

11/16/2006

74-R-06

A RESOLUTION

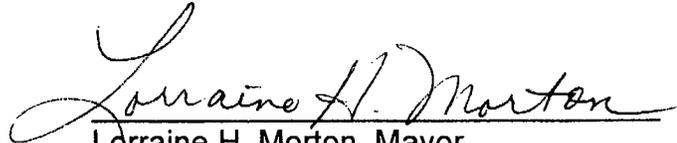
**Authorizing the City Manager to
Sign a Contract
With a Party to Be Named Later
For Electrical Power Supply**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City Manager is hereby authorized and directed to sign, and the City Clerk hereby authorized and directed to attest on behalf of the City of Evanston, a Contract between the City of Evanston and Constellation NewEnergy, Inc., or Sempra Energy Solutions, based on market cost as of November 27, 2006, for electrical power supply for seventeen (17) months beginning January 2, 2007, in an amount not to exceed one million, seven hundred ninety-five thousand, two hundred sixty-eight dollars (\$1,795,268). Such Contract shall be in substantial conformity with the document marked as Exhibit A1 and Exhibit A2 attached hereto and incorporated herein by reference.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional terms and conditions of the said Contract as determined to be in the best interests of the City.

SECTION 3: That this Resolution shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.



Lorraine H. Morton, Mayor

Attest:



Mary P. Morris, City Clerk

Adopted: December 11, 2006

EXHIBIT A1

Constellation NewEnergy, Inc. Proposed Contract



Master Electricity Supply Agreement

«CoName» ("Customer"), and Constellation NewEnergy, Inc. ("NewEnergy"), a Delaware corporation, enter into this Master Electricity Supply Agreement, which includes the attached General Terms and Conditions (the "Master Electricity Supply Agreement") as of the later date set forth under the Parties' signatures below (the "Effective Date").

1. ELECTRICITY SUPPLY. From time to time NewEnergy shall supply, and Customer shall purchase, on an exclusive basis, Customer's full requirements for electricity for the Account(s) identified in the Pricing Schedule(s) for the term set forth on such Pricing Schedule(s).

2. INFORMATION AND AUTHORIZATION. Customer shall designate NewEnergy to the Utility and/or ISO, as appropriate, as an authorized recipient of Customer's current and historical energy billing and usage data and as the exclusive provider of demand response programs, including but not limited to curtailment programs.

3. INVOICING AND PAYMENT. For electric energy supplied under this Agreement, Customer shall pay the NewEnergy Electricity Charge. In addition to the NewEnergy Electricity Charge, Customer shall pay and be responsible for all such other amounts related to the purchase and delivery of electricity, which, unless specifically provided for otherwise in a Pricing Schedule, shall include amounts for (i) Taxes related in any way to the NewEnergy Electricity Charge or any other products or services provided hereunder and (ii) Delivery Charges and related Taxes.

4. TERM. The Master Electricity Supply Agreement will commence on the Effective Date and, unless terminated earlier as otherwise provided in this Agreement, will continue until terminated by either Party upon 30 days written notice to the other.

5. ACCEPTANCE. This Master Electricity Supply Agreement and any Pricing Schedule(s) shall not be binding or enforceable against NewEnergy unless and until signed by an authorized representative of NewEnergy.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the respective dates set forth below.

Constellation NewEnergy, Inc.

By: _____
Name: _____
Title: _____
Date: _____

Customer: «CoName»

By: _____
Name: _____
Title: _____
Date: _____

General Terms and Conditions for Electricity Supply

1.1. **Definitions.** All capitalized terms have the meanings set forth below, in the Pricing Schedules, or defined elsewhere in the Agreement.

"**Accounts**" means those account(s) listed in the Pricing Schedule(s) which are to be supplied with electricity by NewEnergy under this Agreement.

"**Affiliate**" of a Party means any person or entity controlled by, that controls, or that is under common control with, such Party. The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Party, whether through the ownership of voting securities, by contract, or otherwise.

"**Delivery Charges**" mean those amounts payable (including Taxes and surcharges) by Customer for services provided by the Utility, ISO or other third parties.

"**Governing Jurisdiction**" means with respect to each Account, the State of Illinois in which such Account is located; provided that the governing jurisdiction shall be deemed to be the State of New York if the matter at issue involves Accounts or matters in more than one state.

"**Holdover Rate**" shall have the meaning set forth in the Pricing Schedule(s).

"**ISO**" means the independent system operator or regional transmission organization identified on the Pricing Schedule(s), or any successor or replacement entity or other entity, public or private, administering transmission reliability and control of the electricity grid.

"**Law**" means with respect to the Accounts, any Illinois law, rule, regulation, ordinance, statute, judicial decision, administrative order, ISO operating guideline or protocol, Utility or ISO tariff, or rule of the Illinois Commerce Commission, and the like.

"**NewEnergy Electricity Charge**" means the product of the fixed or variable price for electricity as set forth in the Pricing Schedule(s) for each Account multiplied by the Customer's kilowatt-hour (kWh) usage during the applicable period.

"**Notice Period**" shall have the meaning set forth in the Pricing Schedule(s).

"**Payment Date**" shall have the meaning set forth in the Pricing Schedule(s).

"**Taxes**" mean all applicable federal, state, municipal and other taxes, duties, fees, levies, premiums or any other charges imposed by any governmental authority, whether direct or indirect, and whether in effect as of the Effective Date or enacted after such date, together with all interest, penalties or other additional amounts imposed in respect thereof including without limitation, those levied on or measured by, or referred to as sales, consumption, goods and services, use, value added, receipts taxes, kWh taxes, franchise tax, privilege taxes (such as Ohio's Commercial Activity Tax), excise, stamp, withholding or surtaxes (but shall not include taxes imposed on the net income of NewEnergy). The term "Taxes" shall include any and all amounts imposed either on the Customer directly or on NewEnergy in its function as a supplier of Customer, and that are associated in any way with the supply of energy and related services to Customer (in which case the Customer shall be responsible to reimburse NewEnergy for all such amounts). All Taxes invoiced to the Customer under this Agreement will be displayed on the invoice as a separate line item or included in the NewEnergy Electricity Charge as required by Law.

"**Utility**" means the local electricity distribution company owning and/or controlling and maintaining the distribution system required for delivery of electricity to the account(s).

T2.1. **Creditworthiness.** From time to time each Party Customer will provide the other Party NewEnergy with reasonable information as requested by NewEnergy to complete a credit review. Continued supply of electricity under this Agreement is contingent upon each Party NewEnergy's determination, in its sole discretion, that the other Party Customer is creditworthy. If at any time and on an on-going basis during the term of this Agreement a Party NewEnergy determines that the other Party Customer's credit is unsatisfactory, the other Party Customer has experienced any adverse change in its financial condition, the other Party Customer's financial obligations to NewEnergy increase under this Agreement for any reason, or the Customer has made two or more late payments, the Party NewEnergy will have the right to require that the other Party Customer post security or make other credit arrangements satisfactory to the Party NewEnergy (which may include without limitation, making a cash deposit, posting a letter of credit at a financially sound bank or other financial institution, or prepaying NewEnergy for electricity supplied under this Agreement) or to increase or supplement security or other credit arrangements previously put in place, in any such circumstance to ensure prompt payment by each Party Customer of amounts owed or otherwise payable under this Agreement; provided that for purpose of this Section T2.1 NewEnergy shall be deemed creditworthy as long as its net worth exceeds \$50 million. Each Party Customer will provide the requested security or credit arrangements, including any increase thereof, within five (5) business days of NewEnergy's request.

T2.2. **Default.** An "Event of Default" means any one of the following: (a) **Customer's failure to make, when due, any payment required under this Agreement if not paid within the Notice Period;** or (b) any representation or warranty made by a Party in this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true in all material respects during the term of this Agreement, if not cured within 5 business days after written notice from the other Party; or (c) Customer fails to provide additional security or credit arrangements as provided in this Agreement; or (d) except to the extent excused by Force Majeure, the failure by a Party to perform any material obligation set forth in this Agreement (other than the events that are otherwise specifically covered as a separate Event of Default hereunder) where, in circumstances such failure is curable, **it is not cured within 20 business days after receipt of written notice thereof;** or (e) a Party: (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed for it or any substantial portion of its property or assets (iii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed for 20 business days after such filing; (iv) otherwise becomes bankrupt or insolvent (however evidenced); or (v) is unable to pay its debts as they fall due.

T2.3. **Remedies upon Default.**

(a) **If an Event of Default occurs with respect to a Party (the "Defaulting Party"), the other Party (the "Non-Defaulting Party") may, in its discretion, at any time, terminate this Agreement in whole or solely with respect to those Accounts adversely affected by such Event of Default, as a result of such default upon written notice to the Defaulting Party setting forth the effective date of termination (the "Early Termination Date").** If this Agreement is terminated, in whole or in part, pursuant this Section, the Non-Defaulting Party will in good faith calculate a termination payment as set forth below, and the Defaulting Party shall pay such amount following receipt of notice of such amount as provided herein. The Parties acknowledge and agree that any termination payment under this Agreement constitutes a reasonable approximation of harm or loss, and is not a penalty or punitive in any respect.

(b) If Customer terminates this Agreement, in whole or in part, upon the default of NewEnergy, NewEnergy will pay Customer the following early termination payment: [Market Value plus Costs] minus Contract Value, so long as the Market Value plus Costs is greater than the Contract Value.

(c) If NewEnergy terminates this Agreement, in whole or in part, upon the default of Customer or Customer terminates this Agreement, in whole or in part, as permitted under a Pricing Schedule or under Section T.2.5 below, Customer will pay NewEnergy the following early termination payment: [Contract Value plus Costs] minus Market Value, so long as the Contract Value plus Costs is greater than the Market Value.

(d) For purposes of this Section, "**Contract Value**" means the NewEnergy Electricity Charge for the Remaining Anticipated Usage. "**Market Value**" means the amount, as determined by the Non-Defaulting Party as of the Early Termination Date, a bona fide third party would pay for the Remaining Anticipated Usage at current market prices. In determining "Market Value", the Non-Defaulting Party may consider, among other things, quotations from leading dealers in the wholesale energy industry, the Non-Defaulting Party's internally developed forward price valuations, and other bona fide offers from either third parties or Affiliates of the Non-Defaulting Party, all as commercially available to the Non-Defaulting Party and adjusted for the length of the Remaining Term and differences in transmissions costs, volume, and other factors, as the Non-Defaulting Party reasonably determines. "**Costs**" mean brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by, or on behalf of, the Non-Defaulting Party in terminating, liquidating, or obtaining any arrangement pursuant to which it has hedged its obligations, and attorneys' fees, expenses and costs, if any, incurred in connection with enforcing its rights under this Agreement. "**Remaining Anticipated Usage**" means the amount of electricity (in kWh), as determined by the Non-Defaulting Party, that would have been used by each Account covered by the termination during the remaining term of this Agreement had it not been terminated early (the "**Remaining Term**"). In making this determination the Non-Defaulting Party may (but is not required to) consider: (i) anticipated consistency with or deviations from past electricity usage patterns, (ii) variations in anticipated weather patterns, (iii) general economic conditions or conditions affecting the specific industry(ies) in which Customer operates, and/or (iv) any other factors the Non-Defaulting Party deems appropriate."

T2.4 Certain Rights after Termination or Expiration. If following termination or expiration of this Agreement (whether in whole or in part), for any reason the Accounts remain designated by the Utility and/or the ISO as being served by NewEnergy, NewEnergy may, consistent with Law and in its sole discretion, either (i) continue to serve such Account(s) on a month-to-month holdover basis (the "**Holdover Term**") or (ii) move such Account(s) to the then applicable tariff service, whether default service or otherwise, or to another authorized provider of electricity required to serve as the "provider of last resort" (any of the foregoing, "**Alternative Service**"), and in either case NewEnergy shall have the right to pursue all additional remedies available at law or in equity; provided that if the Accounts remain designated by the Utility and/or the ISO as being served by NewEnergy due to a negligent or willful omission or wrongful act, Customer shall be entitled to recover from NewEnergy excess cost associated with being supplied by NewEnergy during such Holdover Term. The NewEnergy Electricity Charge payable during the Holdover Term shall be the Holdover Rate set forth in the applicable Pricing Schedule. This Agreement will continue to govern the provision of service during the Holdover Term. Either Party may terminate the Holdover Term at any time upon 30 days advance written notice to the other or such other time period required by Law, whichever is longer, such termination to be effective as of the next applicable meter read cycle date with respect to each Account. Furthermore, during a Holdover Term, NewEnergy may at any time move the Accounts to Alternative Service without penalty or prejudice. If NewEnergy so requests, Customer will cooperate with NewEnergy in its efforts to cease providing service to Customer after termination or expiration of this Agreement, whether in whole or in part.

T2.5 Change in Law. If a new Law shall be enacted, or there shall occur any revisions in, implementation of, amendments to, or interpretations of any Law (including without limitation those that establish new, or otherwise modify existing, alternative resource adequacy requirements or renewable portfolio standards or that impose new Taxes or change the rate of existing Taxes), in either circumstance affecting approved or anticipated rates, tariffs, Taxes, charges, fees, assessments, or other costs relating to the licensing, marketing, supply, generation, transmission or distribution of electric power and/or energy that could adversely affect the anticipated economic return to NewEnergy under this Agreement, NewEnergy shall have the right to adjust upward the amounts payable by Customer under this Agreement to take account of such adverse economic consequences (a "Change of Law Adjustment"). Such additional amounts will be included in subsequent invoices to Customer. NewEnergy shall notify Customer as soon as reasonably possible of any Change of Law Adjustment and the cost associated therewith.

T2.6. Representations and Warranties.

(a) Mutual Representations and Warranties. Each Party warrants and represents to the other the following: (1) it is duly organized, validly operating and in good standing under the laws of the jurisdiction of its formation; (2) it is authorized and qualified to do business in the jurisdictions necessary to perform under this Agreement; (3) the execution, delivery and performance of this Agreement are duly authorized and do not violate any governing documents or any contracts to which it is a party or any laws, rules or regulations applicable to it; (4) there is no material event(s) or other agreement(s) which would impair that Party's right, authority or ability to execute this Agreement and otherwise consummate the transactions contemplated by this Agreement; and (5) it has knowledge and experience that enable it to evaluate the merits and risks associated with this Agreement.

(b) Additional Representations, Warranties and Covenants of Customer. Customer warrants, represents and covenants that: (1) the data given and representations made concerning its Accounts are true and correct; (2) Customer is entering into this Agreement to purchase its electric energy requirements only; and that the electric energy purchased under this Agreement will be consumed at the facilities to which the Accounts relate, and Customer will not resell such electric energy to any third party (with the sole exception of Customer tenants or lessees in the ordinary course of Customer's business); and (3) Customer is the party of record of the Accounts, or if it is not the party of record, it has the authority to enter into and bind its principal to this Agreement. If requested, Customer will provide NewEnergy written proof of such authority.

T2.7. Force Majeure. "**Force Majeure**" means an event that is not within the reasonable control of the Party claiming Force Majeure ("**Claiming Party**"), and that by the exercise of due diligence, the Claiming Party is unable to overcome in a commercially reasonable manner, and such event will not be deemed a breach or default under this Agreement. Force Majeure includes, but is not limited to, acts of God; fire; war; terrorism; flood; earthquake; civil disturbance; sabotage; facility failure; curtailment, disruption or interruption of distribution, transmission, or supply; declaration of emergency by the Utility or ISO; regulatory, administrative, or legislative action, or action or restraint by court order or governmental authority; or any act or omission of a third party not under the control of the Claiming Party (including without limitation the Utility or ISO). Notwithstanding any other provision of this Agreement, where a Party is unable to carry out any obligation under this Agreement due to a Force Majeure event (other than a payment obligation, which will not be excused for Force Majeure), this Agreement will remain in effect but such obligation will be suspended for the period necessary as a result of the Force Majeure, provided that: (i) to the extent reasonably possible, the Claiming Party gives the other Party prompt written notice describing the particulars of the Force Majeure, including but not limited to, the nature and date of the occurrence and the expected duration of the Force Majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and (iii) the Claiming Party uses commercially reasonable efforts to remedy its inability to perform. If the Force Majeure continues for a period of 30 days (the "**Extended Force Majeure Trigger Date**") or more, the performing Party will have the right to terminate this Agreement with respect to those Accounts adversely affected by the Force Majeure by providing the Claiming Party 15 days prior written notice after the Extended Force Majeure Trigger Date.

T2.8. Indemnification. At and after the point at which Customer takes delivery, Customer agrees to defend, indemnify and hold harmless NewEnergy and all its Affiliates, and all of their respective officers, directors, shareholders, associates, employees, agents, representatives, successors and assigns (collectively including NewEnergy referred to as the "**NewEnergy Parties**") from and against all claims, losses, expenses (including attorneys' fees and court costs), damages, demands,

gments, causes of action or suits (collectively, "Claims") of any kind, including but not limited to, Claims for personal injury, death, or property damage, arising out or related to this Agreement. [Intentionally Omitted]

2.9. Certain Limitations.

(a) **Limitations of Liability.** Notwithstanding any other provision of this Agreement to the contrary, the entire liability of each Party the NewEnergy Parties for any and all claims, losses, expenses (including attorneys' fees and court costs), damages, demands, judgments, causes of action or suits (collectively, "Claims") Claims of any kind arising from or relating to this Agreement, including any causes of action in contract, tort, strict liability or otherwise, will not exceed the full amount due from Customer for the NewEnergy Electricity Charge under the first billing cycle under this Agreement and will be limited to direct actual damages only, subject in all cases to an affirmative obligation on the part of the Customer to mitigate its damages. Furthermore, in no event will the NewEnergy Parties be liable for any consequential, exemplary, special, incidental or punitive damages, including, without limitation, lost opportunities or lost profits.

(b) **Utility/ISO Services.** Customer acknowledges and agrees that the Utility and ISO are exclusively responsible for the electricity delivery system and all interruptions in the delivery of service and that NewEnergy exercises no independent control over the Utility's facilities or the ISO-controlled grid necessary for the delivery of electricity. As such, Customer disclaims any and all right to damages from NewEnergy arising from any interruption in electric service caused in whole or in part by interruption, termination or deterioration of service on the Utility's system or on the ISO-controlled grid. At and after the Delivery Point(s), Customer will be responsible for all distribution and transmission charges, including congestion and ancillary costs, if any, assessed by the Utility, the ISO, or any third party. Furthermore, NewEnergy is not responsible for providing services related to the maintenance and operation of the Utility's electricity delivery system, services regarding Customer's consumption of electricity, or other services which are provided by the Utility or third parties. NewEnergy will have no liability for any act or omission of the Utility, the ISO, or any third party, and Customer understands and agrees that it shall be solely responsible for all amounts due to the Utility or third parties for these and other services.

(c) **Setoff/Netting.** NewEnergy shall have the right to set-off and net against any amounts owed to it by Customer under this Agreement, **including without limitation any early termination payment**, any of the following amounts: (i) monies owed to Customer under this Agreement or under any other agreement between NewEnergy or any of NewEnergy's Affiliates, on the one hand, and Customer or any of Customer's Affiliates and (ii) any collateral or other financial assurance provided by Customer to NewEnergy under this Agreement.

T2.10. DISCLAIMER. CUSTOMER ACKNOWLEDGES AND AGREES THAT NO WARRANTY, DUTY, OR REMEDY, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, IS GIVEN OR INTENDED TO ARISE OUT OF THIS AGREEMENT EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, AND NEWENERGY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

T2.11. Waiver and Severability. *Failure to provide notice of, or object to, any default under this Agreement will not operate or be construed as a waiver of any future default, whether like or different in character.* If any portion of this Agreement, or application thereof to any person or circumstance, is held legally invalid, the remainder will not be affected and will be valid and enforced to the fullest extent permitted by law and equity, and there will be deemed substituted for the invalid provisions such provisions as will most nearly carry out the mutual intent of the Parties as expressed in this Agreement to the fullest extent permitted by applicable Law.

T2.12. Assignment. NewEnergy may assign, sell, pledge, transfer, or encumber any of its rights and obligations under this Agreement or the accounts, revenues, or proceeds hereof to: (A) a bank, insurer, or other financial institution; or (B) any person or entity (i) succeeding to all or substantially all of NewEnergy's assets or business or the division or region of NewEnergy to which this Agreement relates or (ii) into which NewEnergy is merged or otherwise combined or reorganized; provided (with respect to this clause (B)) the succeeding entity agrees to be bound to this Agreement; or (C) any Affiliate of NewEnergy. Customer may assign all (but not less than all) its rights and obligations under this Agreement in their entirety or solely with respect to certain Accounts; **provided (A) it gives NewEnergy 60 days written notice of its intent to do so;** (B) the assignee satisfies in full NewEnergy's credit requirements; (C) the assignee assumes in writing all of Customer's obligations under this Agreement; and (D) Customer continues to be liable for performance, including payment for goods and services received, prior to the assignment date.

T2.13. Confidentiality; Marketing Reference. (a) Customer agrees to keep all terms and provisions of this Agreement, including the pricing offered to Customer, confidential and not to disclose them to any third parties without the prior written consent of NewEnergy provided that Customer may disclose any such information in accordance with the Illinois Freedom of Information Act or otherwise in accordance with Customer's normal practice in providing copies of agreements to which Customer is a party upon request. NewEnergy will keep confidential all Customer identifying information and Account information that is not otherwise publicly available. Each Party shall have the right to disclose such information to its Affiliates and its Affiliates' employees, agents, advisors, and independent contractors who have a need to know such information and who agree to hold such information in the strictest confidence. NewEnergy shall also have the right to disclose information respecting Customer, including this Agreement, to brokers, agents, consultants or other third parties that are representing Customer in the purchase of electricity. Furthermore, NewEnergy may make such other disclosures to third parties of information, including aggregate consumption data, provided they are in a manner that cannot be reasonably expected to specifically identify Customer. If disclosure of a Party's confidential information is sought through process of a court, or a state or federal regulatory agency or other legal compulsion, **the Party receiving such request will notify the other Party immediately** to afford the other Party the opportunity to oppose such disclosure or otherwise obtain a protective order or other relief as may be available. The Party receiving such disclosure request will cooperate with the other Party in its attempts to obtain such protections.

(b) Customer authorizes NewEnergy to utilize Customer's name for publicity and marketing purposes.

T2.14. Choice of Law; Venue; Attorney Fees and Expenses. The validity, performance, and construction of this Agreement will be governed and interpreted in accordance with the laws of the Governing Jurisdiction, without giving effect to conflict of law principles. Any controversy or claim arising from or relating to this Agreement will be settled in accordance with the express terms of this Agreement by a court located in the Governing Jurisdiction (and each Party hereto waives any right to object to venue in this regard). EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY OR TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION CLAIMS IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. If either Party pursues court action to enforce its rights under this Agreement, the non-prevailing Party shall promptly reimburse the prevailing Party for all its attorney fees, expenses and costs. Further, NewEnergy shall be entitled to recover from Customer all costs, including attorneys' fees, incurred in connection with its efforts, whether in court or otherwise, to collect amounts due and payable to NewEnergy.

T2.15. No Third Party Beneficiaries. Except for NewEnergy Parties under the indemnity provisions of this Agreement, this Agreement is for the sole and exclusive benefit of the Parties hereto, and no third party will have any rights under this Agreement whatsoever. If Customer is represented by a third party in connection with

the procurement or performance of this Agreement, unless otherwise expressly provided elsewhere in this Agreement NewEnergy will have no liability therefor, and Customer will be fully responsible for any fee, commission or other compensation owing any such third party, and will indemnify, defend and hold harmless NewEnergy Parties from any and all Claims of any kind of any such third party arising from or relating to this Agreement.

T2.16. Notice. *To be effective, all notices must be in writing delivered by hand, by certified mail, return receipt requested, or by express carrier to the addresses provided in this Agreement. A Party may change its address by providing notice of such change in accordance herewith.*

T2.17. Entire Agreement; Survival of Terms. This Agreement (which constitutes the Master Electricity Supply Agreement, including these General Terms and Conditions, and Pricing Schedule(s) executed and delivered by the Parties from time to time) embodies the Parties' entire agreement and understanding, supersedes all prior agreements and understandings (whether written or oral) regarding the subject matter of this Agreement, and may not be contradicted by any prior or contemporaneous oral or written agreement. Nothing in this Agreement shall be deemed to require NewEnergy to execute and deliver this Master Electricity Supply Agreement or any Pricing Schedule, even if Customer shall have already executed and delivered such to NewEnergy. A facsimile copy of either Party's signature will be considered an original for all purposes under this Agreement, and each Party will provide its original signature upon request. Except to the extent otherwise explicitly provided in this Agreement, no amendment to this Agreement, including the Pricing Schedule(s), will be valid or given any effect unless signed by both Parties. The terms of any purchase order (PO) sent by Customer and/or any alteration, addition, or modification made by Customer to the preprinted terms of this Agreement shall be void and without any effect. In the case of any conflict among the documents comprising the Agreement, they will control in the following order of priority: first, the Pricing Schedule(s) (but only with respect to the Account(s) listed on such Schedule(s)); second, the Master Electricity Supply Agreement. The applicable provisions of this Agreement will continue in effect after termination or expiration hereof to the extent necessary, including but not limited to providing for final billing, billing adjustments and payments, limitations of liability, the forum and manner of dispute resolution, and with respect to any indemnification obligations under this Agreement. The section headings used in this Agreement are for reference purposes only and will in no way affect the meaning of the provisions of this Agreement.

T2.18. Affirmation. Customer affirms that it has read this Agreement in its entirety and it agrees to the terms and conditions contained herein. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement.

T2.19. Relationship of the Parties. NewEnergy is an independent contractor under this Agreement. Except as otherwise explicitly provided in this Agreement, neither Party has the authority to execute documents that purport to bind the other, and nothing in this Agreement will be construed to constitute a joint venture, fiduciary relationship, partnership or other joint undertaking.

T2.20. Forward Contract; Inapplicability of Commodities Exchange Act. The Parties acknowledge and agree that this Agreement is a "forward contract" and that NewEnergy is a "forward contract merchant" for purposes of the U.S. Bankruptcy Code, as amended; provided that Customer does not opine as to whether such agreement is conclusive under the U.S. Bankruptcy Code, as amended. Further, NewEnergy is not providing advice regarding the value or advisability of trading in "commodity interests" as defined in the Commodity Exchange Act, 7 U.S.C. §§ 1-25, et seq., as amended (the "CEA"), including futures contracts and commodity options or any other activity which would cause NewEnergy or any of its Affiliates to be considered a commodity trading advisor under the CEA.



SCHEDULE A

Constellation NewEnergy, Inc. ("NewEnergy") Illinois ComEd Fixed Price Schedule Pricing Expiration Date: «PropExpDt» Customer: «CoName»

This Pricing Schedule is entered into pursuant to and in accordance with a Master Electricity Supply Agreement executed on the _____ day of _____, 200__, by and between NewEnergy and «CoName», and is subject to all of the provisions, terms and conditions of such Master Electricity Supply Agreement. Notwithstanding anything to the contrary, any conflict between this Pricing Schedule and the Master Electricity Supply Agreement will be resolved in favor of this Pricing Schedule. Capitalized terms used herein but not defined will have the meanings ascribed to them in the Master Electricity Supply Agreement.

Product Type: Fixed Price: Constellation will supply and Customer will purchase, on an exclusive basis, Customer's full requirements for electricity for the Account(s) listed on this Pricing Schedule at the applicable Fixed Price(s) plus applicable Utility Charges, Line Loss Charges, Transmission Service Charges, Ancillary Service Charges, and Taxes, each of which are subject to change during the duration of the Agreement, and an Administration Fee. The Master Electricity Agreement provides that NewEnergy, in its sole discretion, is authorized to select on behalf of Customer such sources of electric generation as it deems appropriate for the Accounts. However, NewEnergy agrees that _____ percent (____%) of Customer's load volume at the Accounts will be served by "green power" during the term of this Pricing Schedule. For purposes of this Pricing Schedule, "green power" means electricity generated by renewable energy resources, evidenced by Tradable Renewable Certificates ("TRCs") and satisfying the requirements of the Green-e Renewable Energy Certification Program administered by the Center For Resource Solutions in California. The TRCs are not being provided pursuant to any current or future Federal or State Renewable Portfolio Standards.

PS 1. Certain Definitions.

"Administration Fee" shall equal the fee set forth below for each Account per billing cycle for charges including, but not limited to, billing, metering and securing interval data. **The Administration Fee is fixed for the term of this Agreement.**

"Ancillary Service Charges" means for any billing period the applicable charges regarding ancillary services as set forth in the applicable ISO Open Access Transmission Tariff ("OATT") and more specifically identified in the applicable schedules to the OATT; whether such specific charges are set forth in the OATT or are determined market based in accordance with the OATT. NewEnergy will determine Customer's monthly Ancillary Service Charges by socializing NewEnergy's cost for Ancillary Service Charges across all of our customers within the applicable ISO service territory based on their respective kWh usage or in the form of an otherwise reasonable allocation method. **Ancillary Service Charges are a variable price component and therefore subject to change during the term of this Pricing Schedule.**

"Capacity Charges" means a charge in dollars per kWh (\$/kWh) for fulfilling the capacity requirements for the Account(s) imposed by PJM or otherwise. **The Fixed Price(s) includes Capacity Charges.**

"Congestion Charges" means a charge reflecting the cost associated with transmission congestion. **The Fixed Price(s) includes Congestion Charges.**

"Covered Bandwidth" means for each Account an amount of electricity usage falling in the following range: plus or minus fifteen percent (15%) during summer months and thirty percent (30%) during non-summer months, as defined by Utility, and based on (a) the actual historical monthly kilowatt-hours consumption reported to NewEnergy for the immediately preceding yearly period or (b) in the case of Account(s) that did not receive electricity in the prior year period or whose consumption will likely differ materially during the term of this Agreement from such prior year period, the Parties' NewEnergy's good-faith estimate of the anticipated monthly consumption for such Account(s) as set forth on Exhibit A hereto.

"Delivery Point" means existing and future points of interconnection between the ISO-controlled grid or a third-party transmission system and/or distribution system, as applicable, and the Utility's transmission system and/or distribution system.

"End Date" means the applicable billing cycle date of the Utility's monthly billing cycle for the month and year specified on the Account Schedule to this Pricing Schedule.

"Fixed Price(s)" means the "On-Peak Fixed Price", the "Off-Peak Fixed Price", and the "Non-Time-of-Use Fixed Price" identified on this Pricing Schedule for each Account. Any Account with non-interval read meters will be charged at the Non-Time-of-Use Fixed Price.

"Holdover Rate" means a rate as determined by NewEnergy based on the prevailing market-based rate at or near the time of the expiration of this Pricing Schedule and an administrative charge reflective of our cost and lost margin. NewEnergy will notify Customer of such rate prior to the Holdover Term.

"ISO" means PJM-West, L.L.C. ("PJM"), or other entity approved by the Federal Energy Regulatory Commission or other applicable regulatory body, that provides transmission service within Commonwealth Edison Company's service territory.

"Late Payment Charge" means 1.5 % of the total dollar amount set forth on the invoice as due and payable from Customer.

"Line Loss Charges" means the charges imposed by Utility and by ISO and incurred by NewEnergy in connection with the supply of electricity to Customer in accordance with this Pricing Schedule, which are calculated based on a percentage of Customer's kilowatt-hour consumption during the applicable period times the applicable On-Peak and Off-Peak price set forth on the Account Schedule to this Pricing Schedule. **Line Loss Charges are a variable price component and therefore subject to change during the term of this Pricing Schedule.**

"NewEnergy Cost of Electricity Services" shall mean, for purposes of this Agreement, the total amount due for actual usage of electric power and energy for the Account(s) and shall be defined as the total of the following: (i) NewEnergy Electricity Charges; (ii) Utility Charges; (iii) Line Loss Charges; (iv) Transmission Service Charges; (v) Ancillary Service Charges, (vi) an Administrative Fee; (vii) TRC Charges and (viii) applicable Taxes for delivery of electricity services for the Account(s).

"NewEnergy Electricity Charges" shall mean the sum of Customer's kilowatt-hour consumption during the applicable period, multiplied by the applicable "On-Peak Fixed Price," "Off-Peak-Fixed Price," and "Non-Time-of-Use Fixed Price" for the Accounts listed on this Schedule A.

"Non-Time-of-Use" means all hours of each day.

"Notice Period" means the 5 day period following written notice from NewEnergy to Customer informing Customer of any amounts due under this Agreement.

"On-Peak" means the hours designated from time to time as "peak" by Utility. Currently, On-Peak hours are 9:00 a.m. Central Prevailing Time to 10:00 p.m. Central Prevailing Time on Monday through Friday, except on days on which the following holidays are observed in the United States of America: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and, if one of the forgoing holidays occurs on a Tuesday or Thursday, the immediately preceding Friday or immediately following Friday, respectively.

"Off-Peak" means all hours other than On-Peak hours.

"Payment Date" means that date that is sixty fourteen (6014) days after the date on the invoice.

"Start Date" means the applicable billing cycle date of the Utility's monthly billing cycle for the month and year specified on the Account Schedule to this Pricing Schedule.

"Transmission Service Charges" means the applicable transmission service charges (other than Ancillary Service Charges, which will be invoiced separately) as identified in the applicable OATT Tariff for the provision of transmission service by the ISO within the Utility's service territory. NewEnergy will calculate Customer's Transmission Service Charges in the form of a kWh charge based on Rider TS or in the form of an otherwise reasonable allocation method. **Transmission Service Charges are a variable price component and therefore subject to change during the term of this Pricing Schedule.**

"TRC Charges" means ___ percent (___%) of the sum of Customer's kilowatt-hour consumption during the applicable period, multiplied by \$[_____] per kWh, for the TRCs provided hereunder.

"Utility" means Commonwealth Edison Company, the public utility owning and maintaining the distribution system required for reliable delivery of electricity to the Account(s).

"Utility Charges" means (i) all delivery services or Utility costs, charges, and fees, due under Rate RCDS, Rate RDS, any successor rates or otherwise, and (ii) other applicable Utility tariff charges associated with Customer's use of Utility's distribution network, which charges may include, without limitation, meter rental and installation charges, distribution facilities charges, a customer charge, instrument funding charges, franchise fees, lighting charges, public programs, and decommissioning charges. **Utility Charges are a pass-through and may therefore change during the term of this Pricing Schedule.**

PS2.1 (a) **Initial Term.** With respect to each Account set forth below, the term of this Pricing Schedule shall commence on the "Start Date(s)" and end on the "End Date(s)", both as specified below, unless extended upon the mutual written agreement of the Parties or as otherwise provided in this Pricing Schedule. NewEnergy will use commercially reasonable efforts to begin service to the Accounts on the Start Date(s) set forth below, but if NewEnergy is unable to enroll one or more of the Accounts by such date as a result of circumstances beyond NewEnergy's control (including Customer's failure to notify the Utility that it has selected NewEnergy as its supplier or any acts or omissions of the Utility), the Start Date(s) will commence on the next regularly scheduled Utility meter read date in the month and year following successful enrollment of such Account(s). **In this circumstance, NewEnergy, in its discretion, will have the right, but not the obligation, upon written notice to Customer to extend the End Date to reflect the delay in the start of NewEnergy's supplying electricity to Customer.** If NewEnergy is unable to commence service within 35 days of the Start Date(s), NewEnergy will have the right, in its discretion, to terminate this Pricing Schedule without penalty or prejudice upon written notice to Customer.

(b) **Final Meter Read Date.** Any notice period in the Agreement to the contrary notwithstanding, if Customer terminates the Agreement in accordance with its terms, such termination shall become effective at the applicable termination date but not earlier than the next regularly scheduled meter read cycle date at which NewEnergy is able to return Customer to being served by the Utility or any alternative supplier elected by Customer.

PS2.2 **Renewal Terms.** Not less than 75 days prior to the expiration date of the then current term of this Pricing Schedule (the "Expiration Date"), NewEnergy shall have the right, but not the obligation, to provide written notice to Customer of its intent to extend the term of this Pricing Schedule with respect to all or some of the Accounts listed below (the "Renewal Notice"). The Renewal Notice shall set forth the proposed NewEnergy Electricity Charge for the renewal term, the proposed length of the renewal term, which Accounts are to be served, and any other proposed changes to the terms and conditions of this Pricing Schedule. **Unless Customer notifies NewEnergy in writing within five (5) days of receipt of the Renewal Notice that Customer desires not to renew this Pricing Schedule, Customer shall be deemed to have irrevocably and unconditionally agreed in writing to extend the term of this Pricing Schedule on the terms and conditions set forth in the Renewal Notice.** Nothing in the Agreement (including this Pricing Schedule) shall be deemed to require or otherwise obligate NewEnergy to offer to extend the term of this Pricing Schedule (and thus send a Renewal Notice to Customer). Furthermore, where NewEnergy has sent a Renewal Notice to Customer, NewEnergy shall have the right to withdraw such Renewal Notice without penalty or prejudice at any time prior to the Expiration Date, and following such withdrawal shall have no obligation to continue to provide service to the Accounts past the Expiration Date.

PS2.3 **Invoicing and Payment.** Customer shall receive a single bill from NewEnergy for the NewEnergy Cost of Electricity Services due under this Pricing Schedule and the Agreement. If payment of the NewEnergy Cost of Electricity Services due under this Pricing Schedule is not received by the Payment Date, a Late Payment Charge may be assessed and will appear on a subsequent invoice and such Late Payment Charge is payable on demand. In addition, interest will accrue daily on the amounts due to NewEnergy at a rate of 1.5% per month or the highest rate permitted by Law, whichever is less. NewEnergy reserves the right to adjust its billing cycle from time to time. Customer acknowledges that NewEnergy's ability to invoice Customer is dependent on the Utility's or ISO's ability to furnish NewEnergy with all necessary information. In the absence of such information, NewEnergy shall have the right to invoice Customer based on estimated meter readings or other estimated information. Customer's invoice will be adjusted the next billing cycle after which NewEnergy receives the actual consumption amount and other necessary information from the Utility or ISO, to reconcile any difference between estimated consumption and actual consumption or other matters. **Customer will be deemed to have waived any billing disputes unless presented to NewEnergy in writing within 60 days after the date on Customer's invoice. All other claims Customer may have related in any way to this Pricing Schedule and/or the products and services NewEnergy provides will be deemed waived if Customer fails to notify NewEnergy of such claims within 60 days after termination or expiration of this pricing Schedule.** To the extent that dollar amounts included on an invoice are for the benefit of the Utility, Customer shall also comply with the standard terms and conditions of the Utility applicable to payments owed to it. Payments to NewEnergy are subject to adjustments in subsequent invoices if, on the basis of verified information provided by the ISO, the Utility or otherwise, the amount of electricity delivered to the Customer is adjusted. Customer shall have full responsibility for payment of any existing amounts owed to Utility. In the event that the Customer is deemed by the Utility to be ineligible to receive a single bill from NewEnergy, Customer agrees and acknowledges that NewEnergy will serve Customer's Account(s) under the terms of this Pricing Schedule, but NewEnergy will invoice Customer for NewEnergy Electricity Charges only, and Customer will be invoiced directly by the Utility for all other Utility, delivery, and other related charges. To the extent that Customer fails to comply with the provisions of this PS2.3, NewEnergy reserves the right to cease providing Customer with a single bill and the Customer will be invoiced directly by the Utility for all amounts.

Charges and other charges related to use of the Utility's distribution system and NewEnergy will invoice Customer for NewEnergy Electricity Charges only. **Notwithstanding anything to the contrary in this section PS2.3, to the extent that Customer fails to timely remit payment to NewEnergy, NewEnergy reserves the right to withhold any payments due and owing to the Utility until such payments are received by NewEnergy from the Customer. Customer acknowledges that the failure to timely remit payment to NewEnergy of amounts due and owing to the Utility may result in the Utility requesting that Customer provide a deposit as a condition for service or face disconnection of service by the Utility.**

PS2.4 Usage Variance. Customer acknowledges that NewEnergy determined the fixed price for electricity for the NewEnergy Electricity Charge calculation, in part, based on Customer's historic and/or estimated monthly usage and metered rate of consumption for each Account. Consequently, Customer agrees to bear any additional charges and costs to NewEnergy arising from, or relating to, usage outside the Covered Bandwidth, including without limitation, circumstances in which electric usage by one or more Accounts declines to *de minimis* levels or ceases altogether (for any reason other than Force Majeure). **If one or more of Customer's facilities which are receiving electricity supply hereunder are closed, vacated, sold, consolidated or otherwise disposed of and (i) it was not contemplated by both Parties as of the date of this Pricing Schedule (as shown on Exhibit A) that such facility would be closed, vacated, sold, consolidated or otherwise disposed of on or about the same time and (ii) Customer is not going to replace the corresponding usage by enrolling any other facility with similar usage, then Customer may, to the extent permitted by applicable Law, terminate this Pricing Schedule with respect to the corresponding Account(s) upon 60 days written notice to NewEnergy, provided that whether or not Customer provided timely termination notice, Customer may be liable to make an early termination payment to NewEnergy under Section T2.3 of the Master Electricity Supply Agreement if and to the extent the Contract Value plus Costs exceeds the Market Value for the Remaining Anticipated Usage.** Customer shall use reasonable efforts to provide NewEnergy prompt prior written notice (but in no event less than 30 days) by facsimile or electronic mail before any significant change in the anticipated usage of electricity for any facility receiving service under this Pricing Schedule, including without limitation, changes due to equipment outages, plant or facility shutdowns, or changes in the operating hours of a facility.

PS2.5 Switching Onto and Off of Utility Supply Service. To the extent permitted by Law, NewEnergy reserves the right, in its sole discretion and in accordance with applicable Law, to arrange for the supply of electricity to be provided to the Account(s) and to move the Account(s) onto and off of (i) the Utility's basic tariff service or power purchase option then in effect; or (ii) alternate electricity supply sources to the extent such election does not bind the Customer to such rate, charge or service beyond the term of this Pricing Schedule. Customer agrees to execute in a timely manner any authorizations necessary to effectuate this process. Notwithstanding any move to the Utility basic tariff service or power purchase option then in effect; or any other electric supply service; the amount Customer shall be obligated to pay for such electric energy shall not exceed the NewEnergy Electricity Charge, and to the extent necessary NewEnergy shall credit against amounts Customer owes to NewEnergy, or if no such amounts are due to NewEnergy pay to Customer, on a monthly basis, an amount equal to the difference between the amount charged Customer by the Utility for such electricity (the "Utility Delivery Charge") and the otherwise applicable NewEnergy Electricity Charge, so long as the Utility Delivery Charge is greater than the NewEnergy Electricity Charge.

PS2.6 Certain Customer Acknowledgements. Customer acknowledges and agrees that (1) NewEnergy is not acting as Customer's consultant or advisor for any purpose, and Customer will not construe or rely on any information provided or statements made by NewEnergy, including without limitation as to the advantages or disadvantages of a specific product or service, predictions about future energy prices, or any other statements or information, as advice or representations of any sort; and (2) Customer is making its own decisions based solely upon its own analysis and the advice of its own advisors, if any, and is not relying on NewEnergy in any way in making its decision to enter into this Pricing Schedule or in making any other decision or taking any other action under this Pricing Schedule.

PS2.7 NewEnergy and Utility Contact Information. Customer may contact NewEnergy regarding its invoice or other matters concerning this Agreement at NewEnergy's Customer Service Department by toll-free telephone at (888) 638-4606. **CUSTOMER AGREES TO CONTACT ITS UTILITY IN THE EVENT OF A POWER OUTAGE OR OTHER ELECTRICITY RELATED EMERGENCY AT THE FOLLOWING TELEPHONE NUMBER: (800) 334-7661.**

PS2.8 Resource Adequacy and Renewable Portfolio Standard Program Implementation. NewEnergy Electricity Charges do not reflect the cost of any regulatory or legal requirements which impose an alternative resource adequacy construct or renewable portfolio standards on NewEnergy. Any such standards imposed by Law or regulatory order or otherwise that results in increased costs to NewEnergy shall be considered to be a Change in Law under the Master Electricity Supply Agreement. NewEnergy shall have the right to adjust upwards the amount payable by Customer under this Pricing Schedule to take into account any increased costs associated with such Change in Law. Such additional charges will be included in subsequent invoices to Customer.

[Remainder of page Intentionally left blank]

ACCOUNT SCHEDULE
Expiration Date: «PropExpDt»

Any alteration, addition, or modification of the preprinted terms upon this Illinois ComEd Fixed Price Schedule shall be void and without any effect.

This Pricing Schedule and any Master Electricity Supply Agreement shall not be binding or enforceable against NewEnergy unless and until signed by an authorized representative of NewEnergy.

Please provide executed copies of the following documents by no later than 2:00 p.m. CPT on the Pricing Expiration Date via facsimile to (312) 704-8530 (Attention: Contracts Administrator): (1) a fully completed and executed Master Electricity Supply Agreement (to the extent not previously entered into); (2) this Illinois ComEd Fixed Price Schedule; and (3) a fully executed Designation of General Account Agent (GAA) form.

<<BrokerRider>>

In witness whereof, the Parties have caused this Pricing Schedule to be executed on their behalf on the respective dates written below.

CONSTELLATION NEWENERGY, INC.

By: _____
Name: _____
Title: _____
Date: _____

Address for Notices:

550 West Washington Boulevard
Suite 300
Chicago, IL 60661

NewEnergy Reference Number: IL-CE-MRESA_FP
NewEnergy Contract Number: «PropId»

CUSTOMER: «CoName»

By: _____
Name: _____
Title: _____
Date: _____

Address for Notices:

Address for Receipt of Invoices:

<p><u>CNE LEGAL APPROVAL</u></p> <p>Approver Initials: _____</p>

EXHIBIT A

1) Parties' good-faith estimate of the anticipated monthly consumption for certain Account(s)

Account No.	Anticipated monthly usage (kWh)

2) Scheduled date for a facility to be closed, vacated, sold, consolidated or otherwise disposed

Facility	Account No.	Date	Affected Usage (kWh)



Master Electricity Supply Agreement

«CoName» ("Customer"), and Constellation NewEnergy, Inc. ("NewEnergy"), a Delaware corporation, enter into this Master Electricity Supply Agreement, which includes the attached General Terms and Conditions (the "Master Electricity Supply Agreement") as of the later date set forth under the Parties' signatures below (the "Effective Date").

1. ELECTRICITY SUPPLY. From time to time NewEnergy shall supply, and Customer shall purchase, on an exclusive basis, Customer's full requirements for electricity for the Account(s) identified in the Pricing Schedule(s) for the term set forth on such Pricing Schedule(s).

2. INFORMATION AND AUTHORIZATION. Customer shall designate NewEnergy to the Utility and/or ISO, as appropriate, as an authorized recipient of Customer's current and historical energy billing and usage data and as the exclusive provider of demand response programs, including but not limited to curtailment programs.

3. INVOICING AND PAYMENT. For electric energy supplied under this Agreement, Customer shall pay the NewEnergy Electricity Charge. In addition to the NewEnergy Electricity Charge, Customer shall pay and be responsible for all such other amounts related to the purchase and delivery of electricity, which, unless specifically provided for otherwise in a Pricing Schedule, shall include amounts for (i) Taxes related in any way to the NewEnergy Electricity Charge or any other products or services provided hereunder and (ii) Delivery Charges and related Taxes.

4. TERM. The Master Electricity Supply Agreement will commence on the Effective Date and, unless terminated earlier as otherwise provided in this Agreement, will continue until terminated by either Party upon 30 days written notice to the other.

5. ACCEPTANCE. This Master Electricity Supply Agreement and any Pricing Schedule(s) shall not be binding or enforceable against NewEnergy unless and until signed by an authorized representative of NewEnergy.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the respective dates set forth below.

Constellation NewEnergy, Inc.

By: _____
Name: _____
Title: _____
Date: _____

Customer: «CoName»

By: _____
Name: _____
Title: _____
Date: _____

General Terms and Conditions for Electricity Supply

1. **Definitions.** All capitalized terms have the meanings set forth below, in the Pricing Schedules, or defined elsewhere in the Agreement.

"Accounts" means those account(s) listed in the Pricing Schedule(s) which are to be supplied with electricity by NewEnergy under this Agreement.

"Affiliate" of a Party means any person or entity controlled by, that controls, or that is under common control with, such Party. The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Party, whether through the ownership of voting securities, by contract, or otherwise.

"Delivery Charges" mean those amounts payable (including Taxes and surcharges) by Customer for services provided by the Utility, ISO or other third parties.

"Governing Jurisdiction" means with respect to each Account, the State of Illinois in which such Account is located; provided that the governing jurisdiction shall be deemed to be the State of New York if the matter at issue involves Accounts or matters in more than one state.

"Holdover Rate" shall have the meaning set forth in the Pricing Schedule(s).

"ISO" means the independent system operator or regional transmission organization identified on the Pricing Schedule(s), or any successor or replacement entity or other entity, public or private, administering transmission reliability and control of the electricity grid.

"Law" means with respect to the Accounts, any Illinois law, rule, regulation, ordinance, statute, judicial decision, administrative order, ISO operating guideline or protocol, Utility or ISO tariff, or rule of the Illinois Commerce Commission, and the like.

"NewEnergy Electricity Charge" means the product of the fixed or variable price for electricity as set forth in the Pricing Schedule(s) for each Account multiplied by the Customer's kilowatt-hour (kWh) usage during the applicable period.

"Notice Period" shall have the meaning set forth in the Pricing Schedule(s).

"Payment Date" shall have the meaning set forth in the Pricing Schedule(s).

"Taxes" mean all applicable federal, state, municipal and other taxes, duties, fees, levies, premiums or any other charges imposed by any governmental authority, whether direct or indirect, and whether in effect as of the Effective Date or enacted after such date, together with all interest, penalties or other additional amounts imposed in respect thereof including without limitation, those levied on or measured by, or referred to as sales, consumption, goods and services, use, value added, receipts taxes, kWh taxes, franchise tax, privilege taxes (such as Ohio's Commercial Activity Tax), excise, stamp, withholding or surtaxes (but shall not include taxes imposed on the net income of NewEnergy). The term "Taxes" shall include any and all amounts imposed either on the Customer directly or on NewEnergy in its function as a supplier of Customer, and that are associated in any way with the supply of energy and related services to Customer (in which case the Customer shall be responsible to reimburse NewEnergy for all such amounts). All Taxes invoiced to the Customer under this Agreement will be displayed on the invoice as a separate line item or included in the NewEnergy Electricity Charge as required by Law.

"Utility" means the local electricity distribution company owning and/or controlling and maintaining the distribution system required for delivery of electricity to the account(s).

T2.1. **Creditworthiness.** From time to time each Party Customer will provide the other Party NewEnergy with reasonable information as requested by NewEnergy to complete a credit review. Continued supply of electricity under this Agreement is contingent upon each Party NewEnergy's determination, in its sole discretion, that the other Party Customer is creditworthy. If at any time and on an on-going basis during the term of this Agreement a Party NewEnergy determines that the other Party Customer's credit is unsatisfactory, the other Party Customer has experienced any adverse change in its financial condition, the other Party Customer's financial obligations to NewEnergy increase under this Agreement for any reason, or the Customer has made two or more late payments, the Party NewEnergy will have the right to require that the other Party Customer post security or make other credit arrangements satisfactory to the Party NewEnergy (which may include without limitation, making a cash deposit, posting a letter of credit at a financially sound bank or other financial institution, or prepaying NewEnergy for electricity supplied under this Agreement) or to increase or supplement security or other credit arrangements previously put in place, in any such circumstance to ensure prompt payment by each Party Customer of amounts owed or otherwise payable under this Agreement; provided that for purpose of this Section T2.1 NewEnergy shall be deemed creditworthy as long as its net worth exceeds \$50 million. Each Party Customer will provide the requested security or credit arrangements, including any increase thereof, within five (5) business days of NewEnergy's request.

T2.2. **Default.** An "Event of Default" means any one of the following: (a) **Customer's failure to make, when due, any payment required under this Agreement if not paid within the Notice Period;** or (b) any representation or warranty made by a Party in this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true in all material respects during the term of this Agreement, if not cured within 5 business days after written notice from the other Party; or (c) Customer fails to provide additional security or credit arrangements as provided in this Agreement; or (d) except to the extent excused by Force Majeure, the failure by a Party to perform any material obligation set forth in this Agreement (other than the events that are otherwise specifically covered as a separate Event of Default hereunder) where, in circumstances such failure is curable, **it is not cured within 20 business days after receipt of written notice thereof;** or (e) a Party: (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed for it or any substantial portion of its property or assets (iii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed for 20 business days after such filing; (iv) otherwise becomes bankrupt or insolvent (however evidenced); or (v) is unable to pay its debts as they fall due.

T2.3. **Remedies upon Default.**

(a) If an Event of Default occurs with respect to a Party (the "Defaulting Party"), the other Party (the "Non-Defaulting Party") may, in its discretion, at any time, terminate this Agreement in whole or solely with respect to those Accounts adversely affected by such Event of Default, as a result of such default upon written notice to the Defaulting Party setting forth the effective date of termination (the "Early Termination Date"). If this Agreement is terminated, in whole or in part, pursuant this Section, the Non-Defaulting Party will in good faith calculate a termination payment as set forth below, and the Defaulting Party shall pay such amount following receipt of notice of such amount as provided herein. The Parties acknowledge and agree that any termination payment under this Agreement constitutes a reasonable approximation of harm or loss, and is not a penalty or punitive in any respect.

(b) If Customer terminates this Agreement, in whole or in part, upon the default of NewEnergy, NewEnergy will pay Customer the following early termination payment: [Market Value plus Costs] minus Contract Value, so long as the Market Value plus Costs is greater than the Contract Value.

(c) If NewEnergy terminates this Agreement, in whole or in part, upon the default of Customer or Customer terminates this Agreement, in whole or in part, as permitted under a Pricing Schedule or under Section T.2.5 below, Customer will pay NewEnergy the following early termination payment: [Contract Value plus Costs] minus Market Value, so long as the Contract Value plus Costs is greater than the Market Value.

(d) For purposes of this Section, "**Contract Value**" means the NewEnergy Electricity Charge for the Remaining Anticipated Usage. "**Market Value**" means the amount, as determined by the Non-Defaulting Party as of the Early Termination Date, a bona fide third party would pay for the Remaining Anticipated Usage at current market prices. In determining "Market Value", the Non-Defaulting Party may consider, among other things, quotations from leading dealers in the wholesale energy industry, the Non-Defaulting Party's internally developed forward price valuations, and other bona fide offers from either third parties or Affiliates of the Non-Defaulting Party, all as commercially available to the Non-Defaulting Party and adjusted for the length of the Remaining Term and differences in transmissions costs, volume, and other factors, as the Non-Defaulting Party reasonably determines. "**Costs**" mean brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by, or on behalf of, the Non-Defaulting Party in terminating, liquidating, or obtaining any arrangement pursuant to which it has hedged its obligations, and attorneys' fees, expenses and costs, if any, incurred in connection with enforcing its rights under this Agreement. "**Remaining Anticipated Usage**" means the amount of electricity (in kWh), as determined by the Non-Defaulting Party, that would have been used by each Account covered by the termination during the remaining term of this Agreement had it not been terminated early (the "**Remaining Term**"). In making this determination the Non-Defaulting Party may (but is not required to) consider: (i) anticipated consistency with or deviations from past electricity usage patterns, (ii) variations in anticipated weather patterns, (iii) general economic conditions or conditions affecting the specific industry(ies) in which Customer operates, and/or (iv) any other factors the Non-Defaulting Party deems appropriate."

T2.4 Certain Rights after Termination or Expiration. If following termination or expiration of this Agreement (whether in whole or in part), for any reason the Accounts remain designated by the Utility and/or the ISO as being served by NewEnergy, NewEnergy may, consistent with Law and in its sole discretion, either (i) continue to serve such Account(s) on a month-to-month holdover basis (the "**Holdover Term**") or (ii) move such Account(s) to the then applicable tariff service, whether default service or otherwise, or to another authorized provider of electricity required to serve as the "provider of last resort" (any of the foregoing, "**Alternative Service**"), and in either case NewEnergy shall have the right to pursue all additional remedies available at law or in equity; provided that if the Accounts remain designated by the Utility and/or the ISO as being served by NewEnergy due to a negligent or willful omission or wrongful act, Customer shall be entitled to recover from NewEnergy excess cost associated with being supplied by NewEnergy during such Holdover Term. The NewEnergy Electricity Charge payable during the Holdover Term shall be the Holdover Rate set forth in the applicable Pricing Schedule. This Agreement will continue to govern the provision of service during the Holdover Term. Either Party may terminate the Holdover Term at any time upon 30 days advance written notice to the other or such other time period required by Law, whichever is longer, such termination to be effective as of the next applicable meter read cycle date with respect to each Account. Furthermore, during a Holdover Term, NewEnergy may at any time move the Accounts to Alternative Service without penalty or prejudice. If NewEnergy so requests, Customer will cooperate with NewEnergy in its efforts to cease providing service to Customer after termination or expiration of this Agreement, whether in whole or in part.

T2.5 Change in Law. If a new Law shall be enacted, or there shall occur any revisions in, implementation of, amendments to, or interpretations of any Law (including without limitation those that establish new, or otherwise modify existing, alternative resource adequacy requirements or renewable portfolio standards or that impose new Taxes or change the rate of existing Taxes), in either circumstance affecting approved or anticipated rates, tariffs, Taxes, charges, fees, assessments, or other costs relating to the licensing, marketing, supply, generation, transmission or distribution of electric power and/or energy that could adversely affect the anticipated economic return to NewEnergy under this Agreement, NewEnergy shall have the right to adjust upward the amounts payable by Customer under this Agreement to take account of such adverse economic consequences (a "Change of Law Adjustment"). Such additional amounts will be included in subsequent invoices to Customer. NewEnergy shall notify Customer as soon as reasonably possible of any Change of Law Adjustment and the cost associated therewith.

T2.6. Representations and Warranties.

(a) Mutual Representations and Warranties. Each Party warrants and represents to the other the following: (1) it is duly organized, validly operating and in good standing under the laws of the jurisdiction of its formation; (2) it is authorized and qualified to do business in the jurisdictions necessary to perform under this Agreement; (3) the execution, delivery and performance of this Agreement are duly authorized and do not violate any governing documents or any contracts to which it is a party or any laws, rules or regulations applicable to it; (4) there is no material event(s) or other agreement(s) which would impair that Party's right, authority or ability to execute this Agreement and otherwise consummate the transactions contemplated by this Agreement; and (5) it has knowledge and experience that enable it to evaluate the merits and risks associated with this Agreement.

(b) Additional Representations, Warranties and Covenants of Customer. Customer warrants, represents and covenants that: (1) the data given and representations made concerning its Accounts are true and correct; (2) Customer is entering into this Agreement to purchase its electric energy requirements only; and that the electric energy purchased under this Agreement will be consumed at the facilities to which the Accounts relate, and Customer will not resell such electric energy to any third party (with the sole exception of Customer tenants or lessees in the ordinary course of Customer's business); and (3) Customer is the party of record of the Accounts, or if it is not the party of record, it has the authority to enter into and bind its principal to this Agreement. If requested, Customer will provide NewEnergy written proof of such authority.

T2.7. Force Majeure. "**Force Majeure**" means an event that is not within the reasonable control of the Party claiming Force Majeure ("**Claiming Party**"), and that by the exercise of due diligence, the Claiming Party is unable to overcome in a commercially reasonable manner, and such event will not be deemed a breach or default under this Agreement. Force Majeure includes, but is not limited to, acts of God; fire; war; terrorism; flood; earthquake; civil disturbance; sabotage; facility failure; curtailment, disruption or interruption of distribution, transmission, or supply; declaration of emergency by the Utility or ISO; regulatory, administrative, or legislative action, or action or restraint by court order or governmental authority; or any act or omission of a third party not under the control of the Claiming Party (including without limitation the Utility or ISO). Notwithstanding any other provision of this Agreement, where a Party is unable to carry out any obligation under this Agreement due to a Force Majeure event (other than a payment obligation, which will not be excused for Force Majeure), this Agreement will remain in effect but such obligation will be suspended for the period necessary as a result of the Force Majeure, provided that: (i) to the extent reasonably possible, the Claiming Party gives the other Party prompt written notice describing the particulars of the Force Majeure, including but not limited to, the nature and date of the occurrence and the expected duration of the Force Majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and (iii) the Claiming Party uses commercially reasonable efforts to remedy its inability to perform. If the Force Majeure continues for a period of 30 days (the "**Extended Force Majeure Trigger Date**") or more, the performing Party will have the right to terminate this Agreement with respect to those Accounts adversely affected by the Force Majeure by providing the Claiming Party 15 days prior written notice after the Extended Force Majeure Trigger Date.

T2.8. Indemnification. At and after the point at which Customer takes delivery, Customer agrees to defend, indemnify and hold harmless NewEnergy and all its Affiliates, and all of their respective officers, directors, shareholders, associates, employees, agents, representatives, successors and assigns (collectively including NewEnergy referred to as the "**NewEnergy Parties**") from and against all claims, losses, expenses (including attorneys' fees and court costs), damages, demands,

gments, causes of action or suits (collectively, "Claims") of any kind, including but not limited to, Claims for personal injury, death, or property damage, arising out of or related to this Agreement. [Intentionally Omitted]

9. Certain Limitations.

(a) **Limitations of Liability.** Notwithstanding any other provision of this Agreement to the contrary, the entire liability of each Party the NewEnergy Parties for any and all claims, losses, expenses (including attorneys' fees and court costs), damages, demands, judgments, causes of action or suits (collectively, "Claims") Claims of any kind arising from or relating to this Agreement, including any causes of action in contract, tort, strict liability or otherwise, will not exceed the full amount due from Customer for the NewEnergy Electricity Charge under the first billing cycle under this Agreement and will be limited to direct actual damages only, subject in all cases to an affirmative obligation on the part of the Customer to mitigate its damages. Furthermore, in no event will the NewEnergy Parties be liable for any consequential, exemplary, special, incidental or punitive damages, including, without limitation, lost opportunities or lost profits.

(b) **Utility/ISO Services.** Customer acknowledges and agrees that the Utility and ISO are exclusively responsible for the electricity delivery system and all interruptions in the delivery of service and that NewEnergy exercises no independent control over the Utility's facilities or the ISO-controlled grid necessary for the delivery of electricity. As such, Customer disclaims any and all right to damages from NewEnergy arising from any interruption in electric service caused in whole or in part by interruption, termination or deterioration of service on the Utility's system or on the ISO-controlled grid. At and after the Delivery Point(s), Customer will be responsible for all distribution and transmission charges, including congestion and ancillary costs, if any, assessed by the Utility, the ISO, or any third party. Furthermore, NewEnergy is not responsible for providing services related to the maintenance and operation of the Utility's electricity delivery system, services regarding Customer's consumption of electricity, or other services which are provided by the Utility or third parties. NewEnergy will have no liability for any act or omission of the Utility, the ISO, or any third party, and Customer understands and agrees that it shall be solely responsible for all amounts due to the Utility or third parties for these and other services.

(c) **Setoff/Netting.** NewEnergy shall have the right to set-off and net against any amounts owed to it by Customer under this Agreement, **including without limitation any early termination payment**, any of the following amounts: (i) monies owed to Customer under this Agreement or under any other agreement between NewEnergy or any of NewEnergy's Affiliates, on the one hand, and Customer or any of Customer's Affiliates and (ii) any collateral or other financial assurance provided by Customer to NewEnergy under this Agreement.

T2.10. **DISCLAIMER.** CUSTOMER ACKNOWLEDGES AND AGREES THAT NO WARRANTY, DUTY, OR REMEDY, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, IS GIVEN OR INTENDED TO ARISE OUT OF THIS AGREEMENT EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, AND NEWENERGY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

T2.11. **Waiver and Severability.** *Failure to provide notice of, or object to, any default under this Agreement will not operate or be construed as a waiver of any future default, whether like or different in character.* If any portion of this Agreement, or application thereof to any person or circumstance, is held legally invalid, the remainder will not be affected and will be valid and enforced to the fullest extent permitted by law and equity, and there will be deemed substituted for the invalid provisions such provisions as will most nearly carry out the mutual intent of the Parties as expressed in this Agreement to the fullest extent permitted by applicable Law.

T2.12. **Assignment.** NewEnergy may assign, sell, pledge, transfer, or encumber any of its rights and obligations under this Agreement or the accounts, revenues, or proceeds hereof to: (A) a bank, insurer, or other financial institution; or (B) any person or entity (i) succeeding to all or substantially all of NewEnergy's assets or business or the division or region of NewEnergy to which this Agreement relates or (ii) into which NewEnergy is merged or otherwise combined or reorganized; provided (with respect to this clause (B)) the succeeding entity agrees to be bound to this Agreement; or (C) any Affiliate of NewEnergy. Customer may assign all (but not less than all) its rights and obligations under this Agreement in their entirety or solely with respect to certain Accounts; **provided (A) it gives NewEnergy 60 days written notice of its intent to do so;** (B) the assignee satisfies in full NewEnergy's credit requirements; (C) the assignee assumes in writing all of Customer's obligations under this Agreement; and (D) Customer continues to be liable for performance, including payment for goods and services received, prior to the assignment date.

T2.13. **Confidentiality; Marketing Reference.** (a) Customer agrees to keep all terms and provisions of this Agreement, including the pricing offered to Customer, confidential and not to disclose them to any third parties without the prior written consent of NewEnergy; provided that Customer may disclose any such information in accordance with the Illinois Freedom of Information Act and Customer's normal practice in providing copies of agreements to which Customer is a party upon request. NewEnergy will keep confidential all Customer identifying information and Account information that is not otherwise publicly available. Each Party shall have the right to disclose such information to its Affiliates and its Affiliates' employees, agents, advisors, and independent contractors who have a need to know such information and who agree to hold such information in the strictest confidence. NewEnergy shall also have the right to disclose information respecting Customer, including this Agreement, to brokers, agents, consultants or other third parties that are representing Customer in the purchase of electricity. Furthermore, NewEnergy may make such other disclosures to third parties of information, including aggregate consumption data, provided they are in a manner that cannot be reasonably expected to specifically identify Customer. If disclosure of a Party's confidential information is sought through process of a court, or a state or federal regulatory agency or other legal compulsion, **the Party receiving such request will notify the other Party immediately** to afford the other Party the opportunity to oppose such disclosure or otherwise obtain a protective order or other relief as may be available. The Party receiving such disclosure request will cooperate with the other Party in its attempts to obtain such protections.

(b) Customer authorizes NewEnergy to utilize Customer's name for publicity and marketing purposes.

T2.14. **Choice of Law; Venue; Attorney Fees and Expenses.** The validity, performance, and construction of this Agreement will be governed and interpreted in accordance with the laws of the Governing Jurisdiction, without giving effect to conflict of law principles. Any controversy or claim arising from or relating to this Agreement will be settled in accordance with the express terms of this Agreement by a court located in the Governing Jurisdiction (and each Party hereto waives any right to object to venue in this regard). EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY OR TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION CLAIMS IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. If either Party institutes court action to enforce its rights under this Agreement, the non-prevailing Party shall promptly reimburse the prevailing Party for all its attorney fees, expenses and costs. Further, NewEnergy shall be entitled to recover from Customer all costs, including attorneys' fees, incurred in connection with its efforts, whether in court or otherwise, to collect amounts due and payable to NewEnergy.

T2.15. **No Third Party Beneficiaries.** Except for NewEnergy Parties under the indemnity provisions of this Agreement, this Agreement is for the sole and exclusive benefit of the Parties hereto, and no third party will have any rights under this Agreement whatsoever. If Customer is represented by a third party in connection with

the procurement or performance of this Agreement, unless otherwise expressly provided elsewhere in this Agreement NewEnergy will have no liability therefor, and Customer will be fully responsible for any fee, commission or other compensation owing any such third party, and will indemnify, defend and hold harmless NewEnergy Parties from any and all Claims of any kind of any such third party arising from or relating to this Agreement.

T2.16. Notice. *To be effective, all notices must be in writing delivered by hand, by certified mail, return receipt requested, or by express carrier to the addresses provided in this Agreement. A Party may change its address by providing notice of such change in accordance herewith.*

T2.17. Entire Agreement; Survival of Terms. This Agreement (which constitutes the Master Electricity Supply Agreement, including these General Terms and Conditions, and Pricing Schedule(s) executed and delivered by the Parties from time to time) embodies the Parties' entire agreement and understanding, supersedes all prior agreements and understandings (whether written or oral) regarding the subject matter of this Agreement, and may not be contradicted by any prior or contemporaneous oral or written agreement. Nothing in this Agreement shall be deemed to require NewEnergy to execute and deliver this Master Electricity Supply Agreement or any Pricing Schedule, even if Customer shall have already executed and delivered such to NewEnergy. A facsimile copy of either Party's signature will be considered an original for all purposes under this Agreement, and each Party will provide its original signature upon request. Except to the extent otherwise explicitly provided in this Agreement, no amendment to this Agreement, including the Pricing Schedule(s), will be valid or given any effect unless signed by both Parties. The terms of any purchase order (PO) sent by Customer and/or any alteration, addition, or modification made by Customer to the preprinted terms of this Agreement shall be void and without any effect. In the case of any conflict among the documents comprising the Agreement, they will control in the following order of priority: first, the Pricing Schedule(s) (but only with respect to the Account(s) listed on such Schedule(s)); second, the Master Electricity Supply Agreement. The applicable provisions of this Agreement will continue in effect after termination or expiration hereof to the extent necessary, including but not limited to providing for final billing, billing adjustments and payments, limitations of liability, the forum and manner of dispute resolution, and with respect to any indemnification obligations under this Agreement. The section headings used in this Agreement are for reference purposes only and will in no way affect the meaning of the provisions of this Agreement.

T2.18. Affirmation. Customer affirms that it has read this Agreement in its entirety and it agrees to the terms and conditions contained herein. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement.

T2.19. Relationship of the Parties. NewEnergy is an independent contractor under this Agreement. Except as otherwise explicitly provided in this Agreement, neither Party has the authority to execute documents that purport to bind the other, and nothing in this Agreement will be construed to constitute a joint venture, fiduciary relationship, partnership or other joint undertaking.

T2.20. Forward Contract; Inapplicability of Commodities Exchange Act. The Parties acknowledge and agree that this Agreement is a "forward contract" and that NewEnergy is a "forward contract merchant" for purposes of the U.S. Bankruptcy Code, as amended; provided that Customer does not opine as to whether such agreement is conclusive under the U.S. Bankruptcy Code, as amended. Further, NewEnergy is not providing advice regarding the value or advisability of trading in "commodity interests" as defined in the Commodity Exchange Act, 7 U.S.C. §§ 1-25, et seq., as amended (the "CEA"), including futures contracts and commodity options or any other activity which would cause NewEnergy or any of its Affiliates to be considered a commodity trading advisor under the CEA.

EXHIBIT A2

Sempra Energy Solutions Proposed Contract

ELECTRICITY SALES AND PURCHASE AGREEMENT
Between SEMPRA ENERGY SOLUTIONS ("Seller")
And <COMPANY LEGAL NAME> ("Buyer")
As of <Month, Day, Year> (the "Effective Date")

This Agreement is made by and between Seller and Buyer (referred to collectively as the "Parties" and individually as a "Party)." For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. SCOPE OF THE AGREEMENT

(a) Electricity Supply. Upon enrollment of Buyer's Facilities, Seller shall sell and deliver, or cause a third party (including Buyer's Local Utility) to deliver, and Buyer shall purchase and receive, 100% of Buyer's Electricity requirements at the Delivery Point solely for use at Buyer's Facilities.

(b) Transactions. From time to time, the Parties may, but shall not be obligated to, enter into one or more Transactions. Transactions will ordinarily be entered into by the execution of an Addendum. The Parties may also enter into Transactions orally or through the use of Electronic Communication and in those cases Buyer shall execute, promptly upon Seller's request, an Addendum confirming the terms of such Transaction. Notwithstanding the foregoing, the failure of either Party to execute an Addendum shall not invalidate an otherwise valid Transaction. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of a Transaction entered into in accordance with this Agreement based on any Law requiring agreements to be in writing or to be signed by the Parties or based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

ARTICLE 2. TERM OF AGREEMENT This Agreement shall be in effect as of the Effective Date and shall continue until terminated by either Party with thirty (30) days written notice to the other Party, or in accordance with the other provisions contained herein; provided, that this Agreement shall remain in effect with respect to the Transaction(s) entered into prior to such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s) or such Transaction(s) shall have each been terminated under Articles 6 or 7 of this Agreement, provided that all obligations of the Parties which must survive such termination in order to give full force and effect to the intent of the Parties as expressed herein shall so survive.

ARTICLE 3. PRICING

(a) Contract Price. The price that Buyer pays for Electricity shall be set forth in each Transaction. In the event that Seller delivers and Buyer receives Electricity and there is no Transaction in effect with respect to such deliveries, then the Contract Price shall be the Base Price.

(b) Taxes. As between the Parties, Seller shall be responsible for all Taxes incurred up to the Delivery Point and Buyer shall be responsible for all Taxes incurred at and after the Delivery Point. Seller will recognize a sales tax exemption of Buyer upon receipt of proper documentation.

ARTICLE 4. SERVICE OBLIGATIONS

(a) Enrollment. Buyer shall timely provide Seller with all information (including account information) and documentation required to appoint Seller as Buyer's Electricity service provider and to allow Seller to receive information from Buyer's Local Utility which Seller requires to perform its obligations hereunder. Seller shall enroll Buyer's Facilities upon: (i) execution of a Transaction; (ii) receipt of an executed Enrollment Form (attached hereto as Appendix II) from Buyer and (iii) a designated active switch date from Buyer's Local Utility.

(b) Buyer shall reimburse Seller for all costs and losses incurred by Seller as a result of a delayed or unsuccessful enrollment or de-enrollment, provided, that any such delay or failure is not a direct result of Seller's negligence or willful misconduct.

(c) Operational Requirements. Buyer shall operate Buyer's Facilities such that Electricity consumption is consistent with Buyer's Baseline. Buyer shall notify Seller as soon as practicable of: (i) any revised monthly consumption forecast; (ii) all scheduled or unscheduled outages or anticipated changes in usage; and (iii) changes in Buyer's Baseline. Buyer shall be responsible to Seller for any additional costs and losses incurred by Seller arising from (i), (ii), or (iii); provided that Seller shall use commercially reasonable efforts to mitigate any such costs after receipt of such notice. Buyer shall be responsible for any penalties, charges, expenses, and reasonable attorney's fees incurred by Seller as a result of Buyer's failure to comply with any mandatory curtailment or interruption orders or similar notices requiring reduction, interruption or curtailment of Electricity usage at any of Buyer's Facilities issued by Buyer's Local Utility or an RTO.

(d) Metering. Buyer or Buyer's Local Utility shall be responsible for the cost of installing meters and related equipment (including any telemetry and associated telephonic connections) at Buyer's Facilities that are required by Buyer's Local Utility for Seller to perform its obligations under this Agreement. Such meters shall measure all Electricity at Buyer's Facilities.

(e) Delivery and Title. As between the Parties, Seller will be in exclusive control, hold title to, and be responsible for any damage or injury caused by Electricity before the Delivery Point(s). Seller shall have no further obligation or responsibility relating to the Electricity at and after the Delivery Point(s). Buyer acknowledges that Seller does not own or control any of the transmission or distribution facilities used to deliver Electricity to the Delivery Points and that this function is solely the responsibility of the RTO and/or Buyer's Local Utility, and accordingly that Seller shall have no liability on account of any acts or omissions of these parties or for any interruption or failure to deliver arising therefrom.

ARTICLE 5. BILLING, PAYMENT AND CREDIT

(a) Invoices. Seller shall invoice Buyer each month in a manner consistent with Seller's billing cycle and at the address set forth on Appendix I. Seller shall calculate the amount(s) due based upon Buyer's actual usage information. Seller may reasonably estimate usage and charges at the time of invoicing; provided, that Seller shall adjust subsequent invoices to reflect actual usage and charges after such information is received by Seller.

(b) Payment Terms. All invoices under this Agreement shall be immediately due and payable by Buyer to Seller, without Set-off, in accordance with Seller's invoice instructions on or before the eleventh (11th) day following the date of invoice. All past due payments shall accrue interest at the Interest Rate calculated from the due date until the date payment is received in full by Seller.

(c) LDC Invoice. Where applicable, Buyer will receive a separate invoice from Buyer's Local Utility for the services it provides in delivering Electricity to Buyer's Facilities. Buyer solely shall be responsible for payment of such invoice(s) and of any other charges billed by Buyer's Local Utility in connection herewith.

(d) Billing Disputes. If there is a good faith dispute regarding any invoice, Buyer shall pay to Seller the undisputed amount of such invoice. If any part of the dispute is resolved in Seller's favor, Buyer

shall pay the resolved amount within two (2) Business Days of such resolution and shall include interest at the Interest Rate calculated as of the date of invoice. Buyer's right to dispute an invoice will be deemed waived if not made within one (1) year after the date of invoice.

(e) Credit. Upon any request from time to time by Seller, Buyer shall promptly provide to Seller such financial statements and other information as Seller may reasonably require to adequately assess Buyer's creditworthiness. If Seller has reasonable grounds for insecurity regarding the performance, whether or not then due, of any obligation of Buyer under this Agreement (including, without limitation on account of the occurrence of a material change in Buyer's creditworthiness or any Default), Seller may demand Adequate Assurances in an amount determined by Seller in a commercially reasonable manner, which Adequate Assurances shall be provided by Buyer within two (2) Business Days of such demand. In the event that Adequate Assurances are provided in the form of cash collateral, Buyer shall be deemed to have granted Seller a continuing first priority security interest in, lien on, and right of Set-off against such collateral.

ARTICLE 6. FORCE MAJEURE

Except for payment obligations, if either Party is rendered unable, wholly or in part, to perform its obligations under this Agreement due to Force Majeure, to the extent affected by the Force Majeure the obligations of each Party will be suspended for the duration of such Force Majeure. A Party claiming Force Majeure shall promptly notify the other Party by telephone and confirm within a reasonable period of time by a written notice describing in reasonable detail the nature and estimated duration of such Force Majeure. The Party claiming Force Majeure shall remedy the Force Majeure with all reasonable dispatch. If the duration of the Force Majeure event exceeds twenty (20) days, the Party not claiming Force Majeure may terminate the affected portions of any Transaction upon written notice to the other Party. Any termination due to Force Majeure will not be subject to an early termination payment.

ARTICLE 7. DEFAULT AND TERMINATION

(a) If a Default with respect to a Party shall have occurred and be continuing, the non-defaulting Party shall have the right to suspend its delivery obligations and/or designate a date upon which all outstanding Transactions will liquidate and terminate and all amounts owing will accelerate and be netted into a single amount in accordance with Article 7(c) as of such date ("Early Termination Date").

(b) The non-defaulting Party shall calculate in a commercially reasonable manner a Settlement Amount for each terminated Transaction as of the Early Termination Date. For purposes of calculating such Settlement Amount for any terminated Transaction for which the Contract Quantity thereunder is not a fixed quantity, the Contract Quantity shall be the estimated baseline quantity set forth in the Addendum.

(c) The non-defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (i) all Settlement Amounts that are due to the defaulting Party, plus, at the option of the non-defaulting Party, any cash or other form of security then available to the non-defaulting Party, plus any or all other amounts due to the defaulting Party under this Agreement against (ii) all Settlement Amounts that are due to the non-defaulting Party, plus any or all other amounts due to the non-defaulting Party under this Agreement, so that all such amounts shall be netted to a single amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the non-defaulting Party as appropriate and payable within three (3) Business Days after receipt of a Termination Payment invoice.

(d) If the defaulting Party is owed the Termination Payment, the non-defaulting Party shall be entitled, at its sole option, to Set-off against such Termination Payment any amounts which the defaulting Party owes, whether under this Agreement or otherwise, to the non-defaulting Party or the non-defaulting Party's Affiliates (whether under this Agreement or otherwise).

(e) Notwithstanding any provision to the contrary, in the event that Seller is required under Law to continue to make deliveries to Buyer

under this Agreement or any Transaction after the Early Termination Date ("Post-Termination Deliveries"), the Parties agree that: (i) such obligation shall in no event prohibit, limit or otherwise impair Seller's rights under this Article 7 (including, without limitation, the right to terminate and liquidate any Transaction and accelerate any amounts owing); (ii) Seller may determine in a commercially reasonable manner the anticipated total amount that will be owing by Buyer to Seller in respect of any Post-Termination Deliveries, and Seller shall be entitled at its sole option to Set-off any such Post-Termination Deliveries amounts against any amounts owing to Buyer under this Article 7; and (iii) any Termination Payment payable by Seller under Article 7(c) shall not be payable unless and until Seller has received from Buyer all amounts owing in respect of the Post-Termination Deliveries.

ARTICLE 8. LIMITATION OF LIABILITY

THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED HEREIN SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OR DEFAULT ARISING FROM ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED HEREIN, SUCH REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS MAY BE INCLUDED IN AN EXPRESS REMEDY PROVIDED FOR HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, UNDER ANY INDEMNITY OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 9. REPRESENTATIONS AND WARRANTIES

(a) Each Party represents and warrants to the other that: (i) it is validly existing and in good standing in the jurisdiction of its formation; (ii) the execution, delivery and performance of this Agreement and each Transaction are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents or any agreements to which it is a party or any Law applicable to it; (iii) it has not filed, does not plan to file, nor has it had filed against it, any bankruptcy proceeding; (iv) this Agreement and each Transaction constitutes its legally valid and binding obligation enforceable against it in accordance with its terms (subject to any equitable defenses); (v) it is not a party to or subject to any commitment that may restrict or interfere with the delivery or receipt of Electricity under this Agreement; and (vi) it is a "forward contract merchant" (within the meaning of such term as used in the U.S. Bankruptcy Code) and each Party is acting in its capacity as a forward contract merchant in entering into this Agreement.

(b) Buyer represents to Seller that: (i) Seller is not acting as Buyer's advisor, expert, fiduciary, representative or consultant and has not provided, and nothing herein will be claimed by Buyer as the provision of, advice regarding the value or advisability of trading in commodities; (ii) Buyer shall be solely responsible for retaining adequate advisors and counsel to advise it with respect to the obligations assumed hereunder regardless of any information provided by Seller; (iii) it has knowledge and experience in business matters sufficient to enable it to evaluate the risks associated with this Agreement and this Agreement is entered into by Buyer at Buyer's sole election and in the exercise of its independent judgment without duress; (iv) it is not relying on any representations of Seller other than those expressly set forth herein; (v) Buyer owns or controls Buyer's Facilities or has control over the purchase and receipt of Electricity therefor; (vi) all of the information furnished by Buyer concerning Buyer's Facilities (including applicable load factors, Buyer's Local Utility rate classes and schedules, time of use, and service information) is, to the best of Buyer's information and belief, true and accurate when furnished to Seller; (vii) it is a producer, processor, commercial user of or merchant handling the commodity subject hereto and has entered into this Agreement and any Transactions solely for non-speculative purposes related to such business; (viii) it shall not resell any Electricity received from Seller to a third party and (ix) it can and will be enrolled on the Start Date for the sale and purchase of Electricity specified for each Transaction and for each of Buyer's Facilities.

(c) NEITHER PARTY GIVES NOR RECEIVES ANY WARRANTY REGARDING THE SALE, PURCHASE OR DELIVERY OF ELECTRICITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT. SELLER DISCLAIMS ANY AND ALL IMPLIED WARRANTIES AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OF ELECTRICITY FOR A PARTICULAR PURPOSE OR USE. THE OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT ARE OBLIGATIONS OF THE PARTIES ONLY, AND NO RECOURSE SHALL BE AVAILABLE AGAINST ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER, MEMBER, PARTNER, OR AFFILIATE OF A PARTY UNLESS SPECIFICALLY PROVIDED FOR IN A SEPARATE AGREEMENT.

The representations and warranties made in this Article 9 shall be deemed to be repeated upon the execution of any Transaction.

ARTICLE 10. FORWARD CONTRACT / NON-UTILITY ACKNOWLEDGEMENT The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code. Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in Section 366 of the U.S. Bankruptcy Code, and each Party waives and agrees not to assert the applicability of the provisions of such Section 366 in any bankruptcy proceeding wherein such Party is a debtor.

ARTICLE 11. DEFINITIONS Capitalized terms used in this Agreement have the following meanings:

- (a) "Addendum" means, in respect to a specific Transaction, a supplement to, or modification of, this Agreement signed, or deemed accepted, by both Parties setting forth the terms of such Transaction.
- (b) "Adequate Assurances" means collateral in the form of cash, letters of credit, or other security acceptable to Seller.
- (c) "Affiliates" means, with respect to any person, any other person (other than an individual) 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.
- (d) "Agreement" means this Electricity Sales and Purchase Agreement, including all appendices, Addenda, Voice Records, Electronic Communications, and schedules, which are incorporated herein by reference as part of this Agreement, and all Transactions and any credit support or similar agreement between the Parties in respect thereto.

(e) "Base Price" means an amount per MWh in \$US (unless otherwise provided for) equal to the sum of: (i) the charges for the settlement interval at the time of delivery of Electricity as determined by the RTO or Local Utility (if appropriate) controlling or overseeing the location(s) in which the Delivery Point(s) are located, (ii) all costs to deliver Electricity to the Delivery Point(s), and (iii) two dollars and fifty cents (\$2.50) per MWh.

(f) "Business Day" means any day except Saturday, Sunday, or Federal Bank Holidays.

(g) "Buyer's Baseline" means the information provided to Seller regarding Buyer's operations and Electricity usage, including the stipulated MWh usage set forth in each Transaction.

(h) "Buyer's Facilities" means the account(s) identified in Appendix II.

(i) "Buyer's Local Utility" means the electric distribution utility or utilities responsible for delivering electricity to Buyer's Facilities.

(j) "Contract Price" means the price per MWh in \$US (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of Electricity as specified in a Transaction.

(k) "Contract Quantity" means the quantity of Electricity specified in a Transaction.

(l) "Costs" means, with respect to the non-defaulting Party only, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with enforcing its rights under this Agreement in the event of termination.

(m) "Default" means, with respect to a Party (the defaulting Party), the occurrence of any of the following: (i) the failure to make, when due, any payment required pursuant to this Agreement or otherwise, if such failure is not remedied within five (5) Business Days after written notice; (ii) any representation or warranty is false or misleading when made or repeated; (iii) 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 five (5) Business Days after written notice; (iv) the failure by Buyer to provide Adequate Assurances in accordance with Article 5(e); (v) such Party files a petition or otherwise commences, authorizes or acquiesces to the commencement of a proceeding or cause of action with respect to it under any bankruptcy proceeding or similar Laws for the protection of creditors, or has such a petition filed against it; (vi) such Party makes an assignment or any general arrangement for the benefit of creditors; (vii) such Party otherwise becomes bankrupt or insolvent (however evidenced); (viii) such Party becomes unable to pay its debts as they fall due; or (ix) any Default under any other agreement between the Parties.

(n) "Delivery Point(s)" means the physical point(s) specified in a Transaction at which Seller shall deliver, or cause to be delivered, Electricity to Buyer.

(o) "Electricity" means electric energy (expressed in MWh) and any related components thereto or products specified in a Transaction.

(p) "Electronic Communication" means communication conducted by electronic means whereby electronic records are created, including without limitation, electronic mail and instant messaging.

(q) "Force Majeure" means events or circumstances, beyond the reasonable control of a Party and not caused by the negligence of such Party, which prevent that Party from performing its obligations under this Agreement, and which the Party claiming Force Majeure is unable to avoid or prevent through the exercise of due diligence. Force Majeure shall include, without limitation, a Force Majeure affecting an RTO or Buyer's Local Utility that in turn prevents a Party's performance of its obligations hereunder. A claim of Force Majeure may not be based on: (i) Buyer's inability to economically use or dispose of Electricity purchased under this Agreement; (ii) Buyer's

closure or material curtailment or discontinuation of operation of any of Buyer's Facilities due to economic circumstance or condition; or (iii) Seller's ability to sell Electricity at a price greater than the Contract Price.

(r) "Gains" means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Transaction, determined in a commercially reasonable manner.

(s) "Governmental Entity" means a municipality, county, governmental board, governmental department, commission, agency, bureau, administrative body, joint action agency, court, or other similar political subdivision or public entity or instrumentality of the United States or one or more states.

(t) "Interest Rate" means two percent (2%) per annum over the prime-lending rate as published in *The Wall Street Journal* under "Money Rates"; provided that, the Interest Rate may never exceed the maximum rate permitted by Law.

(u) "Law" means any law, constitution, charter, statute, ordinance, code, rule, regulation, tariff, protocols, decision, order, decree, judgment or other legislative or administrative action of any Governmental Entity, or any interpretation thereof by any court, agency or instrumentality having jurisdiction, as well as all rules, policies and procedures lawfully adopted by an RTO governing or controlling the area in which Buyer's Facilities are located.

(v) "Losses" means, with respect to a Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Transaction, determined in a commercially reasonable manner.

(w) "MWh" means a megawatt-hour of Electricity.

(x) "Off-Peak Hours" means hours not defined as On-Peak Hours.

(y) "On-Peak Hours" means hours determined to be "on peak" by Buyer's regional reliability council of the North American Electric Reliability Council, or any successor entity, governing the area in which Buyer's Facilities are located.

(z) "RTO" means a power pool, independent system operator, transmission provider, or Buyer's Local Utility acting as the grid manager, or any comparable entity that provides system management and oversight for Electricity delivered to Buyer's Facilities.

(aa) "Settlement Amount" means, with respect to a Transaction, the Losses or Gains, and Costs, which the non-defaulting Party incurs as a result of the termination of such Transaction.

(bb) "Set-off" means offset, combination of accounts, netting, right of retention or withholding, or any similar right.

(cc) "Start Date" means the date specified in a Transaction; provided, that if a Transaction does not specify such a date, then the date upon which all of the conditions set forth under Article 4(a)(i)-(iii) are satisfied.

(dd) "Taxes" means all federal, state and local taxes, assessments, levies, duties, fees, charges or withholdings of any kind, including gross receipts taxes, utility and regulatory taxes, assessments and surcharges however denominated and all penalties, fines, additions to tax, or interest on unpaid taxes, but excluding any taxes on net income.

(ee) "Termination Payment" has the meaning set forth in Article 7(c).

(ff) "Transaction" means an agreement between the Parties for the purchase and sale of Electricity pursuant to this Agreement, which shall include, among other terms, the Electricity product, Contract Price, delivery term, Contract Quantity and Delivery Point(s).

(gg) "Voice Record" means a recorded telephone conversation between representatives of the Parties evidencing the terms of a Transaction.

ARTICLE 12. MISCELLANEOUS

(a) When the singular number is used, it is deemed to include the plural and vice versa. The words "include" and "including" mean "including, without limitation" with respect to whatever follows.

(b) This Agreement and each Transaction is strictly confidential and shall not be disclosed by a Party (except to such Party's Affiliates, employees, lenders, counsel and other advisors, permitted assignees, or prospective purchasers who have agreed to treat such information as confidential) without the prior written consent of the other Party, except as required by Law; provided that Seller may publicize the existence of this Agreement in press releases and sales and marketing materials, and identify Buyer as a customer of Seller and as a reference to third parties. The Parties agree that damages would be an inadequate remedy for breach of this provision and that either Party shall be entitled to equitable relief in connection herewith, provided that any damages shall be limited to actual damages as provided herein.

(c) Unless otherwise specified herein, any notice required or permitted under this Agreement, must be in writing and addressed as provided in Appendix I. Notice by receipt confirmed facsimile, email or hand delivery shall be effective on the Business Day actually received. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. Either Party may change any address listed in Appendix I by providing written notice of same in accordance herewith.

(d) This Agreement contains the complete understanding between the Parties, supersedes all previous discussions, communications, writings and agreements related to the subject matter of this Agreement, and, except to the extent otherwise provided for herein, may not be amended, modified or supplemented except in a writing signed by both Parties.

(e) This Agreement (including any Transaction, or portion thereof) may not be assigned or transferred by a Party without the prior written approval of the other Party, which approval shall not be unreasonably withheld, except it may be assigned or transferred without such approval: (i) by either Party to a successor acquiring all or substantially all of the shares and/or the assets (including, without limitation, all or a substantial portion of Seller's portfolio of retail supply contracts) of the transferring Party, whether by merger or acquisition, (ii) by either Party to any wholly-owned Affiliate; or (iii) by Seller in connection with any financing or other financial arrangements involving the accounts, revenues or proceeds hereof; provided, that in the case of items (i) - and (ii), the assignee or transferee shall be at least as creditworthy as the assigning or transferring Party and such assignee or transferee shall agree in writing to be bound by the terms and conditions of this Agreement (including all outstanding Transactions).

(f) In the event that an action, suit or other proceeding is brought to enforce or interpret this Agreement or any part hereof or the rights or obligations of any Party to this Agreement, the prevailing Party will be entitled to recover from the other Party reasonable attorneys' fees and direct out-of-pocket costs and disbursements associated with the dispute that are incurred by the prevailing Party.

(g) No waiver by either Party of any right or obligation hereunder, including in respect to any Default by the other Party, shall be considered a waiver of any future right or obligation, whether of a similar or different character. Any waiver shall be in writing.

(h) This Agreement does not grant, create or otherwise provide any rights enforceable by any person or entity not a Party to this Agreement.

(i) This Agreement and all Transactions (including any Addenda) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Agreement and any terms of a Transaction shall be resolved in favor of the terms of such Transaction. Upon full execution (or deemed acceptance) of an Addendum, such Addendum (absent manifest error) shall control in the event of any

conflict with the terms of a Voice Record or Electronic Communication, or in the event of any conflict with the terms of this Agreement. In the absence of an Addendum, the Voice Record or Electronic Communication shall evidence the terms of the Transaction.

(j) Each Party hereby consents to the recording and storage of Voice Records and Electronic Communication and waives any objection to recording of Voice Records and use of Electronic Communication. An Electronic Communication record shall be deemed received upon arrival at the receiving Party's electronic mailbox or internet address.

(k) THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

(l) Buyer covenants that if it is a Governmental Entity it shall not claim immunity on the grounds of sovereignty or similar grounds from enforcement of this Agreement. Buyer further covenants that if it is a Governmental Entity it shall obtain all necessary budgetary approvals, appropriations, and funding for all of its obligations under this Agreement, the failure of which shall not be an excuse for Buyer's performance hereunder.

(m) Any provision declared or rendered unlawful, invalid, void or unenforceable by any applicable court of law or regulatory agency will not otherwise affect any other provision, agreement, covenant or remaining lawful obligations under this Agreement; provided, that in any such event, the Parties shall use good faith efforts to reform this Agreement in order to give effect to the original intention of the Parties.

(n) This Agreement may be signed in counterparts, each of which will constitute an original and together will constitute one and the same Agreement. The Parties agree that if a copy of this Agreement is executed by a Party and transmitted to the other Party by facsimile, the copy received shall be deemed for all legal purposes to be an original executed by the transmitting Party.

**For SELLER:
SEMPRA ENERGY SOLUTIONS**

By: _____

Title: _____

**For BUYER:
<COMPANY LEGAL NAME>**

By: _____

Title: _____

APPENDIX I
CONTACT AND NOTICE INFORMATION
THE ELECTRICITY SALES AND PURCHASE AGREEMENT
BETWEEN SEMpra ENERGY SOLUTIONS ("SELLER")
AND <COMPANY'S LEGAL NAME> ("BUYER")
AS OF <MONTH DAY, YEAR> ("EFFECTIVE DATE")
 Date of Last Revision

SELLER ALL FORMAL NOTICES:	BUYER ALL FORMAL NOTICES:
Sempra Energy Solutions Attention: Contract Administration 101 Ash Street, HQ09 San Diego, CA 92101 Telephone: (619) 696-3187 Facsimile: (619) 696-3050 Email: dwhite@semprasolutions.com	<Company Name> Attention: <Street Address> <City, State, Zip> Telephone: Facsimile: Email:
SALES REPRESENTATIVE:	BUYER'S REPRESENTATIVE: (Optional)
<Account Manager's Name> Sempra Energy Solutions <Street Address> City, State Zip Telephone: Facsimile: Email:	<Name Of Contact> <Customer's Name> <Street Address> <City, State, Zip> Telephone: Facsimile: Email:
SCHEDULING:	SCHEDULING:
Sempra Energy Solutions Attention: Power Scheduler 101 Ash Street, HQ09 San Diego, CA 92101 Telephone: (619) 696-3111 – West (619) 696-3110 – East Facsimile: (619) 696-3102 Email:	<Company Name> Attention: <Street Address> <City, State, Zip> Telephone: Facsimile: Email:
REMITTANCE BY CHECK:	INVOICES:
Sempra Energy Solutions P.O. Box 51345 Los Angeles, CA 90051-5645	<Company Name> Attention: <Street Address> <City, State, Zip> Telephone: Facsimile:
REMITTANCE BY WIRE TRANSFER:	Copies To: If Applicable
Union Bank of California ABA Number: 1220-00496 For the account of Sempra Energy Solutions, LLC Account Number: 0700497437	

Buyer's Initials _____

1. SERVICE OBLIGATIONS

(a) Upon receipt of an executed Agreement from Buyer and an accepted enrollment request and active switch date from Buyer's Local Utility, Seller will deliver or cause a third party to deliver Buyer's Electricity requirements to the Delivery Point. Costs and expenses incurred by Seller as a result of a delayed or unsuccessful enrollment of Buyer as Seller's customer will be Buyer's sole responsibility provided that the delay or failure is not a direct result of any action or inaction by Seller. Buyer represents to Seller that it can and will be enrolled on the Start Date for the purchase and receipt of Electricity.

(b) Buyer will comply with all notices from Buyer's Local Utility that require reduction or interruption of Electricity usage at Buyer's Facility, and indemnify, defend, and hold Seller harmless from any claims, penalties, charges or expenses, attorneys' fees and disbursements caused by Buyer's failure to so comply.

2. BILLING, PAYMENT AND CREDIT

(a) Seller will calculate monthly invoices based upon Buyer's actual usage, if known, or estimate any amounts, usage or other information that is unknown at the time of invoicing. Seller will periodically adjust future invoices to reflect actual settlement and usage information as it is received by Seller.

(b) Seller shall transmit invoices to Buyer via fax or email on the date of invoice. Invoices are due and payable without Set-off on the tenth (10th) day following the date of invoice. All past due payments shall bear the Interest Rate from the due date.

(c) If there is a good faith dispute regarding an invoice, Buyer will pay the undisputed amount and confer with Seller to resolve the disputed amount. The disputed amount will not accrue interest until ten (10) days after the dispute is resolved or forty-five days after the dispute arose, whichever is earlier.

(d) If Seller has reasonable grounds for insecurity regarding the performance, whether or not then due, of any obligation of Buyer under this Agreement or any Transaction (including on account of the occurrence of a material change in Buyer's creditworthiness or occurrence of any Breach or Default), Seller may demand reasonable additional security in an amount determined by Seller in a commercially reasonable manner. If Buyer does not provide such additional security within three (3) days of such request, Seller may declare Buyer in Default in accordance with the Default and Termination provisions of this Agreement. In the event that security is provided in the form of cash collateral, Buyer shall be deemed to have granted Seller a continuing first priority security interest in, lien on, and right of set-off against such collateral.

3. LIMITATION OF LIABILITY & WARRANTIES

As between the Parties, title and control of Electricity will be deemed held by Seller until the Electricity is delivered to the Delivery Point, and by Buyer after such Electricity has been delivered to the Delivery Point. Neither Party shall be liable to the other for any indirect, special, consequential, punitive or exemplary damages arising out of or related to this Agreement, whether based on contract, tort or otherwise, and each Party releases the other from any such liability, even if during the term hereof they advise the other of the possibility of such damages. NEITHER PARTY GIVES NOR RECEIVES ANY WARRANTY REGARDING ELECTRICITY SALE, PURCHASE OR DELIVERY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, EXCEPT AS PROVIDED IN THIS AGREEMENT. SELLER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OF ELECTRICITY FOR A PARTICULAR PURPOSE OR USE. ALL OBLIGATIONS HEREIN ARE OBLIGATIONS OF THE PARTIES ONLY, AND NO RECOURSE WILL BE AVAILABLE AGAINST A PARTY'S EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER, MEMBER, PARTNER, OR AFFILIATE.

4. FORCE MAJEURE

If either Party experiences a Force Majeure, such Party will promptly notify the other, and confirm in writing within a reasonable time thereafter, notice of a reasonably detailed description of the nature and estimated duration of the Force Majeure event. Except for Buyer's obligation to pay Seller for Electricity delivered prior to such event, each Party's physical obligations will then be suspended to the extent, and for the duration, of the claiming Party's inability to perform due to Force Majeure. The cause of inability to perform will be remedied with all reasonable dispatch. If the duration of the Force Majeure exceeds twenty (20) days, the Party not claiming Force Majeure may terminate the affected portions of this Agreement upon ten (10) days written notice. Any termination due to Force Majeure will not be subject to an Early Termination Payment.

5. DEFAULT

a) If a Default shall have occurred and be continuing, the non-defaulting Party shall have the right to do either or both of the following: (i) suspend its performance hereunder and/or (ii) designate a date upon which this Agreement will terminate and accelerate and liquidate all amounts owing and other remaining obligations of the Parties hereunder into a single net amount as of such date ("Early Termination Date") in accordance with the provisions set forth in the following paragraph.

(b) The non-defaulting Party shall calculate in a commercially reasonable manner a Settlement Amount as of the Early Termination Date. The non-defaulting Party shall aggregate the Settlement Amount with the Additional Termination Amounts Owed, so that such amounts shall be netted out to a single amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the non-defaulting Party as appropriate and payable within three (3) Business Days after receipt of a Termination Payment invoice.

(c) If the defaulting Party would be owed the Termination Payment, the non-defaulting Party shall be entitled, at its option and in its discretion, to set-off against such Termination Payment any amounts which the defaulting Party owes to the non-defaulting Party (whether under this Agreement or otherwise).

(d) Any pre-existing unresolved claims or disputes by either Party that are arising out of, or related to this Agreement will survive termination of this Agreement and will be resolved in accordance with the terms and conditions of this Agreement. All indemnity, confidentiality, warranty and unperformed obligations will survive termination of this Agreement.

6. REPRESENTATIONS AND WARRANTIES

Each Party represents to the other that: (a) it validly exists and is financially able to continue its business; (b) it has not filed, does not plan to file, or had any bankruptcy proceeding filed against it; (c) executing this Agreement has been duly authorized and is a valid and enforceable obligation; (d) it is not subject to any commitment that may interfere with the delivery of Electricity under this Agreement, and (e) no discussion, materials or information provided in connection herewith shall be deemed to be free from error. Buyer represents to Seller that: (a) Buyer will not resell, or purchase for its own consumption, Electricity to/from Buyer's Local Utility or other party for any of Buyer's Facilities during the Delivery Period; (b) information concerning Buyer's Facilities (including load factors, rate classes and schedules, time of use, and service) is true and correct when furnished to Seller to the best of Buyer's information and belief; (c) Buyer has control over Buyer's Facilities; (d) the account information listed for Buyer's Facilities is for Buyer's account(s) with Buyer's Local Utility (e) Buyer shall operate its facilities consistent with Buyer's Baseline; and (f) Buyer enters all transactions related to this Agreement at its sole election in the exercise of its independent judgment without duress. Buyer assumes any risk associated with such transactions, including any information or assumptions used or relied on in finalizing this Agreement; (g) Seller does not act as Buyer's advisor, expert, fiduciary, representative or consultant. Seller has advised Buyer that no such relationship exists or should be relied upon, and that Buyer is solely responsible for its obligations hereunder regardless of the information provided by Seller.

7. CHANGES IN CIRCUMSTANCES

- (a) If a Change in Law occurs after the Effective Date that results in new or modified fees, costs or other charges being incurred by Seller and/or other market participants, then any such costs or charges incurred by Seller and reasonably attributable to this Agreement may be passed through to Buyer.
- (b) If Buyer closes, or materially curtails operations at, any Buyer Facility, Buyer shall give Seller prior written notice and shall be responsible to Seller for any costs incurred by Seller arising from Buyer's reduced Electricity consumption at such Buyer Facility, provided that Seller shall use commercially reasonable efforts to mitigate any such costs after receipt of such notice.

8. DEFINITIONS

- (a) "Additional Termination Amounts Owed" means an amount calculated by netting (i) any amounts due to the defaulting Party under this Agreement upon termination (other than amounts included in the Settlement Amount) against (ii) any amounts due to the non-defaulting Party under this Agreement upon termination (other than amounts included in the Settlement Amount).
- (b) "Agreement" means this Electricity Sales and Purchase Agreement, including all Exhibits Amendments, and Schedules that are incorporated by reference as part of this Agreement.
- (c) "Base Price" means the applicable electricity prices during the settlement interval of delivery as determined by: (a) the RTO controlling the Delivery Point location, or, (b) the applicable costs assessed by Buyer's Local Utility, plus all costs to deliver Electricity to the Delivery Point, plus five dollars (\$5.00) per MWh.
- (d) "Breach" means: (a) failure to make payment when due under this Agreement; (b) failure to perform any material obligation under this Agreement; or (c) failure to comply with its representations and warranties set forth in this Agreement.
- (e) "Buyer's Baseline" means, the information provided by Buyer used in establishing this Transaction, including the stipulated MWh usage set forth in the Contract Quantity table of this Agreement.
- (f) "Buyer's Facilities" means the account(s) associated with the ESI IDs identified in Exhibit B.
- (g) "Buyer's Local Utility" means the electric distribution utility responsible for the service territory where Buyer's Facility is located.
- (h) "Change in Law" means revisions in, implementation of, amendments to, or revised interpretation of any Laws affecting this Agreement, including but not limited to, Laws relating to approved or anticipated rates, meter classifications or profiles, tariffs, taxes, charges, fees, credit requirements or assessments as to retail electricity market rules, licensing, supply, generation, congestion zones, transmission or delivery of electric power and energy.
- (i) "Contract Price" means the price per MWh set forth in this Agreement.
- (j) "Costs" means, with respect to the non-defaulting Party only, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with enforcing its rights under this Agreement in the event of termination.
- (k) "Default" means: (a) a Party's failure to cure its Breach within five (5) days after receiving notice of a Breach by the non-breaching Party, (b) a Party (i) makes an assignment or any general arrangement for the benefit of creditors; or (ii) files a petition or otherwise commences, authorizes or acquiesces to the commencement of a proceeding or cause of action with respect to it under any bankruptcy proceeding or similar Laws for the protection of creditors, or have a petition filed against it; or (iii) otherwise becomes insolvent; (c) a Party's failure to provide security in accordance with clause (d) of the Billing, Payment and Credit section above; or (d) any Default under any other agreement with the other Party.
- (l) "Delivery Point" means the physical point set forth in the Transaction at which Seller delivers, or causes to deliver, Electricity to Buyer.
- (m) "Electricity" means electric energy (expressed in MWh) and the related products and services that are identified in the Transaction.
- (n) "Force Majeure" means events beyond the control of a Party to the extent they prevent that Party from performing its physical obligations under this Agreement that could not have been reasonably anticipated at the time the Agreement was entered into, and which the Party claiming Force Majeure is unable to avoid or prevent through the exercise of due diligence. A Force Majeure claim may not be based on: (i) Buyer's inability to economically use or dispose of Electricity purchased under this Agreement; (ii) Buyer's election to close or materially curtail or discontinue operation of Buyer's Facilities due to economic circumstance; or (iii) Seller's ability to sell the Electricity at a price greater than the Contract Price.
- (o) "Gains" means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner.
- (p) "Interest Rate" means three percent (3%) per annum over the prime-lending rate as published in *The Wall Street Journal* under "Money Rates", compounded semi-annually; provided that, the Interest Rate may never exceed the maximum rate permitted by Law.
- (q) "Law" means any (i) constitution, charter, statute, ordinance, code, rule, regulation, tariff or other legislative or administrative action of any governmental entity, including, any related court decision, or (ii) rules, protocols, policies and procedures promulgated by a transmission provider or power RTO governing the area in which Buyer's Facilities are located.
- (r) "Losses" means, with respect to a Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner.
- (s) "MWh" means a Megawatt-hour of Electricity.
- (t) "Off-Peak Hours" means hours not defined as On-Peak Hours.
- (u) "On-Peak Hours" means hours determined to be "on peak" by Buyer's regional reliability council of the North American Electric Reliability Council, or any successor entity, governing the area in which Buyer's Facilities are located.
- (v) "RTO" means a power pool, independent system operator, transmission provider, or Buyer's Local Utility acting as the grid manager, or any comparable entity that provides system management and oversight for Electricity delivered to Buyer's Facilities.
- (w) "Set-off" means, without limitation, offset, combination of accounts, netting, right of retention or withholding, or comparable right to which a Party is entitled (whether under this or other agreements, Law, or otherwise) that is or imposed on, the other Party.
- (x) "Settlement Amount" means, with respect to this Agreement and the non-defaulting Party, the Losses or Gains, and Costs, which such Party incurs as a result of the termination of this Agreement pursuant to the Default and Termination section above.
- (y) "Transaction" means all of the commercial terms, including at a minimum, the price, term, quantity, delivery point, settlement provisions and the product description, set forth in this Agreement necessary to create binding obligations between the Parties with respect to the purchase and sale of Electricity.

9. MISCELLANEOUS

- (a) Capitalized terms used in this Agreement have the meanings set forth in this Agreement or Addenda. When the singular number is used, it is deemed to include the plural and vice versa. This Agreement will be interpreted pursuant to, and performance governed by, the Law of the state in

Exhibit A - General Terms and Conditions

which Buyer's Facilities that are most affected by the dispute are located, excluding any Law that directs the application of the Law of any other jurisdiction.

(b) This Agreement is strictly confidential and shall not be disclosed by a Party except as required by law or government authority without the prior written consent of the other Party.

(c) Unless otherwise specified herein, any notice or communication under this Agreement must be in writing and will be deemed given when sent by express mail or receipt-confirmed fax, addressed as provided in Exhibit B.

(d) This Agreement is the complete understanding between the Parties and cannot be modified or supplemented except in a writing signed by both Parties.

(e) A Party may assign this Agreement without approval of the other Party to: (a) a successor acquiring a majority of the assigning Party's shares or assets, whether by merger or acquisition, or (b) any wholly-owned subsidiary or parent of the assigning Party; so long as there is no material change in the creditworthiness of the successor. In all other circumstances any assignment requires thirty (30) days written notice and shall be subject to prior written approval by the non-assigning Party, which approval shall not be unreasonably withheld. All assignments shall be made subject to the approved successor's written acceptance of the terms of this Agreement, unless otherwise agreed to in writing by the non-assigning Party.

(f) The prevailing Party in any dispute related to this Agreement, will be entitled to recover reasonable attorney fees and costs and direct out-of-pocket costs associated with the dispute from the other Party that are incurred by the prevailing Party.

(g) A waiver by either Party of any obligation by the other Party shall be in writing, and will not be considered a waiver of any future obligation, whether similar or different in character.

(h) This Agreement does not give rights enforceable by any person or entity not a Party to this Agreement. If any provision of this Agreement is found to be illegal or unenforceable, the provision will be stricken and the remainder of the Agreement will remain in full force and effect to the extent not inconsistent with its original intent.

(i) This Agreement shall constitute a "forward contract" under the U.S. Bankruptcy Code.

(j) This Agreement may be signed in counterparts, each of which will constitute an original and together will constitute one and the same Agreement. If a Party executes a copy of this Agreement and faxes such to the other Party, the copy received shall be deemed for all legal purposes to be an original executed by the transmitting Party.

(k) The Parties acknowledge and understand that the terms and conditions set forth in this Agreement shall not be deemed accepted by a Party unless such Party has duly executed this Agreement. In addition, Buyer acknowledges that Seller's acceptance of this Agreement will be subject to Buyer meeting Seller's credit requirements as determined by Seller in its sole discretion. Seller's form of Credit Application is set forth as Exhibit C, attached.

(l) The Transaction and Exhibits are incorporated by reference as part of this Agreement. If there is a conflict between terms and conditions within these documents, the order of precedence will be: (a) the Transaction; (b) Exhibit A; and (c) Exhibit B.

THIS AGREEMENT IS A CONTRACT. IF YOU ARE A CONSUMER, YOU MAY HAVE CERTAIN RIGHTS UNDER THE LAW. IF YOU ARE A BUSINESS, YOU MAY HAVE CERTAIN RIGHTS UNDER THE LAW.