CONSUMERS ENERGY COMPANY

REQUEST FOR PROPOSALS

Issued
April 3, 2017

Bids Due:
May 15, 2017 5:00 p.m. EPT (Jackson, MI)

Web Address: ceco2017assetrfp.com
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1. Introduction

1.1 With this Request for Proposals (RFP), Consumers Energy Company (CEC) is soliciting proposals for existing generation facilities available for acquisition by CEC as described more fully in Subsection 2.2 below. Within the context of this RFP, a “facility” can refer either to an entire electric generating station with multiple units or whole generating units representing a portion of such an electric generating station. If a Respondent (defined below) proposes to sell a portion of an electric generating station, the Respondent shall clearly state this in its Proposal (defined below) and describe in detail how costs incurred by the station as a whole would be allocated to the generating unit(s) the Respondent proposes to sell.

The general schedule for the RFP process is shown below (see also Subsection 3.5):

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<td>Issue RFP</td>
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1.2 Consumers Energy Company is the principal subsidiary of Jackson-based CMS Energy Corporation and is Michigan’s largest electric and natural gas utility, providing service to almost 7 million of the state’s 10 million residents in all 68 counties in the Lower Peninsula. CEC provides electric service to 1.8 million customers and serves 275 cities and villages in 61 counties. The Company owns and operates five (5) coal-fueled electric generating units, two (2) oil and gas-fueled electric generating units, nine (9) gas-fueled electric generating units, three (3) exhaust-fueled steam condensing electric generating units, thirteen (13) hydroelectric generating plants, one (1) six (6) unit pumped storage electric generating plant, two (2) wind-powered electric generating parks, two (2) solar photovoltaic electric generating systems and seven (7) combustion-turbine electric generating plants that produce electricity when needed during peak demand periods. The utility also purchases power from approximately sixty (60) sources, including the Palisades nuclear plant and the gas-fueled Midland Cogeneration Facility.

Consumers Energy Company is committed to providing a reliable supply of electric power to its customers. In order to ensure reliable, adequate capacity and energy supplies to meet the needs of its customers, CEC seeks to acquire new supplies of capacity, which at a minimum, meet industry-wide reliability and performance criteria and existing new source requirements for electric generation facilities.

Accordingly, you are invited to submit a written bid proposal in accordance with the requirements described in this RFP. Specifically, CEC has retained Navigant Consulting, Inc. (“Navigant”) to manage the RFP process on behalf of CEC for the purpose of soliciting bids for CEC’s acquisition of natural gas fueled simple cycle and combined cycle generating assets that meet the criteria set forth in Section 2.2 (“Product Description”). All proposals must meet the general requirements set forth in

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1 Ownership of one (1) coal-fueled electric generating unit limited to 93.31%.
2 Ownership in the pumped storage plant is limited to 51%.
Section 4 ("RFP General Requirements"). Affiliates of CEC are invited to submit proposals on the same basis and under the same conditions as unaffiliated respondents.

Navigant will also serve as an independent third party to monitor and oversee the evaluation of all bids. Navigant shall administer this process through its website (see subsection 3.1) on CEC’s behalf in accordance with this RFP. Responses to this RFP will be accepted only through Navigant’s RFP website which can be accessed at: http://ceco2017assetrfp.com/.

CONSUMERS ENERGY COMPANY
Service Territory

More information about CEC is available by visiting www.consumersenergy.com.

2. Purpose / Desired Product

2.1 Purpose
The purpose of this solicitation is to solicit offers to sell existing electric generating facilities as described herein, located in that portion of the lower peninsula of the State of Michigan that is serviced by Midcontinent Independent System Operator, Inc. (MISO) and will meet the resource adequacy requirements as described in Module E of MISO’s Open Access Transmission, Energy and Operating Reserve Markets Tariff (https://www.misoenergy.org/Library/Tariff/Pages/Tariff.aspx) and MISO’s applicable Business Practice Manuals (https://www.misoenergy.org/Library/BusinessPracticesManuals/Pages/BusinessPracticesManuals.aspx) to Consumers Energy Company.

2.2 **Product Description**
CEC will consider proposals pursuant to which CEC is offered the opportunity to acquire existing simple cycle or combined cycle natural gas-fueled electric generating facilities ("Proposals") which are in service and operational as of the date of this RFP. CEC is seeking to acquire up to a total of 800 MW on a MISO Unforced Capacity (UCAP) basis. Such Proposals must be consistent with the size and acquisition date requirements specified in Subsections 4.2, 5.3 and 5.4. The physical location of such facilities must be in that portion of the lower peninsula of the State of Michigan that is serviced by MISO. CEC seeks Proposals for the purchase of 100% of the specified generating facilities. Pricing will be based on a single fixed payment that is inclusive of all monetary consideration for the generating assets and, if applicable, ancillary facilities and other contractual arrangements. Any such other contractual arrangement (e.g., fuel supply, fuel transportation, maintenance agreements, waste heat payments, steam host payments, pipeline leases, cooling or make-up water supply, blow down water disposal, emission allowances, etc.) should be clearly defined in the Proposal. CEC prefers generating units that are not subject to any use or operating restrictions or limitations.

3. **Information and Schedule**

3.1 **Information Provided to Potential Respondents**
This RFP and all of its appendices and forms, including the proposed purchase and sale agreement ("PSA"), are anticipated to be available as of April 3, 2017 on Navigant's website (http://ceco2017assetrfp.com/). Interested parties are expected to be able to download the RFP with its required forms and complete the forms in Microsoft Word and/or Excel format. Respondents (defined below) shall submit properly completed forms by the specified deadline by electronic mail to the RFP Submission Email Address (ceco2017assetrfp@gmail.com). Proposals that are nonconforming, not complete, or that are mailed, or hand delivered may be deemed ineligible and may not be considered for further evaluation. Any Proposals received from a Respondent that has not been pre-qualified will be deemed ineligible and will not be considered for further evaluation.

Navigant also anticipates sending an electronic mail notice on or before April 3, 2017 to parties that it considers likely participants in this RFP. The preparation of a Proposal may be initiated at any time provided that such preparations are completed in accordance with the instructions found in this RFP.

CEC also anticipates publishing a press release of this RFP on its website on or before April 3, 2017.

By submitting a Proposal in response to this RFP, the party on whose behalf the Proposal is submitted ("Respondent") certifies that it has not divulged, discussed or compared any commercial terms of its Proposal with other Respondents and has not colluded whatsoever with any other party believed to be a prospective Respondent.
3.2 **Information on the RFP Website**
The information on Navigant’s website will contain the following:

(a) This RFP.
(b) Form of Non-Disclosure Agreement (“NDA”)
(c) Pre-Qualification Application
(d) Form of PSA.
(e) Standard RFP Response Form – Operating Data
(f) Questions and answers about this RFP.
(g) Updates on this RFP process and other relevant information.

3.3 **Questions**
All questions regarding this RFP should be submitted to the RFP Submission Email Address (ceco2017assetrfp@gmail.com). All relevant questions and answers will be posted on Navigant's website on a periodic basis. Other than questions and answers submitted through the RFP Submission Email Address and posted on the RFP website, no other explanations or interpretations of this RFP will be given. Written questions will be accepted by Navigant until five (5) days before the date on which Proposals are due. The Respondent should check the website periodically for updates and postings.

In the event that a given Respondent has a question or seeks clarification or explanation of any data or information provided in this RFP, such Respondent is responsible for obtaining the desired information by submitting a written question to Navigant through the RFP Email Address by no later than five (5) days before the date on which Proposals are due.

Any and all communications regarding this RFP will be submitted through the RFP Email Address, or posting on the RFP website. Under no circumstance should Respondents attempt to contact CEC or Navigant employees directly with any matters related to this RFP.

3.4 **Clarification of Proposals**
While evaluating Proposals, Navigant may request additional information about any item in the Proposal. All requests will be made in writing, and the Respondent will be required to respond to the request within five (5) business days of receipt of such request or Navigant may choose to stop evaluating the Respondent’s Proposal.

3.5 **Schedule**
The following schedule and deadlines apply to this RFP. CEC reserves the right to extend or otherwise modify any portion of this schedule at any time or terminate the RFP process at its sole discretion.

3.5.1 EPT or Eastern Prevailing Time means Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect in Jackson, Michigan on any date specified.

3.5.2 All Proposals are due by 5:00 p.m. EPT, May 15, 2017. Proposals received after the specified date and time will be disqualified from further evaluation.
CEC expects to execute Definitive Agreements no later than August 4, 2017 (with closing expected to occur on or about April 1, 2019).

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4. **RFP General Requirements**

Proposals that do not meet the following criteria will be deemed to be ineligible and not be considered for further evaluation.

4.1 **Respondent Pre-Qualification**

To be eligible to submit a Proposal in response to this RFP, Respondents must be pre-qualified. To pre-qualify, Respondents must:

(a) Submit (i) a Notice of Intent (Appendix A), (ii) a completed Non-Disclosure Agreement (Appendix B), and (iii) a completed Pre-Qualification Application (Appendix C) through the RFP Submission Email Address (ceco2017assetrfp@gmail.com) no later than the date and time specified pursuant to Subsection 3.5.2 above; and

(b) Receive confirmation that Respondent is pre-qualified to submit a Proposal.

4.2 **Facility Parameters**

Each specific generating facility proposed for purchase by CEC under a Proposal must:

(a) Be in service and operational as of the issuance date of this RFP.

(b) Have a MISO reliability capacity rating so as to produce no less than 300 MW of Unforced Capacity (“UCAP”) and no greater than 800 MW of UCAP.

(c) Have a physical location in that portion of the lower peninsula of the State of Michigan that is serviced by MISO (currently designated as Local Resource Zone 7).

(d) Consist of a simple cycle or combined cycle natural gas-fueled generating facility.

(e) Have all relevant environmental and other permits necessary for its operation and maintenance.
(f) Be comprised of a 100% share of the facility.

4.3 **Proposal Quantities and Pricing**
This RFP requests Proposals that consist of a firm price for the specified generating facility. All prices must not be tied to any contingencies other than as specified herein. In the event that multiple Proposals for different facilities are submitted by the same Respondent, Respondent must indicate whether or not the Proposals are mutually exclusive.

4.4 **Valid Proposal Duration**
Proposal pricing must be valid for six (6) months following the Proposal Due Date, upon which time Proposals shall expire unless the Respondent has been notified that its Proposal has been selected.

4.5 **Affiliates**
Affiliates of CEC will be permitted to participate in this RFP. Except for legal and credit functions, all CEC personnel involved in Proposal evaluation are physically located in a different location than affiliate personnel. CEC affiliates are prohibited from contacting CEC personnel directly regarding this RFP and must follow the communication protocol established in Subsection 3.3.

5. **Proposal Content Requirements**
This section describes CEC’s expectations and requirements for the content of Proposals. Proposals that do not meet the following criteria will be deemed to be ineligible and not be considered for further evaluation. CEC expects Respondents to provide any information that could impact the Respondent’s ability to sell the facility as offered. If it appears that certain information is inadvertently omitted from a Proposal, Navigant may contact the Respondent to obtain the information.

All Proposals must include a table of contents and provide concise and complete information on all of the following topics:

5.1 **Standard RFP Response Form**
Respondents shall provide a completed Appendix E, Standard RFP Response Form. Be advised that Appendix E does not capture all of the information required to be provided in this RFP.

5.2 **Executive Summary**
Proposals must include an executive summary of the Proposal’s characteristics including any unique aspects and benefits.

5.3 **Name and Location**
Respondents shall state the name of the generating facility, the county where the generating facility is located, the owner of the facility, and the MISO Commercial Pricing Node associated with the facility. The location must be in that portion of the lower peninsula of the State of Michigan that is serviced by MISO (currently designated as Local Resource Zone 7).
5.4 **Net Capability of Generating Facility**
Respondents shall state the net capability of the facility that would be applicable for each month of a calendar year as well as the nameplate capacity of the facility. In no event shall any Proposal include a generating facility that is capable of producing less than 300 MW of UCAP or likely to produce more than 800 MW of UCAP.

5.5 **Acquisition Date**
In preparing their Proposals, Respondents shall assume that the acquisition of the facility would be closed and title transferred on or about April 1, 2019 and no later than May 1, 2019.

5.6 **Generation Technology**
Respondents shall describe the generation technology of the facility, including the make of the equipment, model and name of supplier. Such technology must consist of a simple cycle or combined cycle natural gas-fueled generating facility.

5.7 **MISO UCAP**
Respondent shall list the UCAP awarded to the facility for the five (5) most recent MISO Planning Years and the projected UCAP for the next three (3) years. In the event that the projected UCAP has sizable deviation from historical UCAP, Respondents shall provide a detailed explanation.

5.8 **Heat Rate and Emission Rates**
Respondents shall provide the current operating heat rate curve (e.g., the coefficients of a fifth-order equation), the no-load cost, the average heat rate at minimum load, incremental heat rates at 50% and 75% of full load, the average full load heat rate of the facility (without duct firing), and the incremental heat rate for duct firing. Respondents shall also provide a summary of any environmental control equipment installed at the facility and emission rates for NOx, SO2, CO2, VOC, PM and CO in units of lb/MMBTU.

5.9 **Operating Costs and Revenues**
Respondents shall state the estimated annual operation and maintenance costs of the facility on a fixed ($) and variable ($/MWh) basis (Long Term Service Agreement fixed and variable costs should be listed separately from other fixed and variable costs) and provide the actual annual operation and maintenance costs of the facility for each of the past three (3) years. Respondents shall also state and describe any property taxes and tax abatements associated with the facility, including actual annual property taxes for the past three (3) years and estimated property taxes for the facility for the next three (3) years.

Respondents shall provide detailed timing and cost information on each of the major planned and forced outages for each of the past three (3) years. Respondents shall provide estimated timing and cost information for the next major planned outage events for the generating units.

5.10 **Capital Expenditures**
Respondents shall identify the total number of operating hours and remaining life for each major turbine component subject to replacement and/or refurbishment as part of the major maintenance cycle. Respondents shall provide historical and budgeted
capital expenditures for the facility. Historical capital expenditures shall be provided for each of the past three (3) years. Budgeted capital expenditures shall be provided for each of next three (3) years along with a description of the projects involved.

Respondents shall supply a summary list of all spare parts and components currently owned by the facility and each part’s and component’s approximate value for parts and components valued at $10,000 or more. Respondents shall also identify any spare parts or components valued at $10,000 or more that are currently needed and/or on order as of the date of this RFP.

5.11 Fuel Supply
Respondents shall provide a description, including detailed cost information, of all existing fuel and transportation contracts that would be assigned to CEC in an acquisition. Respondents must also state whether or not there are any provisions or other considerations that would prohibit the assignment and/or affect the performance obligations of either party under the respective contract. Respondents should fully detail how fuel is purchased and transported to the facility as well as any existing or known potential operational restrictions or impediments on such fuel supply.
Respondents are also required to provide a description of the existing natural gas infrastructure serving the generating unit.

5.12 Other Contractual Commitments
Respondents shall provide a description, including detailed cost information, of any other significant contracts that would be assigned to CEC in an acquisition, including, but not limited to, long-term service agreements, state union labor contracts and/or technical support contracts, steam supply agreements, waste heat supply agreements, cooling water or make-up water supply agreements, blow-down water disposal agreements, steam transport agreements, pipeline lease agreements, fuel supply agreements, fuel transportation agreements, emission allowance agreements, and agreements related to capacity and/or energy sales from the facility and any capacity offers submitted to any ISO/RTO related to the facility that if accepted would be binding on CEC as a result of an acquisition. Respondents must also state whether or not there are any provisions that would prohibit the assignment and/or affect the performance obligations of either party under the respective contract.

5.13 Permits
The facility must have all relevant environmental and other permits necessary for its operation and maintenance. Respondents shall provide a description of all permits currently in place for the operation and maintenance of the facility (e.g. Spill Prevention Containment and Control plans, Title IV and Title V permits of the Clean Air Act, Cap and Trade Permits, NPDES permits, Water Withdrawal, Pollution Incident Prevention Plan). Respondents must also state whether or not there are any provisions that would prohibit the assignment of such permits and/or any consents required for the assignment of the permit.

Respondents shall provide a description of any identified environmental liabilities (e.g., potential site remediation requirements, pending future regulatory requirements, etc.) for the facility.
5.14 **Dispatch Characteristics**
Respondents shall state/describe the dispatch characteristics of the facility, including, but not limited to, minimum load level, ramp rates (up and down), number of gas turbines that can be started simultaneously (if applicable), fuel consumption during startup, capability decreases as a result of ambient temperature increases, supplemental firing capability and any operating limitations caused by such factors as design, material condition of the facility, and various permit restrictions.

Regarding any major operational limitations, Respondents shall provide a description of the root causes of the limitations (e.g., OEM design, material condition of the facility, environmental permits, etc.).

5.15 **Operating Data**
Respondents shall provide historical operating data consisting of: (1) net unit generation in MWh, (2) the commercial operation date of the facility, (3) the annual run-time hours (per unit, if applicable), (4) the annual facility capacity and availability factors, (5) the annual average heat rate, and (6) MISO equivalent forced outage rate demand (XEFORd). The above annual data may be limited to the most recent five years. The XEFORd should correspond to the Unforced Capacity amounts awarded for the last five Planning Years. Respondents shall also provide a forecast of the facility’s forced outage rate and planned outage days for each of the next three (3) years.

Respondents shall also provide: (1) An identification of the heat rate during startup of the facility, and identification of the time startup takes; (2) a description of the total number of annual hours the facility can be assumed to be in startup mode; (3) the heat input required for startup, (4) the average MWh produced while ramping to meet dispatch, (5) the average run-time per start, (6) an identification of the heat rate of the facility when it is being shut down and a description of how long shutdown takes; (7) the average MWh produced while ramping to come off-line; (8) an identification of the annual hours the facility is in shutdown mode; (9) an identification of the annual hours the facility operates at full load; and (10) the number of annual hours that exclude startup and shutdown where the facility operates at less than full load and the corresponding heat rate.

Respondents shall provide details on any equipment health issues and concerns, including the potential drivers and recommended mitigation procedures for the issues and/or concerns. These may include, but are not limited to, turbine startup vibration, uneven heating, compromised turbine or compressor blades, etc. Respondents shall provide a list of any redundant equipment that is currently bypassed or out of service because it is non-functional.

Respondents shall provide maintenance history consisting of: (1) dates of last full unit inspection and findings based on OEM recommendations; (2) total number of equivalent starts and equivalent operating hours on each unit; (3) equivalent starts and equivalent hours since the last major maintenance activity; and (4) outstanding OEM recommendations remaining to be implemented.
5.16 Acquisition Price
Respondents shall submit an acquisition price consisting of a single fixed payment that is inclusive of all monetary consideration for the generating assets, working inventory, and, if applicable, ancillary facilities and other contractual arrangements (e.g. for fuel supply and transportation, maintenance, etc.).

5.17 Purchase and Sale Agreement
This RFP contains a proposed form of PSA (Appendix D). Respondents shall submit a "mark-up" of the PSA containing any comments thereon proposed for consideration as part of Respondent’s Proposal. Respondents should download the PSA from Navigant’s website (see Subsection 3.2) and submit comments in red-lined form to the RFP Submission Email Address (see Subsection 3.1) by the Proposal Due Date.

6. Minimum Bid Eligibility Requirements
This section outlines the minimum requirements that all Proposals must meet to be eligible to participate in this RFP. Proposals unable to meet the following criteria will be deemed to be ineligible and not be considered for further evaluation.

- Respondents must meet the general requirements in accordance with Section 4 of this RFP.
- Proposals must include all content requirements described in Section 5 of this RFP, including all requested information and completed forms.
- Proposals must provide documentation that shows an acceptable level of credit and technology risk as determined by CEC’s bid evaluation team.
- Proposals must demonstrate that the generating facility meets industry-wide reliability and performance criteria and existing new source requirements for electric generation facilities.

7. Bid Evaluation and Contract Negotiations

7.1 Initial Proposal Review
After the Proposal Due Date, Navigant will review all responses for completeness, responsiveness and compliance with the minimum bid eligibility requirements specified in Section 6 of this RFP. Navigant will not accept updated pricing from Respondents during the evaluation period unless such information is requested by Navigant. Preliminary due diligence will also be conducted at this stage to identify any flaws associated with the bid that would make it unacceptable. As a result of this screening, Navigant may either eliminate bid(s) from further consideration, or contact Respondent(s) to clarify information or request additional information. Navigant will make such requests in writing via email and Respondents will be required to respond to the request within five (5) business days of receipt of such request or Navigant may choose to stop evaluating a Respondent’s Proposal (see Subsection 3.4).

7.2 Shortlist Development
Proposals that meet the requirements in Section 6 will be evaluated based on present value economics and other factors that may have an impact on CEC over the anticipated term that CEC would own and operate the facility.
During the evaluation process, CEC and/or Navigant may or may not choose to initiate discussions with one or more Respondents. In that event, Navigant will be the sole conduit of information between Respondent and CEC. Discussions with a Respondent shall in no way be construed as commencing contract negotiations.

7.3 **Contract Negotiations**
CEC’s commencement of and participation in negotiations shall not be construed as a commitment to execute a PSA. Only execution of a Definitive Agreement (an agreement executed by both CEC and the Respondent on mutually acceptable terms) will constitute a “winning Proposal”.

8. **Reservation of Rights**
CEC reserves the right, without qualification, to reject any or all Proposals and to waive any irregularity in submitted information. There is no assurance, expressed or implied, that any agreement will be executed pursuant to this RFP. CEC also reserves the right to evaluate all Proposals received in any manner it elects to employ, to solicit additional Proposals if it is deemed necessary to do so and the right to submit additional information requests to Respondents during the Proposal evaluation process.

This RFP shall not, by itself, give any right to any party for any claim against CEC. Furthermore, by submitting a Proposal, the Respondent shall be deemed to have acknowledged that CEC assumes no liability in any fashion with respect to this RFP or any matters related thereto. By submission of a Proposal, the Respondent, for itself as well as for its successors and assignees (if any), agrees that, as between Respondent and CEC, Respondent is to be solely responsible for all claims, demands, accounts, damages, costs, losses and expenses of whatsoever kind in law or equity, known or unknown, foreseen or unforeseeable, arising from or out of this RFP.

CEC shall not reimburse Respondent and Respondent is responsible for any cost incurred in the preparation or submission of a Proposal, in negotiations for an agreement, and/or any other activity contemplated by the Proposal submitted in connection with this RFP.

9. **Confidentiality of Information**
All Proposals submitted in response to this RFP become the property of CEC upon submittal. Respondents should clearly identify each page of information considered to be confidential or proprietary. Consistent with the NDA, CEC will take reasonable precautions and use reasonable efforts to maintain the confidentiality of all information so identified. CEC reserves the right to release any Proposals to agents or consultants for purposes of Proposal evaluation. Regardless of the confidentiality claimed, however, and regardless of the provisions of this RFP, all such information may be subject to review by the appropriate state authority, or any other governmental authority or judicial body with jurisdiction relating to these matters, and may also be subject to discovery by other parties. CEC will not release any of the Respondent’s confidential information to any of its affiliates who respond to the RFP.

10. **Regulatory Approvals**
10.1 Respondent agrees to cooperate, to the fullest extent necessary, to obtain any and all State, Federal, or other regulatory approvals CEC deems to be required for the effectiveness of the PSA.
10.2 The PSA shall be subject to and contingent on CEC obtaining Michigan Public Service Commission approval of Buyer’s Application for Financing Order, as requested in MPSC Case No. U-18250, in a form that is not subject to further appeal after September 30, 2017.

10.3 The PSA shall be subject to and contingent on CEC obtaining authorization from the Federal Energy Regulatory Commission for the acquisition of assets from Respondent pursuant to Section 203 of the Federal Power Act.

10.4 The PSA shall also be subject to and contingent on CEC obtaining Michigan Public Service Commission approval that the costs of assets purchased pursuant to a Definitive Agreement will be recoverable in the rates charged to CEC’s jurisdictional customers.
Appendix A

Notice of Intent Form

Email to: ceco2017assetrfp@gmail.com

Due: By 5:00 p.m. EPT, April 10, 2017

Note that completion of all information is required.

This response is an indication of our interest in the CEC Request for Proposals in CEC’s April 3, 2017 RFP. This response also establishes contact information for future communications regarding this RFP.

Company: ____________________________________________ (legal name of entity of intended signatory to a contract)

Contact Name: ________________________________________

Contact Title: ____________________________

Address: ____________________________________________

City: ____________________________ State: ________ Zip: __________

Phone Number: ________________________________________

Fax Number: __________________________________________

Email address: _________________________________________

Facility Name: _________________________________________

Facility Location: _______________________________________

Net Demonstrated Capability (MW): _______________
APPENDIX B

CEC 2017 ASSET RFP

AGREEMENT OF CONFIDENTIALITY

This Agreement is entered into as of the _______ day of _________________ , 2017, by and between Consumers Energy Company, a Michigan corporation, One Energy Plaza, Jackson, Michigan 49201, hereinafter called “Consumers” and _________________________________________, a ________________ hereinafter called “Company”.

WHEREAS, Consumers has issued that certain Request for Proposals, dated April 3, 2017 (the “RFP”) for the potential acquisition by Consumers of up to approximately 800 MW of capacity from natural gas simple cycle or combined cycle electric generating facilities, as more thoroughly described in the RFP (the “Potential Transaction”), and Company desires to submit a proposal in response to the RFP in accordance with the terms and conditions thereof.

WHEREAS, as a condition to Company submitting, and Consumers considering, a proposal in response to the RFP in connection with the Potential Transaction, Consumers and Company have agreed to take or abstain from taking certain actions as set forth in this Agreement.

In consideration of the mutual promises contained herein, Consumers and Company agree as follows:

1. Definitions. Unless otherwise defined herein, as used in this Agreement:

   (a) “Confidential Information” means all information regarding the Potential Transaction that is furnished by or on behalf of the Disclosing Party or its Representatives to the Recipient or its Representatives in connection with the Potential Transaction on or after the date of this Agreement, clearly marked or is identified, before, during or after such disclosure, as “Proprietary” or “Confidential” or is otherwise reasonably understood as being confidential in nature, whether oral or written and regardless of the manner in which it is furnished; provided, however, that Confidential Information shall not mean or include information furnished by or on behalf of the Disclosing Party or its Representatives that (i) is or becomes generally available to the public other than as a result of a disclosure by the Recipient or any of its Representatives in violation of this Agreement, (ii) was known to the Recipient on a nonconfidential basis prior to its disclosure by the Disclosing Party or its Representatives, (iii) becomes available to the Recipient on a nonconfidential basis from a Person other than the Disclosing Party or its Representatives who is not, to the Recipient’s knowledge, bound by a legally binding obligation not to transmit such information to the Recipient or any of its Representatives, (iv) is independently developed by the Recipient or its Representatives without reference to any Confidential Information about the Disclosing Party or (v) is obtained by any employee of the Recipient who, at the time that such employee obtained the information, had not received any Confidential Information pursuant to this Agreement.

   (b) “Definitive Agreement” shall have the meaning given to such term in the RFP. For the avoidance of doubt, the Definitive Agreement shall not include any executed letter of intent or other preliminary written agreement or any written or oral acceptance of an offer.

   (c) “Disclosing Party” means the party that is furnishing information, or on whose behalf information is furnished, to the other party pursuant to this Agreement.

   (d) “Person” means any corporation (whether stock or nonstock), professional corporation, limited liability company, limited partnership, limited liability partnership, other entity, any unincorporated organization or any individual.
“Recipient” means the party that receives information, or on whose behalf information is received, from the other party pursuant to this Agreement.

“Representative” means, as to any Person, such Person’s affiliates (excluding any affiliate participating in the RFP) and its and their directors, officers, employees, agents, advisors (including, without limitation, financial advisors, counsel and accountants), controlling persons, investors and debt and equity financing sources.

2. The Recipient shall not disclose any Confidential Information to any Person other than those of its Representatives who are actively and directly participating in its evaluation of the Potential Transaction or who otherwise need to know the Confidential Information for the purpose of evaluating or consummating the Potential Transaction. The Recipient shall not disclose to any Person any information about the Potential Transaction or the terms or conditions or any other facts relating thereto, including, without limitation, the status thereof or the fact that Confidential Information has been made available to the Recipient or its Representatives, except that the Recipient may disclose such information to those of its Representatives who are actively and directly participating in its evaluation of the Potential Transaction or who otherwise need to know such information for the purpose of evaluating or consummating the Potential Transaction.

3. The obligations under Section 2 shall not apply to Confidential Information which: (a) becomes publicly known through no wrongful act of Consumers; (b) is rightfully received from a third party without restriction on disclosure and without breach of this Agreement; (c) is independently developed by Consumers; (d) is later approved for release by written authorization of Company; or (e) is required to be disclosed pursuant to law, judicial or regulatory process, tariff rule, governmental agency requirement or request, or court order, so long as the party required to disclose the information provides the other party with prior written notice of any required disclosure pursuant to such law, judicial or regulatory process, tariff rule, governmental agency requirement or request, or court order. Notwithstanding anything herein to the contrary Consumers may disclose such Confidential Information (i) that it deems reasonably necessary for the approval of the Potential Transaction to the Michigan Public Service Commission (“MPSC”), MPSC Staff, or any other judicial, regulatory or legislative body or (ii) pursuant to discovery requests of an intervenor, the Michigan attorney general or MPSC Staff made in a contested MPSC case.

4. Neither the Disclosing Party nor its Representatives, nor it or its Representatives’ officers, directors, employees, agents or controlling persons, shall be deemed to make, or shall be responsible for, any express or implied representation or warranty as to the accuracy or completeness of any Confidential Information. Neither the Disclosing Party nor any of its Representatives shall have any obligation to update, supplement or amend the Confidential Information as a result of subsequent events or developments or otherwise.

5. No contract providing for the Potential Transaction or any similar transaction shall be deemed to exist between the parties unless and until a Definitive Agreement has been executed and delivered. Unless and until such a Definitive Agreement has been executed and delivered, none of the parties or their respective Representatives shall have any legal obligation of any kind whatsoever with respect to any such transaction by virtue of this Agreement or any other written or oral expression with respect to such transaction (except for obligations under any other written agreements between the parties expressly intended to be binding).

6. This Agreement shall be effective when signed and shall remain in effect for a period of two years (2) years from the date first above written.

7. The parties agree that they will be irreparably injured by a breach of the provisions of this Agreement and that the injured party shall be entitled to equitable relief, including injunctive relief and specific performance without the requirement of posting a bond, in the event of any actual or threatened breach of the provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies in the event of a breach but shall be in addition to all other remedies at law or equity.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to the conflicts-of-law provisions thereof. The parties hereto agree that venue in any action or proceedings related to this Agreement will be in the state and federal courts in Michigan, which courts
shall have personal and subject matter jurisdiction for such purpose, and the parties hereto irrevocably submit to the jurisdiction of such courts and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. This Agreement supersedes all previous representations, understandings and negotiations, either written or oral, between the parties or their representatives related to the Confidential Information and is the entire Agreement between the parties. This Agreement may be amended only by a writing signed by both parties.

9. This Agreement is intended for the benefit of the parties hereto and does not grant any rights to third parties unless otherwise specifically granted herein. This Agreement shall not be assigned by either party without the prior written consent of the other party and any such action in violation of the foregoing restriction shall be void.

10. This Agreement is not intended to constitute, create, give effect, or otherwise recognize a joint venture, partnership or formal business entity of any kind, and the rights and obligations of the parties shall be limited to those expressly set forth herein.

11. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous communications, understandings and representations, whether oral or written, with respect to the subject matter hereof. Amendments thereto shall not be valid unless in writing and signed by both parties.

12. This Agreement may be executed and delivered in counterparts, including by a facsimile or an electronic transmission thereof, each of which shall be deemed an original. Any document generated by the parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

IN WITNESS WHEREOF, this Agreement has been executed by duly authorized representatives of the parties as of the day and year first above written.

CONSUMERS ENERGY COMPANY

By: ____________________________
Name: __________________________
Title: __________________________

By: ____________________________
Name: __________________________
Title: __________________________
Appendix C

Pre-Qualification Application
Respondent’s Credit-Related Information

Provide the following data to enable CEC/Navigant to assess the financial viability of the Respondent as well as the entity providing the credit support on behalf of the Respondent (if applicable). Include any additional sheets and materials with this Appendix as necessary. As necessary, please specify whether the information provided is for the Respondent, its parent or the entity providing the credit support on behalf of the Respondent.

Full Legal Name of the Respondent: ____________________________________________

Dun & Bradstreet No. of Respondent: ____________________________________________

Type of Organization: (Corporation, Partnership, etc.) ____________________________

Description of Corporate Structure (use separate sheet if necessary) _________________

State of Organization: __________________________________________________________

Respondent’s Percent Ownership in Proposed Project: ______________________________

Full Legal Name(s) of Parent Corporation: ________________________________________

Entity Providing Credit Support on Behalf of Respondent (if applicable): ______________

Dun & Bradstreet No. of Entity Providing Credit Support: ____________________________

Address for each entity referenced (provide additional sheets, if necessary): __________

Type of Relationship: __________________________________________________________

Current Senior Unsecured Debt Rating from each of S&P and Moody’s Rating Agencies (specify the entity these ratings are for): ________________________________

OR, if Respondent does not have a current Senior Unsecured Debt Rating, then
Tangible Net Worth (total assets minus intangible assets (e.g. goodwill) minus total liabilities):

Bank References & Name of Institution: __________________________________________

Bank Contact: Name, Title, Address and Phone Number: ___________________________

Pending Legal Disputes, if any (describe): _______________________________________

Financial Statements (Income Statement, Balance Sheet, and Statement of Cash Flows): (Please provide copies of the two most recent quarterly reports containing unaudited consolidated financial statements, signed and verified by an authorized officer of Respondent attesting to their accuracy, a copy of Respondent’s two most recent Annual Reports containing audited consolidated financial statements and a summary of Respondent’s relevant experience. If available electronically, please provide link.) If Respondent does not have any of the above information for itself and Respondent
has a parent Company that will guaranty the obligations of Respondent, the Respondent shall provide the specified information from its parent company.
PURCHASE AND SALE AGREEMENT

by and between

____________________________________

as Seller,

and

Consumers Energy Company

as Buyer

dated as of _____________, 20___
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PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement, dated as of ____________, 20___ (this "Agreement"), is made and entered into by and between ________________, a ____________, and Consumers Energy Company, a Michigan corporation ("Buyer").

WITNESSETH:

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Purchased Assets (as defined below) on the Closing Date (as defined below) on the terms and subject to the conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS AND CONSTRUCTION

Section 1.1 Definitions. As used in this Agreement, the following capitalized terms have the meanings set forth below:

"Acceptable Orders" means all of the following:

(i) a final order of the MPSC that includes the following: (a) affirmation that the acquisition of the Project by Buyer is reasonable and prudent; (b) approval for Buyer to include the Base Purchase Price of the Project in its rate base, (c) recognition of the fuel costs associated with operation of the Project, and approval of the rate adjustments necessary to allow full recovery by Buyer of the non-fuel costs of operating and maintaining the Project; and in the case of each of the approvals set forth in clauses (b) and (c), without the imposition of other conditions that taken in the aggregate would have the effect of reducing such recovery; and in addition to all of the preceding, such order shall be in all other respects satisfactory to Buyer and not subject to appeal or further appeal;

(ii) a final order of the MPSC approving Buyer’s application for the financing order, as requested in MPSC Case No. U-18250, in a form which Buyer, in its sole discretion, deems to be satisfactory approval and that is not subject to further appeal after September 30, 2017; and

(iii) authorization from the FERC for the acquisition of assets from Seller pursuant to Section 203 of the FPA.

"Acquisition Proposal" has the meaning given to it in Section 5.21.

"Adjustment Estimate" has the meaning given to it in Section 2.7(a).
"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. For purposes of this definition, "control" of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or ownership interests, by Contract or otherwise, and specifically with respect to a corporation, partnership or limited liability company, means direct or indirect ownership of more than 50% of the voting securities in such corporation or of the voting interest in a partnership or limited liability company.

"Agreement" has the meaning given to it in the introduction to this Agreement.

"Ancillary Agreements" means the Assignment and Assumption Agreement, bills of sale, the Warranty Deed, the Closing Certificates and the other documents and agreements to be delivered pursuant to this Agreement.

"Assets" of any Person means all assets and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible and wherever situated), including the related goodwill, which assets and properties are operated, owned or leased by such Person.

"Assigned Contracts" means all Contracts set forth on Schedule [____], which schedule may be updated prior to Closing with the mutual written agreement of the Parties.

"Assumed Liabilities" has the meaning given to it in Section 2.2.

"Base Purchase Price" has the meaning given to it in Section 2.4.

"BEA" has the meaning given to it in Section [______].

"Benefit Plan" means all written and unwritten "employee benefit plans" within the meaning of Section 3(3) of ERISA, and any other written and unwritten profit sharing, pension, savings, deferred compensation, fringe benefit, insurance, medical, medical reimbursement, life, disability, accident, post-retirement health or welfare benefit, stock option, stock purchase, sick pay, vacation, employment, severance, termination or other plan, agreement, contract, policy, trust fund or arrangement.

"Budget" means the major maintenance and capital expenditures budget estimates for the Seller for the period from the date hereof until December 31, 20__, as set forth in Schedule 1.1-B.

"Business" means the ownership and operation of the Project as currently conducted, including the generation and sale of electricity and capacity and electric-related products by the Seller or any of its Affiliates at or from the Project as currently conducted, the receipt by the Seller of fuel and the conduct of other activities by the Seller related or incidental to the foregoing all as currently conducted.

"Business Day" means a day other than Saturday, Sunday or any day on which banks located in the State of Michigan are authorized or obligated to close.

"Buyer" has the meaning given to it in the introduction to this Agreement.
"Buyer Approvals" means the filings, waivers, approvals, consents, authorizations and notices set forth in Schedule 1.1-BA, all in form and content satisfactory to Buyer and not subject to appeal or further appeal.

"Buyer Indemnified Parties" has the meaning given to it in Section 9.1(a).

"Buyer's Advisors" has the meaning given to it in Section 5.2.

"Buyer's Determination" has the meaning given to it in Section 2.6(a).

"Casualty Loss" has the meaning given to it in Section 5.11.

"CBA" has the meaning given to it in Section 5.5(b).

"CBA Employees" has the meaning given to it in Section 3.18(d).

"Claim" means any demand, claim, action, investigation, legal proceeding (whether at law or in equity) or arbitration.

"Claiming Party" has the meaning given to it in Section 9.5(a).

"Closing" means the closing of the transactions contemplated by this Agreement, as provided for in Section 2.5.

"Closing Certificates" means the officer's certificates referenced in Section 6.3 and Section 7.3.

"Closing Date" means the date on which Closing occurs.

"Closing Date Net Working Capital" means the aggregate Net Working Capital of the Seller as of the Closing Date.


"Condemnation Value" has the meaning given to it in Section 5.12.

"Confidentiality Agreement" means the Confidentiality Agreement between Buyer and __________________ dated __________, 20__.

"Contract" means any legally binding contract, lease, license, evidence of Indebtedness, mortgage, indenture, purchase order, binding bid, letter of credit, security agreement or other legally binding arrangement but shall exclude Permits.

["Controlled Group Liability" means any and all liabilities under (i) Title IV of ERISA, (ii) Section 302 of ERISA, (iii) Sections 412 and 4971 of the Code, or (iv) the continuation coverage requirements of Section 601 et seq. of ERISA and Section 4980B of the Code.]

"Credit Rating" means, with respect to any Person, the rating given to such Person's long-term unsecured debt obligations by S&P or Moody's, as applicable, and any successors thereto.
"Deductible Amount" has the meaning given to it in Section 9.2(b).

"Employees" has the meaning given to it in Section 3.18(b).

"Environmental Claim" means any Claim or Loss arising out of or related to any violation of, or any Liability or obligation under, any Environmental Law.


“Equity Interests” means capital stock, partnership or membership interests or units (whether general or limited), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing entity.

“Equity Securities” means (i) Equity Interests, (ii) subscriptions, calls, warrants, options or commitments of any kind or character relating to, or entitling any Person to acquire, any Equity Interests and (iii) securities convertible into or exercisable or exchangeable for Equity Interests.


“ERISA Affiliate” means any entity, trade or business that is a member of a group described in Section 414(b) or (c) of the Code or Section 4001(b)(1) of ERISA that includes Seller, or that is a member of the same “controlled group” as Seller pursuant to Section 4001(a)(14) of ERISA.

"Excluded Liabilities" means all Liabilities of Seller or its Affiliates of every kind or nature whatsoever other than Assumed Liabilities.

“Existing Leases” has the meaning given to it in Section _____.”.

"FERC" means the Federal Energy Regulatory Commission or its successor Governmental Authority.

"Financial Statements" means, in relation to any Person, such Person’s balance sheet and the related statements of income, shareholder’s equity and cash flows for the period then ended.

"Final Adjustment" has the meaning given to it in Section 2.8(c).

"FPA" means the Federal Power Act.

"FTC" means the Federal Trade Commission or its successor Governmental Authority.
"GAAP" means generally accepted accounting principles in the United States of America.

"Governmental Authority" means the United States and any State, County, City or other political, subdivision or similar governing entity, and any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States or any state, county, city or other political subdivision or similar governing entity, and including any governmental, quasi-governmental or non-governmental body administering, regulating or having general oversight over natural gas, electricity, power or other markets, including NERC.

"Hazardous Material" means any substance designated as a hazardous waste, hazardous substance, extremely hazardous substance, hazardous material, hazardous chemical, pollutant, contaminant or toxic chemical under any Environmental Law and any petroleum or petroleum products.


"Indebtedness" means any of the following: (a) any indebtedness for borrowed money; (b) any obligations evidenced by bonds, debentures, notes or other similar instruments; (c) any obligations to pay the deferred purchase price of property or services, except trade accounts payable and other current liabilities arising in the ordinary course of business consistent with past practices; (d) any obligations as lessee under capitalized leases; (e) any obligations, contingent or otherwise, under acceptance, letters of credit or similar facilities; and (f) any guaranty of any of the foregoing.

"Indemnified Parties" has the meaning given to it in Section 9.1(b).

"Indemnifying Party" means a Person required to indemnify a Seller Indemnified Party or a Buyer Indemnified Party, as the case may be, pursuant to the terms of this Agreement.

"Independent Accountants" has the meaning given to it in Section 2.8(b).

"Independent Engineering Firm" shall mean ______________ or another engineering firm reasonably acceptable to Buyer and Seller.

"Intellectual Property" means the following intellectual property rights, both statutory and common law rights, if applicable: (a) copyrights, registrations and applications for registration thereof, (b) trademarks, service marks, trade marks, slogans, domain names, logos, trade dress, and registrations and applications for registrations thereof, (c) patents, as well as any reissued and reexamined patents and extensions corresponding to the patents, and any patent applications, as well as any related continuation, continuation in part and divisional applications and patents issuing therefrom and (d) trade secrets and confidential information, including ideas, designs, concepts, compilations of information, methods, techniques, procedures, processes and other know-how, whether or not patentable.

"Interim Financial Statements" has the meaning given to it in Section 3.8.

"Interim Period" has the meaning given to it in Section 5.1.
"Knowledge" when used in a particular representation in this Agreement with respect to Seller, means the actual knowledge, after reasonable inquiry, of the individuals listed on Schedule 1.1-K.

"Laws" means (i) all laws, statutes, rules, regulations, ordinances, orders, decrees and court decisions of any Governmental Authority; (ii) other pronouncements of any Governmental Authority having the effect of law; and (iii) for the avoidance of any doubt, and whether or not falling within either or both of the preceding clauses (i) and (ii), all FERC/NERC-Related Requirements.

“Liabilities” means liabilities or obligations of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

"Lien" means any mortgage, pledge, deed of trust, assessment, security interest, charge, lien, option, restriction, easement, interest, lease, covenant, reservation, purchase right, right of first refusal, or other encumbrance of any nature whatsoever.

"Loss" means any and all judgments, losses, liabilities, amounts paid in settlement, damages, fines, penalties, deficiencies, costs, charges, Taxes, obligations, demands, fees, interest, losses and expenses (including court costs and reasonable fees of attorneys, accountants and other experts in connection with any Claim made by a third party). For all purposes in this Agreement the term "Losses" does not include any Non-reimbursable Damages.

"Material Adverse Effect" means a material adverse effect on the business, financial condition or results of operations of the Seller.

"Material Contracts" has the meaning given to it in Section 3.12(a).

"Moody's" means Moody's Investors Service, Inc., or any successor thereto.

"MPSC" means the Michigan Public Service Commission or its successor Governmental Authority.

“Multiemployer Plan” means any “multiemployer plan” within the meaning of Section 4001(a)(3) of ERISA covering the CBA Employees.

"NERC" means the North American Electric Reliability Corporation or its successor Governmental Authority.

"Net Working Capital" means (without duplication), with respect to the Seller, the amount (expressed as a positive or negative number) calculated in accordance with the formula and methodology described on, and used in the preparation of, [Schedule 1.1-A], and otherwise in accordance with GAAP.

"Non-reimbursable Damages" has the meaning given to it in Section 9.4(b).

"Organizational Documents" means, with respect to any Person, the articles or certificate of incorporation or organization and by-laws, the limited partnership agreement, the partnership
agreement or the limited liability company agreement, or such other organizational documents of such Person, including those that are required to be registered or kept in the place of incorporation, organization or formation of such Person and which establish the legal personality of such Person.

"Parties" means collectively, Buyer and Seller.

"Permits" means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents and orders issued or granted by a Governmental Authority.

"Permitted Lien" means (a) any statutory Lien for Taxes not yet due or delinquent or being contested in good faith by appropriate proceedings; (b) zoning and other similar limitations and restrictions of any Governmental Authority regulating the Property; and (c) the matters identified on Schedule 1.1-PL (except, at Closing, those items marked with an asterisk on such Schedule).

"Person" means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental Authority.

"Pre-Closing Taxable Period" has the meaning given to it in Section 5.10(a).

"Project" means the electric generating facility and all equipment, machinery, facilities, improvements and infrastructure used in connection therewith or in any way related thereto located at the Property.

"Property" means the real property on which the Project is located, as further described in Schedule 4.14, including any improvements thereon and easements and rights-of-way appertaining thereto.

"Property Tax Lien Date" means, with respect to any calendar year, July 1 and December 1 of that calendar year.

"Property Taxes" means real and personal property taxes, special assessments and any payments in lieu of property taxes or under any other arrangements with the Taxing Authority.

"Prudent Engineering and Operating Practices" means the standards, practices, methods, procedures and acts which (a) conform with such degree of skill, diligence, prudence and foresight as would reasonably be expected from a skillful and experienced operator of a power station of similar type to the Project with a view to profit-making therefrom, and (b) would reasonably be expected to be applied by such Person exercising reasonable judgment in light of the facts known or that should have been known at the time a decision was made to accomplish the desired result in an efficient and workman-like manner consistent with Laws.


"Purchased Assets" has the meaning given to it in Section 2.1.

"Purchase Price" has the meaning given to it in Section 2.4.
"Purchase Price Allocation Schedule" has the meaning given to it in Section 2.9.

"Release" means any release, spill, emission, migration, leaking, pumping, injection, deposit, disposal or discharge of any Hazardous Materials.

"Representatives" means, as to any Person, its officers, directors, partners, members, and employees.

"Responding Party" has the meaning given to it in Section 9.5(a).

"Restoration Cost" has the meaning given to it in Section 5.11.

"S&P" means Standard and Poor's Rating Services, a Standard & Poor's Financial Services LLC business, or any successor thereto.

"Schedules" means the disclosure schedules prepared by Seller and attached to this Agreement.

"Seller" has the meaning given to it in the introduction to this Agreement.

"Seller Approvals" has the meaning given to it in Section 3.3(c).

“Seller Consents” means the consents set forth in Schedule 3.3(b).

"Seller Indemnified Parties" has the meaning given to it in Section 9.1(b).

“Seller Title Clearance Deliveries” has the meaning given to it in [Section 5.22.]

"Straddle Taxable Period" has the meaning given to it in Section 5.10(a).

“Survey” has the meaning given to it in [Section 5.22 __]

"Tax" or "Taxes" means (a) any federal, state, local or foreign income, gross receipts, ad valorem, sales and use, employment, social security, disability, occupation, industrial facilities, property, severance, value added, transfer, capital stock, excise, withholding, premium, occupation or other taxes, levies or other like assessments, customs, duties, imposts, charges surcharges or fees imposed by or on behalf of any Governmental Authority, including any interest, penalty or addition thereto and (b) any liability for amounts described in clause (a), (i) as a result of transferee liability, (ii) by Contract or (iii) otherwise.

"Taxing Authority" means, with respect to any Tax, the governmental entity or political subdivision thereof that imposes such Tax and the agency (if any) charged with the collection of such Tax for such entity or subdivision.

"Terminated Contracts" has the meaning given to it in Section 5.4.

"Title and Authority Representations" has the meaning given to it in Section 9.2(a).

“Title Commitment” has the meaning given to it in [Section 5.22 __].
“Title Objection” has the meaning given to it in [Section 5.22__].

"Title Policy" means that certain [owner's title insurance policy] dated ________, ____, issued by ______________________________.

"Transfer Taxes" means all transfer, sales, use, goods and services, value added, documentary, stamp duty, gross receipts, excise, transfer and conveyance Taxes and other similar Taxes, duties, fees or charges.

“Transfer Tax Affidavit” has the meaning given to it in Section 2.6(d)__. 

“Warranty Deed” has the meaning given to it in [Section __].

"Wastewater Permit" means the [wastewater discharge permit], issued ______________ in relation to the Project.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan as those terms are defined in Part I of Subtitle E of Title IV of ERISA.

Section 1.2 Rules of Construction.

(a) All article, section, subsection, schedule and exhibit references used in this Agreement are to articles, sections, subsections, schedules and exhibits to this Agreement unless otherwise specified. The exhibits and schedules attached to this Agreement constitute a part of this Agreement and are incorporated in this Agreement for all purposes.

(b) If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb). Unless the context of this Agreement clearly requires otherwise words importing the masculine gender shall include the feminine and neutral genders and vice versa. The words "includes" or "including" shall mean "including without limitation," the words "hereof," "hereby," "herein," "hereunder" and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular section or article in which such words appear. Any reference to a Law shall include any amendment thereof or any successor thereto and any rules and regulations promulgated thereunder. Currency amounts referenced in this Agreement are in U.S. Dollars.

(c) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day.

(d) Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party or any similar rule operating against the drafter of an agreement shall not be applicable to the construction or interpretation of this Agreement.
(e) All accounting terms used herein and not expressly defined herein shall have the respective meanings given such terms under GAAP.

ARTICLE II
PURCHASE AND SALE AND CLOSING

Section 2.1 Purchase and Sale. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, the real property described in Exhibit 2.1(a), together with all improvements, buildings, structures, fixtures, easements, rights-of-way, division rights, hereditaments and appurtenances associated with that real property (collectively, the "Purchased Assets"), together with exclusive possession thereof. Notwithstanding the previous sentence, the Purchased Assets will not include the Assets listed on Exhibit 2.1(b) (the "Excluded Assets"). The Purchased Assets will be transferred to Buyer free and clear of all Liens, except for Permitted Liens.

Section 2.2 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge only the following Liabilities of Seller (collectively, the "Assumed Liabilities"), and no other Liabilities:

(a) all trade accounts payable of Seller to third parties in connection with the Business that remain unpaid and are not delinquent as of the Closing Date and that are reflected in the Closing Date Net Working Capital;

(b) all Liabilities in respect of the Assigned Contracts but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date, were incurred in the ordinary course of business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing; and

(c) all Liabilities in respect of Permits, easements, rights-of-way, division rights, hereditaments and appurtenances included in the Purchased Assets that are required to be performed after the Closing Date and do not relate to any failure to perform, improper performance, breach, default or violation by Seller on or prior to the Closing; for the avoidance of doubt, Buyer is not assuming any Liabilities of Seller relating to NERC violations prior to the Closing Date.

Section 2.3 Excluded Liabilities. Notwithstanding the provisions of Section 2.2 or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Excluded Liabilities. Seller shall, and shall cause each of its Affiliates to, pay and satisfy in due course all Excluded Liabilities which they are obligated to pay and satisfy.

Section 2.4 Purchase Price. The purchase price (the "Purchase Price") for the purchase and sale described in Section 2.1 is equal to the sum of (i) $______________ (the "Base Purchase Price"), plus (ii) the Closing Date Net Working Capital.

Section 2.5 Closing. The Closing shall take place at the offices of Consumers Energy Company, One Energy Plaza, Jackson, MI 49201 at 10:00 A.M. local time, on (a) the later of (i) the fifth Business Day after the conditions to Closing set forth in Articles VII and VIII (other than
actions to be taken or items to be delivered at Closing) have been satisfied or waived and (ii) April 4, 2018 or (b) such other date and at such other time as Buyer and Seller mutually agree in writing. All actions listed in Section 2.6 or 2.7 that occur on the Closing Date shall be deemed to occur simultaneously at the Closing.

Section 2.6 Closing Deliveries by Seller to Buyer. At the Closing, Seller shall deliver, or shall cause to be delivered, to Buyer

(a) a certification of non-foreign status in the form prescribed by Treasury Regulation Section 1.1445-2(b) with respect to Seller, and with respect to the owner of Seller if Seller is treated as a disregarded entity for federal income tax purposes. If, on or before the Closing Date, Buyer shall not have received the non-foreign status affidavit(s), Buyer may withhold from the Purchase Price payable at Closing to the Seller pursuant hereto such sums as are required be withheld therefrom under Code Section 1445;

(b) [Intentionally Omitted]

(c) a bill of sale in the form of Exhibit 2.6(c) and duly executed by Seller, conveying title to all of such Seller's owned personal property included in the Purchased Assets;

(d) a warranty deed in the form of Exhibit 2.6(d) and duly executed by Seller, conveying good and marketable title to the Real Property to Buyer, subject only to the Permitted Liens (the "Warranty Deed");

(e) a real estate transfer tax valuation affidavit (the "Transfer Tax Affidavit") in a form and substance reasonably acceptable to Buyer;

(f) affidavit in the form of Exhibit 2.6(f) (the "Owner’s Affidavit") for the removal of its standard printed exceptions; provided however, Seller agrees to modify such Owner’s Affidavit as reasonably requested by the Title Insurer to make the Owner’s Affidavit consistent with the Title Insurer’s standard Owner’s Affidavit for similar transactions at the time of the Closing;

(g) resolutions of the managers and members of Seller authorizing the transactions contemplated by this Agreement;

(h) releases of any security interest or similar Liens held on any of the Purchased Assets (other than Permitted Liens);

(i) the certificate referenced in Section 7.3; and

(j) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.
Section 2.7 Closing Deliveries by Buyer to Seller. At the Closing, Buyer shall deliver to Seller the following:

(a) a wire transfer of immediately available funds (to such account or accounts as Seller shall have notified Buyer of at least 2 Business Days prior to the Closing Date) in an amount equal to (i) the Base Purchase Price plus or minus (ii) Buyer's good faith estimate of the Closing Date Net Working Capital (the "Adjustment Estimate") and minus (iii) any amounts owing or payable by Seller under Section 6.8; and

(b) an executed counterpart by Buyer of (i) the Company Assignment Agreement, and (ii) each other Ancillary Agreement to which Buyer is a party.

Section 2.8 Post-Closing Adjustment.

(a) After the Closing Date, Seller and Buyer shall cooperate and provide each other access to their respective books, records and employees (and those of the Seller) as are reasonably requested in connection with the matters addressed in this Section 2.8. Within 60 days after the Closing Date, Buyer shall determine the Closing Date Net Working Capital and shall provide Seller with written notice of such determination, along with reasonable supporting information and calculations (the "Buyer's Determination").

(b) If Seller objects to Buyer's Determination, then it shall provide Buyer written notice thereof within 30 days after receiving Buyer's Determination; provided that Seller and Buyer shall be deemed to have agreed upon all items and amounts that are not disputed by Seller in such written notice. If the Parties are unable to agree on the Closing Date Net Working Capital, within 120 days after the Closing Date, the Parties shall refer such dispute to a firm of nationally recognized independent public accountants mutually acceptable to Buyer and Seller (the "Independent Accountants"), which firm shall make a final and binding determination as to only those matters in dispute with respect to this Section 2.8(b) on a timely basis and promptly shall notify the Parties in writing of its resolution. The Independent Accountants shall not have the power to modify or amend any term or provision of this Agreement. Seller shall bear and pay the fees and other costs charged by the Independent Accountants. If Seller does not object to Buyer's Determination within the time period and in the manner set forth in the first sentence of this Section 2.8(b) or if Seller accepts Buyer's Determination, the Closing Date Net Working Capital as set forth in Buyer's Determination shall become final and binding upon the Parties for all purposes hereunder.

(c) If the Closing Date Net Working Capital (as agreed between the Parties or as determined by the Independent Accountants or otherwise) (the "Final Adjustment") is greater than the amounts related to such adjustments in the Adjustment Estimate, then Buyer shall pay Seller, within 5 Business Days after such amounts are agreed or determined pursuant to Section 2.8(b), by wire transfer of immediately available funds to an account designated by Seller, the difference between the Final Adjustment and the amounts related to such adjustments in the Adjustment Estimate and if the Final Adjustment is less than the amounts related to such adjustments in the Adjustment Estimate, then Seller shall pay Buyer, within 5 Business Days after such amounts are agreed or determined pursuant to Section 2.8(b), by wire transfer of immediately available funds to an account designated by Buyer, the difference between the Final Adjustment and the amounts related to such adjustments in the Adjustment Estimate.
Section 2.9  Allocation of Purchase Price.

(a)  Within 30 days after the Closing Date, Buyer shall deliver to Seller a schedule allocating the Purchase Price (and all other capitalized costs) among the Purchased Assets, grouped by the seven asset classes referred to in Treasury Regulations Section 1.1060-1(c) (the "Purchase Price Allocation Schedule"). Buyer shall permit Seller thirty (30) days to review and comment on Buyer’s proposed Purchase Price Allocation Schedule. Buyer shall make such revisions to its proposed Purchase Price Allocation Schedule as are reasonably requested by Seller within such 30-day period and shall deliver to Seller a final Purchase Price Allocation Schedule within fifteen (15) days of receiving Seller’s comments. The Purchase Price Allocation Schedule shall be revised to take into account subsequent adjustments to the Purchase Price, including the Final Adjustment and any indemnification payments (which shall be treated for Tax purposes as adjustments to the Purchase Price), as mutually agreed by the Parties and in accordance with the provisions of Section 1060 of the Code and the Treasury Regulations thereunder.

(b)  The Parties shall report the transaction for federal and state income tax purposes on IRS Form 8594 in accordance with the Purchase Price Allocation Schedule described in Section 2.7(a). Each of Seller and Buyer agrees to provide the other promptly with any other information required to complete Form 8594.

(c)  If the Parties are unable to agree on the Purchase Price Allocation Schedule pursuant to Section 2.9(a) or any subsequent adjustment to the Purchase Price Allocation Schedule, the Parties shall refer such dispute to the Independent Accountants, which firm shall make a final and binding determination as to all matters in dispute with respect to this Section 2.9 (and only such matters) on a timely basis and promptly shall notify the Parties in writing of its resolution. The Independent Accountants shall not have the power to modify or amend any term or provision of this Agreement. Each Party shall bear and pay one-half of the fees and other costs charged by the Independent Accountants.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as of the date hereof and as of the Closing Date that:

Section 3.1  Organization. Seller is a _______________ duly formed, validly existing and in good standing under the Laws of its jurisdiction of formation. Seller is duly qualified or licensed to do business in each other jurisdiction where the actions to be performed by it hereunder makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not reasonably be expected to result in a material adverse effect on Seller's ability to perform such actions under this Agreement or the Ancillary Agreements to which Seller is party.

Section 3.2  Authority; Enforceability. Seller has all requisite ______________ power and authority to execute and deliver this Agreement and the Ancillary Agreements to which Seller is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and the Ancillary Agreements to which Seller is a party, and the performance by Seller of its obligations
hereunder and thereunder, have been duly and validly authorized by all necessary [corporate] [limited liability company] action. This Agreement has been duly and validly executed and delivered by Seller and constitutes, and each Ancillary Agreement to which Seller is a party when executed and delivered on the Closing Date will constitute, the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, moratorium or other similar Laws relating to or affecting the rights of creditors generally, or by general equitable principles.

Section 3.3 No Conflicts; Consents and Approvals. The execution and delivery by Seller of this Agreement and the Ancillary Agreements to which Seller is a party do not, and the performance by Seller of its obligations under this Agreement and the Ancillary Agreements to which Seller is a party will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the Organizational Documents of Seller;

(b) assuming all of the Seller Consents set forth in Schedule 3.3(b) have been obtained, be in violation of or result in a breach of or default (or give rise to any right of termination, cancellation or acceleration) under (with or without the giving of notice, the lapse of time, or both) any Contract to which Seller is a party, except for any such violations or defaults (or rights of termination, cancellation or acceleration) which would not, individually or in the aggregate, reasonably be expected to result in a material adverse effect on Seller's ability to perform its obligations hereunder; and

(c) assuming all required filings, waivers, approvals, consents, authorizations and notices set forth on Schedule 3.3(c) (collectively, the "Seller Approvals"), Seller Consents and other notifications provided in the ordinary course of business have been made, obtained or given, (i) conflict with, violate or breach any term or provision of any Law applicable to Seller, except as would not reasonably be expected to result in a material adverse effect on Seller's ability to perform its obligations hereunder or (ii) require any consent or approval of any Governmental Authority, or notice to, or declaration, filing or registration with, any Governmental Authority, under any applicable Law, other than such consents, approvals, notices, declarations, filings or registrations which, if not made or obtained, would not reasonably be expected to result in a material adverse effect on Seller's ability to perform its obligations hereunder.

Section 3.4 Legal Proceedings. Seller has not been served with notice of any Claim, no Claim is pending and to Seller's Knowledge none is threatened against Seller, which seeks a writ, judgment, order, injunction or decree restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated by this Agreement.

Section 3.5 Brokers. Seller has no liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated.

Section 3.6 Legal Proceedings. No Claim is pending against, and to Seller's Knowledge, none has been threatened against the Seller that (a) affects the Seller or the Assets of the Seller and would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect or (b) seeks a writ, judgment, order, injunction or decree restraining,
enjoining or otherwise prohibiting or making illegal any of the transactions contemplated by this Agreement.

Section 3.7 Compliance with Laws and Orders. The Seller is in compliance with all Laws applicable to it and its operations or Purchased Assets, including the Project, except where any such failure to comply would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 3.8 Financial Statements; No Undisclosed Liabilities. Seller has previously delivered to Buyer Financial Statements of the Seller as at December 31, 20___ and December 31, 20___ and unaudited Financial Statements of the Seller as at [most recent quarter end] ("Interim Financial Statements"). The Financial Statements have been prepared in accordance with GAAP. The Seller has no liability that would be required to be reflected on any Financial Statement which is not reflected or reserved against in such Financial Statement.

Section 3.9 Absence of Certain Changes. Since December 31, _____, the Seller has operated in the ordinary course of business, consistent with past practices and there has not been any (a) Material Adverse Effect or (b) event or condition that would reasonably be expected to prevent or delay Seller from consummating the transactions contemplated by this Agreement.

Section 3.10 Taxes. (a) All Tax returns that are required to be filed on or before the Closing Date by the Seller have been or will be duly and timely filed, taking into account all permitted extensions, and are true, correct and complete in all material respects, (b) all Taxes of the Seller that are due and payable have been paid in full, (c) all withholding Tax requirements imposed on the Seller have been satisfied in full, except for amounts that are being contested in good faith, (d) the Seller does not have in force any waiver of any statute of limitations in respect of Taxes or any extension of time with respect to a Tax assessment or deficiency, (e) there are no pending or active audits or legal proceedings involving Tax matters or, to Seller's Knowledge, threatened audits or proposed deficiencies or other claims for unpaid Taxes of the Seller, (f) the Seller, under the federal check-the-box regulations, is classified as an entity disregarded as separate from its owner for federal income tax purposes and all applicable state income tax purposes and has been since inception, (g) there are no deficiencies asserted or assessments made as a result of any examination of Tax returns of the Seller, and (h) there are no Liens for Taxes (other than Permitted Liens) on any of the Assets of the Seller. The Seller will provide copies of any correspondence with any Taxing Authority regarding the Seller, the Business or Seller Assets for any tax year still open under the applicable statute of limitations, including but not limited to, any federal or state letter ruling requests or audit notices.

Section 3.11 [Regulatory Status. Intentionally Omitted]

Section 3.12 Contracts.

(a) Schedule 3.12 sets forth a list as of the date of this Agreement of the following Contracts to which the Seller is a party or by which the Assets of the Seller may be bound ( Contracts that meet the descriptions in this Section 3.12 being collectively, the "Material Contracts"): 

(i) Contracts for the purchase, exchange or sale of natural gas;
(ii) Contracts for the purchase, exchange, transmission or sale of electric power in any form, including energy, capacity or any ancillary services;

(iii) Contracts for the transportation of natural gas;

(iv) interconnection Contracts;

(v) Contracts for the purchase or sale of any Asset or that grant a right or option to purchase or sell any Asset;

(vi) Contracts for the provision or receipt of any work, goods or services or that grant a right or option to provide or receive any work, goods or services;

(vii) Contracts under which it has created, incurred, assumed or guaranteed any outstanding Indebtedness, or under which it has imposed a security interest on any of its Assets, tangible or intangible, which security interest secures outstanding Indebtedness;

(viii) any collective bargaining Contracts or other employment Contracts;

(ix) outstanding futures, swap, collar, put, call, floor, cap, option or other Contracts that are intended to benefit from or reduce or eliminate the risk of fluctuations in interest rates or the price of commodities, including electric power, in any form, including energy, capacity or any ancillary services, natural gas or securities;

(x) Contracts that limit the Seller's freedom to compete in any line of business or in any geographic area;

(xi) partnership, joint venture, or limited liability company agreements;

(xii) Contracts that affect the Property including leases (including ground leases) or other land use agreements relating to the Property;

(xiii) Contracts with Governmental Authorities regarding Taxes, tax abatements, tax incentive agreements or any payments in lieu of Property Taxes or under any other arrangements with a Taxing Authority, and water services; and

(xiv) any other Contracts reasonably necessary for the Seller to conduct its Business.

(b) Seller has provided Buyer with, or access to, copies of all Material Contracts.

(c) Each of the Material Contracts (other than any Material Contract which will terminate or expire by its terms prior to Closing without any further liability on the part of the Seller) is in full force and effect and constitutes a legal, valid and binding obligation of the Seller and, to Seller's Knowledge, of the other parties thereto.

(d) The Seller is not in breach or default under any Material Contract and, to Seller's Knowledge, no other party to any of the Material Contracts is in breach or default thereunder.
Section 3.13 Ownership; Liens.

(a) The Seller has good and valid title to all of the Purchased Assets. The Purchased Assets are free and clear of Liens except for Permitted Liens. The title insurance premium on the Title Policy has been paid and the Title Policy is in effect. The Property, the Project and the Business comply with all applicable zoning, subdivision and land use Laws and special use Permits. The Seller, shall at its sole cost, provide Buyer an ALTA/ASCM land title survey of the Property, as-built, by a land surveyor licensed in Michigan and bearing a certificate, signed and sealed by the surveyor, that is selected by Buyer that reflects, without limitation, and the locations of all building lines, easements and areas affected by any recorded documents affecting such Property as disclosed in the Title Policy as well as any encroachments onto the Property or by any part of the Property onto any easement area or adjoining property.

(b) The Seller otherwise owns the Project and all other of the Purchased Assets free and clear of all Liens (except for Permitted Liens).

Section 3.14 Permits.

(a) Schedule 3.14(a) sets forth all Permits held by the Seller. Said Permits set forth on Schedule 3.14(a) constitute all Permits that are required for the ownership and operation of the Project by the Seller in the manner in which they are currently owned and operated. All Permits set forth on Schedule 3.14(a) are in full force and effect.

(b) The Seller is in compliance with all Permits set forth on Schedule 3.14(a) and the Seller has not received any written notification from any Governmental Authority alleging that it is in violation of any such Permits.

Section 3.15 Environmental Matters.

(a) Seller has made available or disclosed to Buyer any knowledge of environmental matters or copies of all assessments, notices of violation(s) or reports in the possession of Seller that relate to environmental matters in connection with operation of the Project.

(b) the Seller has operated, since its inception, in compliance with all applicable Environmental Laws;

(c) the Seller has not been served with notice of any Environmental Claims, actions, proceedings or investigations that are currently outstanding, and no Environmental Claims are pending or, to Seller's Knowledge, threatened, against the Seller by any Governmental Authority or third party under any Environmental Laws;

(d) there is no site to which the Seller has transported or arranged for the transport of Hazardous Materials associated with the Seller which, to Seller's Knowledge, is, or is threatened to become or otherwise likely to be, the subject of any Environmental Claim; and

(e) there has been no Release or threatened Release of any Hazardous Material at or from the Project in connection with construction of the Project or any operations of or relating to the Project; and
Schedule 3.15(f) sets forth all emission reduction credits and emissions allowances that have been allocated to or are otherwise held by the Seller as of the date of this Agreement.

Section 3.16 Intellectual Property.

(a) The Seller owns, or has permanent and indefeasible licenses or rights to use, all Intellectual Property currently used in or reasonably necessary for the Business and otherwise for the operation and maintenance of the Project.

(b) The Seller has not received from any third party a claim in writing that the Seller is infringing the Intellectual Property of such third party.

Section 3.17 Brokers. The Seller has no liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

Section 3.18 Employees and Labor Matters.

(a) Except as identified on Schedule 3.18(a), the Seller does not have any employees;

(b) the persons identified on Schedule 3.18(b) provide full-time or recurring and continuous part-time on site services to the Seller and are employed by a third party vendor pursuant to an agreement with such third-party vendor (persons identified on Schedules 3.18(a) and 3.18(b), collectively, the "Employees");

(c) Schedule 3.18(c) lists each Contract between a third-party vendor and the Seller, Seller or any Affiliate of Seller pursuant to which employees of a third-party vendor provide material on site employee services principally dedicated to the Seller;

(d) the Employees identified with an asterisk by their name on Schedule 3.18(a) or 3.18(b) are represented by a union or other collective bargaining entity (the "CBA Employees");

(e) there has not occurred, nor, to Seller's Knowledge has there been threatened, a labor strike, [request for representation, organizing campaign,,] work stoppage, slowdown, or lockout or other labor dispute by or involving any of the Employees with respect to the Seller in the past ten years;

(f) neither Seller nor any of its Affiliates nor the Seller has received written notice of any unfair labor practice charge against the Seller or against Seller or any of its Affiliates regarding practices/acts at the Seller pending before the National Labor Relations Board; and neither Seller nor any of its Affiliates nor the Seller has received notice that any petition respecting any Employees, or respecting any former employees of the Seller or of Seller or its Affiliates or of a third-party vendor who were principally dedicated to the Seller, has been filed with the National Labor Relations Board;

(g) neither Seller nor any of its Affiliates nor the Seller have received any notice with respect to the Employees, or with respect to any former employees of Seller or its Affiliates or a third-party vendor who were principally dedicated to the Seller, of any charges before any Governmental Authority responsible for the prevention of unlawful employment practices; and Seller and its Affiliates and the Seller and any applicable third-party vendor are in compliance with
all applicable Laws respecting employment practices, occupational health and safety, labor
relations, terms and conditions of employment and similar Laws with respect to the Employees,
and with respect to any former employees of the Seller or Seller or its Affiliates or of a third-party
vendor who were principally dedicated to the Seller; and

(h) neither Seller nor any of its Affiliates nor the Seller have received notice of any
investigation related to the Employees, or related to any former employees of Seller or its
Affiliates or a third-party vendor who were principally dedicated to the Seller, by a Governmental
Authority responsible for the enforcement of labor or employment Laws and regulations and, to
Seller's Knowledge, no such investigation is threatened.

Section 3.19 Employee Benefits.

(a) Schedule 3.19 contains a complete list of all Benefit Plans. Complete copies of all
Benefit Plans and of summary plan descriptions have been made available to Buyer for review.
Each Benefit Plan has been administered in accordance with its terms and the Seller has met its
obligations with respect to such Benefit Plan and has made all required contributions thereto. The
Seller and all Benefit Plans are in compliance with applicable Laws, including but not limited to,
provisions of ERISA and the Code.

(b) The Seller does not have any liability with respect to any "employee benefit plans"
(as defined in Section 3(3) of ERISA).

(c) All the Benefit Plans that are intended to be qualified under Section 401(a) of the
Code have received determination or opinion letters from the Internal Revenue Service to the
effect that such Benefit Plans are qualified and the plans and the trusts related thereto are exempt
from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code; no such
determination or opinion letter has been revoked; and, to the Knowledge of Seller, (i) such
revocation has not been threatened and (ii) no act or omission has occurred, that would adversely
affect a Benefit Plan's qualification.

(d) There does not now exist, nor do any circumstances exist that would result in, any
Controlled Group Liability that would be a liability of Buyer following the Closing. Without
limiting the generality of the foregoing, neither Seller, nor the Seller nor any ERISA Affiliate has
engaged in any transaction described in Section 4069 or Section 4204 of ERISA.

(e) No act or omission has occurred and no condition exists with respect to any Benefit
Plan that would subject the Seller to any fine, penalty, tax or liability of any kind imposed under
applicable Laws, including but not limited to, ERISA or the Code.

(f) With respect to each Multiemployer Plan contributed to by the Seller or the ERISA
Affiliates of the Seller: (i) neither the Seller nor the ERISA Affiliates of the Seller have incurred
any Withdrawal Liability that has not been satisfied in full; and (ii) neither of the Seller nor ERISA
Affiliates of the Seller has received any notification, nor has any reason to believe, that any such
plan is in reorganization, has been terminated, or may be reasonably expected to be in
reorganization or to be terminated.
(g) No Benefit Plan contains any term or provision, or is subject to any Law, that would prohibit the transactions contemplated by this Agreement or that would give rise to the vesting of benefits, payments, or liabilities as a result of the transactions contemplated by this Agreement, except to the extent that full vesting is required under Section 411 of the Code.

(h) All Benefit Plans may be amended or terminated by Seller in any manner and at any time, without the consent of any person covered by any such Benefit Plan and without any further liability for benefits that may be accrued or expenses that may be incurred after the date of such termination or amendment, other than benefits that may be required under the terms of such Benefit Plans or benefits required under Code Section 4980B.

(i) No suit, action or other litigation, excluding claims for benefits incurred in the ordinary course of plan activities have been brought against or with respect to any Benefit Plan, and no suit, action or other litigation is threatened by, against, or relating to any Benefit Plan, and Seller does not have any knowledge of any fact that could form the basis for any such suit, action or litigation. No Benefit Plans are presently under audit or examination by the Internal Revenue Service, the Department of Labor, or any other governmental agency or entity, and no matters are pending with respect to any Benefit Plan under the Employee Plans Compliance Resolution System, the Delinquent Filer Compliance Program, or the Voluntary Fiduciary Correction Program.

Section 3.20 Inventory. All of Seller's inventory (including spare parts) are of a quality and quantity usable in the ordinary and usual course of business, except for obsolete items and items of below-standards quality, all of which have been written off or written down to net realizable value.

Section 3.21 Insurance. Seller or the Seller have in full force and effect policies of insurance with respect to the Business or the Purchased Assets of the Project against such casualties and contingencies and in such amounts, types and forms as are customarily appropriate for its Business and Purchased Assets. Schedule 3.21 contains a list and description of all policies of insurance and bonds carried and owned by Seller or the Seller relating to the Business or the Assets of the Seller; including any claims or claims notices filed under those policies. Neither Seller or the Seller is in default under any such policy of insurance or bond such that it can be canceled and all claims thereunder have been filed in a timely fashion. Seller or the Seller have filed claims with, or given notice of claims, to their insurers or bonding companies in timely fashion with respect to all matters and occurrences for which they believe the Seller has coverage. Schedule 3.21 includes all outstanding claims notices filed by Seller or the Seller relating to the Business or the Assets of the Seller.

Section 3.22 Accuracy of Information Supplied. No representation or warranty of Seller or the Seller contained in this Agreement or any statement, schedule, exhibit or certificate given or to be given by or on behalf of Seller or the Seller in connection herewith contains or will contain any untrue statement of material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.
Section 3.23  **FERC/NERC Matters.**

(a) Seller has made available to Buyer copies of all reports of assessments, investigations, compliance audits, remedial actions, or other investigative or response activities conducted at or with respect to the Project regarding any FERC/NERC-Related Requirements that are in the possession of Seller.

(b) Except as set forth on Schedule 3.23(b), since September 30, 2010, Seller and the Project have operated in compliance in all material respects with all applicable FERC/NERC-Related Requirements.

(c) Except as set forth on Schedule 3.23(c), Seller has not been served with notice of any actual or threatened notice of violation of any FERC/NERC-Related Requirements, or other action, proceeding, investigation, or inquiry pursuant to any FERC/NERC-Related Requirements, and no Claim regarding any FERC/NERC-Related Requirements is pending or, to Seller's Knowledge, threatened, against Seller.

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller as of the date hereof and as of the Closing Date that:

Section 4.1 **Organization.** Buyer is a corporation duly formed, validly existing and in good standing under the Laws of the State of Michigan.

Section 4.2 **Authority: Enforceability.** Buyer has all requisite corporate power and authority to enter into this Agreement and the Ancillary Agreements to which Buyer is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which Buyer is a party and the performance by Buyer of its obligations under this Agreement and the Ancillary Agreements to which Buyer is a party have been duly and validly authorized by all necessary corporate action on behalf of Buyer. This Agreement has been duly and validly executed and delivered by Buyer and constitutes, and each Ancillary Agreement to which the Buyer is a party when executed and delivered on the Closing Date will constitute, the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms except as the same may be limited by bankruptcy, insolvency, moratorium or other similar Laws relating to or affecting the rights of creditors generally or by general equitable principles.

Section 4.3 **No Conflicts.** The execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which Buyer is a party do not, and the performance by Buyer of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of Buyer's Organizational Documents;
(b) assuming all Buyer Approvals have been made, obtained or given, (i) conflict with, violate or breach any term or provision of any Law applicable to Buyer or any of its Assets which would reasonably be expected to result in a material adverse effect on Buyer's ability to perform its obligations hereunder or (ii) require any material consent or approval of any Governmental Authority or notice to, or declaration, filing or registration with, any Governmental Authority, under any applicable Law, other than such consents, approvals, notices, declarations, filings or registrations which, if not made or obtained, would not reasonably be expected to result in a material adverse effect on Buyer's ability to perform its obligations hereunder.

Section 4.4 Legal Proceedings. Buyer has not been served with notice of any Claim, and to Buyer's knowledge, none is threatened, against Buyer which seeks a writ, judgment, order or decree restraining, enjoining or otherwise prohibiting or making illegal the transactions contemplated by this Agreement.

Section 4.5 Brokers. Buyer does not have any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Seller or the Seller could become liable or obligated.

ARTICLE V
COVENANTS

The Parties hereby covenant and agree as follows:

Section 5.1 Regulatory and Other Approvals. From the date of this Agreement until Closing (the "Interim Period"):

(a) The Parties will, in order to consummated the transactions contemplated hereby, take all commercially reasonable efforts necessary, and proceed diligently and in good faith and use all commercially reasonable efforts, as promptly as practicable to obtain the Seller Approvals, Seller Consents, the Acceptable Order and Buyer Approvals and to make all required filings required to be made by it with, and to give all required notices to, Governmental Authorities, and provide such other information and communications to such Governmental Authorities or other Persons as such Governmental Authorities or other Persons may reasonably request in connection therewith. Additionally, Seller will cooperate with Buyer in making Buyer the "Asset Owner" (as defined in the rules of Midcontinent Independent System Operator, Inc.) with respect to the Project as soon as permitted following the Closing.

(b) The Parties will provide prompt notification to each other when any such approval referred to in Section 5.1(a) is obtained, taken, made, given or denied, as applicable, and will advise each other of any material communications with any Governmental Authority or other Person regarding any of the transactions contemplated by this Agreement.

(c) In furtherance of the foregoing covenants:

(i) Each Party shall prepare, as soon as is practical following the execution of this Agreement, all necessary filings in connection with the transactions contemplated by this Agreement that may be required to be filed by such Party with the FERC, the MPSC or under the HSR Act or any other federal, state or local Laws. Each Party shall submit such
filings as soon as practicable, but in no event later than (i) ___ days (subject to extension of such period upon consent of the other Party, which consent shall not be unreasonably withheld) after the execution hereof for filings with the FERC, and (ii) ___ days after the execution hereof for filings under the HSR Act or any FTC filings. The Parties shall promptly furnish each other with copies of any notices, correspondence or other written communication from the relevant Governmental Authority, shall promptly make any appropriate or necessary subsequent or supplemental filings, and shall cooperate in the preparation of such filings as is reasonably necessary and appropriate. Each Party shall have the right to review in advance all information related to Seller, the Seller or Buyer, as applicable, and the transactions contemplated by this Agreement with respect to any filing made by the other Party in connection with the transactions contemplated by this Agreement.

(ii) The Parties shall not, and shall cause their respective Affiliates not to, take any action that is intended to adversely affect the approval of any Governmental Authority of any of the filings referenced in clause (i).

(iii) Seller shall file with the appropriate Governmental Authority an application for the transfer of all Permits held by Seller with respect to the Project to Buyer.

(d) During the Interim Period, Seller shall timely and properly make all submittals and reports, shall pay all fees, and otherwise do all things necessary to maintain in full force and effect and comply in all material respects with, each and every Permit required for the ownership and operation of the Project as it is currently operated. In the event of any actual or threatened cancellation, revocation, termination, suspension, nonrenewal, or adverse modification of any such Permit, Seller shall promptly notify Buyer in writing and shall pursue all available legal and equitable remedies for the purpose of preserving the Permit and the currently prevailing terms thereof.

(e) Notwithstanding the foregoing, nothing in this Section 5.1 shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer, the Seller or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

Section 5.2 Access of Buyer and Seller.

(a) During the Interim Period, Seller will, and will cause the Seller and its Representatives to (i) provide Buyer and its Representatives with reasonable access, upon reasonable prior notice and during normal business hours, to the Property and to the Seller and the officers and employees of Seller and its Affiliates who have significant responsibility for the Seller, but only to the extent that such access does not unreasonably interfere with the business of Seller or the Business and that such access is reasonably related to the requesting Party's obligations and rights hereunder, and subject to compliance with applicable Laws and any
Contracts or Permits to which Seller, the Seller or any of their Affiliates is a party; provided, however, that Seller shall have the right to (x) have a Representative present for any communication with employees or officers of Seller or its Affiliates, (y) impose reasonable restrictions and requirements for safety purposes and (z) restrict access to any privileged information relating to any pending or threatened Claim, (ii) subject to the foregoing clause (z), furnish Buyer, Buyer's Representatives and Buyer's prospective lenders and their representatives (collectively, "Buyer's Advisors") with copies of all such contracts, books and records, and other existing documents and data as Buyer may reasonably request, and (iii) furnish Buyer and Buyer's Advisors with such additional financial, operating, and other data and information as Buyer may reasonably request.

(b) From and after Closing, Buyer agrees to preserve and keep the books and records of the Seller (including accounting records) that were delivered to Buyer at Closing pursuant to Section 5.9 for a period of seven (7) years from the Closing. From and after Closing until the expiration of such 7-year period, Buyer agrees, upon reasonable prior written notice from Seller, to provide to Seller and its Representatives access to or copies (at Seller’s expense) of said books and records of the Seller to the extent needed by Seller for a legitimate business purpose.

Section 5.3 Certain Restrictions.

Except as expressly consented to in writing by Buyer, during the Interim Period, Seller will (a) cause the Seller to operate in the ordinary course of business consistent with Prudent Engineering and Operating Practices, (b) preserve, maintain and protect in all material respects consistent with past practices the Assets, rights, Properties and goodwill of the Seller (including maintaining in all material respects the Seller's relationships with customers, suppliers and Governmental Authorities), and (c) maintain the Permits in accordance with past practices. Without limiting the foregoing, except as expressly consented to in writing by Buyer, during the Interim Period, Seller shall not, and shall cause the Seller not to, with respect to the Seller or the Project:

(i) (A) create any Lien (other than a Permitted Lien) against any of the Assets of the Seller, or (B) permit any Lien (other than a Permitted Lien) against any of the Assets of the Seller;

(ii) (A) enter into any Contract involving total consideration throughout its term in excess of $50,000 individually or $500,000 in the aggregate for all such Contracts or (B) grant any waiver of any material term under, or give any material consent with respect to, any Contract involving total consideration throughout its term in excess of $50,000 individually or $500,000 in the aggregate for all such waivers;

(iii) sell, transfer, remove, assign, convey, distribute or otherwise dispose of, or use, other than in the ordinary course of business consistent with past practices, any material Asset of the Seller, including spare parts and other inventory;

(iv) sell, transfer, assign or convey the emissions allowances or emission reduction credits set forth on Schedule 3.15(f) or any emissions allowances or emission reduction credits allocated to the Seller after the date hereof; provided that nothing in this
clause (iv) shall restrict the use after the date hereof by the Seller of any emissions allowances or emission reduction credits in the ordinary course of business;

(v) other than accounts payable in the ordinary course of business, incur, create, assume or otherwise become liable for Indebtedness or issue any debt securities or assume or guarantee the obligations of any other Person;

(vi) change any accounting method or practice in a manner that is inconsistent with past practice in a way that may adversely affect the Business or the Seller;

(vii) fail to maintain its [limited liability company] existence, merge or consolidate the Seller with any other Person or cause the Seller to acquire all or substantially all of the Assets of any other Person or take any other action that would cause the Seller to be treated as other than a disregarded entity for federal income tax purposes prior to the Closing;

(viii) issue, reserve for issuance, pledge or otherwise encumber, sell or redeem or enter into any Contract with respect to any Equity Interests or other Equity Securities of the Seller;

(ix) liquidate, dissolve, recapitalize, reorganize or otherwise wind up its business or operations of the Seller;

(x) cause the Seller to purchase any securities of any Person, except for short-term investments made in the ordinary course of business consistent with past practices;

(xi) amend or modify the Organizational Documents of the Seller;

(xii) cancel any Indebtedness or settle or waive any claims or rights having a value in excess of $5,000;

(xiii) make any new, or change any existing, election with respect to Taxes, or settle any Tax liability that may adversely affect Buyer or the Seller after the Closing;

(xiv) incur any capital expenditure or major maintenance expenditure in excess of the amounts set forth on the Budget;

(xv) except in the ordinary course of business consistent with past practices or as otherwise required by the terms of any collective bargaining agreement, increase salaries or benefits payable to the Employees;

(xvi) fail to discharge any material liability of the Seller or make any material payment of the Seller as it comes due except in connection with a reasonable good faith dispute;
(xvii) (A) amend, modify or grant any waiver with respect to any Assigned Contract, except for (i) amendments, modifications or waivers that (A) do not extend the term of any Assigned Contract beyond the Closing Date, (B) are not material, or (C) are needed in order to operate the Business in accordance with Prudent Engineering and Operating Practices;

(xviii) declare or pay any dividends or other distributions of cash or other Assets of the Seller; or

(xix) agree or commit to do any of the foregoing.

Section 5.4 Termination of Certain Services and Contracts. Notwithstanding anything in this Agreement to the contrary, at or prior to the Closing, Seller shall (a) terminate, sever, or assign to Seller or an Affiliate thereof effective upon or before the Closing any services provided to the Seller by Seller or an Affiliate thereof, including the termination or severance of insurance policies (including those policies referred to in Section 5.7), Tax services, legal services and banking services (to include the severance of any centralized clearance accounts), terminate or assign to Seller or any Affiliate thereof each Contract listed on Schedule 5.4, and cause all Claims or obligations (contingent or otherwise) between the Seller, on one hand, and Seller or an Affiliate thereof, on the other, to be released effective immediately prior to Closing (collectively such services, Contracts, claims or obligations, the "Terminated Contracts").

Section 5.5 Employee and Benefit Matters

(a) From time to time prior to the Closing Date, Seller shall update Schedule 3.18(a) and 3.18(b) to (i) remove any Person who ceases to be an Employee after the date hereof and (ii) add any Person who becomes an Employee after the date hereof.

(b) Schedule 3.12 sets forth the collective bargaining agreement or agreements to which the Seller is a party or is subject (each, a "CBA" and collectively, the "CBAs"). From and after the Closing Date, Buyer agrees to cause the Seller to fulfill the Seller's obligations under the CBA. Buyer and its Affiliates shall not assume sponsorship of or any obligation under any Benefit Plans, but instead shall establish their own benefit plans or otherwise contribute to appropriate benefit plans.

(c) Buyer assumes no liability with respect to, and receives no right or interest in, any Benefit Plan. At the close of business on the Closing Date, all Employees shall cease participation in all Benefit Plans, except with respect to benefits accrued as of, or claims incurred on or prior to, the Closing Date, all liability and responsibility for which shall remain with Seller and for which Seller shall indemnify and save Buyer harmless therefrom.

(d) Within a reasonable time prior to Closing, Seller shall provide Buyer with such pertinent data or information as Buyer shall reasonably require to determine each Employee's service, compensation or other information related to benefits. To the extent the consent of an Employee is required in order for Seller to deliver any such pertinent data, records or information to Buyer, Seller agrees to use its commercially reasonable efforts to secure such consent.
Section 5.6 Indebtedness. Notwithstanding anything in this Agreement to the contrary, prior to or at the Closing, Seller shall cause any and all Indebtedness of the Seller to be paid in full and any and all Liens securing any such Indebtedness to be released such that Buyer shall acquire the Seller free of any such Indebtedness or any such Liens.

Section 5.7 Insurance. Seller shall maintain or cause to be maintained in full force and effect the material insurance policies covering the Assets of the Seller until the Closing or shall replace them with reasonably comparable policies. All such insurance coverage shall be terminated as of the Closing. Buyer shall be responsible for providing insurance to the Seller for any event or occurrence that occurs after the Closing. Without limiting the rights of Buyer set forth elsewhere in this Agreement, for a period of two years after the Closing Date, if any claims may reasonably be made, or Losses occur prior to the Closing Date, that relate to the Seller, the Assets of the Seller, the Project or the Business, and such claims, or the claims associated with such Losses, may be made against third-party insurance policies retained by Seller or its Affiliates, then Seller (on behalf of itself and its Affiliates) shall, at Buyer's request, use its commercially reasonable efforts in an effort to permit after the Closing Date Buyer in cooperation with Seller to file, notice and otherwise continue to pursue such claims and recover proceeds under the terms of such policies (but only to the extent the terms and conditions of such policies reasonably would provide coverage for such claims, or the claims associated with such Losses, and, subject to all of the foregoing, Seller (on behalf of itself and its Affiliates) agrees to otherwise reasonably cooperate with Buyer or its Affiliates to make the benefits of any such third-party insurance policies available to Buyer or its Affiliates.

Section 5.8 Transfer Taxes; Property Taxes.

(a) Transfer Taxes. Notwithstanding anything in this Agreement to the contrary, Seller shall pay in full, without any charge to or reimbursement from the Seller and also without any reimbursement from or proration with Buyer, any Transfer Taxes imposed on Buyer, Seller or the Seller by Law as a result of the transactions hereunder. The Transfer Tax Affidavit shall: (i) be mutually prepared by Buyer and Seller, (ii) be acceptable to Buyer and (iii) conform to Michigan Law.

(b) Property Taxes.

(i) Any special assessments outstanding on or with respect to the Property and/or the Project (or proposed to be assessed on or with respect to the Property and/or the Project even if not yet a Lien), whether or not same have become due and payable on or before the Closing Date (including, in the case of special assessments payable in installments, any installments that will become payable after the Closing Date), shall be paid by Seller in full prior to Closing without any charge to or reimbursement from the Seller and also without any reimbursement from or proration with the Buyer.

(ii) All Property Taxes, other than special assessments as addressed in Subsection 5.8(b)(i), on the Property or otherwise on the Project shall be prorated at Closing as follows: Any such Property Taxes shall be deemed to cover the calendar year in which the applicable Property Tax Lien Date occurs. Any such Property Taxes for which the applicable Property Tax Lien Date occurs in calendar years prior to the calendar year of Closing shall be paid by Seller in full prior to Closing without any reimbursement.
from or proration with Buyer. Any such Property Taxes for which the applicable Property Tax Lien Date occurs in the calendar year of Closing shall be prorated at the Closing so that Seller (without any charge to or reimbursement from the Seller) shall be charged with such Property Taxes from the first of the calendar year to the Closing Date and Buyer charged with such Property Taxes for the balance of said calendar year. With respect to any bill for Property Taxes proratable hereunder that has not yet been issued as of the Closing Date, the current taxable value and tax rate shall be assumed to apply and used in proration hereunder.

(iii) With respect to Property Taxes for which the applicable Property Tax Lien Date occurs in the calendar year of Closing, Buyer shall have the right to participate in the appeal, settlement or compromise of any proceeding to determine the value of the Project for purposes of Property Taxes. Seller shall (and shall cause the Seller to) take such action in connection with any such proceeding as Buyer shall reasonably request from time to time to implement the preceding sentence, including the selection of counsel and experts and the execution of powers of attorney. During the Interim Period, Seller shall not settle any proceeding with respect to Property Taxes that could materially affect Buyer or the Seller in the calendar year of Closing without Buyer’s prior written consent.

(iv) During the Interim Period, Seller shall take appropriate action to ensure the continuation of existing Project Property Tax incentives, exemptions and abatements, including but not limited to, air and water pollution control tax exemption certificates, industrial facility tax abatements payment in lieu of taxes or renaissance zones. Further, Seller shall participate and take appropriate actions to transfer ownership or registration of such incentives, abatements or exemptions to the Buyer.

Section 5.9 Books and Records. Seller shall deliver the books and records of the Seller in Seller's possession (including those set forth on Schedule 5.9) to Buyer as promptly as practicable following the Closing Date if such books and records are not present at the Seller on the Closing Date (it being agreed that Seller may retain a copy thereof).

Section 5.10 Tax Matters. Except as provided in Section 5.8(a) relating to Transfer Taxes and except as provided in Section 5.8(b) relating to Property Taxes:

(a) With respect to any Tax return covering a taxable period ending on or before the Closing Date (a "Pre-Closing Taxable Period") that is required to be filed after the Closing Date with respect to the Seller, (i) Seller shall cause such Tax return to be prepared in a manner consistent with practices followed in prior taxable periods and in compliance with applicable Law except as required by change in Law or fact and shall deliver such Tax return as so prepared to Buyer not later than 25 days prior to the due date (including extensions) for filing such Tax return for Buyer's review and comments, (ii) Seller shall cooperate and consult with Buyer to finalize such Tax return, and (iii) thereafter, subject to Seller's payment to Buyer of such Tax in compliance with Section 5.10(b), Buyer shall cause such Tax return to be executed and duly and timely filed with the appropriate Taxing Authority and shall pay all Taxes shown as due and payable on such Tax return. With respect to any Tax return covering a taxable period beginning on or before the Closing Date and ending after the Closing Date (a "Straddle Taxable Period") that is required to be filed after the Closing Date with respect to the Seller, (x) Buyer shall cause such Tax
return to be prepared (in a manner consistent with practices followed in prior taxable periods except as required by Law or fact) and shall deliver a draft of such Tax return to Seller for Seller's review and approval at least 25 days prior to the due date (including extensions) for filing such Tax return, (y) Seller and Buyer shall cooperate and consult with each other in order to finalize such Tax return, and (z) thereafter, subject to Seller's payment to Buyer of any portion of such Tax in compliance with Section 5.10(b), Buyer shall cause such Tax return to be executed and duly and timely filed with the appropriate Taxing Authority and shall pay all Taxes shown as due and payable on such Tax return.

(b) Seller shall be responsible for and indemnify the Buyer Indemnified Parties against, and Seller shall be entitled to all refunds or credits of, any Tax with respect to the Seller that is attributable to a Pre-Closing Taxable Period or to that portion of a Straddle Taxable Period that ends on the Closing Date. Within 5 days prior to the due date for the payment of any such Tax, Seller shall pay to Buyer the amount of such Taxes, less any prepaid Taxes. With respect to a Straddle Taxable Period, Seller and Buyer shall determine the Tax attributable to the portion of the Straddle Taxable Period that ends on the Closing Date by an interim closing of the books of the Seller as of the Closing Date, except for franchise Taxes based solely on capital which shall be prorated on a daily basis to the Closing Date. For this purpose, any franchise Tax paid or payable with respect to the Seller shall be allocated to the taxable period for which payment of the Tax provides the right to engage in business, regardless of the taxable period during which the income, operations, assets or capital comprising the base of such Tax is measured.

(c) Buyer shall be responsible for and indemnify Seller against, and Buyer shall be entitled to all refunds and credits of, all Taxes of the Seller that are attributable to a taxable period (or portion thereof) beginning after the Closing Date.

(d) With respect to any Tax for which Seller is responsible, Seller shall have the right, at its sole cost and expense, to control (in the case of a Pre-Closing Taxable Period) or participate in (in the case of a Straddle Taxable Period) the prosecution, settlement or compromise of any proceeding involving such Tax. Buyer shall (and shall cause the Seller to) take such action in connection with any such proceeding as Seller shall reasonably request from time to time to implement the preceding sentence, including the selection of counsel and experts and the execution of powers of attorney. Notwithstanding the foregoing, Buyer shall be entitled to participate in any proceeding involving a Pre-Closing Taxable Period, and Seller shall not settle any proceeding with respect to any issue that could materially and adversely affect Buyer or the Seller in a taxable period (or portion thereof) beginning after the Closing Date without Buyer's prior written consent. Buyer shall (and shall cause the Seller to) give written notice to Seller of its receipt of any notice of any audit, examination, claim or assessment for any Tax for which Seller is responsible within 20 days after its receipt of such notice; failure to give any such written notice within such 20-day period shall limit Seller's indemnification obligation pursuant to this Agreement to the extent Seller is actually prejudiced by such failure.

(e) Seller shall grant to Buyer (or its designees) access at all reasonable times to all of the information, books and records relating to the Seller within the possession of Seller (including workpapers and correspondence with Taxing Authorities), and shall afford Buyer (or its designees) the right (at Buyer's expense) to take extracts therefrom and to make copies thereof, to the extent reasonably necessary to permit Buyer (or its designees) to prepare Tax returns, respond
to Tax audits and investigations, prosecute Tax protests, appeals and refund claims and to conduct negotiations with Taxing Authorities. Buyer shall grant or cause the Seller to grant to Seller (or its designees) access at all reasonable times to all of the information, books and records relating to the Seller for Pre-Closing Taxable Periods or Straddle Taxable Periods within the possession of Buyer (including workpapers and correspondence with Taxing Authorities) and to any employees of the Seller, and shall afford Seller (or its designees) the right (at Seller's expense) to take extracts therefrom and to make copies thereof, in each case to the extent reasonably necessary to permit Seller (or its designees) to prepare Tax returns, respond to Tax audits and investigations, prosecute Tax protests, appeals and refund claims and to conduct negotiations with Taxing Authorities. After the Closing Date, Seller and Buyer will preserve all information, records or documents in their respective possessions relating to liabilities for Taxes of the Seller for Pre-Closing Taxable Periods or Straddle Taxable Periods until the later of (i) seven years or (ii) six months after the expiration of any applicable statute of limitations (including extensions thereof) with respect to the assessment of such Taxes; provided that neither Party shall dispose of any of the foregoing items without first offering such items to the other Party.

(f) If after the Closing Buyer or the Seller receives a refund or utilizes a credit of any Tax of the Seller attributable to a Pre-Closing Taxable Period or that portion of a Straddle Taxable Period ending on the Closing Date, Buyer shall pay to Seller within 20 Business Days after such receipt or utilization an amount equal to such refund received or credit utilized, together with any interest received or credited thereon net of any costs associated therewith.

(g) To the extent that the provisions of Article X are inconsistent with or conflict with the provisions of this Section 5.10, the provisions of this Section 6.10 shall control, unless such provision in Article IX expressly refers to Section 5.10, in which case such provision in Article X shall apply.

Section 5.11 Casualty. If any Asset of the Seller is damaged or destroyed by fire, storm, explosion or other casualty loss after the date hereof and prior to the Closing (a "Casualty Loss"), and (a) the cost of restoring such damaged or destroyed Asset to a condition reasonably comparable to its prior condition plus (b) the amount of any lost profits reasonably expected to accrue after Closing as a result of such Casualty Loss (net of and after giving effect to any insurance proceeds available to the Seller for such restoration and lost profits) (such costs and lost profits, as estimated by a qualified firm selected by Buyer and reasonably acceptable to Seller acting in good faith, the "Restoration Cost") does not exceed 10% of the Base Purchase Price, Buyer may elect to reduce the amount of the Purchase Price by the estimated Restoration Cost, by notice to Seller, and such Casualty Loss shall not affect the Closing. If Buyer does not make any such election within 90 days after the date of such Casualty Loss, Seller may elect to terminate this Agreement within 10 Business Days after the end of such 90-day period by written notice to Buyer. If Buyer does not make any such election within 90 days after the date of such Casualty Loss, Seller may elect to terminate this Agreement within 10 Business Days after the end of such 90 day period by written notice to Buyer.
Section 5.12 **Condemnation.** If any Purchased Assets of the Seller is taken by condemnation after the date hereof and prior to the Closing and such Purchased Assets has the sum of (a) the reduction or loss in value of the Property and/or Project and/or portion(s) thereof plus (b) to the extent not included in preceding clause (a), the amount of any lost profits reasonably expected to accrue after Closing as a result of such condemnation (net of and after giving effect to any condemnation award) (such reduction or loss in value and lost profits, as estimated by a qualified firm selected by Buyer and reasonably acceptable to Seller acting in good faith, the "**Condemnation Value**") not in excess of 10% of the Base Purchase Price, Buyer may elect to reduce the Purchase Price by such estimated Condemnation Value (less the amount of any condemnation award) by notice to Seller, and such condemnation shall not affect the Closing. If Buyer does not make such an election within 90 days after the date of such condemnation, Seller may elect to terminate this Agreement within 10 Business Days after such 90-day period by written notice to Buyer. If the estimated Condemnation Value is in excess of 10% of the Base Purchase Price, Buyer may, by notice to Seller within 90 days after the award of condemnation proceeds, elect to (m) reduce the Purchase Price by such estimated Condemnation Value (after giving effect to any condemnation award available or (n) terminate this Agreement, in each case by providing written notice to Seller; provided, however, that if Buyer does not make such an election, then Seller may, by written notice to Buyer, terminate this Agreement within 10 Business Days of receipt by Seller of Buyer's notice regarding its election.

Section 5.13 **Confidentiality.**

(a) Any information or materials furnished by Seller to Buyer or Buyer to Seller on and after the date of this Agreement shall be subject to the Confidentiality Agreement; provided that Buyer shall not have any obligation to maintain the confidentiality of any information with respect to the Seller from and after the Closing. In the event of any conflict between this Agreement and the Confidentiality Agreement, this Agreement shall prevail.

(b) Notwithstanding the above and anything in the Confidentiality Agreement to the contrary, Buyer may provide confidential information to any Governmental Authority with jurisdiction as necessary to comply with Section 5.1.

Section 5.14 **Public Announcements.** Unless required by Law, court process or by the rules of a national securities exchange to make such disclosure, (in which case, Seller shall give Buyer at least 24 hours’ notice prior to such required disclosure), neither Seller nor any of its Affiliates shall make any public announcement of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media before Buyer has made a public announcement of this Agreement or the transactions contemplated hereby.

Section 5.15 **Distributions.** For the avoidance of doubt, the Parties hereby acknowledge and agree that Seller shall not, during the Interim Period, cause the Seller to distribute any of the cash, accounts receivable or other ss held by the Seller to Seller or its Affiliates.

Section 5.16 **Further Assurances.** Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, at any Party's request and without further consideration, the other Party shall execute and deliver to such Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information
and take such other actions as such Party may reasonably request in order to consummate the transactions contemplated by this Agreement.

Section 5.17 Monthly Operating Report. During the Interim Period, Seller will, promptly after its preparation, cause the Seller to provide Buyer with the monthly operating report with respect to the Seller prepared in the ordinary course of business.

Section 5.18 Guaranty of Seller’s Obligations.

[Seller shall provide a parent guaranty from an entity that has investment grade or greater Credit Rating or other support acceptable to Buyer, assuring Seller’s ongoing ability to perform its post-Closing obligations hereunder.]

Section 5.19 Financial Statements. During the Interim Period, Sellers shall deliver to Buyer true and correct copies of financial statements of the Seller prepared in accordance with GAAP no later than 60 days after each year end and no later than 45 days after each quarter end.

Section 5.20 Creditworthiness of Seller

[TO BE DETERMINED]]

Section 5.21 No Solicitation of Other Bids.

(a) Seller shall not, and shall not authorize or permit any of its Affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Seller shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, "Acquisition Proposal" means any inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or any portion of the Business or the Purchased Assets, but does not include any inquiry, proposal or offer with respect to the sale of electricity, capacity or ancillary services by Seller.

(b) In addition to the other obligations under this Section 5.21, Seller shall promptly (and in any event within three Business Days after receipt thereof by Buyer or its Representatives) advise Buyer orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) Seller agrees that the rights and remedies for noncompliance with this Section 5.21 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.
ARTICLE VI
BUYER'S CONDITIONS TO CLOSING

The obligation of Buyer to consummate the Closing is subject to the fulfillment of each of the following conditions (except to the extent waived in writing by Buyer):

Section 6.1 Representations and Warranties.

(a) All representations and warranties made by Seller in Article III shall be true and accurate on and as of the Closing Date as though made on and as of the Closing Date, except for (i) changes expressly permitted or contemplated hereby, or (ii) representations and warranties which are as of a specific date, which shall be true and accurate as of such date.

(b) Since the date of the [most recent] Financial Statement, there has not been any Material Adverse Effect.

Section 6.2 Performance. Seller shall have performed and complied with all agreements, covenants and obligations required by this Agreement to be performed or complied with by Seller at or before the Closing.

Section 6.3 Officer's Certificate. Seller shall have delivered to Buyer at the Closing a certificate of an officer of Seller, dated as of the Closing Date, affirming and certifying the matters set forth in Sections 6.1 and 6.2.

Section 6.4 Orders and Laws. There shall be no effective injunction, writ or restraining order or any order of any nature issued by a Governmental Authority of competent jurisdiction to the effect that the purchase and sale of the Seller Interests pursuant to this Agreement may not be consummated as provided in this Agreement and no proceeding or lawsuit shall have been commenced by any Governmental Authority which may result in any such injunction, writ or restraining order or to otherwise prohibit or make illegal the consummation of the transactions contemplated by this Agreement.

Section 6.5 Consents and Approvals. The Buyer Approvals, the Seller Approvals and the Acceptable Order shall have been duly obtained, made or given and shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental Authority shall have occurred. In addition, the waiting period applicable to the consummation of the transactions contemplated hereunder required pursuant to the provisions of the HSR Act shall have expired.

Section 6.6 Resignation of Members, Managers, Officers and Directors. Seller shall have caused the resignation or removal of all members, managers, partners, officers and directors, as applicable, nominated or appointed by Seller or its Affiliates to any board or operating, management or other committee relating to the Project or established under the Seller's
Organizational Documents, and shall have delivered to Buyer at the Closing evidence of such resignations or removals.

Section 6.7 Release of Indebtedness; Release of Liens. Seller shall have delivered to Buyer evidence, satisfactory to Buyer, of Seller’s compliance with Section 5.6.

ARTICLE VII
SELLER'S CONDITIONS TO CLOSING

The obligation of Seller to consummate the Closing is subject to the fulfillment of each of the following conditions (except to the extent waived in writing by Seller):

Section 7.1 Representations and Warranties. The representations and warranties made by Buyer in Article IV shall be true and accurate on and as of the Closing Date as though made on and as of the Closing Date, except for (i) changes expressly permitted or contemplated hereby; or (ii) representations and warranties which are as of a specific date, in which event they shall be true and accurate as of such date.

Section 7.2 Performance. Buyer shall have performed and complied with all agreements, covenants and obligations required by this Agreement to be so performed or complied with by Buyer at or before the Closing.

Section 7.3 Officer's Certificate. Buyer shall have delivered to Seller at the Closing a certificate of an officer of Buyer, dated as of the Closing Date, affirming and certifying the matters set forth in Sections 7.1 and 7.2.

Section 7.4 Orders and Laws. There shall be no effective injunction, writ or restraining order or any order of any nature issued by a Governmental Authority of competent jurisdiction to the effect that the purchase and sale of the Seller Interests pursuant to this Agreement may not be consummated as provided in this Agreement and no proceeding or lawsuit shall have been commenced by any Governmental Authority which may result in any such injunction, writ or restraining order or to otherwise prohibit or make illegal the consummation of the transactions contemplated by this Agreement. In addition, the waiting period applicable to the consummation of the transactions contemplated hereunder required pursuant to the provisions of the HSR Act shall have expired.

Section 7.5 Consents and Approvals. The Seller Approvals shall have been duly obtained, made or given and shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental Authority shall have occurred.

ARTICLE VIII
TERMINATION

Section 8.1 Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time before the Closing as follows:

(a) by Seller, by written notice to Buyer, if Buyer has breached any representation, warranty, covenant, agreement or obligation in this Agreement and such breach has not been cured within 20 days following written notification thereof; provided, however, that if, at the end
of such 20 day period, Buyer is endeavoring in good faith, and proceeding diligently, to cure such breach, Buyer shall have an additional 20 days in which to effect such cure;

(b) by Buyer, by written notice to Seller, if Seller has breached any representation, warranty, covenant, agreement or obligation in this Agreement and such breach has not been cured within 20 days following written notification thereof; provided, however, that if, at the end of such 20 day period, Seller is endeavoring in good faith, and proceeding diligently, to cure such breach, Seller shall have an additional 20 days in which to effect such cure;

(c) by Buyer or Seller, by notice to the other, on or after __________, 20___ or such later date as the Buyer and Seller may agree in writing; provided that Buyer cannot terminate under this provision if the failure of the Closing to occur is the result of the failure on the part of Buyer to perform any of its obligations hereunder and Seller cannot terminate this Agreement under this provision if the failure of the Closing to occur is the result of the failure on the part of Seller to perform any of its obligations hereunder;

(d) by Buyer or Seller, in accordance with Section 5.11 or Section 5.12; and

(e) by mutual written consent of Buyer and Seller.

Section 8.2 Effect of Termination.

(a) If this Agreement is validly terminated pursuant to Section 8.1, there will be no liability or obligation on the part of Seller or Buyer (or any of their respective Representatives or Affiliates), except as provided in this Section 8.2 and Section 8.3.

(b) Regardless of the reason for termination, Sections 5.14, 5.15, 8.2, 8.3, 9.4(a), and 9.4(b) and Article X will survive any termination of this Agreement, and each Party shall continue to be liable for any breach of this Agreement by it occurring prior to such termination.

Section 8.3 Specific Performance and Other Remedies. Each Party hereby acknowledges that the rights of each Party to consummate the transactions contemplated hereby are special, unique and of extraordinary character and that, if either Party violates or fails or refuses to perform any covenant or agreement made by it herein, the non-breaching Party may be without an adequate remedy at law. If either Party violates or fails or refuses to perform any covenant or agreement made by such Party herein, the non-breaching Party or Parties may, subject to the terms hereof and in addition to any remedy at law for damages or other relief, institute and prosecute an action in any court of competent jurisdiction to enforce specific performance of such covenant or agreement or seek any other equitable relief.

ARTICLE IX
INDEMNIFICATION, LIMITATIONS OF LIABILITY AND WAIVERS

Section 9.1 Indemnification.

(a) Subject to Section 9.2, from and after the Closing, Seller shall defend and hold harmless Buyer, the Seller, and their respective stockholders, partners, members, officers,
employees, Affiliates and Representatives (collectively, the "Buyer Indemnified Parties") from and against all Losses incurred or suffered by any Buyer Indemnified Party resulting from:

(i) any breach or inaccuracy as of the Closing Date (as though made on and as of the Closing Date except to the extent otherwise provided in this Agreement) of any representation or warranty of Seller contained in this Agreement, any Ancillary Agreement or any certificates delivered in connection herewith or therewith;

(ii) any breach of any covenant or agreement of Seller contained in this Agreement, any Ancillary Agreement or any certificates delivered in connection herewith or therewith; and

(iii) the Excluded Liabilities.

(b) Subject to Section 9.2, from and after Closing, Buyer shall indemnify, defend and hold Seller and its stockholders, partners, members, officers, employees, Affiliates and Representatives (collectively, the "Seller Indemnified Parties" and, together with Buyer Indemnified Parties, the "Indemnified Parties") harmless from and against all Losses incurred or suffered by any Seller Indemnified Party resulting from:

(i) any breach or inaccuracy as of the Closing Date (as though made on and as of the Closing Date except to the extent otherwise provided in this Agreement) of any representation or warranty of Buyer contained in this Agreement, any Ancillary Agreement or any certificates delivered in connection herewith or therewith; and

(ii) any breach of any covenant or agreement of Buyer contained in this Agreement, any Ancillary Agreement or any certificates delivered in connection herewith or therewith.

Section 9.2 Limitations of Liability. Notwithstanding anything in this Agreement to the contrary:

(a) the representations, warranties, covenants, agreements and obligations in this Agreement or any Ancillary Agreement shall survive the Closing; provided, however, that no Party may make or bring a Claim for liability (i) with respect to any representations or warranties (or in any certificate relating thereto) contained in Articles III or IV (other than those representations and warranties contained in Section 3.2 (Authority), ______________, (collectively, the "Title and Authority Representations") or Section 3.15 (Environmental Matters) or Section 3.10 (Taxes)) after 3 years following the Closing Date, (ii) with respect to the representations and warranties contained in Section 3.15 (Environmental Matters), after the five-year anniversary of the Closing Date, and (i) with respect to the representations and warranties contained in Section 3.10 (Taxes), after 60 days following the expiration of the applicable statute of limitations;

(b) Seller shall have no liability for a breach of this Agreement (other than any Excluded Liabilities, any breach of the Title and Authority Representations, a breach of a representation or warranty contained in Section 3.10 (Taxes) or a matter covered by Section 5.8 (Transfer Taxes; Property Taxes) or by Section 5.10 (Tax Matters)) until the aggregate amount of
all Losses incurred by Buyer equals or exceeds $10,000 (the "Deductible Amount"), in which event Seller shall be liable for Losses only to the extent they are in excess of the Deductible Amount (except as otherwise set forth in this Section 9.2);

(c) in no event shall Seller's aggregate liability arising out of or relating to Losses under Section 9.1(a)(i) and (ii) or Buyer's aggregate liability arising out of or relating to Losses under Section 9.1(b)(i) and (ii) exceed 100% of the Base Purchase Price; and

(d) no Indemnifying Party shall have any liability under this Article IX to indemnify any Indemnified Party with respect to a Loss to the extent that the Loss arose from or was exacerbated by any action taken directly by any Indemnified Party on or after the Closing Date.

Section 9.3 No Other Representations or Warranties.

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE III, NEITHER SELLER NOR ANY OTHER PERSON MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY ON BEHALF OF SELLER. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE IV, NEITHER THE BUYER NOR ANY OTHER PERSON MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY ON BEHALF OF BUYER.

Section 9.4 Waiver of Remedies.

(a) The Parties hereby agree that, except with respect to Claims for fraud (but not constructive fraud), no Party shall have any liability, and no Party shall make any Claim, for any Loss or other matter under, relating to or arising out of this Agreement, or the Closing Certificates, whether based on contract, tort, strict liability, other Laws or otherwise, except as provided in Section 5.10, Articles XIII and IX.

(b) NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, EXCEPT AS SET FORTH IN SECTION 5.11 AND SECTION 5.12, NO PARTY SHALL BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES OR LOST PROFITS, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE AND WHETHER OR NOT ARISING FROM THE OTHER PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT ("NON-REIMBURSABLE DAMAGES").

Section 9.5 Procedure with Respect to Third-Party Claims.

(a) If any Party (or as to Buyer after Closing, the Seller) becomes subject to a pending or threatened Claim of a third party and such Party (the "Claiming Party") believes it has a claim against the other Party (the "Responding Party") as a result, then the Claiming Party shall promptly notify the Responding Party in writing of the basis for such Claim setting forth the nature of the Claim in reasonable detail. The failure of the Claiming Party to so notify the Responding Party shall not relieve the Responding Party of liability hereunder except to the extent that the defense of such Claim is materially prejudiced by the failure to give such notice.
If any proceeding is brought by a third party against a Claiming Party and the Claiming Party gives notice to the Responding Party pursuant to this Section 9.5, the Responding Party shall be entitled to participate in such proceeding and, to the extent that it wishes, to assume the defense of such proceeding, if (i) the Responding Party provides written notice to the Claiming Party that the Responding Party intends to undertake such defense, (ii) the Responding Party conducts the defense of the third-party Claim actively and diligently with counsel reasonably satisfactory to the Claiming Party and (iii) if the Responding Party is a party to the proceeding, the Responding Party or the Claiming Party has not determined in good faith that joint representation would be inappropriate because of a conflict of interest. The Claiming Party, in its sole discretion, shall have the right to employ separate counsel (who may be selected by the Claiming Party in its sole discretion) in any such action and to participate in the defense thereof, and the fees and expenses of such counsel shall be paid by such Claiming Party. The Claiming Party and the Responding Party shall fully cooperate with each other and their respective counsel in the defense or compromise of such Claim. If the Responding Party assumes the defense of a proceeding, no compromise or settlement of such Claims may be effected by the Responding Party without the Claiming Party's consent unless (x) there is no finding or admission of any violation of Law or any violation of the rights of any Person and no adverse effect on any other Claims that may be made against the Claiming Party and (y) the sole relief provided is monetary damages that are paid in full by the Responding Party.

(c) If (i) notice is given to the Responding Party of the commencement of any third-party legal proceeding and the Responding Party does not, within 30 days after the Claiming Party's notice is given, give notice to the Claiming Party of its election to assume the defense of such legal proceeding, (ii) any of the conditions set forth in clauses (i) through (iii) of Section 9.5(b) above become unsatisfied or (iii) a Claiming Party determines in good faith that there is a reasonable probability that a legal proceeding may adversely affect it other than as a result of monetary damages for which it would be entitled to indemnification from the Responding Party under this Agreement, then the Claiming Party shall (upon notice to the Responding Party) have the right to undertake the defense, compromise or settlement of such claim; provided, however, that the Responding Party shall reimburse the Claiming Party for the costs of defending against such third-party claim (including reasonable attorneys' fees and expenses) and shall remain otherwise responsible for any liability with respect to amounts arising from or related to such third-party claim, to the extent it is ultimately determined that such Responding Party is liable with respect to such third-party claim for a breach under this Agreement. The Responding Party may elect to participate in such legal proceedings, negotiations or defense at any time at its own expense.

ARTICLE X
MISCELLANEOUS

Section 10.1 Notices.

(a) Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by facsimile or sent by registered or certified mail, postage prepaid, or by a nationally recognized
overnight courier service that provides a receipt of delivery, in each case, to the Parties at the addresses specified below:

If to Buyer, to:

Consumers Energy Company  
One Energy Plaza  
Jackson, MI 49201  
Facsimile No.: (517) 788-0180  
Attn: President

With copies to:

Consumers Energy Company  
One Energy Plaza  
Jackson, MI 49201  
Facsimile No.: (517) 788-1671  
Attn: General Counsel

If to Seller, to:

[Name]  
[Address]  
[Address]  
Facsimile No.:  
Attn:

With copies to:

[Name]  
[Address]  
[Address]  
Facsimile No.:  
Attn:

(b) Notice given by personal delivery, mail or overnight courier pursuant to this Section 10.1 shall be effective upon physical receipt. Notice given by facsimile pursuant to this Section 10.1 shall be effective as of the date of confirmed delivery if delivered before 5:00 p.m. Eastern Time on any Business Day or the next succeeding Business Day if confirmed delivery is after 5:00 p.m. Eastern Time on any Business Day or during any non-Business Day.

Section 10.2 Entire Agreement. This Agreement supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof, and this Agreement, the
Ancillary Agreements and the other documents delivered pursuant to this Agreement contain the sole and entire agreement between the Parties hereto with respect to the subject matter hereof.

Section 10.3 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated hereby are consummated, each Party will pay its own costs and expenses incurred in anticipation of, relating to and in connection with the negotiation and execution of this Agreement and the transactions contemplated hereby.

Section 10.4 Disclosure. Seller may, at its option, include in the Schedules items that are not material in order to avoid any misunderstanding, and any such inclusion, or any references to dollar amounts, shall not be deemed to be an acknowledgment or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of any provision of this Agreement that establishes a standard of materiality. Information disclosed in any Schedule shall constitute a disclosure for purposes of all other Schedules notwithstanding the lack of specific cross-reference thereto, but only to the extent the applicability of such disclosure to such other Schedule is relevant to the other Schedule and reasonably apparent. The Seller shall promptly notify the Buyer of (a) the occurrence, or failure to occur, of any event, which occurrence or failure has caused any representation or warranty of Seller contained in this Agreement or in any exhibit, schedule, certificate, document or written instrument attached hereto to be untrue or inaccurate, (b) any failure of Seller to comply with, perform or satisfy, in any respect, any covenant, condition or agreement to be complied with, performed by or satisfied by it under this Agreement or any exhibit, schedule, certificate, document or written instrument attached hereto and (c) any notice or other communication from any Governmental Authority in connection with this Agreement, the Company Assignment Agreement or the transactions contemplated herein and therein; provided that such disclosure shall not be deemed to cure, or to relieve Seller of any liability or obligation with respect to, any breach of or failure to satisfy any representation, warranty, covenant or agreement or any condition hereunder, and shall not affect Buyer's right with respect to indemnification hereunder.

Section 10.5 Waiver. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

Section 10.6 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

Section 10.7 No Third Party Beneficiary. Except for the provisions of Sections 5.2(b), 9.1(a) and (b) (which are intended for the benefit of the Persons identified therein), the terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person, including, without limitation, any employee, any beneficiary or dependents thereof, or any collective bargaining representative thereof.
Section 10.8 Assignment; Binding Effect. Buyer may assign its rights and obligations hereunder to any Affiliate or Affiliates, or to Buyer's lenders for collateral security purposes, but such assignment shall not release Buyer from its obligations hereunder. Except as provided in the preceding sentence, neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Party, and any attempt to do so will be void, except for assignments and transfers by operation of Law. Subject to this Section 10.8, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

Section 10.9 Headings. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

Section 10.10 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

Section 10.11 Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any facsimile copies hereof or signature hereon shall, for all purposes, be deemed originals.

Section 10.12 Governing Law; Venue; and Jurisdiction.

(a) This Agreement shall be governed by and construed in accordance with the Laws of the State of Michigan, without giving effect to any conflict or choice of law provision that would result in the imposition of another state's Law.

(b) THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN THE STATE OF MICHIGAN AND EACH PARTY HEREBY CONSENTS TO THE JURISDICTION OF SUCH COURTS (AND OF THE APPROPRIATE APPELLATE COURTS THEREFROM) IN ANY SUCH SUIT, ACTION OR PROCEEDING AND IRREVOCABLE WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT THEY ANY SUCH SUIT, ACTION OR PROCEEDING THAT IS BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. DURING THE PERIOD A LEGAL DISPUTE THAT IS FILED IN ACCORDANCE WITH THIS SECTION 10.12 IS PENDING BEFORE A COURT, ALL ACTIONS, SUITS OR PROCEEDINGS WITH RESPECT TO SUCH LEGAL DISPUTE OR ANY OTHER LEGAL DISPUTE, INCLUDING ANY COUNTERCLAIM, CROSS-CLAIM OR INTERPLEADER, SHALL BE SUBJECT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT. EACH
PARTY HEREBY WAIVES, AND SHALL NOT ASSERT AS A DEFENSE IN ANY LEGAL
DISPUTE, THAT (A) SUCH PARTY IS NOT SUBJECT THERETO, (B) SUCH ACTION,
SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN SUCH
COURT, (C) SUCH PARTY'S PROPERTY IS EXEMPT OR IMMUNE FROM EXECUTION,
(D) SUCH ACTION, SUIT OR PROCEEDING IS BROUGHT IN AN INCONVENIENT
FORUM OR (E) THE VENUE OF SUCH ACTION, SUIT OR PROCEEDING IS IMPROPER. A
FINAL JUDGMENT IN ANY ACTION, SUIT OR PROCEEDING DESCRIBED IN THIS
SECTION 10.12 FOLLOWING THE EXPIRATION OF ANY PERIOD PERMITTED FOR
APPEAL AND SUBJECT TO ANY STAY DURING APPEAL SHALL BE CONCLUSIVE
AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT
OR IN ANY OTHER MANNER PROVIDED BY APPLICABLE LAWS.

(c) EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED
BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY.

[signature page follows]
IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each Party as of the date first above written.

SELLER:

[COMPANY NAME]

By:
Name:
Title:

BUYER:

CONSUMERS ENERGY COMPANY

By:
Name:
Title:
# Instructions:
Respondents are to fill out the highlighted input cells in the form below.

## 5.4: Net Capability of Generating Facility

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## 5.7: MISO UCAP

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## 5.8: Heat Rates and Emission Rates

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<td>Avg Minimum Load Heat Rate (MMBtu/MWh)</td>
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<td>Incremental Heat Rates (MMBtu/MWh) at:</td>
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<td>NOx (lb/MMBtu)</td>
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<td>SO₂ (lb/MMBtu)</td>
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<td>CO₂ (lb/MMBtu)</td>
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<td>CO (lb/MMBtu)</td>
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APPENDIX E - CEC 2017 ASSET RFP
Request for Proposals
Natural Gas Simple and Combined Cycle Generating Assets
## APPENDIX E - CEC 2017 ASSET RFP
### Request for Proposals
#### Natural Gas Simple and Combined Cycle Generating Assets

**Instructions:**
Respondents are to fill out the highlighted input cells in the form below.

### 5.9: Operating Costs and Revenues

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<td>Variable, non-fuel O&amp;M Cost (excluding LTSA) ($K)</td>
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<td>Fixed O&amp;M Costs (excluding LTSA) ($K)</td>
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<td>Fixed LTSA Related O&amp;M Cost ($K)</td>
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<td>Total O&amp;M Costs ($K)</td>
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<td>Variable O&amp;M Cost ($/MWh)</td>
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### Forced & Planned Outages

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<td>Planned Outage Cost ($K)</td>
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<td>Forced Outage Costs ($K)</td>
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### Property Tax

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<td>Property Tax Abatements ($K)</td>
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### 5.10: Capital Expenditures

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<td>LTSA CAPEX Actual and Budgeted ($K)</td>
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### 5.15 Operating Data

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APPENDIX E - CEC 2017 ASSET RFP
Request for Proposals
Natural Gas Simple and Combined Cycle Generating Assets

**Instructions:**
Respondents are to fill out the highlighted input cells in the form below.

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## APPENDIX E - CEC 2017 ASSET RFP

**Request for Proposals**

**Natural Gas Simple and Combined Cycle Generating Assets**

### Instructions:
Respondents are to fill out the highlighted input cells in the form below.

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**Request for Proposals**  
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**5.16: Acquisition Price**

Acquisition Price ($K)