualified as a PJM "Market Seller" pursuant to the PJM Agreements; or (b) have entered into an agreement with a Market Participant that will perform all of Seller's PJM-related obligations in connection with the Facility and this Agreement.

6.8 Market-Based Rate Authority. Seller shall, at all times during the Services Term, maintain all necessary authorization from FERC to sell Energy at market-based rates as contemplated by this Agreement.

6.9 Forecasts. Commencing thirty (30) days prior to the anticipated Initial Delivery Date, and throughout the Services Term, Seller shall prepare and deliver to Buyer on a monthly

basis and in a form reasonably acceptable to Buyer, twelve (12) month rolling forecasts of Energy production by the Facility, which forecasts shall be prepared in good faith and in accordance with Good Utility Practice based on historical performance, maintenance schedules, Seller's generation projections and other relevant data and considerations.

6.10 Tier One Renewable Source. Seller shall be solely responsible for certifying the Facility as a Tier One Renewable Source under the RPS Act and maintaining such certification during the Services Term.

6.11 Compliance Reporting. To the extent Buyer is subject to any certification or compliance reporting requirement with respect to the Products produced by Seller and delivered to Buyer hereunder, Seller shall provide any information in its possession (or, if not in Seller's possession, available to it and not reasonably available to Buyer) reasonably necessary to permit Buyer to comply with any such reporting requirement.

6.12 Initial Delivery Date. Subject to Section 12.4 [Delay Damages], Seller shall achieve the Initial Delivery Date no later than the Guaranteed Initial Delivery Date. Seller shall provide Buyer with notice of (i) the expected occurrence of the Initial Delivery Date no later than thirty (30) days prior thereto; and (ii) the actual Initial Delivery Date no later than five (5) Business Days prior thereto.

6.13 Facility Guarantees. Seller guarantees that the Facility shall maintain the Availability Percentage required under Schedule 6.13, and shall pay Availability Damages, if any are due pursuant to Schedule 6.13.

6.14 Facility Design and Costs. As between Buyer and Seller, Seller (including its contractors and subcontractors) is solely responsible for all Facility design and all costs of installing, developing, financing, operating, maintaining and, to the extent applicable, removing the Facility from the Facility Site. Nothing in this Agreement or the Buyer's review of Seller's reports, nor its monitoring of the development and construction the Facility, shall be construed as endorsement by Buyer of the design, engineering, construction or testing of the Facility nor as any express or implied warranty as to the performance, safety, durability, or reliability of the Facility.

6.15 No Milestone Schedule Adjustment Expected at Effective Date. Seller represents and warrants to Buyer that, as of the Effective Date, (i) none of Seller's existing or potential contractors or subcontractors has provided oral or written notice to Seller that its ability to provide equipment, supplies, or services to Seller has been adversely affected by the disease designated as COVID-19 or 2019-nCoV acute respiratory disease or the virus designated as SARS-CoV-2, 2019 novel coronavirus or 2019-nCoV to the extent that an adjustment to the Milestone Schedule is reasonably likely; and (ii) Seller has no factual or legal basis to claim any Force Majeure Event.

6.16 No Interference with Buyer's Products. Unless Buyer has agreed in writing, Seller shall not monetize or otherwise secure the benefits of the Energy and Environmental Attributes of the Facility on behalf of any other Person if such action interferes with the qualification, scheduling or transfer of the Products to Buyer as provided in this Agreement.

6.17 Insurance. Seller shall maintain at its sole expense, commencing with the Effective Date and continuing through the Contract Term, insurance for the Facility (including commercial

general liability insurance) customarily maintained for facilities of similar type and size in the state in which the Facility is located, but no less than a commercially reasonable business would obtain for a facility of similar value and operation. Seller shall provide certificates of insurance or other reasonable evidence of such insurance coverage acceptable to Buyer upon request. Failure to obtain and maintain the required insurance shall constitute a breach of the Agreement and Seller will be liable for any and all costs, liabilities, damages, and penalties (including attorneys' fees, court, and settlement expenses) resulting to Buyer from such breach, unless a written waiver of the specific insurance requirement is provided to Seller by Buyer and such failure may constitute on Event of Default in accordance with Section 12.2 [Additional Seller Events of Default]. Failure of Seller to provide insurance as herein required or failure of Buyer to require evidence of insurance or to notify Seller of any breach by Seller of the requirements of this Section shall not be deemed to be a waiver by Buyer of any of the terms and conditions of this Agreement, nor shall they be deemed to be a waiver of the obligation of Seller to defend, indemnify, and hold harmless Buyer as required herein. The obligation to procure and maintain any insurance required is a separate responsibility of Seller and independent of the duty to furnish a copy or certificate of such insurance policies. Notwithstanding any provision of this Agreement, none of the requirements contained herein as to insurance coverage to be maintained by Seller are intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by Seller under this Agreement, any other agreement with Buyer or its Affiliates, or otherwise provided by Law.

6.18 Ownership of Renewable Assets. At all times during the Contract Term, Seller or its Affiliates shall own or operate wind or solar electricity generating assets that have a nameplate capacity of not less than one thousand (1,000) MW in the aggregate in the United States (excluding the Facility). Seller shall promptly notify Buyer in writing upon any breach of this covenant.

6.19 Facility Site Visits; Publicity. During the Contract Term, Buyer may request permission from Seller to visit the Facility site during normal business hours to monitor the construction, start-up, testing, and operation of the Facility at the Site and to verify compliance with this Agreement. Seller shall accommodate Buyer's reasonable requests for such visits, provided that Buyer shall comply with Seller's safety policies and instructions during any such visit to the Facility. Upon request by Buyer, Seller shall use reasonable efforts to permit Buyer to take photographs of the Facility, which photographs, if approved by Seller, may be used by Buyer for publicity purposes and internal communications. No Party shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of the other Party, which approval shall not be unreasonably withheld. The preceding sentence shall not apply to communications or other filings with Governmental Authorities by Buyer, including any filings with the DCPSC.

ARTICLE 7.
METERING

7.1 Metering. All electric metering associated with the Facility, including the Facility Meter and any other real-time meters, billing meters and back-up meters, shall be installed, operated, maintained and tested in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Transmitting Utility in whose territory the Interconnection Point is located and any applicable Regional Reliability Entity. The Facility Meter shall be used for the registration, recording and transmission of information regarding the Energy

output of the Facility. As between the Parties, Seller shall be responsible for the operation, maintenance, and calibration of the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility in accordance with the Interconnection Agreement, Good Utility Practice and any applicable requirements and standards issued by NERC, the Transmitting Utility in whose territory the Interconnection Point is located and any applicable Regional Reliability Entity. Seller shall provide Buyer with a copy of all metering, testing and calibration information and documents regarding the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility promptly following receipt thereof by Seller.

7.2 Measurements. Readings of the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility by the Transmitting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; *provided*, *however*, that Seller, at the direction of Buyer and at Buyer's expense, shall cause the Facility Meter to be tested by the Transmitting Utility in whose territory the Facility is located, and if the Facility Meter is out of service or is determined to be registering inaccurately by more than two percent (2%): (a) measurement of Energy produced by the Facility shall be adjusted in accordance with the filed tariff of such Transmitting Utility; and (b) Seller shall reimburse Buyer for the cost of such test of the Facility Meter.

7.3 Testing and Calibration. Buyer shall have the right to have a representative(s) present during any testing or calibration of the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility.

7.4 Audit of Facility Meter. Buyer shall have access to the Facility Meter and any other real-time meters, billing meters and back-up meters at the Facility and the right to audit all information and test data related to such meters.

7.5 Notice of Malfunction. Seller shall provide Buyer with prompt notice of any malfunction or other failure of the Facility Meter or other telemetry equipment necessary to accurately report the quantity of Energy being produced by the Facility.

7.6 Telemetry. Seller shall transmit to Buyer, via a dedicated data line reasonably acceptable to Buyer and paid for by Seller, all telemetry data measured by the Facility Meter, including MW, MVAR, MWh, MVARh, isolation breaker open/closed status, interconnection bus voltage and amp flow. Without limiting the foregoing, all such telemetry equipment shall comply with PJM requirements for PJM transmission owners.

ARTICLE 8.
BILLING AND PAYMENT

8.1 Price for Energy and RECs. Buyer shall pay the Contract Price for all Energy delivered to the Delivery Point for Buyer's account in accordance with Section 5.1 [Delivery of Energy] and all RECs transferred to Buyer in accordance with Section 5.2 [Delivery of Environmental Attributes]. Buyer shall not be obligated to make any other payments to Seller for any Energy or Environmental Attributes delivered or required to be delivered by Seller to Buyer pursuant to this Agreement.

8.2 Billing. Unless otherwise agreed to by the Parties, on or before the fifteenth (15th) day of each month (or the first Business Day thereafter), Seller shall deliver to Buyer, via electronic transmission or other means agreed to by the Parties, an invoice ("Invoice") that sets forth: (a) the net amount due from one Party to the other for all Products delivered by Seller to Buyer pursuant to the terms of this Agreement as of the end of the immediately preceding calendar month; and (b) any other credits, charges and liabilities due pursuant to the terms of this Agreement, including any adjustments and outstanding amounts due pursuant to prior Invoices. All Invoices to Buyer shall include the supporting documentation reasonably necessary to demonstrate how the Invoice amounts were calculated, including information from PJM to substantiate all calculations of the Energy delivered by Seller to the Delivery Point and GATS documentation of REC transfers to Buyer, and any additional information reasonably requested by Buyer. Buyer shall pay to Seller or Seller shall pay to Buyer, as the case may be, the total amount due pursuant to such Invoice no later than the final Business Day of the month during which such Invoice is issued (such day, the "Monthly Settlement Date").

8.3 Payment. All payments shall be made by "Electronic Funds Transfer" (EFT) via "Automated Clearing House" (ACH), to a bank designated in writing by the Party to which payment is owed, by 11:59:59 pm EPT on the Monthly Settlement Date. Payment of an Invoice shall not be deemed an admission or waiver with respect to any matter related to such Invoice or the charges reflected therein.

8.4 Interest. Interest on delinquent amounts (including amounts determined to be owed as a result of the resolution of a billing dispute) shall be calculated at the Interest Rate (a) from the original due date (or, for amounts not properly invoiced, the date that would have been the due date if such amounts were properly invoiced) to the date of payment; or (b) in the case of reimbursement obligations, from the date an overpayment was received until the date of reimbursement.

8.5 Set-Off. Each of Buyer and Seller shall have the right to set off any undisputed amounts owed by the other Party pursuant to this Agreement against any undisputed amounts that it owes to such Party pursuant to this Agreement.

8.6 Billing Disputes. Either Party may, in good faith, dispute any amount charged or paid pursuant to an Invoice within twelve (12) months of the date of such Invoice by providing a written statement setting forth the basis of such dispute. Each Party shall remain obligated to pay any undisputed amounts pending resolution of a billing dispute. Failure by a Party to deliver notice of a billing dispute within the time period set forth herein shall be deemed a waiver of such Party's right to dispute such Invoice. The Parties shall continue to perform under this Agreement during the period of any billing dispute but shall not be precluded from exercising any other remedy available under this Agreement. A billing dispute shall be subject to the provisions of Article 13 [Dispute Resolution]. Any amount determined to be owed as a result of the resolution of a billing dispute shall be paid within fifteen (15) days of such resolution, along with accrued interest in accordance with Section 8.4 [Interest].

8.7 PJM Accounting Procedures. Each of Buyer and Seller shall comply with all applicable PJM accounting procedures in connection with invoicing and settlement for amounts due under this Agreement.

ARTICLE 9.
TAXES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Regulatory Charges. Seller shall pay or cause to be paid all taxes, fees and other charges imposed by any Governmental Authority ("Regulatory Charges") on or with respect to the Products arising before and at delivery thereof in accordance with this Agreement, including ad valorem taxes, taxes related to the operation or maintenance of the Facility, and other taxes attributable to the Facility or interests in land associated with the Facility. Buyer shall pay or cause to be paid all Regulatory Charges on or with respect to the Products being delivered to Buyer hereunder after delivery thereof in accordance with this Agreement (other than ad valorem, franchise or income taxes related to the sale of the Products, which shall be the responsibility of Seller). In the event a Party is required by Law to pay Regulatory Charges which are the other Party's responsibility hereunder: (a) the Party that is assessed such Regulatory Charges shall notify the Party responsible for payment (which notice shall include supporting documentation) of such assessment; (b) the assessed Party shall timely pay such Regulatory Charges; and (c) the responsible Party shall reimburse the assessed Party in full no later than the next Monthly Settlement Date, with interest at the Interest Rate from and including the date on which the assessed Party paid such Regulatory Charges until (but excluding) the date on which the responsible Party reimburses the assessed Party. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Regulatory Charges from which it is exempt under the Law; *provided*, *however*, that an exempt Party shall bear the responsibility of proving upon request its exemption as necessary to avoid the unjust imposition of Regulatory Charges on the other Party.

ARTICLE 10.
INDEMNIFICATION

10.1 Seller's Indemnification. Seller shall indemnify, hold harmless and defend Buyer, its Affiliates and their respective officers, directors, employees, agents, contractors, subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Buyer's Indemnitees") from and against any and all claims, liabilities, costs, losses, damages and expenses, including reasonable attorney and expert fees and disbursements, actually incurred for: (a) damage to property or injury to, or death of, any person; and (b) any penalties or fines imposed by Governmental Authorities, in any such case to the extent directly caused by the gross negligence or willful misconduct of Seller and/or its officers, directors, employees, agents, contractors, subcontractors or invitees, and arising out of, or connected with, Seller's performance under this Agreement, Seller's exercise of rights under this Agreement or Seller's breach of this Agreement.

10.2 Buyer's Indemnification. Buyer shall indemnify, hold harmless and defend Seller, its Affiliates and their respective officers, directors, employees, agents, contractors, subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Seller's Indemnitees") from and against any and all claims, liabilities, costs, losses, damages and expenses, including reasonable attorney and expert fees and disbursements, actually incurred for: (a) damage to property or injury to, or death of, any person; and (b) any penalties or fines imposed by

Governmental Authorities, in any such case to the extent directly caused by the gross negligence or willful misconduct of Buyer and/or its officers, directors, employees, agents, contractors, subcontractors or invitees arising out of or connected with Buyer's performance under this Agreement, Buyer's exercise of rights under this Agreement or Buyer's breach of this Agreement.

10.3 Defense of Indemnified Claims.

(a) Within a reasonable time after receipt by a Person (the "Indemnified Person") of any claim as to which the indemnification provided for in Section 10.1 [Seller's Indemnification] or 10.2 [Buyer's Indemnification] may apply, such Indemnified Person shall notify the indemnifying Party (the "Indemnifying Party") in writing of such fact; *provided, however,* that delay in notifying the Indemnifying Party shall not relieve such Indemnifying Party of its indemnification obligations except to the extent that it is materially prejudiced by such delay.

(b) The Indemnifying Party shall diligently, competently and in good faith control and conduct the defense, with counsel reasonably satisfactory to the Indemnified Person, of any claim as to which the indemnification provided for in Section 10.1 [Seller's Indemnification] or 10.2 [Buyer's Indemnification] applies; *provided, however*, that the Indemnifying Party may not settle or compromise any such claim without the Indemnified Person's consent, unless the terms of such settlement or compromise unconditionally release the Indemnified Person(s) from any and all liability with respect thereto and do not impose any obligations on any Indemnified Person.

(c) An Indemnified Person shall have the right, at its option (but not the obligation), to be represented by advisory counsel of its own selection and at its own expense and to monitor the progress and handling of an indemnified claim. An Indemnified Person shall also have the right, at its option (but not the obligation), to assume the defense of any such claim with counsel of its own choosing at its sole cost and expense; *provided, however*, that an Indemnified Person shall have the right to assume the defense of, and to settle or compromise, any such indemnified claim at the Indemnifying Party's expense if: (i) the Indemnifying Party fails to acknowledge, in writing, its responsibility to assume the defense of such claim; (ii) the Indemnifying Party fails to diligently, competently and in good faith control and conduct the defense of such claim with counsel reasonably satisfactory to the Indemnified Person; (iii) there is an apparent conflict of interest between the Indemnifying Party and the Indemnified Person with respect to such claim; or (iv) such Indemnified Person shall have reasonably concluded that there are legal defenses available to it which are different from, additional to, or inconsistent with, those available to the Indemnifying Party.

(d) The Indemnifying Party's obligations to indemnify, defend and hold each Indemnified Person harmless shall not be reduced or limited by reason of any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party or any of its subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 11.
FORCE MAJEURE EVENTS

11.1 Excused Performance. Notwithstanding anything in this Agreement to the contrary, a Party shall be excused from performing its obligations under this Agreement (other than the obligation to make payments when due) and shall not be liable for damages due to its failure to perform such obligations during any period that such Party is unable to perform due to a Force Majeure Event; *provided, however,* that the Party claiming a Force Majeure Event shall (a) have the burden of proving the existence and consequences of such Force Majeure Event; and (b) act expeditiously to resume performance. The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by the Force Majeure Event.

11.2 Notification. A Party unable to perform under this Agreement due to a Force Majeure Event shall: (a) provide prompt written notice of such Force Majeure Event to the other Party (in no event later than ten (10) days after the Party has knowledge, or should have reasonably known, of the occurrence of the Force Majeure Event), which notice shall include a description of the Force Majeure Event and its effect on performance under this Agreement, and an estimate of the expected duration of such Party's inability to perform due to the Force Majeure Event; and (b) provide prompt notice to the other Party when performance resumes.

11.3 No Extension of Term. In no event will any delay or failure of performance caused by any Force Majeure Event extend this Agreement beyond the Services Term.

11.4 Right to Terminate. In the event that any delay or failure of performance caused by a Force Majeure Event continues for an uninterrupted period of one hundred eighty (180) days or longer, the Party not claiming the Force Majeure Event may, upon not less than thirty (30) days' advance written notice, terminate this Agreement without liability to the other Party.

ARTICLE 12.
EVENTS OF DEFAULT; REMEDIES

12.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any undisputed payment required to be made pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice thereof is received;

(b) any representation or warranty made by such Party herein shall be false in any material respect and shall remain uncured for a period of thirty (30)

days after written notice thereof is received; *provided* that if such Party cannot cure the default within thirty (30) days in spite of a diligent, good faith effort to do so, then such Party shall have a longer cure period not to exceed ninety (90) days in the aggregate to effect such cure;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) days after written notice thereof is received; *provided* that if such Party cannot cure the default within thirty (30) days in spite of a diligent, good faith effort to do so, then such Party shall have a longer cure period not to exceed one hundred twenty (120) days in the aggregate to effect such cure;

(d) such Party becomes Bankrupt;

(e) such Party assigns this Agreement or any rights, interests or obligations hereunder without the prior written consent of the other Party when such consent is required; and

(f) any Permit necessary for a Party to be able to perform as contemplated by this Agreement is not received, expires or is revoked or suspended and is not renewed or reinstated within a reasonable period following the expiration, revocation or suspension thereof, by reason of the action or inaction of such Party and such expiration, revocation or suspension creates a material adverse impact on the other Party.

12.2 Additional Seller Events of Default. Any of the following events shall constitute an Event of Default of Seller:

(a) the failure by Seller to achieve the Initial Delivery Date no later than one hundred eighty (180) days after the Guaranteed Initial Delivery Date, including any extensions for Force Majeure Events;

(b) the failure by Seller to deliver to Buyer in accordance with this Agreement any Products required to be delivered hereunder or the delivery or sale of any such Products to any Person other than Buyer if not expressly permitted under this Agreement;

(c) PJM shall have declared such Party to be in default of any provision of the PJM Agreements if such default is not remedied within thirty (30) days after the declaration is made;

(d) the failure by Seller to provide a Guaranty or other Performance Assurance, as required by Article 14 [Credit and Collateral Requirements];

(e) the failure by Seller to comply with Section 6.7 [PJM Membership] or 6.8 [Market-Based Rate Authority] if such failure is not remedied as soon as

practicable (and no more than thirty (30) days) after Seller becomes aware of such failure;

(f) the failure by Seller to obtain and maintain insurance as required under Section 6.17 [Insurance] if such failure is not remedied within five (5) Business Days after written notice thereof is received;

(g) except as permitted by Section 17.10 [Assignment], the transfer by Seller of all or substantially all of its assets to another Person without the prior written consent of Buyer; and

(h) the failure by Seller to maintain the Availability Requirement, as required under Section 6.13 [Facility Guarantees].

12.3 General Remedies. If an Event of Default has occurred and is continuing with respect to a Defaulting Party, the other Party (the "Non-Defaulting Party") shall have the right to (a) suspend performance under this Agreement, and/or (b) exercise any remedies available at law or in equity, including termination of this Agreement. Without limiting the generality of the foregoing, upon a Seller Event of Default, Buyer shall have the right to exercise its remedies under any Guaranty or other Performance Assurance.

12.4 Delay Damages. In the event the Initial Delivery Date does not occur on or prior to the Guaranteed Initial Delivery Date, for each day beginning with the day after the Guaranteed Initial Delivery Date through and including the date on which the Initial Delivery Date occurs, Seller shall pay liquidated damages in the amount of $0.20 per kW of Buyer's Percentage of the Facility Nameplate Rating per day ("Delay Damages"). Delay Damages shall be paid by Seller within thirty (30) days after the end of the month in which the Delay Damages accrue. The Parties acknowledge and agree that (a) calculation of actual damages that Buyer would suffer as a result of a delay in the Initial Delivery Date would be difficult or impossible to ascertain; (b) obtaining an adequate remedy may be difficult; and (c) the amount of Delay Damages constitutes a fair and reasonable approximation of the damages Buyer will incur as a result of delay in the Initial Delivery Date and is not intended as, nor shall it be deemed, a penalty. Subject to Section 14.5 [Calling on Security] and excluding Buyer's right to terminate as a result of a Seller Event of Default under Section 12.2(a) [Additional Seller Events of Default], the rights set forth pursuant to this Section 12.4 shall be Buyer's exclusive remedy for Seller's delay in achieving the Guaranteed Initial Delivery Date.

12.5 Damages on Termination.

(a) Upon a termination of this Agreement by Buyer based on a Seller Event of Default, Buyer shall be entitled to recover the net present value of (a) the replacement cost of Energy and Environmental Attributes supplied from a [*wind*][*solar*] energy generating resource less (b) the cost of Energy and Environmental Attributes that Buyer would have incurred at the Contract Price, with all Energy delivered to the Delivery Point, during all hours of the Services Term (or the remainder thereof).

(b) Upon a termination of this Agreement by Seller based on a Buyer Event of Default, Seller shall be entitled to recover the net present value of (a) the price of Energy and Environmental Attributes at the Contract Price less (b) the market price of Energy at the Delivery Point and Environmental Attributes supplied from a [*wind*][*solar*] energy generating resource during all hours of the Services Term (or the remainder thereof) under a long-term contract for the Services Term (or the remainder thereof).

(c) All calculations under this Section 12.5 shall be determined in a commercially reasonable manner, and may include reference to one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs, all of which should be calculated for the remaining Services Term and include the value of Environmental Attributes. For the avoidance of doubt, the Non-Defaulting Party shall not be required to enter into a replacement transaction in order to establish the amounts owed under this Agreement.

(d) The Parties acknowledge and agree that: (i) Energy supplied from a [*wind*][*solar*] energy generating resource has an inherent value greater than the value of other forms of Energy; (ii) the inherent value of Energy supplied from a [*wind*][*solar*] energy generating resource is a primary reason Buyer is entering into this Agreement; (iii) in the event of termination of this Agreement based on a Seller Event of Default, Buyer will likely be required to replace the Energy that would have been provided hereunder with Energy supplied from another [*wind*][*solar*] energy generating resource; and (iv) in the event of termination of this Agreement by Seller based on a Buyer Event of Default, Seller will likely sell the Energy that would have been sold hereunder to a Party seeking Energy supplied from a [*wind*][*solar*] energy generating resource.

12.6 Right of First Offer. If Seller or any Seller Affiliate seeks to enter into an agreement to sell any of the Energy or Environmental Attributes generated by a [wind][solar] energy generating project on the approximate location of the Facility at any time after the Agreement has been terminated by Buyer due to a Seller Event of Default, or pursuant to Sections 2.3 or 11.4, but prior to one hundred eighty days after such termination, Buyer shall have a right of first offer for any proposed sale of Energy or Environmental Attributes (or both) by Seller or Seller Affiliate. Buyer shall have thirty (30) days to submit a purchase offer after its receipt of written notice from Seller of the intention of Seller (or an Affiliate of Seller) to seek to enter into an agreement for any such Energy or Environmental Attributes and Seller and its Affiliates shall negotiate a purchase agreement with Buyer in good faith. If no agreement is executed within forty-five (45) days following Buyer's delivery to Seller of such purchase offer, Seller and its Affiliates may negotiate with third parties for the sale of such Energy or Environmental Attributes; *provided, however*, such

agreement may not be on terms more favorable to the new buyer than the terms set forth in Buyer's proposed purchase offer.

12.7 Cumulative Remedies. The remedies provided for in this Article 12 shall be without prejudice and in addition to any right of set-off, combination of accounts, Lien or other right to which any Party is at any time otherwise entitled (whether by operation of Law, contract or otherwise).

12.8 Facility Lender's Right to Cure. In connection with any financing or refinancing of the Facility by Seller, Buyer shall use good faith efforts to work with Seller and the Facility Lender to agree upon a Financing Assignment of this Agreement, including with respect to: (i) Buyer's notice of any Seller Event of Default to such Facility Lender; and (ii) Buyer's acceptance of a cure of any Seller Event of Default by the Facility Lender, so long as the cure is accomplished within the applicable cure periods set forth in this Agreement or the Financing Assignment.

12.9 Exclusion of Consequential Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE, PROVIDED THAT THE FOREGOING EXCLUSION SHALL NOT PRECLUDE RECOVERY BY A PARTY OF ANY LIQUIDATED DAMAGES EXPRESSLY PROVIDED HEREIN, NOR SHALL IT BE CONSTRUED TO LIMIT RECOVERY BY AN INDEMNIFIED PERSON UNDER ANY INDEMNITY PROVISION IN RESPECT OF A THIRD PARTY CLAIM OR WITH RESPECT TO THE GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT OF A PARTY.

12.10 Liquidated Damages. The Parties acknowledge and agree that: (a) Buyer shall be damaged by Seller's failure to meet its obligations as specified in Sections 2.3 [Early Termination for Failure to Issue Construction Notice to Proceed], 6.13 [Facility Guarantees] and 12.4 [Delay Damages]; (b) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom; (c) any sums that would be creditable or payable under those sections are in the nature of liquidated damages, and not a penalty, and are fair and reasonable; and (d) each payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from each such failure.

ARTICLE 13.
DISPUTE RESOLUTION

13.1 Informal Dispute Resolution. Before initiating legal action pursuant to Section 13.2 [Formal Dispute Resolution], a Party aggrieved by a dispute hereunder shall provide written notice to the other Party setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. The Parties shall use good faith and reasonable commercial efforts to informally resolve such dispute. Such efforts shall last for a period of at least thirty (30) days from the date that the notice of the dispute is first delivered from one Party to the other Party. Any amounts determined to be owed as a result of informal dispute resolution pursuant to this Section 13.1 shall be paid within three (3) Business Days of such resolution.

13.2 Formal Dispute Resolution. After the requirements of Section 13.1 [Informal Dispute Resolution] have been satisfied, either Party may initiate legal action in accordance with Sections 17.11 [Governing Law] and 17.13 [Jurisdiction and Venue].

ARTICLE 14.
CREDIT AND COLLATERAL REQUIREMENTS

14.1 Credit Support. If Seller (or Seller's Guarantor, if any) is rated at or above Investment Grade and provides a Guaranty, Seller shall have no requirement to provide Performance Assurance. If during the Contract Term, Seller (or Seller's Guarantor, if any) is no longer rated at or above Investment Grade, Seller must post, within five (5) Business Days, Performance Assurance equal to the Performance Assurance Amount.

14.2 Grant of Security Interest. To secure its obligations under this Agreement, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of set-off against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer, *provided*, *however*, that such interest may be junior to an interest granted by Seller in such collateral or proceeds for purposes of financing the development, construction or operation of the Facility. Seller agrees to take such action as reasonably required to perfect in favor of Buyer such security interest in, and lien on (and right of set-off against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

14.3 Remedies. Upon or any time after the occurrence of an Event of Default caused by Seller, Buyer may do any one or more of the following: (i) exercise any of the rights and remedies of Buyer with respect to all collateral, including any such rights and remedies under Law then in effect; (ii) exercise its rights of set-off against any and all property of Seller in the possession of Buyer, whether held in connection with this Agreement or any other agreement(s) between Buyer and Seller for the provision of Energy or Environmental Attributes; (iii) draw on any outstanding Performance Assurance or Guaranty issued for Buyer's benefit; and (iv) liquidate all collateral security held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral security realized upon the exercise of such rights or remedies to reduce Seller's obligation under this Agreement or any other agreement(s) between Buyer and Seller for the provision of Energy or Environmental Attributes (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

14.4 Forms of Performance Assurance. At Seller's choice, the following are deemed to be acceptable methods for posting Performance Assurance, if required:

(a) Cash. Buyer shall not be entitled to hold Performance Assurance in the form of cash; rather, Performance Assurance in the form of cash shall be held in any major U.S. commercial bank, or a foreign bank with a U.S. branch office, and that has assets of at least $10 billion dollars ($10,000,000,000.00) and a Credit Rating of at least "A" by S&P or "A2" by Moody's ("Qualified Institution"). Buyer will pay to Seller on the first

Business Day of each calendar quarter the amount of interest it receives based upon the applicable overnight repurchase interest rate from the Qualified Institution on any Performance Assurance in the form of cash posted by Seller.

(b) Letter of Credit. A Letter of Credit shall state that it shall renew automatically for successive one year periods unless Buyer receives written notice from the issuing financial institution at least ninety (90) days prior to the expiration date stated in the Letter of Credit that the issuing financial institution elects not to extend the Letter of Credit. If Buyer receives notice from the issuing financial institution that the Letter of Credit will not be extended, Seller will be required to provide a substitute Letter of Credit from an alternative bank or financial institution. The receipt of the substitute Letter of Credit must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least ten (10) Business Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit as required herein, then Buyer will have the right to draw on the expiring Letter of Credit and to hold the amount as collateral. Seller shall have the right to amend its Letter of Credit to reflect any reduction of Performance Assurance under this Agreement.

14.5 Calling on Security. Buyer may call upon any Guaranty or the Performance Assurance posted by Seller if Seller fails to pay amounts due to Buyer pursuant to this Agreement, including any damages that may be due hereunder, or any other agreement(s) between Buyer and Seller for the provision of Energy and Environmental Attributes after written notice of default is provided to Seller and any applicable cure period set forth in this Agreement ends. Within thirty (30) days of the Facility Commercial Operation Date, Seller shall replenish the Performance Assurance to the extent reduced by the amount of any draws prior to the Facility Commercial Operation Date and thereafter shall have no obligation to replenish the Performance Assurance.

14.6 Release of Security. Promptly following the end of the Contract Term or the earlier termination of this Agreement and the satisfaction of all of Seller's obligations hereunder, Buyer shall promptly release any Performance Assurance held by it to Seller.

14.7 No Limit of Liability. Except to the extent expressly stated in this Agreement, the required amounts of any cash or Letters of Credit shall not be deemed to be a limitation of Seller's liability.

ARTICLE 15.
REPRESENTATIONS AND WARRANTIES

15.1 Representations and Warranties. Each Party hereby represents and warrants to the other Party as of the Effective Date that:

(a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to transact business in

each jurisdiction in which its operations or the ownership of its properties require it to be qualified;

(b) it has all Permits necessary for it to legally perform its obligations under this Agreement except: (i) in the case of Buyer, PSC Approval; and (ii) in the case of Seller, those Permits identified on Schedule 15.1, each of which Seller anticipates will be obtained by Seller in the ordinary course of its development and construction of the Facility;

(c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation or order applicable to it, the violation of which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement;

(d) it has full power and authority to carry on its business as now conducted and to enter into, and carry out its obligations under, this Agreement;

(e) the execution and delivery of this Agreement and performance or compliance with any provision hereof will not result in the creation or imposition of any Lien upon its properties (except as expressly contemplated in favor of Buyer pursuant to this Agreement), the creation or imposition of which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement;

(f) this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency or other similar laws relating to or affecting the enforcement of creditors' rights generally and general equitable principles (regardless of whether such enforceability is considered in a proceeding at law or in equity);

(g) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(h) there are no pending or, to its knowledge threatened actions, suits or proceedings against it or any of its Affiliates before any court or Governmental Authority that could reasonably be expected to materially adversely affect its ability to perform its obligations under this Agreement;

(i) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance will occur as a result of its entering into or performing its obligations under this Agreement; and

(j) it is not relying upon the advice or recommendations of the other Party in entering into this Agreement, it is capable of understanding, understands

and accepts the terms, conditions and risks of this Agreement and its rights and obligations hereunder, and the other Party is not acting as a fiduciary for or advisor to it in respect of this Agreement.

15.2 Disclaimer of Implied Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, THERE ARE NO WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

ARTICLE 16.
CONFIDENTIALITY

16.1 Non-Disclosure of Confidential Information. Neither Party (a "Receiving Party") shall disclose any Confidential Information of the other Party (the "Disclosing Party") obtained pursuant to, or in connection with, the execution or performance of this Agreement to any Person other than an officer, director, employee, agent, lender, equity investor, representative or consultant of the Receiving Party without the express prior written consent of the Disclosing Party.

16.2 Designation of Confidential Information. A Party seeking to classify any material as Confidential Information must specifically designate such material as confidential prior to disclosing it to the Receiving Party. A Disclosing Party may not seek confidential treatment of any material unless such material was designated as confidential at the time of disclosure to the Receiving Party.

16.3 Disclosure to DCPSC. The Parties acknowledge and understand that all or portions of this Agreement may be made public by the DCPSC in connection with the DCPSC's review of this Agreement. The Parties further acknowledge that materials deemed confidential may be provided to the DCPSC at any time. The Parties shall use reasonable efforts in cooperation with each other to seek confidential treatment of any portion of this Agreement, consistent with the provisions of this Article 16.

16.4 Other Permitted Disclosures. Notwithstanding Section 16.1 [Non-Disclosure of Confidential Information], either Party may:

(a) produce Confidential Information in response to a subpoena, discovery request or other compulsory process issued by a Governmental Authority upon reasonable prior notice to the Disclosing Party; *provided, however*, that prior to such disclosure the Receiving Party must use reasonable efforts in cooperation with the Disclosing Party to seek confidential treatment of such Confidential Information;

(b) disclose whatever information FERC requires it to disclose in connection with the filing of quarterly or annual reports and may make such disclosure without notification to the Disclosing Party; and/or

(c) disclose Confidential Information to its Affiliates and their officers, directors, employees, agents, lenders, equity investors, representatives and consultants; *provided, however*, that such Affiliates, officers, directors,

employees, agents, lenders, equity investors, representatives and consultants must be bound by the confidentiality obligations set forth in this Article 16; *and provided further*, that in no event shall a document or information be disclosed in violation of the FERC Code of Conduct or Standards of Conduct requirements.

16.5 Audits. Any independent auditor performing an audit on behalf of a Party pursuant to Section 17.7 [Audit] shall be required to execute a confidentiality agreement with the Party being audited requiring that any Confidential Information disclosed in connection with such audit be treated as confidential pursuant to this Article 16.

16.6 Equitable Relief. The Parties agree that monetary damages may be inadequate to compensate a Disclosing Party for a Receiving Party's breach of its obligations under this Article 16. Each Receiving Party accordingly agrees that a Disclosing Party shall be entitled to equitable relief, by way of injunction or otherwise, if the Receiving Party breaches or threatens to breach its obligations under this Article 16, which equitable relief shall be granted without bond or proof of damages, and the Receiving Party shall not plead in defense that there would be an adequate remedy at law.

16.7 Survival. The confidentiality provisions of this Article 16 shall survive any termination of this Agreement for a period of three (3) years.

ARTICLE 17.
MISCELLANEOUS

17.1 Notices. Whenever this Agreement requires or permits delivery of a notice or requires a Party to notify the other Party, all notices, requests, statements or payments shall be made to the Parties in writing using the contact information set out in Schedule 17.1, as updated from time to time by each Party by providing written notice to the other Party. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is sent by facsimile (and confirmed) or hand delivered. Notice by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt. Notices sent by electronic messaging system will be deemed received on the date the electronic message is received (it being agreed that the burden of proving receipt will be on the sender and will not be met by automatic out-of-office or similar replies).

17.2 Joint Preparation. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, negotiation or drafting hereof.

17.3 No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party to this Agreement. This Agreement shall not impart any rights enforceable by any Person other than a Party or a permitted successor or assignee thereof.

17.4 Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void or

make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

17.5 Headings. The headings used in this Agreement are for convenience and reference purposes only and shall have no bearing on the interpretation hereof.

17.6 Records. Each Party shall keep and maintain all books and records as may be necessary or useful in performing or verifying any calculations made pursuant to this Agreement or in verifying such Party's performance hereunder, including operating logs, Facility output data, meter readings and financial records, all in accordance with Good Utility Practice. Each Party shall provide such books and records to the other Party within fifteen (15) days of a written request for such information. All records shall be retained by each Party for at least three (3) years following the year in which such records were created.

17.7 Audit. Each Party shall have the right, upon at least three (3) Business Days' prior written notice, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement, including records necessary to verify that Buyer has received and is receiving Buyer's Percentage of Products produced by the Facility. If any such examination reveals any inaccuracy in any Invoice, the necessary adjustments in such Invoice and the payments thereof will be made in accordance with Sections 8.1 [Price for Energy and RECs] and 8.6 [Billing Disputes].

17.8 Successors. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

17.9 No Dedication. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's property or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent Person.

17.10 Assignment.

(a) Neither Party shall assign this Agreement or delegate its rights or obligations hereunder without the prior written consent of the other Party; *provided, however,* that:

(i) a Party may collaterally assign this Agreement or any accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; and

(ii) a Party may transfer or assign this Agreement to any Person whose creditworthiness is equal to or higher than that of the transferring Party, *provided, however*, that in the case of an assignment by Seller, the assignee must also own substantially all of the assets of the Facility necessary to perform Seller's obligations under this Agreement.

(b) Any consent required by Section 17.10(a) shall not be unreasonably withheld, conditioned or delayed; *provided*, *however*, that neither Party shall be required to consent to any assignment or transfer that would require it to accept any limitation of its rights under this Agreement or expansion of the liability, risks or obligations imposed on it under this Agreement.

(c) It shall be a condition of any assignment, transfer, delegation or other disposition of this Agreement that: (a) all Letters of Credit and Guaranties required pursuant to Article 14 [Security] shall remain in place in favor of Buyer notwithstanding such assignment, transfer, delegation or disposition; or (b) replacement Letters of Credit and Guaranties in form and substance acceptable to Buyer shall have been provided prior to such assignment, transfer, delegation or disposition.

17.11 Governing Law. This Agreement and the rights and obligations of the Parties shall be governed by and construed, enforced and performed in accordance with the laws of the District of Columbia, without regard to principles of conflicts of law, or, if and to the extent applicable, federal law.

17.12 No Partnership or Joint Venture. This Agreement is not intended to create, nor shall it be construed to create, any partnership or joint venture relationship between Buyer and Seller, and neither Party hereto shall have the power to bind or obligate the other Party. Neither Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise. Each Party retains full control over the employment, direction, compensation and discharge of its employees, and will be solely responsible for all compensation of such employees, including social security, withholding and worker's compensation responsibilities.

17.13 Jurisdiction and Venue. Except for matters subject to the exclusive or primary jurisdiction of FERC, the DCPSC or the appellate courts having jurisdiction over the DCPSC or FERC matters, all disputes hereunder shall be resolved in the federal or state courts of the District of Columbia. Each Party hereby irrevocably submits to the *in personam* jurisdiction of such courts for such purpose. Each Party hereby waives its respective rights to any jury trial with respect to any litigation arising under or in connection with this Agreement.

17.14 Amendments and Future Treatment. Each Party agrees that it will not assert or defend itself on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not be amended, modified, terminated, discharged or supplemented, nor shall any provision hereof be waived, unless mutually agreed, in writing, by the Parties. Furthermore, the Parties expressly agree that no amendment of this Agreement that imposes costs for which Buyer may seek recovery from its ratepayers shall be enforceable absent specific DCPSC approval of such amendment and Buyer's right to recover such costs through its rates. The rates, terms and conditions contained in this Agreement are not subject to change under Section 205 or 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of the Parties to the proposed change, the standard of review for any avoidance, breach, rejection, termination or other cessation of performance of, or changes to, any portion of this Agreement over which FERC has jurisdiction, whether proposed by a Party, a non-Party or FERC acting sua

sponte, shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as such standard may be subsequently clarified by the Supreme Court of the United States or inferior courts.

17.15 Modification of PJM Agreements. Notwithstanding Section 1.2(h) [Interpretation]: (a) if the PJM Agreements are amended or modified so that any Schedule or Section reference herein to such agreement is changed, such Schedule or Section reference shall be deemed to automatically (and without any action by the Parties) refer to the new or successive Schedule or Section in such PJM Agreement that replaces the provision originally referred to in this Agreement; and (b) if any provision of any of the PJM Agreements referenced herein, or any other PJM rule relating to the implementation of this Agreement, is changed materially from that in effect on the Effective Date, both Parties shall cooperate to make conforming changes to this Agreement to fulfill the purposes of this Agreement; *provided, however*, that neither Party shall be obligated to agree to any change that diminishes the benefits of this Agreement to such Party.

17.16 Bankruptcy Considerations. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code and that each of Seller and Buyer is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

17.17 Delay and Waiver. Except as otherwise provided in this Agreement, no delay or omission to exercise any right, power or remedy accruing to a Party upon any breach or default by the other Party shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement, and any waiver of any provision or condition of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing.

17.18 Further Assurances. Each Party shall deliver or cause to be delivered to the other Party such instruments, documents, statements, certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested.

17.19 Entire Agreement. This Agreement, including the Exhibits and Schedules hereto, embodies the entire agreement and understanding of the Parties in respect of the subject matter hereof. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the matters contemplated by this Agreement.

17.20 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. The Parties agree that the Agreement may be executed by electronic signature.

17.21 Obligation of Good Faith. In carrying out its rights, obligations and duties under this Agreement, each Party shall act reasonably and in accordance with the principles of good faith and fair dealing.

[*remainder of page intentionally left blank*]

IN WITNESS WHEREOF, this Agreement is executed by the respective Parties on the dates set forth below and shall be effective as of the date first written above.

Seller	**Buyer**
By: _____	**By:** _____
Name: _____	**Name**: _____
Title: _____	**Title:** _____

EXHIBIT A

FACILITY DESCRIPTION

EXHIBIT B

DELIVERY POINT

SCHEDULE 6.1

MILESTONE SCHEDULE

[additional details to be supplied]

Milestone	Expected Completion Date
Construction Notice to Proceed	[•]
[additional milestones to be specified by Seller]	
Substantial Completion	[•]
Commercial Operation	[•]

SCHEDULE 6.13

AVAILABILITY CALCULATIONS

1. Availability Damages. For any Period in which Seller does not maintain the Guaranteed Availability Percentage, Seller shall pay to Buyer liquidated damages ("Availability Damages") in an amount equal to (a) the Contract Price multiplied by (b) the Guaranteed Availability Percentage minus the Availability Percentage for such Period, multiplied by (c) the Delivered Energy for such Period divided by the Availability Percentage, multiplied by the Guaranteed Availability Percentage; *provided however*, that the first determination of the Availability Percentage of the Facility shall be calculated twenty-four (24) months after the Initial Delivery Date (the "First Availability Calculation Date"). Commencing on the First Availability Calculation Date (or the first Business Day thereafter) and continuing on or before the fifteenth (15th) day of each Period (or the first Business Day thereafter) thereafter during the Services Term, Seller shall provide Buyer with the Availability Percentage calculated for the preceding Period along with any supporting documentation reasonably required for Buyer to independently confirm Seller's Availability Percentage calculation.

2. Availability Requirement. Seller shall maintain an Availability Percentage equal to or greater than the average of the Guaranteed Availability Percentage over two Periods (as defined below) (the "Availability Requirement").

3. Definitions.

The Availability Percentage of the Facility shall be calculated as follows:

$$AP = 100 * \sum \text{(of all Units)} [(AH - TOH) / AH] * UWP$$

Where:

AH = Available Hours

AP = Availability Percentage

TOH = Total Outage Hours

UWP = Unit Weighted Percentage

For purposes of this Schedule 6.13, the following capitalized terms shall be defined as follows. Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

"Availability Damages" shall have the meaning set forth in Section 1 of this Schedule 6.13.

"Available Hours" means the result of the Total Period Hours less the Force Majeure Event Hours.

"Equivalent Forced Outage Hours" means the total number of equivalent hours in a Period that represents an immediate reduction in output or capacity or removal from service, in whole or in part, of a Unit by reason of an emergency or threatened emergency, unanticipated failure or other cause beyond the control of Seller; *provided*, *however*, that any Force Majeure Event Hours shall not be counted as Equivalent Forced Outage Hours. Neither (a) a reduction in output or removal from service of a Unit or the Facility in response to changes in market conditions nor (b) a reduction by Seller brought about by any Instructed Operation shall constitute Equivalent Forced Outage Hours.

"Equivalent Maintenance Outage Hours" means the total number of equivalent hours in a Period that represents the scheduled removal from service, in whole or in part, of a Unit in order to perform necessary repairs on specific components of the Unit.

"Equivalent Planned Outage Hours" means the total number of equivalent hours in a Period that represents the scheduled removal from service, in whole or in part, of a Unit for inspection, maintenance or repair.

"First Availability Calculation Date" shall have the meaning set forth above in Section 1 of this Schedule 6.13.

"Force Majeure Event Hours" means the total number of hours in a Period during which either Seller or Buyer has declared a Force Majeure Event for one or more Units. Force Majeure Event Hours shall include the hours during which one or more Units is not operating due to a Serial Defect.

"Guaranteed Availability Percentage" shall mean ninety percent (90%).

"Period" means the immediately preceding period of twelve (12) consecutive months for which the Availability Percentage is being calculated.

"Serial Defect" shall mean a manufacturing, material or design defect of a substantially identical nature that has occurred to fifteen percent (15%) or more of the Units of the Facility.

"Total Outage Hours" means the sum of Equivalent Forced Outage Hours, Equivalent Maintenance Outage Hours and Equivalent Planned Outage Hours for a Period.

"Total Period Hours" means the total number of hours in a Period.

"Unit" means each [wind turbine][solar] generation unit forming a part of the Facility, as described in Exhibit A.

"Unit Weighted Percentage" means, for each Unit, the portion of the Facility Nameplate Rating represented by the nameplate rating of such Unit, expressed as a percentage.

[***additions for solar***]

"Guaranteed Availability Percentage" shall mean the amounts set forth in the following table for the applicable Contract Year in the Services Term.

Contract Year	Guaranteed Availability Percentage
1	90%
2	95%
3	95%
4	95%
5	95%
6	95%
7	95%
8	95%
9	95%
10	95%
11	95%
12	95%
13	95%
14	95%
15	95%
16	95%
17	95%
18	95%
19	95%
20	95%

For purposes of all calculations under this Schedule 6.13, hours shall be those hours in which the plane of array irradiance conditions are 50 W/m2 or greater. Data will be collected as hourly averages for all installed plane of array sensors at the Facility.

SCHEDULE 8.1

CONTRACT PRICE

SCHEDULE 14.1

FORM OF LETTER OF CREDIT

Irrevocable Letter of Credit No.: _____

Issue Date: _____

Expiry Date: _____ (the "Expiry Date")

Beneficiary: Potomac Electric Power Company ("Beneficiary")
c/o Pepco Holdings, Inc.
701 Ninth St., NW
Washington, DC 20068

Amount: US$ _____

We hereby issue in your favor our Irrevocable Letter of Credit No: _____ (the "Letter of Credit") for the account of _____ ("Applicant") for an amount or amounts not to exceed in the aggregate _____ Dollars (US$_____) available by your draft(s) at sight on the bank of _____ ("Issuer") located at _____ [ADDRESS], effective _____ [DATE] and initially expiring at our counters on _____ [DATE] or any automatically extended expiry date, as provided herein (the "Expiry Date"). This Letter of Credit is available in one or more drafts up to the aggregate amount set forth herein.

This Letter of Credit is presentable and payable at our counters, and we hereby engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be honored on presentation if accompanied by the required documents pursuant to the terms of this Letter of Credit.

The below mentioned document(s) must be presented on or before the Expiry Date of this Letter of Credit in accordance with the terms and conditions of this Letter of Credit.

1. Your signed and dated certification by an authorized officer, reading as follows:

   "The amount of this drawing, US$ [AMOUNT], being made under the bank of _____ [ISSUER NAME], Letter of Credit number _____, represents an amount due and payable to Beneficiary from Applicant or an affiliate of Applicant pursuant to Section _____ of the Renewable Energy Purchase Agreement dated as of _____ between Beneficiary and _____."

2. The original of this Letter of Credit and any amendments.

If presentation of any drawing is made on a Business Day (as herein defined) and such presentation is made on or before 1:00 pm New York time, Issuer shall satisfy such drawing

request on the next Business Day. If the drawing is received after 1:00 pm New York time, Issuer will satisfy such drawing request on the second following Business Day.

It is a condition of this Letter of Credit that it will be automatically extended without amendment for one year from the initial expiration date hereof, or any future expiration date occurring thereafter, unless at least ninety (90) days prior to any expiration date we notify you at the above address by registered mail, overnight courier, or hand delivered courier that we elect not to consider this Letter of Credit renewed for any such period.

This Letter of Credit may be terminated upon the earlier of (a) Issuer's receipt of Beneficiary's written certification that they have received payment in full of all sums owing to Beneficiary under the Renewable Energy Purchase Agreement dated _____ between Beneficiary and _____, and that Issuer is subsequently authorized to cancel this Letter of Credit; (b) Issuer's receipt of a written release from Beneficiary releasing Issuer from its obligations under this Letter of Credit; or (c) the Expiry Date, or any automatically extended expiry date, provided notice has been given as set forth in the immediately preceding paragraph.

The term "Business Day" as used herein means any day other than a Saturday, a Sunday or a day on which banking institutions located in the City of New York are required or authorized by law to be closed.

Applicant's filing of a bankruptcy, receivership or other debtor-relief petition, and/or Applicant's discharge thereunder, shall in no way affect the liability of Issuer under this Letter of Credit and, notwithstanding any such filing by, or on behalf of, Applicant or any resultant discharge thereunder, Issuer shall remain liable to Beneficiary for the full amount of Issuer's obligations herein to Beneficiary, not to exceed the available undrawn amount of this Letter of Credit.

Additional terms and conditions:

1. All commissions and other banking charges will be borne by Applicant.

2. This Letter of Credit may not be transferred or assigned.

3. This Letter of Credit is irrevocable.

4. This Letter of Credit is subject to the International Standby Practices of the International Chamber of Commerce Publication No. 590 ("ISP98") or such later revision(s) of ISP98 as may be hereafter adopted. As to matters not governed by ISP98, this Letter of Credit shall be governed by, and construed in accordance with, the laws of the State of New York, including, to the extent not inconsistent with ISP98, the Uniform Commercial Code as in effect in the State of New York. This Letter of Credit may not be amended, changed or modified without the express written consent of Beneficiary and Issuer.

5. This Letter of Credit is irrevocable and any rights granted to Beneficiary hereunder cannot be deemed to be waived, modified or revoked prior to its expiration without the prior written consent of Beneficiary.

6. A failure to make any partial drawings at any time shall not impair or reduce the availability of this Letter of Credit in any subsequent period or our obligation to honor your subsequent demands for payment made in accordance with the terms of this Letter of Credit, as long as the combined amount of all partial drawings does not exceed the aggregate amount of this Letter of Credit.

Authorized Signature:

_____

[NAME AND TITLE]

SCHEDULE 14.2

PERFORMANCE ASSURANCE AMOUNTS[1]

The amount of Performance Assurance during the Contract Term shall be equal to the dollar amount specified in the following table for the number of years and the applicable year of the Services Term:

15-year Services Term:

Beginning of Contract	$23,700,000
14 Years Remaining	$22,200,000
13 Years Remaining	$20,600,000
12 Years Remaining	$19,000,000
11 Years Remaining	$17,400,000
10 Years Remaining	$15,800,000
9 Years Remaining	$14,300,000
8 Years Remaining	$12,700,000
7 Years Remaining	$11,100,000
6 Years Remaining	$9,500,000
5 Years Remaining	$7,900,000
4 Years Remaining	$6,400,000
3 Years Remaining	$4,800,000
2 Years Remaining	$3,200,000
1 Years Remaining	$1,600,000

[1] ***Note: Performance Assurance to be adjusted based on size of contracted project.***

20-year Services Term:

Beginning of Contract	$31,600,000
19 Years Remaining	$30,100,000
18 Years Remaining	$28,500,000
17 Years Remaining	$26,900,000
16 Years Remaining	$25,300,000
15 Years Remaining	$23,700,000
14 Years Remaining	$22,200,000
13 Years Remaining	$20,600,000
12 Years Remaining	$19,000,000
11 Years Remaining	$17,400,000
10 Years Remaining	$15,800,000
9 Years Remaining	$14,300,000
8 Years Remaining	$12,700,000
7 Years Remaining	$11,100,000
6 Years Remaining	$9,500,000
5 Years Remaining	$7,900,000
4 Years Remaining	$6,400,000
3 Years Remaining	$4,800,000
2 Years Remaining	$3,200,000
1 Years Remaining	$1,600,000

SCHEDULE 14.3

FORM OF GUARANTY

THIS GUARANTY AGREEMENT (this "Guaranty") is made and entered into as of this ____ day of _____ 20__, by _____ (the "Guarantor"), with an address at _____, in favor of Potomac Electric Power Company ("Pepco") (the "Creditor"), with an address at 701 Ninth Street NW, Washington DC 20068 in consideration of the Renewable Energy Purchase Agreement (the "REPA") between Pepco and _____ (the "Supplier") dated _____. Guarantor is the _____ of Supplier. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the REPA.

Whereas, Supplier and Guarantor are Affiliates, Guarantor will therefore benefit by Supplier entering into the REPA with Creditor and Guarantor desires Creditor to enter into the REPA with Supplier and to extend credit to Supplier thereunder.

1. Guaranty of Obligations.

(a) The Guarantor hereby irrevocably and unconditionally guarantees, with effect from the date hereof, the prompt and complete payment when due of all of Supplier's payment obligations under the REPA, whether on scheduled payment dates, when due upon demand, upon declaration of termination or otherwise, in accordance with the terms of the REPA and giving effect to any applicable grace period, and all reasonable out-of-pocket costs and expenses incurred by Creditor in the enforcement of the Guarantor's obligations or collection under this Guaranty, including reasonable attorney's fees and expenses (collectively, the "Obligations").

(b) The limitations on liabilities of the Supplier set forth in the REPA shall also apply to the liabilities of the Guarantor hereunder.

2. Nature of Guaranty; Waivers.

(a) This is a guaranty of payment and not of collection and the Creditor shall not be required, as a condition of the Guarantor's liability, to pursue any rights which may be available to it with respect to any other Person who may be liable for the payment of the Obligations. This is not a performance guaranty and the Guarantor is not obligated to provide power under the REPA or this Guaranty.

(b) This Guaranty is an absolute, unconditional, irrevocable (subject to the provisions of Section 12 of this Guaranty) and continuing guaranty and will remain in full force and effect until all of the Obligations have been indefeasibly paid in full, or until the REPA has been terminated, whichever comes later. This Guaranty will not be affected by any surrender, exchange, acceptance, compromise or release by the Creditor of any other party, or any other guaranty or any security held by it for any of the Obligations, by any failure of the Creditor to take any steps to perfect or maintain its lien or security interest in or to preserve its rights to any security or other collateral for any of the Obligations or any guaranty, or by any irregularity, unenforceability or invalidity of any of the Obligations (other than any irregularity, unenforceability or invalidity of any of the obligations under the REPA resulting from the conduct of the Creditor) or any part thereof.

(c) Except as to any claims, defenses, or rights of set-off of Supplier in respect of its obligations under the REPA, all of which are expressly reserved under this Guaranty, the Guarantor's obligations hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim the Guarantor may have against Supplier or the Creditor, including: (i) any change in the corporate existence (including its charter or other governing agreement, Laws, rules, regulations or powers), structure or ownership of Supplier or the Guarantor; (ii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Supplier or its assets; (iii) the invalidity or unenforceability in whole or in part of the REPA; or (iv) any provision of applicable Law or regulations purporting to prohibit payment by Supplier of amounts to be paid by it under the REPA (other than any Law or regulation that eliminates or nullifies the obligations under the REPA).

(d) Guarantor waives notice of acceptance of this Guaranty, diligence, presentment, notice of dishonor and protest and any requirement that at any time any Person exhaust any right to take any action against Supplier or its assets or any other guarantor or Person, provided, however, that any failure of Creditor to give notice will not discharge, alter or diminish in any way Guarantor's obligations under this Guaranty. The Guarantor waives all defenses based on suretyship or impairment of collateral or any other defenses that would constitute a legal or equitable discharge of Guarantor's obligations, except any claims or defenses of Supplier in respect of its obligations under the REPA.

(e) The Creditor at any time and from time to time, without notice to or the consent of the Guarantor, and without impairing or releasing, discharging or modifying the Guarantor's liabilities hereunder, may (i) to the extent permitted by the REPA, change the manner, place, time or terms of payment or performance of, or other terms relating to, any of the Obligations; (ii) to the extent permitted by the REPA, renew, substitute, modify, amend or alter, or grant consents or waivers relating to any of the Obligations, or any other guaranties for any Obligations; (iii) settle, compromise or deal with any other Person, including Supplier, with respect to any Obligations in such manner as the Creditor deems appropriate in its sole discretion; (iv) substitute, exchange or release any security provided pursuant to the REPA; or (v) take such actions and exercise such remedies hereunder as Creditor deems appropriate.

3. Representations and Warranties. The Guarantor hereby represents and warrants that:

(a) it is a _____, duly organized, validly existing and in good standing under the Laws of the jurisdiction of its [formation, organization, incorporation] and has the power and authority to conduct the business in which it is currently engaged and enter into and perform its obligations under this Guaranty;

(b) it has the power and authority and the legal right to execute and deliver, and to perform its obligations under, this Guaranty, and has taken all necessary actions to authorize its execution, delivery and performance of this Guaranty;

(c) this Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms, except as affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting the

enforcement of creditors' rights generally, general equitable principles and an implied covenant of good faith and fair dealing;

(d) the execution, delivery and performance of this Guaranty will not violate any provision of any requirement of Law or contractual obligation of the Guarantor (except to the extent that any such violation would not reasonably be expected to have a material adverse effect on the Guarantor or this Guaranty);

(e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority and no consent of any other Person (including, without limitation, any stockholder, member, equity holder or creditor of the Guarantor) is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty, other than any which have been obtained or made prior to the date hereof and remain in full force and effect; and

(f) no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Guarantor, threatened by or against the Guarantor that would have a material adverse effect on this Guaranty.

4. Repayments or Recovery from the Creditor. If any demand is made at any time upon the Creditor for the repayment or recovery of any amount received by it in payment or on account of any of the Obligations, including but not limited to upon the bankruptcy, insolvency, dissolution or reorganization of the Supplier, and if the Creditor repays all or any part of such amount by reason of any judgment, decree or order of any court or administrative body or by reason of any settlement or compromise of any such demand, the Guarantor (subject to Sections 2 (c) and (d) of this Guaranty) will be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never been received originally by the Creditor. The provisions of this Section will be and remain effective notwithstanding any contrary action which may have been taken by the Guarantor in reliance upon such payment, and any such contrary action so taken will be without prejudice to the Creditor's rights hereunder and will be deemed to have been conditioned upon such payment having become final and irrevocable.

5. Enforceability of Obligations. No modification, limitation or discharge of the Obligations of Supplier arising out of or by virtue of any bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state Law will affect, modify, limit or discharge the Guarantor's liability in any manner whatsoever and this Guaranty will remain and continue in full force and effect and will be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted. The Guarantor waives all rights and benefits which might accrue to it by reason of any such proceeding and will be liable to the full extent hereunder, irrespective of any modification, limitation or discharge of the liability of Supplier that may result from any such proceeding.

6. Subrogation. Guarantor will not exercise any rights which it may acquire by way of subrogation under this Guaranty by any payment made hereunder or otherwise, until all the Obligations guaranteed hereunder have been paid in full or otherwise satisfied. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all the Obligations guaranteed hereunder shall not have been paid in full or otherwise such amount shall

be held in trust for the benefit of the Creditor and shall forthwith be paid to the Creditor to be credited and applied to the Obligations.

7. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to the addresses for the Creditor and the Guarantor set forth below or to such other address as one may give to the other in writing for such purpose:

All communications to Creditor shall be directed to:

Attn:
Phone:
Fax:

With a copy to:

or such other address as the Creditor shall from time to time specify to Guarantor.

All communications to Guarantor shall be directed to:
Attn:
Phone:
Fax:

With a copy to:

or such other address as the Guarantor shall from time to time specify to Creditor.

8. Preservation of Rights. Except as provided by any applicable statute of limitations, no delay or omission on the Creditor's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Creditor's action or inaction impair any such right or power.

9. Illegality. In case any one or more of the provisions contained in this Guaranty should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

10. Amendments. No modification, amendment or waiver of any provision of this Guaranty nor consent to any departure by the Guarantor therefrom, will be effective unless made in a writing signed by the Creditor, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Guarantor in any case will entitle the Guarantor to any other or further notice or demand in the same, similar or other circumstance.

11. Entire Agreement. This Guaranty (including the documents and instruments referred to herein) constitutes the entire agreement between the parties hereto and supersedes all

other prior agreements and understandings, both written and oral, between the Guarantor and the Creditor with respect to the subject matter hereof.

12. Successors and Assigns. This Guaranty is binding upon and inures to the benefit of the Guarantor and the Creditor and their respective successors and permitted assigns. Neither party may assign this Guaranty in whole or in part without the other's prior written consent, which consent will not be unreasonably withheld or delayed, except that: (i) Creditor may at any time assign this Guaranty without Guarantor's consent, in the same manner, on the same terms and to the same Persons as Creditor assigns the REPA in accordance with Section 17.10 of the REPA.

13. Interpretation. In this Guaranty, unless the Creditor and the Guarantor otherwise agree in writing, the singular includes the plural and the plural the singular; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and references to sections or exhibits are to those of this Guaranty unless otherwise indicated. Section headings in this Guaranty are included for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose.

14. Governing Law.

(a) This Guaranty has been delivered to and accepted by the Creditor. THIS GUARANTY WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE CREDITOR AND THE GUARANTOR DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ITS CONFLICT OF LAWS RULES.

(b) The Guarantor hereby irrevocably consents to the non-exclusive jurisdiction of any federal court in the State of New York, but in the event that the Guarantor and the Creditor determine in good faith that jurisdiction does not lay with such court or that such court refuses to exercise jurisdiction or venue over the Guarantor and the Creditor or any claims made pursuant to this Guaranty, then the Guarantor and the Creditor agree to submit to the non-exclusive jurisdiction of the New York state courts; provided that nothing contained in this Guaranty will prevent the Creditor from bringing any action, enforcing any award or judgment or exercising any rights against the Guarantor individually, against any security or against any property of the Guarantor within any other county, state or other foreign or domestic jurisdiction. The Guarantor and the Creditor acknowledge and agree that the venue provided above is the most convenient forum for both the Creditor and the Guarantor. The Guarantor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Guaranty.

15. WAIVER OF JURY TRIAL. THE GUARANTOR AND CREDITOR IRREVOCABLY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS GUARANTY, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS GUARANTY OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE GUARANTOR AND CREDITOR ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

16. Term. This Guaranty shall survive termination of the REPA and remain in full force and effect until all amounts due hereunder, including all of the Obligations, have been indefeasibly paid or performed in full.

17. Stay of Acceleration Ineffective with Respect to Guarantor. If acceleration of the time for payment of any amount payable by Supplier under the REPA is stayed upon the insolvency, bankruptcy or reorganization of Supplier, all such amounts otherwise subject to acceleration or required to be paid upon an early termination pursuant to the terms of the REPA shall nonetheless be payable by the Guarantor hereunder on written demand by Creditor.

18. The Guarantor acknowledges that it has read and understands all of the provisions of this Guaranty, and has been advised by counsel as necessary or appropriate.

[Guarantor]

By:_____
Name:
Title:

SCHEDULE 15.1

SELLER DELAYED PERMITS

Permit	Issuing Agency	Status

SCHEDULE 17.1

NOTICE INFORMATION

Any notices required under this Agreement shall be made as follows (as updated by the Parties from time to time):

Buyer:	Seller:
All Notices: Potomac Electric Power Company C/O Pepco Holdings, Inc. 701 Ninth Street, NW Washington, DC 20068 Attn: E-mail: Facsimile: Duns: Federal Tax ID Number: 51-0084283 **Invoices:** Attn: Phone: E-mail: Facsimile: **With additional Notices of an Event of Default to:** Pepco Holdings, Inc. Attn: General Counsel 701 Ninth St., NW Washington, DC 20068 Phone: E-mail: Facsimile:	**All Notices:** **Invoices:** **Electronic Funds Transfer:** BNK: Fed-ABA: ACH-ABA ACCT Name: ACCT No: **With additional Notices of an Event of Default to:**

CERTIFICATE OF SERVICE

I hereby certify a copy of Potomac Electric Power Company's Revised Request for Proposal and Draft Final Agreement was served this May 21, 2020 on all parties in Formal Case No. 1017 by electronic mail.

Ms. Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission
of the District of Columbia
1325 G Street N.W. Suite 800
Washington, DC 20005
bwestbrook@psc.dc.gov

Frann G. Francis, Esq.
Senior Vice President and General Counsel
Apartment and Office Building Association of Metropolitan Washington
1025 Connecticut Ave N.W. Suite 1005
Washington, DC 20036
ffrancis@aoba-metro.org

Clinton Vince, Esq.
Sonnenschein, Nath and Rosenthal
1301 K Street, NW
Suite 600 East Tower
Washington, DC 20005
cvince@sonnenschein.com

Leah Gibbons
Director of Regulatory Affairs
Reliant Energy
3711 Market Street, Suite 1000
Philadelphia, PA 19104
NEretailregulatory@reliantenergy.com

Brian R. Greene
GreeneHurlocker, PLC
1807 Libbie Avenue, Suite 102
Richmond, VA 23226
BGreene@GreeneHurlocker.com

Mary Lynch
Constellation Power Sou441rce, Inc.
111 Market Place, Suite 500
Baltimore, MD 21202
mary.lynch@constellation.com

Brian W. Kalcic
Excel Consulting
225 S. Meramec Ave.
Suite 720T
St. Louis, MO 63105
excel.consulting@sbcglobal.net

Marc Hanks
Strategic Energy, LLC
1350 I Street, NW
Suite 300
Washington, DC 20005
marc.hanks@directenergy.com

Shawn P. Leyden
PSEG Energy Resources & Trade, LLC
80 Park Plaza, 19th Floor
Newark, NJ 07102
shawn.leyden@pseg.com

Richard L. Roberts
Steptoe & Johnson, LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
rroberts@steptoe.com

Sandra Mattavous-Frye, Esq.
People's Counsel
Office of the People's Counsel
1133 15th Street, NW
Suite 500
Washington, DC 20005
smfrye@opc-dc.gov

Ronald Cerniglia
Direct Energy Services, LLC
7240 Ryehill Drive
Cary, North Carolina 27519
Ron.cerniglia@directenergy.com

Frank Mossburg
Katherine Gottshall
Commission Consultant
Bates White, LLC
1300 Eye Street, N.W. – Suite 600
Washington, D.C. 20005
Frank.mossburg@bateswhite.com
Katherine.gottshall@bateswhite.com

Brian Caldwell, Esq.
Office of the Attorney General
for the District of Columbia
441 Fourth Street, NW
Suite 450 North
Washington, DC 20001
brian.caldwell@dc.gov

Barbara Burton, Esq.
Assistant People's Counsel
Office of the People's Counsel
1133 15th Street, NW
Suite 500
Washington, DC 20005
bburton@opc-dc.gov

Jerome S. Paige
Jerome S. Paige & Associates, LLC
1691 Tamarack Street, NW
Washington, DC 20012
jpaige@paigeandassociates.com

Richard A. Drom
Charles A. Zdebski
Eckert Seamans Gordon Cherin & Mellot, LLC
1717 Pennsylvania Avenue, Suite 1200
Washington, D.C. 20006
rdrom@eckertseamans.com
czdebski@eckertseamans.com

Christopher Lipscombe
General Counsel
Public Service Commission
of the District of Columbia
1325 G Street N.W. Suite 800
Washington, DC 20005
clipscombe@psc.dc.gov

Tommy Wells
Director
Department of Energy & Environment
1200 1st Street N.E.
Washington, DC 20002
Tommy.wells@dc.gov

/s/ *Dennis P. Jamouneau*
Dennis P. Jamouneau