

Wednesday, prior to the Agenda Distribution.

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon.

_____	_____	Village Attorney X
_____	_____	Finance Director X
_____	_____	Village Manager X

Review (as necessary):

Staff is requesting ratification of the electricity contract executed by the Village Manager on March 24, 2010.

BACKGROUND/POLICY IMPLICATIONS:

SUBMITTED BY: Timothy Sexton, Director of Finance

DATE: April 6, 2010

FROM: David A. Hulseberg, Village Manager

TO: PRESIDENT AND BOARD OF TRUSTEES

TITLE: Motion to Ratify a Contract with Constellation New Energy, Inc. for the Provision of Electrical Energy for the Village Hall for the Period of May 2010 through May 2011

_____	_____
_____	X
_____	_____

Resolution or Ordinance (Blue) _____ *Waiver of First Requested*

Recommendations of Boards, Commissions & Committees (Green)

Other Business (Pink)

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
 For Inclusion on Board Agenda



To: David A. Hulseberg
Village Manager

From: Timothy Sexton
Director of Finance

Date: April 6, 2010

Subject: Electricity Supply Contract – Village Hall Heat

On February 4, 2010, the Village Board approved Resolution 63-10 which authorized the Northern Illinois Municipal Electric Cooperative (NIMEC) to serve as the broker for the Village in regard to obtaining bids from electricity providers and authorizing the Village Manager or Assistant Village Manager to approve a contract with the lowest cost electricity provider.

Bidding was conducted by NIMEC on March 24, 2010, for the electrical needs for the Village Hall heating. There were three bids submitted, from Constellation NewEnergy, Inc (CNE), Exelon and Mid-American. CNE was the low bidder, at 5.90 cents/kwh. The current rate we have been paying with ComEd was 6.75 cents/kwh. However, that fixed rate was ending in May, and the rate would have gone to an hourly rate, which fluctuates significantly throughout the day between approximately 2 cents and 10 cents. Since the majority of the heating use is during the day, when rates are highest, it was decided to lock in a fixed rate with this NIMEC bid.

As CNE previously supplied electricity for water pumping and treatment, the attached contract has previously been reviewed by the Village Attorney's office. In accordance with the authorization provided for in Resolution 63-10, the contract was executed on March 24, 2010. As provided for in that resolution, the contract is to be placed on the first available Village Board meeting following the execution thereof by the Village Manager for ratification by the President and Board of Trustees.

State of Illinois Disclosure

Section 454.90 of the Public Utilities Act (220 ILCS 5/16 - 115C) requires all agents, brokers and consultants engaged in the procurement or sale of electricity supply for third parties to: a) Disclose in plain language in writing the nature of the services offered by the ABC; b) Disclose in plain language in writing to all persons it solicits the total anticipated remuneration to be paid to it by any third party over the period of the proposed underlying customer contract. Any such disclosure must be made prior to entering into the contract and signed by the customer; c) Not hold itself out as independent or unaffiliated with any RES, or both, or use words calculated to give that impression, unless the person or entity offering service under this Section 16-15C of the Act has no contractual relationship with any RES or its affiliates regarding retail electric service in Illinois; d) Not utilize false, misleading, materially inaccurate, defamatory, or otherwise deceptive language or materials in the soliciting or providing of its services; e) Maintain copies of all marketing materials disseminated to third parties for a period of not less than three years; f) Maintain copies of all disclosure statements required in subsections (a) and (b) for a period of not less than three years; g) Not present electricity pricing information in a manner that favors one supplier over another, unless a valid pricing comparison is made utilizing all relevant costs and terms; and h) Comply with the requirements of Sections 2EE, 2FF, 2GG, and 2HH of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE, 2FF, 2GG, and 2HH].

The Northern Illinois Municipal Electric Co-operative ("Co-operative") has been organized to solicit bids on behalf of its membership. The Co-operative will endeavor to aggregate the members' electricity supply and bid out the collective volumes with at least three electric suppliers. Any bids solicited by the Co-operative are from third party suppliers that are approved by the Illinois Commerce Commission. The Co-operative then determines which supplier has the lowest priced bid (based upon a weighted average) for the entire bid group, then presents the lowest bid from that supplier to each member for their acceptance or rejection. Each member of the Co-operative is under no obligation to accept the bid presented by the Co-operative.

There are no contracts or other written obligations between the Co-operative and its members. As such, each member is under no binding obligation to the Co-operative.

Any contracts signed are between the Co-operative member and the power supplier. The Co-operative has not expressed an opinion as to the quality of the supplier contracts.

The Co-operative believes the rates that it submits to its members are competitive.

The Co-operative does not solicit from all the ICC approved suppliers, and we do not discourage our members from independently soliciting additional bids on their own behalf from suppliers not engaged by the Co-operative.

The Co-operative receives no compensation from the power suppliers, nor from its membership, other than a nominal one-time membership fee. The Co-operative engages the professional consulting services from Glenview Consulting, Ltd. in exchange for this, Glenview Consulting receives a fee from the suppliers of \$0.0010 per kilowatt hour for the NIMEC volume. We are aware of no other agent, broker or consultant that charges a lower fee for accounts your size. Many charge a significantly higher fee. Each member is able to calculate the expected remuneration to Glenview by multiplying its annual consumption (found in the attached documentation) by the supplier fee.

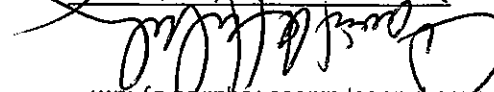
In the Co-operative's opinion, this fee is more than offset by the value of the aggregation. When the members' load is aggregated, power suppliers are willing to bid more aggressively on the larger load than on the individual member's load. Additionally, many suppliers are willing to lower their margin as the account was not originated by their own sales force.

No employee from the co-operative or Glenview Consulting is an employee of Commonwealth Edison.

Both parties acknowledge that this form was presented to the client prior to the execution of the sales documents.

Any information given to us by customers is confidential and solely distributed to those suppliers that are engaged by the Co-operative. Likewise, this Disclosure statement is to remain confidential; it is not to be shared with outside parties, unless required by law.

Received by:



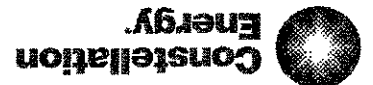
Name:

David Nulberg

Municipality:

Village of Lombard, Illinois

Date: March 24, 2010



**Constellation NewEnergy, Inc.
Fixed Price Solutions Pricing Schedule**

Agreement is Not
Valid Unless
Executed by
NewEnergy

MRESA Reference. This Pricing Schedule is entered into pursuant to and in accordance with a Master Electricity Supply Agreement executed the day of March 20 10 by and between Constellation NewEnergy, Inc. ("NewEnergy") and Village of Lombard ("Customer"), and is subject to all of the provisions, terms and conditions of such Master Electricity Supply Agreement. Notwithstanding anything to the contrary, any conflict between this Pricing Schedule and the Master Electricity Supply Agreement will be resolved in favor of this Pricing Schedule, but only with respect to the Account(s) listed on this Pricing Schedule. This Pricing Schedule, supersedes all prior agreements and understandings with respect to the Account(s), and may not be contradicted by any prior or contemporaneous oral or written agreement. Capitalized terms used herein but not defined will have the meanings ascribed to them in the Master Electricity Supply Agreement.

Customer's full requirements for electricity for the Account(s) listed on the Account Schedule below. The prices contained in the Account Schedule include all the costs listed below as "Fixed", meaning that they are "fixed" for the existing term of this Pricing Schedule and only subject to changes as a result of a Change in Law as described in the Master Electricity Supply Agreement, or a Material Change and described in Section PS 2.7 of this Pricing Schedule. Costs listed below as "Passed Through" means that charges for these costs will change during the existing term of this Pricing Schedule if and as the related charges assessed or charged to NewEnergy vary for any reason, including but not limited to the types of changes described in Section PS 2.7 hereof or in the Change in Law Section of the Master Electricity Supply Agreement. Customer is also responsible to pay, without markup or administrative fee(1) Taxes - as required by Law, and (2) Utility Charges for delivery/distribution services if separate line item or reflected as part of the price of electricity, as required by Law, and (3) Utility Charges for delivery/distribution services if NewEnergy provides a single bill that includes Utility Charges. The Utility Charges (if any) and Taxes are charged to Customer as "Passed Through." At any time during the term of this Pricing Schedule, Customer may request the purchase of renewable energy certificates in an amount equal to a prescribed percentage of Customer's load volume by entering into one or more Retail Trade Transactions ("RTTs") between Customer and NewEnergy. If the Parties agree to the pricing and terms of the renewable energy certificates purchase, a separate RTT Confirmation signed by Customer and NewEnergy will document each such purchase.

Energy Costs	Fixed
Ancillary Services And Other ISO Costs	Passed Through
Capacity Costs	Passed Through
Transmission Costs	Passed Through
Line Loss Costs	Passed Through

The prices contained in the Account Schedule have been reduced to reflect a fixed credit to Customer for the Auction Revenue Rights and Transmission Loss Credits associated with the Account(s). The prices also include any costs associated with meeting Renewable Portfolio Standards ("RPS") at the levels required by currently applicable Law.

GENERAL TERMS AND CONDITIONS

PS 1.1. General Definitions.

"Covered Bandwidth" means for each Account an amount of electricity usage falling in the following range: plus or minus 15% of (a) the actual historical monthly kilowatt-hours consumption reported to NewEnergy for the immediately preceding yearly period, or (b) in the case of Account(s) that did not receive electricity in the prior year period or whose consumption will likely differ materially during the term of this Pricing Schedule from such prior year period, NewEnergy's good-faith estimate of the anticipated monthly consumption for such Account(s).

"Delivery Point" means existing and future points of interconnection between the ISO-controlled grid or a third party transmission system and/or distribution system, as applicable, and the Utility's transmission system and/or distribution system.

"Holdover Costs" means the sum of all out-of-pocket costs and charges incurred by NewEnergy for the retail delivery of energy, including, without limitation and as applicable, the Federal Energy Regulatory Commission, renewable portfolio standards, and any similar charges that may be imposed on NewEnergy with respect to the Accounts (whether by the ISO or the Utility) from time to time. We will pass Holdover Costs through to Customer on Customer's invoice without mark-up as part of Customer's Holdover Rate.

"Holdover Rate" means a rate calculated by NewEnergy in its sole discretion for each billing cycle as ((Metered Usage) x (Market Price + Holdover Costs + \$0.00525/kkWh) + Taxes.

"ISO" means PJM, or other successor or replacement entity, public or private, administering transmission reliability and control of the electricity grid.

"Late Payment Charge" means 0% of the total dollar amount set forth on Customer's invoice as due and payable from Customer.

"Market Price" means the ISO-published Real Time Locational Based Marginal Price for the ISO zone identified in the Account Schedule, expressed in \$/kWh, except for NYISO Zone J, where Market Price means the ISO-published Day Ahead Locational Based Marginal Price for the ISO zone identified in the Account Schedule, expressed in \$/kWh. Market Prices are published hourly or sub-hourly depending on ISO. If Customer's Account(s) are not equipped with meters that provide an hourly reading, we will use either the load profiles provided by the Utility for Customer's class or, in the absence of such load profiles provided by the Utility on a timely basis, an otherwise reasonable allocation method established by us, in order to apply Market Prices to Customer's monthly usage.

"Metered Usage" means Customer's kilowatt-hour usage at the Account(s) during the applicable billing period, as adjusted by the applicable line loss factor(s).

"NewEnergy Electricity Charges" means for purpose of this Pricing Schedule all Fixed cost components identified in the "Price Terms" section above at the prices identified in the Account Schedule below multiplied, as applicable, by Customer's usage, demand, number of accounts or other factor shown on the Account Schedule for such Fixed price during the applicable period.

"Notice Period" means, unless a longer period is required by applicable Law, the five day period following written notice from NewEnergy to Customer informing Customer of any amounts past due under this Agreement.

"Payment Date" means the date 60 days following the invoice date, or such other date as is mandated by the Prompt Payment Act (as defined in PS 2.3 below) by which Customer's payment to NewEnergy is due without offset or reduction of any kind except as provided in PS 2.3 below.

"Utility Charges" means Delivery Charges to the extent provided by the Utility.

PS 1.2. Market Definitions.

"Ancillary Services And Other ISO Costs" means for any billing period the applicable charges regarding ancillary services as set forth in the applicable ISO Open Access Transmission Tariff ("OATT") and for other ISO costs not included in the definition of Capacity Costs, Energy Costs, and Transmission Costs. NewEnergy will determine Customer's monthly Ancillary Services And Other ISO Costs based on Customer's \$/kWh share of NewEnergy's cost for Ancillary Services And Other ISO Costs incurred with respect to all of NewEnergy's customers within the applicable ISO service territory or in the form of an otherwise reasonable allocation method as NewEnergy may determine from time to time based on how Ancillary Services And Other ISO Costs are assessed by the ISO.

"Capacity Costs" means a charge for fulfilling the capacity requirements for the Account(s) imposed by the ISO or otherwise.

"Auction Revenue Rights" are revenue credits resulting from the annual financial transmission rights auction conducted by the ISO that are awarded to NewEnergy with respect to NewEnergy's customers' transmission peak load contribution.

"Energy Costs" means a charge for the cost items included in the Locational Marginal Price for the ISO zone identified in the Account Schedule "Line Loss Costs" means the distribution charges imposed by the Utility in connection with the supply of electricity by NewEnergy to Customer in accordance with this Agreement, which are calculated based on a percentage of Customer's kilowatt-hour consumption during the applicable period times.

"Non Time Of Use" or "NTOU" means all hours of each day.

"Transmission Costs" means the charge for Network Transmission Service as identified in the applicable OATT Tariff for the provision of transmission service by the ISO within the Utility's service territory.

"Transmission Loss Credits" are amounts credited to NewEnergy by the ISO under the ISO's marginal loss construct for the load served by NewEnergy.

"UDC Peak" means the hours designated as peak from time to time by the Utility.

"UDC Off Peak" means all hours other than UDC Peak hours.

PS 2.1. Initial Term. With respect to each Account set forth below, the term of this Pricing Schedule shall commence on the date set forth on the Account table below under "Start Date", through the date set forth on the Account table below under "End Date", unless extended on a holdover basis as described in this Agreement. Unless the Start Date and End Date specify a specific meter read date, such date shall be the first regularly scheduled meter read date for the stated month and calendar year, which meter read date may fall within the prior calendar month or in the subsequent calendar month (e.g., the meter read date for the month of March may in fact fall in February). Meter read dates are based on the information currently available from the Utility, actual meter read dates are determined by the Utility and may deviate from those shown on the Account Schedule. NewEnergy will use commercially reasonable efforts to begin service to the Account(s) on the Start Date(s) set forth below, but if NewEnergy is unable to enroll one or more of the Accounts by such date as a result of circumstances beyond NewEnergy's control (including (i) Customer's failure to timely provide NewEnergy with all information with respect to the Account(s) necessary in order to successfully enroll the Account(s) with the Utility or notify the Utility that it has selected NewEnergy as its supplier or (ii) any acts or omissions of the Utility), the Start Date(s) will commence on the next regularly scheduled Utility meter read date in the month and year following successful enrollment of such Account(s), but the End Date(s) will remain the same.

PS 2.2 Renewal Terms. Nothing in this Agreement shall be deemed to require or otherwise obligate NewEnergy to offer to extend the term of this Agreement (and thus send a Renewal Notice to Customer).

PS 2.3 Invoicing and Payment. For amounts due under this Pricing Schedule and the Agreement, unless otherwise agreed to by the parties, Customer will receive two invoices, one from NewEnergy for all charges applicable to Customer's electricity usage, which consists of the NewEnergy Electricity Charge plus all charges identified as a Passed Through in the "Price Terms" section above, and one from the Utility for the Utility Charges. If Customer has elected to receive a single bill from NewEnergy for one or more of the Account(s) served hereunder, NewEnergy will invoice Customer for those Account(s) and related Taxes for those Account(s); otherwise, the Utility will invoice Customer for all Utility Charges and related Taxes for those Account(s). Such invoices will include all detail required by the Law. Any sums billed and not received by NewEnergy by the Payment Date shall be automatically subject to Late Payment Charges. Customer acknowledges that NewEnergy's ability to invoice Customer is dependent on the Utility's or ISO's ability to furnish NewEnergy with all necessary information. In the absence of such information, NewEnergy shall have the right to invoice Customer based on estimated meter readings or other estimated information. Customer's invoice will be adjusted the next billing cycle after which NewEnergy receives the actual consumption amount and other necessary information from the Utility or ISO, to reconcile any difference between estimated consumption and actual consumption or other matters. To the extent that dollar amounts included on an invoice are for the benefit of the Utility, Customer shall also comply with the standard terms and conditions of the Utility applicable to payments owed to it. Payments to NewEnergy are subject to adjustments in subsequent invoices if, on the basis of verified information provided by the ISO, the Utility or otherwise, the amount of electricity delivered to the Customer is adjusted. Customer shall have full responsibility for payment of any existing amounts owed to Utility. Customer shall make payments in accordance with this Pricing Schedule and the Agreement, provided that to the extent the payment terms of this Pricing Schedule and the Agreement are in conflict with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq, (the "Prompt Payment Act"), the Prompt Payment Act shall govern.

To the extent that Customer receives a single bill from NewEnergy and fails to comply with the provisions of this PS 2.3, NewEnergy reserves the right to cease providing Customer with a single bill and the Customer will be invoiced directly by the Utility for all Utility Charges and other charges related to use of the Utility's distribution system and NewEnergy will invoice Customer for NewEnergy charges only. Notwithstanding anything to the contrary in this Section PS 2.3, to the extent that Customer fails to timely remit payment to NewEnergy, NewEnergy reserves the right to withhold any payments due and owing to the Utility until such payments are received by NewEnergy from the Customer. Customer acknowledges that the failure to timely remit payment to NewEnergy of amounts due and owing to the Utility may result in the Utility requesting that Customer provide a deposit and/or face disconnection of service by the Utility.

PS 2.4 Usage Variance. Customer acknowledges that NewEnergy determined the fixed component(s) of the NewEnergy Electricity Charge calculation, in part, based on Customer's historic and/or estimated monthly usage for each Account. Consequently, in the event and only in the event Customer's aggregated demand is greater than 5 MW per annum, Customer agrees to bear any additional charges and costs to NewEnergy arising from, or relating to, usage outside the Covered Bandwidth, including without limitation, circumstances in which electric usage by one or more Accounts declines to *de minimis* levels or ceases altogether (for any reason other than Force Majeure). If one or more of Customer's facilities which are receiving electricity supply hereunder are closed, vacated, sold, consolidated or otherwise disposed of, then Customer may, to the extent permitted by applicable Law, terminate this Pricing Schedule with respect to the corresponding Account(s) upon 30 days written notice to NewEnergy, in which event Customer may be liable to make an early termination payment to NewEnergy under Section T2.3 of the Master Electricity Supply Agreement. Customer shall use reasonable efforts to provide NewEnergy prompt prior written notice (but in no event less than 30 days) by facsimile or electronic mail before any significant change in the anticipated usage of electricity for any facility receiving service under this Pricing Schedule, including without limitation changes due to equipment outages, plant or facility shutdowns, or changes in the operating hours of a facility.

PS 2.5 Switching On to and Off of Utility Supply Service. To the extent permitted by Law, NewEnergy reserves the right, in its reasonable discretion and in accordance with applicable Law, to arrange for the supply of electricity to be provided to the Account(s) and to move the Account(s) onto and off of the Utility's electric tariff service, during the term of this Pricing Schedule. Customer agrees to execute in a timely manner any authorizations reasonably necessary to effectuate this process. Notwithstanding any move to the Utility's electric tariff service, the amount Customer shall be obligated to pay for such electric energy and related costs, charges and Taxes shall not exceed what Customer would pay under the prices and terms of this Pricing Schedule, and to the extent necessary NewEnergy shall credit against amounts Customer owes to NewEnergy, or if no such amounts are due to NewEnergy, pay to Customer, on a monthly basis, an amount equal to the difference between the amount charged Customer by the Utility for such electricity and related costs, charges and Taxes (the "Utility Electricity Charge") and what Customer would pay under the prices and terms of this Pricing Schedule, so long as the Utility Electricity Charge is greater than the amount Customer would pay under the prices and terms of this Pricing Schedule.

PS 2.6 Certain Acknowledgments. Customer acknowledges and agrees that (a) NewEnergy is not acting as Customer's consultant or advisor for any purpose, and Customer will not constitute or rely on any information provided or statements made by NewEnergy, including without limitation as to the advantages or disadvantages of any specific product or service, predictions about future energy prices, or any other statements or information, as advice or representations of any sort; and (b) Customer is making its own decisions based solely upon its own analysis and the advice of its own advisors, if any, and is not relying on NewEnergy in any way in making its decision to enter into this Pricing Schedule or in making any other decision or taking any other action under this Pricing Schedule.

NewEnergy acknowledges that if this Agreement is being executed for and on behalf of Customer by an authorized Agent ("Agent") for Customer (evidenced by a letter of authorization or similar proof of agency authority executed by both Customer and Agent), such Agent is not personally or otherwise liable for any claims or obligations arising in connection with this Agreement.

PS 2.7 Material Changes. Intentionally Deleted.

PS 2.8, NewEnergy and Utility Contact Information. Customer may contact NewEnergy regarding its invoice or other matters concerning this pricing Schedule at NewEnergy's Customer Service Department by toll-free telephone at 888-635-0827, or email at customer@constellation.com. **CUSTOMER AGREES TO CONTACT ITS UTILITY IN THE EVENT OF A POWER OUTAGE OR OTHER ELECTRICITY RELATED EMERGENCY AT THE FOLLOWING TELEPHONE NUMBERS:**

Utility Name	Commonwealth Edison	Emergency: 8003347661
Utility Abbreviation	COMED	Contact Numbers

Each party has caused this Agreement to be executed by its authorized representative on the respective dates written below.

CONSTELLATION NEWENERGY, INC.

By: _____

Name:

Title:

Date:

Address: 1221 Lamar St. Suite 750

Houston, Texas 77010

Attention: Contracts Administration

Facsimile: (866) 470-0482

Telephone: (312) 704-9200

Name: David Hulberg

Title: Village Manager

Date: 3/24/2010

Address: 255 E. Wilson Ave.

Lombard IL 601483926

Attention:

Facsimile: (630) 620-8222

Telephone: (630) 620-5902

Email Address:

Customer: Village of Lombard

By: 

ACCOUNT SCHEDULE:
For: Village of Lombard

The pricing set forth below is only valid until 5:00 PM Central Prevailing Time on DATE 3/23/2010

NewEnergy shall have no obligation to enroll or supply electricity to any account(s) that are not identified on the Account Schedule below. Please verify that your specific information is COMPLETE and ACCURATE. Your review and acceptance of this information will help ensure accurate future invoices

Notes: Accounts listed in the Account(s) Schedule may be updated or replaced with a new account number issued by the Utility, ISO or other entity.

UDC	UDC Account Number	Service Address	Contract Start Date	Contract End Date	Energy Price Non TOU (\$/kWh)
COMED	1605083020	255 E Wilson Ave, Lombard, IL, 601483926	5/7/2010	5/9/2011	\$ 0.036967

TO ACCEPT THE PRICING ABOVE, PLEASE FAX A SIGNED COPY OF THIS AGREEMENT TO NEWENERGY AT (666) 470-0482

Payments to Certain Third-Parties: Customer acknowledges and understands that:

- NewEnergy is making a payment to Glenview Consultants Group 1 in connection with its efforts to facilitate NewEnergy entering into this Agreement; and
 - Customer's price reflects the fee NewEnergy is paying to Glenview Consultants Group 1
 - Glenview Consultants Group 1 is acting on Customer's behalf as Customer's representative and is not a representative or agent of NewEnergy.
- Customer should direct any questions regarding such fee to Glenview Consultants Group 1.

Village of Lombard ("Customer"), a Delaware corporation, enter into this Master Electricity Supply Agreement, which includes the attached General Terms and Conditions (the "Master Electricity Supply Agreement") as of the later date set forth under the Parties' signatures below (the "Effective Date"). NewEnergy and Customer are sometimes referred to individually as a "Party" and collectively as the "Parties." This Master Electricity Supply Agreement is intended to govern transactions for the purchase and sale of electricity and related services to be entered into between the Parties from time to time and shall be evidenced by separate pricing schedule(s) between the Parties (each, a "Pricing Schedule"). Each Pricing Schedule shall set forth certain commercial and other terms for the purchase and sale of electricity, and following execution and delivery by both Parties shall become effective and be subject to this Master Electricity Supply Agreement. The Pricing Schedule(s) along with this Master Electricity Supply Agreement are sometimes herein collectively referred to as the "Agreement". The Parties agree as follows:

1. **ELECTRICITY SUPPLY.** From time to time NewEnergy shall supply, and Customer shall purchase, on an exclusive basis, Customer's full requirements for electricity for the Account(s) identified in the Pricing Schedule(s) for the term set forth on such Pricing Schedule(s). The Pricing Schedule(s) shall also specify services, including without limitation scheduling coordination and ancillary services, provided by NewEnergy in connection with the supply of electricity to Customer. Consistent with applicable Law, NewEnergy, in its sole, but commercially reasonable discretion, is authorized to select on behalf of Customer such sources of electric generation as it deems appropriate for the Accounts. NewEnergy shall deliver the electricity to the Delivery Point(s), at which point risk of loss and title shall transfer to Customer.

2. **INFORMATION AND AUTHORIZATION.** Customer shall designate NewEnergy to the Utility and/or ISO, as appropriate, as an authorized recipient of Customer's current and historical energy billing and usage data. Customer authorizes NewEnergy to take such actions it reasonably deems necessary to enroll the Account(s) with the Utility and/or ISO as Accounts to be served by NewEnergy and otherwise meet its obligations under this Agreement, including executing on Customer's behalf any documents necessary to effectuate any such election. Customer shall take any actions and execute any documents as NewEnergy shall reasonably request in this regard. Customer shall also provide to NewEnergy, at minimum, the following information: Customer's Utility account number and meter number(s), meter read data, rate class, electric usage, Customer's formal legal name, address(es), telephone number, facsimile number, and other information as NewEnergy may reasonably require from time to time consistent with applicable Law, including without limitation, facility description, operation information, and other information regarding the Account(s). Furthermore, Customer shall promptly notify NewEnergy in writing of any changes in any of the foregoing information, including the closing of an Account for any reason; (iii) the replacement of an Account number with a new number; and (iv) an assignment by the Utility and/or ISO of a new Account number to any existing service address of Customer listed in a Pricing Schedule. NewEnergy expressly acknowledges that Customer may participate, at Customer's sole discretion, in any ISO or Utility demand response program on its own or with any registered Curtailment Service Provider. Customer will use commercially reasonable efforts to provide NewEnergy with prompt notice in writing of any anticipated material change in usage resulting from the implementation of a Demand Response Program.

3. **INVOICING AND PAYMENT.** For electric energy supplied under this Agreement Customer shall pay the NewEnergy Electricity Charge. In addition to the NewEnergy Electricity Charge, Customer shall pay and be responsible for all such other amounts related to the purchase and delivery of electricity, which shall include amounts for (i) Taxes related in any way to the NewEnergy Electricity Charge or any other products or services provided hereunder and (ii) Delivery Charges and related Taxes. Invoices issued by NewEnergy will be sent to Customer in accordance with NewEnergy's normal billing cycle. Each billing statement sent to Customer shall also be subject to adjustment for errors in arithmetic, computation, meter readings or other errors. Invoices provided by NewEnergy, whether during the term of this Agreement or thereafter, shall be due and payable on the date of such invoice without offset or reduction of any kind. Customer shall make payments to the address set forth on the Pricing Schedule(s). If NewEnergy does not receive payment on or before the Payment Date, NewEnergy shall have the right to assess and collect from Customer a Late Payment Charge (which shall be specified in the Pricing Schedule), if any. In addition, in the case of late payments interest will accrue daily on outstanding amounts from the due date until paid in full at the rate of 1.0% per month, or the highest rate permitted by Law, whichever is less. Anything contained herein to the contrary notwithstanding, to the extent the payment terms of this Agreement are in conflict with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq. (the "Prompt Payment Act"), the Prompt Payment Act shall govern. In the event of a good faith reasonable billing dispute between NewEnergy and Customer, NewEnergy will continue to provide all services under this Agreement as long as Customer provides written notice of the nature and extent of its dispute on or before the date payment of the disputed invoice is due and makes payment of any non-disputed portion when due. Upon determination of the proper invoice amount, the Customer shall promptly pay the invoice amount along with any interest charge as set forth in this Agreement from and including the due date to and excluding the date paid.

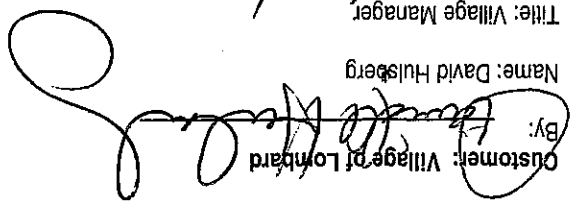
4. **TERM.** The Master Electricity Supply Agreement will commence on the Effective Date and, unless terminated earlier as otherwise provided in this Agreement, will continue until terminated by either Party upon 30 days written notice to the other. If at the time of such termination notice any Pricing Schedule(s) are in effect, such termination will not become effective as to any such Pricing Schedule until its expiration, which shall continue to be governed by the terms and conditions of this Master Electricity Supply Agreement.

5. **ACCEPTANCE.** This Master Electricity Supply Agreement and any Pricing Schedule(s) shall not be binding or enforceable against NewEnergy unless and until signed by an authorized representative of NewEnergy.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the respective dates set forth below.

Constellation NewEnergy, Inc.

By: _____
Name: _____
Title: _____
Date: _____

Customer: Village of Lombard
By: 
Name: David Hulsberg
Title: Village Manager
Date: 3/24/2010

General Terms and Conditions for Electricity Supply

T1. Definitions. All capitalized terms have the meanings set forth below, in the Pricing Schedules, or defined elsewhere in the Agreement.

"Accounts" means those account(s) listed in the Pricing Schedule(s) which are to be supplied with electricity by NewEnergy under this Agreement.

"Affiliate" of a Party means any person or entity controlled by, that controls, or that is under common control with, such Party. The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Party, whether through the ownership of voting securities, by contract, or otherwise.

"Claims" means all claims, losses, expenses (including attorneys' fees and court costs), damages, demands, judgments, causes of action or suits of any kind, including but not limited to, Claims for personal injury, death, or property damage, arising out of or related to this Agreement.

"Delivery Charges" mean those amounts payable (including Taxes and surcharges) by Customer for services provided by the Utility, ISO or other third parties.

"Governing Jurisdiction" means with respect to each Account, the State in which such Account is located; provided that the governing jurisdiction shall be deemed to be the State of Illinois if the matter at issue involves Accounts or matters in more than one state.

"Holdover Rate" shall have the meaning set forth in the Pricing Schedule(s).

"ISO" means the independent system operator or regional transmission organization identified on the Pricing Schedule(s), or any successor or replacement entity or other entity, public or private, administering transmission reliability and control of the electricity grid.

"Law" means any law, rule, regulation, ordinance, statute, judicial decision, administrative order, ISO operating guideline or protocol, Utility or ISO tariff, rule of the public utilities commission, public service commission or similar state commission or agency having jurisdiction over Utilities and the electricity distribution system of the state in which the Accounts are located, and the like.

"NewEnergy Electricity Charge" means the product of the fixed or variable price for electricity as set forth in the Pricing Schedule(s) for each Account multiplied by the Customer's kilowatt-hour (kWh) usage during the applicable period.

"NewEnergy Parties" means NewEnergy and all its Affiliates, and all of their respective officers, directors, shareholders, associates, employees, agents, representatives, successors and assigns.

"Notice Period" shall have the meaning set forth in the Pricing Schedule(s).

"Payment Date" shall have the meaning set forth in the Pricing Schedule(s).

"Taxes" mean all applicable federal, state, municipal and other taxes, duties, fees, levies, premiums or any other charges imposed by any governmental authority, whether direct or indirect, and whether in effect as of the Effective Date or enacted after such date, together with all interest, penalties or other additional amounts imposed in respect thereof including without limitation, those levied on or measured by, or referred to as sales, consumption, goods and services, use, value added, receipts taxes, kWh taxes, franchise taxes, privilege taxes (such as Ohio's Commercial Activity Tax), excise, stamp, withholding or surtaxes (but shall not include taxes imposed on the net income of NewEnergy not related to the supply and delivery of electricity to Customer hereunder). The term "Taxes" shall include any and all amounts imposed either on the Customer directly or on NewEnergy in its function as a supplier of Customer, and that are associated with the supply of energy and related services to Customer (in which case the Customer shall be responsible to reimburse NewEnergy for all such amounts). All Taxes invoiced to the Customer under this Agreement will be displayed on the invoice as a separate line item or included in the NewEnergy Electricity Charge as required by Law.

"Utility" means the local electricity distribution company owning and/or controlling and maintaining the distribution system required for delivery of electricity to the Account(s).

T2.1. Creditworthiness. From time to time Customer will provide NewEnergy with reasonable information as requested by NewEnergy to complete a credit review. Continued supply of electricity under this Agreement is contingent upon NewEnergy's determination, in its commercially reasonable discretion, that Customer is creditworthy. If at any time and on an on-going basis during the term of this Agreement NewEnergy reasonably determines that Customer's credit is unsatisfactory, Customer has experienced any material adverse change in its financial condition, Customer's financial obligations to NewEnergy increase under this Agreement for any reason, or the Customer has made two or more late payments, NewEnergy will have the right to require that Customer post security or make other credit arrangements satisfactory to NewEnergy (which may include without limitation, making a cash deposit, posting a letter of credit at a financially sound bank or other financial institution, or prepaying NewEnergy for electricity supplied under this Agreement) or to increase or supplement security or other credit arrangements previously put in place, in any such circumstance to ensure prompt payment by Customer of amounts owed or otherwise payable under this Agreement. Customer will provide the requested security or credit arrangements, including any increase thereof, within 5 business days of NewEnergy's written request.

T2.2. Default. An "Event of Default" means any one of the following: (a) Customer's failure to make, when due, any payment required under this Agreement if not paid within the Notice Period; or (b) any representation or warranty made by a Party in this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true in all material respects during the term of this Agreement, if not cured within 5 business days after written notice from the other Party; or (c) Customer fails to provide additional security or credit arrangements as provided in this Agreement; or (d) except to the extent excused by Force Majeure, the failure by a Party to perform any material obligation set forth in this Agreement (other than the events that are otherwise specifically covered as a separate Event of Default hereunder) where, in circumstances such failure is curable, it is not cured within 20 business days after receipt of written notice thereof; or (e) a Party: (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed for it or any substantial portion of its property or assets; or (iii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed for 20 business days after such filing; (iv) otherwise becomes bankrupt or insolvent (however evidenced); or (v) is unable to pay its debts as they fall due.

T2.3. Remedies upon Default.

(a) If an Event of Default occurs with respect to a Party (the "Defaulting Party"), the other Party (the "Non-Defaulting Party") may, in its discretion, at any time, terminate this Agreement in whole or solely with respect to those Accounts adversely affected by such Event of Default, as a result of such default upon written notice to the Defaulting Party setting forth the effective date of termination (the "Early Termination Date"). If this Agreement is terminated, in whole or in part, pursuant to this Section, the Non-Defaulting Party will in good faith calculate a termination payment as set forth below, and the Defaulting Party shall pay such amount following receipt of notice of such amount as provided herein. The Parties acknowledge and agree that any termination payment under this Agreement constitutes a reasonable approximation of harm or loss, and is not a penalty or punitive in any respect.

(b) If Customer terminates this Agreement, in whole or in part, upon the default of NewEnergy, NewEnergy will pay Customer the following early termination payment: the net present value of [Market Value plus Costs] minus Contract Value, so long as the Market Value plus Costs is greater than the Contract Value.

(c) If NewEnergy terminates this Agreement, in whole or in part, upon the default of Customer or Customer terminates this Agreement, in whole or in part, as permitted under a Pricing Schedule, Customer will pay NewEnergy the following early termination payment: the net present value of [Contract Value plus Costs] minus Market Value, so long as the Contract Value plus Costs is greater than the Market Value.

(d) For purposes of this Section, "Contract Value" means the NewEnergy Electricity Charge for the Remaining Anticipated Usage. "Market Value" means the amount, as determined by the Non-Defaulting Party as of the Early Termination Date, a bona fide third party would pay for the Remaining Anticipated Usage at current market prices. In determining "Market Value", the Non-Defaulting Party may consider, among other things, quotations from leading dealers in the wholesale energy industry, the Non-Defaulting Party's internally developed forward price valuations, and other bona fide offers from either third parties or Affiliates of the Non-Defaulting Party, all as commercially available to the Non-Defaulting Party and adjusted for the length of the Remaining Term and differences in transmission costs, volume, and other factors, as the Non-Defaulting Party reasonably determines. "Costs" mean actual out-of-pocket brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by, or on behalf of, the Non-Defaulting Party in terminating, liquidating, or obtaining any arrangement pursuant to which it has hedged its obligations, and attorneys' fees, expenses and costs, if any, incurred in connection with enforcing its rights under this Agreement. "Remaining Anticipated Usage" means the amount of electricity (in kWh), as determined by the Non-Defaulting Party, that would have been used by each Account covered by the termination during the remaining term of this Agreement had it not been terminated early (the "Remaining Term"). In making this determination the Non-Defaulting Party may (but is not required to) consider: (i) anticipated consistency with or deviations from past electricity usage patterns, (ii) variations in anticipated weather patterns, (iii) general economic conditions or conditions affecting the specific industry(ies) in which Customer operates, and/or (iv) any other factors the Non-Defaulting Party deems appropriate. If an Event of Default occurs, the Non-Defaulting Party shall act in a commercially reasonable manner and mitigate its damages, liabilities, losses and costs.

2.4 Certain Rights after Termination or Expiration. If following termination or expiration of this Agreement (whether in whole or in part), for any reason the Accounts remain designated by the Utility and/or the ISO as being served by NewEnergy, NewEnergy may, consistent with Law and in its reasonable discretion, either (i) continue to serve such Account(s) on a month-to-month holdover basis (the "Holdover Term") or (ii) move such Account(s) to the then applicable tariff service, whether default service or otherwise, or to another authorized provider of electricity required to serve as the "provider of last resort" (any of the foregoing, "Alternative Service"), and in either case NewEnergy shall have the right to pursue all additional remedies available at law or in equity. The NewEnergy Electricity Charge payable during the Holdover Term shall be the Holdover Rate set forth in the applicable Pricing Schedule. This Agreement will continue to govern the provision of service during the Holdover Term. Either Party may terminate the Holdover Term at any time upon 30 days advance written notice to the other or such other time period required by Law, whichever is longer, such termination to be effective as of the next applicable meter read cycle date with respect to each Account. Furthermore, during a Holdover Term, NewEnergy may at any time move the Accounts to Alternative Service without penalty or prejudice. If NewEnergy so requests, Customer will cooperate with NewEnergy in its efforts to cease providing service to Customer after termination or expiration of this Agreement, whether in whole or in part.

2.5 Change in Law.

If a new Law shall be enacted, or there shall occur any revisions in, implementation of, amendments to, or interpretations of any Law (including without limitation those that establish new, or otherwise modify existing, alternative resource adequacy requirements or renewable portfolio standards or that impose new Taxes or change the rate of existing Taxes), in either circumstance affecting approved or anticipated rates, tariffs, Taxes, charges, fees, assessments, or other costs relating to the licensing, supply, generation, transmission or distribution of electric power and/or energy that could adversely affect the anticipated economic return to NewEnergy under this Agreement (any of the foregoing a "Change in Law"), NewEnergy shall have the right to adjust upward the amounts payable by Customer under this Agreement to take account of such adverse economic consequences. Such additional amounts will be included in subsequent invoices to Customer. For the avoidance of doubt, where a Change in Law has occurred prior to the Effective Date but NewEnergy cannot determine the economic impact of such Change in Law because sufficient information is not available (including lack of final implementing rules or regulations), NewEnergy shall have the right to adjust upward the amounts payable by Customer in Law. Upon written request by Customer, NewEnergy will provide reasonably detailed supporting documentation of the nature, calculation and amount of the additional costs resulting from such regulatory changes.

2.6 Mutual Representations and Warranties.

Each Party warrants and represents to the other the following: (1) it is duly organized, validly operating and in good standing under the laws of the jurisdiction of its formation; (2) it is authorized and qualified to do business in the jurisdictions necessary to perform under this Agreement; (3) the execution, delivery and performance of this Agreement are duly authorized and do not violate any governing documents or any contracts to which it is a party or any laws, rules or regulations applicable to it; (4) there is no material event(s) or other agreement(s) which would impair Party's right, authority or ability to execute this Agreement and otherwise consummate the transactions contemplated by this Agreement; and (5) it has knowledge and experience that enable it to evaluate the merits and risks associated with the transactions contemplated by this Agreement. NEWENERGY REPRESENTS AND WARRANTS TO CUSTOMER THAT NEWENERGY HAS THE RIGHT TO SELL ENERGY SERVICES AND THAT SUCH ENERGY SERVICES WILL BE DELIVERED TO CUSTOMER TO THE DELIVERY POINT(S) FREE AND CLEAR OF ALL LIENS, CLAIMS OR ENCUMBRANCES OF ANY KIND.

(b) Additional Representations, Warranties and Covenants of Customer. Customer warrants, represents and covenants that: (1) the data given and representations made concerning its Accounts are true and correct; (2) Customer is entering into this Agreement to purchase its electric energy requirements only, and that the electric energy purchased under this Agreement will be consumed at the facilities to which the Accounts relate, and Customer will not resell such electric energy to any third party (with the sole exception of Customer tenants or lessees in the ordinary course of Customer's business); and (3)

Customer is the party of record of the Accounts, or if it is not the party of record, it has the authority to enter into and bind its principal to this Agreement. If requested, Customer will provide NewEnergy written proof of such authority.

T2.7. Force Majeure. "Force Majeure" means an event that is not within the reasonable control of the Party claiming Force Majeure ("Claiming Party"), and that by the exercise of due diligence, the Claiming Party is unable to overcome in a commercially reasonable manner, and such event will not be deemed a breach or default under this Agreement. Force Majeure includes, but is not limited to, acts of God, fire, war, terrorism, flood, earthquake, civil disturbance; sabotage; facility failure; curtailment, disruption or interruption of distribution, transmission, or supply; declaration of emergency by the Utility or ISO; regulatory, administrative, or legislative action, or action or restraint by court order or governmental authority; or any act or omission of a third party not under the control of the Claiming Party (including without limitation the Utility or ISO). Notwithstanding any other provision of this Agreement, where a Party is unable to carry out any obligation under this Agreement due to a Force Majeure event (other than a payment obligation, which will not be excused for Force Majeure), this Agreement will remain in effect but such obligation will be suspended for the period necessary as a result of the Force Majeure, provided that: (i) to the extent reasonably possible, the Claiming Party gives the other Party prompt written notice describing the particulars of the Force Majeure, including but not limited to, the nature and date of the occurrence and the expected duration of the Force Majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and (iii) the Claiming Party uses commercially reasonable efforts to remedy its inability to perform. If the Force Majeure continues for a period of 30 days (the "Extended Force Majeure Trigger Date") or more, the performing Party will have the right to terminate this Agreement with respect to those Accounts adversely affected by the Force Majeure by providing the Claiming Party 15 days prior written notice after the Extended Force Majeure Trigger Date.

T2.8. Identification. Intentionally deleted.

T2.9. Certain Limitations.

(a) **Limitations of Liability.** Notwithstanding any other provision of this Agreement to the contrary, the entire liability of the NewEnergy Parties and Customer for any and all claims of any kind arising from or relating to this Agreement, including any causes of action in contract, tort, strict liability or otherwise, will be limited to direct actual damages only, subject in all cases to an affirmative obligation on the part of the Parties to mitigate their damages. Furthermore, in no event will the NewEnergy Parties or Customer be liable for any consequential, exemplary, special, incidental or punitive damages, including, without limitation, lost opportunities or lost profits; provided that the foregoing shall not limit the amounts payable under Section T2.3 above.

(b) **Utility/ISO Services.** Customer acknowledges and agrees that the Utility and ISO are exclusively responsible for the electricity delivery system and all interruptions in the delivery of service and that NewEnergy exercises no independent control over the Utility's facilities or the ISO-controlled grid necessary for the delivery of electricity. As such, Customer disclaims any and all right to damages from NewEnergy arising from any interruption in electric service caused in whole or in part by interruption, termination or deterioration of service on the Utility's system or on the ISO-controlled grid. At and after the Delivery Point(s), Customer will be responsible for all distribution and transmission charges, including congestion and ancillary costs, if any, assessed by the Utility, the ISO, or any third party. Furthermore, NewEnergy is not responsible for providing services related to the maintenance and operation of the Utility's electricity delivery system, services regarding Customer's consumption of electricity, or other services which are provided by the Utility or third parties. NewEnergy will have no liability for any act or omission of the Utility, the ISO, or any third party, and Customer understands and agrees that it shall be solely responsible for all amounts due to the Utility or third parties for these and other services.

(c) **Setoff/Netting.** NewEnergy shall have the right to set-off and net against any amounts owed to it by Customer under this Agreement, including without limitation any early termination payment, any of the following amounts: (i) monies owed to Customer under this Agreement or under any other agreement between NewEnergy or any of NewEnergy's Affiliates, on the one hand, and Customer or any of Customer's Affiliates and (ii) any collateral or other financial assurance provided by Customer to NewEnergy under this Agreement.

T2.10. DISCLAIMER. CUSTOMER ACKNOWLEDGES AND AGREES THAT NO WARRANTY, DUTY, OR REMEDY, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, IS GIVEN OR INTENDED TO ARISE OUT OF THIS AGREEMENT EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, AND NEWENERGY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

T2.11. Waiver and Severability. Failure to provide notice of, or object to, any default under this Agreement will not operate or be construed as a waiver of any future default, whether like or different in character. If any portion of this Agreement, or application thereof to any person or circumstance, is held legally invalid, the remainder will not be affected and will be valid and enforced to the fullest extent permitted by law and equity, and there will be deemed substituted for the invalid provisions such provisions as will most nearly carry out the mutual intent of the Parties as expressed in this Agreement to the fullest extent permitted by applicable Law.

T2.12. Assignment. NewEnergy may assign, sell, pledge, transfer, or encumber any of its rights and obligations under this Agreement or the accounts, revenues, or proceeds hereof to: (A) a bank, insurer, or other financial institution; or (B) any person or entity (i) succeeding to all or substantially all of NewEnergy's assets or business or the division or region of NewEnergy to which this Agreement relates or (ii) into which NewEnergy is merged or otherwise combined or reorganized; provided (with respect to this clause (B)) the succeeding entity agrees to be bound to this Agreement; or (C) any Affiliate of NewEnergy. Customer may assign all (but not less than all) its rights and obligations under this Agreement in their entirety or solely with respect to certain Accounts; *provided* (A) it gives NewEnergy 60 days written notice of its intent to do so; (B) the assignee satisfies in full NewEnergy's credit requirements; (C) the assignee assumes in writing all of Customer's obligations under this Agreement; and (D) Customer continues to be liable for performance, including payment for goods and services received, prior to the assignment date.

T2.13. Confidentiality. (a) Customer agrees to keep all terms and provisions of this Agreement, including the pricing offered to Customer, confidential and not to disclose them to any third parties without the prior written consent of NewEnergy. NewEnergy will keep confidential all Customer identifying information and Account information that is not otherwise publicly available. Each Party shall have the right to disclose such information to its Affiliates, employees, agents, advisors, and independent contractors who have a need to know such information and who agree to hold such information in the strictest confidence. NewEnergy shall also have the right to disclose information respecting Customer, including this Agreement, to brokers, agents, consultants or other third parties that are representing Customer in the purchase of electricity. Furthermore, NewEnergy may make such other disclosures to third parties or information, including aggregate consumption data, provided they are in a manner that cannot be reasonably expected to specifically identify Customer. If disclosure of a Party's confidential information is sought through process of a court, or a state or federal regulatory agency or other legal compulsion, the Party Reference Number: 1-396383878 | Account Representative: E64300 | FORM: Siebel - 1-396383878 | Page - 5 - of 6 | Great Lakes REGION | Printed: 2/10/2010 | E13288 @2009 Constellation Energy, Inc. All rights reserved. The offering herein is sold and contracted by Constellation NewEnergy, Inc., a subsidiary of Constellation Energy Group, Inc. Errors and omissions excepted

receiving such request will notify the other Party immediately to afford the other Party the opportunity to oppose such disclosure or otherwise obtain a protective order or other relief as may be available. The Party receiving such disclosure request will cooperate with the other Party in its attempts to obtain such protections.

12.14. CHOICE OF LAW; VENUE; Attorney Fees and Expenses. The validity, performance, and construction of this Agreement will be governed and interpreted in accordance with the laws of the Governing Jurisdiction, without giving effect to conflict of law principles. Any controversy or claim arising from or relating to this Agreement will be settled in accordance with the express terms of this Agreement by a court located in the Governing Jurisdiction (and each Party hereto waives any right to object to venue in this regard). EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY OR TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION CLAIMS IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. If either Party pursues court action to enforce its rights under this Agreement, the non-prevailing Party shall promptly reimburse the prevailing Party for all its attorney fees, expenses and costs. Further, NewEnergy shall be entitled to recover from Customer all costs, including attorneys' fees, incurred in connection with its efforts, whether in court or otherwise, to collect amounts due and payable to NewEnergy.

12.15. No Third Party Beneficiaries. Except for NewEnergy Parties under the indemnity provisions of this Agreement, this Agreement is for the sole and exclusive benefit of the Parties hereto, and no third party will have any rights under this Agreement whatsoever. If Customer is represented by a third party in connection with the procurement or performance of this Agreement, unless otherwise expressly provided elsewhere in this Agreement NewEnergy will have no liability therefore, and Customer will be fully responsible for any fee, commission or other compensation owing any such third party, and will indemnify, defend and hold harmless the NewEnergy Parties from any and all Claims of any kind or any such third party arising from or relating to this Agreement.

12.16. Notice. To be effective, all notices must be in writing delivered by hand, by certified mail, return receipt requested, or by express carrier to the addresses provided in this Agreement. A Party may change its address by providing notice of such change in accordance herewith.

12.17. Entire Agreement; Survival of Terms. This Agreement (which constitutes the Master Electricity Supply Agreement, including these General Terms and Conditions, and Pricing Schedule(s)) executed and delivered by the Parties from time to time) embodies the Parties' entire agreement and understanding, supersedes all prior agreements and understandings (whether written or oral) regarding the subject matter of this Agreement, and may not be contradicted by any prior or contemporaneous oral or written agreement. Nothing in this Agreement shall be deemed to require NewEnergy to execute and deliver this Master Electricity Supply Agreement or any Pricing Schedule, even if Customer shall have already executed and delivered such to NewEnergy. A facsimile copy of either Party's signature will be considered an original for all purposes under this Agreement, and each Party will provide its original signature upon request. Except to the extent otherwise explicitly provided in this Agreement, no amendment to this Agreement, including the Pricing Schedule(s), will be valid or given any effect unless signed by both Parties. The terms of any purchase order (PO) sent by Customer and/or any alteration, addition, or modification made by Customer to the preprinted terms of this Agreement shall be void and without any effect. In the case of any conflict among the documents comprising the Agreement, they will control in the following order of priority: first, the Pricing Schedule(s) (but only with respect to the Account(s) listed on such Schedule(s)); second, the Master Electricity Supply Agreement. The applicable provisions of this Agreement will continue in effect after termination or expiration hereof to the extent necessary, including but not limited to providing for final billing, billing adjustments and payments, limitations of liability, the forum and manner of dispute resolution, and with respect to any indemnification obligations under this Agreement. The section headings used in this Agreement are for reference purposes only and will in no way affect the meaning of the provisions of this Agreement.

12.18. Affirmation. Customer affirms that it has read this Agreement in its entirety and it agrees to the terms and conditions contained herein. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement.

12.19. Relationship of the Parties. NewEnergy is an independent contractor under this Agreement. Except as otherwise explicitly provided in this Agreement, neither Party has the authority to execute documents that purport to bind the other, and nothing in this Agreement will be construed to constitute a joint venture, fiduciary relationship, partnership or other joint undertaking.

12.20. Forward Contract; Inapplicability of Commodities Exchange Act. The Parties acknowledge and agree that this Agreement is a "forward contract" and that NewEnergy is a "forward contract merchant" for purposes of the U.S. Bankruptcy Code, as amended. Further, NewEnergy is not providing advice regarding the value or advisability of trading in "commodity interests" as defined in the Commodity Exchange Act, 7 U.S.C. §§ 1-25, et seq., as amended (the "CEA"), including futures contracts and commodity options or any other activity which would cause NewEnergy or any of its Affiliates to be considered a commodity trading advisor under the CEA.

12.21. Agent Execution. (If this Agreement is executed by an agent on behalf of Customer) NewEnergy acknowledges that if this Agreement is being executed by and on behalf of Customer by an authorized agent ("Agent") for Customer (evidenced by a letter of authorization or similar proof of agency authority executed by both Customer and Agent), such Agent is not personally or otherwise liable for any claims or obligations arising in connection with this Agreement.