

**BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

In the Matter of the Joint Application of Evergy )  
Kansas Central, Inc., Evergy Kansas South, Inc., )  
and Evergy Metro, Inc. for Approval of Tariff ) Docket No. 23-EKCE-588-TAR  
Changes Related to Wholesale Demand Response )  
Participation. )

**SIERRA CLUB’S AND VOTE SOLAR’S PETITION FOR RECONSIDERATION**

Pursuant to K.S.A. 66-118(b), K.S.A. 77-529(a)(1), and KAR 82-1-235, Sierra Club and Vote Solar respectfully request reconsideration of the State Corporation Commission of the State of Kansas’s (“Commission”) October 24, 2023 Order Approving Non-Unanimous Settlement (“Order”):

**INTRODUCTION**

1. This case requires the Commission to determine the scope of its authority, under both Kansas and federal law, to regulate the relationship between retail customers and the wholesale market operated the Southwest Power Pool (“SPP”) and the Federal Energy Regulatory Commission (“FERC”). This is a case of first impression.<sup>1</sup> While the Commission’s Order nominally approves changes to tariffs that typically govern a jurisdictional utility’s relationship with its customers, the true aim of the tariffs approved by the Order is actually to regulate the relationship between customers and the wholesale market, which is beyond this Commission’s jurisdiction.

2. The Order contends that the Commission has jurisdiction to approve the tariffs because they regulate customer demand response activities that could potentially, indirectly, affect operation of the distribution system grid. But the Commission lacks authority to regulate wholesale

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<sup>1</sup> Staff’s Closing Brief at 1, 9 (asserting that this is “the KCC’s first opportunity to hear the issues relating to the subject matter as it pertains to demand response activity on the system of a jurisdictional utility.”).

activity by non-utility entities based on effects to the grid. Moreover, even if the Commission had such authority, there are no evidentiary facts connecting the tariffs' requirements to any impact to the grid. The Commission should therefore reconsider because the Order relied on factual findings that are not supported by substantial evidence when viewed in light of the record as a whole, exceeded the Commission's jurisdiction conferred by provision of law, erroneously interpreted and applied the law, and is otherwise unreasonable, arbitrary, and capricious.<sup>2</sup>

#### STANDARD OF REVIEW

3. Petitions for reconsideration of Commission orders are governed by K.S.A. 66-118(b), K.S.A. 77-529, and K.A.R. 82-1-235. Section 66-118(b) provides that petitions for reconsideration of Commission orders must be filed in accordance with the provisions of K.S.A. 77-529. Section 77-529, in turn, provides that any party, within 15 days after service of a final order, may file a petition for reconsideration, stating the specific grounds upon which relief is requested.<sup>3</sup> Commission Rule 235 similarly provides that any aggrieved party may file a petition for reconsideration.<sup>4</sup>

4. A petition for reconsideration serves to inform the Commission and other parties of mistakes of law and fact in a Commission order.<sup>5</sup>

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<sup>2</sup> K.S.A. 77-621.

<sup>3</sup> K.S.A. 77-529(a)(1).

<sup>4</sup> K.A.R. 82-1-235(a).

<sup>5</sup> *Citizens' Util. Ratepayer Bd. v. State Corp. Comm'n of the State of Kan.*, 24 Kan. App. 2d 222, 228, 943 P.2d 494, 500-01 (1997), *aff'd in part, rev'd in part on other grounds*.

## SUMMARY OF BACKGROUND FACTS

5. FERC issued Order 719<sup>6</sup> on October 17, 2009, and upheld that order on rehearing in Order 719-A.<sup>7</sup> The intent of Order 719 is to correct a market inefficiency where load (i.e., demand) cannot respond to price signals seen by supply and, therefore, load and supply cannot efficiently balance through market forces.<sup>8</sup> Order 719 also includes a narrow “opt-out” provision in which FERC determined that it would not preempt state laws “where the relevant electric retail regulatory authority prohibits such customers' demand response to be bid into organized markets by an aggregator of retail customers.”<sup>9</sup> The opt-out provision requires a binary determination that state law either prohibits customer demand response from being bid into organized wholesale markets, or it does not. The opt-out provision does not permit states to regulate demand response by establishing state-level requirements. Those topics are covered, to the extent FERC deemed them necessary—as weighed against their costs and disincentives imposed—in the SPP tariff.

6. This Commission opened a proceeding related to FERC’s Order 719.<sup>10</sup> After receiving comments from utilities, the Commission concluded “that Kansas law and rules and regulations [do] not prohibit FERC’s policy outlined in FERC Order 719,” and “Kansas law would permit a retail customer to participate in this policy.”<sup>11</sup> That was the only determination relevant to whether customers can offer demand response service to the SPP market.

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<sup>6</sup> *Wholesale Competition in Regions with Organized Elec. Mkts.*, 125 FERC ¶ 61,071 (2008) (“Order 719”).

<sup>7</sup> *In re Investigation into Laws and Regulations Relating to Demand Response and Scarcity Pricing*, Order Closing Docket ¶¶ 1-2, Docket No. 10-GIME-215-GIE, 2011 WL 12455790 (Kan. Corp. Comm’n, May 13, 2011).

<sup>8</sup> *FERC v. Elec. Power Supply Ass’n*, 577 U.S. 260, 264–72 (2016) (“EPSA”).

<sup>9</sup> 18 C.F.R. § 35.28(g)(1)(iii).

<sup>10</sup> *Id.* p 3.

<sup>11</sup> *Id.* p 7.

7. On January 25, 2023, Evergy Kansas Central, Inc., Evergy Kansas South, Inc., and Evergy Metro, Inc., (collectively, “Evergy”) filed an application with the Commission seeking approval of proposed tariff changes that would condition customers’ ability to offer demand response to the SPP market. The proposed tariffs would amend the existing Kansas Central tariff section 7.12 and adopt new tariff provisions for Evergy Metro requiring any customer to obtain permission from Evergy before offering demand response to the SPP market and to meet various registration and reporting obligations to Evergy both before and periodically during any such market participation.

8. The version of the tariffs that Evergy originally proposed would regulate demand response aggregators by requiring them to enter a contract with Evergy, through which Evergy could directly regulate the operations of the aggregator.

9. On May 9, 2023, Staff filed a Report and Recommendation (“R&R”) stating that the Staff supported Evergy’s proposed tariff changes because, based on claims by Evergy witness Darrin Ives, customers offering demand response to the SPP market could cause unspecified inefficiencies, which could indirectly increase Evergy’s costs in unexplained ways, and thereby increase rates for retail customers.<sup>12</sup> As the R&R states, the point of Evergy’s proposed tariffs is to (1) require “additional advanced notice, coordination and data sharing, before [customer demand response] submits an SPP market registration,” (2) require the demand response provider to “submit a summary-level operational report of the DRs in Evergy’s territory to Evergy on a regular basis,” and (3) allow the Commission to oversee disputes between Evergy and customers regarding demand response provided to wholesale markets.<sup>13</sup> Notably, demand response resources

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<sup>12</sup> R&R at 1-2.

<sup>13</sup> R&R at 2.

already provide notice to the Commission and Evergy through SPP, provide operational reports to SPP, and are subject to dispute resolution at SPP and FERC. The tariffs, therefore, add a second layer of the information gathering and reporting already addressed by the SPP tariff—including imposing requirements the SPP tariff does not impose. The tariffs also make the sufficiency of that reporting and performance under the SPP tariff enforceable by Evergy and the Commission, rather than SPP and FERC.

10. Staff's R&R also points to its prior concerns expressed to FERC that existing FERC rules and SPP tariffs do not provide sufficient information sharing and coordination, create unspecified "inefficiencies and possible cost shifting," insufficient standardized demand response performance tracking, and unspecified "reliability challenges and negative impacts to distribution system operations."<sup>14</sup> That is, the R&R directly ties the requirements of the tariffs at issue to policy concerns the Commission raised with SPP and FERC, but which (in Staff's view) SPP and FERC have not satisfactorily addressed.

11. On August 10, 2023, some parties (Evergy, Citizens' Utility Ratepayer Board, Empire District Electric Company, Voltus, Inc., Southern Pioneer Electric Company, and Sunflower Electric Power Corporation) filed a Non-Unanimous Settlement Agreement ("NSA"). Vote Solar and Sierra Club opposed the NSA.

12. The NSA makes certain requirements, conditions, and obligations applicable to Evergy's retail electricity customers as a condition of the customers participating in the FERC-regulated SPP wholesale market. One of the parties to the NSA, Voltus, agreed to take additional steps to make its data available to Evergy and disclose certain business information to Evergy.

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<sup>14</sup> R&R at 3.

13. The purpose of the tariffs is to add registration, notice, and performance information monitoring beyond that required by SPP. Evergy is authorized to perform the same and additional verification and monitoring of customers' demand response reductions in the wholesale market that SPP already reviews and monitors.<sup>15</sup> Under the SPP tariff, SPP and FERC determine the eligibility and verifiable demand response reductions, and audit customer demand response performance in the wholesale market. Evergy may object to registration with SPP based on a legitimate dispute about a demand response registration, and SPP (and ultimately FERC) can adjudicate that dispute. Under the tariffs in this case, Evergy will determine for itself whether a wholesale market participant qualifies for and complies with SPP's tariffs and monitor the participant's performance in the SPP wholesale market, rather than bringing its dispute to SPP.<sup>16</sup> In short, the tariffs create a parallel state regulatory regime seeking to strike a different balance than SPP and FERC created between qualification, notice, information, and performance monitoring on the one hand, and administrative burden and delay on the other.

14. The tariffs approved by the Order also impose additional burdens on customers seeking to participate in the wholesale market. Among other burdens, the tariffs require customers to disclose private business records, including "a copy of any agreement it has entered with" a demand response aggregator (Evergy's competitors in the wholesale market)<sup>17</sup> and prohibit

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<sup>15</sup> Order, Exhibit 3 Parts 1-3.

<sup>16</sup> Application at 5, 7-9; Ives Dir. at 5, 10, 14; Order, Ex. 3 Part 5 § 4.a., b. The tariffs also impose an Evergy-enforceable obligation to "comply with SPP rules regarding establishing the Retail Customer's baseline and measurement and verification" and to "comply with... the governing documents of SPP." Order, Ex. 3 Part 5, § 2.f, j.

<sup>17</sup> Order, Ex. 3 Part 5 § 3.b.

“double compensation” that the SPP tariffs permit.<sup>18</sup> The tariffs also impose legal obligations such as strict liability for any damages.

15. There is also no evidence in the record that demand response participation by customers in wholesale markets negatively affects reliability or safety. Instead, the only reference to reliability or safety impacts are vague and speculative claims that an unspecified amount of demand response at some unspecified time and at some unspecified amount could theoretically impact the utility’s ability to plan for future capacity, and unspecified load swings could negatively impact the grid in unidentified ways. There was no evidence of any such effects in Kansas, or in any other state in which customers provide demand response to wholesale markets.

16. On October 24, 2023, the Commission met virtually in an open meeting and approved a decision approving the NSA. The same day, the Commission issued the written Order.

17. According to the Order<sup>19</sup>, the Commission follows a five-factor test for whether to approve a non-unanimous settlement agreement:

- i. Whether there was an opportunity for the opposing party to be heard on their reasons for opposition to the agreement;
- ii. Whether the agreement is supported by substantial competent evidence;
- iii. Whether the agreement conforms with applicable law;
- iv. Whether the agreement results in just and reasonable rates;
- v. Whether the results of the Settlement Agreement are in the public interest, including the interest of the customers represented by the party not consenting to the agreement.

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<sup>18</sup> The tariffs provide that the customer’s participation in wholesale markets “will not in any manner result in double compensation for a resource, double counting of a resource, or failure to otherwise comply with relevant regulatory requirements.” Order, Ex. 3 Part 5, § 2.i. The tariff does not define “double compensation,” “double counting,” or “regulatory requirements.” There is no prohibition on the same demand response resource participating in multiple wholesale products and being compensated for each. Every does not deny that it considers participation in multiple demand response programs to be “double counting” or “double compensation” under the tariff.

<sup>19</sup> Order ¶ 8.

18. The Order contends that “[n]o party contests the first two standards” and proceeded to address “the remaining three.”<sup>20</sup>

19. As to the Commission’s authority under Kansas law to regulate retail customers’ demand response participation in the SPP market, the Order states that the Commission “has broad powers to supervise and control electric public utilities, and that inherent in those broad powers is the ability to regulate aspects of the relationship between the Commission [sic, the utility] and its customers.”<sup>21</sup> While the Order acknowledges that the Commission “does not have the power to tell customers when or how to use electricity,” it contends that “there is a difference between a customer’s decision to turn the lights off and a decision to turn the lights off in a coordinated fashion with other customers in order to have a substantial effect on the capacity and by extension, safety of the grid.”<sup>22</sup> The Order contends that because the NSA “primarily focuses on coordination and information-sharing” in order to “create[e] more efficiency and reliable implementation of [aggregated demand response] activities in Kansas” it is “well within the bounds of state jurisdiction.”<sup>23</sup>

20. As to whether the NSA is preempted by federal law, the Order states that “it may be improper for the Commission to... influence customer participation in wholesale market aggregation activities,” but it does not believe that the NSA does so.<sup>24</sup> The Order cites paragraph 54 of FERC Order 719-A and *Hughes v. Talen Energy Marketing*, 578 U.S. 150, 164, LLC, 136 S.Ct. 1288, 1298 (2016) for what it purports to be the legal test for whether a state’s attempted

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*, ¶ 14.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*



regulation of wholesale activity is preempted: whether the state is "attempt[ing] to regulate wholesale rates."<sup>25</sup>

21. The Order asserts that because Evergy "testifies that the intent of its proposed tariff updates is to ensure the safety and reliability of the grid," and that Evergy "does not seek to bar participation in wholesale markets," the tariffs are, therefore, "not aimed directly at wholesale markets."<sup>26</sup>

22. The Order also states that the fact that the proposed tariffs dictate whether customers may participate in the SPP market, by requiring Evergy's consent, is not "aimed at" the wholesale market because the tariff prohibits Evergy from "unreasonably" withholding or delaying consent, and because it is not aware of "any issues arising from" a provision in Evergy Central's tariff requiring Evergy's consent.<sup>27</sup> The Order also points to the tariff provisions requiring that customers report to Evergy and interprets those requirements as limiting Evergy's approval determination as limited to only "a ministerial exercise allowing Evergy to confirm it has all the information it needs," as specified in the tariff.<sup>28</sup> The Order concludes that these facts mean the NSA tariffs "are not aimed at wholesale market rates or participation" and are instead "a means by which Evergy and the Commission fulfill their duties to protect the safety and reliability of the grid."<sup>29</sup>

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<sup>25</sup> Order, ¶ 17.

<sup>26</sup> *Id.*, ¶ 18.

<sup>27</sup> *Id.* ¶ 20.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

## GROUNDS FOR RECONSIDERATION

### **I. The Commission does not have authority to regulate electricity customers.**

23. The Order is unlawful and exceeds the Commission’s jurisdiction.

24. The Order concedes that the Commission does not have authority to regulate customers’ choices of whether and when to use electricity.<sup>30</sup> It nevertheless contends that the Commission has *inherent* authority to regulate that same activity by customers—determining whether and when to use electricity—when the Commission deems such choices to have a “substantial effect on the capacity and by extension, safety of the grid.”<sup>31</sup> There are three fundamental problems with the Commission’s reasoning. First, the Commission’s power, while broad within the scope provided by statute, is limited to regulating utilities. The Legislature has not provided authority to regulate activities by entities that are not public utilities. Second, the Evergy tariffs do not regulate the relationship between the utility and its customers, as the Order contends. Rather, the tariffs regulate the relationship between the customer and SPP. Third, the record in this case does not substantiate the premise that all demand response activities covered by the Evergy tariffs have “substantial effect” on capacity and safety of the distribution grid.

25. The tariffs approved by the Order attempt to regulate non-jurisdictional services, provided by entities that are not public utilities, to wholesale markets. That is beyond the Commission’s authority to regulate.

#### **A. The Commission Does Not Have Implicit Authority to Regulate Everything That Affects the Electricity Grid.**

26. Kansas agencies have limited authority and limited powers and may not exceed their express authority. As an administrative agency created by the Legislature, the Commission

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<sup>30</sup> Order, ¶ 14.

<sup>31</sup> *Id.*

has “no general or common law power that can be exercised...”<sup>32</sup> Every act by the Commission must be based on authority either expressly provided by a statute “or by clear implication from the express powers granted.”<sup>33</sup> Agency regulation that extends beyond what the Legislature has authorized and exceeds the agency’s jurisdiction is unlawful, just as regulation that violates a statute.<sup>34</sup>

27. The Commission’s authority to approve tariffs is limited to regulating “jurisdictional services” provided by “public utilities” to the public.<sup>35</sup> That is, the Commission’s authority is premised on a proposed tariff pertaining to a jurisdictional service and rendered by a public utility. Unless a tariff meets those predicates, there is no authority to approve the tariff. Or, as Staff correctly noted in its Closing Brief: “the KCC may investigate, fix, establish and consent to rates charged, compel compliance and issue penalties *by public utilities* within the state... [and] require *public utilities* to establish just and reasonable rates in order to maintain reasonably sufficient and efficiency service.”<sup>36</sup>

28. Customers are not “public utilities.” The Kansas Legislature has not provided the Commission with authority to regulate non-utility entities when they provide demand response services to wholesale markets.<sup>37</sup> As Staff’s Closing Brief correctly conceded, “there is no existing

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<sup>32</sup> *Pork Motel, Corp. v. Kans. Dept. of Health & Env’t*, 234 Kan. 374, 378, 673 P.2d 1126 (1983).

<sup>33</sup> *Ft. Hays St. Univ. v. Univ. Ch., Am. Ass’n of Univ. Profs.*, 290 Kan. 446, 455, 228 P.3d 403 (2010).

<sup>34</sup> *Kan. Comm’n on Civil Rights v. U.S.D. No. 51*, 243 Kan. 137, 144, 755 P.2d 539 (1988) (“A rule or regulation which goes beyond that which the legislature has authorized, or which violates the statute, or which alters, extends, or limits the source of its legislative powers is void. (internal quote omitted); *Woods v. Midwest Conveyor Co.*, 231 Kan. 763, 771, 648 P.2d 234 (1982) (an agency “cannot pull itself up by its own boot straps” and expand its authority expressly conferred by the Legislature).

<sup>35</sup> K.S.A. 66-101c; *see also* K.S.A. 66-101b.

<sup>36</sup> Staff Closing Br. at p. 27 (emphasis added).

<sup>37</sup> In contrast, other states *have* authorized their commissions to regulate demand response activities by non-utility entities. *See e.g.*, Ark. Code § 23-18-1003(a), (b) (providing the state commission with explicit

Kansas law directly applicable to demand response activity in SPP’s wholesale markets via Evergy’s customers and grid.”<sup>38</sup> That should be the end of the question. Commission jurisdiction cannot be expanded beyond regulating public utilities “merely by inclusion of a provision in the utility’s tariff which seeks to reach beyond such relationship” to regulate the activities of the utility’s customers.<sup>39</sup>

29. The Order does not clearly identify a statute providing the Commission’s claimed authority to regulate the choices made by non-utility entities to engage in non-jurisdictional activities. The Order refers to arguments made by CURB, Evergy, and Voltus, which identified two statutes: K.S.A. 66-101 and 66-1283(2)-(3).<sup>40</sup> Neither of those statutes provides the Commission with authority to approve Evergy’s tariffs.

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authority to regulate third-party demand response and to set the terms and conditions by which demand response aggregators may operate); Pennsylvania 2008 Act 129, Public Law 1592 (authorizing the state regulatory commission to regulate Conservation Service Providers, which is broadly defined to include third-party demand response aggregators); 66 Pa. Stat. §§ 2806.1(m), 2806.2; Md. Code Ann., Pub. Util. § 1-101(1)(1); *Order No. 84275, In re Investigation of the Regulation of Curtailment Service Providers*, Case No. 9241, at 7 (Md. Pub. Serv. Comm’n Aug. 22, 2011) (Maryland’s Public Service Commission has jurisdiction over “electricity suppliers,” which includes demand response aggregators).

<sup>38</sup> Staff Closing Br. at pp. 27-28.

<sup>39</sup> *Brooks v. Toledo Edison Co.*, 169 P.U.R.4<sup>th</sup> 179, 1996 WL 331201 \*13 (Ohio Pub. Util. Comm’n, 1996).

<sup>40</sup> Order, ¶¶ 11-14. The Order refers to CURB’s argument that the Commission should have power to regulate customers’ use of electricity in order “to fill a regulatory gap.” Order, ¶ (citing CURB’s Brief in Support of Non-Unanimous Settlement Agreement at pp. 16-17). CURB cites no law in support of that claim. Instead, it cites a law review article for the proposition that the electrical system is complex and becoming more complex and then asserts that “[g]ood public policy dictates that... a public utility regulator’s duties and discretion must be broad enough to regulate... consumers’ use of technologies that facilitate a retail customer’s Demand Response.” *Id.* Respectfully, CURB’s opinion of “good policy” or the perceived need to “fill a regulatory gap” is not the basis for agency authority; authority must be traced to a legislative grant through statute. *Cf. Fort Hays*, 290 Kan. at 460 (holding that even “a valid public policy concern” is “for the legislature to resolve” and cannot confer authority that does not “clearly arise” from express statutory authority); *Willcott v. Murphy*, 204 Kan. 640, 647, 465 P.2d 959 (1970) (when the Legislature omits regulation of a service or activity, an agency’s otherwise broad and discretionary power does not include authority to regulate in the gap left by the legislature); *see also Brown v. U.S.D. No. 333*, 261 Kan. 134, 141-42, 928 P.2d 57 (1996) (the Legislature expresses its intent through the text of the statutes it adopts and the courts cannot give effect to something different based on what the law should be).

30. A statute such as K.S.A. 66-101, permitting an agency to do whatever “necessary” to its jurisdiction, does not extend the scope of an agency’s authority; it only permits the agency to act within the scope of authority granted by other statutes.<sup>41</sup> Thus, to claim that its Order is authorized by K.S.A. 66-101, the Commission must first point to a separate statute providing specific authority to act before the general permission to do what is “necessary” to that jurisdiction “comes into play.”<sup>42</sup> The Commission has not pointed to any such statute, because no such statute exists.

31. Section 66-1283 also fails to provide the authority the Order claims to regulate private customer demand response activities at SPP. Section 66-1283 requires that the Commission “permit *public utilities* to implement commission-approved demand-side programs and cost recovery mechanisms.”<sup>43</sup> And, demand-side programs are defined as “any program conducted by... [a]n *electric utility*.”<sup>44</sup> The Commission’s authority under K.S.A. 66-1283 is confined to approving or rejecting demand-side programs proposed by public utilities; it does not permit the Commission to regulate demand response activities by entities that are not public utilities. In fact, to the extent K.S.A. 66-1283 is relevant at all, the Legislature’s omission of any authority over non-utility demand response belies any claim that the Commission can regulate private demand that does not involve public utilities.<sup>45</sup>

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<sup>41</sup> See *Durrett v. Bryan*, 14 Kan.App.2d 723, 728, 799 P.2d 110 (1990) (rejecting argument that a general authority to make all reasonable rules and regulations necessary to an agency’s authority expands the scope of its authority).

<sup>42</sup> *Id.*

<sup>43</sup> K.S.A. 66-1283(c)(1)(A) (emphasis added).

<sup>44</sup> K.S.A. 66-1283(a)(3) (emphasis added).

<sup>45</sup> K.S.A. 66-1823 was enacted in 2014 as House Bill 2482, 2014 Kansas Laws ch. 66 (Energy Efficiency Investment Act), after FERC Order 719 and the Commission’s conclusion in Docket 10-GIME-215-GIE that Kansas law does not bar private customer demand response in wholesale markets. The Legislature

32. Evergy also argued in the prior phase of this case that, while no Kansas law provides “explicit” authority for the Commission to regulate private customers’ relationships with SPP, the Kansas Supreme Court recognized the Commission’s authority to regulate anyone and anything that “bears upon” a utility’s ability to provide service.<sup>46</sup> Such a broad delegation of legislative power would be effectively limitless, since nearly every activity in modern society utilizes utility service and therefore “bears upon” it in some way. However, even a cursory reading of the case that Evergy cites reveals that the Kansas Supreme Court did not recognize such limitless authority. Instead, it recognized a very specific and narrow scope of authority, based on a 1917 case, permitting the Commission to impose reasonable limits on liability for interruptions in utility services because liability in that context is inseparable from defining the level of service required and rates.<sup>47</sup> There is no analogous longstanding case addressing demand response, nor any claim that customers offering demand response to SPP is inseparable from defining service or setting rates for retail service. In fact, customers in Kansas and other states have been providing demand response to wholesale markets for years without any documented impact on rates, much less a demonstration that such wholesale demand response activity is inseparable from retail rates. The *Danisco* holding is inapposite and does not support expansion of the Commission’s jurisdiction to anything bearing upon the utility, as Evergy claims.

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did not provide the Commission with authority to regulate such private demand response activities when it provided limited authority to regulate public utility demand response programs.

<sup>46</sup> Br. in Supp. Of Non-Unanimous Stipulation and Agreement of Evergy Kansas Central, Inc., Evergy Kansas So. Inc. and Evergy Metro, Inc. at p.13 (citing *Danisco Ingredients USA, Inc. v. Kansas City Power & Light Co.*, 986 P.2d 377, 382-86 (Kan. 1999)).

<sup>47</sup> *Danisco*, 986 P.2d at 379-83. Importantly, the court was not presented with the question of whether the Commission could impose any limits, since the parties stipulated for purposes of that case that it could; it was only asked whether the limits imposed were reasonable. *Id.* at 381.

33. There is also no limiting principle to the Commission’s jurisdiction if it were authorized to regulate whatever “bears upon” (i.e., affects) a utility’s “capacity,” as the Order contends. Customers switching from gas to electricity for space or water heating, or from a gasoline to an electric vehicle, or any number of customer choices and behavior “bear upon” the utility’s available capacity. For that matter, so do private businesses installing energy efficient appliances, load controls, and behind-the-meter generation. For example: Evergy’s unregulated subsidiary offers “solar services agreements” behind the meter and without Commission approval.<sup>48</sup> Tellingly, Evergy does not claim that the Commission can regulate its currently-unregulated solar service agreements based on whether the load reductions and behind the meter generation provided by those agreements “bear upon” the regulated utility.

34. Neither the Order nor any party to this case has provided an appropriate limiting principle. In modern society, nearly every activity will have some effect on the electric utility. Under the Order’s premise that the Commission has implicit authority to regulate all private activity by non-utility entities that affects the utility, the Commission’s jurisdiction would be nearly limitless. Such an interpretation of the Commission’s authority has no basis in the enabling statutes and would be untenable.

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<sup>48</sup> See, e.g., <https://newsroom.evergy.com/2022-02-07-The-City-of-Osawatomie,-Evergy-announce-solar-development-agreement>; <https://blog.evergyenergypartners.com/case-study-baldwin-solar>; Executive Summary, Spring Hill School District Solar + Controls Project (Jan. 12, 2021) (attached as Exhibit 1); Solar Services Agreement between Evergy Energy Solution, Inc. and Spring Hill USD 230 (March 31, 2021) (attached as Exhibit 2).

**B. The Tariffs Impermissibly Regulate the Relationship Between Customers and SPP, Rather Than Regulating the Relationship Between Evergy and Its Customers.**

35. The Order also contends that it can “regulate aspects of the relationship between the Commission [sic, utility] and its customers.”<sup>49</sup> However, that is not what these tariffs do. Rather, the tariffs dictate whether and on what terms “a customer [may] participate in the SPP’s Integrated Marketplace Demand Response program.”<sup>50</sup> That is a relationship between the customer and SPP, not between Evergy and the customer. Further, the obligations imposed by the tariffs all relate to the customer’s activities within the SPP market.

36. CURB argued in its Brief that imposing conditions on private demand response participation in the SPP market through Evergy’s tariffs is appropriate because tariffs are the conditions that regulate the relationship between the utility and customers.<sup>51</sup> That argument is circular: defining a tariff as regulating conditions of service and defining conditions of service as whatever Evergy imposes through a tariff. The relevant question under the applicable statute, which CURB’s reasoning avoids, is whether the tariff refers to “jurisdictional services to be rendered by such electric public utilities.”<sup>52</sup> The tariffs approved by the Order in this case do not define the scope of *jurisdictional services* provided by Evergy to the customer; they prohibit or condition non-jurisdictional services offered by customers to SPP. The Commission has no

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<sup>49</sup> *Id.*

<sup>50</sup> Order, Ex. 1 § 7.12, Exhibit 2 § 7.13.

<sup>51</sup> CURB Brief p. 15, citing *Southwestern Bell Tel. Co. v. Kan. Corp. Comm’n*, 233 Kan. 375, 377, 664 P.2d 798 (1983)).

<sup>52</sup> K.S.A. 66-101c; *see also Mapco Interstate Pipeline Co., Inc. v. State Corp. Comm’n*, 10 Kan.App.2d 527, 531, 704 P.2d 989 (Ct. App. 1985) (noting potential legitimate topics for tariffs as including “matters such as billing procedures or service cutoffs.”)



authority to regulate the relationship between customers and third parties merely because it inserts those obligations into a utility tariff.

**C. The Order’s Factual Premise Is Unsubstantiated In The Record.**

37. Even if the Commission had explicit authority to regulate non-utility entities that have secondary effects on the utility’s capacity and “safety of the grid”—which it does not—the Order would still be in error because there is no factual record in this case that all of the demand response activities regulated by the approved tariffs will have, or are even likely to have, “a substantial effect on the capacity, and by extension, safety of the grid.”<sup>53</sup> Demand response is a reduction in load, which generally has fewer potential impacts than increases in load. Moreover, since SPP is the transmission operator and charged with accounting for potential transmission impacts, only impacts to the distribution grid are potentially at issue. Yet, nothing in the record identifies what impacts to the distribution grid are possible, the physical events that would cause such impacts, or the amount of demand response that would have to occur for such physical events and impacts to result. Nor did any party identify a single instance of an unsafe grid event in any other state where demand response participation in wholesale markets occurs.

38. Evergy identified several “challenges” from customers providing demand response to SPP. Those included customer “education” about the role of Evergy, alleged inaccuracies (in Evergy’s view) in registration materials provided to SPP, and unspecified “instances” where a customer changed its mind after signing a contract to offer demand response to SPP. Even if those concerns accurately described actual “challenges” to Evergy, they relate to customer service and marketing issues between Evergy and its customers and between demand response aggregators

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<sup>53</sup> Order ¶ 14.

and their customers. Accordingly, Evergy's claimed "challenges" are not issues of grid reliability or safety.

39. As to grid impacts, Evergy only offered speculation that "other challenges [could] arise," if Evergy is unable "to accurately forecast load patterns," which in turn could affect its resource-planning.<sup>54</sup> Not only did Evergy fail to substantiate that concern, it failed to explain why the notifications it already receives from SPP when demand response registers, which provides more information to Evergy than many of the other inputs to resource-planning (fuel prices, load growth, interest rates, etc.), is insufficient.

40. The only example of a potential grid impact identified as a potential "challenge" by Evergy is potential "rapid fluctuations in load in response to wholesale pricing signals, that could potentially disrupt grid operations, particularly during periods of stress on the distribution system such as extreme weather events."<sup>55</sup> Those claims are not only vague, but entirely speculative. There is no indication of how much demand response would have to occur for fluctuations in load to actually affect grid operations. Nor, for that matter, is there any connection between the registration and performance reporting obligations imposed through the tariffs and the ability to avoid the alleged impact from load fluctuations and grid operations.

41. Notably, other states with active demand response participation do not impose these obligations to obtain utility permission or provide any reporting beyond the system operator's procedures. The Commission needs only look to its neighbor for a demonstration of how the terms and requirements of the tariffs are unnecessary. The Missouri Public Service Commission recently issued an order partially reversing Missouri's prohibition on wholesale demand response

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<sup>54</sup> Ives Dir. 13:22-14:5.

<sup>55</sup> Ives Dir. 14:6-9.

participation, lifting its Order 719 opt-out for large commercial and industrial customers.<sup>56</sup> Critically, the Missouri Commission did not attempt to impose a retail tariff conditioning or restricting wholesale market participation on additional registration, reporting, and state-level review. Rather, the Missouri Commission relied on a report provided by the Lawrence Berkeley National Laboratory, finding that “experience in other states indicates that ARCs can operate in vertically integrated states without comprehensive state-level requirements beyond those in place at the RTOs.”<sup>57</sup> The Missouri Commission further found that each relevant RTO (SPP and the Midcontinent Independent System Operator) had sufficient rules to address issues of concern.<sup>58</sup> These rules—including information-sharing requirements and opportunities for the applicable utility to object to a retail customer’s participation<sup>59</sup>—are likewise sufficient here, without any need for this Commission to trespass into FERC’s exclusive wholesale domain.

42. For each of the foregoing reasons, the Order exceeds the Commission’s jurisdiction by regulating non-jurisdictional services provided by non-utility entities. The Commission has no authority to regulate any activity by non-utility entities based on effects on the electrical grid. But, even if it did, the record in this case does not substantiate any such effects, much less connect the regulations imposed by the tariffs and avoidance of such effects.

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<sup>56</sup> Order Partially Modifying the Commission’s 2010 Order Regarding ARCs, *In re: Establishment of a Working Case Regarding FERC Order 2222*, No. EW-2021-0267 (Oct. 12, 2023).

<sup>57</sup> *Id.* at 7 (citing Lawrence Berkeley National Laboratory Report: *Regulation of Third-Party Aggregation in the MISO and SPP Footprints*, Forrester, Triedman, Kozel, Brooks, Cappers (Apr. 2023), filed in No. EW-2021-0267 (May 24, 2023)).

<sup>58</sup> *Id.* at 7-8.

<sup>59</sup> *Id.*

## II. The Commission Erred because the Regulation of Registration, Qualifications, and Performance of Resources in Federally Regulated Wholesale Markets Is Preempted by the Federal Power Act.

43. The Commission’s Order is also in error because the Commission may not approve tariffs that aim at activities in the wholesale market, which federal law precludes states from regulating.<sup>60</sup> The Order incorrectly concludes that the tariffs are not preempted because Evergy intends the tariffs to address impacts on retail service and the distribution system, rather than to establish wholesale rates. The Order’s reasoning misstates the law on preemption, which turns on the activity the regulation targets or aims at, based on which activities the regulation *attaches to* and *seeks to affect*, not the subjective intent of Evergy or the Commission.<sup>61</sup> It is not disputed—in fact, the Commission affirmatively concedes—that the tariffs impose a “requirement that Evergy grant ‘consent’ for customers to participate in DR” in the wholesale market.<sup>62</sup> The activity that the tariff attaches to is a wholesale activity. The preemption inquiry ends there. That regulation is preempted, regardless of the professed intent to protect distribution grid safety or reliability.

44. FERC has exclusive authority to set eligibility criteria, reporting, performance monitoring, and other terms of participation of resources in wholesale markets, including resources composed of retail customer actions or that connect at the distribution system in

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<sup>60</sup> See generally *Sierra Club’s and Vote Solar’s Brief in Opposition to Non-Unanimous Settlement Agreement*, Docket No. 23-EKCE-588-TAR (December 27, 2022) at 15-21.

<sup>61</sup> *NARUC*, 964 F.3d at 1188; see also *Hughes*, 578 U.S. at 1299 (a state law nominally governing generation facilities, but that “operates within” wholesale markets by achieving a particular effect in that market, is aimed at matters within FERC’s jurisdiction and preempted); *N. Nat. Gas Co. v. State Corp. Comm’n of Kan.*, 372 U.S. 84, 91–92 (1963) (invalidating an order from this Commission regulating production of gas, which is otherwise a state power, because it is “directed at” and indirectly regulates wholesale gas transactions); see also Evergy Resp. to Staff Report and Intervenor Comments at 10 (acknowledging that the Commission cannot impose conditions of service that are “aimed directly at [wholesale] markets” (quoting FERC Order 841-A at ¶ 41)).

<sup>62</sup> Order, ¶ 19.

wholesale markets.<sup>63</sup> When federal law preempts “the field,” there is no place for state regulation.<sup>64</sup> Thus, no state may impose regulations that directly aim at wholesale market participation or that preclude FERC from regulating wholesale markets comprehensively and effectively.<sup>65</sup> Field preemption prohibits not only state regulation that directly contradicts FERC regulation, but also state regulation that imposes additional burdens on wholesale market participation that FERC sought to avoid. In fact, even complementary parallel state regulation is preempted.<sup>66</sup>

45. The Order fails to distinguish or otherwise meaningfully grapple with the governing case law on this issue, including the holdings in *EPSA*, *Hughes*, or *NARUC*. The Supreme Court’s decision in *Hughes* rejected a state attempt to encourage construction of in-state generation—which is a legitimate state activity—because the state did so by attempting to affect the wholesale market. As the Supreme Court held, “States may not seek to achieve ends, however legitimate, through regulatory means that intrude on FERC’s authority over interstate wholesale rates...”<sup>67</sup>

46. Importantly, contrary to the Order’s apparent belief that federal preemption only applies to setting wholes rates, FERC’s exclusive jurisdiction extends to *all* of the federal market,

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<sup>63</sup> 16 U.S.C. § 824d(a); *Hughes v. Talen Energy Marketing, LLC*, 578 U.S. 150, 153–54 (2016) (FERC has exclusive jurisdiction over wholesale sales of electricity in interstate commerce), 163 (states overstep their jurisdictional bounds by attempting to regulate what is reserved to FERC’s exclusive authority); *Nat’l Ass’n of Regulatory Util. Commissioners (“NARUC”) v. FERC*, 964 F.3d 1177, 1181 (D.C. Cir. 2020) (FERC has “exclusive authority over the regulation of” not only the sale of electricity at wholesale, but “any rule or practice affecting such rates”).

<sup>64</sup> See, e.g., *State ex rel. Fatzner v. Sinclair Pipe Line Co.*, 180 Kan. 425, 437, 304 P.2d 930 (1956) (interpreting field preemption to limit the Commission’s authority to regulating in-state utilities, which “does not include the power to directly regulate *or to burden* interstate” activities (emphasis added)).

<sup>65</sup> *NARUC*, 964 F.3d at 1188.

<sup>66</sup> *Arizona v. U.S.*, 567 U.S. 387, 401 (2012) (“Where Congress occupies an entire field... even complementary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards.”)

<sup>67</sup> *Hughes*, 578 U.S. at 164.

including “the criteria for participation in those markets”<sup>68</sup> Therefore, the Commission is not only precluded from setting wholesale rates, but also from establishing criteria or requiring state approval (via the utility) to register, monitor, and enforce performance within the wholesale markets, as the tariffs attempt to do.

47. Case law is equally clear that states may not limit or condition retail service to target wholesale activities based on the purported indirect impact those activities have on retail service.<sup>69</sup> Thus, as FERC has unequivocally stated, FERC “has exclusive jurisdiction over the participation of [resources] in the organized wholesale electricity markets, *including the terms of eligibility for the participation of such resources.*”<sup>70</sup>

48. FERC’s rules and SPP’s tariff set the requirements for registering a demand response resource and participating in the wholesale market. The demand response resource must “meet[] the necessary technical requirements under the tariff, and submit[] a bid under the [FERC]-approved independent system operator’s or regional transmission organization’s bidding rules...”<sup>71</sup> SPP’s FERC-approved tariff further specifies the information that must be disclosed, when those disclosures must occur, and ensure that market participants are providing the demand response they offer into the market.<sup>72</sup>

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<sup>68</sup> Order 2222 at P 57.

<sup>69</sup> *NARUC*, 964 F.3d at 1187; *see also La. Pub. Serv. Comm’n v. Federal Commc’ns Comm’n et al.*, 476 U.S. 355, 374–75 (1986) (an agency cannot confer power onto itself, especially to expand its authority beyond what Congress conferred); *City of Providence v. Barr*, 954 F.3d 23, 34–35 (1st Cir. 2020) (agencies cannot expand their authority by imposing new conditions not permitted by statute).

<sup>70</sup> *Advanced Energy Econ.*, 163 FERC ¶ 61,030 at P 36 (2018) (emphasis added); *see also id.* at P 37 (“A provision directly restricting retail customers’ participation in organized wholesale electricity markets, even if contained in the terms of retail service, nonetheless intrudes on the Commission’s jurisdiction over the wholesale markets”).

<sup>71</sup> 18 C.F.R. § 35.28(g)(1)(i)(A).

<sup>72</sup> Dixon Resp. Test. at 18 (explaining FERC and system operator oversight); *see also Ives Dir.* 10:3-11:9.

49. The NSA would add a layer of state-level registration, qualification, audit, and performance review (implemented and enforced by Evergy) to FERC's market rules. This additional regulatory layer requires more red tape, more time, and more transaction costs<sup>73</sup> which interferes with FERC's uniform requirements for qualification and performance in wholesale markets. In fact, the requirements imposed by the tariffs approved by the Order track the arguments made by those opposed to Order 719 and that Evergy contends have been insufficiently addressed by FERC.<sup>74</sup> In other words, the tariffs second-guess and try to impose different policy choices other than those FERC made. If the Commission or Evergy has a policy concern about the sufficiency of information sharing and performance monitoring, it can and should take that up with SPP and FERC. The Commission may not attempt to fix perceived shortcomings in SPP's tariff by imposing a second, state, layer of regulation. Thus, in addition to being field preempted, the tariffs are also preempted because they conflict with FERC's rules.<sup>75</sup>

50. The Federal Power Act provides that only FERC may set the rules and regulations for wholesale markets.<sup>76</sup> The Act does not permit FERC to re-delegate that power to states. Nor

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<sup>73</sup> Dixon Resp. Test. at 29 (a state registration process before registering with SPP adds time and slows down registration, delaying revenue to the customer and increasing business costs).

<sup>74</sup> See e.g., Ives Dir. 6:8-16, 8:1-9:3. To the extent the Commission and Evergy believe insufficient information is provided through the SPP process, the remedy is to engage in the stakeholder process at SPP and appeal to FERC. See, e.g., The Kansas Corporation Commission's Notice of Intervention and Initial Comments, Docket No. RM21-14-000 (July 23, 2021) at 12 ("The KCC recognizes that policies and safeguards can be implemented to ensure that system reliability can be maintained with the expansion of participation by demand response aggregators in wholesale markets").

<sup>75</sup> *Farmland Indus., Inc. v. Kan. Corp. Comm'n*, 37 P.3d 640, 1040 (2001) (the Commission may not issue orders that are inconsistent with FERC approved tariffs).

<sup>76</sup> 16 U.S.C. § 824d(a); *NARUC*, 964 F.3d at 1187–88 (opt-out provisions allowing states to determine whether customers may participate in wholesale market would violate "well-established principles of federal preemption" because such prohibitions "aim at" activities that only FERC may regulate); *Advanced Energy Econ.*, 161 FERC ¶ 61,245, at P 61 (2017) (state action that prohibits participation in wholesale markets "impermissibly intrudes upon the wholesale electricity market, a domain Congress reserved to the Commission alone"); *Participation of Distributed Energy Res. Aggregations in Mkts. Operated by Reg'l Transmission Orgs. and Indep. Sys. Operators*, 172 FERC ¶ 61,247, at P 58 (2020)

does Order 719 purport to do so. Order 719 is not addressed to states at all; rather, it instructs wholesale market operators which bids to accept. SPP is to accept demand response bids, except if “the relevant electric retail regulatory authority prohibits such customers' demand response to be bid into organized markets by an aggregator of retail customers.”<sup>77</sup> Order 719 requires SPP to play a ministerial gatekeeping role by making a binary determination of whether state law categorically “prohibits customers’ demand response to be bid into organized markets” or not.<sup>78</sup> Order 719 does not delegate authority to the states to impose interstitial regulations and conditions on customers providing demand response in wholesale markets. There is no dispute that there is no Kansas law prohibiting customers from offering demand response into the wholesale market.<sup>79</sup>

51. Here, the Order asserts that because Evergy “testifies that the *intent* of its proposed tariff updates is to ensure the safety and reliability of the grid,” and that Evergy “does not seek to bar participation in wholesale markets,” the tariffs are, therefore, “not aimed directly at wholesale markets.”<sup>80</sup> However, what matters is not the “intent” of the tariffs or what Evergy “seeks” to do; rather, what matters with regard to a federal preemption analysis is what the tariffs objectively do.

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(“Order 2222”) (FERC cannot permit states to prohibit participation in wholesale markets because Congress provided that only FERC may regulate participation in wholesale markets).

<sup>77</sup> 18 C.F.R. § 35.28(g)(i)(iii).

<sup>78</sup> Order 719 at PP 155, 158(e), (k); *EPSA*, 577 U.S. at 275; Wellinghoff Dec. ¶ 26 (“FERC adopted provisions in Order 719 for states to categorically limit retail customer participation in wholesale markets...”).

<sup>79</sup> *In re Investigation into Laws and Regulations Relating to Demand Response and Scarcity Pricing*, Order Closing Docket, at 4–5 ¶ 7, Docket No. 10-GIME-215-GIE (Kan. Corp. Comm’n, May 13, 2011), (Order mailed May 16, 2011) (noting that comments submitted by parties “confirmed the Commission’s belief that Kansas law and rules and regulation did not prohibit FERC policy outlined in FERC Order 719 and 719-A... the Commission concluded Kansas law would permit a retail customer to participate in this policy.”).

<sup>80</sup> Order at P 18. (emphasis added).



And here, the NSA aims directly at wholesale market participation by regulating eligibility and reporting requirements.

52. Rather than looking for Evergy’s subjective “intent,” the Commission must look to the plain text of the tariffs themselves to determine what they objectively do. Here, the text of the tariffs target wholesale market participation and not impacts to the distribution system. For example, the proposed tariffs provide:

- Evergy’s “express written consent is necessary for a customer *to participate in the SPP’s Integrated Marketplace...*”<sup>81</sup>
- “A Retail Customer requesting Evergy’s consent... *to participate in the [SPP] Integrated Marketplace Demand Response program(s)...* must first submit this Schedule 1... at least thirty (30) days prior to the date the Retail Customer’s DRA *register the Retail Customer’s load with SPP.*”<sup>82</sup>
- Customer must describe devices to be installed “for purposes of managing and tracking the Retail Customer’s *participation in SPP’s Integrated Marketplace...*”<sup>83</sup>
- “Evergy’s written Consent is necessary for a Retail Customer to *participate in SPP’s Integrated Marketplace Demand Response program(s).*”<sup>84</sup>
- “The Retail Customer’s participation *in SPP’s Integrated Marketplace...* will at all times respect the operational constraints identified by Evergy in the course of Evergy’s SPP registration review process...”<sup>85</sup>
- “The Retail Customer’s offered load for participation *in the SPP’s Integrated Marketplace...* will reflect verifiable demand reduction and will *comply with SPP rules* regarding establishing the Retail Customer’s baseline and measurement and verification.”<sup>86</sup>

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<sup>81</sup> Order, Ex. 1 at § 7.12, Ex. 2 at § 7.13.

<sup>82</sup> Order, Ex. 3 at p. 1; *see also* Order, Ex. 4 at p. 1 (same but referencing Schedule 1A).

<sup>83</sup> Order, Ex. 3 at p. 2, Ex. 4 at p. 2.

<sup>84</sup> Order, Ex. 3 at p. 2, Ex. 4 at p. 2.

<sup>85</sup> Order, Ex. 3 at p. 2, Ex. 4 at p. 2.

<sup>86</sup> Order, Ex. 3 at p. 3, Ex. 4 at p. 3.

- “The Retail Customer’s participation *in SPP’s Integrated Marketplace...* will not in any manner result in double compensation for a resource, double counting of a resource...”<sup>87</sup>
- “The Retail Customer’s participation *in SPP’s Integrated Marketplace...* must at all times comply with... the governing documents of SPP.”<sup>88</sup>
- “Upon request by Evergy, the Retail Customer must provide a copy of any agreement it has entered with the [aggregator] *governing participation in SPP’s Integrated Marketplace...*”<sup>89</sup>
- The customer must report at least quarterly to Evergy the “Demand Response potential (MW) for the resource as *listed in the Registration package to SPP*” and “the total demand response performance for the resource for the reporting period, in MWh” that “should match *performance reports submitted to SPP.*”<sup>90</sup>

53. The Order characterizes these requirements as a “ministerial exercise;”<sup>91</sup> but that does not change the fact that the activity being regulated is a wholesale activity.

54. Missing from the tariffs is any reference to, or regulation of, actual impacts to the distribution system. The various terms and conditions apply specifically because of, and only because of, participation in wholesale markets. The tariffs do not demand information about loads and potential load swings from all customers; the tariffs require this information only from customers participating in wholesale demand response. Customers may turn their facilities on or off – or ramp them up or down – due to any number of different circumstances, and they frequently do so. Whatever load swings may occur because of those changes are unaddressed, while all demand response participation is regulated under the tariffs regardless of whether it has any impact

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<sup>87</sup> Order, Ex. 3 at p. 3, Ex. 4 at p. 3.

<sup>88</sup> Order, Ex. 3 at p. 3, Ex. 4 at p. 3.

<sup>89</sup> Order, Ex. 3 at p. 3.

<sup>90</sup> Order, Ex. 2.

<sup>91</sup> Order, ¶ 21. The Commission’s characterization is further contradicted by the tariffs’ imposition of additional, substantive requirements—such as a prohibition on “double compensation,” which SPP does not prohibit. *Sierra Club & Vote Solar Opp’n Br.* at 8 n.24. The Commission’s Order failed to address this argument.

on the grid. A residential customer with a smart thermostat enrolled in a demand response program is regulated, while a large industrial electric arc furnace tripping offline is not. That mis-match between the alleged grid impact concerns and the scope of the tariffs therefore also belies the claim that the tariffs are intended to address grid impacts. In short, the application of the tariffs is premised only on the wholesale activity and not on impacts to the distribution grid. That is quintessential regulation aimed at wholesale market activity, and not at safety and reliability of the distribution system, as Evergy insists.<sup>92</sup>

55. The Order also contends that one existing demand response tariff already similarly addresses demand response participation, and that the Commission “is not aware of any issues arising from this provision.”<sup>93</sup> However, whether the Commission is “aware of any issues” is irrelevant to a federal preemption analysis. Moreover, it is equally irrelevant how long the existing tariff provision had been in place or how similar it is to the proposed revised tariff provision.<sup>94</sup>

56. The Commission has authority to regulate actual impacts to the grid to ensure safety and reliability. But that is not what the tariffs approved by the Order do. Instead, the tariffs regulate whether a customer can participate in the market.<sup>95</sup> At best, the tariffs are intended to monitor and approve market participation because of potential downstream impacts on safety and reliability. But regulating wholesale participation in order to address downstream distribution system impacts

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<sup>92</sup> Evergy Resp. to Staff Report and Intervenor Comments ¶ 25.

<sup>93</sup> Order, ¶ 20.

<sup>94</sup> *Id.* (discussing the similarity between the existing tariff provision and the revised tariff provision). The Order omits that it is also true that customers provide demand response to wholesale markets in other states without any additional state-imposed information and reporting obligations and the Commission is also not aware of any impacts to grid reliability or safety in those states.

<sup>95</sup> Staff Closing Br. at 9 (“Evergy’s requested tariff changes set out to establish the structure and parameters under which Evergy retail customers could participate in wholesale demand response activities...”).

is exactly what states cannot do: “States may not seek to achieve ends, however legitimate, through regulatory means that intrude on FERC’s authority over interstate wholesale rates.”<sup>96</sup>

### CONCLUSION

57. For the reasons discussed above, the Commission’s Order is incorrect and improper due to several errors of law and fact. As a result, the Commission should grant Sierra Club and Vote Solar’s motion for reconsideration.

Respectfully submitted,

Teresa A. Woody (KS Bar No. 16949)

David C. Bender (admitted pro hac vice)

*Attorneys for Sierra Club and Vote Solar*

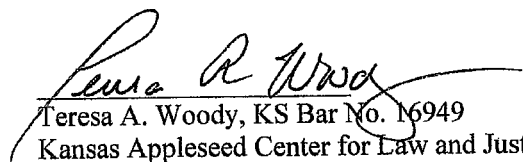
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<sup>96</sup> *Hughes*, 136 S.Ct. at 1291.

VERIFICATION

STATE OF MISSOURI            )  
  ) ss  
COUNTY OF JACKSON        )

I, Teresa A. Woody, of lawful age and being duly sworn, state and affirm the following: that I am counsel for Sierra Club and Vote Solar in this matter; I have read and reviewed the above and foregoing Petition for Reconsideration and the contents thereof are true and correct to the best of my information, knowledge, and belief.

  
Teresa A. Woody, KS Bar No. 16949  
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(785) 251-8160  
[twoody@kansasappleseed.org](mailto:twoody@kansasappleseed.org)

Subscribed and sworn to before me this 7<sup>th</sup> day of November, 2023.

  
Notary Public

My commission or appointment expires 12/27/2026

MICHELLE A. HAUGHEY  
NOTARY PUBLIC - NOTARY SEAL  
STATE OF MISSOURI  
MY COMMISSION EXPIRES DECEMBER 27, 2026  
JACKSON COUNTY  
COMMISSION #14497465

# EXECUTIVE SUMMARY

**TO: Spring Hill School District**  
**FROM: EnergyLink/Evergy Team**  
**RE: Spring Hill High School Solar + Controls Project**  
**DATE: 1.12.21**

EnergyLink, a trusted local Missouri solar contractor, was asked to provide the feasibility and potential design of a sustainability project for the Spring Hill School District. From the initial assessment including review of past utility usage and costs, the EnergyLink team has designed a plan and determined a partnership with Evergy would provide the Spring Hill School District with the best solution.

The Executive Summary below and the following proposal highlight both the engineered solution and financial structure utilized for this project. EnergyLink will construct and maintain the physical solar array and building controls, and Evergy will expand their renewable energy portfolio to own these systems through their Solar Service Agreement (SSA) thus acting as the financial partner on this project.

#### Scope of Work:

1. 750.4 kW Ground Mount Solar Array
  1. Gravel bed base
  2. 6' perimeter fence
  3. Located in the NE corner of the property
2. Upgraded BAS (Building Automation System) with integration of the solar array and Demand Management programming

#### Financial Highlights:

1. Est. Year 1 Energy Savings - \$113,384
2. Year 1 cash flow after SSA - \$9,761
3. Cashflow over the life of the 20 year contract - \$1,214,259

#### School District's Mitigated Risk:

1. Project is backed by Evergy
2. The contract stipulated an Annual Performance Guarantee of 85%
3. No capital outlay for the School District
4. O&M costs are accounted for in the SSA - EnergyLink will maintain the system
5. Monthly performance reports will be provided

#### Construction Timeline:

1. Slated to begin on-site construction May 2021 to be completed by the start of school in August 2021
2. Construction timeline is based on a decision date of the board of February 19, 2021 (if the decision date is later, it jeopardizes the completion timeline)

EnergyLink and Evergy will work with the school district to provide learning materials for the students of the school district which includes:

1. Energy Management
2. Sustainability
3. Construction Management
4. Project Management
5. Engineering
6. Renewable Energy

Our teams have much success in working with school districts and universities on projects such as this. We believe this is an excellent pilot project for the school district with the thought of implementing these projects on other facilities at a later date. We are excited for the opportunity and look forward to the future of this project.

Sincerely,  
EnergyLink and Evergy Teams





# SPRING HILL SCHOOL DISTRICT SCHEMATIC DESIGN & ECONOMIC ANALYSIS FOR SOLAR SERVICE AGREEMENT (SSA)

Jeremy Nolen, VP – Project Management

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DATE: October 16<sup>th</sup>, 2020



**ENERGYLINK**  
AN ENERGY SERVICE COMPANY





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# ENERGYLINK OVERVIEW

Founded in 2010, EnergyLink LLC started as a residential energy systems and weatherization contractor in Columbia, Missouri. Years of expanding both the market segments we service as well as the energy solutions and products we offer has grown us into the organization that we are today: a nationwide renewable energy and energy efficiency developer that offers design-build-finance services to commercial and nonprofit clients across all industries, including engineering & design, financial & economic analysis, and contracting & construction management. We apply these services across a wide variety of product categories including solar energy, building automation, energy storage, CHP systems, HVAC systems, thermal boundaries, LED lighting, and more. We self-perform critical aspects of our design and installation processes to keep costs low for our customers and possess a National General Contractor A License. Unlike most contractors, we take on the responsibility and risk of our systems' performance through energy savings performance contracts (ESPCs), ensuring our customers receive the full benefits of their projects while minimizing risk.



EnergyLink is committed to performing services that increase the cash flows of our clients, the sustainability of our national ecosystem, and the quality of life of those in the communities we serve. In accordance with that commitment to efficiency, we have extensively vertically-integrated and are capable of designing and managing our own projects without subcontracting key operations to third-parties, thus reducing costs and increasing economic benefits. We bring higher value to our clients than traditional contractors by providing alternative funding sources and securing rebate and grant incentives. In addition, our firm prides itself on providing the highest and most sophisticated solutions available to our clients, and we relentlessly search for the cutting edge in energy technology to that end.

*Thank you for your time and your consideration of our firm as your energy service provider.*



# COMPANY RESUME

## Vendor Contact Information:

Legal Business Entity Name: EnergyLink LLC

Address of Business: 238 W 74<sup>th</sup> St #108, Kansas City, MO 64114

Primary Points of Contact: Jeremy Nolen, VP – Project Management  
[jnolen@goenergylink.com](mailto:jnolen@goenergylink.com); Caelan Gander, Project Manager,  
[rgander@goenergylink.com](mailto:rgander@goenergylink.com); Craig Stichter, Project Executive,  
[cstichter@goenergylink.com](mailto:cstichter@goenergylink.com)

Company Telephone Number: 816.929.8570

## Company Background

Ownership Structure: No parents, affiliates, or subsidiaries

Business Type: LLC

Shareholders: Christopher Ihler – CEO; Scott Schnelle – CCO

Other States: Colorado, Kansas, Iowa, Nebraska, Alabama, Kentucky

## Experience

References and pictures from recent energy projects are listed in the Appendix.

Company Scale and Resources: EnergyLink employs 17 full time staff.

Personnel assigned to this project hold the following energy-related engineering qualifications: NABCEP Certified Energy Practitioner, EPA Certified Renovator, DOE Industrial Assessment Center Student Auditor, Building Performance Institute (BPI) Certified Energy Auditor, National General Building Contractor A (F11), Certified Energy Manager (CEM) Certificate coming Jan. 2020. In addition to our core employee base, we have contracted with Tradesmen International to scale up on demand and accommodate more and larger projects.

## Other Relevant Information

EnergyLink is a reputation-based company and a trusted local partner that holds the best interests of Kansas City organizations and the local community in mind.

EnergyLink is currently earning its DOE ESCO certification and its NAESCO accreditation as an energy service performance contractor.



# DESIGNATED PROJECT DEVELOPMENT TEAM

## Key Personnel

In addition to special attention and oversight from the owner, Chris Ihler, EnergyLink will devote a management team of six highly qualified individuals, working together to ensure the installation is completed flawlessly. This team will be focused on your project from start to finish through the duration of your project. In addition to these five primary project specialists, we will support the installation with additional installation technicians from our team. Our installation technicians have low voltage and DC wiring experience, OSHA 10, and have worked with EnergyLink on many other rooftop, carport, and ground mount solar PV facilities.

**Chris Ihler – Owner/CEO:** Chris will provide EPC oversight for all activities of the project, from design to installation and the administrative needs. Chris has 10 years of experience developing many "first of their kind" energy projects for the C&I and multi-family markets and has a strong track record of completing energy redevelopment projects on-time and on-budget. Beyond 10 years of energy redevelopment experience, Chris brings forth a prior career in real estate development and general contracting. Chris graduated from the University of Missouri with a degree in Real Estate and Finance.  
Cell: 573.424.3734





# DESIGNATED PROJECT DEVELOPMENT TEAM

## **Jeremy Nolen – VP of Project Management:**

Jeremy will be the dedicated project manager on this project. He will coordinate permitting, supply chain, sub-contractors, and construction logistics with our Chief of Construction and Project Engineer. Jeremy has been a PM for EnergyLink for 4 years with 15 projects under his belt, several of which were part of a larger GC contract, requiring a diverse range of sub-contractors, permitting, and logistics. Jeremy played basketball at Columbia College and has an MBA from UMKC. Cell: 334.559.9239



**Caelan Gander – Project Manager:** Caelan will provide communication and support for all project/PR needs between EnergyLink team members and any counterparties to the project. He earned a Bachelor of Science in Business Administration – Marketing and a Bachelor of Arts and Science in International Studies – East Asian Studies from the University of Missouri in 2019. Caelan's role as the development lead is critical for this project. Cell: 660.651.5062



**Craig Stichter – Project Executive:** Craig will provide knowledge and experience working with public schools and aid the organization in structuring the financing of these systems. Craig is a Mechanical Engineer, worked 10 years at MU as a facilities PM, and is the founder/majority owner of Bur Oak Brewery in Columbia, MO. Craig's support role is critical for this project as well as any future developing projects as a result of the relationship between the customer and EnergyLink. Cell: 573.424.0509



# DESIGNATED PROJECT DEVELOPMENT TEAM

**Cully Meier – VP of Project Engineering:** Cully has an electronics engineering degree, is NABCEP Certified and will act as the designer, integrator, and commissioning agent for the installation. Cully will work with the P.E.'s to create stamped formal engineering documents, he will be on-site to provide QA and QC of every aspect for the installation and will personally install the inverter package. Cully will also provide system support after the installation is complete. Cully has worked at EnergyLink for 5 years and has designed over 20 MW of commercial/industrial projects.  
Cell: 573.289.8252



**Scott Schnelle – Chief of Construction:** Scott will be on the jobsite every day of construction. He will act as a supervisor and installer. He will coordinate site staging, site safety, communication between trades, and construction labor. Scott has been a partner at EnergyLink for 10 years, is BPI certified, OSHA 60, and has personally coordinated/constructed over 3.6 MW of commercial PV in the Mid-Missouri area.  
Cell: 573.673.8579



**Andrew Halpern – Construction Manager:** Andrew is EnergyLink's Construction Manager. He works directly with Jeremy Nolen, the VP of Project Management to coordinate the construction of all nationwide energy projects. Andrew is pursuing his Master's in Public Administration holds a Bachelor's in Mechanical Engineering. He has a passion for sustainability and his efforts are crucial in ensuring that each project we do meets the high standards EnergyLink has set for renewable energy and energy efficiency projects. Cell: 443.845.8219



# DESIGNATED PROJECT DEVELOPMENT TEAM

**Chris Jackman** – Chris will be structuring the lease for this project and is the main point of contact for Evergy Energy Solutions. Cell: 816.519.7613



**Lindsay Freeman** – Lindsay has 4 years of experience in the solar industry. She has a bachelors degree in biological engineering. Lindsay will be focused on the development of your project and also community engagement throughout the term of the agreement. She has been a part of developing over 50 MWs of solar project throughout the US. Cell: 816.305.9578



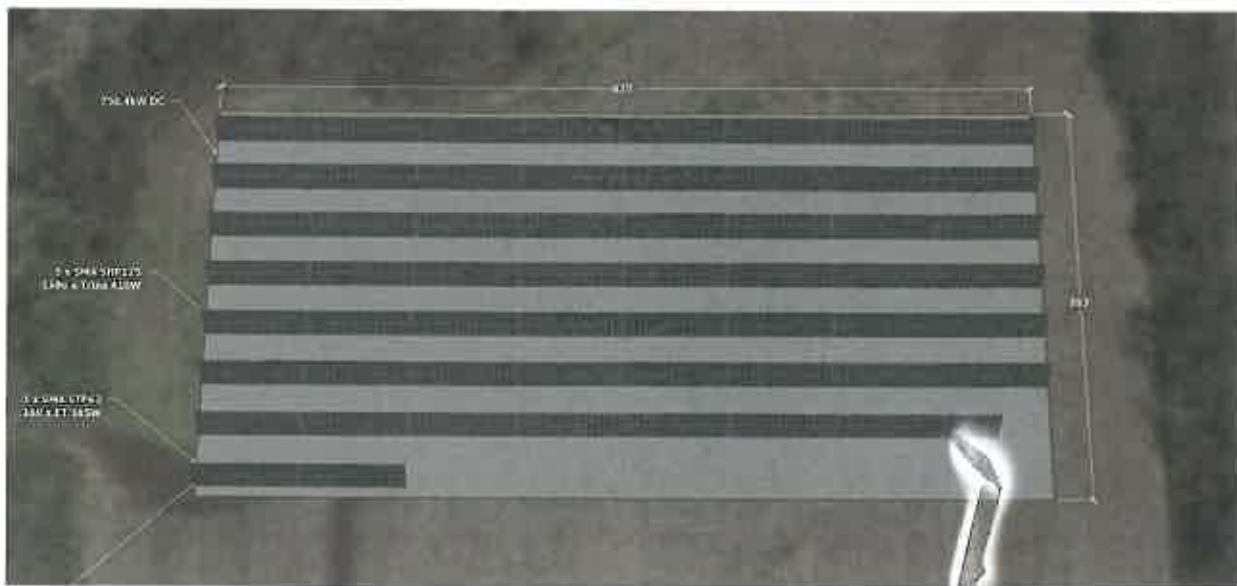


## SPRING HILL HIGH SCHOOL

We recommend implementing the following upgrades to reduce your usage and demand expenditures and to increase the cash flows and economic value of your facility.

### 750.4 kW Ground Mount Solar Array

A solar array generates energy onsite for your own usage, decreases your utility expenditures, and reduces your reliance on grid-provided power, all while benefitting the environment through sustainability. This will provide supplemental power to the facility and drive down your utility bill.



## SPRING HILL HIGH SCHOOL

We recommend implementing the following upgrades to reduce your usage and demand expenditures and to increase the cash flows and economic value of your facility.

### System Specs

- DC System Sizing: 750.4 kW (1,840 modules)
- AC System Sizing: 687 kW (6 inverters)
- Racking Tilt – 30 degrees
- Racking Azimuth – 180 degrees
- Approx. dimensions – 450' x 230'
- 6' Perimeter Chain Link Fence
- Gravel Base Layer





# FINANCIAL ANALYSIS - SSA PRO FORMA

## Ground Mount Solar + Controls (BAS)

### Yearly Cash Flows by Category

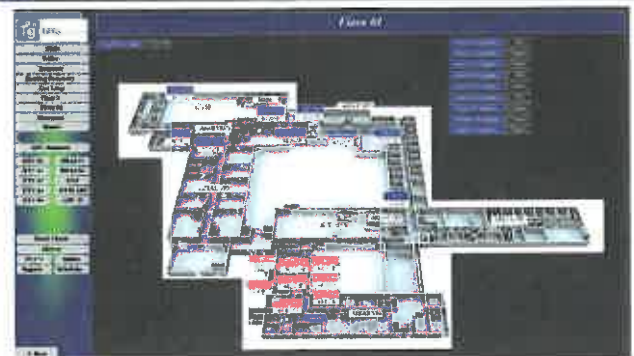
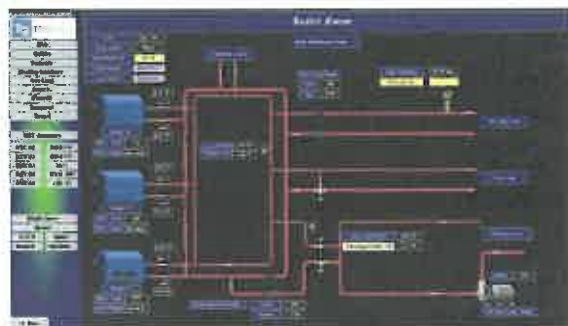
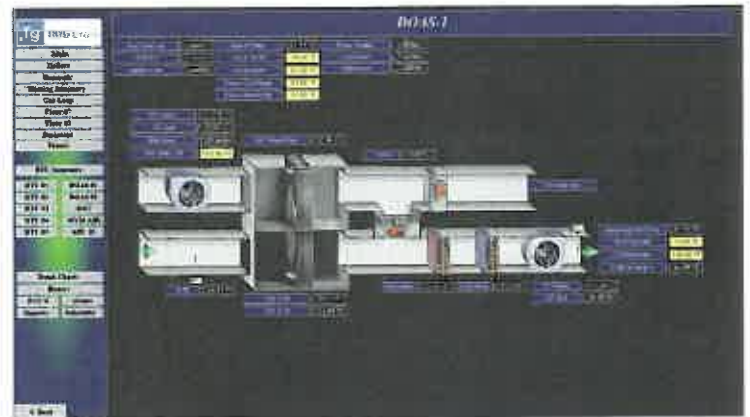
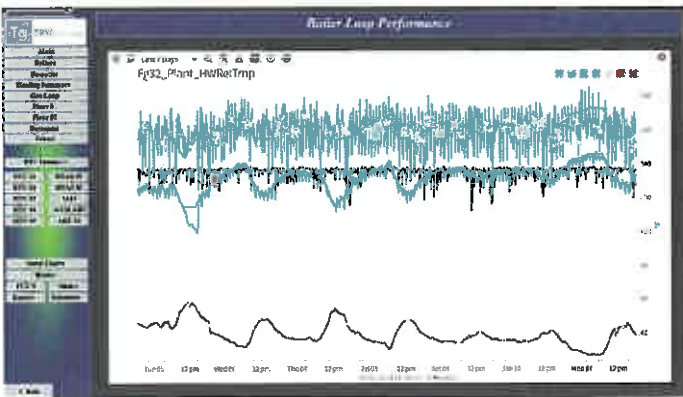
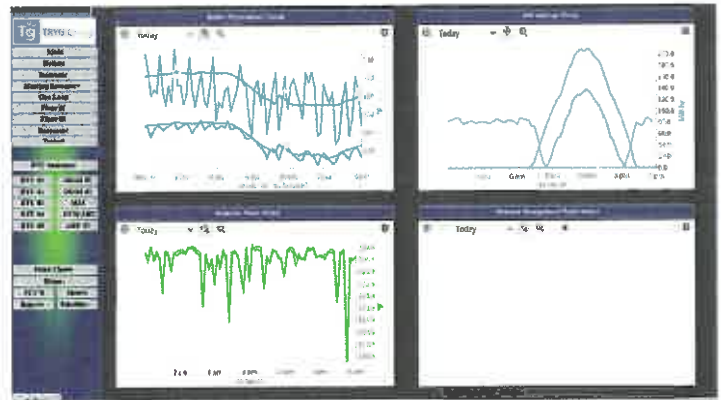
Year	Down Payment	Debt Payment	Energy Savings Income	Net Cash Flow	Cumulative Net Cash Flow
1	\$0	(\$103,623)	\$113,384	\$9,761	\$9,761
2	\$0	(\$103,623)	\$117,625	\$14,002	\$23,763
3	\$0	(\$103,623)	\$122,024	\$18,401	\$42,164
4	\$0	(\$103,623)	\$126,587	\$22,965	\$65,129
5	\$0	(\$103,623)	\$131,322	\$27,699	\$92,828
6	\$0	(\$103,623)	\$136,233	\$32,611	\$125,439
7	\$0	(\$103,623)	\$141,323	\$37,706	\$163,145
8	\$0	(\$103,623)	\$146,614	\$42,991	\$206,136
9	\$0	(\$103,623)	\$152,097	\$48,473	\$254,611
10	\$0	(\$103,623)	\$157,786	\$54,163	\$308,774
11	\$0	(\$103,623)	\$163,687	\$60,064	\$368,838
12	\$0	(\$103,623)	\$169,809	\$66,186	\$435,024
13	\$0	(\$103,623)	\$176,160	\$72,537	\$507,562
14	\$0	(\$103,623)	\$182,743	\$79,125	\$586,687
15	\$0	(\$103,623)	\$189,583	\$85,960	\$672,647
16	\$0	(\$103,623)	\$196,673	\$93,051	\$765,698
17	\$0	(\$103,623)	\$204,029	\$100,406	\$866,104
18	\$0	(\$103,623)	\$211,660	\$108,037	\$974,141
19	\$0	(\$103,623)	\$219,576	\$115,953	\$1,090,094
20	\$0	(\$103,623)	\$227,788	\$124,165	\$1,214,259
21	\$0	\$0	\$236,307	\$236,307	\$1,450,566
22	\$0	\$0	\$245,145	\$245,145	\$1,695,711
23	\$0	\$0	\$254,313	\$254,313	\$1,950,025
24	\$0	\$0	\$263,825	\$263,825	\$2,213,849
25	\$0	\$0	\$273,692	\$273,692	\$2,487,541
26	\$0	\$0	\$283,928	\$283,928	\$2,771,469
27	\$0	\$0	\$294,547	\$294,547	\$3,066,015
28	\$0	\$0	\$305,563	\$305,563	\$3,371,578
29	\$0	\$0	\$316,991	\$316,991	\$3,688,569
30	\$0	\$0	\$328,846	\$328,846	\$4,017,415
<b>Total:</b>	<b>\$0</b>	<b>(\$2,072,453)</b>	<b>\$6,069,863</b>	<b>\$4,017,415</b>	



# SOLUTIONS - BUILDING AUTOMATION SYSTEM

## Building Automation System (BAS)

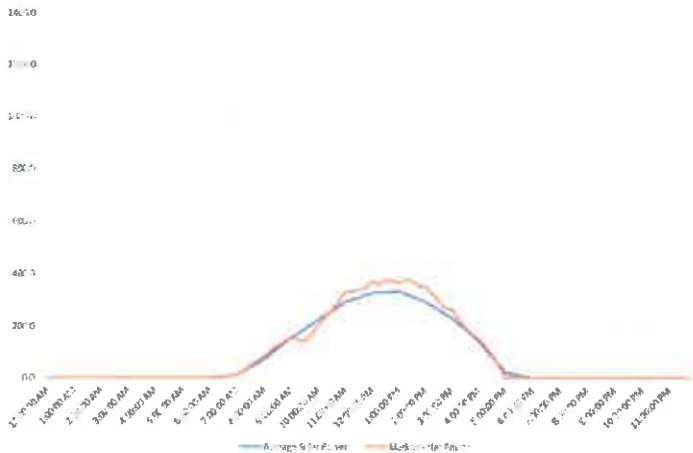
By installing and configuring an advanced controls system with a custom demand management algorithm, you can modulate your HVAC systems to operate in a round-robin rotation such that peak load synchronizes with the solar array's production. This substantially reduces demand cost while maintaining temperature control. We will upgrade your system with Trane Ensemble or Trane Endeavor (depending on the current system), purchase the license, perform software programming, run low voltage wiring, install modules, and wire contact points. We will integrate the package with all HVAC units, thermostats, fan power boxes, inverters, and CT monitors at the main power service.



# SOLUTIONS - BUILDING AUTOMATION SYSTEM

## February Load Curves – Based on 8760 Historic Hourly Data

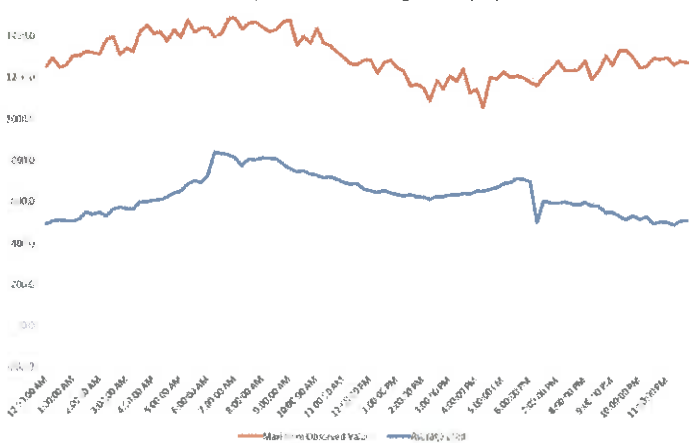
February Solar instantaneous Output (kW)



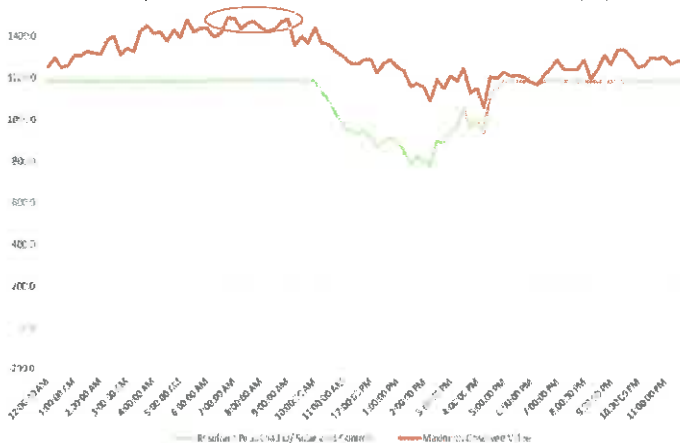
February Instantaneous Building Demand With Solar (kW)



February Instantaneous Building Demand (kW)



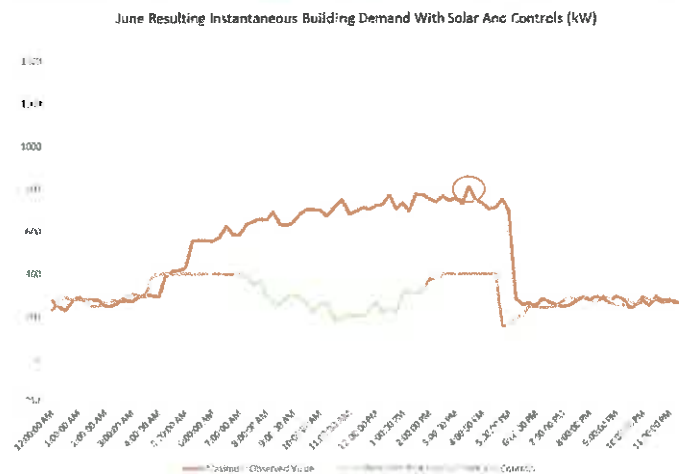
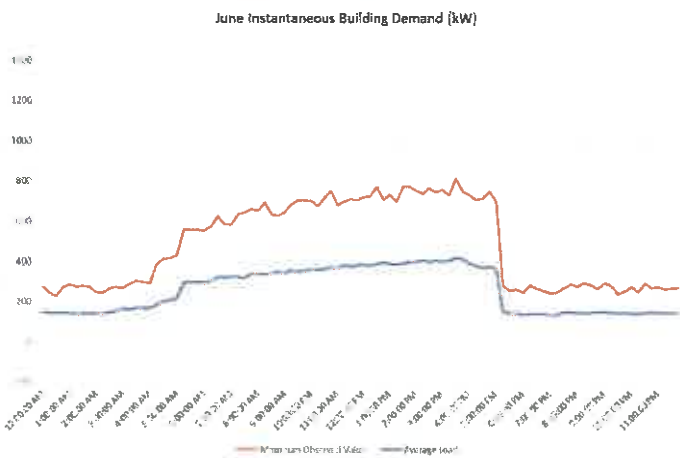
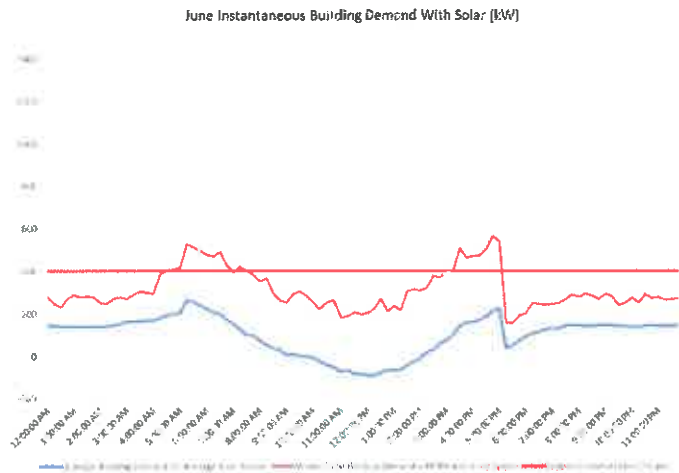
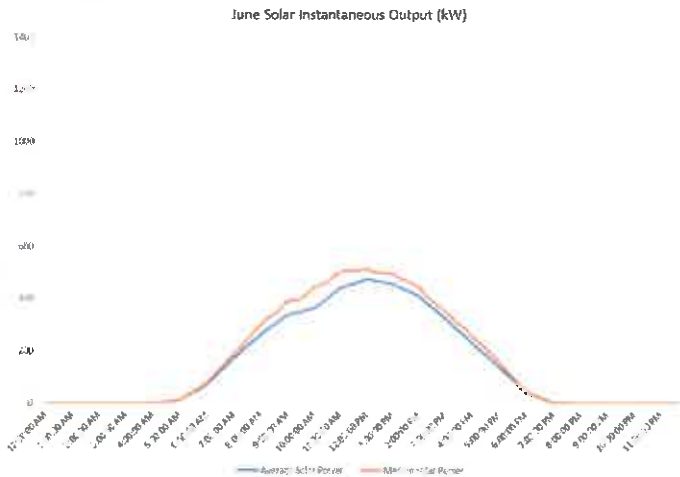
February Resulting Instantaneous Building Demand With Solar And Controls (kW)





# SOLUTIONS - BUILDING AUTOMATION SYSTEM

## June Load Curves – Based on Historic 8,760 Hourly Data



# PROJECTED UTILITIES

## Solar + Controls

Months	kWh	KW	kW/kW	Summer	\$0.0674	\$0.0482	\$0.0276	Added kWh Costs	Facilities Charge	Demand Charge	TIDC	Estimated Totals	Actual Totals	Load Factor	
				Winter	\$0.0472	\$0.0294	\$0.0242								
				180	180	360	\$0.0250	\$3.03	\$6.62	\$3.02					
				180	180	360	\$0.0250	\$3.03	\$6.62	\$3.02	\$2.47				
January	419,107	1119.21	379.55	\$9,449.82	\$9,437.07	\$10,475.43	\$4,499.55	\$3,331.93	\$2,749.63	\$36,977.39	\$35,619.00	52.30%			
February	455,472	1495	333.65	\$12,805.87	\$8,712.82	\$12,395.33	\$4,499.55	\$4,464.70	\$3,637.95	\$44,357.69	\$43,705.00	46.34%			
March	414,551	1371	302.37	\$11,638.14	\$4,935.82	\$10,363.78	\$4,499.55	\$4,140.42	\$3,366.37	\$38,554.05	\$38,310.00	42.00%			
April	222,479	931	238.97	\$7,903.07	\$1,615.13	\$8,551.98	\$4,499.55	\$2,811.62	\$2,299.57	\$24,690.92	\$25,330.00	33.19%			
May	211,555	792	267.12	\$6,723.13	\$2,029.92	\$5,268.55	\$4,499.55	\$2,391.24	\$1,956.24	\$22,889.63	\$24,400.00	37.10%			
June	251,235	808	310.52	\$9,816.24	\$3,108.78	\$3,282.23	\$4,499.55	\$5,355.63	\$1,998.23	\$31,080.61	\$33,151.00	43.14%			
July	251,235	808	310.52	\$9,816.24	\$3,108.78	\$3,282.23	\$4,499.55	\$5,355.63	\$1,998.23	\$31,080.61	\$33,151.00	43.14%			
August	251,235	808	310.52	\$9,816.24	\$3,108.78	\$3,282.23	\$4,499.55	\$5,355.63	\$1,998.23	\$31,080.61	\$33,151.00	43.14%			
Sept	313,514	655	367.45	\$10,859.75	\$4,972.43	\$7,997.99	\$4,499.55	\$6,524.90	\$2,210.65	\$38,155.23	\$37,179.00	45.55%			
Oct	251,080	889	293.64	\$7,546.54	\$2,972.30	\$9,528.25	\$4,499.55	\$2,554.75	\$2,195.00	\$25,425.26	\$25,939.00	45.78%			
Nov	293,547	1212	242.25	\$10,295.51	\$2,221.42	\$7,345.18	\$4,499.55	\$3,653.26	\$2,395.11	\$31,023.43	\$30,303.00	33.65%			
Dec	342,448	1257	266.08	\$10,925.35	\$3,259.38	\$8,551.20	\$4,499.55	\$3,885.74	\$3,178.99	\$34,310.85	\$30,541.00	36.96%			
<b>Totals</b>	<b>5,734,367</b>										<b>\$289,988.30</b>	<b>\$350,879.00</b>			

Solar Size 700  
1,076,000

Months	kWh	KW	kW/kW	0%			Added kWh Costs	Facilities Charge	Demand Charge	TIDC	Estimated Totals	
				First 180	Second 180	Over 360						
January	311,971	997	347.54	\$7,947.31	\$4,425.88	\$7,799.23	\$3,499.24	\$2,710.17	\$2,215.59	\$28,239.07		
February	354,045	1155	315.23	\$9,373.42	\$4,594.52	\$9,101.14	\$3,499.24	\$3,487.59	\$2,352.52	\$33,238.52		
March	285,132	1055	270.23	\$8,567.15	\$2,800.86	\$7,128.30	\$3,499.24	\$3,183.60	\$2,806.26	\$28,178.34		
April	139,201	756	179.45	\$5,408.32	-\$73.55	\$3,330.03	\$3,499.24	\$2,279.34	\$1,394.54	\$17,303.12		
May	118,174	661	179.75	\$5,511.85	-\$24.20	\$2,554.24	\$3,499.24	\$1,593.49	\$1,332.89	\$15,570.53		
June	147,132	673	213.75	\$8,160.77	\$767.00	\$3,378.21	\$3,499.24	\$4,452.35	\$1,531.24	\$22,218.93		
July	145,330	676	215.04	\$8,255.20	\$696.75	\$3,633.24	\$3,499.24	\$4,473.90	\$1,635.28	\$22,172.59		
August	153,204	682	224.54	\$8,279.07	\$994.00	\$3,850.11	\$3,499.24	\$4,318.93	\$1,585.32	\$22,704.67		
Sept	205,623	740	277.73	\$8,983.44	\$2,128.74	\$5,140.57	\$3,499.24	\$4,901.22	\$1,322.70	\$28,481.91		
Oct	165,967	720	230.52	\$8,112.45	\$1,070.15	\$4,148.57	\$3,499.24	\$2,174.90	\$1,778.55	\$18,784.71		
Nov	200,799	945	212.43	\$8,024.17	\$921.75	\$5,015.95	\$3,499.24	\$2,354.70	\$2,334.90	\$22,534.62		
Dec	246,582	998	246.96	\$8,475.77	\$1,356.97	\$5,194.55	\$3,499.24	\$3,015.35	\$2,483.21	\$25,599.11		
<b>Totals</b>	<b>2,477,180</b>									<b>\$105,541.08</b>	<b>\$4,593.25</b>	<b>Avoided Costs</b>
											<b>\$110,537.93</b>	<b>Total Savings</b>



# SAVINGS CALCULATIONS

## Solar + Controls

Estimated Impact	% Live-consumed		Solar kWh consumed	Solar kWh sold to grid	Base Load	Estimated Light contribution	HVAC peak	Estimated Controls kWh reduction	Estimated Controls kWh reduction
	Solar Production								
January	76,650	90.00%	69,285	7,365	190	190	884	216	59,369
February	81,121	90.00%	73,009	8,112	200	190	1,018	330	67,785
March	93,920	90.00%	76,136	13,784	130	190	972	316	58,768
April	97,890	85.00%	83,622	34,259	120	190	842	176	25,385
May	106,291	85.00%	89,050	37,151	120	190	403	131	21,619
June	104,929	70.00%	73,450	31,479	120	190	420	139	26,079
July	109,827	70.00%	76,739	32,899	130	190	410	133	28,458
August	104,441	70.00%	73,109	31,332	150	190	390	127	24,216
Sept	99,326	85.00%	84,427	14,899	160	190	476	166	34,915
Oct	90,617	80.00%	72,494	18,123	190	190	520	169	30,527
Nov	78,124	85.00%	63,855	11,269	130	190	324	269	39,913
Dec	65,693	85.00%	60,450	8,243	130	190	399	269	47,246
<b>Total</b>			<b>854,596</b>	<b>254,263</b>					<b>451,427</b>

Resulting kWh billed	Resulting kW billed
299,916	897
354,679	1,155
380,646	1,055
132,962	755
120,989	661
151,759	673
149,092	676
153,936	682
201,476	740
158,029	720
190,079	946
234,753	998
<b>2,428,344</b>	



# WARRANTY & MAINTENANCE

## Post-Installation Service Warranty

Solar Service Agreement Covers the following over the life of the contract:

- labor warranty covering workmanship
- labor warranty covering replacement of manufacturer-warranted parts
- Remote monitoring and verification of system performance to ensure that any possible problems or defects are detected early
- Yearly monitoring and maintenance of solar and BAS systems
- Energy Saving Performance Guarantee
- Metering and Verification reporting and services

Manufacturer's warranties cover:

- Panels: 10-year product warranty, 25-year production warranty
- Inverters: 20-year extended product warranty
- Racking: 25-year product warranty



## Educational Aspects:

- Construction Management
- Energy Management
- Project Management
- Energy Financing
- Energy Modeling
- Renewable Energy





# NEXT STEPS

## Design, Build, Finance (DBF) Process

EnergyLink's DBF Process is a comprehensive system crafted to ensure that maximum value and efficiency are delivered to our customers across all the services we provide. By initiating these next steps you will be on your way to completing and reaping the benefits of an EnergyLink redevelopment project.

### Schematic Design (Completed)

The economic analysis and preliminary design delivered through this proposal is our first step and one that we provide free-of-charge to display the economic value and engineering viability of our products and services.

### Design Development

The Design Development (DD) portion of the project focuses on identifying and solving challenges that may undo the economics or viability of the project. This includes:

- Interval datalogging main and sub meters
- Interconnection study
- Interconnection application for co-generation asset with utility provider
- Preliminary load analysis
- Engineered code verification letter
- Structural dead load engineering/sled design letter
- Funding partner RFP with economic and financial analysis
- Preliminary legal and financial underwriting for financing methods
- Selection of funding partner and pre-approval with term sheets
- Custom rebate pre-verification
- Bid revision and verification of economic analysis

DD requires a signed Letter-of-Intent (LOI) to proceed.

### Construction Contract for Construction Management (CM), Construction Administration (CA), and General Contracting (GC) Services

After DD work is completed and project economics and feasibility have been verified, a final agreement detailing the procedures and payment for the actual construction completes the process and allows us to begin work.

# RELIABILITY & QUALITY CONTROL

## Reliability

Solar panel technology has advanced significantly over the past 30 years, and so too has the reliability and quality control. Approximately 5 out of every 10,000 panels installed after the year 2000 have experienced pre-mature failure as a result of faulty components or other manufacturing issues that would qualify them as “defective.” This is 0.5%. Fortunately, nearly every manufacturer of solar panels that are sold and installed in North America offers a 25-year manufacturer warranty on their panels, and the vast majority of failures or defects become evident within the first 6 months after installation. Replacements of the extremely limited number of warranted panels is painless, as well as uncommon. Many manufacturers offer warranties that extend as far as to guarantee the actual output power of the panels as a percentage of original output for 10 or 25 years. Tests for determining the failure and degradation rates of panels over time have also been continually improving to produce more accurate results.

## Quality

All solar panels that EnergyLink installs are subject to ISO 9001 manufacturing quality control standards, as well as international IEC standards for PV quality. Panels observed and tested for failure rates in recent years tend to fail at half the rate of panels installed between the years 1980 and 2000 due to constantly improving technologies in manufacturing and materials engineering.

## Longevity

When discussing the longevity of solar panels, it's important to understand the concept of “useful life” or “lifetime” as it applies in practical terms. Many people have heard that the life span or useful life of a solar panel is about 30 years, but that is somewhat misleading, as it implies that your solar array may cease to function at that time. The “useful life” for solar panels that has become the generally accepted value is just a product of IRS rules for depreciating solar assets, but the practical life of the array is considerably longer, if gradually degrading. This IRS-defined life span is just outside the warranty period for most manufacturers, and it represents the age at which the power output of the array will have degraded to about 80% of its original capacity. So at 30 years of age the array is officially at the “end of its useful life,” for the purpose of depreciation rules, but it is only producing 20% less energy than it did in the first year of operation.

[Researchers at NREL Find Fewer Failures of PV Panels and Different Degradation Modes in Systems Installed after 2000](#)

[International Electrotechnical Commission TC 82 PV Systems Scope](#)

## Conclusion

If it is assumed that failure rates of new panels will be close to NREL results of roughly 5 in 10,000, your project would be expected to have as few as one or two panels fail prematurely due to manufacturing defects out of the entire array. Furthermore, all inverters will be monitoring the array and providing remote alerts in the event any panels should fail or exhibit concerning behavior worthy of manufacturer replacement.



# INSURANCE INFORMATION

Solar panels will be covered under your existing property insurance policy. In the coming years, we anticipate insurance companies to require a specific hail policy for solar panels in certain US regions, but we are unsure if your state will be included. If and when this occurs, we would advise you not to pay the higher premium, but instead accept a higher deductible, as the risk of the panels and other equipment being damaged by hail is extremely low.

See this video for an example of proven panel durability:

<https://www.youtube.com/watch?v=M6v2IDa8Hos>

Or this news release from energy.gov showing the ability of panels to withstand severe weather events:

Home » Hail No! National Lab's Solar Panels Survive Severe Storm

The Denver area was pelted with an unusually severe hailstorm on May 8 – one that left a trail of destruction in its wake, shattering car windows and leaving golf ball-sized dents on the roofs of local homes and vehicles.

After the storm, staff at the National Renewable Energy Laboratory (NREL) set out to assess the damage. Its main campus in Golden, Colorado boasts more than 2.5 megawatts of photovoltaic (PV) power. A majority of those panels (more than 3,000) are located on or adjacent to the roof of the lab's Research Support Facility, a net-zero energy building. The post-storm inspection revealed just one broken panel.



 Just one PV panel out of more than 3,000 was damaged at NREL following the hailstorm. Photo | NREL

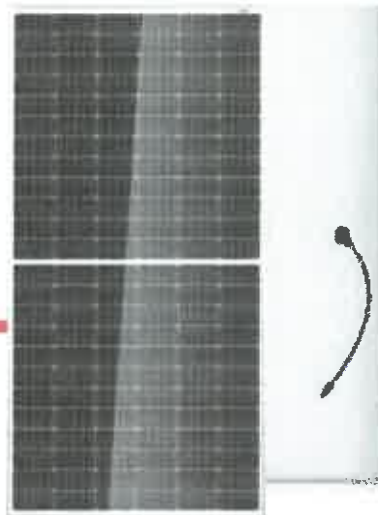
<https://www.energy.gov/eere/articles/hail-no-national-labs-solar-panels-survive-severe-storm>

# PRODUCT SPECIFICATIONS

## Panel Specs

### THE TALLMAX<sup>M</sup>

FRAMED 144 HALF-CELL MODULE



**144-Cell**  
MONOCRYSTALLINE MODULE

**380-410W**  
POWER OUTPUT RANGE

**20.2%**  
MAXIMUM EFFICIENCY

**0~+5W**  
POSITIVE POWER TOLERANCE

CELLS	CELL TYPE	POWER RANGE
144	Monocrystalline	380-410W



#### High power output

- Reduce BOS cost with high power pin and 1500V system voltage
- New cell string layout and split J-box location reduces the energy loss caused by inter-row shading
- Lower resistance of half-cut cells ensures higher power



#### High energy generation, low LCOE

- Excellent 3rd party validated IAM and low light performance with cell process and module material optimization
- Integrated LRF (Light Redirecting Film) to enhance power
- Low P<sub>max</sub> temp coefficient (-0.36%) increases energy production
- Better anti-shading performance and lower operating temperature



#### Certified to perform in highly challenging environment

- High PID resistance through cell process and module material control
- Resistant to salt, acid, sand, wind emissions
- Certified to 5400 Pa positive load and 2400 Pa negative load



#### Easy to install, wide application

- Frame design enables compatibility with standard installation methods
- Deployable for ground mounted and rooftop projects
- Safe and easy to transport, handle, and install

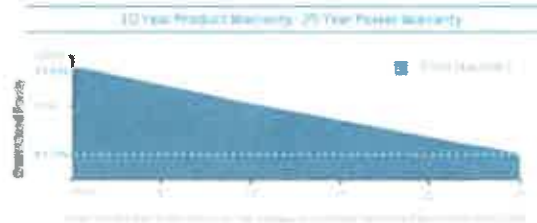
Trina Solar is the world's leading solar solution provider for solar energy. With over 30 years of experience around the globe, Trina Solar is able to provide exceptional service to our customers in each region and deliver new innovative, reliable products with the backing of Trina as a strong bankable brand. Trina Solar now distributes its PV products to over 100 countries all over the world, and is committed to building stronger, mutually beneficial relationships with industry, developer, distributor and other partners to bring clean energy together.

#### Comprehensive Products and System Certificates

ISO 9001:2015 Quality Management System  
 ISO 14001:2015 Environmental Management System  
 ISO 45001:2018 Occupational Health and Safety Management System



#### PERFORMANCE WARRANTY

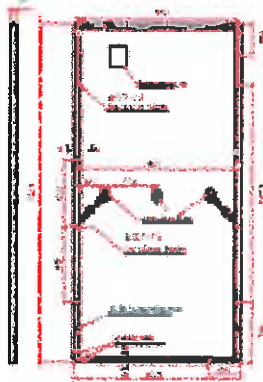




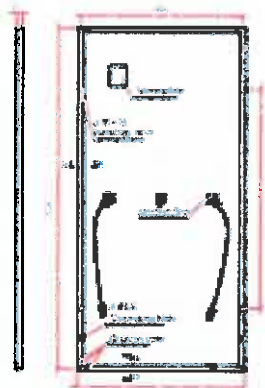
# PRODUCT SPECIFICATIONS

## Panel Specs

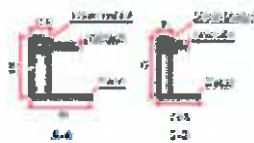
DIMENSIONS OF PV MODULE (mm)



350W (350W)



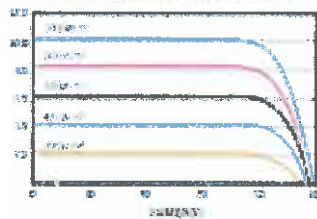
400W (400W)



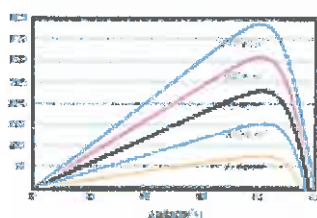
6-4

6-5

I-V CURVES OF PV MODULE(350W)



P-V CURVES OF PV MODULE(350W)



### ELECTRICAL DATA (STC)

Peak Power (watts)-P <sub>max</sub> (Wp)*	350	355	360	365	400	405	410
Power Output Tolerance (Wp) (W)	±1%						
Minimum Power Voltage (V <sub>mp</sub> ) (V)	35.5	40.1	40.5	40.5	40.1	40.4	41.7
Maximum Power Current (I <sub>mp</sub> ) (A)	9.52	9.51	9.54	9.69	9.74	9.79	9.84
Open Circuit Voltage (V <sub>oc</sub> ) (V)	45.1	45.5	45.7	50.1	50.4	50.8	51.2
Short Circuit Current (I <sub>sc</sub> ) (A)	9.99	10.03	10.05	10.19	10.18	10.29	10.39
Module Efficiency (η <sub>p</sub> ) (%)	18.7	18.8	19.2	19.4	19.7	19.8	20.2

STC: Irradiance 1000W/m<sup>2</sup>; Cell Temperature 25°C; Air Mass AM1.5; Maximum Spectrum Error ±0.5%

### ELECTRICAL DATA (NHOT)

Maximum Power (Wp) (Wp)	287	291	295	299	303	307	311
Maximum Power Voltage (V <sub>mp</sub> ) (V)	37.5	37.0	36.5	35.9	36.1	36.4	36.7
Maximum Power Current (I <sub>mp</sub> ) (A)	7.54	7.59	7.55	7.70	7.74	7.79	7.82
Open Circuit Voltage (V <sub>oc</sub> ) (V)	45.4	45.8	46.3	47.3	47.5	47.9	48.3
Short Circuit Current (I <sub>sc</sub> ) (A)	8.05	8.08	8.12	8.15	8.20	8.24	8.28

NHOT: irradiance at 1000W/m<sup>2</sup>; Ambient Temperature 22°C; Wind Speed 1m/s

### MECHANICAL DATA

Solar Cells	Monocrystalline
Cell Orientation	144 cells (6 × 24)
Module Dimensions	992 × 1650 × 36 mm (39.03 × 65.00 × 1.38 inches)
Weight	22.9kg (50.5lb)
Class	3.2 mm (0.125 inches) High Transmission, AR Coated Heat Strengthened Glass
Encapsulant Material	EVA
Backsheet	White
Frame	36 mm (1.38 inches) Anodized Aluminum Alloy
J-Box	IP 68 rated
Cables	Photovoltaic Technology Cable 4 Core (0.200 inches) Zinc plated # 24 Copper 385mm (5.97 × 1.52 inches) Insulator (Ø 1400 mm × 1400 mm) (56.12 × 56.12 inches)
Connector	Tina TS4

### TEMPERATURE RATINGS

MPPT Temperature Operating Temperature	41°C (±5°C)
Temperature Coefficient of P <sub>max</sub>	-0.55%/°C
Temperature Coefficient of V <sub>oc</sub>	-0.25%/°C
Temperature Coefficient of I <sub>sc</sub>	0.04%/°C

### MAXIMUM RATINGS

Operating Temperature	-40°~+85°C
Maximum System Voltage	1500V DC (IEC)
	1500V AC (UL)
Max Series Fuse Rating	20A

(Go to [www.evergy.com](http://www.evergy.com) for more information on our products and services.)

### WARRANTY

- 10-year Product Workmanship Warranty
- 25-year Power Warranty

(Please refer to product warranty for details.)

### PACKAGING CONFIGURATION

- Modules per box: 30 pieces
- Modules per 40' container: 630 pieces

# PRODUCT SPECIFICATIONS

## Inverter Specs



SUNNY TRIPOWER CORE1 33-US / 50-US / 62-US



### Fully integrated

- Innovative design requires no additional racking for rooftop installation
- Integrated DC and AC disconnects and overvoltage protection
- 12 direct string inputs for reduced labor and material costs

### Increased power, flexibility

- Multiple power ratings for small to large scale commercial PV installations
- Six MPPT trackers for flexible stringing and maximum power production
- OptiTrac™ Global Peak shade-tolerant MPPT tracking

### Enhanced safety, reliability

- Integrated SunSpec PLC signal for module-level rapid shutdown compliance to 2017 NEC
- Next-gen DC AFCI arc-fault protection certified to new Standard UL 1699E

### Smart monitoring, control, service

- Advanced smart inverter grid support capabilities
- Increased POI with SMA enexOS cross sector energy management platform
- SMA Smart Connected proactive O&M solution reduces time spent diagnosing and servicing in the field

## SUNNY TRIPOWER CORE1 33-US / 50-US / 62-US

It stands on its own

The Sunny Tripower CORE1 is the world's first free-standing PV inverter for commercial rooftops, carports, ground mount and repowering legacy solar projects. Now with expanded features and new power classes, the CORE1 is the most versatile, cost-effective commercial solution available. From distribution to construction to operation, the Sunny Tripower CORE1 enables logistical, material, labor and service cost reductions. Integrated SunSpec PLC for rapid shutdown and enhanced DC AFCI arc-fault protection ensure compliance to the latest safety codes and standards. With Sunny Tripower CORE1 and SMA's enexOS cross sector energy management platform, system integrators can deliver comprehensive commercial energy solutions for increased ROI.

[www.sma.com/us/en](http://www.sma.com/us/en)



[jnolen@goenergylink.com](mailto:jnolen@goenergylink.com) | [lindsay.freeman@evergy.com](mailto:lindsay.freeman@evergy.com)

# PRODUCT SPECIFICATIONS

## Inverter Specs

Technical data*	Sunny Tripower CORE1 33-US	Sunny Tripower CORE1 50-US	Sunny Tripower CORE1 62-US
<b>Input (DC)</b>			
Maximum array power	10000 Wp STC	75000 Wp STC	93750 Wp STC
Maximum system voltage	1000 V	1000 V	1000 V
Rated MPPT voltage range	200 V - 800 V	200 V - 800 V	250 V - 800 V
MPPT operating voltage range	150 V - 1000 V	150 V - 1000 V	150 V - 1000 V
Minimum DC voltage / array voltage	150 V / 182 V	150 V / 182 V	150 V / 182 V
MPPT resolution / range per MPPT input	6 / 2	6 / 2	6 / 2
Maximum operating input current per MPPT tracker	120 A / 30 A	120 A / 30 A	120 A / 30 A
Maximum short-circuit current per MPPT (per string input)	30 A / 30 A	30 A / 30 A	30 A / 30 A
<b>Output (AC)</b>			
AC nominal power	33300 W	50000 W	62500 W
Maximum apparent power	33300 VA	50000 VA	62500 VA
Output phases / line configuration	3 / 3-INV-PE	3 / 3-INV-PE	3 / 3-INV-PE
Normal AC voltage	480 V / 277 V VWT	480 V / 277 V VWT	480 V / 277 V VWT
AC voltage range	244 V - 305 V	244 V - 305 V	244 V - 305 V
Maximum output current	40 A	64 A	75.5 A
Rated grid frequency	60 Hz	60 Hz	60 Hz
Grid frequency range	50 Hz - 60 Hz / 5 Hz - 10 Hz	50 Hz - 60 Hz / 5 Hz - 10 Hz	50 Hz - 60 Hz / 5 Hz - 10 Hz
Power factor at rated power / adjustable range (min/max)	1 / 0.9 leading - 0.9 lagging	1 / 0.9 leading - 0.9 lagging	1 / 0.9 leading - 0.9 lagging
Harmonic THD	< 5%	< 5%	< 5%
<b>Efficiency</b>			
CEC efficiency (preliminary)	99.5%	98%	98%
<b>Protection and safety features</b>			
Isolated DC disconnect	●	●	●
Isolated AC disconnect	●	●	●
Ground fault monitoring (Pv0 / Differential current)	●	●/●	●/●
DC AC/DC/DC/DC protection	●	●	●
Surge FID signal for rapid shutdown	●	●	●
DC reverse polarity protection	●	●	●
AC short-circuit protection	●	●	●
DC surge protection Type 2 / Type 1+2	●/●	●/●	●/●
AC surge protection Type 2 / Type 1+2	●/●	●/●	●/●
Institution class / overvoltage category (see page 540)	●/●	●/●	●/●
<b>General data</b>			
Device dimensions (W/H/D)	421 mm / 732 mm / 667 mm (24.6 in x 28.8 in x 26.4 in)		
Device weight	54 kg (118 lbs)		
Operating temperature range	-25 °C - +45 °C (-13 °F - +109 °F)		
Storage temperature range	-20 °C - +70 °C (-4 °F - +158 °F)		
Relative humidity maximum (full power @ 25 °C)	95% RH		
Internal convection at night	0 W		
Topology	Three-Phase		
Cooling Concept	OptiCool (forced convection, variable speed fan)		
Enclosure protection rating	Type 4X, IP20 (see page 536)		
Maximum permissible relative humidity (non-condensing)	100%		
<b>Additional information</b>			
Mounting	Free-standing with included mounting feet		
DC connection	Amplified LVTX PV connectors		
AC connection	See terminals: 4 AWG to 6 AWG CU/AL		
LED indicators (Status / Fault / Communication)	●		
Network interface Ethernet / WLAN / RS485	●/●/●		
Data protocols: SMA Modbus / SunSpec Modbus / ModbusRTU	●/●/●		
Multifunction relay	●		
OptiView (Status) Push (Shade-Tolerant MPPT tracking)	●		
Integrated Power Control / Low Demand ZPT	●/●		
ON Grid ready / SMA Field Service Compatible compatible	●/●		
SMA Smart Connected (remote monitoring and service support)	●		
Certification (pending on page 522)			
Certification and approvals	UL 1741, UL 1699B, UL 1998, IEC 61647, CAN/CSA-C22.2 No. 62109		
FCC compliance	FCC Part 15 Class A		
Grid interconnection standards	UL 1741 SA - CA Rule 21, HBCC Rule 14H		
Advanced grid support capabilities	UVVRT, UVVET, VoltMax, VoltWatt, FrequencyWatt, Ramp Rate Control, Fixed Power Factor		
<b>Warranty</b>			
Standard	10 years		
Optional extension	15 / 20 years		
● Optional features   ● Standard features   ● Not available			
Type designation	* Preliminary data as of June 2018 STP33-US-41	STP50-US-41	STP62-US-41



Toll Free +1 888 4 SMA USA  
www.SMA-America.com

SMA America, LLC

# PRODUCT SPECIFICATIONS

## Racking Specs



### Complete Single-Source Solutions

RBI Solar's ground mount solar systems are designed and engineered for each customer's site specific conditions to minimize the field installation labor by eliminating field welding, drilling, or other on-site fabrication. Our meticulous project planning and precise execution combine to provide you with solar racking solutions that are tailored to the unique conditions of your location while reducing your overall total project costs. RBI provides a wide range of PV mounting systems in various sizes to offer freedom and flexibility to support every type of PV module.

#### Why choose RBI Solar?

- Single-source solutions aide in reduction of overall total project costs
- Streamlined production process
- Wider selection of component parts
- Higher strength steel with corrosion protection
- Uses less steel without sacrificing strength
- Pre-assembled components available
- Quick response & efficient communication
- Follow contours to mitigate civil/site work
- Nationwide installation services
- ETL Classified to UL Standard 2703
- 20-yr limited warranty
- 85+ years manufacturing experience & bankable financial backing





# PRODUCT SPECIFICATIONS

## Building Automation System (BAS) Specs

WebCTRL

Building Automation System

AUTOMATED LOGIC  
SOLUTIONS



### Key Features and Benefits

- Powerful, comprehensive building management with mobile, tablet and web graphical access
- Dynamic color flow plans convey a stark understanding of building conditions
- Customizable graphics, schedules, trends, reports, and alarms
- Inherent dataCTRL Environmental Index™ tool for measuring, analyzing, and comparing comfort conditions against setpoints, helping you balance comfort with efficiency
- Powerful WebCTRL Time Log™ graphics for analyzing and troubleshooting up to 24 hours of past building operation
- Built-in Fault Detection and Diagnostics (FDD) to help anticipate, provide insight, and automatically respond to building issues
- Award-winning Green Energy rebate program using the OpenADR 2.0 protocol
- Optimize Energy Rebate™ rebate package can be added to optimize, compare, and normalize building energy consumption data over different time periods
- Optimize Eco Screen™ sustainability score software can be added to showcase building systems and energy efficient building features to residents and visitors
- Easily integrates to other building systems and third party software using BACnet, Modbus™, Lonworks™, and other proprietary protocols
- Fully compatible with Automated Logic legacy systems

WebCTRL unifies the power of all Automated Logic legacy building automation systems in a **big web!**

The Automated Logic® WebCTRL® building automation system offers an intuitive user interface and powerful tools to help facility managers keep resources profitable, manage energy consumption, measure, monitor, and optimize systems, and analyze the results. And best of all, this can all be done anytime, anywhere, through a variety of Internet devices, from desktop PCs to smartphones and tablets.

WebCTRL systems provide real-time global energy management and control, and easily work with all major electrical and mechanical subsystems in the building. With these capabilities and more, facility managers will be able to configure and manage building control systems in ways that best serve their operating needs and budget.

# APPENDIX

## Recent Project References

### ULC – AmeriCorps Mountain West Campus

- First project of ULC portfolio
- Solar farm, VRV Daikin water source geothermal heat pump system, recommissioning of HVAC assets, gas conversion of RTU's, high efficiency condensing injection loop boiler package, LED lights, retro commissioning of DOAS system, EnergyStar windows, white TPO insulated roof, net-zero electric

Aurora, CO

*Eric Parker, Sustainability and Facilities Manger*

720.301.3176



# APPENDIX

## Recent Project References

### Doctors Park Medical Plaza

- Two facility installation
- Carport & rooftop solar, battery energy storage, LED lights, HVAC controls with demand mgmt. BAS, rate category change, net-zero electric

*Columbia, MO*

*John Riddick, Owner*

*877.879.9038*





# APPENDIX

## Recent Project References

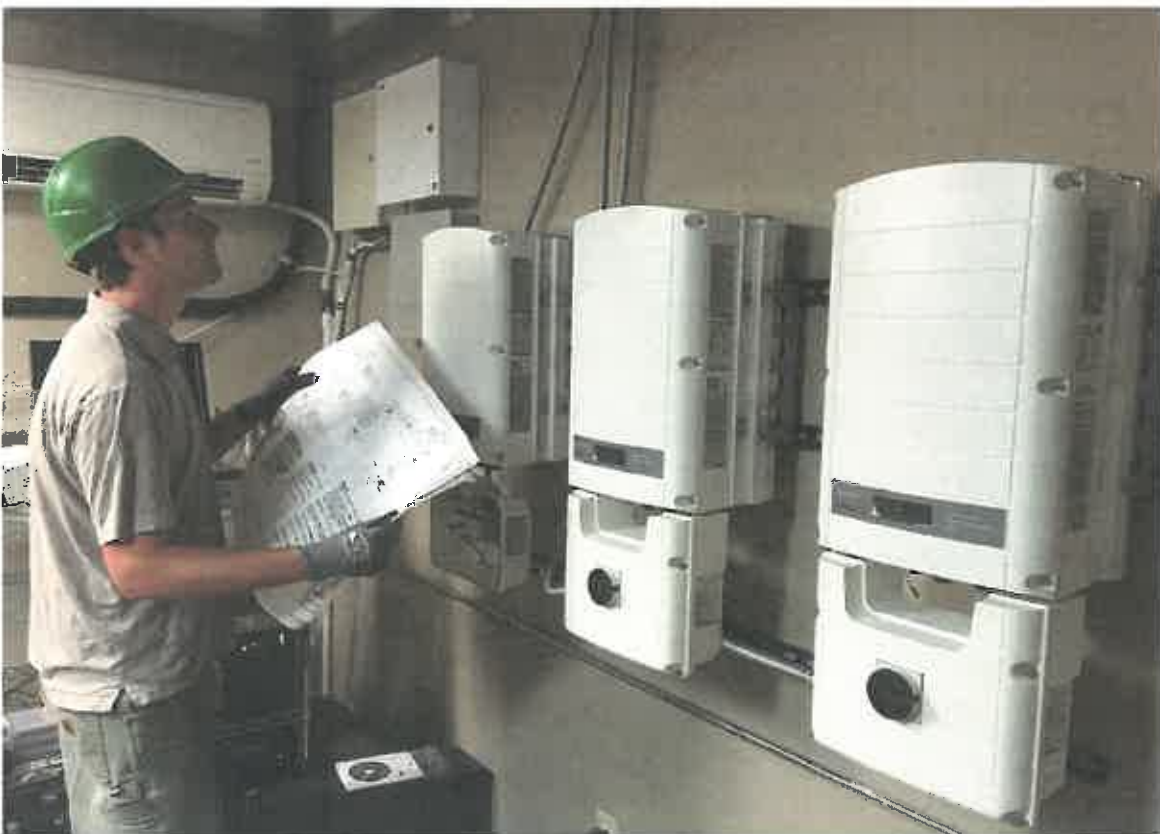
### Affordable Family Storage – Self Storage

- Repeat customer – three locations plus future projects slated
- Solar, USDA Grants

*Jefferson City, MO; Springfield, MO; Slated for future projects in IA, KS, and NE*

*Trent Overhue, Owner*

*402.659.3540*



# APPENDIX

## Recent Project References

### Wilson's Sports and Fitness Centers

- Repeat customer – two locations plus future projects slated
- Rooftop and carport solar, insulation, high efficiency scroll chiller, ice and battery storage, LED lights, HVAC controls with demand mgmt. BAS, Time-Of-Use rate category change

*Columbia, MO*

*JD Abrams, President*

*573.881.9696*



# APPENDIX

## Recent Project References

### True Media, True Properties – Offices

- Repeat customer – three locations in MO
- Rooftop solar, HVAC controls with BAS, LED lights, destratification, duct reconfiguration with zoning

*St. Louis County and Columbia, MO*

*Jack Miller, Owner*

*314.219.0946*





# APPENDIX

## Recent Project References

### IKE Skelton – Jefferson City National Guard Facility

- MO State RFP
- Rooftop solar

*Jefferson City, MO*

*Jeremy Newton, Design Project Manager*

*573.638.9500*





# APPENDIX

## Recent Project References

### EDC Business & Community Partners

- Nonprofit business incubator
- Rooftop solar, HVAC controls with BAS, LED lights

*St. Charles, MO*

*Craig Frahm, CFO*

*636.229.5277*



# APPENDIX

## Recent Project References

### Moberly Cardio Surgical Center/Lyon Crest Student Housing Facility

- Repeat customer – alternate asset classes
- Rooftop and carport solar, battery storage, HVAC controls with demand management BAS, EV charging station

*Moberly, MO and Columbia, MO*

*Sanjeev Ravipudi, MD, Owner*

*660.616.0022*



# APPENDIX

## Recent Project References

### Faber & Brand – Law Offices

- Carport & rooftop solar, LED lights, mini split HVAC installation with zoning, HVAC controls with demand management, rate category change, first PURPA interconnection for a CO-OP in MO

*Boone County*

*Stuart Mullen, Owner*

*573.449.3141*





# APPENDIX

## Recent Project References

### GME – North American Safety Equipment Supplier

- Repeat customer – future project slated
- Rooftop solar, OCC sensor light package for shipping warehouse, lighting retrofit, daylight harvesting, Suntracker skylights, thermostat package

*Boone County*

*Beau Aero, Owner*

*7181.210.3913*



# APPENDIX

## Recent Project References

### TelGaas – Satellite & Aerospace Components

- Ground mount and rooftop solar, ordinance variances required

*O'Fallon, MO*

*Bill Lazechko, Owner*

*636.272.2384*



**SOLAR SERVICES AGREEMENT**

THIS SOLAR SERVICES AGREEMENT (this "**SSA**"), dated as of March 31, 2021 (the "**Effective Date**") is entered into by and between **Evergy Energy Solutions, Inc.**, a Missouri corporation ("**Provider**"), and **Spring Hill USD 230** ("**Customer**") (together, **Provider** and **Customer** are the "**Parties**").

**RECITALS:**

WHEREAS, **Customer** and **Provider** desire to agree to terms whereby **Provider** will supply certain solar and accompanying demand reduction services ("**Solar Services**") to **Customer** including:

- the designing, sizing, placement and installation of an electricity grid-connected solar photovoltaic system with a total generating capacity rated at approximately 750.4 kW DC, as more fully described in **Exhibit A** (the "**System**"), on the **Site** (as defined below);
- all necessary construction services, including but not limited to, engineering equipment and material procurement, construction management, and construction relating to the **System** in accordance with the terms set forth herein;
- the delivery of electrical energy (the "**Energy**") generated by the **System** to the **Site** (as defined below)
- the financing of costs, including the monetizing of any tax benefits for the **System** and the related **Energy**;
- arranging for or providing maintenance as agreed to by the **Parties**; and
- Integration of the **System** with power monitoring and demand management logic software to the existing automated logic **BAS** (**Building Automation System**).

WHEREAS, the **Customer** is the owner or customer of the real property and related improvements, the address or legal description of which is provided in **Exhibit B**, (the "**Site**") and, pursuant to this **SSA**, the **Customer** will grant to **Provider** an easement to design, finance, construct, own, maintain, and operate the **System** on the **Site**;

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the **Parties** hereby agree as follows:



## AGREEMENT

1. **Definitions.** Definitions not provided within the body of this SSA or within the applicable exhibit are set forth in **Exhibit C** hereto.

2. **Solar Services.** Subject to the terms and conditions hereof, Provider agrees to provide the Solar Services to Customer. Provider may, at its sole discretion, use contractors and any level of subcontractors to perform its obligations hereunder.

3. **System Installation.**

3.1 **Conditions Precedent to Commencement of Construction and Installation.** Commencement by the Provider of construction and installation activities with respect to a System shall be subject to the satisfaction of the following conditions precedent:

3.1.1. Provider shall be in the process of obtaining or have obtained the permits, licenses and other approvals required by Applicable Law to be obtained by Provider prior to such commencement;

3.1.2. Provider shall be in the process of obtaining or have obtained relevant inspections (such as a roof inspection and inspection of a structural engineer) verifying load-bearing capacity and suitability of the Site for construction, installation and ongoing operation of the System; and

3.1.3. Provider shall obtain insurance or proof of insurance, pursuant to the terms of this SSA.

provided, however, if the foregoing conditions precedent are not completed within 365 days following the date of this SSA, unless extended by Customer (not including any days in which a Force Majeure Event existed), despite Provider's commercially reasonable efforts to satisfy said conditions, Provider or Customer may terminate the SSA without triggering the default provisions of this SSA or any liability under this SSA. Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this SSA to revise the Placed in Service Date and Term of this SSA.

3.2 **Installation.** Subject to Customer's compliance with this SSA, Provider will cause the System to be designed, engineered, procured, installed and constructed in material accordance with the terms of this SSA. Notwithstanding the foregoing, in the event that Provider determines, in its sole discretion, that Provider is unable to install a System at the Site, Provider shall provide notice to Customer of such determination, and the Parties shall use their best efforts to find and agree upon an alternative location for the System. In the event that no such agreement can be reached within thirty (30) calendar days of Provider's notice, Provider or Customer may terminate the SSA by written notice without triggering the default provisions of this SSA or any liability under this SSA.

3.3 **Placement in Service and Placed in Service.** The System shall be deemed to be placed in service following the receipt of all required licenses and permits relating

to the System, the completion of any critical tests relating to the safety and functionality of the System, the commencement of daily or regular operations, and the synchronization of the System into the power grid for generating electricity to produce income, all consistent with the IRS's published guidance interpreting the terms "placement in service" and "placed in service" for purposes of section 48 of the IRS Code.

### 3.4 Delivery of Energy.

3.4.1. On the Placed in Service Date and thereafter, Provider is under no obligation to deliver Energy to the Site unless and until all permits and licenses required to be obtained under Applicable Law in connection with the operation of the System have been obtained and remain in full force and effect. In no event shall Provider have any liability to Customer for a delay in the Placed in Service Date. After the Placed in Service Date, Provider shall use commercially reasonable efforts to commence and continue delivery of Energy and shall have no liability to Customer for failure to deliver Energy unless Provider has not met this commercially reasonable efforts standard.

3.4.2. REC Financial Incentives. To the extent allowable by Applicable Law, all REC Financial Incentives available in connection with the System shall be owned by Provider. Customer shall use all commercially reasonable efforts to assist Provider in obtaining all REC Financial Incentives currently available or subsequently made available in connection with the System. Unless otherwise provided in this SSA, if Customer acts in good faith to complete documentation or take actions reasonably requested by Provider, then Customer shall have no liability to Provider should Provider fail to receive any REC Financial Incentives.

3.4.3. Local Utility Incentives. To the extent that the local utility where the Site is located provides or makes available solar incentives, rebates, or other local incentives as provided by that local utility (the "Local Utility Solar Incentive") which would apply to the System, Customer shall assist Provider, if necessary and at Provider's expense, in submission of any documentation or application to the local utility for such Local Utility Solar Incentive, and Provider shall thereafter be entitled to all rights, title and interest in and to the Local Utility Solar Incentive with the local utility, or any other local incentive provided by said local utility during the Term of this SSA.

3.4.4. Guaranteed Yearly Solar Production and Efficiency Offset. Provider and Customer agree that actual Energy produced by the System will vary due to various factors beyond either Party's control, including monthly or seasonal weather variances, shading and other factors impacting generation, and that while the annual Energy production of the System may be estimated or projected, it is difficult to establish the reasons why projected and actual Energy production may vary. For this reason, the Parties agree to define "compliance" or "acceptable performance" within certain parameters by calculating the Guaranteed Yearly Solar Production and Energy Offset of the System and awarding Customer an adjustment payment or credit to be applied against subsequent Service Fees

should the System fail to achieve the applicable Guaranteed Yearly Solar Production and Efficiency Offset amount as further set out in, and calculated in accordance with, **Exhibit E**.

3.5 Interconnection Point. The point where the System is interconnected to Customer's electrical intertie is hereinafter referred to as the "**Interconnection Point**." Risk of loss related to Energy will transfer from Provider to Customer at the Interconnection Point. Customer will be deemed to be in exclusive control of the Energy at and from the Interconnection Point.

3.6 Non-Disturbance Agreements. Customer shall pay for and obtain all consents required for it to enter into and perform its obligations under this SSA from its lenders, landlord, tenants, and any other persons with interests in the Site. If there is any mortgage, fixture filing, or similar item against the Site which could be construed as prospectively attaching to the System or this SSA, upon the request of Provider, Customer shall promptly provide an acknowledgement and consent from such lienholder, in form and substance acceptable to Lender, stating that the ownership of the System remains in Provider and further acknowledging that the System is personal property of Provider and agreeing not to disturb the rights of Provider in the System and under this SSA. If Customer is the fee owner of the Site, Customer consents to the filing of a disclaimer of the System as a fixture of the Site in any public record. If Customer is not the fee owner, Customer will obtain such consent from such owner of the Site. Such acknowledgment and consents, or acceptable notices thereof, shall be recorded, at Customer's expense, in the appropriate recording office. Customer may in the future mortgage, pledge, and grant security interests in all or a portion of the Site and the improvements thereon, provided the mortgagee or other grantee, of the encumbrance acknowledges this SSA, the Solar Services, all access and other rights granted hereunder, and the priority of Provider's (and/or Lender's) rights in the System, the Solar Services and all access rights.

#### 4. Operation & Maintenance.

##### 4.1 Operation & Maintenance and Technical Assistance.

4.1.1. O&M Work. Provider shall provide operation, repair, monitoring and maintenance services for the System during the Term of this SSA, including the monitoring and maintenance of metering equipment determining the quantity of electricity produced by the System and Actual Demand Reduction at the Site (collectively, the "**O&M Work**"). Provider shall perform the O&M Work to ensure that the System is capable of delivering Energy.

4.1.2. Phone/Data Line. Customer shall properly maintain, pay for and provide access to the necessary phone, computer, or other communication lines necessary for Provider to record the electrical output of the System for the entire Term.

4.2 Malfunctions. Each of Customer and Provider shall notify the other within one business day following the discovery by it of (a) any material malfunction in the operation of the System or (b) any interruption in the supply of Solar Services. Provider and Customer each shall notify the other Party immediately upon the discovery of an emergency condition in the System.

4.3 Title to System. Provider, or Provider's permitted assigns, shall at all times retain title to and be the legal and beneficial owner of the System, including the right to any REC Financial Incentives, environmental attributes of any kind, or other tax credits or benefits available under federal or state law, and the System shall retain the legal status of Provider's or Provider's affiliates personal property as defined under Applicable Law. The System is personal property and shall not attach to or be deemed a part of, or fixture to, the Site. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Customer covenants that it shall keep the System free from all liens, claims and encumbrances of its lenders and any other third parties (other than those created by Provider or its creditors) and will engage in its best efforts to place all persons having an interest in or lien upon the real property comprising the Site on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Site which could be construed as prospectively attaching to the System as a fixture of the Site, Customer shall provide to Provider a disclaimer, release or other similar instrument reasonably acceptable to Provider from any such mortgagee or person making a fixture filing on the Site. If Customer is the fee owner of the Site, Customer consents to the filing of a disclaimer of the System as a fixture of the Site in the office where real estate records are customarily filed in the jurisdiction of the Site. If Customer is not the fee owner, Customer will obtain such disclaimer from such owner.

4.4 Section 7701. It is the intention of the Parties that the provisions in this SSA shall meet all of the requirements set forth in Section 7701(e)(3) of the Code, and any related Treasury Regulations and IRS administrative pronouncements (as amended), so that this SSA is deemed to be treated as a "service contract" and not as a "Lease" pursuant to Code Section 7701(e). Notwithstanding any provisions in the SSA, Parties agree to make any amendments to this SSA to achieve such compliance as reasonably directed by Provider and its counsel.

4.5 Shutdowns, Relocation; Closure or Sale of Site.

4.5.1. Customer Requested Shutdown. Customer, from time to time, may request Provider to temporarily stop operation of the System for a period no longer than fourteen (14) days, such request to be reasonably related to Customer's activities in maintaining and improving the Site. Upon prior written consent of Provider, Customer may request Provider to temporarily stop operation of the System for a period exceeding fourteen (14) days. During any shutdown period, regardless of duration (but not including periods coinciding with the occurrence of a Force Majeure Event or periods following a Provider termination as provided for below in this Section), for purposes of Provider's calculation of

the Actual Yearly Solar Production and Efficiency Offset during such Annual Period, Provider shall estimate and calculate the amount of lost Energy production, lost efficiency offsets, and lost Actual Demand Reduction during such time that the System is not Operating and shall include those calculated amounts in the Provider's final calculation of the Actual Yearly Solar Production and Efficiency Offset for that applicable Annual Period. Determination of the amount of Energy that would have been produced and Actual Demand Reduction that would have taken place during the period of the shutdown shall be based on the **Exhibit E Estimated Yearly Solar Production and Efficiency Offset** during the period of such shutdown, unless Provider and Customer mutually agree to an alternative methodology. If a shutdown pursuant to this Section continues for one hundred and eighty (180) days or longer, Provider may terminate this SSA and require Customer to pay the amount specified in **Section 10.1** for Customer Defaults.

**4.5.2. Provider Safety Shutdown.** In addition to the right of Provider to shut down the System for maintenance, Provider may shut down the System if Provider, in the exercise of reasonable judgment, believes Site conditions or activities of persons on Site, which are not under the control of Provider, whether or not under the control of Customer, may interfere with the safe operation of the System. Provider shall give Customer notice of such a shutdown promptly upon becoming aware of such conditions or activities. Provider and Customer shall cooperate and coordinate their respective efforts to restore Site conditions so as to not interfere with the safe operation of the System and to reduce, to the greatest extent practicable, the duration of the shutdown. In the event of such a shutdown, Customer shall be deemed to have acted under **Section 4.5.1** to shut down the System, but specifically excluding that period of time prior to Provider's notice of the shutdown or during any Force Majeure Event. If a shutdown pursuant to this Section 4.5.2 continues for one hundred and eighty (180) days or longer, Provider may elect to terminate this SSA and require Customer to pay the amount specified in **Section 10.1** for Customer Defaults.

**4.5.3. System Relocation.** Customer may request to move the System to another location on the Site or to another Site owned or leased by Customer, but any such relocation shall be subject to the approval of Provider and any Lender in each of their sole discretion. In connection with such approved relocation, the Parties shall execute an amendment to this SSA reflecting the new location of the System but otherwise continuing all the terms and conditions of this SSA for the remaining Term of this SSA. Customer shall also provide any consents or releases required by Provider in connection with the new location. Customer shall pay all costs associated with the removal and relocation of the System, including installation and testing costs and interconnection costs. In addition, during the period of relocation, for purposes of Provider's calculation of the Actual Yearly Solar Production and Efficiency Offset during such Annual Period, Provider shall estimate and calculate the amount of lost Energy production, lost efficiency offsets, and lost Actual Demand Reduction during such time that the System is not Operating due to this relocation and shall include those calculated

amounts in the Provider's final calculation of the Actual Yearly Solar Production and Efficiency Offset for that applicable Annual Period. Determination of the amount of Energy that would have been produced and Actual Demand Reduction that would have taken place during the period of the shutdown and relocation shall be based on the Exhibit E Estimated Yearly Solar Production and Efficiency Offset during the period of such shutdown, unless Provider and Customer mutually agree to an alternative methodology.

**4.5.4. Site Shutdown: Interconnection Deactivated.** In the event Site is closed as a result of an event that is not (i) a Force Majeure Event or (ii) caused by or related to any unexcused action or inaction of Provider, Customer shall nevertheless continue to pay Provider for all Solar Services provided. If an interconnection becomes deactivated for reasons that are not a Force Majeure Event or caused by or related to any unexcused action or inaction of Provider such that the System is no longer able to produce Energy or transfer Energy to its respective Site or to the Interconnection Point, for purposes of Provider's calculation of the Actual Yearly Solar Production and Efficiency Offset during such Annual Period, Provider shall estimate and calculate the amount of lost Energy production, lost efficiency offsets, and lost Actual Demand Reduction during such time that the System is not Operating and shall include those calculated amounts in the Provider's final calculation of the Actual Yearly Solar Production and Efficiency Offset for that applicable Annual Period. Determination of the amount of Energy that would have been produced and Actual Demand Reduction that would have taken place during the period of the shutdown shall be based on the Exhibit E Estimated Yearly Solar Production and Efficiency Offset during the period of such shutdown, unless Provider and Customer mutually agree to an alternative methodology. If a shutdown pursuant to this Section continues for one hundred and eighty (180) days or longer, Provider may terminate this SSA and require Customer to pay the amount specified in Section 10.1 for Customer Defaults.

**4.5.5. Sale of Site.** In the event Customer transfers (by sale, SSA assignment or otherwise) all or a portion of its interest in the Site, Customer shall remain primarily liable to Provider for the performance of the obligations of Customer hereunder notwithstanding such transfer. However, if no Customer Default has occurred and is continuing and the transferee has been deemed acceptable in writing by Provider (and Lender, if applicable) in its sole discretion, and the transferee executes all necessary agreements assuming this SSA in form and substance satisfactory to Provider (and Lender, if applicable) in its sole discretion, Customer may be released from further obligations under this SSA.

**4.6 Hazardous Materials.** Provider is not responsible for any Hazardous Materials encountered at the Site which were not brought to the Site by Provider. Provider may terminate this SSA at any time upon becoming aware of any Hazardous Materials; provided, however, in the event that Customer agrees to fully pay for clean-up of the Hazardous Materials, then Provider must use reasonable discretion in deciding to terminate or not terminate this SSA. If this SSA is terminated due to Hazardous



Materials, to the extent allowable under Applicable Law, Customer shall reimburse Provider for all expenses reasonably incurred by Provider in the design and installation of the System prior to the discovery of the Hazardous Materials and in demobilizing and decommissioning the System after the discovery of the Hazardous Materials.

5. Purchase of Solar Services. With respect to the System installed pursuant to this SSA:

5.1 Purchase Requirement. Customer agrees to accept one hundred percent (100%) of the Energy delivered by the System during the Term (or any renewal thereof). Customer acknowledges and agrees that the Solar Services represent a package of services including the production and supply of Energy from the System together with insurance, training, building energy conservation, demand reduction and any other services associated with solar energy production that Provider may provide to Customer. The payment for Solar Services is calculated to include all of the above services in the price.

5.2 REC Financial Incentives. For the avoidance of doubt, Customer's purchase of Solar Services does not include the right to claim the benefit or use of any REC Financial Incentives, Local Utility Solar Incentive, or tax or depreciation benefits that are currently or may become applicable during the Term, all of which shall be retained and owned by Provider as the owner of the System. Customer shall not take any action or suffer any omission at the Site that would have the effect of impairing the value to the Provider of any applicable tax, depreciation, or environmental benefits. Customer shall be solely responsible for notifying Provider of any action or omission that could impair such value and for consulting with Provider as necessary to prevent impairment of the value of tax, depreciation, or environmental benefits.

5.3 Solar Rebate Amount. As of the Effective Date of this SSA, it is not anticipated that Provider will be eligible for any Solar Rebate Amount. Notwithstanding the foregoing, Customer agrees that it will, at Provider's expense, assist Provider in obtaining any Rebates and Tax Incentives currently available or subsequently made available in connection with the System. Customer shall not knowingly take or suffer any action or omission at the Site that would have the effect of impairing the value to the Provider of any such future Rebates and Tax Incentives or depreciation or environmental benefits. Customer shall be solely responsible for notifying Provider of any action or omission by Customer that could knowingly impair such value and will consult with Provider, as necessary, to come to a mutual written resolution to prevent impairment of the value of such Rebates and Tax Incentives or depreciation or environmental benefits.

6. Price and Payment.

6.1 Price. Customer shall pay Provider for the Solar Services provided pursuant to the terms of this SSA on the dates and in the manner set forth in Section 6.3 and at the rates set forth in Exhibit D, plus any additional amount required pursuant to Section 6.2.

**6.2 Taxes.**

**6.2.1. Income Taxes.** Provider shall be responsible for any and all income taxes associated with payments from Customer to Provider for Solar Services. Provider (and/or Lender), as owner of the System, shall be entitled to all REC Financial Incentives, including those related to taxes, with respect to the System.

**6.2.2. Sales Taxes.** Customer shall be responsible for all taxes, fees, and charges, including sales, excise, use, and gross receipts taxes, imposed or authorized by any Governmental Authority on the sale of Solar Services by Provider to Customer. Customer shall timely report, make filings for, and pay any and all such taxes assessed directly against it and shall reimburse Provider for any and all such taxes assessed against and paid by Provider.

**6.2.3. Property Taxes.** Provider shall be responsible for all ad valorem personal property or real property taxes levied against the Site, improvements thereto and personal property located thereon. If Customer is assessed any taxes related to the existence of the System on the Site, Customer shall promptly notify Provider. Customer and Provider shall cooperate in contesting any such assessment. If, after resolution of the matter, such tax is imposed upon Provider related to the improvement of real property by the existence of the System on the Site, Provider shall pay such tax.

**6.2.4. Tax Contests.** Each Party has the right to contest taxes in accordance with Applicable Law and the terms of encumbrances against the Site. Each Party shall use all reasonable efforts to cooperate with the other in any such contests of tax assessments or payments. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

**6.2.5. Payment of Delinquent Taxes.** In the event either Party fails to pay any taxes that may become a lien upon the other Party's property, such Party may pay such amounts and in such event shall be entitled to recover such paid amount from the other Party, together with interest thereon at the lesser of (i) one percent (1%) per month, compounded monthly, or (ii) the highest rate allowed by Applicable Law.

**6.2.6. Reimbursement Deadline.** Any reimbursement of taxes owing pursuant to this Section shall be paid within twenty (20) business days of receiving an invoice from the Party who paid the taxes.

**6.3 Review and Credits.** Review and calculation of Customer credits and any Provider deficiencies for the Solar Services sold and purchased under this SSA shall be as follows:

**6.3.1. Annual Review.** Provider shall provide a consolidated invoice to Customer on an annual basis, within a reasonably practicable time after each

**Annual Period.** The invoice will include the Annual Period's: (i) Actual Yearly Solar Production and Efficiency Offset, (ii) Actual Demand Reduction, (iii) any estimated Actual Yearly Solar Production and Efficiency Offset and any Actual Demand Reduction losses calculated and included pursuant to Section 4.5, (iii) the determination of the applicable Solar Production and Efficiency Offset Credits and Demand Credits generated and/or used, and (iv) and any Deficiency Adjustment owed by Provider, all as calculated pursuant to **Exhibit E**.

**6.3.2. Payments.** Subject to adjustment in accordance with the following **Section 6.3.3**, if Provider delivers less than the Guaranteed Yearly Solar Production and Efficiency Offset during any Annual Period after the first Annual Period, then the Deficiency Adjustment will be calculated in accordance with **Exhibit E**, and applied to the Customer's next Annual Period, or, if the SSA has expired or been terminated, then paid by Provider as a Remittance Payment due to Customer within 60 days after the expiration or termination of the SSA.

**6.3.3. Invoice Errors.** Within fifteen (15) days after receipt of any invoice, Customer may provide written notice to Provider of any alleged error therein. If Provider notifies Customer in writing within fifteen (15) days of receipt of such notice that Provider disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days of Provider's response for the purpose of attempting to resolve the dispute. If the Parties are unable to resolve the dispute within thirty (30) days after such initial meeting, such dispute shall be submitted to mediation, as mutually agreed to by the Parties. The mediation shall take place in Overland Park, Kansas (or such other location as mutually agreed to by the Parties) before a single mediator, as mutually agreed to by the parties. The decision of the mediator in the matter shall be non-binding.

**6.3.4. Late Payments.** All payments hereunder shall be made without setoffs or deduction. Any payment not made within the time limits specified in this SSA shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received by the Provider. Such interest shall accrue at the lesser of 1% per month or the highest rate allowed by Applicable Law.

**6.3.5. Delivery of Invoice.** All invoices required by this **Section 6.3** shall be in writing and shall be (a) delivered in person, or (b) mailed, or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the Parties to this SSA shall designate in a written notice to the other Party, or (d) transmitted by facsimile where confirmation of successful transmission is received from the receiving party's facsimile machine (such transmission to be effective on the day of receipt if received prior to 5:00 p.m. local time on a business day or in any other case on the next business day following the day of transmittal), or (e) transmitted by e-mail if receipt of such transmission by e-mail is specifically acknowledged by the

recipient (automatic responses not being sufficient for acknowledgment) addressed to Customer as follows:

Entity: Spring Hill USD 230  
Name: [ Dr. Wayne Burke ]  
Title: [ Superintendent ]  
Address: [ 17640 W. 199th ]  
[ St. Spring Hill, KS 66083 ]  
E-mail: [ burke@usd230.org ]

6.4 Adjustments to Contract Price. In the event there is any change in Applicable Law, the result of which is to increase Provider's costs to provide the Solar Services, Provider will promptly submit to Customer a written notice setting forth (a) a description of the change in Applicable Law, (b) the manner in which such change in Applicable Law has changed or will increase Provider's costs to provide the Solar Services, including reasonable computations in connection therewith, and (c) Provider's proposed adjustment to the Exhibit D rate for the Solar Services payable by Customer to reflect such expected changes in Provider's costs. Customer agrees to negotiate with Provider an adjustment in the Rate such that the new rate compensates Provider for the cost increase related to the change in Applicable Law, which adjustment shall remain in effect over the remaining years of the Term of this SSA or until the Applicable Law that caused the increase in costs is altered, repealed, or made inapplicable to the System.

## 7. General Covenants.

7.1 Covenants of Provider. As a material inducement to Customer's execution and delivery of this SSA, Provider covenants and agrees to the following:

7.1.1. Permits and Approvals. While providing Solar Services, Provider shall use commercially reasonable efforts to obtain, and shall maintain all approvals, consents, licenses, permits, and inspections from relevant Governmental Authorities and the Site's owners, if applicable, and other agreements and consents required to be obtained and maintained by Provider and to enable Provider to perform such work.

7.1.2. Removal of Liens. Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Site or any interest therein; provided that this Section 7.1.2 shall not limit Liens on any System. If Provider breaches its obligations under this Section, it shall immediately notify Customer in writing, shall promptly cause such Lien to be discharged and released of record without cost to Customer, and shall defend and indemnify Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.1.3. Output and Dimensions. Provider may not increase the output or physical dimensions of the System beyond that designated in Exhibit B without the consent of Customer.

7.1.4. Operation of the System. Provider agrees to operate the Systems in such a manner that reasonable levels of comfort are maintained for the employees, residents, and visitors at the Site.

7.2 Customer's Covenants. As a material inducement to Provider's execution of this SSA, Customer covenants and agrees as follows:

7.2.1. Access. Customer hereby grants Provider and its employees, agents, contractors, and subcontractors the right to access the Site in order to construct, maintain, operate, monitor, repair, replace, decommission and remove the System. Such access will be provided during regular business hours, or such other reasonable hours as may be requested by Provider.

7.2.2. Customer Conduct on Site. Customer will not conduct activities on, in or about the Site that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Provider (i) acknowledges that Customer and its employees, agents, contractors and subcontractors (collectively, the "*Customer Permittees*") may need to access the Site to maintain, repair or replace improvements in the vicinity of the System and (ii) consents to such access subject to Customer Permittees' exercise of commercially reasonable efforts to minimize interference to the System and compliance with Provider's safety rules. Customer shall implement and maintain reasonable and appropriate security measures on the Site to prevent Customer Permittees and other unrelated third Parties, from having access to the System, and to prevent from occurring any theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.

7.2.3. Health and Safety. Customer shall at all times maintain the areas of the Site consistent with all Applicable Laws pertaining to the health and safety of persons and property.

7.2.4. Consent to Install. Customer (i) acknowledges that the installation of all or a portion of the System may require installation to the ground or may require physically mounting and adhering portions of the System to the improvements appurtenant to the property and (ii) consents to such mounting or adhering, as applicable.

7.2.5. Security. Customer shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Site's alarms, if any.

**7.2.6. Notice of Damage.** Customer shall promptly notify Provider of any matters it is aware of pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

**7.2.7. Liens.** Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. Customer also shall pay promptly before a fine or penalty may attach to the System any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Customer is responsible. If Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Provider, and to the extent allowable under Applicable Law, shall indemnify Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

**7.2.8. Consents and Approvals.** Customer shall obtain and maintain, and secure and deliver to Provider copies of all consents, approvals, permits, licenses, and authorizations relating to the performance of Customer's obligations and the rights granted by Customer hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument to which Customer is a party or by which Customer is bound, including completing applications for interconnection. Customer shall use reasonable commercial efforts to assist Provider in fulfilling Provider's responsibilities under Section 7.1.1. In connection with entering this SSA, Customer has taken commercially reasonable efforts to ensure that it has legal authority to enter into this SSA.

**7.2.9. Maintenance of Interconnection.** Customer shall ensure that all of the facilities to which Energy is delivered hereunder remain interconnected to the electrical grid during the entire Term, except as specifically permitted under this SSA.

**7.2.10. Overshadowing and Shading.** Notwithstanding any other provision of this SSA to the contrary, Customer, or any Customer, grantee or licensee of Customer, shall not erect any structures on, or make other modifications to, or plantings on, the Site which will interfere with the construction, operation or maintenance of, or solar access of, the System. Further, if Applicable Law and existing easements do not ensure that structures or plantings on adjoining property will not interfere with the solar access for the System, then Customer and Provider shall work together to obtain from owners of adjoining properties any easements reasonably necessary to protect the solar access of the System. Such easements shall run for the benefit of both Customer and Provider. Provider shall pay for the expense of obtaining such easements, including payments to property owners and legal costs, but the rates payable by Customer for Solar Services shall be increased by an amount sufficient for Provider to fully amortize such costs, over a period equal to the lesser of (i) five years or (ii) the remaining Term of this SSA without regard to Customer's option to purchase the System.



**7.2.11. Customer Increase in Demand.** If the Customer plans to a) increase the serviceable area of the electric meters associated with the Site, b) install or operate additional equipment or heaters to be served by the electric meters, or c) materially alter the Customer's facility's or Site's operation from its original intended use, Customer must inform Provider in writing at least 45 days prior to such increase, installation, or alteration. Additionally, except in emergency situation, Customer agrees to prohibit the use of space heaters or personal heading devices in the facilities at the Site. Upon being informed of any Customer violation of this Section 7.2.11, Provider may perform an energy audit on Provider's own behalf or through a subcontractor, to determine any necessary revisions to Exhibit E. If Provider's audit confirms a violation of this Section 7.2.11, Provider shall be entitled to reimbursement of all reasonable third-party expenses incurred by Provider in conducting such audit. If Customer accepts the revisions proposed by Provider, then Exhibit E shall be deemed amended with those revisions. If Customer declines the revisions as proposed by Provider, this Agreement shall terminate immediately upon a written notice by Provider to Customer.

**7.2.12. Customer Records.** Customer shall keep complete and accurate records of its electrical operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this SSA. Provider shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

**8. Force Majeure Events.** If either Party is prevented from or delayed in performing any of its obligations under this SSA by reason of a Force Majeure Event, such Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this SSA to the extent that such Force Majeure Event has interfered with such performance. The Party whose performance under this SSA is prevented or delayed as the result of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this SSA is due to a Force Majeure Event, then such failure shall not be deemed a Provider Default or a Customer Default, as the case may be, and Provider shall be entitled to rely upon the applicable Exhibit E Estimated Yearly Solar Production and Efficiency Offset to calculate the amount of Energy and Demand Reduction that would have taken place during the term of the Force Majeure Event for purposes of calculating the Actual Yearly Solar Production and Efficiency Offset during the year that the Force Majeure Event took place. Notwithstanding anything in this Section 8 to the contrary, no payment obligation of Customer under this SSA may be excused or delayed as the result of a Force Majeure Event. In the event that a Force Majeure Event has occurred and is continuing for at least two (2) years with respect to the Site, then either Party may terminate this SSA with respect to the Site without fault by written notice to the other.

**9. Term.**

**9.1 Term.** The initial term of this SSA shall commence on the Placed in Service Date for the System and shall end at the earlier to occur of: (i) 11:59 P.M.

(Kansas City time) on the day that is ten (10) years after the Placed in Service Date; provided, however, that this initial ten (10) year term shall automatically extend for an additional ten (10) years from the end of the initial ten (10) year term unless Customer provides Provider with at least one hundred and eighty (180) days prior written notice before the expiration of the initial ten (10) year term that Customer wishes to terminate the SAA at the end of the initial ten (10) year term, or (ii) until Customer's payment upon exercise of the Purchase Option is made, whichever first occurs, unless earlier terminated as provided for in this SSA (the "**Term**"). The date upon which the Term ends pursuant to prior written notice or pursuant to the terms of this SSA shall be known as the "**Termination Date**".

9.2 Customer Options During and Upon Expiration of Term

9.2.1. Customer Purchase Option. So long as no Customer Default shall have occurred and be continuing, Provider grants to Customer an option to purchase the System (the "**Purchase Option**"), which purchase will take effect within the thirty (30) calendar day period following the Termination Date; provided, however, Customer must give written notice to Provider of its intent to exercise its Purchase Option at least one hundred and twenty (120) calendar days' prior to the Termination Date. Should Customer timely exercise its Purchase Option, then within thirty (30) days of the Termination Date: (i) the Parties shall execute and deliver to each other all documents necessary to (A) cause title to the System to pass to Customer as-is, where-is, and free and clear of any liens, and (B) Provider shall assign all third-party warranties for the System, if any, to Customer, to the extent assignable; and (ii) Customer will pay the Option Price to Provider. For the purposes of this Section, "**Option Price**" means an amount equal to the Fair Market Value of the System. The "**Fair Market Value**" of the System shall be the value determined by the mutual agreement of Customer and Provider within thirty (30) days after receipt by Provider of Customer's notice of its election to purchase the System. If Customer and Provider cannot mutually agree to a Fair Market Value, then the Provider and Customer shall jointly select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Notwithstanding anything to the contrary in this SSA, the Fair Market Value of the System shall not be less than the sum of (a) the Remaining Contract Value, (b) the salvage value of the System at the end of the Term, and (c) Provider's closing costs.

9.2.2. Removal of System. In the event Customer elects not to extend this SSA or purchase the System as provided in this SSA, Customer shall peaceably leave, quit and surrender the System. Upon such termination, Customer will be responsible for ensuring that the System is free of all Liens and encumbrances and is in "as-is, where-is" condition. Provider shall remove all

requested tangible property comprising the System from the Site within one hundred and eighty (180) days after the Termination Date; provided, however, that notwithstanding any other terms of this SSA, in the event that the Termination Date occurs for reasons attributable to Customer, including but not limited to a Customer Default, Provider shall have no obligation to remove the System from the Site prior to Customer's payment of the applicable damages in accordance with the terms of this SSA.

9.3 Early Termination. If, at any time during the Term, but prior to the end of the Term, any of the following events occurs, Provider shall have the right, but not the obligation, to terminate this SSA prior to the expiration of the Term with written notice to Customer and without any further liability of either Party to the other Party except for such rights and obligations as are set forth in Section 9.4 and any other provisions of this SSA intended to survive beyond the Term (an "Early Termination"):

- (i) At any time within one hundred and eighty (180) days following the Placed in Service Date;
- (ii) An unstayed order of a court or administrative agency having the effect of subjecting the sales of electricity to federal or state regulation of prices and/or service;
- (iii) Elimination or alteration of one or more Rebate or REC Financial Incentive or other Change in Law that results in a material adverse economic impact on Provider;
- (iv) Over any 12-month period, there is an annual level of direct beam solar resource availability that is less than or equal to ninety percent (90%) of historical averages as determined by Provider;
- (v) The termination or diminution of Customer's leasehold or ownership interest over the Site prior to the end of the Term for any reason;
- (vi) The termination of this SSA pursuant to Section 7.2.11; or
- (vii) Upon the occurrence of a Customer Default.

9.4 Payment of Termination Fee on Termination Date. Except in the event that Customer exercises its Purchase Option pursuant to Section 9.2.1 above, if a Termination Date for the System occurs for reasons attributable to Customer, including as a result of a Customer Default or termination pursuant to Section 7.2.11, Customer shall be required to pay to Provider the then-applicable Termination Fee as liquidated damages. The Parties agree that actual damages to Provider in the event this SSA terminates prior to the expiration of the Term for causes attributable to Customer would be difficult to ascertain, and the applicable Termination Fee is a reasonable approximation of the damages suffered by Provider as a result of early termination of this SSA. The Termination Fee shall be calculated as follows:

- (i) the Termination Value; plus
- (ii) any other unpaid amounts then outstanding and due under this SSA to Provider by Customer as of the date of such Early Termination.

Any amounts received by Customer, either in connection with a Taking of the System, or from Insurance Proceeds as a result of the losses to or damage or destruction of the System, shall be promptly transferred to Provider, and any amounts received by Provider in excess of the Early Termination Fee shall be promptly remitted to Customer by Provider. If the System is damaged or destroyed by fire or other casualty and is not repaired or replaced pursuant to this SSA, upon receipt of the Early Termination Fee in connection therewith, Provider shall transfer (by an appropriate instrument of transfer in form and substance satisfactory to Provider and at the expense of Customer) all of Provider's rights, title and interest in the System to Customer (or its designee), on an "as is," "where is" and "with all faults" basis, without representations or warranties.

## 10. Defaults.

10.1 Customer Default. The occurrence at any time of any of the following events (unless excused by a Force Majeure Event pursuant to the terms hereunder) shall constitute a "*Customer Default*":

10.1.1. Payment Default. The failure of Customer to make a timely payment to Provider hereunder; provided that Customer may cure each such failure within seven (7) business days after Customer receives written notice of such failure from Provider.

10.1.2. Phone and Data Line Default. The failure of Customer to maintain and grant Provider access to the phone and other communications lines as required hereunder; provided that Customer may cure each such failure within seven (7) days after Customer receives written notice of such failure from Provider.

10.1.3. Other Defaults. The failure of Customer to perform or cause to be performed any other obligation required to be performed by Customer under this SSA, or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Customer shall have a period of fifteen (15) days after receipt of written notice from Provider of such failure for Customer to cure the same and a Customer Default shall not be deemed to exist during such period; provided, further, that if Customer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for forty (40) additional business days.

10.1.4. Insolvency Default. (a) Customer as a matter of fact is unable to pay its debts generally as they become due or is "*insolvent*" as such term is generally interpreted under Kansas Applicable Law; (b) Customer files a petition

or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other Applicable Law of the United States of America or any State, district or territory thereof; (c) Customer makes an assignment for the benefit of creditors; (d) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Customer has a petition in bankruptcy filed against it; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction assumes custody or control of the whole or any substantial part of Customer's assets.

**10.2 Provider Default.** The occurrence at any time of the following events (unless excused by a Force Majeure Event pursuant to the terms hereunder) shall constitute a "***Provider Default***":

**10.2.1. Performance Default.** The failure of Provider to perform or cause to be performed any of its material obligations hereunder or, as of the date hereof, the failure of any material representation and warranty set forth herein to be true and correct provided that such failure results in a material adverse effect on Customer; provided, further, that if such failure by its nature can be cured, then Provider shall have a period of sixty (60) business days after receipt of written notice from Customer of such failure for Provider to cure the same and a Provider Default shall not be deemed to exist during such period; provided, further, that if Provider commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for forty (40) additional business days.

**10.2.2. Insolvency Default.** (a) Provider as a matter of fact is unable to pay its debts generally as they become due or is "***insolvent***" as such term is generally interpreted under Kansas law; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other Applicable Law of the United States of America or any State, district or territory thereof; (c) Provider makes an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction assumes custody or control of the whole or any substantial part of Provider's assets.

**10.2.3. Provider Default, Notice and Opportunity to Cure.** In the event that Provider defaults on performance of its duties and obligations pursuant to **Section 10.2.1** of this SSA, Customer hereby agrees to notify Lender, if any, in the same fashion as notice is given to Provider. Customer also agrees that in the event Provider fails to cure such default, Lender shall have an opportunity to cure in-lieu of Provider, and Lender's cure period shall be equal to Provider's and shall



begin accruing immediately after Provider's cure period has ended. In no event shall Customer terminate the SSA for failure to remedy a default until both Provider's and Lender's cure periods have expired.

**11. Remedies Following Default.**

**11.1 Customer's Remedies Upon Occurrence of a Provider Default.**

**11.1.1. Termination.** If a Provider Default as described in Section 10.2 above has occurred, Customer may terminate this SSA by written notice, and this SSA shall be of no further force or effect as of the date the termination notice is given, in which case Customer may require Provider, at Provider's sole cost and expense, to remove all of its tangible property comprising the System from the Site by a mutually convenient date but in no case later than one hundred eighty (180) days after the date the termination notice is given and in such case the Site shall be returned to its original condition, except for System support structures, electric/wiring components and ordinary wear and tear.

**11.1.2. Other Rights and Remedies.** Except as provided in this SSA, Customer shall have no right to terminate this SSA and shall have no other remedies.

**11.2 Provider's Remedies Upon Customer Default.** In addition to any other remedies available under this SSA or at law, upon the occurrence of any Customer Default (including the expiration of all applicable grace periods), Provider shall have the rights and remedies hereinafter set forth, which shall be distinct, separate and cumulative and shall not operate to exclude or deprive Provider of any other right or remedy allowed it by law:

- (i)** Provider may terminate this SSA immediately upon delivery to Customer notice of Provider's election to do so, in which event the Term of this SSA shall end, and all right, title and interest of Customer hereunder shall expire on the date stated in such notice;
- (ii)** Provider may terminate the right of Customer to possession of the System without terminating this SSA by giving notice to Customer that Customer's right of possession shall end on the date stated in such notice, whereupon the right of Customer to possession of the System or any part thereof shall cease on the date stated in such notice;
- (iii)** Provider may enforce the provisions of this SSA and may enforce and protect the rights of Provider hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including recovery of all moneys due or to become due from Customer under any of the provisions of this SSA;

- (iv) Whether or not Provider shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraphs (i) through (iii) above, Provider, by written notice to Customer specifying a Termination Date that shall be not earlier than ten (10) days after the date of such notice, may demand that Customer pay to Provider, and Customer shall pay to Provider, on the Termination Date specified in such notice, any unpaid SSA Payment due before such Termination Date, plus as liquidated damages for loss of a bargain and not as a penalty (in lieu of the SSA Payment due on and after such Termination Date), at Provider's election, the following: (x) an amount equal to the excess, if any, of the Termination Value computed as of such Termination Date over the Fair Market Sales Value of the System as of such Termination Date, or (y) an amount equal to the excess, if any, of Termination Value computed as of such Termination Date over the Fair Market SSA Payment Value of the Facility until the end of the Term, after discounting such Fair Market SSA Payment Value semiannually to present value as of such Termination Date at a rate equal to 10%, or (z) an amount equal to the Termination Value computed as of such Termination Date; provided, however, that upon payment of such Termination Value by Customer pursuant to clause (z) and all other SSA Payment (not otherwise included in the calculation of such Termination Value) then due and unpaid, or accrued and unpaid, by Customer, Provider shall forthwith transfer to Customer (or its designee) on an "as is," "where is" and "with all faults" basis, without representation or warranty other than a warranty as to the absence of Liens, all of Provider's interest in the System, and shall execute and deliver appropriate releases and other documents or instruments necessary or desirable to effect the foregoing, all to be prepared, filed and recorded (as appropriate) at the cost and expense of Customer. Upon payment of such amount under either clause (x), (y) or (z) of this paragraph (iv) and all other SSA Payment then due and unpaid, or accrued and unpaid, by Customer outstanding on the applicable Termination Date, SSA Payment, as applicable, shall cease to accrue and Customer's obligation to pay SSA Payment hereunder due for any periods subsequent to the date of such payment shall terminate and this SSA shall terminate; and
- (v) Provider shall have all rights and remedies of a secured party under the Uniform Commercial Code in any jurisdiction in which enforcement is sought.

11.3 No Consequential Damages. Nothing in this SSA is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business, lost profits or lost revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Customer and Provider. Notwithstanding the foregoing, none of the payments for Solar Services or any other amount specified as payable by Customer to Provider under the terms of this SSA upon the termination of this SSA shall be deemed consequential damages. Provider's liability

hereunder shall be in all respects limited to amounts paid to it hereunder during the most recent thirty-six (36) month period.

11.4 Effect of Termination. Upon the Termination Date or upon the expiration of the Term of this SSA, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Customer and Provider under this SSA shall be terminated (other than the indemnity obligations set forth in Section 12). Such termination shall not relieve either Party from obligations accrued prior to the Termination Date or the expiration of the Term of this SSA.

11.5 Termination Date Liquidated Damages. The Parties agree that actual damages to Provider in the event of termination prior to the end of the Term (or any extension thereof) as a result of Customer's actions would be difficult to ascertain, and the applicable remedies set forth herein are a reasonable approximation of the damages suffered by Provider as result of early termination of this SSA. Absent fraud or intentional misconduct, payment of the applicable remedies specified in this SSA to Provider shall be Provider's sole remedy in the event that this SSA terminates because of Customer. If a court of competent jurisdiction determines that the applicable remedies set forth herein or their application are void or unenforceable, the Provider shall be entitled to recover its actual damages incurred as a result of the early termination of this SSA.

11.6 Lender a Third Party Beneficiary. Customer agrees and acknowledges that any Lender is a third-party beneficiary of the provisions of this SSA.

## 12. Indemnification.

12.1 Indemnification by Provider. Provider shall fully indemnify, hold harmless and defend Customer from and against any and all costs, claims, and expenses incurred by Customer in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the gross negligence or willful misconduct of Provider or its agents or employees or others under Provider's control or (b) a Provider Default; provided, however, that nothing in this Section 12.1 is intended to modify the limitation of Provider's liability set forth in this SSA, including Section 11.3. Notwithstanding the foregoing, the Parties agree that in no event shall Provider's total liability incurred pursuant to this SSA exceed the greater of (i) the actual monetary value of this SSA to Provider from the date hereof to the end of the Term or (ii) Provider's insurance coverage.

12.2 Indemnification by Customer. To the extent allowable under Kansas Applicable Law, Customer shall fully indemnify, hold harmless and defend Provider from and against any and all costs, claims, and expenses incurred by Provider in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the gross negligence or willful misconduct of Customer or its

agents or employees or others under Customer's control or (b) a Customer Default; provided, however, that nothing in this Section 12.2 is intended to modify the limitation of consequential damages set forth in Section 11.3. Notwithstanding the foregoing, the Parties agree that in no event shall Customer's total liability incurred pursuant to this SSA exceed the greater of (i) the actual value of Customer's payment obligations hereunder or (ii) Customer's insurance coverage.

**12.3 Notice of Claims.** Any Party seeking indemnification hereunder (the "***Indemnified Party***") shall deliver to the other Party (the "***Indemnifying Party***") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "***Claim Notice***"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section 12.3, except to the extent that such Indemnifying Party has been materially prejudiced by such failure.

**12.4 Indemnity Survival.** The provisions of this Article 12 shall survive the expiration or termination of this SSA for a period of two (2) year from the date hereof.

**13. Miscellaneous Provisions.**

**13.1 Notices.** All notices, communications and waivers under this SSA shall be in writing and shall be (a) delivered in person, or (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below, or to any other address either of the Parties to this SSA shall designate in a written notice to the other Party, or (d) transmitted by facsimile where confirmation of successful transmission is received from the receiving party's facsimile machine (such transmission to be effective on the day of receipt if received prior to 5:00 p.m. local time on a business day or in any other case on the next business day following the day of transmittal), or (e) transmitted by e-mail if receipt of such transmission by e-mail is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgment) addressed as follows:

**IF TO PROVIDER:**

**Evergy Energy Solutions**

1200 Main Street  
Kansas City, MO 64105  
Attention: Chris Jackman  
E-mail: chris.jackman@evergy.com

**IF TO CUSTOMER:**

Entity: Spring Hill USD 230  
By: Spring Hill USD 230  
Name: Dr. Wayne Burke  
Title: Superintendent  
Address: 17640 W. 199th  
St. Spring Hill, KS 66083  
E-mail: burke@usd230.org

All notices sent pursuant to the terms of this Section 13.1 shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by reputable overnight, express courier, then on the next business day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third (3rd) business day following the day sent or when actually received.

**13.2 Party Representations and Warranties.**

**13.2.1. Provider Representations.** Provider hereby represents and warrants that:

(a) It is a corporation duly organized, validly existing and in good standing under the laws of Missouri and has all requisite corporate power and authority to enter into this SSA, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby;

(b) The execution and delivery of this SSA and the performance of its obligations hereunder and thereunder have been duly authorized by all necessary action and, to the best knowledge of Provider, as of the date of execution hereof, no governmental approval (other than any governmental approvals that have been previously obtained or disclosed in writing to Customer) is required in connection with the due authorization, execution and delivery of this SSA by Provider;

(c) This SSA is a legal, valid and binding obligation of Provider enforceable against Provider in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and

remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law); and

(d) The execution and delivery of this SSA by Provider and the compliance by Provider with the terms hereof do not conflict with, breach or contravene the provisions of the operating agreement of Provider or any material contractual obligation of Provider.

13.2.2. Customer Representations. Customer hereby represents and warrants that:

(a) It is validly existing and in good standing under the laws of Kansas and has all requisite governmental power and authority to enter into this SSA, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby;

(b) The execution and delivery of this SSA and the performance of its obligations hereunder and thereunder have been duly authorized by all necessary governmental action and no governmental approval (other than any governmental approval which has been previously obtained or disclosed in writing to Provider) is required in connection with the due authorization, execution and delivery of this SSA by Customer or the performance by Customer of its obligations hereunder and thereunder which Customer has reason to believe that it will be unable to obtain in due course;

(c) This SSA is a legal, valid and binding obligation of Customer enforceable against Customer in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);

(d) Neither the execution and delivery of this SSA by Customer nor compliance by Customer with any of the terms and provisions of this SSA conflicts with, breaches or contravenes the provisions of the charter documents of Customer, or any contractual obligation of Customer;

(e) To the best knowledge of Customer, there are no existing amounts of regulated Hazardous Materials that are currently located at the Site; and



(f) Customer has not entered into any contracts or agreements with any other person regarding the provision of the services contemplated to be provided by Provider under this SSA.

### 13.3 Assignment.

13.3.1. Consent of Assignment. Customer shall not assign this SSA without the prior written consent of Provider and any such attempted assignment shall be void *ab initio*. Provider shall be permitted to assign this SSA upon written notice thereof to Customer. Any permitted assignee must assume and agree to be bound by all of the obligations, liabilities and duties of the assigning Party under this SSA.

13.3.2. Lender Accommodations. Customer acknowledges that Provider may finance the development, installation, acquisition, operation and/or maintenance of the System with financing or other accommodations from one or more financial institutions (each, a "Lender") and that Provider's obligations to such Lender(s) may be secured by, *inter alia*, a pledge or collateral assignment of this SSA and a first security interest in the System (collectively, the "**Lender's Security Interest**"). In order to facilitate such financing or other accommodations (or agent or trustee on behalf of such financial institutions), and with respect to any Lender, Customer agrees as follows:

(a) Consent to Lender's Security Interest. Customer consents to Provider providing to Lenders the Lender's Security Interest. Customer acknowledges and agrees that: (i) Customer and all of Customer's rights hereunder are and shall be in all respects subject and subordinate to the Lender's Security Interest and all renewals, modifications, supplement, amendments, consolidations, replacements, substitutions, additions and extensions thereof; and (ii) no amendments or modifications of this SSA, are permitted without Lender's prior written consent.

(b) Rights Upon Event of Default. Notwithstanding any contrary term of this SSA, upon the occurrence of an event of default under Lender's financing documents:

1. Lender, as holder of the Lender's Security Interest, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this SSA in accordance with the terms of this SSA. Lender shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this SSA and the System.

2. Lender shall have the right, but not the obligation, to pay all sums due from Provider under this SSA and to perform any other act, duty or obligation required of Provider hereunder or cause to be cured any default of Provider hereunder in the time and

manner provided by the terms of this SSA. Nothing herein requires Lender to cure any Provider Default (unless Lender has succeeded to Provider's interests under this SSA) or to perform any act, duty or obligation of Provider under this SSA, but Customer hereby gives it the option to do so.

3. Upon the exercise of remedies under the Lender's Security Interest in the System, including any sale thereof by Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to Lender (or any Qualified Assignee of Lender) in lieu thereof, Lender shall give notice to Customer of the transferee or assignee of this SSA. Any such exercise of remedies shall not constitute default under this SSA, nor require Customer's consent.

4. Upon any rejection or other termination of this SSA pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of Lender made within ninety (90) days of such termination or rejection, Customer shall enter into a new agreement with Lender or its Qualified Assignee having substantially the same terms and conditions as this SSA.

(c) Right to Cure. Notwithstanding any contrary term of this SSA:

1. Customer will not exercise any right to terminate or suspend this SSA as a result of a Provider Default unless (to the extent Customer has been given prior written notice of the manner in which to give Lender notice hereunder), it shall have given Lender prior written notice of its intent to terminate or suspend this SSA, as required by this SSA, specifying the Provider Default giving rise to such right, and Lender shall not have caused to be cured the Provider Default giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this SSA; provided that if such Provider Default cannot be cured by Lender within such period and Lender commences and continuously pursues cure of such Provider Default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional one hundred twenty (120) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

2. If Lender or its Qualified Assignee (including any Customer or transferee), pursuant to an exercise of remedies by Lender, shall acquire title to or control of Provider's assets and

shall, within the time periods described in Section 13.3.2(c)(1), cure all defaults under this SSA existing as of the date of such change in title or control in the manner required by this SSA and which are capable of cure by a third person or entity, then such Person shall no longer be in default under this SSA, and this SSA shall continue in full force and effect.

(d) Further Assurances. At the request of Lender and/or its Qualified Assignee, Customer agrees to execute and deliver any document, instrument or statement required by law or otherwise as reasonably requested by Lender or its Qualified Assignee in order to create, perfect, continue or terminate the security interest in favor of Lender in all assets of Provider, and to secure the obligations evidenced by Lender's Security Interest.

13.4 Successors and Assigns. The rights, powers and remedies of each Party shall inure to the benefit of such Party and its successors and permitted assigns.

13.5 Casualty. If the System is damaged or destroyed by fire, theft or other casualty, Provider shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction (the "*Insurance Proceeds*"). Provider, using the Insurance Proceeds, shall within one hundred eighty (180) calendar days after the Insurance Proceeds become available to Provider, repair, restore, replace or rebuild the System to substantially the same condition as existed immediately prior to the damage or destruction, assuming the System was in the condition and repair required to be maintained in accordance with the terms herein, and shall be made, or caused to be made and substantially in accordance with the originally approved plans for the System (the "*Restoration Work*"). Notwithstanding the foregoing, in the event of substantial damage or destruction by casualty (i) which damage Provider in good faith determines is such that the reconstruction of an economically viable System is not practicable, either because (a) the Insurance Proceeds made available to Provider are not sufficient to repair such loss or damage, or (b) such reconstruction cannot be carried out under Applicable Laws, including then-current building or zoning laws, or (ii) which damage occurs during the last three (3) years of the Term, then Provider shall have the right to terminate this SSA. If Provider elects or is required to reconstruct the System, and if the Insurance Proceeds received by Provider are insufficient to pay the entire cost of the Restoration Work, then the amount of any such deficiency shall be borne solely by Provider. If the Insurance Proceeds received by Provider exceed the entire cost of the Restoration Work, then such excess proceeds shall be retained by Provider.

13.6 Amendments to Agreement. This SSA shall not be amended, modified or supplemented without the written agreement of Provider and Customer at the time of such amendment, modification or supplement.

13.7 Waivers; Approvals. No waiver of any provision of this SSA shall be effective unless set forth in writing signed by the Party making such waiver, and any such

waiver shall be effective only to the extent it is set forth in such writing. Failure by a Party to insist upon full and prompt performance of any provision of this SSA, or to take action in the event of any breach of any such provisions or upon the occurrence of any Provider Default or Customer Default, as applicable, shall not constitute a waiver of any rights of such Party, and, subject to the notice requirements of this SSA, such Party may at any time after such failure exercise all rights and remedies available under this SSA with respect to such Provider Default or Customer Default. Receipt by a Party of any instrument or document shall not constitute or be deemed to be an approval of such instrument or document. Any approvals required under this SSA must be in writing, signed by the Party whose approval is being sought.

13.8 Partial Invalidity. In the event that any provision of this SSA is deemed to be invalid by reason of the operation of Applicable Law, Provider and Customer shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this SSA (and in the event that Provider and Customer cannot agree then such provisions shall be severed from this SSA) and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected by such adjustment and shall remain in full force and effect.

13.9 Execution in Counterparts. This SSA may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same SSA.

13.10 No Agency. This SSA is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

13.11 No Recourse to Affiliates. This SSA is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, affiliate, lender, director, officer or employee of the other Party for performance or nonperformance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

13.12 Cooperation with Financing. Customer acknowledges that Provider may be financing the Solar Services and the System and Customer agrees that it shall reasonably cooperate with Provider and its financing parties in connection with such financing, including (a) the furnishing of such information, (b) the giving of such certificates, and (c) providing such opinions of counsel and other matters as Provider and its financing parties may reasonably request; provided, that the foregoing undertaking shall not obligate Customer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Customer under this SSA (except for providing notices and additional cure periods to the financing parties with respect to events of Provider Default as a financing party may reasonably request).

**13.13 Choice of Law.** This SSA shall be construed in accordance with the laws of the State of Kansas, without regard to its conflict of laws principles. The Parties irrevocably agree that any action, suit or proceeding related to this SSA may be brought in whichever of the federal or state courts sitting in the State of Kansas that a Party may choose and that such court has subject matter jurisdiction over the dispute and each Party waives any objection that it may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground.

**13.14 Negotiated Resolution.** Except as otherwise set forth in this SSA, in the event that there is any controversy, claim or dispute between the Parties hereto arising out of or related to this SSA, or the breach hereof or thereof, that has not been resolved by informal discussions and executive-level negotiations, either Party may take whatever action it deems appropriate to seek resolution of the matter after forty (40) business days of unsuccessful negotiation has passed; provided, however, either Party may, during said forty (40) business day period, request the utilization of the services of a professional mediator (chosen by mutual agreement of the Parties), and the other Party shall cooperate with such request and share the reasonable costs of such non-binding mediator (upon which time the forty (40) day period shall be reasonably extended to provide the mediator adequate time to attempt to resolve such dispute). If any legal action or claim shall be instituted in a court of law between Customer and Provider in connection with this SSA, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such legal proceeding, including reasonable attorneys' fees.

**13.15 Entire Agreement.** This SSA (including all exhibits attached hereto) represent the entire agreement between the parties to this SSA with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous oral and prior written agreements.

**13.16 ITC.** It is the intent of the Provider or Lender to apply for and receive an Investment Tax Credit ("*ITC*") as part of the financing of the System. Notwithstanding any provision in this SSA, in the event that any action or inaction of the Customer directly or indirectly results in a recapture or potential recapture of the ITC (as determined by the Provider in its sole discretion), then the Customer agrees to immediately pay to the Provider upon its request an amount equal to the recapture or to be potentially recaptured including any potential or actual penalties, fines, and interest that may be or have been charged or imposed upon the Provider or any of its affiliates. The Customer agrees that it has no interest whatsoever in the ITC. The Customer also agrees to cooperate to the extent requested by the Provider so that the Provider or its affiliate, or Lender can obtain such ITC or defend any action with respect to any recapture of the ITC which cooperation includes but is not limited to making the Customer's employees, contractors, or other service providers available to the Provider, executing any documents requested by the Provider, and providing any information whether written or verbal to the Provider.

**13.17 Confidential Information.** Each Party (the "*Receiving Party*") shall not use for any purpose other than performing their obligations under this SSA or divulge,

disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the "*Disclosing Party*"), any Confidential Information of the Disclosing Party. The Receiving Party shall use a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party as required by any court or other Governmental Authority or its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations. If a Receiving Party believes that it will be compelled by a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice, and in all cases not less than five (5) business days notice in advance of disclosure, so that the Disclosing Party may determine whether to take steps to oppose such disclosure. Notwithstanding the foregoing, Provider understands and agrees that Customer is a public entity and subject to the Kansas Open Records Act. Should Customer receive a request for records that would include information about this Agreement, Customer agrees to notify Provider so as to afford Provider the opportunity to seek protection from the compelled disclosure.

13.18 Press Releases. The Parties acknowledge that they each desire to publicize information about this SSA and the System. The Parties therefore agree that each may make independent press releases about entering into this SSA, the size and location of the System, and the identity of the other Party, without the prior written consent of the other Party, so long as only Provider has the exclusive right to (i) claim that electric energy provided to Customer was generated by the System, (ii) Provider is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of such electric energy and (iii) Provider is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing except as otherwise expressly provided in this SSA. However, the terms of this SSA and information about the System other than that described above constitutes Confidential Information, as defined below, and is subject to the remaining provisions of this SSA.

13.19 Budgeting. Customer agrees to include the payments required to fulfill its obligations under the SSA in any annual (or other) budget and to take all reasonable and necessary action to ensure funds are available at all necessary times to satisfy its obligations hereunder.



IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Solar Services Agreement as of the date first written above.

**PROVIDER:**

Evergy Energy Solutions, Inc.

**CUSTOMER:**

Spring Hill USD 230

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DocuSigned by:  
*Douglas J Updike*  
7E8EED3387E440B...

Douglas J Updike

School Board President

**SOLAR SERVICES AGREEMENT**

**EXHIBIT A**

**SYSTEM DESCRIPTION**

**Total 750.4 kW ground mount solar array comprised of:**

- Trina TallMax 410W Monofacial – quantity 1680
- ET 385W Monofacial – quantity 160
- SMA Sunny Tripower Core1 Inverters – quantity 6

**Demand Reduction System**

- Building Automation system WebCTRL

**SOLAR SERVICES AGREEMENT**

**EXHIBIT B**

**SITE DESCRIPTION**

**Legal Location:** SPRING HILL USD 230 CAMPUS LT 1 EX S 70' IN ST SPC 233 1

**Address:** 19701 S Ridgeview Rd, Spring Hill, KS 66083

**Description:** Ground mount solar array located in the North East corner of 19701 S Ridgeview Rd, Spring Hill, KS 66083. Occupying approximately 2.02 acres.



## **SOLAR SERVICES AGREEMENT**

### **EXHIBIT C**

#### **DEFINITIONS**

***“Actual Demand Reduction”*** shall have that meaning set forth in Exhibit E.

***“Annual Period”*** shall mean the period commencing on the Placed in Service Date and ending on the last day of the calendar year in which the Placed in Service Date occurs, and, thereafter, all subsequent one (1)-year periods during the Term.

***“Applicable Law”*** shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

***“Claim Notice”*** shall have that meaning set forth in the Section 12.3.

***“Code”*** shall mean the Internal Revenue Code of 1986, as amended.

***“Confidential Information”*** includes, without limitation, this SSA and exhibits hereto, all information or materials prepared in connection with this SSA including, but not limited to, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same directly from the Disclosing Party.

***“Customer”*** shall have that meaning set forth in the Recitals.

***“Customer Default”*** shall have that meaning set forth in the Section 10.1.

***“Customer Permittees”*** shall have that meaning set forth in the Section 7.2.2.

***“Deficient Year”*** shall have that meaning set forth in Exhibit E.

**“Demand Credits”** shall have that meaning set forth in Exhibit E.

**“Disclosing Party”** shall have that meaning set forth in the Section 13.17.

**“Early Termination”** shall have that meaning set forth in the Section 9.3.

**“Effective Date”** shall have that meaning set forth in the Recitals.

**“Energy”** shall have that meaning set forth in the Recitals.

**“Estimated Yearly Solar Production and Efficiency Offset”** shall have that meaning set forth in Exhibit E.

**“Force Majeure Event”** shall mean, when used in connection with the performance of a Party’s obligations under this SSA, any of the following events to the extent not caused by such Party or its agents or employees: (i) war, riot, pandemics, epidemics, quarantine restrictions, acts of a public enemy or other civil disturbance; (ii) acts of God, including but not limited to, winds, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, range or forest fires, and objects striking the earth from space (such as meteorites), prolonged adverse weather conditions at the Site beyond the scope of regionally modeled weather probabilities, sabotage or destruction by a third party (other than any contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this SSA; and (iii) strikes, walkouts, lockouts or similar industrial or labor actions or disputes.

**“Governmental Authority”** shall mean any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

**“Guaranteed Yearly Solar Production and Energy Offset of the System”** shall have that meaning set forth in Exhibit E.

**“Hazardous Materials”** means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollutants,” “regulated substances,” “solid wastes,” or “contaminants” or words of similar import, under any Applicable Law.

**“Indemnified Party”** shall have that meaning set forth in the Section 12.3.

**“Indemnifying Party”** shall have that meaning set forth in the Section 12.3.

***“Insurance Proceeds”*** shall have that meaning set forth in the Section 13.5.

***“Interconnection Point”*** shall have that meaning set forth in Section 3.5.

***“ITC”*** shall have that meaning set forth in the Section 13.16.

***“Lender”*** shall have that meaning set forth in the Section 13.3.2.

***“Lender’s Security Interest”*** shall have that meaning set forth in the Section 13.3.2.

***“Liens”*** shall have that meaning set forth in the Section 7.1.2.

***“O&M Work”*** shall have that meaning set forth in Section 4.1.1.

***“Option Price”*** shall have that meaning set forth in the Section 9.2.1.

***“Party”*** and ***“Parties”*** shall have the meaning set forth in the preamble.

***“Person”*** shall mean any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

***“Projected Annual Production”*** shall have that meaning set forth in Exhibit E.

***“Provider”*** shall have the meaning set forth in the preamble. For purposes of access rights and other rights necessary for Provider to perform its obligations hereunder, the term “Provider” shall include Provider’s authorized agents, contractors and subcontractors.

***“Provider Default”*** shall have that meaning set forth in the Section 10.2.

***“Purchase Option”*** shall have that meaning set forth in the Section 9.2.1.

***“Qualified Assignee”*** means a proposed assignee of Provider, for which Provider has, by way of example and not limitation, provided to Customer reasonable proof that the proposed assignee: (x) has comparable successful experience in operating and maintaining photovoltaic solar Systems comparable to the System and successfully providing services comparable to the services performed by Provider pursuant to the SSA; (y) has the financial capability to maintain the System and provide the services performed by Provider pursuant to the SSA in the manner required by this SSA; and (z) shall agree to assume in writing the due performance of all of Provider's obligations under this SSA, including any accrued obligations at the time of the assignment.

***“Receiving Party”*** shall have that meaning set forth in the Section 13.17.

***“RECs”*** means renewable energy credit(s) or certificates, emission reduction credits, investment credits, production tax credits, emission allowances, green tags, tradable renewable credits, or other transferable indicia denoting carbon offset credits or indicating generation of a particular



quantity of renewable energy attributed to the Energy produced by the System under any reporting program adopted by a governmental authority, or for which a registry and a market exists or for which a market may exist at a future time.

**“REC Financial Incentives”** shall mean each of the following RECs, financial rebates and incentives that is in effect as of the Effective Date or may come into effect in the future: (i) performance-based incentives under any federal state or local renewable energy program or initiative, (ii) any utility rebates, incentives, state-funded monetary assistance originating from state legislation or local other funding offered for the development of renewable energy or solar Systems, (iii) any incentive tax credits (including investment tax credits arising under the Code) other tax benefits, and bonus or accelerated depreciation, however named or referred to, with respect to any and all fuel, emissions, air quality, energy generation, or other environmental or energy characteristics, resulting from the use or ownership of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Solar Services, and (iv) all reporting rights with respect to such foregoing allowances.

**“Restoration Work”** shall have that meaning set forth in the Section 13.5.

**“Remaining Contract Value”** shall mean, upon any termination of this SSA, the present value of Customer’s Solar Services purchase obligations for the remaining portion of the Term (excluding any renewal period), which shall be calculated as follows: the number of days remaining in the term of this SSA times the rate Customer would otherwise pay for such Solar Services pursuant to Exhibit D. The present value discount shall be equal to the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of termination of this SSA.

**“Site”** shall have that meaning set forth in the Recitals.

**“Solar Production and Efficiency Offset Credits”** shall have that meaning set forth in Exhibit E.

**“Solar Rebate Amount”** means the amount of payments that the local utility provider will pay to an eligible retail utility customer under any solar photovoltaic rebate program for qualified photovoltaic solar systems.

**“Solar Services”** shall have that meaning set forth in the Recitals.

**“SSA”** shall have that meaning set forth in the Recitals.

**“System”** shall have that meaning set forth in the Recitals.

**“Term”** shall have that meaning set forth in the Section 9.1.

**“Termination Date”** shall have that meaning set forth in the Section 9.1.

**“Termination Value”** for any Termination Date shall mean, on any Termination Date for the System, an amount, as reasonably calculated by Provider, equal to the sum of:

- the costs of dismantling, packing, removing and transporting the System; and

- the value of any Rebates and Tax Credits that would have accrued to Provider if the termination of this Lease did not occur; and
- the value of any recapture of state or federal tax benefits (including penalties and interest assessed in connection with such recapture); and
- the value of any Lease Payments that would have been paid had it not been for the Termination of this Lease.

**SOLAR SERVICES AGREEMENT**

**EXHIBIT D**

**PRICING**

Utility reference number: ACT: 101 33 5456

System Name: Spring Hill High School Ground Mount

Customer shall pay Provider for the Solar Services provided pursuant to the terms of this SSA at the rate of \$103,623.00, plus a 0.00% annual escalator, plus any additional amount required pursuant to this SSA. Assuming no additional amounts are required pursuant to this SSA, the annual payments over the Term of this SSA are anticipated to be as follows:

Year	Payment	Year	Payment	Year	Payment	Year	Payment
1	\$103,623.00	2	\$103,623.00	3	\$103,623.00	4	\$103,623.00
5	\$103,623.00	6	\$103,623.00	7	\$103,623.00	8	\$103,623.00
9	\$103,623.00	10	\$103,623.00	11	\$103,623.00	12	\$103,623.00
13	\$103,623.00	14	\$103,623.00	15	\$103,623.00	16	\$103,623.00
17	\$103,623.00	18	\$103,623.00	19	\$103,623.00	20	\$103,623.00

## **SOLAR SERVICES AGREEMENT**

### **Exhibit E**

#### **Production Guaranty and Demand Reduction**

The Parties recognize and agree that, so long as the System is producing Energy at, or above, the applicable Guaranteed Yearly Solar Production and Efficiency Offset amount during the applicable Performance Measurement Period (as defined below), then the System and Solar Services being performed are satisfactory under this SSA and that Customer is not paying for Solar Services not received.

Provider guarantees the performance of the System according to the following terms:

1. Commencing on the second (2nd) anniversary of the Placed in Service Date and assessed on each subsequent anniversary Annual Period throughout the Term, Provider guarantees that the Actual Solar Production and Efficiency Offset from the System will meet or exceed Guaranteed Yearly Solar Production and Efficiency Offset as detailed in Schedule A in any given Annual Period after the first Annual Period.
2. Commencing on the second (2nd) anniversary of the Placed in Service Date and assessed on each subsequent anniversary Annual Period throughout the Term, Provider guarantees that Actual Demand Reduction during each Annual Period will meet or exceed Guaranteed Demand Reduction as detailed in Schedule B.
3. Provider will calculate and publish Baseline Energy Consumption and Baseline Peak Demand per the template in Schedule C every year within 30 days after the Review Date for that Annual Period.
4. Figures for Actual Solar Production and Efficiency Offset shall be calculated by subtracting the Customer's kilowatt-hours consumed as billed by the utility in any given Annual Period from the Customer's Baseline Energy Consumption as shown in Schedule C for that Annual Period.
5. Figures for Actual Demand Reduction shall be calculated by subtracting the Customer's kilowatt demand as billed by the utility in any given Annual Period from the Customer's Baseline Peak Demand as shown in Schedule C.
6. Provider shall provide all calculations and supporting documentation used to calculate actual figures to Customer for review within 30 days after the Review Date for that Annual Period.
7. Calculations of actual measurements of energy usage and power demand will be based on the utility billing statements as provided by the Customer's utility company, and calculations of weighted average costs per unit will be based on the rate structures published by the Customer's utility company.
8. If any Annual Period's Actual Yearly Solar Production and Efficiency Offset is less than that Annual Period's Guaranteed Yearly Solar Production and Efficiency Offset, Deficient Solar Production and Efficiency Offset will be generated, that Annual Period will be deemed a Deficient Year.

9. If the sum of a year's Deficient Demand Reduction values, less any Demand Credits generated in that Annual Period or any prior Annual Period, is positive, that Annual Period will be deemed a Deficient Year, and Provider will make a Deficiency Adjustment to Customer.
10. Deficiency Adjustments are calculated as the sum of the following
  - (a) Deficient Solar Production and Efficiency Offset multiplied by \$0.0616/kWhac
  - (b) Deficient Demand Reduction multiplied by \$11.31/kW
11. Provider will apply any Annual Period's Deficiency Adjustment as a reduction in Customer's annual payment.
12. The first Review Date will be twenty (24) months after the Placed in Service Date.
13. If any Annual Period's Actual Yearly Solar Production and Efficiency Offset is higher than that year's Estimated Yearly Solar Production and Efficiency Offset, Solar Production and Efficiency Offset Credits will be generated.
14. If any Annual Period's Actual Demand Reduction is higher than that Annual Period's Estimated Demand Reduction, Demand Credits will be generated.
15. If, at the expiration or termination of the SSA, there remains any Solar Production and Efficiency Offset Credits and/or Demand Credits, Customer shall pay to Provider the value of those credits as calculated as the sum of the following:
  - (a) Solar Production and Efficiency Offset Credits multiplied by \$0.0616/kWhac
  - (b) Demand Credits multiplied by \$11.31/kW

Such final calculation and payment amount will be included in the final invoice.

16. Baseline estimate utility costs by year assumptions listed in Schedule C are based on the following:
  - a) 8,760 hourly interval data from 2019
  - b) Past 3-5 years utility history
  - c) Weather data derived of the utility history
  - d) History observed during the COVID-19 pandemic was discredited from historic building data.

The sole and exclusive remedy for Provider's failure to meet the Guaranteed Yearly Solar Production and Efficiency Offset pursuant to this SSA shall be an adjustment in the Exhibit D annual payments or the payment by Provider of an adjustment payment as calculated pursuant to this Exhibit E.

**Definitions:**

- A. "Estimated Yearly Solar Production and Efficiency Offset" is equal to the Systems' projected kilowatt-hour solar production and offset of kilowatt-hours through efficient mechanical systems or building management protocols in any given Annual Period as detailed and agreed upon in Schedule A.
- B. "Estimated Demand Reduction" is equal to the System's projected reduction of peak measured kilowatts in any given month as detailed and agreed upon in Schedule B.
- C. "Baseline Energy Consumption" is calculated yearly by Provider and is equal to the estimated monthly kilowatt hours of energy that the Site would have consumed and been billed for by their utility provider in the absence of the installed Systems, adjusted for yearly weather patterns and outdoor temperatures.
- D. "Baseline Peak Demand" is calculated yearly by Provider and is equal to the estimated monthly kilowatt demand peak that the Customer's utility provider would have measured at the Site and billed the Customer for in the absence of the installed Systems, adjusted for yearly weather patterns and outdoor temperatures.
- E. "Guaranteed Yearly Solar Production and Efficiency Offset" is equal to eighty five percent (85%) of Estimated Yearly Solar Production and Efficiency Offset.
- F. "Guaranteed Demand Reduction" is equal to eighty five percent (85%) of Estimated Demand Reduction.
- G. "Actual Yearly Solar Production and Efficiency Offset" is the Systems' real kilowatt-hour solar production and offset of kilowatt-hours through efficient mechanical systems or building management protocols in any given Annual Period.
- H. "Actual Demand Reduction" is the Systems' real reduction of peak measured kilowatts in any given Annual Period.
- I. "Deficient Solar Production and Efficiency Offset" is an amount measured in kilowatt-hours by which Guaranteed Yearly Solar Production and Efficiency Offset exceeds Actual Yearly Solar Production and Efficiency Offset.
- J. "Deficient Demand Reduction" is an amount measured in kilowatts by which Guaranteed Demand Reduction exceeds Actual Demand Reduction.
- K. "Deficient Year" is any Annual Period where Deficient Solar Production and Efficiency Offset, Deficient Demand Reduction, or both are generated.
- L. "Deficiency Adjustment" is a credit made by Provider to the Customer in a Deficient Year to be applied on a prorated bases in the next Annual Period.
- M. "Review Date" is the date each year by which Provider will have determined if Deficient Solar Production and Efficiency Offset, Deficient Demand Reduction, or both were generated and calculated any Deficiency Adjustment necessary.
- N. "Solar Production and Efficiency Offset Credits" are kilowatt-hours created and banked for the duration of this SSA equal to any amounts by which Actual Yearly Solar Production and



Efficiency Offset exceeds Estimated Yearly Solar Production and Efficiency Offset and are used to offset any Deficient Solar Production and Efficiency Offset that has occurred up until the creation of the Solar Production and Efficiency Offset Credits or that occurs thereafter.

O. "Demand Credits" are kilowatt measurements created and banked for the duration of this SSA equal to any amounts by which Actual Demand Reduction exceeds Estimated Demand Reduction and are used to offset any Deficient Demand Reduction that has occurred up until the creation of the Demand Credits or that occurs thereafter.

P. "Remittance Payment" is a payment made by the Customer to Provider at the end of the Contract Term.

## SOLAR SERVICES AGREEMENT

### Schedule A

#### Projected and Guaranteed Kilowatt-Hour Solar Production and Efficiency Offset

<b>Guarantee:</b>	<b>Solar Panel Degradation Rate:</b>	<b>Utility Escalator:</b>
95%	0.5%	0.00%

#### Usage (Kilowatt-Hour) Guarantee

<u>Year 1</u>		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	119,269.00	101,571.85
Feb	140,793.00	119,474.05
Mar	153,905.00	118,819.25
Apr	95,517.00	76,085.45
May	90,569.00	76,983.65
Jun	99,530.00	84,600.50
Jul	102,157.00	96,847.45
Aug	57,324.00	62,729.40
Sep	109,442.00	100,675.70
Oct	105,021.00	97,567.85
Nov	102,755.00	89,202.80
Dec	107,595.00	91,540.75
<b>Total</b>	<b>1,336,022.00</b>	<b>1,110,318.70</b>

<u>Year 2</u>		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	119,656.70	100,854.99
Feb	140,089.04	119,075.45
Mar	133,295.48	113,280.15
Apr	85,039.42	75,709.00
May	80,116.16	76,998.73
Jun	89,382.35	84,177.50
Jul	101,686.02	86,433.11
Aug	56,837.39	62,311.77
Sep	117,869.79	100,172.32
Oct	102,505.90	87,130.01
Nov	103,249.16	87,761.75
Dec	107,156.53	91,063.05
<b>Total</b>	<b>1,299,691.89</b>	<b>1,104,569.11</b>

<u>Year 3</u>		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	116,071.37	100,640.67
Feb	139,358.59	116,480.30
Mar	152,569.30	112,653.90
Apr	89,624.07	75,330.46
May	89,665.57	76,215.74
Jun	99,537.39	83,756.61
Jul	101,177.55	93,000.55
Aug	56,353.15	61,900.21
Sep	117,250.54	99,571.46
Oct	101,593.57	86,694.36
Nov	102,732.91	87,322.98
Dec	106,620.74	90,627.63
<b>Total</b>	<b>1,292,994.43</b>	<b>1,099,045.27</b>

<u>Year 4</u>		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	117,451.51	99,858.86
Feb	138,691.65	117,867.90
Mar	131,906.45	112,120.48
Apr	88,180.95	74,953.81
May	85,217.25	75,834.66
Jun	95,044.50	83,537.53
Jul	100,571.70	85,570.94
Aug	55,571.43	61,490.71
Sep	116,674.24	99,173.10
Oct	101,483.40	86,260.59
Nov	102,219.23	86,556.36
Dec	106,057.54	90,174.48
<b>Total</b>	<b>1,296,523.45</b>	<b>1,095,553.04</b>

<u>Year 5</u>		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	116,893.61	99,359.57
Feb	137,998.19	117,293.45
Mar	131,246.92	111,559.88
Apr	87,740.04	74,879.04
May	88,771.16	75,455.43
Jun	97,554.28	82,321.14
Jul	100,158.34	85,143.65
Aug	55,392.97	61,053.26
Sep	116,090.87	98,577.04
Oct	103,975.58	85,529.58
Nov	101,708.15	85,451.52
Dec	105,557.20	89,723.42
<b>Total</b>	<b>1,283,096.81</b>	<b>1,099,082.29</b>

<u>Year 6</u>		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	116,309.14	99,862.77
Feb	137,308.20	116,711.57
Mar	130,590.68	111,002.08
Apr	87,801.94	74,205.14
May	88,827.30	75,076.21
Jun	97,566.51	82,501.53
Jul	99,667.90	84,717.37
Aug	54,915.11	60,677.94
Sep	115,510.41	98,185.55
Oct	100,471.10	85,400.44
Nov	101,159.41	85,015.67
Dec	105,029.41	89,775.00
<b>Total</b>	<b>1,275,836.35</b>	<b>1,096,941.79</b>

Year 7		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	115,727.60	98,245.48
Feb	138,821.58	115,126.41
Mar	129,997.73	110,447.37
Apr	86,864.54	73,635.11
May	87,888.67	74,702.30
Jun	96,931.18	82,094.00
Jul	97,153.16	84,258.79
Aug	84,440.58	80,274.48
Sep	114,950.24	97,492.96
Oct	99,945.75	84,973.43
Nov	100,693.11	85,535.77
Dec	104,904.27	88,528.63
<b>Total</b>	<b>1,267,927.35</b>	<b>1,077,525.67</b>

Year 8		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	115,148.96	97,574.31
Feb	138,958.55	115,547.77
Mar	129,258.04	109,594.54
Apr	86,430.51	73,468.36
May	87,444.24	74,329.50
Jun	96,098.27	81,683.53
Jul	97,173.31	83,872.32
Aug	79,945.89	78,576.56
Sep	114,358.20	97,204.67
Oct	99,465.90	84,548.37
Nov	100,190.15	85,161.62
Dec	105,981.73	89,384.48
<b>Total</b>	<b>1,260,991.21</b>	<b>1,071,842.53</b>

Year 9		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	114,573.21	97,557.23
Feb	138,258.56	114,870.09
Mar	128,641.68	109,345.89
Apr	85,992.30	73,091.61
May	87,009.01	73,957.66
Jun	95,617.76	81,278.11
Jul	96,175.98	83,431.51
Aug	83,493.49	79,471.71
Sep	113,736.41	96,718.44
Oct	98,971.53	84,323.62
Nov	99,686.20	84,735.52
Dec	103,461.54	87,942.56
<b>Total</b>	<b>1,254,696.23</b>	<b>1,066,683.31</b>

Year 10		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	114,000.33	96,800.29
Feb	137,882.53	114,394.54
Mar	127,998.39	108,793.62
Apr	85,843.37	72,789.11
May	86,873.96	73,357.27
Jun	95,139.69	80,243.74
Jul	97,469.05	83,035.59
Aug	83,031.00	79,074.35
Sep	113,217.67	96,294.35
Oct	98,474.70	83,707.29
Nov	99,190.75	84,812.14
Dec	102,844.53	87,502.35
<b>Total</b>	<b>1,243,412.82</b>	<b>1,061,150.90</b>

Year 11		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	113,450.45	95,419.77
Feb	137,900.63	113,823.20
Mar	127,388.40	108,254.14
Apr	83,140.51	72,369.43
May	84,141.03	73,219.56
Jun	94,512.99	80,454.33
Jul	97,200.60	82,620.51
Aug	82,363.54	78,550.57
Sep	112,321.39	95,783.18
Oct	97,384.21	83,264.97
Nov	98,354.80	83,190.95
Dec	102,429.51	87,068.33
<b>Total</b>	<b>1,242,370.73</b>	<b>1,035,643.54</b>

Year 12		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	112,663.19	95,393.71
Feb	133,249.10	113,284.07
Mar	126,721.61	107,714.87
Apr	84,714.52	72,057.10
May	85,730.39	72,855.83
Jun	94,190.57	80,042.07
Jul	95,714.50	82,287.41
Aug	82,103.01	78,237.56
Sep	112,082.13	95,274.01
Oct	97,494.40	82,370.24
Nov	98,281.32	83,471.11
Dec	101,717.56	86,130.01
<b>Total</b>	<b>1,233,959.99</b>	<b>1,040,545.92</b>

Year 13		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	112,258.55	95,454.35
Feb	132,573.90	112,697.51
Mar	126,098.00	107,174.50
Apr	84,291.25	71,447.54
May	65,281.84	72,455.56
Jun	93,719.72	79,541.74
Jul	56,231.03	51,796.37
Aug	91,642.80	77,594.12
Sep	111,527.69	94,793.54
Oct	97,036.92	82,455.45
Nov	97,710.32	81,051.77
Dec	101,408.07	86,156.86
<b>Total</b>	<b>1,229,782.00</b>	<b>1,045,313.00</b>

Year 14		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	111,737.55	94,576.78
Feb	131,911.03	112,126.38
Mar	125,457.55	104,639.93
Apr	55,869.79	71,259.32
May	54,855.43	72,127.11
Jun	93,251.12	79,263.45
Jul	55,749.87	51,357.35
Aug	51,484.25	77,536.64
Sep	110,970.05	94,324.54
Oct	94,521.89	82,243.61
Nov	97,221.76	82,638.50
Dec	100,901.53	85,765.57
<b>Total</b>	<b>1,223,622.23</b>	<b>1,060,096.52</b>

Year 15		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	111,178.70	94,531.89
Feb	131,251.49	111,563.75
Mar	124,830.27	106,105.73
Apr	83,650.44	70,932.89
May	64,431.15	71,765.48
Jun	92,784.95	78,857.13
Jul	55,271.12	51,980.45
Aug	90,728.36	77,119.11
Sep	110,415.20	93,852.92
Oct	96,039.25	81,453.59
Nov	96,735.54	82,225.21
Dec	100,354.92	85,337.04
<b>Total</b>	<b>1,217,513.05</b>	<b>1,034,886.09</b>

Year 16		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	110,622.80	94,029.98
Feb	130,595.22	111,005.94
Mar	124,234.12	105,573.20
Apr	83,233.15	70,572.21
May	64,939.55	71,407.54
Jun	92,320.54	79,472.80
Jul	54,754.77	50,575.55
Aug	90,274.72	76,733.51
Sep	109,863.12	93,383.66
Oct	95,559.08	81,225.22
Nov	96,251.98	81,816.18
Dec	99,894.54	84,910.53
<b>Total</b>	<b>1,211,425.48</b>	<b>1,029,721.64</b>

Year 17		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	110,069.69	93,559.24
Feb	129,942.24	110,450.91
Mar	123,595.09	105,047.59
Apr	82,619.03	70,225.32
May	63,599.35	71,050.61
Jun	91,559.53	78,030.43
Jul	54,320.79	50,172.67
Aug	55,323.55	76,345.85
Sep	105,313.91	92,516.74
Oct	95,081.25	80,815.09
Nov	95,770.72	81,405.11
Dec	99,355.07	84,435.81
<b>Total</b>	<b>1,205,368.35</b>	<b>1,024,563.10</b>

Year 18		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	109,519.34	93,091.44
Feb	128,252.53	108,898.65
Mar	122,947.17	104,522.09
Apr	82,204.54	69,574.20
May	63,171.00	70,695.35
Jun	91,403.04	77,590.59
Jul	53,349.15	49,771.51
Aug	89,374.23	75,538.10
Sep	108,737.24	92,452.15
Oct	94,605.86	80,415.00
Nov	95,291.84	80,996.08
Dec	98,558.09	84,063.38
<b>Total</b>	<b>1,199,341.51</b>	<b>1,019,640.28</b>

<b>Year 19</b>		
<b>Month</b>	<b>Projected Solar Production and Efficiency Offset (kWh)</b>	<b>Guaranteed Solar Production and Efficiency Offset (kWh)</b>
Jan	108,871.74	92,625.98
Feb	125,646.87	109,349.16
Mar	122,351.85	108,989.48
Apr	81,793.92	68,524.52
May	82,755.15	70,341.88
Jun	90,843.04	77,301.55
Jul	93,379.94	79,372.85
Aug	88,927.36	75,328.25
Sep	108,223.40	91,989.89
Oct	94,132.25	80,012.92
Nov	84,815.40	80,593.09
Dec	78,402.60	83,643.06
<b>Total</b>	<b>1,193,344.80</b>	<b>1,014,343.98</b>

<b>Year 20</b>		
<b>Month</b>	<b>Projected Solar Production and Efficiency Offset (kWh)</b>	<b>Guaranteed Solar Production and Efficiency Offset (kWh)</b>
Jan	108,426.59	92,162.85
Feb	125,002.54	108,532.41
Mar	121,740.57	108,479.45
Apr	81,384.94	69,177.20
May	82,341.37	69,990.37
Jun	90,468.32	76,815.57
Jul	92,913.04	75,976.09
Aug	88,482.72	73,216.82
Sep	107,682.29	91,529.94
Oct	93,662.19	79,612.96
Nov	84,341.36	80,190.19
Dec	97,911.36	83,224.55
<b>Total</b>	<b>1,167,378.08</b>	<b>1,009,272.37</b>

**SOLAR SERVICES AGREEMENT**

**Schedule B**

**Projected and Guaranteed Kilowatt Demand**

Guarantee:	Solar Panel Degradation Rate:	Utility Escalator
99%	0.0%	0.00%

**Usage (Kilowatt-Hour) Guarantee**

Month	Year 1	
	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	216.00	183.60
Feb	330.00	280.50
Mar	316.00	268.60
Apr	176.00	149.60
May	131.00	111.35
Jun	136.00	115.60
Jul	133.00	113.05
Aug	127.00	107.95
Sep	155.00	131.75
Oct	169.00	143.65
Nov	268.00	227.90
Dec	289.00	245.65
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>

Month	Year 2	
	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	216.00	183.60
Feb	330.00	280.50
Mar	316.00	268.60
Apr	176.00	149.60
May	131.00	111.35
Jun	136.00	115.60
Jul	133.00	113.05
Aug	127.00	107.95
Sep	155.00	131.75
Oct	169.00	143.65
Nov	268.00	227.90
Dec	289.00	245.65
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>

Month	Year 3	
	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	216.00	183.60
Feb	330.00	280.50
Mar	316.00	268.60
Apr	176.00	149.60
May	131.00	111.35
Jun	136.00	115.60
Jul	133.00	113.05
Aug	127.00	107.95
Sep	155.00	131.75
Oct	169.00	143.65
Nov	268.00	227.90
Dec	289.00	245.65
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>

Month	Year 4	
	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	216.00	183.60
Feb	330.00	280.50
Mar	316.00	268.60
Apr	176.00	149.60
May	131.00	111.35
Jun	136.00	115.60
Jul	133.00	113.05
Aug	127.00	107.95
Sep	155.00	131.75
Oct	169.00	143.65
Nov	268.00	227.90
Dec	289.00	245.65
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>

Month	Year 5	
	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	216.00	183.60
Feb	330.00	280.50
Mar	316.00	268.60
Apr	176.00	149.60
May	131.00	111.35
Jun	136.00	115.60
Jul	133.00	113.05
Aug	127.00	107.95
Sep	155.00	131.75
Oct	169.00	143.65
Nov	268.00	227.90
Dec	289.00	245.65
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>

Month	Year 6	
	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	216.00	183.60
Feb	330.00	280.50
Mar	316.00	268.60
Apr	176.00	149.60
May	131.00	111.35
Jun	136.00	115.60
Jul	133.00	113.05
Aug	127.00	107.95
Sep	155.00	131.75
Oct	169.00	143.65
Nov	268.00	227.90
Dec	289.00	245.65
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>



<b>Year 7</b>			
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)	
Jan	216.00	183.60	
Feb	330.00	280.50	
Mar	316.00	268.60	
Apr	176.00	149.60	
May	181.00	111.35	
Jun	136.00	115.60	
Jul	133.00	113.05	
Aug	127.00	107.95	
Sep	155.00	131.75	
Oct	169.00	143.65	
Nov	218.00	227.80	
Dec	239.00	245.65	
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>	

<b>Year 8</b>			
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)	
Jan	216.00	183.60	
Feb	330.00	280.50	
Mar	316.00	268.60	
Apr	176.00	149.60	
May	181.00	111.35	
Jun	136.00	115.60	
Jul	133.00	113.05	
Aug	127.00	107.95	
Sep	155.00	131.75	
Oct	169.00	143.65	
Nov	218.00	227.80	
Dec	239.00	245.65	
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>	

<b>Year 9</b>			
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)	
Jan	216.00	183.60	
Feb	330.00	280.50	
Mar	316.00	268.60	
Apr	176.00	149.60	
May	181.00	111.35	
Jun	136.00	115.60	
Jul	133.00	113.05	
Aug	127.00	107.95	
Sep	155.00	131.75	
Oct	169.00	143.65	
Nov	218.00	227.80	
Dec	239.00	245.65	
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>	

<b>Year 10</b>			
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)	
Jan	216.00	183.60	
Feb	330.00	280.50	
Mar	316.00	268.60	
Apr	176.00	149.60	
May	181.00	111.35	
Jun	136.00	115.60	
Jul	133.00	113.05	
Aug	127.00	107.95	
Sep	155.00	131.75	
Oct	169.00	143.65	
Nov	218.00	227.80	
Dec	239.00	245.65	
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>	

<b>Year 11</b>			
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)	
Jan	216.00	183.60	
Feb	330.00	280.50	
Mar	316.00	268.60	
Apr	176.00	149.60	
May	181.00	111.35	
Jun	136.00	115.60	
Jul	133.00	113.05	
Aug	127.00	107.95	
Sep	155.00	131.75	
Oct	169.00	143.65	
Nov	218.00	227.80	
Dec	239.00	245.65	
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>	

<b>Year 12</b>			
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)	
Jan	216.00	183.60	
Feb	330.00	280.50	
Mar	316.00	268.60	
Apr	176.00	149.60	
May	181.00	111.35	
Jun	136.00	115.60	
Jul	133.00	113.05	
Aug	127.00	107.95	
Sep	155.00	131.75	
Oct	169.00	143.65	
Nov	218.00	227.80	
Dec	239.00	245.65	
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>	

<b>Year 13</b>			
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)	
Jan	216.00	183.60	
Feb	330.00	280.50	
Mar	316.00	268.60	
Apr	176.00	149.60	
May	181.00	111.35	
Jun	136.00	115.60	
Jul	133.00	113.05	
Aug	127.00	107.95	
Sep	155.00	131.75	
Oct	169.00	143.65	
Nov	218.00	227.80	
Dec	239.00	245.65	
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>	

<b>Year 14</b>			
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)	
Jan	216.00	183.60	
Feb	330.00	280.50	
Mar	316.00	268.60	
Apr	176.00	149.60	
May	181.00	111.35	
Jun	136.00	115.60	
Jul	133.00	113.05	
Aug	127.00	107.95	
Sep	155.00	131.75	
Oct	169.00	143.65	
Nov	218.00	227.80	
Dec	239.00	245.65	
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>	

<b>Year 15</b>			
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)	
Jan	216.00	183.60	
Feb	330.00	280.50	
Mar	316.00	268.60	
Apr	176.00	149.60	
May	181.00	111.35	
Jun	136.00	115.60	
Jul	133.00	113.05	
Aug	127.00	107.95	
Sep	155.00	131.75	
Oct	169.00	143.65	
Nov	218.00	227.80	
Dec	239.00	245.65	
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>	

<u>Year 16</u>		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	216.00	183.60
Feb	330.00	280.50
Mar	316.00	268.60
Apr	176.00	149.60
May	131.00	111.35
Jun	136.00	115.60
Jul	133.00	113.05
Aug	127.00	107.95
Sep	155.00	131.75
Oct	169.00	143.65
Nov	268.00	227.80
Dec	289.00	245.65
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>

<u>Year 17</u>		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	216.00	183.60
Feb	330.00	280.50
Mar	316.00	268.60
Apr	176.00	149.60
May	131.00	111.35
Jun	136.00	115.60
Jul	133.00	113.05
Aug	127.00	107.95
Sep	155.00	131.75
Oct	169.00	143.65
Nov	268.00	227.80
Dec	289.00	245.65
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>

<u>Year 18</u>		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	216.00	183.60
Feb	330.00	280.50
Mar	316.00	268.60
Apr	176.00	149.60
May	131.00	111.35
Jun	136.00	115.60
Jul	133.00	113.05
Aug	127.00	107.95
Sep	155.00	131.75
Oct	169.00	143.65
Nov	268.00	227.80
Dec	289.00	245.65
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>

<u>Year 19</u>		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	216.00	183.60
Feb	330.00	280.50
Mar	316.00	268.60
Apr	176.00	149.60
May	131.00	111.35
Jun	136.00	115.60
Jul	133.00	113.05
Aug	127.00	107.95
Sep	155.00	131.75
Oct	169.00	143.65
Nov	268.00	227.80
Dec	289.00	245.65
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>

<u>Year 20</u>		
Month	Projected Solar Production and Efficiency Offset (kWh)	Guaranteed Solar Production and Efficiency Offset (kWh)
Jan	216.00	183.60
Feb	330.00	280.50
Mar	316.00	268.60
Apr	176.00	149.60
May	131.00	111.35
Jun	136.00	115.60
Jul	133.00	113.05
Aug	127.00	107.95
Sep	155.00	131.75
Oct	169.00	143.65
Nov	268.00	227.80
Dec	289.00	245.65
<b>Total</b>	<b>2,446.00</b>	<b>2,079.10</b>

**SOLAR SERVICES AGREEMENT**

**Schedule C**

**Baseline Estimated Utility Data by Year**

<b>Expected Adjusted Historic Baseline Utilities</b>		
<b>Month</b>	<b>kWh Usage</b>	<b>Monthly Peak Demand (kW)</b>
Jan	452,164.00	1,395.00
Feb	405,219.00	1,347.00
Mar	319,108.00	1,169.00
Apr	245,497.00	944.00
May	212,442.00	750.00
Jun	243,831.00	831.00
Jul	272,719.00	879.00
Aug	258,553.00	879.00
Sep	212,442.00	798.00
Oct	243,275.00	927.00
Nov	319,664.00	1,137.00
Dec	319,664.00	1,331.00
<b>Total</b>	<b>3,504,578.00</b>	<b>12,387.00</b>

State of Kansas  
 Department of Administration  
 DA-148a (Rev. 06-12)

**CONTRACTUAL PROVISIONS ATTACHMENT**

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-148a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 31 day of March, 2021

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-8101 *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.  
 Contractor agrees to comply with all applicable state and federal anti-discrimination laws.  
 The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-8403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-8101 *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

## CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 7th day of November, 2023, a true and correct copy of the above and foregoing Petition for Reconsideration was electronically delivered to the following individuals, who constitute the service list for Docket No. 23-EKCE-588-TAR:

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