

**DRAFT FORM OF POWER PURCHASE
AGREEMENT BETWEEN**
[Seller]
AND
HOLY CROSS ENERGY

HOLY CROSS ELECTRIC ASSOCIATION, INC., d/b/a HOLY CROSS ENERGY (“HCE”), a Colorado cooperative with its principal place of business in Glenwood Springs, Colorado and _____ (“Seller”), a _____, hereby enter into this Power Purchase Agreement (“Agreement”). Seller and HCE are sometimes referred to in this Agreement jointly as “Parties” or individually as “Party.” In consideration of the mutual promises and obligations stated in this Agreement and its appendices, the Parties agree as follows:

1. DOCUMENTS INCLUDED; DEFINED TERMS

This Agreement includes the following appendices, which are specifically incorporated herein and made a part of this Agreement.

Appendix A – Definitions

Appendix B – Facility Description, Contract Price, Seller Contact Information

Appendix C – Initial Energy Delivery Date Confirmation Letter

2. SELLER’S GENERATING FACILITY, PURCHASE PRICES AND PAYMENT

2.1. Facility. This Agreement governs HCE’s purchase of the Product from the electrical generating facility (hereinafter referred to as the “Facility”) as described in Appendix B.

2.2. Permission to operate. This Agreement does not provide Seller authorization to interconnect the Facility or inject power into HCE’s system. Seller acknowledges that the Generator Interconnection Agreement is a separate contract and the Generator Interconnection Agreement does not modify the Parties’ rights and obligations under this PPA.

2.3. Transaction.

2.3.1. During the Delivery Term of this Agreement, Seller shall sell and deliver, or cause to be delivered, and HCE shall purchase and receive, or cause to be received, the Product at the Delivery Point subject to the terms and conditions of this Agreement.

2.3.2. HCE shall be required to purchase solely Renewable Energy (as defined in C.R.S. § 40-2-124). In no event shall Seller have the right to procure the energy or capacity from a source or sources other than the Facility for sale or delivery to HCE under this Agreement. HCE shall have no obligation to receive or purchase energy or capacity from Seller prior to the Initial Energy Delivery Date or after the end of the Delivery Term.

2.3.3. Unless HCE shall otherwise agree, Seller shall purchase from HCE all energy required to serve the Seller’s on-site electrical requirements, exclusive of Station

Use, pursuant to HCE's applicable tariff. Unless otherwise agreed by HCE, HCE shall be entitled to all energy and associated capacity from the Facility, excluding Seller's Station Use as set forth above, including any ancillary services.

- 2.4. Delivery Term. Seller shall deliver the Product from the Facility to HCE for _____ Contract Years (the "Delivery Term"), commencing on the first day of the calendar month following the Initial Energy Delivery Date, and continuing until 11:59 pm on the last day of the calendar month during which occurs the _____ anniversary of the Initial Energy Delivery Date or until any earlier date on which this Agreement is terminated in accordance with its terms.
- 2.5. Contract Price. HCE shall pay Seller for each kilowatt-hour ("kWh") of the Product delivered to HCE at the Delivery Point during the Delivery Term pursuant to the terms of this Agreement at a rate as calculated per the terms of this Agreement as described in Appendix B. HCE's payments under this section shall constitute full consideration for the purchase of the Product.
- 2.6. Billing. HCE shall pay Seller if the value of the purchased energy in a month is at least fifty dollars; if less, HCE may pay Seller quarterly.
- 2.7. Title and Risk of Loss. HCE shall be deemed to take title to and shall assume the risk of loss of the Product at the Delivery Point.

3. GREEN ATTRIBUTES

For the duration of the Delivery Term, HCE is entitled to all Green Attributes associated with the electricity generation from the Facility, and Seller hereby conveys to HCE all present and future rights to such Green Attributes and agrees to take all further steps required to effect such transfer to HCE at the time of any such delivery, as further provided in Section 3.4.

- 3.1. Obligations of Seller. Seller shall not sell, exchange, or reserve any claim of ownership of, the Green Attributes from the Facility which are required to be conveyed to HCE or take any other action that would prevent such Green Attributes from being used by HCE to meet the Colorado Renewable Portfolio Standard. Payment of the contract price in Section 2.5 shall constitute full payment for Green Attributes and no additional consideration shall be due to Seller in respect of such transfer.
- 3.2. Obligations of the Parties. Within ninety days of HCE's written request, the Parties shall cooperate to execute all documents and instruments necessary and desirable to evidence the Green Attributes and to effect or evidence transfer of such Green Attributes to HCE or its designee, including with respect to participation by HCE or Seller in the Western Renewable Energy Generation Information System ("WREGIS") of Green Attributes conveyed to HCE under this Agreement. The Parties may use an alternate registration and tracking system upon written mutual agreement. Each Party shall promptly give to the other Party copies of all documents it submits to such registry, tracking or certification bodies to document, record, or effectuate these obligations. Each Party shall bear its own costs for such transfers, including administrative or membership costs.

4. REPRESENTATIONS AND WARRANTIES; COVENANTS

- 4.1. Representations and Warranties. On the Execution Date, each Party represents and warrants to the other Party that:

- 4.1.1. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; and
- 4.1.2. The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it; and
- 4.1.3. This Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation, enforceable in accordance with its terms, subject to applicable bankruptcy or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law); and
- 4.1.4. It is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent; and
- 4.1.5. There is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement; and
- 4.1.6. It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement.

4.2. General Covenants. Each Party covenants that throughout the Term of this Agreement:

- 4.2.1. It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- 4.2.2. It shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and
- 4.2.3. It shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it.

4.3. Seller Covenants. Seller hereby covenants that on and after the Commercial Operation Date:

- 4.3.1. It holds all the rights to the Product, free and clear of all liens, taxes, claims, security interests, and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point, and that at the time of any delivery thereof to HCE, Seller will transfer good and marketable title to the Product free and clear of any such encumbrances or interests.
- 4.3.2. The Facility is an Eligible Energy Resource and that throughout the Delivery Term of the Agreement, the Seller shall take all necessary actions within its power

to ensure that the Facility will continue at all times to meet the requirements for qualification as an Eligible Energy Resource, and that its output may be counted towards satisfying HCE's obligations under the Colorado Renewable Portfolio Standard.

- 4.3.3. The Facility meets the requirements of a "Qualifying Facility" (QF) under 18 C.F.R. §292.203(a) and §292.204 and is exempt from filing a Form 556 self-certification with the FERC under 18 C.F.R. §292.203(d). Seller shall take all necessary actions within its power to ensure that the Facility will continue at all times to meet the requirements of a QF.

5. GENERAL CONDITIONS

- 5.1. Facility Care, Interconnection and Transmission Service. Seller shall pay and be responsible for designing, installing, operating, and maintaining the Facility in accordance with the terms of the HCE Generator Interconnection Policy, execute a Generator Interconnection Agreement and shall comply with all applicable HCE, transmission operator, PUC and FERC regulations or tariffs, including applicable interconnection and metering requirements under HCE's Generator Interconnect Policy. During the Delivery Term, Seller shall undertake all arrangements necessary to interconnect with HCE, except as HCE may otherwise determine, and shall be solely responsible to pay for any and all necessary costs thereof, including as set forth in the Generator Interconnect Policy and any related agreement with HCE. As a condition of HCE's obligation to accept and purchase the Product from Seller, Seller must satisfy all obligations required by the Generator Interconnect Policy and related agreements with HCE in full force and effect throughout the Delivery Term.
- 5.2. Metering Requirements. HCE shall specify, install, and maintain appropriate metering to measure the energy delivered to HCE at the Delivery Point at Seller's sole expense. Upon HCE request, Seller shall be responsible for procuring and maintaining a communication link, as specified by HCE, to electronically retrieve this metering data at Seller's sole expense.
- 5.3. Standard of Care. Seller shall: (a) maintain and operate the Facility and interconnection facilities, except facilities installed by HCE, in conformance with all applicable laws and regulations and in accordance with Good Utility Practices; (b) obtain any governmental authorizations and permits required for the construction and operation thereof; and (c) generate, schedule and perform transmission services in compliance with all applicable operating policies, criteria, rules, guidelines and tariffs and Good Utility Practices. Seller shall indemnify and hold HCE harmless for any and all losses, damages, claims, penalties, or liability HCE incurs as a result of Seller's failure to obtain or maintain any governmental authorizations and permits required for construction and operation of the Facility throughout the Delivery Term of this Agreement.
- 5.4. Access Rights. HCE, its authorized agents, employees and inspectors shall have the right to inspect the Facility on reasonable advance notice during normal business hours and for any purposes reasonably connected with this Agreement or the exercise of any and all rights of HCE under Law, its tariff schedules or the Generator Interconnect Policy.

- 5.5. **Emergency Coordination.** Each Party shall use reasonable efforts to notify the other Party of emergencies and other events adversely affecting its facilities and the delivery of the Product hereunder, as soon as practicable following the occurrence of any such event. Subject to Section 5.3, Seller and its Facility operator, if any, shall coordinate Seller's response to any such emergency with HCE, provided that Seller shall keep HCE advised of current procedures for communications directly between HCE and Seller and with any Facility operator.
- 5.6. **Protection of Property.** Each Party shall be responsible for protecting its own facilities from possible damage resulting from electrical disturbances or faults caused by the operation, faulty operation, or non-operation of the other Party's facilities.
- 5.7. **HCE Performance Excuse; HCE Curtailment.**
- 5.7.1. **HCE Performance Excuse.** HCE shall not be obligated to accept or pay for the Product during a Force Majeure affecting HCE nor shall HCE be obligated to accept or pay for the Product during an HCE Curtailment as defined in Section 5.7.2 of this Agreement.
- 5.7.2. **HCE Curtailment.** HCE may require Seller to interrupt or reduce deliveries of energy: (a) when necessary to construct, install, maintain, repair, replace, remove, or investigate any of its equipment or part of HCE's transmission system, distribution system, or facilities; or (b) if HCE determines that curtailment, interruption, or reduction is necessary because of an Emergency, Forced Outage, Force Majeure or compliance with Good Utility Practice.
- 5.8. **Notices of HCE Curtailment.** Whenever practicable, HCE shall endeavor to give Seller reasonable notice of any HCE Curtailment.
- 5.9. **Notice of Seller Outages.** Whenever practicable, Seller shall give HCE reasonable notice of any Scheduled Outage, Forced Outage or Force Majeure or other condition that may cause Seller to interrupt or suspend deliveries of energy from the Facility.
- 5.10. **Ancillary Services.** Company shall be entitled to, and Seller shall make available to Company, all Ancillary Services associated with the Facility, at no additional charge to Company. Seller shall use Commercially Reasonable Efforts to maximize the Ancillary Services available from the Facility.
- 5.11. **Dispatch Control.** Company may require Seller, by telephonic communication or through use of the electronic controls or other commercially reasonable means agreed upon by the Parties, to curtail the delivery of Energy to Company from the Facility, for any reason and in Company's sole discretion. Seller shall promptly comply with each such notification.

6. INDEMNITY

Each Party as indemnitor shall save harmless and indemnify the other Party, its members, affiliates, directors, officers, agents, and employees from and against any and all loss or liability for injuries to persons including employees of either Party, and for any damage to property, including the property of either Party, including all claims, demands, costs or expenses for which such other Party may be deemed to be liable arising from any such loss, liability or damage, resulting from or arising out of: (a) the engineering, design, construction, maintenance, or

operation of the Facility; or (b) the installation of replacements, additions, or betterments to the indemnitor's facilities. This indemnity and save harmless provision shall apply notwithstanding the active or passive negligence of the indemnitee. Neither Party shall be indemnified for liability or loss resulting from its gross negligence or willful misconduct. The indemnitor shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity and shall pay all costs, including reasonable attorney fees that may be incurred by the other Party in enforcing this indemnity.

7. LIMITATION OF DAMAGES

Except as otherwise provided in this Agreement, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. Liability shall be limited to direct actual damages only; such direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived unless expressly herein provided. Neither party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract, under any indemnity provision or otherwise, unless expressly herein provided, and subject to the provisions of Section 6 (Indemnity), it is the intent of the parties that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes related thereto, including the negligence of any party, whether such negligence be sole, joint or concurrent, or active or passive.

8. NOTICES

Notices shall, unless otherwise specified herein, be in writing and may be delivered by electronic messaging (e-mail) when such delivery is followed by another method, hand delivery, United States mail, or overnight courier service. Whenever this Agreement requires or permits delivery of a "notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication in the manner specified below. A notice sent by e-mail will be recognized and shall be deemed received on the Business Day on which such notice was transmitted if received before 4 p.m. Mountain Prevailing time (and if received after 4 p.m., on the next Business Day) and a notice by overnight mail or courier shall be deemed to have been received two Business Days after it was sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior oral communication, in which case any such notice shall be deemed received on the day sent. A Party may change its addresses by providing notice of same in accordance with this provision. All written notices shall be directed as follows:

To HCE by US Mail:

Holy Cross Energy
Attn: Vice President – Power Supply & Programs, Administration
PO Box 2150
Glenwood Springs, CO 81602-2150

To HCE by courier or hand delivery:

Holy Cross Energy
Attn: Vice President – Power Supply & Programs, Administration
3799 Highway 82
Glenwood Springs, CO 81601

To HCE by email: sbeuning@holycross.com with a copy to renewables@holycross.com

To Seller: See Appendix B.

9. INSURANCE

9.1. General Liability Coverage.

9.1.1. Seller shall maintain for the Delivery Term specified herein, General Liability Insurance of not less than \$1,000,000 of combined single limit or equivalent for bodily injury, personal injury, and property damage as the result of any one occurrence.

9.1.1.1. HCE shall be named as an additional insured by endorsement to the insurance policy.

9.1.1.2. Such liability insurance shall provide, by endorsement to the policy, that HCE shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for the payment of any premium for such insurance.

9.1.1.3. The liability insurance shall not exclude coverage for any incident related to the subject generator or its operation.

9.1.2. General Liability Insurance shall include coverage for liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

9.1.3. Such insurance shall provide for thirty days written notice to HCE prior to cancellation, termination, alteration, or material change of such insurance.

9.2. Additional Insurance Provisions.

9.2.1. Evidence of coverage described above in Paragraph 9.1 shall state that coverage provided is primary and is not excess to or contributing with any insurance or self-insurance maintained by HCE.

9.2.2. HCE shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

9.2.3. Seller shall furnish the certificates and endorsements required under this Agreement to HCE prior to the Initial Energy Delivery Date.

9.2.4. Seller shall ensure that its insurance carrier(s) shall provide HCE with thirty days' prior notice or such other notice as is practicable of any lapse, cancellation, termination, non-renewal or material change to Seller's insurance.

9.2.5. All insurance certificates, endorsements, cancellations, terminations, non-renewal and material changes of such insurance shall be issued and submitted in accordance with Section 8.

10. TERM, DEFAULT, TERMINATION EVENT AND TERMINATION

- 10.1. Term. The term of this Agreement shall commence upon the execution by the duly authorized representatives of each of HCE and Seller and shall remain in effect until the conclusion of the Delivery Term or unless terminated sooner pursuant to Section 10.3 of this Agreement (the “Term”). All indemnity rights shall survive the termination of this Agreement for twelve months.
- 10.2. Termination Event. Each of the following events shall constitute a “Termination Event”, as the result of which HCE shall be entitled to terminate the Agreement in accordance with Section 10.3:
- 10.2.1. Seller fails to submit an interconnection application in compliance with HCE’s Interconnection Policy within 180 days of the execution of this Agreement; or
 - 10.2.2. The Facility has not achieved Commercial Operation by the date 180 days after the scheduled Initial Energy Delivery Date in Appendix B; or
 - 10.2.3. Seller has not sold or delivered energy from the Facility to HCE for a period of twelve consecutive months; or
 - 10.2.4. Seller breaches any representation or warranty set forth herein; or
 - 10.2.5. Seller breaches its covenant to maintain the Facility’s status as an Eligible Energy Resource as set forth in Section 4.4 of the Agreement; or
 - 10.2.6. Seller breaches its covenant to maintain the Facility’s status as a QF as set forth in this Agreement; or
 - 10.2.7. Seller makes an assignment for the benefit of its creditors, excluding, for clarity, any assignment permitted under Section 12; or
 - 10.2.8. Seller files a petition of otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed for sixty days after such filing.
- 10.3. Termination.
- 10.3.1. Declaration of a Termination Event. If a Termination Event has occurred and is continuing, HCE shall have the right to: (a) send notice, designating a day, no earlier than five days after such notice is deemed to be received (as provided in Section 8) and no later than twenty days after such notice is deemed to be received (as provided in Section 8), as an early termination date of this Agreement (“Early Termination Date”) unless Seller has timely communicated with HCE and the Parties have agreed to resolve the circumstances giving rise to the termination Event; (b) accelerate all amounts owing between the Parties; and (c) terminate this Agreement and end the Delivery Term effective as of the Early Termination Date.
 - 10.3.2. Release of Liability for Termination Event. Upon termination of this Agreement pursuant to Section 10.3.1, neither Party shall be under any further obligation or subject to liability hereunder, except with respect to the indemnity provision in Section 6 hereof, which shall remain in effect for a period of 12 months following the Early Termination Date.

11. CONFIDENTIALITY

Each Party agrees to keep confidential, except as required by law, all documents (excluding this Agreement), data, drawings, studies, projections, plans, and other written information provided by one Party that is not in the public domain and that the providing Party labels as “Confidential Information” at the time of delivery; provided that to the extent Confidential Information regarding the Facility is not in the public domain, a Party may disclose such information to the FERC, the North American Electric Reliability Corporation, Public Service Company of Colorado, PUC, any of their successor organizations, and/or any other regulatory body, transmission operator, or governmental entity as necessary to comply with reasonable requests, applicable rules, regulations or contract obligations. A Party may also provide Confidential Information to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, lenders, underwriters, contractors, brokers, suppliers and others involved in construction, operation and financing arrangements for a Party or its subsidiaries or affiliates.

12. ASSIGNMENT

- 12.1. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement to its financing providers for collateral security purposes, provided that as a condition to becoming a Party to this Agreement or exercising any rights hereunder, the financing provider(s) or any transferee, as the case may be, shall agree in writing to be bound by the terms and conditions hereof and shall provide such further assurances as the non-transferring Party shall reasonably request. A Party executing a transfer, sale, pledge, encumbrance, or assignment shall provide the other Party written notice of such within 30 days of the effective date of such transaction.
- 12.2. HCE hereby notifies Seller that upon execution hereof, this Agreement may be assigned by HCE for collateral security purposes to any such lender with existing loans to HCE that require such assignment. This may include the Administrator of the Rural Utilities Service of the United States Department of Agriculture, who shall have the authority set forth in 7 U.S.C. § 907, the National Rural Utilities Cooperative Finance Corporation, or CoBank, ACB.

13. APPLICABLE LAW

This Agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of Colorado, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. Any proceedings to enforce this Agreement, declare the parties' rights and obligations under it, or in any way relating to it shall be brought in federal court in the City and County of Denver, Colorado or in state court in Garfield County, Colorado. Each of the parties expressly consents to the jurisdiction of either court over them personally for such purpose, and waives any objection to personal jurisdiction and venue in either court for such purpose.

14. SEVERABILITY

If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

15. COUNTERPARTS

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or PDF transmission will be deemed as effective as delivery of an originally executed counterpart. Each Party delivering an executed counterpart of this Agreement by facsimile or PDF transmission will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

16. GENERAL

- 16.1. Modification and Waiver. No amendment to or modification of this Agreement shall be enforceable unless reduced to writing and executed by both parties.
- 16.2. Successors and Assigns. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement.
- 16.3. No Prior Agreements. This Agreement supersedes all other prior understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.
- 16.4. No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default, nor shall any delay by a Party in the exercise of any right under this Agreement be considered as a waiver or relinquishment thereof.
- 16.5. Headings. The headings used herein are for convenience and reference purposes only.
- 16.6. Rules of Construction. "Hereof," "herein," "hereunder" and similar words refer to this Agreement in its entirety. "Or" is not necessarily exclusive. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation.
- 16.7. No Third-Party Beneficiaries. This Agreement confers no rights whatsoever upon any person other than the Parties and shall not create, or be interpreted as creating, any standard of care, duty or liability to any person not a Party hereto.
- 16.8. Mutual Negotiation. This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. None of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

- 16.9. Good Faith and Fair Dealing. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement.
- 16.10. Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code.
- 16.11. Service Contract. The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and will not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code of 1986, including applicable rules and regulations promulgated thereunder, as amended from time to time, this Agreement is and will be deemed to be a service contract.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below.

HOLY CROSS ELECTRIC ASSOCIATION, INC.

By: _____ Date: _____

Name: Stephen J. Beuning

Title: Vice President, Power Supply & Programs, Administration

SELLER

By: _____ Date: _____

Name: _____

Title: _____

Appendix A

DEFINITIONS

“Ancillary Services” means ancillary services addressed under the Transmission Tariff from time to time (if any), which are associated, directly or indirectly, with the capacity of the Facility or the generation, storage and/or transmission of Energy from the Facility from time to time, including any rights to compensation therefor. By way of example only, “Ancillary Services” may include capacity or reliability attributes, resource adequacy characteristics, locational benefit attributes, and/or var generation.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday during the hours of 8:00 a.m. and 5:00 p.m. Mountain Prevailing Time.

“Colorado Renewable Portfolio Standard” means the renewable energy program and policies established by §40-2-124 C.R.S, as such provision may be amended, supplemented or replaced from time to time, including the regulations pursuant thereto.

“Contract Year” means a period of twelve consecutive months with the first Contract Year commencing on the first day of the month immediately following the Initial Energy Delivery Date and each subsequent Contract Year commencing on the anniversary of the Initial Energy Delivery Date.

“Delivery Point” means the point of interconnection to the HCE distribution system as further described in Appendix B.

“Delivery Term” shall have the meaning set forth in Section 2.4 of this Agreement.

“Eligible Energy Resource” means any generation resource eligible to be certified as a Qualifying Facility pursuant to the Public Utilities Regulatory Policy Act (“PURPA”) and eligible to be certified to generate, claim, own or use Renewable Energy Credits and green tags pursuant to the protocols and procedures developed and approved by applicable Government Authorities for the REC Registration Program.

“Emergency” means any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of HCE’s load or generation supply, that could adversely affect the reliability of the HCE system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.

“Execution Date” means the latest signature date found at the end of the Agreement.

“Facility” means the generator and all equipment necessary to interconnect to HCE’s System, including Seller’s rights to the Site, including but not limited to all of the following: buildings, generators, step-up transformers, output breakers, facilities necessary to connect to the Interconnection Point, protective and associated equipment, improvements, and other tangible and intangible assets, contract rights, Permits, easements, rights of way, surface use agreements and other interests or rights in real estate, owned or used for construction, operation, maintenance, generation and delivery of the capacity and energy subject to this PPA.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Forced Outage” means any unplanned reduction or suspension of the electrical output from the Facility resulting in the unavailability of the Facility, in whole or in part, in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of the Facility for operation, in whole or in part, for maintenance or repair that is not the result of Force Majeure.

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby. Force Majeure shall not be based on: (i) HCE’s inability economically to use or resell the energy or capacity purchased hereunder; (ii) Seller’s ability to sell the energy, capacity or other benefits produced by or associated with the Facility at a price greater than the price set forth in this Agreement, (iii) Seller’s inability to obtain approvals of any type for the construction, operation, or maintenance of the Facility; (iv) a strike or labor dispute limited only to Seller, Seller’s affiliates, the Engineering, Procurement, and Construction Contractor or subcontractors thereof; or (v) any equipment failure not caused by an event of Force Majeure of the specific type described in any of subsections (i) through (iv) of this definition of Force Majeure.

“Generator Interconnect Agreement” and “Generator Interconnect Policy” are the documents detailing the requirements and obligations of Seller and HCE involved with the interconnection of a generator to the HCE distribution system, available from HCE’s Engineering Department.

“Good Utility Practices” means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the electric power generation industry pertaining to facilities of the type, similar size and location to the Facility that, at a particular time, in the exercise of Commercially Reasonable judgment, in light of the facts that are known (or reasonably should have been known) at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, Permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices is not limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the applicable segment of the electric power generation industry in the relevant region, during the relevant period.

“Green Attributes” mean the full set of environmental, power source and emissions characteristics, whether in the form of credits (including Renewable Energy Credits), benefits,

emissions reductions, offsets, allowances or by any other designation, attributable to the generation of electric energy from the Facility. Green Attributes include but are not limited to (1) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluoric carbons, perfluoro carbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise under Law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere, (2) any avoided emissions of sulfur oxides (SO_x), nitrogen oxides (NO_x) and carbon monoxide (CO), and of any other pollutant of the air, soil or water (other than GHGs) that is now or is proposed now or in the future to be regulated under Law, including as part of any renewable portfolio standard, or tradable under any registration or trading program, whether or not such Law, portfolio standard or registration or trading program is enacted, implemented or promulgated; and (3) the right of HCE as the owner or prospective owner of Green Attributes to report the ownership of accumulated Green Attributes to any agency, authority or other party, including without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future domestic, international or foreign Law, renewable portfolio standard or registration or trading program. One MWh of energy output generated from the Facility is assumed to be the equivalent to one unit of Green Attributes, subject to applicable Law, standards or trading program requirements. Green Attributes do not include: (i) any energy, capacity, reliability or other power attributes from the Facility; (ii) production tax credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation; or (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept or dispose of certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits.

"Initial Energy Delivery Date" means the date on which (i) the Facility is capable of operating; (ii) HCE confirms Seller's satisfaction of all applicable requirements for interconnection with HCE, including those requirements as set forth in HCE's Generator Interconnect Policy and any applicable agreements between the Parties; and (iii) Seller produces and delivers energy to HCE pursuant to the terms of this Agreement.

"Law" means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective during the Delivery Term; or any binding interpretation of the foregoing.

"Product" means the energy (net of Station Use), capacity and all ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Facility, including, without limitation, renewable attributes, Renewable Energy Credits, and Green Attributes.

"PUC" means the Colorado Public Utilities Commission, or successor entity.

"Qualifying Facility" (QF) is a FERC approved electric generating facility that falls into one of two categories: small power producers, which are generating facilities of 80 MW or less whose primary energy source is a renewable resource, biomass, waste, or geothermal; and

cogeneration facilities, which sequentially produce electricity and another form of useful thermal energy.

“Renewable Energy Credit” or “REC” has the meaning set forth in C.R.S. § 40-2-124, as may be amended from time to time or as further defined or supplemented by Law, and any regulations adopted pursuant to this section.

“Scheduled Outage” means any reduction in deliveries for any purpose that is anticipated or scheduled in advance of the reduction.

“Station Use” means energy consumed within the Facility’s electric energy distribution system as losses, as well as energy used to operate the Facility’s auxiliary equipment. The auxiliary equipment may include, but is not limited to, plant lighting, control systems, communications systems and inverters. This does not include HCE’s retail electric service provided to the site.

Appendix B

Facility Description

Facility name:

Address: _____, CO

County: _____ County

AC nameplate rating: _____ kW DC nameplate rating: _____ kW

Inverter output voltage: _____ V _____ -Phase Grounding method: _____

Delivery point: _____ terminals of the HCE supplied site transformer

Scheduled Initial Energy Delivery Date: _____

Contract Price

Contract Price. Commencing at the Initial Energy Delivery Date through the end of the term, HCE shall pay Seller for each kWh delivered at the Delivery Point at a rate of \$0.xx per kWh.

Connection charge. Payments for each month of the Delivery Term shall be reduced by an amount equal to the service charge for the General Services – Small tariff or its successor as applicable.

Seller Contact Information

To Seller by US Mail:

Attn: _____

To Seller by courier or hand delivery:

Attn: _____

To Seller by email: _____

Single Line Diagram

DRAFT

Facility Arrangement

DRAFT

Appendix C
Initial Energy Delivery Date Confirmation Letter

In accordance with the terms of that certain Renewable Generator Power Purchase Agreement dated _____ (“Agreement”) by and between Holy Cross Energy and _____ (“Seller”), this letter serves to document the Parties’ further agreement that (i) the conditions precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Seller has delivered and HCE has received the Product, as specified in the Agreement, as of this _____ day of _____, 20 ___. This letter shall confirm the Initial Energy Delivery Date, as defined in the Agreement, as the date referenced in the preceding sentence.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below:

SELLER

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

HOLY CROSS ELECTRIC ASSOCIATION, INC.

By: _____ Date: _____
Name: Stephen J. Beuning
Title: Vice President, Power Supply & Programs, Administration

This Agreement is effective when accepted and executed by HCE.