

**KENTUCKY MUNICIPAL ENERGY AGENCY**  
**ALL REQUIREMENTS POWER SALES CONTRACT**

This All Requirements Power Sales Contract ("Contract") entered into as of the 16<sup>th</sup> day of August, 2016, between **KENTUCKY MUNICIPAL ENERGY AGENCY**, a joint public agency established and existing pursuant to the laws of the Commonwealth of Kentucky (the "Agency"), and the **ELECTRIC AND WATER PLANT BOARD OF THE CITY OF FRANKFORT, KENTUCKY** (the "Member") (each a "Party" and together, the "Parties").

WITNESSETH:

WHEREAS, the Agency was organized pursuant to Sections 65.210 to 65.300 of the Kentucky Revised Statutes, as amended, known as the "Interlocal Cooperation Act" and was created by virtue of the Interlocal Cooperation Agreement Creating the Kentucky Municipal Energy Agency by and among municipal electric systems in the Commonwealth of Kentucky (the "Interlocal Cooperation Agreement"), which Interlocal Cooperation Agreement was filed with and approved by the Attorney General of the Commonwealth of Kentucky in accordance with law; and

WHEREAS, the purposes of the Agency include allowing its member municipal electric systems to effectively collaborate to do all things necessary to serve the current and future electric power and energy requirements of the Agency's members and to otherwise provide assistance to the Agency's members related to their electric power and energy utility systems; and

WHEREAS, the Agency is empowered (i) to enter into contracts or agreements for the purchase, sale, tolling, exchange, interchange, wheeling, pooling, transmission, distribution or storage of electrical capacity, energy, and other related attributes from any source, and fuel or any rights thereto, within and without the Commonwealth of Kentucky; (ii) to plan, finance, acquire, construct, purchase, manage, operate, transmit the output of, maintain, use, share the cost of, own, lease, sell or dispose of any electric power supply project or projects and any and all facilities, including all equipment, structures, machinery, and tangible and intangible property, real and personal, for the generation or transmission of electrical energy, or both, including any fuel supply or source or acquisition of fuel or facilities for the production, transportation, handling, utilization and storage of fuel, either by itself or with other electric utilities or groups of utilities, within or without the Commonwealth of Kentucky; (iii) to make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the Agency, and (iv) to do all acts and things necessary, convenient or desirable to carry out the purposes of, and to exercise the powers granted to, the Agency; and

WHEREAS, the Member owns and operates a municipal electric utility, which furnishes retail electric service to the public and is authorized under the laws of the Commonwealth of Kentucky to contract to purchase from the Agency power and energy and related services; and

WHEREAS, in order to secure an adequate, reliable and economical supply of electric power and energy for the Member's municipal electric utility, the Agency and the Member have

determined that the Agency will sell to the Member, and the Member will purchase from the Agency, power and energy and related services on the terms and conditions set forth herein; and

WHEREAS, the Agency intends to acquire power and energy for sale and delivery to the Member and other members contracting with the Agency therefor through appropriate means, which may include the purchase thereof from any source; the purchase of transmission and related ancillary and coordination services; and the ownership of generation and transmission facilities or any interest therein or output therefrom; and

WHEREAS, in order to enable the Agency to pay the cost of acquiring and constructing such generation, transmission or other resources and facilities as are useful in meeting its obligations hereunder and to issue revenue bonds, it is necessary for the Agency to have binding contracts with the Member and each of the other All Requirements Members (as defined herein) providing for the equitable sharing of the resulting benefits, risks, and costs, and to be able to pledge the payments required to be made under such contracts as security for meeting the obligations of the Agency;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, it is agreed by and between the Parties hereto as follows:

#### **SECTION 1. Definitions**

**Agency** means the Kentucky Municipal Energy Agency, as identified in the first paragraph of this Contract.

**Agency Obligation** means each obligation of the Agency related to the Agency's performance of its duties under this Contract, including financial, power supply, fuel supply, energy scheduling, energy integration, and energy delivery obligations; power purchase and other contracts; and obligations related to Member-Owned Resources, Generation Resource Project resources, financial transmission rights, financial hedging instruments, and Agency-owned generating or transmission facilities.

**All Requirements Members** means the Member and those members of the Agency that are, or hereafter become, parties to All Requirements Power Sales Contracts (as defined herein).

**All Requirements Power Sales Contracts** means this Contract and the other substantially similar contracts providing for the sale of power and energy by the Agency to All Requirements Members, as amended from time to time, provided that it shall not include any such contract which expressly provides that it is not to be considered an All Requirements Power Sales Contract.

**All Requirements Power Supply Resources** means those resources, including power purchase agreements and Generation Resource Projects, for the acquisition, production, or delivery of electric power and energy and related Attributes included in the System to the extent the same are employed by the Agency to supply electric power and energy and related Attributes sold or utilized under the All Requirements Power Sales Contracts. For the avoidance of doubt, All Requirements Power Supply may include renewable generation resources.

**All Requirements Project** or **AR Project** means the project to be designated and authorized by resolution of the Agency pursuant to Article II, Section 4 of the Interlocal Cooperation Agreement in accordance with Section 16 of this Contract.

**All Requirements Project Committee** or **AR Project Committee** means the project management committee for the All Requirements Project established pursuant to Article III, Section 4 of the Interlocal Cooperation Agreement and Section 16 of this Contract.

**Attributes** means, with respect to a generation resource, all aspects of the resource or its output from which value may be derived, including electric capacity, energy, ancillary services, energy storage, and environmental characteristics.

**Board of Directors** means the Board of Directors of the Agency.

**Bond Resolution** means any one or more resolutions, trust agreements, loan agreements or other similar instruments providing for the issuance of Bonds.

**Bonds** means electric utility revenue bonds, notes, or other evidences of indebtedness, without regard to the term thereof, whether or not any issue of such Bonds shall be subordinated as to payment to any other issue of Bonds, from time to time issued by the Agency to finance any cost, expense or liability paid or incurred or to be paid or incurred by the Agency in connection with the investigating, studying, planning, engineering, designing, financing, installing, constructing, acquiring, operating, maintaining, retiring, decommissioning, or disposing of any part of the System or otherwise paid or incurred or to be paid or incurred by the Agency in connection with the performance of its obligations under the All Requirements Power Sales Contracts or for any other lawful purpose permitted under the Interlocal Cooperation Agreement for the System.

**Contract** means this All Requirements Power Sales Contract, as defined in the first paragraph of this Contract.

**Generation Resource Project Participation Agreement** means an agreement between the Agency and those of its members participating in a Generation Resource Project governing their respective rights, duties, and obligations associated with the Generation Resource Project.

**Generation Resource Project** means a project designated by the Board of Directors pursuant to Article II, Section 4 of the Interlocal Cooperation Agreement for the development, construction, acquisition, or purchase of Attributes of an electric generation resource in which one or more All Requirements Members participate. For purposes of this Contract, Generation Resource Project refers to projects in which either the participants are not identical to the All Requirements Members or each participant's share of the project is prescribed, or both, thus requiring that the Agency account for the costs and benefits of the project as provided in Section 3(e). For avoidance of doubt, a Generation Resource Project may be a renewable generation resource project. Generation Resource Project does not include (a) Agency generation resource projects that are for the benefit of all of the All Requirements Members and in which the All Requirements Members share costs in proportions that vary over time through the cost recovery mechanism of the Rate Schedule, or (b) a project for which it is expressly provided that it is not to be considered a Generation Resource Project.

**Governing Body** means the city council, city commission, city utilities commission, plant board, electric plant board, or other legislative body of the Member, as applicable, that has the authority to approve this Contract and its execution and delivery on behalf of the Member.

**Integrated Utility System** has the meaning set forth in Section 5(a).

**Interlocal Cooperation Act** means Sections 65.210 to 65.300 of the Kentucky Revised Statutes ("KRS"), as it may be amended from time to time.

**Interlocal Cooperation Agreement** has the meaning set forth in the first recital of this Contract.

**Member** means the municipality or municipal electric system identified as "Member" in the first paragraph of this Contract.

**Member-Owned Resource** has the meaning set forth in Section 3(d). For avoidance of doubt, Member-Owned Resources may include renewable generation resources.

**MISO** means the Midcontinent Independent System Operator, Inc. or its successor.

**NERC** means the North American Electric Reliability Corporation or its successor.

**Open Access Transmission Tariff** means the tariff(s) of the Transmission Provider(s) under which electric transmission and related services are provided, as they may be amended from time to time.

**Point of Delivery** means any point at which the Agency shall be required to deliver power and energy to the Member as set forth in paragraph 2 of Schedule A hereto, as amended from time to time.

**Point of Measurement** means any point at which the Agency shall be required to meter power and energy delivered to the Member as set forth in paragraph 3 of Schedule A hereto, as amended from time to time. Paragraph 3 of Schedule A shall include as a Point of Measurement the point of interconnection between any generating facility connected to the Member's distribution system and the Member's distribution system.

**Prudent Utility Practice** means, at a particular time, any of the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto) which, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, would have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and timeliness. Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

**PURPA** means the federal Public Utility Regulatory Policies Act of 1978, as amended from time to time.

**Rate Schedule** means the rate schedule setting forth the rate for payments by the Member for electric power and energy delivered hereunder and for services related to the All Requirements Project, which may be revised from time to time by a new schedule adopted by the Board of Directors, including any amendment, change, deletion, or addition to any of the billing components, terms or conditions, or any adjustment set forth therein as may be adopted pursuant to Section 5. The Rate Schedule may include surcharges or credits applicable only to certain All Requirements Members, such as (i) to provide compensation for a Member-Owned Resource, (ii) to reflect the cost consequences of any agreement pursuant to Section 3(f) whereby one or more All Requirements Members rely to a lesser or greater than proportional extent on the Attributes of particular All Requirements Power Supply Resources to serve their respective loads, or (iii) to reflect the cost consequences of a Generation Resource Project Participation Agreement allocating the Attributes of a generation project to one or more of the All Requirements Members in accordance with Section 3(e).

**Resource Obligation** means the Member's allocable share of each Agency Obligation entered into for the benefit of the All Requirements Members for which the Agency will remain obligated after the effective date of termination of this Contract, as determined in accordance with Section 12. To qualify as a Resource Obligation under this Contract, the associated Agency Obligation (a) must have been entered into by the Agency (i) before the Member has delivered to the Agency written notice of termination of this Contract, or (ii) in the case of Contract termination arising out of an Event of Default, before the occurrence of the Event of Default; and (b) must not be subject to automatic reduction or abatement commensurate with loss of All Requirements Members.

**Resource Obligation Table** means the table listing certain Agency Obligations as described in Section 12(e) and attached as Schedule B, as updated from time to time.

**Revenue Requirements** means the portion reasonably and equitably allocable, consistent with generally accepted ratemaking principles and Prudent Utility Practice, to the All Requirements Project of all costs and expenses paid or incurred or to be paid or incurred by the Agency resulting from the ownership, operation, maintenance, termination, retirement from service, and decommissioning of; repairs, renewals, replacements, additions, improvements, betterments, and modifications to; and performance by the Agency of its obligations related to; the System or otherwise relating to the acquisition and sale of power and energy and transmission and other services or to the performance by the Agency of its obligations under the All Requirements Power Sales Contracts, as further described in Section 5(c).

**Service Term** means the period commencing on May 1, 2019 and extending through the term of this Contract.

**System** means all of the Agency's properties, rights, and interests in properties, including contract rights for the purchase or acquisition of power and energy and other Attributes and transmission or other services from others, all electric production, transmission, delivery facilities, general plant, and other related facilities and any mine, well, pipeline, plant, structure, or other facility for the development, production, manufacture, storage, fabrication, or processing of fuel of any kind or any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the Agency's generating plants, now existing and

hereafter acquired by lease, contract, purchase, or otherwise or constructed by the Agency, including any interest or participation of the Agency in any such facilities, together with all additions, betterments, extensions, and improvements to said system or any part thereof hereafter made and together with all lands, easements, and rights of way of the Agency and all other works, property, or structures of the Agency and rights to the use of any thereof or the output, products, or services therefrom or other contract rights, and other tangible and intangible assets of the Agency used or useful in connection with or related to said system.

Notwithstanding the foregoing definition of the term System, such term shall not include any properties or interests in properties of the Agency which the Agency determines shall not constitute a part of the System for the purposes of this Contract.

**Transmission Provider** means Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU,” together, “LG&E/KU”), the public utility operating companies that jointly own the transmission system to which the Member is electrically connected, or any successor owner of that transmission system or entity to which the use and control of that transmission system has been dedicated. For a Member indirectly connected to the LG&E/KU transmission system over the transmission facilities of a third party, the definition of Transmission Provider shall include that third party.

**Uncontrollable Force** means any cause beyond the control of the Party affected, including failure of facilities, flood, earthquake, storm, lightning, fire, explosion, epidemic, pestilence, war, riot, an act of domestic or international terrorism, civil disturbance, labor disturbances, sabotage, or an act of civil or military authorities, including court orders, injunctions, or orders of governmental agencies with proper jurisdiction, which by due diligence and foresight such Party could not reasonably have been expected to avoid.

## **SECTION 2. Term and Termination**

This Contract shall become effective as of the date first entered above. The Contract shall remain in effect until terminated in accordance with this Section 2.

This Contract may be terminated:

- (a) by the Member effective on May 31, 2024, or on any subsequent May 31st (or, if the last day of the MISO resource planning year changes to a different date, effective on such revised date) thereafter, upon the Member having given at least five (5) years’ prior written notice to the Agency in accordance with Section 29 of the Contract, provided that the Member shall remain responsible for any Resource Obligations, as determined in accordance with Section 12;
- (b) by the Member at such time that all Bonds shall have been paid or provision for such payment shall have been made therefor pursuant to any Bond Resolution and all contractual obligations entered into by the Agency for the generation, purchase, transmission or transformation of power and energy have been terminated and provision has been made for the payment of any residual costs thereof; or

- (c) upon the occurrence of an Event of Default in accordance with Section 12.

In no event shall the term of this Contract exceed the maximum term permitted by law.

### **SECTION 3. Sale and Purchase of Electricity**

- (a) The Agency hereby agrees to sell and deliver to the Member, and the Member hereby agrees to purchase and receive from the Agency, during the Service Term all electric power and energy required to serve the loads of the Member's retail customers and municipal loads and to operate the Member's municipal electric system, all in accordance with the provisions of this Contract.
- (b) The Agency and the Member agree, in furtherance of the purposes of this Contract, to submit a request to the Federal Energy Regulatory Commission for waiver of the Member's purchase obligations under the Public Utility Regulatory Policies Act of 1978 ("PURPA") and for approval of the Agency's undertaking of such PURPA purchase obligations, all for the period of the Service Term. The Agency shall be responsible for filing the request and taking such actions as it deems reasonable to obtain FERC's approval thereof. The Agency's costs of preparing and making such filing and other activities in connection with FERC proceedings to obtain or retain such approvals shall be included in the Revenue Requirements hereunder or otherwise equitably assessed to the All Requirements Members. Each PURPA purchase made by the Agency in an All Requirements Member's stead pursuant to the FERC waiver shall be an All Requirements Power Supply Resource.

In the event that the requested waiver is not granted or if, pursuant to other provisions of law, the Member is required to purchase electric power from a small power production facility, a cogeneration facility or any other facility, the Member shall promptly notify the Agency, and the Member and the Agency shall use their best efforts to arrange for such purchases to be made by the Agency. If such arrangements cannot be made, then the Member shall make the required purchases and sell the power purchased to the Agency at a price equal to the price paid by the Member. The Member appoints the Agency to act as its agent in all dealings with the owner of any such facility from which power is to be purchased and in connection with all other matters relating to such purchases.

- (c) The Member hereby commits itself to take and pay for all of the electric power and energy which it is required to purchase and receive under Section 3(a) and which is made available to the Member hereunder at its Point(s) of Delivery, such payments to be made at rates set forth in the Rate Schedule, as revised from time to time by the Board of Directors.

- (d) If requested by the Member, the Parties shall cooperate in seeking to develop a mutually beneficial agreement for the use by the Agency of the Attributes of any Member-owned generation resources or other entitlements the Member may have to generation resource Attributes (each a "Member-Owned Resource"), provided that any entitlement the Member may have to the Attributes of a Generation Resource Project resource shall not be considered a Member-Owned Resource. Under any such agreement, the Agency will integrate and schedule Attributes from the Member-Owned Resource in accordance with the Agency's standard procedures for other All Requirements Power Supply Resources. Payments or credits to the Member for the Attributes of a Member-Owned Resource shall not exceed their value to the Agency, as specified in the agreement and as measured by the Agency's actual or estimated net avoided costs resulting from the Agency's use of the resource or, if the Agency markets the Attributes, the actual or estimated net revenues received by the Agency for the Attributes less a reasonable allowance for the cost of administration. Any such agreement and quantification of the Agency's net avoided costs or anticipated net revenues shall take into consideration the characteristics of the Member-Owned Resource and other relevant factors, including the term of the agreement, which may be of any mutually agreed-upon duration. The costs of owning and operating the Member-Owned Resource shall remain the exclusive responsibility of the Member and therefore shall not be included in the Agency's Revenue Requirements. Member-Owned Resources shall not be used to serve the Member's load directly or to reduce the Member's billing demands under this Contract.
- (e) If the Member has or acquires an entitlement to the Attributes of a Generation Resource Project resource, it may direct the Agency to include the entitlement as an All Requirements Power Supply Resource. Unless otherwise agreed, the Agency will integrate and schedule the Attributes associated with each such entitlement of the Member in accordance with the Agency's standard procedures for other All Requirements Power Supply Resources. All net benefits attributable to each such entitlement included as an All Requirements Power Supply Resource shall be accounted for by the Agency and shall redound to the Member, such as by crediting the entitlement as having supplied a portion of the Member's load obligations or by passing through to the Member the revenues or cost savings associated with its use, less a reasonable allowance for the cost of administration. The Member shall be responsible for all costs associated with each such entitlement, consistent with the provisions of any Generation Resource Project Participation Agreement, and including all costs, if any, of holding harmless those All Requirements Members that are not participants in the Generation Resource Project from any adverse economic consequences to them resulting from inclusion of the Generation Resource Project entitlement in the portfolio of All Requirements Power Supply Resources. To the extent costs related to a



Generation Resource Project resource are included in the Revenue Requirements, those costs shall be separately accounted for and charged exclusively to the All Requirements Members participating in that Generation Resource Project through the Rate Schedule.

- (f) Except for All Requirements Power Supply Resources that are Member entitlements to Attributes of Generation Resource Project resources, the Parties intend that the capacity and energy output of each All Requirements Power Supply Resource shall serve the load of each All Requirements Member in proportion to the Member's load in order to facilitate efficient power supply planning and implementation. Notwithstanding the foregoing, in the event that one or more All Requirements Members request and the Board of Directors agrees that certain of the All Requirements Power Supply Resources shall be used to serve those Members' respective loads to a greater or lesser than proportional extent, the Rate Schedule and resulting rates and charges to those Members and the other All Requirements Members shall reflect the cost consequences of each such agreement.
- (g) Nothing in this contract shall interfere with a Member's authority to implement demand response, net metering, or energy efficiency programs. The Member shall coordinate with the Agency prior to implementing any proposed demand response or net metering program, and all such programs shall be subject to review by the All Requirements Project Committee in the interest of achieving consistency of such programs and avoiding cross-subsidization among the All Requirements Members to the extent practicable. Any ability by the Member to directly control and reduce load on the Member's electric system shall be addressed through an agreement between the Agency and the Member for compensation as a Member-Owned Resource pursuant to Section 3(d). The activation of any such direct load control shall be coordinated with the Agency for the benefit of the All Requirements Project as a whole, rather than being used by the Member to reduce its individual billing demands under this Contract.
- (h) Except as expressly permitted in this Contract (including the provisions for Member-Owned Resources, Generation Resource Projects, and net metering), the Member shall not buy power from any other source or operate (or allow operation of) any electrical generator(s) on its system during the Service Term. The Member may, during the Service Term, buy power from any other source or operate (or allow operation of) any electrical generator(s) (other than a Member-Owned Resource for which an agreement has been reached pursuant to Section 3(d) or a Generation Resource Project resource entitlement that is included as an All Requirements Power Supply Resource) only in the event of, and only to the extent of, (i) the failure or inability of the Agency to deliver power hereunder, (ii) the Member's inability to receive deliveries from the

Agency due to outage conditions on the Member's side of the Point of Delivery, (iii) periodic testing of emergency generators to ensure that they will be available to the Member when needed, or (iv) a legal requirement to purchase power pursuant to (A) a state or federal renewable portfolio standard that imposes greater demands on the Member than can be met through the All Requirements Power Supply Resources, (B) a state or federal net metering standard that imposes requirements on the Member, or (C) PURPA, but only to the extent that FERC has not granted waiver of the Member's PURPA purchase obligation as anticipated pursuant to Section 3(b).

#### **SECTION 4. Electric Characteristics, Points of Delivery and Measurement**

- (a) Electricity to be furnished hereunder shall be three phase, sixty hertz alternating current. The Member shall be responsible for arranging and paying for all connections between the system of the Member and the system of the Transmission Provider at the Points of Delivery. The Points of Delivery, the Points of Measurement and the delivery voltage shall be as set forth in Schedule A attached hereto, which Schedule may be amended from time to time to include such other Point or Points of Delivery and Point or Points of Measurement and delivery voltage as may be agreed upon by the Agency and the Member. Other provisions of Schedule A may be amended from time to time by the Agency in accordance with Prudent Utility Practice.
- (b) The Member shall install, own, and maintain any necessary substation equipment at the Points of Delivery and shall install, own, and maintain switching and protective equipment of adequate design and sufficient capacity on the Member's side of such Points of Delivery to enable the Member to take and use the power and energy supplied under this Contract without hazard to the facilities of the Transmission Provider.
- (c) The Agency shall not be responsible for the transmission, control, use, or application of power and energy provided under this Contract on the Member's side of the Point of Delivery.
- (d) The Member shall not be responsible for the transmission, control, use, or application of power and energy provided under this Contract on the Agency's side of the Point of Delivery, but the Member shall be responsible for its share of the Agency's costs of obtaining or providing such functions in accordance with the terms of this Contract, including the pass-through of all costs the Agency incurs pursuant to the Transmission Provider's Open Access Transmission Tariff attributable to service to the Member.

- (e) When electricity is measured at more than one Point of Measurement, the maximum total coincident demand of the Member's system shall be determined by combining the recorded demand at each Point of Measurement during the same billing demand measurement interval as specified in the Rate Schedule. Measurement of the Member's demand to determine responsibility for the costs of transmission and ancillary services shall be performed in accordance with the Transmission Provider's Open Access Transmission Tariff.
- (f) If the Point of Measurement is not located at the Point of Delivery, the measured amounts of demand and energy will be adjusted for billing purposes to reflect any electrical losses in accordance with Prudent Utility Practice. The measured amounts of demand and energy for billing purposes shall also be adjusted, where applicable, to include amounts the Member is required to purchase from the Agency, but which were not physically delivered by the Agency at the Point(s) of Delivery due to output from Member-Owned Resources or PURPA or other resources located behind the Member's Point(s) of Delivery, all as adjusted for losses in accordance with Prudent Utility Practice.

#### **SECTION 5. Rates**

- (a) The Member shall pay the Agency for all electric power and energy furnished at the Point(s) of Delivery hereunder and for all services related to the All Requirements Project at the rates and on the terms and conditions set forth in the Rate Schedule. The Board of Directors may revise and place into effect new Rate Schedules from time to time. The Member agrees to pay the rates and charges set forth in each revised Rate Schedule from the effective date established by the Board of Directors for such Rate Schedule. In the event that, during any portion of any billing period, electric power is made available to the Member by the Agency in accordance with this Contract which the Member is required to take and receive pursuant to Section 3 hereof, but which the Member fails to take and receive for any reason other than an inability due to an Uncontrollable Force, the Member shall pay the Agency for such availability in an amount equal to the product of the applicable demand charge(s) in the Rate Schedule and the billing demand computed as provided in the Rate Schedule except that, for such purpose, the kilowatts of demand for such billing period shall be based upon the kilowatts that would have otherwise been taken as evidenced by the total electric power consumed by the Member's retail customers during the billing period. Payments made by the Member under the Rate Schedule shall be treated as an operating expense from the revenues of the Member's electric utility system, or other Integrated Utility System of the Member of which the Member's electric utility system may be a part, to the extent permitted by law, and from other funds of such system legally available therefor and shall be in addition to and not in substitution for any other payments whether on account of dues

or otherwise owed by the Member to the Agency. The obligation of the Member to make payments under the Rate Schedule shall not constitute a general obligation of the Member, and the Member shall not be required to make such payments from any source other than the revenues and funds referred to in the next preceding sentence. The obligation of the Member to make payments under the Rate Schedule shall not be subject to any reduction, whether by offset, counterclaim, recoupment or otherwise, and shall not be otherwise conditioned upon the performance by the Agency under this or any other agreement or instrument; provided, however, that nothing contained herein shall be construed to prevent or restrict the Member from asserting any rights which it may have against the Agency under this Contract or under any provision of law, including the institution of legal proceedings for specific performance or recovery of damages.

The Member's electric utility system shall be deemed to be a part of an Integrated Utility System for purposes of Sections 5(a) and 7(a) hereof if the revenues of the electric utility system (i) are commingled with the revenues of one or more other utility systems owned by the Member, or (ii) are utilized to pay operating expenses of the Member's electric utility system and one or more other utility systems owned by the Member, or (iii) are pledged to secure bonds issued to finance one or more other utility systems owned by the Member. For purposes of this paragraph, the term "commingled" shall not be deemed to include the keeping of funds in one bank account so long as such funds are separately accounted for on the books and records of the Member.

- (b) The Board of Directors shall establish and maintain rates in the Rate Schedule hereunder and under the other All Requirements Power Sales Contracts that will provide revenues which are sufficient, but only sufficient, to meet the anticipated Revenue Requirements of the Agency. The Agency staff shall assist the All Requirements Project Committee in developing and designing the rates in the Rate Schedule in accordance with generally accepted ratemaking principles and procedures to provide revenues to meet the anticipated Revenue Requirements, and the Board of Directors shall not unreasonably withhold its approval and establishment of rates so developed by the AR Project Committee. The ratemaking methods used by the Board of Directors to establish rates and charges for all products and services the Agency provides to its members shall be consistent with Prudent Utility Practice.
- (c) Revenue Requirements include the following items of cost and offsetting revenues, in each case in amounts properly allocable to the AR Project (which, as to certain items, may be 100% of the costs or revenues):
  - (i) the cost incurred under power purchase agreements for All Requirements Power Supply Resources;

- (ii) the cost of other electric power and energy and other Attributes purchased by the Agency and the cost of transmitting, integrating, scheduling, dispatching, and related services for delivery of, electric power and energy and other Attributes to the All Requirements Members;
- (iii) the cost of risk management programs, such as fuel price hedging, derivative product payments, and financial transmission rights;
- (iv) payments of principal and interest and associated costs of notes or other evidences of indebtedness of the Agency, including lines of credit;
- (v) the administrative and general costs of the Agency, including the costs of insurance;
- (vi) the cost of operating and maintaining the System and of acquiring, producing, integrating, scheduling, dispatching, marketing, and delivering power and energy and other Attributes therefrom (including fuel costs, administrative and general expenses and working capital, for fuel or otherwise, and taxes or payments in lieu thereof) not included in the costs specified in the other items of this definition and the cost of power supply planning and implementation associated with meeting the Agency's power supply obligations;
- (vii) amounts which the Agency may be required to pay for the prevention or correction of any loss or damage or for renewals, replacements, repairs, additions, improvements, betterments, and modifications which are necessary to keep any facility of the System in good operating condition or to prevent a loss of revenues therefrom;
- (viii) payments of principal of and premium, if any, and interest on all Bonds issued by the Agency and payments which the Agency is required to make into any debt service reserve fund or account under the terms of any Bond Resolution or other contract with holders of Bonds;
- (ix) amounts required under any Bond Resolution to be paid or deposited into any fund or account established by such Bond Resolution (other than funds and accounts referred to in clause (viii) above), including any amounts required to be paid or deposited by reason of the transfer of monies from such funds or accounts to the funds or accounts referred to in clause (viii) above;
- (x) all costs incurred or associated with the salvage, discontinuance, decommissioning, and disposition or sale of properties;

- (xi) all costs and expenses relating to injury and damage claims required to be paid by the Agency;
  - (xii) any reserves, provision for rate stabilization funds, and working capital the Agency shall determine to be necessary for the payment of those items of costs and expenses referred to in clauses (i) through (xi) above to the extent not already included in such clauses; and
  - (xiii) additional amounts that must be realized by the Agency in order to meet the requirement of any rate covenant with respect to coverage of principal of and interest on Bonds contained in any Bond Resolution or contract with holders of Bonds or that the Agency deems advisable to enhance creditworthiness for the negotiating of power supply contracts or the marketing of its Bonds; and
  - (xiv) any other costs reasonably incurred by the Agency consistent with Prudent Utility Practice in support of the All Requirements Project;
  - (xv) less (i.e., offset by) revenues received by the Agency from sources other than payments to the Agency by the All Requirements Members pursuant to the All Requirements Power Sales Contracts.
- (d) In connection with any revision of the Rate Schedule, the Agency shall cause a notice in writing to be given to each All Requirements Member, which shall set out any proposed revision of the Rate Schedule with the effective date thereof, which shall be not less than sixty days after the date of delivery of the notice, and which shall be accompanied by an analysis of the anticipated Revenue Requirements that the new Rate Schedule is designed to recover and the derivation of the new rates. Routine changes in the level of an approved rate element that tracks specific costs, such as an energy cost adjustment factor, purchased power adjustment factor, or similar charge, shall not require submission of the analysis of estimated Revenue Requirements, but the derivation of any such charge shall be made available to the All Requirements Members.

#### **SECTION 6. Covenants of the Agency**

- (a) In performing its duties under this Contract, the Agency's goal will be to minimize the costs of reliably serving the All Requirements Members' collective requirements, to the extent feasible within practical limitations and equitable considerations, and in all cases subject to Section 24(b).
- (b) The Agency shall coordinate with the All Requirements Project Committee in identifying and acquiring All Requirements Power Supply Resources involving commitments of one (1) year or longer,

subject, however, to the obligation of the Agency to maintain the financial health of the Agency and to comply with any Bond Resolution and other contractual, regulatory, or legal requirements. To achieve long-term economic benefits, the Agency's power supply planning horizon shall be at least ten (10) years, and the Parties anticipate that the Agency will enter into power supply-related commitments both shorter and longer than the notice of termination period specified in Section 2(a).

- (c) The Agency shall use commercially reasonable efforts to market, under economically advantageous terms and conditions, electric power and energy and other Attributes that, in the sole judgment of the Agency, can be sold without adversely affecting performance by the Agency under this Contract or resulting in the breach of any Agency covenant or contract.
- (d) The Agency shall use its best efforts in accordance with Prudent Utility Practice to provide a constant and uninterrupted supply of electric power and energy under this Contract.
- (e) In addition to the delivery of power and energy pursuant to this Contract and the performance of all acts and actions incident thereto, the Agency agrees that it will perform, or cause to be performed through third-party providers, services, including: (i) coordinating and monitoring the investigating, studying, planning, engineering, designing, financing, installing, constructing, acquiring, operating, maintaining, retiring, decommissioning, or disposing of any part of the System; (ii) issuing and selling Bonds; (iii) planning, undertaking, coordinating, and monitoring the economic dispatching and scheduling of power and energy to the All Requirements Members; (iv) reviewing and paying of invoices related to the AR Project; (v) complying with all NERC standards applicable to the Agency; and (vi) providing such other services as the All Requirements Members may request and the Board of Directors determines to be feasible and appropriate.

#### **SECTION 7. Covenants of the Member**

- (a) The Member agrees to establish, maintain, and collect rates for electric power and energy to its consumers that will provide to the Member revenues sufficient to meet its obligations to the Agency under this Contract; to pay all other operating expenses; to pay all obligations, whether now outstanding or incurred in the future, payable from, or constituting a charge or lien on, the net revenues of its electric system; and to make any other payments required by Kentucky law; and, at the option of the Member, to provide any additional revenues permitted under Kentucky law. The Member agrees to use its best efforts to take all actions necessary or convenient to fulfill its obligations under this Section 7(a), including making timely applications for rate increases and

processing such applications with diligence. The Member agrees to comply with reasonable liquidity requirements as may be adopted by the Board of Directors from time to time to support the creditworthiness of the Agency. The Agency shall, upon request of the Member, perform or cause to be performed studies of the Member's revenues and potential methods of ensuring the Member's ability to satisfy this obligation. If such study is requested and performed, the Agency may charge and the Member shall pay all actual costs incurred in the development and delivery of the study.

The Member further covenants and agrees that if it maintains or establishes an Integrated Utility System of which its electric system is a part for its electric, water, gas, cable television, telephone, broadband, and sanitary sewer systems (or any combination of two or more thereof which includes its electric system), it will establish, maintain, and collect rates and charges for the services provided by its Integrated Utility System that will produce revenues at least sufficient to enable the Member to pay all expenses attributable to the Integrated Utility System, including the expenses incurred in the operation and maintenance of the Integrated Utility System (including the obligations under this Contract); to pay the debt service requirements on any bonds, notes or other evidences of indebtedness, whether now outstanding or incurred in the future, secured by such revenues and issued to finance improvements to the Integrated Utility System; and to make any other payments required by law.

- (b) The Member shall not sell at wholesale any of the electric power and energy delivered to it hereunder to any customer of the Member or any other entity for resale by that customer or entity.
- (c) The Member shall not sell, lease or otherwise dispose of all or substantially all of its electric system except on ninety (90) days' prior written notice to the Agency and, in any event, shall not so sell, lease or otherwise dispose of the same unless the following conditions are met:
  - (i) the Member shall assign this Contract and its rights and interest hereunder to the purchaser or lessee of the electric system and such purchaser or lessee shall assume all obligations of the Member under this Contract;
  - (ii) if and to the extent necessary to reflect such assignment and assumption, the Agency and such purchaser or lessee shall enter into an agreement supplemental to this Contract to clarify the terms on which power and energy are to be sold hereunder by the Agency to such purchaser or lessee;
  - (iii) the senior debt of such purchaser or lessee shall be rated in one of the four highest whole rating categories by at least one nationally-recognized bond rating agency;
  - (iv) the Agency shall have received an opinion of counsel of recognized standing in the field of law relating to municipal bonds selected by the Agency stating that such sale, lease or other disposition will not adversely affect the value of this Contract as security for the payment of Bonds and the interest thereon or jeopardize the tax-exempt status of the interest on any Bond or Bonds the



Agency has issued or may issue in the future as that status is governed by Section 103(a) of the Internal Revenue Code of 1954, as amended, and the Treasury Regulations or any rulings promulgated thereunder or as affected by a decision of any court of competent jurisdiction; (v) opinions shall be obtained from the respective counsel of assignee and the Agency that the assignment is lawfully permitted under Kentucky law; and (vi) the rates to be paid by the assignee, if a utility as defined by KRS § 278.010, have been approved by the Kentucky Public Service Commission or its successor. In the event that the Member sells or leases its electric system in violation of this Section 7(c), it shall be liable to the Agency for all resulting unavoidable costs owed by the Agency, including the Member's allocable share of all remaining fixed costs and must-take or minimum-take energy costs.

- (d) The Member covenants and agrees that it shall take no action the effect of which would be to prevent, hinder or delay the Agency from the timely fulfillment of its obligations under this Contract, any outstanding Bonds, or any Bond Resolution of the Agency.
- (e) The Member covenants and agrees that it shall not use or permit to be used any of the power and energy acquired under this Contract in any manner or for any purpose or take any other action or omit to take any action which would result in the loss of the tax-exempt status of the interest on any Bond or Bonds issued by the Agency as that status is governed by Section 103(a) of the Internal Revenue Code of 1954, as amended, and the Treasury Regulations or any rulings promulgated thereunder or as affected by a decision of any court of competent jurisdiction. The Member covenants that, prior to entering into any contract that could result in a violation of the covenant in this Section 7(e) whereby a person agrees to take, or to take or pay for, power and energy provided to the Member under this Contract, the Member shall notify the Agency of its intent to enter into such contract. As soon as practicable after receipt of such notice, the Agency shall advise the Member as to whether, in the opinion of counsel of recognized standing in the field of law relating to municipal bonds selected by the Agency, the entering into of such contract would result in a violation of the covenant contained in this Section 7(e). The Member agrees that if the Agency advises the Member that such a violation will or might result, the Member will not enter into such contract.
- (f) The Member covenants and agrees that it shall, in accordance with Prudent Utility Practice, (1) at all times operate the properties of its electric system and the business in connection therewith in an efficient manner, (2) maintain its electric system in good repair, working order, and condition, (3) comply with all NERC standards applicable to the Member, and (4) from time to time make all necessary and proper repairs, renewals, replacements, obligations, additions, betterments, and improvements with respect to its electric system so that at all times the

business carried on in connection therewith shall be properly and advantageously conducted; provided, however, this covenant shall not be construed as requiring the Member to expend any funds which are derived from sources other than the operation of its electric system and provided further that nothing herein shall be construed as preventing the Member from doing so.

- (g) The Member covenants and agrees that it shall not issue bonds, notes or other evidences of indebtedness or incur lease obligations which are payable from the revenues derived from its electric system superior to the payment of the operating expenses of its electric system; provided, however, that nothing herein shall limit the Member's present or future right to issue bonds, notes or other evidences of indebtedness or incur lease obligations which are payable on a parity with operating expenses or payable from revenues after payment of operating expenses.

#### **SECTION 8. Authorities**

- (a) The Agency is hereby authorized by the Member (i) to enter into contracts and to undertake projects from time to time in accordance with recommendations by the All Requirements Project Committee, and the Board of Directors shall not unreasonably withhold its approval, pursuit, and implementation of such contracts and projects; (ii) to act as the Member's agent (A) to serve as a market participant, (B) to procure and administer transmission and other services related to providing all requirements electric service, and (C) to act on the Member's behalf in performing the Agency's duties under this Contract; and (iii) to obtain financing consistent with Prudent Utility Practice to meet liquidity needs and working capital requirements of the All Requirements Project. The Agency is authorized by the Member to issue Bonds in accordance with any applicable provisions of the Interlocal Cooperation Act; provided that the Member shall not be responsible for the payment of any share of the principal of, premium, if any, interest on, or any other costs related to Bonds issued by the Agency to finance the procurement of an All Requirements Power Supply Resource unless approved and authorized in writing by the Member's Governing Body and any other governmental entity that is required by law to grant its approval or authorization; and provided further that if the Member does not obtain such approval or authorization, it shall not be entitled to share in the Attributes of the resource being financed, and the rates and charges to the Member under the Rate Schedule shall be adjusted as necessary to reflect any additional costs incurred by the Agency in serving the Member's load from any necessary alternative resources, and the Member shall hold harmless the Agency and those All Requirements Members who did obtain such approval or authorization from any additional costs incurred by the Agency resulting from such alternative power supply arrangements that were required to serve the Member.

- (b) The Board of Directors hereby authorizes the Agency's President and his or her designees to carry out the Agency's responsibilities as set forth in this Contract and to provide support for the activities of the AR Project Committee, subject to limitations on the President's authority as may be adopted from time to time in policies approved by the Board of Directors.

#### **SECTION 9. Meter Readings and Payment of Bills**

- (a) The Agency shall read meters or cause meters to be read at monthly intervals which coincide with the billing period established by the Board of Directors in accordance with the Rate Schedule.
- (b) The Member shall pay for electric power and energy furnished hereunder by electronic transfer to a bank account designated from time to time by the Agency within 15 days of receipt of the bill; provided, however, that if said 15th day is a Saturday, Sunday or legal holiday in the Commonwealth of Kentucky, the next following business day shall be the day on which such payment shall be due. In the event that the Member fails to make payment when due of any amount owing hereunder, the Agency may impose a late-payment charge as provided in the Rate Schedule. The Agency shall bill the Member on a prompt and timely basis in accordance with a schedule to be determined by the Agency. The Agency may, whenever any amount due remains unpaid after the due date, take all steps available to it under this Contract or applicable law to collect such amount and, after giving 15 days' advance notice in writing of its intention to do so, discontinue service hereunder to the extent permitted by law.
- (c) In the event the Member desires to dispute all or any part of a bill, the Member shall nevertheless pay the full amount of the bill when due and notify the Agency in writing of the grounds on which any charges in the bill are disputed and the amount in dispute. The Member will not be entitled to any adjustment on account of any disputed charges which are not brought to the attention of the Agency in the manner herein specified. Such adjustment shall be for the time period for which it can be established a billing error took place but in no event shall the adjustment period extend past 365 days or, in the event of meter errors, the date of the most recent meter test.

#### **SECTION 10. Metering**

- (a) The Agency shall furnish, install, and maintain, or cause to be furnished, installed, and maintained, the necessary revenue-quality metering and associated equipment required at each Point of Measurement of the Member to measure and record the electric power and energy furnished hereunder at such Point of Measurement and to communicate the real-time metering data to the Agency on a continuous basis. The Agency

will own the metering and associated equipment and will assess the cost of furnishing and installing the necessary metering and equipment to the Member. Such metering equipment shall provide a continuous record of the integrated total demand of the Member at such Point of Measurement during each billing period throughout the Service Term. Such records shall be available at all reasonable times to authorized agents of the Member. The Member may, at its own cost, install additional metering equipment to provide a check on the Agency's metering equipment, so long as the Member's additional metering equipment does not interfere with the functioning, operation, or maintenance of the Agency's metering. All metering equipment shall be maintained by the respective owner(s) thereof.

- (b) The Agency shall test and calibrate meters or cause meters to be tested and calibrated by comparison with accurate standards at intervals of not less than twelve (12) months. The Agency shall also perform or cause to be performed special meter tests at the Member's request. The cost of all tests shall be borne by the Agency except that if any special meter test performed at the Member's request shall disclose that the meters are recording accurately, the Member shall reimburse the Agency for the cost of such test. Meters registering within one percent (1%) of accuracy shall be deemed to be accurate. The readings for any meter that shall have been disclosed by test to be inaccurate shall be corrected in accordance with the percentage of inaccuracy found by such test from the beginning of the first billing period which began after the next preceding meter test but in any case for no period longer than 365 days. Should any meter fail to register, the electric power and energy delivered during such period of failure shall for billing purposes be estimated by the Agency after consultation with the Member from the best information available. The Agency shall notify the Member or cause the Member to be notified in advance of the time of any meter test so that the Member's representative may be present at such meter test.
- (c) For a fractional part of a billing period at the beginning or end of service, demand charges under the Rate Schedule shall be proportionately adjusted by the Agency in the ratio that the number of hours that electric service is furnished to the Member (in such fractional billing period) bears to the total number of hours in the billing period involved. Except as provided in this Section 10(c) with respect to fractional billing periods at the beginning and end of service, there shall be no proration of demand charges under the Rate Schedule for any billing period during any part of which power is made available to the Member.

#### **SECTION 11. Right of Access Accorded Each Party**

The Member shall permit duly authorized representatives and employees of the Agency to enter upon its premises for the purpose of reading or checking meters, inspecting, testing, repairing, renewing, or exchanging any or all of the equipment owned by the Agency located on

such premises, or for the purpose of performing any other work necessary in the performance of this Contract. The Member shall have a similar right of access with respect to the Agency's premises.

## **SECTION 12. Default and Remedies**

- (a) It shall constitute an "Event of Default" under this Contract if any one or more of the following occurs and the corresponding cure period, if any, has expired without cure:
- (i) The Member fails to make any payment required pursuant to this Contract and such failure continues for a period of ten (10) days after delivery of notice thereof by the Agency.
  - (ii) The Member fails in any material respect to comply with or observe any material covenant, warrant, or obligation under this Contract (except a payment default as described in Section 12(a)(i), and except a failure due to causes excused by Uncontrollable Forces or attributable to the Agency's wrongful act or wrongful failure to act) and such failure continues for a period of thirty (30) days after delivery of notice thereof by the Agency, or, if such failure cannot reasonably be cured within such 30-day period, such further period as shall reasonably be required to effect such cure, provided that the Member commences within the first thirty (30) days to effect such cure and at all times thereafter proceeds diligently to complete such cure as quickly as possible, but in no event shall such failure continue longer than one hundred twenty (120) days.
  - (iii) The Agency fails in any material respect to comply with or observe any material covenant, warrant, or obligation under this Contract (except a failure due to causes excused by Uncontrollable Forces or attributable to the Member's wrongful act or wrongful failure to act) and such failure continues for a period of thirty (30) days after delivery of notice thereof by the Member, or, if such failure cannot reasonably be cured within such 30-day period, such further period as shall reasonably be required to effect such cure, provided that the Agency commences within the first thirty (30) days to effect such cure and at all times thereafter proceeds diligently to complete such cure as quickly as possible, but in no event shall such failure continue longer than one hundred twenty (120) days.
  - (iv) A Party becomes insolvent, or generally does not pay its debts as they become due; or admits in writing its inability to pay its debts; or makes an assignment for the benefit of creditors; or insolvency, reorganization, bankruptcy, or receivership proceedings are commenced by or against a Party and such proceedings are not dismissed or stayed within sixty (60) days.

- (b) Upon the occurrence of an Event of Default, the nondefaulting Party may at its option terminate this Contract by giving twenty-one (21) days' prior notice thereof (or, in the case of a payment default as described in Section 12(a)(i), five (5) days' prior notice thereof) to the defaulting Party.
- (c) Upon the effective date of termination, this Contract shall be of no further effect, and neither Party shall have any further obligation to the other under this Contract except for the payment of any amounts due for services provided prior to cancellation, and except as set forth in this Section 12 and Section 32.
- (d) After the effective date of termination of this Contract, regardless of whether terminated under Section 2 or this Section 12, the Member shall be required to fulfill all Resource Obligations in accordance with this Section 12. Commencing on the effective date of termination, (i) the Member shall pay to the Agency monthly charges designed to recover the costs incurred by the Agency associated with each of the Member's Resource Obligations, including reasonable and customary charges relating to the administration of the associated Attributes or entitlement, and (ii) the Agency shall utilize or sell the Member's allocated share of the Attributes or entitlement associated with each Resource Obligation in exchange for providing the Member a credit or offset equal to the cost avoided or revenue received by the Agency from the respective utilization or sale of such Attributes or entitlement up to the amount of the charges to the Member for that Resource Obligation. If requested by the Agency, the Member shall promptly provide to the Agency and maintain a letter of credit or other form of security in an amount sufficient to fulfill the Member's Resource Obligations and in a form satisfactory to the Agency as security for the Member's payment of the monthly charges related to its Resource Obligations. The Member's responsibility for each Resource Obligation shall continue until the earliest of (1) the date on which the associated Agency Obligation expires; (2) the effective date of arrangements between the Agency and one or more other Agency members pursuant to which such other member(s) voluntarily (and, if applicable, collectively) accept the transfer of the Resource Obligation; or (3) the effective date on which the Agency, acting in its sole discretion, has otherwise fully satisfied or terminated the Member's allocable share of the associated Agency Obligation and has been reimbursed by the Member for all costs incurred in achieving such satisfaction or termination of the Member's allocable share.
- (e) For the convenience of the Parties and to provide information to the All Requirements Members concerning potential future Resource Obligations, the Parties shall maintain in Schedule B a Resource Obligation Table identifying Agency Obligations that, as of the time of

preparing or updating the Table, are expected to remain in effect for a time period longer than the notice of termination period specified in Section 2(a). Updates to the Resource Obligation Table shall be made at least annually to reflect current Agency Obligations of such duration and shall be approved by vote of the All Requirements Project Committee. Notwithstanding the foregoing, any omission from the Resource Obligation Table of an Agency Obligation that extends beyond the effective date of termination of this Contract shall not relieve the Member of its Resource Obligation associated with that Agency Obligation. The allocation to determine each of the Member's Resource Obligations as a share of the respective associated Agency Obligations will be the Member's monthly billing demands under the Rate Schedule as a percentage of the total monthly billing demands of the All Requirements Members (excluding those of any All Requirements Member that does not share in the costs of the resource from which the Agency Obligation derives) during the twelve consecutive full calendar months immediately preceding the month in which the effective date of termination falls, provided, however, that if the Member's share of a particular Agency Obligation has been established on a different basis, such as in a Generation Resource Project Participation Agreement or a specific allocation for a particular resource pursuant to Section 3(f), the allocation for each such Agency Obligation shall be the Member's share as so established.

- (f) In the event of termination of this Contract upon the occurrence of an Event of Default, the nondefaulting Party shall have the right to seek remedies at law or in equity or damages for the breach of any term, condition, covenant, warranty or obligation under this Contract.

### **SECTION 13. Uncontrollable Force**

Neither the Agency nor the Member shall be considered to be in default in respect to any obligation hereunder (other than the obligation of the Member to pay for electric power and energy made available hereunder to the extent payment is required by Section 5(a) hereof) if prevented from fulfilling such obligations by reason of an Uncontrollable Force. The Party claiming an Uncontrollable Force shall give notice and reasonable details of any potential or actual Uncontrollable Force to the other Party as soon as is reasonably practicable, shall provide regularly updated information as to the anticipated occurrence or duration of the Uncontrollable Force, and shall provide prompt notice when it is able to resume performance of those obligations that were affected as a result of the Uncontrollable Force. Either Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall exercise due diligence to remove such inability with all reasonable dispatch.

### **SECTION 14. Cooperation**

- (a) The Member and the Agency shall cooperate with each other and with the other All Requirements Members to fulfill the objectives of this Contract.

- (b) If it becomes necessary by reason of any emergency or extraordinary condition for either the Agency or the Member to request the other Party to furnish personnel, materials, tools, or equipment for the accomplishment of its obligations hereunder, the Party so requested shall cooperate with the requesting Party and render such assistance as the Party so requested may determine to be available. The Party making such request, upon receipt of properly itemized bills from the other Party, shall promptly reimburse the other Party for all costs properly and reasonably incurred by it in providing such assistance. The cost shall include an amount not to exceed ten percent (10%) for administrative and general expenses; such costs are to be determined on the basis of current charges or rates used in its own operations by the Party rendering the assistance.

#### **SECTION 15. Construction, Operation and Maintenance Standards**

The Member shall own, install, and maintain electrical protective relaying equipment at each point of interconnection with the Transmission Provider's transmission system. The design and operating characteristics of such equipment shall be coordinated with the Agency and subject to the Agency's approval, which approval shall not be unreasonably withheld.

#### **SECTION 16. All Requirements Project**

- (a) The Board of Directors shall designate and authorize by resolution the establishment of an All Requirements Project pursuant to Article II, Section 4 of the Interlocal Cooperation Agreement for the purposes, among others, of planning, developing, and implementing a portfolio of power supply resources to serve all the electric power and energy requirements of the All Requirements Members, and of acquiring transmission, scheduling, dispatching, marketing, and all other types of purchases or services necessary or useful to integrate and deliver all resources used to supply the requirements of the All Requirements Members. The participants in the All Requirements Project shall be the All Requirements Members.
- (b) An All Requirements Project Committee shall be established and conduct its activities in accordance with Article III, Section 4 of the Interlocal Cooperation Agreement and Article V of the Agency's Bylaws.
- (c) Each AR Project Committee member shall have one unweighted vote and shall have the same number of weighted votes as its Agency member has on the Board of Directors as provided in the Agency's Bylaws. Matters submitted to a vote of the AR Project Committee shall be decided by majority unweighted vote of the members present, provided, however, that any AR Project Committee member voting in the minority shall have the right to call for reconsideration based on a weighted vote. The AR Project Committee shall adopt from time to time the threshold of weighted votes required to grant reconsideration, which shall have the



effect of vacating the original per capita vote, provided, however, that the threshold number of weighted votes required for reconsideration to be granted must at all times be high enough that no single AR Project Committee member has enough weighted votes to carry the vote by itself. In the event that the Member causes an Event of Default, the Member shall not be entitled to vote on the AR Project Committee while that Event of Default continues to exist.

- (d) In the event that all of the Agency's members become All Requirements Members, the AR Project Committee may determine that the AR Project and AR Project Committee are no longer needed and should be terminated. In that event, the functions and authority of the AR Project Committee shall thereafter be performed and exercised by the Board of Directors, and the AR Project shall be terminated, subject, however, to compliance with all requirements, and fulfillment or assumption of all obligations, of the All Requirements Project.

#### **SECTION 17. Assignment of Contract**

- (a) This Contract shall inure to the benefit of and shall be binding upon the respective successors and assigns of the Parties to this Contract; provided, however, that, except for the assignment by the Agency authorized by clause (b) of this Section 17 and except for any assignment in connection with the sale, lease or other disposition of all or substantially all of the Member's electric system as provided in Section 7(c) hereof, neither this Contract nor any interest herein shall be transferred or assigned by either Party except with the consent in writing of the other Party, which the Party may grant or deny in its sole discretion. Except for the assignment by the Agency authorized by clause (b) of this Section 17, the Party seeking to assign this Contract must provide at least ninety (90) days' prior written notice to the other Party. No assignment or transfer of this Contract shall relieve the Parties of any obligation hereunder.
- (b) The Member acknowledges and agrees that the Agency may assign and pledge to any trustee or similar fiduciary designated in any Bond Resolution all of, or any interest in, its right, title and interest in and to all payments to be made to the Agency under the provisions of this Contract as security for the payment of the principal (including sinking fund installments) of, premium, if any, and interest on any Bonds and may deliver possession of this Contract to such trustee in connection therewith, and, upon such assignment, pledge and delivery, the Agency may grant to such trustee any rights and remedies herein provided to the Agency and thereupon any reference herein to the Agency shall be deemed, with the necessary changes in detail, to include such trustee which shall be a third party beneficiary of the covenants and agreements of the Member herein contained. Upon any such assignment, pledge and delivery, such trustee shall fulfill all of the obligations with respect to the

Member that the Agency was required to fulfill prior to such assignment, pledge and delivery.

#### **SECTION 18. Records and Accounts**

The Agency shall keep accurate records and accounts of its properties and its operations in accordance with or so as to permit conversion to the Federal Energy Regulatory Commission Uniform System of Accounts prescribed for Class A and Class B Public Utilities and Licensees as in effect from time to time. Should the Federal Energy Regulatory Commission be modified or cease to exist, the records shall be maintained under the Uniform System of Accounts as adopted or used by whatever agency succeeds or takes over the duties of the Federal Energy Regulatory Commission. The Member shall have the right at any reasonable time to examine such accounts. The Agency shall cause such accounts to be audited annually by a firm of independent public accountants of national reputation and shall supply copies of such audits to the Member.

#### **SECTION 19. Information**

The Agency and the Member will promptly furnish to each other such information as may be reasonably requested from time to time in order to carry out more effectively the intent and purpose of this Contract or as may be reasonably necessary and convenient in the conduct of the operations of the Party requesting such information or as may be required by law. Without limiting the generality of the foregoing, the Member shall, upon request, furnish to the Agency all such information, certificates, engineering reports, feasibility reports, information relating to load forecasts and generation and transmission expansion plans, audited financial statements, financial audits, opinions of counsel (including the opinion required by Section 22 hereof), official statements and other documents as shall be reasonably necessary in connection with financings of the Agency and maintaining the creditworthiness of the Agency.

#### **SECTION 20. No Adverse Distinction**

The Agency agrees that there shall be no pattern of adverse distinction and no pattern of undue discrimination in carrying out its obligations under this Contract relating to the Member as compared to other All Requirements Members; provided, however, that differences in treatment among All Requirements Members under the All Requirements Power Sales Contracts based upon variances in cost of service shall not be considered a pattern of adverse distinction or a pattern of undue discrimination for purposes of this Section.

#### **SECTION 21. Amendment and Uniformity of Contracts**

- (a) Except as provided for expressly herein (including Section 21(c)), neither this Contract nor any terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing executed by each Party to this Contract.
- (b) This Contract shall not be amended, modified, or otherwise changed by agreement of the Parties in any manner that will materially and adversely affect repayment, the tax-exempt status, or debt rating of any Bonds, or

the security afforded by the provisions of this Contract for the payment of any of the Agency's obligations under the All Requirements Power Supply Contracts, so long as any such obligations are outstanding and unpaid, unless sufficient funds are set aside for the payment or retirement thereof.

- (c) In order to preserve the uniformity of the All Requirements Power Supply Contracts, the Member agrees that this Contract may be amended to conform to the terms of the other All Requirements Power Supply Contracts in the event that the amendment is approved by (i) the Board of Directors, (ii) a two-thirds majority of unweighted votes of the All Requirements Project Committee, and (iii) a simple majority weighted vote of the All Requirements Project Committee; provided, however, that no change shall be made to the length of notice of termination specified in Section 2(a) without the consent of the Member.

## **SECTION 22. Opinion and Certificate as to Validity**

Upon request from time to time by the Agency, the Member shall furnish the Agency, in form and substance satisfactory to the Agency, with (i) an opinion of the Member's attorney or an attorney employed by the Member, and (ii) a certificate from the Member as to each of Sections 22(a) through 22(g) below.

- (a) The Member is a municipal corporation or municipal utility duly created and validly existing pursuant to the laws of the Commonwealth of Kentucky.
- (b) The Member has full legal right and authority to enter into this Contract and to carry out its obligations hereunder.
- (c) The Governing Body duly approved this Contract and its execution and delivery on behalf of the Member by ordinance or resolution duly and lawfully adopted at a meeting or meetings duly called and held at which quorums were present and acting throughout and such meeting or meetings were called pursuant to necessary public notice.
- (d) This Contract has been duly authorized, executed, and delivered by the appropriate officers of the Member; and, assuming that the Agency has all the requisite power and authority to execute and deliver, and has duly authorized, executed, and delivered, this Contract, this Contract constitutes the legal, valid, and binding obligation of the Member in accordance with its terms subject, however, to the effect of, and to restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization, or other similar laws affecting creditors' rights generally. No opinion need be rendered as to the availability of any particular remedy.
- (e) The execution and delivery of this Contract by the Member, the performance by the Member of its obligations hereunder and the consummation of the transactions contemplated herein do not and will

not contravene any existing law or any existing order, injunction, judgment, decree, rule, or regulation of any court or administrative agency having jurisdiction over the Member or its property or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond ordinance, trust agreement, indenture, mortgage, deed of trust, or other agreement to which the Member is a party or by which it or its property is bound.

- (f) All approvals, consents, or authorizations of, or registrations or filings with, any governmental or public agency, authority, or person required on the part of the Member in connection with the execution, delivery, and performance of this Contract have been obtained or made.
- (g) To the knowledge of such attorney or firm of attorneys and of the Member after due inquiry, there is no litigation or other proceedings pending or threatened in any court or other tribunal of competent jurisdiction (either state or federal) questioning the creation, organization, or existence of the Member or the validity, legality, or enforceability of this Contract.

### **SECTION 23. Relationship to and Compliance with Other Instruments**

It is recognized by the Parties that the Agency must comply with the requirements of (i) power purchase agreements for All Requirements Power Supply Resources, (ii) Open Access Transmission Tariffs under which transmission service may be arranged for the delivery of Attributes from All Requirements Power Supply Resources, (iii) any agreements concerning Member-Owned Resources entered into pursuant to Section 3(d), (iv) any Generation Resource Project Participation Agreement, (v) any other agreement between the Agency and a third party related to services the Agency provides under this Contract, and (vi) the Interlocal Cooperation Agreement. It is further recognized by the Parties that, in undertaking, or causing to be undertaken, the planning, financing, construction, acquisition, operation, and maintenance of the System, the Agency must comply with the requirements of any Bond Resolution, any agreement with any owner or co-owner of or participant or co-participant in any facility included in the System relating to the construction, operation, or maintenance thereof and all licenses, permits, and regulatory approvals necessary for such planning, financing, construction, acquisition, operation, and maintenance, and it is therefore agreed that this Contract is made subject to the terms and provisions of any Bond Resolution, any such agreement or tariffs, and all such licenses, permits, and regulatory approvals.

### **SECTION 24. Indemnification and Liability**

- (a) The Agency and the Member shall defend and hold each other harmless from any and all claims, liability, and expense, including attorneys' fees, litigation expenses, and any judgment arising out of any bodily injury, death, or damage to property (other than bodily injury, death, or damage to property proximately caused by the other Party or its servants or employees), occurring on their respective properties, including such

injury, death, or damage as may be suffered by the Agency or the Member or by third parties, except that the Agency and the Member shall each be responsible for all claims of its respective employees, agents, and servants under workmen's compensation laws or any similar statutes. In no event shall either the Agency or the Member be liable to each other for any indirect, special, incidental, or consequential damages with respect to any claim arising out of this Contract whether based on contract, tort, strict liability, or otherwise.

- (b) The Member acknowledges that (i) effective performance by the Agency of its obligations under this Contract will require exercise of business judgment by Agency officers, directors, personnel, and consultants on the basis of information available to them, and (ii) while the Agency's aim will be to enhance value and reduce risk to the Member and the other All Requirements Members, it is not reasonable to expect that value will be ideally maximized or that risk will be fully eliminated. In no event shall a claim of breach or Event of Default by the Agency be based on the dissatisfaction of one or more of the All Requirements Members with transactions arranged or entered into by the Agency pursuant to this Contract, or with the nature or level of savings, costs, or risks associated therewith, absent a showing of gross negligence or willful misconduct by the Agency. The sole remedy available to the Member or another All Requirements Member that is dissatisfied with the Agency's ability to achieve the Agency's goals is to terminate this Contract in accordance with Section 2.

#### **SECTION 25. Dispute Resolution**

- (a) Any dispute, claim, or controversy between the Parties arising out of this Contract (each a "Dispute") shall be resolved in accordance with the procedures set forth in this Section 25.
- (b) In the event of a Dispute, either Party to the Dispute shall provide written notice, including a description of the nature of the Dispute, to the other Party and to the other All Requirements Members.
- (c) Promptly after delivery of notice of a Dispute, the Parties' representatives shall negotiate in good faith to resolve the Dispute. If the Dispute is not resolved within fifteen (15) days after receipt of the notice, each Party shall have seven (7) days to appoint a senior executive or official who shall meet and negotiate in good faith with the other Party's senior executive or official to resolve the Dispute.
- (d) Good faith mediation shall be a condition precedent to the filing of any litigation in law or equity by either Party relating to this Contract except injunctive litigation to the limited extent necessary to mitigate or cure an imminent threat to public or employee safety. Before the further

remedies provided for in this Section 25 may be exercised by either Party, the Party perceiving itself to be aggrieved shall initiate mediation by giving written notice to the other Party in sufficient detail that the other Party will be fully advised of the circumstances underlying the Dispute and the basis for the Party's claim. The responding Party shall deliver to the initiating Party a written response within ten (10) business days of receipt of such notice.

- (e) The Parties shall attempt to resolve the Dispute by engaging a single mediator, experienced in the subject matter, to mediate the Dispute. The mediator shall be mutually selected by the Parties and conduct mediation at a location to be agreed upon by the Parties or, absent agreement, designated by the mediator. Within two (2) business days of selection, the Parties shall provide to the mediator a copy of the notice, response, this Contract, and any other documents exchanged by the Parties. If the Parties and the mediator are unable to settle the Dispute within thirty (30) days from selection, or such other time as the Parties agree, the mediator shall make a written recommendation as to the resolution of the Dispute. Should the Parties be unable to agree on a mediator within ten (10) business days of the written response of the responding Party, either Party or the Parties jointly shall petition the Presiding Judge of a court of general jurisdiction over the Parties and the matters at issue and in which venue is proper, to appoint a mediator, experienced and knowledgeable in the subject matter of the Dispute. The costs of the mediator shall be shared equally by the Parties to the dispute. If the Parties are unable to agree on a mediator and no court has appointed a mediator within a reasonable time, the obligation to mediate shall be deemed fulfilled.
- (f) In any litigation, a Party that had refused to accept the mediator's recommendation for resolving the Dispute shall be liable for the other Party's reasonable attorneys' fees and expenses incurred in litigating the Dispute, not to exceed \$10,000, unless the result of such litigation materially improves such Party's position as compared to the recommended resolution. For purposes of this Section 25(f), "materially improve" shall mean, with regard to compensation or liability, twenty-five percent (25%) or greater improvement. All determinations under this Section 25(f) shall be decided in the sole discretion of the tribunal before whom the litigation was resolved, and the record of the mediation and the mediator's recommendation shall be admissible for such purposes and only for such purposes following the conclusion of the litigation.
- (g) The Parties may agree to waive mediation. If no resolution of the Dispute is achieved through mediation, each Party may pursue litigation as it chooses. If the Parties agree on further dispute resolution procedures they wish to follow, such as binding arbitration, nothing in this Section 25 shall prevent them from doing so.

- (h) Nothing in this Section 25 shall be construed to affect jurisdiction or venue over any Dispute that is otherwise appropriate under law.
- (i) EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, AND AFTER HAVING CONSULTED OR HAVING HAD AMPLE OPPORTUNITY TO CONSULT THEIR RESPECTIVE LEGAL COUNSEL CONCERNING THE CONSEQUENCES OF SUCH WAIVER, TRIAL BY JURY IN ANY ACTION OR OTHER PROCEEDING BROUGHT TO ENFORCE OR DEFEND AGAINST ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT.

#### **SECTION 26. Applicable Law**

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

#### **SECTION 27. Consent to Jurisdiction and Venue**

The Agency and the Member hereby consent to the jurisdiction of any state or federal court located within the County of Franklin, Commonwealth of Kentucky, and each waives any objection it may have based on improper venue or *forum non conveniens* to the conduct of any proceeding in any such court.

#### **SECTION 28. Waiver of Immunity**

The Member agrees that with respect to obligations under this Contract and performance thereof, it will not claim immunity, on the grounds of its status as a municipality, from: (i) suit, (ii) jurisdiction of court (including a court located outside the jurisdiction of the municipality), (iii) relief by way of injunction, order for specific performance, or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment.

#### **SECTION 29. Notices**

All notices, invoices, consents, waivers, and other communications required or permitted hereby shall be in writing and shall be deemed to have been given when (i) delivered to the other Party's address personally, by facsimile, by messenger, by a nationally or internationally recognized overnight delivery service, or otherwise, or (ii) received or rejected by the other Party, if sent by certified mail, return receipt requested, in each case, addressed to the other Party at its address, marked to the attention of the person designated below. In addition, notice shall be provided by email to the other Party's email address designated below.

If to the Agency:

Kentucky Municipal Energy Agency  
c/o Rubin & Hays  
Attn: Charles S. Musson  
450 South Third Street  
Louisville, KY 40202  
Email: csmusson@rubinhays.com

If to the Member:

Electric and Water Plant Board of the City of Frankfort, Kentucky  
Attn: Herbie Bannister  
317 West Second Street  
Frankfort, Kentucky 40601  
Email: hbannister@fewpb.com

The foregoing names and addresses may be changed by similar written notice at any time.

### **SECTION 30. Waivers**

- (a) Any waiver at any time by either Party hereto of its rights with respect to a default or any matter arising in connection with this Contract shall not be deemed to be a waiver with respect to any subsequent default or matter.
- (b) The failure of either Party hereto to enforce at any time any of the provisions of this Contract or to require at any time performance by the other Party hereto of any of the provisions hereof shall in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this Contract or the right of such Party thereafter to enforce each and every provision hereof.

### **SECTION 31. Severability**

In the event that any of the terms, covenants, or conditions of this Contract, or the application of any such term, covenant, or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction under the circumstances, the remainder of this Contract and the application of its terms, covenants, or conditions to such persons or circumstances shall not be affected thereby.

### **SECTION 32. Survival of Obligations**

The termination of this Contract shall not discharge either Party thereto from any obligation it owes to the other Party under this Contract by reason of any transaction, loss, cost, damage, expense, or liability which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to such termination. It is the intent of the Parties hereby that any such obligation owed (whether the same shall be known or unknown at the termination of this



Contract or whether the circumstances, events, or basis of the same shall be known or unknown at the termination of this Contract) shall survive the termination of this Contract. Cancellation, expiration, or termination of this Contract shall not relieve the Parties of obligations that expressly survive or by their nature should survive such cancellation, expiration, or termination, including Sections 5, 7, 10(c), 12, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 33.

**SECTION 33. Entire Agreement**

This Contract supersedes all previous representations, understandings, negotiations, and agreements, either written or oral, between the Parties or their representatives with respect to the subject matter hereof and constitutes the entire agreement of the Parties with respect to the subject matter hereof.

**SECTION 34. No Third Party Beneficiaries**

This Contract is intended solely for the benefit of the Parties hereto. Except as provided in Section 17(b), nothing in this Contract shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Contract.

**SECTION 35. Incorporation of Schedules**

Schedules to this Contract are an integral part of the Contract and are incorporated herein as if set forth herein in their entirety.

**SECTION 36. Counterparts**

This Contract may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Contract to be executed by its duly authorized official, officer, or representative and its seal to be hereto affixed, if required, effective as of the day, month and year first above written.

*[signatures appear on the next page]*

KENTUCKY MUNICIPAL ENERGY AGENCY

By: Ronald W. Herd  
Ronald W. Herd, Chairman

ATTEST:

Vent Foster  
Vent Foster, Secretary

ELECTRIC AND WATER PLANT BOARD OF  
THE CITY OF FRANKFORT, KENTUCKY

By: Ralph Ludwig  
Ralph Ludwig, Chairman of the Board

ATTEST:

Herbbie Bannister  
Herbbie Bannister, General Manager

Dr. Scott Green  
Dr. Scott Green, Secretary/Treasurer

SCHEDULE A

KENTUCKY MUNICIPAL ENERGY AGENCY  
SERVICE SPECIFICATIONS

MEMBER: Electric and Water Plant Board of the City of Frankfort, Kentucky

1. **Applicability.** These service specifications are applicable to the All Requirements Power Sales Contract covering the supply and delivery of electric power and energy by the Agency to the Electric and Water Plant Board of the City of Frankfort, Kentucky (“Member”).
2. **Points of Delivery.** The Agency is obligated to deliver electric power and energy contracted for by the Member at the following points and voltages:

Delivery Point Identity and Location	Delivery Voltage
EAST FRANKFORT (To Myrick Main 1) Delivery Point ID: 1362	69 kV
EAST FRANKFORT (To Myrick Main 2) Delivery Point ID: 1363	69 kV

3. **Points of Measurement.** The Agency shall meter electric power and energy delivered to the Member as follows:

Metering Point Identity and Location	Delivery Voltage
EAST FRANKFORT (To Myrick Main 1) Delivery Point ID: 1362	69 kV
EAST FRANKFORT (To Myrick Main 2) Delivery Point ID: 1363	69 kV

4. **Power Factor.** The Member shall maintain its system leading and lagging power factor in compliance with any requirements in the Transmission Provider’s Open Access Transmission Tariff, as they may be amended from time to time.

**SCHEDULE B**

**KENTUCKY MUNICIPAL ENERGY AGENCY  
RESOURCE OBLIGATION TABLE**

*Updated as of July 31, 2016*

<b>Agency Obligation</b>	<b>Expiration Date</b>
Big Rivers Electric Corporation	May 31, 2029
Illinois Power Marketing Company	May 31, 2022
Electric Plant Board of the City of Paducah, Kentucky d/b/a Paducah Power System	May 31, 2029