

A REGULAR MEETING
Of The
TRAVERSE CITY LIGHT AND POWER BOARD

Will Be Held On

TUESDAY, October 28, 2014

At

5:15 p.m.

In The

COMMISSION CHAMBERS
(2nd floor, Governmental Center)
400 Boardman Avenue

Traverse City Light and Power will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon notice to Traverse City Light and Power. Individuals with disabilities requiring auxiliary aids or services should contact the Light and Power Department by writing or calling the following.

Stephanie Tvardek
Administrative Assistant
1131 Hastings Street
Traverse City, MI 49686
(231) 932-4543

Traverse City Light and Power
1131 Hastings Street
Traverse City, MI 49686
(231) 922-4940

Posting Date: 10-23-14
4:00 p.m.

AGENDA

Pledge of Allegiance

1. Roll Call

2. Consent Calendar

The purpose of the consent calendar is to expedite business by grouping non-controversial items together to be dealt with by one Board motion without discussion. Any member of the Board, staff or the public may ask that any item on the consent calendar be removed therefrom and placed elsewhere on the agenda for full discussion. Such requests will be automatically respected. If an item is not removed from the consent calendar, the action noted in parentheses on the agenda is approved by a single Board action adopting the consent calendar.

None.

Items Removed from the Consent Calendar

None.

3. Unfinished Business

None.

4. New Business

- a. Consideration of approving minutes of the Regular Meeting of October 14, 2014. (p. 4)
- b. Consideration of West Side Transmission Line Upgrade Project Authorization Request. (Arends) (p. 7)
- c. Consideration of professional engineering services related to the West Side Transmission Line Upgrade project. (Arends) (p. 12)
- d. Consideration of an Amendment to the accepted Counterproposal for Purchasing M-72 Wind Turbine. (Doren) (p. 17)
- e. Consideration of authorizing a Power Purchase Agreement for M-72 Wind Turbine Energy. (Arends/Myers-Beman) (p. 20)
- f. Consideration of Cowell Family Cancer Center Service Agreement. (Arends/Myers-Beman) (p. 55)
- g. Introduction of proposed Board Rules Amendment. (Doren) (p. 61)

5. Appointments

None.

6. Reports and Communications

- a. From Legal Counsel.
- b. From Staff.
 - 1. Arc Flash study and implementation report. (Solak/Olney) (p. 67)
 - 2. Presentation of fiscal year end June 30, 2014 unaudited financial statements.
(Myers-Beman) (p. 68)
 - 3. Announcement of the Clean Up Green Up event scheduled for November 2, 2014.
(Wheaton) (verbal)
- c. From Board.

7. Public Comment

/st

**TRAVERSE CITY
LIGHT AND POWER BOARD**

Minutes of Regular Meeting
Held at 5:15 p.m., Commission Chambers, Governmental Center
Tuesday, October 14, 2014

Board Members -

Present: Barbara Budros, Jim Carruthers, Jan Geht, Jeff Palisin, Bob Spence, John Taylor

Absent: Pat McGuire

Ex Officio Member -

Present: Jered Ottenwess, City Manager

Others: Tim Arends, Karla Myers-Beman, Tom Olney, Kelli Schroeder, Stephanie Tvardek, Jessica Wheaton, Blake Wilson

The meeting was called to order at 5:15 p.m. by Chairman Taylor.

Item 2 on the Agenda being Consent Calendar

Moved by Carruthers, seconded by Palisin, that the following actions, as recommended on the Consent Calendar portion of the Agenda be approved:

- a. Minutes of the Regular Meeting of August 12, 2014.
- b. Receive and File minutes of the Energy Optimization Plan Ad Hoc Committee of August 27, 2014.
- c. Declare asset surplus and accepted the bid for its sale.
- d. Industrial customer payment arrangement.

CARRIED unanimously. (McGuire absent)

Items Removed from the Consent Calendar

None.

Item 3 on the Agenda being Unfinished Business

None.

Item 4 on the Agenda being New Business

None.

Item 5 on the Agenda being Appointments

None.

Item 6 on the Agenda being Reports and Communications

a. From Legal Counsel.

None.

b. From Staff.

Chairman Taylor requested the Board suspend its rules to allow public comment immediately following item 6b(1) and allow a Q&A format with the public.

Moved by Budros, seconded by Carruthers, that the Board suspend its rules and allow public comment immediately following item 6b(1) and allow a Q&A format with the public.

Roll Call Vote:

Yes – Budros, Carruthers, Palisin, Spence, Geht, Taylor

No – None

CARRIED unanimously. (McGuire absent)

1. Tim Arends and Michael McGeehan, GRP Engineering, Inc., presented the West Side Transmission Line Upgrade options.

The following individuals addressed the Board:

Karla Myers-Beman, Controller
Blake Wilson, System Engineer
Jered Ottenwess, City Manager

The following individuals from the public addressed the Board:

-Matt Cowall, Executive Director, Garfield Township Recreational Authority, Ratepayer
-Nicole Girard, 2973 Concord Street, Non-Ratepayer
-Eileen Ganter, 1615 Randolph Street, Non-Ratepayer
-Emily Mitchell, 3716 Jefferson, Non-Ratepayer
-Barb Solmonson, 119 North Madison Street, Ratepayer
-Mary Joseph, 1422 Wayne Street, Ratepayer
-Kera Ganter, 1615 Randolph Street, Non-Ratepayer
-Mike Gaines, 425 North Madison Street, Ratepayer, Slabtown Neighborhood Association President

2. Jessica Wheaton and Kelli Schroeder presented the new Communications Strategy.

The following individuals addressed the Board:

Tim Arends, Executive Director

3. Tim Arends provided an update regarding TCL&P major projects.
4. Jessica Wheaton provided an update regarding the LED Lighting Kit give-away.

C. From Board.

1. Bob Spence and Jan Geht voiced their support for the recent steak lunch provided to TCL&P employees during a quarterly all employee meeting.
2. Jan Geht asked if staff could draft an External Communication Policy for board review at a future meeting.
3. Jeff Palisin commended the Executive Director and staff for their work on the West Side Transmission Line upgrade process.

Item 6 on the Agenda being Public Comment

No one from the public commented.

There being no objection, Chairman Taylor declared the meeting adjourned at 6:48 p.m.


/st

Tim Arends, Secretary
LIGHT AND POWER BOARD

DRAFT



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Tim Arends, Executive Director 
Date: October 22, 2014
Subject: West Side Transmission Line Upgrade Project Authorization Request

Through the process of determining the best course of action regarding the upgrade of the West Side Transmission Line (LINE), the following options were decided upon as the preferred options for consideration:

- 1) Upgrade the LINE overhead in its current location,
- 2) Upgrade the LINE in its current location with a reroute through a portion of Hickory Hills Ski Area, or
- 3) Relocate the LINE to the M-72/Grandview Parkway corridor – overhead.

After careful consideration of the pros and cons of each option, staff recommends option 2 - Upgrade the LINE in its current location with a reroute through a portion of Hickory Hills Ski Area. Staff's justifications for this recommendation are as follows:

- Changing the location of the LINE will be a change in the approved Six-Year Capital Improvements Plan that requires the project to be re-approved by the City Planning Commission and City Commission. That approval is not guaranteed.
- Relocating the LINE to M-72/Grandview Parkway will increase the cost by nearly \$1 Million. In deciding what is best for the entire utility and its 12,500 customers, this added expense is not necessary to achieve the desired result of an upgraded LINE that improves system reliability and allows for a fully looped distribution system. While it is hopeful that MISO would reimburse the utility over ten years for this project, regardless of the location, it is not guaranteed. Even if they did approve reimbursement the cash reserves of the utility would be impacted for the immediate future.
- The M-72/Grandview Parkway option would require permitting with Elmwood Township, FAA, MDOT, and the City of Traverse City. The project would be delayed at least one year in working toward obtaining those permits. Approvals of permits are not guaranteed.
- The M-72/Grandview Parkway option would require 20 private property easements for guying of poles. Traditional poles with guys would cost \$10,700 each with an additional \$5,000 for legal/engineering for each pole site in securing the easement. If an easement was not obtainable, the pole type would change to a self-supporting structure at an installed cost of \$70,000 each. With 20 poles that need easements, this could be a major additional expense for the project.

FOR THE LIGHT & POWER BOARD MEETING OF OCTOBER 28, 2014

- The existing LINE has been in place for 55 years which is two years after Hickory Hills Ski Area was formed and well before Hickory Meadows became parkland. In addition, most of the Wayne Street residents either built or purchased their homes with the LINE already there. It is anticipated there will be public pushback to constructing a transmission line where it did not exist before.
- As mentioned previously, it is the utility's expectation that if the utility relocates this LINE (one of five planned transmission line upgrade projects) it will create the expectation in other neighborhoods that the utility move the transmission lines to major traffic corridors. For some of those existing lines that would not be possible.
- The justification for the increased cost to realign the LINE and install self-supporting poles in certain areas of the Hickory Hills Ski Area is that it will allow for the planned upgrade to an existing tow rope lift, and improve skier safety by elimination of wires along one ski run.
- Spending nearly double the amount that is required to achieve the reliability of the upgrade will make the problems of increased purchase power costs even more problematic. Already, the utility is aware that its deficient capacity charges will be nearly \$500K more in 2015 than they are in the current year. This trend is expected to continue for the next four years. The utility must continue to cut spending where it can and carefully plan capital projects that improve system reliability and safety for the benefit of the utility and all of its customers.
- It is uncertain if MISO will reimburse to the utility for the additional cost of relocating the LINE along the M-72/Grandview Parkway route since a lower cost option exists.

Certainly, all of the options could have a long list of benefits for the utility and/or the community.

This meeting is intended for the Board to debate the options in upgrading the LINE taking into consideration both the economic and community impacts and to give staff direction on which option it would like the utility to pursue.

If after Board discussion you agree with staff's recommendation, the following motion would be appropriate:

MOVED BY _____, SECONDED BY _____,

THAT THE BOARD APPROVES THE PROJECT AUTHORIZATION REQUEST AS PRESENTED TO UPGRADE THE OVERHEAD WEST TRANSMISSION LINE FROM GRAY SUBSTATION TO HALL STREET SUBSTATION IN ITS EXISTING TRANSMISSION LINE EASEMENT WITH A REALIGNMENT IN THE HICKORY HILLS SKI AREA.

Project Name: WEST SIDE TRANSMISSION LINE UPGRADE

Date of Board Presentation/Consideration: October 28, 2014

Budgeted in Capital Plan: Yes **CIP:** \$1.575 Million

Objective: Target Completion date of July 1, 2015

Project Description: Reconstruction of the Gray to Hall Street 69KV transmission line will include replacement of all wood poles, insulators, conductor, plus associated hardware, guying, and anchoring. Poles will generally be replaced in the same location, although revised pole spacing will occur where it makes good engineering and practical sense. Poles will be taller due to increased conductor sag with the proposed #795 ACSS conductor. This increased height will provide the NESC required clearances over ground features plus distribution circuits, and joint-use (phone, cable, etc.) lines on the same poles. Line design will give preference to traditional round wood poles, with the exception of a few laminated self-supporting structures in the Hickory Hills Ski Area to improve skier safety. Self-supporting laminated wood structures will only be utilized in other areas if installation of guying and anchoring is not possible. The line will be insulated and operated at 69KV for the foreseeable future.

Project Purpose and Necessity: The 69KV Gray to Hall Street transmission line must remain in service to provide the most reliable transmission system for TCL&P and interconnected utilities by eliminating potential customer outages under first (single) contingency conditions and to meet MISO requirement of having transmission lines looped. Completion of the South Substation project including installation of 69KV circuit breakers will allow for automatic clearing of any faults on the south line section thereby maintaining service to all TCL&P customers plus Wolverine Power's South Airport Substation assuming the Gray to Hall Street 69KV line is re-conducted. Completion of two 69KV transmission loops capable of serving peak system load provides adequate redundancy within the transmission system.

Project Benefits: The transmission line is the most aged transmission infrastructure on TCL&P's system and is considered past its useful life and is not built to current day standards. Upgrading the line will include larger conductor that will allow for increased amperage, while maintaining the same voltage, to carry the full load required by the system in the event another transmission circuit is out of service, for whatever reason. Its upgrade will also allow the utility to receive the full benefits of the multi-million dollar investment into the Gray Substation.

Other Alternatives: Line removal was researched and determined to be detrimental to the utility's reliability in a first (single) contingency outage situation. The utility also researched relocating the line to the M-72/Grandview Parkway corridor. That route was cost estimated and staff considered all of the obstacles and increased costs of that option.

Timing of Project: Due to the age of the 55 year old transmission line, this project is the highest priority capital project for 2015. Typical life of a transmission line is 35-40 years.

Project Timeline: Bidding of materials and construction contractors will commence over the winter months with a spring 2015 start date.

Preliminary Engineering Cost Estimate: \$1,665,311 - See attached detailed estimate from GRP Engineering, Inc.

Financing: No bonding or borrowing is required. Current cash reserves have been allocated within the Six Year Capital Improvements Plan.

Additional Revenues: None, other than the reimbursement from MISO for the capital costs to upgrade the transmission line which will occur over an 8-10 year period.

Impact on O&M Expenses: No increase. Since the line will be newly constructed the maintenance would be decreased from its current status.

Staff Recommendation: Reconstruction of the transmission line overhead in its current utility easement with a slight realignment in Hickory Hills Ski Area.

**TRAVERSE CITY LIGHT & POWER
GRAY ROAD TO HALL STREET TRANSMISSION LINE
REBUILD INCLUDING MINOR CENTERLINE REVISION & SELF-SUPPORTING POLES
CONSTRUCTION COST ESTIMATE**

ITEM	ITEM DESCRIPTION	UNITS	LABOR	MATERIAL	TOTAL	EXTENDED TOTAL
1	Poles	LS	\$99,700.00	\$270,250.00	\$369,950.00	\$369,950
2	Self-Supporting Laminated Wood Poles	LS	\$20,000.00	\$30,000.00	\$50,000.00	\$50,000
3	Self-Supporting Pole Foundations	LS	\$80,000.00	\$10,000.00	\$90,000.00	\$90,000
4	Transmission Top Assemblies	LS	\$53,250.00	\$70,600.00	\$123,850.00	\$123,850
5	Distribution Top Assemblies	LS	\$11,825.00	\$8,135.00	\$19,960.00	\$19,960
6	Phase Conductor & OPTGW	LS	\$117,221.30	\$104,800.50	\$222,021.80	\$222,022
7	Guying & Anchoring	LS	\$34,670.00	\$17,385.00	\$52,055.00	\$52,055
8	Transformers/Secondaries/Services	LS	\$13,395.00	\$2,245.00	\$15,640.00	\$15,640
9	Grounding	LS	\$7,755.00	\$5,850.00	\$13,605.00	\$13,605
10	Distribution Transfers	LS	\$9,935.00	\$0.00	\$9,935.00	\$9,935
11	Miscellaneous Construction	LS	\$93,007.50	\$11,395.00	\$104,402.50	\$104,403
12	Tree Trimming	LS	\$50,000.00	\$0.00	\$50,000.00	\$50,000
13	Site Restoration	LS	\$25,000.00	\$2,500.00	\$27,500.00	\$27,500
14	Demolition & Removals	LS	\$97,391.72	\$0.00	\$97,391.72	\$97,392
15	Topographic Survey	LS	\$30,000.00	\$0.00	\$30,000.00	\$30,000
16	Soil Borings & Environmental	LS	\$5,000.00	\$0.00	\$5,000.00	\$5,000
17	Traffic Control & Signage	LS	\$22,000.00	\$0.00	\$22,000.00	\$22,000
18	Mobilization	LS	\$25,000.00	\$0.00	\$25,000.00	\$25,000
19	Insurance & Bonding	LS	\$4,000.00	\$0.00	\$4,000.00	\$4,000

Subtotal	\$1,332,311
Contingency (15%)	\$200,000
Design Engineering	\$133,000
Staking & Inspections	\$67,000
Total Estimated Construction Cost	\$1,665,311

Notes:

- All costs are estimated as 2015 construction costs.
- Cost estimate is based on rebuilding the existing 69kV transmission line from Gray Road to the Wayne & Division Street underground riser pole along the same centerline with the exception of a minor revision within Hickory Hills.
- Cost estimate is based on traditional round wood pole construction and self-supporting laminated wood structures at the base of the ski runs in Hickory Hills.
- The cost estimate submitted herein is based on time-honored practices within the construction industry. As such, the Engineer does not control the cost of labor, materials, equipment or a contractor's method of determining prices and competitive bidding practices or market conditions. The estimate contained represents our best judgement as design professionals using current information available at the time of preparation. The Engineer cannot guarantee that proposals, bids and/or construction costs will not vary from this cost estimate.



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Tim Arends, Executive Director (TA)
Date: October 21, 2014
Subject: West Side Transmission Line Professional Engineering Services

Should the Board approve staff's recommendation of a Project Authorization Request to upgrade the West Side Transmission Line, as presented, the next action item would be consideration of professional engineering services for its upgrade. Attached is a proposal from GRP Engineering, Inc. for your consideration of approval.

GRP will provide transmission line design, contract administration, and project management services from the projects inception to its completion. Please note: GRP has already provided most of the transmission line design services while creating the "baseline" cost of the project, at TCL&P's request.

Staff recommends approval of the proposal as presented. If after Board discussion you agree with staff's recommendation the following motion would be appropriate:

**MOVED BY _____, SECONDED BY _____,
THAT THE BOARD AUTHORIZES THE CHAIRMAN AND SECRETARY TO ENTER
INTO AN AGREEMENT WITH GRP ENGINEERING, INC. FOR PROFESSIONAL
ENGINEERING SERVICES RELATED TO THE WEST SIDE TRANSMISSION LINE
UPGRADE PROJECT IN THE AMOUNT OF \$110,000; SUBJECT TO APPROVAL AS
TO SUBSTANCE BY THE EXECUTIVE DIRECTOR, AND AS TO FORM BY
GENERAL COUNSEL.**

October 21, 2014

Mr. Tim Arends
Traverse City Light & Power
1131 Hastings St.
Traverse City, MI 49686

RE: Engineering Services Proposal
Gray Road to Hall Street 69kV Transmission Line

Dear Tim:

GRP Engineering, Inc. is pleased to present this proposal to Traverse City Light & Power (TCL&P) for Engineering Design & Contract Administration Services for the Gray Road to Hall Street Transmission Line Rebuild project. We are uniquely qualified to provide these services for TCL&P through our project experience on TCL&P's system, our team's local presence, and the qualifications of all our personnel. GRP Engineering, Inc. will complete engineering services on this project using a team approach including subcontracting to a local, Traverse City based firm for

Project Design Team

Electrical Engineering	GRP Engineering, Inc.
Civil & Geotechnical Engineering	Gosling-Czubak Earth Sciences, Inc.
Construction Staking	Gosling-Czubak Earth Sciences, Inc.

Project scope includes reconstruction of the existing 69kV transmission line commencing at the tap just south of Gray Road & Barney Road, east on Barney Road, then east through the Hickory Hills recreation area, east on Wayne Street and terminating at the existing 69kV riser pole at Division Street & Wayne Street.

Transmission line design will include traditional round poles, two self-supporting laminated wood poles within the Hickory Hills Ski area, #795ACSS conductor on 69kV linepost insulators, and optical ground wire. Steel poles will not be utilized on this project. Design for transferring existing distribution facilities owned by Cherryland Electric Cooperative and TCL&P to the new pole line will be included in the project. Provisions for joint-use facilities (e.g. phone, CATV, fiber, etc.) will be provided in the design.

Gray Road to Hall Street 69kV Transmission Line Rebuild Design Phase

- Project administration (maintain correspondence & meeting minutes.)
- Project planning & control (design schedules & cost estimates.)
- Project kickoff meeting and preliminary field design review with TCL&P staff.
- Two soil borings to depths of 35 feet below grade and preparation of a geotechnical report.
- Detailed transmission & distribution design engineering. All transmission line design will be completed in PLS-CADD and will meet current National Electric Safety Code (NESC) design requirements.
- Coordination with Wolverine Power Supply Cooperative on design for connection of new conductor at the Gray Road junction.
- Preparation of construction assembly drawings meeting TCL&P standards.
- Preparation of distribution line construction staking sheets and associated drawings.
- Preparation of 13.8kV construction assembly units required for the project to meet TCL&P standards.
- Coordination with Cherryland Electric Cooperative for transfer of their facilities to the new transmission line.
- Design review meetings with TCL&P staff as required.
- Meetings with affected property owners as requested by TCL&P.
- Preparation of one construction contract plus assistance with bid and award.
- Printing & shipping of all required construction drawings sets.
- Determination of new relay settings at Gray Road and Hall Street Substations.
- Assistance with material procurement including preparation and processing of two procurement contracts.
- Prepare all necessary contract close-out documents.
- Provide record drawings including two (2) bound sets and files in AutoCAD 2015 format.

GRP Engineering, Inc. will provide the engineering design services for Gray Road to Hall Street Transmission Line Rebuild project for a lump sum fee of \$68,000 including expenses and all subcontracted services.

Gray Road to Hall Street 69kV Transmission Line Rebuild Contract Administration Phase

- Attendance at TCL&P project preconstruction meetings.
- Shop drawing review and approval for all procurement and construction contracts.
- Preparation and processing of required county road commission permits for structure replacement and conductors in road rights-of-way.
- Construction staking of all transmission and distribution structures.
- Construction staking of right-of-way clearing limits.
- On-site representation during construction at critical times.
- Monitoring and verification of construction compliance with engineering drawings and specifications and all NESC requirements
- Construction coordination between TCL&P, construction contractors, and other affected projects and parties including City of Traverse City, CE, WPCI, CEC, METC/ITC, and MISO.
- Preparation of monthly progress reports, which will include contractor performance and any work quality issues.

- Relay setting installation oversight at Gray Road and Hall Street Substations, plus submittal of test reports and setting documentation. Testing to be completed by others.
- Process all contractor invoicing and change orders.
- Final inventory and inspection and preparation of punch lists and energization release forms for the new 69kV transmission line.

GRP Engineering, Inc. will provide the Contract Administration Phase services for the Gray Road to Hall Street Transmission Line Rebuild Project on an hourly basis for a fee not to exceed \$42,000, including expenses.

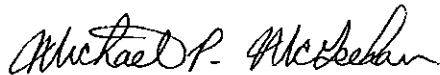
All services performed for Traverse City Light & Power within this scope will be billed on a monthly basis. Should additional services be required outside the scope of this proposal, GRP Engineering, Inc. will complete those tasks on an hourly basis via the attached rate sheet.

This proposal does not include topographic survey services or soil density testing services.

We appreciate the opportunity to submit this proposal and look forward to being of service to you. Please contact me should you have any questions regarding this proposal.

Sincerely,

GRP Engineering, Inc.



Michael P. McGeehan, P.E.
President

Enclosures

**GRP ENGINEERING, INC.
HOURLY BILLING RATES**

Employee Title	Engineer Level	Hourly Rate Range
Senior Project Manager	8	\$125 - \$150
Project Manager	7	\$105 - \$120
Senior Engineer	6	\$90 - \$105
Project Engineer	4 - 5	\$80 - \$90
Engineer	2 - 3	\$70 - \$80
Entry Level Engineer	1	\$50 - \$70
Engineering Technician		\$40 - \$50
Engineering Support		\$30 - \$43
Administrative Support		\$35 - \$50


Expenses will be invoiced at cost including, but not limited to, mileage, meals, lodging, printing and reproduction.

All subcontracted services will be invoiced at cost, with no additional markup.

Rates are valid through December 31, 2014



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Tim Arends, Executive Director 
Date: October 21, 2014
Subject: M-72 Wind Turbine Accepted Counterproposal Amendment

In August the Board approved a Counterproposal with Heritage Sustainable Energy (Heritage) for its purchase of the M-72 Wind Turbine that made the sale subject to certain conditions. The Counterproposal was accepted by Heritage and they have been working diligently in examining and testing the unit. Based on preliminary inspections they asked permission to replace a splintered blade and to change fluids in the generator. Permission was granted with the caveat that the expense was at their own risk should the ultimate sale not occur.

TCL&P has been notified by Heritage that they are satisfied with the unit and would like to proceed with its purchase. As recommended by General Counsel, attached is an Amendment Number One to the Accepted Counterproposal for your consideration of approval. The Amendment identifies that Heritage has satisfied the first state contingencies and further identifies the remaining steps in transferring ownership to Heritage. The deadline for these second stage contingencies would be December 31, 2014.

Staff recommends approval of the Amendment. If after Board discussion you agree with staff's recommendation the following motion would be appropriate:

**MOVED BY _____, SECONDED BY _____,
THAT THE BOARD AUTHORIZES THE CHAIRMAN AND SECRETARY TO EXECUTE
AMENDMENT NUMBER ONE TO THE ACCEPTED COUNTERPROPOSAL TO HERITAGE
SUSTAINABLE ENERGY FOR THE SALE OF THE M-72 WIND TURBINE; SUBJECT TO
APPROVAL AS TO SUBSTANCE BY THE EXECUTIVE DIRECTOR AND AS TO FORM BY
GENERAL COUNSEL.**

**Amendment Number One to the Accepted Counterproposal
for Purchasing M-72 Wind Turbine**

On this the _____ day of _____, 2014, the TRAVERSE CITY LIGHT AND POWER DEPARTMENT (TCL&P) and HERITAGE SUSTAINABLE ENERGY, LLC (Heritage), amend the accepted Counterproposal for Purchasing M-72 Wind Turbine signed by Heritage on August 15 and by TCL&P on September 8, 2014 (Counterproposal), as follows:

1. First Stage Contingencies. It is agreed that all First Stage Contingencies have been satisfied or waived by the parties
2. Second Stage Contingencies. It is agreed that the parties will negotiate a Power Purchase Agreement in good faith in an attempt to arrive at a mutually acceptable agreement. It is further agreed that the parties shall negotiate in good faith to arrive at mutually acceptable Conveyance Documents consisting of the following:
 - a. Partial Assignment of Easement for Electric Facilities recorded at Liber 415, Pages 558-562, Leelanau County Register of Deeds, assigning to Heritage that part of the easement, pertaining to the wind turbine generator and pad mount transformer and the right to ingress and egress to the wind turbine generator site. TCL&P shall retain that part of the easement consisting of the electric lines and poles running north and south and the underground electric line running southeast from the wind turbine sited on the property to the above-described power line easement.
 - b. Interconnection Agreement for the Wind Turbine.
 - c. Assignment of the Driveway Access Easement (wind turbine) recorded at Liber 1173, Pages 8-12, Leelanau County Register of Deeds.
 - d. A Bill of Sale conveying the wind turbine and all related equipment, but not the underground power line running from the wind turbine to the above ground power line, in an as is/where is condition.

These Conveyance Documents must be approved and executed or waived by the TCL&P Executive Director on behalf of TCL&P.

Also as a part of these contingencies there must be surplus status confirmation of real property involved by the TCL&P Board and confirmed by the City Commission.

3. Lautner Easement Expiration. The above Easement for Electric Facilities from Terry K. and Cathryn L. Lautner expires April 27, 2020. The parties agree to cooperate to attempt to extend that Easement at no cost to TCL&P.
4. Deadline for Second Stage Contingencies. Unless otherwise agreed by the TCL&P Executive Director and Heritage in writing, if the Power Purchase Agreement and these

Conveyance Documents are not fully executed, satisfied or waived by December 31, 2014, either party, upon written notice to the other party, may cancel the agreement to sell and purchase the wind turbine.

5. Counterproposal. All other provisions of the Counterproposal shall remain in effect.

The parties hereto have executed this agreement on the date and year first above written.

TRAVERSE CITY LIGHT AND
POWER DEPARTMENT


HERITAGE SUSTAINABLE
ENERGY, LLC

By: Timothy J. Arends
Its: Executive Director

By: Marty Lagina
Its: President



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Tim Arends, Executive Director 
Date: October 21, 2014
Subject: M-72 Wind Turbine Power Purchase Agreement

With the assistance of Board Member McGuire, staff has negotiated the terms of a Power Purchase Agreement (Agreement) with Heritage Sustainable Energy, LLC (Heritage) to buy the output of the M-72 wind turbine when/if the sale of the unit to Heritage is consummated. The Agreement is attached for your review.

The initial term of the Agreement is ten years with subsequent five year renewal periods for a total of twenty years. The Agreement requires continuous operation of the unit and exposes the utility to a premium energy rate equal to the \$160K estimate it would have incurred to dismantle the unit and restore the property to original condition. The premium is the difference between the prices charged per kWh for output from the unit compared to the market rate of energy the utility would pay if the unit energy were not purchased by the utility. In calculating the premium rate an estimated cumulative MWh of 4,600 was used based on the difference of the current market rate (off peak) and \$70/MWh. After the unit produces a cumulative 4,600 MWh the rate charged to the utility will be the actual market rate.

The other terms of the Agreement are standard that relate mainly to ownership, responsibilities of the parties, liability, default, and compliance with regulations. Staff believes this is a sound Agreement that keeps the historic unit in operation and does not overly expose the utility to high renewable energy charges. The Agreement will not impact the utility's average cost of power due to its low percentage of overall energy purchased by the utility.

Staff recommends approval of the Agreement as presented. If after Board discussion you agree with staff's recommendation the following motion would be appropriate:

MOVED BY _____, SECONDED BY _____,

THAT THE BOARD AUTHORIZES THE CHAIRMAN AND SECRETARY TO EXECUTE A POWER PURCHASE AGREEMENT WITH HERITAGE SUSTAINABLE ENERGY, LLC FOR THE OUTPUT FROM THE M-72 WIND TURBINE ONCE THE SALE OF THE UNIT IS FINALIZED; SUBJECT TO APPROVAL AS TO SUBSTANCE BY THE EXECUTIVE DIRECTOR AND AS TO FORM BY GENERAL COUNSEL.

POWER PURCHASE AGREEMENT

This Power Purchase Agreement is made and entered into as of October ____, 2014 (the "Effective Date") by and between TRAVERSE CITY LIGHT & POWER DEPARTMENT, a Michigan municipal electric utility, ("Buyer") and HERITAGE SUSTAINABLE ENERGY, LLC, a Michigan limited liability company ("Supplier"). Buyer and Supplier are referred to individually as a "Party" and collectively as the "Parties."

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

WHEREAS, Supplier owns and operates a wind generation facility (the "Generating Facility") on a site located in Leelanau County, Michigan; and

WHEREAS, Supplier desires to sell to Buyer all non-firm energy generated by the .6 MW (nameplate capacity) of Generating Facility (less energy consumed by such Generating Facility), and Buyer desires to purchase all such energy from Supplier upon the terms and conditions set forth herein. If the generating facility does not produce at least 300 MWh in any consecutive 12 calendar month period, Buyer may terminate this agreement at Buyer's option.

NOW, THEREFORE, in consideration of the premises and the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Supplier, agree as follows:

DEFINITIONS

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

- 1.1 "Affiliate" means, with respect to any Person, each Person that directly or indirectly controls or is controlled by or is under common control with such Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") as used with respect to any Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise.
- 1.2 "Agreement" means this Power Purchase Agreement together with the Exhibits attached hereto, as such may be amended from time to time.
- 1.3 Intentionally left blank.
- 1.4 "Billing Period" has the meaning ascribed to that term in Section 7.2.1.

- 1.5 “Business Day” means any day other than Saturday, Sunday, and any day that is a holiday observed by Buyer.
- 1.6 “Buyer” has the meaning set forth in the preamble of this Agreement, and includes such Person's permitted successors and assigns.
- 1.7 “Commercial Operation” means that the Generating Facility has been constructed in accordance with the requirements of the IOA and Good Utility Practice and has delivered Energy to the Delivery Point and all of the requirements set forth in Sections 8.1 to 8.5 and *Exhibit* __ have been satisfied. If Commercial Operation is not achieved on the first day of a month, then Commercial Operation shall be deemed to be achieved on the first day of the following calendar month.
- 1.8 “Commercial Operation Date” means the date on which Commercial Operation occurs.
- 1.9 “Confidential Information” has the meaning ascribed to that item in Section 23.1.
- 1.10 “Contract Representative” of a Party means the individual designated by that Party in *Exhibit* __ responsible for ensuring effective communication, coordination, and cooperation between the Parties. A Party may change its Contract Representative by providing notice of such change to the other Party in accordance with the procedures set forth in Section 24.1.
- 1.11 “Contract Year” means each calendar year beginning on January 1 and ending on December 31 of such year following the Commercial Operation Date; provided, however, that the first Contract Year shall commence on the Commercial Operation Date and end on the following December 31.
- 1.12 “Control Area” means an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to (a) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s) with the load within the electric power system(s); (b) maintain scheduled interchange with the other Control Areas, within the limits of Good Utility Practice;(c) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and (d) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.
- 1.13 “Control Area Operator” means a Person, its agents, and successors that is responsible for the operation of the Transmission System and for maintaining reliability of the electrical transmission system(s), including the Transmission System, within the Control Area.

- 1.14 “Cure Period” has the meaning ascribed to that term in Section 19.2.
- 1.15 “Default Notice” means the notice of an Event of Default to the Defaulting Party.
- 1.16 “Defaulting Party” has the meaning ascribed to that term in Section 19.1.
- 1.17 “Deemed Delivered Amount” means the quantity of Energy, expressed in MWh, that would have been produced by the Generating Facility and delivered to the Delivery Point during any period, determined by taking into account (i) the actual 10-minute (or more frequent) wind speeds (interpolated over time intervals, if necessary) measured by wind monitoring equipment located on the Wind Turbine that was available for operation immediately prior to the commencement of the period in question and expected to be available for the duration of the period in question or prorated accordingly or, if such monitoring equipment is unavailable during a relevant interval, then using other available data or interpolated data determined using industry standard practices, as reasonably accepted by Supplier and Buyer; and (ii) the generation determined by the power curve provided by the manufacturer of the Wind Turbines reflecting the Energy that would be produced by the Wind Turbine at all operational speeds, as applied to the wind speeds referred to in clause (i), as adjusted for line losses to the Delivery Point, using historical data compiled by Supplier and reasonably agreed or confirmed by Buyer.
- 1.18 Intentionally left blank.
- 1.19 “Delivered Amount” means, with respect to any Contract Year, the actual amount of Energy delivered by Supplier and accepted by Buyer at the Delivery Point during such Contract Year.
- 1.20 “Delivery Point” means the delivery point as set forth in *Exhibit __* and any other delivery point as may be mutually agreed upon by the Parties.
- 1.21 “Derating” means a condition of the Generating Facility as a result of which it is unable to produce the forecasted Energy during a Dispatch Hour.
- 1.22 “Disclosing Party” has the meaning ascribed to that term in Section 23.1.
- 1.23 “Dispatch Hour” means each hour from the Operation Date through the end of the Term.
- 1.24 “Dispute” has the meaning ascribed to that term in Section 16.1.
- 1.25 “Effective Date” has the meaning ascribed to that term in the preamble of this Agreement.
- 1.26 “Emergency” means any circumstance or combination of circumstances or any condition of the Generating Facility, the Transmission System, or the transmission system of other

electric utilities which is reasonably likely to (a) endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property; or (b) adversely affect, degrade, or impair Transmission System reliability or transmission system reliability of other electric utilities.

- 1.27 “Energy” means three phase 60 Hz electrical energy (measured in MWh) that is generated by the Generating Facility from and after the Operation Date and delivered to the Delivery Point, excluding Station Use. Energy shall also mean the capacity intended to be available and/or delivered to Buyer at the specifications and Delivery Point stated herein.
- 1.28 “Environmental Law” shall mean any federal, state, local, or other law (including common law), regulation, rule, ordinance, code, decree, judgment, binding directive, or judicial or administrative order relating to the protection, preservation, or restoration of human health, the environment, or natural resources, including any law relating to the releases or threatened releases of Hazardous Substances into any media (including ambient air, surface water, groundwater, land, and surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport, and handling of Hazardous Substances.
- 1.29 “EPT” means Eastern Standard Time or Eastern Daylight Time, whichever is then prevailing.
- 1.30 “Event of Default” has the meaning ascribed to that term in Section 19.1.
- 1.31 “EWG” means an exempt wholesale generator pursuant to Section 32 of the Public Utility Holding Company Act of 2005; as such Law may be amended or superseded.
- 1.32 “FERC” means the Federal Energy Regulatory Commission and any successor entity thereto.
- 1.33 “First Full Contract Year” means the first Contract Year that is a full calendar year.
- 1.34 “Force Majeure” has the meaning set forth in Section 15.2.
- 1.35 “Generating Facility” means Supplier's renewable generating power plant, including any associated facilities and equipment required to deliver Energy to the Delivery Point, as further described in *Exhibits __ and __* hereto.
- 1.36 “Good Faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
- 1.37 “Good Utility Practice” means (a) the applicable practices, methods, and acts required by or consistent with applicable Laws and reliability criteria, whether or not the Party whose

conduct at issue is a member of any relevant organization, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period; or (b) any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to acceptable practices, methods, or acts generally accepted in the region and industry. Good Utility Practice shall include compliance with applicable Laws and regulations, applicable reliability criteria, and the criteria, rules, and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules, and standards of any successor organizations.

- 1.38 “Governmental Authority” means, as to any Person, any federal, state, local, or other governmental, regulatory, or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over such Person or its property or operations.
- 1.39 “Hazardous Substance” means (a) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, friable asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls (PCBs) in regulated concentrations; (b) any chemicals or other materials or substances which are now or hereafter become defined as, or included in, the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants”, “pollutants”, or words of similar import under any Environmental Law; and (c) any other chemical or other material or substance, exposure to which is now or hereafter prohibited, limited, or regulated as such under any Environmental Law including the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., or any similar state statute, as such Laws may be amended or superseded.
- 1.40 “IEEE-SA” means the Institute of Electrical and Electronics Engineers Standards Association and any successor entity thereto.
- 1.41 “Invoice” means the statements described in Section 7.2 setting forth the Energy delivered to the Delivery Point, if any, and the associated payment due for the Billing Period.
- 1.42 “IOA” means the Interconnection and Operating Agreement, if any, that has been or will be executed between Supplier and Buyer, or its successors, for the Generating Facility.

- 1.43 “Law” means any federal, state, local, or other law (including any Environmental Laws), common law, treaty, code, rule, ordinance, binding directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, which is binding on a Party or any of its property.
- 1.44 “Loss” means any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, penalties, sanctions, Taxes, judgments, damages, losses, or expenses imposed by a third-party upon a Party or incurred in connection with any claim by a third-party against a Party.
- 1.45 “Material Adverse Effect” means, with respect to a Party, a material adverse effect on the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate, or on the business, operations, or financial condition of such Party.
- 1.46 “Meter” means any of the physical or electronic metering devices, data processing equipment, and apparatus required for (a) an accurate determination of the quantities of Delivered Amounts from the Generating Facility and for recording other related parameters required for the reporting of data to Supplier, and (b) the computation of the payment due to Supplier from Buyer. Meters do not include any check meters Buyer may elect to install as contemplated by Section 7.1.1.
- 1.47 “MISO” means the Midcontinent Independent System Operator, Inc. and any successor entity thereto.
- 1.48 “MPSC” means the Michigan Public Service Commission and any successor entity thereto.
- 1.49 “MW” means a megawatt of electrical capacity.
- 1.50 “MWh” means a megawatt hour of electrical energy.
- 1.51 “NERC” means the North American Electric Reliability Corporation and any successor entity thereto.
- 1.52 “Non-Defaulting Party” means the Party other than the Defaulting Party.
- 1.53 “OATT” means Transmission Provider's or Control Area Operator's then effective Open Access Transmission Tariff, which has been accepted for filing by the FERC.
- 1.54 “Operating Representative” means any of the individuals designated by a Party, as set forth in *Exhibit* __, to transmit and receive routine operating and Emergency communications required under this Agreement. A Party may change any of its Operating Representatives

by providing notice of the change to the other Party in accordance with the notice procedures set forth in Section 24.1 herein.

- 1.55 “Operation Date” means the first date on which the Wind Turbine is energized and operates in parallel with the Transmission System and delivers Energy to the Delivery Point. Fifteen (15) calendar days prior to any synchronization to the Transmission System, Supplier shall provide written notice to Buyer’s Contract Representative, as set forth in *Exhibit __*, that Supplier is preparing to synchronize to the Transmission System and the date on which such synchronization will occur.
- 1.56 “Party” means each Person set forth in the preamble of this Agreement and its permitted successor or assigns.
- 1.57 “Person” means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.
- 1.58 “Power Quality Standards” means the Power Quality Standards established by NERC, MISO, Buyer, IEEE-SA, National Electric Safety Code, the National Electric Code, and their respective successor organizations or codes, as they may be amended or superseded from time to time, and consistent with Good Utility Practice.
- 1.59 “Product” means all Energy produced by the Generating Facility, except Station Usage.
- 1.60 “Product Rate”
- 1.60.1 “Product Rate” shall mean \$70/MWh.
- 1.60.2 After such time as 4,600 MWh (cumulative) have been delivered to Buyer pursuant to this contract, “Product Rate” shall mean the LMP Real-Time hourly rate at the Cons.TC Node.
- 1.61 “PTC” means the production tax credit established pursuant to Section 45 of the U.S. Internal Revenue Code of 1986; as such Law may be amended or superseded.
- 1.62 “QF” means a cogeneration or small power production facility which meets the criteria as defined in Title 18, Code of Federal Regulations, §§ 292.201 through 292.207, as such Law may be amended or superseded.
- 1.63 “Receiving Party” has the meaning ascribed to that term in Section 23.1.
- 1.64 “Station Usage” means all Energy consumed by the Generating Facility.

- 1.65 “Supplier” has the meaning set forth in the preamble of this Agreement and includes such Person's permitted successors and assigns.
- 1.66 “Supplier's Lenders” means any Persons other than an Affiliate of Supplier, and their permitted successors and assignees, whose business it is in the ordinary course to provide funding in connection with any development, bridge, construction, permanent debt, or tax equity financing or refinancing (collectively, “Financing”) and, in this case, Financing for the Generating Facility.
- 1.67 “Tax” means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees, or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty, or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.
- 1.68 Intentionally left blank.
- 1.69 “Term” has the meaning ascribed to that term in Section 2.2.
- 1.70 “Transmission Provider” means the operator or owner of the Transmission System to which the Generating Facilities are interconnected for the delivery of energy.
- 1.71 “Transmission System” means the facilities used for the transmission of electric energy, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Provider.
- 1.72 “Wind Turbine” means the Vestas V44-600, 600KW wind turbine generator presently integrated into the Generating Facility.

TERM, TERMINATION, AND SURVIVAL OF OBLIGATIONS

- 2.1 Effective Date. This Agreement shall become effective on the Effective Date.
- 2.2 Term. Supplier's obligation to deliver Product and Buyer's obligation to accept and pay for Product under this Agreement shall commence on the Commercial Operation Date and shall continue until terminated pursuant to the terms hereof (the “Term”) or until the [20th] anniversary of January 1 of the First Full Contract Year.

- 2.2.1 Easement. The Term of this Agreement is dependent upon a new or extended easement from the landowners, Terry and Cathryn Lautner. The parties intend the Term to be identical.
- 2.3 Termination.
- 2.3.1 Options to Terminate. Supplier and Buyer each has options to terminate or renegotiate the terms of this Agreement effective, on the tenth (10th) anniversary, on the fifteenth (15th) anniversary, and on the twentieth (20th) anniversary of January 1 of the First Full Contract Year, by written notice delivered to the other party not less than ninety (90) days before such tenth (10th) anniversary, and such fifteenth (15th) anniversary.
- 2.3.2 Mutual Agreement. This Agreement may be terminated by written agreement of the Parties.
- 2.3.3 Force Majeure. This Agreement may be terminated by a Party if the other Party's obligations hereunder have been excused by the occurrence of an event of Force Majeure for longer than six (6) consecutive calendar months.
- 2.3.4 Lack of Production. If the generating facility does not produce at least 300 MWh in any consecutive 12 calendar month period, Buyer may terminate this agreement at Buyer's option.
- 2.4 Extension. If not sooner terminated by Supplier or Buyer, then after the twentieth (20th) anniversary of January 1 of the First Full Contract Year, this Agreement shall automatically renew each January 1 for additional periods of one (1) year each unless Supplier or Buyer shall terminate this Agreement by written notice delivered to the other party not less than three (3) months before such annual renewal date.
- 2.4 Effect of Termination - Survival of Obligations. Any termination of this Agreement or expiration of the Term shall not release either Party from any applicable provisions of this Agreement with respect to:
- 2.4.1 The payment of any amounts owed to the other Party arising prior to or resulting from termination of, or on account of breach of, this Agreement;
- 2.4.2 Limitation of liability provisions contained in Sections 14.1 to 14.3;
- 2.4.3 For a period of one (1) year after the termination date, the right to submit a payment dispute pursuant to Sections 16.1-16.6;

- 2.4.4 The resolution of any dispute submitted pursuant to Sections 16.1 to 16.6 prior to, or resulting from, termination; or
- 2.4.5 The confidentiality provisions contained in this Agreement.

SUPPLY SERVICE OBLIGATIONS

- 3.1 **Energy.** Subject to the other provisions of this Agreement, commencing on the Commercial Operation Date, Supplier shall supply and deliver to Buyer at the Delivery Point all Energy produced by Supplier at the Generating Facility except for Station Usage. All purchases of Energy delivered to Buyer shall be sales for resale.
- 3.2 **Dedication.** All Product shall be dedicated exclusively to Buyer for the Term of this Agreement. Supplier shall not, without Buyer's prior written consent (which Buyer may withhold in its sole discretion), sell, divert, grant, transfer, or assign Product to any Person other than Buyer.
- 3.3 **Buyer's Obligation and Delivery.** Except as to Station Usage, Buyer shall take delivery of all Energy produced by Supplier at the Delivery Point in accordance with the terms of this Agreement. Supplier shall be responsible for all costs associated with delivery of the Energy to the Delivery Point. Buyer shall be responsible for all costs associated with receipt of the Energy at the Delivery Point.
- 3.4 **Title and Risk of Loss.** Title to and risk of loss with respect to Energy shall pass from Supplier to Buyer at the Delivery Point. Until title passes, Supplier shall be deemed in exclusive control of the Energy and shall be responsible for any damage or injury caused thereby. After title to the Energy passes to Buyer, Buyer shall be deemed in exclusive control of the Energy and shall be responsible for any damage or injury caused thereby. Supplier shall deliver the Energy to Buyer free and clear of all liens, security interests, claims, and encumbrances or any interest therein or thereto by any Person.

PRICE OF PRODUCT

- 4.1 **Product Payments.** Supplier shall be paid for the Product based on the Delivered Amount of Energy as determined by data from monthly Meter readings, as follows:
 - 4.1.1 Upon the Operation Date and prior to the Commercial Operation Date, all Product associated with Delivered Amounts of Energy from the Generating Facility shall be paid for by the Buyer at the Product Rate.

RENEWABLE ENERGY CREDITS AND RENEWABLE ENERGY BENEFITS

- 5.1 Renewable Energy Credits. All Renewable Energy Credits and any benefits derived therefrom are exclusively dedicated to and vested in Supplier until such as time that Supplier may, at its discretion, upgrade the turbine to a more efficient model that produces more product. In that case, the Buyer has the right to open negotiations for the purchase of the Renewable Energy Credits for the entire turbine output.
- 5.2 Renewable Energy Benefits. All Renewable Energy Benefits shall be exclusively retained by and shall be vested in Supplier in accordance with the exception in Section 5.1.

RIGHT OF FIRST OFFER

- 6.1 Before Supplier (or any direct or indirect parent of Supplier) sells or transfers the Generating Facility to a non-Affiliate third-party, Supplier must provide written notice to Buyer of intention to sell or transfer together with all terms of sale or transfer. Upon Buyer's receipt of such notice, Buyer shall have the right to negotiate in Good Faith with Supplier for no more than sixty (60) calendar days, unless otherwise agreed to by Supplier, the terms of the sale or transfer of the Generating Facility to Buyer or its designee on an exclusive basis. If Buyer desires to enter into such negotiation, Buyer shall notify Supplier of such decision within thirty (30) calendar days of receipt of Supplier's notice. Supplier will provide, in a timely manner, information regarding the Generating Facility which is reasonable or customary to allow Buyer to perform due diligence and to negotiate in Good Faith for the purchase of the Generating Facility.
- 6.2 If Buyer does not exercise its right to negotiate pursuant to Section 6.1, Supplier must comply with Section 18.4 in any assignment or delegation of Supplier's rights, interests, or obligations herein to a purchaser of the Generating Facility.
- 6.3 If Supplier does not execute an agreement, subject to receipt of appropriate regulatory approvals, to sell or transfer the Generating Facility to any non-Affiliate third-party in accordance with this Agreement within three hundred sixty-five (365) calendar days of the date that Supplier provided Buyer with written notice pursuant to Section 6.1, Supplier (or any direct or indirect parent of Supplier) must again follow the procedures of this Agreement if it intends to sell or transfer the Generating Facility to a non-Affiliate third-party.
- 6.4 Supplier shall supply Buyer with documented proof to Buyer's reasonable satisfaction that the transferee has the qualifications to operate and maintain the turbine and be able to demonstrate the financial ability to meet all financial obligations. Buyer shall not unreasonably delay, condition or deny consent to such transfer.

METERING, INVOICING, AND PAYMENTS

7.1 Metering.

- 7.1.1 Meters. The Meters shall be used for quantity measurements under this Agreement. Such equipment shall be bi-directional and shall be capable of measuring and reading instantaneous, hourly real and reactive energy and capacity. Buyer, at its expense, may install additional check meters. Buyer shall not install any check-metering equipment on Seller's-owned facilities.
- 7.1.2 Location. Meters shall be installed at the location specified in *Exhibit 4*, or as otherwise reasonably determined by Seller to effectuate this Agreement.
- 7.1.3 Non-Interference. Supplier shall not undertake any action that may interfere with the operation of the Meters. Supplier shall be liable for all costs, expenses, and liabilities associated with any such interference with the Meters.
- 7.1.4 Meter Testing. Meters shall be tested at least once every two years by Supplier, at Supplier's expense. Either Party may request a special test of Meters or check meters, but the testing Party shall bear the cost of such testing unless there is an inaccuracy outside the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.1, latest version), in which case the Party whose meters were found to be inaccurate shall be responsible for the costs of the special testing. Meters installed pursuant to this Agreement shall be sealed and the seal broken only when the meters are to be adjusted, inspected, or tested. Authorized representatives of both Parties shall have the right to be present at all routine or special tests and to inspect any readings, testing, adjustment, or calibration of the Meters or check meters. Supplier's Operating Representative shall provide fifteen (15) calendar days prior notice of routine Meter testing to Buyer's Operating Representative. If Buyer has installed check meters in accordance with Section 9.1.1, Buyer shall test and calibrate each such meter at least once every two years. Buyer's Operating Representative shall provide fifteen (15) calendar days prior written notice of routine check meter testing to Supplier's Operating Representative. In the event of special Meter testing, the Parties' Operating Representatives shall notify each other in writing with as much advance notice as practicable.
- 7.1.5 Metering Accuracy. If the Meters are registering but their accuracy is outside the limits established in ANSI C12.1, Supplier shall repair and recalibrate or replace the Meters and Supplier shall adjust invoices to Buyer for the Delivered Amount for the lesser of the period in which the inaccuracy existed or ninety (90) calendar days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the Meters; provided, however, the adjustment period shall not exceed ninety (90) calendar days. If adjusted payments are

required, Supplier shall render a statement describing the adjustments to Buyer within thirty (30) calendar days of the date on which the inaccuracy was rectified. Any payment adjustments due Supplier pursuant to this Section 7.1.5 shall accompany Supplier's statement.

7.1.6 Failed Meters. If the Meters fail to register, Buyer shall make payments to Supplier based upon Buyer's check metering; provided, however, that if the accuracy of the check meters is subsequently determined to be outside the limits established in ANSI C12.1, Buyer shall adjust the payments to Supplier for the Delivered Amount calculated using the check meters for the lesser of the period in which the inaccuracy existed or ninety (90) calendar days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the check meters; provided, however, the adjustment period shall not exceed ninety (90) calendar days. If no such metering is available, payments shall be based upon the Parties' best estimate of the Delivered Amount. In such event, the Parties' estimated payments shall be in full satisfaction of payments due hereunder. If the Parties cannot agree on a best estimate of the Delivered Amount, the dispute shall be resolved in accordance with Section 16.1-16.6.

7.2 Invoices.

7.2.1 Invoicing and Payment. On or before the 10th day of each calendar month, Supplier shall send to Buyer an Invoice for the prior calendar month (a "Billing Period"). The Invoice shall be calculated based upon Meter data available to Supplier and as set forth in *Exhibit* __.

7.2.2 Monthly Energy Invoice Calculation. Supplier shall calculate each monthly Invoice as set forth in *Exhibit* __.

7.3 Payments.

7.3.1 Payment to Buyer. The Invoice referred to in Section 7.2.1 above shall net any amounts owing to Buyer from amounts due to Supplier and shall indicate the net payment due Supplier or Buyer, as applicable. Supplier shall provide supporting data in reasonable detail to support its calculations of any amounts owing to Buyer. Any payment due to Buyer shall be credited to following Billing Periods and if no such Billing Periods remain.

7.3.2 Method of Payment. Buyer and Supplier, as applicable, shall remit the payment of any undisputed amounts pursuant to the instructions stated on the Invoice, and if no instructions are stated on such Invoice, then in accordance with *Exhibit* __. Payment will be made on or before the later of (a) thirty-two (32) calendar days following the end of each Billing Period or (b) thirty (30) calendar days from receipt of Invoice by the applicable Party.

- 7.3.3 Examination and Correction of Invoices. As soon as practicable, either Party shall notify the other Party in writing of any alleged error in Supplier's Invoice.
- 7.3.3.1 If a Party notifies the other Party of an alleged error in Supplier's Invoice, the Parties agree to make Good Faith efforts to reconcile the billing and mutually agree on the appropriate remedy, if any.
- 7.3.3.2 If a correction is determined to be required, Supplier shall provide an adjusted Invoice to Buyer. If such correction results in an additional payment to Supplier, Buyer shall pay Supplier the amount of the adjusted Invoice within thirty (30) calendar days of the date of the receipt of adjusted Invoice. If such correction resulted in a refund owed to Buyer, Supplier shall pay Buyer the amount of the adjusted Invoice within thirty (30) calendar days of the date of the statement or, at Buyer's option, Buyer may net such amount against the subsequent monthly payment to Supplier.
- 7.3.3.3 If Supplier fails to provide Buyer with notice of any alleged error in Supplier's Invoice within twelve (12) months of Buyer's receipt of such Invoice, then Supplier shall be deemed to have waived all rights to object to such Invoice.
- 7.3.4 Overdue Amounts and Refunds. Overdue amounts and refunds of overpayments shall bear interest from and including, the due date or the date of overpayment, as the case may be, to the date of payment of such overdue amounts or refund. Any amounts not paid when due shall bear interest until paid at the prime rate established by CitiBank, N.A. as published in The Wall Street Journal on the date the amount becomes due, plus one (1) percent.
- 7.3.5 Access to Books and Records. Supplier agrees to make available for inspection upon five (5) Business Days written notice from Buyer its books and records for the purpose of allowing Buyer to verify the information contained within the Invoices presented pursuant to this Agreement.
- 7.3.6 Parties Right to Net. Either Party shall have the right to net any undisputed amounts owed to the other Party under this Agreement.
- 7.3.7 Taxes. Supplier is responsible for any Taxes imposed on or associated with the Energy or its delivery to the Delivery Point. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any Tax.

FACILITY CONSTRUCTION, OPERATIONS, AND MODIFICATIONS

- 8.1 Construction of Generating Facility. Supplier shall place the Generating Facility back in service in accordance with Good Utility Practice. Supplier shall provide to Buyer in a form satisfactory to Buyer within thirty (30) calendar days after execution of the IOA, if any, an update to *Exhibit* __ which shall include a single line diagram of the Generating Facility, the Delivery Point, and the location of Meters, which location shall be reasonably acceptable to Buyer.
- 8.2 Commercial Operation. Supplier shall notify Buyer at least ten (10) Business Days prior to the commencement of any performance tests required. Buyer shall have the right to be present at and witness each such test. Supplier shall notify Buyer at least ten (10) Business Days prior to the commencement of the performance tests required by *Exhibit* __. Buyer shall be deemed to waive its right to be present at the performance tests if Buyer fails to appear at the scheduled time for the performance tests. Within five (5) Business Days of the successful completion of the performance tests pursuant to *Exhibit* __, Supplier shall provide Buyer with a written certification that all of the requirements for Commercial Operation hereunder have been satisfied together with completed test summary data sheets and other relevant data derived from such tests demonstrating to Buyer's satisfaction that such tests have been successfully completed.
- 8.3 Modification. Without the prior written consent of Buyer, which shall not be unreasonably delayed, conditioned or denied, Supplier shall not make any modification to the Generating Facility that might (a) expose Buyer to any additional liability or increase its obligations under this Agreement or (b) adversely affect Supplier's or Buyer's ability to perform its obligations under this Agreement or any Law or to any third-party. Any such modifications shall be conducted in accordance with Good Utility Practice and all applicable Laws and reliability criteria, as such may be amended from time to time.
- 8.4 Operation and Maintenance. Supplier at all times shall install, operate, maintain, and repair the Generating Facility in accordance with Good Utility Practice. Supplier agrees to (a) maintain records of all operations of the Generating Facility in accordance with Good Utility Practice, and (b) follow such regulations, directions, and procedures of Buyer, the Control Area Operator, the Transmission Provider, MISO, NERC, and any applicable Governmental Authority to protect and prevent the Transmission System from experiencing any negative impacts resulting from the operation of the Generating Facility. In the event of an inconsistency, Buyer shall choose whose procedures shall govern. Each Party shall use all reasonable efforts to avoid any interference with the other's operations. Supplier shall cause the Energy of the Generating Facility to meet the Power Quality Standards at all times, and shall operate the Generating Facility consistent with MISO, NERC, Buyer, Control Area Operator, and Transmission Provider requirements.
- 8.5 Right to Review. Buyer and Supplier each shall have the right to review and copy during normal business hours copies of the relevant books and records of the other Party to confirm the accuracy of such as they pertain only to transactions under this Agreement. The review shall be consistent with standard business practices and shall follow reasonable

notice to the other Party. Reasonable notice for a review of the previous month's records shall be a minimum of seven (7) Business Days. If a review or copy request is requested of other than the previous month's records, then notice of that request shall be provided with a minimum of fourteen (14) Business Days' notice by the requesting Party. The notice shall specify the period to be covered by the review or copying. The Party providing records can exercise its right under Sections 23.1 to 23.6 to protect the confidentiality of the records.

EMERGENCY AND CURTAILMENT

- 9.1 In the event of an Emergency, Buyer and Supplier shall promptly comply with any applicable requirements of any Governmental Authority, NERC, MISO, Control Area Operator, Transmission Provider, and any successor of any of them regarding the reduced or increased generation of the Generating Facility.
- 9.2 Each Party shall provide prompt oral and written notification to the other Party of any Emergency. If requested by the other Party, the Party declaring the Emergency shall provide a description in reasonable detail of the Emergency and any steps employed to cure it.
- 9.3 In the event of an Emergency, either Party may take reasonable and necessary action to prevent, avoid, or mitigate injury, danger, damage, or loss to its own equipment and facilities, or to expedite restoration of service; provided, however, that the Party taking such action shall give the other Party prior notice, if practicable, before taking any action. This Section 9.3 shall not be construed to supersede Sections 9.1 and 9.2.
- 9.4 In the event of an Emergency, as a result of which Buyer is unable to receive some or all of the Energy at the Delivery Point or is unable to deliver some or all of the Energy to its customers, then Buyer shall have no payment liability in respect of such Energy that Buyer is unable to receive.
- 9.5 Supplier shall curtail deliveries of Energy at any time, in whole or in part, in a quantity and for any duration specified by Buyer upon at least thirty (30) minutes prior notice (which may be given by e-mail or telephone) to Supplier. The quantity of Energy curtailed shall equal a Deemed Delivered Amount for such period of curtailment. Supplier shall promptly provide Buyer with such information and data as Buyer may request to confirm to its satisfaction such Deemed Delivered Amount. Supplier shall be paid for such Deemed Delivered Amount at the Product Rate plus an amount equal to the value of the PTCs, if any, associated with such Deemed Delivered Amount that Supplier or any of its Affiliates were unable to utilize as a result of Buyer's curtailment notice, as if the Deemed Delivered Amount were delivered to Buyer. During any such period of curtailment, Supplier shall not produce Energy (to the extent curtailed by Buyer) or sell Product to any third-party. All Energy curtailed in accordance with this Section 9.5 shall be considered Product delivered to Buyer for all purposes under this Agreement.

- 9.6. Buyer's curtailment for any safety purposes, or to prevent damage to the turbine unit, or as requested by Supplier, shall not subject Buyer to pay for a Deemed Delivered Amount as it relates to this Section.

REPORTS AND OPERATIONS LOG

- 10.1 Copies of Communications. Supplier shall promptly provide Buyer with copies of any orders, decrees, letters, or other written communications to or from any Governmental Authority asserting or indicating that Supplier or its Generating Facility is in violation of Laws that relate to Supplier or the operation or maintenance of the Generating Facility and could have an adverse effect on Buyer. Supplier shall keep Buyer apprised of the status of any such matters.
- 10.2 Notification of Generating Facility Status. Supplier shall notify Buyer of the status of the Generating Facility as an EWG, QF, or such other status no later than ninety (90) calendar days prior to the Operation Date. Supplier shall notify Buyer, as soon as practicable, of any changes in that status after the Operation Date of this Agreement.
- 10.3 Notices of Change in Generating Facility. In addition to any consent required pursuant to Section 8, Supplier shall provide notice to Buyer as soon as practicable prior to any temporary or permanent change to the performance, operating characteristics, or Wind Turbine of the Generating Facility. Such notice shall describe any changes, expected or otherwise, to the total capacity of the Generating Facility, the rate of production and delivery of Energy, interconnection and transmission issues, and such additional information as may be required by Buyer.
- 10.4 Scheduled Operation Date and Commercial Operation Date. Supplier shall provide notice to Buyer of its scheduled Operation Date and Commercial Operation Date and Supplier shall provide to Buyer in writing any adjustments to such scheduled dates as soon as possible, and shall coordinate with Buyer regarding the commencement of operation of the Generating Facility.
- 10.5 After Commercial Operation Date. After the Commercial Operation Date, Supplier shall provide to Buyer on January 1 and July 1 of each calendar year throughout the Term of this Agreement, in both electronic and hard copy format, a report which shall include all pertinent information in connection with Supplier's Generating Facility, which includes all reporting information maintained in the operational log. Each February during the Term, the Parties may meet to conduct an annual review of the Generating Facility at the request of either Party. Additional data and meetings may be required as necessitated by Generating Facility performance.
- 10.6 Operations Log. Supplier shall maintain an operations log, which shall include the Delivered Amount, unplanned maintenance outages, circuit breaker trip operations, partial deratings of equipment, and any other significant event or information related to the

operation of the Generating Facility. The operations log shall be available for inspection and copying by Buyer upon reasonable advance request, and Supplier shall make the data that supports the log available on a real-time basis by remote access to Buyer, if Buyer acquires the necessary equipment and software license to process the data by remote access

- 10.7 Financial Information. Upon Buyer's written request, Supplier shall, within thirty (30) calendar days of such request, provide Buyer with (a) copies of Supplier's most recent financial statements required by Supplier's Lenders and (b) in the initial request by Buyer, the relevant provisions of Supplier's lending agreements setting forth the financial reporting obligations and, for any subsequent requests, any amendments thereto. In the event Supplier is funding one hundred percent (100%) of the engineering, procurement, construction, and operation of the Generating Facility with its own equity, then Supplier shall, within thirty (30) calendar days of a request for its most recent financial statements, provide Buyer with copies of such financial statements prepared in accordance with generally accepted accounting principles in the United State as in effect from time to time.

COMMUNICATIONS

- 11.1 On Call. Supplier's Operating Representative shall be available to address and make decisions on all operational matters under this Agreement on a twenty-four (24) hour, seven (7) day per week basis. Supplier shall, at its expense, maintain and install a twenty-four (24) hour, seven (7) day per week communication link with Buyer's Operating Representative at Buyer's operations center and with Buyer's scheduling personnel, as listed on *Exhibit* __, to maintain communications between personnel on site at the Generating Facility and Buyer's Operating Representative at Buyer's operations center, Buyer's schedulers, and the Control Area Operator at all times. Supplier shall provide at its expense:
- 11.1.1 For the purposes of telemetering, a telecommunications circuit from the Generating Facility to Buyer's operations center;
 - 11.1.2 Two (2) dedicated ringdown voice telephone lines for purposes of accessing Buyer's dial-up metering equipment and for communications with Buyer's operations center; and
 - 11.1.3 Equipment to transmit to and receive voice data, facsimiles, and email from Buyer and the Control Area Operator.

COMPLIANCE

- 12.1 Compliance with Laws. Each Party shall comply with all relevant Laws and shall, at its sole expense, maintain in full force and effect all relevant permits, authorizations, licenses,

and other authorizations material to the maintenance of its facilities and the performance of obligations under this Agreement. Each Party and its representatives shall comply with all relevant requirements of the Control Area Operator, Transmission Provider, and each Governmental Authority to ensure the safety of its employees and the public.

- 12.2 Good Utility Practice. Buyer and Supplier shall perform, or cause to be performed, their obligations under this Agreement in all material respects in accordance with Good Utility Practice.

CREDITWORTHINESS AND SECURITY

- 13.1 Credit Appraisal. Acceptance of this Agreement is contingent upon (i) Buyer's completion of a credit appraisal of Supplier and (ii) Buyer's determination, in its sole discretion, that Supplier is able to perform its obligations. To enable Buyer to conduct such credit appraisal, within 30 days after the Effective Date Supplier shall submit the information below to the extent such information is applicable to Supplier. All such information shall be submitted on a confidential basis.
- 13.1.1 Supplier shall provide the latest audited fiscal and latest interim financial statements, prepared in accordance with generally accepted accounting principles;
- 13.1.2 Supplier shall confirm in writing that it is not operating under any chapter of the bankruptcy laws and is not subject to liquidation or debt reduction procedures under state laws, such as an assignment for the benefit of creditors, or any informal creditors' committee agreement;
- 13.1.3 Supplier shall confirm in writing that no significant collection lawsuits or judgments are outstanding which would seriously reflect upon the business entity's ability to remain solvent;
- 13.1.4 Supplier shall provide a statement of prospective Supplier's legal composition and ownership;
- 13.1.5 Supplier shall provide such other information as may be requested by Buyer; and
- 13.1.6 In the event Supplier cannot provide the information above, it shall, if applicable, provide that information for Supplier's parent company or guarantor.
- 13.1.7 Within 5 business days after receipt of the above information required from Supplier, Buyer shall notify in writing if Buyer is not satisfied with Supplier's financial condition and, in the absence of such notice, Buyer shall be deemed to have accepted Buyer's financial condition and ability to perform this Agreement.
- 13.2 Waiver of Buyer Security. Supplier hereby waives any and all rights it may have, including rights at Law and otherwise, to require Buyer to provide financial assurances or security

(including, but not limited to, cash, letters of credit, bonds, or other collateral) in respect of its obligations under this Agreement.

- 13.3 Adequate Assurances. If at any time, Buyer has reasonable grounds for insecurity of the Supplier's ability to perform under this Agreement, then Buyer may require Supplier to Provide adequate assurance of due performance as determined by Buyer in a commercially reasonable manner. After receipt of a justified demand, Supplier shall provide such assurance of due performance as is adequate under the circumstances within thirty (30) calendar days of the particular demand.
- 13.4 Letter of Credit. Within 30 days of Buyer's approval of Supplier's financial condition to perform this Agreement, as set forth in Section 13.1, above, Supplier shall provide to Buyer an irrevocable letter of credit in the amount of \$150,000. If Buyer shall be required to incur any expense related to the decommissioning of the Wind Turbine at any time before the commencement of the 6th Contract Year, then Buyer shall be entitled to draw upon such letter of credit in such amount as necessary to reimburse Buyer for such expenses incurred. Commencing with the 6th Contract Year, such letter of credit shall no longer be required.

LIMITATION OF LIABILITY

- 14.1 Responsibility for Damages. Except where caused by Buyer's gross negligence or willful misconduct, Supplier shall be responsible for all physical damage to or destruction of the property, equipment, and/or facilities owned by it and Supplier hereby releases Buyer from any reimbursement for such damage or destruction.
- 14.2 Limitation on Damages. To the fullest extent permitted by Law, and notwithstanding other provisions of this Agreement, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages, and lost business opportunities), exemplary, or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement.
- 14.3 Survival. The provisions of Section 14.1-14.2 shall survive any termination, cancellation, expiration, or suspension of this Agreement.

FORCE MAJEURE

- 15.1 Excuse. Subject to Section 15.4, neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations, and shall be excused in the performance of its obligations under this Agreement (including any

obligation to deliver or accept Product), if such delay or failure is due to an event of Force Majeure.

- 15.2 "Force Majeure" means, subject to Section 15.3, any of the following enumerated events that occur subsequent to the Effective Date and before the termination or expiration of the Term of this Agreement, and that delays or prevents a Party's performance of its obligations under this Agreement, but only to the extent that (a) such event of Force Majeure is not attributable to fault or negligence on the part of that Party; (b) such event of Force Majeure is caused by factors beyond that Party's reasonable control; (c) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate, or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate, or overcome such event or consequences; and (d) such Party has satisfied the requirements of Section 15.4:
- 15.2.1 Acts of God such as storms, hurricanes, floods, lightning, and earthquakes;
 - 15.2.2 Sabotage or destruction by a third-party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
 - 15.2.3 War, riot, acts of a public enemy or other civil disturbance;
 - 15.2.4 Strike, walkout, lockout or other significant labor dispute;
 - 15.2.5 Action or inaction of a Governmental Authority (excluding any change in Law, including Renewable Energy Law); or
 - 15.2.6 Action or inaction of Transmission Provider, but excluding any FERC approved amendments to Transmission Provider's FERC approved tariff.
- 15.3 Exclusions. None of the following shall constitute an event of Force Majeure:
- 15.3.1 Economic hardship of either Party;
 - 15.3.2 The non-availability of wind to generate electricity from the Generating Facility;
 - 15.3.3 A Party's failure to obtain any permit, license, consent, agreement, or other approval from a Governmental Authority attributable to the fault or negligence of that Party, except to the extent it is caused by an event listed in Sections 15.2.3 or 15.2.4; and
- 15.4 Conditions. A Party may rely on a claim of Force Majeure to excuse its performance only to the extent that such Party:
- 15.4.1 Provides prompt notice of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;

- 15.4.2 Exercises all reasonable efforts to continue to perform its obligations under this Agreement;
- 15.4.3 Expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the event or condition being corrected or cured using commercially reasonable efforts; provided, however, that settlement of strikes or other labor disputes will be completely within the sole discretion of the Party affected by such strike or labor dispute;
- 15.4.4 Exercises all commercially reasonable efforts to mitigate or limit damages to the other Party; and
- 15.4.5 Provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

DISPUTES

- 16.1 **Dispute or Claim.** Any cause of action, claim, or dispute which either Party may have against the other arising out of or relating to this Agreement, including the interpretation of the terms hereof or any Laws that affect this Agreement, or the transactions contemplated hereunder, or the breach, termination, or validity thereof ("Dispute") shall be submitted in writing to the other Party. The written submission of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and appropriate supporting documentation.
- 16.2 **Good Faith Resolution.** The Parties agree to cooperate in Good Faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligations under this Agreement.
- 16.3 **Informal Negotiation.** The Parties shall first attempt in Good Faith to resolve any Dispute through informal negotiations by the Operating Representatives or Contract Representatives and senior management of each Party.
- 16.4 **Mediation.** If the Parties are unable to resolve a Dispute as provided in Section 16.3, and before formally instituting any other dispute resolution mechanism, the Parties shall use the services of a mutually acceptable neutral mediator, who meets the qualifications of MCR 2.411, to bring the Parties together in at least one mediation session. All mediation sessions shall occur within 60 days after receipt of written submission of any Dispute provided in Section 16.1.
- 16.5 **Litigation.** If the Parties are unable to resolve any Dispute pursuant to the foregoing, either may seek redress in a court of law or equity subject to the exclusive jurisdiction in the state

court. All meetings, hearings and actions to resolve any Dispute shall be in Grand Traverse County as venue.

- 16.6 Recovery Costs. In the event any action is brought at law or in equity in court to enforce any provision of this Agreement, or for damages by reason of any alleged breach of this Agreement, then the prevailing Party will be entitled to recover from the other Party all costs of the suit, including court costs, the prevailing Party's reasonable attorneys' fees, and related costs and expenses of litigation.

NATURE OF OBLIGATIONS

- 17.1 Relationship of the Parties. The provisions of this Agreement shall not be construed to create an association, trust, partnership, or joint venture; or impose a trust or partnership duty, obligation, or liability or agency relationship between the Parties.
- 17.2 No Public Dedication. By this Agreement, neither Party dedicates any part of its facilities nor the service provided under this Agreement to the public.

ASSIGNMENT

- 18.1 Buyer Assignment. Buyer's obligations hereunder shall not be assigned by Buyer without the prior written consent of Supplier, which consent shall not be unreasonably delayed, conditioned or denied.
- 18.2 Supplier Assignment. Supplier's obligations hereunder shall not be assigned by Supplier without the prior written consent of Buyer, which consent shall not be unreasonably delayed, conditioned or denied.
- 18.3 Liability After Assignment. A Party's assignment or transfer of rights or obligations pursuant to this Agreement and consented to by the other Party shall relieve said Party from any liability and financial responsibility for the future performance thereof arising after any such transfer or assignment, provided such transferee enters into an assignment and assumption agreement in form and substance satisfactory to the other Party, pursuant to which such transferee assumes all of the assigning or transferring Party's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.
- 18.4 Transfers of Ownership. Subject to Section 6.1-6.4, during the Term, Supplier shall not sell, transfer, assign, or otherwise dispose of its ownership interest in the Generating Facility to any third-party absent (a) a transfer of this Agreement to such third-party and (b) Supplier entering into an assignment and assumption agreement, in form and substance satisfactory to Buyer, with such third-party pursuant to which such third-party assumes all

of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.

- 18.5 Assignee Obligations. Supplier shall procure and deliver to Buyer an undertaking, enforceable by Buyer, from each party possessing a security interest in the Generating Facility to the effect that, if such party forecloses on its security interest, (a) it will assume Supplier's obligations under and otherwise be bound by the terms of this Agreement, and (b) it will not sell, transfer, or otherwise dispose of its interest in the Generating Facility to any third-party absent an agreement from such third-party to assume Supplier's obligations under and otherwise be bound by the terms of this Agreement.
- 18.6 Successors and Assigns. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

DEFAULT AND REMEDIES

- 19.1 Events of Default. Except to the extent excused due to an event of Force Majeure in accordance with this Agreement, an event of default ("Event of Default") shall be deemed to have occurred with respect to a Party (the "Defaulting Party") upon the occurrence of one or more of the following events:
- 19.1.1 Failure to comply with any material obligations imposed upon it by this Agreement;
 - 19.1.2 Failure to make timely payments due under this Agreement;
 - 19.1.3 Failure to comply with the material requirements of the Control Area Operator, Transmission Provider, Buyer, MISO, MPSC, FERC, and any successor thereto where following such directions is required hereunder;
 - 19.1.4 In the case of Supplier, its failure to install, operate, maintain, or repair the Generating Facility or Meters in accordance with Good Utility Practice;
 - 19.1.5 In the case of Supplier, its failure to comply with the provisions of Section 13.3 or 13.4;
 - 19.1.6 In the case of Supplier, its failure to comply with the provisions of Section 18.2 or 18.4;
 - 19.1.7 In the case of Supplier, its failure to comply with the provisions of Section 22.1 and 22.6; and
 - 19.1.8 In the case of Supplier, if Supplier (a) becomes insolvent and files for or is forced into bankruptcy, (b) makes an assignment for the benefit of creditors, (c) is unable

to pay its debts as they become due, or (d) is subject to a similar action or proceeding.

- 19.2 Cure Period. Upon the occurrence of an Event of Default, other than pursuant to Section 19.1.8, the Defaulting Party shall be entitled to a period of thirty (30) calendar days from the date of written notice of such default from the Non-Defaulting Party such occurrence (the "Cure Period") to cure such Event of Default during which time the duties and obligations of the Non-Defaulting Party under this Agreement are suspended. If such Event of Default is not capable of cure within such 30-day notice period, and if the Defaulting Party commences and diligently proceeds to cure such default within such 30-day notice period, then the Cure Period shall be extended up to 60 additional days.
- 19.3 Remedies. If an Event of Default is not cured by the Defaulting Party during the Cure Period, the Non-Defaulting Party shall be entitled to all legal remedies that are not expressly prohibited by the terms of this Agreement, including termination of this Agreement as provided in Section 2.3.

REPRESENTATIONS AND WARRANTIES OF SUPPLIER

Supplier represents and warrants the following to Buyer as of the Effective Date and the beginning of each Contract Year, as applicable:

- 20.1 Organization; Qualification. Supplier is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Michigan and has all requisite power and authority to own, lease, and/or operate its properties and to carry on its business as is now being conducted. Supplier is duly qualified or licensed to do business as a limited liability company and is in good standing in each jurisdiction in which the property owned, leased, or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.
- 20.2 Authority Relative to this Agreement. Supplier has full authority to execute, deliver, and perform this Agreement to which it is a Party and to consummate the transactions contemplated herein. No other proceedings or approvals on the part of Supplier are necessary to authorize this Agreement. This Agreement constitutes a legal, valid, and binding obligation of Supplier enforceable in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of rights generally.
- 20.3 Consents and Approvals: No Violation. The execution, delivery, and performance of this Agreement by Supplier shall not (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Supplier; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except where the failure to obtain such consent, approval,

authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect; or (c) result in a default (or give rise to any right of termination, cancellation, or acceleration) under any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation to which Supplier or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation, or acceleration) as to which requisite waivers or consents have been obtained.

- 20.4 Regulation as a Utility. Except as set forth in *Exhibit __*, Supplier is not subject to regulation as a public utility or public service company (or similar designation) by any Governmental Authority.
- 20.5 Availability of Funds. Supplier has, or will have, and shall maintain, sufficient funds available to it to perform all obligations under this Agreement and to consummate the obligations contemplated pursuant thereto.
- 20.6 Related Agreements. Supplier has entered into or will enter into all necessary and material agreements as listed in *Exhibit __* related to Supplier's obligations under this Agreement.
- 20.7 Title. Upon achieving the Operation Date, Supplier owns all Product attributable to the Generating Facility and has the right to sell such Product to Buyer. Supplier will convey good title to the Product to Buyer free and clear of any liens or other encumbrances or title defects, including any which would affect Buyer's ownership of any portion of such Product or prevent the subsequent transfer of any portion of such Product by Buyer to a third-party.
- 20.8 Generating Facility Site. Supplier either (a) owns the real property on which the Generating Facility is located, (b) has obtained the option to exclusively use and/or purchase the real property on which the Generating Facility will be located, or (c) has obtained the necessary rights to construct and operate the Generating Facility on such real property, throughout the Term.

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants the following to Supplier as of the Effective Date and the beginning of each Contract Year, as applicable:

- 21.1 Organization; Qualification. Buyer is a Michigan municipal electric utility duly organized, validly existing and in good standing under the laws of the State of Michigan and has all requisite power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted.
- 21.2 Authority Relative to this Agreement. Buyer has full authority to execute, deliver, and perform this Agreement to which it is a Party and to consummate the transactions

contemplated herein. No other proceedings or approvals on the part of Buyer are necessary to authorize this Agreement. This Agreement constitutes a legal, valid, and binding obligation of Buyer enforceable in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of rights generally.

- 21.3 Consents and Approvals; No Violation. The execution, delivery, and performance of this Agreement by Buyer shall not (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Buyer; (b) require any consent, approval, authorization, or permit of, or filing with or notification to, any Governmental Authority, except (i) where the failure to obtain such consent, approval, authorization, or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (ii) for those consents, authorizations, approvals, permits, filings, and notices which become applicable to Buyer (or any of its Affiliates) or as a result of any other facts that specifically relate to the business or activities in which Buyer (or any of its Affiliates) is or proposes to be engaged, which consents, approvals, authorizations, permits, filings, and notices have been obtained or made by Buyer; or (c) result in a default (or give rise to any right of termination, cancellation, or acceleration) under any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation, or acceleration) as to which requisite waivers or consents have been obtained.
- 21.4 Related Agreements. Buyer warrants that it has entered into or will enter into all necessary and material agreements related to Buyer's obligations under this Agreement.

INSURANCE

- 22.1 General Requirements. Supplier shall maintain at all times, at its own expense, general/commercial liability, worker's compensation, and other forms of insurance relating to its property, operations, and facilities in the manner and amounts set forth herein from the Effective Date of this Agreement. Supplier shall maintain coverage on all policies written on a "claims made" or "occurrence" basis. If converted to an occurrence form policy, the new policy shall be endorsed to provide coverage back to a retroactive date acceptable to Buyer. On all insurance policies, Supplier shall maintain Buyer and the City of Traverse City as additional named insureds.
- 22.2 Qualified Insurers. Every contract of insurance providing the coverage required herein shall be with an insurer or eligible surplus lines insurer qualified to do business in the State of Michigan and with the equivalent, on a continuous basis, of a "Best Rating" of "A" or better and shall include provisions or endorsements:

- 22.2.1 Stating that such insurance is primary insurance with respect to the interest of Buyer and that any insurance maintained by Buyer is excess and not contributory insurance required hereunder;
 - 22.2.2 Stating that no reduction, cancellation, or expiration of the policy shall be effective until ninety (90) calendar days from the date notice thereof is actually received by Buyer, provided that upon Supplier's receipt of any notice of reduction, cancellation, or expiration, Supplier shall immediately provide notice thereof to Buyer; and
 - 22.2.3 Naming Buyer as an additional insured on the general liability insurance policies of Supplier as its interests may appear with respect to this Agreement.
- 22.3 Certificates of Insurance. Within thirty (30) calendar days of the Effective Date, Supplier shall provide to Buyer, and shall continue to provide to Buyer within thirty (30) calendar days of each anniversary of the Effective Date until the expiration of this Agreement, upon any change in coverage, or at the request of Buyer not to exceed once each year, properly executed and current certificates of insurance with respect to all insurance policies required to be maintained by Supplier under this Agreement. Certificates of insurance shall provide the following information:
- 22.3.1 The name of insurance company, policy number, and expiration date;
 - 22.3.2 The coverage required and the limits on each, including the amount of deductibles or self-insured retentions, which shall be for the account of Supplier maintaining such policy; and
 - 22.3.3 A manuscript endorsement indicating that Buyer shall receive at least thirty (30) calendar days prior notice of cancellation or expiration of a policy or of a reduction of liability limits with respect to a policy, including for nonpayment of premium.
- 22.4 Certified Copies of Insurance Policies. At Buyer's request, in addition to the foregoing certifications, Supplier shall deliver to Buyer a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company.
- 22.5 Inspection of Insurance Policies. Buyer shall have the right to inspect the original policies of insurance applicable to this Agreement at Supplier's place of business during regular business hours.
- 22.6 Supplier's Minimum Insurance Requirements.
- 22.6.1 Worker's Compensation. Worker's compensation insurance in accordance with statutory requirements including employer's liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence and endorsement

providing insurance for obligations under the U.S. Longshoremen's and Harbor Worker's Compensation Act and the Jones Act where applicable.

- 22.6.2 General Liability. General liability insurance including bodily injury, property damage, products/completed operations, contractual and personal injury liability with a combined single limit of at least five million dollars (\$5,000,000) per occurrence and at least five million dollars (\$5,000,000) annual aggregate.
- 22.6.3 Automobile Liability. Automobile liability insurance including owned, non-owned, and hired automobiles with combined bodily injury and property damage limits of at least one million dollars (\$1,000,000) per occurrence and at least one million dollars (\$1,000,000) aggregate.
- 22.7 Failure to Comply. If Supplier fails to comply with the provisions of Sections 22.1 to 22-7, Supplier shall save harmless and indemnify Buyer from any direct and indirect loss and liability, including attorneys' fees and other costs of litigation, resulting from the injury or death of any person or damage to any property if Buyer would have been protected had Supplier complied with the requirements of these Sections.

CONFIDENTIALITY

- 23.1 Confidential Information. "Confidential Information" means information provided by one Party (the "Disclosing Party") to the other (the "Receiving Party") in connection with the negotiation or performance of this Agreement that is clearly labeled or designated by the Disclosing Party as "confidential" or "proprietary" or with words of like meaning or, if disclosed orally, clearly identified as confidential with that status confirmed promptly thereafter in writing, excluding, however, information described in Section 23.3.
- 23.2 Treatment of Confidential Information. The Receiving Party shall treat any Confidential Information with at least the same degree of care regarding its secrecy and confidentiality as the Receiving Party's similar information is treated within the Receiving Party's organization. The Receiving Party shall keep confidential and not disclose the Confidential Information of the Disclosing Party to third parties (except as stated hereinafter) nor use it for any purpose other than the performance under this Agreement, without the express prior written consent of the Disclosing Party. The Receiving Party further agrees that it shall restrict disclosure of Confidential Information as follows:
- 23.2.1 Disclosure shall be restricted solely to (a) its agents as may be necessary to enforce the terms of this Agreement; (b) its Affiliates, shareholders, directors, officers, employees, advisors, lenders, and representatives as necessary; (c) any Governmental Authority in connection with seeking any required regulatory approval; (d) to the extent required by applicable Law, in the case of Buyer *only*, potential transferees of Energy obtained by Buyer; and (e) potential assignees of this Agreement (together with their agents, advisors, and representatives) as may be

necessary in connection with any such assignment (which assignment or transfer shall be in compliance with this Agreement), in each case after advising those agents of their obligations under this Agreement.

23.2.2 In the event that the Receiving Party is required by applicable Law to disclose any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt notice of such request or requirement to enable Disclosing Party to seek an appropriate protective order or other remedy and to consult with Disclosing Party with respect to Disclosing Party taking steps to resist or narrow the scope of such request or legal process. The Receiving Party agrees not to oppose any action by the Disclosing Party to obtain a protective order or other appropriate remedy. In the absence of such protective order, and provided that the Receiving Party is advised by its counsel that it is compelled to disclose the Confidential Information, the Receiving Party shall:

23.2.2.1 Furnish only that portion of the Confidential Information which the Receiving Party is advised by counsel is legally required; and

23.2.2.2 Use its commercially reasonable efforts, at the expense of the Disclosing Party, to ensure that all Confidential Information so disclosed will be accorded confidential treatment.

23.2.3 Section 23.2.2 shall only apply to information disclosed as contemplated by 23.2.1.

23.3 Excluded Information. Confidential Information shall be deemed not to include the following:

23.3.1 Information which is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party in breach of this Agreement;

23.3.2 Information which was available to the Receiving Party on a nonconfidential basis prior to its disclosure by the Disclosing Party; and

23.3.3 Information which becomes available to the Receiving Party on a nonconfidential basis from a Person other than the Disclosing Party or its representative who is not otherwise bound by a confidentiality agreement with Disclosing Party or its agent or is otherwise not under any obligation to Disclosing Party or its agent not to disclose such information to the Receiving Party and the Receiving Party, exercising reasonable due diligence, should have known of such obligation.

23.4 Injunctive Relief Due to Breach. The Parties agree that remedies at Law may be inadequate to protect each other in the event of a breach of Confidential Information Sections, and the Receiving Party hereby in advance agrees that the Disclosing Party shall be entitled to seek, without proof of actual damages, temporary, preliminary, and permanent injunctive

relief from any Governmental Authority restraining the Receiving Party from committing or continuing any such breach.

- 23.5 Public Statements. The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement or the transactions contemplated hereby and Supplier shall not issue any such public announcement, statement or other disclosure without having first received the written consent of Buyer, except as may be required by Law. Notwithstanding the foregoing, Supplier acknowledges and agrees that Buyer may advertise, issue brochures or make other announcements, publications or releases regarding this Agreement and the Generating Facility for educational, promotional or informational purposes. Supplier shall reasonably cooperate with Buyer regarding such activities, including providing Buyer with reasonable access to the Generating Facility and authorizing the use of pictures of the Generating Facility for such activities.
- 23.6 The Parties acknowledge that Buyer is subject to the Michigan Freedom of Information Act (FOIA) and that Buyer's obligations under this Section with respect to confidential information are and shall be first subject to FOIA.

MISCELLANEOUS

24.1 Notices.

- 24.1.1 All notices hereunder shall, unless expressly specified otherwise, be in writing and shall be addressed, except as otherwise stated herein, to the Parties' Contract Representatives as set forth in *Exhibit* __ or as modified from time to time by the receiving Party by notice to the other Party. Any changes to *Exhibit* __ shall not constitute an amendment to this Agreement.
- 24.1.2 All notices or submittals required by this Agreement shall be sent either by hand-delivery, regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, overnight courier delivery, electronic mail, or facsimile transmission. Such notices or submittals will be effective upon receipt by the addressee, except that notices or submittals transmitted by electronic mail or facsimile transmission shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 1600 EPT, and if transmitted after that time, on the following Business Day; provided, however, that if any notice or submittal is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

- 24.1.3 All oral notifications required under this Agreement shall be made to the receiving Party's Operating Representative and shall promptly be followed by notice as provided in the other provisions of this Section 24.1.
- 24.2 Integration. This Agreement contains the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations, whether written or oral, by the Parties with respect to such subject matter.
- 24.3 Counterparts. This Agreement may be executed in two (2) counterparts, both of which shall be deemed an original and when taken together shall constitute one and the same instrument.
- 24.4 Interpretation. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The words "include", "includes", and "including" in this Agreement shall not be limiting and shall be deemed in all instances to be followed by the phrase "without limitation". References to Articles and Sections herein are cross-references to Articles and Sections, respectively, in this Agreement. Unless otherwise stated and where the context requires, words, including capitalized terms, importing the singular will include the plural and vice versa.
- 24.5 Headings and Recitals. The headings or section titles contained in this Agreement are inserted solely for convenience and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner in the construction of this Agreement. The Recitals are to be used in the construction of this Agreement, and are considered terms of this Agreement.
- 24.6 Severability. If any term, provision, or condition of this Agreement is held to be invalid, void, or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision, or condition shall be deemed severed from this Agreement and all remaining terms, provisions, and conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in Good Faith to replace such invalid, void, or unenforceable provisions with valid and enforceable provisions which achieve the purpose intended by the Parties to the greatest extent permitted by law.
- 24.7 Waivers; Remedies Cumulative. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing or course of performance between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be

effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

- 24.8 Amendments. The Parties agree that if the Laws that govern this Agreement are amended or superseded such that a change in Law causes a Material Adverse Effect on either Party, the affected Party is entitled to provide written notice to the other requesting that the Parties convene and negotiate in Good Faith ways to amend this Agreement to mitigate the Material Adverse Effect. Otherwise, amendments to this Agreement shall be mutually agreed upon by the Parties, produced in writing, and shall be executed by an authorized representative of each Party.
- 24.9 Time is of the Essence. Time is of the essence to this Agreement and in the performance of all of the covenants, obligations, and conditions hereof.
- 24.10 Choice of Law. This Agreement and the rights and obligations of the Parties shall be construed and governed by the Laws of the State of Michigan.
- 24.11 Further Assurances. The Parties hereto agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents, and information which a Party may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
- 24.12 Forward Contract. The Parties acknowledge and agree that this Agreement is a contract (other than a Commodity Contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two calendar days after the date the contract is entered into. "Commodity Contract" means (a) with respect to a futures commission merchant, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade; (b) with respect to a foreign futures commission merchant, foreign future; (c) with respect to a leverage transaction merchant, leverage transaction; (d) with respect to a clearing organization, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization; or (e) with respect to a commodity options dealer, commodity option.
- 24.13 No Third-Party Beneficiaries. There are no third-party beneficiaries and (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability, or standard of care to any third-party; (b) no third-party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder; and (c) this

Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third-party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the Effective Date:

BUYER:

Traverse City Light & Power Department

SUPPLIER:

Heritage Sustainable Energy, LLC

By: John Taylor

Its: Board Chairman

By:

Its:

By: Timothy J. Arends

Its: Board Secretary

APPROVED AS TO SUBSTANCE:

Timothy J. Arends, Executive Director

APPROVED AS TO FORM:

W. Peter Doren, General Counsel



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Karla Myers-Beman, Controller *KMB*
Date: October 20, 2014
Subject: Cowell Family Center Agreement

Munson Medical Center Engineering and Design ("Munson") on September 30, 2013 issued a proposal to both TCL&P and Consumers Energy ("Consumers") to provide electrical service to the Cowell Family Cancer Center ("Cancer Center").

During the proposal review meeting, Munson notified TCL&P it was their intention to initially select Consumers based on the ability to connect the Cancer Center with their primary rate meter at the hospital. This rate would be less expensive than TCL&P commercial rates and provide other benefits such as a secondary backup system and connection to Munson's substation. (The Cancer Center alone would not substantiate enough load for the TCL&P primary rate.) At that time, TCL&P informed Munson of the 1994 TCL&P and Consumers Agreement, whereby it stated the property was to be served by TCL&P. After legal review and further discussions Munson came to TCL&P and requested that TCL&P consider discounting the secondary and second feed connection charges that were requested in the proposal.

TCL&P staff surveyed how other utilities charge local commercial customers for connection charges. It was determined that TCL&P propose, similar to other utilities, to reduce the connection charges in the amount of \$110,327.75 from the initial amount of \$194,706.50, based on a formula that measures anticipated utility revenues from the new service, as explained below.

Based on the load information provided to TCL&P by Munson, net revenues over and above the cost of TCL&P's purchased power costs (71.8% of charged rates) are anticipated to be \$51,852.19 annually. TCL&P will take three year's net revenues and apply those revenues to the new connection charges, excluding non-standard customer requested materials (underground footage for alternative feed, transformer charge, and auto throw switch) and the primary feed underground per foot charges, as provided in the board underground policy. The new connection estimate is (\$194,706.50 total cost -\$109,781.50 non-standard customer requested materials and primary feed underground = \$84,925.00) \$84,925.00. If the three year net revenues of \$155,556.57 (\$51,852.19 x 3= \$155,556.57) do not exceed the new connection estimate of \$84,925 Munson would be invoiced for the difference. If the three year net revenues do exceed the new connection estimate Munson would not be invoiced for any amount and the connection

FOR THE LIGHT & POWER BOARD MEETING OF OCTOBER 28, 2014

charges would be recovered through the first three years billings.

Attached is the proposed Agreement drafted by legal counsel along with the attachments for you to review.

Staff recommends the Board's approval of the Agreement between TCL&P and Munson Medical Center to provide electrical service to the Cowell Family Cancer Center.

If after Board discussion you agree with staff's recommendation the following motion would be appropriate:

MOVED BY _____, SECONDED BY _____,

THAT THE BOARD AUTHORIZES THE SECRETARY AND CHAIRMAN TO EXECUTE THE ELECTRIC SERVICE AGREEMENT FOR THE COWELL FAMILY CANCER CENTER, SUBJECT TO APPROVAL AS TO SUBSTANCE BY THE EXECUTIVE DIRECTOR AND AS TO FORM BY GENERAL COUNSEL.

**ELECTRIC SERVICE AGREEMENT
FOR COWELL FAMILY CANCER CENTER**

This Electric Service Agreement for Cowell Family Cancer Center (Agreement) is effective as of the date last signed below (Effective Date) between MUNSON MEDICAL CENTER, whose address is 1105 Sixth Street, Traverse City, Michigan 49684-2386 (Customer), and the TRAVERSE CITY LIGHT AND POWER DEPARTMENT, whose address is 1131 Hastings Street, Traverse City, Michigan 49686 (Utility), agree as follows:

1. Cowell Family Cancer Center. The Cowell Family Cancer Center is the property and current and future improvements to the property as described on **Attachment A** which is attached hereto and incorporated here by reference. The Cowell Family Cancer Center is owned by the Customer. The Utility will provide all of the electricity to the Cowell Family Cancer Center.

2. Estimated Connection Charges. Utility must ensure that its connection complies with all applicable laws, rules, regulations, and industry-standards. Utility will install temporary service equipment and wiring as part of the construction process by December 14, 2014. Utility must also ensure that it has completed all connections necessary for Customer to receive electrical service to the Cowell Family Cancer Center by the following deadline (whichever occurs first) (Connection Deadline): (1) the date Munson receives its temporary occupancy permit, (estimated October, 2015) or (2) December 31, 2015. Notwithstanding the Connection Deadline in the prior sentence, Utility is not in violation of this Agreement if it fails to meet that Connection Deadline due to either (a) an act of Munson (or Munson's architects, engineers, or contractors) that materially impairs Utility's ability to meet the Connection Deadline; or (2) an act outside of the Utility's reasonable control, such as Force Majeure. "Force Majeure" means unforeseeable events beyond a party's reasonable control and without such party's failure or negligence, including, but not limited to, acts of God, acts of public enemy, acts of the federal or state

government, acts of a court such as injunctions, fire, flood, inclement weather, epidemic, quarantine restrictions, strikes and embargoes, labor disturbance, the unavailability of raw materials and delays of subcontractors due to such causes, but only if the party seeking to claim Force Majeure takes reasonable actions necessary to avoid or lessen delays caused thereby. If Utility fails to meet the Connection to provide Customer with electrical service to the Cowell Family Cancer Center, Customer has these rights: (1) Customer may terminate this Agreement (but not Utility's exclusive right to serve the Cowell Family Cancer Center); and (2) Customer may pursue all other available relief available to it. A description of the connection Utility must make for Customer's Cowell Family Cancer Center, and the costs of that connection, are described on **Attachment B** which is attached hereto and incorporated by reference. The Estimated Connection Charges and discount Utility must apply to that Estimated Connection Charge (Discount) for the Cowell Family Cancer Center are as follows:

Utility's Estimated Connection Charges	\$186,081.50
Primary feed underground (350')	8,625.00
Total estimated cost	<u>\$194,706.50</u>
Less: Non-discountable:	
Underground footage for alternative feed	(12,925.00)
Transformer charge	(15,000.00)
Auto Throw Switch (ATO)	<u>(57,000.00)</u>
Total Cost Subject To Discount	<u>\$109,781.50</u>
Estimated Connection Charges Minus Applicable Discount	<u>\$84,925.00</u>
Utility's Estimated Net Revenues for three years	\$155,556.57

3. Estimated Net Revenues. If the actual three years Net Revenues (revenues less purchase power costs) does not exceed the actual "Total Cost Subject to Discount" referred to in Section 2 above, the Customer will reimburse the Utility the difference between actual three year revenues

and the actual Total Cost Subject To Discount. Utility may not invoice Customer for the actual "Total Cost Subject to Discount" if the actual three years Net Revenues equal or exceed the Total Cost Subject to Discount. For purposes of the calculation described in this Section 3, the phrase "actual three years net revenues" means the revenues Utility receives from providing electric service to Customer at the Cowell Family Cancer Center from the time period beginning on the date Customer receives a final occupancy permit for the Cowell Family Cancer Center. When Utility completes the connection to the new Cowell Family Cancer Center, Utility must provide Munson with a certificate that its connection complies with all applicable laws, rules, regulations, and industry-standards.

4. Estimate Revision. At the conclusion of the electrical connection to the Cowell Family Cancer Center the above estimates shall be revised with actual costs and a final connection cost shall be determined. This cost shall be invoiced by the Utility to the Customer and the Customer shall pay the amount of the invoice within 30 days. The Customer may inspect any and all records of the Utility in relation to the determination of final connection cost. If Customer's inspection of Utility's records reveals a discrepancy as to the determination of final connection cost, the parties must enter good-faith discussions to resolve the discrepancy.

5. Each Party represents that each has been authorized by all necessary action to enter into this Agreement, and that entering into this Agreement does not violate any other agreement a Party may have with a third party.

6. Customer and Utility each represent that their respective entering into this Agreement does not violate any applicable laws, rules, orders, or other agreements to which it is a party.

7. Merger Clause. This Agreement, and the related "letter agreement" between Utility and Consumers Energy (to which Munson is an express third party beneficiary) supersedes

all prior discussions and understandings between the Parties as to the subject matter covered here – rights to provide electrical service to the Cowell Family Cancer Center, and any such prior discussions or understandings are merged into this Agreement.

8. No Oral Amendments. This Agreement may be amended only by a writing signed by both Parties.

9. Severability. If any part of this Agreement is declared invalid, that declaration does not invalidate the remaining parts of this Agreement.

10. Governing Law. This Agreement is governed by the laws of Michigan.

11. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same document. All counterparts constitute one and the same document. An electronic transmission of a signature (such as by facsimile or scan-and-email) is deemed to be an original signature. Any Party who provides a signature by electronic transmission must upon request deliver an original counterpart of the same to the other Party.

MUNSON MEDICAL CENTER

TRAVERSE CITY LIGHT AND

By: _____
Its: _____
Dated: _____

By: John Taylor:
Its: Chairman

By: Timothy J. Arends
Its: Secretary

Dated: _____



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: W. Peter Doren, General Counsel
Date: October 20, 2014
Subject: Board Rules – Cancellation of Meetings

From time to time regular meetings are cancelled due to lack of quorum or lack of business that needs to be transacted. Another municipal client of mine had the right of a chairman to cancel a regular meeting challenged by a citizen. To provide authority for such practice, I am suggesting an Amendment to Rule 1 of the TCL&P Board Rules. A copy is attached in redline format.

At this meeting, after your input and any suggested changes, I recommend the following motion:

THAT THE AMENDMENT TO RULE 1 OF THE TCL&P BOARD RULES TO PROVIDE FOR CANCELLATION OF REGULAR MEETINGS BE PROPOSED AND SCHEDULED FOR ADOPTION AT THE NEXT REGULAR MEETING.

Enclosure
c w/encls:

Tim Arends (via email)

RULES OF THE TRAVERSE CITY LIGHT AND POWER BOARD

Adopted July 28, 1998
Amended February 8, 2011, Rule 11
Amended July 22, 2014, Rule 2
Amended November 11, 2014, Rule 1

1. Regular Meetings. Regular meetings of the Light and Power Board shall be held on the second and fourth Tuesdays of every month at 5:15 P.M. in the Commission Chambers of the Governmental Center, 400 Boardman Avenue, Traverse City.

Any regular meeting of the Light and Power Board may be cancelled by the Chairman, after consultation with the Executive Director, if the Chairman determines that there will not be a quorum in attendance at the meeting, that there is insufficient business to justify the holding of the meeting, or for such other reason as would make the holding of the meeting not productive to the business of the Light and Power Department. Notice of cancellation of a regular meeting shall be given to each Board Member, posted, and announced on the Department website at least 18 hours in advance of the scheduled time of the regular meeting.

2. Order of Business and Agenda for Regular Meetings. The order of business and agenda for regular meetings of the Board shall be as follows:
 1. Roll Call
 2. Consent Calendar
 3. Unfinished Business
 4. New Business
 5. Appointments
 6. Reports and Communications
 7. Board and Public Comment

Unless there is an objection by a Board member, the Chairman may alter the order of business.

3. Agenda and Packets. A written agenda and a packet of supporting materials shall be prepared by the Executive Director for every regular meeting, and shall be completed and released for delivery to the members of the Board not later than 5:00 P.M. on the Monday immediately preceding the date of said regular meeting.
4. Special Meetings and Special Business. Special meetings may be called by the Chairman or any two (2) Board members, or by the Executive Director, upon 18 hours posting and advance written notice to all Board members. Special meetings shall consider only such

matters as are specified in the notice of the meeting, unless all voting members are present and a motion is passed pursuant to these Rules. Unless there is an objection by a Board member, the Chairman may alter the order of business. The Board may direct by a majority vote that any matter may be made the special business of a future meeting and the same shall have precedence over all other business at such meeting.

5. Consent Calendar.

- A. When the Executive Director determines that any item of business requires action by the Light and Power Board, but is of a routine and non-controversial nature, the Executive Director may cause such item to be presented at a regular meeting of the Light and Power Board as part of a Consent Calendar.
- B. The Consent Calendar shall be introduced by a motion to approve the Consent Calendar, and shall be considered by the Light and Power Board as a single item.
- C. There shall be no debate or discussion by any member of the Light and Power Board, regarding any item on the Consent Calendar, beyond asking questions for simple clarification.
- D. On request by any Light and Power Board member, staff or member of the public present to inclusion of any item on the Consent Calendar, that item shall be removed from the Consent Calendar. Such request may be recorded at any time prior to the taking of a vote on the motion to approve the Consent Calendar. All such items shall be considered individually at a place, on the agenda, determined by the Presiding Officer.
- E. Approval of the motion to approve the Consent Calendar shall be fully equivalent to approval, adoption, or enactment of each motion, resolution, ordinance, or other item of business thereon, exactly as if each had been acted upon individually.

6. Presiding Officer. The Chairman shall preside at all meetings, and in the absence of the Chairman, the Vice-Chairman shall preside. If both the Chairman and the Vice-Chairman are absent, the Secretary shall call the Board to order and shall preside until a presiding officer is chosen. If the Secretary is absent, a majority of the Board then present shall select a Presiding Officer.

7. Rules of Order. The most current and authorized edition of Robert's Rules of Order shall govern the conduct of meetings unless modified by these Rules. The Presiding Officer shall decide all questions arising under these Rules and general parliamentary practice subject to appeal, which appeal shall be determined by a majority of the members present. In the event an appeal is taken by any member from the ruling of the Presiding

Officer, the member of the Board desiring to appeal shall state that he claims an appeal from the ruling of the Presiding Officer and shall state briefly what, in his opinion, the ruling should have been. If this appeal is seconded, the Presiding Officer shall state clearly the question at issue, and shall then call for the vote of the Board on the question: "Shall the decision of the Presiding Officer be sustained?" The Presiding Officer shall preserve order and decorum and may speak to points of order in preference to other questions. The Presiding Officer may express an opinion on any subject under debate without the substitution of another Presiding Officer.

8. Motions. Every motion or resolution shall require a second before being put to a vote, and it shall not be debated until it shall be reduced to writing if requested by the presiding officer or any member, but it may be withdrawn at any time by the movant with consent of the second before decision or amendment. No motion to reconsider shall be entertained unless made by a member voting with the majority.
9. Amendment of Agenda at Regular Meetings. At a regular meeting, and as the first item after Roll Call, any official or officials of the Department, acting as such, may ask, orally or in writing, that a certain matter or matters be added to the agenda for consideration by the Board at that meeting. By motion that the matter or matters in question be added to the agenda of that meeting, passed by the concurring vote of not less than four (4) Board members, the matter or matters may be added to the agenda under an appropriate order of business and may be considered at that regular meeting.
10. Amendment of Agenda at Special Meetings. At a special meeting, and as the first item after Roll Call, any official or officials of the Department, acting as such, may ask, orally or in writing, that a certain matter or matters not appearing in the notice of that meeting as posted and released for delivery to the members of the Board be considered by the Board at that meeting. By motion that the matter or matters in question be considered at that meeting, passed by the concurring vote of not less than five (5) Board members, any such matters may be considered at that special meeting.
11. Public Comment. The Light and Power Board welcomes public comment and has prescribed the following to facilitate the conduct of public business.
 - A. Public Comment during Agenda Items. At any regular or special meeting, any interested person may address the Board on any agenda item if recognized by the Presiding Officer or upon request of any Board member. For any agenda item requiring action of the Board at that meeting other than the Consent Calendar, the Presiding Officer shall, before any final vote is taken, ask for and conduct public comment on that agenda item. Any interested person may address the Board on any matter of Department concern during the agenda item designated Public Comment. The comment of any member of the public or any special interest

group may be limited in time as provided in subsection (E). As part of its deliberation, the Board may clarify, answer questions and ask questions as a result of public comment.

- B. Public Comment during the designated Public Comment Section – Reserved. Any interested person or special interest group wishing to address the Board for a reserved time shall submit a written request to the Executive Director no later than Tuesday, 5:00 P.M. the week immediately preceding the date of said regular meeting. The communication shall (1) identify the writer's name and address and (2) identify with reasonable specificity the subject matter. The same shall appear on the written agenda under the designated "Public Comment" section for said regular meeting as made available to the news media and released for delivery to the Board. All persons must identify themselves and will be asked their address and to direct their comments to the Board. The comment of any member of the public or special interest group may be limited to 15 minutes except as provided in subsection (E). Questions posed may be answered at the meeting or may be referred to staff for response at a later time.

Reserved time shall be limited to one (1) per meeting and shall appear on the written agenda. A TCL&P ratepayer or city taxpayer shall take precedence over a non-TCL&P ratepayer or non-city taxpayer request. In such case, the non-TCL&P ratepayer or non-city taxpayer request shall be postponed and placed on the written agenda of a future meeting as selected by the non-TCL&P ratepayer/non-city taxpayer. In no case shall the non-TCL&P ratepayer/non-city taxpayer request be postponed more than one time in favor of a TCL&P ratepayer or city taxpayer. If more than one (1) request is received per meeting the requests shall be considered in the order they were received; subject to the above procedure.

- C. Public Comment during the designated Public Comment Section – General. Any interested person wishing to address the Board regarding other matters may do so under the designated Public Comment section. All persons must identify themselves and will be asked their address and to direct their comments to the Board. The comment of any member of the public or any special interest group may be limited in time as provided in subsection (E).
- D. Public Comment during the designated Public Comment Section – Board Chair and Board Members. The Board Chair and other Board Members interested in making a public comment may do so under the designated Public Comment section. Further, the Board Chair and Board Members may briefly respond for clarification purposes as a result of public comment.

- E. Order and Duration of any Public Comment. The comment of any member of the public or special interest group may be limited in time by the Presiding Officer. The Presiding Officer shall have the authority to limit and terminate any public comment that becomes disruptive, unduly repetitive, or impedes the orderly progress of the meeting. The Presiding Officer shall control the order and duration of any public comment, subject to appeal.
12. Suspension of Rules. The Rules may be suspended on the vote of five (5) members. The Rules may be amended by a majority vote of the members elect at a meeting held after the meeting at which the amendment was proposed.
13. Executive Director Spending Authority. The Executive Director shall have authority to expend up to one-tenth of one percent (0.1%) of current budget year total expenses, per transaction, involving the acquisition and disposal of personal property pursuant to City Charter Section 179(a) without the necessity of Board approval or securing competitive bids. Such authority shall also supply to the acquisition of services in furtherance of Light and Power activities.



**TRAVERSE CITY
LIGHT & POWER**

To: Light & Power Board
From: Tom Olney, Operations Manager *TO*
Date: October 21, 2014
Subject: Arc Flash Study and Implementation

As recommended by Hometown Connections in the efficiency study, staff included conducting a formal Arc Flash Study by June 30, 2014 as a goal in the Strategic Plan.

• **What is an arc flash?**

An arc flash is where a flashover of electric current leaves its intended path and travels through the air from one conductor to another, or to ground.

• **What is the purpose of an Arc Flash Study?**

An Arc Flash Study helps determine the arc flash boundary, the incident energy at the working distance, and the proper personal protective equipment (PPE) that workers should use when working within the arc flash boundary in order to maintain a safe working environment.

TCL&P contracted with GRP Engineering, Inc. (GRP) to conduct the study and provide a final report. GRP provided a final Arc Flash Report on June 24, 2014 for both the TCL&P System and the Kalkaska Combustion Turbine. Staff reviewed the final reports in detail with Michael McGeehan and Rob Shelly from GRP. Both reports were later reviewed with all Union employees who will be performing the work affected by these studies.

As a result of the final reports, TCL&P has taken the following actions:

- Warning labels have been placed on the front covers of all low voltage service panels and disconnect switches as required. These arc flash warning labels state the voltage, incident energy, required level of PPE and the arc flash boundary.
- Additional PPE required when conducting work on specific 480 volt equipment and switch gear was purchased and distributed to employees.

TCL&P is now in full compliance with the latest arc flash rules set forth by the National Electric Safety Code (NESC) as well as the National Fire Protection Association (NFPA) 70E.



To: Light and Power Board
From: Karla Myers-Beman, Controller *WB*
Date: October 21, 2014
Subject: Quarterly Financial Report

Enclosed in your packet are the fourth quarter financial statements for the Electric and Fiber Funds.

Electric Utility Fund:

As of June 30, 2014, operating revenues are 108% of budgeted operating revenues. The Board's action to remove the cap on the Power Cost Recovery Rate (PCR) as of October 1, 2013 has resulted in the overall increase in revenues over the prior year along with a slight increase in kWh sales.

Total operating expenses are at 98.1% of budget year-to-date, or very nearly on-budget. Overall purchased power costs are at 101.7% of budget. Transmission expense is under budget due to the allocation factor of Attachment O being lower than expected and no contingent maintenance on the transmission lines needed in the fiscal year. Metering and Customer Service Distribution are under budget, because meter reading wages being distributed to other departments based on actual work performed. Conservation and Public Services is significantly under budget at 42.8% because of the additional allocation of PA 295 funds during the budget process that will not be expended until a plan is developed in the 2014-2015 fiscal year. General Administration expense is under budget because of positions not being filled.

Net income through the third quarter is \$3.95 million, which is ahead of budget.

Fiber Fund:

Revenues in the Fiber Fund are on-budget while expenses exceeded budget (unfavorable). Net income of \$31,271 is 49.2% of budget through March.

Total operating expenses are at 119.7% of budget year-to-date, or very nearly on-budget. Supervision and Maintenance has the largest difference between budget and actual. The difference was from the assistance provided to GTACS in starting up their connection to our fiber network, which is offset by the reimbursements received in non-operating revenues.

TRAVERSE CITY LIGHT & POWER

Balance Sheet

6/30/2014

ASSETS		LIABILITIES AND NET ASSETS	
Current assets		Current liabilities	
Cash and cash equivalents	\$5,464,605	Accounts payable	\$1,987,395
Investments	15,852,407	Customer deposits & credits	99,849
Receivables		Accrued expenses & other liabilities	775,585
Customer (net of allowance)	3,426,500	Due to primary government	215,851
Accrued interest	56,287		
Taxes	2,156	Total current liabilities	3,078,680
Other	698,039		
Inventories	1,990,709	Long-term liabilities	
Prepaid expenses	5,600	Compensated absences	162,633
Total current assets	27,496,303	Total liabilities	3,241,313
Long-term assets		Net assets	
Long-term advances & OPEB assets	1,234,281	Invested in capital assets	47,750,850
Land and land improvements	1,395,691	Unrestricted	25,489,271
Construction in progress	1,712,092		
Capital assets, net	44,643,067	Total net assets	73,240,121
Total long-term assets	48,985,131		
		Total liabilities and net assets	\$76,481,434
Total assets	\$76,481,434		
		Total Cash & Investments	\$ 21,317,012.00
		Difference	\$ -

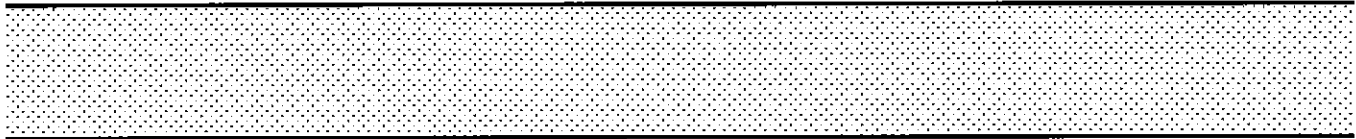
TRAVERSE CITY LIGHT & POWER
Schedule of Revenues & Expenses - Budget and Actual
For the Month Ended June 30, 2014

	Current Month	Y-T-D Actual	Annual Budget	% of Budget
Operating revenues - sales	\$ 2,134,921	\$ 32,516,825	\$ 29,971,000	108.5%
Other operating revenues	213,544	2,775,301	2,704,000	102.6%
Total operating revenues	2,348,465	35,292,126	32,675,000	108.0%
Generation expense:				
Purchased power	525,179	6,083,935	6,440,000	94.5%
Stoney corners-wind energy	188,200	2,890,566	2,970,000	97.3%
Combustion turbine	252,002	3,076,260	3,978,000	77.3%
Campbell/belle river	606,921	10,631,920	8,840,000	120.3%
Landfill gas	36,648	388,419	460,000	84.4%
Other operations & maintenance	18,779	203,704	78,000	261.2%
Total generation expenses	1,627,730	23,274,804	22,766,000	102.2%
Distribution expense:				
Operations & maintenance	436,561	3,355,752	3,470,000	96.7%
Transmission expense:				
Operations & maintenance	32,013	299,449	420,900	71.1%
Other operating expense:				
Metering & customer accounting	90,507	500,904	573,400	87.4%
Conservation & public services	53,268	440,260	1,027,750	42.8%
General administration	45,106	753,148	1,163,950	64.7%
Insurance	5,655	59,502	66,350	89.7%
Depreciation expense	304,785	2,027,184	1,982,000	102.3%
City fee	120,000	1,775,851	1,634,700	108.6%
Total other operating expenses	619,321	5,556,849	6,448,150	86.2%
Total operating expenses	2,715,625	32,486,854	33,105,050	98.1%
Operating income/(loss)	(367,160)	2,805,272	(430,050)	-652.3%
Other revenues/(expenses):				
Non-operating revenues	142,580	1,149,154	430,050	267.2%
Non-operating expenses	0	0	0	---
Net income	\$ (224,580)	\$ 3,954,426	\$ -	

TRAVERSE CITY LIGHT & POWER
Revenue & Expenses Compared

	June 2014	June 2013	Increase/Decrease	%	Y-T-D 6/30/2014	Y-T-D 6/30/2013	Increase/Decrease	%
	\$	\$	\$	#DIV/0!	\$	\$	\$	#DIV/0!
Federal Grants	-	-	-	-	-	-	-	-
State Grant - Other	-	-	-	-	-	-	-	-
Residential Sales	250,147.15	238,591.00	11,556.15	4.8	6,352,044.37	5,543,163.00	838,881.37	15.1
Commercial Sales	922,167.55	951,407.00	(29,239.45)	(3.1)	15,612,426.61	14,143,835.00	1,468,591.61	10.4
Industrial Sales	918,223.45	821,726.00	96,497.45	11.7	9,950,825.26	9,020,921.00	929,904.26	10.3
Public Authority Sales	23,845.22	28,679.00	(4,833.78)	(16.9)	296,799.91	274,590.00	22,209.91	8.1
Street Lighting Sales	16,344.64	16,140.00	204.64	1.3	195,177.67	194,708.00	469.67	0.2
Yard Light Sales	4,193.01	5,365.00	(1,171.99)	(21.8)	79,551.43	77,197.00	2,354.43	3.0
Forfeited Discounts	3,413.16	3,457.00	(43.84)	(1.3)	57,694.57	56,978.00	716.57	1.3
Merchandise & Jobbing	5,462.92	10,954.00	(5,491.08)	(50.1)	43,442.87	40,647.00	2,795.87	6.9
Interest & Dividend Earnings	90,097.08	(465,914.00)	556,011.08	(179.3)	402,878.00	(285,545.00)	688,423.00	(241.1)
Rents & Royalties	22,045.00	1,475.00	20,570.00	1,394.6	47,282.38	23,635.00	23,647.38	100.1
Sale of Fixed Assets	-	-	-	#DIV/0!	46,931.00	-	46,931.00	#DIV/0!
Reimbursements	30,438.38	30,001.00	437.38	1.5	616,140.23	163,980.00	452,160.23	275.7
Recovery of Bad Debts	44.80	46.00	(1.20)	(2.6)	187.76	109.00	78.76	72.3
Sales of Scrap	699.64	671.00	28.64	4.3	34,332.10	50,958.00	(16,625.90)	(32.6)
Miscellaneous Income	5,140.43	4,027.00	1,113.43	27.6	37,982.65	51,047.00	(13,664.35)	(26.8)
Refunds & Rebates	6.00	-	6.00	#DIV/0!	1,413.04	2,223.00	(809.96)	(36.4)
Pole Rentals	-	-	-	#DIV/0!	35,922.01	41,593.00	(5,670.99)	(13.6)
MISO Revenues	198,776.68	181,611.00	17,165.68	9.5	2,600,847.04	2,353,289.00	247,558.04	10.5
Total Revenues	\$ 2,491,045.11	\$ 1,828,236.00	\$ 662,809.11	36.3	\$ 36,441,278.90	\$ 31,753,328.00	\$ 4,687,950.90	14.8
Expenses:								
Generation Operations & Maint	\$ 1,627,730.02	\$ 1,726,392.00	\$ (98,661.98)	(5.7)	\$ 23,274,804.00	\$ 23,783,427.00	\$ (508,623.00)	(2.1)
Distribution Operations & Maint	436,560.73	352,803.00	83,757.73	23.7	3,355,752.00	3,493,024.00	(137,272.00)	(3.9)
Transmission Operations & Maint	32,013.00	23,867.00	8,146.00	34.1	299,449.00	366,978.00	(67,529.00)	(18.4)
Metering & Customer Accounting	90,507.20	70,760.00	19,747.20	27.9	500,904.00	516,919.00	(16,015.00)	(3.1)
Conservation & Public Services	53,267.89	90,927.00	(37,659.11)	(41.4)	440,260.00	1,689,992.00	(1,249,732.00)	(73.9)
Administration	45,105.51	29,839.00	15,266.51	51.2	753,148.00	959,602.00	(206,454.00)	(21.5)
Other	430,440.53	435,976.00	(5,535.47)	(1.3)	3,862,537.00	3,538,543.00	323,994.00	9.2
Total Expenses	\$ 2,715,624.88	\$ 2,730,564.00	\$ (14,939.12)	(0.5)	\$ 32,486,854.00	\$ 34,348,485.00	\$ (1,861,631.00)	(5.4)
Net Income	\$ (224,579.77)	\$ (902,328.00)	\$ 677,748.23	(75.1)	\$ 3,954,424.90	\$ (2,595,157.00)	\$ 6,549,581.90	(252.4)

**TRAVERSE CITY LIGHT & POWER
FIBER FUND
Balance Sheet
June 30, 2014**



ASSETS		LIABILITIES AND NET ASSETS	
Current assets		Current liabilities	
Cash and cash equivalents	\$278,447	Accounts payable	\$150
Accounts receivable	4,230	Due to other funds	11,464
Prepaid Insurance	-	Deferred revenue	14,270
Total current assets	282,677	Total liabilities	25,884
		Long-term liabilities	
		Compensated absences	1,226
		Total liabilities	27,110
Long-term assets		Net position	
Construction in progress	73,641	Contribution from other funds	1,208,876
Capital assets, net	1,261,860	Unrestricted fund balance	382,192
Total long-term assets	1,335,501	Total net assets	1,591,068
Total assets	\$1,618,178	Total liabilities and net assets	\$1,618,178

**TRAVERSE CITY LIGHT & POWER
FIBER FUND**
Schedule of Revenues & Expenses - Budget and Actual
For the Month Ended June 30, 2014

	Current Month	Y-T-D Actual	Annual Budget	% of Budget
<u>Operating revenues:</u>				
Charges for services	\$ 17,480	\$ 229,120	\$ 229,000	100.1%
Total operating revenues	17,480	229,120	229,000	100.1%
<u>Operating expenses:</u>				
Office & operating supplies	6	1,184	2,000	59.2%
Supervision & maintenance	4,697	65,803	41,000	160.5%
Overhead & underground lines	2,975	19,522	16,000	122.0%
Customer installations	-	2,187	6,500	33.6%
Termination boxes	5,394	23,834	16,500	144.4%
Tools	-	-	150	0.0%
Professional & Contractual Svcs.	-	1,095	-	---
Legal Services	-	3,655	-	---
City fee	11,464	11,464	10,100	113.5%
Professional development	-	-	2,150	0.0%
Insurance	76	791	1,000	79.1%
Repairs and Maintenance	-	-	500	0.0%
Depreciation expense	10,156	90,109	87,600	102.9%
Total operating expenses	34,768	219,644	183,500	119.7%
Operating income/(loss)	(17,288)	9,476	45,500	20.8%
<u>Non-operating revenues:</u>				
Interest revenue	167	167	-	---
Reimbursements	2,000	21,628	18,000	120.2%
Total nonoperating revenue	2,167	21,795	18,000	121.1%
Net income	\$ (15,121)	\$ 31,271	\$ 63,500	49.2%