

INTERCONNECTION AND OPERATING AGREEMENT

This Interconnection and Operating Agreement (“Agreement”) for the facility located at _____, in the City of _____, Michigan, is entered into this _____ day of _____, 200____ by and between Wisconsin Electric Power Company, a Wisconsin corporation authorized to do business in Michigan and doing business as We Energies, (“the Utility”) and _____ (the “Project Developer”). The Utility and the Project Developer are hereinafter collectively referred to as the “Parties” and individually as a “Party”.

RECITALS

WHEREAS, the Utility is the owner of the electric distribution system serving _____ (“Utility Distribution System”); and

WHEREAS, Project Developer desires to install a generation facility or energy storage device including related interconnection equipment (the “Project”) and to interconnect the Project to the Utility’s distribution system; and

WHEREAS, the Utility has previously reviewed and approved the Project Developer’s Interconnection Application dated _____, and supporting materials (the “Application”). The completed Application is attached as Exhibit 1 and incorporated into this Agreement; and

WHEREAS, Project Developer wishes to interconnect the Project to the Utility’s distribution system and the Utility is willing to permit such interconnection subject to the terms and conditions as set forth in the Michigan Electric Utility Generator Interconnection Standards; Mich. Admin. Code R 460.481 through 460.489; the completed Application approved by the Utility; and this Agreement; and

WHEREAS, the Parties have agreed to execute this mutually acceptable Interconnection Agreement in order to provide interconnection service to the Project Developer, and to define the continuing rights, responsibilities, and obligations of the Parties with respect to the use of certain of their own and the other Party’s property, assets, and facilities.

NOW, THEREFORE, in consideration of their respective commitments set forth herein, and intending to be legally bound hereby, the Parties covenant and agree as follows:

Section 1. Design Requirements

1.1 The Project Developer’s facility shall be installed in compliance with Mich. Admin. Code R 460.481 through 460.489 as well as the Michigan Electric Utility Generator Interconnection Requirements, which were approved by the Michigan Public Service Commission on August 10, 2004, both of which may be

amended from time to time. Those interconnection requirements are attached as Exhibit 2 and incorporated into this Agreement.

1.2 All Utility Costs associated with making modifications to its distribution system will be paid by the Project Developer.

1.3 Any new line construction to connect the Project to the Utility's electric system will be undertaken by the Utility at the Project Developer's expense.

Section 2. Project Developer's Representations and Warranties

2.1 The Project Developer represents and warrants that:

- a. The Project is fully and accurately described in the Application;
- b. All information in the Application is true and correct;
- c. The Project has been installed to the Project Developer's satisfaction;
- d. Project Developer has been given warranty information and an operational manual for the facility;
- e. Project Developer has been adequately instructed in the operation and maintenance of the facility.
- f. Project Developer has read and understands the Interconnection Agreement and all applicable Exhibits and Attachments.
- g. Project Developer has had the Interconnection Process explained to him by a Utility representative.

Section 3 Indemnification

3.1 Each Party to this Agreement shall indemnify, hold harmless and defend the other Party, its officers, directors, employees and agents from and against any and all claims, suits, liabilities, damages, costs, and expenses (including without limitation, reasonable attorney's and expert witness fees) for damage to property, or injury to, or death of, any individual, including the employees, officers, directors and agents of the indemnified Party or any other third-parties, to the extent caused wholly or in part by the negligence or the intentional wrongdoing of the indemnifying Party.

3.2 Notwithstanding anything in this section or in any other provision of this Agreement to the contrary, the liability of each Party to this Agreement shall be limited to direct actual damages, and all other damages at law or in equity are hereby waived. Under no circumstances shall a party be liable to the other Party, whether in tort, contract or other basis in law or equity for any special, indirect, punitive, exemplary, or consequential damages including lost profits.

3.3 Project Developer and the Utility's indemnification obligations under this section and the limits upon their respective liability shall continue in full force

and effect notwithstanding the expiration or termination of this Agreement with respect to any event or condition giving rise to an indemnification obligation that occurred prior to such expiration or termination.

Section 4. Discontinued Operations

4.1 The Project shall discontinue parallel operation and perform necessary switching when requested by the Utility for any of the following reasons:

- a. When public safety is being jeopardized.
- b. During voltage or loading problems, system emergencies, or when abnormal sectionalizing or circuit configuration occurs on the Utility system;
- c. During scheduled shutdowns of Utility equipment that are necessary to facilitate maintenance or repairs. Any such scheduled shutdowns shall be coordinated with the Project Developer.
- d. In the event there is demonstrated electrical interference to the Utility's customers, suspect to be caused by the Project, and such interference exceeds then current system standards, the Utility reserves the right, at the Utility's initial expense to install special test equipment as may be required to perform a disturbance analysis and monitor the operation and control of the project to evaluate the quality of power produced by the project. In the event no standards exist than the applicable tariffs and rules governing electric service apply. If the project is proven to be the source of interference and that interference exceed the Utility's standard or generally accepted industry standards, than it shall be the responsibility of the Project Developer to eliminate the interference problem and to reimburse the Utility for the costs of the disturbance monitoring installation, removal, and analysis excluding the cost of the meters or other special testing equipment.
- e. When either the Project or its associated synchronizing and protective equipment is demonstrated by the Utility to be improperly maintained so as to present a hazard to the Utility system or its customers.
- f. Whenever the Project is operating isolated with other Utility customers for whatever reason.
- g. Whenever the Utility notifies the Project Developer in writing of a claimed non-safety related violation of the Interconnection Agreement and the Project Developer fails to remedy the claimed violation within ten (10) working days of notification, unless within that time the Project Developer either:
 - (i) Files a complaint with the Michigan Public Service Commission seeking resolution of the dispute; or
 - (ii) The Project Developer and Utility agree in writing to a different procedure.

Section 5. Metering

5.1 The Utility will own, operate and maintain all required billing metering equipment at the Project Developer's expense.

5.2 The Project Developer shall provide authorized employees and agents of the Utility access to the premises at all times to install, turn on, disconnect, inspect, test, read, repair, or remove the metering equipment. The Project Developer may, at its option, have a representative present to witness this work.

Section 6. Communication Circuits

6.1 The Project Developer is responsible for ordering and acquiring the telephone circuits required for the Project's interconnection. The Project Developer will assume all installation, operating, and maintenance costs associated with the telephone circuit, including the monthly charges for the telephone line and any rental equipment required by the local telephone provider.

6.2 At the Utility's discretion, the Utility may select an alternative communication method, such as wireless communication.

6.3 Regardless of the method, the Project Developer will be responsible for all costs associated with materials and installation, whereas the Utility will be responsible to define the specific communication requirements.

6.4 The Utility will cooperate and provide Utility information necessary for the proper installation of telephone circuits upon Project Developer's written request.

6.5 All telephone circuits, both voice and data, must be analog circuits.

Section 7. Amendments

7.1 Any amendment of modification to this Agreement must be in writing and executed by the Project Developer and the Utility.

7.2 The failure of the Project Developer or the Utility to insist on performance by the other Party of any provision of this Agreement shall not waive the right of the Party who failed to insist on performance to enforce the same provision at a later time.

Section 8. Term

8.1 This Agreement shall become effective immediately upon the execution by the Parties and shall continue in effect until terminated by any of the following:

- a. Mutual written agreement of the Parties;
- b. Abandonment or removal of the facility by the Project Developer;
- c. By the Utility pursuant to Section 4 of this Agreement; or
- d. By Project Developer upon thirty (30) working days prior written notice given to the Utility.

Section 9. Successors and Assigns

9.1 The Project Developer shall not assign its rights and obligations under this Agreement in whole or in part without the prior written consent of the Utility, which consent shall not unreasonably be withheld or unduly delayed.

9.2 The Utility may withhold its consent to any proposed assignment if the proposed assignee fails to assume the obligations of the Project Developer under this Agreement in writing.

9.3 The Utility shall have the right to assign this Agreement in whole upon written notification to the Project Developer.

9.4 This Agreement shall be binding upon the personal representatives, heirs, successors, and permitted assigns of the respective Parties.

Section 10. Agency

10.1 No agency or partnership is created with the interconnection of the Project Developer's facility.

Section 11. Insurance

11.1 Specified Coverage. As of the date of this Agreement, Project Developer or its contractors and subcontractors, as applicable, shall maintain liability insurance equal to or greater than the following amounts, per occurrence. The Project Developer shall name the Utility as an additional insured party in the liability insurance policy.

- 11.1.1 For Projects 30 kw and less, the minimum liability insurance coverage shall be \$300,000.00
- 11.1.2 For Projects more than 30 kw but less than 750 kw, the minimum liability insurance coverage shall be \$1,000,000.00
- 11.1.3 For Projects more than 750 kw but less than 2 MW, the minimum liability insurance coverage shall be \$2,000,000.00
- 11.1.3 For Projects greater than 2 MW, the minimum liability insurance coverage shall be negotiated by the Parties.

11.2 Each Party waives all rights against the other Party and such other Party's agents, officers, directors and employees for recovery of damages to the extent such damages are covered by any of the insurance required above. However, the liability assumed in this section by Project Developer and Utility shall not be limited by any other commercial terms of this Agreement.

11.3 Insurance Certificates.

Project Developer shall furnish Utility with duly executed certificates of insurance certifying that such insurance has been provided and that the insurance companies will give Utility thirty (30) days prior written notice of any material change in, or cancellation of, such insurance coverage.

Such certificates shall also specify the dates when such insurance commences and expires. Certificates should be delivered to Utility at the address set forth in the Generator Interconnection Requirements, attached hereto as Exhibit 2.

Project Developer agrees that such insurance shall be maintained throughout the entire term of this Agreement. New certificates shall be provided within two weeks of the renewal date of any expiring insurance coverage giving evidence of continuing coverage.

The failure of the Utility to obtain evidence of such insurance from the Project Developer shall not be deemed to be a waiver by the Utility, and the Project Developer shall remain under continuing obligation to maintain the insurance coverage.

Section 12 Event of Default and Remedies.

12.1 An Event of Default shall occur upon (i) a failure by a Party to pay any amount due hereunder when due or (ii) a failure by a Party to perform any other obligation under this Agreement, provided the following:

- 12.1.1 Said failure has a material adverse impact on the non-defaulting Party;

- 12.1.2 Said failure has not been cured by the defaulting Party within thirty (30) days after receiving written notice of the default from the other Party, which notice sets forth in reasonable detail the nature of the default; and
 - 12.1.3 In the case of a material failure, other than a failure to pay any amount due hereunder when due, that is not reasonably capable of being cured within the aforesaid thirty (30) day period, the defaulting Party shall have an additional period of one-hundred and fifty (150) days to cure the default, *provided* the defaulting Party commences a cure within such thirty (30) day period and thereafter diligently pursues such cure to completion within such additional period.
- 12.2 Upon the occurrence of an Event of Default, if the defaulting Party fails to cure the default within the period described above, the non-defaulting Party shall have the following rights:
- 12.2.1 to terminate this Agreement by written notice to the defaulting Party;
 - 12.2.2 to suspend performance of its obligations and duties hereunder upon written notice to the defaulting Party; and
 - 12.2.3 to pursue any other remedy given under this Agreement or which is now or hereafter existing at law or in equity or otherwise.

Section 13 Force Majeure

13.1 If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement, it is agreed that, upon such Party giving notice and reasonably full particulars of such Force Majeure by telephone, to be confirmed in writing, to the other Party as soon as possible after the occurrence of the cause relied upon, the obligations of the Party giving such notice, other than to make payments accrued hereunder, so far as they are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused but for no longer period. Such cause shall, as far as possible, be remedied within thirty (30) days after the occurrence; provided, however, that in the case the cause relied upon cannot reasonably be cured within the thirty (30) day cure period, the Party giving notice shall have additional time to cure the cause relied upon if such party commences to cure the cause within such thirty (30) day cure period, it diligently pursues such cure, and such cause is capable of being cured by the Party giving notice within no more than one hundred twenty (120) days after the occurrence of the cause relied upon. If the event of Force Majeure continues for more than one hundred twenty (120) days, the Party not invoking may terminate this Agreement by notice to the other Party delivered within one hundred fifty (150) days after the commencement of the event of Force Majeure, provided that the event of Force Majeure has not terminated as of the date such notice is received. In the event the Force Majeure relied upon has not terminated as of the date such notice is received, this Agreement will terminate on the date of receipt of such notice of termination and neither Party shall have any further obligation under this Agreement, except such termination shall not relieve either Party of the obligation to pay to the other Party amounts then owing.

IN WITNESS WHEREOF, Project Developer and Utility have executed this Agreement as of the year and date first set forth above.

Dated: _____ WISCONSIN ELECTRIC POWER COMPANY

BY: _____

TITLE: _____

Dated: _____ PROJECT DEVELOPER

BY: _____

TITLE: _____