

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

In the Matter of the Application of Southern)
Pioneer Electric Company for Approval of its) Docket No. 24-SPEE-540-TAR
Renewable Energy Program Rider Tariff)

NOTICE OF FILING OF STAFF'S REPORT AND RECOMMENDATION

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and files its Report and Recommendation regarding the Application of Southern Pioneer Electric Company (Southern Pioneer) for approval of its Renewable Energy Program Rider Tariff.

Staff is recommending approval of the RE Program and Three-party Agreement-RE Program Participation Agreement (Participation Agreement), with the following stipulations:

1. Southern Pioneer must note in the customer education materials that residential participation in their Community Solar Program will not add any additional renewable generation to Sunflower's generation portfolio and allocates generation from its Johnson Corner Solar Project;
2. As detailed in the Southern Pioneer/Sunflower Participant Agreement, Southern Pioneer/Sunflower must pursue all legal recourse to minimize the impact of any Tier 3 customer default on Southern Pioneer's retail customer base; and
3. If Sunflower/Southern Pioneer places any defaulted portion of a PPA transacted on behalf of a third party customer into its Energy Cost Adjustment, Sunflower will flow-through any legal proceeds received from the customer default back through Southern Pioneer's ECA, less any legal fees incurred to win a judgement or settle damages.

WHEREFORE, Staff submits its Report and Recommendation for Commission review and consideration and for such other relief as the Commission deems just and reasonable.

Respectfully submitted,
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REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Andrew J. French, Chairperson
Dwight D. Keen, Commissioner
Annie Kuether, Commissioner

FROM: Ian Campbell, Senior Auditor
Chad Unrein, Chief of Accounting and Financial Analysis
Justin Grady, Deputy Director of Utilities
Jeff McClanahan, Director of Utilities

DATE: May 31, 2024

SUBJECT: Docket No. 24-SPEE-540-TAR – In the Matter of Application of Southern Pioneer Electric Company for Approval of its Renewable Energy Program Rider Tariff.

EXECUTIVE SUMMARY:

Southern Pioneer Electric Company (Southern Pioneer) filed its Application asking for Commission Approval to implement a voluntary Renewable Energy Program (RE Program) for its customers on January 31, 2024. Staff has reviewed testimony, exhibits, data request responses, and conducted two technical conferences with Southern Pioneer and the Interveners in this Docket. Staff is recommending approval of the RE Program and Three-party Agreement-RE Program Participation Agreement (Participation Agreement), with the following stipulations:

1. Southern Pioneer must note in the customer education materials that residential participation in their Community Solar Program will not add any additional renewable generation to Sunflower's generation portfolio and allocates generation from its Johnson Corner Solar Project;
2. As detailed in the Southern Pioneer/Sunflower Participant Agreement, Southern Pioneer/Sunflower must pursue all legal recourse to minimize the impact of any Tier 3 customer default on Southern Pioneer's retail customer base; and
3. If Sunflower/Southern Pioneer places any defaulted portion of a PPA transacted on behalf of a third party customer into its Energy Cost Adjustment, Sunflower will flow-through any legal proceeds received from the customer default back through

Southern Pioneer’s ECA, less any legal fees incurred to win a judgement or settle damages.

BACKGROUND:

On January 31, 2024, Southern Pioneer filed an Application asking the Commission to approve a voluntary Renewable Energy Program (“RE Program”) tariff that would allow Commercial, Industrial, and Residential customers to purchase energy from either a Wind Power Purchase Agreement (PPA) or from a utility scale solar farm.

Sunflower Electric Power Corporation ("Sunflower") developed and administers the RE Program for its member cooperatives, of which Southern Pioneer is a member. The RE Program, as filed, consists of a multi-level subscription program with 3 tiers for wind energy and 3 tiers for solar, which is further divided into two categories for Solar Tier 1a and 1b. The program is designed to give customers voluntary access to renewable energy generation, without the need for the customer to own, install, or maintain the system themselves. The RE Program is available to residential, Commercial, and Industrial customers that take service under Southern Pioneer's standard service rate on a first-come, first-serve basis. Southern Pioneer’s Commercial and Industrial (C&I) customers have access to Wind and Solar Tiers based on minimum size requirements and participation and tier caps. Southern Pioneer’s commercial and industrial customers do not qualify for the Community Solar Program (Solar Tier 1b). Every Tier has different qualification requirements and participant limitations, which will be discussed in more detail later in this report, but each customer can elect a participation level from 25% of total energy consumption up to 100% of their total energy consumption, or the Tier Participant Cap.

Southern Pioneer’s RE Program is divided into Tiers based on the minimum size requirement for customer’s average-hourly demand from the previous twelve-months. Southern Pioneer will review a customer’s eligibility based on minimum size when the customer requests service under the RE Rider, with subsequent evaluations performed at the beginning of each calendar year to determine the customer’s ongoing eligibility. Southern Pioneer provided the following table regarding its minimum size requirements in the Testimony of Chantry Scott.

<i>WIND</i>	Minimum Size
Tier 1	100 kW
Tier 2	200 kW
Tier 3	1,000 kW
<i>SOLAR</i>	Minimum Size
Tier 1a	1 kW
Tier 1b	125 kWh/usage per year (1 share)
Tier 2	5 kW
Tier 3	500 kW

There are two types of Tier Caps set forth in the RE Program. The Tier Participant Cap is a monthly limit on maximum participation by individual customers in the program, measured in kWh/month.

The Total Tier Cap is the monthly limit on maximum participation by all Tier participants. The following table included in Testimony of Southern Pioneer's witness Chantry Scott provides a breakdown of the Tier Participation Cap and the total Tier Cap for its RE Rider.

WIND	Tier Participation Cap	Total Tier Cap
Tier 1	1,500,000 kWh	8,000,000 kWh
Tier 2	3,000,000 kWh	16,000,000 kWh
Tier 3	None	None
SOLAR	Tier Participant Cap	Total Tier Cap
Tier 1a	100,000 kWh	600,000 kWh
Tier 1b	Based on customer's previous 12-month average kWh usage	Total number of shares made available to Southern Pioneer by Sunflower
Tier 2	200,000 kWh	1,200,000 kWh
Tier 3	None	None

From the above table, Staff would note that Wind and Solar Tier 3 do not have any participation or tier caps. For qualifying Tier 3 customers, Sunflower would seek new renewable energy projects on behalf of its commercial and industrial customers and result in Sunflower signing long-term purchase power agreements. Prior to acquiring the PPA on behalf of its Tier 3 customers, Sunflower would require its Tier 3 customers to sign a long-term Service Agreement with Southern Pioneer and Sunflower, including participant financial guarantees, default provisions, and penalties for early exit.¹

RE Program - Residential Customers

Southern Pioneer's RE Program for residential customers is classified under its Community Solar Tier or Solar Tier 1b and is capped based on its residential customer's previous 12-month average kWh usage. Total participation is limited to the 2,907 shares of 125 kWh and is provided on a first-come, first-serve basis. Each customer may purchase a number of shares up to their total average energy usage over a 12-month period. Each share is \$5 for 125 kWh. An average Southern Pioneer customer uses around 1,000 kWh in a month, which equates to 8 shares, or \$40 per month. Customers pay for the number of shares they have purchased, which appears as a separate line item on their bill. Customers who have purchased shares will then have an adjustment amount, which divides the total revenue generated by the Johnson Corner Solar Farm by the total electrical output of the solar farm, multiplied by the number of shares and kWh per customer. This amount will be used to either offset customer's bills or calculate a premium that customers must pay. To clarify, Southern Pioneer's share of Community Solar is currently limited to Southern Pioneer's allocated share of its Johnson Corner Solar project by Sunflower. As a result, residential customer participation in the Community Solar Program does not increase Sunflower's investment in new solar generation projects. Staff believes Southern Pioneer should include clarifying language in its customer education materials regarding their Community Solar program for residential customers.

¹ See Attachment: Renewable Energy Program Participant Agreement.

RE Program- C&I Customers

For C&I customers, Southern Pioneer and its customers will enter into a third-party service agreement between Southern Pioneer, Sunflower, and the customer. The service agreement will define the customer's selected Division, Tier, and Participation Level. The term of the agreement will be determined between the parties but will not be less than one year for service under Tiers 1 and 2 (except for Solar Tier 1b-Residential Community Solar, addressed below). Tier 3 service agreements will include exit fee provisions to protect against stranded investment if a customer leaves prior to the expiration of any new power supply arrangement entered into by Sunflower as Southern Pioneer's wholesale power provider to serve the customer per the terms of this Rider.

Wind Tier 1 and Solar Tier 1a provides a different type of benefit to its subscribers. Tier 1 is designed to be accessible to smaller commercial and industrial load profiles and does not provide any real economic benefit to these customers. The main benefit to customers is the ability to claim Renewable Energy Credits (RECs), which can help customers meet sustainability and clean energy goals. Southern Pioneer has included the ability to retire or transfer RECs for customers at no additional cost. Due to the Southwest Power Pool's (SPP) Integrated Marketplace pooling all electrical generation before being distributed to customers, any energy purchased under any Wind or Solar tier will not be traceable to any single customer; instead, the customer will own the rights to the RECs.² There is a secondary market where RECs can be marketed and purchased by other utilities or large companies that want to claim a portion of the energy that was generated by renewable generation resources. This market value of a REC is currently limited in nature, but additional value may be added in the future, if Federal or State governments or SPP were to pursue additional regulations, such as mandated carbon emissions limits or carbon tax.

Wind and Solar Tier 2 is for larger C&I customers that have a minimum size requirement for customer's average-hourly demand of 5kW for Solar Tier 2 or 200 kW for Wind Tier 2 for the previous twelve-month period. For these customers, a Renewable Energy Charge line item will be added to their bills as the average energy charge from the PPAs available to Southern Pioneer. Additionally, a monthly Renewable Energy Adjustment will be applied, equal to the total monthly revenue earned from selling renewable energy into the SPP Integrated Marketplace, divided by the total energy (kWh) produced by the resource under the PPA during the month, multiplied by the customer's total participation energy.

Wind and Solar Tier 3 is available to even larger C&I customers with a minimum size requirement for customer's average-hourly demand of 500kW for Solar Tier 3 or 1,000 kW for Wind Tier 3. Customer participation in Tier 3 allows for participation in new solar or wind resources that may be procured by Sunflower, and the customer's participation supports those future generation procurements. The calculations for the Renewable Energy Charge and Renewable Energy Adjustment are the same for Tier 3 as for Tier 2. All other applicable rates and charges under the applicable rate schedule for standard service to the customer are still included in the customer's monthly bills.

² If a customer owned a qualifying renewable resource behind-the-meter, the electricity generated would be directly traced to the customer, as would the RECs, but the customer would be fully responsible for operation and maintenance costs. Under this program, the customer will not own the generation resource or be responsible for its upkeep, but will still own the rights to the RECs.

Sunflower is in the process of rolling out its Renewable Energy Programs across its member-owner cooperatives. At the time of the filing, Pioneer was the only Sunflower cooperative with an active Renewable Energy Program. Pioneer currently has 40 active residential customers within their Community Solar Energy program and has sold 338 shares under its Solar Tier 1b in its service territory. Pioneer has yet to have any Commercial or Industrial customers signed up for its Renewable Energy Program.

ANALYSIS:

Residential RE Program:

When evaluating whether a residential customer participating in Tier 1b would have benefitted from this program during the years 2022 and 2023, the data shows mixed results for customers. In 2022, when natural gas prices were relatively high, the value of low-cost solar energy was also high, which resulted in lowered customer bills. However, in 2023, when gas prices dropped, customers ended up typically paying more on their bills than they would have without purchasing the solar shares. However, when gas prices are low, customers still benefit from the lower Energy Cost Adjustment (ECA), which reflects the cost of fuel used to provide power. In the example models provided by Southern Pioneer, ECA costs were not included, so Staff cannot provide any estimates of cost savings or premiums, and natural gas prices are too volatile to predict with any certainty.

While the benefits/costs of the Renewable Energy Program is largely contingent on the marginal price of energy in the SPP IM, Southern Pioneer is able to demonstrate that the RE Program provides customers an alternative to customer-installed rooftop solar. Rooftop solar requires an up-front customer investment to install roof-top solar and requires specific roof layouts and environmental factors. Often, residential customers are tasked with evaluating long-term lease agreements and choices from a variety of vendors that may be driven by their own profit motivations. Purchasing shares from an already-constructed utility-scale solar farm offers significant advantages over rooftop solar installations.³ Southern Pioneer's program is completely voluntary, and customers can exit the program at any time at no additional cost, unlike a rooftop installation.

In addition, Southern Pioneer and its customer base benefit from customers' loads being retained on Southern Pioneer's system. Any customer that chooses to install a rooftop solar station or similar behind-the-meter installations will result in that amount of energy being removed from Southern Pioneer's load. This results in higher ECA rates as "cost recovery shifts to Southern Pioneer's other customers."⁴ This is especially amplified if a larger Commercial or Industrial customer were to leave the system. It is also important to note that Southern Pioneer is a relatively small utility company, with a larger share of Commercial and Industrial customers than other utilities. This makes Southern Pioneer's residential customers especially sensitive to potential large load losses associated with large-scale behind-the-meter investment.

³ See Direct Testimony of Chantry C. Scott on Behalf of Southern Pioneer Electric Company, pp. 18-16 (Jan. 31, 2024) ("Scott Direct"), for a more detailed listing of residential-specific benefits of utility solar over customer-owned rooftop solar.

⁴ See *id.*, pp 15-16.

Another factor that Staff has considered is the customer educational materials shared with Southern Pioneer's customers to educate them on the benefits/costs of Southern Pioneer's Renewable Energy Program. Some of Sunflower's other members have already implemented a RE Rider identical to the one in this docket, and have provided some basic information on their websites regarding the program. Southern Pioneer has indicated that it will be implementing similar customer education strategies to Pioneer Electric. Based on its review, Staff believes that the customer informational material is sufficient; however, Staff recommends Southern Pioneer include clarifying language that signing up for this RE Program will not be directly increasing the utility's investment in solar energy, as the solar farm available to them is already part of Sunflower's energy portfolio and passed on through Southern Pioneer's energy cost adjustment.

Commercial and Industrial RE Program:

C&I customers have access to all tiers of both programs, except for Solar Tier 1b. For Wind Tier 1 and Solar Tier 1a, there are no economic benefits to the customer, but they do allow the customer to claim RECs and clean energy benefits.⁵ The cost per kWh is \$0.0025 for Wind Tier 1 and \$0.0035 for Solar Tier 1a, and customers are required to have usage greater than 1 kW. The price is listed separately on the customer's billing.

Along with the benefits described for the RE Program for residential customers, C&I customers in the Tier 2 & Tier 3 RE Programs can benefit from a number of pathways from a directly-assigned fixed price hedge, retention of their current High Load Factor Discount, and the aggregation of multiple meters to serve load. Customers in the Tier 2 and Tier 3 programs pay a fixed cost set at the price of the PPA contract and are provided a revenue adjustment, according to their participation volume. In addition, C&I customers can continue to qualify for High Load Factor Discount while participating in the RE Program. If customers set up their own renewable roof-top systems, these C&I customers would be at risk of losing this discount, since the energy required will be from Southern Pioneer and not from a behind-the-meter system that reduces customer demand and energy consumption. This keeps the customer's load on the system, which benefits all customers by allocating costs over a larger number of kWhs, reducing each customer's individual costs. Another benefit of the RE Program for C&I customers comes from the ability for customers to aggregate multiple meters. Large C&I customers often have multiple metering points, and the RE Program is designed to allow customers to aggregate their load points when applying for participation in the RE Program. With a traditional renewable installation, the multiple metering points may require C&I customers to invest in multiple roof-top systems, where the RE Programs aggregates these points in a utility-scale solar investment.

According to the Application, Tier 3 service will not be available until C&I customers' aggregate participation level reaches a threshold sufficient for Sunflower to justify pursuing a new renewable resource via a Purchase Power Agreement, as determined by Sunflower. Tier 3 agreements will also include exit fee provisions to protect against stranded investment if a customer leaves prior to the expiration of any new power supply arrangement Sunflower enters into in order to serve the customer under this Rider. Exit fees would apply only if Sunflower would not have constructed a plant or entered into a PPA without the required interest level in Tier 3 subscriptions. These fees function to protect Southern Pioneer's other customers from absorbing the cost of the contract.

⁵ See Scott Direct, pp. 16-17, for a more detailed and extensive listing of commercial and industrial customer-specific benefits.

Staff requested a copy of the Three-Party Agreement or Renewable Energy Program Participant Agreement (Participant Agreement), which Southern Pioneer provided on May 21, 2024.⁶ Staff has included a copy of Southern Pioneer's proposed Participant Guarantee as an Attachment to the Report. The Agreement outlines how Sunflower will go about procuring a PPA for Tier 3 customers, as well as general terms for settling disputes, billing practices, and other items. The Agreement also contains Customer Credit Requirements. Staff notes that this Agreement has not been signed by any customers and intervening parties may propose any redline revisions to the Participant Guarantee. Based on Staff's review of the Participant Guarantee, Staff does not recommend any edits to Southern Pioneer's proposed Service Agreement and recommends approval of the Participant Guarantee along with Commission approval of the RE Program and tariffs.

The provisions of the Participant Agreement provide both Sunflower and the Distributing Electric Company ("DEC"), in this case Southern Pioneer, several levels of assurance of the financial capability of any potential customer. Sunflower can review any customer's annual reports, and have a Customer Performance Assurance in the form of an irrevocable, non-transferrable letter of credit with various levels of credit ratings, with all costs associated with the line of credit to be borne by the customer. The Participation Agreement also includes a provision for a Customer Deposit, payable to Sunflower, equal to two times the average total retail electric bill once the customer's facilities have reached designated production levels.

The Participant Agreement includes ten Events of Default, through which Sunflower or Southern Pioneer retain the right to terminate the contract for cause. These Events include: failure to pay any amount under the Agreement; failure to maintain or provide Performance Assurance; a downgrade of the customer's credit rating; failure to perform or observe any material obligation in the Agreement; incorrect representation or warranty in any material respect; a party's failure to pay debts or seeking bankruptcy; failure of a customer to receive Environmental Attributes (the RECs); failure of a customer to maintain the load required; cessation of operations of the customer load for a period exceeding 3 months; and consolidation or merger with another entity. Most of these Events are conditioned with a grace period after a notice is given to the relevant party. In the event of a customer default, the Participant Agreement includes a detailed dispute resolution process that includes settlement negotiations and mediation procedures.

In the Participant Guarantee, Sunflower and Southern Pioneer do not address the process for allocating any proceeds from a customer settlement or judgement directly to Sunflower, Southern Pioneer, or Southern Pioneer's customer base. Staff recommends the Commission include the following two stipulations in event of customer default:

1. Sunflower and/or Southern Pioneer should pursue all legal recourse to recover any damages suffered by the early termination of the contract to minimize the impact on Southern Pioneer's retail customer base.
2. If Sunflower/Southern Pioneer places the customer portion of the PPA into its Energy Cost Adjustment, Sunflower should flow-through any legal proceeds received from the

⁶ Attached as Attachment A.

Southern Pioneer's customer default back through Southern Pioneer's ECA, less any legal fees incurred to win a judgement or settle damages.

RECOMMENDATION:

Southern Pioneer's Renewable Energy Program provides residential, commercial, and industrial customers with voluntary access to renewable generation at wind and solar projects, while maintaining customer load on Southern Pioneer's system. In comparison to customer installed systems, Southern Pioneer's RE Program provides access to a more efficient utility-scale wind and solar generation without being tied to the up-front investment, installation fees, maintenance costs, and/or contractual obligations that come with customer-owned systems. Therefore, Staff recommends that the Commission approve Southern Pioneer's Application for the Renewable Energy Program Rider tariff with the following three stipulations:

1. Southern Pioneer adds to its education materials a clarifying statement that its Community Solar Program will not directly increase the utility's investment in solar energy, as the Johnson Corner solar project is available to them is already part of Sunflower's energy
2. As detailed in the Southern Pioneer/Sunflower Participant Agreement, Southern Pioneer/Sunflower agrees to pursue all legal recourse to minimize the impact of any Tier 3 customer default on Southern Pioneer's retail customer base.
3. If Sunflower/Southern Pioneer places any defaulted portion of the PPA transacted on behalf of a third party customer into its Energy Cost Adjustment, Sunflower will flow-through any legal proceeds received from the Southern Pioneer's customer default back through Southern Pioneer's ECA, less any legal fees incurred to win a judgement or settle damages.

ATTACHMENT A

RENEWABLE ENERGY PROGRAM PARTICIPATION AGREEMENT

BY AND AMONG [DISTRIBUTION CO-OP], SUNFLOWER ELECTRIC POWER CORPORATION AND CUSTOMER

This Renewable Energy Program Participation Agreement (this “**Agreement**”) is made and entered into as of this [REDACTED] day of [REDACTED], 2022 (“**Execution Date**”), by and among **[Distribution Co-op]** (“**DEC**”), **Sunflower Electric Power Corporation** (“**Sunflower**”), and **[Customer]** (“**Customer**”), each hereinafter referred to singularly as “**Party**” or collectively as “**Parties**.”

WHEREAS, DEC is a distribution electric cooperative that owns and operates facilities for the provision of electric energy to its members at retail;

WHEREAS, Sunflower is a generation and transmission electric cooperative that owns and operates facilities for the generation and transmission of wholesale electric energy for resale to its members;

WHEREAS, DEC is a member of Sunflower and purchases electric energy from Sunflower;

WHEREAS, Customer has or plans to have Customer Load (as hereinafter defined) in DEC’s electric service territory;

WHEREAS, Customer receives electric energy to serve the Customer Load from DEC, which DEC purchases from Sunflower;

WHEREAS, Customer desires to receive renewable energy to cover a portion of the Customer Load from a resource owned by or under contract with Sunflower per the terms of the Sunflower Renewable Energy Rider;

WHEREAS, Sunflower has received adequate notice of interest from Customer and other customers of Sunflower members to proceed with Tier 3 participation per the terms of the Sunflower Renewable Energy Rider;

WHEREAS, associated with the Customer’s desired Tier 3 participation, in conjunction with similar desired participation from other customers’ of Sunflower members, in the Sunflower Renewable Energy Rider, Sunflower will construct, procure or purchase renewable energy resources in the form and quantity specified herein to serve a portion of the Customer Load;

WHEREAS, it is the intent of the Parties that all material incremental costs associated with the renewable energy resources contemplated herein are borne by Customer so that no Sunflower member or other DEC customer, subsidizes or pays for those material incremental costs; and

WHEREAS, for the foregoing services to be provided to the Customer Load, Customer shall pay rates and charges to DEC, and DEC shall pay rates and charges to Sunflower that permit Sunflower and DEC to recover all their respective costs of service, pursuant to the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, mutually agree as follows:

1. **Definitions.** Unless otherwise required by the context in which any term appears, initially capitalized terms used herein have the following meanings:

a. **"Affiliate"** means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities or by contract or otherwise.

b. **"Business Day"** means Monday through Friday. It excludes weekends (Saturday and Sunday) and all federal holidays.

c. **"Customer Load"** means all power requirements associated with the facilities located on the Customer's premises, as more specifically described in Exhibit A, attached hereto and incorporated herein.

d. **"Customer's Allocation"** means the portion (to the nearest tenth of a MW) of a given renewable resource's nameplate capacity that is assigned to the Customer. The Customer's Allocation is [INSERT ALLOCATION]; provided however, the Customer's Allocation may be adjusted by Sunflower to the Customer's annual non-coincident hourly peak energy usage from the previous two years if such annual non-coincident peak drops below the aforementioned Customer's Allocation.

d. **"Customer's Share"** means the portion of the Net Output from the Dedicated Renewable PPA and the associated Environmental Attributes that shall be assigned to the Customer per the terms of this Agreement. The Customer's Share shall be a percentage of the total Net Output from the Dedicated Renewable PPA calculated by dividing the Customer's Allocation (to the tenth of a MW) into the nameplate capacity of the resource (to the tenth of a MW) associated with the Dedicated Renewable PPA.

d. **"Dedicated Renewable Purchase Default"** means a default, termination event, or event or circumstance that, with the giving of notice or passage of time, would constitute a default or termination event, however so described, in a Dedicated Renewable PPA.

e. **"Dedicated Renewable PPA"** means any contract or agreement to purchase the output of solar photovoltaic electric generating facilities or wind powered

generating facilities, entered into by Sunflower to supply electric power, energy and RECs to the Customer Load pursuant hereto.

f. **“Developer”** means a third-party who owns or controls a Dedicated Renewable PPA, or who contracts with the owner or operator for the rights to the Net Output and Environmental Attributes of a Dedicated Renewable PPA, and is the counterparty to Sunflower in a Dedicated Renewable PPA.

g. **“Early RE Termination Payment”** means the payment due to DEC from the Customer if an Event of Default occurs. The Early RE Termination Payment shall be calculated by summing the Monthly Mark-to-Market Cost for all months from the time of the Event of Default through the remaining term of the Dedicated Renewable PPA. The Early RE Termination Payment shall be payable within thirty (30) days from the date the Customer ceases to have the Customer Load, causes a material breach of this Agreement, or causes an Event of Default to occur.

h. **“Electric Service”** means the provision of all generation, transmission, and distribution services required to serve the peak demand and energy requirements of the Customer Load.

i. **“Environmental Attributes”** means any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil, or water, which are deemed of value by Customer. Environmental Attributes include: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), and other pollutants; (b) all Emissions Reduction Credits; and (c) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere.

j. **“Monthly Billing Adjustment”** means the adjustment ultimately applied to the Customer’s bill from the DEC associated with their participation in the Dedicated Renewable PPA for a given calendar month as set forth in Exhibit B, hereto and incorporated herein.

k. **“Governmental Authority”** means any federal, or state authority or other political subdivision thereof, having jurisdiction over a Party, a Dedicated Renewable PPA, or this Agreement, including any municipality, township, or county, and any entity or body exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

l. **“Law”** means any statute, law, treaty, rule, regulation, regulatory staff guidance, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree, or other legal or regulatory determination or restriction

by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. Laws include the Tariff, RTO/ISO rules and business practices, requirements of North American Energy Reliability Corporation, any applicable regional reliability entity, any applicable domestic or international renewable portfolio standard, and any applicable market-based reporting entity for renewable energy credits.

m. **“Monthly Mark-to-Market Cost”** means the monthly cost of energy provided under the terms of the Dedicated Renewable Energy PPA subtracted from the cost of the equivalent amount of energy if it were purchased from the Southwest Power Pool Integrated Marketplace (“SPP IM”). For purposes of determining the cost of energy purchased from the SPP IM, the Locational Marginal Price (“LMP”) at the Sunflower load node (SECI_SECI) shall be utilized. For Dedicated Renewable Energy PPAs associated with a solar resource, the monthly average on-peak (7X16) price shall be utilized. For Dedicated Renewable Energy PPAs associated with a wind resource, the monthly average around-the-clock (7X24) price shall be utilized. For forward LMP projections at the Sunflower load node, the SPP North Hub LMP projection as published in _____ shall be utilized with a basis adjustment of _____.

n. **“Net Output”** means all energy produced by renewable energy generating facilities, exclusive of station use, and sold to Sunflower pursuant to a Dedicated Renewable PPA.

o. **“Peer Tier 3 Customers”** means other retail customers of Sunflower members who desire to participate in the same Tier 3 Dedicated Renewable Energy PPA in aggregation with the Customer per the terms of the Sunflower Renewable Energy Rider.

p. **“Prudent Electrical Practices”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4).

q. **“Renewable Energy Credit(s)” or “REC(s)”** means (a) renewable energy certificates or credits associated with the production of electricity from an eligible renewable energy generating facility and (b) the exclusive right of an owner of Environmental Attributes to report exclusive ownership of the Environmental Attributes in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such Customer’s discretion, and include reporting under section 1605(b) of the Energy Policy Act of 1992, or under any present or future mandatory or voluntary

domestic, international, or foreign emissions trading program or renewable portfolio standard. One REC is equal to one megawatt-hour ("MWh") produced by an eligible renewable energy generating facility.

2. Term. This Agreement shall become effective as of the Effective Date, and shall remain in effect for the period of time in which the Dedicated Renewable PPA is effective, automatically terminating at the time the Dedicated Renewable PPA terminates (the "Term"), unless otherwise earlier terminated as provided for herein.

3. Conditions Precedent. The obligations of Sunflower and DEC to perform their respective obligations hereunder is contingent upon approval of this Agreement, without material change or condition, by any Governmental Authority having jurisdiction over this Agreement. The Parties shall fully cooperate to obtain such approvals. This Agreement shall take effect upon the granting of all required approvals as set forth in this section (the "Effective Date").

4. Representations and Warranties. Each Party represents, covenants, and warrants to the other that:

a. it is duly organized and validly existing under the laws of its State of organization;

b. it has the requisite power and authority to enter hereinto and to perform according to the terms hereof;

c. it has taken all corporate actions required to be taken by it to authorize the execution, delivery, and performance hereof and the consummation of the transactions contemplated hereby;

d. the execution, delivery, performance, and observance by it of its obligations hereunder do not (a) contravene any provision of, or constitute a default under, (i) any indenture, mortgage, security instrument or undertaking, or other material agreement to which it is a party or by which it is bound, (ii) any valid order of any court, or any regulatory agency or other body having authority to which it is subject, or (iii) any material Law presently in effect having applicability to it, or (b) require the consent or approval of, or material filing or registration with, any Governmental Authority or other person other than such consents or approvals that are not yet required but expected to be obtained in due course; and

e. it, and any guarantor of its obligations hereunder, is an "eligible contract participant" within the meaning of the Commodity Exchange Act.

5. Dedicated Renewable PPA.

a. Solicitation of Dedicated Renewable PPA. Prior to or upon execution of this Agreement, Sunflower shall solicit, on behalf of Customer and Peer Tier 3 Customers, the development, construction and operation of new solar or wind generating facilities

intended to supply energy and Environmental Attributes. Sunflower shall negotiate and, if agreement is reached upon terms satisfactory to Sunflower, enter into a Dedicated Renewable PPA to purchase renewable energy from a renewable electric generating facility. The electric rate and pricing terms of said Dedicated Renewable PPA shall be memorialized in Exhibit B to this Agreement and signed by both parties, which shall thereupon become incorporated as part of this Agreement. Sunflower will be the purchaser directly contracting with the Developer for the Dedicated Renewable PPA. Any and all capacity attributes that originate from the Dedicated Renewable PPA shall be retained by Sunflower.

b. Customer Payment. Customer shall pay DEC pursuant to Exhibit B for the costs of the Dedicated Renewable PPA, plus any additional administrative costs associated with the provision of energy and RECs from the Dedicated Renewable PPA to the Customer, as part of its monthly bill to DEC as set forth in Exhibit B. All payment obligations are subject to the monthly reconciliation set forth in Exhibit B.

c. Negotiation. Sunflower will negotiate the terms of the Dedicated Renewable PPA with the Developer and, if agreement is reached upon terms satisfactory to Sunflower, enter into the Dedicated Renewable PPA(s) for the purchase of the Net Output of the Dedicated Renewable PPA and the associated Environmental Attributes.

d. Administration. Sunflower will administer the daily operation and administration of each Dedicated Renewable PPA consistent with Prudent Electrical Practices. Sunflower will provide Customer with any notices or communications received from the Developer with respect to a Dedicated Renewable PPA to the extent such notices or communications (or their subject matter) materially impact the rights of Customer hereunder.

e. Developer Default. Any damages received from the Developer shall be retained by Sunflower.

g. Quote for Buyout. At any time during the term of the Dedicated Renewable PPA, Customer may request a quote from Sunflower for a price (which may be a payment to or from Customer, as applicable) at which Sunflower would be willing to eliminate the specified Dedicated Renewable PPA as a "Dedicated Renewable PPA" from this Agreement. Nothing in this section will require Sunflower to actually terminate the specified Dedicated Renewable PPA with the Developer, and Sunflower is no way obligated to accept Customer's request for buyout unless mutually agreed upon.

6. Electric Service to Serve Customer Load.

a. Generally. DEC shall make available, and Customer shall take and purchase from DEC, all of Customer's requirements for electric demand and energy and all other related services for the provision of Electric Service to fulfill the electric load obligations of the Customer Load pursuant to Exhibit B, and the Sunflower Renewable Energy Rider and DEC's applicable tariff, both as described in Exhibit C, attached hereto

and incorporated herein. The demand and energy consumed by Customer Load shall be paid for in accordance with this Agreement, DEC's rules and regulations, and DEC's rate tariffs of general applicability as then in effect applicable by their terms to the Customer Load (the "Tariffs"). In the event of a conflict between the provisions of this Agreement and the Tariffs, the Tariffs shall control. In the event of a conflict between the provisions of this Agreement and DEC's rules and regulations, the DEC's rules and regulations shall also control.

b. Failure to Maintain Customer Load. If the monthly energy consumption of the Customer Load is less than [REDACTED] kWhs for six (6) or more months out of any calendar year, or annually less than [REDACTED] kWhs (pro-rated for partial years), it shall be considered an Event of Default. Upon the effective date of termination, Electric Service to the Customer Load shall be provided to Customer by DEC pursuant to DEC's rate of general applicability as then in effect applicable by its terms to the Customer Load, and Customer shall immediately pay to Sunflower the Early RE Termination Payment.

c. Restriction on Electric Service Sources. During the term of this Agreement and any Dedicated Renewable PPA designated hereunder, Customer shall not use Electric Service to satisfy its Customer Load from any source other than Electric Service provided by DEC, and is restricted from satisfying its Customer Load with Electric Service from any other source, including, but not limited to, self-provision of electric demand and energy, Customer-owned generation resources, Customer-leased generation resources, power purchase agreements with any other entity besides DEC, or any arrangement where DEC is not the sole source of Electric Service satisfying the Customer Load. This restriction shall survive any changes in Law after the Execution Date, including, but not limited to, federal or state activity deregulating retail electric energy service or exclusive retail service territories.

7. Environmental Attributes.

a. Title; Retirement. To the extent allowed by Law and the rules of any applicable program, title to Environmental Attributes produced by the generation and delivery of Customer's Share from the Dedicated Renewable PPA shall be retained by Sunflower and retired by Sunflower on behalf of the Customer upon generation of Customer's Share and delivery of the REC certificates from Developer in the applicable tracking system. Sunflower's obligation to retire REC certificates on behalf of Customer arises when the corresponding REC certificates have been delivered by Developer to Sunflower through the applicable tracking system. Sunflower shall retire all applicable REC certificates within thirty days of receipt. The amount of such REC certificates will not exceed either Net Output from the resource associated with Dedicated Renewable PPA or those actually received by Sunflower under the Dedicated Renewable PPA. The Parties shall execute all additional documents and instruments reasonably requested by Customer in order to further document the transfer and retirement of the Environmental Attributes on behalf of Customer.

b. Exclusive Right to Environmental Attributes. During the Term, Sunflower shall not allow the sale of any of the RECs from the Dedicated Renewable PPA, the Customer's Share of which is subject to this Agreement, to any person or entity other than Customer without Customer's written consent. To the extent that any public communication is allowed hereunder, in any public communication concerning the Dedicated Renewable PPA(s) or the RECs, all Parties shall be fully compliant with the applicable requirements of section 260.15 of the Federal Trade Commission's "Green Guides," 77 Federal Register 62122, 16 Code of Federal Regulations, Part 260. Neither Sunflower nor the DEC may claim the RECs, any Environmental Attributes, or any energy from the Dedicated Renewable PPA as "renewable energy", "clean energy", "green energy" or having similar attributes belonging or attributable to Sunflower or DEC or the Dedicated Renewable PPA generation.

8. Records, Billing, and Payment.

a. Sunflower Bills to DEC. Each calendar month Sunflower shall prepare and send to DEC, with a copy to Customer, the Monthly Billing Adjustment. The Monthly Billing Adjustment shall be included as a separate line item on Sunflower's monthly power bill to the DEC. Payments and credits associated with the Monthly Billing Adjustment shall be settled as part of the normal billing and payment processes between Sunflower and the DEC. If within twelve months after a Sunflower Monthly Billing Adjustment has been sent to DEC, additional or different calculations under Exhibit B become known to Sunflower (e.g., Sunflower receives bills for charges from a supplier of services contemplated under this Agreement), Sunflower shall include those charges in the next Monthly Billing Adjustment.

b. DEC Bills to Customer. DEC shall incorporate the Monthly Billing Adjustment as a separate line item in DEC's monthly power bill to Customer. Payments and credits associated with the Monthly Billing Adjustment shall be settled as part of the normal billing and payment process between DEC and the Customer. If within twelve months after the Monthly Billing Adjustment has been sent to Customer, additional or different monthly charges under Exhibit B become known (e.g., DEC receives bills for charges from Sunflower related to a supplier of services contemplated under this Agreement), DEC shall include those charges in the next Monthly Billing Adjustment after discovery of those additional or different monthly charges.

c. Right to Review; Disputes. Customer may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement pursuant to DEC's rules and regulations.

9. Customer Credit Requirements.

a. Financial Information. If requested by Sunflower or DEC, Customer shall deliver within One Hundred Twenty (120) days following the end of each fiscal year, a copy of Customer's, or Customer's parent company's annual report containing audited consolidated financial statements for such fiscal year(s) requested. The audited financial

statements shall reflect and presented in the form of generally accepted accounting principles. Should any statements not be available on a timely basis due to a delay in the preparation or auditor's certification, such delay shall not be an Event of Default so long as Customer diligently pursues the preparation, certification and delivery of the statements. Customer shall provide concurrent notice to Sunflower and DEC in the event of a material negative change in its financial condition.

b. Form of Performance Assurance. Unless otherwise agreed to in writing by Sunflower, DEC, and Customer, the form of any Customer Performance Assurance required herein shall be an irrevocable, non-transferrable standby letter of credit issued by a commercial bank or trust company organized under the Laws of the United States of America or a political subdivision thereof, with: (i) a credit rating of at least (a) "A-" by S&P or Fitch, or "A3" by Moody's; and (ii) having a capitalization of at least \$1,000,000. The letter of credit must be substantially in the form set forth in Exhibit D hereto, with such changes to the terms in that form as the issuing bank may reasonably require and as may be reasonably acceptable to Sunflower and the DEC. The costs and expenses (including, but not limited to, bank fees and attorney's fees) of establishing, renewing, substituting, canceling, collecting on, and increasing the amount of a letter of credit shall be borne by Customer ("Performance Assurance").

c. Customer Obligation to Provide Performance Assurance.

The Customer, or its Guarantor, shall provide performance assurance acceptable to Sunflower and DEC in an amount equal to:

A. the current value, recalculated quarterly, of the Early RE Termination Payment, if: (1) the Customer's highest current credit rating is less than "BBB" from Standard & Poor's ("S&P") or Fitch, or "Baa2" from Moody's; (2) an Event of Default on the part of Customer has occurred; or (2) the Customer has no credit rating from S&P, Fitch, or Moody's;

B. half the current value, recalculated quarterly, of the Early RE Termination Payment if the Customer's highest current credit rating is between "A" from S&P or Fitch or "A2" from Moody's and "BBB" from S&P or Fitch or "Baa2" from Moody's, inclusive; or

C. one-fourth the value, recalculated quarterly, of the Early RE Termination Payment if the Customer's highest current credit rating is better than "A" from S&P or Fitch or "A2" from Moody's.

d. Performance Assurance Threshold. Notwithstanding the above provisions, no Performance Assurance shall be required to be posted by the Customer if the current sum of the Early RE Termination Payment, as applicable, is equal to or less than \$250,000.

e. Administration of Performance Assurance. Any letter of credit shall be subject to the following provisions:

i. Each letter of credit shall be maintained for the benefit of Sunflower and DEC. The pledging party shall: (A) renew or cause the renewal of each outstanding letter of credit on a timely basis as provided in the relevant letter of credit; (B) if the bank that issued the outstanding letter of credit has indicated its intent not to renew such letter of credit, provide either a substitute letter of credit at least twenty (20) business days prior to the expiration of the outstanding letter of credit; and (C) if a bank issuing a letter of credit shall fail to honor the secured party's properly documented request to draw on an outstanding letter of credit, provide for the benefit of the secured party a substitute letter of credit that is issued by a bank acceptable to the secured party within one (1) business day after such refusal;

ii. The pledging party may increase the amount of an outstanding letter of credit or establish one or more additional letters of credit; and

iii. With respect to each such letter of credit, the pledging party hereby irrevocably constitutes and appoints the secured party and any officer or agent thereof, with full power of substitution, as the pledging party's true and lawful attorney-in-fact with full irrevocable power and authority to act in the name, place and stead of the pledging party or in the secured party's own name, from time to time at the secured party's discretion, but only in strict adherence to the terms set forth in the letter of credit, for the purpose of taking any and all action and executing and delivering any and all documents or instruments which may be necessary or desirable to accomplish the purposes of this section.

iv. If Performance Assurance is required to be posted, the amount shall be calculated and adjusted on a quarterly basis. A new or amended standby letter of credit in the adjusted amount shall be issued quarterly, within twenty (20) calendar days of the receipt of the adjusted amount, to replace the prior letter of credit.

f. Exercise of Rights Against Performance Assurance. In the event that: (1) an Event of Default with respect to the pledging party has occurred and is continuing, and all required notices have been given and any cure periods set forth in this Agreement have run; or (2) this Agreement is terminated by any Party prior to the expiration of the Term, a secured party may exercise any one or more of the rights and remedies provided under the Agreement or as otherwise available under applicable Law, including, without limitation, exercising any one or more of the following rights and remedies:

i. All rights and remedies available to a secured Party under the Kansas Uniform Commercial Code and other applicable Laws with respect to the Performance Assurance held by or for the benefit of the secured party.

ii. the right to set off any Performance Assurance held by or for the benefit of the secured party against, and in satisfaction of, any amount payable by the pledging party in respect of any of its obligations; and

iii. the right to draw in strict adherence with the terms on any outstanding letter of credit issued for its benefit. A secured party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. The pledging party shall in all events remain liable to the secured party for any amount payable by the pledging party with respect to any of its contractual obligations remaining unpaid after any such liquidation, application and set off.

g. Encumbrance; Grant of Security Interest. As security for the prompt and complete payment of all amounts due or that may now or hereafter become due from a Party to the other Party and the performance by a Party of all covenants and obligations to be performed by it pursuant to this Agreement, each Party hereby pledges, assigns, conveys and transfers to the other Parties, and hereby grants to the other Parties a present and continuing security interest in and to, and a general first lien upon and right to setoff against, all Performance Assurance which has been or may in the future be transferred to, or received by, the other Parties, and each Party agrees to take such action as the other Parties reasonably request in order to perfect the other Party's continuing security interest in, and lien on (and right to setoff against), such Performance Assurance.

h. Guaranty. Customer's obligations with regard to payment and the provision of Performance Assurance may be assumed by an affiliated guarantor of the Customer who shall be permitted to use its own credit rating from S&P, Fitch or Moody's for purposes of calculating any Performance Assurance amounts due hereunder. Any such guaranty shall be in a form substantially similar to that set forth in Exhibit E and that is acceptable to Sunflower and DEC in their respective sole and exclusive direction. The Customer may substitute an affiliated entity as its guarantor after having received the express written consent of Sunflower and DEC, which shall not be unreasonably withheld. The existence of a guarantor shall not relieve or excuse the Customer from any obligations set forth in this Agreement.

i. Customer Deposit. In addition to all other payment and Performance Assurance obligations, the Customer shall, prior to the Effective Date, and by the end of each calendar year thereafter:

i. Pay to Sunflower a sum equal to the amount necessary to purchase a bond or secondary insurance policy that is in an amount two times (2x) Customer's monthly average total retail electric bill that is reflective of Customer's facilities having reached full production level. If such information does not exist, DEC shall estimate the amount based on any available Customer Load data and Customer input; or

ii. Provide a surety bond issued by a surety company acceptable to Sunflower and DEC that meets the requirements of the most recent version of the U.S.

Department of Treasury's Circular 570, naming DEC as the beneficiary, in an amount that is two times Customer's monthly average total retail electric bill once Customer's facilities have reach its designated full production level.

10. Termination.

a. For Cause. Upon Sunflower's execution of a Dedicated Renewable PPA, this Agreement may be terminated by Sunflower or DEC upon an Event of Default by Customer. Notwithstanding anything to the contrary herein, in no event shall an Event of Default by Sunflower or DEC result in the termination of this Agreement.

b. Upon Mutual Agreement. If both Parties agree to an early buyout per Section 5g, this Agreement may be terminated upon such mutual agreement per the agreed upon payment terms.

11. Events of Default and Remedies.

a. Events of Default. An event of default ("Event of Default") includes the following:

i. The failure to pay any amount due under this Agreement, where such failure has continued for five (5) Business Days after written notice has been given to remedy such failure;

ii. The failure of Customer to provide or maintain Performance Assurance as required, where such failure has continued for three (3) Business Days after written notice has been given to remedy such failure;

iii. A downgrade in the Customer's credit rating that is not remedied by the posting of adequate Performance Assurance, if required, within twenty (20) calendar days of receiving the lower credit rating;

iv. The failure to perform or observe any material (except for the payment of money due) obligation, covenant, or agreement contained in this Agreement, which any Party is obligated to perform or observe, where any such failure remains unremedied for thirty (30) calendar days after written notice has been given to the breaching Party;

v. As to any material representation or warranty made by a Party or contained in this Agreement, any certificate, document, financial statement, or any other statement furnished to another Party pursuant to this Agreement, the failure of such representation or warranty to have been correct in any material respect when made, where any such failure remains unremedied for thirty (30) calendar days after written notice has been given to the Party to remedy such failure;

vi. A Party's failure to generally pay its debts as such debts become due; a Party's admission in writing of its inability to pay its debts generally; a Party's execution of a general assignment for the benefit of creditors; institution of any proceeding by or against a Party seeking to adjudicate it bankrupt or insolvent or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property, where such proceeding instituted against said Party is not dismissed within sixty (60) calendar days; or any corporate action by a Party to authorize any of the actions set forth above; unless said Party provides the other Parties adequate financial assurance within such sixty (60) calendar day period that said Party can perform its obligations;

vii. Failure of Customer to begin receiving Environmental Attributes under this Agreement by [REDACTED];

viii. Failure of Customer to maintain Customer Load as required in subsection 6(b);

ix. Cessation of operation of the Customer Load for a period exceeding three (3) months at any time during the Term of this Agreement; and

x. The consolidation, amalgamation or merger, with or into, or the transfer of all or substantially all of a Parties assets to, another entity, and, at the time of such consolidation, amalgamation, merger or transfer, the resulting surviving entity or transferee fails to assume all of the obligations of the original Party to this Agreement.

b. Remedies. Upon the occurrence of an Event of Default by Customer, Customer shall immediately pay to DEC any unpaid and outstanding amount owed hereunder and the Early RE Termination Payment.

c. Other Remedies. If any Event of Default shall occur and be continuing, DEC, Customer, or Sunflower may proceed to protect and enforce their rights under this Agreement by exercising such remedies as are available under Law, either by suit in equity or by action at law, or both, whether for specific performance of any covenant or other agreement contained in this Agreement or in aid of the exercise of any power granted in this Agreement. No remedy conferred in this Agreement upon any of the Parties is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy conferred herein or now or hereafter existing at law or in equity or by statute. Notwithstanding anything to the contrary herein, in no event shall an Event of Default by Sunflower or DEC result in the termination of this Agreement.

d. Default Interest Rate. While an Event of Default is continuing, interest on all amounts due shall apply. The rate of interest shall be the prime rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. as its "prime rate,"

plus two percent (2%). If a Citibank, N.A. prime rate is not available, the applicable prime rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest is being paid.

e. NO WARRANTIES; LIMITATION OF LIABILITY. EXCEPT AS MAY BE SET FORTH EXPRESSLY HEREIN, CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT SUNFLOWER AND THE DEC HAVE MADE NO SPECIFIC OR GENERAL REPRESENTATIONS OR WARRANTIES REGARDING THE RENEWABLE ENERGY TO BE PURCHASED HEREBY OR ANY FACILITIES ASSOCIATED WITH GENERATING, TRANSMITTING OR DISTRIBUTING SAME, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT ANY REPRESENTATIONS AND WARRANTIES HAVE BEEN MADE, UNLESS EXPRESSLY SET FORTH HEREIN, CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT THEY ARE HEREBY EXPRESSLY DISCLAIMED. CUSTOMER ALSO UNDERSTANDS AND AGREES THAT HIS OR HER SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THIS AGREEMENT BY SUNFLOWER OR THE DEC IS EXPRESSLY LIMITED TO PURCHASING REPLACEMENT POWER FROM THE DEC AT PREVAILING TARIFF RATES.

12. Notices.

a. Addresses and Delivery Methods. All notices, requests, statements, or payments shall be made to the addresses set out below. Notices required to be in writing shall be delivered by letter, facsimile, or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been given when received or hand delivered. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this section.

If to Sunflower:

If to DEC:

If to Customer:

13. Confidentiality.

a. Duty to Maintain Confidentiality. "Confidential Information," as used in this Agreement, means, whether oral or written: (a) the Parties' proposals and negotiations concerning this Agreement, (b) the terms of this Agreement, (c) the actual charges billed to Customer hereunder, and (d) information related to this Agreement provided by one Party to the other identified or marked as confidential. Each Party agrees to hold Confidential Information wholly confidential. Such Confidential Information may only be

used by the Parties for purposes related to the approval, administration, or enforcement hereof and for no other purpose. Each Party agrees not to disclose Confidential Information to any other person (other than its members, Affiliates, counsel, auditors, consultants, lenders, prospective lenders, purchasers, prospective purchasers, contractors constructing or providing services pursuant to this Agreement, employees, officers, and directors who agree to be bound by the provisions of this section), without the prior written consent of the other Party; *provided however*, that: (a) either Party may disclose Confidential Information, if and to the extent such disclosure is required: (i) by Law, (ii) in order for Sunflower or DEC to receive regulatory recovery of expenses related to this Agreement, (iii) pursuant to an order of a court or regulatory agency, or (iv) in order to enforce this Agreement or to seek approval hereof. If a Party is required by Law to disclose Confidential Information, such Party shall to the extent possible notify the other Party at least three (3) Business Days in advance of such disclosure.

b. Regulatory Compliance. The Parties acknowledge that Sunflower and DEC are required by law or regulation to report certain information that could embody Confidential Information from time to time. Such reports may include models, filings, reports of net power costs, general rate case filings, power cost adjustment mechanisms, required reporting by the Federal Energy Regulatory Commission (“FERC”), Government-required reporting, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource planning reports, reports to regulatory and reliability entities or similar or successor organizations, forms, filings, or reports, the specific names of which may vary by jurisdiction, along with supporting documentation. Additionally, in regulatory proceedings in all state and federal jurisdictions in which it does business, Sunflower or DEC will from time to time be required to produce Confidential Information, and each may use its business judgment in its compliance with all of the foregoing and the appropriate level of confidentiality it seeks for such disclosures. Sunflower or DEC may submit Confidential Information in regulatory proceedings without notice to Customer if it has obtained in such proceedings a protective order covering such Confidential Information.

c. Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this section constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

d. News Releases and Publicity. Each Party agrees not to issue any news release or publicly distributed promotional material regarding this Agreement that they have not all mutually approved in writing.

e. Third-Party Providers. The provisions of this Agreement do not limit the rights of the Parties to challenge any aspect of a third-party transmission provider’s transmission tariff, including the applicable loss factor methodology proposed for any transmission or ancillary transmission-based service as presented to FERC by the third-party transmission provider.

14. Dispute Resolution.

a. Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of, related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at least one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter if neither Party has requested that the dispute be mediated. All negotiations are confidential.

b. Mediation. If the dispute is not resolved within thirty (30) days after the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may request that the matter be submitted to nonbinding mediation.

The Party requesting the mediation, may commence the mediation process by notifying the other Parties in writing ("**Mediation Notice**") of such Party's desire that the dispute be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party's written agreement to such mediation. The mediation shall be conducted through, by and at the office of Sunflower located in **Hays, Kansas**. The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable mediator.

The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the Dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process. The costs of the mediation, including fees and expenses, shall be borne equally by the Parties. All verbal and written communications between the Parties and issued or prepared in connection with this section shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute. The initial mediation meeting between the Parties and the mediator shall be held within twenty (20) days after the Mediation Notice. Either Party may terminate the mediation process upon or after the earlier to occur of (i) the failure of the initial mediation meeting to occur within twenty (20) calendar days after the date of the Mediation Notice, (ii) the passage of thirty (30) days after the date of the Mediation Notice without the dispute having been resolved, or (iii) such time as the mediator makes a finding that there is no possibility of resolution through mediation. All deadlines specified in this section may be extended by mutual agreement.

c. Place of Contract Formation; Choice of Forum. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement shall be brought exclusively in the state and federal courts in the State of Kansas. By execution and delivery hereof, each Party (i) accepts the exclusive jurisdiction of such courts and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such courts over each Party for the purpose of any proceeding related to this Agreement, (ii) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such courts arising out of such documents or actions, (iii) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such courts (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith, (iv) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address as set forth herein, and (v) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

d. Settlement Discussions. No statements of position or offers of settlement made in the course of the dispute resolution process described in this section may be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

e. Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING HEREINTO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

15. Force Majeure.

a. The generation and sale of renewable energy is dependent upon numerous factors, including many of which are beyond the control of Sunflower and DEC. Sunflower and DEC shall not be responsible or liable for any disruption or prevention of the production of renewable energy from any generation resource that is attributable to a Force Majeure Event, as that term is defined in this section.

b. Events of force majeure include: (a) natural events, such as acts of God, landslides, lightning, eclipses, weather patterns, earthquakes, fires, storms, and the like; (b) interruption and/or curtailment of generation or transmission facilities; (c) acts of others, such as strikes, lockouts, riots, sabotage, vandalism, insurrections, wars, acts of terror, and the like; (d) government actions, such as compliance with a court order, administrative order, a change in law, statute, regulation or ordinance, such that compliance with said government action would be practically or financially impossible or impracticable; (e) defaults or breach by Developers of their obligations to perform under Dedicated Renewable PPA(s); (f) cyber attacks or intrusions (g) explosions, breakage, freezing, and failure or accidents to equipment, machinery, or lines; (h) outbreaks, epidemics, or pandemics; and (i) any other cause whether similar or dissimilar to the foregoing that is beyond the affected party's reasonable control (individually, a "Force Majeure Event," and collectively, the "Force Majeure Events").

c. In the event of any inability of Sunflower and/or DEC to perform as a result of a Force Majeure Event, the Customer may elect to receive RECs as replacement for any lost Customer's Share.

d. The obligations of Sunflower and DEC under this Agreement shall be suspended during a Force Majeure Event. Notwithstanding the foregoing, no Force Majeure Event shall relieve Customer from its payment obligations under this Agreement.

16. Miscellaneous.

a. Forward Contract. The Parties intend that the sales hereunder from Sunflower to DEC, and the sales hereunder from DEC to Customer, are each "forward contracts" between "forward contract merchants" within the meaning given such terms in the United States Bankruptcy Code; provided that no Party shall be in breach of this Agreement if a court determines that is not the case.

b. Just and Reasonable Rates. None of the Parties shall seek, nor shall it support any related party or third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application to any Governmental Authority. All Parties agree that the rates hereunder are just and reasonable, and shall not take a contrary position in any regulatory proceeding.

c. Waivers. Any waiver at any time of rights as to any default or other matter arising under this Agreement must be in writing and signed by the party against whom it

is sought to be enforced, and shall not be deemed a waiver as to subsequent defaults or other matters under this Agreement. Any delay, short of the statutory period of limitation, in asserting or enforcing any right herein shall not be deemed a waiver of such right.

d. No Joint Venture. Nothing in this Agreement shall be construed to create a joint venture, partnership, or general partnership among or between any of the Parties, or to authorize any Party to act as an agent for any other Party. The execution of this Agreement shall also not be construed to breach, amend, modify, or be deemed to amend any other contract between one Party and another Party, or any amendments thereto.

e. Entire Agreement; Amendment. This Agreement, any addenda, and the Exhibits hereto constitute the entire agreement between the Parties and supersedes and cancels any prior agreements, representations, warranties, or communications, whether oral or written, between the Parties relating to the transactions contemplated hereby or the subject matter herein. This Agreement, or any provision hereof or schedule hereto, may not be amended orally, but only by an agreement in writing signed by all the Parties. Furthermore, the amendment of this Agreement or any applicable Schedule shall be subject to approval of any regulatory agency having jurisdiction.

f. Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF KANSAS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

g. Assignment. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties, except this Agreement may not be assigned by a Party without the written consent of the other Parties. Any Party, or its permitted transferee, may pledge, mortgage, or collaterally assign its interest in the Agreement to a lender or lenders. Sunflower or DEC, without the approval of Customer, may assign, transfer, mortgage, or pledge this Agreement to create a security interest for the benefit of the United States of America (the "Government"), acting through the Administrator of the Rural Utilities Service (the "Administrator"), and its other lenders. Thereafter, the Administrator or such other lenders, without the approval of Customer, may (a) cause this Agreement to be sold, assigned, transferred, or otherwise disposed of to a third party pursuant to the remedies with respect to such security interest or in lieu of the exercise of such remedies in connection with a debt settlement, or (b) if the Government first acquires this Agreement pursuant to 7 U.S.C §907, sell, assign, transfer, or otherwise dispose of this Agreement to a third party; provided, that in either case at the time of such initial disposition (i) Sunflower or DEC, as applicable, is in default of its obligations to the Government or such other lenders that are secured by such security interest and the Administrator or such other lender has given Customer notice of such default; and (ii) the Administrator or such other lender has given thirty (30) days' prior notice of its intention to sell, assign, transfer, or otherwise dispose of this Agreement indicating the identity of the intended third party assignee or purchaser. No permitted sale,

assignment, transfer, mortgage, pledge, or other disposition shall release or discharge Customer from its obligations under this Agreement.

h. Survival. Each provision of this Agreement providing for the payment of rates and charges or any remedies for default, damage, indemnification, limitation of liability, or payment of any other liabilities will survive termination of this Agreement to the full extent necessary for the enforcement and protection of the Party in whose favor such rights may run.

i. Drafting Responsibility; Headings. Should a court of competent jurisdiction be required to construe any of the provisions or the Agreement as a whole, nothing in this Agreement shall be construed against or for one Party but shall be construed as if all Parties had equal authority and input into negotiations and drafting this Agreement. The headings set forth in this Agreement are solely for convenience and are not deemed part of the Agreement.

j. Counterparts. This Agreement may be executed and exchanged electronically in two or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same Agreement. This Agreement shall become binding when any one or more counterparts hereof, individually or taken together, bear the signatures of all Parties hereto. For the purposes hereof, a facsimile or electronic copy of this Agreement, including the signature pages hereto, shall be deemed an original.

k. Deregulation. If federal or state activity deregulating retail electric energy service affecting Sunflower or DEC results in the termination of this Agreement or makes the performance thereunder impossible, by Customer or otherwise, Customer shall be subject to payment of the Early RE Termination Payment.

l. Rules of Interpretation.

i. Terms used in this Agreement but not specifically defined shall have meanings as commonly used in the English language and, where applicable, in Prudent Electrical Practices. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used in accordance with such recognized meanings. Unless otherwise required by the context in which any term appears, the singular includes the plural and vice versa; references to “sections” are to each numbered section (e.g. 1, 2, 3) and references to “subsections” are to subparagraphs under each section (e.g. 1(a), 2(b), 3(c)); all references to a particular entity or an electricity market price index include a reference to such entity’s or index’s successors; “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied; the masculine includes the feminine and neuter and vice versa; “including” means “including, without limitation” or “including, but not limited to”; all references to a particular tariff, law or statute mean that

tariff, law or statute as amended from time to time; and the word “or” is not necessarily exclusive.

ii. Each term hereof shall be construed simply according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term hereof shall be construed against a Party on the ground that the Party is the author of that provision.

iii. The headings used for the sections and subsections hereof are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions hereof.

iv. Example calculations and other examples set forth herein are for purposes of illustration only and are not intended to constitute a representation, warranty, or covenant concerning the example itself or the matters assumed for purposes of such example. If there is a conflict between an example and the text hereof, the text shall control.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

DEC:

By: _____
Name: _____
Title: _____

Sunflower:

By: _____
Name: _____
Title: _____

CUSTOMER:

By: _____
Name: _____
Title: _____

EXHIBIT A

[information about Customer Load, and timing]

EXHIBIT B

Monthly Billing Adjustment. The Customer's Monthly Billing Adjustment shall be calculated as set forth in the formula below.

PPA Energy Charge + REC Administration Charge + Other PPA Charges - PPA Market Revenue

"PPA Energy Charge" means the Customer's Share multiplied by the energy price defined in the Dedicated Renewable PPA

"REC Administration Charges" means Sunflower's costs to receive, register, retire and/or transfer the Environmental Attributes generated by the Dedicated Renewable PPA(s).

"Other Charges" means any other monthly costs associated with Customer's Share that Sunflower may incur due to the terms of the Dedicated Renewable PPA such as makewhole payments for curtailments of net output from the renewable energy resource.

"PPA Market Revenue" means the revenue earned by Sunflower through selling Customer's Share into the SPP IM per the SPP IM protocols.

Terms of Dedicated Renewable PPA

EXHIBIT C

Renewable Energy Rider

(Attached)

DEC Tariff

(Attached)

EXHIBIT D

Form Letter of Credit

(Attached)

EXHIBIT E

Form Guaranty

(Attached)

CERTIFICATE OF SERVICE

24-SPEE-540-TAR

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Staff's Report and Recommendation was served via electronic service this 31st day of May, 2024, to the following:

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CERTIFICATE OF SERVICE

24-SPEE-540-TAR

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Ann Murphy

Ann Murphy