

**RENEWABLE WIND ENERGY  
POWER PURCHASE AGREEMENT**

**between**

**DELMARVA POWER & LIGHT COMPANY**

**(“Buyer”)**

**and**

**SYNERGICS EASTERN WIND ENERGY, LLC**

**(“Seller”)**

**Dated as of May 30, 2008**

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**RENEWABLE WIND ENERGY  
POWER PURCHASE AGREEMENT**

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**RENEWABLE WIND ENERGY  
POWER PURCHASE AGREEMENT**

THIS RENEWABLE WIND ENERGY POWER PURCHASE AGREEMENT (“Agreement”), is made and entered into as of May 30, 2008 (“Effective Date”), by and between Synergics Eastern Wind Energy, LLC, a Maryland limited liability company, hereinafter referred to as “Seller” and Delmarva Power & Light Company, a Delaware corporation, hereinafter referred to as “Buyer” (each hereinafter referred to individually as “Party” and collectively as “Parties”).

**W I T N E S S E T H:**

**WHEREAS**, Seller plans to own and operate a wind-powered electric generating Facility with an aggregate total nameplate capacity rating of up to sixty (60) MW (the “Facility Nameplate Rating”), located in Garrett County, Maryland; and

**WHEREAS**, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive, certain Energy and Environmental Attributes (collectively, the “Products”); and

**WHEREAS**, Buyer intends to use the Products purchased under this Agreement to serve a portion of its energy requirements and to satisfy a portion of the requirements under the State of Delaware’s Renewable Energy Portfolio Standards Act (26 Del. C. §§ 351-363) (the “RPS Act”).

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

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

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

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

“After-Tax Basis” means, with respect to any payment received or deemed to have been received by a Party, the amount of such payment (the “Base Payment”) supplemented by a further payment (the “Additional Payment”) to such Party so that the

sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

“Agreement” has the meaning set forth in the preamble hereto.

“Auditor Opinion” means an opinion from Buyer’s Auditors, in form and substance reasonably acceptable to Buyer, stating that, in connection with this Agreement and the Parties’ performance hereunder during the term hereof: (i) Seller is not a “variable interest entity” as defined by FIN 46; or (ii) if Seller is a “variable interest entity” as defined by FIN 46, Buyer is not required to consolidate Seller in Buyer’s financial statements.

“Bankrupt” means, with respect to any entity, such entity: (a) voluntarily files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it by its creditors and such petition is not dismissed within sixty (60) days of the filing or commencement; (b) makes an assignment or any general arrangement for the benefit of creditors; (c) otherwise becomes insolvent, however evidenced; (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (e) is generally unable to pay its debts as they fall due.

“Buyer” has the meaning set forth in the preamble hereto.

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

“Buyer’s Percentage” means one hundred percent (100%); *provided however*, that if, after the Effective Date, the Facility Nameplate Rating is modified (including by a modification of the rated output of any Unit(s) or a change in the number of Units in the Facility), Buyer’s Percentage shall be adjusted so that, as a percentage of the modified Facility Nameplate Rating, it represents the same quantity as Buyer’s Percentage of the original Facility Nameplate Rating.

“Buyer’s Auditors” means an independent accounting firm designated by Buyer.

“Buyer’s Indemnitees” has the meaning set forth in Section 10.1 [Seller’s Indemnification].

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

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

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

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

“Delaware PSC” means the Delaware Public Service Commission.

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

“Delivery Point” means the single point on the PJM Transmission System with a Pnode Identification in the PJM Bus Model, as identified in Exhibit B.

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

“Eastern Prevailing Time” or “EPT” means Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect on any particular date.

“Effective Date” has the meaning set forth in the preamble hereto.

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

“Eligible Energy Resource” shall have the meaning ascribed to it in the RPS Act.

“Emergency” means: (a) an abnormal system condition requiring manual or automatic action to maintain system frequency or voltage or to prevent loss of firm load, equipment damage or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; (b) system recovery

from an abnormal condition that resulted in loss of firm load or equipment damage; or (c) a condition that requires implementation of “emergency procedures” (as defined by PJM or any Transmitting Utility).

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

“Energy Payment Rate” means the price per MWh of Energy delivered by Seller to the Delivery Point for Buyer’s account, inclusive of the corresponding quantity of RECs and Environmental Attributes transferred by Seller to Buyer pursuant to the terms of this Agreement, as set out on Schedule 8.1.

“Environmental Attributes” means Renewable Energy Credits and any and all other federal, regional, state and other credits, certificates, benefits, emission reductions, offsets and allowances that are attributable, now or in the future, to the Facility or the Energy produced by the Facility, including: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility’s displacement of fossil-fuel derived or other conventional energy generation; (b) any environmental certificates issued by PJM under the GATS in connection with Energy delivered to Buyer; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Energy delivered to Buyer from the Facility; *provided however*, that Environmental Attributes shall not include: (i) PTCs or any state production tax credits; (ii) any investment tax credits or other tax credits associated with the construction or ownership of the Facility; or (iii) any state, federal or private cash payments or grants relating in any way to the construction or ownership of the Facility, the output thereof or PTCs.

“Event of Default” has the meaning set forth in Sections 12.1 [Events of Default], 12.2 [Additional Seller Events of Default], and 12.3 [Failure to Maintain Mechanical Availability Percentage].

“Existing PTC Law” means Section 45 of the Internal Revenue Code of 1986, as amended, as in effect on the Effective Date.

“Facility” means the wind-powered electric generating facility, nominally consisting of twenty five (25) Units (each with a nominal nameplate rating of two (2) MW), the Electrical Interconnection Facilities and any other ancillary facilities and equipment, as more particularly described in Exhibit A, as amended.

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

- (a) ninety percent (90%) of the Units comprising the Facility shall have been fully commissioned and shall be operational;
- (b) all performance testing of the Electrical Interconnection Facilities shall have been successfully completed in accordance with PJM Manuals (or any other applicable RTO rules);

- (c) the Facility shall be operating and able to produce and deliver Energy to the Interconnection Point: (i) pursuant to the terms of this Agreement and the Interconnection Agreement; and (ii) in accordance with Good Utility Practice; and
- (d) the computer monitoring system (CMS) for the Facility shall have been installed and tested and shall be fully operational.

“Facility Commercial Operation Date” means the first date as of which: (a) Facility Commercial Operation has occurred; and (b) Seller shall have delivered to Buyer written certification of an authorized officer of Seller certifying that the Facility has achieved Facility Commercial Operation.

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

“Facility Meter” means the revenue quality electricity generation meter to be located at the Metering Point (the proposed location of which is identified in Exhibit B), which Facility Meter shall register all Energy produced by the Facility and delivered to the Interconnection Point.

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

“FERC” means the Federal Energy Regulatory Commission.

“FIN 46” means Interpretation No. 46R issued by the Financial Accounting Standard Board (“Consolidation of Variable Interest Entities”).

“Fitch” means Fitch Investor Service, Inc.

“Force Majeure Event” means an event or circumstance that: (a) prevents a Party from performing its obligations under this Agreement; (b) was not foreseeable by such Party; (c) was not within the reasonable control of, or the result of the negligence of such Party; and (d) such Party is unable to mitigate or avoid or cause to be avoided with the exercise of due diligence. Notwithstanding the foregoing, under no circumstance shall a Force Majeure Event be based on: (i) Seller’s ability to sell a Product at a price greater than that received under the terms of this Agreement; or (ii) Buyer’s ability to purchase a Product at a price lower than paid under the terms of this Agreement.

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

“GATS Operating Rules” means the operating rules for the GATS, as published by PJM Environmental Information Services, Inc. and posted on the PJM Internet site ([www.pjm-eis.com/documents/downloads/gats-operating-rules.pdf](http://www.pjm-eis.com/documents/downloads/gats-operating-rules.pdf)).

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

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

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

“Guaranteed Initial Delivery Date” means December 31, 2010; *provided however*, that the Guaranteed Initial Delivery Date shall be extended on a day-for-day basis for up to twelve (12) months to the extent that the Initial Delivery Date is delayed as a result of Force Majeure Event.

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

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

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

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

“Initial Delivery Date” means the date, which shall be no earlier than June 1, 2009, on which the conditions set forth in Section 3.3 [Initial Delivery Date] have been satisfied or waived in writing by Buyer.

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

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

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

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

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

“kW” means kilowatt.

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

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

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

“Load Serving Entity” or “LSE” shall have the meaning ascribed to it in the PJM Agreements.

“Locational Marginal Price” means, as of any point in time, the cost of serving the next increment of load at the Delivery Point as determined and posted by PJM in accordance with the PJM Agreements.

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

“Maximum Delay Damages” has the meaning set forth in Section 12.4 [Delay Damages].

“Mechanical Availability Percentage” means the mechanical availability of the Facility, expressed as a percentage, calculated on a twenty four (24) month, rolling average basis in accordance with Schedule 6.13.

“Metering Point” means the physical location at the Facility where the Facility Meter is situated, as shown in Exhibit B.

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

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

“Moody’s” means Moody’s Investor Services, Inc.

“MW” means megawatt.

“MWh” means megawatt-hour.

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

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

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

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

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

“PJM” means PJM Interconnection, LLC.

“PJM Agreements” means the PJM Tariff, the PJM Operating Agreement, the PJM RAA, the PJM Manuals and any other applicable PJM bylaws, procedures, manuals or documents.

“PJM Control Area” shall have the meaning ascribed to it in the PJM Agreements.

“PJM E-Account” means an account obtainable through PJM which provides access to web-based PJM settlement, accounting, marketing and other informational and economic systems.

“PJM Interchange Energy Market” has the meaning set forth in the PJM Tariff.

“PJM Manual” or “PJM Manuals” means the instructions, rules, procedures and guidelines established by PJM for the operation, planning and accounting requirements of the PJM Control Area and PJM Interchange Energy Market.

“PJM Member” means any entity satisfying the requirements of PJM to conduct business with PJM, including Market Participants, transmission owners, generating entities and Load Serving Entities.

“PJM Operating Agreement” means the Operating Agreement of PJM.

“PJM RAA” means the PJM Reliability Assurance Agreement.

“PJM Tariff” means the Open Access Transmission Tariff of PJM.

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

“Products” means Energy and Environmental Attributes.

“Production Tax Credit” or “PTC” means the tax credit provided by Section 45 of the Internal Revenue Code of 1986, as amended, for electricity produced from certain qualified energy resources, including wind.

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

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

“PTC Compensation Amounts” has the meaning set forth in Section 2.2(b) [Special Termination Rights].

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

“Qualified Seller” means a Seller that, as of a specified date, has a Credit Rating equal to or better than the Minimum Acceptable Credit Rating.

“Rating Agency” or “Rating Agencies” shall mean, individually or collectively, S&P, Moody’s and Fitch.

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

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

“Regional Transmission Organization” or “RTO” means any Person certified by FERC to provide open access transmission service over the transmission facilities of its members under a tariff filed with FERC.

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

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

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

“RPS Act” has the meaning set forth in the Recitals hereto.

“RPS Rules” means the Delaware PSC’s Rules and Procedures to Implement the Renewable Energy Portfolio Standard.

“S&P” means Standard & Poor’s Ratings Group, a division of McGraw Hill, Inc.

“Seller” has the meaning set forth in the preamble hereto.

“Seller’s Indemnitees” has the meaning set forth in Section 10.2 [Buyer’s Indemnification].

“Services Term” means the period of time commencing on the Initial Delivery Date and ending twenty (20) years thereafter.

“Services Term Letter of Credit” shall have the meaning set forth in Section 14.1(c) [Letters of Credit].

“Tangible Net Worth” means, with respect to Seller or a Guarantor as of a specified date, the positive difference, if any, between: (a) the value of such Person’s total assets (exclusive of intangible assets); and (b) such Person’s total liabilities, each as determined in accordance with GAAP.

“Test Output” means any and all Products produced by a Facility prior to the Initial Delivery Date.

“TNW Percentage” means, with respect to Seller or a Guarantor as of a specified date, the applicable percentage determined pursuant to Schedule 14.2.

“Transmitting Utility” means any utility (including its control area operators) or RTO (including PJM) that transmits Energy from the Interconnection Point to the Delivery Point.

“Unit” means each wind turbine generation unit forming a part of the Facility, as described in Exhibit A.

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

“Unsecured Credit Amount” means, with respect to Seller or a Guarantor as of a specified date, the lesser of: (a) the product of the TNW Percentage for such Person multiplied by the Tangible Net Worth of such Person; and (b) the Unsecured Credit Cap for such Person.

“Unsecured Credit Cap” means, with respect to Seller or a Guarantor as of a specified date, the lesser of: (a) the amount designated as such in accordance with Schedule 14.2; or (b) \$59.40 per kW of Buyer’s Percentage of the Facility Nameplate Rating.

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

- (a) the singular shall include the plural and vice versa;
- (b) references to Articles, Sections, Schedules or Exhibits shall be to Articles, Sections, Schedules or Exhibits of this Agreement, unless otherwise specified;

- (c) all references to a particular Person in any capacity shall be deemed to refer also to such Person's successors and permitted assigns in such capacity;
- (d) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection thereof;
- (e) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation" and shall not be construed to mean that the examples given are an exclusive list of the topics covered;
- (f) all accounting terms not specifically defined herein shall be construed in accordance with GAAP;
- (g) references to this Agreement shall include a reference to all schedules and exhibits hereto, each of which shall be incorporated by reference into this Agreement;
- (h) references to any agreement, document or instrument, including the PJM Agreements, shall be construed to refer to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;
- (i) the masculine shall include the feminine and neuter and vice versa;
- (j) references to a Law shall be construed to refer to such Law as the same may be amended, modified, supplemented or restated from time to time;
- (k) the term "month" shall mean a calendar month unless otherwise indicated, and a "day" shall be a 24-hour period beginning at 12:00:01 am and ending at 12:00:00 midnight; *provided however*, that a "day" may be 23 or 25 hours on those days on which daylight savings time begins or ends;
- (l) unless expressly provided otherwise in this Agreement, where this Agreement requires the consent, approval or similar action by a Party, such consent, approval, or action shall be made or given in such Party's sole discretion;
- (m) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Good Utility Practice or the PJM Agreements, shall have such meaning in this Agreement, or (ii) do not have well known and generally accepted meaning in Good Utility Practice or the PJM Agreements but have well known

technical or trade meanings shall have such recognized meanings;  
and

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

## **ARTICLE 2 TERM**

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

### 2.2 Special Termination Rights.

- (a) Either Party may terminate this Agreement without liability on thirty (30) days advance written notice if PSC Approval does not occur on or before the PSC Approval Deadline, provided that such terminating Party must deliver a notice of termination no later than ten (10) days after the PSC Approval Deadline. In addition, if the PSC Approval is appealed, either Party may terminate this Agreement without liability within thirty (30) days of a final, non-appealable ruling on appeal, if such final ruling results in a modification of the terms of the PSC Approval and such modification materially adversely affects such Party. Buyer shall notify Seller whether any order issued by the Delaware PSC approving the terms of this Agreement is in form and substance acceptable to Buyer no later than five (5) Business Days after issuance of such order.
- (b) If, as of the earlier of the Initial Delivery Date or the Guaranteed Initial Delivery Date, the Existing PTC Law: (i) is not extended to apply to electricity produced from wind by generating facilities placed in service before the Guaranteed Initial Delivery Date; or (ii) is extended to apply to electricity produced from wind by generating facilities placed in service before the Guaranteed Initial Delivery Date but the amount of PTCs available under the new Law is materially less than the amount of PTCs available under the Existing PTC Law, Seller may terminate this Agreement; *provided however*, that: (a) in order to exercise its right to terminate this Agreement pursuant to this Section 2.2(b), Seller must deliver written notice of termination no later than sixty (60) days after expiration or amendment of the Existing PTC Law and such notice of termination must designate a termination date no earlier than

thirty (30) days after the date thereof; and (b) Seller shall have no right to terminate this Agreement pursuant to this Section 2.2(b) if, within twenty (20) days of receipt of Seller's notice of termination pursuant to this Section 2.2(b), Buyer delivers to Seller a written statement agreeing to compensate Seller for the difference, calculated on an After-Tax Basis, between the amount of the Production Tax Credits Seller is entitled to receive in connection with the generation and sale of Buyer's Percentage of Energy produced by the Facility and the amount of Production Tax Credits Seller would be entitled to receive in connection with the generation and sale of Buyer's Percentage of Energy produced by the Facility if the Existing PTC Law continued to be in force (such monthly differences, the "PTC Compensation Amounts"). Any PTC Compensation Amounts shall be reasonably documented by Seller and shall be invoiced by Seller and paid by Buyer in accordance with Article 9 [Billing and Payment] based on the times when Seller receives (or would have received) the Production Tax Credits.

### **ARTICLE 3 CONDITIONS PRECEDENT**

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

3.2 Non-Consolidation Opinion. Seller shall have no obligation to deliver or sell Products and Buyer shall have no obligation to accept or purchase Products prior to receipt by Buyer of an Auditor Opinion. Upon the request of Buyer or Buyer's Auditors, Seller shall provide to Buyer's Auditors any information requested by Buyer's Auditors regarding Seller, its Affiliates, this Agreement, the Facility or any material agreements of Seller or its Affiliates pertaining to the Facility as determined by Buyer's Auditors to be reasonably necessary to render the Auditor Opinion; *provided however*, that if any such information is considered by Seller to be confidential or proprietary and is not otherwise required to be provided to Buyer hereunder, Seller may, at its option, provide such information directly to Buyer's Auditors under a mutually agreeable confidentiality agreement. In the event Buyer's Auditors determine that, as a result of this Agreement, Buyer would be required to consolidate Seller in Buyer's financial statements: (A) Buyer shall promptly notify Seller of such determination; (B) Buyer and Seller shall use commercially reasonable efforts to amend this Agreement such that Buyer would not be required to consolidate Seller in Buyer's financial statements (provided that neither Party shall be obligated to agree to any amendment that would adversely affect such Party); and (C) in the event the Parties are unable, within sixty (60) days of the notice required by clause (A) of this Section 3.2, to agree to an amendment of this Agreement such that Buyer would not be required to consolidate Seller in Buyer's financial statements, Buyer may terminate this Agreement without liability on thirty (30) days advance written

notice. Promptly after the Effective Date (and in no event later than thirty (30) days thereafter), Buyer shall request the Auditor Opinion.

3.3 Determination of Facility and Facility Nameplate Rating. A minimum of twelve months prior to the Initial Delivery Date, but in no case less than twelve months prior to the Guaranteed Initial Delivery Date, Seller shall notify Buyer of its intent to adjust the Facility Nameplate Rating from the sixty (60) MW proposed Facility Nameplate Rating based on Seller's final design of the Facility and Facility equipment availability; *provided, however*, that in no event shall the Facility have an adjusted Facility Nameplate Rating below thirty (30) MW, or above sixty (60) MW. Such adjustment is subject to Buyer and Seller's consent, which shall not be unreasonably withheld, delayed beyond thirty (30) days or conditioned. Notwithstanding the foregoing, under no circumstance shall such consent be based on: (i) Seller's ability to sell the Products at a price greater than that received under the terms of this Agreement; or (ii) Buyer's ability to purchase the Products at a price lower than paid under the terms of this Agreement. Upon Buyer and Seller's consent to the adjusted Facility Nameplate Rating, the adjustments shall be documented in a revised Exhibit A, and such revised Exhibit A shall constitute the Facility.

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

- (a) the Facility Commercial Operation Date shall have occurred or will occur simultaneously with the Initial Delivery Date;
- (b) Seller or one of its Affiliate shall have obtained (and demonstrated possession of) all Permits required for the lawful operation of the Facility and for Seller to perform its obligations under this Agreement, including Permits related to environmental matters;
- (c) no Seller default or Event of Default shall be occurring;
- (d) Seller shall be a PJM Member and shall have entered into all required PJM Agreements required for the performance of Seller's obligations in connection with the Facility and this Agreement, which agreements shall be in full force and effect or Seller shall have entered into an agreement with a Market Participant that will perform all of Seller's PJM-related obligations in connection with the Facility and this Agreement;
- (e) the Facility shall have been qualified and certified by the Delaware PSC as an Eligible Energy Resource pursuant to the RPS Act;
- (f) Seller shall have made all filings and applications required for accreditation of the Facility in GATS and for the registration, origination and transfer of Environmental Attributes from the Facility that are eligible for origination, registration and transfer under GATS;

- (g) Seller shall have entered into all agreements and made all filings and other arrangements necessary for the transmission and delivery of the Energy associated with Buyer's Percentage of the Facility from the Facility to the Delivery Point;
- (h) Seller shall have obtained all necessary authorizations from FERC to sell Energy at market-based rates as contemplated by this Agreement and shall be in compliance with such authorization;
- (i) Seller shall have delivered a Letter of Credit and, if applicable, a Guaranty as required pursuant to Article 14 [Security];
- (j) Seller and Buyer have agreed to a final Facility pursuant to Section 3.3 [Determination of Facility and Facility Nameplate Rating], and have agreed to a revised version of Exhibit A which sets forth the final Facility definition, Facility Nameplate Rating and total number of Units for the Facility;
- (k) Seller shall have provided Buyer a revised version of Exhibit B which includes the Pnode Identification Number assigned by PJM for the Delivery Point;
- (l) PSC Approval shall have occurred and shall have become final and non-appealable; and
- (m) Seller shall have provided Buyer with written evidence that all of the preceding conditions have been satisfied.

#### **ARTICLE 4 PURCHASE AND SALE OF PRODUCTS**

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

4.2 Quantity. The quantity of Energy required to be delivered by Seller to Buyer at the Delivery Point shall be equal to Buyer's Percentage of the Energy produced by the Facility and metered at the Metering Point (adjusted for any transmission line and transformer losses, as determined in accordance with applicable tariffs and Good Utility

Practice, to the Interconnection Point). The quantity of RECs required to be delivered by Seller to Buyer shall be equal to Buyer's Percentage of the Energy produced by the Facility.

4.3 Limitations on Seller's Obligation to Sell. Notwithstanding anything to the contrary set forth herein: (a) Seller may curtail output from the Facility or sell any or all Products produced by the Facility to Persons other than Buyer during any period(s) when the Locational Marginal Price at the Delivery Point is negative (*i.e.*, a value less than zero); and (b) Seller may sell any or all Energy produced by the Facility to Persons other than Buyer to the extent it is unable to deliver Buyer's Percentage of such Energy to the Delivery Point due to a Force Majeure Event or an Instructed Operation, *provided however*, that during any such period, Seller shall remain obligated to deliver and sell Buyer's Percentage of Environmental Attributes produced by or associated with the Facility to Buyer.

4.4 Limitations on Buyer's Obligation to Purchase. Notwithstanding anything to the contrary set forth in this Agreement: (a) Buyer shall not be obligated to accept delivery of any Energy from Seller under this Agreement to the extent it is unable to do so due to a Force Majeure Event or an Instructed Operation; (b) Buyer shall not be obligated to accept delivery of or purchase Test Output; and (c) Buyer's obligation to make purchases of Energy pursuant to this Agreement is expressly conditioned on the delivery and sale by Seller, in accordance with the terms of this Agreement, of RECs in an amount equal to Buyer's Percentage of the Energy produced by the Facility.

4.5 Origination of Products. Products provided by Seller to Buyer hereunder shall not be required to originate from Energy produced by the Facility so long as all Products delivered to Buyer under this Agreement: (a) are sourced from an Eligible Energy Resource; (b) qualify, as applicable, as Energy or other Environmental Attributes (including but not limited to RECs) pursuant to the RPS Act, the RPS Rules and GATS; and (c) may be counted toward Buyer's then-current compliance requirement under the RPS Act.

## **ARTICLE 5 SCHEDULING AND DELIVERY OF PRODUCTS**

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

costs, scheduling costs, imbalance costs, congestion costs and the cost of firm transmission rights.

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

5.3 Title and Risk of Loss.

- (a) Title to, and risk of loss (including risks and costs associated with any transmission outages or curtailment up to and at the Delivery Point) related to, Energy sold by Seller to Buyer pursuant to this Agreement shall pass and transfer from Seller to Buyer upon delivery thereof for Buyer's account at the Delivery Point. Seller covenants that it shall have good and marketable title to all Energy delivered to Buyer at the Delivery Point and that it has the right to, and will, sell and deliver such Energy to Buyer free and clear of all Liens. Ownership of Energy will be transferred from Seller to Buyer using the PJM eSchedule application.
- (b) Title to, and risk of loss related to, Environmental Attributes sold by Seller to Buyer pursuant to this Agreement shall pass and transfer from Seller to Buyer upon the completion of the recordation of transfer and physical or electronic delivery of such Environmental Attributes to Buyer in definitive form in accordance with GATS Operating Rules or other applicable Law. Seller shall transfer certificates into Buyer's GATS account(s) as necessary to transfer Environmental Attributes to Buyer under GATS. Seller covenants that it shall have good and marketable title to all Environmental Attributes delivered to Buyer and that it has the right to, and will, sell and deliver such Environmental Attributes to Buyer free and clear of all Liens.

5.4 PJM E-Accounts. Each of Buyer and Seller shall establish and maintain for the duration of the Services Term, separate PJM E-Accounts for Seller to provide and Buyer to receive Products.

**ARTICLE 6  
SELLER COVENANTS**

6.1 Progress Reports for New Construction. Seller shall prepare and submit to Buyer written progress reports, in a form reasonably satisfactory to Buyer, describing the status of development and construction of the Facility, including the status of each of the conditions precedent to the Initial Delivery Date set forth in Section 3.3 [Initial Delivery Date]. Such progress reports shall be submitted: (a) on a monthly basis commencing no

later than two (2) years prior to Seller's anticipated Initial Delivery Date; and (b) on a weekly basis commencing forty-five (45) days prior to Seller's anticipated Initial Delivery Date. In addition to such progress reports, Seller shall promptly provide to Buyer any written reports regarding the status of development of the Facility that are delivered to Facility Lenders or their representatives.

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

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

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

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

6.6 Planned Outages. Unless agreed to in advance by Buyer, Seller shall not schedule a planned outage of the Facility or any portion thereof between June 15 and September 15 during any year of the Services Term. No later than thirty (30) days prior to Seller's anticipated Initial Delivery Date, Seller shall deliver to Buyer a schedule of planned maintenance for the Facility for the following twelve (12) month period, which schedule shall: (a) be updated by Seller by each March 31 and September 30 to cover the twelve (12) month period following such update; (b) be consistent with the requirements of Good Utility Practice and the Interconnection Agreement; (c) indicate the planned commencement and completion dates for each planned maintenance during the period covered thereby, as well as the affected portion(s) of the Facility; and (d) be in form and substance reasonably acceptable to Buyer. To the extent Seller is required by any Transmitting Utility to provide information regarding maintenance, outages or availability of the Facility, Seller shall, simultaneous with the submission thereof to such Transmitting Utility, deliver a copy thereof to Buyer.

6.7 PJM Membership. Seller shall, at all times during the Services Term, either: (a) be a member in good standing of PJM and be qualified as a PJM "Market

Seller” pursuant to the PJM Agreements; or (b) have entered into an agreement with a Market Participant that will perform all of Seller’s PJM-related obligations in connection with the Facility and this Agreement.

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

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

6.10 Eligible Energy Resource. Seller shall be solely responsible for certifying the Facility and each of the Units as an Eligible Energy Resource under the RPS Act and maintaining such certification during the Services Term.

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

6.12 Initial Delivery Date. Seller shall achieve the Initial Delivery Date no later than the Guaranteed Initial Delivery Date. Seller shall provide Buyer with notice of: (i) the expected occurrence of the Initial Delivery Date no later than thirty (30) days prior thereto; and (ii) the actual Initial Delivery Date no later than five (5) Business Days prior thereto.

6.13 Mechanical Availability Percentage. During the Services Term, Seller shall maintain a Mechanical Availability Percentage of no less than ninety percent (90%); *provided however*, that the first determination of the Mechanical Availability Percentage of the Facility shall be calculated thirty six (36) months after the Initial Delivery Date for the preceding twenty four (24) month period. On or before the tenth (10<sup>th</sup>) Business Day following the end of each calendar month during the Services Term, Seller shall provide Buyer with the Mechanical Availability Percentage calculated for the preceding Period, consistent with Schedule 6.13, along with any supporting documentation reasonably required for Buyer to independently confirm Seller’s Mechanical Availability Percentage calculation.

## **ARTICLE 7 METERING**

7.1 Metering. All electric metering associated with the Facility, including the Facility Meter and any other real-time meters, billing meters and back-up meters, shall be

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

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

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

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

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

7.6 Telemetry. The Facility Meter shall be capable of sending meter telemetry into the PJM eMeter system and Seller shall provide Buyer with access to such eMeter data. Seller shall transmit to Buyer, via a dedicated data line reasonably acceptable to Buyer and paid for by Seller, all telemetry data measured by the Facility Meter, including MW, MVAR, MWh, MVARh, isolation breaker open/closed status, interconnection bus voltage and amp flow. Without limiting the foregoing, all such telemetry equipment shall

comply with PJM requirements for PJM transmission owners as set forth in PJM Transmission Owner Standards (<http://www.pjm.com/planning/trans-standard.html>).

## **ARTICLE 8 BILLING AND PAYMENT**

8.1 Price for Products. Buyer shall pay for all Energy delivered to the Delivery Point for Buyer's account in accordance with Section 5.1 [Delivery of Energy] and for all RECs and other Environmental Attributes transferred to Buyer in accordance with Section 5.2 [Delivery of Environmental Attributes] based on the Energy Payment Rate; *provided however*, that if, for any period when Seller is delivering Energy to Buyer pursuant to this Agreement, the Locational Marginal Price at the Delivery Point is negative (*i.e.*, a value less than zero) and Buyer is obligated to pay or incur such negative Locational Marginal Price, the applicable Energy Payment Rate for Energy purchased from Seller during such period shall be reduced by the absolute value of such negative Locational Marginal Price. Buyer shall not be obligated to make any other payments to Seller for any Energy delivered or required to be delivered by Seller to Buyer pursuant to this Agreement, and Buyer shall not be obligated to make any other payments to Seller for any Environmental Attributes delivered or required to be delivered by Seller to Buyer pursuant to this Agreement

8.2 Billing. Unless otherwise agreed to by the Parties, on or before the fifteenth (15<sup>th</sup>) day of each month (or the first Business Day thereafter), Buyer shall deliver to Seller, via electronic transmission or other means agreed to by the Parties, an invoice ("Invoice") that sets forth: (a) the net amount due from one Party to the other for all Products delivered by Seller to Buyer pursuant to the terms of this Agreement as of the end of the immediately preceding calendar month; and (b) any other credits, charges and liabilities due pursuant to the terms of this Agreement, including any adjustments and outstanding amounts due pursuant to prior Invoices. Buyer shall pay to Seller or Seller shall pay to Buyer, as the case may be, the total amount due pursuant to such Invoice no later than the final Business Day of the month during which such Invoice is issued (such day, the "Monthly Settlement Date").

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

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

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

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

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

## **ARTICLE 9 TAXES**

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

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

Charges from which it is exempt under the Law; *provided however*, that an exempt Party shall bear the responsibility of proving upon request its exemption as necessary to avoid the unjust imposition of Regulatory Charges on the other Party.

## **ARTICLE 10 INDEMNIFICATION**

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

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

### 10.3 Defense of Indemnified Claims.

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

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

- (c) An Indemnified Person shall have the right, at its option (but not the obligation), to be represented by advisory counsel of its own selection and at its own expense and to monitor the progress and handling of an indemnified claim. An Indemnified Person shall also have the right, at its option (but not the obligation), to assume the defense of any such claim with counsel of its own choosing at its sole cost and expense; *provided however*, that an Indemnified Person shall have the right to assume the defense of, and to settle or compromise, any such indemnified claim at the Indemnifying Party's expense if: (i) the Indemnifying Party fails to acknowledge, in writing, its responsibility to assume the defense of such claim; (ii) the Indemnifying Party fails to diligently, competently and in good faith control and conduct the defense of such claim with counsel reasonably satisfactory to the Indemnified Person; (iii) there is an apparent conflict of interest between the Indemnifying Party and the Indemnified Person with respect to such claim; or (iv) such Indemnified Person shall have reasonably concluded that there are legal defenses available to it which are different from, additional to, or inconsistent with, those available to the Indemnifying Party.
- (d) The Indemnifying Party's obligations to indemnify, defend and hold each Indemnified Person harmless shall not be reduced or limited by reason of any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party or any of its subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE 11 FORCE MAJEURE EVENTS**

11.1 Excused Performance. Notwithstanding anything in this Agreement to the contrary, a Party shall be excused from performing its obligations under this Agreement (other than the obligation to make payments when due) and shall not be liable for damages due to its failure to perform such obligations during any period that such Party is unable to perform due to a Force Majeure Event; *provided however*, that the Party

claiming a Force Majeure Event shall: (a) have the burden of proving the existence and consequences of such Force Majeure Event; and (b) act expeditiously to resume performance. The suspension of performance due to a Force Majeure Event shall be of no greater scope and of no longer duration than is required by the Force Majeure Event.

11.2 Notification. A Party unable to perform under this Agreement due to a Force Majeure Event shall: (a) provide prompt written notice of such Force Majeure Event to the other Party (in no event later than five (5) days after the occurrence of the Force Majeure Event), which notice shall include a description of the Force Majeure Event and its effect on performance under this Agreement, and an estimate of the expected duration of such Party's inability to perform due to the Force Majeure Event; and (b) provide prompt notice to the other Party when performance resumes.

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

11.4 Right to Terminate. In the event that any delay or failure of performance caused by one or more Force Majeure Events continues for an uninterrupted period of 365 days, the Party not claiming the Force Majeure Event may, upon not less than thirty (30) days advance written notice, terminate this Agreement without liability.

## **ARTICLE 12 EVENTS OF DEFAULT; REMEDIES**

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

- (a) the failure to make, when due, any undisputed payment required to be made pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice thereof is received;
- (b) any representation or warranty made by such Party herein shall be false in any material respect and shall remain uncured for a period of thirty (30) days after written notice thereof is received;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) days after written notice thereof is received;
- (d) such Party becomes Bankrupt;
- (e) such Party assigns this Agreement or any rights, interests or obligations hereunder without the prior written consent of the other Party when such consent is required; and

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

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

- (a) the failure by Seller to deliver to Buyer in accordance with this Agreement any Products required to be delivered hereunder or the delivery or sale of any such Products to any Person other than Buyer if not expressly permitted under this Agreement;
- (b) PJM or any other RTO shall have declared such Party to be in default of any provision of such RTO's agreements or procedures;
- (c) the failure by Seller to provide a Letter of Credit or Guaranty as required by Article 16 [Security];
- (d) the failure by Seller to comply with Section 6.7 [PJM Membership] or 6.8 [Market-Based Rate Authority];
- (e) the transfer by Seller of all or substantially all of its assets to another Person without the prior written consent of Buyer; and

12.3 Failure to Maintain Mechanical Availability Percentage. It shall be an Event of Default of Seller if the Mechanical Availability Percentage calculated for the Facility falls below eighty percent (80%) at any time during the Services Term. Should Seller fail to satisfy the requirements of Section 6.13 [Mechanical Availability Percentage] but the Mechanical Availability Percentage of the Facility remains above eighty percent (80%), Seller shall be entitled to a six (6) month period ("MAP Remedy Period") where Seller shall diligently work to remedy its failure to comply with Section 6.13 [Mechanical Availability Percentage], with such MAP Remedy Period commencing on the date notice under this Section 12.3 was given by Buyer to Seller in accordance with the provisions of this Agreement. Should Seller not be able to demonstrate compliance with the requirements of Section 6.13 [Mechanical Availability Percentage] to Buyer by the end of the MAP Remedy Period, Buyer shall have the right to exercise any remedy available to Buyer under the provisions of this Agreement, including but not limited to the right to terminate this Agreement pursuant to Section 12.5 [General Remedies].

12.4 General Remedies. If an Event of Default has occurred and is continuing with respect to a Defaulting Party, the other Party (the "Non-Defaulting Party") shall have the right to: (a) suspend performance under this Agreement; and/or (b) exercise any remedies available at law or in equity, including termination of this Agreement. Without

limiting the generality of the foregoing, upon a Seller Event of Default, Buyer shall have the right to exercise its remedies under any Letter of Credit or the Guaranty.

12.5 Delay Damages. In the event the Initial Delivery Date does not occur on or prior to the Guaranteed Initial Delivery Date and such delay is not directly attributable to a Force Majeure Event (as reasonably determined by Buyer), for each day beginning with the day after the Guaranteed Initial Delivery Date through and including the date on which the Initial Delivery Date occurs, Buyer's exclusive remedy shall be payment by Seller of liquidated damages in the amount of \$0.20 per kW of Buyer's Percentage of the Facility Nameplate Rating per day ("Delay Damages"); *provided however*, that Seller's liability for Delay Damages shall not exceed \$66.00 per kW of Buyer's Percentage of Facility Nameplate Rating ("Maximum Delay Damages"). In the event the Initial Delivery Date does not occur within 365 days of the Guaranteed Initial Delivery Date, Buyer shall have the right to terminate this Agreement without liability. The Parties acknowledge and agree that: (a) calculation of actual damages that Buyer would suffer as a result of a delay in the Initial Delivery Date would be difficult or impossible to ascertain; (b) obtaining an adequate remedy may be difficult; and (c) the amount of Delay Damages constitutes a fair and reasonable approximation of the damages Buyer will incur as a result of delay in the Initial Delivery Date and is not intended as, nor shall it be deemed, a penalty. The rights set forth pursuant to this Section 12.4 shall be Buyer's exclusive remedy for Seller's delay in achieving the Guaranteed Initial Delivery Date.

12.6 Damages on Termination.

- (a) Upon a termination of this Agreement by Buyer based on a Seller Event of Default, Buyer shall be entitled to recover the net present value of the replacement cost of Energy, RECs and Environmental Attributes supplied from a wind energy generating resource less the cost of the Energy, RECs and Environmental Attributes that Buyer would have incurred at the Energy Payment Rate, assuming the Facility produced Energy at twenty percent (20%) of the Facility Nameplate Rating during all hours of the Services Term (or the remainder thereof); *provided however*, that for any termination of this Agreement prior to the Initial Delivery Date based on a Seller Event of Default after which Seller permanently ceases development or operation of the Facility, Seller's liability shall be limited to the amount of its posted security pursuant to Article 14.
- (b) Upon a termination of this Agreement by Seller based on a Buyer Event of Default, Seller shall be entitled to recover the net present value of the price of Energy, RECs and Environmental Attributes at the Energy Payment Rate less the market price of Energy, RECs and Environmental Attributes supplied from a wind energy generating resource, assuming the Facility produced Energy at twenty percent (20%) of the Facility Nameplate Rating during all hours of the Services Term (or the remainder thereof) under a

long-term contract for the Services Term (or the remainder thereof).

- (c) The Parties acknowledge and agree that: (i) Energy supplied from a wind energy generating resource has an inherent value greater than the value of other forms of Energy; (ii) the inherent value of Energy supplied from a wind energy generating resource is a primary reason Buyer is entering into this Agreement; (iii) in the event of termination of this Agreement based on a Seller Event of Default, Buyer will likely be required to replace the Energy that would have been provided hereunder with Energy supplied from another wind energy generating resource; (iv) in the event of termination of this Agreement by Seller based on a Buyer Event of Default, Seller will likely sell the Energy that would have been sold hereunder to a Party seeking Energy supplied from a wind energy generating resource; and (v) the formulations of damages described in this Section 12.5 are fair and reasonable approximations of the damages each Party would incur upon a termination based on an Event of Default and are not intended to be, nor should they be interpreted to result in, a penalty.

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

12.8 Facility Lender's Right to Cure. In the event Seller notifies Buyer of the contact information for a Facility Lender: (i) Buyer shall provide notice of any Seller Event of Default to such Facility Lender; and (ii) Buyer shall accept a cure of any Seller Event of Default by the Facility Lender, so long as the cure is accomplished within the applicable cure periods set forth in this Agreement.

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

### **ARTICLE 13 DISPUTE RESOLUTION**

13.1 Informal Dispute Resolution. Before initiating legal action pursuant to Section 13.2 [Formal Dispute Resolution], a Party aggrieved by a dispute hereunder shall

provide written notice to the other Party setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. The Parties shall use good faith and reasonable commercial efforts to informally resolve such dispute. Such efforts shall last for a period of at least thirty (30) days from the date that the notice of the dispute is first delivered from one Party to the other Party. Any amounts determined to be owed as a result of informal dispute resolution pursuant to this Section 13.1 shall be paid within three (3) Business Days of such resolution.

13.2 Formal Dispute Resolution. After the requirements of Section 13.1 [Informal Dispute Resolution] have been satisfied, either Party may initiate legal action in accordance with Sections 17.11 [Governing Law] and 17.12 [Jurisdiction and Venue].

## **ARTICLE 14 SECURITY**

### 14.1 Letters of Credit.

- (a) No later than three (3) Business Days after the Effective Date, Seller shall deliver to Buyer a Letter of Credit in the amount of \$495,000.00, which Letter of Credit in such required amount shall remain in full force and effect until: (i) Seller provides to Buyer a Letter of Credit pursuant to Section 14.1(b); or (ii) termination of this Agreement and satisfaction of all of Seller's obligations and liabilities hereunder.
- (b) No later than three (3) Business Days after PSC Approval, Seller shall deliver to Buyer a Letter of Credit in the amount of \$990,000.00, which Letter of Credit in such required amount shall remain in full force and effect until: (i) Seller provides to Buyer a Letter of Credit pursuant to Section 14.1(c) or Section 14.1(d); or (ii) termination of this Agreement and satisfaction of all of Seller's obligations and liabilities hereunder. Simultaneous with the receipt of a Letter of Credit pursuant to this Section 14.1(b), Buyer shall return to Seller the Letter of Credit provided pursuant to Section 14.1(a).
- (c) No later than three (3) Business Days after Buyer and Seller agree to a final Facility Nameplate Rating pursuant to Section 3.3 [Determination of Facility and Facility Nameplate Rating], Seller shall deliver to Buyer a Letter of Credit in the amount of \$33.00 per kW of Buyer's Percentage of the Facility Nameplate Rating as adjusted pursuant to Section 3.3 [Determination of Facility and Facility Nameplate Rating], which Letter of Credit in such required amount shall remain in full force and effect until: (i) Seller provides to Buyer a Letter of Credit pursuant to Section 14.1(d); or (ii) termination of this Agreement and satisfaction of all of Seller's obligations and liabilities hereunder. Simultaneous with the

receipt of a Letter of Credit pursuant to this Section 14.1(c), Buyer shall return to Seller the Letter of Credit provided pursuant to Section 14.1(b).

- (d) Prior to the Initial Delivery Date, Seller shall deliver to Buyer a Letter of Credit (the “Services Term Letter of Credit”) which, subject to Sections 14.2 [Seller Credit] and 14.3 [Guaranty], shall be, and shall be maintained, in the amount of \$66.00 per kW of Buyer’s Percentage of the Facility Nameplate Rating as adjusted pursuant to Section 3.3 [Determination of Facility and Facility Nameplate Rating]. The Services Term Letter of Credit shall remain in full force and effect for the duration of the Services Term.
- (e) Each Letter of Credit shall be in the form of Schedule 14.1 (or such other form as may be acceptable to Buyer) and shall be free and clear of all Liens, security interests (except security interests in favor of Buyer), claims and encumbrances.
- (f) Seller shall renew or replace each Letter of Credit required pursuant to this Section 14.1: (i) no later than thirty (30) days prior to the stated expiration date of such Letter of Credit; (ii) within five (5) Business Days of the issuer of such Letter of Credit ceasing to be a Qualified Institution; and (iii) within three (3) Business Days of the issuer of such Letter of Credit failing to honor Buyer’s request to draw on such Letter of Credit. If Buyer does not receive a replacement Letter of Credit within the time specified in the preceding sentence, it may: (A) draw on the full available amount of such Letter of Credit; (B) hold the proceeds thereof in an interest bearing account; and (C) apply all or any portion of such proceeds to satisfy any obligation or liability of Seller under this Agreement (whether or not this Agreement has been terminated).
- (g) All costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing or otherwise administering any Letter of Credit shall be borne by Seller.
- (h) Buyer shall be entitled to draw on any Letter of Credit to satisfy any obligation or liability of Seller arising pursuant to this Agreement (whether or not this Agreement has been terminated) that is not paid when due.
- (i) In the event Buyer draws on any Letter of Credit to fulfill any of Seller’s obligations under this Agreement, Seller shall promptly, and in any event within three (3) Business Days of such draw,

replenish the amount of such Letter of Credit to the level required pursuant to this Section 14.1.

14.2 Seller Credit. Notwithstanding Section 14.1(c) [Letters of Credit], for any period of the Services Term during which Seller is a Qualified Seller, the amount of the Services Term Letter of Credit shall be reduced by Seller's then-current Unsecured Credit Amount.

14.3 Guaranty. Notwithstanding Section 14.1(c) [Letters of Credit] for any period of the Services Term during which Seller provides a Guaranty, the amount of the Services Term Letter of Credit shall be reduced by Guarantor's then-current Unsecured Credit Amount.

14.4 Supporting Information. For any period of the Services Term for which the amount of the Letter of Credit has been reduced pursuant to Section 14.2 [Seller Credit] or 14.3 [Guaranty]: (a) Seller shall notify Buyer of any change to the Credit Rating of Seller or Guarantor, as applicable, no later than two (2) Business Days after the date of such change; (b) Seller shall provide Buyer with written financial information regarding Seller or Guarantor, as applicable, to determine their Tangible Net Worth, including audited annual reports, balance sheets, financial statements and quarterly balance sheets (each prepared in accordance with GAAP) and schedules of long term debt (including maturity dates).

14.5 Release of Security. Buyer shall return all Letters of Credit and Guaranties promptly after the first to occur of the following: (a) the Services Term shall have expired; or (b) this Agreement shall have terminated and all obligations and liabilities of Seller arising pursuant to this Agreement, including payments due at, or as a result of, such termination shall have been paid in full.

14.6 No Limit of Liability. Except to the extent expressly stated in this Agreement, neither the required amounts of any Letters of Credit nor the Unsecured Credit Amount shall be deemed to be a limitation of Seller's liability.

## **ARTICLE 15 REPRESENTATIONS AND WARRANTIES**

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

- (a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to transact business in each jurisdiction in which its operations or the ownership of its properties require it to be qualified;
- (b) it has all Permits necessary for it to legally perform its obligations under this Agreement except: (i) in the case of Buyer, PSC Approval; and (ii) in the case of Seller, those Permits identified on Schedule 15.1, each of which Seller anticipates will be obtained by

Seller in the ordinary course of its development and construction of the Facility;

- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation or order applicable to it, the violation of which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (d) it has full power and authority to carry on its business as now conducted and to enter into, and carry out its obligations under, this Agreement;
- (e) the execution and delivery of this Agreement and performance or compliance with any provision hereof will not result in the creation or imposition of any Lien upon its properties (except as expressly contemplated in favor of Buyer pursuant to this Agreement), the creation or imposition of which could reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (f) this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency or other similar laws relating to or affecting the enforcement of creditors' rights generally and general equitable principles (regardless of whether such enforceability is considered in a proceeding at law or in equity);
- (g) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (h) there are no pending, or to its knowledge threatened, actions, suits or proceedings against it or any of its Affiliates before any court or Governmental Authority that could reasonably be expected to materially adversely affect its ability to perform its obligations under this Agreement;
- (i) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance will occur as a result of its entering into or performing its obligations under this Agreement; and
- (j) it is not relying upon the advice or recommendations of the other Party in entering into this Agreement, it is capable of

understanding, understands and accepts the terms, conditions and risks of this Agreement and its rights and obligations hereunder, and the other Party is not acting as a fiduciary for or advisor to it in respect of this Agreement.

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

## **ARTICLE 16 CONFIDENTIALITY**

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

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

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

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

- (a) produce Confidential Information in response to a subpoena, discovery request or other compulsory process issued by a Governmental Authority upon reasonable prior notice to the Disclosing Party; *provided however*, that prior to such disclosure, the Receiving Party must use reasonable efforts in cooperation with the Disclosing Party to seek confidential treatment of such Confidential Information;
- (b) disclose whatever information FERC requires it to disclose in connection with the filing of quarterly or annual reports and may make such disclosure without notification to the Disclosing Party; and/or

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

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

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

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

## **ARTICLE 17 MISCELLANEOUS**

17.1 Notices. Whenever this Agreement requires or permits delivery of a notice or requires a Party to notify the other Party, all notices, requests, statements or payments shall be made to the Parties using the contact information set out in Schedule 17.1, as updated from time to time by each Party by providing written notice to the other Party. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is sent by facsimile (and confirmed) or hand delivered. Notice by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt.

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

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

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

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

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

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

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

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

17.10 Assignment.

- (a) Neither Party shall assign this Agreement or delegate its rights or obligations hereunder without the prior written consent of the other Party; *provided however*, that without the consent of the other Party:
  - (i) a Party may transfer, sell, pledge, encumber or assign this Agreement or the Facility, or any accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements of the Facility; or

- (ii) a Party may transfer or assign this Agreement to any Person whose creditworthiness is equal to or higher than that of the transferring Party; *provided however*, that in the case of an assignment by Seller the assignee must also own the Facility.
- (b) Any consent required by Section 17.10(a) shall not be unreasonably withheld, conditioned or delayed; *provided however*, that neither Party shall be required to consent to any assignment or transfer that would require it to accept any limitation of its rights under this Agreement or expansion of the liability, risks or obligations imposed on it under this Agreement.
- (c) It shall be a condition of any assignment, transfer, delegation or other disposition of this Agreement that: (a) all Letters of Credit and Guaranties required pursuant to Article 14 [Security] shall remain in place in favor of Buyer notwithstanding such assignment, transfer, delegation or disposition; or (b) replacement Letters of Credit and Guaranties in form and substance acceptable to Buyer shall have been provided prior to such assignment, transfer, delegation or disposition.

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

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

17.13 Amendments and Future Treatment. Each Party agrees that it will not assert or defend itself on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not be amended, modified, terminated, discharged or supplemented, nor shall any provision hereof be waived, unless mutually agreed, in writing, by the Parties. Furthermore, the Parties expressly agree that no amendment of this Agreement that imposes costs for which Buyer may seek recovery from its ratepayers shall be enforceable absent specific Delaware PSC approval of such amendment and Buyer's right to recover such costs through its rates. The rates, terms and conditions contained in this Agreement are not subject to change under Section 205 or 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of the Parties to the proposed change, the standard of review for any avoidance, breach, rejection, termination or other cessation of performance of, or changes

to, any portion of this Agreement over which FERC has jurisdiction, whether proposed by a Party, a non-Party or FERC acting *sua sponte*, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as such standard may be subsequently clarified by the Supreme Court of the United States or inferior courts.

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

17.15 Bankruptcy Considerations. The Parties acknowledge and agree that the standard of review for any proposed avoidance, breach, rejection, termination or other cessation of performance or changes to any portion of this Agreement over which the United States District Court or the United States Bankruptcy Court for the district in which a proceeding is pending, whether proposed by Seller, Buyer, or a non-Party, shall be the standard of review set forth in *In re Mirant Corp.*, 318 B.R. 100 (N.D. Tex. 2004). Nothing in this Section 17.15 shall adversely affect, in any way, the protections afforded to a non-debtor counterparty under the United States Bankruptcy Code. The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code and that each of Seller and Buyer is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

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

17.17 Entire Agreement. This Agreement, including the Exhibits and Schedules hereto, embodies the entire agreement and understanding of the Parties in respect of the subject matter hereof. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein. This

Agreement supersedes all prior agreements and understandings between the Parties with respect to the matters contemplated by this Agreement.

17.18 Counterparts. This Agreement may be executed in two or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

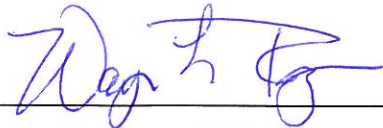
17.19 Obligation of Good Faith. In carrying out its rights, obligations and duties under this Agreement, each Party shall act reasonably and in accordance with the principles of good faith and fair dealing.

*[remainder of page intentionally left blank]*

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

**Seller**

**Buyer**

By: 

By: \_\_\_\_\_

Name: WAYNE L. ROGERS

Name: \_\_\_\_\_

Title: PRESIDENT

Title: \_\_\_\_\_



## **EXHIBIT A**

### **FACILITY DESCRIPTION**

The facility will be located approximately 19 miles northeast of Oakland, consisting of about 7 miles of ridge length of Four Mile Ridge and Elbow Mountain in Garrett County, Maryland. A map of the facility site is included on page A-2.

The Facility will be 50 MW in nominal rated capacity consisting of approximately 25 wind turbines of nominal 2.0 MW mounted on free standing tubular towers, about 80 meters in height. The individual unit size, final total output and location will be based on the actual turbine and site selection and will be reflected in a revised version of this Exhibit A.



**EXHIBIT B**

**DELIVERY POINT**

The Delivery Point shall be at the point in the planned 138kV Four Mile Ridge Substation to be constructed by Allegheny Power where PJM has identified a Pnode Identification Number. Upon finalization of the interconnection agreement this Exhibit B will be updated by Seller.

**SCHEDULE 6.13**

**MECHANICAL AVAILABILITY PERCENTAGE**

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

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

Where:

- AH = Available Hours
- MAP = Mechanical Availability Percentage
- TOH = Total Outage Hours
- UWP = Unit Weighted Percentage

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

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

“Equivalent Forced Outage Hours” means the total number of equivalent hours in a Period that represents an immediate reduction in output or capacity or removal from service, in whole or in part, of a Unit by reason of an emergency or threatened emergency, unanticipated failure or other cause beyond the control of Seller; *provided however*, that any Force Majeure Event Hours shall not be counted as Equivalent Forced Outage Hours. A reduction in output or removal from service of a Unit or the Facility in response to changes in market conditions shall not constitute Equivalent Forced Outage Hours.

“Equivalent Maintenance Outage Hours” means the total number of equivalent hours in a Period that represents the scheduled removal from service, in whole or in part, of a Unit in order to perform necessary repairs on specific components of the Unit, if removal of the Unit meets PJM’s guidelines.

“Equivalent Planned Outage Hours” means the total number of equivalent hours in a Period that represents the scheduled removal from service, in whole or in part, of a Unit for inspection, maintenance or repair with the approval of PJM’s Office of Interconnection.

“Force Majeure Event Hours” means the total number of hours in a Period during which either Seller or Buyer has declared a Force Majeure Event for one or more Units.

“Period” means the immediately preceding period of twenty four (24) consecutive months for which the Mechanical Availability Percentage is being calculated. The initial Period shall commence on the first day of the thirteenth (13<sup>th</sup>) calendar month following the Initial Delivery Date.

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

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

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

2. Sample Calculations.

**SAMPLE CALCULATION A:**

Assumptions:

- 1) Facility consists of 25 Units, each with an identical nameplate rating of 2 MW
- 2) There are 24 months in the relevant Period (with no leap year)
- 3) There was no Force Majeure Event for the Period
- 4) Each Unit of the Facility each experienced 200 Total Outage Hours during the Period
- 5) One Unit had 500 additional Total Outage Hours during the Period

For the 24 Units that each experienced 200 Total Outage Hours:

MAP	=	$[(17,520 - 200) / 17,520] * 0.04$
	=	0.0395 for each Unit
	=	0.948 for all 24 Units

For the one (1) Unit that experienced 700 Total Outage Hours:

MAP	=	$[(17,520 - 700) / 17,520] * 0.04$
	=	0.035 for the 1 Unit

The Mechanical Availability Percentage equals:

MAP	=	$0.948 + 0.035 \times 100$
	=	<b>98.30%</b>

**SAMPLE CALCULATION B:**

Assumptions:

- 1) The Facility consists of 21 Units, 17 of which have nameplate ratings of 2.0 MW and four of which have nameplate ratings of 1.5 MW.
- 2) There are 24 months in the relevant Period (with no leap year).
- 3) There was no Force Majeure Event for the Period.

- 4) Each of the 17 2.0 MW Units experienced 200 hours of Total Outage Hours during the Period.
- 5) Each of the four 1.5 MW Units experienced 1,200 Total Outage Hours during the Period.

For the 17 Units that each experienced zero Total Outage Hours:

MAP	=	$[(17,520 - 200) / 17,520] * 0.05$
	=	0.0494 for each Unit
	=	0.840 for the 17 Units

For the 4 Units that each experienced 1,200 Total Outage Hours:

MAP	=	$[(17,520 - 1,200) / 17,520] * 0.0375$
	=	0.0349 for each Unit
	=	0.140 for the 4 Units

The Mechanical Availability Percentage equals:

MAP	=	$0.840 + 0.14 \times 100$
	=	<b>98.00 %</b>

## SCHEDULE 8.1

### ENERGY PAYMENT RATE

#### I. Energy Payment Rate

The Energy Payment Rate from the Initial Delivery Date until the first anniversary of the Initial Delivery Date shall equal \$ 81.00 per MWh. On the earlier to occur of: 1) the first anniversary of the Initial Delivery Date; or 2) the first anniversary of the Initial Delivery Date of the Synergics Roth Rock Wind Energy Facility pursuant to the power purchase agreement between Synergics Roth Rock Wind, LLC and Buyer dated May 30, 2008, and each subsequent anniversary of the Initial Delivery Date, the Energy Payment Rate shall be increased by the lesser of: (a) a factor equal to fifty percent (50 %) of the CPI Calculation (but not a negative factor, which in said case shall be zero); or (b) two and one half percent (2.5 %).

#### II. Definitions

“Adjustment Year” shall mean the twelve month period ending on the applicable anniversary of the Initial Delivery Date for which the Energy Payment Rate is being calculated.

“Base Year” shall mean the annual period ending twelve (12) months prior to the Adjustment Year.

“Consumer Price Index” shall mean the figure, published annually by the United States Department of Labor, Bureau of Labor Statistics, for “Urban Wage Earners and Clerical Workers: Washington-Baltimore, DC-MD-VA-WV”, found electronically at <http://data.bls.gov/cgi-bin/surveymost>, or from any office of the United States Department of Labor, Bureau of Labor Statistics, with the Series Identification Number CWURA311SA0, with the base period of 100 being November 1996. If at any time the United States Department of Labor, Bureau of Labor Statistics ceases to publish Series CWURA311SA0 referred to herein, the Parties shall mutually agree upon a successor inflationary price index.

“CPI Calculation” shall equal the product of the following mathematical equation:

$$[(\text{CPI AY} / \text{CPI BY}) - 1] \times 100$$

Where:

**CPI AY** = The Consumer Price Index for the month of the Adjustment Year that is exactly one year after the month of the Initial Delivery Date. Successive periods will increment by one year, each year, with the CPI AY month always the same as the Initial Delivery Date.

**CPI BY** = The Consumer Price Index for the month of the Base Year that represents twelve (12) months prior to the CPI AY. Successive periods will increment by one year, each year, with the CPIBY month always the same as the Initial Delivery Date, but one year prior to the CPIAY month.

III. Example Calculations

**SAMPLE CALCULATION A:**

Assumptions:

- 1) Current Energy Payment Rate is \$ 81.00 per MWh.
- 2) Facility Initial Delivery Date is March 1, 2007

CPI Calculation for March 1, 2008 is determined as follows:

CPI AY = 220.935 (Published in February 2008 but in effect for March 2008)  
 CPI BY = 213.152 (Published in February 2007 but in effect for March 2007)

$$[(220.935 / 213.152) - 1] \times 100$$

$$[1.0365 - 1] \times 100$$

**CPI Calculation for March 1, 2008 = 3.65 percent**

	=	\$ 81.00 x [the lesser of ([0.50 x 3.65 %] or 2.5%) = 1.825 %]
Energy Payment Rate	=	\$ 81.00 x 1.825 % = \$ 1.48 increase
	=	\$ 82.48 per MWh for the 12 months beginning March 1, 2008

**SAMPLE CALCULATION B:**

Assumptions:

- 1) Current Energy Payment Rate is \$ 82.01 per MWh.
- 2) CPI Calculation for Adjustment Year (detailed calculation omitted) is six percent (6.0 %).

	=	\$ 82.01 x [the lesser of ([0.50 x 6.0 %] or 2.5%) = 2.5 %]
Energy Payment Rate	=	\$ 82.01 x 2.5 % = \$ 2.05 increase
the Adjustment Year	=	\$ 84.06 per MWh for the 12 months beginning March 1 of

**SCHEDULE 14.1**  
**FORM OF LETTER OF CREDIT**

Irrevocable Letter of Credit No.: \_\_\_\_\_

Issue Date: \_\_\_\_\_

Expiry Date: \_\_\_\_\_ (the "Expiry Date")

Beneficiary: Delmarva Power & Light Company ("Beneficiary")  
c/o Pepco Holdings, Inc.  
701 Ninth St., N.W.  
Washington, D.C. 20068

Amount: US \$ \_\_\_\_\_

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

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

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

1. Your signed and dated statement, reading as follows:

"The amount of this drawing, US\$ [\_\_\_\_\_] , being made under the bank of \_\_\_\_\_ [ISSUER NAME] Letter of Credit number \_\_\_\_\_, represents an amount due and payable to Beneficiary from Applicant or an affiliate of Applicant for security related to the Renewable Wind Energy Power Purchase Agreement dated as of \_\_\_\_\_ between Beneficiary and Synergics Roth Rock Wind Energy, LLC."

2. An original of this Letter of Credit.

If presentation of any drawing is made on a Business Day (as herein defined) and such presentation is made on or before 11:00 am New York time, Issuer shall satisfy such drawing request on the next Business Day. If the drawing is received after 11:00 am New York time, Issuer will satisfy such drawing request on the second following Business Day.

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

This Letter of Credit may be terminated upon: (a) the indefeasible payment in full of all sums owing to Beneficiary under the Renewable Wind Energy Power Purchase Agreement dated \_\_\_\_\_ between Beneficiary and Synergics Roth Rock Wind Energy, LLC; and (b) Issuer's receipt of a written release from Beneficiary releasing Issuer from its obligations under this Letter of Credit.

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

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

Additional terms and conditions:

1. All commissions and other banking charges will be borne by Applicant.
2. This Letter of Credit may not be transferred or assigned.
3. This Letter of Credit is irrevocable.
4. This Letter of Credit is subject to the International Standby Practices of the International Chamber of Commerce Publication No. 590 ("ISP98") or such later revision(s) of ISP98 as may be hereafter adopted. As to matters not governed by ISP98, this Letter of Credit shall be governed by, and construed in accordance with, the laws of the State of New York, including, to the extent not inconsistent with ISP98, the Uniform Commercial Code as in effect in the State of New York. This Letter of Credit may not be amended, changed or modified without the express written consent of Beneficiary and Issuer.
5. Beneficiary shall not be deemed to have waived any rights under this Letter of Credit, unless Beneficiary or an authorized agent of Beneficiary shall have signed a dated,

written waiver. No such waiver, unless expressly so stated therein, shall be effective as to any transaction that occurs subsequent to the date of such waiver, nor as to any continuance of a breach after the waiver.

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

Authorized Signature:

\_\_\_\_\_  
[NAME AND TITLE]

**SCHEDULE 14.2****UNSECURED CREDIT AMOUNT**

As of any specified date, the Unsecured Credit Amount for Seller or a Guarantor shall be determined based on the TNW Percentage specified for such Person in the following table. The Credit Rating used to calculate the TNW Percentage and Unsecured Credit Cap for any Person shall be the lowest Credit Rating (S&P, Moody's or Fitch) most recently published for such Person as of a specified date.

<b>Credit Rating</b>			<b>TNW Percentage</b>	<b>Unsecured Credit Cap</b>
<b>S&amp;P</b>	<b>Fitch</b>	<b>Moody's</b>		
AAA to AA-	AAA to AA-	Aaa to Aa3	10%	\$50,000,000
A+ to A-	A+ to A-	A1 to A3	8%	\$40,000,000
BBB+ to BBB	BBB+ to BBB	Baa1 to Baa2	6%	\$30,000,000
BBB-	BBB-	Baa3	4%	\$20,000,000

## SCHEDULE 14.3

### FORM OF GUARANTY

THIS GUARANTY AGREEMENT (this “Guaranty”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by \_\_\_\_\_ (the “Guarantor”), with an address at \_\_\_\_\_, in favor of Delmarva Power & Light Company (“DP&L”) (the “Creditor”), with an address at 701 Ninth Street NW, Washington DC 20068 in consideration of the Renewable Wind Energy Power Purchase Agreement (the “PPA”) between DP&L and Synergics Eastern Wind Energy, LLC (the “Supplier”) dated \_\_\_\_\_, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. Guarantor is the \_\_\_\_\_ of Supplier. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the PPA.

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

1. Guaranty of Obligations.

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

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

2. Nature of Guaranty; Waivers.

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

(b) This Guaranty is an absolute, unconditional, irrevocable (subject to the provisions of Section 12 of this Guaranty) and continuing guaranty and will remain in full force and effect until all of the Obligations have been indefeasibly paid in full, or until the PPA has been terminated, whichever comes later. This Guaranty will not be affected by any surrender, exchange, acceptance, compromise or release by the Creditor of any other party, or any other guaranty or any security held by it for any of the

Obligations, by any failure of the Creditor to take any steps to perfect or maintain its lien or security interest in or to preserve its rights to any security or other collateral for any of the Obligations or any guaranty, or by any irregularity, unenforceability or invalidity of any of the Obligations (other than any irregularity, unenforceability or invalidity of any of the obligations under the PPA resulting from the conduct of the Creditor) or any part thereof.

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

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

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

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

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

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

(c) this Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms, except as affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting the enforcement of creditors' rights generally, general equitable principles and an implied covenant of good faith and fair dealing;

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

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

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

4. Repayments or Recovery from the Creditor. If any demand is made at any time upon the Creditor for the repayment or recovery of any amount received by it in payment or on account of any of the Obligations, including but not limited to upon the bankruptcy, insolvency, dissolution or reorganization of the Supplier, and if the Creditor repays all or any part of such amount by reason of any judgment, decree or order of any court or administrative body or by reason of any settlement or compromise of any such demand, the Guarantor (subject to Sections 2 (c) and (d) of this Guaranty) will be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never been received originally by the Creditor. The provisions of this

Section will be and remain effective notwithstanding any contrary action which may have been taken by the Guarantor in reliance upon such payment, and any such contrary action so taken will be without prejudice to the Creditor's rights hereunder and will be deemed to have been conditioned upon such payment having become final and irrevocable.

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

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

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

All communications to Creditor shall be directed to:

Attn: Vice President and Treasurer  
Pepco Holdings, Inc.  
701 Ninth St., N.W.  
Washington, D.C. 20068

With a copy to: General Counsel  
Pepco Holdings, Inc.  
701 Ninth St., N.W.  
Washington, D.C. 20068

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

All communications to Guarantor shall be directed to:

Attn:

Phone:

Fax:

With a copy to:

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

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

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

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

11. Entire Agreement. This Guaranty (including the documents and instruments referred to herein) constitutes the entire agreement between the parties hereto and supersedes all other prior agreements and understandings, both written and oral, between the Guarantor and the Creditor with respect to the subject matter hereof.

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

13. Interpretation. In this Guaranty, unless the Creditor and the Guarantor otherwise agree in writing, the singular includes the plural and the plural the singular; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be

deemed to be followed by the words “without limitation”; and references to sections or exhibits are to those of this Guaranty unless otherwise indicated. Section headings in this Guaranty are included for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose.

14. Governing Law.

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

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

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

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

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

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

[Guarantor]

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE 15.1**  
**SELLER DELAYED PERMITS**

<b>Permit</b>	<b>Issuing Agency</b>	<b>Status</b>
PSC Exemption	Maryland PSC	To be applied on completion of Interconnection Agreement
Notice of Proposed Construction or Alteration	Federal Aviation Administration	Turbine towers permit application to be submitted in April 2009, expected to be obtained by August 2009.
Building Permit	Garrett County Planning and Zoning Office	Application to be filed in June 2009, Garrett County estimates approval in 60 days.
Soil Erosion and Sediment Control	Garrett County Planning and Zoning Office	Application to be submitted January 2009, approval expected by August 2009.
Storm Water Management (includes on-site Grading)	Garrett County Planning and Zoning Office	Application to be submitted in January 2009, approval expected by August 2009.
Grading Permit (For access roads to the site)	Garrett County Planning and Zoning Office; Garrett County Roads Department	Applications to be submitted by the Construction Contractor, approval to be obtained prior to start of construction

Road Crossing and Access	Maryland Department of Transportation, State Highway Administration	Applications to be submitted by the Construction Contractor, approval to be obtained prior to start of construction
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**SCHEDULE 17.1**

**NOTICE INFORMATION**

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

<p>Buyer:</p> <p><b>All Notices:</b></p> <p>Delmarva Power &amp; Light Company  C/O Pepco Holdings, Inc  701 Ninth Street, NW  Washington, DC 20068  Attn: Peter E. Schaub, General Manager  Energy Supply  Facsimile: 202-872-3350  Duns: 427468903  Federal Tax ID Number: 51-0084283</p> <p><b>Invoices:</b></p> <p>Attn: Robert J. Reuter, Bulk Power  Consultant  Phone: 202-331-6511  Facsimile: 202-872-3350</p> <p><b>With additional Notices of an Event of Default to:</b></p> <p>Pepco Holdings, Inc.  Attn: General Counsel  701 Ninth St., N.W.  Washington, D.C. 20068  202-872-2890 (phone)  202-331-6767</p>	<p>Seller:</p> <p>Synergics Eastern Wind Energy, LLC.  191 Main Street  Annapolis, MD 21401  Attn: Wayne L. Rogers, President  Facsimile: 410-269-1530  Federal Tax ID Number: 26-2695129</p> <p><b>Invoices:</b></p> <p>Attn: Susan Warpinski, Asst Controller  Phone: 410-268-8820  Facsimile: 410-269-1530</p> <p><b>Electronic Funds Transfer:</b>  (To be provided)  BNK:  Fed-ABA:  ACH-ABA:  ACCT Name:  ACCT No:</p> <p><b>With additional Notices of an Event of Default to:</b></p> <p>Attn: Wayne L. Rogers, President  Phone: 410-268-8820  Facsimile: 410-269-1530</p>
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