



April 14, 2023

VIA FEDEX OVERNIGHT and E-Mail

Kevin D. Keiser, CEO
Steuben County REMC
1212 S. Wayne St.
Angola, IN 46703

Dear Kevin,

At the April 5, 2023 board meeting, the Wabash Valley Board approved the New ARC ("All-Requirements Contract"). This approval represented the culmination of a process that included multiple meetings and discussions by the Wabash Valley Directors and Member CEOs during Committee meetings and within the board room. I am very appreciative of the time and effort exerted by the Members on such a crucial agreement. With this mailing I have included two copies of the New ARC for your consideration, approval, and execution. The Wabash Valley Board requests that each Member execute the New ARC on or prior to **August 3, 2023**, and send both signed ARCs to Wabash Valley.

Here is a brief recap of the recent process that led up to the approved New ARC:

1. Wabash Valley has previously entered into two long-term all-requirements wholesale power supply contracts with each of its members. The first of which expires on April 14, 2028 ("Vintage Contracts") and the second of which commences upon the expiration of the Vintage Contracts and expires on December 31, 2050 ("2050 Contracts") (collectively "ARCs").
2. The Board re-established the All-Requirements Contract Committee ("ARC Committee") in order to develop a revised version of a new ARC after the Court of Appeals for the District of Columbia issued its August 2, 2022 decision upholding the Federal Energy Regulatory Commission's ("FERC") rejection of the Company's prior filing of 21 new all-requirements contracts because of the inclusion of a *Mobile-Sierra* provision.
3. The ARC Committee met on August 16, 2022, October 21, 2022, December 12, 2022, and January 20, 2023 and made presentations to the Board on September 6, 2022, December

6-7, 2022, and February 1, 2023, to address what changes need to be made to the New ARC. The Committee's recommendations included the two existing ARCs being consolidated, amended, and restated into a single ARC or the "New ARC." At the regularly scheduled February 1, 2023 Board meeting, the ARC Committee presented the Board the New ARC for its consideration and approval.

4. At the April 5, 2023, board meeting, the Board approved the New ARC. Within the approved resolution, it was requested that the Members execute the New ARC within one hundred twenty (120) days of the adoption of this Resolution which is **August 3, 2023**.

In conclusion, I would like to thank you in advance for your consideration. I would be delighted to meet with you on this matter or provide other information that would be helpful. Again, we respectfully request that you sign both ARC copies on or prior to **August 3, 2023**, and return them to Wabash Valley. Please do not hesitate to contact me if you have any questions.

Sincerely,



Jeff A. Conrad
President and CEO

Enclosures

cc: Larry Jack (via email w/enclosure)

WHOLESALE POWER SUPPLY CONTRACT

THIS WHOLESALE POWER SUPPLY CONTRACT (the “Agreement”) is made and entered into this 3rd day of August 2023 by and between **WABASH VALLEY POWER ASSOCIATION, INC. d/b/a WABASH VALLEY POWER ALLIANCE**, an Indiana nonprofit corporation (“Wabash Valley”), with its principal place of business being 6702 Intech Boulevard, Indianapolis, Indiana 46278 and **STEUBEN COUNTY RURAL ELECTRIC MEMBERSHIP CORPORATION**, an Indiana rural electric membership corporation (“Member”), with its principal place of business being 1212 S. Wayne Street, Angola, Indiana 46703. Wabash Valley and Member may hereinafter be referred to individually as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, Wabash Valley is a nonprofit corporation with its primary purpose being the generation and transmission of electric power and energy for delivery to its member systems at wholesale; and

WHEREAS, the Wabash Valley members generally are not-for-profit entities that operate as cooperatives and distribute electric energy to their member consumers at retail; and

WHEREAS, Member is an electric cooperative and became a member of Wabash Valley on or about September 12, 1972; and

WHEREAS, the Parties previously entered into that certain Wholesale Power Supply Contract, dated March 25, 1977, as amended from time to time, under which the Parties agreed that Wabash Valley would supply and Member would purchase all of the Member’s wholesale electric power and energy requirements from Wabash Valley through April 30, 2028 (the “Vintage Agreement”); and

WHEREAS, the Parties also previously entered into that certain Wholesale Power Supply Contract, dated April 26, 2007, as amended from time to time, under which the Parties agreed that Wabash Valley would supply and Member would purchase all of the Member's wholesale electric power and energy requirements from Wabash Valley from and after the expiration of the Vintage Contract through December 31, 2050 (the "New Agreement"); and

WHEREAS, the Parties desire to consolidate, amend and restate the Vintage Agreement and New Agreement under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties, each to the other, it is agreed that the Vintage Agreement and the New Agreement are hereby consolidated, superseded, amended and restated as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated and made a part of this Agreement.

2. **General.** (a) Except for distributed generation which the Member is permitted to own or is permitted to purchase directly from interconnected resources pursuant to Wabash Valley's Distributed Generation Policy D-11.1, as the same may be amended or superseded from time to time by the Wabash Valley Board of Directors, and to the extent required, approved by the applicable regulatory authority, if any, from time to time (the "DG Policy"), Wabash Valley shall during the Term (as hereinafter defined) sell and deliver to Member, and Member shall purchase and receive from Wabash Valley, all electric power and energy which Member shall require for the operation of the Member's system, and which power and energy shall be delivered to the Member's Delivery Points as hereinafter identified and defined in Section 5 hereof. Notwithstanding the foregoing, if the Board of Directors amends Policy D-11.1 to reduce the Member's DG Allowances (as defined therein), the Member shall have the right, notwithstanding

such amendment, to continue purchasing the energy and capacity produced by those Distributed Generation Facilities (as defined therein) that it has under contract or owns on the day immediately preceding the effective date of such amendment even if such purchases would exceed the Member's then effective DG Allowance. The Parties further agree that energy storage is not generation under this Agreement and that the Member may without limitation own, lease, use and deploy energy storage technology and systems on its distribution system during the Term of this Agreement.

(b) The Parties recognize the essential nature of the sale and delivery of power and energy and payment therefor as provided by this Agreement. Accordingly, Wabash Valley shall make every commercially reasonable effort to deliver the power and energy that is required by Member at the Member's Delivery Points, and Wabash Valley has the sole and exclusive obligation and right to make such power and energy available to the Member and to arrange for the delivery of such power and energy to the Member's Delivery Points, including the purchase of any necessary transmission, sub-transmission, distribution and ancillary services.

(c) The Member and Wabash Valley hereby agree that during the Term, Member hereby irrevocably authorizes Wabash Valley from time to time, on behalf of the Member, and consistent with the DG Policy and, to the extent applicable, subject to approval or acceptance by any applicable state or federal regulatory authority with jurisdiction over the subject matter, to:

(i) Seek and obtain a waiver on behalf of the Member from any applicable state or federal regulatory authority (e.g. Federal Energy Regulatory Commission) of the Member's obligation to purchase any energy or capacity made available from a qualifying facility ("QF(s)") or other distributed generation resource ("DG(s)") interconnected to the Member's system ("Purchase Obligation") under the Public Utility Regulatory Policies Act

of 1978 or any similar or superseding state or federal statute and any rules or regulations promulgated thereunder (collectively, “PURPA”); and

(ii) Develop and implement a plan meeting the obligations imposed on the Member under PURPA consistent with the DG Policy; and

(iii) To stand in the Member’s shoes and assume the Member’s Purchase Obligation, subject to Member retaining or re-assuming any mandatory obligations to make any and all retail sales of power and energy to such interconnected QFs or DGs.

3. **Term.** This Agreement shall be effective upon the date it is approved by the applicable regulatory authority, if any (“Effective Date”); and shall remain in effect until the hour ending 24:00 on December 31, 2060 (the “Initial Term”), provided, however that this Agreement shall renew and extend on the fifth anniversary of the Effective Date and each fifth year thereafter (each a “Fifth Anniversary”) for an additional five (5) year renewal period (each a “Renewal Term”) unless one Party provides written notice to the other Party prior to such Fifth Anniversary of its intent not to renew and extend the Agreement. Wabash Valley shall provide the Member with written notice of the Effective Date following the acceptance of this Agreement by the applicable regulatory authority, if any. For avoidance of doubt and by way of an example, the Term of the Agreement will be extended beyond the Initial Term expiration date of December 31, 2060 to December 31, 2065 unless one of the Parties gives the other Party written notice of its intent not to renew and extend the Agreement on or before the Fifth Anniversary of the Effective Date contained in the written notice provided by Wabash Valley to the Member under this Section. The Initial Term and any Renewal Terms shall hereinafter be collectively referred to as the “Term”. Wabash Valley shall provide the Member with written notice of each pending Fifth Anniversary at least six (6) months prior to the date of such Fifth Anniversary and the deadline for the Member

to take action and to give notice prior to such Fifth Anniversary shall be extended on a day for day basis for each day that Wabash Valley fails to timely provide such six (6) month prior written notice to the Member. Wabash Valley shall also provide a copy of such notice to the Wabash Valley Board of Directors at its next meeting following the provision of such notice to the Member.

4. **Early Termination by Buyout.** During the Term, Member may terminate this Agreement by giving Wabash Valley written notice of its election to terminate this Agreement (“Early Termination”) pursuant to the terms and conditions established by the Wabash Valley Board of Directors from time to time and to the extent required, approved by the applicable regulatory authority, if any, from time to time. As of the Effective Date, the terms and conditions for Early Termination of this Agreement are contained in a duly established policy of the Board of Directors of Wabash Valley known as Extension of Wholesale Power Supply Contract, Termination of Membership, and Buyout Policy Procedure, Policy D-2, as the same may be amended or superseded from time to time by the Wabash Valley Board of Directors, and to the extent required, approved by the applicable regulatory authority, if any, from time to time (the “Buyout Policy”). After providing the notice as required by the Buyout Policy, Member may terminate this Agreement by complying with all of the terms and conditions of the Buyout Policy. In the event a Buyout Policy is not in existence on the date notice is given by Member, then the Board of Directors of Wabash Valley shall provide such equitable terms and conditions for the Member to terminate this Agreement, subject to, and to the extent required, the approval of the applicable regulatory authority, if any.

5. **Electric Characteristics and Delivery Points.** Electric power and energy to be furnished hereunder shall be alternating current, three-phase, four-wire, 60-cycle, and the delivery voltage shall be at such voltages as may be agreed upon by the Parties from time to time and

delivered to the Member's delivery points as mutually established by the Parties from time to time (each a "Delivery Point" and collectively, the "Delivery Points").

6. **Rates.** (a) Member shall pay Wabash Valley for all electric power and energy furnished hereunder at the rates and on terms and conditions as set forth in any applicable tariff schedules or formulary rate tariffs ("Tariffs") approved from time to time by the Board of Directors of Wabash Valley and, to the extent applicable, approved or accepted by any federal or state regulatory authority having jurisdiction over this Agreement, the Tariffs or the rates charged hereunder.

(b) The Board of Directors of Wabash Valley, at such intervals as it deems appropriate but in any event not less frequently than once in each calendar year, shall review the rates for electric power and energy furnished under this Agreement and, if necessary, shall revise such rates to produce revenues which are sufficient, but only sufficient, with the revenues of Wabash Valley from all other sources, to meet all of Wabash Valley's costs and other liabilities and obligations of Wabash Valley, including, without limitation: the cost of ownership, operation and maintenance of generating plant(s), transmission system(s), distribution system(s), substations and related facilities (including, without limitation, fuel, amortization and depreciation, replacements, insurance, retirement and decommissioning, unrecovered accounts receivables, taxes); the cost of third-party transmission and distribution services; the cost of power and energy purchased for resale by Wabash Valley; the payment of applicable taxes; the payments on account of principal and interest on all indebtedness of Wabash Valley; the payment of reasonable administrative and general expenses of Wabash Valley; the cost of providing for the establishment and maintenance of reasonable reserves and margins; and to comply with all financial requirements contained in any indenture, mortgage or contract relating to any indebtedness or other financial obligations of

Wabash Valley as they may exist from time to time. Wabash Valley shall cause written notice to be given to the Member of such revisions and the effective date thereof.

(c) Member agrees that the rates established by the Board of Directors of Wabash Valley from time to time shall be deemed to be substituted for the previously established rates. Member agrees to pay for the power and energy furnished by Wabash Valley at such revised rates after the effective date of such revision; subject, however, to the extent applicable, to any approval or acceptance by any applicable regulatory authority having jurisdiction over this Agreement, the Tariffs or the rates charged hereunder.

7. **Meter Reading and Payment of Bills.** Wabash Valley shall cause all power and energy delivered to the Member's Delivery Points to be metered on the low-side of each Delivery Point transformer, or if metered on the high-side of a Delivery Point transformer or a Delivery Point that is any distance from the meter, adjusted to compensate for any such transformation or distance losses at adjustment factors determined from time to time by Wabash Valley in its reasonable judgment. Wabash Valley shall file any new or changed adjustment factors as Exhibit A to this Contract with the federal or state regulatory authority, if any, having jurisdiction over this Agreement, the Tariffs or the rates charged hereunder for review and acceptance prior to implementing any such new or changed adjustment factor. The meters shall be read monthly. Wabash Valley shall submit a bill for electric power and energy delivered to the Member pursuant to the Tariffs and such other applicable policies established from time to time by the Wabash Valley Board of Directors and to the extent applicable, approved or accepted by any federal or state regulatory agency having jurisdiction over this Agreement. Payment shall be made by Member to Wabash Valley pursuant to the terms of and at times established under such Tariffs and policies.

8. **Meter Testing and Billing Adjustment.**

(a) Wabash Valley shall test and calibrate the meters by comparison with accurate standards at intervals of twenty-four (24) months. Wabash Valley shall make special meter tests at Member's request. The cost of all such tests shall be borne by Wabash Valley; provided, however, that if any such special meter test made at Member's request shall disclose that the meters are recording accurately, Member shall reimburse Wabash Valley for the cost of such test. Meters registering not more than two percent (2%) above and below normal shall be deemed to be accurate. The readings of any meter which shall have been disclosed by such test to be inaccurate shall be corrected for the ninety (90) days previous to such test in accordance with the percentage of inaccuracy found by such test. If any meter shall fail to register for any period, Wabash Valley shall estimate based on relevant historical information the amount of energy and power furnished during such period, and Wabash Valley shall render a bill therefor.

(b) Wabash Valley shall notify Member in advance of the time of any meter test so that Member's representative may be present at such meter test.

9. **Right of Access.** Duly authorized representatives of either Party hereto shall be permitted to enter the premises of the other Party at all reasonable times after reasonable notice and subject to compliance with such Party's safety and security rules and regulations in order to carry out the purposes and provisions hereof.

10. **Continuity of Service.** Wabash Valley shall use reasonable diligence consistent with prudent utility practices commonly used in the electric utility industry to provide a constant and uninterrupted supply of electric power and energy to the Member; provided, however, if the supply of power and energy shall fail, be interrupted or become defective through an event of

Force Majeure, then Wabash Valley shall not be liable for damages caused thereby. For purposes of this Agreement, the term “Force Majeure” shall mean, include, or be the consequence of any of the following causes or contingencies: acts of God, the elements, storms, hurricanes, tornadoes, cyclones, sleet, floods, back waters caused by floods, lightning, earthquakes, landslides, washouts or other revulsions of nature, epidemics, accidents, fires, collisions, explosions, vandalism, sabotage, riots, wars, insurrections, blockades, acts of the public enemy, acts or restraints of federal, state or other governmental authorities, any claims of force majeure under any agreement or contracts with third-party suppliers of electric energy, capacity or transmission service for the services contemplated under this Agreement, or a third party’s curtailment or failure to supply the services under this Agreement not within the control of a Party, or any other curtailment or failure to supply the services under this Agreement not within the control of a Party by the exercise of reasonable diligence.

11. **Limitations on Transfers of Member’s Assets.**

(a) Member agrees that, for so long as Wabash Valley has outstanding long-term debt, Member will not, without the approval in writing by Wabash Valley, which approval shall not be unreasonably withheld or conditioned, take or suffer to be taken any steps for reorganization or dissolution; consolidate with or merge into any corporation; sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired; or except as otherwise provided for in this Agreement, withdraw as a Member of Wabash Valley and terminate this Agreement.

(b) Notwithstanding paragraph (a) of this Section, Member may merge or consolidate with:

(i) another member of Wabash Valley, provided that Member shall have

provided evidence, in the form and substance satisfactory to Wabash Valley, that the obligations of Member under this Agreement have been assumed by, and are binding on, the successor member's organization; or

(ii) a third party, provided that Member and such third party shall have provided assurances in form and substance satisfactory to Wabash Valley, that:

- (A) the obligations of Member under this Agreement have been assumed by and are binding on such third party;
- (B) the third party shall have the ability to perform its payment and other obligations under this Agreement;
- (C) electric service will continue to be provided to Member's customers by Member or such third party; and
- (D) such merger or consolidation will not otherwise materially adversely affect Wabash Valley.

12. **Amendments and Waivers.** No amendment or waiver of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Parties. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

13. **Incorporation of Exhibits and Schedules.** The exhibits, schedules, attachments, policies, or other documents identified or referred to in this Agreement, as amended from time to time and to the extent required, approved by the applicable regulatory authority, if any, from time

to time, are a part of and hereby incorporated into this Agreement by reference as if set forth in full herein.

14. **Confidentiality.**

(a) **Protected Information.** Except as otherwise set forth in this Agreement, neither Party shall publish, disclose, or otherwise divulge any term or condition of this Agreement and, without limitation, any information relating to any transaction or documents exchanged between the Parties in connection with this Agreement (such information, the “Protected Information”) to a third person (other than the Party’s employees, affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential), at any time during or for three (3) years after the expiration or early termination of this Agreement, without the other Party’s prior written consent. Each Party shall be entitled to all remedies available at law or in equity (including specific performance and/or injunctive relief) to enforce, or seek relief in connection with, this confidentiality obligation.

(b) **Non-Confidential Information.** The following shall not be considered Protected Information, and the receiving Party shall not be limited in the use or disclosure of the following information: (a) information which is or becomes part of the public domain through no act or omission of receiving Party; (b) information which demonstrably was known or was in the possession of receiving Party without obligation to maintain confidentiality prior to the Effective Date of this Agreement; (c) information which is subsequently rightly received by the receiving Party from a third party who is not bound to maintain such information as confidential; and/or (d) information independently developed by the receiving Party without reference to the Protected Information received under this Agreement.

(c) Return of Confidential Information. Upon request of disclosing Party, receiving Party shall either (i) return the Protected Information, including all copies, or (ii) destroy the Protected Information, including all copies, and present written assurances of the destruction to disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Protected Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by Receiving Party on electronic devices, magnetic tape, or other media (“Back-Up Tapes”). Notwithstanding the terms of this Agreement, in no event shall Receiving Party be required to destroy Protected Information stored on Back-Up Tapes; provided, however, any Protected Information not returned or destroyed pursuant to this Section 14 shall be kept confidential for the duration of its existence. Furthermore, the Parties agree that receiving party may retain one (1) copy of such Protected Information in receiving Party’s files for audit and compliance purposes for the duration of its existence; provided, however, such Protected Information shall be kept confidential for the duration of its existence in accordance with the terms of this Agreement.

(d) Required Disclosures. Notwithstanding the confidentiality requirements set forth herein, a Party may, subject to the limitations set forth herein, disclose Protected Information to comply with its compliance and/or regulatory requirements, any other applicable requirement of any federal, state or local statute, law, ordinance, rule or regulation (collectively, the “Law”), or any exchange, control area or independent system operator rule, in response to a court order, in connection with any court or regulatory proceeding, or as otherwise required by any requirement of Law. Such disclosure shall not terminate the obligations of confidentiality unless the Protected Information thereafter falls within one of the exclusions provided for herein. To the extent the disclosure of Protected Information is requested or compelled as set forth above, the receiving

Party agrees to give disclosing Party reasonable notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any Confidential Information. Such notice by the receiving Party shall give disclosing Party an opportunity, at disclosing Party's discretion and sole cost, to seek a protective order or similar relief. If such protective order or other appropriate remedy is not sought and obtained within at least thirty (30) days of receiving Party's notice, receiving Party shall disclose only that portion of the Protected Information that is required or necessary in the opinion of receiving Party's legal counsel; *provided, however*, receiving Party shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to any Confidential Information so disclosed.

(e) Regulatory Disclosures. This Section 14(e) will apply notwithstanding anything to the contrary in this Agreement. In the event of the establishment of a docket or proceeding before any public service commission, public utility commission, or other agency having jurisdiction over Wabash Valley's obligations to Member with respect to the Protected Information shall automatically be governed solely by the rules and procedures governing such docket to the extent such rules or procedures are additional to, different from or inconsistent with this Agreement. In regulatory proceedings in all state and federal jurisdictions in which it does business, Wabash Valley may from time to time be required to produce Protected Information, and it may do so without prior notice to Member, using its business judgment, and the appropriate level of confidentiality it seeks for such disclosures.

15. Interpretation. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. In the event that any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly

by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any person or entity by virtue of the authorship of any of the provisions of this Agreement.

16. **Severability.** It is the desire and intent of the Parties that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

17. **Binding Effect; Assignment.** This Agreement shall be binding upon, and inure to the benefit of, the Parties, and their permitted successors and assigns. Neither Party shall assign this Agreement or any interest under the Agreement without the prior written consent of the other Party, provided, however, the Parties shall have the right at any time to mortgage, create or provide for a security interest in, or convey in trust all or a part of its interest in, this Agreement, under deeds of trust, mortgages, indentures or security agreements, as security for, or in relation to, a Party securing financing without need for the consent of the other Party.

18. **Governing Law; Venue.** This Agreement and the rights and duties of the Parties hereunder shall be governed by, and construed in accordance with, the internal laws of the State of Indiana and, to the extent applicable, to federal laws of the United States of America, exclusive

of any conflict of law provisions thereof that would apply the laws of another jurisdiction and without regard to principles of conflict of laws. The Parties hereby irrevocably submit to the exclusive jurisdiction of, and agree that exclusive venue for actions hereunder shall be, the U.S. District Court for the Southern District of Indiana, if the U.S. District Court has jurisdiction, or, if the U.S. District Court does not have jurisdiction, the Circuit or Superior Courts of the State of Indiana sitting in Marion County, Indiana, it being understood, however, that judgments, orders or decrees resulting from such lawsuits or court actions may be appealed to or enforced in any competent court.

19. **Specific Performance.** The Parties agree that the failure or threatened failure of either Party to comply with the terms of this Agreement will cause irreparable harm to the other Party and the other members which cannot properly or adequately be compensated by the mere payment of money. Therefore, the Parties agree that, in the event of a breach or threatened breach of the terms of this Agreement by either Party, the other Party shall have the right, in addition to any other remedies that may be judicially available, to obtain from any court of competent jurisdiction a decree enjoining such breach or threatened breach of the terms of this Agreement or a decree providing that the terms of this Agreement be specifically enforced, with or without the demonstration or proof by the claiming Party that it will be irreparably harmed.

20. **Attorney Fees.** Notwithstanding anything in this Agreement to the contrary, in the event of the commencement of a suit or proceeding with respect to the validity or enforcement of this Agreement or any of the provisions of this Agreement, the prevailing party in such suit, shall be entitled to recover its attorneys' fees and costs of litigation from the non-prevailing party that the court may determine reasonable in addition to all other relief granted.

21. **Safe Harbor.** The Parties acknowledge and agree that: (a) all transactions under this Agreement constitute "forward contracts" as defined in 11 U.S.C. §101(25); (b) the electric

energy supplied under this Agreement is a “commodity” as that term is used in 11 U.S.C. §101(25)(A); (c) all payments made or to be made by Member to Wabash Valley under this Agreement constitute “settlement payments” as used in 11 U.S.C. §546(e); (d) Member is a “forward contract merchant” as defined in 11 U.S.C. §101(26); (e) all transfers of credit assurances, if any, by one Party to the other Party under this Agreement constitute “margin payments” as used in 11 U.S.C. §546(e); and, (f) without limitation, each Party’s rights under this Agreement constitute contractual rights “to liquidate, terminate, or accelerate.” Further, each Party agrees that it will not assert, and hereby waives any right to assert, that the other Party in performing hereunder is not doing so as a “utility” as such term is used in 11 U.S.C. § 366. Further each Party hereby waives and agrees not to assert that 11 U.S.C. § 366 applies to this Agreement or any transaction hereunder in any bankruptcy proceeding. In any such proceeding, each Party waives the right to assert, and agrees that it will not assert, that the other Party is a provider of last resort for any transaction hereunder or otherwise limit contractual rights to liquidate, terminate, or accelerate. Without limiting the binding nature of any other provision of this Agreement on permitted successors and assigns, this provision is intended to be binding upon all successors and assigns of the Parties, including judgment lien creditors, receivers, estates in possession, and trustees thereof.

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IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Agreement as of the date identified above.

WABASH VALLEY POWER ASSOCIATION, INC.

By: _____
Jeff A. Conrad – President & CEO

ATTEST:

By: _____
Theresa Young – Assistant Secretary-Treasurer

**STEUBEN COUNTY RURAL ELECTRIC
MEMBERSHIP CORPORATION**

By: _____
Wayne Gingerich, President

ATTEST:

By: _____
Gary Shough, Secretary

EXHIBIT A

Metering Point
None

Voltage

Adjustment Factor