

**KENTUCKY MUNICIPAL ENERGY AGENCY  
CONTRACT FOR USE OF MEMBER-OWNED RESOURCE OF THE  
CITY OF PARIS, KENTUCKY  
(Diesel Units)**

This Contract for Use of Member-Owned Resource of the City of Paris, Kentucky ("Contract") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017, 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 **CITY OF PARIS, 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 August 25, 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 owns and operates seven diesel generating units with a combined electric generating capacity of approximately 11 Megawatts; and

WHEREAS, the Member and the Agency have determined that it would be mutually beneficial for the Agency to use the Attributes of the Paris diesel generating units as an All Requirements Power Supply Resource and for the Agency to compensate the Member for that use 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 Paris Resource Capacity** means the amount of Paris Resource capacity for which the Member is to be compensated under this Contract as provided in Sections 5 and 6.

**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 Paris 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 the Use of Member-Owned Resource of the City of Paris, Kentucky, 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 City of Paris, Kentucky, as identified in the first paragraph of this Contract.

**Paris Resource** means the seven diesel generating units owned by the Member.

**Prudent Utility Practice** means, at a particular time, any of the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto) which, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, would have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and timeliness. 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 a spectrum of possible practices, methods or acts.

**Service Term** means the period from May 1, 2019, through the end of the term as set forth in Section 2.

**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 All Requirements Contract, or (c) the effective date of termination resulting from the occurrence of an Event of Default in accordance with Section 7.

## **SECTION 3. Member Authorizations**

The Member hereby authorizes the Agency during the Service Term to schedule and use the Attributes of the Paris Resource, subject to the operating limitations set forth in Appendix A to this Contract, entitled "Operating Limitations of the Paris Resource," as they may be modified by the Parties from time to time to comply with regulatory requirements, and in accordance with all other provisions of this Contract. The Member authorizes the Agency to serve as the Member's agent in the procurement and administration of transmission-related and other services in connection with such use. The Member authorizes the Agency to include the Paris Resource as a Designated Network Resource of the Agency 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 Paris Resource 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 cost of owning and operating the Paris Resource shall remain the exclusive responsibility of the Member and therefore 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, and utilize the Attributes of, the Paris Resource 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.
- (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 Paris Resource. The Agency will comply with any applicable 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 Paris Resource Capacity each month during the Service Term. For the period from the beginning May 1, 2019 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 as

specified in Appendix B to this Contract, entitled "CPI Adjustment of Monthly Capacity Price."

- (b) Compensation for Energy. The Agency shall compensate the Member each month for the energy scheduled by and delivered for the Agency from the Paris Resource 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 Paris Resource 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 Paris Resource 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 Paris Resource in good standing during the term of this Contract in accordance with Prudent Utility Practice and with operating and maintenance standards adopted by the Agency from time to time to assure that the full amount of the Accredited Paris Resource Capacity is available to serve the loads of the Agency's members, including the City of Paris.
- (b) The Member shall perform testing of the Paris Resource at least annually and more frequently as circumstances may warrant to determine the amount of Accredited Paris Resource Capacity. Such testing shall be performed in accordance with Prudent Utility Practice and with protocols adopted by the Agency from time to time. In the event and to the extent that the Agency or the Member becomes subject

to requirements for establishing the amount of electric generation capacity that qualifies to meet resource adequacy requirements or similar power supply resource planning requirements, the Agency's testing protocols shall be amended as necessary to meet all such requirements.

- (c) 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 Paris Resource with those of other power supply resources available to the Agency as the Agency determines to be advantageous to the Agency and its members.
- (d) The Member and the Agency shall cooperate with each other to fulfill the objectives of this Contract, including by furnishing information to each other as may be reasonably requested from time to time.

#### **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 Paris Resource 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 this Contract, including performance, testing, and maintenance records related to the Paris Resource.

## **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 Member-Owned Resources (as defined in the All Requirements Contract) available for scheduling and integration by the Agency; provided, however, that differences in treatment among members based upon variances in the characteristics of the resource or variances in net avoided costs or in resulting net compensation 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: \_\_\_\_\_  
Ronald W. Herd, Chairman

ATTEST:

\_\_\_\_\_  
Vent Foster, Secretary

CITY OF PARIS, KENTUCKY

By: \_\_\_\_\_  
Michael J. Thornton, Mayor

ATTEST:

\_\_\_\_\_  
Stephanie Settles, City Clerk

## **Appendix A**

### **Operating Limitations of the Paris Resource**

[to be added]

**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.