



February 1, 2018

Via: KCC E-filing Express

Lynn M. Retz  
Secretary to the Commission  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, Kansas 66604

Re: In the Matter of the Application of Mid-Kansas Electric Company, LLC for  
Approval of the City of Montezuma Firm Energy, Capacity, and Load Following  
Agreement

Dear Ms. Retz:

Pursuant to K.S.A. 66-1220a and K.A.R. 82-1-221a, Mid-Kansas Electric Company, LLC ("Mid-Kansas") hereby respectfully requests confidential treatment of certain portions of the Firm Energy, Capacity, and Load Following Agreement (the "Agreement") that is contained in Exhibit A of the above referenced application. Those confidential portions of the Agreement have been redacted. Those redacted portions of the Agreement contain confidential commercial information regarding terms for wholesale electric service to a city. Cities are not subject to exclusive retail service territory requirements, and therefore have a choice regarding from whom they purchase power supply. Further, cities are large load centers. As such, competition for the power supply to cities is high. If the requested confidential information is disclosed, Mid-Kansas could be disadvantaged in future negotiations with other potential wholesale rate payers, as well as at a disadvantage when competing with other power suppliers for prospective load. In accordance with this confidentiality request, Mid-Kansas is filing a public and confidential version of the Agreement.

Sincerely,



James Brungardt  
Manager, Regulatory Relations

TPC/mas

Encl. 1

c. Mid-Kansas records

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Application of )  
Mid-Kansas Electric Company, Inc. )  
for Approval of the City of Montezuma )  
Firm Energy, Capacity, and Load )  
Following Agreement )  
 ) Docket No. 18-MKEE329 -CON  
 )

**APPLICATION**

COMES NOW, Mid-Kansas Electric Company, Inc. (“Mid-Kansas”), formerly known as Mid-Kansas Electric Company, LLC, and pursuant to K.S.A. 66-104, 66-117, and 66-104d(f), hereby files this Application with the State Corporation Commission of the State of Kansas (hereinafter referred to as the “Commission”) for the purpose of obtaining approval of the Firm Energy, Capacity, and Load Following Agreement by and between Mid-Kansas and The City of Montezuma (“Montezuma”), attached hereto in **Confidential Exhibit A** (the “Agreement”). In support of its application, Mid-Kansas states as follows:

1. Mid-Kansas is a Kansas non-profit corporation with its principal place of business located in Hays, Kansas. Mid-Kansas is a coalition of five Kansas consumer-owned cooperatives and one corporation wholly owned by a sixth Kansas consumer-owned cooperative<sup>1</sup> (collectively the “Members”). Mid-Kansas holds a certificate of convenience and necessity from the Commission to transact business as an electric

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<sup>1</sup> The six electric utilities and their headquarters are as follows: Lane-Scott Electric Cooperative, Inc., Dighton; Southern Pioneer Electric Company, Ulysses; Prairie Land Electric Cooperative, Inc., Norton; The Victory Electric Cooperative Association, Inc., Dodge City; Western Cooperative Electric Association, Inc., WaKeeney; and Wheatland Electric Cooperative, Inc., Scott City.

public utility for the generation, transmission and sale of electric energy for resale. Mid-Kansas has the power to generate, furnish, transmit, and sell electric power and energy at wholesale, and, in general, with the power to do all things necessary, useful and appropriate to accomplish such purposes.

2. In addition to the undersigned, copies of pleadings, documents, and correspondence in this docket should be sent to:

Reneé Braun  
Corporate Paralegal and Contracts Supervisor  
Mid-Kansas Electric Company, Inc.  
301 West 13th Street  
P.O. Box 980  
Hays, KS 67601  
(785) 623-6630  
rbraun@sunflower.net

James Brungardt  
Manager, Regulatory Relations  
Mid-Kansas Electric Company, Inc.  
301 West 13th Street  
P.O. Box 980  
Hays, KS 67601  
(785) 623-6638  
jbrungardt@sunflower.net

Erica Villarreal  
Manager, Power Contracts  
Mid-Kansas Electric Company, Inc.  
2075 W. St. John Street  
Garden City, KS 67846  
(620) 277-4757  
evillarreal@sunflower.net

3. Under K.S.A. 66-104d, certain electric cooperatives may elect to be exempt from the jurisdiction, regulation, supervision and control of the Commission. Mid-Kansas elected to self-regulate under K.S.A. 66-104d by complying with the

requirements under subsection (c) thereof.<sup>2</sup> However, under K.S.A. 66-104d(f), a self-regulated cooperative remains subject to the regulation of the Commission for sales of power for resale to non-member-owners. The Agreement is a contract for sale of power for resale between Mid-Kansas and Montezuma (a non-member-owner), and therefore the subject matter of the Agreement is subject to the jurisdiction of the Commission.

4. Under the Agreement, Mid-Kansas agrees to provide on a firm basis, all power, energy, and other related services to Montezuma, to meet Montezuma's power and energy requirements, and Montezuma agrees to take from Mid-Kansas all power, energy, and other related services to meet its power and energy requirements. Mid-Kansas and Montezuma will operate their electric systems in an interconnected manner and the parties will be responsible for their own expenses and any required construction associated with operation and maintenance of their electric systems.

5. Montezuma will not enter into any new power supply contract with any other entity for power or energy to serve Montezuma, but Montezuma may make additions of intermittent renewable resources upon one year's notice to Mid-Kansas so long as the total maximum nameplate capacity rating of such resources does not exceed five percent of Montezuma's non-coincidental system peak.

6. The rate for firm energy is described in Article VI and Exhibits A and B of the Agreement. Any transmission services required for the delivery of firm power and energy under the Agreement will be provided in accordance with The Southwest Power Pool Inc.'s ("SPP") Open Access Transmission Tariff ("OATT"). Montezuma will

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<sup>2</sup> Order Affirming Mid-Kansas Electric Company, LLC's Election to Deregulate, Docket No. 14-MKEE-253-DRC (filed January 7, 2014).

reimburse Mid-Kansas for all SPP transmission charges and any local access system charges.

7. Mid-Kansas submits that the rate for firm power and energy is the result of arm's-length negotiations between the parties who held equal bargaining strength. The Agreement is just and reasonable and is necessary to assure continuing, adequate and reliable utility service for Montezuma.

WHEREFORE, Applicant prays that the Commission (1) issue an Order approving the Agreement; and (2) for such other and further relief as the Commission may deem just and proper.

Respectfully submitted,



Taylor P. Calcara, #25561  
Mark D. Calcara, #09957  
Watkins Calcara, Chtd.  
Suite 300, 1321 Main Street  
P.O. Drawer 1110  
Great Bend, Kansas 67530  
(620) 792-8231 telephone  
(620) 792-2775 facsimile

**ATTORNEYS FOR MID-KANSAS ELECTRIC  
COMPANY, INC.**

**VERIFICATION**

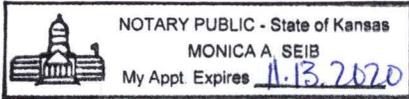
STATE OF KANSAS            )  
  )  
COUNTY OF ELLIS         )       **ss:**

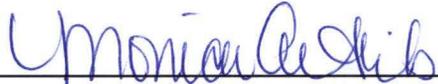
Taylor P. Calcara, of lawful age, being first duly sworn upon his oath, does state:

That he is an attorney for the above-named petitioner; that he has read the above and foregoing Application, and, upon information and belief, states that the matters therein appearing are true and correct.

  
\_\_\_\_\_  
Taylor P. Calcara

SUBSCRIBED AND SWORN to before me this 1 day of February, 2018.



  
\_\_\_\_\_  
Notary Public Monica A. Seib

Seal:

My Commission expires: 11.13.2020

**Exhibit A**

Firm Energy, Capacity, and Load Following Agreement, by and between Mid-Kansas Electric Company, LLC and the City of Montezuma, Kansas.

(Attached)

**CONFIDENTIAL  
PURSUANT TO  
K.S.A. 66-1220A  
AND K.A.R. 82-1-  
221A**

## **FIRM ENERGY, CAPACITY, AND LOAD FOLLOWING AGREEMENT**

This FIRM ENERGY, CAPACITY, AND LOAD FOLLOWING AGREEMENT ("Agreement") is made and entered into this 7<sup>th</sup> day of August, 2017, by and among Mid-Kansas Electric Company LLC, a Kansas limited liability company ("Mid-Kansas"), and the City of Montezuma, Kansas ("City"), each a "Party" and collectively, the "Parties".

### **RECITALS**

**WHEREAS**, the Parties hereto are organized and existing under the laws of the State of Kansas;

**WHEREAS**, Mid-Kansas owns and operates facilities for the generation, transmission, and sale of electric power and energy;

**WHEREAS**, the City owns and operates facilities for the distribution, and sale of electric power and energy; to serve in contiguous areas in the state of Kansas;

**WHEREAS**, the City is within such geographic vicinity and the facilities of the Parties are so located that they are interconnected;

**WHEREAS**, the City desires to purchase firm power, energy, and other related services from Mid-Kansas, and Mid-Kansas desires to sell firm power, energy, and other related services to the City.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the Parties hereto mutually agree as follows:

### **ARTICLE I DEFINITIONS**

**1.1 Defined Terms.** Unless otherwise defined in this Agreement, initially capitalized terms used herein shall have the following meanings:

**"Accredited Capacity"** shall mean the Accredited Generating Capacity, plus any commitments for firm capacity from electric suppliers under separate contracts now existing or hereinafter created, that is recognized by SPP, NERC, or other responsible entity for purposes of determining compliance with System Capacity Requirement.

**"Accredited Generating Capacity"** shall mean the total capability of electric generating facilities, owned or controlled by the City, if any, that has been tested on a regular basis in accordance with SPP requirements under Criteria 12, and may be used by Mid-Kansas under the provisions of this Agreement.

**"Agreement"** shall mean this Firm Energy, Capacity, and Load Following Agreement, and the Exhibits and Schedules thereto, as the same may be amended from time to time pursuant hereto.

**"Business Day"** shall mean every day other than a Saturday, Sunday, or any day on which banks in the State of Kansas are permitted or required to remain closed.

“**Charges**” shall mean all amounts owed by a Party for power and energy, or other services or commodities for an applicable period less any credits, refunds, or offsets provided for in this Agreement.

“**Commencement Date**” shall be 0001 hours on May 1, 2019.

“**Contract Year**” shall mean the twelve-month time period starting at 0001 hours on January 1 of each year and ending at 2400 hours on December 31 of the same year; provided, however, the first Contract Year shall begin on the Commencement Date and shall end at 2400 hours on December 31, 2020.

“**Defaulting Party**” is defined in Section 10.1.

“**Effective Date**” shall mean the date upon which receipt of all necessary approvals, as indicated in 15.2 have been received.

“**Event of Default**” is defined in Section 10.1.

“**Federal Power**” is the power and energy provided by Western Area Power Administration, Southwest Power Administration, or any other federal power providers.

“**Firm Energy**” shall mean energy generated by Mid-Kansas generating resources or obtained from market resources available to Mid-Kansas (at Mid-Kansas’ sole discretion) that is provided to the City on a firm basis.

“**Good Utility Practice**” is defined in the SPP OATT, as may be amended from time to time.

“**Indemnified Party**” is defined in Section 11.1.

“**Indemnifying Party**” is defined in Section 11.1.

“**Interconnection Point(s)**” is defined in Section 4.1.

“**KMEA**” is defined in Section 6.2.

“**Kansas Municipal Utilities (KMU)**” is the statewide association of municipally-owned and operated electric, gas, water, wastewater, storm water, and telecommunications utilities across the State of Kansas.

“**kWh**” shall mean kilowatt hour.

“**Load Following Services**” shall mean the services associated with providing energy in an amount equal to the difference between the City’s hourly energy requirements and the City’s generation, if any, as allowed under Section 5.1, and scheduled energy amounts.

“**Load Responsibility**” shall mean Mid-Kansas’ Native Load requirements and other existing firm power commitments.

“**Native Load**” shall mean all power and energy required to be served by Mid-Kansas to its members under the member’s wholesale power agreements to meet the member’s retail load.

“**NERC**” is the North American Electric Reliability Corporation.

“**OATT**” is defined in Section 2.2.

“**Person**” means any individual, partnership, joint venture, corporation, trust, limited liability company, unincorporated organization, tribunal, governmental entity, department or agency or other entity or association.

“**RTO**” is the Regional Transmission Organization.

“**SPP**” shall mean the Southwest Power Pool, Inc., or the successor thereto, also referred to as the Regional Transmission Organization, which shall be the transmission provider for services provided hereunder.

“**System Capacity Requirement**” shall be the Accredited Capacity that is required to be maintained per the SPP criteria, as such requirements may be amended from time to time.

“**Uncontrollable Forces**” is defined in Section 12.1.

“**Victory**” shall mean the Victory Electric Cooperative Association, Inc., a distribution cooperative, with its principal offices located in the City of Dodge City, Kansas, and a member of Mid-Kansas.

“**WAPA**” is the Western Area Power Administration.

“**WHM**” shall mean Mid-Kansas’ wholesale member rate, tariff MKEC WHM-16 Rev 2, as amended from time to time and depicted in **Exhibit A**.

## **ARTICLE II RESPONSIBILITIES OF THE PARTIES**

- 2.1 Power Pool Requirements.** The City is not party to a power pool or a reliability council, but agrees to operate all of its facilities, including, but not limited to, its renewable resources, if any, and transmission interconnection facilities, in a manner consistent with SPP criteria and NERC reliability standards applicable to Mid-Kansas and in Good Utility Practice.
- 2.2 Transmission Services.** Transmission services for the ancillary services and Firm Energy to be supplied under this Agreement shall be provided in accordance with the applicable SPP Open Access Transmission Tariff (“OATT”) or its successor tariff and any local access tariff, as they may be amended from time to time. It shall be the responsibility of Mid-Kansas, as the agent for the City, to pay for such SPP transmission service and local access service, and any applicable SPP Charges or local access Charges, in accordance with the OATT for all such SPP transmission Charges and local access Charges through its Firm Energy payment as specified in Section 6.1. It shall be the responsibility of the City to reimburse Mid-Kansas for all such SPP transmission Charges and local access Charges through its Firm Energy payment as specified in Section

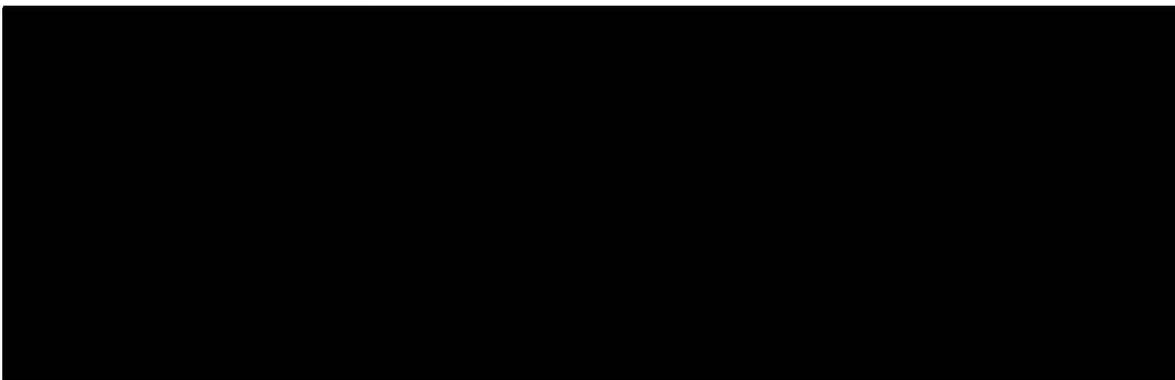
6.1. The City will pay Firm Energy as specified in Section 6.1 and will pay the applicable OATT Charges for transmission and any local access Charges. At no time during the term of this Agreement, or thereafter, will Mid-Kansas be obligated to pay, without reimbursement, for the SPP transmission expense, or any applicable local access Charges associated with Firm Energy delivery to the City, and any transmission expense, whether SPP or local access, associated with energy, delivery from another source as allowed hereunder.

**2.3 Good Utility Practice.** The Parties hereto agree to operate and maintain their respective systems in a manner consistent with Good Utility Practices.

**2.4 Interconnection.** The Parties hereto shall operate their electric systems in an interconnected manner and shall furnish such quantities of electric power and energy, as may be mutually agreed upon, through Interconnection Point(s) in accordance with the terms and provisions of this Agreement.

### ARTICLE III TERM; TERMINATION

3.1



**3.2 Termination.** No termination of this Agreement shall release any of the Parties from their obligations to pay for any Charges incurred prior to the effective date of such termination or any sale or exchange of power and energy made pursuant to this Agreement, or any legally binding arrangements related thereto, until the satisfaction and discharge of such obligations or as otherwise mutually agreed by the Parties hereto.

### ARTICLE IV INTERCONNECTIONS

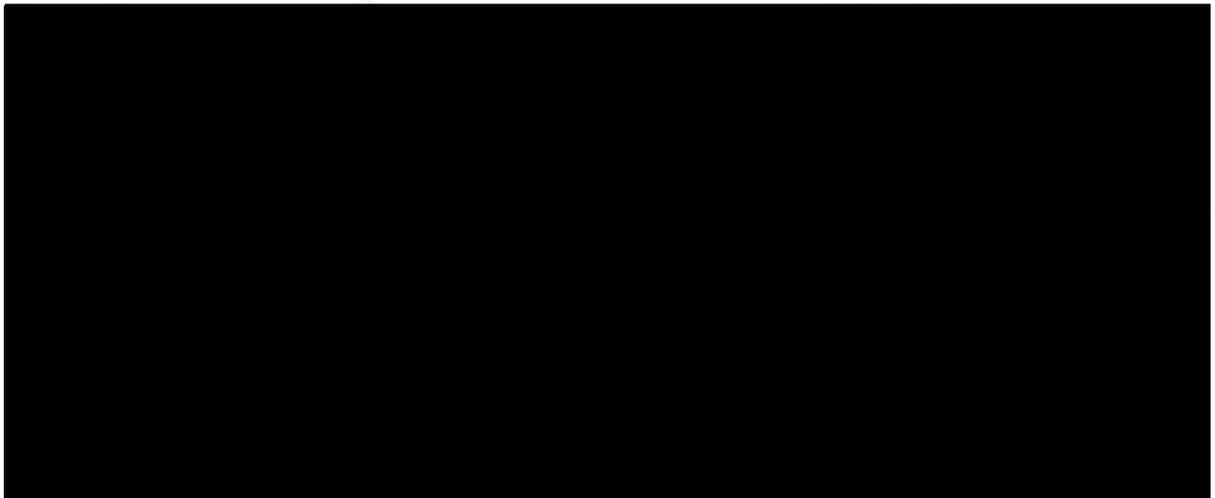
**4.1 Interconnection Point(s).** The “Interconnection Point(s)” between Mid-Kansas and the City shall be the point(s) at which the Victory facilities connect to the City-owned facilities that are in place upon execution of this Agreement, as depicted in **Exhibit C**, or at such other mutually agreeable points of interconnect as provided for in Section 4.2. Mid-Kansas shall not be responsible for demand or energy losses on any facilities beyond the Interconnection Point(s). The City shall be responsible for its own expenses, and for any required construction, associated with operation and maintenance of its electric system up to and including the Interconnection Point(s). Mid-Kansas shall be responsible for its own expenses, and for any required construction, associated with operation and

maintenance of its electric system up to the Interconnection Point(s). The City may contract with Mid-Kansas or others to perform such construction, operation and maintenance of the interconnection facilities under a separate agreement.

- 4.2 Additional or Expanded Interconnection Point(s).** Additional or expanded Interconnection Point(s) may be established by mutual written agreement of the Parties hereto. However, no Party shall have the obligation to create new, or expand the current Interconnection Point(s). Any additional or expanded Interconnection Point(s) shall be constructed and maintained by the City at its sole expense. **Exhibit C** shall be amended to reflect the additional or expanded Interconnection Point(s).
- 4.3 System Area Control.** Upon the Commencement Date, the City's load will become part of Mid-Kansas' firm load responsibility and the City's Accredited Capacity, if any, associated with renewable resources will become part of Mid-Kansas' capacity total for purposes of meeting its System Capacity Responsibility, and Mid-Kansas shall provide the City's ancillary services.
- 4.4 Operations and Communications Procedures.** The City and Mid-Kansas shall develop operations and communications procedures to ensure that interactions between the Parties are adequate to support billing procedures and Interconnection Point(s). Such procedures will include provisions for interruptions by Mid-Kansas in the event of emergency conditions affecting Mid-Kansas. The Parties shall schedule operating meetings as required to discuss the operations and communications procedures and any other issues that pertain to generation, operations, and/or communications between the Parties during the term of the Agreement.

**ARTICLE V  
MUNICIPAL RESOURCES**

5.1



5.2

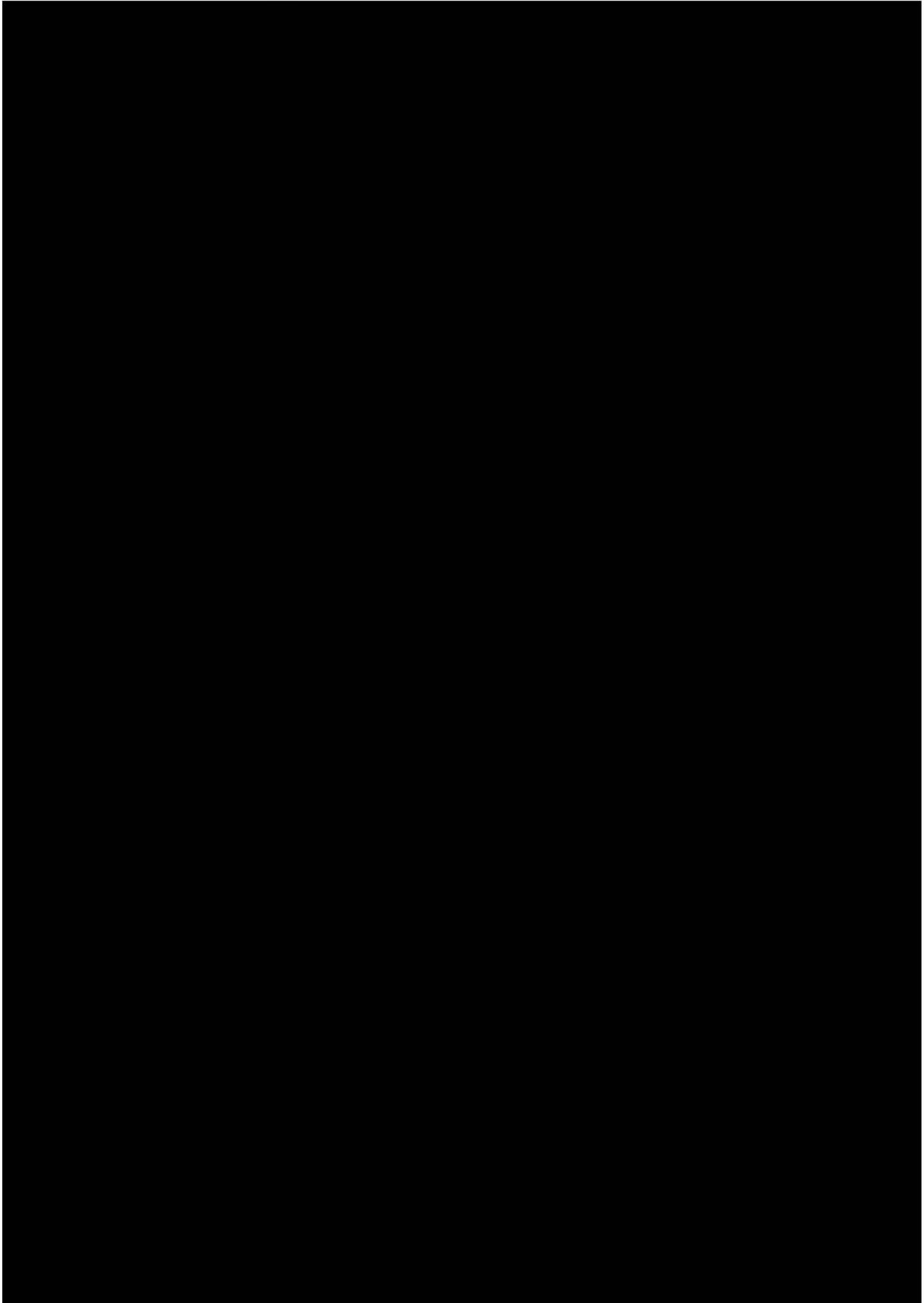
**ARTICLE VI  
FIRM ENERGY**

6.1

6.2

6.3

6.4



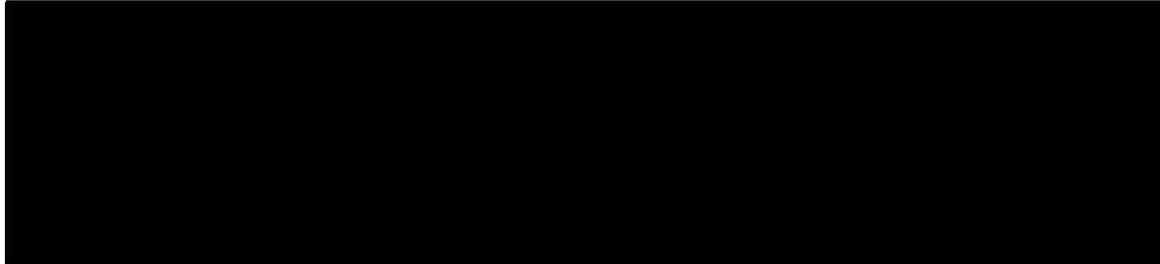


**ARTICLE VII  
ELECTRICAL EQUIPMENT**

**7.1 Dispatching.** All transactions occurring under this Agreement relating to power flows between the Parties shall be coordinated between the City and Mid-Kansas' system operations center located in Garden City, Kansas or SPP.

**7.2 Power Factor.** The City shall abide by the requirements, and maintain an average power factor as indicated on the WHM in **Exhibit A**.

**7.3**



**ARTICLE VIII  
MEASUREMENT OF ELECTRIC POWER AND ENERGY**

**8.1 Metering Equipment.** The necessary billing metering equipment, as reasonably determined by Mid-Kansas, for carrying out the purposes of this Agreement shall be installed, owned and maintained by Mid-Kansas. Nothing shall preclude the City, at its own expense, from installing and maintaining additional metering equipment for the purpose of comparisons with Mid-Kansas' readings. The City shall own maintain separate meters for each generating unit it owns, if any, as allowed under Section 5.1. These meters shall be at the expense of the City and shall substantially conform to the requirements of the SPP.

**8.2 Calibration and Testing.** Each Party shall test and calibrate its meters at regular intervals not to exceed one year. Each Party shall, upon reasonable notice from the other, make more frequent tests; provided, that if any such special meter test discloses the meter to be registering within acceptable limits of accuracy (two percent above or below comparisons with calibrated standards), then the requesting Party shall bear the expense of the test. At the time of such test, the meter shall either be corrected to register accurately, or replaced. However, if, at the time of testing, the meter shall be found to be inaccurate by more than two percent, then an adjustment shall be made for a maximum period of 30 days prior to the date of the test, or to the period during which such

inaccuracy may be determined by known incident of equipment failure to have existed, which ever period is shorter. If any metering equipment at any time fails to register, or if registration thereof is so erratic as to be meaningless, the electric power and energy delivered shall be determined from the best available data.

- 8.3 Additional Records.** In addition to meter records as envisioned by this Section, the Parties shall retain for the time period as identified in the Party's approved retention policy such log sheets and other records as may be needed to afford a clear history of the various movements of power and energy into and out of the systems of the Parties in the transactions under this Agreement and in transactions of any Party hereto under any related alternate energy supply agreements, and to effect such differentiation as may be needed in connection with settlements relating to such transactions. The originals of all such meter records, log sheets and other records shall be open to inspection upon proper notice by each Party's representatives during normal business hours.

#### ARTICLE IX PAYMENT

- 9.1 Payment of Bills.** All bills for Charges, if any, pursuant to this Agreement shall be rendered monthly by Mid-Kansas to the City normally not later than twenty days after the end of the period to which such bills are applicable. Unless otherwise agreed upon, such billing periods shall be from 0001 hours of the first day of the month to 2400 hours of the last day of the month. Bills shall be due and payable within fifteen days from the date such bills are received, and payment shall be made when due and without deduction. When a bill becomes delinquent; a late payment charge in an amount equal to two percent (2%) of the delinquent amount owed for current utility service will be added to the City's bill, and any collection efforts by Mid-Kansas shall be initiated.
- 9.2 Disputed Bills.** In the event that the City desires to dispute all or any part of the billings pursuant to this Agreement, the City shall pay the full amount of the Charges when due and give notification to Mid-Kansas in writing within 90 days from the date the billing is rendered, stating the grounds on which the Charges are disputed and the amount in dispute. The City will not be entitled to any adjustment on account of any disputed Charges which are not, within the time and in the manner herein specified, brought in writing to the attention of Mid-Kansas. If any dispute results in a refund, interest on the refunded amount shall be added to the refund from the date payment was received until the date refund was made, at the rate of one percent per month or fraction thereof.

#### ARTICLE X DEFAULT

- 10.1 Events of Default.** For purposes of this Agreement, an "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

**10.1.1.** A Party's failure to pay, when due, any Charges or the failure of either Party to make, when due, any other payment to the other Party required pursuant to this Agreement, if such failure is not remedied within ten business days after written notice is received by the Defaulting Party;

**10.1.2.** The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure constitutes a separate Event of Default) if such failure is not remedied within twenty business days after written notice is received by the Defaulting Party;

**10.1.3.** Such Party (i) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due; or

## **ARTICLE XI INDEMNITY**

**11.1 Third Party Indemnification.** Except as provided for in Section 11.2, each Party (an "Indemnifying Party") shall indemnify, hold harmless and defend the other Party (the "Indemnified Party") and its directors, officers, agents, employees, successors and assigns from and against any and all claims or actions, threatened or filed, whether groundless or false, and the resulting losses, liabilities, damages, expenses, reasonable attorney's fees and court costs, whether incurred by settlement or otherwise to the extent arising out of or by reason of the Indemnifying Party's gross negligence or willful misconduct or breach of its obligations under this Agreement.

**11.1.1** Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Section 11 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and reasonably satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party or there is a conflict of interest precluding representation of both by the same counsel, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless the applicable liability insurer is willing to pay such costs.

**11.1.2** If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

**11.1.3** Any amount owing to an Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party, which proceeds the Indemnified Party shall use commercially reasonable efforts to obtain.

**11.2 Limitation on Liability.**

**11.2.1.** Except where caused by the other Party's gross negligence or willful misconduct, each Party shall be responsible for all physical damage, bodily injury, sickness, disease, death, or destruction of the property, equipment and/or facilities owned by it, and shall not seek recovery or reimbursement from the other Party for such damage, bodily injury, sickness, disease, or death.

**11.2.2.** To the fullest extent permitted by applicable laws and SPP requirements, and notwithstanding other provisions of this Agreement, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages and lost business opportunities), exemplary or punitive damages related to, any claims arising out of tort, contract, strict liability and/or operation of law, or resulting from performance or nonperformance of this Agreement. This limitation on damages shall not apply with respect to claims brought by third parties for which the Indemnified Party is entitled to indemnification under this Agreement.

**ARTICLE XII  
UNCONTROLLABLE FORCES**

**12.1 Uncontrollable Forces.** No Party to this Agreement shall be considered to be in default in performance of any obligation hereunder, other than the obligation to make payments as provided in this Agreement, if failure of performance shall be due to Uncontrollable Forces; the term "Uncontrollable Forces" shall mean any cause beyond the control of the Party affected, including, but not limited to, an act of God, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, restraint by court order or public authority, including court or regulatory orders, injunctions and restraint by governmental agencies with proper jurisdiction prohibiting or failing to approve acts necessary to perform hereunder or permitting any such act only subject to unreasonable conditions, and failure of equipment or inability to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers, which by the exercise of due foresight such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. No Party hereto, however, shall be relieved of liability for

failure of performance if such failure be due to causes which it fails to remove or remedy with reasonable dispatch. Nothing contained herein, however, shall be construed to require any Party to prevent or settle a strike or labor negotiations against its will, or shall be construed to relieve a Party of duty to pay.

### ARTICLE XIII WAIVERS

- 13.1 Waivers.** Any waiver at any time by any Party hereto of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other default or matter. Any delay short of the statutory period of limitation in asserting or enforcing any right shall not be deemed a waiver of such right.

### ARTICLE XIV SUCCESSIONS AND ASSIGNS

- 14.1 Permitted Assignments.** This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto. No permitted sale, assignment, transfer or other disposition shall release or discharge any Party from its obligations under this Agreement.
- 14.2 Other Assignments.** Except for an assignment by Mid-Kansas due to sale or merger of the company or substantially all of its assets, or as provided in Section 14.1, no Party may assign its interest in the Agreement in whole or in part without the prior written consent of the other Parties. Such consent shall not be unreasonably withheld.

### ARTICLE XV MISCELLANEOUS

- 15.1 Beneficial Use.** The provisions of this Agreement shall not and do not create any rights in favor of the City, or any person, corporation, or association not a party to this Agreement and the obligations herein assumed are solely for the use and benefit of the Parties to this Agreement.
- 15.2 Approvals.** This Agreement is conditioned upon the approval and authorization of any commission, governing board or regulatory body whose approval may be required by law, and the governing boards or councils of Mid-Kansas and the City.
- 15.3 Ingress and Egress.** Each Party grants to the other Party rights of ingress and egress over their respective properties as may be reasonably arranged and required to enable performance of this Agreement, subject to prior notification and compliance with the owning Party's applicable requirements for safety and security.
- 15.4 Notices.** All notices, payments, and communications required to be given hereunder shall be deemed to have been given if mailed or electronic delivery to the other Party, postage prepaid, as follows:

a. If to **City**  
City Clerk

With a copy to:

City of Montezuma, Kansas

b. If to **Mid-Kansas**  
Mid-Kansas Electric Company, LLC  
Attn: Manager, Power Contracts  
2075 W. St. John St.  
Garden City, KS 67846  
Email: [evillarreal@sunflower.net](mailto:evillarreal@sunflower.net)

With a copy to:  
Mid-Kansas Electric Company, LLC  
Attn: Legal Department  
301 W. 13th Street  
P.O. Box 1020  
Hays, KS 67601  
Email: [legal@sunflower.net](mailto:legal@sunflower.net)

The forgoing destinations of the name and address, to which notice and communications are to be directed, may be changed from time to time by written notice given by any Party to the others.

- 15.5 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Kansas.
- 15.6 Applicable Taxes.** If, at any time, there shall be levied upon any Party hereto a direct tax, charge in lieu of taxes, or other assessment applicable to services rendered by such Party under this Agreement based upon kilowatt or kWh or the amount of a bill rendered, the Charges as set forth herein shall be increased by the amount of such taxes, assessments or Charges paid by such Party on account of such sales or bills rendered.
- 15.7 Captions.** Captions of the various Sections herein are intended for convenience of reference only and shall not define or limit any of the terms or provisions hereof.
- 15.7 Amendments.** Neither this Agreement nor any part hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification is sought.

**IN WITNESS WHEREOF**, the Parties have signed this Agreement by their duly authorized representatives as of the date first stated above.

[SIGNATURE PAGE TO FOLLOW]

Mid-Kansas – City of Montezuma  
Firm Energy, Capacity, and Load Following Agreement

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City of Montezuma, Kansas

Mid-Kansas Electric Company, LLC

Chester L. Wiswell  
Signature

Stuart Lowry  
Signature

APPROVED  
BY DPIC  
BY PMS

Chester L. Wiswell  
Printed Name

Stuart Lowry  
Printed Name

Mayor  
Title

President and CEO  
Title

08/07/2017  
Date

8/14/2017  
Date

**EXHIBIT A**

**(Attached)**

**Mid-Kansas Member Rate**

**Tariff MKEC-WHM-16 Rev 2**

[Redacted]

*Handwritten signature*

[Redacted]

*CONFIDENTIAL*

[REDACTED]

*CONFIDENTIAL*

[REDACTED]

*CONFIDENTIAL*

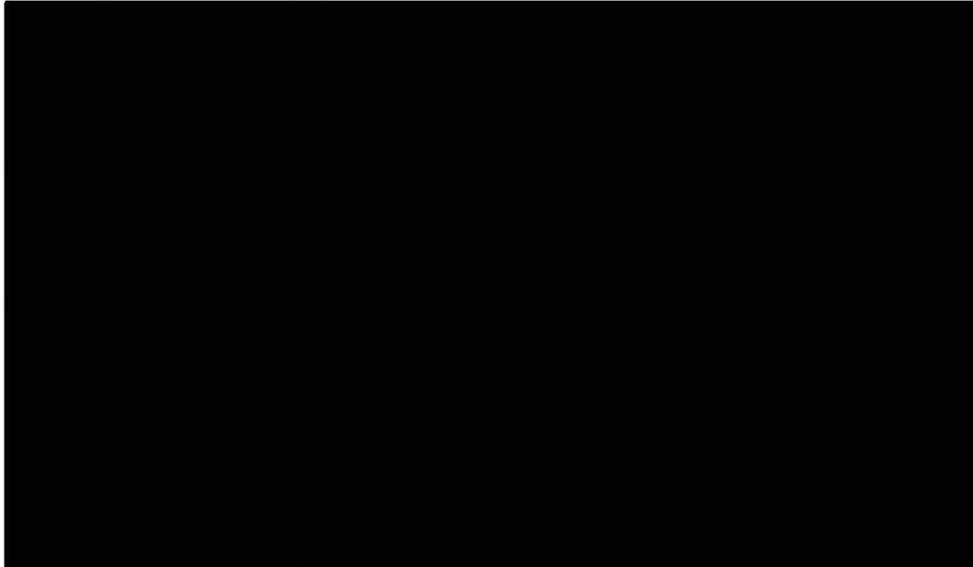
[REDACTED]

SMITH SMITH

[REDACTED]

**EXHIBIT B**

**Discount Rate Schedule**

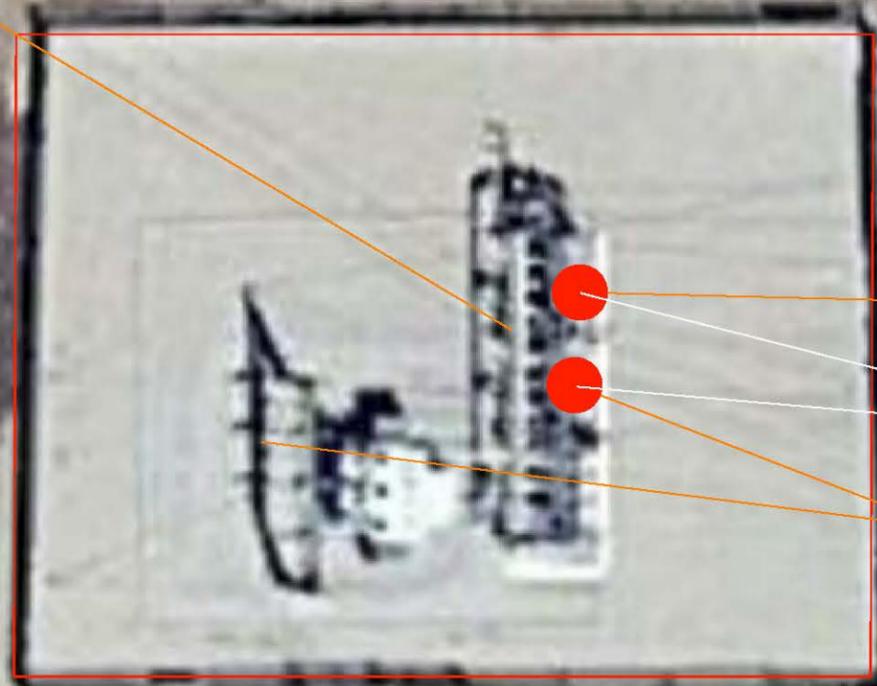


**EXHIBIT C**

**Interconnection Points**

**[Insert point of interconnection/line of demarcation drawing when available]**

# City of Montezuma 34.5kV Substation



Point of Interconnection  
Sub Steel Takeoff

- Point of Interconnect
- Distribution Lines
- Fence Boundary



<b>FOR REFERENCE</b>		VENDOR: X	
DATE: 01/12/18 PROJ# N/A		ORIGINAL DRAWING FILE NUMBER: X	
CITY OF MONTEZUMA 34.5KV SUBSTATION POINT OF INTERCONNECTION			
 Mid-Kansas ELECTRIC COMPANY, LLC		DRAWING NAME: N/A	
DRAWN BY: A/J		SCALE: N/A	
CHECKED BY: A/J		SHEET NUMBER: 01/01	

1/12/2018 11:58:14 AM C:\Users\jmontezuma\Desktop\Projects\_for\_City\Montezuma.dwg