

Attachment A

ASSET PURCHASE AGREEMENT

dated as of

February 10, 2021

by and

between

Pennsylvania Electric Company

as Seller

and

Tri-County Rural Electric Cooperative, Inc.

as Buyer

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EXHIBITS

Exhibit A	Form of Assignment and Assumption Agreement
Exhibit B	Form of Bill of Sale
Exhibit C	Form of Transition Services Agreement
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Exhibit E	Form of Construction Agreement
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Schedule 1.01(a)	Equipment
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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (“*Agreement*”), dated as of February 10, 2021 (the “*Execution Date*”), is by and between Pennsylvania Electric Company, a Pennsylvania corporation (the “*Seller*”), and Tri-County Rural Electric Cooperative, Inc., a Pennsylvania corporation (the “*Buyer*” and, together with Seller, the “*Parties*”).

RECITALS:

A. Seller possesses, or after the merger described in Section 9.02(f) will possess, rights to the Purchased Assets, including but not limited to ownership and operation of certain substations, distribution lines and related equipment and real property located in the State of New York used for the distribution of electric power for the benefit of the Waverly Service Territory in the State of New York; and

B. Seller desires to sell and transfer the Purchased Assets to Buyer, and Buyer desires to purchase the Purchased Assets, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein made and the mutual benefits to be derived therefrom, and in considerations of the representations, warranties, and covenants contained herein, the Parties agree as follows:

ARTICLE 1

DEFINITIONS, RULES OF CONSTRUCTION AND ACCOUNTING TERMS

Section 1.01 **Definitions.** The following terms and phrases, as used in this Agreement, have the following meanings:

“*Affiliate*” means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under Common Control with, such first Person.

“*Agreement*” is defined in the preamble.

“*Apportioned Obligations*” is defined in Section 8.02(b).

“*Assignment and Assumption Agreement*” means an Assignment and Assumption Agreement in substantially the form set forth on Exhibit A.

“*Attorney Work Product*” means all notes, memoranda, correspondence or similar material reflecting the legal conclusions, recommendations, privileged communications or other work product of or to attorneys, whether they be in-house or external, acting as counsel to Seller or any of its Affiliates.

“*Bill of Sale*” means a Bill of Sale in substantially the form set forth on Exhibit B.

“*Breach Notice*” is defined in Section 11.01(d).

“**Business Day**” means any day other than Saturday, Sunday or a day on which United States national banks are authorized or required by Law to be closed.

“**Buyer**” is defined in the preamble.

“**Buyer Disclosure Schedule**” means the schedules setting forth certain disclosures of Buyer, or qualifications or exceptions to any of Buyer’s representations or warranties set forth in ARTICLE 4, which schedules are delivered simultaneously with the execution and delivery of this Agreement.

“**Buyer Indemnified Parties**” is defined in Section 10.02.

“**Buyer Material Adverse Effect**” means an event, fact, circumstance, effect or occurrence that materially and adversely affects the ability of Buyer to consummate the Transaction or perform its obligations under the Transaction Agreements.

“**Claim**” means any contest, action, petition, plea, charge, summons, citation, claim, assessment, demand, suit, complaint, inquiry, notice of violation, hearing, arbitration, proceeding or investigation, whether civil, criminal or administrative, or notice of any of the foregoing involving any Person.

“**Closing**” has the meaning ascribed to such term in Section 2.04.

“**Closing Date**” means the date on which the Closing actually occurs.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Confidentiality Agreement**” means the Confidentiality Agreement, dated March 27, 2020, by and between FirstEnergy Service Company and Buyer.

“**Construction Agreement**” is defined in Section 7.07.

“**Contract**” means any agreement, contract, lease, commitment or consensual obligation (whether written or oral) related to or affecting the Purchased Assets.

“**Control,**” including corresponding meaning of the terms “**Controlled by**” and “**under Common Control with,**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, as general partner or managing member, by contract or otherwise.

“**Customer Receivables**” is defined in Section 2.02(d).

“**Damages**” means any damage, loss, penalty, liability, judgment, cost and expense, including reasonable expenses of investigation and reasonable attorneys’ and professional’s fees and expenses in connection with any action, suit or proceeding.

“**Deductible**” is defined in Section 10.04(a).

“*e-mail*” is defined in Section 12.01.

“*Easements and Rights of Way*” means the easements and rights of way held by Seller or Waverly with respect to the distribution lines included in the Purchased Assets.

“*Enforceable*” means, with respect to any Contract stated to be “Enforceable” by or against any Person, that such Contract is a legal, valid and binding obligation enforceable by or against such Person in accordance with its terms, except to the extent that enforcement of the rights and remedies created thereby is subject to bankruptcy, insolvency, reorganization, moratorium and other similar Laws of general application affecting the rights and remedies of creditors and to general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

“*Environmental Claims*” means any written Claim, Order, information request or notice of noncompliance, liability or violation by or from any Person arising under any Environmental Law.

“*Environmental Laws*” means all existing Laws relating to wildlife (including any endangered, threatened or protected species), natural resources and pollution or protection of the environment (including ambient air, soil, surface water, groundwater, land surface or subsurface strata), including those relating to Releases or threatened Releases of any Hazardous Material, or otherwise relating to the management, manufacture, generation, processing, distribution, use, presence, control, treatment, storage, disposal, transport, or handling of any Hazardous Material.

“*Environmental Permit*” means any Permit with respect to the Purchased Assets or the use of the Purchased Assets issued pursuant to or required under any applicable Environmental Law.

“*Equipment*” means the equipment described on Schedule 1.01(a), attached hereto and incorporated herein by reference, that is located in the State of New York on the Closing Date and used for the distribution of electric power in the Waverly Service Territory.

“*Excluded Assets*” is defined in Section 2.02.

“*Execution Date*” is defined in the preamble.

“*FERC*” means the Federal Energy Regulatory Commission or any successor thereto, and any committee, division or unit thereof.

“*FERC Applications*” means PJM Interconnection, L.L.C. or Buyer’s applications to FERC for authorizations in connection with the Transaction with respect to (1) the Interconnection Agreement, (2) an “Other Supporting Facilities Charge” as set forth on Schedule 9.01(d), and (3) network integration transmission services.

“*Financing*” is defined in Section 4.07.

“*GAAP*” means United States generally accepted accounting principles in effect from time to time.

“Good Utility Practice” means any of the applicable practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period which, in the exercise of reasonable judgment in 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 Law, good business practices, reliability, safety, and expedition. Good 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 practices, methods, or acts generally accepted in the region and shall include the maintenance of adequate inventories, spare parts and major maintenance reserves for the Purchased Assets.

“Governmental Body” means any legislature, agency, bureau, branch, department, division, commission, court, tribunal, magistrate, justice, multi-national organization, quasi-governmental body, or other similar recognized organization or body of any federal, state, county, municipal, local, or foreign government or other similar recognized organization or body exercising similar powers or authority, including FERC and NY PSC, but shall not include Seller in its capacity as “Seller” under this Agreement.

“Hazardous Material” means any substance, material, pollutant, contaminant, chemical or waste which is regulated under any applicable Environmental Law, including, without limitation, petroleum or hydrocarbons in any form, natural gas or natural gas products, radon gas, asbestos and asbestos-containing materials, mercury, radioactive materials, lead-based paint, and polychlorinated biphenyls.

“Indemnified Party” is defined in Section 10.04.

“Indemnifying Party” is defined in Section 10.04.

“Interconnection Agreement” means an Interconnection Agreement in substantially the form set forth on Exhibit D.

“Knowledge of Buyer,” “Buyer’s Knowledge” or any other similar knowledge qualification with respect to Buyer means the actual knowledge or constructive knowledge (after due inquiry) of the following individuals: Craig Eccher.

“Knowledge of Seller,” “Seller’s Knowledge” or any other similar knowledge qualification with respect to Seller means the actual knowledge or constructive knowledge (after due inquiry) of the following individuals: Albert Fratini, Milorad Pokrajac, and, solely with respect to matters contained in Section 3.11, Daniel C. Havalo.

“Law” means any federal, state, local, municipal or foreign (including supranational) law (including common law), statute, ordinance, rule, code, directive, ruling, regulation, judgment, Order, injunction, decree, arbitration award, agency requirement, license or permit of any Governmental Body having or asserting jurisdiction over the Parties or any of their assets.

“Lien” means, with respect to any property or asset, any mortgage, lien, encumbrance, easement, encroachment, pledge, charge, security interest, warrant, Claim, equitable interest, option, conditional sale, right of first refusal, or other title retention device or arrangement

(including a capital lease), or restriction on the creation of any of the foregoing, whether relating to any property or right or the income or profits therefrom.

“Material” when used with respect to Buyer, means material to the ability of Buyer to consummate the Transaction or perform its obligations under the Transaction Agreements, and when used with respect to Seller, means material to the Purchased Assets taken as a whole.

“NY PSC” means the State of New York Public Service Commission.

“NY PSC Authorization” means the issuance of an order by NY PSC granting without material modification or condition all authorizations requested by Buyer and Seller under an application for authorization of the Transaction pursuant to, and in accordance with, New York Public Service Law Section 70. As part of such application and at the behest of the Buyer, Buyer and Seller agree to explain to the NY PSC that the Purchased Assets will be operated by the Buyer as a cooperative following the Transaction.

“Order” means any order, ruling, decision, verdict, decree, writ, subpoena, mandate, precept, command, directive, consent, approval, award, judgment, injunction, or other similar determination or finding by, before, or under the supervision of any Governmental Body, arbitrator, or mediator.

“Parties” is defined in the preamble.

“Permit” means any permit, license, certificate, authorization, approval, consent, notice, waiver, franchise, registration, filing, accreditation, or other similar authorization required by any Law, Governmental Body, or Contract.

“Permitted Liens” means: (i) statutory liens for Taxes or other governmental charges or assessments not yet due or delinquent or the validity of which are being contested in good faith by appropriate proceedings; (ii) mechanics’, materialmen’s, carriers’, workers’, repairers’ and other similar liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of Seller or the validity of which are being contested in good faith; (iii) zoning, entitlement, conservation restriction and other land use and environmental regulations imposed by Governmental Bodies; (iv) easements, leases, licenses, restrictions, activity and use limitations, conservation easements, encumbrances and encroachments, in each case of record and (v) other Liens, encroachments or imperfections of title that have not materially impaired, or would not reasonably be expected to materially impair the use or operation of the Purchased Assets in the same manner as conducted by Seller.

“Person” means an individual, corporation, partnership, limited liability company, association, trust, an incorporated organization, or other entity or organization, including a Governmental Body and any department or agency thereof.

“Phase II Notice” means a written notice prepared by Buyer that includes: (i) a description of the necessity of the performance of a Phase II for any particular parcel(s) of the Real Property, together with a copy of the Phase I for the particular parcel(s) and all related documentation; (ii) the proposed contractor chosen by Buyer to perform the Phase II with documentation showing that the contractor is reasonably competent to perform the Phase II; (iii) a specific proposed Phase II work

plan prepared by a qualified environmental professional; and (iv) an executed Access and Confidentiality Agreement in a form to be reasonably agreed to by the Parties.

“Post-Closing Tax Period” is defined in Section 8.02(b).

“Pre-Closing Tax Period” is defined in Section 8.01.

“Prime Rate” means, as of any date, the prime rate as published in The Wall Street Journal on such date or, if not published on such date, on the most recent date of publication.

“Purchase Price” is defined in Section 2.02.

“Purchased Assets” is defined in Section 2.01.

“Real Property” means the parcels of real property located in the State of New York and set forth on Schedule 1.01(b), and all right, title and interest of Seller or Waverly to appurtenances thereto, including (i) all right, title and interest of Seller or Waverly in and to easements or rights-of-way appurtenant to such real property; and (ii) all right, title and interest of Seller and Waverly in and to all rights of ingress and egress to and from such real property, together with all right, title and interest of Seller and Waverly to all improvements thereon. For the avoidance of doubt, (A) “Real Property” does not include the Easements and Rights of Way, and (B) any reference to items “on the Real Property” includes all items at, on, in, upon, over, across, under and within the Real Property.

“Records” means the operating records, manuals, all existing and historic Permits and their applications, files, papers and similar documents of Seller relating exclusively to the Purchased Assets, including all data and electronic information relating exclusively to the Purchased Assets stored or archived in any server, computer, laptop, network, system, or other electronic database (including any such data or information stored in any asset not included in the Purchased Assets); provided, however, “Records” excludes both any Attorney Work Product and such records, files and papers of Seller to the extent they do not relate to the Purchased Assets.

“Release” means any releasing, spilling, emitting, leaking, pumping, pouring, emptying, injecting, escaping, dumping, disposing, discharging, depositing, leaching or migrating into or through the environment (including ambient air, soil, surface water, groundwater, land surface or subsurface strata).

“Reliability Standards” means those reliability standards approved by NERC or FERC, as they may be amended from time to time, pursuant to Section 215 of the Federal Power Act, including any regional variations thereof approved by the NY PSC.

“Required Consents” is defined in Section 3.06.

“Seller” is defined in the preamble.

“Seller Disclosure Schedule” means the schedules setting forth certain disclosures of Seller, or qualifications or exceptions to any of Seller’s representations or warranties set forth in ARTICLE 3, which schedules are delivered simultaneously with the execution and delivery of this Agreement.

“*Seller Indemnified Parties*” is defined in Section 10.03.

“*Seller Material Adverse Effect*” means any fact, circumstance, event, change, effect or occurrence that, individually or in the aggregate with all other facts, circumstances, events, changes, effects or occurrences, has or would be reasonably likely to have a material adverse effect on the Purchased Assets, taken as a whole, or that would be reasonably likely to prevent or materially delay or materially impair the ability of Seller to consummate the Transaction, provided, however, that no facts, circumstances, events, changes, effects or occurrences (by themselves or when aggregated with any other facts, circumstances, events, changes, effects or occurrences) resulting from, relating to or arising out of the following shall be deemed to be or constitute a Seller Material Adverse Effect or shall be taken into account when determining whether there has, may or would have occurred a Seller Material Adverse Effect: (i) the effect of any change generally affecting the economy or the financial or securities markets in the United States or elsewhere in the world, including any political conditions or developments, or any outbreak or escalation of hostilities, weather, climate change, declared or undeclared acts of war, terrorism, or pandemic, (ii) effects of public perceptions of power transmission facilities or (iii) the effect of (a) the announcement of, or compliance with, this Agreement or the announcement of the Transaction or (b) any changes in applicable Law or GAAP or interpretation thereof.

“*Tangible Personal Property*” means the tools, fixtures, and other tangible personal property as set forth on Schedule 1.01(c). “Tangible Personal Property” shall also include, to the extent transferable, all rights of Seller to warranties and licenses received from manufacturers and sellers of such Tangible Personal Property.

“*Tax*” has the meaning ascribed to such term in Section 8.01.

“*Tax Return*” means any return, declaration, report, claim for refund, information return or statement relating to Taxes, including any amended return, extension request with respect thereto and any schedule or attachment thereto.

“*Taxing Authority*” is defined in Section 8.01.

“*Transaction Agreements*” means each of this Agreement, the Assignment and Assumption Agreement, the Bill of Sale, the Deed, the Assignments of Easement and Rights-of-Way, the Interconnection Agreement, the Construction Agreement and any other agreement entered into in connection with the transaction described in this Agreement.

“*Transaction*” means, collectively, the transactions contemplated by the Transaction Agreements.

“*Transfer Taxes*” is defined in Section 8.02(c).

“*TSA*” means a Transition Services Agreement in substantially the form set forth on Exhibit C.

“*Waverly*” means The Waverly Electric Light and Power Company, a New York corporation.

“Waverly Service Territory” means Waverly’s, or after the merger described in Section 9.02(f), the Seller’s electric power distribution service territory in the State of New York.

Section 1.02 **Rules of Construction.**

(a) The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party because of the authorship of any provision of this Agreement.

(b) Unless the context of this Agreement otherwise clearly requires, (i) references to the plural include the singular, (ii) references to the singular include the plural, (iii) references to any gender include the other genders, (iv) the term “including” is not limiting and has the inclusive meaning represented by the phrase “including without limitation,” (v) the term “include” is not limiting and has the inclusive meaning represented by the phrase “include without limitation,” (vi) the term “includes” is not limiting and has the inclusive meaning represented by the phrase “includes without limitation,” (vii) the terms “hereof,” “herein,” “hereunder,” “hereto” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, and (viii) the terms “day” and “days” mean and refer to calendar day(s).

(c) Unless otherwise set forth herein, references in this Agreement to (i) any document, instrument or agreement (including this Agreement) (A) includes and incorporates all exhibits, schedules, Disclosure Schedule and other attachments thereto, (B) includes all documents, instruments or agreements issued or executed in replacement thereof and (C) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time, and (ii) a particular law, regulation or ordinance means such law, regulation or ordinance as amended, modified, supplemented or succeeded, from time to time and in effect at any given time and all rules and regulations promulgated thereunder, unless the context requires otherwise. All Article, Section, Exhibit and Schedule references herein are to Articles, Sections, Exhibits and Schedules of this Agreement, unless otherwise specified.

(d) The Parties intend that each representation, warranty, covenant, and condition contained herein will have independent significance. If any Party has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same or similar subject matter (regardless of the relative levels of specificity) which the Party has not breached will not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, or covenant. If any condition to Closing contained herein has not been satisfied in any respect, the fact that there exists another condition relating to the same or similar subject matter (regardless of the relative levels of specificity) which has been satisfied shall not detract from or mitigate the fact that the first condition has not been satisfied.

ARTICLE 2

PURCHASE AND SALE

Section 2.01 **Purchase and Sale.** Except as otherwise provided in, and upon the terms and subject to the conditions of this Agreement, Buyer agrees to purchase, acquire and accept from Seller and Seller agrees to sell, convey, transfer, assign and deliver, to Buyer at the Closing, free and clear of all Liens (except for Permitted Liens), all of Seller's and its Affiliates' right, title and interest in the following equipment and property that are related to the distribution of electric power for the benefit of the Waverly Service Territory in the State of New York (the "**Purchased Assets**"):

- (a) the Equipment;
- (b) the Real Property;
- (c) the Easements and Rights of Way;
- (d) the Tangible Personal Property;
- (e) the customer accounts in the Waverly Service Territory with service addresses, on the date hereof, in the State of New York;
- (f) all original or, to the extent originals are not readily available, copies of all, Records; and
- (g) all Permits to the extent legally transferable.

The transfer of the Purchased Assets pursuant to this Agreement shall not include the assumption of any liability or obligation of Seller of any kind related to the Purchased Assets, whether known or unknown, contingent, matured or otherwise, whether currently existing or hereafter created.

Section 2.02 **Excluded Assets.** Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets or properties of Seller, and all such other assets and properties are excluded from the Purchased Assets (the "**Excluded Assets**"). Excluded Assets include the following assets and properties of Seller:

- (a) All cash, cash equivalents, bank deposits, accounts and notes receivable (trade or otherwise), and any income, sales, payroll or other receivables relating to Taxes, in each case whether or not relating to the Purchased Assets;
- (b) All assets, equipment, and other personal and real property related to the Waverly Service Territory that are located in Pennsylvania; and
- (c) All accounts and related records for customers with service addresses not, as of the date hereof, located in the State of New York.
- (d) All customer accounts receivable for customers in the Waverly Service Territory for electric service provided before the Closing Date (the "**Customer Receivables**").

Buyer acknowledges that the Purchased Assets also exclude all cables, wires, appliances, apparatuses, and any other fixtures or attachments that are owned by a third-party and attached to the Equipment.

Section 2.03 Purchase Price. Upon the terms and subject to the conditions set forth in this Agreement, in consideration for the sale, assignment, conveyance, transfer and delivery of the Purchased Assets, Buyer shall pay to Seller at the Closing cash in an aggregate amount equal to the net book value of the Purchased Assets as of the Closing (as reflected in Seller's financial records and calculated in accordance with Schedule 1.01(d)) (the "**Purchase Price**") by wire transfer of immediately available funds to the account designated by Seller to Buyer in writing at least two Business Days prior to the Closing Date.

Section 2.04 Closing. The closing (the "**Closing**") of the sale, assignment, conveyance, transfer and delivery of the Purchased Assets by Seller to Buyer, and the purchase, assumption and acquisition by Buyer of the Purchased Assets, and the consummation of the Transaction shall take place remotely via the exchange of documents and signatures or at such other time and place as Buyer and Seller agree upon, orally or in writing, no more than three Business Days after the date on which the last of the conditions precedent to the Closing set forth in ARTICLE 9 have been satisfied or, to the extent permitted by applicable Law, waived by the Party for whose benefit such conditions precedent exist (other than those conditions that by their nature will be satisfied at the Closing, but subject to the satisfaction (or waiver as provided herein) of such conditions). The Closing shall be effective for all purposes at 12:01 a.m., Akron, Ohio time, on the Closing Date. Risk of loss of the Purchased Assets will remain with Seller until the completion of Closing.

Section 2.05 Prorations and Adjustments.

(a) Except as otherwise provided in this Agreement, all of the items customarily prorated relating to the ownership, maintenance or use of the Purchased Assets, including those listed below, shall be prorated as of the Closing Date, with Seller liable to the extent such items relate to any period prior to the Closing Date, and Buyer liable to the extent such items relate to any period on or after the Closing Date (measured in the same units used to compute the item in question, and otherwise measured by calendar days):

(i) Personal and real property Taxes, assessments and other charges, if any, on or with respect to the ownership, maintenance or use of the Purchased Assets;

(ii) Any permit, license, registration, compliance assurance fees or other fees with respect to any Permit relating exclusively to the Equipment;

(iii) Prepaid use and maintenance expenses; and

(iv) Prepaid revenues from third parties, and prepaid amounts paid to third parties, in connection with poles that are included in the Purchased Assets.

(b) Before Closing, Buyer and Seller shall establish a mutually-agreeable and commercially-reasonable methodology to determine the meter reading for each customer account as of 12:01 a.m., Akron, Ohio time, on the Closing Date. Seller shall issue to each account a final

bill for service using the agreed-upon meter reading. Within sixty (60) days after the Closing Date, Buyer and Seller shall exchange lists with names and account numbers that detail any Customer Receivables received by Buyer for service provided prior to the Closing Date or received by Seller for service provided after the Closing Date. Buyer and Seller shall remit payments, as appropriate, to the other Party within five (5) days of agreeing to the reconciliation amounts. If the Parties cannot mutually agree to the reconciliation amounts, then each Party shall designate a senior management corporate representative, and the senior management corporate representatives shall meet and agree to a final reconciliation.

(c) Seller or Buyer, as the case may be, shall promptly reimburse the other Party for that portion of any amount paid by such other Party to the extent relating to the period for which Seller or Buyer, as the case may be, is liable under Section 2.05(a), in each case, upon presentation of a statement setting forth in reasonable detail the nature and amount of any such payment. In connection with the prorations set forth in Section 2.05(a), if actual figures are not available on the Closing Date, the proration shall be calculated based upon the respective amounts accrued through the Closing Date or paid for the most recent year or other appropriate period for which such amounts paid are available. All prorated amounts shall be recalculated and paid to the appropriate Party within 60 days after the date that the previously unavailable actual figures become available. Seller and Buyer shall furnish each other with such documents and other records as may be reasonably requested in order to confirm all proration calculations made pursuant to this Section 2.05.

Section 2.06 Deliveries at Closing. In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing:

(a) Seller shall deliver to Buyer:

- (i) the Bill of Sale duly executed by Seller;
- (ii) the Assignment and Assumption Agreement duly executed by Seller;
- (iii) the TSA duly executed by Seller;
- (iv) the Interconnection Agreement duly executed by Seller;
- (v) a deed in substantially the form set forth on Exhibit F;
- (vi) an assignment of easements and rights-of-way in substantially the form set forth on Exhibit G;
- (vii) an officer's certificate certifying that the conditions in Section 9.01 and Section 9.02 have been satisfied; and
- (viii) any other documents or instruments reasonably required by Buyer to consummate the Transaction and reasonably requested of Seller prior to the Closing Date.

(b) Buyer shall deliver to Seller:

- (i) the Purchase Price;

- (ii) the Assignment and Assumption Agreement duly executed by Buyer;
- (iii) the TSA duly executed by Buyer;
- (iv) the Interconnection Agreement duly executed by Buyer;
- (v) an officer's certificate certifying that the conditions in Section 9.01 and Section 9.03 have been satisfied; and
- (vi) any other documents or instruments reasonably required by Seller to consummate the Transaction and reasonably requested of Buyer prior to the Closing Date.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Seller Disclosure Schedule or with respect to representations or warranties that speak of a specific date, Seller represents and warrants to Buyer that the statements contained in this ARTICLE 3 are true, correct and complete as of the Execution Date and will be true, correct and complete as of the Closing Date.

Section 3.01 Existence and Power. Seller is a corporation duly organized, validly existing, and in good standing under the Laws of Pennsylvania. Seller has full power and authority to own or use the Purchased Assets that it purports to own or use, and to perform all its obligations with respect thereto.

Section 3.02 Authorization. Seller has the relevant power and authority necessary to execute and deliver each Transaction Agreement to which it is a party and, subject to the authorization of the merger described in Section 9.02(f), to perform and consummate the Transaction. Seller has taken all action necessary to authorize the execution and delivery of each Transaction Agreement to which it is a party, the performance of its respective obligations thereunder, and the consummation of the Transaction. Each Transaction Agreement to which Seller is a party has been duly authorized by, and has been or will be duly executed and delivered by, and, assuming the due authorization, execution and delivery thereof by each counterparty, is enforceable against, Seller.

Section 3.03 Governmental Authorization. The execution, delivery and performance by Seller of the Transaction Agreements to which it is a party and the consummation of the Transaction require no action by or in respect of, or registration, filing, application, notice, consent, approval, qualification, or waiver with, by or to any Governmental Body or under any Law or Order other than any such action or filing as set forth on Section 3.03 of the Seller Disclosure Schedule.

Section 3.04 Noncontravention. Except as set forth in Section 3.04 of the Seller Disclosure Schedule, the execution, delivery and performance by Seller of the Transaction Agreements to which it is a party and the consummation of the Transaction do not and will not: (a) result in a violation of any organizational document of Seller, (b) violate any applicable Law in any manner, (c) result in any Lien on the Purchased Assets (other than Permitted Liens), or (d)

result in or cause the violation, suspension or revocation of any Permit relating to the Purchased Assets, except, in the case of each of clause (d), where such violation, default, termination, cancellation, or acceleration (as applicable) would not, individually or in the aggregate, reasonably be expected to have a Seller Material Adverse Effect.

Section 3.05 Finders' Fees. There is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Seller or any of its Affiliates who might be entitled to any fee or commission from Buyer or its Affiliates in connection with the Transaction.

Section 3.06 Required Consents. Section 3.06 of the Seller Disclosure Schedule sets forth each Purchased Asset requiring a consent or other action by any Person as a result of the execution, delivery and performance of the Transaction Agreements (the "**Required Consents**").

Section 3.07 Contracts. The Purchased Assets are not subject to any leases, options to purchase, rights of first purchase or refusal, or any other Contracts, other than this Agreement.

Section 3.08 Litigation.

(a) Except as set forth in Section 3.08(a) of the Seller Disclosure Schedule, there is no action, suit, investigation or proceeding pending against, or to the Knowledge of Seller, threatened against, Seller or any of Seller's Affiliates (i) relating to or affecting any of the Purchased Assets, before any arbitrator or Governmental Body or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with, the Transaction. Notwithstanding the foregoing, no representation or warranty is made in this Section 3.08 with respect to environmental matters, which are covered exclusively in Section 3.11.

(b) Except as set forth in Section 3.08(b) of the Seller Disclosure Schedule, there is no Material Order to which Seller or any of the Purchased Assets is subject.

(c) Except as set forth in Section 3.08(c) of the Seller Disclosure Schedule, (i) Seller is in compliance with all of the terms and requirements of each Order to which it, in connection with any of the Purchased Assets, is subject, (ii) no event has occurred or circumstance exists that is reasonably likely to constitute or result in (with or without notice or lapse of time) a violation of or failure to comply with any term or requirement of any Order to which Seller or any of the Purchased Assets is subject, and (iii) since January 1, 2019, Seller has not received any written or, to the Knowledge of Seller, oral, notice or other communication from any Governmental Body or any other Person regarding any actual, alleged, possible, or potential violation of, or failure to comply with, any term or requirement of any Order to which Seller or any of the Purchased Assets is or has been subject.

Section 3.09 Compliance with Laws. Seller is in compliance in all Material respects with all applicable Laws that affect the use or operation of the Purchased Assets as they are used or operated by Seller on the date hereof. Notwithstanding the foregoing, no representation

or warranty is made in this Section 3.09 with respect to environmental matters, which are covered exclusively in Section 3.11.

Section 3.10 Title to Purchased Assets. Seller has good, marketable and valid title to all of the Purchased Assets Seller owns, leases or otherwise possesses, in each case free and clear of all Liens (except for Permitted Liens).

Section 3.11 Environmental Matters. Except as set forth in Section 3.11 of the Seller Disclosure Schedule:

(a) Seller is in material compliance with all applicable Environmental Laws relating to or arising from the Purchased Assets.

(b) There are no unresolved Environmental Claims and, to the Knowledge of Seller, there are no Environmental Claims threatened that arise from or relate to the ownership or use of the Purchased Assets.

(c) Neither Seller nor any Affiliate of Seller has used, handled, stored or Released Hazardous Materials at, on, under or from the Purchased Assets, except in material compliance with Environmental Law, and none of the Purchased Assets is contaminated by, or is the source of any contamination of the environment by, any Hazardous Material, in a manner that has given or would reasonably be expected to give rise to any liability under Environmental Law.

(d) Seller has obtained all Environmental Permits required under applicable Environmental Laws, and each such Environmental Permit is either in full force and effect or remains effective as a result of the timely filing of a renewal application. Seller is in material compliance with all applicable obligations imposed by such Environmental Permits. Seller has provided Buyer with copies of all material documents in Seller's possession, custody or control relating to the compliance of the Purchased Assets with Environmental Laws or to the Release or threatened Release of Hazardous Materials in connection with the ownership or use of the Purchased Assets.

(e) This Section 3.11 contains the exclusive representations and warranties of Seller with respect to matters arising under or relating to Environmental Law.

Section 3.12 Permits.

(a) All Permits required for the ownership and use of the Purchased Assets have been obtained by Seller and are valid and in full force and effect, except where the failure to obtain such Permits would not have a Seller Material Adverse Effect.

(b) Notwithstanding the foregoing, no representation or warranty is made in this Section 3.12 with respect to environmental matters, which are covered exclusively in Section 3.11, or with respect to real estate matters, which are covered exclusively in Section 3.13.

Section 3.13 Real Property.

(a) Except as set forth on Section 3.13(a) of the Seller Disclosure Schedule:

(i) the Real Property is owned of record by Waverly and no other Person has any ownership or leasehold interest in any of the owned Real Property;

(ii) Waverly owns the Real Property free and clear of all Liens, except Permitted Liens;

(iii) to Seller's Knowledge, Seller and Waverly are not in material violation of or material default under any easements, restrictions or other Liens on or relating to the Real Property;

(iv) there is no pending or, to Seller's Knowledge, contemplated condemnation or eminent domain Proceeding affecting all or any portion of any of the Real Property or, to Seller's Knowledge, any plans, proposals or ordinances by any Governmental Body for changes in road grade, access or other municipal improvements which would affect the Real Property or result in any assessment against the Real Property; and

(v) no Person has any rights to acquire, lease or use (or does use) any of such Real Property.

(b) Seller does not hold or own any leasehold interest in any parcels of real property that are part of, or used exclusively in connection with, the Purchased Assets.

Section 3.14 **Taxes.**

(a) Seller has filed or will file when due all Tax Returns that are required to be filed by it with respect to any Tax relating to the Purchased Assets. All such Tax Returns were correct and complete in all material respects and were prepared in compliance with all applicable laws and regulations. Seller or its Affiliates has paid all Taxes that have become due whether or not shown or required to be shown on any Tax Return.

(b) None of the Purchased Assets are subject to any Lien for Taxes other than a Permitted Lien.

(c) None of the Purchased Assets are property that is required to be treated as being owned by any other Person pursuant to the so-called safe harbor lease provisions of former Section 168(f) of the Code, and none of the Purchased Assets are "tax-exempt use" property within the meaning of Section 168(h) of the Code.

(d) This Section 3.14 contains the exclusive representations and warranties of Seller with respect to matters arising under or relating to Taxes.

Section 3.15 **Operations and Maintenance.**

(a) Except as set forth in Section 3.15(a) of the Seller Disclosure Schedule, the Equipment and Tangible Personal Property are in good operating condition, subject to normal wear and tear, and have been regularly maintained in accordance with Good Utility Practice.

(b) The Records accurately reflect the operational history of the Equipment in all Material respects and contain all transferrable warranties for the Equipment.

Section 3.16 Representations Complete. Except as to those matters covered by the representations and warranties in this Agreement, (A) SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER (INCLUDING ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY TO MODELS OR SAMPLES OF MATERIALS) TO BUYER AND (B) THE PURCHASED ASSETS ARE BEING CONVEYED ON AN “AS-IS, WHERE-IS” AND “WITH ALL FAULTS” BASIS.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF BUYER

Except as set forth in the Buyer Disclosure Schedule or with respect to representations or warranties that speak of a specific date, Buyer represents and warrants to Seller that the statements contained in this ARTICLE 4 are correct and complete as of the Execution Date and will be correct and complete as of the Closing Date.

Section 4.01 Corporate Existence and Power. Buyer is a corporation duly organized, validly existing, and in good standing under the Laws of Pennsylvania. Buyer is duly authorized to conduct its business and is in good standing under the Laws of each jurisdiction where such qualification is required, except where failure to be so qualified would not have, individually or in the aggregate, a Buyer Material Adverse Effect.

Section 4.02 Corporate Authorization. Buyer has the relevant entity power and authority necessary to execute and deliver each Transaction Agreement to which it is a party and to perform and consummate the Transaction. Buyer has taken all action necessary to authorize the Transaction and the execution and delivery of each Transaction Agreement to which it is a party, the performance of its respective obligations thereunder, and the consummation of the Transaction. Each Transaction Agreement to which Buyer is a party has been duly authorized by, and has been or will be duly executed, and delivered by, and, assuming the due authorization, execution and delivery thereof by each counterparty, is Enforceable against, Buyer.

Section 4.03 Governmental Authorization The execution, delivery and performance by Buyer of the Transaction Agreements to which it is a party and the consummation of the Transaction requires no action by or in respect of, or filing with, any Governmental Body other than any such action or filing (a) contemplated by, taken or made in connection with this Agreement or (b) as to which the failure to take, make or obtain would not reasonably be expected to have, individually or in the aggregate, a Buyer Material Adverse Effect.

Section 4.04 Noncontravention. Except as to matters which would not reasonably be expected to have, individually or in the aggregate, a Buyer Material Adverse Effect, the execution, delivery and performance by Buyer of the Transaction Agreements to which it is a

party and the consummation of the Transaction do not and will not (a) result in a violation of the organizational documents of Buyer or (b) violate any applicable Law in any manner.

Section 4.05 Finders' Fees. There is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Buyer or any of its Affiliates who might be entitled to any fee or commission from Seller or any of its Affiliates upon consummation of the Transaction.

Section 4.06 Litigation. There is no action, suit, investigation or proceeding pending against, or to the Knowledge of Buyer, threatened against or affecting, Buyer before any court or arbitrator or any Governmental Body which, individually or in the aggregate, would reasonably be expected to have a Buyer Material Adverse Effect or which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the Transaction.

Section 4.07 Financing. Buyer has access to, and will have available to it at the Closing, all of the funds required to be provided by Buyer for the consummation of the Transaction to be completed at the Closing and for the satisfaction of all of Buyer's obligations under the Transaction Agreements (the "**Financing**").

Section 4.08 NY PSC Authorization. Buyer expressly acknowledges and understands the risk that the NY PSC will not authorize the Transaction or will place conditions on its authorization of the Transaction that limit Buyer's operational or management authority and discretion for the Purchased Assets as a cooperative. Notwithstanding such risk, Buyer expressly acknowledges and understands its obligation to negotiate in good faith with Seller in the event Buyer or Seller finds such conditions to be unacceptable, as set forth in Section 7.08, and that such obligation will not be extinguished due to delays and/or costs associated with such good faith negotiations.

Section 4.09 No Other Representations. Buyer has inspected and investigated the Purchased Assets and knowingly and voluntarily accepts such Purchased Assets on an "AS IS, WHERE IS" basis, subject only to the express representations and warranties and other terms and conditions of this Agreement. In making the decision to enter into this Agreement, Buyer is relying solely on its own determination about the potential use or treatment of the Purchased Assets after the Closing, and Buyer acknowledges that Seller has not made any representation or warranty as to Seller or the Purchased Assets, except as expressly set forth in Article 3 of this Agreement.

Section 4.10 Representations Complete. Except as and to the extent set forth in this Agreement, Buyer makes no representations or warranties whatsoever to Seller and hereby disclaims all liability and responsibility for any representation, warranty, statement, or information not included herein that was made, communicated, or furnished (orally or in writing) to Seller or its representatives (including any opinion, information, projection, or advice that may have been

or may be provided to Seller by any director, officer, employee, agent, consultant, or representative of Buyer or Affiliate thereof).

ARTICLE 5

COVENANTS OF SELLER

Section 5.01 **Conduct of Business through the Closing.** Seller covenants and agrees that, between the Execution Date and the Closing Date, Seller shall, except as set forth on Schedule 5.01 attached hereto or as otherwise contemplated by this Agreement or as required by Law:

(a) use the Purchased Assets in the ordinary course consistent with prior practice and use commercially reasonable efforts to maintain its Permits and comply with applicable Laws;

(b) not, without the written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed:

(i) enter into any Contract that relates exclusively to the Purchased Assets, other than a Contract that relates exclusively to the Purchased Assets that is entered into in the ordinary course of business and that has compensation no greater than \$50,000;

(ii) terminate or fail to renew a Permit that relates exclusively to the Purchased Assets other than in the ordinary course of business;

(iii) fail to maintain the Records in the usual, regular and ordinary manner, on a basis consistent with past practice;

(iv) sell, transfer, lease, license, distribute, remove or otherwise dispose of any of the Purchased Assets except for Seller's consumption, use, disposal or sale of supplies and materials in the ordinary course of business that are valued at no greater than \$50,000.00;

(v) encumber, mortgage, pledge or subject to any Lien (other than a Permitted Lien) any material property or assets (as the same exist on the Execution Date) that would constitute Purchased Assets;

(vi) commence, initiate, settle, satisfy, release or forgive any action, suit, investigation or proceeding relating to the Purchased Assets (A) for an amount in excess of \$50,000.00 or (B) that seeks non-monetary, equitable or injunctive relief or alleges any violation of criminal Law;

(vii) make any new, or change any existing, election with respect to Taxes, settle any Tax liability, or enter into any agreement with respect to Taxes, in each case, to the extent that any such action is out of the ordinary course of business and would reasonably be expected to have an adverse impact on the Purchased Assets;

(viii) undertake or authorize any non-emergency equipment replacements or upgrades that increase the net book value of the Purchased Assets by \$100,000.00 or more;

provided, however, that for purposes of this covenant, any replacement or upgrade that is required by the NYPSC or that must be immediately accomplished to restore electric service to customer or to protect safety or reliability shall be deemed “emergency” and may be pursued immediately by Seller, with notice to Buyer within thirty (30) days after such action is taken; or

(ix) take or agree in writing or otherwise to take any of the actions described in this Section 5.01(b).

Section 5.02 Access to Purchased Assets and Information.

(a) From the Execution Date through the Closing Date, Seller will, to the extent permitted by Law (except that in no case is Seller required to take any action that would constitute a waiver of the attorney-client or other privilege where there is no common interest between Seller and Buyer):

(i) for a period of six months after the Execution Date, give Buyer and its authorized representatives reasonable physical access to the substations included in the Real Property in connection with Buyer’s reasonable due diligence activities, and thereafter give Buyer and its authorized representatives reasonable physical access to the Real Property if Buyer has a reasonable basis for believing that the Real Property may have suffered Material damage since the Execution Date or if Seller provides notice of emergency replacements or upgrades pursuant to Section 5.01(b)(viii); provided that, in each case, such access will be under the supervision of Seller’s personnel and is subject to reasonable health and safety conditions and reasonable limitations relating to the Real Property, as may be imposed by Seller;

(ii) give Buyer, its counsel, financial advisors, auditors and other authorized representatives reasonable access, via an electronic data room or other means enabling Buyer to review information remotely, to all books, records, and plans in the possession of Seller and its Affiliates exclusively relating to the Purchased Assets;

(iii) furnish Buyer with copies of, or access to review, the Records upon request;

(iv) subject to privilege restrictions, furnish Buyer with a copy of each notice of violation or similar correspondence since January 1, 2019, from any Governmental Body;

(v) subject to privilege restrictions, furnish Buyer with copies of all reports, certifications, responses or other documents relating to the Purchased Assets submitted by Seller to, or received from, NY PSC in connection with any audit, certification, report or self-report, spot check, investigation, or otherwise, and demonstrating, purporting to demonstrate, or relied upon by Seller to demonstrate compliance with applicable Reliability Standards in each case since January 1, 2019;

(vi) furnish Buyer with all such other information in the possession of Seller as shall be reasonably necessary to enable Buyer, at its request, to verify the accuracy of

the representations and warranties of Seller contained in this Agreement; provided, however, that:

(A) any such access or requests shall be conducted in such manner as not to interfere unreasonably with the use of the Purchased Assets;

(B) Seller shall not be required to take any action which would constitute a waiver of the attorney-client or other privilege;

(C) Seller need not supply Buyer with any information which Seller is under a legal or contractual obligation not to supply; and

(D) Seller may furnish the information via an electronic data room or other means enabling Buyer to review the information remotely;

(vii) furnish to Buyer, its counsel, financial advisors, auditors and other authorized representatives such other information relating to the Purchased Assets as such Persons may reasonably request; and

(viii) instruct the employees, counsel and financial advisors of Seller and its Affiliates to cooperate reasonably with Buyer in its investigation of the Purchased Assets.

Any investigation pursuant to this Section 5.02 shall be made during regular business hours and conducted in such manner as not to interfere unreasonably with the use of the Purchased Assets, and Seller may furnish the information via an electronic data room or other means enabling Buyer to review the information remotely. Notwithstanding the foregoing, Buyer shall not have access to (i) any information which is subject of any attorney-client or other privilege in favor of Seller or any confidentiality obligation by which Seller is bound or (ii) any information the provision of which Seller in good faith believes may cause Seller to violate applicable Law. Buyer may perform, at its sole cost and expense, a nonintrusive Phase I environmental assessment pursuant to ASTM E1527-13 (“**Phase I**”) and a Phase II environmental assessment (“**Phase II**”) at the Real Property; provided that before Buyer performs any Phase II or other intrusive inspection or sampling of the physical condition of the Real Property, Buyer shall: (i) provide Seller with the Phase II Notice; (ii) have received Seller’s written approval of Buyer’s Phase II Notice along with a fully executed copy of an Access and Confidentiality Agreement (as described in the definition of “**Phase II Notice**”); and (iii) have provided Seller with at least five Business Days prior written notice of the date upon which Buyer will access the Real Property to carry out the Phase II work plan. If Seller has an objection to the Phase II Notice, Buyer and Seller shall negotiate in good faith to resolve any such objections to the Phase II Notice. Seller shall have the right to have its representative(s) present during any inspections conducted by Buyer or its agents under this Section 5.02. Any information disclosed to Buyer and its representatives under this Section 5.02 shall be subject to the Confidentiality Agreement.

(b) Seller shall, by the Closing Date, provide to Buyer such reasonably available documents as Buyer reasonably requests at least 10 Business Days prior to the Closing Date regarding the Purchased Assets, including testing related to the capacity of the Equipment, which are in possession of Seller and which are included as part of the Purchased Assets.

Section 5.03 Pre-Closing Transition Cooperation. Between the Execution Date through the Closing Date, Seller shall reasonably cooperate with Buyer and its authorized representatives in the interest of planning and facilitating an orderly transition of the Purchased Assets to ensure that there is no interruption in the use or availability of the Equipment as a result of such transition.

Section 5.04 Easements and Rights of Way. Between the Effective Date and the Closing Date, Seller shall use commercially reasonable efforts to locate and deliver to Buyer copies of all Easements and Rights of Way, licenses, permits, and agreements with respect to the distribution lines included in the Purchased Assets that are in Seller or Waverly's possession and which Seller is able to locate after a reasonable search of Seller's records ("**Existing Agreements**"). Seller shall not be required to contact any counterparty, licensor or permittor to obtain copies of any Existing Agreement with respect to any distribution line unless reasonably requested to do so by Buyer in connection with Buyer's election to obtain a new license, permit or other agreement for such distribution line. If Buyer, in Buyer's discretion, elects to seek to obtain a new license, permit or other agreement, as applicable, for any distribution line, Seller shall cooperate with and provide reasonable assistance to Buyer, including contacting the appropriate counterparty, licensor or permittor if requested and directed to do so by Buyer; provided, however, that Buyer shall pay all costs and expenses with respect thereto (including application fees, review fees, and other fees, charges, rents or other payments required by such counterparty, licensor or permittor).

ARTICLE 6 COVENANTS OF BUYER

Section 6.01 Access. After the Closing Date, Buyer will promptly afford Seller and its agents reasonable access upon written request, at no charge to Seller, to its properties, books, records, and employees to the extent necessary to permit Seller to determine any matter relating to its rights and obligations hereunder or to any Claims related to the Purchased Assets for the period ending on or before the Closing Date (for example, for purposes of any tax or accounting audit or any Claim or litigation matter); provided that any such access by Seller shall not unreasonably interfere with the conduct of the business of Buyer. Seller will hold, and will cause its officers, directors, employees, accountants, counsel, consultants, advisors and agents to hold, in confidence, unless, in the judgment of its legal counsel, compelled to disclose by judicial or administrative process or obligated to disclose by other requirements of Law, all confidential documents and information concerning Buyer or the Purchased Assets reasonably deemed as such by Buyer and provided to Seller pursuant to this Section 6.01 and shall use such information solely for the purposes identified in the written request as the basis for the access.

Section 6.02 Transfer of Permits. From the Execution Date until the Closing Date, Buyer shall use commercially reasonable efforts to arrange for the transfer of all Permits, including Environmental Permits, on or prior to the Closing Date, or, if required by the applicable Governmental Body, or as soon as reasonably possible thereafter. For any Permits, including Environmental Permits, that are required by Law for the use of the Purchased Assets that Buyer has not obtained before the Closing but with respect to which Buyer has otherwise complied with its obligations under this Section 6.02, Seller shall reasonably cooperate with Buyer, both before

and after the Closing Date, in order to facilitate the use of the Purchased Assets in the ordinary course by Buyer after the Closing.

Section 6.03 PJM Tariff. Buyer acknowledges that, starting on the Closing Date, it will be subject to all charges per the applicable sections of the PJM Open Access Transmission Tariff on file with FERC for the service of customers in the Waverly Service Territory, including Attachment H in accordance with the methodologies set forth in Schedule 6.03.

Section 6.04 Financing. Buyer shall take all commercially reasonable actions as set forth below to obtain, as of the Closing Date, the Financing required to effect the Closing. Buyer acknowledges that its obligations under this Agreement to effect the Closing are not dependent on Buyer obtaining the Financing. Without limiting the foregoing, within 120 days after the Execution Date, Buyer shall deliver to Seller a duly executed copy of a commitment letter from a debt provider, pursuant to which such debt provider has agreed, subject to the terms and conditions set forth therein, to provide a loan to finance the Transaction. Buyer shall use its commercially reasonable efforts to keep Seller reasonably informed of the status of its efforts to arrange the Financing and to provide Seller with such information about the Financing as Seller may reasonably request; provided, that in no event will Buyer be under any obligation to disclose any information that is subject to attorney-client or similar privilege. Buyer shall give Seller prompt written notice if Buyer receives any notice relating to the termination (or potential termination) of the financing source's commitment in respect of the Financing.

ARTICLE 7

COVENANTS OF BUYER AND SELLER

Section 7.01 Further Assurances. Subject to the terms and conditions of this Agreement, Buyer and Seller will use reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable Laws to consummate the Transaction. Seller and Buyer agree to execute and deliver, or cause to be executed and delivered, such other documents, certificates, agreements and other writings as may be reasonably necessary after the Closing to implement expeditiously the Transaction and to vest in Buyer good title to the Purchased Assets, subject to Permitted Liens.

Section 7.02 Certain Actions. From the Execution Date until the Closing Date, Seller and Buyer shall cooperate with one another (a) in determining whether any action by or in respect of, or filing with, any Governmental Body is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material Contracts, in connection with the consummation of the Transaction and (b) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.

Section 7.03 Approvals and Public Announcements.

(a) Each Party shall use reasonable best efforts to obtain all authorizations, consents, actions, orders, and approvals of, and to give all notices to and make all filings with, all Governmental Bodies and third parties that are, may be or become necessary for its execution and

delivery of, and the performance of its obligations under, this Agreement and the consummation of the Transaction, and will cooperate fully with the other Party in promptly seeking to obtain all such authorizations, consents, actions, orders, and approvals, giving such notices, and making such filings.

(b) Neither Party will issue any press release or make any public statement with respect to this Agreement or the Transactions without the prior written consent of the other Party, except for any press releases or public statements the making of which are advisable by each Party's legal counsel or required by applicable Law or any listing agreement with any national securities exchange.

Section 7.04 Notices of Certain Events. Without limiting either Party's representations or warranties in this Agreement, from the Execution Date until the Closing Date, each of Seller and Buyer shall promptly notify the other Party of:

(a) any notice or other communication received from any Person alleging that the consent of such Person is or may be required in connection with the Transaction;

(b) any notice or other communication received from any Governmental Body in connection with the Transaction; and

(c) any Claims commenced relating to the Purchased Assets of which it receives notice and which, individually or in the aggregate, would reasonably be expected to have a Seller Material Adverse Effect or which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the Transaction.

Section 7.05 Confidentiality. Seller acknowledges that information concerning the Purchased Assets has competitive value to Buyer, and Seller agrees that after the Closing, to the extent permitted by Law, all information that prior to Closing would have been "Confidential Information" under the Confidentiality Agreement shall become confidential information of Buyer ("**Confidential Information**"), and Seller and each of Seller's Affiliates shall maintain the confidentiality of such Confidential Information for a period of 24 months in accordance with the terms of the Confidentiality Agreement as if it were the party to whom the information was disclosed under the Confidentiality Agreement.

Section 7.06 Bulk Sales Laws. Each of the Parties hereby waives compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

Section 7.07 Construction Agreement. Buyer and Seller shall negotiate in good faith to finalize and execute a construction agreement (the "**Construction Agreement**") as promptly as practicable after the Execution Date in substantially the form set forth on Exhibit E.

Section 7.08 NY PSC Authorization. If the NY PSC places conditions on the approval of the Transaction in its order that limit Buyer's operational or management authority and discretion for the Purchased Assets as a cooperative, and such condition(s) are unacceptable to Buyer or Seller, in either Party's sole but reasonable discretion, the Parties shall negotiate in good faith to reform the structure of this Agreement in light of such order, as contemplated in

Sections 9.01(b), 11.01(c), 11.01(g), and 12.04(b); provided, however, such reformation shall only be as necessary to manifest the intent of the Parties as reflected in this Agreement.

ARTICLE 8

TAX MATTERS

Section 8.01 **Tax Definitions.** The following terms, as used herein, have the following meanings:

“Pre-Closing Tax Period” means (i) any tax period ending on the day before the Closing Date and (ii) with respect to a tax period that commences before but ends on or after the Closing Date, the portion of such period up to and including the Closing Date.

“Tax” means any tax, governmental fee or other like assessment or charge in the nature of a tax, including, without limitation, any federal, state, local, or non-U.S. income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code §59A), capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not and including any obligations to indemnify or otherwise assume or succeed to the Tax liability of any other Person that are imposed by any Governmental Body (a **“Taxing Authority”**) responsible for the imposition of any such tax (domestic or foreign).

Section 8.02 **Tax Cooperation; Allocation of Taxes.**

(a) Buyer and Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Purchased Assets (including, without limitation, access to books and records) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing Authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Buyer shall retain all books and records with respect to Taxes pertaining to the Purchased Assets for a period of at least six years following the Closing Date. Seller and Buyer shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Purchased Assets. Notwithstanding anything herein to the contrary, the Parties agree, to the extent consistent with applicable law, to treat all machinery and equipment included in the Purchased Assets as personal property for purposes of any Tax filings or elections.

(b) All personal property taxes and similar *ad valorem* obligations levied with respect to the Purchased Assets for a taxable period which includes (but does not end on) the Closing Date (collectively, the **“Apportioned Obligations”**) shall be apportioned between Seller and Buyer based on the number of days of such taxable period for each Taxing Authority included in the Pre-Closing Tax Period and the number of days of such taxable period after the Closing Date (with respect to any such taxable period, the **“Post-Closing Tax Period”**) (i.e., in accordance with the fiscal year method of tax proration). Seller shall be liable for the proportionate amount of such taxes that is attributable to the Pre-Closing Tax Period, and Buyer shall be liable for the proportionate amount of such taxes that is attributable to the Post-Closing Tax Period.

(c) All excise, sales, use, value added, VAT, stamp duty, registration stamp, recording, documentary, conveyancing, franchise, property, transfer, and similar Taxes, levies, charges and fees (collectively, “*Transfer Taxes*”) incurred in connection with the Transaction shall be borne by Seller. Buyer and Seller shall cooperate in providing each other with any appropriate resale exemption certifications and other similar documentation.

(d) Apportioned Obligations and Transfer Taxes shall be timely paid, and all applicable filings, reports and returns shall be filed, as provided by applicable Law. The paying party shall be entitled to reimbursement from the non-paying party to the extent provided in Section 8.02(b) or (c), as the case may be. Upon payment of any such Apportioned Obligation or Transfer Tax, the paying party shall present a statement to the non-paying party setting forth the amount of reimbursement to which the paying party is entitled under Section 8.02(b) or (c), as the case may be, together with such supporting evidence as is reasonably necessary to calculate the amount to be reimbursed. The non-paying party shall make such reimbursement promptly but in no event later than 30 days after the presentation of such statement. Any payment not made within such time shall bear interest at the annual rate of the Prime Rate for each day until paid.

ARTICLE 9

CONDITIONS TO CLOSING

Section 9.01 Conditions to Obligations of Buyer and Seller. The obligations of each of Buyer and Seller to consummate the Closing are subject to the satisfaction, on or before the Closing, of each of the following conditions unless waived in writing by each of the Parties:

(a) No Order has been issued and is in effect restraining or prohibiting the Transaction.

(b) (i) The FERC Applications have been submitted for approval, (ii) the NY PSC Authorization has been received; and (ii) the consents, approvals, orders, authorizations or actions of or by any other Governmental Body set forth on Schedule 9.01(b) have been obtained; provided, that the approvals, consents, orders, authorizations or actions described in this Section 9.01(b) are, in each case, in a form and substance satisfactory to Buyer and Seller. The Parties agree that Schedule 9.01(b) is subject to revision at any time before Closing to reflect any consents, approvals, orders, authorizations or actions of or by any other Government Body that, after execution of this Agreement, the Parties agree are required to be obtained in order to consummate the Transaction as contemplated herein.

(c) Seller has completed the infrastructure work contemplated under the Construction Agreement and Buyer has reimbursed Seller for the infrastructure work in accordance with the terms of the Construction Agreement.

(d) The Parties have entered into agreements, in a form reasonably acceptable to Buyer and Seller, with PJM Interconnection, L.L.C. with respect to (1) an “Other Supporting Facilities Charge” as set forth on Schedule 9.01(d) and (2) Network Integration Transmission Services.

(e) Seller and Buyer have received the consents set forth on Schedule 9.01(e).

(f) The Parties have agreed upon the process to reconcile customer deposits and similar liabilities and obligations relating to the Waverly Service Territory as of the Closing Date.

Section 9.02 Conditions to Obligation of Buyer. The obligation of Buyer to consummate the Closing is subject to the satisfaction, on or before the Closing, of each of the following further conditions unless waived in writing by Buyer:

(a) Seller has performed in all material respects the covenants and agreements contained in this Agreement that are required to be performed by it on or prior to the Closing Date.

(b) The representations and warranties of Seller set forth in this Agreement shall be true and correct in all Material respects (i) on and as of the Execution Date and (ii) on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (except for representations and warranties that expressly speak only as of a specific date or time which need only be true and correct as of such date or time).

(c) Since the Execution Date, a Seller Material Adverse Effect is not continuing. Seller has delivered to Buyer a certificate dated as of the Closing Date executed by Seller, certifying as to the foregoing statement.

(d) Buyer has received evidence of the release in form and substance reasonably satisfactory to Buyer of all Liens (except for Permitted Liens) on any of the Purchased Assets.

(e) Buyer has received evidence of the transfer or issuance of all Permits set forth on Schedule 9.02(e).

(f) Buyer has received evidence of the completion of the merger of Waverly into Seller.

(g) Buyer has received a certificate from an authorized officer of Seller, dated the Closing Date, to the effect that, to the best of such officer's actual knowledge, the conditions set forth in Section 9.02(a) and (b) have been satisfied.

(h) Seller has demonstrated prior to Closing that all customer deposits (including interest) relating to the Waverly Service Territory have been returned to the appropriate customers.

Section 9.03 Conditions to Obligation of Seller. The obligation of Seller to consummate the Closing is subject to the satisfaction, on or before the Closing, of each of the following further conditions unless waived in writing by Seller:

(a) Buyer has performed in all material respects the covenants and agreements contained in this Agreement that are required to be performed by it on or prior to the Closing Date.

(b) The representations and warranties of Buyer set forth in this Agreement shall be true and correct (i) on and as of the Execution Date and (ii) on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (except for representations and warranties that expressly speak only as of a specific date or time which need only be true and correct as of such date or time), except in each of cases (i) and (ii) for such failures of representations and warranties to be true and correct (without giving effect to any materiality qualification or standard contained in any such representations and warranties)

which would not reasonably be expected to have, individually or in the aggregate, a Buyer Material Adverse Effect.

(c) Since the Execution Date a Buyer Material Adverse Effect has not occurred.

(d) Seller has received a certificate from an authorized officer of Buyer, dated the Closing Date, to the effect that, to the best of such officer's actual knowledge, the conditions set forth in Section 9.03(a) and (b) have been satisfied.

ARTICLE 10

SURVIVAL; INDEMNIFICATION

Section 10.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained in this Agreement survive the Closing and remain in full force and effect until the date that is 18 months after the Closing Date; provided, however, that Seller's obligations to indemnify Buyer for Environmental Claims under Section 10.02(c) shall continue until the applicable statute of limitations expires for the particular claim; provided, however, that in no case shall Seller's indemnity obligations survive for more than three years after the Execution Date. None of the covenants or other agreements contained in this Agreement will survive the Closing Date other than those which by their terms contemplate performance after the Closing Date, and each such surviving covenant and agreement shall survive the Closing for the period contemplated by its terms. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party before the expiration date of the applicable survival period shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved.

Section 10.02 Indemnification by Seller. From and after the Closing, Seller shall indemnify Buyer and its Affiliates, and its and their respective directors, officers, agents, limited partners, general partners, members, managers, employees, stockholders, equity holders or control persons of Buyer and its Affiliates (collectively, the "***Buyer Indemnified Parties***") against and hold each of them harmless from any and all Damages incurred or suffered by any Buyer Indemnified Party arising out of or related to:

(a) the breach or inaccuracy of any representation or warranty made by Seller in this Agreement;

(b) the breach or violation of, or default under, any covenant, agreement or undertaking of Seller contained in this Agreement;

(c) any Environmental Claim or other event arising from the use and ownership of, or conditions first occurring with respect to, any of the Purchased Assets prior to 12:01 a.m., Akron, Ohio time, on the Closing Date;

(d) any Claim regarding the service to or payments received by Seller from electric customers in the Waverly Service Territory for activities prior to 12:01 a.m., Akron, Ohio time, on the Closing Date; and

- (e) any Excluded Asset.

Section 10.03 Indemnification by Buyer. From and after the Closing, Buyer shall indemnify Seller and its Affiliates, and its and their respective directors, officers, agents, limited partners, general partners, members, managers, employees, stockholders, equity holders or control persons of Seller and its Affiliates (collectively, the “*Seller Indemnified Parties*”) against and hold each of them harmless from any and all Damages incurred or suffered by any Seller Indemnified Party arising out of or related to:

- (a) the breach or inaccuracy of any representation or warranty made by Buyer in this Agreement;
- (b) the breach or violation of, or default under, any covenant, agreement or undertaking of Buyer contained in this Agreement;
- (c) any Environmental Claim or event arising from the use and ownership of, or conditions first occurring with respect to, any of the Purchased Assets after 12:01 a.m., Akron, Ohio time, on the Closing Date, except to the extent that such Damages are caused by any pre-Closing act or omission that gives rise to or results in a breach or inaccuracy of any representation or warranty made by Seller for which a Claim for indemnification is not precluded by the survival period or limitations set forth in this ARTICLE 10.

Section 10.04 Certain Limitations. The party making a claim under this ARTICLE 10 is referred to as the “**Indemnified Party**,” and the party against whom such claims are asserted under this ARTICLE 10 is referred to as the “**Indemnifying Party**.” The indemnification provided for in Section 10.02 and Section 10.03 is subject to the following limitations:

- (a) The Indemnifying Party is not liable to the Indemnified Party for indemnification under Section 10.02(a) or Section 10.03(a), as the case may be, until the aggregate amount of all Damages in respect of indemnification under Section 10.02(a) or Section 10.03(a) exceeds 3% of the Purchase Price (the “*Deductible*”), in which event the Indemnifying Party shall only be required to pay or be liable for Losses in excess of the Deductible.
- (b) The aggregate amount of all Damages for which an Indemnifying Party is liable pursuant to Section 10.02(a) or Section 10.03(a), as the case may be, shall not exceed 10% of the Purchase Price.
- (c) Payments by an Indemnifying Party pursuant to Section 10.02 or Section 10.03 in respect of any Damages shall be limited to the amount of Damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment received or reasonably expected to be received by the Indemnified Party in respect of any such claim. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements any Damages before seeking indemnification under this Agreement.

(d) Payments by an Indemnifying Party pursuant to Section 10.02 or Section 10.03 in respect of any Damages shall be reduced by an amount equal to any Tax benefit realized or reasonably expected to be realized as a result of such Damages.

(e) In no event shall any Indemnifying Party be liable to any Indemnified Party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple (other than indemnification for amounts paid to third parties in respect of any third-party Claim for which indemnification hereunder is otherwise required).

(f) Seller shall not be liable under this ARTICLE 10 for any Damages based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement if Buyer had knowledge of such inaccuracy or breach before the Closing.

(g) Notwithstanding anything else is this Agreement, in no event shall any Indemnifying Party be liable to any Indemnified Party for any Liabilities (whether arising under this Agreement or any Environmental Law) relating to or discovered through a subsurface investigation or excavation conducted by, conducted on behalf of, or permitted to be conducted by the Indemnified Party (including any Liability discovered as part of or relating to any finding of a Phase I or a Phase II), unless such activity was required to be conducted under or to comply with an Environmental Law.

Section 10.05 Indemnification Procedures. Whenever any claim arises for indemnification hereunder, the Indemnified Party shall promptly provide written notice of such claim to the Indemnifying Party. Such notice by the Indemnified Party shall: (a) describe the claim in reasonable detail; (b) include copies of all material written evidence thereof in the Indemnified Party's possession or control; and (c) indicate the estimated amount, if reasonably practicable, of the Damage that has been or may be sustained by the Indemnified Party. In connection with any Environmental Claim or other Claim giving rise to indemnity hereunder resulting from or arising out of any action by a Person who is not a party to this Agreement, the Indemnifying Party, at its sole cost and expense and upon written notice to the Indemnified Party, may assume the defense of any such action with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall be entitled to participate in the defense of any such action, with its counsel and at its own cost and expense, subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party does not assume the defense of any such action, the Indemnified Party may, but shall not be obligated to, defend against such action in such manner as it may deem appropriate, including settling such action, after giving notice of it to the Indemnifying Party, on such terms as the Indemnified Party may deem appropriate and no action taken by the Indemnified Party in accordance with such defense and settlement shall relieve the Indemnifying Party of its indemnification obligations herein provided with respect to any damages resulting therefrom. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any claim, including: (i) making available records relating to such claim; and (ii) furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such claim. The Indemnifying Party shall not settle any action without the Indemnified Party's prior written consent (which consent shall not be

unreasonably withheld or delayed). Each of Buyer and Seller has an obligation to use commercially reasonable efforts to mitigate Damages subject to indemnification pursuant to this ARTICLE 10.

Section 10.06 Tax Treatment of Indemnification Payments All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 10.07 Exclusive Remedies. The parties acknowledge and agree that their sole and exclusive remedy with respect to any and all Claims (other than claims arising from intentional fraud on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement shall be pursuant to the indemnification provisions set forth in this ARTICLE 10. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this ARTICLE 10. Nothing in this Section 10.07 limits any Person's right to seek and obtain any equitable relief to which such Person shall be entitled or to seek any remedy on account of any intentional fraud by any party hereto.

ARTICLE 11

TERMINATION

Section 11.01 Grounds for Termination. This Agreement may be terminated at any time prior to the Closing;

- (a) by mutual written agreement of Seller and Buyer;
- (b) by either Buyer or Seller (i) if the Closing has not occurred on or before August 10, 2022, and (ii) the terminating Party has not breached in any material respect any of its obligations under this Agreement in any manner that has proximately caused the failure of a closing condition to be satisfied pursuant to ARTICLE 9;
- (c) by either Buyer or Seller if (i) a statute, rule, regulation or executive order has been enacted, entered or promulgated prohibiting the consummation of the Transaction or (ii) an Order has been entered permanently restraining, enjoining or otherwise rejecting the request to authorize the Transaction, and such Order has become final and non-appealable and the party seeking to terminate this Agreement pursuant to this Section 11.01(c)(ii) has used reasonable best efforts to remove such order, decree, ruling or injunction;
- (d) by Buyer, so long as Buyer is not then in Material breach of any of its representations, warranties, covenants or agreements hereunder, by written notice to Seller, if there has been a Material breach of any representation or warranty of Seller, or a Material breach of any covenant or agreement of Seller hereunder, which breach would be reasonably expected to have, individually or in the aggregate, a Seller Material Adverse Effect, and such breach has not been

remedied within 30 days after receipt by Seller of notice in writing (a “**Breach Notice**”) from Buyer, specifying the nature of such breach and requesting that it be remedied or Buyer has not received adequate assurance of a cure of such breach within such 30 day period (or which breach cannot by its nature be so cured); or

(e) by Seller, so long as Seller is not then in Material breach of any of its representations and warranties, covenants or agreements hereunder, by written notice to Buyer, if there has been a Material breach of any representation or warranty of Buyer, or a Material breach of any covenant or agreement of Buyer hereunder, which breach would be reasonably expected to have, individually or in the aggregate, a Buyer Material Adverse Effect, and such breach has not been remedied within 30 days after receipt by Buyer of a Breach Notice, specifying the nature of such breach and requesting that it be remedied or Seller has not received adequate assurance of a cure of such breach within such 30 day period (or which breach cannot by its nature be so cured).

(f) (i) by Buyer if any of the conditions set forth in Section 9.01 or Section 9.02 have not been satisfied as of the Closing Date or if the satisfaction of such a condition is or becomes impossible (other than through the failure by Buyer to comply with its obligations under this Agreement) and Buyer has not waived such condition on or before the Closing Date; or (ii) by Seller, if any of the conditions set forth in Section 9.01 or Section 9.03 have not been satisfied as of the Closing Date or if the satisfaction of such a condition is or becomes impossible (other than through the failure of Seller to comply with its obligations under this Agreement) and Seller has not waived such condition on or before the Closing Date.

(g) by Buyer, if any Law is enacted, promulgated or issued that prevents Buyer from serving customers in the Waverly Service Territory as members of Buyer’s rural electric cooperative; provided, however, Buyer may not exercise this termination right unless the Parties have failed to amend this Agreement under Section 7.08.

The Party desiring to terminate this Agreement pursuant to Section 11.01(d) or (e) shall give five Business Days written notice of such termination to the other Party.

Section 11.02 Effect of Termination. If this Agreement is terminated as permitted by Section 11.01, such termination shall be without liability of either Party (or any stockholder, Affiliate, director, officer, employee, agent, consultant or representative of such Party) to the other Party to this Agreement; provided that if such termination results from the (a) willful failure of either Party to fulfill a condition to the performance of the obligations of the other Party, or (b) willful failure to perform a material covenant of this Agreement, such Party shall be fully liable for any and all Damages incurred or suffered by the other Party as a result of such failure or breach.

ARTICLE 12

MISCELLANEOUS

Section 12.01 Notices. Any notice or other communication from any Party to the other Party shall be made in writing in the English language and shall be (a) delivered by hand or sent by a nationally or internationally recognized courier to the address of the Party set forth below, or (b) or sent by electronic mail (“*e-mail*”) transmission to the e-mail address set forth below,

which e-mail transmission shall request receipt of such e-mail transmission. All notices and communications shall be deemed received upon: (a) actual receipt thereof by the addressee or actual delivery thereof to the appropriate address; or (b) in the case of an e-mail transmission, the sender receiving receipt of such e-mail transmission:

if to Buyer, to:

Tri-County Rural Electric Cooperative, Inc.
22 N. Main Street
Mansfield, PA 16933
Attn: Craig Eccher, President and CEO
Email: ceccher@ctenterprises.org

with a copy to (such copy not to constitute notice):

C&T Enterprises, Inc.
P.O. Box 129
Venetia, PA 15367
Attn: Pamela Polacek, Chief Legal and Regulatory Officer
Email: ppolacek@ctenterprises.org

and

Loomis | Koernig
102 West Wellsboro Street
Mansfield, PA 16933
Attn: Terra R. Koernig
Email: terrarg@mac.com

if to Seller, to:

Pennsylvania Electric Company
76 S. Main Street
Akron, OH 44076
Attn: Regional President
Email: naustin@firstenergycorp.com

with a copy to (such copy not to constitute notice):

Pennsylvania Electric Company
76 South Main Street
Akron, OH 44308
Attn: General Counsel
Email: hpark@firstenergycorp.com

with a copy to (such copy not to constitute notice):

Squire Patton Boggs (US) LLP
4900 Key Tower

127 Public Square
Cleveland, OH 44114
Attn: Dynda A. Thomas
Email: Dynda.thomas@squirepb.com

Section 12.02 Amendments and Waivers.

(a) Any provision of this Agreement or of any other Transaction Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each Party to this Agreement or such other Transaction Agreement, as the case may be, or in the case of a waiver, by the Party against whom the waiver is to be effective.

(b) No failure or delay by any Party in exercising any right, power or privilege hereunder or under any of the other Transaction Agreements shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided or provided in any of the other Transaction Agreements shall be cumulative and not exclusive of any rights or remedies provided by Law.

Section 12.03 Expenses. Except as otherwise provided herein, all costs and expenses incurred in connection with negotiating, preparing and executing the Transaction Agreements shall be paid by the Party incurring such cost or expense.

Section 12.04 Successors and Assigns

(a) The provisions of the Transaction Agreements shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns; provided that, except as provided in Section 12.04(b), no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement or under any of the other Transaction Agreements without the consent of each other Party hereto and thereto.

(b) Buyer may, at any time, without Seller's consent, assign to any one or more of its Affiliates all or any portion of Buyer's rights and obligations under this Agreement, including the right to acquire the Purchased Assets at the Closing pursuant to this Agreement and under the other Transaction Agreements (and the corresponding rights and obligations of Buyer under this Agreement and the other Transaction Agreements), but no such assignment will relieve Buyer from any of its obligations under this Agreement, which obligations shall continue.

Section 12.05 Governing Law. THIS AGREEMENT SHALL BE CONSTRUED, PERFORMED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS.

Section 12.06 Jurisdiction. Except as otherwise expressly provided in this Agreement or any of the other Transaction Agreements, the Parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement, the other Transaction Agreements or the Transaction shall be brought in a federal court located in the Northern District of the State of New York or in a state

court located in the Tioga County Supreme Court, and that any cause of action arising out of this Agreement or any of the other Transaction Agreements shall be deemed to have arisen from a transaction of business in the State of New York, and each of the Parties hereby irrevocably consents to the nonexclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court.

Section 12.07 **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OTHER TRANSACTION AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 12.08 **Counterparts; Third Party Beneficiaries.** This Agreement and the other Transaction Agreements may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures hereto and thereto were upon the same instrument. This Agreement and the other Transaction Agreements shall become effective when each Party hereto or thereto shall have received a counterpart hereof or thereof signed by the other Party hereto or thereto. Except as explicitly provided herein or therein, no provision of this Agreement or of any of the other Transaction Agreements is intended to confer upon any Person other than the Parties hereto or thereto any rights or remedies hereunder or thereunder.

Section 12.09 **Entire Agreement.** This Agreement and the other Transaction Agreements constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and supersede all prior agreements and understandings, both oral and written, between the Parties with respect to the subject matter of this Agreement, except for the Confidentiality Agreement, which remains in full force and effect in accordance with its terms and which applies to this Agreement, the Transaction Agreements and the Transaction.

Section 12.10 **Captions.** The captions herein and in the other Transaction Agreements are included for convenience of reference only and shall be ignored in the construction or interpretation hereof or thereof.

Section 12.11 **Severability.** The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof; provided that if any provision of this Agreement, as applied to any Party or to any circumstance, is adjudged by a Governmental Body or arbitrator not to be enforceable in accordance with its terms, the Parties agree that such Governmental Body or arbitrator making such determination will have the power to modify the provision in a manner consistent with its objectives such that it is enforceable, or to delete specific words or phrases, and in its reduced form, such provision will then be enforceable and will be enforced.


Section 12.12 **Specific Performance.** Each Party acknowledges and agrees that the other Party would be damaged irreparably if any provision of this Agreement is not performed

in accordance with its specific terms or is otherwise breached. Accordingly, each Party agrees that the other Party will be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and its terms and provisions in any action instituted in any court of the United States or any state thereof having jurisdiction over the Party and the matter, subject to Section 12.05, Section 12.06 and Section 12.07, in addition to any other remedy to which it may be entitled, at law or in equity.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

Pennsylvania Electric Company

By: 
Name: NICHOLAS A. AUSTIN
Title: ~~CEO~~ PRESIDENT, PENNEC

Tri-County Rural Electric Cooperative, Inc.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

Pennsylvania Electric Company

By: _____
Name:
Title:

Tri-County Rural Electric Cooperative, Inc.

By:  _____
Name: Craig Eccher
Title: President & CEO

EXHIBIT A

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

[See attached]

EXHIBIT A
FORM OF
ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement, dated as of [____], 202__ (this “***Agreement***”), is by and between Pennsylvania Electric Company, a Pennsylvania corporation (the “***Assignor***”), and Tri-County Rural Electric Cooperative, Inc., a Pennsylvania corporation (the “***Assignee***”).

RECITALS

A. Assignor and Assignee are parties to the Asset Purchase Agreement dated as of February 10, 2021 (as amended, the “***Asset Purchase Agreement***”), pursuant to which Assignee has agreed to purchase the Purchased Assets; and

B. In accordance with the terms of the Asset Purchase Agreement, Assignor and Assignee have agreed to enter into this Agreement, pursuant to which Assignee agrees to assume, pay, perform and discharge certain liabilities, in each case on and subject to the terms of the Asset Purchase Agreement.

AGREEMENT

The Assignor and Assignee, intending to be legally bound, agree as follows:

1. **Definitions.** Undefined capitalized terms herein are defined in the Asset Purchase Agreement.

2. **Assignment.** Assignor hereby assigns the Purchased Assets to Assignee as of the date hereof, in accordance with and subject to the terms and conditions of the Asset Purchase Agreement.

3. **Acceptance and Assumption.** Assignee hereby, as of the date hereof, assumes and agrees to pay, perform and discharge when due, and shall be liable with respect to all of Assignor’s liabilities, duties and obligations under or relating the Purchased Assets, but only to the extent such liabilities, duties and obligations arise or accrue on or after the Closing Date.

4. **Parties in Interest.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

5. **Terms of Asset Purchase Agreement.** Nothing contained herein will itself change, amend, extend, or alter (nor should it be deemed or construed as changing, amending, extending, or altering) the terms or conditions of the Asset Purchase Agreement in any manner whatsoever. This instrument does not create or establish rights, liabilities or obligations not otherwise

contemplated by or pursuant to the Asset Purchase Agreement. In the event of any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms of this Agreement, the terms of the Asset Purchase Agreement will govern.

6. Other Provisions. The provisions of Article 12 of the Asset Purchase Agreement are hereby incorporated into this Agreement, *mutatis mutandis*.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written.

PENNSYLVANIA ELECTRIC COMPANY

By: _____

Name: _____

Title: _____

TRI-COUNTY RURAL ELECTRIC
COOPERATIVE, INC

By: _____

Name: _____

Title: _____

EXHIBIT B
FORM OF BILL OF SALE

[See attached]

EXHIBIT B

FORM OF

BILL OF SALE

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and subject to the terms and conditions of the Asset Purchase Agreement dated as of February 10, 2021 (the “**Asset Purchase Agreement**”) by and between Pennsylvania Electric Company, a Pennsylvania corporation (“**Seller**”), and Tri-County Rural Electric Cooperative, Inc., a Pennsylvania corporation (“**Buyer**” and together with Seller, the “**Parties**”), Seller hereby unconditionally and irrevocably grants, bargains, transfers, sells, assigns, conveys, and delivers to Buyer, its successors and assigns forever, all of Seller’s right, title, and interest in and to the Purchased Assets pursuant to this Bill of Sale, dated as of [____], 202__ (this “**Bill of Sale**”) and subject to the terms of the Asset Purchase Agreement, including Section 2.01 thereof, free and clear of all Liens other than Permitted Liens,

TO HAVE AND TO HOLD the Purchased Assets with all appurtenances thereto.

- A. Undefined capitalized terms herein are defined in the Asset Purchase Agreement.
- B. Notwithstanding anything to the contrary contained herein, none of the Excluded Assets shall be included in the Purchased Assets.
- C. This Bill of Sale shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns.
- D. This Bill of Sale is being executed solely pursuant to the Asset Purchase Agreement to give effect to the transactions contemplated by the Asset Purchase Agreement. Nothing in this Bill of Sale, express or implied, is intended to or shall be construed to modify, expand or limit in any way the terms of the Asset Purchase Agreement. To the extent that any provisions of this Bill of Sale conflicts or is inconsistent with the terms of the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall govern.
- E. Nothing in this Bill of Sale, express or implied, is intended or shall be construed to confer upon or give to, any person, firm or corporation other than Buyer and its successors and assigns any remedy or claim under or by reason of this instrument or any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises and agreements in this instrument shall be for the sole and exclusive benefit of Buyer and its successors and assigns.
- F. At any time or from time to time, at Buyer’s request and without further consideration (but without any requirement that Seller expends any out of pocket funds), Seller shall execute and deliver to Buyer such other instruments of sale, transfer, conveyance,

assignment and confirmation, provide such materials and information and take such other actions as Buyer may reasonably deem necessary or desirable in order more effectively to transfer, convey and assign the Purchased Assets to Buyer.

G. The provisions of Article 12 of the Asset Purchase Agreement are hereby incorporated into this Bill of Sale, *mutatis mutandis*.

[Signature Page Follows]

IN WITNESS WHEREOF, this Bill of Sale is being executed and delivered by Seller as of the date first written above.

PENNSYLVANIA ELECTRIC COMPANY

By: _____

Name:

Title:

[Signature Page to Bill of Sale]

EXHIBIT C

FORM OF TRANSITION SERVICES AGREEMENT

[See attached]

EXHIBIT C
FORM OF
TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (the “*Agreement*”), dated as of [____], 20[•], is by and between Tri-County Rural Electric Cooperative, Inc., a Pennsylvania corporation (“*Buyer*”), and Pennsylvania Electric Company, a Pennsylvania corporation (“*Seller*” and, together with Buyer, the “*Parties*”).

RECITALS

WHEREAS, under the Asset Purchase Agreement, dated as of February 10, 2021, by and between Seller and Buyer (as may be amended, supplemented or otherwise modified from time to time, the “*Asset Purchase Agreement*”), Seller has agreed to sell and convey to Buyer, and Buyer has agreed to purchase from Seller, the Purchased Assets;

WHEREAS, in connection with the Asset Purchase Agreement, Seller and Buyer have agreed to enter into, or cause to be entered into, a transition services agreement at the Closing pursuant to which Seller will provide, or cause to be provided through its Affiliates, to Buyer, certain transition services pursuant to a transition services agreement; and

WHEREAS, Seller and Buyer have agreed upon the terms and conditions for such a transition services agreement and desire to memorialize their mutual understandings with respect to same in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, Buyer and Seller agree as follows:

ARTICLE I
DEFINITIONS

1.1 **Definitions.** Capitalized terms that are used but are not otherwise defined in this Agreement have the meanings given to such terms in this Article I or, with respect to any such terms that are not defined in this Article I, have the meanings given to such terms in the Asset Purchase Agreement.

1.2 “***Confidential Information***” means all information relating to the business, operations, assets, liabilities, plans, prospects, projects and other affairs of Buyer and its Affiliates, in whatever form.

1.3 “***Emergency***” means an emergency adversely affecting the health or protection of, or otherwise endangering, any Persons or property.

1.4 “***Good Industry Practices***” means those practices, methods and acts generally employed in the utility power distribution industry at the particular time in question that, in the exercise of reasonable judgment in light of the facts reasonably known at the time the decision in

question was being made, would have been expected to accomplish the desired result of such decision consistent with good utility practices and the requirements of applicable Laws. Good Industry Practices are not limited to the optimum practices, methods or acts to the exclusion of all others, but rather include a spectrum of possible practices, methods or acts commonly employed in the utility generation industry during the relevant period in light of the circumstances.

1.5 “*Party*” means individually either Buyer or Seller as the context dictates.

ARTICLE II SCOPE OF SERVICES

2.1 Services. On the terms and subject to the conditions set forth in this Agreement, Seller agrees to provide to Buyer, directly, or indirectly through one or more of its Affiliates, the services (a) set forth on Exhibit A hereto, or (b) otherwise agreed to by Buyer and Seller to be provided pursuant hereto (each a “*Service*” and collectively the “*Services*”).

2.2 Type or Volume of Services. Notwithstanding any provision of this Agreement to the contrary, Seller shall only be required to perform, or to cause its Affiliates to perform, the type and volume of Services that are not greater than or different from the type or volume of Services used by Seller immediately prior to the Closing Date.

2.3 Standards for Performance. Seller shall provide the Services and perform its obligations under this Agreement in a manner consistent with Buyer’s directions and in accordance with Good Industry Practices; provided, however, Seller shall not be required to take any actions that in Seller’s reasonable judgment, would be likely to violate applicable Law or Seller’s internal safety policies, be inconsistent with Seller’s or its Affiliates’ safety policies and safety practices, or create an Emergency. The Parties acknowledge the transitional nature of the Services and agree that Seller may, without incurring any liability hereunder, make reasonable changes from time to time in the manner of performing any Service(s) if Seller is making similar changes in performing similar services for itself and its Affiliates at any of their respective facilities.

2.4 Independent Contractor. Seller shall, at all times during the Term, act as, be deemed to be, and be, an independent contractor to, or of, Buyer. Furthermore, nothing in this Agreement shall create or be deemed to create the relationship of joint venture, principal and agent, master and servant or any partnership, employment or other relationship between Buyer and Seller, that is, would be, or could be construed to be inconsistent with Seller’s status hereunder as an independent contractor to, or of, Buyer. Each of Buyer and Provider (and any third party service providers) shall be solely responsible for and assume all liability for the safety and supervision of their respective employees, agents, representatives and subcontractors in connection with the provision of the Services. No Party shall have the authority or power to bind the other or to contract in the name of, or create a liability against, any other Party in any way or for any purpose.

2.5 Consents. Seller shall use commercially reasonable efforts to obtain any applicable third party consents, approvals, licenses, or other appropriate rights in order to provide the Services; provided, however, that neither Seller nor its Affiliates shall be required to pay any fees or other payments or incur any liabilities or payment obligations to obtain any such consents, approvals, licenses, or other rights (except to the extent (i) required to be paid by Seller pursuant

to the Asset Purchase Agreement or (ii) with respect to which Buyer promptly reimburses Seller as Out of Pocket Costs pursuant to Section 4.1 of this Agreement); provided, however that if providing the Services is not legally permissible, Seller shall be relieved of its obligation to provide the applicable Service(s) until such consents, approvals, licenses or other rights are obtained.

ARTICLE III RESPONSIBILITIES OF BUYER AND SELLER

3.1 Performance by Parties. Under this Agreement, Buyer and Seller shall act or perform consistent with, in furtherance of, or in accordance with, the following:

(a) Buyer will not direct Seller to take any action inconsistent with applicable Law, or otherwise adversely affecting the safety, health or protection of, or otherwise endangering any Persons or property, and Seller shall be under no obligation to follow any such direction by Buyer.

(b) Seller shall obtain and provide, and be solely responsible for, all workers compensation and other mandatory insurance applicable to employees of Seller.

3.2 Information to be Provided by Buyer. Notwithstanding Seller's prior ownership, following the Closing, Buyer will provide, or make reasonably available, copies of all technical, operational and other information (including manuals) that are necessary or useful in Seller's performance of the Services hereunder and any updates thereto, including additional information received from the manufacturers of any such equipment or replacement equipment to the extent possessed by, or under the control of, Buyer. Seller shall be entitled to rely upon any information provided by Buyer (other than the Records to be delivered in accordance with the terms of the Asset Purchase Agreement) in the performance of the Services hereunder.

3.3 Computer-Based and other Resources. From and after the Closing Date, (a) Buyer shall cause all of its personnel having access to Seller's owned and licensed computer software, networks, hardware, technology or computer-based resources in connection with performance, receipt or delivery of a Service to comply with all security guidelines (including physical security, network access, internet security, confidentiality and personal data security guidelines) of Seller and its Affiliates, and (b) Seller shall cause all of its personnel having access to Buyer's owned and licensed computer software, networks, hardware, technology or computer-based resources in connection with performance, receipt or delivery of a Service to comply with all security guidelines (including physical security, network access, internet security, confidentiality and personal data security guidelines) of Buyer and its Affiliates.

3.4 Information of Buyer. All information and records received by Seller or its Affiliates from Buyer or any of its Affiliates in connection with the Services, and any information, records or reports generated by Seller in connection with providing Services to Buyer, shall be and remain the sole property of Buyer and shall be subject to Section 7.05 of the Asset Purchase Agreement. Seller, and its Affiliates and third party service providers, shall have a license to use Confidential Information solely for purposes of providing the Services. Such license shall automatically terminate contemporaneously with the termination of this Agreement. Any manuals that are not Purchased Assets shall remain the sole property of Seller.

**ARTICLE IV
COMPENSATION AND PAYMENT**

4.1 Fees; Out of Pocket Costs. During the Term, the Services shall be provided for a fee of \$[_____] ¹; provided that any reasonable and documented out-of-pocket costs incurred by Seller or its Affiliates solely related to the applicable Services (the “*Out of Pocket Costs*”) shall be promptly paid by Buyer.

4.2 Invoices. Seller shall invoice, or cause invoices to be issued to, Buyer on a monthly basis for any Out of Pocket Costs hereunder (together with supporting documentation therefor) and such invoices shall be payable 30 days after receipt (“*Due Date*”).

4.3 Late Payment. To the extent Seller fails to pay any amount required to be paid under this Agreement by the Due Date, such unpaid amount will accrue interest each day at an annual rate of interest equal to the prime rate as published by the Wall Street Journal plus 4% from the Due Date until such amount (plus accrued interest) is paid in full.

4.4 Payment Default. In the event of Buyer’s failure to pay any Out of Pocket Costs in accordance with the terms herein, and such failure to pay is not cured within 30 days after Buyer has received notice of such default, Seller may suspend performance hereunder until the default payments and all associated late payments are paid in full.

4.5 Taxes. Buyer shall be solely responsible for any sales, use or similar Taxes (and excluding all income and similar Taxes) arising with respect to, or on account of, the provision of Services hereunder.

4.6 No Right to Set-Off. Buyer shall pay the full amount of Out of Pocket Costs and shall not set-off, counterclaim or otherwise withhold any amount owed to Seller under this Agreement on account of any obligation owed by Seller or any of its Affiliates to Buyer or any of its Affiliates that has not been finally adjudicated, settled or otherwise agreed upon by the Parties in writing.

**ARTICLE V
TERM**

5.1 Term. This Agreement shall become effective upon the Closing Date and, unless the Parties have otherwise agreed in writing, this Agreement shall terminate, with respect to each applicable Service, at the end of the period set forth in Exhibit A with respect to such Service, and otherwise shall terminate in its entirety on the six-month anniversary of the Closing Date, or such later date as the Services described in paragraph 2 of Exhibit A have terminated (the “*Term*”).

¹ Note to Draft: Fee to be agreed.

5.2 Termination.

(a) The Parties are permitted to terminate this Agreement if they enter into a mutual written agreement to do so.

(b) Seller is permitted to terminate this Agreement if Seller has suspended performance under Section 4.4 above for 15 consecutive days.

(c) Buyer is permitted to reduce (to the extent practicable due to the nature of the specific Service) or terminate any and all Services, without penalty, in whole or in part and including the termination of this Agreement in its entirety, at any time and for any reason (or for no reason) upon 15 days' written notice to Seller.

5.3 Out of Pocket Costs. Within 30 days after the date of any termination, Buyer shall pay Seller for any invoiced Out of Pocket Costs not yet paid by Buyer for Services rendered by Seller through the termination date.

ARTICLE VI INDEMNIFICATION

6.1 Indemnification by Buyer. Subject to the limitations on liability set forth in Article VII, Buyer will indemnify and hold harmless Seller and its Affiliates and their respective officers, directors, employees, agents and representatives (the "***Seller Indemnitees***"), from and against, and no Seller Indemnitee will have responsibility hereunder for, any and all Damages arising in connection with any action, suit, demand, claim or legal, administrative, arbitration or other alternative dispute resolution proceeding, hearing or investigation (any of the foregoing a "***Claim***") asserted or instituted by any Person other than the Parties or their respective Affiliates and incurred or suffered by any Seller Indemnitee, to the extent caused by (a) the breach or violation of, or default under, any covenant, agreement or undertaking of Buyer contained in this Agreement, or (b) any actions undertaken within the scope of or in connection with the Services to the extent, but only to the extent, that such actions result from the willful misconduct or fraud of Buyer or its Affiliates or their respective employees, agents, affiliates, representatives or third party service providers.

6.2 Indemnification by Seller. Subject to the limitations on liability set forth in Article VII, Seller will indemnify and hold harmless Buyer and its agents and representatives (the "***Buyer Indemnitees***"), from and against, and no Buyer Indemnitee will have responsibility hereunder for, any and all Damages arising in connection with any Claim asserted or instituted by any Person other than the Parties or their respective Affiliates and incurred or suffered by any Buyer Indemnitee to the extent caused by (a) the breach or violation of, or default under, any covenant, agreement or undertaking of Seller contained in this Agreement, or (b) any actions undertaken within the scope of or in connection with the Services, to the extent, but only to the extent, that such actions result from the willful misconduct or fraud of Seller or its Affiliates or their respective employees, agents, affiliates, representatives or third party service providers.

6.3 Other Terms. The provisions of Section 10.05 of the Asset Purchase Agreement shall apply, mutatis mutandis, to any claims for indemnification under this Article VI.

ARTICLE VII
LIABILITIES OF THE PARTIES

7.1 Limitations of Liability.

(a) None of the Parties shall be liable for any punitive, incidental, consequential, special or indirect Damages, provided, however, that this provision shall not limit the obligation of Seller to indemnify any Buyer Indemnitee, or the obligation of Buyer to indemnify any Seller Indemnitee, with respect to any such amounts paid in settlement or judgment with respect to any Claim asserted or instituted by any Person other than the Parties or their respective Affiliates and with respect to which such Seller Indemnitee or Buyer Indemnitee is entitled to indemnification pursuant to Article VI.

(b) The Parties further agree that the indemnification obligations, waivers and disclaimers of liability, indemnities (including Article VI), releases from liability and limitations of liability arising under this Agreement will survive for a period of six months from the termination or expiration of this Agreement and are only applicable with respect to rights and obligations under this Agreement. Notwithstanding any provision in this Agreement to the contrary, nothing in this Agreement shall in any way limit, modify, alter, amend, change or otherwise affect the terms of or obligations, rights, remedies, or liabilities of any Party, Affiliate of a Party or other Person under the Asset Purchase Agreement.

(c) No Warranties or Guarantees. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE ASSET PURCHASE AGREEMENT OR THE OTHER TRANSACTION AGREEMENTS, THE PARTIES DO NOT MAKE ANY WARRANTIES OR GUARANTEES TO EACH OTHER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER.

7.2 Further Limitation of Liability. Liability hereunder will further be limited as follows:

(a) The Parties agree that this Agreement does not require, and Seller shall not be liable hereunder for any failure to operate or achieve any particular or required level of performance.

(b) Seller's liability under this Agreement for any loss of, or damage to, any property in the care, custody or control of Seller will be reduced by the actual amount of proceeds received or recovered by Buyer pursuant to any applicable insurance.

(c) Notwithstanding anything to the contrary in this Agreement, (i) the total aggregate liability of Buyer to Seller for all liabilities arising out of any claims made pursuant to Section 6.1 shall not exceed [\$_____], and (ii) the total aggregate liability of Buyer to Seller for all other liabilities arising out of any events occurring or other claims made in connection with the performance of its obligations under this Agreement shall not exceed [\$_____].²

² Note to Draft: Liability limits in Section 7.2 to be agreed.

(d) Notwithstanding anything to the contrary in this Agreement, (i) the total aggregate liability of Seller to Buyer for all liabilities arising out of any claims made pursuant to Section 6.2 shall not exceed [\$_____], and (ii) the total aggregate liability of Seller to Buyer for all other liabilities arising out of any events occurring or other claims made in connection with the performance of its obligations under this Agreement shall not exceed [\$_____].

7.3 Exclusive Remedy. Except as specifically set forth in this Agreement, each Party waives any rights and claims it may have against the other Party, whether in Law or in equity, relating to the Services covered by this Agreement. Article VI provides the exclusive remedies for any claim arising out of this Agreement or the Services provided hereunder. Each Party has an obligation to use commercially reasonable efforts to mitigate Damages subject to indemnification pursuant to Article VI. Notwithstanding anything to the contrary in this Section 7.3 or elsewhere in this Agreement, nothing in this Section 7.3 or elsewhere in this Agreement shall in any way limit, reduce, change, amend, modify, terminate or otherwise affect any term or provision of, or any liability, obligation or right under or with respect to, the Asset Purchase Agreement and other Transaction Agreements.

ARTICLE VIII MISCELLANEOUS

8.1 Mutual Cooperation. The Parties and their respective Affiliates shall use commercially reasonable efforts to cooperate with each other in connection with the performance of the Services hereunder, including producing on a timely basis all information that is reasonably requested with respect to the performance of Services and the transition at the end of the term of this Agreement; provided that such cooperation does not unreasonably disrupt the normal operations of the Parties or their respective Affiliates.

8.2 Force Majeure.

(a) No Party shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to:

(i) acts of God or public enemy, acts of a Governmental Body, wars, acts of terrorism, civil disturbances, riots, insurrections and sabotage, labor disputes, floods, droughts, tidal waves, fires, hurricanes, earthquakes, landslides, other catastrophes or unusually severe storms of extended duration or impact, or

(ii) causes beyond its reasonable control and which are not foreseeable, or causes beyond the reasonable control of their suppliers which are not foreseeable, if the Party claiming the force majeure is unable to prevent its occurrence or mitigate its effects notwithstanding the exercise of commercially reasonable efforts.

(b) In the event of any such failure or delay, the date of performance shall be extended for a period equal to the time lost by reason of the delay, and Buyer need not pay Seller during or because of such delay. Both Parties shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the event causing the failure or delay has ceased. Seller shall promptly notify Buyer of any delay and its effects on the Services to be provided under this Agreement.

(c) If an actual or potential labor dispute delays or threatens to delay the performance of the Services hereunder, Seller shall promptly notify Buyer in writing, stating all relevant information concerning the dispute and its background.

(d) Nothing set forth in this Article VIII will release the Parties from the obligations that by their nature are not affected by Force Majeure.

8.3 Entire Agreement. This Agreement, in conjunction with any exhibits, schedules, addenda, amendments or attachments hereto, and the Asset Purchase Agreement contain the entire agreement between the Parties with respect to the subject matter hereof. Nothing in this Agreement shall in any way modify, amend, alter, limit, reduce, change or otherwise affect the terms of, or the obligation, rights, remedies, or liabilities of any Party, Affiliate of a Party or other Person under the Asset Purchase Agreement.

8.4 Other Provisions. Each of the provisions set forth in Article 12 of the Asset Purchase Agreement shall apply *mutatis mutandis*, to this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, Buyer and Seller have executed this Transition Services Agreement as of the date first above written.

SELLER:

PENNSYLVANIA ELECTRIC COMPANY

By: _____

Name:

Title:

[Signature Page to Transition Services Agreement]

BUYER:

**TRI-COUNTY RURAL ELECTRIC
COOPERATIVE, INC.**

By: _____

Name:

Title:

[Signature Page to Transition Services Agreement]

Exhibit A

Services

1. [To be determined]

EXHIBIT D

FORM OF INTERCONNECTION AGREEMENT

[See attached]

EXHIBIT D

FORM OF

**INTERCONNECTION AGREEMENT
FOR WHOLESALE LOAD**

Between

Tri-County Rural Electric Cooperative, Inc.

And

**Pennsylvania Electric Company,
(by its agent Mid-Atlantic Interstate Transmission, LLC.)**

This Agreement is entered into as of the ____ day of _____, 20__ by and between Tri-County Rural Electric Cooperative, Inc. (Tri-County) and Pennsylvania Electric Company by its agent Mid-Atlantic Interstate Transmission, LLC. (“FirstEnergy”), being sometimes herein referred to collectively as the "Parties" or singularly as a "Party." For the avoidance of doubt, the term “Party” or “Parties” shall not include PJM Interconnection, L.L.C. (“PJM”). In consideration of the mutual covenants and agreements herein, it is agreed as follows:

WITNESSETH:

WHEREAS, FirstEnergy owns and operates certain electric facilities used for the transmission and distribution of wholesale electric energy as defined by the PJM’s Operating Agreement and the PJM Open Access Transmission Tariff (“OATT” or “Tariff”).

WHEREAS, Tri-County is an entity that serves or acts on behalf of others in arranging for the wholesale transmission and distribution of electric energy utilizing facilities owned by FirstEnergy and the FirstEnergy Operating Companies to serve Tri-County’s load.

WHEREAS, PJM is a Regional Transmission Organization offering transmission service to eligible customers.

WHEREAS, the Federal Energy Regulatory Commission (“FERC” or the “Commission”) has requested that the Parties include PJM as a signatory to this Agreement for the purpose of ensuring that PJM is kept fully apprised of the matters addressed herein and so that PJM may be kept aware of any reliability and planning issues that arise;

WHEREAS, this Agreement does not provide for the purchase, sale or exchange of transmission or ancillary services; and

WHEREAS, the Parties wish to establish the terms and conditions for the interconnection and coordinated operation of the Parties' systems and for Tri-County's use of certain transmission and/or distribution facilities to enable Tri-County to serve its wholesale loads, which are separate from the rates, terms and conditions of transmission service provided by PJM under the PJM Open Access Transmission Tariff ("PJM Tariff").

NOW, THEREFORE, in consideration of the premises and of the mutual covenants set forth herein, the Parties agree as follows:

ARTICLE 1: AGREEMENT OBJECTIVE AND APPLICABLE TARIFFS

- 1.1 **Agreement Objective**: The objective of this Agreement is to establish the terms and conditions for the interconnection and coordinated operation of the Parties' systems and for Tri-County's use of certain transmission and/or distribution facilities to enable Tri-County to serve its wholesale load(s).
- 1.2 **Limitation of Scope**: Nothing in this Agreement shall be deemed to impose on Tri-County any obligation or standard of care or performance with respect to facilities used by Tri-County to serve its retail customer(s).
- 1.3 **Applicability of Tariffs**: During the term of this Agreement, as it may be amended from time to time, FirstEnergy agrees to provide Services for Tri-County, and Tri-County agrees to pay for such Services as provided in this Agreement. The term "Services" means those services described herein which are subject to the jurisdiction of the FERC but not provided by PJM under the PJM Tariff. In addition, the applicable provisions of the PJM Tariff, as such tariff shall at any time during the term of this Agreement be on file and accepted by FERC, including any applicable Schedules and Attachments appended to such Tariff shall apply. FirstEnergy shall not provide any Services or levy any charges hereunder that are provided or charged by PJM under the PJM Tariff. FirstEnergy and Tri-County's rights and obligations with respect to Services are limited to the terms of this Agreement.
- 1.4 **Failure to Perform**: In the event a Party fails to adhere to the provisions of this Agreement, the other Party will provide reasonable notice and an opportunity for the failing Party to remedy any adverse condition(s) on the notifying Party's system that are caused by the Party's failure to adhere to the provisions of this Agreement. Such notice shall be provided in writing and shall provide at least 180 days for the Parties to develop a mutually agreeable plan to cure the adverse condition(s). If the Parties fail to develop a mutually agreeable plan to cure the adverse condition(s), or if the failing Party does not comply with the plan or meet the timelines included in the plan, the Parties shall first comply with the dispute resolution procedures in this Agreement. If a plan for curing the adverse condition(s) is not developed, or compliance with the plan or meeting the timelines included in the plan is not achieved as part of the dispute resolution process, the noticing Party may take remedial action on its system as is reasonable and consistent with Good Utility Practice under the circumstances. Such remedial actions may include the installation of facilities on the notifying Party's system, at the other Party's expense, to remedy the adverse condition(s) on the notifying Party's system. Such remedial actions shall not include the curtailment of service unless the adverse condition(s) is likely to cause physical damage to the notifying Party's generating, transmission, or distribution facilities.

Incurred charges for facilities planned for or installed pursuant to the immediately preceding sentence shall be limited to the planning or installing Party's actual costs and may include actual direct and indirect labor and non-labor costs to the extent such costs are properly allocable to the planning or installation of the subject facilities.

1.5 **Governance Over Conflicts**: The terms and conditions of such Services provided by FirstEnergy shall be governed by this Agreement, or as hereafter amended. In the case of any conflict between this Agreement and the PJM Tariff, the PJM Tariff shall control.

1.6 **Good Utility Practice**: The term "Good Utility Practice" as used herein shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region, including those practices required by Federal Power Act Section 215.

ARTICLE 2: DELIVERY POINTS

2.1 **Location**: The location of existing facilities connecting Tri-County's power delivery facilities to FirstEnergy power delivery facilities ("Delivery Points") that are subject to this Agreement are listed in Appendix 1 of this Agreement. Unless the Parties shall subsequently agree otherwise, the existing Delivery Points listed in Appendix 1, of this Agreement, shall be continued in service. FirstEnergy and Tri-County, to the extent practicable, shall each maintain, in accordance with Good Utility Practice, the facilities on their respective sides of such points, and future points of delivery as may be established from time to time in accordance with this Agreement, in order that said facilities will operate in a reliable and satisfactory manner, and without material reduction in their intended capacity or purpose. Delivery Points shall be used only for the delivery of electric power and energy to Tri-County, and shall not be used to inject electric power or energy into the FirstEnergy system from electric generating facilities owned by Tri-County, a municipal utility, a rural co-operative, or a third party unless Tri-County has studied, planned, and coordinated the interconnection of the generation facility with FirstEnergy pursuant to the Application process or at any time, through the PJM Tariff generator interconnection process. Tri-County and FirstEnergy shall endeavor to operate their respective facilities in continuous synchronism through such Delivery Points as shall from time to time be established by mutual agreement between the Parties. The Parties may, from time to time by mutual agreement, add one or more additional Delivery Point(s) or discontinue or modify one or more existing Delivery Point(s) pursuant to this Agreement and shall amend Appendix 1 including any one-line diagram(s) in Appendix 2 of this Agreement. This Agreement shall govern only the Delivery Points specified in Appendix 1, and the Parties may enter into additional agreements to address other locations where Tri-County's power delivery facilities connect with the FirstEnergy power delivery facilities.

ARTICLE 3: OPERATION AND MAINTENANCE

- 3.1 **General:** Tri-County must design, construct, maintain, and operate its system facilities safely and efficiently in accordance with Good Utility Practice; applicable national, state, and local codes, standards, and regulations; applicable manufacturer's equipment specifications; and the most current requirements specified by FirstEnergy and applicable to the Services, including but not limited to those set forth by FirstEnergy in the documents entitled "Transmission Connection Requirements," "Transmission Planning Criteria" and "Distribution Connection Requirements" ("FirstEnergy Documents") as they may be revised from time to time and posted on its web site in Appendix 3 of this Agreement.
- 3.2 **Electric Service Characteristics:** Electric service, in the form of three phase, approximately sixty-hertz alternating current, shall be delivered at the designated Delivery Point(s) and nominal voltage(s) listed in Appendix 1 of this Agreement.
- 3.2.1 **Multiple Delivery Points:** When multiple Delivery Points are provided to a specific location identified in Appendix 1 of this Agreement, except as allowed by Section 3.4 they shall not be operated in parallel by Tri-County without the approval of FirstEnergy, which approval shall not be unreasonably withheld; provided that any such approval may be revoked if in FirstEnergy's discretion such action is necessary to maintain or retain safe and reliable operation of the electric system or any of FirstEnergy's facilities. Each Party shall exercise due diligence and reasonable care in maintaining and operating its facilities so as to maintain continuity of service.
- 3.2.2 **Avoidance of Burdens and Control of System Disturbance:** The Parties shall maintain and operate their respective systems so as to minimize, in accordance with Good Utility Practice, the likelihood of a disturbance originating in either system which might cause impairment to the service of the other Party or of any system interconnected with the system of the other Party. For planning purposes, Tri-County shall not transfer loads from one Delivery Point to another without FirstEnergy's approval, which timely approval shall not be unreasonably withheld. For normal operational purposes, except as allowed by Section 3.4, the Parties shall coordinate transfers of load from one Delivery Point to another Delivery Point, and Tri-County shall not transfer loads from one Delivery Point to another without FirstEnergy's approval, which timely approval shall not be unreasonably withheld.
- 3.3 **Impairment:** If the function of either Party's facilities is impaired or the capacity of any Delivery Point is reduced, or synchronous operation at any Delivery Point(s) becomes interrupted, either manually or automatically, as a result of force majeure (as such term force majeure is described in the Amended and Restated Operating Agreement of PJM) or maintenance coordinated by the Parties, the Parties will cooperate to remove the cause of such impairment, interruption or reduction, so as to restore normal operating conditions as expeditiously as practicable under Good Utility Practice and the circumstances.
- 3.4 **Emergencies:** Each Party reserves the right to take any action deemed necessary by PJM or itself during an actual or imminent emergency to preserve the reliability and integrity of the interconnected systems of FirstEnergy and Tri-County, limit or prevent damage, expedite restoration of service, ensure safe and reliable operation, avoid adverse effects on the quality of service, or preserve public safety.

- 3.5 **Curtailment**: FirstEnergy may curtail Service under this Agreement to limit or prevent damage to its generating, transmission, or distribution facilities as directed by PJM or in accordance with Good Utility Practice; provided that, to the extent practicable, FirstEnergy will provide reasonable notice to Tri-County and an opportunity for Tri-County to remedy the adverse condition. Any such curtailment of load, redispatching, or load shedding shall be effectuated on a non-discriminatory basis and in accordance with PJM manuals or FirstEnergy's Operations.
- 3.6 **Procedures**: The Parties shall establish procedures to coordinate the maintenance schedules, and return to service of the generating resources, transmission and distribution facilities, to the greatest extent practicable, to ensure sufficient transmission and distribution resources are available to maintain system reliability and reliability of service to the integrated facilities of FirstEnergy and Tri-County in accordance with FirstEnergy Documents and the requirements of the PJM Tariff and/or PJM Manuals.
- 3.6.1 **Scheduled Maintenance and Outages**: Each Party may, in accordance with Good Utility Practice, remove from service its facilities that may affect the other Party's system in order to perform maintenance or to install or replace equipment on such facilities. The Party proposing to remove such facilities from service shall provide prior notice of such activities to the other Party in accordance with FirstEnergy Documents. The Party scheduling a facility outage shall coordinate its actions with the other Party with the goal of avoiding any disruptions of service on the system of either Party.
- 3.7 **Control of Reactive Power Exchange**: No Party shall be obligated to deliver or receive reactive power for the benefit of any other Party under this Agreement. The Parties will maintain voltage and load power factor requirements at the Delivery Points in accordance with the latest version of the FirstEnergy Documents and/or the PJM Tariff.
- 3.8 **Control of Energy**: Any deviations between actual and planned deliveries of power and energy between the systems of the respective Parties to serve their load will be managed and settled pursuant to the PJM Tariff and the PJM and FirstEnergy business practices, or other applicable agreements.

ARTICLE 4: PLANNING AND PROTECTION

- 4.1 **Planning Data**: No later than December 15 of each year, Tri-County shall provide FirstEnergy with: (a) copies of documents provided by Tri-County to PJM on an annual basis in accordance with provisions of the PJM Tariff that require Tri-County to submit a ten (10) year forecast of load for each existing and planned new Delivery Point, and a ten (10) year projection of existing and planned generating resources and committed transactions with third parties, insofar as such information pertains to Tri-County's existing and planned Delivery Point(s); and (b) a projection for each of the next ten (10) years of transmission and distribution facility additions to be owned and/or constructed by Tri-County. Notwithstanding the foregoing, Tri-County shall not be required to provide FirstEnergy with information that Tri-County in good faith deems to be proprietary or commercially sensitive unless FirstEnergy agrees to protect such information in accordance with this Agreement. For purposes of the load forecast to be developed by FirstEnergy in accordance with this Agreement, FirstEnergy shall weather normalize

such load forecasts and otherwise prepare those load forecasts in accordance with applicable PJM requirements.

ARTICLE 5: NEW DELIVERY POINTS AND MODIFICATIONS TO EXISTING DELIVERY POINTS

- 5.1 **General:** Unless otherwise agreed upon, the procedures outlined in this Agreement shall be followed for new Delivery Point(s); upgrades, retirements, replacements, relocations for existing Delivery Point(s); or additions, retirements, or modifications to behind-the-meter generation. Prior to submitting an application (“Application”) for any facility under this Agreement, Tri-County should discuss the proposed Delivery Point project with FirstEnergy to determine the need for a Load Study.
- 5.2 **Application:** Should it become necessary or desirable by Tri-County to (a) upgrade, retire, replace, or relocate an existing Delivery Point, or establish a new Delivery Point, including metering or other facilities at such location; (b) add, retire, or modify generation; (c) for existing Delivery Points, adding 1 MW or more of load over any 12-month period above the most recent load forecast, Tri-County shall make an Application request, in writing, to FirstEnergy using the then-effective Application form made available by contacting FirstEnergy’s representative. The requirement to submit an Application shall not apply in situations in which load is temporarily transferred from one Delivery Point to another Delivery Point with FirstEnergy’s approval.
- 5.2.1 **Response to Application:** Upon receipt of an Application, FirstEnergy shall review the information and advise Tri-County within five (5) business days that the Application is complete, or if additional information is needed to make the Application complete. FirstEnergy will attempt to remedy minor deficiencies in the Application through informal communications with Tri-County. If FirstEnergy does not receive the required additional information to complete the Application within fifteen (15) business days, the application will be deemed withdrawn. As soon as practicable within thirty (30) calendar days after receipt of a completed Application, FirstEnergy will inform Tri-County of the need for a Load Study as those terms are defined below and provide Tri-County with the appropriate agreement.
- 5.3 **Load Study:** Should a Load Study be required, once the Load Study Agreement is executed, FirstEnergy will proceed with performing the Load Study. Upon completion of the Load Study, FirstEnergy will provide the Load Study and Construction Service Agreement, if applicable, to Tri-County.

ARTICLE 6: METERING

- 6.1 **General:** Suitable metering equipment must be installed related to each Delivery Point as provided in the FirstEnergy Documents , PJM Tariff and/or PJM Manuals.

ARTICLE 7: COMPLIANCE WITH PJM TARIFF AND PJM MANUALS

- 7.1 **General:** Each Load Serving Entity is responsible for complying with all applicable PJM Tariff and PJM Manual requirements.

ARTICLE 8: COMPENSATION

- 8.1 **Compensation for Wholesale Service:** Tri-County shall pay FirstEnergy only the rates and charges specified in this Agreement and accepted or approved by FERC, as compensation for Services provided by FirstEnergy to Tri-County.
- 8.1.1 **Wholesale Distribution Rates:** Tri-County shall pay wholesale distribution charges using the rates for Services taken over distribution facilities as specified in Appendix 1.
- 8.1.2 **Losses:** Tri-County's load shall be adjusted for settlement purposes for wholesale distribution charges to include both FirstEnergy's transmission and distribution losses. Loss factors are specified in Attachment M-1 and M-2 of the PJM Tariff or Appendix 1 of this Agreement. To the extent Tri-County's load at any Delivery Point is supplied from behind-the-meter generation, losses shall be assessed only for the net load delivered to such Delivery Points by FirstEnergy.

ARTICLE 9: OPERATING COMMITTEE

- 9.1 **Purpose:** An Operating Committee consisting of a representative and alternate from each Party familiar with the day-to-day operations of their respective systems shall be established to coordinate and implement, on an ongoing basis, the terms and conditions of this Agreement, including planning, operating, scheduling, redispatching, curtailments, control requirements, technical and operating provisions, integration of equipment, hardware and software, and other considerations. Each Party shall evidence its appointments to the Operating Committee by written notice to the other Party and, by similar notice, each Party may change its representative and/or alternate to the Operating Committee.
- 9.2 **Membership:** Each member and alternate shall be a responsible person working with the day-to-day operations of their respective system. The Operating Committee shall represent FirstEnergy and Tri-County in all matters arising under this Interconnection Agreement and which may be delegated to it by mutual agreement of the Parties hereto.
- 9.3 **Meetings:** The Operating Committee shall meet or otherwise conference at the request of either Party upon reasonable notice and each Party may place items on the meeting agenda. All proceedings of the Operating Committee shall be conducted by its members taking into account the exercise of Good Utility Practice.
- 9.4 **Operating Committee Disputes:** If the Operating Committee is unable to agree on any matter coming under its jurisdiction within 30 days after it is presented, that matter shall be submitted for settlement under the procedures specified in this Agreement, or otherwise, as mutually agreed by Tri-County and FirstEnergy.

ARTICLE 10: FINANCIAL RESPONSIBILITY

- 10.1 **Allocation of Responsibility:** Except to the extent otherwise required by law, each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party (the "Indemnified Party"), and the Indemnified Party's officers, shareholders, members, managers, representatives, directors, agents and employees, from and against any and all claims and/or liabilities for losses, costs or expenses (including to third parties), damage to

property, injury to or death of any person, or any other liability incurred by the Indemnified Party, including reasonable attorneys' fees (each a "Covered Claim"), in any manner directly or indirectly arising from or contributed to by the provision of service or the construction of facilities by the Indemnifying Party under this Agreement, except to the extent that the losses, expenses or damage were caused wholly or in part by any negligence or willful misconduct of the Indemnified Party. The Indemnified Party agrees to provide the Indemnifying Party with notice of any claim made against the Indemnified Party for which the Indemnifying Party may be responsible under this Section. To the extent that Tri-County and FirstEnergy are jointly liable for a Covered Claim, then liability for such Covered Claim shall be allocated between them in accordance with applicable laws of comparative fault or joint liability in effect at the time liability under a Covered Claim arises.

- 10.2 **Consequential Damages:** No Party nor any of its affiliates, members, shareholders, officers, directors, employees, agents, successors or assigns shall be liable under this Agreement, whether in contract, tort (including negligence and strict liability) or otherwise, to the other Party or any of its affiliates, members, shareholders, officers, directors, employees, agents, successors or assigns for incidental, punitive, special, indirect, multiple, exemplary or consequential damages (including without limitation attorneys' fees, litigation costs, lost profits or revenues, or loss of good will) connected with or resulting from performance or non-performance of this Agreement.

ARTICLE 11: ARBITRATION

- 11.1 **Submission to Arbitration:** No dispute arising under this Agreement may be submitted to arbitration unless the Parties have made a good faith attempt to resolve such dispute by referral to the Operating Committee. The Operating Committee will seek to resolve the dispute within 30 days unless otherwise agreed by the Parties. In the event the dispute is not resolved by the Operating Committee, the dispute may, if both Parties agree, be submitted to binding arbitration in the manner hereinafter provided. Arbitration is limited to disputes between the Parties with respect to: (a) any matter herein specifically made subject to arbitration, (b) any question of operating practice involved in performance of this Agreement, (c) any question of fact involved in the application of provisions of this Agreement, or (d) the interpretation of any provision of this Agreement. In the event the matter is not submitted to binding arbitration, either Party may invoke other dispute resolution procedures to the full extent permitted by law.
- 11.2 **Appointment of Arbitrators:** In the event that the Parties determine that a disagreement should be resolved through binding arbitration, the Parties shall set forth in writing the subject or subjects to be arbitrated, and the Parties thereupon shall endeavor to agree upon and appoint one person to act as sole arbitrator. If the Parties fail to agree on an arbitrator within a period of fifteen (15) business days from the receipt of the original notice, either Party may call for appointment of a board of arbitrators skilled with respect to matters of the character involved in the disagreement, naming one arbitrator in such notice. The other Party shall, within ten (10) business days after the receipt of such call, appoint a second arbitrator, and the two arbitrators so appointed shall choose and appoint a third arbitrator. In case such other Party fails to appoint an arbitrator within said ten (10) business days, or in case the two so appointed fail for ten (10) business days to agree upon and appoint a

third, the Party calling for the arbitration, upon five (5) business days' written notice delivered to the other Party, shall apply to the person who at the time shall be the most senior Judge of a United States District Court having jurisdiction for appointment of the second or third arbitrator, as the case may be.

- 11.3 **Arbitration**: The sole arbitrator, or the board of arbitrators, shall afford adequate opportunity to the Parties to present information with respect to the question or questions submitted for arbitration and may request further information from either or both Parties. The findings and award of the sole arbitrator or of a majority of the board of arbitrators shall be final and conclusive with respect to the question or questions submitted for arbitration and shall be binding upon the Parties and may be challenged only in the manner and to the extent permitted by Ohio law. If there is a single arbitrator, the Parties shall split evenly the costs of a single arbitrator, unless the award shall specify a different division of the costs. If there is a board of arbitrators, each Party shall pay for the services and expenses of the arbitrator appointed on its behalf, and they shall split evenly the costs of the neutral arbitrator, unless the award shall specify a different division of the costs. All other costs incurred in connection with the arbitration shall be paid by the Party incurring them.
- 11.4 **FERC Jurisdiction**: The determination of a matter in dispute pursuant to arbitration hereunder shall not operate to limit or displace FERC's statutory jurisdiction over any such matter. Accordingly, following the completion of arbitration procedures, either Party may seek FERC review of the arbitration decision, but only to the extent the arbitration decision affects matters subject to FERC's statutory jurisdiction. Nothing herein shall affect the statutory exemption from FERC jurisdiction available to Tri-County under Section 201(f) of the Federal Power Act.

ARTICLE 12: TERM AND TERMINATION OF AGREEMENT

- 12.1 **Effective Date, Terms and Termination**: This Agreement shall be effective as of the date first written above, or such later date as the last necessary regulatory approval hereof shall be obtained (unless an earlier date is specified by the regulatory authority having jurisdiction); until it is terminated in whole.
- 12.2 **Notice of Termination**: Either Party may terminate this Agreement by providing to the other Party at least twelve month's advance written notice of its intent to terminate this Agreement.
- 12.3 **Other Permitted Termination**: This Agreement may be terminated earlier (a) if the Parties mutually agree or (b) as otherwise expressly provided for in this Agreement following the expiration of any required notice and opportunity to cure. Both Parties reserve their right to seek relief from FERC or a court of competent jurisdiction with respect to any such termination.

ARTICLE 13: REGULATORY AUTHORITIES

- 13.1 **Regulatory Authorities**: This Agreement is made subject to the jurisdiction of any governmental authority or authorities having jurisdiction over the Parties, the systems of the Parties, this Agreement and the subject matter hereof. Nothing contained in this Agreement shall be construed as affecting in any way, the right of a Party furnishing service under this Agreement to unilaterally make application to FERC for a change in the rates and charges or other terms and conditions of this Agreement under Section 205 of

the Federal Power Act and pursuant to the FERC's Rules and Regulations promulgated thereunder or any Party receiving service to file a complaint seeking changes in rates and charges or other terms and conditions of this Agreement under Section 206 of the Federal Power Act.

- 13.2 **Adverse Regulatory Change:** Following execution of this Agreement, FirstEnergy shall file it with FERC. Tri-County shall not protest the filing and FirstEnergy may represent in its filing that Tri-County supports the filing. Each Party hereby agrees to not, directly or indirectly, aid or support any person or entity that protests or intervenes in such filing before FERC. Any material changes or conditions imposed by the FERC or any other governmental authority with competent jurisdiction in connection with such submission or otherwise in respect of this Agreement, any of which are unacceptable to a Party after the Parties' good faith attempt to negotiate a resolution to such objectionable change or condition, shall be cause for termination of this Agreement upon thirty (30) days' prior written notice by the non-consenting Party to the other parties hereto.

ARTICLE 14: OTHER

- 14.1 **Assignment:** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties. Successors and assigns of PJM shall become signatories to this Agreement for the limited purpose described herein applicable to PJM. This Agreement shall not be assigned by any Party without the written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that consent shall not be required if the assignment is to a successor to which substantially all of the business and assets of such Party shall be transferred or to an affiliate of the assigning Party for the purposes of a corporate restructuring. Tri-County may assign all or a portion of its rights and responsibilities under this Agreement to Allegheny Electric Cooperative or another entity responsible for the management of the wholesale supply to serve Tri-County's members.
- 14.2 **Prior Agreement:**
No prior Agreement exists.
- 14.3 **Waivers:** Any waiver at any time by either Party of its rights with respect to default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or matter. Any delay, short of the statutory period of limitation, in asserting or enforcing any right under this Agreement, shall not be deemed a waiver of such right.
- 14.4 **Liability:** Nothing in this Agreement shall be construed to create or give rise to any liability on the part of PJM, and the Parties expressly waive any claims that may arise against PJM under this Agreement. The Parties acknowledge and understand that the signature of the authorized officer of PJM on this Agreement is for the limited purpose of acknowledging that a representative of the PJM has read the terms of this Agreement. The Parties and PJM further state that they understand that the FERC desires that the Parties keep PJM fully apprised of the matters addressed herein as well as any reliability and planning issues that may arise under this Agreement, and that the signature of the PJM authorized officer shall not in any way be deemed to imply that the PJM is taking responsibility for the actions of any Party, that PJM has any affirmative duties under this Agreement, or that PJM is liable in any way under this Agreement.

- 14.5 **Non-Standard Terms and Conditions:** The Parties may establish non-standard terms and conditions applicable to any Delivery Point and to certain shared facilities related to a Delivery Point that are specified in this Agreement (“Non-Standard Terms and Conditions”). The Non-Standard Terms and Conditions shall be set forth in Appendix 4 to this Agreement and shall be in addition to any other terms and conditions provided for in this Agreement. Any conflict between the Non-Standard Terms and Conditions and any other provisions of this Agreement shall be resolved in favor of the Non-Standard Terms and Conditions.
- 14.6 **Choice of Law:** The validity and meaning of this Agreement shall be governed by and construed in accordance with federal law where applicable and, when not in conflict with or preempted by federal law, by the applicable laws of the Commonwealth of Pennsylvania.
- 14.7 **Counterparts:** This Agreement may be executed in two or more counterparts and each such counterpart shall be deemed an original and all such counterparts together shall constitute one and the same instrument.
- 14.8 **Confidentiality:** Except as otherwise provided by law, no Party shall disclose to third parties (which term does not include attorneys and consultants, who shall be required to comply with this Section) Confidential Information obtained from the other Party pursuant to this Agreement. Each Party shall use reasonable efforts to prevent or limit the disclosure required to third parties under this Section. For the purpose of this Section, "Confidential Information" shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection or otherwise. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and Tri-County-specific load data that constitutes a trade secret. Confidential Information shall also include any other information that is provided and identified by a Party as “Critical Energy Infrastructure Information,” as that term is defined in the Code of Federal Regulations.
- 14.9 **Regulatory Reporting:** Each Party shall provide information reasonably requested by the other Party to satisfy regulatory reporting requirements.
- 14.10 **Audit.** Tri-County and FirstEnergy shall maintain such records as are necessary to properly support the accuracy of the reported energy deliveries and to support the accounting methods, costs, and other calculations used to determine transactions under this Agreement. Upon reasonable advance notice and at its sole expense, each Party shall have the right at reasonable intervals and during normal business hours of the other Party to audit the relevant records of that other Party to the extent necessary to determine the accuracy of any billing arising under this Agreement.

ARTICLE 15: NOTICES

- 15.1 Any notice given pursuant to this Agreement shall be in writing as follows:

If to FIRSTENERGY:

Manager, FERC & Wholesale Connection Support

FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308

And

Attorney for FERC & Wholesale Connection Support
Legal Department
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308

If to Tri-County:

Tri-County Rural Electric Cooperative, Inc.
22 N. Main Street
Mansfield, PA 16933
Attn: Craig Eccher, President and CEO
Email: ceccher@ctenterprises.org

with a copy to:

C&T Enterprises, Inc.
P.O. Box 129
Venetia, PA 15367
Attn: Pamela Polacek, Chief Legal and Regulatory Officer
Email: ppolacek@ctenterprises.org

And

Loomis | Koernig
102 West Wellsboro Street
Mansfield, PA 16933
Attn: Terra R. Koernig
Email: terrarg@mac.com

If to PJM:

Vice President - Government Policy
PJM Interconnection, L.L.C.
1200 G Street, NW, Suite 600
Washington, D.C. 20005

And

General Counsel
PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Audubon, PA 19403

- 15.2 The above names and addresses of any Party may be changed at any time by notice to the other Party.

IN WITNESS WHEREOF, the Parties executed by their respective officers lawfully authorized so to do.

Service Agreement No. 5787

**PENNSYLVANIA ELECTRIC COMPANY, by its agent
MID-ATLANTIC INTERSTATE TRANSMISSION, LLC.**

By: _____
(Signature)

Name: Gregory F. Hussing
(Print)

Title: Director, FERC & RTO Technical Support

Date: _____

TRI-COUNTY RURAL ELECTRIC COOPERATIVE, INC.

By: _____
(Signature)

Name: _____
(Print)

Title: _____

Date: _____

The signature below of the authorized officer of PJM Interconnection, L.L.C. is for the limited purpose of acknowledging that a representative of PJM has read this Agreement as of ____ day of _____, 20____.

Service Agreement No. 5787

PJM INTERCONNECTION, L.L.C.

By: _____
(Signature)

Name: _____
(Print)

Title: _____

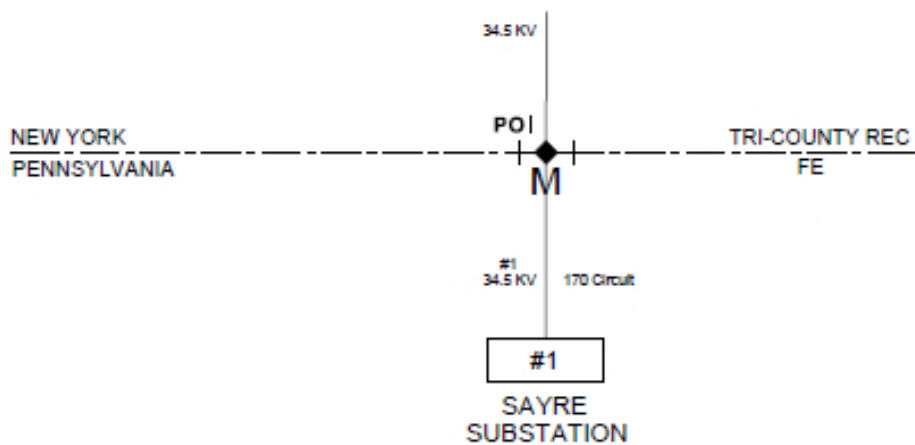
Date: _____


APPENDIX 1

Delivery Point(s), Voltage, Monthly Distribution Charge (\$/kW) and Distribution Losses

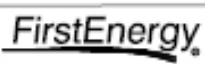
	Delivery Point(s)	Voltage (kV)	Monthly Distribution Charge (\$/kW)	Distribution Losses
1.1	Sayre #1	34.5 kV	3.78	TBD
1.2	Sayre #2	34.5 kV		TBD
1.3	Sayre #3	4 kV		TBD
1.4	Sayre #4	4 kV		TBD
1.5	East Sayre #1	4 kV		TBD
1.6	East Sayre #2	4 kV		TBD

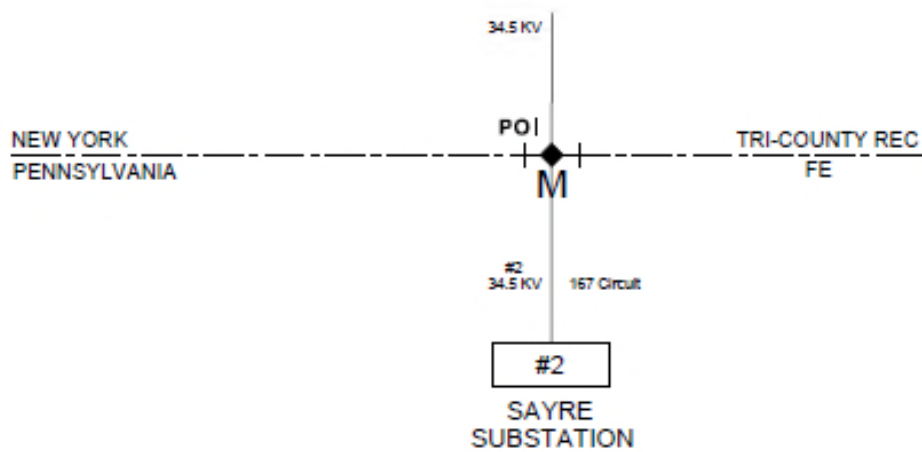
The rates and losses set forth above shall apply for a period of 4 years after the Closing Date or until the effective date of revised distribution rates approved by the Pennsylvania Public Utility Commission for Pennsylvania Electric Company, whichever occurs earlier. At that time, the Parties shall calculate revised rates and losses using the direct assignment methodology.



 = POI (POINT OF INTERCONNECTION) LOCATED AT THE METERING WHERE PENELEC OWNED DISTRIBUTION LINE TERMINATES

M = REVENUE METERING FOR THE INTERCONNECTION CUSTOMER IS OWNED, OPERATED, AND MAINTAINED BY PENELEC

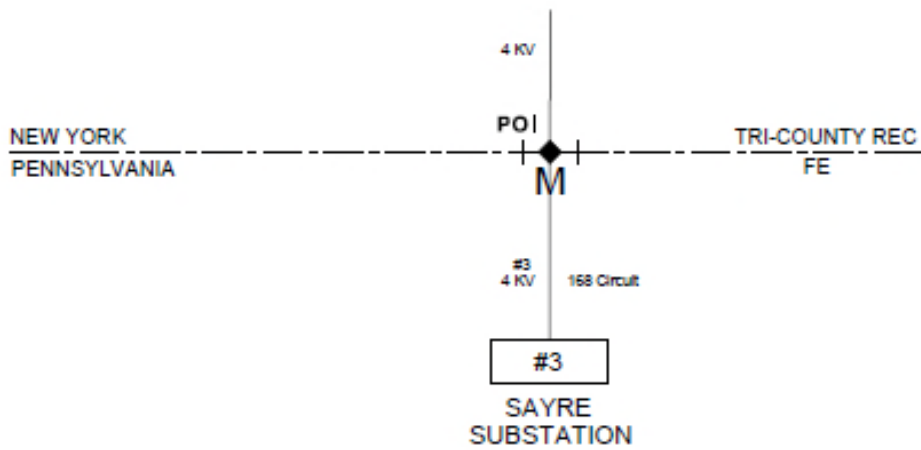
 Energy Delivery Technical Services		TITLE INTERCONNECTION FROM SAYRE SUBSTATION NO.1 34.5KV LINE TO THE TRI-COUNTY REC PA/NY BORDER 34.5 KV LINE		
		AGREEMENT	ID: 0	REV. -
BN R J R	DATE 1-1-2025	POI-PN-NY-1.1		
WPK -	ISSUED PRELIMINARY			



◆ = POI (POINT OF INTERCONNECTION) LOCATED AT THE METERING WHERE PENELEC OWNED DISTRIBUTION LINE TERMINATES

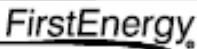
M = REVENUE METERING FOR THE INTERCONNECTION CUSTOMER IS OWNED, OPERATED, AND MAINTAINED BY PENELEC

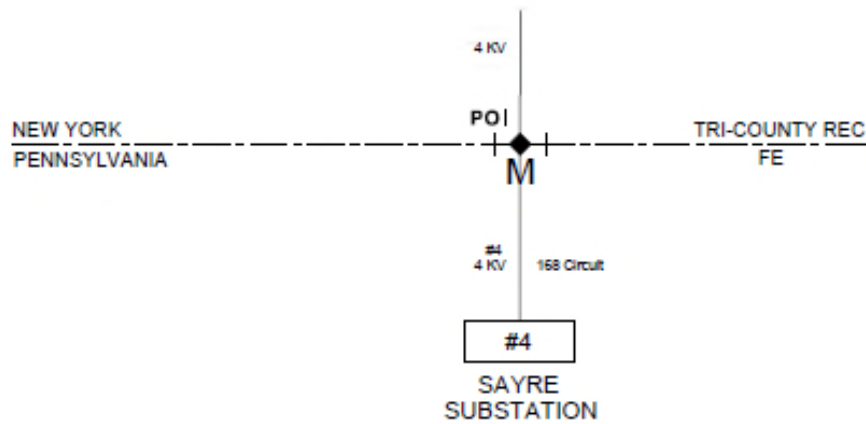
 Energy Delivery Technical Services		TITLE INTERCONNECTION FROM SAYRE SUBSTATION NO.2 34.5KV LINE TO THE TRI-COUNTY REC PANY BORDER 34.5 KV LINE	
EN	R J R	DATE	1-4-2025
APP	-	ISSUED BY	RELDWAY
		AGREEMENT	
		ID: 0	REV. -
		POI-PN-NY-1.2	



◆ = POI (POINT OF INTERCONNECTION) LOCATED AT THE METERING WHERE PENELEC OWNED DISTRIBUTION LINE TERMINATES

M = REVENUE METERING FOR THE INTERCONNECTION CUSTOMER IS OWNED, OPERATED, AND MAINTAINED BY PENELEC

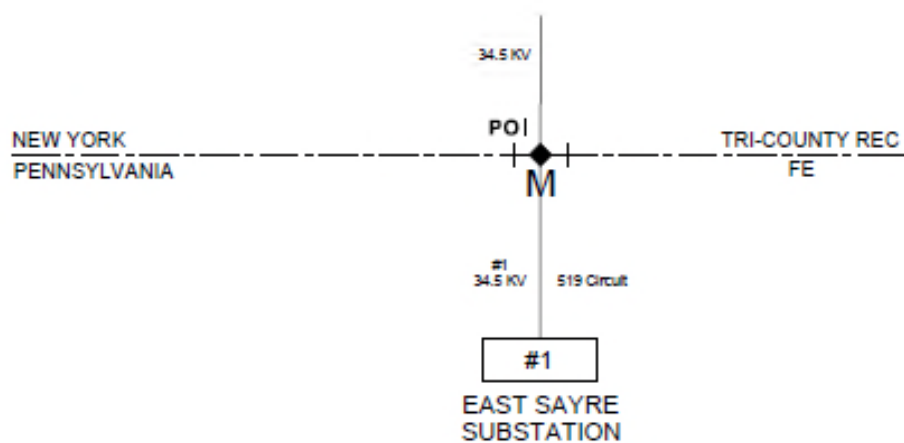
 Energy Delivery Technical Services		TITLE INTERCONNECTION FROM SAYRE SUBSTATION NO.3 - 4 KV LINE TO THE TRI-COUNTY REC PA/NY BORDER 4 KV LINE		
		DATE 1-1-2025	AGREEMENT	ID: 0 POI-PN-NY-1.3
BY R J R	ISSUED PRELIMINARY			



◆ = POI (POINT OF INTERCONNECTION) LOCATED AT THE METERING WHERE PENELEC OWNED DISTRIBUTION LINE TERMINATES

M = REVENUE METERING FOR THE INTERCONNECTION CUSTOMER IS OWNED, OPERATED, AND MAINTAINED BY PENELEC

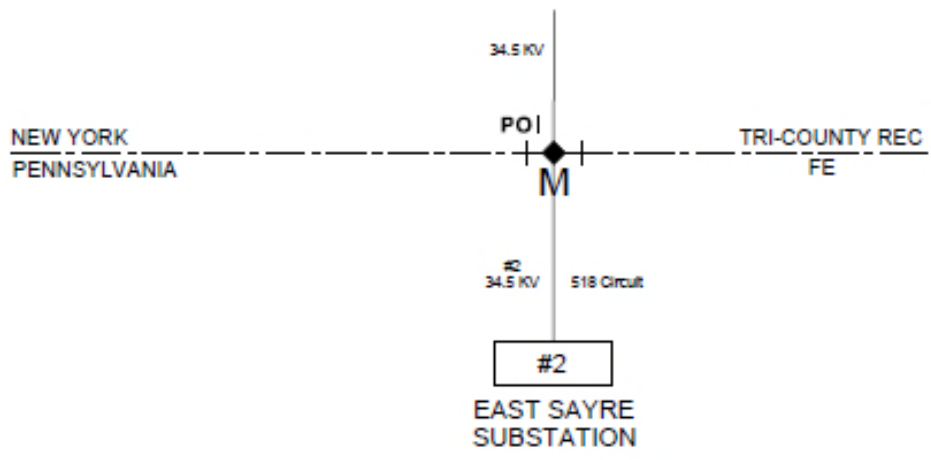
		TITLE INTERCONNECTION FROM SAYRE SUBSTATION NO.4 - 4 KV LINE TO THE TRI-COUNTY REC PA/NY BORDER 4 KV LINE	
By R J R Date 1-1-2022	Issued FIELDWAY	AGREEMENT	ID: 0 POI-PN-NY-1.4 REV: -




◆ = POI (POINT OF INTERCONNECTION) LOCATED AT THE METERING WHERE PENELEC OWNED DISTRIBUTION LINE TERMINATES

M = REVENUE METERING FOR THE INTERCONNECTION CUSTOMER IS OWNED, OPERATED, AND MAINTAINED BY PENELEC

FirstEnergy Energy Delivery Technical Services		TITLE INTERCONNECTION FROM EAST SAYRE SUBSTATION #1 - 34.5KV LINE TO THE TRI-COUNTY REC PA/NY BORDER 34.5 KV LINE	
DR	R J R	DATE	1-1-2025
APP	-	ISSUED BY/DATE	JSSD FIELD/1/1/2025
		APP/EDIT	
		ID: 0	REV. -
		POI-PN-NY-1.5	



 = POI (POINT OF INTERCONNECTION) LOCATED AT THE METERING WHERE PENELEC OWNED DISTRIBUTION LINE TERMINATES

M = REVENUE METERING FOR THE INTERCONNECTION CUSTOMER IS OWNED, OPERATED, AND MAINTAINED BY PENELEC

FirstEnergy Energy Delivery Technical Services		TITLE INTERCONNECTION FROM EAST SAYRE SUBSTATION #2 - 34.5KV LINE TO THE TRI-COUNTY REC PA/NY BORDER 34.5 KV LINE	
By R J R	DWG 1-1-2025	AGREEMENT	ID: 0
APR -	JESSE FIELDWAY		REV. -
			POI-PN-NY-1.6

Appendix 3

The FirstEnergy Documents can be found posted on the following web site:
<https://www.firstenergycorp.com/feconnect/wholesale-interconnections.html>

Appendix 4

Non-Standard Terms and Conditions

N/A

EXHIBIT E

FORM OF CONSTRUCTION AGREEMENT

[See attached]

EXHIBIT E

FORM OF

CONSTRUCTION AGREEMENT

Between

Tri-County Rural Electric Cooperative, Inc.

And

**Pennsylvania Electric Company,
(by its agent Mid-Atlantic Interstate Transmission, LLC.)**

for

Waverly Metering Points

This Agreement is entered into as of the ____ day of _____ 202____ by and between Tri-County Rural Electric Cooperative, Inc. (Tri-County) and Pennsylvania Electric Company by its agent Mid-Atlantic Interstate Transmission, LLC. (“FirstEnergy”), being sometimes herein referred to collectively as the "Parties" or singularly as a "Party." For the avoidance of doubt, the term “Party” or “Parties” shall not include PJM Interconnection, L.L.C. (“PJM”). In consideration of the mutual covenants and agreements herein, it is agreed as follows:

WITNESSETH:

WHEREAS, Tri-County desires to establish additional wholesale interconnection points with FirstEnergy (the “Project”);

WHEREAS, PJM Interconnection, L.L.C. (“PJM”) has functional control of the transmission system (the “Transmission System”) owned by each Party.

WHEREAS, FirstEnergy and Tri-County are members of PJM.

WHEREAS, FirstEnergy is engaged in the transmission of electric energy.

WHEREAS, this Agreement does not modify or supersede the Tri-County to Penelec Interconnection Agreement, but the Parties anticipate making changes to the Tri-County to Penelec Interconnection Agreement to reflect the final design of the Project; and

WHEREAS, the Parties wish to definitively agree on the respective rights and obligations of each Party with respect the Project by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Definitions**. The following definitions shall apply:
 - a. **“Affiliate”** means with respect to a corporation, partnership or other entity, each other corporation, partnership, or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.
 - b. **“Contractor(s)”** means the person(s) or entity(s) designated by a Party to provide or perform all or a portion of the E & C Services, including the supply of any work, services, labor, supervision, equipment, data, materials or any other item.
 - c. **“E & C Services”** means the work, services, goods, materials, equipment, labor, supervision, oversight, actions, and items performed or provided by each Party in connection with the construction and engineering required to complete the Project as described in this Agreement.
 - d. **“Force Majeure”** means any occurrence beyond the reasonable control of a Party which affects or prevents performance of this Agreement, including, but not limited to, fire; flood; drought; earthquake; storm; lightning; explosion; strikes; labor disputes; labor or material shortage; war; terrorism; epidemic; sabotage; acts of public enemy; riot; civil disturbance or disobedience; damage to or failure of major equipment, plants, piping, or appurtenances; unavailability of transportation facilities; emergency or safety related circumstances; acts of God; acts or failure to act by governmental authority; regulatory requirements, regulations, or orders; failure to obtain permits or property rights; acts or omissions of third parties; court orders or other events whether or not the same or similar to the occurrences listed herein. Force Majeure does not include: (i) a failure of performance that is due to an affected Party’s own negligence or intentional wrongdoing; (ii) any removable or remediable causes (other than settlement of a strike or labor dispute) which an affected Party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected Party.
 - e. **“Good Utility Practice”** means, unless otherwise expressly provided for in this Agreement, those practices, methods and acts with respect to the design, construction, installation, operation, maintenance, repair, replacement, reinforcement, rearrangement, purchase, selection, examination, review, inspection or acceptance of any facility or equipment engaged in or approved by

a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

- f. **“Hazardous Substances”** means any chemicals, materials or substances defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, hazardous constituents, restricted hazardous materials, extremely hazardous substances, toxic substances, radioactive substances, contaminants, pollutants, toxic pollutants or words of similar meaning and regulatory effect under any applicable environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by applicable Law.
 - g. **“Law”** means all applicable federal, state, county and municipal laws, statutes, ordinances, resolutions, rules and regulations as well as the requirements of all commissions, boards, bodies and agencies having jurisdiction over FirstEnergy, or the E & C Services or over any persons or entities performing or providing any portion of the E & C Services.
 - h. **“Penelec Project Facilities”** means FirstEnergy owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Appendix 1.
 - i. **“Schedule of Work”** means the schedule for performing the E & C Services as set forth in Appendix 3.
 - j. **“Tri-County Project Facilities”** means Tri-County-owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Appendix 2.
 - k. **“Written Notice”** means a writing delivered via personal delivery or upon receipt by fax, e-mail (with confirmation of receipt) registered or certified U.S. mail or courier service to the individuals specified in Article 13 of this Agreement.
2. **Roles and Responsibilities.** This Agreement addresses how costs, reimbursement and other responsibilities and obligations are allocated between the Parties.
3. **Scope of E & C Services.** The E & C Services to be performed by FirstEnergy and its Contractor(s) are described in the attached Appendix 1, “Scope of Work for FirstEnergy.” All E & C Services to be performed by FirstEnergy shall meet the requirements of each of the National Electrical Safety Code (“NESC”), Good Utility Practice, pertinent PJM design criteria, FirstEnergy and/or Contractor standards and specifications, and Law.

The E & C Services to be performed by Tri-County and its Contractor(s) are described in the attached Appendix 2, “Scope of Work for Tri-County.” All E & C

Services to be performed by Tri-County shall meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design criteria, and Law.

4. **Location of E & C Services.** To the extent necessary for the performance of the E & C Services, each Party shall arrange to have the appropriate easement or other necessary access right granted to the other Parties. Each Party will obtain any and all new rights-of-way, or other necessary access right, deemed necessary by such Party for the relocation/modification of its Project Facilities.
5. **Schedule of E & C Services.** Each Party shall use reasonable commercial efforts in order to perform its respective E & C Services in accordance with Appendix 3, "Schedule of Work." The "Preliminary Outage Schedule" is attached hereto as Appendix 4. The Schedule of Work and Preliminary Outage Schedule shall be revised as required by mutual agreement of the Parties, which agreement shall not be unreasonably withheld, conditioned or delayed.
6. **Changes to the Scope of E & C Services.** Any material change, modification, increase or reduction to the Scope of Work contained in Appendix 1 or Appendix 2, FirstEnergy Project Facilities, or Tri-County Project Facilities, shall be subject to the prior mutual agreement of the Parties and no such material change, modification, increase or reduction shall be effective unless Appendix 6, "Scope of Work Amendment or Modification Form," is entered into by the Parties and executed by their duly authorized representatives.
7. **Safety.**
 - a. General. Each Party agrees that all work performed on Project Facilities by a Party that may reasonably be expected to affect the other Party shall be performed in accordance with Good Utility Practice and all Law pertaining to the safety of persons or property. A Party performing E & C Services within the boundaries of the other Party's facilities must abide by the safety rules applicable to the site. Notwithstanding the foregoing, when E & C Services are being performed in an area controlled by the other Party, the Party performing the E & C Services will abide by the safety, security and work rules applicable to that area.
 - b. Environmental Releases. Each Party shall notify the other Parties, first orally and then in writing, of the release of Hazardous Substances, such as any asbestos, Polychlorinated Biphenyls (PCBs), mercury or lead abatement activities, or any type of remediation activities, each of which may reasonably be expected to affect the other Party, as soon as possible but not later than twenty four (24) hours (unless a shorter period is required by Law) after the Party becomes aware of the occurrence, and shall promptly furnish to the other Party copies of any reports filed with any governmental agencies addressing such events.

8. General Payment Responsibilities.

- a.** Tri-County's responsibility to reimburse FirstEnergy for the E & C Services to be performed by FirstEnergy and/or its Contractor(s) shall include, but not be limited to, the following related to the work described in Appendix 1:
 - i.** Actual quantities of labor and material expended and the sum due for the E & C Services, including, but not limited to Contractor costs as well as the costs of restoring, protecting, temporarily or permanently relocating, and rearranging FirstEnergy property or other property or facilities.
 - ii.** Cost of surveying, verifying and locating existing facilities, including but not limited to, test pits, correspondence, meetings, and exchanges of information.
 - iii.** Cost of engineering, supervision, equipment of and for the E & C Services and for the cost of pensions, insurance and taxes and other indirect costs for FirstEnergy and/or Contractor employees performing E & C Services.
 - iv.** Cost of additional right of way acquisition and permitting costs as applicable. Said costs may include, but are not limited to, any and all permits required under Federal, State or local laws or regulations for FirstEnergy and/or its Contractor(s) to perform the E & C Services described herein and the costs of negotiations and acquisition of additional right of way;
 - v.** Costs associated with any soil removal and/or use of Hazwoper-trained workers required for provision of the E & C Services; and
 - vi.** Tax Gross-Up.
 - 1.** FirstEnergy will treat payments made by Tri-County to FirstEnergy pursuant to this Agreement as taxable contributions to capital for compliance purposes under the Internal Revenue Code and any applicable state tax laws. Tri-County will initially pay any gross-up for income taxes in connection with its payments required by this Agreement. Tri-County may, at its own expense, or FirstEnergy shall, upon the timely written request by Tri-County and at Tri-County's expense, seek final determination by the Internal Revenue Service of the tax status of payments made pursuant to this Agreement. If Tri-County requests FirstEnergy to obtain such final determination, Tri-County shall advance to FirstEnergy on a periodic basis as requested by FirstEnergy the estimated costs of obtaining such determination. In the event a final determination is made by the Internal Revenue Service that any payment by Tri-County to FirstEnergy pursuant to this Agreement constitutes a non-taxable contribution in aid of construction, within thirty (30) business

days from receipt of such final determination, FirstEnergy shall refund to Tri-County any payment(s) attributable to the amount determined to be non-taxable, plus interest received by, or credited to, FirstEnergy in connection with the treatment of its tax returns and the ultimate refund by taxing authorities related to such final determination.

2. The Parties acknowledge that, with respect to any other services that may be performed by one Party hereunder for the other Party under this Agreement or otherwise: (A) FirstEnergy's agreement to make any tax gross-up under this Article 8(a) (vi) for E & C Services shall not be deemed to establish any precedent; and (B) the Party seeking a tax gross-up for such other services shall provide written notice of the gross-up to the other Party.

9. Invoices and Payment.

- a. Upon execution of this Agreement by the Parties, Tri-County shall furnish to FirstEnergy a payment in the amount provided for in Appendix 5-#1 to this Agreement, which represents the estimated costs and expenses for FirstEnergy's completion of the E & C Services relating to the work as set forth in Appendix 1.
- b. Within one hundred and twenty (120) business days after FirstEnergy's completion of the E & C Services as set forth in Appendix 1, FirstEnergy shall furnish to Tri-County a final reconciliation statement (the "Final Reconciliation Statement") specifying the nature and amount of the actual costs incurred by FirstEnergy in connection with the E & C Services relating to the work, as set forth in Appendix 1, including the installation, testing and commissioning related to FirstEnergy Project Facilities, compared with the amount collected under the payment provisions of Appendix 5-#1.
 - i. In the event that FirstEnergy becomes aware that the actual costs for the E & C Services will or are expected to exceed the projected costs in Appendix 5-#1 by more than 25%, then FirstEnergy shall immediately notify Tri-County of the revised projection and the reasons for the deviation.
 - ii. In the event that the Final Reconciliation Statement contains total actual costs and expenses that exceed the amount collected under the payment provisions of Appendix 5-#1, FirstEnergy will issue to Tri-County a final reconciliation invoice (the "Final Reconciliation Invoice") contemporaneously with the Final Reconciliation Statement. Tri-County shall furnish to FirstEnergy a payment for such difference within 30 business days after FirstEnergy's issuance of the Final Reconciliation Invoice.
 - iii. In the event that the Final Reconciliation Statement contains total actual costs and expenses that are less than the amount collected

under the payment provisions of Appendix 5-#1, FirstEnergy shall furnish to Tri-County a refund payment in the amount of such difference within 30 business days after Tri-County's receipt of the Final Reconciliation Statement.

- c. In connection with the reconciliation, Tri-County shall have the right to review, after a timely request therefore, FirstEnergy's documentation of its costs and expenses for providing the E & C Services necessary to enable Tri-County to verify the accuracy of the Final Reconciliation Statement. However, such review shall not extend the due date of, or extend, postpone or otherwise affect Tri-County's obligation to pay within thirty (30) business days any amounts due as described in the Final Reconciliation Statement.
- d. In the event that Tri-County disputes the correctness of any portion of the Final Reconciliation Statement, it shall pay the portion that is not in dispute. The Parties agree to negotiate in good faith to resolve the disputed amount. If a resolution of such dispute is not achieved thereby, then the Parties agree to resolve such dispute in accordance with Article 26 of this Agreement. Upon resolution of such dispute, the Parties will adjust the payment amount to reflect the resolution and any overpayment or underpayment will be reconciled in accordance with this Article 9 of this Agreement.

10. **Inspection and Testing.** Each Party shall perform routine inspection and testing of its Project Facilities in accordance with Good Utility Practice. Each Party shall have the right, upon reasonable advance written notice, at its own expense, to inspect the other Party's Project Facilities.

11. **Other Considerations.**

- a. All transmission outages in connection with the provision of E & C Services will or have already been scheduled by FirstEnergy in accordance with Appendix 4, "Preliminary Outage Schedule," will or have been approved by PJM, and are or will be reflected in the PJM Outage Schedule. No generating unit outages will be required to complete the scope of work related to the E & C Services for the Parties.
- b. The cancellation or change of any transmission outage(s) scheduled by FirstEnergy in the performance of this Agreement will be subject to PJM requirements and approved by PJM.
- c. All structure loading and electrical clearances will be designed to meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design criteria and FirstEnergy and/or FirstEnergy standards and specifications.
- d. In the event there are any FirstEnergy Project Facilities constructed under the terms of this Agreement, they shall be the sole property of FirstEnergy, and FirstEnergy shall be solely responsible for their operation, repair and maintenance. The Tri-County Project Facilities constructed under the terms of this Agreement shall be the sole property of Tri-County, and Tri-County shall be solely responsible for their operation, repair and maintenance.

- e. Appendix 1 through 5, inclusive, are incorporated by reference into this Agreement in their entirety, and any modification to the Scope of Work for E & C Services effected through the use of Appendix 6 will likewise be incorporated by reference into this Agreement.

12. **Contractors**. Nothing in this Agreement shall prevent each Party from utilizing the services of a Contractor(s) as it deems appropriate to perform its obligations under this Agreement, provided, however, that each Party shall require its Contractor to comply with all applicable terms and conditions of this Agreement in performing such obligations.

13. **Written Notice**. All notices pertaining to this Agreement shall be in writing and directed to the following individuals for their respective organizations, provided however that any Party may change the individuals designated to receive Written Notice by providing Written Notice of such change to the other Party:

a. For FirstEnergy:		With a copy to:	
Name:	Manager, FERC & Wholesale Connection Support – FirstEnergy Service Company	Name:	Legal Department. Attn: Attorney for FERC & Wholesale Connection Support - FirstEnergy Service Company
Address:	<u>76 S. Main St., 10th Floor Akron, Ohio 44308</u>	Address:	<u>76 S. Main St., 15th Floor Akron, Ohio 44308</u>
Phone:	<u>330-384-3889</u>	Phone:	<u>330-761-4307</u>
Fax:	<u>330-761-4388</u>	Fax:	<u>330-777-6521</u>

b. For Tri-County:		With a copy to:	
Name:	Craig Eccher, President and CEO	Name:	Pamela Polacek, Chief Legal and Regulatory Officer
Address:	<u>22 N. Main Street Mansfield, PA 16933</u>	Address:	<u>P.O. Box 129 Venetia, PA 15367</u>
Phone:	<u>570-662-2175</u>	Phone:	<u>570-724-9436</u>
Fax:	<u>570-662-2142</u>	Fax:	<u>570-724-3996</u>
Email	<u>ceccher@ctenterprises.org</u>	Email	<u>ppolacek@ctenterprises.org</u>

And

_____	Name:	<u>Terra R. Koernig</u>
_____	Address:	<u>Loomis Koernig 102 West Wellsboro Street Mansfield, PA 16933</u>
_____	Phone:	<u>570-662-2157</u>
_____	Fax:	<u>570-662-3267</u>
_____	Email	<u>terrarg@mac.com</u>

14. **Assignment.** Neither this Agreement nor any interest therein shall be assigned by any Party without the prior written consent of the other Party; provided, however, that any Party may assign this Agreement, in whole or in part, to an Affiliate or successor of such Party that owns and operates all or any portion of such Party's transmission system (meaning those facilities of such Party that are classified as transmission facilities in the PJM Open Access Transmission Tariff), including a regional transmission organization, an independent system operator or an independent transmission company. Notwithstanding the foregoing, any Party may assign this Agreement to a successor to all or substantially all of the assets of such Party by way of merger, consolidation, sale or otherwise, provided that such successor assumes and becomes liable for all of such Party's duties and obligations hereunder. No assignment of rights or obligations under this Agreement by a Party will relieve such Party from liability and financial responsibility for the performance thereof after such assignment unless and until the assignee agrees in writing to assume the obligations and duties of that Party under this Agreement and the non-assigning Party have consented in writing to such assumptions and to a release of the assigning Party from such liability, said consent not to be unreasonably withheld or delayed.
15. **No Waiver.** A Party's failure to insist in any one or more instances upon strict performance of any provision of the Agreement, or failure or delay to take advantage of any of its rights or remedies hereunder, violation, or default, shall not be construed as a waiver by the Party of any such performance, provision, right, breach, violation, or default, either then or for the future. Any waiver shall be effective only if in writing and signed by each Party's authorized representative, and only with respect to the particular case expressly covered therein.
16. **Law and Venue.** This Agreement shall be governed by, construed, and enforced in accordance with the law of the Commonwealth of Pennsylvania. Any legal claim, suit, proceeding, or action brought by a Party shall be brought in a Pennsylvania state court or a federal court located in Pennsylvania.
17. **Headings.** The headings assigned to the Articles of this Agreement are for convenience only and shall not limit the scope and applicability of the Articles.
18. **Survival.** All provisions providing for limitation of or protection against loss or liability of the Parties, including all protections and indemnities, shall survive termination, suspension, cancellation or expiration of this Agreement.
19. **Force Majeure.** The Parties acknowledge that Force Majeure events may affect the performance of this Agreement and agree as follows:
 - a. The Parties shall not be liable to each other for any breach or failure to perform under this Agreement caused by Force Majeure, provided that Force Majeure shall not excuse Tri-County from its obligations to pay Tri-County under this Agreement for all costs and expenses for E & C Services, whether

such costs and expenses were incurred before or after the Force Majeure event.

- b. Where Force Majeure continues for more than ninety (90) business days, any Party may, at its option, terminate this Agreement upon thirty (30) days advance Written Notice. In the event of termination in accordance with this Article of the Agreement, no Party shall have any further responsibility or liability to the other, except for the payment for all costs and expenses for E & C Services relating to the Radial Modifications, whether such costs and expenses were incurred before or after the Force Majeure event performed on or before the date of termination.

20. **Environmental.** In the event that Hazardous Substances are encountered in the course of E & C Services, the following shall apply:

- a. No Party shall be responsible for the handling, removal, disposal or remediation of the Hazardous Substances, unless the presence of said Hazardous Substances was caused or likely to have been caused by that Party, or its Contractor(s). Such Party shall be responsible for satisfying reporting requirements required by Law.
- b. In the event Hazardous Substances are found on FirstEnergy property, or on property occupied by FirstEnergy pursuant to easement, license or other such right, and were not caused by Tri-County or its Contractor(s), FirstEnergy shall be responsible for bearing the costs and expenses associated with the handling, removal, disposal or remediation of said Hazardous Substances. FirstEnergy shall be responsible for satisfying reporting requirements required by Law.
- c. In the event Hazardous Substances are found on Tri-County property, or on property occupied by Tri-County pursuant to easement, license or other such right, and were not caused by FirstEnergy or its Contractor(s), Tri-County shall be responsible for bearing the costs and expenses associated with the handling, removal, disposal or remediation of said Hazardous Substances. Tri-County shall be responsible for satisfying reporting requirements required by Law.

21. **Limitations of Liability.** The following limitations of liability shall apply:

- a. No Party shall be liable for any delays in performing the E & C Services, provided that a Party, it's Contractor(s) or suppliers do not willfully act to delay the Project.
- b. The liability of a Party under this Agreement shall be limited to direct actual damages.
- c. Except as provided in this Agreement, no Party shall be liable for any special, indirect, incidental, punitive, or consequential losses, damages, judgments, fines, penalties, costs or expenses whatsoever including, but not limited to: (i) delayed, lost or reduced profits, revenues, efficiency, productivity, bonding capacity, business opportunities; or (ii) increased or extended overheads, operating, maintenance, depreciation, financing costs or expenses arising out of, related to, or in connection with the performance or breach of this

Agreement whether based upon contract, tort (including negligence), warranty, strict liability or under any other legal or equitable theory.

22. Indemnification.

a. General.

Each Party (an “Indemnifying Party”) shall indemnify and hold harmless the other Party (the “Indemnified Party”), and the Indemnified Party’s officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against any and all liabilities, losses, liens, damages, judgments, fines, penalties, fees or expenses (including reasonable attorneys’ fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified Party’s employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the Indemnifying Party’s negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the Indemnified Party’s intentional misconduct or negligence.

b. Obligation to Defend.

An Indemnifying Party shall, at the Indemnified Party’s option and at the Indemnifying Party’s own cost and expense, defend the Indemnified Party, and the Indemnified Party’s officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against any and all liabilities, losses, liens, damages, judgments, fines, penalties, fees or expenses (including reasonable attorneys’ fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified Party’s employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the indemnifying Party’s negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the indemnified Party’s intentional misconduct or negligence. Without the consent of the applicable Indemnified Party, which shall not be unreasonably withheld, an Indemnifying Party may not settle any such claim for any relief (including monetary damages) or any claim in the nature of regulatory or similar legal enforcement action by a governmental authority. For purposes of fulfilling its duties to defend, indemnify and hold harmless, each Party waives its immunities, rights, or defenses that may be available under applicable Workers’ Compensation Laws.

23. Insurance.

a. Prior to the start of E & C Services, each Party performing E & C Services will at its own expense, procure and maintain in effect during performance and until final completion and acceptance of any E & C Services under this Agreement the following minimum insurance coverages with carriers acceptable to the other Party, including:

i. Workers’ Compensation insurance in accordance with statutory

- limits, as required by the Commonwealth of Ohio, and Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence.
- ii. Commercial General Liability insurance providing coverage for premises, bodily injury, property damage, personal injury, advertising liability, blanket contractual liability covering a Party's obligations under this Agreement, products and completed operations for not less than three (3) years from the date that Party completes the E & C Services, coverage for independent contractors and broad form property damage coverage with limits of not less than one million dollars (\$1,000,000) for each occurrence with an annual aggregate of three million dollars (\$3,000,000) per location where E & C Services are performed.
 - iii. Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired vehicles, trailers or semi-trailers designed for travel on public roads used by each Party in the connection with the E & C Services with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence of bodily injury, including death, and property damage.
 - iv. Excess or Umbrella Liability insurance with a limit of not less than five million dollars (\$5,000,000) for each occurrence with an annual aggregate of five million dollars (\$5,000,000) per location where the E & C Services are performed. This limit applies in excess of each of the coverages set forth above in Article 23(a)(i) (Employer's Liability), Article 23(a)(ii) (Commercial General Liability insurance) and Article 23(a)(iii) (Commercial Automobile Liability insurance), which are scheduled as primary. Any of the above per-occurrence limits may be satisfied by a combination of primary and excess liability coverage.
 - v. Pollution/Environmental Liability insurance with a minimum limit of one million dollars (\$1,000,000) each occurrence where the work involves or includes a Party handling, transporting, disposing, or performing work or operations with Hazardous Substances.
 - vi. All above-mentioned insurance policies shall provide the following: be primary to any other insurance carried by each Party with respect to such Party's negligence; contain standard cross-liability provisions; and provide for a waiver of all rights of subrogation against each Party or its insurers.
- b.** Additional Insured Requirement: The Commercial General Liability and Excess or Umbrella Liability insurance policies shall name the other Party and their successors and assigns, as additional insureds and each Party shall maintain the required coverages for a period of not less than three (3) years from the date a Party completes the E & C Services.
 - c.** Evidence of Insurance: Prior to the start of any E & C Services by and subsequently upon request of a Party, such Party shall deliver to the other Party's contracting representatives, evidence of the required insurance coverage in the form of Certificates of Insurance. Each Party shall provide at

least thirty (30) business days prior written notice to the other Party in the event the minimum insurance coverages outlined in this Agreement are canceled or non-renewed.

- d. Ratings: All insurance coverages required under this Agreement shall be provided by insurance companies having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificates of Insurance referred to in Article 23(d) above (Evidence of Insurance)).
- e. Failure to Obtain and Maintain Insurance: Failure to obtain and maintain the insurance required under this Agreement shall constitute a material breach of this Agreement and the breaching Party will be liable for any and all costs, liabilities, and damages (including attorney's fees, court costs, and settlement expenses) resulting to the other Party from such breach.
- f. Each Party's Obligations Not Limited: The insurance requirements set forth above are to protect each Party from any and all claims by third parties, including employees of each Party, its agents, Contractor(s) and invitees. Said insurance, however, is in no manner to relieve or release a Party, its agents, Contractor(s) and invitees from, or limit their liability as to, any and all obligations assumed under this Agreement.

24. Breach.

- a. A breach of this Agreement shall occur upon: (a) the failure of a Party to pay any amount when due; (b) the failure of a Party to comply with any material term or condition of this Agreement, including any material breach of a representation, warranty or covenant; (c) any assignment of this Agreement in a manner inconsistent with its terms; or (d) the failure of a Party to provide access rights, or a Party's attempt to revoke or terminate access rights, that are required by the other Party to perform E & C Services under this Agreement.

25. Termination.

- a. This Agreement shall automatically terminate upon the completion of the E & C Services and payment in full pursuant to the Final Reconciliation Statement.
- b. This Agreement may be terminated by mutual consent of the Parties.
- c. This Agreement may be terminated by a Party in the event that a Party breaches this Agreement and the breach has not been cured within sixty (60) days after the affected Party provides Written Notice of such breach to the breaching Party in accordance with the notification provisions of Article 13. During the sixty (60) days following the Party's delivery of notice of breach pursuant to Article 13 to the breaching Party, the non-breaching Party may at its sole discretion suspend its performance under this Agreement.
- d. Upon the termination of this Agreement for reasons other than pursuant to Article 25(a), each Party shall be obligated, if directed by the other Party, to remove its equipment, facilities, and debris related to the E & C Services

from the directing Party's property and restore such property, as close as practicable, to its condition prior to the commencement of the E & Services. The access and other property rights granted to each Party under this Agreement shall survive such termination to the extent needed by each Party to perform its obligations under this Article 25(d).

26. Dispute Resolution.

- a. Notice of any claim or dispute, which any Party may have against any other, arising out of this Agreement, shall be submitted in writing to the other Party in accordance with the notification provisions of Article 13, not later than sixty (60) days after the circumstance which gave rise to the claim or dispute was to have taken place. If agreed by each Party, the Parties may submit a dispute to mediation and the following provisions shall apply.
- b. In the mediation process, the Parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the Parties as soon as practical after the Parties have agreed to submit the matter to the mediation process. Each Party shall provide the other with a list of no less than three (3) and no more than five (5) mediators, and the other Party or Parties may strike as many names as it chooses. If the Parties cannot agree on a mediator, a mediator will be selected by the American Arbitration Association ("AAA") at the request of a Party.
- c. The Parties agree that any and all mediation will be conducted in the AAA offices in or nearest to Akron, Ohio, and in the manner specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- d. Unless otherwise agreed to, the mediation process shall be concluded not later than six (6) months after the date that it is initiated. The decision must be in writing and contain the reasons for the decision. The mediator shall have the authority only to recommend interpretations of the terms and conditions of this Agreement and shall have no power to modify any term or condition of this Agreement.
- e. If any dispute is not settled by mediation, then any Party may pursue any and all rights and remedies available to it under this Agreement, in law or in equity. Notwithstanding the mediation hereunder, the Parties have the right to proceed directly to court to seek relief in law or in equity.
- f. The submission of a dispute to mediation shall not limit or in any way affect the applicable Party's right to effect remedies or limit such Party's rights under this Agreement or otherwise.

27. Audit of Records.

- a. Maintenance of Records. For any E & C Services performed hereunder, each Party shall keep a detailed account of all costs necessary for proper financial management with a system in accordance with Generally Accepted Accounting Principles, consistently applied. Maintaining proper records

shall not relieve a Party of its responsibility to document properly all invoices submitted for payment.

- i. Each Party, including its agents or employees, shall have access to the other Party's books, vouchers, memoranda, records, data, and other documents relative to the E & C Services, for inspection, audit, or reproduction. Each Party shall preserve all of the above records for two years after final payment, during which time a Party shall have the right to perform any audit, inspection, or reproduction it may desire. If discrepancies or questions arise, the records shall be preserved until an agreement is reached between the Parties. Each Party reserves the right to recover any overcharges or incorrect charges from the other Party.
- ii. Any audit conducted by a Party shall be at its expense; provided, however, that if it is determined that a Party incorrectly charged the auditing Party, the former shall be liable to the other for all charges, including the amount of the overcharge or incorrect charge and cost of audit or other investigation.
- iii. Time of Audit. Audits shall take place at times and places to be mutually agreed upon.

28. **Conflicts.** In the event of any conflict between a provision in this Agreement and that of a Schedule, such conflict shall be resolved in favor of the terms set forth in such Schedule.

29. **Entire Agreement.** This Agreement constitutes the full, complete and only agreement between the Parties at this time with respect to the E & C Services and supersedes all prior communications, agreements, and understandings, whether written or oral, concerning such matters. This Agreement cannot be modified or amended verbally and can only be changed via a formal written agreement between the Parties, executed by both their duly authorized representatives.

30. **Existing Arrangements.** Nothing in this Agreement shall supersede, nullify or otherwise modify any pre-existing policies, programs, procedures or arrangements between the Parties. In the event of any conflict between a term or condition of this Agreement and any such pre-existing policy, program, procedure or arrangement, the latter shall control.

[Signatures on the next page]

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

Service Agreement No. 5786

**PENNSYLVANIA ELECTRIC COMPANY, by its agent
MID-ATLANTIC INTERSTATE TRANSMISSION, LLC.**

By: _____
(Signature)

Name: _____ Gregory F. Hussing _____
(Print)

Title: _____ Director, FERC & RTO Technical Support _____

Date: _____

TRI-COUNTY RURAL ELECTRIC COOPERATIVE, INC.

By: _____
(Signature)

Name: _____
(Print)

Title: _____

Date: _____

Appendix 1

Scope of Work for Penelec

- Install 4- 4 kV revenue meters
- Install 2 – 34.5 kV revenue meters

Estimated Project Cost: \$99,800

Appendix 2

Scope of Work for Tri-County

The Applicant is responsible for the design, purchase, installation, and cost of the equipment leading up to the defined Point of Interconnection (POI) at their facility.

The Applicant is solely responsible for protecting its own equipment in such a manner that electrical faults or other disturbances on the FE system do not damage its equipment. The Applicant must also design their system to meet all Codes and Laws detailed in the FirstEnergy, Energy Delivery Planning & Protection “**Requirements For Transmission Connected Facilities**”, which describes in detail the full requirements for customers connecting to the FE transmission and sub-transmission systems. The document may be found at the link below:

<https://www.firstenergycorp.com/content/dam/feconnect/files/wholesale/Requirements-for-Transmission-Connected-Facilities-10-03-2016.pdf>

The Applicant must also design their system to meet all Codes and Laws applicable to this installation.

System protective devices proposed by the Applicant must be designed to have adequate fault interrupting capability at the point of application. System protective devices must be designed by the Applicant to coordinate with the first FE upstream protective device. The Applicant must submit to FE for approval, all applicable system protective devices that need to coordinate with the FE system. This review and approval process is necessary to ensure that faults on the load side of the Applicant’s main system protection do not adversely affect the FE system. A detailed protection requirement document will be provided as part of the detailed engineering, should the Applicant choose to proceed with the proposed interconnection.

FirstEnergy shall review the settings for all customer-owned relays in order to establish coordination between the Applicant’s protective equipment and the FE transmission system relays. FE personnel may choose to witness functional testing of the relays and tripped devices.

All customer substation equipment must adhere to the requirements in Section 8 of FE’s “Requirements for Transmission Connected Facilities” document. This covers topics such as: overhead wire, BIL issues, surge protection, electrical clearances, station grounding, etc. It is expected that the substation will be built using good utility practice and all necessary safety codes are adhered to. After installation, the equipment is expected to be maintained properly according to Section 18 of FE’s “Requirements for Transmission Connected Facilities” document.

FE will reserve the right to approve all work performed on equipment that protects the FE transmission system, including circuit breaker, circuit switchers and associated relaying. In addition, prior to energization, the substation must be inspected and pass a final checkout by FE/PN personnel, in accordance with Section 17 of the FE “Requirements for Transmission Connected Facilities” document. The cost for the substation checkout will be the responsibility of the Applicant.

Appendix 3

Schedule of Work

FirstEnergy and Tri-County will work collaboratively to develop timely schedules and milestone dates for the Project to complete the Scope of Work described in Appendix 1 and 2 on or about: TBD.

Appendix 4

Preliminary Outage Schedule

The following outage schedule is preliminary and may change as a result of a modification to the Scope of Work and/or Schedule of Work pursuant to Appendix 6 of this Agreement.

Outage	Start Date	End Date	Party Responsible for Submitting Outage Request	Equipment Required to be Out of Service	Description/ Purpose
1	N/A				
2					

Appendix 5

Payment Schedule

No. of Payments	Amount	Due Date
Payment #1	\$99,800	Upon execution of this Agreement
Payment #2	“True-up” costs	Within 30 business days after FirstEnergy’s issuance of the Final Reconciliation Invoice or Tri-County’s receipt of the Final Reconciliation Statement pursuant to Section 9.b.ii or 9.b.iii, as applicable

Appendix 6

SCOPE OF WORK AMENDMENT OR MODIFICATION FORM

This SCOPE OF WORK AMENDMENT OR MODIFICATION FORM, dated as of _____, is by and between FirstEnergy and Tri-County. FirstEnergy and Tri-County may each be referred to herein individually as a “Party,” and together as the “Parties.”

W I T N E S S E T H

WHEREAS, FirstEnergy and Tri-County are parties to a Construction Agreement dated [_____]; and

WHEREAS, the Construction Agreement between FirstEnergy and Tri-County contemplates that the Parties may from time to time agree to certain modifications in the Scope of Work; and

WHEREAS, by execution of this Scope of Work Amendment or Modification Form the Parties intend to alter the Scope of Work provided in the Construction Agreement; and

WHEREAS, but for the modifications specifically described below, the Parties intend for all other terms and provisions of the Construction Agreement to be applicable and take precedence over this Scope of Work Amendment or Modification Form.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

1.1 Additional Work to be Performed by FirstEnergy:

1.2 Additional Work to be Performed by Tri-County:

2.1 Cost Responsibilities for the Additional Work contemplated in Sections 1.1 and 1.2:

IN WITNESS WHEREOF, FirstEnergy and Tri-County have caused this Scope of Work Amendment or Modification Form to be duly executed and delivered by their respective duly authorized officers as of the date first above written.

Service Agreement No. 5786

**PENNSYLVANIA ELECTRIC COMPANY, by its agent
MID-ATLANTIC INTERSTATE TRANSMISSION, LLC.**

By: _____
(Signature)

Name: _____
(Print)

Title: _____

Date: _____

TRI-COUNTY RURAL ELECTRIC COOPERATIVE, INC.

By: _____
(Signature)

Name: _____
(Print)

Title: _____

Date: _____

EXHIBIT F
FORM OF DEED

[See attached]

EXHIBIT F

This Instrument Prepared By:
Squire Patton Boggs (US) LLP
4900 Key Tower, 127 Public Square
Cleveland, OH 44114
Attention: Lynn M. Gattozzi, Esq.

Parcel Identification Number(s)

FORM OF

SPECIAL WARRANTY DEED

THIS INDENTURE, made this ____ day of _____, 202__, by **PENNSYLVANIA ELECTRIC COMPANY**, a Pennsylvania corporation, whose address is 76 S. Main Street, Akron, OH 44076 (“*Grantor*”), to **TRI-COUNTY RURAL ELECTRIC COOPERATIVE, INC.**, a Pennsylvania corporation, whose address is 22 N. Main Street, Mansfield, PA 16933 (“*Grantee*”),

WITNESSETH:

That Grantor for and in consideration of the sum of \$10.00 and other good and valuable considerations, to it in hand paid, the receipt whereof is hereby acknowledged, by these presents hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto Grantee and its successors and assigns forever, the following real property (collectively, the “*Property*”):

ALL THAT CERTAIN PARCEL OF LAND (the “*Land*”) situate in Tioga County, New York, more particularly described in Exhibit A attached hereto and by this reference made a part hereof;

TOGETHER with all improvements thereon and all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

SUBJECT TO taxes and assessments not yet due and payable, and easements, restrictions, agreements and other matters of record, if any (“*Permitted Exceptions*”).

TO HAVE AND TO HOLD the Property unto the said Grantee, its successors and assigns, in fee simple forever, subject to the Permitted Exceptions.

AND Grantor hereby covenants with Grantee that Grantor is lawfully seized of the Property in fee simple subject to the Permitted Exceptions; that Grantor has good right and lawful authority to sell and convey the Property; that Grantor has done nothing to impair such title as Grantor received and has not done or suffered anything whereby the Property has been encumbered in any way whatever, except for the Permitted Exceptions, and that Grantor will defend the same against the lawful claims of all persons claiming by, through or under Grantor, subject to the Permitted Exceptions, but not otherwise.

AND Grantor, in compliance with Section 13 of the Lien Law of the State of New York, covenants that Grantor will receive the consideration for this conveyance and will hold the right to

receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the same for any other purpose.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantor has caused these presents to be duly authorized in its name and by those thereunto duly authorized, the day and year first above written.

PENNSYLVANIA ELECTRIC COMPANY,
a Pennsylvania corporation

By: _____
Name: _____
Title: _____

STATE OF OHIO)

COUNTY OF SUMMIT) ss:

On the _____ day of _____, 202__, before me the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence, to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

(SEAL)

Notary Public – Sign and affix stamp
Commission Expiration Date: _____

EXHIBIT A
LEGAL DESCRIPTION

[INSERT LEGAL]

NOTE:

District: _____ Section: _____ Block: _____ Lot: _____
Commonly known as: _____

NOTE: Lot and Block shown for informational purposes only.

010-9148-8883/2/AMERICAS

EXHIBIT G

FORM OF ASSIGNMENT OF EASEMENTS AND RIGHTS OF WAY

[See attached]

EXHIBIT G

This Instrument Prepared By:
Squire Patton Boggs (US) LLP
4900 Key Tower, 127 Public Square
Cleveland, OH 44114
Attention: Lynn M. Gattozzi, Esq.

FORM OF
ASSIGNMENT OF EASEMENTS

THIS ASSIGNMENT OF EASEMENTS (this “*Assignment*”) is made as of _____, 202__ (the “*Closing Date*”), by and between **PENNSYLVANIA ELECTRIC COMPANY**, a Pennsylvania corporation, whose address is 76 S. Main Street, Akron, OH 44076 (“*Assignor*”), and **TRI-COUNTY RURAL ELECTRIC COOPERATIVE, INC.**, a Pennsylvania corporation, whose address is 22 N. Main Street, Mansfield, PA 16933 (“*Assignee*”).

Assignor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does by these presents transfer, convey, and assign unto Assignee, its successors and assigns, to the extent assignable, all of Assignor’s rights, title and interests in and to the easements described on Attachment 1, attached hereto and made a part hereof, subject to the terms and conditions of this Assignment (collectively, the “*Assigned Easements*”); and Assignee does hereby accept the Assigned Easements and does hereby assume all of Assignor’s rights and benefits in, to and under the Assigned Easements, and all of Assignor’s liabilities, duties and obligations under or relating the Assigned Easements, but only to the extent such liabilities, duties and obligations arise or accrue on or after the Closing Date, it being expressly agreed that Assignor will remain liable for any such liabilities, duties, and obligations arising or accruing before the Closing Date.

The Assigned Easements, and the assignment, transfer and conveyance of the Assigned Easements under this Assignment, are subject to (a) the terms and conditions of the applicable instruments and agreements granting, conferring, establishing or creating the Assigned Easements, (b) all easements, covenants, conditions, restrictions, reservations and other matters of record affecting, encumbering or relating to the Assigned Easements, and (c) Permitted Liens .

This Assignment is an instrument of transfer and conveyance contemplated by, and is executed and delivered under and subject to that certain Asset Purchase Agreement dated as of February 10, 2021, by and between Assignor and Assignee (the “*Asset Purchase Agreement*”). Nothing contained herein will itself change, amend, extend, or alter (nor should it be deemed or construed as changing, amending, extending, or altering) the terms or conditions of the Asset Purchase Agreement in any manner whatsoever. This instrument does not create or establish rights, liabilities or obligations not otherwise contemplated by or pursuant to the Asset Purchase Agreement. In the event of any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms of this Assignment, the terms of the Asset Purchase Agreement will govern.

The provisions of Article 12 of the Asset Purchase Agreement are hereby incorporated into this Assignment, mutatis mutandis.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the Closing Date.

ASSIGNOR:

PENNSYLVANIA ELECTRIC COMPANY,
a Pennsylvania corporation

By: _____

Name: _____

Title: _____

STATE OF OHIO)

COUNTY OF SUMMIT) ss:

On the _____ day of _____, 202__, before me the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence, to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

(SEAL)

Notary Public – Sign and affix stamp
Commission Expiration Date: _____

ASSIGNEE:

**TRI-COUNTY RURAL ELECTRIC
COOPERATIVE, INC.,** a Pennsylvania
corporation

By: _____

Name: _____

Title: _____

STATE OF OHIO)

COUNTY OF SUMMIT) ss:

On the _____ day of _____, 202__, before me the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence, to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

(SEAL)

Notary Public – Sign and affix stamp
Commission Expiration Date: _____

ATTACHMENT 1 TO ASSIGNMENT OF EASEMENTS

[TO BE ATTACHED]

CONFIDENTIAL

Schedule 1.01(a)
Equipment

The Equipment is the following:

- Chemung St. Substation components as reflected in the substation cascade files located in the electronic data room
- Waverly Substation components as reflected in the substation cascade files located in the electronic data room
- Approximately 3,450 poles
- Overhead lines and equipment used to provide electric distribution service in the Waverly Service Territory (wire, conductors, transformers, breakers, reclosers, meters, service drops, etc.)
- Streetlighting components
- Miscellaneous underground equipment (conduit, conductors, handholes, padmounts, submersibles, etc.)

Schedule 1.01(b)
Real Property

Waverly Substation (Tax Map ID # 166.12-1-24)

Situate in the Village of Waverly, Town of Barton, County of Tioga and State of New York, bounded and described as follows:

Commencing at the iron pin set in the East line of Garfield Street Extension at the intersection with the south line of lands of Romeyn and Norma Allen;

Running thence S 66° 30' E four hundred nineteen (419) feet along the south line of said Allen lands to a pin set one hundred (100) feet west of the northeast corner of the lands of the Grantor;

Running thence S 27° 30' W two hundred (200) feet to a pin;

Running thence N 66° 30' W two hundred sixty-five (265) feet to a pin for a corner;

Running thence N 22° 30' E one hundred (100) feet to a pin for a corner;

Running thence N 66° 30' W one hundred fifty-two and five-tenths (152.5) feet to a pin set in the east line of Garfield Street Extension;

Running thence N 26° 40' E one hundred (100) feet along the East line of Garfield Street Extension to the point and place of beginning.

Together with a right-of-way across lands retained by the Grantor forty (40) feet in width, the center line of which shall commence at a point in the North line of Spring Street a distance of one hundred nine (109) feet westerly from the southeast corner of lands of the Grantor, and run thence northeasterly to the point in the south line of the lands above described, which said point is twenty-eight (28) feet on a course N 66° 30' W from the southeasterly corner of the premises above described. The use of such right-of-way, however, shall not interfere with the free ingress and egress by the party of the first part, its agents, servants and employees, over such right-of-way from Spring Street to buildings owned and maintained by it, and located adjacent to such right-of-way, which such privilege is reserved for vehicular traffic and otherwise.

Chemung Street Substation (Tax Map ID # 166.18-1-5)

Situate in the Village of Waverly, Town of Barton, County of Tioga and State of New York, bounded and described as follows:

BEGINNING at a concrete monument set in the westerly line of the public highway or street known and designated as Old Route 17 at the approximate point where such street or

highway merges with State Highway Route 17 and being the southeasterly corner of the premises owned by the grantor; thence South $83^{\circ} 20'$ West along a line fence a distance of three hundred (300') feet along the northerly line of premises of Robert Packer Hospital through a pin to a second pin set in the northerly line of premises of Robert Packer Hospital; thence North $7^{\circ} 14'$ West a distance of one hundred seventy-three and four-tenths (173.4') feet to a point marked by a pin, being the northwesterly corner of premises herein described; thence North $83^{\circ} 35'$ East a distance of two hundred (200') feet to a pint marked by a pin in the westerly margin of Old Route 17; thence South $32^{\circ} 35'$ East along the westerly margin of said street or highway a distance of fifty-six and five-tenths (56.5') feet to a point marked by a pin; thence South $38^{\circ} 45'$ East along the westerly margin of said street or highway designated as Old Route 17 a distance of one hundred forty-three and five-tenths (143.5') feet along the easterly boundary of the lands above described to the point and place of beginning.

Together with the right of ingress and egress by the party of the second part over any lands retained by the party of the first part and which adjoin the premises above described along the easterly line to the public highway known as Old Route No. 17 (reputedly a public street of the Village of Waverly) and New York State Route No. 17, such ingress and egress to be for the general purposes of the party of the second part, and to cover ingress and egress of trucks, vehicles and equipment of all kinds and nature from such public highways to and from the parcel above described; party of the second part to have the further right to construct and maintain utility lines, either overhead or underground, to the premises above described, from said Highways located to the east thereof over premises retained by party of the first part, with whatever wires, poles, conduits, cables or other construction as required in connection with such line or lines.

Schedule 1.01(c)
Tangible Personal Property

None.

Schedule 1.01(d)
Estimated Net Book Value of the Purchased Assets

Waverly Assets as of 9/30/2020

<u>Description</u>	<u>Gross Book Value</u>	<u>Reserve</u>	<u>Net Book Value</u>
35610 - Overhd Conductr, Devices	\$39.44	\$3.33	\$36.11
36022 - Easements - Dist. Lines	\$26,068.85	\$19,827.88	\$6,240.97
36011 - Fee Land - Dist. Subs.	\$10,744.33	\$49.23	\$10,695.10
36110 - Structures, Improvements	\$11,007.14	\$9,902.25	\$1,104.89
36200 - Station Equipment	\$285,260.03	\$135,638.40	\$149,621.63
36400 - Poles, Towers And Fixtures	\$2,031,373.17	\$930,491.41	\$1,100,881.76
36500 - Overhd Conductr, Devices	\$2,408,055.33	\$801,517.82	\$1,606,537.51
36510 - Clearing, Grading of Land	\$22,064.42	\$14,283.70	\$7,780.72
36600 - Underground Conduit	\$58,011.21	\$31,168.37	\$26,842.84
36700 - Undergrnd Conductr, Devices	\$551,317.88	\$246,745.79	\$304,572.09
36800 - Line Transformers	\$1,413,433.61	\$727,129.15	\$686,304.46
36900 - Services	\$930,027.94	\$348,202.04	\$581,825.90
37000 - Meters	\$419,854.03	\$113,475.50	\$306,378.53
37100 - Inst. On Cust. Prem.	\$67,921.57	\$45,194.98	\$22,726.59
37310 - Street Light - Oh, Ug Lines	\$212,332.46	\$53,171.76	\$159,160.70
Totals	\$8,447,511.41	\$3,476,801.60	\$4,970,709.81

Schedule 9.01(b)
Governmental Approvals

None.

Schedule 9.01(d)
Other Supporting Facilities Charge

Development of Waverly Other Supporting Facilities Charge
Average Rate Methodology

	<u>Primary</u>	<u>Subtrans</u>	<u>Total</u>	
Penelec Wholesale Distribution Rates	\$ 10.23	\$ 2.66	-	/kW-mo
Peak Load (estimate)	1,740	10,081	11,821	kW
Other Supporting Facilities Charge	\$ 213,572	\$ 321,945	\$ 535,517	/year
Peak Load (capacity values from Settlements)			11,821	kW

Proposed OSF Rate	3.78 /kW-mo
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Development of Waverly Other Supporting Facilities Charge
Direct Assignment Methodology

<u>Description</u>	<u>Voltage (kV)</u>	<u>Applicable Circuit Miles</u>	<u>2018 Gross Plant</u>	<u>NY Customer Peak Load as % of Facility Peak Load</u>						<u>Direct Assignment</u>
				<u>518</u>	<u>519</u>	<u>167</u>	<u>168</u>	<u>170</u>	<u>Total</u>	
<i>Substations</i>										
East Sayre No. 1	115/34.5	-	\$ 1,924,170	0.2%					0.2%	\$ 4,363
East Sayre No. 3	115/34.5	-	\$ 1,539,336		34.4%	4.9%	0.0%	2.3%	41.6%	\$ 640,154
Sayre	34.5/4.8	-	\$ 482,096			30.6%	0.1%	14.5%	45.2%	\$ 217,970
Subtotal			\$ 3,945,602							\$ 862,487
<i>Lines</i>										
00516-61	34.5	0.63	\$ 54,143			10.8%	0.0%	5.1%	16.0%	\$ 8,663
00518-61	34.5	1.43	\$ 123,471	0.6%					0.6%	\$ 785
00519-61	34.5	0.04	\$ 3,276		57.3%				57.3%	\$ 1,877
00167-61	4.8	0.33	\$ 28,669			73.0%			73.0%	\$ 20,932
00168-61	4.8	1.00	\$ 86,071				0.8%		0.8%	\$ 652
00170-61	4.8	1.04	\$ 89,790					41.0%	41.0%	\$ 36,836
Subtotal			\$ 385,420							\$ 69,745
Total			\$ 4,331,023							\$ 932,232

Gross Plant Levelized Charge Rate 1.10% /month

Other Supporting Facilities Charge **\$ 123,537 /year**

Peak Load (capacity values from Settlements) 11,821 kW

Proposed OSF Rate	\$ 0.87 /kW-mo
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Schedule 9.01(e)
Consents to Transaction

Consent to Assignment of pole agreements: To Be Determined by the parties

Schedule 9.02(e)
Permits

None