

ENERGY PURCHASE AGREEMENT
between
CORNHUSKER PUBLIC POWER DISTRICT
and

This Energy Purchase Agreement (“Agreement”) is entered into as of _____, 20_____, by and between Cornhusker Public Power District, a public corporation and political subdivision of the State of Nebraska, hereinafter referred to as “CPPD,” and _____, hereinafter referred to as “DG Operator,” each sometimes hereinafter referred to singularly as “Party” or collectively as “Parties”.

WITNESSED

WHEREAS, CPPD owns and operates an integrated electric utility, including facilities for the purchase, transmission, distribution and sale of electric power and energy, and

WHEREAS, the DG Operator owns and operates a _____ operation located near _____, Nebraska, and has determined that he will acquire, install, own and operate a _____ project that will incorporate an electric generator that using _____ as fuel, and

WHEREAS, the DG Operator is a total requirements electric customer of the CPPD, and CPPD is a total requirements wholesale electric customer of Nebraska Electric Generation and Transmission Cooperative, Inc. (“NEG&T”), and

WHEREAS, it has been determined by CPPD and NEG&T, that CPPD may utilize the entire output of the DG Operator’s proposed electric generation facilities without violating the intent and spirit of said total requirements wholesale power supply contract between CPPD and NEG&T, and

WHEREAS, the DG Operator desires to sell to CPPD, and CPPD desires to purchase, the output of The DG Operator’s electric generation facilities under the terms and conditions set forth below, and

WHEREAS, the Parties hereto will enter into an Interconnection and Service Agreement, effective simultaneously with this Agreement, which will provide for interconnection and delivery of the output of the DG Operator’s generating facilities.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the Parties do hereby mutually agree as follows:

ARTICLE I – TERM OF AGREEMENT

- 1.1 This Energy Purchase Agreement shall become effective on the date first above written; provided, however, this Agreement shall not become effective until the Interconnection and Service Agreement has been fully executed and is in full force and effect between the Parties and shall continue in force for a period of five (5) years, unless sooner terminated as herein provided. Either Party may terminate this Agreement by providing at least three (3) years prior written notice, which notice can be given at any time after the second year of this Agreement. In addition, if the Interconnection and Service Agreement between the Parties is terminated or no longer valid or effective for any reason, this Agreement will terminate simultaneously.

ARTICLE II – GENERATOR PROVISIONS

- 2.1 The DG Operator shall own and be solely responsible for the generator and its cost, design, associated equipment, installation, operation, maintenance, and renewals and replacements, retirement and removal, and any and all costs or liabilities associated with any thereof.
- 2.2 The generation to be installed is rated at _____ Kilowatts (kW) and will run continuously, as fuel is available, for energy production.
- 2.3 The DG Operator and CPPD Public Power District shall enter into an Interconnection and Service Agreement simultaneously with this Agreement, which among other things outlines the point of interconnection, ownership and cost responsibilities of the interconnection facilities, metering equipment, and service provisions for the delivery of generator output.

ARTICLE III – ENERGY PRICE AND PAYMENTS

- 3.1 The DG Operator agrees to sell and deliver to CPPD, and CPPD agrees to purchase, the entire electric output of the DG Operator electric generator. For electric energy sold and delivered to CPPD pursuant to this Agreement, CPPD agrees to pay the DG Operator an amount equal to the calculated avoided cost as outlined in the CPPD Rate Schedule PURPA-1, a current copy of which is attached to this Agreement, and made a part hereof by reference.
- 3.2 Avoided costs are determined using the rates paid by CPPD to NEG&T for wholesale power and energy as its basis. The aforementioned Rate Schedule PURPA-1 will be revised from time to time as said wholesale rates paid by CPPD are modified. In that event, CPPD shall provide a revised Rate Schedule PURPA-1 to the DG Operator at least 30 days prior to the implementation of said schedule, and any such amended rate schedules applicable to this Agreement shall be provided without the necessity of a formal amendment to this Contract. All rates, rate schedules, and revisions thereto, are done in accordance with the action taken by, and approval of, the CPPD Board of Directors.
- 3.3 The DG Operator will retain all rights to any federal production tax credits that might at any time be attributable to electric generation from his project. In consideration of CPPD’s purchase of electric energy from the DG Operator pursuant to this Agreement, CPPD will receive all right, title and interest in and to any environmental attributes associated with electric energy generated by the DG Operator and sold and delivered to CPPD pursuant to this Agreement, the same sometimes being commonly referred to as “renewable energy credits,” or “green tags,” or by similar terms. In furtherance of the preceding sentence, the DG Operator agrees that he will execute and deliver all documentation reasonably requested by CPPD to effectively evidence the transfer of such rights, title and interest to CPPD.

ARTICLE IV - FUEL

- 4.1 The DG Operator shall be responsible for providing all fuel for the operation of the generator.
- 4.2 The Parties agree that in the event that The DG Operator is prohibited by any court or governmental agency having jurisdiction from using _____ for the operation of the generating facilities, and such prohibition or unavailability of fuel continues for a period of six months, CPPD shall have the right to immediately terminate this Agreement upon written notice to The DG Operator.

ARTICLE V – DELIVERY POINT/METERING

- 5.0 All metering equipment to determine the generation produced by the DG Operator from the DG Operator’s generating units shall be installed, owned, operated and maintained by CPPD as outlined on Exhibit A to the Interconnection and Service Agreement which has been executed by the DG Operator and CPPD. Delivery point(s) for power and energy are outlined as well on said Exhibit A.

ARTICLE VII – RESPONSIBILITIES OF THE DG OPERATOR

- 7.1 The DG Operator shall, in consideration of the payments by CPPD pursuant to this Agreement, and without any additional charge to CPPD:
 - A. Operate its generating facilities to provide energy in accordance with standard operating procedures for similarly operated plants.
 - B. Maintain generating facilities in good operating condition.
 - C. Notify authorized CPPD personnel of scheduled outages of all or any part of the generating facilities.
 - D. Allow periodic inspection by CPPD of the generating facilities and periodically demonstrate generation capability according to generator test runs, when requested by CPPD.
 - E. Prepare and submit to CPPD such reports concerning the generating facilities as may be reasonably requested and on forms as provided by CPPD.
 - F. Indemnify and hold harmless CPPD, their respective directors, officers, employees, agents and representatives, from any and all losses, and any and all claims, liabilities, penalties, fines, costs and expenses incurred or paid in connection with any threatened or completed demand, claim, suit, order, injunction, proceeding or other action threatened or brought against an indemnified person for any reason whatsoever including (without limitation) for the loss of or damage to any property, or for the injury, disease or death of any person, caused by (whether in whole or in part), arising from, or in any manner related to any act or omission of the DG Operator, or any person acting for or on his behalf, in connection with any activity performed or undertaken pursuant to this Agreement. This agreement for indemnity shall survive the expiration or other termination of this Agreement.
 - G. Decide whether or not to insure against physical damage to all or any part of the DG Operator property, and the DG Operator agrees that CPPD and its representatives shall not be liable for, and The DG Operator shall hold harmless CPPD and its representatives from any losses or damage to such property or for expenses incidental to such loss or damage.

ARTICLE VIII – RESPONSIBILITIES OF CPPD

- 8.1 CPPD agrees to notify the DG Operator when the DG Operator is to operate its generation facilities for test purposes and CPPD agrees to give The DG Operator as much advance notice of required operation as is feasible under the circumstances then existing.
- 8.2 CPPD shall provide to the DG Operator the phone number of the appropriate personnel to notify for outages whether such outages are planned or for emergency conditions.

ARTICLE IX – ACCREDITATION OF GENERATION CAPACITY

- 9.1 CPPD shall have the right to use the tested capacity in kW of the DG Operator generation facilities for its use. The Parties agree that the tested capacity as used herein refers only to the accredited capacity of the DG Operator generating facilities, and ownership of such facilities shall remain solely with the DG Operator and this Agreement is not intended to, and shall not be construed or deemed to, constitute or create any lien or encumbrance in respect of such facilities.
- 9.2 For CPPD to be allowed to use the capacity of the generation in its resource mix CPPD must meet criteria for accreditation by the responsible agency with jurisdiction over requirements for accreditation. At the time this Agreement is entered into, the Mid-Continent Area Power Pool (MAPP) is the responsible accrediting agency. CPPD will follow all policies, procedures, requirements, criteria and the like issued by MAPP or the responsible accrediting agency in accrediting the DG Operator generation.

ARTICLE X - ASSIGNMENT

- 10.1 This Agreement may not be assigned by the Parties hereto without the written consent of the other Party.
- 10.2 This Energy Purchase Agreement and all related documents are not transferable to parties, DG facilities or DG equipment other than those identified in said documents. If the DG facility undergoes a change of DG Operatorship, or the facility is modified, any existing agreements between the previous DG Operator and CPPD are considered null and void. The new DG Operator, or the DG Operator of a modified DG facility, does not have CPPD permission for closed transition operation, and such circumstances will require the execution of a new Energy Purchase. Refer to the CPPD Distributed Generation (DG) Policies and Procedures Manual's Section 6 - The Approval Process for DG Installations renewal requirements for additional information.

ARTICLE XI - REPORTS

- 11.1 The DG Operator will furnish, or cause to be furnished to, CPPD such information as is necessary for making any computation required pursuant to this Agreement and the Parties will cooperate in exchanging such additional information as may be reasonably necessary for their respective operations.

ARTICLE XII - CAPTIONS

- 12.1 The captions of the various sections and paragraphs herein are intended for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

ARTICLE XIII - WAIVERS

13.1 Any waiver at any time by a party of its rights, or any delay in enforcing its rights, with respect to any default by the other Party hereto, or with respect to any other matter arising out of or related to this Agreement, shall not be considered a waiver with respect to any other default or matter.

ARTICLE XIV – NO SPECIAL RELATIONSHIP

14.1 Nothing in this Energy Purchase Agreement or the Interconnection and Service Agreement, shall be construed as in any way constituting or creating a partnership between or a joint venture by the Parties, or any franchise, fiduciary, agency, employment or other special relationship between the parties, nor shall anything in this Energy Purchase Agreement or the Interconnection and Service Agreement, be construed to evidence the intention of the Parties to constitute or create any such relationship.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers or representatives and their corporate seals to be hereunto affixed as of the dates indicated below.

CORNHUSKER PUBLIC POWER DISTRICT:

By: _____

Title: _____

Date: _____

DG OPERATOR:

By: _____

Title: _____

Date: _____