

215 South Cascade Street
PO Box 496
Fergus Falls, Minnesota 56538-0496
218 739-8200
www.otpco.com (web site)

September 22, 2010



Dr. Burl W. Haar
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

**PUBLIC DOCUMENT - TRADE
SECRET DATA HAS BEEN EXCISED**

**RE: In the Matter of the Petition of Otter Tail Power Company for Approval
of a Power Purchase Agreement with District 45 Dairy, LLP
Docket No. E-017/M-10-_____**

Dear Dr. Haar:

Enclosed please find the Public version of an Otter Tail Power Company Petition requesting approval of a Power Purchase Agreement ("PPA") between District 45 Dairy, LLP and Otter Tail Power Company. A Non-Public version is submitted under separate cover.

This Petition for PPA approval is submitted under the provisions of Minn. Stat. §216B.1645. The PPA is not a C-BED PPA and thus is subject to the Commission's standard process for review. Otter Tail respectfully requests the Commission to initiate its process for review.

The Petition and Attachment 1 contain information marked as trade secret and considered sensitive by District 45 Dairy and Otter Tail. The trade secret information is related to the pricing, and disclosure of this information would have a detrimental effect by providing suppliers with valuable information not otherwise readily ascertainable and from which these suppliers would obtain economic value.

A copy of the Petition has been provided to the Office of Energy Security and the Office of Attorney General – Residential Utilities Division. Copies of the Petition summary have been provided to those on the miscellaneous electric service list. Please contact me at (218) 739-8269 or bmorlock@otpco.com for any questions.

Sincerely,

/s/ *BRYAN D. MORLOCK*
Bryan D. Morlock, P.E.
Consultant, Planning

wao

Enclosures

By electronic Filing

c: Minnesota Office of Energy Security
Office of Attorney General – Residential Utilities Division
Service List

CERTIFICATE OF SERVICE

**RE: In the Matter of the Petition of Otter Tail Power Company for Approval
of a Power Purchase Agreement with District 45 Dairy, LLP
Docket No. E-017/M-10-_____**

I, Wendi A. Olson, hereby certify that I have this day served a copy of the following, or a summary thereof, on Dr. Burl W. Haar and Sharon Ferguson by e-filing, and to all other persons on the attached service list by electronic service or by First Class mail.

**Otter Tail Power Company
Initial Filing**

Dated this **22nd** day of **September, 2010**.

/s/ WENDI A. OLSON
Wendi A. Olson, Regulatory Assistant
Otter Tail Power Company
215 South Cascade Street
Fergus Falls MN 56537
(218) 739-8699

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Christopher	Anderson	canderson@allete.com	Minnesota Power	30 W Superior St Duluth, MN 558022191	Electronic Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST
Peter	Beithon	pbeithon@otpc.com	Otter Tail Power Company	P.O. Box 496 215 South Cascade Street Fergus Falls, MN 565380496	Electronic Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST
Michael	Bradley	bradley@moss- barnett.com	Moss & Barnett	4800 Wells Fargo Ctr 90 S 7th St Minneapolis, MN 55402-4129	Paper Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST
Gary	Chesnut	gchesnut@agp.com	AG Processing Inc. a cooperative	12700 West Dodge Road PO Box 2047 Omaha, NE 681032047	Paper Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST
James C.	Erickson	jericksonkbc@gmail.com	Kelly Bay Consulting	17 Quechee St Superior, WI 54880-4421	Paper Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST
Sharon	Ferguson	sharon.ferguson@state.mn .us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST
Bruce	Gerhardson	bgerhardson@otpc.com	Otter Tail Corporation	PO Box 496 215 S Cascade St Fergus Falls, MN 565380496	Electronic Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST
Shane	Henriksen	shane.henriksen@enbridge .com	Enbridge Energy Company, Inc.	1409 Hammond Ave FL 2 Superior, WI 54880	Electronic Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST
James D.	Larson		Avant Energy Services	200 S 6th St Ste 300 Minneapolis, MN 55402	Paper Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST
Douglas	Larson	dlarson@dakotaelectric.co m	Dakota Electric Association	4300 220th St W Farmington, MN 55024	Paper Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Robert S	Lee	RSL@MCMLAW.COM	Mackall Crouse & Moore Law Offices	1400 AT&T Tower 901 Marquette Ave Minneapolis, MN 554022859	Paper Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST
John	Lindell	agorud.ecf@state.mn.us	Office of the Attorney General-RUD	900 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST
Kavita	Maini	kmaini@wi.rr.com	KM Energy Consulting LLC	961 N Lost Woods Rd Oconomowoc, WI 53066	Paper Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST
Andrew	Moratzka	apm@mcmlaw.com	Mackall, Crouse and Moore	1400 AT&T Tower 901 Marquette Ave Minneapolis, MN 55402	Paper Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST
Marcia	Podratz	mpodratz@mnpower.com	Minnesota Power	30 W Superior S Duluth, MN 55802	Paper Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST
Larry L.	Schedin	Larry@LLSResources.com	LLS Resources, LLC	12 S 6th St Ste 1137 Minneapolis, MN 55402	Paper Service	No	GEN_SL_Otter Tail Power Company_GENERAL SERVICE LIST

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David C. Boyd
J. Dennis O'Brien
Phyllis Reha
Thomas W. Pugh
Betsy L. Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Otter
Tail Power Company for Approval
of a Power Purchase Agreement with
District 45 Dairy, LLP

Docket No. E-017/M-10-___

SUMMARY OF FILING

On September 22, 2010, Otter Tail Power Company, a Minnesota corporation, filed with the Minnesota Public Utilities Commission its petition for approval of a Power Purchase Agreement with District 45 Dairy, LLP, with a nameplate capacity of approximately 2 MW, for the purchase of energy produced from generation fueled with biogas from an anaerobic digestion facility.

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David C. Boyd	Chair
J. Dennis O’Brien	Commissioner
Phyllis Reha	Commissioner
Thomas W. Pugh	Commissioner
Betsy L. Wergin	Commissioner

In the Matter of the Petition of Otter
Tail Power Company for Approval
of a Power Purchase Agreement with
District 45 Dairy, LLP

Docket No. E-017/M-10-____

INTRODUCTION

As provided for under Minn. Stat. §216B.1645, Otter Tail Power Company (“Otter Tail” or “Company”), a Minnesota Corporation, is petitioning for approval of a Power Purchase Agreement (“PPA”) with the District 45 Dairy, LLP (“Dairy”), a Minnesota Limited Liability Partnership, to satisfy the REO and RES set forth in Minn. Stat. §216B.1691 and approval of the associated expenditures. A copy of the PPA is included here as Attachment 1.

The Dairy is installing an internal combustion generation facility to be fueled with biogas derived from the anaerobic digestion of manure. Minn. Stat. §216B.1691, Subd. 1 (a)(5) specifically defines an anaerobic digester system as an eligible energy technology for renewable energy to satisfy the Renewable Energy Objectives (REO) and Renewable Energy Standards (RES) identified in Minn. Stat. §216B.1691.

I. General Filing Information

A. Name, Address, and Telephone Number of Utility

Otter Tail Power Company
215 South Cascade St.
P.O. Box 0496
Fergus Falls, MN 56538-0496
(218) 739-8200

B. Name, Address, and Telephone Number of Utility Attorney

Bruce Gerhardson
Associate General Counsel
Otter Tail Power Company
215 South Cascade St.
Fergus Falls, MN 56538-0496
(218) 998-7108

C. Date of Filing and Date Modified Rates Take Effect

Otter Tail submits this petition for approval on September 22, 2010. This Petition is also made pursuant to Minn. Stat. §216B.16, subd. 1, which prescribes general time lines for rate and tariff changes, including, but not limited to, a requirement of 60 day notice prior to any rate or tariff change. This filing is a “miscellaneous rate change” under the Commission’s rules at Minn. Rule 7829.0100, subp. 11. Do determination of Otter Tail’s overall revenue requirement is necessary (or required under the Cost Recovery Legislation).¹ Minn. Rule, 7829.1400, subp. 1 and subp. 4 permit comments in response to a miscellaneous filing to be filed within 30 days and reply comments to be filed no later than 10 days thereafter. Otter Tail requests that timeline for comments in this proceeding.

D. Statute Controlling Schedule for Processing the Filing

The Agreement is the result of negotiations between Otter Tail and the Dairy. The Agreement is very similar to the standardized Otter Tail PPA for wind generation facilities of 5 MW or less, as approved by the Commission in Docket No. E-999/CI-09-753. This petition is subject to the Commission’s standard process for review.

E. Utility Employee Responsible for Filing

Bryan D. Morlock, P.E.
Consultant, Planning
Otter Tail Power Company
215 South Cascade St.
Fergus Falls, MN 56538-0496
(218) 739-8269

Please send Information Requests to:
Bryan D. Morlock, P.E.
Consultant, Planning
Otter Tail Power Company
215 South Cascade St.
Fergus Falls, MN 56538-0496
Fax Number: (218) 739-8629
Email: bmorlock@otpc.com

II. Description and Purpose of Filing

Otter Tail seeks approval of the Agreement, provided as Attachment 1,² for renewable energy generation from an internal combustion generation facility fueled with biogas

¹ Otter Tail filed a general rate case on April 2, 2010, in Docket No. E-017/GR-10-239. A review of Otter Tail’s revenue requirements is underway in that proceeding.

² Certain provisions of the agreement have been designated as “Trade Secret”.

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

from an anaerobic digester. The facility owner is District 45 Dairy, LLP, a Minnesota Limited Liability Partnership, located south of Morris, MN in Stevens County. The Agreement addresses the power purchase aspect of the transaction with the Dairy. In this instance, the interconnection will take place to the distribution facilities of another utility and is covered by an interconnection agreement between the Dairy and that utility.

In support of this filing, Otter Tail provides:

- Background information,
- Overview of the generation resource,
- Summary of relevant terms of the PPA,
- Proposed use of fuel and resource recovery clauses related to the purchase, and
- Demonstration that the PPA is in the public interest, reasonable and protects the interest of ratepayers.

A. Background

The Minnesota legislature established a preference for renewable energy through a number of statutes. Minn. Stat. §216B.2422 is the Resource Planning and Renewable Energy statute. Subd. 1(c) of the statute defines renewable energy and Subd. 4 states the legislature's preference for renewable energy facilities. Minn. Stat. §216B.1691 was enacted to further facilitate the development of renewable energy through the establishment of a Renewable Energy Objective (REO) for the 2005 – 2011 time period, and a Renewable Energy Standard (RES) which is effective commencing in 2012. Minn. Stat. §216B.1612 was enacted to foster local development and ownership of renewable energy projects throughout Minnesota. This statute is the Community-Based Energy Development (“C-BED”) statute that provides tariff alternatives to support these projects. Although this project is not eligible for C-BED status due to the short term of the PPA, the statute is another indication of Minnesota's support for such projects.

The legislature also provided for recovery of the expenses incurred by a utility to comply with Minn. Stat. §216B.1691, over the duration of an approved contract, through Minn. Stat. §216B.1645. Otter Tail is therefore petitioning for approval of the PPA for use in compliance with the requirements of Minn. Stat. §216B.1691 and for recovery, through Otter Tail's FCA, of the expenses under Minn. Stat. §216B.1645. Otter Tail's FCA provides for recovery of costs incurred to purchase energy, and incurred under eligible purchases of renewable energy.

B. Overview of the Generation Resource

District 45 Dairy (“Dairy”) is one of several large dairy sites managed by Riverview, LLP. Two of the other sites are already equipped with anaerobic digesters creating biogas to fuel generation that is being purchased by another utility. The Dairy renewable energy facility consists of a large anaerobic digester that will create biogas from the manure of approximately 7,000 head of dairy cattle. The biogas is collected from the anaerobic digester and fed to three 710 kW internal combustion engines. Normal

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

operation is estimated to be at about 1,500 kW, so it is possible that only two engines will operate at a time.

The Dairy began filling the anaerobic digester with manure during September 2010. It takes about a month to fill the digester. The digester must be heated to about 100°F, at which point bacteria will begin to grow and digest the manure, giving off biogas. The biogas, consisting of mostly methane, is drawn off the top of the digester to fuel the generators. Waste heat is collected from the generators and used to heat the digester. The bacteria require a constant temperature or the culture will begin to die off and biogas production will decline. The bacteria will likely require several weeks to reach the expected output level of methane. Anaerobic digestion-fueled generation is not considered dispatchable since the digester and the fuel supply it provides require stable operation and any disruption of the anaerobic digester can impact output for some time.

All of the generation output from this site is being sold to Otter Tail. The Dairy is not using any of the generation to serve on-site load. The Dairy is a retail customer of Agralite Electric Cooperative (“Agralite”), a distribution cooperative whose transmission and generation needs are supplied by Great River Energy (“GRE”). The Dairy is responsible for the delivery of the generation to the 115 kV high voltage side of the Agralite Hancock Substation, and has a wheeling agreement with Agralite. The substation is connected to a GRE 115 kV transmission line which is a component of the MISO transmission system. Otter Tail has obtained a 2 MW network transmission reservation from MISO for delivery of the energy to the Otter Tail system.³ The location of the facility is within the boundaries of the Otter Tail local balancing authority (“LBA”) area.

C. Relevant Terms of the Transaction

Following is a brief description of the major relevant terms of the PPA:

1. Purchase Price and Term

Otter Tail will purchase the output of the generation for the remainder of 2010, plus five additional years.

The price in this PPA is [TRADE SECRET DATA BEGINS: ...

...TRADE SECRET ENDS]

The pricing was determined by a combination of factors, including (1) capacity pricing offered to Otter Tail by others, (2) on-peak energy pricing based on proposals provided by others and an estimate of the market price, and (3) off-peak energy pricing based on the Company’s Hoot Lake Steam Plant.

³ MISO reservation #75002730.

2. Renewable Energy Credits and Greenhouse Gas Credits

Otter Tail will receive the Renewable Energy Credits (RECs) associated with all of the energy it purchases from the use of biogas as a fuel for generation. The Dairy will retain all Greenhouse Gas Credits (GHGs) associated with the anaerobic digester and the collection of methane gas. The delineation of environmental benefits between the use of biogas as a fuel for generation and collection of methane from the anaerobic digester was discussed with the staff administering the Midwest Renewable Energy Tracking System (“M-RETS”) to ensure that it was in compliance with the requirements for RECs.

The PPA includes consideration that at some point in the future the Commission, the South Dakota Public Utilities Commission, the North Dakota Public Service Commission, or M-RETS may make a determination that it is not possible to have both the RECs associated with generation from a renewable fuel and GHG’s from the collection of methane with an anaerobic digester. If such an event should occur, the PPA provides for the termination of either (1) any agreement by the Dairy to sell GHG credits, or (2) the PPA by Otter Tail.

3. Transmission and Curtailment

The small size of this project and its interconnection to the distribution system with load greater than the size of the project provide for a very low curtailment risk. For any curtailment due to Force Majeure, Emergency, or a failure on the part of the Dairy or the Agralite system, there will be no liability on the part of Otter Tail. For any curtailments due to transmission constraints, low load, or line loading relief or equivalent procedure, Otter Tail shall be required to pay for 50% of the PPA price the Dairy would have received. Sharing of curtailment risk on a 50-50 basis is standard practice on Otter Tail PPAs. If Otter Tail declines to accept the energy at any time for a reason other than transmission constraints, low load, or line loading relief, then Otter Tail shall be required to pay for 100% of the PPA price the Dairy would have received.

4. Other Terms and Conditions

The PPA contains numerous other terms and conditions typical in a power purchase agreement that involves construction of new resources. These include representations of each party about the ability to enter the transaction, force majeure provisions, dispute resolution, listing or responsibilities, and provisions relating to defaults and similar issues.

D. Fuel Clause Related to the Purchase

Otter Tail intends to count this renewable energy purchase toward the legislative requirements of Minn. Stat. §216B.1691 subd. 2(a), and upon PPA approval, and costs incurred in connection with this Agreement are recoverable consistent with Minn. Stat.

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

§216B.1645. Like all other Otter Tail non-dispatchable renewable energy generation purchases, this purchase is priced entirely on an energy basis. Otter Tail is seeking approval to recover costs incurred for this purchase pursuant to Minn. Stat. §216B.1645 through the fuel clause adjustment (FCA). This recovery method is the same as that set forth for the Company’s other non-dispatchable renewable energy generation PPAs to satisfy the legislative requirements of §216B.1691subd. 2(a).

E. Description of the Proposed Tariff

Specific tariff changes are not necessary as existing tariff language provides for recovery of the costs of the purchase through the Company’s FCA. The proposed terms of the agreement and associated costs to ratepayers are described in the petition.

F. The PPA is in the Public Interest, Reasonable and Protects the Interests of Otter Tail Ratepayers

This project is clearly consistent with the legislature’s desire to encourage and promote the development of renewable energy contained in the provisions of Minn. Stat. §216B.1691, §216B.1612, §216B.2422, and §216B.1645. The fuel stock for the generation is provided as a byproduct of the agricultural economy in rural Minnesota.

The PPA pricing is in line with Otter Tail’s estimated costs to acquire capacity and energy over similar duration in the near-term market (5 years).

The project, although small, will help to diversify the Company’s and Minnesota’s energy supply and will help to satisfy the legislative requirements of Minn. Stat. §216B.1691.

III. Effect of Change Upon Otter Tail Revenue

The PPA is expected to result in annual energy expenditures of approximately [TRADE SECRET DATA BEGINS... ... TRADE SECRET DATA ENDS] in 2011. Pursuant to Minn. Stat. §216B.1645, the Minnesota portion of these energy costs will be recovered through the FCA.

No net increase in revenue to Otter Tail will result from this transaction, as the Minnesota costs of the power purchase will equal the Minnesota revenue collected.

IV. Miscellaneous Information

A. Service List

Pursuant to Minnesota Rule 7829.0700, Otter Tail requests that the following persons be placed on the Commission official service list for this matter:

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

Bruce Gerhardson
Associate General Counsel
Otter Tail Power Company
215 South Cascade St.
Fergus Falls, MN 56538-0496

Bryan Morlock
Consultant, Planning
Otter Tail Power Company
215 South Cascade St.
Fergus Falls, MN 56538-0496

B. Service on Other Parties

Pursuant to Minnesota Rule 7829.1300, subp. 2, Otter Tail has served a copy of this Petition on the Office of Energy Security and the Office of the Attorney General (Residential Utilities Division). A summary of the filing has been served on all parties on Otter Tail's miscellaneous electric service list.

C. Summary of Filing

A one-paragraph summary of the filing accompanies this Petition pursuant to Minnesota Rule 7829.1300, subp. 1.

CONCLUSION

The PPA negotiated with the Dairy supports the Minnesota legislature's desire to promote the use and local ownership of renewable energy facilities. The project and associated PPA meet the requirements of Minn. Stat. §216B.1645, at an expenditure equal to what Otter Tail otherwise would pay for these resources. Therefore, approval of the PPA is reasonable and in the public interest.

Otter Tail requests the Commission Order to state the purchase qualifies to satisfy the Otter Tail REO and RES obligations set forth in Minn. Stat. §216B.1691, and approves the associated expenditures incurred in the purchase.

Questions can be addressed to Bryan Morlock at 218-739-8269 or bmorlock@otpc.com

Respectfully submitted,

/s/ BRYAN D. MORLOCK
Bryan D. Morlock, P.E.
Consultant, Planning

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

POWER PURCHASE AGREEMENT

This power purchase agreement ("Agreement") is entered into this 9th day of September, 2010 (the "Effective Date") by and between Otter Tail Power Company, a Minnesota corporation ("OTP") and District 45 Dairy, LLP, a Minnesota limited liability partnership ("Seller").

RECITALS

1. Seller is constructing and intends to operate an internal combustion powered electric generating facility (the "Facility") fueled with methane created by the anaerobic digestion of manure on a site located in Moore Township, Stevens County, Minnesota with a nameplate capacity of 2,130 kW to be interconnected with Agralite Electric Cooperative ("Agralite") and operated in parallel with the transmission and generation system.
2. OTP desires to purchase the Capacity, Net Energy, and RECs generated by the Facility, to achieve and maintain accreditation of that Capacity and Energy by MISO Resource Adequacy Requirements, and other entities and agencies to which OTP may be obligated by contract or otherwise.
3. OTP is willing to purchase and Seller is willing to sell, all of the Capacity, Net Energy, and RECs of the Facility, subject to the terms and conditions and at the prices set forth in this Agreement.

NOW THEREFORE, in consideration of these premises and the mutual promises set forth below, Seller and OTP agree as follows:

AGREEMENT

ARTICLE I - DEFINITIONS

- 1.1 This item intentionally left blank.**
- 1.2 Accreditable Capacity:** The amount of net generating capability rounded to the nearest hundredth of a megawatt associated with the Facility for which capacity credit may be obtained under applicable MISO Resource Adequacy Requirements.
- 1.3 Agreement:** This contract, including all appendices, for the purchase of Capacity, Energy, and RECs entered into between Seller and OTP, as amended by the Parties from time to time in accordance with the Agreement.
- 1.4 Agralite Transmission System:** The electric power transmission, substation and distribution facilities owned, operated and maintained by Agralite, or for which Agralite has contractual rights.
- 1.5 Capacity:** The output potential a machine or system can produce or carry under specified conditions. The capacity of generating equipment is generally expressed in MW. Capacity is also referred to as "capability" in the industry and for the purposes of the Agreement the terms are

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

synonymous. Reference to “Capacity” does not mean or imply that the entire capacity of such machine or system is available.

- 1.6 Commercial Operation:** When (a) 100% of the Committed Nameplate Capacity of the Facility is installed, (b) the Facility has operated at a generation level meeting any requirements of the Interconnection Provider Agreement without experiencing any abnormal or unsafe operating conditions on any interconnected system, (c) Seller has obtained all Permits necessary to authorize that production and delivery, and (d) Seller has determined the Facility is ready for normal operation.
- 1.7 Commercial Operation Date:** The first calendar day following a successful demonstration that the Facility has reached Commercial Operation, provided that such date must not be earlier than September 1, 2010 or later than (i) two (2) years after the date of this Agreement or (ii) eighteen (18) months following MISO designation as a Network Resource for the Facility, whichever of items (i) or (ii) occurs earlier.
- 1.8 Committed Nameplate Capacity:** The total maximum designed nameplate power output expressed in MW, of all installed generators at the Facility as specified by the equipment manufacturer, which is 2.13 MW.
- 1.9 Emergency:** Any condition or situation which in the sole judgment of OTP, MISO, MRO or any other entity with operational control or authority over the interconnected transmission system, (as communicated to OTP) (i) endangers or might endanger life or property or (ii) adversely affects or might adversely affect OTP's ability, or the ability of any other entity associated with the interconnected transmission system, to maintain safe and reliable electric service to OTP's customers and/or the customers of any such other entity.
- 1.10 Energy:** The amount of electricity either used or generated over a period of time; expressed in terms of megawatt-hour (MWh).
- 1.11 Energy Resource:** Interconnection service which allows the Seller to connect the Facility to the transmission or distribution system, as applicable, as an "Energy Resource" as defined by the MISO Open Access Transmission and Energy Markets Tariff, and be eligible to deliver the Facility's output using the existing firm or nonfirm capacity on the transmission system on an as available basis.
- 1.12 Environmental Law:** Any federal, state, and local laws including statutes, regulations, rulings, orders, administrative interpretations, and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process waste water, or otherwise relating to the environment or hazardous substances as amended from time to time.
- 1.13 Environmental Liability:** Any and all liability arising under, resulting from or imposed by any Environmental Law.
- 1.14 Facility:** The generation and transmission facilities owned by Seller and located on the Site for the generation of electricity and delivery of such electricity to OTP.
- 1.15 FERC:** Federal Energy Regulatory Commission or its successor organization, if any.
- 1.16 Financier:** Any individual or entity providing money or extending credit (including any capital lease) to Seller for (i) the construction, term, or permanent financing of the Facility; or (ii)

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

working capital or other ordinary business requirements for the Facility. "Financier" shall not include common trade creditors of Seller.

- 1.17 Governmental Authority:** Any nation, government, state or other political subdivision thereof, whether foreign or domestic, including, without limitation, any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, including, without limitation, any corporation, or other entity owned or controlled by any of the foregoing.
- 1.18 Greenhouse Gas Credits (GHG Credits):** Shall have the meaning defined in Section 2.7(b).
- 1.19 Guaranteed Price:** The prices expressed in dollars per MWh set forth in Section 2.3 (a) of this Agreement and used as the basis for determining payments by OTP to Seller for the Net Energy and all Capacity and RECs of the Facility.
- 1.20 IEEE:** Institute of Electrical and Electronic Engineers or its successor organization, if any.
- 1.21 Interconnection:** Construction, installation, operation, and maintenance of all Interconnection Facilities in accordance with any Interconnection Agreement.
- 1.22 Interconnection Agreement:** The separate agreement between Seller and Interconnection Provider for the interconnection of the Facility to the Interconnection Provider's System, as such agreement may be amended from time to time, that is described in Section 4.5.
- 1.23 Interconnection Facilities:** All the facilities installed for the purpose of interconnecting the Interconnection Provider's System and the Facility.
- 1.24 Interconnection Provider:** The Person that owns and operates the transmission lines, Interconnection Facilities, and other equipment and facilities with which the Facility interconnects at the Point of Delivery, and its successors and assignees.
- 1.25 Interconnection Provider's System:** The transmission and sub-transmission facilities and Interconnection Facilities by which the Interconnection Provider provides interconnection and transmission of the Net Energy at and from the Point of Delivery.
- 1.26 kW:** Kilowatt.
- 1.27 MISO Procedures:** Those procedures and guidelines established by MISO or its committees that are applicable to OTP generation and transmission system operations or the Facility, as amended from time to time.
- 1.28 MISO:** Midwest Independent Transmission System Operator, Inc., a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware and any successor organization
- 1.29 MISO Resource Adequacy Requirements:** Those procedures and guidelines applicable to OTP owned or purchased generation set forth in, or in accordance with, Module E of the MISO Open Access Transmission and Energy Markets Tariff, as amended from time to time.
- 1.30 MPUC:** Minnesota Public Utilities Commission and any successor agency.

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

- 1.31 MRETS Program:** The Midwest Renewable Energy Tracking System as established and described by the MPUC in its Docket No. E-999/CI-04-1616 and subsequent and related proceedings.
- 1.32 MRO:** The Midwest Reliability Organization (MRO), a NERC regional electric reliability council, or any successor organization.
- 1.33 MVA:** Megavolt amperes.
- 1.34 MW:** Megawatt.
- 1.35 NDPS:** North Dakota Public Service Commission.
- 1.36 NERC:** North American Electric Reliability Council and any successor agency.
- 1.37 Net Energy:** The actual number of MWh generated by the Facility during the period being considered that is delivered and measured at the meter installed pursuant to Section 3.1 of this Agreement.
- 1.38 Network Resource.** The applicable amount of Capacity for the Facility that has been designated for resource adequacy as a "Network Resource" under Module E of the MISO Open Access Transmission and Energy Markets Tariff, if such designation is achieved by the Facility and credited to OTP.
- 1.39 Network Upgrades.** All or a portion of the modifications or additions to transmission related facilities that are integrated with and support the Interconnection Provider's (or other applicable transmission owner's) overall transmission system for the general benefit of all users of the transmission system.
- 1.40 New Joint Transmission Authority:** Any independent service organization or other Person that may be created or becomes operational subsequent to the date of this Agreement and that is empowered or authorized to plan, coordinate, operate, regulate or otherwise manage any or all of the Interconnection Provider's System, whether in place of, or in addition to, MRO or MISO.
- 1.41 OATT:** Any open access transmission tariff on file with FERC.
- 1.42 OTP:** Otter Tail Power Company, a Minnesota corporation, and its successors and assignees.
- 1.43 Parties:** OTP and Seller, and their respective successors and permitted assignees.
- 1.44 Party:** OTP or Seller, and their respective successors and permitted assignees.
- 1.45 Permits:** All state, federal, and local authorizations, certificates, permits, licenses, and approvals required by any Governmental Authority for the construction, operation, and maintenance of the Facility.
- 1.46 Person:** An individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trusts, unincorporated association, joint venture, Governmental Authority, or other entity.

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

- 1.47 Point of Delivery:** The point at which OTP accepts title to and risk of loss for the Net Energy and Capacity sold and delivered by Seller to OTP. The Point of Delivery shall be the high voltage side of the Agralite Electric Cooperative Hancock Substation as shown on Appendix B.
- 1.48 Point of Interconnection:** The point on the electrical system where the Facility is physically interconnected with the Agralite Electric Cooperative Transmission System.
- 1.49 Prudent Electric Industry Practice:** Those methods, practices, and use of certain equipment, as changed from time to time, that are commonly used and accepted in electrical engineering and operations to operate electric equipment lawfully and with safety, dependability and efficiency, including, but not limited to, the requirements of the National Electric Safety Code, the National Electrical Code, NERC, MRO, MISO Procedures, NERC standards and procedures, and any governmental code or regulations.
- 1.50 Renewable Energy Credits (RECs):** All attributes of an environmental or other nature that are created or otherwise arise from the Facility’s generation of Energy using biogas as a fuel in contrast to the generation of electricity using nuclear or fossil fuels or resources, including, but not limited to, tags, certificates or similar products or rights associated with biogas as a “green” or “renewable” electric generation resource. These attributes include any and all environmental air quality credits, emissions reductions, carbon offsets, allowances or other benefits related to the generation of Energy at the Facility that reduces, displaces or offsets emissions resulting from fuel combustion at another location pursuant to any existing or future international, federal, state or local legislation or regulation or voluntary agreement, and the aggregate amount of credits, offsets or other benefits related to the MRETS Program or other environmental or renewable energy credit trading program derived from the use, purchase or distribution of Energy generated at the Facility, including, but not limited to, credits, allowances, offsets or similar rights which can be used to claim responsibility for any avoidance or reduction of emissions or pollutants such as mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter, or other contaminants of air, water or soil under any international regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol and similar or successor programs. “RECs” do not include GHG credits associated with the reduction of methane or other greenhouse gases at or from any anaerobic digesters or covered lagoons. RECs do not include any production tax credits or any similar tax credits, cash grants, production incentives or similar tax or cash benefits.
- 1.51 Requirements of Law:** Collectively, the certificate of incorporation and bylaws or other organizational or governing documents of Seller or OTP and any United States federal, state or provincial law, treaty, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon Seller or any of its property or to which Seller or any of its respective properties are subject.
- 1.52 SDPUC:** South Dakota Public Utilities Commission
- 1.53 Seller:** District 45 Dairy, LLP and any permitted successor or assignee.
- 1.54 Seller's Contractual Obligations:** As to Seller, any provision of any security issued by it or any material agreement, instrument or undertaking to which Seller is a party or by which it or any of its property is bound.

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

- 1.55 Site:** The real property on which the Facility is located, in Moore Township, Stevens County, Minnesota.
- 1.56 Station Auxiliary:** Energy used by Seller to operate the Facility.
- 1.57 Substation:** The electrical substation owned and operated by Agralite Electric Cooperative and related transformers and interconnection equipment at which the Energy from the Facility will be transformed and delivered to the Point of Delivery, as shown on Appendix B.
- 1.58 Term:** The period of time during which the Agreement is in effect.
- 1.59 Transmission Agreement:** The agreement (or agreements) between Agralite and Seller (or any other party and Seller) that permits Seller to interconnect with the Agralite Transmission System at the Point of Interconnection and to transmit the output of the Facility to the Point of Delivery at the high voltage side of the Agralite Electric Cooperative Hancock Substation.
- 1.60 Trial Energy:** Any Net Energy generated by the Facility and delivered to the Point of Delivery prior to the Commercial Operation Date for the Facility.
- 1.61 Unavailable:** A physical state in which the Facility is not capable of providing Net Energy to the Point of Interconnection.

ARTICLE II - PURCHASE AND SALE

- 2.1 Term.** This Agreement shall be effective upon execution by both Parties, and shall continue unless otherwise terminated in accordance with its terms, through December 31, 2015. OTP's obligation to purchase the Capacity and Net Energy of the Facility, as set forth herein, shall be effective on the Commercial Operation Date; provided, however, OTP shall also purchase all Trial Energy delivered to the Point of Delivery as contemplated by Section 2.3(b).
- 2.2 Sale and Purchase.** OTP agrees to purchase the entire Capacity and Net Energy of the Facility during the Term and to accept delivery of the Capacity and Net Energy at the Point of Delivery during the Term, subject to the terms of the Agreement. Subject to the terms of this Agreement, Seller agrees to sell the Capacity and Net Energy, if any, from the Facility to OTP at the Point of Delivery for the Term. Other than in connection with a breach by OTP, Seller shall not contract to sell any Energy or Capacity from the Facility to any Person other than OTP for the Term. Seller shall not be obligated to produce or deliver any minimum amount of Net Energy to OTP during the Term.
- 2.3 Energy Rate.**
- (a) **Guaranteed Price.** From and after the Commercial Operation Date, OTP shall pay Seller the Guaranteed Price per MWh delivered for the Net Energy that Seller delivers to OTP, at the Point of Delivery, as indicated in Appendix A. OTP and Seller agree that the applicable Guaranteed Price is intended to compensate Seller for the Net Energy, Capacity, and RECs delivered to OTP, and that Seller is not entitled to a separate price or payment for the Capacity or RECs of the Facility to which OTP is entitled.
- (b) **Trial Energy.** Prior to the Commercial Operation Date, OTP shall purchase all Trial Energy produced and delivered by the Facility during startup and testing and delivered to OTP at

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

the Point of Delivery at the price indicated in Appendix A. OTP and Seller agree that the applicable Guaranteed Price is intended to compensate Seller for the Net Energy and RECs delivered to OTP, and that Seller is not entitled to a separate price or payment for the RECs of the Facility to which OTP is entitled.

- 2.4 Tax Credits.** Seller is responsible to apply and qualify for any production tax credits or payments or other assistance, grants or financial credits which might be available to Seller or the Facility from any Governmental Authority, and OTP agrees that Seller is entitled to receive any such credits, assistance, or grants. Seller and OTP agree that the Guaranteed Price and other pricing set forth in this Agreement are not subject to adjustment or amendment due to Seller's receipt, or failure to receive, any such credits, assistance or grants, in whole or in part, after the date of this Agreement, for any reason.
- 2.5 Committed Nameplate Capacity.** Seller agrees that the Committed Nameplate Capacity shall be 2,130 kW, and that the Committed Nameplate Capacity shall include only Capacity from the Facility.
- 2.6 Capacity Accreditation.** Each year Seller shall collect hourly data as directed by OTP in accordance with MISO Resource Adequacy Requirements and MISO Procedures to assist in determining the Accreditable Capacity of the Facility. OTP shall advise Seller of the applicable MISO Resource Adequacy Requirements and MISO Procedures. Seller shall comply with all MISO and OTP requirements regarding determination of Accreditable Capacity, the administrative costs of which shall be at OTP's sole cost and expense.
- 2.7 RECs.**

(a) **RECs.** The Parties agree that the Guaranteed Price includes compensation for the RECs associated with the Energy and Capacity purchased by OTP pursuant to this Agreement and that OTP is entitled to utilize any and all such RECs for purposes determined by OTP, including without limitation, to (i) meet any voluntary, statutory or regulatory mandate to own, construct or contract for the purchase of renewable energy, including, but not limited to, the provisions of Minn. Stat. Section 216B.1612, the provision of Minn. Stat. Section 216B.1691, terms of any MPUC order, the MRETS Program, and any other similar existing or future requirement; (ii) meet the requirements of any green pricing program by which OTP resells the Net Energy to retail customers as renewable energy; and (iii) offset, avoid, reduce or obtain credit for reduction of pollutants or air emissions created by OTP's electric generating facilities. To the full extent allowed by such law or regulation, OTP shall own or be entitled to claim all RECs to the extent such RECs may exist during the Term, and to the extent necessary, Seller shall assign to OTP all rights, title and authority for OTP to register, own hold and manage such RECs in OTP's own name and to OTP's account, including any rights associated with the MRETS Program or any renewable energy information or tracking system that may be established with regard to monitoring, tracking, certifying, or trading such RECs.

Within thirty days of the Effective Date, OTP shall apply to register the Facility with the M-RETS administrator and submit such information and documents necessary for the M-RETS administrator to make a determination as to whether the RECs qualify as "Renewable Energy Credits" under Minn. Statute §216B.1691, ND Century Code Section 49-02-25, and SD Codified Laws Chapter 49-34A-94. OTP shall promptly notify Seller of the M-RETS administrator's final decision. If the M-RETS administrator declines to register the Facility or fails to make an affirmative determination that the RECs qualify under Minn. Statute §216B.1691, ND Century Code Section 49-02-25, and SD Codified Laws Chapter 49-34A-94 or any reason, (i) within

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

thirty days of its receipt of notice from OTP, Seller may, but shall not be obligated to, terminate the Greenhouse Credit Agreement, and (ii) if Seller elects not to terminate the Greenhouse Credit Agreement, either OTP or Seller may terminate this Agreement by giving written notice to the other Party within thirty (30) days of the receipt of M-RETS' decision. No termination payment or other payment shall be payable by either Party to the other Party in connection with such a termination, except for payment of amounts owed and unpaid by the Parties under this Agreement prior to such termination.

(b) **Greenhouse Gas Credits.** Seller shall retain all rights in, and shall have the right to sell to any third party, all Greenhouse Gas (GHG) Credits (as defined below) arising from or related to the legal, economic and other benefits resulting from a physical reduction of greenhouse gases by any anaerobic digestion system and/or any covered lagoon system owned by Seller, whether or not such anaerobic digestion or lagoon systems are associated with the Facility. OTP acknowledges that Seller and its affiliates have executed an agreement with Greenhouse Gas Services, LLC ("Greenhouse Credit Agreement") to sell all of the GHG Credits arising from or related to biogas generated by any anaerobic digestion system and/or covered lagoon system owned by Seller or its affiliates at the dairy facilities in Minnesota known as "District 45. "GHG Credits" means the legal, economic and other benefits, rights and/or credits resulting from a physical reduction of methane or other greenhouse gases at or from any anaerobic digesters or covered lagoons. OTP further acknowledges that Seller is not selling or agreeing to sell to OTP any of the GHG Credits now or hereafter generated.

The term GHG Credits does not include RECs created or arising from the Facility's generation of electricity. If, at any time during the term of this Agreement, the MPUC, the NDPSC, the SDPUC or any party-initiates a generic or specific inquiry into whether the sale of GHG Credits precludes RECs from qualifying as Renewable Energy Credits under MN Stat. §216B.1691, ND Century Code Section 49-02-28, or SD Codified Law Chapter 49-34A-95, or otherwise adversely affects the amount or character of RECs that OTP might otherwise receive under this Agreement, OTP shall notify Seller in writing promptly after it becomes aware of the inquiry. OTP shall promptly notify Seller of the final decision of the MPUC, NDPSC, SDPUC or other adjudicating body. At any time prior to its receipt of notice from OTP of the final decision, Seller may, but shall not be obligated to, terminate the Greenhouse Credit Agreement. In addition, if any competent authority issues an order such that the RECs do not qualify as "Renewable Energy Credits" under MN Stat. §216B.1691, ND Century Code Section 49-02-28, or SD Codified Law Chapter 49-34A-95, or that otherwise adversely affects the amount or character of RECs that OTP might otherwise receive under this Agreement, due to the sale by Seller of GHG Credits under the Greenhouse Credit Agreement ("REC Disapproval"), within thirty days after its receipt of notice from OTP of the REC Disapproval, Seller may, but shall not be obligated to, terminate the Greenhouse Credit Agreement. After a REC Disapproval, if Seller elects not to terminate the Greenhouse Credit Agreement, OTP may terminate this Agreement by giving written notice to Seller within thirty (30) days of the receipt of the REC Disapproval. No termination payment or other payment shall be payable by either Party to the other Party in connection with such a termination, except for payment of amounts owed and unpaid by the Parties under the Agreement prior to such termination.

ARTICLE III - METERING AND BILLING

3.1 **Metering Requirements:**

The transfer of electric Capacity and Energy between Seller and OTP shall be measured by metering equipment at the Point of Interconnection. This meter shall be the basis for billing.

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

Seller shall arrange and maintain (or cause the Interconnection Provider to arrange and maintain) at Seller's cost the necessary metering and any other telemetering equipment. Each meter shall utilize internet telemetry and other characteristics appropriate for real-time metering.

All meters shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified, or relocated. Meter test results shall be available to OTP upon request. If a test shows a meter to have an average error of more than 2% fast or 2% slow, the Seller shall make an adjustment to the bills for the period of registration error, if known. If the period of registration error is unknown, a billing adjustment will be applied to lesser period of (a) one-half the time elapsed since the last testing of the meter, or (b) six months.

3.2 Billing and Payment: OTP, using internet telemetry, shall read the meter once a month as close to practicable on the last day of the month and automatically wire the appropriate amount determined pursuant to the terms of this Agreement to Seller for Net Energy in MWhs and Capacity provided within fifteen (15) days of the date on which the meter was read by OTP, in accordance with the price terms of this Agreement. OTP shall also deliver a billing statement via email to Seller each month along with such payment.

3.3 Billing and Payment Records: To facilitate payment and verification, Seller shall maintain all books and records necessary for billing and payments, including without limitation copies of all invoices and data with respect to the Facility for a period of at least two (2) years, and Seller shall grant OTP reasonable access to those books, records and data on the premises of the Facility or at the principal place of business of the Seller. OTP may examine such books and records relating to transactions under and administration of this Agreement, at any time during the period the records are required to be maintained, upon request with reasonable notice and during normal business hours.

3.4 Late Payment: Payments posted after the due date shall be considered late and shall bear interest on the unpaid balance at a rate equal to three (3) percent plus the average daily prime rate as determined from the "Money Rates" section of the Midwest Edition of the Wall Street Journal for the days of the late payment period multiplied by the number of days elapsed from and including the day after the due date, to and including the payment date. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.

ARTICLE IV - SELLER'S OBLIGATIONS

During the Term of the Agreement, as the same may be terminated pursuant to the terms of this Agreement, Seller hereby agrees to be bound by and to perform the following affirmative obligations:

4.1 Design, Construction and Operation of the Facility.

Seller shall

(a) At its sole expense, design and construct the Facility and any related facilities in accordance with Prudent Electric Industry Practice.

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

(b) In a timely manner, seek, obtain, maintain, comply with and, as necessary, renew and modify, at Seller's sole expense, the Permits and all other permits, certificates or other authorizations which are required by any Requirement of Law or Governmental Authority as prerequisites to engaging in the activities envisioned by the Agreement and to meeting Seller's obligation to operate the Facility consistently with the terms of the Agreement, but excluding any MPUC approval for which OTP is responsible pursuant to Section 5.3.

(c) At Seller's sole expense, operate, maintain, and repair the Facility in accordance with this Agreement, all Requirements of Law, Seller's Contractual Obligations, Permits, the practices and requirements of OTP, MISO, MRO and any New Joint Transmission Authority, and in accordance with Prudent Electric Industry Practice.

(d) Comply with MISO, MRO and NERC Procedures and the requirements of any New Joint Transmission Authority and cooperate with all reasonable requests by OTP relating to OTP's compliance with such entities.

4.2 General Obligations.

(a) Seller, during the Term of the Agreement, shall pay all present or future federal, state, municipal, or other lawful taxes or fees applicable to Seller or the Facility or by reason of the sale of Energy or Capacity under the Agreement. Seller shall receive the benefit of any new tax credits, allowances, grants, or other financial credits related to the Facility (except RECs and any emission credits associated with the Net Energy purchased by Otter Tail hereunder for which Otter Tail shall receive all benefit).

(b) Seller shall obtain in its own name and at its own expense any and all pollution or environmental credits or offsets necessary to operate the Facility in compliance with the Environmental Laws. Seller agrees to execute an Indemnity Agreement in the form set forth in Appendix C in favor of OTP that shall protect OTP against any Environmental Liability relating to or arising from the Site and the Facility.

(c) Unless otherwise agreed by the Parties, Seller shall acquire its own Station Auxiliary power from a third-party provider. Seller may obtain Station Auxiliary power from OTP to the extent authorized by applicable law and otherwise shall be responsible for obtaining Station Auxiliary power at no additional expense to OTP.

(d) Seller shall keep complete and accurate operating and other records and all other data for the purposes of proper administration of the Agreement, including such records as may be required by any Governmental Authority, MISO, MRO, any New Joint Transmission Authority, OTP, the Parties and as otherwise required by Prudent Electric Industry Practice, as requested by OTP. OTP shall provide reasonable notice of OTP's specific requirements of Seller.

(e) Seller shall continue to (i) to the extent applicable, preserve, renew and keep in full force and effect its organizational existence and good standing, and take all reasonable action to maintain all permits, rights, privileges, licenses, and franchises necessary or desirable in the ordinary course of its business; and (ii) comply with all Seller's Contractual Obligations and Requirements of Law.

(f) Subject to the confidentiality obligations set forth in Section 9.16, at OTP's cost and expense, Seller shall provide to OTP such other information regarding the permitting, engineering, construction, condition and operations, of Seller or the Facility, or otherwise, or

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

other data concerning the Seller or the Facility as OTP may, from time to time, reasonably request.

(g) Seller shall execute any necessary documentation to allow OTP to report the total aggregate generation of the Facility to facilitate tracking of the RECs associated with the Energy purchased by and delivered to OTP in the MRETS Program. OTP shall be responsible for all MRETS Program enrollment fees and annual MRETS Program fees relating to its participation in the MRETS Program and the RECs acquired by OTP pursuant to this Agreement.

4.3 Merger:

(a) Seller shall not merge, consolidate or join with or into any other Person (or permit or suffer any subsidiary to do the same), without the prior written consent of OTP, which shall not be unreasonably withheld, receipt of which will be contingent upon Seller's demonstration to OTP's satisfaction that the proposed changes will not adversely affect the ability of Seller or any successor entity to perform its obligations under this Agreement.

(b) Notwithstanding any provision in this Agreement to the contrary, Seller may merge, consolidate or join with or into Riverview LLP, a Minnesota limited liability partnership, or any other entity managed by Riverview LLP in accordance with applicable law without OTP's consent.

4.4 Sale of Assets.

(a) Seller shall not lease, sell, agree to sell, convey or otherwise transfer or dispose of (in one or a series of related transactions) any of its interest or title in any material portion of its Facility assets, now owned or hereafter acquired, except as part of a collateral assignment or other security instruments in favor of a Financier, or in the ordinary course of business as parts need repair or replacement, without OTP's consent, which shall not be unreasonably withheld.

4.5 Interconnection and Transmission Agreements; Separation of Functions.

(a) Seller shall be responsible for negotiating, entering into, and performing the Transmission Agreement with Agralite for design, installation and operation of the transmission system at the Point of Interconnection and between the Point of Interconnection and Point of Delivery necessary to permit delivery of the Net Energy and Capacity to the Point of Delivery. Seller shall also be responsible for negotiating, entering into, and performing, or causing Agralite to negotiate, enter into and perform the Interconnection Agreement with the Interconnection Provider, MISO and any other necessary Persons for design, installation and operation of the Interconnection Facilities necessary to designate the Facility as a Network Resource and permit delivery and transformation of the Net Energy and Capacity on Seller's side of the Point of Delivery.

(b) The Parties acknowledge that OTP's responsibilities and obligations under this Agreement are those of OTP's merchant function, not of its transmission function, and that this Agreement imposes no responsibilities or obligations on OTP's transmission function. Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify Seller's or OTP's rights, duties and obligations under this Agreement. Furthermore, this Agreement shall not be construed to create any rights between Seller and the Interconnection Provider.

(c) The Parties further recognize that OTP's functionally separate transmission organization offers transmission service on its system pursuant to the terms of the relevant OATT and that this Agreement does not impose any responsibilities or obligations on OTP's functionally separate transmission organization.

ARTICLE V - OTP OBLIGATIONS; TRANSMISSION SERVICE; CURTAILMENT

5.1 Cooperation. OTP agrees to cooperate with Seller in any applications that Seller is making for tax credits, grants, or assistance as described in Section 2.4, at OTP's expense. OTP's obligation shall consist only of providing nonproprietary information in its possession, custody, or control necessary to complete any such applications, responding to requests from the relevant Governmental Authorities, and similar activities.

5.2 Collateral Assignments.

(a) OTP shall not be required to enter into collateral assignments of the Agreement except as provided by this Section 5.2. Subject to the terms and conditions of the Agreement, OTP shall, upon prior written request by Seller, execute a commercially reasonable consent and agreement with respect to a collateral assignment hereof in favor of any Financier in a form reasonably acceptable to OTP, provided (i) Seller shall reimburse OTP for all reasonable out-of-pocket expenses incurred by OTP in connection therewith, including reasonable attorneys' fees, and (ii) that OTP's duty to make factual statements or representations in such consent and agreement shall be contingent upon the truthfulness and accuracy of such statements or representations at the time the consent and agreement is delivered.

(b) OTP further acknowledges that the Financier(s) may have other or further requests with respect to the assignment of the Agreement (such as requests for legal opinions or certificates from OTP) and may request that certain terms be incorporated into a consent and agreement or assignment agreement to be executed by OTP. OTP will consider any such requests and will cooperate and negotiate any such consent and agreement or assignment in good faith. Seller shall reimburse OTP for all reasonable out-of-pocket expenses incurred by OTP in connection therewith, including without limitation reasonable attorneys' fees.

5.3 MPUC Approval.

To the extent OTP deems it necessary, in its sole discretion, OTP shall request approval of this Agreement and the payments to be made to Seller pursuant to this Agreement from the MPUC. Seller agrees to cooperate with OTP with respect to any such request by providing information reasonably necessary to support the request and to respond to discovery requests by parties to the proceeding to the extent requested by OTP. In the event OTP elects to file this Agreement, in whole or in part, for MPUC approval, OTP shall submit such filing within thirty (30) days following the date of this Agreement. If the MPUC declines to approve this Agreement or approves this Agreement subject to conditions that are unacceptable to OTP in its sole discretion, then OTP may terminate this Agreement upon written notice to Seller within thirty (30) days after the MPUC decision, with no further obligations under this Agreement.

5.4 Transmission Service.

(a) Seller shall be solely responsible for obtaining and paying for transmission and delivery of any and all Energy and Capacity produced by the Facility to the Point of Delivery. Seller shall

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

further be responsible, with cooperation from OTP, for applying for and obtaining designation of the Facility, from MISO, as a Network Resource. Subject to OTP's termination right set forth in Section 5.4(b) below, all cost allocations associated with designation of the Facility as a Network Resource or an Energy Resource shall be determined pursuant to, and governed by, the applicable MISO tariff, the Interconnection Agreement and applicable FERC rules and regulations. Seller's receipt of obtaining Facility designation as a Network Resource is not a condition precedent to Commercial Operation. In the event that the Facility has not reached Commercial Operation within the time frame set forth in Section 1.7 of this Agreement, OTP may terminate this Agreement upon written notice to Seller without further obligation.

(b) In the event any Network Upgrades are necessary (in whole or in part) for the Facility to be designated as a Network Resource by MISO and it is determined by MISO, FERC, MPUC or other appropriate Person that OTP or its ratepayers will be responsible for the costs of such upgrades or charges (either directly or indirectly through the operation of MISO tariffs or FERC policies), then OTP shall have the right at its sole and absolute discretion to determine whether to agree to accept such costs. In the event OTP decides not to accept the costs associated with the Facility obtaining designation as a Network Resource, OTP may terminate this Agreement upon written notice to Seller within forty-five (45) days following OTP's receipt of the definitive cost estimates pursuant to the facilities study conducted in connection with the Seller's Network Resource interconnection request. Seller shall provide the Transmission Provider, the Interconnection Provider, and any applicable transmission owners written permission to release transmission study results to OTP.

5.5 Curtailement; Production Losses.

(a) The Parties acknowledge that there may be circumstances in which OTP, MRO, MISO, the Interconnection Provider or a New Joint Transmission Authority will direct Seller or Agralite to curtail deliveries of Energy and Capacity from the Facility in accordance with applicable laws, tariffs or agreements. If and to the extent a curtailment is due to an (i) Emergency, (ii) Force Majeure, (iii) failure of Seller to maintain the Permits, (iv) lack of available transmission capacity or service prior to the Point of Delivery at the time of curtailment, (v) the operation of Seller's system protection equipment or any malfunction of Seller's equipment that causes the Facility to be disconnected from the system, Seller shall not be entitled to any compensation for any lost production.

(b) In the event that a curtailment is directed by OTP, MRO, MISO, the Interconnection Provider or a New Joint Transmission Authority as mandatory transmission loading relief or comparable procedures implemented under an OATT, or OTP refuses or fails to accept delivery of Net Energy and Capacity at the Point of Delivery for reasons other than as set forth in Section 5.5(a), (each hereinafter a "Qualifying Production Loss Event"), and the Facility was otherwise capable of providing and delivering Energy and Capacity to the Point of Delivery, then Seller shall be able to claim compensation pursuant to Section 5.5(d).

(c) Upon the occurrence of a Qualifying Production Loss Event, Seller shall calculate the amount of Net Energy and Capacity which it would have produced and delivered to OTP at the Point of Delivery but for the Qualifying Production Loss Event, using the available methane fuel for each hour during the duration of the Qualifying Production Loss Event. For each hour during a Qualifying Production Loss Event, the lost production shall be based on the actual availability

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

of all internal combustion engines during the hour, excluding any internal combustion engines unavailable for outages and reflecting any other operating restrictions applicable to any internal combustion engines during the hour (the "Available Capacity"). For each hour (or partial hour) during a Qualifying Production Loss Event the lost production shall be the lesser of (a) the available capacity of the internal combustion engines, or (b) the volume of methane gas available for the hour divided by the historic average volume of methane gas required to generate one MWh of electricity, less any actual Net Energy produced by the Facility and delivered to the Point of Delivery during the applicable hour that is paid for by OTP. The Parties may revise the calculation of Available Capacity and lost production based on changes in the actual operational characteristics of the Facility and other circumstances.

(d) Upon the occurrence of a Qualifying Production Loss Event as a result of a curtailment directed by OTP, MRO, MISO, the Interconnection Provider or a New Joint Transmission Authority as mandatory transmission loading relief or comparable procedures implemented under an OATT as set forth in Section 5.5(b), OTP shall be obligated to pay Seller an amount equal to fifty percent (50%) of the Guaranteed Price that Seller would have received under this Agreement for the Net Energy, measured in megawatt-hours, which Seller would have otherwise produced and delivered to the Point of Delivery but for the Qualifying Production Loss Event.

(e) In the event that OTP refuses or fails to accept delivery of Net Energy and Capacity at the Point of Delivery for reasons other than as set forth in Section 5.5(a) or as a result of a curtailment directed by OTP, MRO, MISO, the Interconnection Provider or a New Joint Transmission Authority as mandatory transmission loading relief or comparable procedures implemented under an OATT as set forth in Section 5.5(b), and the Facility was otherwise capable of providing and delivering Energy and Capacity to the Point of Delivery, then Seller shall be able to claim compensation in a manner similar to that pursuant to Section 5.5(c). OTP shall be obligated to pay Seller an amount equal to one hundred percent (100%) of the Guaranteed Price that Seller would have received under this Agreement for the Net Energy, measured in megawatt-hours, which Seller would have otherwise produced and delivered to the Point of Delivery but for the curtailment.

(f) Seller shall invoice OTP for amounts due as a result of Qualifying Production Loss Events. Seller shall include information with the invoice documenting (i) the nature and duration of the Qualifying Production Loss Event, (ii) methane gas production data gathered at the Site for the period during such Qualifying Production Loss Event used to calculate the lost production amounts, (iii) historic methane gas volume per MWh of Net Energy produced, and (iv) the computation of amounts due under this Section for the invoiced lost production. OTP shall notify Seller within thirty (30) days of receipt if OTP believes that the circumstances described do not constitute a Qualifying Production Loss Event and the reason for that conclusion. If the Parties cannot resolve the difference of opinion by negotiation, either Party may utilize the dispute resolution procedures in the Agreement.

ARTICLE VI - FORCE MAJEURE

6.1 **Force Majeure.** The performance of each Party under the Agreement may be subject to interruptions or reductions due to an event of Force Majeure. The term "Force Majeure" shall mean an event or circumstance beyond the control of the Party claiming Force Majeure, which, by exercise of due diligence and foresight, could not reasonably have been avoided, including, but not limited to an Emergency, a Force Majeure event on the Interconnection Provider's System

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

to the extent it causes the Facility to be physically incapable of delivering energy or OTP from receiving energy at the Point of Delivery; a Force Majeure event (or comparable uncontrollable circumstances as may be defined in the applicable OATT) on the regional transmission system to the extent it causes OTP to be unable to accept delivery of Energy at the Point of Delivery or to transmit such energy from and after the Point of Delivery, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, strike, and act of God or any other cause beyond the control of the Party claiming Force Majeure. However, the obligation to use due diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty.

6.2 **Remedial Action.** A Party shall not be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to an event of Force Majeure. The Party rendered unable to fulfill any obligation by reason of a Force Majeure shall take all reasonable action necessary to remove such inability with all due speed and diligence. The nonperforming Party shall be prompt and diligent in attempting to remove the cause of its failure to perform, and nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed.

6.3 **Exclusions from Definition of Force Majeure.** Notwithstanding anything in the Agreement to the contrary, "Force Majeure" shall not mean:

(a) General inclement weather normally experienced within the vicinity of the Site and affecting construction, start-up, operation, or decommissioning of the Facility or related facilities.

(b) Changes in market conditions, governmental action, or weather conditions that affect the cost of Seller's supply of Energy from the Facility.

(c) Unavailability of equipment, repairs or spare parts for the Facility, except to the extent due to a qualifying event of Force Majeure.

(d) Inability to obtain, maintain or renew any Permit or any delay in obtaining, maintaining, or renewing any Permit.

(e) Litigation or administrative or judicial action pertaining to the Agreement, the Site, the Facility, the acquisition, maintenance or renewal of financing or any Permits, or the design, construction, maintenance or operation of the Facility.

(f) Any acts or omissions of any third party, including, without limitation, any vendor or supplier of Seller, except to the extent due to a qualifying event of Force Majeure.

(g) Any mechanical or equipment breakdown or other mishap at the Facility or events or conditions attributable to normal wear and tear or flaws or failure to operate or maintain such component in accordance with Prudent Electric Industry Practice, unless such mishap is caused by a qualifying event of Force Majeure.

6.4 **Notice.** In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering the event of Force Majeure shall, as soon as practicable, after the occurrence of the Force Majeure event, notify the other Party in writing of the nature, cause, date of commencement thereof, and the anticipated extent of any delay or interruption in performance.

ARTICLE VII – TERMINATION/DEFAULT/REMEDIES

7.1 Events of Default by OTP. The following shall each constitute an Event of Default by OTP:

- (a) OTP breaches any non-monetary material obligation under this Agreement, and fails to cure such breach within thirty (30) days after written notification by Seller of the breach.
- (b) After the Commercial Operation Date, for any reason other than an event of Force Majeure or an Event of Default by Seller, and except as allowed pursuant to Sections 5.4 and 5.5 of this Agreement, OTP refuses to purchase Energy after the Commercial Operation Date.
- (c) OTP fails to make any payment due under the Agreement within ten (10) days after written notice from Seller that such payment is past due, unless such payment is contested or a right of set-off has been claimed by OTP.

7.2 Events of Default by Seller. The following shall each constitute an Event of Default by the Seller:

- (a) For any reason other than an event of Force Majeure or an Event of Default by OTP, the Facility being Unavailable to provide Energy for ninety (90) consecutive days or one hundred and twenty (120) non-consecutive days in any three hundred sixty-five- (365) day period commencing on the Commercial Operation Date and prior to expiration of the Term of the Agreement.
- (b) Seller breaches any material obligation under this Agreement and fails to cure the breach within thirty (30) days after written notification by OTP of the breach.

7.3 Termination.

- (a) In the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 7.1 or 7.2, as applicable, or upon the occurrence of an incurable Event of Default, the non-defaulting Party may terminate the Agreement by notifying the defaulting Party in writing of the decision to terminate and the effective date of the termination.
- (b) Either Party shall have the right to terminate this Agreement upon notice to the other Party if: (i) there is any change in any laws, rules or regulations that apply to or affect the Facility, the Site, any other aspect of this Agreement or either Party's fulfillment of its obligations under this Agreement that makes compliance with or any other aspect of this Agreement illegal or otherwise increases Seller's costs and/or expenses to be incurred in connection with this Agreement by ten percent or more in any one year period as reasonably demonstrated by Seller; or (ii) the Interconnection Agreement and/or the Transmission Agreement is terminated or otherwise ends. No termination payment or other payment shall be payable by either Party to the other Party in connection with a termination pursuant to the foregoing clauses, except for payment of amounts owed and unpaid by the Parties under this Agreement prior to such termination. This Agreement may also be terminated as otherwise set forth in this Agreement.
- (c) Seller shall have the right to terminate this Agreement upon notice to OTP if Seller determines that the sale of RECs to OTP under this Agreement is adversely affecting the sale or marketability of the GHG Credits. No termination payment or other payment shall be payable by

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

either Party to the other Party in connection with a termination pursuant to this Section, except for payment of amounts owed and unpaid by the Parties under this Agreement prior to such termination.

(d) Seller shall have right to terminate this Agreement at any time upon three (3) months written notice to OTP; provided, however, Seller shall not sell Net Energy or RECs associated with the Facility to a third party for a period of two (2) years following the termination date of this Agreement.

(e) For any reason other than an event of Force Majeure or an Event of Default by OTP, and except as allowed pursuant to Sections 5.4 and 5.5 of this Agreement, if the Facility is Unavailable to provide Energy for ninety (90) consecutive days or one hundred and twenty (120) non-consecutive days in any three hundred sixty-five (365) day period commencing on the Commercial Operation Date and prior to expiration of the Term of the Agreement, then OTP shall have the right to terminate this Agreement upon thirty (30) days notice if such notice is given within thirty (30) days of the occurrence of such triggering event.

(f) Upon termination of the Agreement by OTP due to an Event of Default by Seller pursuant to Section 7.3(a), OTP shall have no future or further obligation to purchase the Capacity or Net Energy of the Facility or to make any payment whatsoever under this Agreement, except for payments for obligations arising or accruing prior to the effective date of termination. Upon termination of the Agreement by Seller due to an Event of Default by OTP pursuant to Section 7.3(a), Seller shall have no future or further obligation to deliver the Capacity or Net Energy of the Facility to OTP or to satisfy any other obligation of this Agreement, except for payments or other obligations arising or accruing prior to the effective date of termination. After the effective date of termination, the Agreement shall not be construed to provide any residual value to either Party or any successor or any other Person, for rights to, use of, or benefits from the Facility or the Interconnection Provider's System.

7.4 Other Damages.

(a) For all claims, causes of action and damages the Parties shall be entitled to the recovery of actual damages allowed by law unless otherwise limited by the Agreement. Neither the enumeration of Events of Default in Sections 7.1 and 7.2, nor the termination of this Agreement by a non-defaulting Party pursuant to Section 7.3(a), shall limit the right of a non-defaulting Party to rights and remedies available at law, including, but not limited to, claims for breach of contract or failure to perform by the other Party and for direct damages incurred by the non-defaulting Party as a result of the termination of this Agreement.

(b) Except as otherwise specifically and expressly provided in the Agreement, no Party shall be liable to the other Party under the Agreement for any indirect, special, punitive, exemplary, incidental or consequential damages, including, without limitation, loss of use, loss of revenues, loss of profit, interest charges, cost of capital, or claims of customers to which service is made, whether arising under statute or in tort or contract. Notwithstanding the foregoing, in the event that OTP breaches this Agreement by failing to purchase or accept delivery of Energy and Capacity (except for curtailments allowed pursuant to Sections 5.4 and 5.5 or as otherwise excused pursuant to the terms of this Agreement), Seller shall be entitled to seek damages measured by the difference between the amounts Seller would otherwise have been paid under this Agreement for such Energy and Capacity if it had been purchased or accepted for delivery by OTP and the costs saved by (A) not being required to produce and deliver such Energy and Capacity or (B) in the event Seller sells such Energy and Capacity to a third party following

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

OTP's default, less the actual payment Seller receives for such Energy and Capacity sold to a third party. In no event shall one Party's liability to the other exceed any limit of liability established for either Party under any Requirement of Law.

(c) In no event shall Seller be liable to OTP in the event the Facility fails to operate regardless of the cause of such failure and regardless if such failure is due to the intentional acts or omissions of Seller.

7.5 **Indemnification.** Seller and OTP agree to defend, indemnify, and hold each other, and their respective officers, directors, employees, and agents, harmless from and against all claims, demands, losses, liabilities, and expenses (including reasonable attorneys' fees) (collectively "Damages") for personal injury or death to Persons and damage to each other's physical property or facilities or the property of any other Person or corporation to the extent arising out of, resulting from, or caused by the negligent or intentional acts, errors, or omissions of the indemnifying Party. Furthermore, each Party shall defend, indemnify, and hold the other harmless from and against all damages that are or were incurred or suffered by the indemnified Party and which relate to the indemnifying Party's breach or failure to perform any of the covenants, agreements, obligations, representations, or warranties contained in the Agreement. Nothing in this section shall relieve Seller or OTP of any liability to the other for any breach of the Agreement. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the indemnitees but the indemnifying Party's liability to pay Damages to the indemnified Party shall be reduced in proportion to the percentage by which the indemnitees' negligent or intentional acts, errors or omissions caused the Damages. Neither Party shall be indemnified for its Damages resulting from its sole negligence or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

7.6 THE EXPRESS LIMITED WARRANTIES IN THIS AGREEMENT BY SELLER ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESSED OR IMPLIED, CONTRACTUAL OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE VIII - ARBITRATION

8.1 **Arbitration.**

(a) Any controversy or claim arising out of or relating to the Agreement, or the breach thereof, shall be subject to resolution by binding arbitration in Minneapolis, Minnesota as set forth in this Article.

(b) Prior to initiation of arbitration, authorized representatives designated by the Parties shall meet for the purposes of discussing and resolving the controversy or claim. The Parties agree to participate in negotiations for a period of thirty (30) days, which period may be extended by agreement. If the Parties are not successful in resolving the dispute(s) through such negotiations, then they agree to submit the unresolved dispute(s) or portions thereof to binding arbitration as provided in Section 8.2.

8.2 Arbitration Procedure.

(a) All disputes arising between the Parties which relate to the validity, interpretation or performance of this Agreement, and which are not successfully resolved by the Parties, shall be submitted to arbitration at the request of either Party to the dispute, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and this Agreement.

(b) The demand for arbitration shall be filed in writing with the other Party to this Agreement and with the American Arbitration Association or other agreed arbitrator within ten (10) days of the conclusion of the discussions of management described in Section 8.1(b). No arbitration initiated by the Parties shall include, by consolidation, joinder or in any other manner, any other Person unless such Person and both Parties agree to the inclusion and unless such Person is substantially involved in a common question of law or fact or its presence is required if complete relief is to be accorded in the arbitration. This agreement to arbitrate between the Parties, and any fully executed subsequent agreement to arbitrate with a third party, shall be specifically enforceable under the Minnesota or federal arbitration act, whichever is applicable.

(c) The arbitrators shall have jurisdiction and authority to interpret, apply, or determine compliance with the provisions of this Agreement insofar as shall be necessary to the determination of issues properly before the arbitrators, including the right to order specific performance of this Agreement against either Party. In making the decision, the arbitrators shall issue appropriate findings and conclusions regarding the issues. The arbitrators shall not have jurisdiction or authority to alter the provisions of this Agreement or any applicable law or rule of civil procedure. The arbitrators shall have the authority to require either Party to specifically perform its obligations under this Agreement. The arbitrators shall require the non-prevailing party to pay the attorneys fees and costs and other costs of the arbitration incurred by the prevailing party. The arbitrators shall render a decision within sixty (60) days after the completion of the hearing on the matter.

(d) This Article VIII shall survive the termination of the Agreement as necessary to resolve any disputes arising out of, in connection with, or relating to the Agreement.

ARTICLE IX - MISCELLANEOUS

9.1 No Assignment. The rights and obligations of this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, Seller shall have the right to assign this Agreement to Riverview, LLP or an affiliate thereof along with the assignment of the Facility and the Site. Seller's consent shall not be required for OTP to assign this Agreement to an Affiliate of OTP, provided that OTP provides assurances and executes documents reasonably required by Seller and the Financier regarding OTP's continued liability for all of OTP's obligations under this Agreement in the event of any nonperformance on the part of such assignee. Such assignments are subject to approval by the Minnesota Public Utilities Commission. Any purported assignment of this Agreement in the absence of the required consent as required by this Section 9.1 shall be void.

9.2 **Notices.** Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

Chuck MacFarlane
President
Otter Tail Power Company
215 South Cascade Street
Fergus Falls, MN 56537

With a copy to:

Bruce Gerhardson
Associate General Counsel
Otter Tail Power Company
215 South Cascade Street
Fergus Falls, MN 56537

on behalf of OTP; and to:

Brady Janzen
District 45 Dairy, LLP
26406 470th Avenue
Morris, MN 56267
320-392-5609
320-392-5319 (FAX)

With a copy to:

Shawn McIntee
Maslon Edelman Borman & Brand, LLP
90 S. 7th St.
3300 Wells Fargo Center
Minneapolis, MN 55402

on behalf of Seller. The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail.

9.3 **Captions.** All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.

9.4 **No Third-Party Beneficiary.** No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any Person not a Party hereto.

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

- 9.5 No Dedication.** No undertaking by one Party to the other under any provision of the Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect the status of OTP as an independent public utility corporation or Seller as an independent individual or entity and not a public utility.
- 9.6 Integration; Amendment.** The Agreement, together with all Appendices attached hereto, constitutes the entire agreement between the Parties relating to the transaction described herein and supersedes any and all prior oral or written understandings. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
- 9.7 Governing Law.** The Agreement is made in the State of Minnesota and shall be interpreted and governed by the laws of the State of Minnesota and/or the laws of the United States, as applicable.
- 9.8 Relationship of Parties.**
- (a) The duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and OTP or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and OTP shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- (b) The relationship between OTP and Seller shall be that of contracting party to independent contractor. Accordingly, subject to the specific terms of the Agreement, OTP shall have no general right to prescribe the means by which Seller shall meet its obligations under the Agreement.
- (c) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform Seller's obligations under the Agreement, including all federal, state, and local income, social security, payroll, and employment taxes, and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of OTP for any purpose; nor shall Seller represent to any Person that he or she is or shall become an OTP employee or agent.
- 9.9 Good Faith and Fair Dealing; Reasonableness.** The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of the Agreement. Unless expressly provided otherwise in this Agreement, (i) wherever the Agreement requires the consent, approval, or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.
- 9.10 Severability.** Should any provision of the Agreement be or become void, illegal, or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in force. The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

clauses which correspond as closely as possible to the sense and purpose of the affected provision and the Agreement as a whole.

- 9.11 Cooperation.** The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under the Agreement.
- 9.12 Counterparts.** This Agreement may be executed in two or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.
- 9.13 Standard of Review.** This Agreement is contingent upon appropriate authorization from the Federal Energy Regulatory Commission under Section 205 of the Federal Power Act. The terms and conditions and the rates for service specified in this Agreement shall remain in effect for the term of the transaction described in this Agreement. Absent the Parties' written agreement, this Agreement shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of Seller and OTP to a proposed change, the standard of review for changes to the Guaranteed Price under this Agreement proposed by OTP, Seller, a non-party or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).
- 9.14 Use of OTP's Name.** Seller shall not use OTP's (or any of its affiliates') name, logos or other marks in connection with this Agreement or otherwise, without the prior written consent of OTP, which consent shall be within OTP's sole discretion.
- 9.15 Press Releases and Media Contact.** Upon the request of either Party, the Parties shall develop a mutually-agreed-upon joint press release to be issued as of the Effective Date describing the location, size, type and timing of the Facility, the long-term nature of the Agreement, and other relevant factual information about the relationship. In the event during the Term, either Party is contacted by the media concerning this Agreement or the Facility, the contacted Party shall inform the other Party of the existence of the inquiry, any questions asked, and the substance of any information provided to the media.
- 9.16 Confidentiality.** This Agreement, the exact prices contained herein and any information provided to or obtained by OTP related to Seller and/or the Facility are confidential to Seller and may not be shared with any person or party other than:
- i) The Parties' employees, consultants and attorneys who have agreed to treat such information as confidential,
 - ii) Such information as is specifically required to obtain capacity accreditation with any organization to which OTP is obligated to provide accredited capacity or documentation thereof,
 - iii) As required to comply with applicable law, regulation, court order, lender or regulatory proceeding; or
 - iv) As necessary in connection with discussions with Greenhouse Gas Services regarding the effect of sales of RECs on the Greenhouse Credit Agreement.

The Parties agree that the Term of the Agreement and an approximate total price may be shared publicly and without consent.

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

IN WITNESS WHEREOF, the Parties have caused the Agreement to be duly executed as of the day and year first above written.

Dated: September 14, 2010

District 45 Dairy, LLP

By: Kurt Domnick

Name: Kurt Domnick

Its: Managing Partner

Dated: September 9, 2010

**OTTER TAIL POWER COMPANY,
a Minnesota Corporation**

By: Todd Wahlund

Name: Brian Draxten

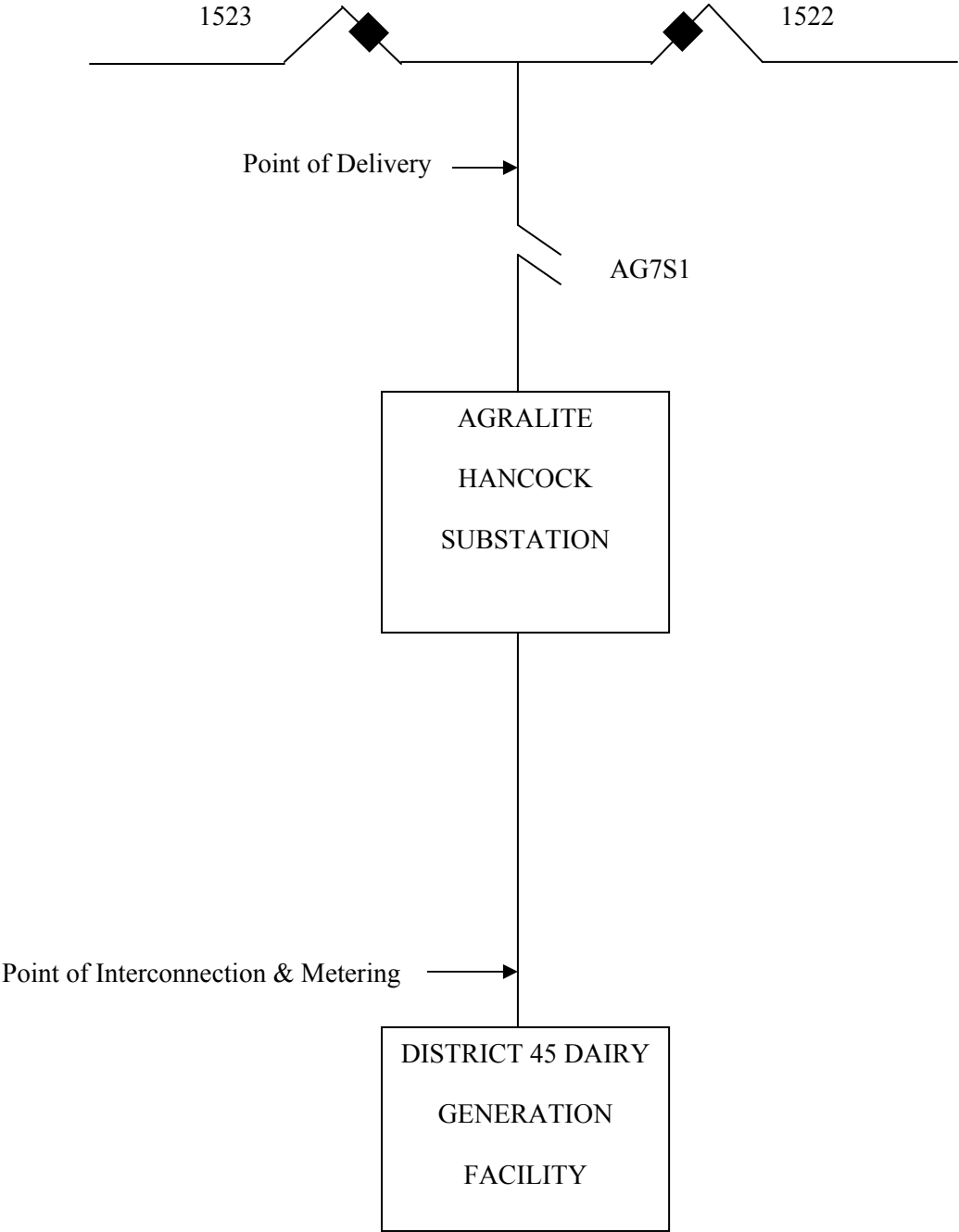
Its: Manager, Resource Planning

Appendix A

[TRADE SECRET DATA BEGINS ...

...TRADE SECRET DATA ENDS]

Appendix B
One-Line Diagram



APPENDIX C

FORM OF ENVIRONMENTAL INDEMNITY AGREEMENT

This agreement is entered into this 9th day of September, 2010 by and between District 45 Dairy, LLP, a Minnesota limited liability partnership ("Seller") and Otter Tail Power Company, a Minnesota corporation ("OTP").

RECITALS

A. OTP is a public utility providing electricity to retail customers in Minnesota, South Dakota and North Dakota. Seller is engaged in the business of owning and operating biogas energy conversion electric generating facilities.

B. OTP and Seller have entered into a Power Purchase Agreement dated September 9, 2010, as amended (the "Agreement") pursuant to which Seller agrees to construct and install an internal combustion powered electric generation facility (the "Facility") fueled with methane created by the anaerobic digestion of manure on real property owned or leased by Seller and described in Section 1.55 of the Agreement (the "Site").

C. As a condition to its entry into and performance under the Agreement, OTP requires that Seller execute and deliver in its favor an agreement indemnifying OTP against any claims for environmental emissions, releases or other sources of potential liability related to or arising from the Facility or the Site.

D. Seller wishes to indemnify OTP in order to obtain the benefits of the Agreement.

NOW, THEREFORE, in consideration of these premises, the mutual promises in the Agreement and other good and valuable consideration, the receipt and adequacy of which are acknowledged, Seller and OTP agree as follows:

AGREEMENT

1. Definitions. All capitalized terms used herein shall have the meaning given to them in the Agreement, unless otherwise expressly defined herein.

2. Seller represents and warrants that, to the best of its knowledge, and except as set forth on Exhibit A, no portion of the Site and the improvements thereon has ever been used by previous or current owners or operators or Seller to generate, manufacture, refine, transport, treat, store, handle or dispose of toxic material, hazardous substances, solid waste or hazardous wastes, as the terms are defined in any applicable Environmental Law, and Seller does not intend to use any

of the Site for such purposes. To the best of Seller's knowledge, the Site does not contain, through the action or inaction of previous owners or operators or Seller, asbestos, urea formaldehyde foam insulation, PCBs, other toxic materials, hazardous substances, or any other chemical, material, or substance exposure to which may or could pose a health hazard whether or not the substance is prohibited, limited or regulated by any Governmental Authority, whether used in the Facility or stored on the Site.

3. Seller represents and warrants that Seller has not received a summons, citation, directive, letter, or other communication, written or oral, from any Governmental Authority concerning the existence of any condition on or affecting the Site which currently violates, or which, with the passage of time, will violate, any applicable Environmental Law, or which otherwise indicates that Seller may be subject to any potential Environmental Liability with respect to the Site or the Facility. To the best of Seller's knowledge, Seller, the Facility and the Site are not subject to any existing or pending investigation or inquiry by any Governmental Authority or to any remedial obligations under any applicable Environmental Law. These representations and warranties would continue to be true and correct following disclosure to the applicable Governmental Authority of all relevant facts, conditions and circumstances pertaining to Seller, the Facility, and the Site.

4. Seller agrees to defend, indemnify and hold OTP and its officers, directors, employees, agents and representatives, and their respective successors and assigns, from and against all claims, actions, demands, losses, liabilities, damages, judgments, penalties, injuries, and expenses arising from or related to any Environmental Liability concerning Seller, the Facility or the Site, including, but not limited to, (1) any claim for personal injury or property damage by any Person arising out of, resulting from or caused by any violation of any applicable Environmental Law by Seller or concerning the Facility or the Site; (2) any assessment, fine, penalty, lien or other imposition by any Governmental Authority; and (3) any liability, losses, or remedial costs suffered because a Governmental Authority finds OTP to be a responsible party, owner or operator of the Facility or Site.

PUBLIC DOCUMENT – TRADE SECRET DATA HAS BEEN EXCISED

5. The release and return of this Indemnity Agreement shall not affect or impair any rights or remedies or claims OTP may have outside the scope of this Indemnity Agreement, at law or in equity, with respect to Seller or other Persons. The obligations of this Indemnity Agreement shall survive the termination of the Agreement.

6. This Indemnity Agreement shall inure to the benefit of OTP and any successor and assignee of OTP and shall be binding upon Seller and its successors and assignees.

7. OTP shall not be required to resort first to any other indemnitors or other Persons or their respective properties or estates, or to any collateral, property, liens or other rights or remedies available to OTP before seeking indemnification hereunder from Seller.

8. This Indemnity Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

9. No provision of this Indemnity Agreement, whether express or implied, is intended to nor shall it in any way inure to the benefit of any third Person, so as to constitute any such Person a third-party beneficiary under the Indemnity Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any Person other than OTP, and neither this Indemnity Agreement nor any provision thereof is intended to confer any rights or remedies of any sort on any Person other than OTP. Nothing in this Indemnity Agreement is intended to relieve or discharge any obligation or liability of any Person to any party to this Indemnity Agreement or to the Agreement, and no provision of this Indemnity Agreement shall give any Person other than a Party any right of subrogation or cause of action over and against any Party.

DISTRICT 45 DAIRY, LLP, a Minnesota limited liability partnership

By: Kurt Domnick_____

Name: Kurt Domnick_____

Its: Managing Partner

OTTER TAIL POWER COMPANY, a
Minnesota corporation

By: Todd Wahlund_____

Name: Todd Wahlund_____

Title: VP, Renewable Energy Dev. & Risk Mgmt.

Exhibit A to Indemnity Agreement

Existing or Previous Use of Solid Waste Materials

- The District 45 Dairy site handles and stores all of the dairy manure produced by the cows on-site. The site is designed and permitted to properly handle this waste and has done so since it was constructed in 2005.