

KENTUCKY MUNICIPAL ENERGY AGENCY

CONTRACT FOR INTEGRATION OF MEMBER-OWNED RESOURCE

This Contract for Integration of Member-Owned Resource ("Contract") is entered into as of the _____ day of _____, 2016, between **KENTUCKY MUNICIPAL ENERGY AGENCY**, a joint public agency established and existing pursuant to the laws of the Commonwealth of Kentucky (the "Agency"), and the _____, **KENTUCKY** (the "Member") (each a "Party" and together, the "Parties").

WITNESSETH:

WHEREAS, the Agency was organized pursuant to Sections 65.210 to 65.300 of the Kentucky Revised Statutes, as amended, known as the "Interlocal Cooperation Act" and was created by virtue of the Interlocal Cooperation Agreement Creating the Kentucky Municipal Energy Agency by and among municipal electric systems in the Commonwealth of Kentucky (the "Interlocal Cooperation Agreement"), which Interlocal Cooperation Agreement was filed with and approved by the Attorney General of the Commonwealth of Kentucky in accordance with law; and

WHEREAS, the Member is a party to the Interlocal Cooperation Agreement and is a member in good standing of the Agency; and

WHEREAS, the Agency and the Member are parties to that certain All Requirements Power Sales Contract, dated as of _____, 2016 (the "All Requirements Contract"), pursuant to which the Member has committed, among other things, to purchase electric power and energy from the Agency, commencing May 1, 2019; and

WHEREAS, Section 3(d) of the All Requirements Contract provides that the Agency and the Member may enter into mutually beneficial agreements for the scheduling and integration by the Agency of the Attributes (as defined herein) of certain Member-owned generation resources or other entitlements the Member may have to generation resource Attributes; and

WHEREAS, the Member has a contractual entitlement to electric capacity and energy marketed by the Southeastern Power Administration ("SEPA") from the Cumberland System of Projects of the United States Army Corps of Engineers pursuant to the Member's SEPA Contract as defined herein (the Member's "SEPA Entitlement"); and

WHEREAS, the Member and the Agency have determined that it would be mutually beneficial for the Agency to schedule and integrate on the Member's behalf the Attributes of the Member's SEPA Entitlement for the benefit of the Member in accordance with the terms of this Contract;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, it is agreed by and between the Parties hereto as follows:

SECTION 1. Definitions

Accredited SEPA Capacity means the amount of SEPA capacity for which the Member is to be compensated under this Contract. To reflect the fact that SEPA supports the Member's SEPA Entitlement with generation reserve capacity, the Accredited SEPA Capacity equals the sum of (i) the Member's SEPA Capacity Entitlement plus (ii) the product of (x) the Member's SEPA Capacity Entitlement times (y) the Agency's then-current capacity planning reserve percentage (currently 15%) during the time period for which compensation is being provided.

Agency means the Kentucky Municipal Energy Agency, as identified in the first paragraph of this Contract.

All Requirements Contract means the contract identified in the third recital of this Contract.

Attributes means, with respect to the Member-Owned Resource, all aspects of the resource from which value may be derived, including electric capacity, electric energy, and any other characteristics.

Contract means this Contract for Integration of Member-Owned Resource, as defined in the first paragraph of this Contract.

Interlocal Cooperation Act has the meaning set forth in the first recital of this Contract.

Interlocal Cooperation Agreement has the meaning set forth in the first recital of this Contract.

LG&E/KU means Louisville Gas and Electric Company and Kentucky Utilities Company and their respective successors.

Member means the municipality or municipal electric system identified as "Member" in the first paragraph of this Contract.

Member-Owned Resource means the Member's SEPA Entitlement.

Service Term means the period from June 1, 2019, through the end of the term as set forth in Section 2, provided, however, that the Service Term shall begin on May 1, 2019, if All Requirements members with contracts to integrate their SEPA allocations as Member-Owned Resources representing a majority of the contracted-for SEPA allocations request the earlier commencement date by providing notice to the KyMEA Board by June 1, 2017, or by such later date as the KyMEA Board may determine in its sole discretion it is able to accommodate.

SEPA means the Southeastern Power Administration of the United States Department of Energy, or its successor.

SEPA Capacity Entitlement means the then-current allocation by SEPA to the Member of electric generation capacity through the Member's SEPA Entitlement, as it may be adjusted by SEPA from time to time to reflect operating conditions of the hydroelectric resources

marketed by SEPA or to reflect any other revisions SEPA may make to its allocation of electric capacity to the Member. SEPA's original allocation of capacity to the Member and to other municipal SEPA customers in Kentucky is set forth in Appendix A to this Contract.

SEPA Contract means the contract executed by the United States Department of Energy, acting by and through the Southeastern Power Administration and the Member, dated January 10, 1997, Contract No. 89-00-1501-10XX, as it may be amended or replaced during the term of this Contract.

SEPA Entitlement has the meaning as defined in the fifth recital of this Contract.

TVA means the Tennessee Valley Authority, or its successor.

Uncontrollable Force means any cause beyond the control of the Party affected, including failure of facilities, flood, earthquake, storm, lightning, fire, explosion, epidemic, pestilence, war, riot, an act of domestic or international terrorism, civil disturbance, labor disturbances, sabotage, or an act of civil or military authorities, including court orders, injunctions, or orders of governmental agencies with proper jurisdiction, which by due diligence and foresight such Party could not reasonably have been expected to avoid.

SECTION 2. Term and Termination

This Contract shall become effective as of the date first entered above. The Contract shall remain in effect until the earliest of (a) May 31, 2029, (b) the effective date of termination of the Member's SEPA Contract, (c) the effective date of termination of the Member's All Requirements Contract, or (d) the effective date of termination resulting from the occurrence of an Event of Default in accordance with Section 7.

SECTION 3. Member Authorizations

In order for the Member to efficiently realize the benefits of its SEPA Entitlement as provided in this Contract, the Member hereby authorizes the Agency during the Service Term to perform the services set forth in Section 4 of this Contract and to serve as the Member's exclusive agent in the performance of those services. The Member authorizes the Agency to include the Member's SEPA Entitlement as a Designated Network Resource of the Agency on behalf of the Member under the LG&E/KU Open Access Transmission Tariff or its successor. The Member acknowledges and agrees that, in accordance with Section 3(d) of the All Requirements Contract, the Member's SEPA Entitlement will not be used to serve the Member's load directly or to reduce the Member's billing demands under the All Requirements Contract, and the Member's costs of obtaining and maintaining its SEPA Entitlement shall not be included in the Agency's Revenue Requirements under the All Requirements Contract.

SECTION 4. Agency Services to Member

- (a) The Agency hereby agrees to schedule the delivery of the full amount of the Attributes of Member's SEPA Entitlement and to integrate those Attributes with those of other power supply resources available to the Agency as the Agency determines to be advantageous to the Agency and

its Members. The Agency shall serve as the Member's agent in communications and coordination between the Member and SEPA. The Agency shall comply with all scheduling requirements and limitations applicable to the Attributes of the Member's SEPA Entitlement in accordance with the provisions of the Member's SEPA Contract.

- (b) The Agency hereby agrees to arrange for all transmission and related ancillary services required for the scheduling and integration of the Attributes of the Member's SEPA Entitlement. The Agency will comply with any applicable TVA, LG&E/KU or other transmission provider's tariff, business practices, and procedures in performing the services under this Contract.

SECTION 5. Agency Compensation to Member

- (a) Compensation for Capacity. The Agency shall compensate the Member for the Member's Accredited SEPA Capacity each month during the Service Term. For the period from the beginning of the Service Term through May 31, 2022, the Agency shall pay a capacity price of \$3.85 per kilowatt-month. During the remainder of the Service Term, the monthly capacity price shall be adjusted each year in accordance with the provisions for "CPI Adjustment of Monthly Capacity Price" set forth in Appendix B to this Contract. If in the future the Member's SEPA Capacity Entitlement exceeds the Member's original SEPA Capacity Entitlement as shown in Appendix A, the compensation for the capacity in excess of the original SEPA Capacity Entitlement shall be based on the Agency's avoided costs, if any, attributable to that excess increment of capacity as of the time it becomes available to the Agency. If the Parties are unable to agree on the level of compensation for any such excess increment of capacity, the Member either (i) may direct the Agency to market the excess increment of capacity and any associated energy on the Member's behalf and pass through to the Member all revenues obtained for them, less a reasonable allowance for the cost of administration, or (ii) may make independent arrangements for the utilization of such excess increment of capacity and associated energy outside of the scope of this Contract.
- (b) Compensation for Energy. The Agency shall compensate the Member each month for the energy scheduled by and delivered for the Agency from the Member's SEPA Entitlement during that month. The compensation each month shall be the sum of the amounts calculated for each hour of delivery in the month, as follows: the kilowatt-hours of energy delivered from the Member's SEPA Entitlement to the input of the LG&E/KU transmission system during that hour times either (i) a rate per kilowatt-hour that reflects the actual cost of energy avoided by the Agency during that hour, or (ii) any actual increase in revenues to the Agency net of associated marketing costs attributable to the Agency's marketing of an

equivalent amount of energy during that hour. The foregoing hourly actual energy rate shall be determined using the after-the-fact energy accounting methodology that the Agency uses to settle its other energy transactions each month.

- (c) Compensation for other Attributes. If and to the extent the Agency avoids power supply costs or realizes a net increase in revenues as a result of other Attributes of the Member's SEPA Entitlement that are not accounted for in the compensation for capacity and energy as provided in Sections 5(a) and 5(b), the Agency shall compensate the Member in the amount of the avoided costs or increase in net revenues, after subtracting any costs the Agency incurs in achieving such additional value.
- (d) The Agency's payment to the Member of the compensation prescribed in this Agreement shall be made each month as a credit on the Agency's next monthly invoice to the Member under the All Requirements Contract. If the compensation owed to the Member in a month exceeds the amount owed by the Member for that month, the Agency shall pay the Member the difference no later than the last day of the immediately following month. Any disputes over the amount of compensation owed under this Contract shall be addressed in the manner specified for billing disputes in Section 9(c) (Payment of Bills) and Section 25 (Dispute Resolution) of the All Requirements Contract, as it may be amended from time to time.

SECTION 6. Member Obligations

- (a) The Member shall be exclusively responsible for maintaining its SEPA Contract in good standing during the Service Term, including by making all payments to SEPA in the amounts and manner required under the Member's SEPA Contract.
- (b) The Member shall fully exercise its rights under its SEPA Contract to enable the Agency to perform the services specified in this Contract. Upon request from the Agency, the Member shall inform SEPA that the Agency is the Member's authorized agent for managing the Member's SEPA Entitlement. The Member shall take no action the effect of which would be to prevent, hinder or delay the Agency from the timely fulfillment of its obligations under this Contract or from being able to effectively integrate the Attributes of the Member's SEPA Entitlement with those of other power supply resources available to the Agency as the Agency determines to be advantageous to the Agency and its Members.
- (c) The Member and the Agency shall cooperate with each other and with SEPA to fulfill the objectives of this Contract, including by furnishing information to each other as may be reasonably requested from time to time and by the Member promptly providing to the Agency copies of all notices and correspondence with SEPA regarding the SEPA Entitlement.

SECTION 7. Default and Remedies

- (a) It shall constitute an “Event of Default” under this Contract if any one or more of the following occurs and the corresponding cure period, if any, has expired without cure:
 - (i) The Agency fails in any material respect to comply with or observe any material covenant, warrant, or obligation under this Contract (except a failure due to causes excused by Uncontrollable Forces or attributable to the Member’s act or failure to act) and such failure continues for a period of thirty (30) days after delivery of notice thereof by the Member, or, if such failure cannot reasonably be cured within such 30-day period, such further period as shall reasonably be required to effect such cure, provided that the Agency commences within the first thirty (30) days to effect such cure and at all times thereafter proceeds diligently to complete such cure as quickly as possible, but in no event shall such failure continue longer than one hundred twenty (120) days.
 - (ii) The Member fails in any material respect to comply with or observe any material covenant, warrant, or obligation under this Contract (except a failure due to causes excused by Uncontrollable Forces or attributable to the Agency’s act or failure to act) and such failure continues for a period of thirty (30) days after delivery of notice thereof by the Agency, or, if such failure cannot reasonably be cured within such 30-day period, such further period as shall reasonably be required to effect such cure, provided that the Member commences within the first thirty (30) days to effect such cure and at all times thereafter proceeds diligently to complete such cure as quickly as possible, but in no event shall such failure continue longer than one hundred twenty (120) days.
 - (iii) A Party becomes insolvent, or generally does not pay its debts as they become due; or admits in writing its inability to pay its debts; or makes an assignment for the benefit of creditors; or insolvency, reorganization, bankruptcy, or receivership proceedings are commenced by or against a Party and such proceedings are not dismissed or stayed within sixty (60) days.
- (b) Upon the occurrence of an Event of Default, the nondefaulting Party may at its option terminate this Contract by giving twenty-one (21) days’ prior notice thereof to the defaulting Party.
- (c) Upon the effective date of termination, this Contract shall be of no further effect, and neither Party shall have any further obligation to the other under this Contract except for the payment of any amounts due for services provided prior to cancellation.

- (d) In the event of termination of this Contract upon the occurrence of an Event of Default, the nondefaulting Party shall have the right to seek remedies at law or in equity or damages for the breach of any term, condition, covenant, warranty or obligation under this Contract.

SECTION 8. Uncontrollable Force

Neither the Agency nor the Member shall be considered to be in default in respect to any obligation hereunder (other than the obligation of the Agency to compensate the Member for Attributes of the Member's SEPA Entitlement made available hereunder to the extent compensation is owed under Section 5 hereof) if prevented from fulfilling such obligations by reason of an Uncontrollable Force. The Party claiming an Uncontrollable Force shall give notice and reasonable details of any potential or actual Uncontrollable Force to the other Party as soon as is reasonably practicable, shall provide regularly updated information as to the anticipated occurrence or duration of the Uncontrollable Force, and shall provide prompt notice when it is able to resume performance of those obligations that were affected as a result of the Uncontrollable Force. Either Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall exercise due diligence to remove such inability with all reasonable dispatch.

SECTION 9. Assignment of Contract

This Contract shall inure to the benefit of and shall be binding upon the respective successors and assigns of the Parties to this Contract; provided, however, that neither this Contract nor any interest herein shall be transferred or assigned by either Party except with the consent in writing of the other Party, which the Party may grant or deny in its sole discretion. The Party seeking to assign this Contract must provide at least ninety (90) days' prior written notice to the other Party. No assignment or transfer of this Contract shall relieve the Parties of any obligation hereunder.

SECTION 10. Records and Accounts

The Agency shall keep accurate records and accounts of its operations and its determination of amounts owed to the Member under this Contract. The Member shall have the right at any reasonable time to examine such records and accounts. The Agency shall have the right at any reasonable time to examine the Member's records and accounts regarding implementation of the SEPA Contract.

SECTION 11. No Adverse Distinction

The Agency agrees that there shall be no pattern of adverse distinction and no pattern of undue discrimination in carrying out its obligations under this Contract relating to the Member as compared to other Agency members who make their SEPA entitlements available for scheduling and integration by the Agency; provided, however, that differences in treatment among Members based upon variances in net avoided costs or variances in increases in net revenues under Section 5 in contracts executed during different time periods shall not be considered a pattern of adverse distinction or a pattern of undue discrimination for purposes of this Section.

SECTION 12. Amendment

Neither this Contract nor any terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing executed by each Party to this Contract.

SECTION 13. Indemnification and Liability

The Agency and the Member shall defend and hold each other harmless from any and all claims, liability, and expense, including attorneys' fees, litigation expenses, and any judgment arising out of any bodily injury, death, or damage to property (other than bodily injury, death, or damage to property proximately caused by the other Party or its servants or employees), occurring on their respective properties, including such injury, death, or damage as may be suffered by the Agency or the Member or by third parties, except that the Agency and the Member shall each be responsible for all claims of its respective employees, agents, and servants under workmen's compensation laws or any similar statutes. In no event shall either the Agency or the Member be liable to each other for any indirect, special, incidental, or consequential damages with respect to any claim arising out of this Contract whether based on contract, tort, strict liability, or otherwise.

SECTION 14. Applicable Law

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

SECTION 15. Consent to Jurisdiction and Venue

The Agency and the Member hereby consent to the jurisdiction of any state or federal court located within the County of Franklin, Commonwealth of Kentucky, and each waives any objection it may have based on improper venue or *forum non conveniens* to the conduct of any proceeding in any such court.

SECTION 16. Waiver of Immunity

Each Party agrees that with respect to obligations under this Contract and performance thereof, it will not claim immunity, on the grounds of its status as a municipality or an agency comprising municipalities, from: (i) suit, (ii) jurisdiction of court (including a court located outside the jurisdiction of the municipality), (iii) relief by way of injunction, order for specific performance, or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment.

SECTION 17. Notices

All notices, invoices, consents, waivers, and other communications required or permitted hereby shall be in writing and shall be deemed to have been given when (i) delivered to the other Party's address personally, by facsimile, by messenger, by a nationally or internationally recognized overnight delivery service, or otherwise, or (ii) received or rejected by the other Party, if sent by certified mail, return receipt requested, in each case, addressed to the other Party

at its address, marked to the attention of the person designated below. In addition, notice shall be provided by email to the other Party's email address designated below.

If to the Agency:

Kentucky Municipal Energy Agency
c/o Rubin & Hays
Attn: Charles S. Musson
450 South Third Street
Louisville, KY 40202
Email:

If to the Member:

Attn: _____

Email:

The foregoing names and addresses may be changed by similar written notice at any time.

SECTION 18. Waivers

- (a) Any waiver at any time by either Party hereto of its rights with respect to a default or any matter arising in connection with this Contract shall not be deemed to be a waiver with respect to any subsequent default or matter.
- (b) The failure of either Party hereto to enforce at any time any of the provisions of this Contract or to require at any time performance by the other Party hereto of any of the provisions hereof shall in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this Contract or the right of such Party thereafter to enforce each and every provision hereof.

SECTION 19. Severability

In the event that any of the terms, covenants, or conditions of this Contract, or the application of any such term, covenant, or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction under the circumstances, the remainder of this Contract and the application of its terms, covenants, or conditions to such persons or circumstances shall not be affected thereby.

SECTION 20. Survival of Obligations

The termination of this Contract shall not discharge either Party from any obligation it owes to the other Party under this Contract by reason of any transaction, loss, cost, damage, expense, or liability which shall occur or arise (or the circumstances, events, or basis of which shall occur or arise) prior to such termination. It is the intent of the Parties hereby that any such obligation owed (whether the same shall be known or unknown at the termination of this Contract or whether the circumstances, events, or basis of the same shall be known or unknown at the termination of this Contract) shall survive the termination of this Contract. Cancellation, expiration, or termination of this Contract shall not relieve the Parties of obligations that expressly survive or by their nature should survive such cancellation, expiration, or termination.

SECTION 21. Entire Agreement

This Contract supersedes all previous representations, understandings, negotiations, and agreements, either written or oral, between the Parties or their representatives with respect to the subject matter hereof and constitutes the entire agreement of the Parties with respect to the subject matter hereof.

SECTION 22. No Third Party Beneficiaries

This Contract is intended solely for the benefit of the Parties hereto. Nothing in this Contract shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Contract.

SECTION 23. Counterparts

This Contract may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Contract to be executed by its duly authorized official, officer, or representative and its seal to be hereto affixed, if required, effective as of the day, month and year first above written.

[signatures appear on the next page]

KENTUCKY MUNICIPAL ENERGY AGENCY

By: _____
Chairman

ATTEST:

Secretary
(SEAL)

[MEMBER]

By: _____
[NAME AND TITLE OF MEMBER OFFICIAL]

ATTEST:

[TITLE]
(SEAL)

Appendix A

Original SEPA Hydropower Allocations for Municipal SEPA Customers in Kentucky

SEPA Customer	SEPA Capacity Entitlement (kW)
Barbourville	2,200
Bardstown	2,247
Bardwell	542
Benham	248
Corbin	2,598
Falmouth	590
Frankfort	15,621
Madisonville	7,803
Nicholasville	2,556
Paris	1,364
Providence	<u>1,231</u>
Subtotal –Customers other than Owensboro	37,000
Owensboro	<u>25,000</u>
Total	62,000

CPI Adjustment of Monthly Capacity Price

Commencing on June 1, 2022, and as of each June 1 thereafter during the remainder of the Contract Term, the monthly capacity price shall be adjusted by the percentage by which the final published annual “CPI-U Index” for the preceding calendar year is greater than or less than the final published annual “CPI-U Index” for calendar year 2020. In 2022 and each following year, after publication of the final annual “CPI-U Index” for the preceding calendar year, the Agency shall calculate an updated monthly capacity price using the change in such “CPI-U Index” compared to the 2020 annual “CPI-U Index.” For purposes of clarity, the monthly capacity price to be so adjusted in each year shall be the initial price of \$3.85 per kilowatt-month, excluding the effects of any previous adjustments for annual “CPI-U Index” changes compared to 2020. The Agency shall provide notice of the updated price to the Member with supporting documentation within 45 days of publication of the final annual “CPI-U Index.”

For purposes of adjusting the monthly capacity price, the “CPI-U Index” shall be that index identified as Consumer Price Index for All Urban Consumers – U.S. city average, all items [1980-1982=100] determined and reported by the Bureau of Labor Statistics of the U.S. Department of Labor. The “CPI-U Index” shall be determined to the nearest three decimal places. The percentage change in the “CPI-U Index” for a given year compared to 2020 shall be calculated to the nearest one-tenth of one percent. The adjusted monthly capacity price to be applied in a given period shall be rounded to the nearest one cent.

As an example, if the “CPI-U Index” for calendar year 2023 were 271.245, and the “CPI-U Index” for 2020 were 259.188, the percentage adjustment of the monthly capacity price as of June 1, 2024 would be 104.7%, and the adjusted monthly capacity price would be \$4.03 per kilowatt-month.