



CITY COUNCIL/ELECTRICAL  
ADVISORY COMMITTEE- STUDY  
SESSION

December 1, 2010 - 6:00 p.m.

CITY COUNCIL

Gilbert X. Cheves, Mayor  
Leo Evans, Mayor Pro-tem  
Patricia Baribeau, Council Member  
Brady Nelson, Council Member  
Walter Baker, Council Member

ADMINISTRATION

James V. O'Toole, City Manager  
Robert S. Richards, CMC, City Clerk  
Ralph B.K. Peterson, City Attorney  
Mike Furmanski, Electrical Superintendent  
Michael Dewar, City Controller  
Thomas Butz, Power System Engineering

ELECTRICAL ADVISORY COMMITTEE

Ronald Beauchamp, Chairman  
John Mellinger, Vice Chairman  
Larry Arkens, Committee Member  
Glendon Brown, Committee Member  
Ann Bissell, Committee Member  
Tim Wilson, Committee Member  
John Anthony, Committee Member  
Donald Racicot, Committee Member

City Council Chambers located at: City Hall - 410 Ludington Street - Room C101 - Escanaba, MI 49829

Special Study Session Agenda  
Wednesday, December 1, 2010

CALL TO ORDER

ROLL CALL - City Council Members and Electrical Advisory Committee Members

MINUTES APPROVAL/REVIEW - November 10, 2010

CONFLICT OF INTEREST DECLARATION

NEW BUSINESS

1. **Power Plant Discussion.**

**Explanation:** Administration will update the City Council, Electrical Advisory Committee and Citizens of Escanaba on the status of the Power Plant. Discussion topics will include, but not be limited to:

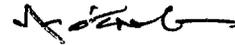
- a. **Early Termination Agreement** – Under the terms and conditions of the Early Termination Agreement, the Upper Peninsula Power Company (UPPCO) would cease operating the Generation Facilities on or around December 15, 2010, as opposed to June 5, 2011. In the event the Early Termination Agreement is approved, Council will be asked to approve a Meter Data Management Agreement (MDMA) with UPPCO. The MDMA assigns responsibility to UPPCO to acquire meter data and load shift data on behalf of the City.
- b. **Asset Purchase Agreement/Remediation Agreement/Operation and Maintenance Agreement/Transition Agreement – Escanaba Energy Company, L.L.C.** - An Asset Purchase Agreement which encompasses the Remediation Agreement, Operation and Maintenance Agreement and Transition Agreement is the written agreement which defines the assets and liabilities Escanaba Electric Company, LLC will agree to operate the Escanaba Generating Facilities with the option to purchase.
- c. **Power Purchase Agreement.** The Power Purchase Agreement is a legal contract between Escanaba Energy Company, L.L.C. and the City, and is used to define how energy and capacity will be provided to the City to include the terms of delivery, pricing and guarantees.

Agenda -November 3, 2010.

- d. **Reiss Coal Dock Storage Agreement.** The Reiss Coal Company Dock Storage Agreement is the agreement which allows the City to store coal on the Reiss Coal Dock with the option to assign the agreement to the Escanaba Electric Company, L.L.C.

GENERAL PUBLIC COMMENT  
COUNCIL/COMMITTEE, STAFF REPORTS  
ADJOURNMENT

Respectfully Submitted,



James V. O'Toole  
City Manager

**OFFICIAL PROCEEDINGS**  
**CITY COUNCIL**  
**ELECTRICAL ADVISORY COMMITTEE**  
**CITY OF ESCANABA, MICHIGAN**  
**Special Joint Meeting**  
**Wednesday, November 10, 2010**

Pursuit to a special meeting posted November 8, 2010, the meeting was called to order by the Mayor Gilbert X. Cheves at 6:00 p.m. in the Council Chambers of City Hall located at 410 Ludington Street.

Present: Mayor Gilbert X. Cheves, Mayor Pro Tem Leo J. Evans (arrived at 6:11 p.m.), Council Members Patricia A. Baribeau, and Pete Baker, and Council Member Nelson.

Absent: None.

Present: Electrical Advisory Committee Members: Chairman Ronald Beauchamp, John Anthony, Ann Bissell, Glendon Brown, John Mellinger, Don Racicot, Tim Wilson, and Larry Arkens.

Absent: None

Also Present: City Manager James V. O'Toole, Electric Superintendent Mike Furmanski, City Controller Mike Dewar, City Attorney Ralph B.K. Peterson, Consultant Tom Butz of Power Systems Engineering (PSE), Power Plant Manager Jerry Pirkola, members of the public, and media.

**UNFINISHED BUSINESS - None**

**CONFLICT OF INTEREST – None**

**PUBLIC HEARING - None**

**NEW BUSINESS**

**Power Plant Negotiation Status/Update.**

Administration updated the City Council, Electrical Advisory Committee and Citizens of Escanaba on the status of the Power Plant negotiations and on the following various agreements being negotiated.

**UPPCO Early Termination Agreement.** Manager O'Toole, and City Attorney Peterson provided an update and summary of the discussions and deliberations with the Upper Peninsula Power Company (UPPCO) on an early termination agreement which would have UPPCO ending their operating agreement on or around December 15, 2010, as opposed to June 5, 2011. (See Attachment – A) The following was discussed:

- Article I – termination of the current agreement;
- Article II - referred to the assets, substation, and environmental liabilities set forth in 2.5;

Joint City Council & Electrical Advisory Minutes  
November 10, 2010 – cont.

- UPPCO would not have any liability from Phase I & II of the Baseline Environmental Assessments. City will be cleaning up the site in the amount of \$2.5 million dollars;
- Any future liabilities the City would need to file a claim at that time.
- Reviewed Hard Assets figure UPPCO believed City should pay, over \$300K;
- Reviewed Section 2.6 Employee Liability language;
- Reviewed Article III, Section 3.2 Indemnification;
- Reviewed Article IV, proposed new future operating agreement.

**Asset Purchase Agreement.** Administration provided a summary of the discussion and deliberations with Traxys N.A. (aka: E.E.C.) on an Asset Purchase Agreement. An Asset Purchase Agreement was the written agreement which defined the assets and liabilities Traxys N.A. agreed to operate the Escanaba Generating Facilities with the option to purchase. As of the meeting time, Traxys still had not submitted their revised changes.

**Power Purchase Agreement.** PSE Consultant Tom Butz provided an update and summary of the discussion and deliberations with Traxys N.A. (aka: E.E.C.) on a Power Purchase Agreement. The Power Purchase Agreement was a legal contract between Traxys N.A. and the City and was used to define how energy will be provided to the City to include the terms of delivery, pricing and guarantees. (See Attachment – B)

- Reviewed Load forecasting error, on page 5, which was going to be deleted;
- City had the right to find another buyer if the Traxys deal fell through.

**Reiss Coal Dock Storage Agreement.** Manager O'Toole provided an update and summary of the discussion and deliberations with the Reiss Coal Company on an assignable coal dock storage agreement to Traxys N.A. (aka: E.E.C.). (See Attachment – C)

- This was a one year agreement. It was advised, the City coal should be gone by the end of the agreement.

**GENERAL PUBLIC COMMENT - None**

**COUNCIL/COMMITTEE, STAFF REPORTS - None**

**ADJOURNMENT**

Hearing no further public comment, or further reports from the Electrical Advisory Committee and Council, the meeting adjourned at 7:11 p.m.

Respectfully submitted,

Robert S. Richards, CMC  
City Clerk

Approved: \_\_\_\_\_  
Gilbert X. Cheves, Mayor

**DRAFT: FOR DISCUSSION PURPOSES ONLY**  
**DATE OF DRAFT: November 9, 2010**

**MUTUAL TERMINATION OF THE  
GENERATING AGREEMENT**

This Termination of the Generating Agreement (Termination Agreement), dated as of November \_\_, 2010, is entered into between the City of Escanaba, a Michigan municipal corporation (Owner), and Upper Peninsula Power Company, a Michigan corporation (Operator).

WHEREAS, Operator owns and operates electric facilities and is engaged in the generation, transmission, distribution, and sale of electric energy and capacity in the State of Michigan, and

WHEREAS, Owner owns electric facilities and is engaged in the generation, transmission, distribution, and sale of electric energy in and around Escanaba, Michigan, and

WHEREAS, the electric facilities of Operator and Owner are interconnected at the Delta Substation, which is owned by Operator and in which American Transmission Company, LLC (ATC) has assets, and

WHEREAS, Operator and Owner are parties to that certain Joint Ancillary Service Tariff dated January 1, 2008 (JAST), which governs their interconnection, and

WHEREAS, Operator and Owner are parties to that certain Dispatch Service Agreement dated September 8, 1988, which was cancelled and replaced with an Amended and Restated Energy Services Agreement dated as of November 12, 2009 (ESA), which ESA remains in effect between the parties, and

WHEREAS, Operator and Owner are parties to that certain Inter-Control Center Communication Protocol Services Agreement dated as of November 30, 2009 (ICCP Agreement), and

WHEREAS, Owner owns two (2) coal- and fuel oil-fired generating units, each having a nominal rated output of 12,650 kW, located on property owned by the Owner, situated on the shore of Lake Michigan in the City of Escanaba (the Plant), and one oil-fired General Electric 17,812 kW MS 5001 LA turbine S/N 179401 and one oil-fired General Electric 21,176 KVA air cooled generator S/N 8384301,

located on property owned by the Owner, situated on the shore of Lake Michigan in the City of Escanaba (collectively, the CT), and the Plant and the CT are the generating facilities that comprise the Escanaba Generating Station (Generating Facilities), and

WHEREAS, Owner owns a substation located within the Generating Facilities (Owner Substation), and

WHEREAS, Operator currently operates and maintains the Generating Facilities on behalf of Owner under a Generating Facilities Operating Agreement (Generating Agreement) dated December 12, 1986 and amended as of May 22, 2002, and

WHEREAS, Owner has provided Operator of a notice of termination of the Generating Agreement dated June 4, 2008 (Termination Notice), with termination thereof to be effective June 5, 2011, and

WHEREAS, the Owner desires to enter into an operating agreement with Escanaba Electric Company LLC (EEC) to be effective as of December 15, 2010 (EEC Operating Agreement), under which EEC will operate and maintain the Generating Facilities, and as such Operator's services under the Generating Agreement will no longer be needed after December 14, 2010, and

WHEREAS, notwithstanding the Termination Notice, it is in the interest of both Operator and Owner to mutually terminate the Generating Agreement effective at 11:59:59 p.m. e.s.t. on December 14, 2010, and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

## ARTICLE I REPRESENTATIONS

1.1. Operator Representations. Operator represents and warrants to Owner as follows:

(a) Operator is a corporation duly organized under the laws of the State of Michigan. Operator has all necessary power and authority to enter into and perform its obligations under this Termination Agreement.

(b) The execution, delivery and performance of this Termination Agreement by Operator (i) have been duly authorized by all requisite

corporate action, (ii) do not require any approval, except as has been heretofore obtained, from the board of directors or shareholders of Operator, (iii) to the best of Operator's knowledge will not conflict with any provisions of Applicable Law, and (iv) will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected. As used herein, "Applicable Law" shall mean any law, rule, regulation, requirement, guideline, permit or order of any federal, state or local agency, court or other governmental body having jurisdiction, applicable from time to time, over the parties, the Generating Facilities, the Site, the services provided under the Generating Agreement, or any other transaction contemplated hereby (including but not limited to the common law, and including without limitation any of the foregoing which concern health, safety, environmental protection, non-discrimination or the payment of prevailing wages); and "Site" shall mean the real estate parcels owned by Owner on which the Generating Facilities are located.

(c) The execution and delivery by Operator of this Termination Agreement do not require the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of any governmental authority which has not previously been accomplished.

(d) Except for the items identified in Schedule 1.1 attached hereto, there is no action, suit or proceeding, at law or in equity, or official investigation by or before any governmental authority, arbitral tribunal or other body pending or, to the knowledge of Operator threatened, against or affecting Operator or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on Operator's ability to perform its obligations under this Termination Agreement or on the validity or enforceability of this Termination Agreement.

(e) Except for the items identified on Schedule 1.2 attached hereto, Operator has as of the date hereof received no notice from governmental authorities or any other person of a violation of any Applicable Law at the Site, including without limitation, any Applicable Laws pertaining to the protection of the environment.

1.2. Owner Representations. Owner represents and warrants to Operator as follows:

(a) Owner is a municipal corporation duly organized under the laws of the State of Michigan. Owner has all necessary power and authority to carry on its business as presently conducted, to own or hold its properties and to enter into and

perform its obligations under this Termination Agreement.

(b) The execution, delivery and performance of this Termination Agreement by Owner (i) have been duly authorized by all requisite corporate/governmental action, (ii) do not require any approval, except as has been heretofore obtained, from any elected or appointed official or other authority responsible for governing and/or managing Owner, (iii) to the best of Owner's knowledge will not conflict with any provisions of Applicable Law, and (iv) will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any covenant, agreement, resolution, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected, including without limitation the charter and organizational documents of Owner.

(c) The execution and delivery by Owner of this Termination Agreement do not require the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of any governmental authority which has not previously been accomplished.

(d) Except for the items identified on Schedule 1.2 attached hereto, there is no action, suit or proceeding, at law or in equity, or official investigation by or before any governmental authority, arbitral tribunal or other body pending or, to the knowledge of Owner threatened, against or affecting Owner or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on Owner's ability to perform its obligations under this Termination Agreement or on the validity or enforceability of this Termination Agreement.

(e) Except for the items identified on Schedule 1.2 attached hereto, Owner has as of the date hereof received no notice from governmental authorities or any other person of a violation of any Applicable Law at the Site, including without limitation, any Applicable Laws pertaining to the protection of the environment.

(f) Owner has purchased and currently maintains property and general liability insurance covering the Generating Facilities as provided under section 2.8 of the Generating Agreement, and Owner will continue to maintain such insurance in full force and effect, including any necessary tail coverage.

## ARTICLE II

## ITEMS RESOLVED

2.1. Termination of Generating Agreement. Operator and Owner hereby mutually and collectively agree that the Generating Agreement shall terminate on December 14, 2010 at 11:59:59 p.m. e.s.t., and upon that date and time Operator shall cease providing services under the Generating Agreement, and after that date and time Operator shall no longer have any duties or responsibilities under the Generating Agreement.

2.2. Representatives.

(a) Operator and Owner each shall designate a representative to address matters relating to the administration of the terms of this Termination Agreement. The initial representative for Operator (Operator's Representative) shall be Assistant Vice President of Energy Supply Operations – Howard Giesler, and the initial representative for Owner (Owner's Representative) shall be the City Manager – James O'Toole.

(b) Owner's Representative shall have authority to make decisions which shall be binding and enforceable against Owner. Subject to Section 5.3, Operator's Representative shall have authority to make decisions which shall be binding and enforceable against Operator.

2.3 Other Agreements. The JAST, ESA and ICCP Agreements shall survive the termination of the Generating Agreement and continue in full force unless and until they are terminated pursuant to their own terms.

2.4 Substation Assets.

(a) The assets identified in Schedule 2.4(a) attached hereto are located within the Owner Substation but are solely owned by Operator (Operator Assets). Effective as of the time of termination of the Generating Agreement, Operator shall sell and transfer all of its right, title and interest in the Operator Assets to Owner for the purchase price set forth in Schedule 2.4(a) pursuant to a bill of sale and mortgage release in the form included as part of Schedule 2.4(a).

(b) The assets identified in Schedule 2.4(b) attached hereto are located within the Owner Substation but are co-owned by Operator and ATC (Operator/ATC Assets). Owner and Operator agree to cooperate and work with ATC in order to sell and transfer Operator's ownership interest in the Operator/ATC Assets to

Owner effective as of the time of termination of the Generating Agreement or as soon as possible thereafter as is practicable.

(c) Easements. Owner and Operator agree to grant by November 20, 2010, easements, each to the other, for necessary assets remaining in each other's sub-stations (Owners and Delta Substation referenced herein).

2.5 Environmental Liability. Operator shall have no liability to Owner for any environmental contamination, clean-up of such contamination, environmental property damage, or any other environmental matters whatsoever: (i) that were identified in the Phase I Environmental Site Assessment for the Escanaba Generating Station Property prepared by Environmental Consulting & Technology, Inc. dated January 29, 2010; or (ii) that were identified in the Phase II Environmental Site Assessment for the Escanaba Generating Station Property prepared by Weston Solutions of Michigan, Inc. dated July, 2010 (the Phase II); or (iii) that relate to potential areas, potential sources, or potential contaminants that were within the scope of the Phase II investigation; or (iv) that were otherwise known to the Owner as of the date hereof; whether under the Generating Agreement, under any Applicable Law, or otherwise, and Owner hereby waives any and all claims against Operator for any such contamination, clean-up, property damage and other environmental matters, including but not limited to such claims related to Hazardous Materials generated, transported, stored or used in the operation or maintenance of the Generating Facilities or at the Site or any environmental condition present at, above or below the Generating Facilities.

As used herein, "Hazardous Materials" means any pollutant, chemical, contaminant, hazardous or toxic substances or wastes, pollutants, contaminants, or any constituent thereof, that is regulated, limited or prohibited in any manner pursuant to Environmental Law, including, without limitation, petroleum products, petroleum by-products, asbestos, special waste, universal waste, coal combustion by-product, radioactive material or waste, and polychlorinated biphenyls.

2.6 Employee Liability. Operator performs many of its obligations under the Generating Agreement through its employees who are unionized members of Local 510 (the Local 510 Employees). Owner acknowledges that, in connection with the termination of the Generating Agreement and the contemplated performance of operation and maintenance services at the Generating Facilities by EEC commencing on December 15, 2010, the Operator will provide final layoff notices to the Local 510 Employees on or before November 14, 2010, with such notices to be effective upon termination of the Generating Agreement (excluding any such employees who have and timely exercise "bumping rights" to remain employed by

Operator). The Owner hereby accepts, and agrees to indemnify Operator against, all liability for any workers compensation claims of any employee for work related injuries that occur before December 15, 2010.

2.7 Customer Liability. The Owner accepts and shall be responsible for all liability for meter back-billing and any and all Midwest Independent Transmission System Operator, Inc. (MISO) or ATC resettlements associated with the Generating Facilities, including without limitation any such back-billing and resettlements relating to the period prior to the termination of the Generating Agreement.

2.8 Final Invoice. Operator shall continue to perform its obligations under the Generating Agreement until it terminates on December 14, 2010, and Owner shall remain responsible to pay and reimburse Operator for all costs, expenses and other amounts incurred and owing under the Generating Agreement. By no later than April 15, 2011, Operator shall provide Owner with a final invoice for all costs and expenses incurred by Operator in the operation and maintenance of the Generating Facilities and not previously invoiced, and all other amounts that remain owing to Operator under the Generating Agreement; these costs and expenses shall include, without limitation, those identified in section 2.3 of the Generating Agreement. Owner shall pay this final invoice within ten days after receipt thereof.

2.9 Operator Payment. In consideration for early termination of the Generating Agreement, Owner shall pay to the Operator \$317,500 in lieu of the management fee that would have been payable had the Generating Agreement not been terminated early, Unamortized Costs to Benefit Plans, 2011 Employee Accrued Vacation and the Substation Assets identified in Schedule 2.4(a) and 2.4(b). Owner shall make this payment no later than December 31, 2010.

2.10 Unamortized Costs to Benefit Plans. As a result of the termination of the Generating Agreement, Operator has retained approximately \$237,300 (Benefit Amount) in unrecognized employee pension and benefit costs associated with services performed under the Generating Agreement.

2.11 Contracts. Schedule 2.11 attached hereto identifies certain contracts entered into by Operator in connection with performing its obligations under the Generating Agreement (Operator Contracts). Owner acknowledges that Operator will terminate or cancel all of the Operator Contracts effective not later than December 14, 2011, and that Owner or EEC will be responsible for entering into such agreements as are necessary to facilitate the operation and maintenance of the Generating Facilities on and after December 15, 2010. Operator will not be assigning any contracts, or rights under any contracts, to Owner or EEC.

## ARTICLE III

## TERMINATION; INDEMNIFICATION

3.1 No Obligations after Termination. Subject to Section 3.2(b) below, all obligations, duties and responsibilities of Operator under or in connection with the Generating Agreement shall terminate and become unenforceable effective upon termination of the Generating Agreement as provided herein on December 14, 2010:

3.2 Indemnification.

(a) Except as provided in Section 3.2(b) below, Owner shall indemnify Operator and its managers, officers, directors, agents, employees, members and representatives, licensees, invitees, successors and assigns from and against any and all losses, costs, expenses, damages, claims, and liabilities (including, without limitation, reasonable attorneys' fees and other costs of defending any action) (collectively, "Damages") which any of them may incur as a result of any claim arising out of or in connection with the Generating Agreement, the services provided by or on behalf of Operator under the Generating Agreement prior to the termination of that Agreement, the Generating Facilities or the Site, including without limitation any claim for personal injury, death, damage to property, or environmental liabilities.

(b) Operator shall indemnify Owner and its managers, officers, agents and employees from and against any and all Damages which any of them may incur as a result of any claim for personal injury, death, or damage to property, but only to the extent such Damages (i) arise out of or in connection with the operation of the Generating Facilities under the Generating Agreement prior to its termination, and (ii) result from the negligence of Operator, and (iii) in the case of environmental liability claims, are not or have not been waived by Owner under Section 2.5 above.

(c) A party entitled to indemnification hereunder shall keep the indemnifying party apprised of the status of all claims with respect to which it is entitled to indemnification, and shall not settle any such claim without the consent of the indemnifying party, such consent not to be unreasonably withheld or unduly delayed.

## ARTICLE IV

## NEW O&amp;M AGREEMENT

4.1 EEC Operating Agreement. Owner presently intends to negotiate and enter into the EEC Operating Agreement with EEC sufficiently far in advance of December 15, 2010, so as to allow EEC to transition smoothly into its role of providing operation and maintenance services for the Generating Facilities commencing at 12:00:00 a.m. e.s.t. on December 15, 2010. Owner shall notify Operator in writing when the EEC Operating Agreement has been executed by Owner and EEC and shall provide Operator with a copy of said EEC Operating Agreement.

4.2 New O&M Agreement. It is specifically understood and agreed by Owner and Operator that the Generating Agreement shall terminate as and when provided in Section 2.1 above, and that all other provisions of this Agreement shall be fully effective, whether or not Owner and EEC enter into the EEC Operating Agreement, and whether or not EEC ever performs services for Owner with respect to the Generating Facilities. If Owner and EEC do not enter into the EEC Operating Agreement prior to December 15, 2010, Operator hereby confirms that it will be willing to provide operation and maintenance services for the Generating Facilities commencing on December 15, 2010, but only on the following conditions: (i) such operation and maintenance services shall be provided under a new operation and maintenance agreement (New O&M Agreement) to be negotiated that is in form and substance mutually acceptable to Operator and Owner (it being understood that an agreement substantially in the form of the Generating Agreement will not be acceptable to Operator); and (ii) Operator must be notified by Owner in writing by no later than November 30, 2010 if Owner wishes to enter into a New O&M Agreement, so as to allow sufficient time for the parties to negotiate a mutually acceptable New O&M Agreement.

## ARTICLE V

## MISCELLANEOUS

5.1 Governing Law. This Termination Agreement shall be governed by the laws of the State of Michigan, without regard to its choice of law rules.

5.2 Interpretation. This Termination Agreement, including the schedules attached hereto, constitutes the entire agreement between the parties hereto with respect to the termination of the Generating Agreement and the other

transactions expressly addressed herein. This Termination Agreement supersedes all prior or contemporaneous understandings and agreements among the parties, whether written or oral, with respect to the transactions contemplated by this Termination Agreement, including, without limitation, the termination of the Generating Agreement. Other than the Generating Agreement and notwithstanding anything in this Termination Agreement to the contrary, the Parties agree and acknowledge that this Termination Agreement shall not supersede terms of any other agreement between Owner and Operator.

5.3. Amendments and Waivers. This Termination Agreement may be amended only by a written instrument signed by a duly authorized representative of each of Operator and Owner. Operator's Representative is not authorized to amend any of the terms of this Termination Agreement. The failure of either party to insist on one or more occasions upon the strict performance of the obligations owed it by the other party hereunder shall not waive or release such party's right to insist on strict performance of such obligation or any other obligation in the future.

5.4. Notices. All notices given to either of the parties pursuant to or in connection with this Termination Agreement shall be in writing, shall be delivered by hand, by certified or registered mail, return receipt requested, by confirmed facsimile transmission, or by Federal Express, Express Mail, or other internationally recognized overnight carrier. Notices are effective when received. Notice addresses are as follows:

If to Operator:      Upper Peninsula Power Company  
                              500 N. Washington St.  
                              Ishpeming, MI 49849  
                              Fax: 906-485-2429  
                              Attention: Assistant Vice President Energy  
                              Supply Operations

If to Owner:            City of Escanaba  
                              410 Ludington St.  
                              P.O. Box 948  
                              Escanaba, MI 49829  
                              Attention: City of Escanaba Manager

5.5. Change of Address. Either party may, by written notice to the other party given in accordance with the foregoing, change its address for notices.

5.6. Successors; Assignment. This Termination Agreement shall be

binding upon the parties and their respective successors and permitted assigns. No party shall make any sale, assignment, mortgage, pledge, or other transfer of all or any portion of its rights or obligations under this Termination Agreement, whether voluntarily or involuntarily, by operation of law or otherwise, without the prior written consent of the other party; provided, however, that Operator may assign this Termination Agreement to any corporate affiliate of Operator without the prior written consent of Owner.

5.7. Severability. If any portion of this Termination Agreement is held to be invalid or unenforceable, the balance of the Termination Agreement shall be enforced without regard to such invalid or unenforceable provision.

5.8. Counterparts. This Termination Agreement may be signed in counterparts; each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

5.9. Further Assurances. Each party agrees to execute and deliver any such instruments and to perform any such acts as may be necessary or reasonably requested by the other in order to give full effect to the terms of this Termination Agreement.

IN WITNESS WHEREOF, Owner has caused this Termination Agreement to be duly executed and delivered in its name and behalf by its Mayor and its corporate seal to be hereunto affixed and attested by its Clerk, each thereunto duly authorized; and Operator has caused this Termination Agreement to be duly executed and delivered in its name and behalf by its Senior Vice President, Energy Delivery and Customer Service and its corporate seal to be hereunto affixed and attested by its Secretary, each thereunto duly authorized, all as of the day and year first above written.

OWNER:

CITY OF ESCANABA

By: \_\_\_\_\_  
Name:  
Title: City of Escanaba - Mayor

Attest:

\_\_\_\_\_  
City Clerk

OPERATOR:

UPPER PENINSULA POWER COMPANY

By: \_\_\_\_\_  
Name: Barbara Nick  
Title: Senior Vice President, Energy Delivery and  
Customer Service

Attest:

\_\_\_\_\_  
Secretary

Schedule 1.1

See items identified in Schedule 1.2

Schedule 1.2

1. The MDEQ issued to the Owner a letter of violation dated January 25, 2008, related to the Generating Facilities. In connection with this letter of violation, Owner and the MDEQ entered into a Consent Decree that was signed by the MDEQ on July 10, 2009.
2. The United States Environmental Protection Agency issued a Request to Provide Information Pursuant to the Clean Air Act, dated July 31, 2009, to Operator. Operator has cooperated with the Owner in responding to this Request.
3. Sierra Club issued a Freedom of Information Act request to the Owner dated September 11, 2009, requesting information relating to work orders, monitoring data and reports for the Generating Facilities. Operator has cooperated with Owner in responding to this Request.

Schedule 2.4(a)

## Escanaba 69 Sub UPPCO Assets

Location	Vintage	Description	UPPCO Net Book Value
Escanaba 69 Substation - 418000 - 670	1974	Audio Tone - Lot Unit Control, Telemetering & Audio Tone Equipment*	1,582.65
Escanaba 69 Substation - 418000 - 670	1973	Audio Tone - Unit Control, Telemetering & Audio Tone Equipment*	506.58
Escanaba 69 Substation - 418000 - 670	1958	Bus & Conductors	71.19
Escanaba 69 Substation - 418000 - 670	1989	Cable & Connections	1,691.17
Escanaba 69 Substation - 418000 - 670	1958	Feet of Control Cable	108.44
Escanaba 69 Substation - 418000 - 670	1958	Foundation - Transformer Base and Piers	119.77
Escanaba 69 Substation - 418000 - 670	1996	RTU - SCADA : MPR-7050B RTU with Associated Equipment	11,936.41
Escanaba 69 Substation - 418000 - 670	1996	RTU Addition	6,374.65
Escanaba 69 Substation - 418000 - 670	1958	Steel Structures - 1 Lot	90.12
Escanaba 69 Substation - 418000 - 670	1958	Switch - Control	1.35
Escanaba 69 Substation - 418000 - 670	1997	Transducers	3,231.19
Escanaba 69 Substation - 418000 - 670	1996	Transducers	7,468.63
			<b>33,182.15</b>

\* Includes transfer trip equip on Esc#1 69KV Line

Schedule 2.4(b)

## Escanaba 69 Sub - UPPCO - ATC Joint Assets

Location	Vintage	Description	UPPCo Net Book Value
Escanaba 69 Substation - 418000 - 670	1976	Relay & Control Panel OCB 695	74.41
Escanaba 69 Substation - 418000 - 670	1958	Relay & Control Panel OCB 695	517.98
Escanaba 69 Substation - 418000 - 670	1962	Relay & Control Panel OCB 695	3.26
Escanaba 69 Substation - 418000 - 670	1965	Relay & Control Panel OCB 695	0.98
Escanaba 69 Substation - 418000 - 670	1989	Relay : Westinghouse IRD-8	1,678.32
			<u>2,274.95</u>

Schedule 2.11

<b>Vendor</b>	<b>Service provided and terms(contract or PO when service provided)</b>
ABLE TECHNOLOGY	safety valve repairs- write PO as needed
AECOM USA INC	Environmental consulting -write PO as needed
ALSTOM POWER INC	stoker parts- write PO as needed
AMERICAN WELDING & GAS	Contract in place - welding gases
ARJAY AUTOMATION INC	Instrumentation supply write PO as needed
AT&T MOBILITY	phones
AUTOMATION PRODUCTS INC	no contract
BASLER ELECTRIC CO	new generator exciter purchase spring 2010(Jay 1815)
BAYVIEW TRUCK & AUTO SERVICE INC	dump truck and loader repairs write PO as needed
BEAUMONT BIRCH SUPPLY CO INC	parts supply, write PO as needed
BICHLER GRAVEL & CONCRETE CO	gravel supply write PO as needed
BOSK CORP.	PO written as needed(vacuuming, labor)
CHAMPION CHARTER SALES & SERVICE	equipment supply write PO as needed
CHATFIELD MACHINE CO	machining write PO as needed
CITY OF ESCANABA	water/sewer bill
CONGER INDUSTRIES INC	fork truck repairs write PO as needed
COOPER OFFICE EQUIPMENT INC	copy machine lease(plant will buy copier)
CR MEYER & SONS CO	labor for turbine overhaul(rates on file, write PO as needed)
DETROIT STOKER CO	stoker parts write PO as needed
DIAMOND POWER INTERNATIONAL INC	soot blower parts write PO as needed
DIAMOND POWER SPECIALTY CO	soot blower parts write PO as needed
ECOLAB INC	chemical supply open PO with set pricing
EK DRIVER TESTING	CDL testing for employees write PO as needed
EMERSON PROCESS MANAGEMENT	instrumentation supply write PO as needed
ESKY QUICK LUBE	local oil change as needed open PO
FEDEX FREIGHT	parts shipment no contract
FUREY FILTER & PUMP INC	pump/filter supplier PO as needed
GERARD CHIMNEY CO	gunnite purchase order for stack repair, no open PO
GRAINGER INC	parts catalog purchases

GREAT LAKES TV SEAL INC	borescope services write PO as needed
H2O IN MOTION INC	lab testing write PO as needed
HALRON LUBRICANTS INC	lubricants write PO as needed
HAWK MTN LABS INC	environmental testing, write PO as needed
HYDRITE CHEMICAL CO	chemical supply open PO with set pricing
INDUSTRIAL MAINTENANCE SERVICE INC	local labor for boiler work write PO as needed
JACOBS ENGINEERING GROUP INC	Engineering support(stack work), write PO as needed
JOHNSTON PRINTING & OFFSET	log book supply, write PO as needed
KLENZOID EQUIPMENT CO	water treatment membranes write PO as needed
KOBAS ELECTRIC CO INC	electrical contractor write PO as needed
MICHIGAN DEPT OF ENERGY LABOR & ECONOMIC	no contract
MICHIGAN DEPT OF NATURAL RESOURCES	no contract
MIRON CONST CO INC	stack work, no open purchase order
MI VAN DAMME TRUCKING INC	dust control chemical application open PO with pricing
NALCO CO	boiler chemicals open PO with pricing
NET LEC LLC	phone services
NEUNDORFER INC	precipitator inspection write PO as needed
NEXUS SOLUTIONS	opacity monitor software maintenance, contract expires 3/2011
NORTHERN MACHINING & REPAIR INC	local machining - write PO as needed
NORWAY SPRINGS INC	drinking water - open PO with pricing
NOVASPECT INC	distributed control system service open PO
OSGOOD STOKER CONSULTING CO	stoker grate consultant write PO as needed
OSI ENVIRONMENTAL INC	oil and grease disposal, contract in place
PEARSON ASBESTOS	asbestos abatement - open PO with rates in place
POMPS TIRE SERVICE INC	local tire pay as needed
POWER INDUSTRY CONSULTANTS INC	Dave Myer's services - contract in place through 12/14/2010
REGENCO	turbine repairs from spring 2010 - PO is with WPSC
RICHERS REFRIGERATION & AIR CONDITIONING	no contract, write PO as needed
ROLAND MACHINERY	heavy equipment repair - write PO as needed
ROY NESS CONTRACTING & SALES INC	carpentry and masonry - write PO as needed
SICK MAI HAK INC	opacity monitor service - write PO as needed
STATE OF MICHIGAN	boiler inspection services for operating certificate
STENBERG BROTHERS INC	septic tank pumping - open PO with rates

STROPICH OIL CO	vehicle maintenance - write PO as needed
TELNET WORLDWIDE INC	telecom provider
THE JAMAR CO	outage repairs to boiler and plant - write PO as needed
THE PLUM COMPANY	Stoker repairs/parts write PO as needed
TIMBERLAND ENGINEERING INC	local engineering firm write PO as needed
TRIMEDIA CONSULTANTS	local engineering firm write PO as needed
UNITED CONVEYOR SUPPLY CO	ash disposal parts/services write PO as needed
UP ENVIRONMENTAL SERVICES	boiler water disposal write PO as needed
UPS	package delivery services
VAN ERT ELECTRIC CO INC	electrical contractor use PO as needed
VERIZON WIRELESS	phone services
WASTE MANAGEMENT CORP	garbage pickup corporate contract in place
WERNER ELECTRIC SUPPLY CO	electrical parts write PO as needed
WOS OPTICAL	employee prescription safety glasses corporate contract in place
YOKOGAWA CORP OF AMERICA	instrumentation write PO as needed
Z&R ELECTRIC SERVICE INC	motor and breaker repairs write PO as needed

### Confirmation

This Confirmation shall confirm the Transaction agreed to on November \_\_, 2010, between the Escanaba Electric Company L.L.C. ("EEC" the "Seller") and the City of Escanaba (the "City" or "Buyer"), EEC and the City, collectively referred to herein as the "Parties"

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WHEREAS, the City wishes for Seller to supply the City with all of the City's requirements for Aggregate Planning Resource Credits ("APRCs"), energy and an option to purchase renewable energy credits to serve the City's load (the "Requirements");

WHEREAS, Seller desires to supply such Requirements; and

WHEREAS, Seller and Buyer have agreed to certain pricing, products and other terms related to the supply of such Requirements as further set forth herein.

NOW THEREFORE, the Parties agree as follows:

**Buyer:** The City of Escanaba

**Seller:** Escanaba Electric Company, L.L.C.

Deleted: and Traxys North America LLC

**Term:** Beginning Hour Ending 0100 December 15, 2010 through Hour Ending 2400 June 30, 2013.

**Condition Subsequent:** The continued effectiveness of the Parties' obligations under this Confirmation are conditioned on that the Seller has converted the Generating Assets into two biomass units that each qualify as a renewable energy source under the Act (as defined below) and such biomass units have achieved commercial operation. In the event the above condition is not satisfied or waived, Buyer shall have the right to terminate this Confirmation upon written notice to Seller, which notice shall become effective 60 days after delivery to Seller. If Buyer exercises such right, neither Party will have any further obligations under this Confirmation and this Confirmation will be of no further force or effect. Need to explain presence of "such termination" that is mentioned here -> In addition, such termination shall terminate the Plant Operating Agreement agreed to pursuant to the APA without further obligation of the Parties thereunder.

Deleted: (a) Seller closing on the purchase of those certain assets (the "Generation Assets" as defined in the APA) from the City as set forth in the Asset Purchase Agreement between the Parties dated as of \_\_\_\_\_ ("APA") by July 31, 2011; and (b)  
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**Governing Agreement:** Mid-Continent Energy Marketers Association Capacity and Energy Tariff, effective February 27, 2009 (the "MEMA Tariff").

**MISO Rules:** The Parties acknowledge and agree that the supply of electric power and energy will be administered by the Midwest Independent Transmission System

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Operator, Inc. ("MISO") under (i) its Open Access Transmission, Energy and Operating Reserve Markets Tariff (the "MISO Tariff") on file with the Federal Energy Regulatory Commission ("FERC"), as may be amended from time to time; and (ii) the MISO Business Practice Manuals, as the same may be amended, including without limitation the Resource Adequacy Business Practice Manual ("MISO Manuals" or collectively with the MISO Tariff, referred to as the "MISO Rules").

**Definitions:** Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them by either the MEMA Tariff or the MISO Rules, as applicable.

**Products:** The Seller is providing the following products as defined within this Confirmation:

Product 1 – Aggregate Planning Resource Credits and Firm (LD) Energy  
Product 2 – Renewable Energy Credits (Call Option)

Seller will source Products 1 and 2 from a Designated Network Resource that is wholly within MISO and deliverable to UPPC.ESC. Seller has no responsibility to deliver any Ancillary Services to Buyer.

**PRODUCT 1**

**Product 1A:** Aggregate Planning Resource Credits ("APRC"), as such term is defined in the MISO Rules. For clarification purposes, the Parties acknowledge and understand that, in accordance with the MISO Rules, one APRC represents one megawatt ("MW") of Unforced Capacity, as such term is defined in the MISO Rules, that qualifies to satisfy the resource adequacy requirements of Module E of the MISO Tariff.

**Quantity:** Seller shall supply Buyer with APRCs equal to Buyer's Requirements for APRCs, including applicable losses and planning reserves. Buyer will provide Seller historical load data and other data reasonably requested by Seller to allow Seller to determine Buyer's Requirements; provided, that Seller will be ultimately responsible for the actual Requirements of Buyer. Seller will provide Buyer with notification of submitting APRCs to MISO per the MISO Rules to confirm that APRC delivery was achieved in a timely manner.

**Price:** The price for APRCs is included in the Energy price set forth below.

*Confidential and Proprietary***Special Conditions related to APRCs:****1. Delivery and Receipt.**

The applicable terms and conditions regarding delivery and receipt of the Product, for the quantity set forth in the APRC Notice, shall be as specified below.

Seller shall accomplish delivery of the Product by submitting the appropriate transaction(s) in MISO's Module E capacity tracking system, or any successor system ("MECT") to electronically assign the Product to Buyer. Buyer shall accomplish receipt of the Product by confirming the appropriate transaction(s) submitted by Seller in the MECT. Seller shall submit the appropriate transaction(s) in the MECT at least five (5) Business Days prior to the Transfer Deadline (as defined below).

Notwithstanding anything to the contrary herein, with respect to each month for which APRCs are to be electronically assigned by Seller to Buyer hereunder, the Seller and Buyer shall accomplish delivery and receipt of Product for each month by submitting and confirming the appropriate transaction(s) in the MECT, by no later than fifteen (15) Business Days prior to the Resource Plan Deadline, as such term is defined in the MISO Tariff, for such month ("Transfer Deadline").

The submitting and confirming of the appropriate transaction(s) in the MECT shall be conducted by the Seller and Buyer in accordance with the requirements of the MISO Rules and other applicable rules adopted by the MISO regarding the MECT.

The Parties recognize that the Buyer has submitted APRC transactions for December 2010, January 2011 and February 2011 with respect to APRCs generated by the Generating Assets sold pursuant to the APA. The Parties agree to cooperate and coordinate efforts to ensure those APRCs that Buyer has notified MISO as being available for the above months are appropriately treated as the Buyer's APRCs pursuant to such notifications and this Confirmation.

**2. Failures to Deliver and/or Receive.**

The intent of subsection (a) and (b) below is to make a party economically whole in the case where the other party failed to deliver or to receive the contracted Quantity of APRCs, as set forth in the APRC Notice.

(a) Seller's Failure to Deliver. In the event that: (i) Seller fails to deliver all or part of the Product by five (5) Business Days prior to the Transfer Deadline, and such failure is not excused by Buyer's failure to perform; (ii) Buyer provides notice of such failure to Seller at least nine (9) Business Days prior to the Resource Plan Deadline; and (iii) Seller fails to cure such failure within one (1) Business Day after notice from the Buyer, then Seller shall pay Buyer, within five (5) Business Days of invoice receipt, an amount equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price and multiplying such positive difference, if any, by

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the portion of the Quantity Buyer purchased in the bilateral market or MISO Voluntary Capacity Auction as a result of Seller's failure to deliver, plus any Financial Settlement Charges (as defined in the MISO Resource Adequacy Business Practice Manual) or similar MISO charges that may be assessed to Buyer as a result of Seller's failure to deliver all or part of the Product.

In the event that: (i) Seller fails to deliver all or part of the Product by five (5) Business Days prior to the Transfer Deadline, and such failure is not excused by Buyer's failure to perform; and (ii) Buyer fails to provide notice of such failure to Seller at least nine (9) Business Days prior to the Resource Plan Deadline, then Seller shall pay Buyer, within five (5) Business Days of invoice receipt, the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price and multiplying such positive difference, if any, by the portion of the Quantity Buyer purchased in the bilateral market or MISO Voluntary Capacity Auction as a result of Seller's failure to deliver.

Buyer shall use commercially reasonable efforts to purchase replacement Product for the portion of the Quantity which Seller failed to deliver.

The invoice from Buyer to Seller for any amount owed by Seller to Buyer pursuant to this provision shall include a written statement explaining in reasonable detail the calculation of such amount. The Parties acknowledge and agree that with respect to this Product only, Section 2.47 of the MEMA Tariff shall be amended to delete all references to "at the Delivery Point" and "to the Delivery Point" contained in such section.

**(b) Buyer's Failure to Receive.**

In the event that Buyer fails to receive all or part of the Product by the Transfer Deadline, and such failure is not excused by Seller's failure to perform, then Buyer shall pay Seller, within five (5) Business Days of invoice receipt, an amount equal to the positive difference, if any, between (1) the Contract Price multiplied by the portion of the Quantity Buyer failed to receive less (2) the portion of the Quantity Buyer failed to receive which Seller sold into the bilateral market or the MISO Voluntary Capacity Auction multiplied by the applicable Sale Price.

Seller shall use commercially reasonable efforts to sell Product Buyer failed to receive for the portion of the Quantity which Buyer failed to receive.

The invoice from Seller to Buyer for any amount owed by Buyer to Seller pursuant to this provision shall include a written statement explaining in reasonable detail the calculation of such amount. The Parties acknowledge and agree that with respect to this Product only, Section 2.49 of the MEMA Tariff shall be amended to delete all references to "at the Delivery Point" contained in such section.

**(c) Limitation of Remedies.** The Parties acknowledge and agree that the remedies set

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forth herein regarding failures to deliver/receive APRCs shall supersede and replace Section 4.1 and Section 4.2 of the MEMA Tariff with respect to APRCs only.

**Product 1B:** Firm (LD) Energy

**Delivery Point:** UPPC.ESC

**Quantity:** Seller shall supply Buyer with Firm (LD) Energy equal to Buyer's Requirements for Energy, including applicable losses and congestion. Buyer will provide Seller historical load data and other data reasonably requested by Seller to allow Seller to determine Buyer's Requirements. The parties shall share equally any penalties arising from inaccuracies due to scheduled events caused by Buyer; notwithstanding any of the above it is the responsibility of the Buyer to inform Seller of any scheduled outages, or other events in order to minimize such penalties.

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**Price:** The price for APRCs and Firm (LD) Energy is \$66/MWh delivered to the Delivery Point as set forth in this Confirmation free and clear of any liens, security interests, claims and encumbrances.

Deleted: ed by Seller to allow Seller to determine Buyer's Requirements; provided, that Seller will be ultimately responsible for the actual Requirements of Buyer and shall be responsible for any charges or credits related to load forecast inaccuracy from the MISO settlement statements (including without limitation excessive energy amount and non-excessive energy amount charges).

**Scheduling:** The MISO Day Ahead Schedules for Firm (LD) Energy under this Confirmation shall be made in the MISO Day Ahead Energy Market as follows: the Seller and Buyer shall arrange a Financial Bilateral Transaction ("FINSCH") at the Delivery Point for Firm (LD) Energy using standard MISO Day Ahead scheduling practices. The Seller shall submit such FINSCH no later than 9:00 a.m. EST of the business day prior to the schedule day. The Buyer is not required to confirm the FINSCH prior to the schedule day.

If the Day Ahead Schedule is short of the actual load Requirements of the Buyer, then Seller and Buyer shall arrange a FINSCH at the Delivery Point for Firm (LD) Energy using standard MISO Real Time schedule practices selling Buyer such deficiency at the Price set forth above.

If the Day Ahead Schedule is in excess of the actual load Requirements of the Buyer, then Seller and Buyer shall arrange a FINSCH at the Delivery Point for Firm (LD) Energy using standard MISO Real Time schedule practices so that Seller retains all LMP responsibility with respect to such excess and Buyer shall not owe any amount under this Confirmation or with respect to MISO with respect to such excess.

**PRODUCT 2**

**Product 2:** Call Option - Renewable Energy Credit(s) ("RECs"), which for the purposes of this Transaction shall mean "renewable energy credits" as such term is defined

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in Mich. Comp. Laws 460.1001 (2010), as may be amended from time to time (the "Act").

For clarification purposes, the Parties acknowledge and understand that one REC represents one megawatt-hour ("MWh") of Energy generated by a "renewable energy source" as such term is defined in Mich. Comp. Laws 460.1041 (2010), as may be amended from time to time.

**Quantity:** Buyer shall have the option to require Seller to supply RECs to Buyer up to an amount equal to the amount of RECs Buyer is required to retire pursuant to the Act in any Year. Buyer shall exercise such option by providing Seller written notice of such exercise no later than 60 days prior to the prevailing deadlines applicable to retirement of RECs for such Year.

**Price:** \$8/REC delivered to Buyer as provided below.

**Delivery:** The applicable terms and conditions regarding delivery of the RECs shall be as specified below.

If Buyer has exercised its option as provided above, Seller shall, in accordance with the Michigan Renewable Energy Certification System Operating Procedures as may be amended from time to time ("Operating Rules") of the Michigan Renewable Energy Certification System ("MIRECS"), or any successor system to MIRECS, accomplish delivery of the [full Quantity for each Year] by submitting the necessary transaction(s) in the MIRECS to electronically transfer such Quantity from Seller's MIRECS account (as identified below) to Buyer's MIRECS account (as identified below) within five (5) Business Days of receipt of such exercise. Buyer shall, in accordance with the Operating Rules, accomplish receipt of the full Quantity for each Year by confirming the necessary transaction(s) submitted by Seller within [thirty (30) days] of the delivery date described above.

In accordance with Section 11.3 of the MEMA Tariff, title and risk of loss related to the Product shall transfer from Seller to Buyer when the Product is electronically transferred from Seller's MIRECS account to Buyer's MIRECS account.

MIRECS Accounts:

Seller MIRECS Account:

Buyer MIRECS Account: as provided to Buyer by written notice

**Additional Representations and Warranties related to RECs:**

Seller hereby represents and warrants to Buyer that:

- (a) it has the legal right to claim, sell and transfer to Buyer all right, title and interest to the RECs delivered to Buyer hereunder;
- (b) the RECs delivered to Buyer hereunder have not been sold or otherwise

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transferred to any person or entity other than Buyer;

(c) it has not sold, and shall not sell, more RECs, or any rights thereto, to any entity or entities (including without limitation Buyer) for a given Year encompassed by this Transaction than the amount of RECs generated by the underlying "renewable energy resource" associated with the RECs delivered to Buyer hereunder for such Year per the Act;

(d) the RECs delivered to Buyer hereunder have not otherwise expired, been retired, been redeemed or decertified and are, when delivered, valid for the Year associated therewith per the Act; and

(e) the RECs delivered to Buyer hereunder are severable from the underlying Energy associated therewith.

**Special Conditions Applicable to All Products:**

1. **[PAYMENT – see provisions in Article 7 of the MEMA]**
2. [Traxys North America LLC shall be a Guarantor for Buyer and as of the date hereof shall deliver a guaranty in the form attached hereto as Exhibit 1] Option 2 of Section 9.2 of the MEMA Tariff shall otherwise apply with respect to the Performance Assurance requirements of Seller. Section 9.2 of the MEMA Tariff shall not apply to Buyer and Buyer shall not be required to post Performance Assurance or collateral pursuant to this Confirmation.
3. "Written Confirmation" shall be the election for Article Three of the MEMA Tariff.
4. For the avoidance of doubt and notwithstanding Section 11.5 of the MEMA Tariff, Buyer may, at any time, grant, pledge, and assign a security interest in this Confirmation to its current lenders, or any future lenders, without the consent of any other Party.
5. The Parties agree that references to New York in Section 11.6 of the MEMA Tariff shall be replaced with references to Michigan.
6. The Parties agree that references to St. Paul, Minnesota in Section 11.13 of the MEMA Tariff shall be replaced with references to Escanaba, Michigan.
7. In the event that Seller fails to deliver APRCs or Firm (LD) Energy as provided herein or in the MEMA Tariff, or reasons which are not the fault of Buyer, Buyer shall be permitted to submit an invoice for damages arising from such failure to deliver and Seller will be required to pay such amount within five (5) Business Days of invoice receipt.

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IN WITNESS WHEREOF, each of the Parties have caused their duly authorized representatives to execute and deliver this Confirmation.

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TRAXYS NORTH AMERICA LLC¶  
¶  
Deleted: By: . Date:

ESCANABA ELECTRIC COMPANY L.L.C.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name:  
Title:

THE CITY OF ESCANABA

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name:  
Title:

*[NOTE: any special signature blocks needed here?]*

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DRAFT 11/9/2010

[EXHIBIT 1  
FORM OF GUARANTY]

2224103v4

FORM OF GUARANTY

This Guaranty Agreement (the "Guaranty") dated and effective as of November \_\_, 2010, is made and entered into by Traxys North America LLC ("Guarantor") in favor of the City of Escanaba ("Beneficiary").

WHEREAS, Escanaba Electric Company L.L.C. ("Company"), an affiliate of Guarantor, and Beneficiary are parties to the Confirmation dated as of November \_\_, 2010 (whether one or more, the "Agreement"); and

WHEREAS, Guarantor has benefited and in the future will directly or indirectly benefit from the Agreements to be entered into between Company and Beneficiary.

NOW THEREFORE, in consideration of Beneficiary entering into the Agreement, Guarantor hereby covenants and agrees as follows:

1. GUARANTY. Subject to the provisions hereof, Guarantor hereby absolutely, irrevocably and unconditionally guarantees the full, prompt and punctual payment, whether on demand, at stated maturity, by acceleration or otherwise, and performance of all debts, liabilities and obligations owed by the Company to the Beneficiary whenever, however or wherever incurred under or pursuant to the Agreement (the "Obligations"). This is an absolute and continuing guaranty of payment rather than a guaranty of collection. If for any reason Company shall fail to duly and punctually pay the Obligations owed by it under the Agreement, then Guarantor shall promptly pay such Obligations upon Guarantor's receipt of Beneficiary's demand.

2. NATURE OF GUARANTY. Guarantor's liability under this Guaranty is absolute and will not be affected by the existence, validity, enforceability, perfection or extent of any collateral or security for the Obligations. The Beneficiary shall not be obligated to file any claim relating to the Obligations if the Company becomes subject to a bankruptcy, reorganization or similar proceeding and the failure of the Beneficiary to do so shall not affect the Guarantor's obligations under this Guaranty.

3. SETOFFS AND COUNTERCLAIMS. Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Company is entitled arising from or out of the express terms of the Agreement, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Company, the invalidity, enforceability or illegality of the Agreement, or any other defense expressly waived hereunder.

4. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the jurisdiction of its formation and has the corporate

power and authority to execute, deliver and carry out the terms and provisions of this Guaranty;

- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of the Guarantor for the execution and delivery of this Guaranty;
- (c) this Guaranty, when executed and delivered, constitutes a valid and legally binding agreement of the Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity;
- (d) the individual signing below is authorized to bind the Guarantor to its obligations under this Guaranty; and
- (e) there are no actions, suits or proceedings pending or, to the knowledge of the Guarantor, threatened against or affecting the Guarantor before any court, governmental agency or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of the Guarantor or of the ability of the Guarantor to perform its obligations under the Guaranty.

5. SUBROGATION. Guarantor hereby agrees not to assert or enforce any right of contribution, reimbursement, indemnity, subrogation or any other right to payment from the Company as a result of Guarantor's performance of its obligations pursuant to this Guaranty until all Obligations are irrevocably paid in full. Any amount paid to the Guarantor in violation of the preceding sentence shall be held by the Guarantor for the benefit of the Beneficiary and shall forthwith be paid to the Beneficiary to be credited and applied to the Obligations.

6. NOTICES. Any demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested or by overnight courier service, as follows:

To  
Beneficiary:

To  
Guarantor:

Phone No:  
Fax No:  
with a copy to:

Phone No:  
Fax No:  
with a copy to:

Notice given by personal delivery, mail or by overnight courier service shall be effective upon receipt. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

7. WAIVERS. Guarantor hereby unconditionally waives any circumstance which might constitute a legal or equitable discharge of Guarantor, and waives any defense related thereto, including but not limited to (a) notice of acceptance of this Guaranty; (b) diligence, presentment, demand, notice of dishonor, protest, notice of any sale of collateral security and all other notices whatsoever concerning the liabilities of Guarantor; (c) any right to require that any action or proceeding be brought against Company or any other person; and (d) any requirement that Beneficiary seek enforcement of any performance against Company or any other person prior to taking any action against Guarantor under the terms hereof.

Except as to applicable statutes of limitation, no delay of Beneficiary in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder, nor shall any single or partial exercise by Beneficiary of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to Beneficiary or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Beneficiary from time to time.

Subject to the provisions hereof, Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Agreement, and Guarantor further agrees that Beneficiary, at any time and from time to time without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder, may take or fail to take any action of any kind in respect of any security for any Obligation or liability of Company to Beneficiary.

8. TERM AND TERMINATION. This Guaranty shall expire on the Termination Effective Date (as defined below). This Guaranty shall be effective until sixty (60) days after the termination or expiration of the Agreement (the "Termination Effective Date"). Any such termination shall not affect Guarantor's continuing liability with respect to any Agreement entered into or any Obligations existing or arising thereunder prior to the time of such expiration

or the effective date of termination. While this Guaranty is in effect, in the event any payment to Beneficiary in respect of the Obligations is rescinded or must otherwise be returned for any reason whatsoever, Guarantor shall remain liable hereunder in respect of such Obligations as if such payment had not been made.

9. EXPENSES. Guarantor agrees to pay to Beneficiary on demand all reasonable costs and expenses (including, without limitation, attorneys' fees) in any way relating to the enforcement or protection of the rights of the Beneficiary hereunder should Guarantor be required to pay under this Guaranty.

10. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a written instrument signed by Guarantor and Beneficiary.

11. ASSIGNMENT. This Guaranty shall be binding upon the Guarantor, its successors and assigns, and shall inure to the benefit of and be enforceable by the Beneficiary, its successors, assigns and creditors. The Beneficiary may, upon notice to the Guarantor, assign its rights hereunder without the consent of Guarantor. The Guarantor may not assign its rights, interest or obligations hereunder to any other person without the prior written consent of the Beneficiary, which consent may be withheld in its sole discretion and any purported assignment absent such consent is void.

12. MISCELLANEOUS.

(a) **THIS GUARANTY SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MICHIGAN.** The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts of Michigan in any action or proceeding arising out of or relating to this Guaranty. The Guarantor waives any objection to such jurisdiction on the grounds that it is an inconvenient forum or any similar grounds. The Guarantor consents to the service of process in any action or proceeding relating to this Guaranty by notice to the Guarantor in accordance with the notice provisions of this Guaranty. Nothing shall prevent the Beneficiary from enforcing any related judgment against the Guarantor in any other jurisdiction.

(b) **WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY.**

(c) The Guaranty embodies the entire agreement and understanding between Guarantor and Beneficiary and supersedes all prior agreements and understandings relating to the subject matter hereof.

- (d) If any provision of this Guaranty or any application thereof shall be invalid or unenforceable, the remainder of this Guaranty and any other application of such provision shall not be affected thereby.
- (e) Nothing in this Guaranty or any other document referred to herein is intended to waive any rights not specifically waived in said documents nor is intended to enlarge or modify the obligations or duties of Beneficiary.
- (f) The headings of this Guaranty are for purposes of reference only, and shall not affect the meaning hereof.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty on the \_\_\_\_ day of November, 2010, but it is effective as of the date first above written.

**GUARANTOR**

TRAXYS NORTH AMERICA, LLC

By: \_\_\_\_\_  
Name:  
Title:

The C Reiss Coal Company  
 P O Box 688  
 Sheboygan WI 53082-0688



TRADEMARK REGISTERED

### Storage Contract

<b>To:</b> City of Escanaba 410 Ludington Escanaba MI 49829  <u>Shipper Contact</u> City of Escanaba Jim O'Toole Phone: (906)786-9402 Fax: (906)789-3809	Negotiated Date: April 29, 2010  Agreement: 853995  Contract No: Storage Contract  <u>Carrier Contact</u> The C Reiss Coal Company William Jr Reiss - Marketer Phone: (920)451-8912 Fax: (920)457-4417
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The C Reiss Coal Company agrees to provide storage service to City of Escanaba per the following:

<b>PRODUCT:</b>	Coal Storage
<b>CONTRACT TERM:</b>	July 01, 2010 to December 31, 2011
<b>PAYMENT TERMS:</b>	Net 5 days from Invoice Date

<b>DELIVERY POINT:</b>	FOB CRCC-Escanaba, MI (also point of Title Transfer)
<b>DELIVERY MODE:</b>	Truck
<b>PRICE:</b>	7,500.00 \$USD/Month.

#### SPECIAL TERMS:

Coal Storage Contract for approximately 80,000 tons.

Storage charge of \$7,500/month beginning 7/1/10 thru 12/31/11. The C. Reiss Coal Company's contract performance is complete when the coal is loaded into City of Escanaba trucks.

This contract does not provide for a handling rate for inbound shipments of coal to the Reiss Escanaba dock #1 nor does it require a minimum quantity to be shipped outbound from the dock. All coal must be removed from the dock by 12/31/11 or a fee of \$1,000 per day will apply for as long as tonnage remains on the dock.

At any time, with 90 days written notice, during the contract term Reiss may require the City of Escanaba to remove the coal from Reiss Escanaba dock #1. This contract will be terminated after such 90 day notice.

Since this is a storage contract, any other coal handling charges will be separately negotiated.

Upon assignment of this Coal Storage contract to Traxys all or any portion of the coal inventory located on the Reiss Escanaba #1 dock may be sold at any time to a third party by Traxys only after Reiss is provided the opportunity to purchase such coal (right of first refusal) at the same price that was negotiated by Traxys for the sale of coal to a third party or \$70 per ton FOB Reiss Escanaba dock #1, whichever is less.

**GENERAL TERMS AND CONDITIONS:**

This agreement is subject to the attached General Terms and Conditions which are hereby incorporated into and made a part of this contract as essential terms and conditions hereof. In the event of a conflict between the general terms and conditions attached and specific provisions set forth above, the specific provisions will control.

Accepted and Agreed to this day by:

The C. Reiss Coal Company

City of Escanaba

\_\_\_\_\_  
William Jr Reiss

Date: \_\_\_\_\_

\_\_\_\_\_  
Jim O'Toole

Date: \_\_\_\_\_

THE C. REISS COAL COMPANY GENERAL TERMS AND CONDITIONS  
Coal Services ( Storage only ) Agreement

1. In the event BUYER shall fail to pay in accordance with the terms hereof, SELLER may, at its option, (1) terminate this contract, unless BUYER makes payment within five business days' after receipt of written notice, (2) suspend loadings until all indebtedness is paid in full, and/or (3) place BUYER on cash delivery basis. No cash discount will be allowed unless specified otherwise. SELLER shall be entitled to interest on past due amounts as set forth in paragraph 3 hereof.
2. SELLER shall not be liable for any demurrage unless otherwise specifically agreed.
3. Should either party (the "BREACHING PARTY") default under this Contract, the other party (the "NON-BREACHING PARTY") shall be entitled to all the rights under this Contract and, except as limited by Section 4 below, applicable law. In addition, where permitted by law, the NON-BREACHING PARTY shall be entitled to recover from the BREACHING PARTY all court costs, and reasonable attorneys' fees and expenses incurred by the NON-BREACHING PARTY incident to such proceedings and interest on past due amounts at 1.0% per month or the highest rate chargeable to the BREACHING PARTY under applicable law, if less than 1.0% per month.
4. SELLER may, from time to time, demand different terms of payment from those referred to in paragraph 2 hereof whenever it appears to SELLER, in its sole discretion, that BUYER'S financial condition requires such a change. Further, SELLER may demand assurance of BUYER'S ability to pay whenever SELLER, in its sole discretion, determines that such ability is in doubt. Any such adequate assurance shall be in the form and amount requested by Seller in its sole discretion. Such assurance may, at the option of SELLER, include, without limitation, any of the following or any combination of the following, (i) the required posting of a letter of credit as security for payment and performance (in a format and issued by a commercial bank acceptable to SELLER); (ii) cash prepayments; or (iii) corporate guarantee. ANY SUCH DEMAND MAY BE IN WRITING OR ORAL AND SELLER MAY, UPON THE MAKING OF SUCH DEMAND, SUSPEND SHIPMENTS HEREUNDER UNTIL WRITTEN ACCEPTANCE OF DIFFERING PAYMENT TERMS OR RECEIPT OF ASSURANCE OF FINANCIAL ABILITY IN A FORM ACCEPTABLE TO SELLER, WHICHEVER HAS BEEN REQUESTED, HAS BEEN RECEIVED BY SELLER. If within the period stated in such demand BUYER fails or refuses to agree to such different terms of payment or fails or refuses to give adequate assurance of ability to pay, SELLER may, at its option, treat such failure or refusal as a repudiation of the portion of this Contract which has not been fully performed. BUYER WAIVES WRITTEN NOTICE OF ANY SUCH DEMAND OR ANY SUSPENSION OR CANCELLATION
5. EXCEPT AS PROVIDED HEREIN, THERE IS NO EXPRESS OR IMPLIED WARRANTY GRANTED HEREIN CONCERNING THE SERVICES PROVIDED HEREUNDER UNLESS PROHIBITED BY LAW.
6. The amount of any future or any increase in any existing tax, fee, levy or other charge not included in the handling and storage price or otherwise paid by BUYER, imposed by any government or agency thereof upon or relating to the performance of the services hereunder shall be added to and become part of the price hereunder, shall be paid by the BUYER and shall apply to all shipments loaded thereafter unless and until further adjustment of price shall be made pursuant to the provisions of this Contract.
7. This Contract constitutes the entire agreement between parties hereto and the terms hereof shall not be altered or changed except by written agreement signed by SELLER and BUYER. THESE STANDARD TERMS AND CONDITIONS ARE DEEMED AN OFFER FOR SERVICES BY SELLER. IF BUYER DOES NOT ACCEPT THIS OFFER BY EXECUTION ON THE FACE HEREOF OR OTHERWISE IN WRITING, BUYER SHALL BE DEEMED TO HAVE ACCEPTED THIS OFFER BY DELIVERING GOODS OR TAKING DELIVERY OF GOODS STORED AND LOADED INTO TRUCK FROM SELLER. ANY ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS AND CONDITIONS WITHOUT ANY ALTERATION OR ADDITION THERETO. Notwithstanding any other provision therein to the contrary, no term in BUYER'S purchase order, SELLER'S invoice, or other document which conflicts with the terms of this Contract, including these conditions of sale, or increases either party's obligations or reduces either party's rights or remedies hereunder shall be binding unless particularly accepted by both parties in writing executed by an officer of each party.  
  
Remedies herein reserved to either party are cumulative and in addition to any other or future remedies, either party may have at law or equity. No usage of trade or prior course of dealing or performance between BUYER and SELLER shall be deemed to modify the terms of this Contract. Any provision of this Contract which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction to the extent permitted by applicable law. The parties hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.
8. The rights and duties of this Contract are not assignable or transferable by either party except that should Traxys purchase the subject coal referred to in the SA ( attached hereto ) Seller will assign this contract to Traxys.
9. Waiver by either party of any breach by the other party of the terms and conditions hereof shall not be construed as a waiver of any other or continuing breach hereunder.
10. Except for BUYER'S payment to SELLER for any services performed hereunder, SELLER and BUYER shall be excused from the performance of any obligation hereunder when the cause of such nonperformance is due to an event or condition which constitutes "force majeure" hereunder, and in such event the quantities of the goods and services so affected shall be eliminated from this Contract without liability, but this Contract shall otherwise remain unaffected. Force majeure shall be construed to include the event of war, fire, flood, strike, labor trouble from whatever cause arising and whether or not the demands of the employees are reasonable and within the party's power to concede, accident, riot, acts of God, BUYER'S plant shutdown, BUYER'S or SELLER'S equipment failure, the voluntary or involuntary compliance with any law, order, regulation or request of any governmental authority that negatively affects the ability of Seller to store or load the goods or BUYER'S ability to purchase or store such goods, including, without limitation, any compliance (i) that increases SELLER'S cost to store, handle and load BUYER'S coal or (ii) with a request for any purchase for the purpose of national security and any contingencies of like or different character.
11. BUYER assumes all risks and liabilities arising from or in connection with the presence of SELLER'S or its contractors' trucks at SELLER'S facilities, transportation of the coal from SELLER'S facilities to BUYER'S plant and use by BUYER of the coal stored hereunder. By acceptance of the coal stored hereunder BUYER shall indemnify and defend SELLER and hold it harmless from any and all losses, liabilities, damages or claims of any nature or kind, including the payment of attorneys' fees, other than those attributable to SELLER'S sole negligence, which shall arise or grow out of any injury to or death of any person (including, but not limited to BUYER and BUYER'S employees, agents, suppliers, invitees or trespassers) or damage to any property (including, but not limited to, the property of BUYER) caused by or resulting from storage, handling and loading into truck, application or use by BUYER of the coal stored hereunder.
12. In the event of default in the performance of any duty or obligation of either party or any subsidiary or affiliate of either party to the other party or any subsidiary or affiliate of the other party whether under this Contract or any other contract between the parties, or any contract between either of the parties and any subsidiary or affiliate of the other, or any contract between any subsidiary or affiliate of both parties, or in the event either party or any subsidiary or affiliate of either party becomes insolvent before satisfaction of any obligation to the other party or any subsidiary or affiliate of the other party; then, in any such event the non-breaching party or any subsidiary or affiliate of the non-breaching party may at its option and without limitation, (a) withhold any payment due the breaching party or any subsidiary or affiliate of the breaching party, (b) withhold or refuse storage and loading to or from the breaching party or any subsidiary or affiliate of the breaching party, or (c) offset and deduct from any payment or delivery of goods due the breaching party or any subsidiary or affiliate of the breaching party under this contract against any payment or delivery of goods due the non-breaching party or any subsidiary or affiliate of the non-breaching party under this contract. The foregoing specific rights shall be cumulative and alternative and shall be in addition to any other rights to which the parties may be entitled, including but not limited to damages for specific performance.
13. In the event of any litigation between the parties, the terms and provision hereof shall be construed in accordance with the laws of the State of Wisconsin. Venue shall be in the County of Sheboygan, State of Wisconsin, U.S.A.

***DRAFT: FOR DISCUSSION PURPOSES ONLY***  
***DATE OF DRAFT: November 9, 2010***

**MUTUAL TERMINATION OF THE  
GENERATING AGREEMENT**

This Termination of the Generating Agreement (Termination Agreement), dated as of November \_\_, 2010, is entered into between the City of Escanaba, a Michigan municipal corporation (Owner), and Upper Peninsula Power Company, a Michigan corporation (Operator).

WHEREAS, Operator owns and operates electric facilities and is engaged in the generation, transmission, distribution, and sale of electric energy and capacity in the State of Michigan, and

WHEREAS, Owner owns electric facilities and is engaged in the generation, transmission, distribution, and sale of electric energy in and around Escanaba, Michigan, and

WHEREAS, the electric facilities of Operator and Owner are interconnected at the Delta Substation, which is owned by Operator and in which American Transmission Company, LLC (ATC) has assets, and

WHEREAS, Operator and Owner are parties to that certain Joint Ancillary Service Tariff dated January 1, 2008 (JAST), which governs their interconnection, and

WHEREAS, Operator and Owner are parties to that certain Dispatch Service Agreement dated September 8, 1988, which was cancelled and replaced with an Amended and Restated Energy Services Agreement dated as of November 12, 2009 (ESA), which ESA remains in effect between the parties, and

WHEREAS, Operator and Owner are parties to that certain Inter-Control Center Communication Protocol Services Agreement dated as of November 30, 2009 (ICCP Agreement), and

WHEREAS, Owner owns two (2) coal- and fuel oil-fired generating units, each having a nominal rated output of 12,650 kW, located on property owned by the Owner, situated on the shore of Lake Michigan in the City of Escanaba (the Plant), and one oil-fired General Electric 17,812 kW MS 5001 LA turbine S/N 179401 and one oil-fired General Electric 21,176 KVA air cooled generator S/N 8384301,

located on property owned by the Owner, situated on the shore of Lake Michigan in the City of Escanaba (collectively, the CT), and the Plant and the CT are the generating facilities that comprise the Escanaba Generating Station (Generating Facilities), and

WHEREAS, Owner owns a substation located within the Generating Facilities (Owner Substation), and

WHEREAS, Operator currently operates and maintains the Generating Facilities on behalf of Owner under a Generating Facilities Operating Agreement (Generating Agreement) dated December 12, 1986 and amended as of May 22, 2002, and

WHEREAS, Owner has provided Operator of a notice of termination of the Generating Agreement dated June 4, 2008 (Termination Notice), with termination thereof to be effective June 5, 2011, and

WHEREAS, the Owner desires to enter into an operating agreement with Escanaba Electric Company LLC (EEC) to be effective as of December 15, 2010 (EEC Operating Agreement), under which EEC will operate and maintain the Generating Facilities, and as such Operator's services under the Generating Agreement will no longer be needed after December 14, 2010, and

WHEREAS, notwithstanding the Termination Notice, it is in the interest of both Operator and Owner to mutually terminate the Generating Agreement effective at 11:59:59 p.m. e.s.t. on December 14, 2010, and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

#### ARTICLE I REPRESENTATIONS

1.1. Operator Representations. Operator represents and warrants to Owner as follows:

(a) Operator is a corporation duly organized under the laws of the State of Michigan. Operator has all necessary power and authority to enter into and perform its obligations under this Termination Agreement.

(b) The execution, delivery and performance of this Termination Agreement by Operator (i) have been duly authorized by all requisite

corporate action, (ii) do not require any approval, except as has been heretofore obtained, from the board of directors or shareholders of Operator, (iii) to the best of Operator's knowledge will not conflict with any provisions of Applicable Law, and (iv) will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected. As used herein, "Applicable Law" shall mean any law, rule, regulation, requirement, guideline, permit or order of any federal, state or local agency, court or other governmental body having jurisdiction, applicable from time to time, over the parties, the Generating Facilities, the Site, the services provided under the Generating Agreement, or any other transaction contemplated hereby (including but not limited to the common law, and including without limitation any of the foregoing which concern health, safety, environmental protection, non-discrimination or the payment of prevailing wages); and "Site" shall mean the real estate parcels owned by Owner on which the Generating Facilities are located.

(c) The execution and delivery by Operator of this Termination Agreement do not require the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of any governmental authority which has not previously been accomplished.

(d) Except for the items identified in Schedule 1.1 attached hereto, there is no action, suit or proceeding, at law or in equity, or official investigation by or before any governmental authority, arbitral tribunal or other body pending or, to the knowledge of Operator threatened, against or affecting Operator or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on Operator's ability to perform its obligations under this Termination Agreement or on the validity or enforceability of this Termination Agreement.

(e) Except for the items identified on Schedule 1.2 attached hereto, Operator has as of the date hereof received no notice from governmental authorities or any other person of a violation of any Applicable Law at the Site, including without limitation, any Applicable Laws pertaining to the protection of the environment.

1.2. Owner Representations. Owner represents and warrants to Operator as follows:

(a) Owner is a municipal corporation duly organized under the laws of the State of Michigan. Owner has all necessary power and authority to carry on its business as presently conducted, to own or hold its properties and to enter into and

perform its obligations under this Termination Agreement.

(b) The execution, delivery and performance of this Termination Agreement by Owner (i) have been duly authorized by all requisite corporate/governmental action, (ii) do not require any approval, except as has been heretofore obtained, from any elected or appointed official or other authority responsible for governing and/or managing Owner, (iii) to the best of Owner's knowledge will not conflict with any provisions of Applicable Law, and (iv) will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any covenant, agreement, resolution, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected, including without limitation the charter and organizational documents of Owner.

(c) The execution and delivery by Owner of this Termination Agreement do not require the consent or approval of, the giving of notice to, the registration with, the recording or filing of any document with, or the taking of any other action in respect of any governmental authority which has not previously been accomplished.

(d) Except for the items identified on Schedule 1.2 attached hereto, there is no action, suit or proceeding, at law or in equity, or official investigation by or before any governmental authority, arbitral tribunal or other body pending or, to the knowledge of Owner threatened, against or affecting Owner or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on Owner's ability to perform its obligations under this Termination Agreement or on the validity or enforceability of this Termination Agreement.

(e) Except for the items identified on Schedule 1.2 attached hereto, Owner has as of the date hereof received no notice from governmental authorities or any other person of a violation of any Applicable Law at the Site, including without limitation, any Applicable Laws pertaining to the protection of the environment.

(f) Owner has purchased and currently maintains property and general liability insurance covering the Generating Facilities as provided under section 2.8 of the Generating Agreement, and Owner will continue to maintain such insurance in full force and effect, including any necessary tail coverage.

## ARTICLE II

### ITEMS RESOLVED

2.1. Termination of Generating Agreement. Operator and Owner hereby mutually and collectively agree that the Generating Agreement shall terminate on December 14, 2010 at 11:59:59 p.m. e.s.t., and upon that date and time Operator shall cease providing services under the Generating Agreement, and after that date and time Operator shall no longer have any duties or responsibilities under the Generating Agreement.

2.2. Representatives.

(a) Operator and Owner each shall designate a representative to address matters relating to the administration of the terms of this Termination Agreement. The initial representative for Operator (Operator's Representative) shall be Assistant Vice President of Energy Supply Operations – Howard Giesler, and the initial representative for Owner (Owner's Representative) shall be the City Manager – James O'Toole.

(b) Owner's Representative shall have authority to make decisions which shall be binding and enforceable against Owner. Subject to Section 5.3, Operator's Representative shall have authority to make decisions which shall be binding and enforceable against Operator.

2.3 Other Agreements. The JAST, ESA and ICCP Agreements shall survive the termination of the Generating Agreement and continue in full force unless and until they are terminated pursuant to their own terms.

2.4 Substation Assets.

(a) The assets identified in Schedule 2.4(a) attached hereto are located within the Owner Substation but are solely owned by Operator (Operator Assets). Effective as of the time of termination of the Generating Agreement, Operator shall sell and transfer all of its right, title and interest in the Operator Assets to Owner for the purchase price set forth in Schedule 2.4(a) pursuant to a bill of sale and mortgage release in the form included as part of Schedule 2.4(a).

(b) The assets identified in Schedule 2.4(b) attached hereto are located within the Owner Substation but are co-owned by Operator and ATC (Operator/ATC Assets). Owner and Operator agree to cooperate and work with ATC in order to sell and transfer Operator's ownership interest in the Operator/ATC Assets to

Owner effective as of the time of termination of the Generating Agreement or as soon as possible thereafter as is practicable.

(c) Easements. Owner and Operator agree to grant by November 20, 2010, easements, each to the other, for necessary assets remaining in each other's sub-stations (Owners and Delta Substation referenced herein).

2.5 Environmental Liability. Operator shall have no liability to Owner for any environmental contamination, clean-up of such contamination, environmental property damage, or any other environmental matters whatsoever: (i) that were identified in the Phase I Environmental Site Assessment for the Escanaba Generating Station Property prepared by Environmental Consulting & Technology, Inc. dated January 29, 2010; or (ii) that were identified in the Phase II Environmental Site Assessment for the Escanaba Generating Station Property prepared by Weston Solutions of Michigan, Inc. dated July, 2010 (the Phase II); or (iii) that relate to potential areas, potential sources, or potential contaminants that were within the scope of the Phase II investigation; or (iv) that were otherwise known to the Owner as of the date hereof; whether under the Generating Agreement, under any Applicable Law, or otherwise, and Owner hereby waives any and all claims against Operator for any such contamination, clean-up, property damage and other environmental matters, including but not limited to such claims related to Hazardous Materials generated, transported, stored or used in the operation or maintenance of the Generating Facilities or at the Site or any environmental condition present at, above or below the Generating Facilities.

As used herein, "Hazardous Materials" means any pollutant, chemical, contaminant, hazardous or toxic substances or wastes, pollutants, contaminants, or any constituent thereof, that is regulated, limited or prohibited in any manner pursuant to Environmental Law, including, without limitation, petroleum products, petroleum by-products, asbestos, special waste, universal waste, coal combustion by-product, radioactive material or waste, and polychlorinated biphenyls.

2.6 Employee Liability. Operator performs many of its obligations under the Generating Agreement through its employees who are unionized members of Local 510 (the Local 510 Employees). Owner acknowledges that, in connection with the termination of the Generating Agreement and the contemplated performance of operation and maintenance services at the Generating Facilities by EEC commencing on December 15, 2010, the Operator will provide final layoff notices to the Local 510 Employees on or before November 14, 2010, with such notices to be effective upon termination of the Generating Agreement (excluding any such employees who have and timely exercise "bumping rights" to remain employed by

Operator). The Owner hereby accepts, and agrees to indemnify Operator against, all liability for any workers compensation claims of any employee for work related injuries that occur before December 15, 2010.

2.7 Customer Liability. The Owner accepts and shall be responsible for all liability for meter back-billing and any and all Midwest Independent Transmission System Operator, Inc. (MISO) or ATC resettlements associated with the Generating Facilities, including without limitation any such back-billing and resettlements relating to the period prior to the termination of the Generating Agreement.

2.8 Final Invoice. Operator shall continue to perform its obligations under the Generating Agreement until it terminates on December 14, 2010, and Owner shall remain responsible to pay and reimburse Operator for all costs, expenses and other amounts incurred and owing under the Generating Agreement. By no later than April 15, 2011, Operator shall provide Owner with a final invoice for all costs and expenses incurred by Operator in the operation and maintenance of the Generating Facilities and not previously invoiced, and all other amounts that remain owing to Operator under the Generating Agreement; these costs and expenses shall include, without limitation, those identified in section 2.3 of the Generating Agreement. Owner shall pay this final invoice within ten days after receipt thereof.

2.9 Operator Payment. In consideration for early termination of the Generating Agreement, Owner shall pay to the Operator \$317,500 in lieu of the management fee that would have been payable had the Generating Agreement not been terminated early, Unamortized Costs to Benefit Plans, 2011 Employee Accrued Vacation and the Substation Assets identified in Schedule 2.4(a) and 2.4(b). Owner shall make this payment no later than December 31, 2010.

2.10 Unamortized Costs to Benefit Plans. As a result of the termination of the Generating Agreement, Operator has retained approximately \$237,300 (Benefit Amount) in unrecognized employee pension and benefit costs associated with services performed under the Generating Agreement.

2.11 Contracts. Schedule 2.11 attached hereto identifies certain contracts entered into by Operator in connection with performing its obligations under the Generating Agreement (Operator Contracts). Owner acknowledges that Operator will terminate or cancel all of the Operator Contracts effective not later than December 14, 2011, and that Owner or EEC will be responsible for entering into such agreements as are necessary to facilitate the operation and maintenance of the Generating Facilities on and after December 15, 2010. Operator will not be assigning any contracts, or rights under any contracts, to Owner or EEC.

## ARTICLE III

### TERMINATION; INDEMNIFICATION

3.1 No Obligations after Termination. Subject to Section 3.2(b) below, all obligations, duties and responsibilities of Operator under or in connection with the Generating Agreement shall terminate and become unenforceable effective upon termination of the Generating Agreement as provided herein on December 14, 2010.

#### 3.2 Indemnification.

(a) Except as provided in Section 3.2(b) below, Owner shall indemnify Operator and its managers, officers, directors, agents, employees, members and representatives, licensees, invitees, successors and assigns from and against any and all losses, costs, expenses, damages, claims, and liabilities (including, without limitation, reasonable attorneys' fees and other costs of defending any action) (collectively, "Damages") which any of them may incur as a result of any claim arising out of or in connection with the Generating Agreement, the services provided by or on behalf of Operator under the Generating Agreement prior to the termination of that Agreement, the Generating Facilities or the Site, including without limitation any claim for personal injury, death, damage to property, or environmental liabilities.

(b) Operator shall indemnify Owner and its managers, officers, agents and employees from and against any and all Damages which any of them may incur as a result of any claim for personal injury, death, or damage to property, but only to the extent such Damages (i) arise out of or in connection with the operation of the Generating Facilities under the Generating Agreement prior to its termination, and (ii) result from the negligence of Operator, and (iii) in the case of environmental liability claims, are not or have not been waived by Owner under Section 2.5 above.

(c) A party entitled to indemnification hereunder shall keep the indemnifying party apprised of the status of all claims with respect to which it is entitled to indemnification, and shall not settle any such claim without the consent of the indemnifying party, such consent not to be unreasonably withheld or unduly delayed.

## ARTICLE IV

### NEW O&M AGREEMENT

4.1 EEC Operating Agreement. Owner presently intends to negotiate and enter into the EEC Operating Agreement with EEC sufficiently far in advance of December 15, 2010, so as to allow EEC to transition smoothly into its role of providing operation and maintenance services for the Generating Facilities commencing at 12:00:00 a.m. e.s.t. on December 15, 2010. Owner shall notify Operator in writing when the EEC Operating Agreement has been executed by Owner and EEC and shall provide Operator with a copy of said EEC Operating Agreement.

4.2 New O&M Agreement. It is specifically understood and agreed by Owner and Operator that the Generating Agreement shall terminate as and when provided in Section 2.1 above, and that all other provisions of this Agreement shall be fully effective, whether or not Owner and EEC enter into the EEC Operating Agreement, and whether or not EEC ever performs services for Owner with respect to the Generating Facilities. If Owner and EEC do not enter into the EEC Operating Agreement prior to December 15, 2010, Operator hereby confirms that it will be willing to provide operation and maintenance services for the Generating Facilities commencing on December 15, 2010, but only on the following conditions: (i) such operation and maintenance services shall be provided under a new operation and maintenance agreement (New O&M Agreement) to be negotiated that is in form and substance mutually acceptable to Operator and Owner (it being understood that an agreement substantially in the form of the Generating Agreement will not be acceptable to Operator); and (ii) Operator must be notified by Owner in writing by no later than November 30, 2010 if Owner wishes to enter into a New O&M Agreement, so as to allow sufficient time for the parties to negotiate a mutually acceptable New O&M Agreement.

## ARTICLE V

### MISCELLANEOUS

5.1 Governing Law. This Termination Agreement shall be governed by the laws of the State of Michigan, without regard to its choice of law rules.

5.2 Interpretation. This Termination Agreement, including the schedules attached hereto, constitutes the entire agreement between the parties hereto with respect to the termination of the Generating Agreement and the other

transactions expressly addressed herein. This Termination Agreement supersedes all prior or contemporaneous understandings and agreements among the parties, whether written or oral, with respect to the transactions contemplated by this Termination Agreement, including, without limitation, the termination of the Generating Agreement. Other than the Generating Agreement and notwithstanding anything in this Termination Agreement to the contrary, the Parties agree and acknowledge that this Termination Agreement shall not supersede terms of any other agreement between Owner and Operator.

5.3. Amendments and Waivers. This Termination Agreement may be amended only by a written instrument signed by a duly authorized representative of each of Operator and Owner. Operator's Representative is not authorized to amend any of the terms of this Termination Agreement. The failure of either party to insist on one or more occasions upon the strict performance of the obligations owed it by the other party hereunder shall not waive or release such party's right to insist on strict performance of such obligation or any other obligation in the future.

5.4. Notices. All notices given to either of the parties pursuant to or in connection with this Termination Agreement shall be in writing, shall be delivered by hand, by certified or registered mail, return receipt requested, by confirmed facsimile transmission, or by Federal Express, Express Mail, or other internationally recognized overnight carrier. Notices are effective when received. Notice addresses are as follows:

If to Operator: Upper Peninsula Power Company  
500 N. Washington St.  
Ishpeming, MI 49849  
Fax: 906-485-2429  
Attention: Assistant Vice President Energy  
Supply Operations

If to Owner: City of Escanaba  
410 Ludington St.  
P.O. Box 948  
Escanaba, MI 49829  
Attention: City of Escanaba Manager

5.5. Change of Address. Either party may, by written notice to the other party given in accordance with the foregoing, change its address for notices.

5.6. Successors; Assignment. This Termination Agreement shall be

binding upon the parties and their respective successors and permitted assigns. No party shall make any sale, assignment, mortgage, pledge, or other transfer of all or any portion of its rights or obligations under this Termination Agreement, whether voluntarily or involuntarily, by operation of law or otherwise, without the prior written consent of the other party; provided, however, that Operator may assign this Termination Agreement to any corporate affiliate of Operator without the prior written consent of Owner.

5.7. Severability. If any portion of this Termination Agreement is held to be invalid or unenforceable, the balance of the Termination Agreement shall be enforced without regard to such invalid or unenforceable provision.

5.8. Counterparts. This Termination Agreement may be signed in counterparts; each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

5.9. Further Assurances. Each party agrees to execute and deliver any such instruments and to perform any such acts as may be necessary or reasonably requested by the other in order to give full effect to the terms of this Termination Agreement.

IN WITNESS WHEREOF, Owner has caused this Termination Agreement to be duly executed and delivered in its name and behalf by its Mayor and its corporate seal to be hereunto affixed and attested by its Clerk, each thereunto duly authorized; and Operator has caused this Termination Agreement to be duly executed and delivered in its name and behalf by its Senior Vice President, Energy Delivery and Customer Service and its corporate seal to be hereunto affixed and attested by its Secretary, each thereunto duly authorized, all as of the day and year first above written.

OWNER: CITY OF ESCANABA

By: \_\_\_\_\_  
Name:  
Title: City of Escanaba - Mayor

Attest:

\_\_\_\_\_  
City Clerk

OPERATOR: UPPER PENINSULA POWER COMPANY

By: \_\_\_\_\_  
Name: Barbara Nick  
Title: Senior Vice President, Energy Delivery and  
Customer Service

Attest:

\_\_\_\_\_  
Secretary

Schedule 1.1

See items identified in Schedule 1.2

Schedule 1.2

1. The MDEQ issued to the Owner a letter of violation dated January 25, 2008, related to the Generating Facilities. In connection with this letter of violation, Owner and the MDEQ entered into a Consent Decree that was signed by the MDEQ on July 10, 2009.

2. The United States Environmental Protection Agency issued a Request to Provide Information Pursuant to the Clean Air Act, dated July 31, 2009, to Operator. Operator has cooperated with the Owner in responding to this Request.

3. Sierra Club issued a Freedom of Information Act request to the Owner dated September 11, 2009, requesting information relating to work orders, monitoring data and reports for the Generating Facilities. Operator has cooperated with Owner in responding to this Request.

Schedule 2.4(a)

Escanaba 69 Sub UPPCO Assets

Location	Vintage	Description	UPPCO Net Book Value
Escanaba 69 Substation - 418000 - 670	1974	Audio Tone - Lot Unit Control, Telemetering & Audio Tone Equipment*	1,582.65
Escanaba 69 Substation - 418000 - 670	1973	Audio Tone - Unit Control, Telemetering & Audio Tone Equipment*	506.58
Escanaba 69 Substation - 418000 - 670	1958	Bus & Conductors	71.19
Escanaba 69 Substation - 418000 - 670	1989	Cable & Connections	1,691.17
Escanaba 69 Substation - 418000 - 670	1958	Feet of Control Cable	108.44
Escanaba 69 Substation - 418000 - 670	1958	Foundation - Transformer Base and Piers	119.77
Escanaba 69 Substation - 418000 - 670	1996	RTU - SCADA : MPR-7050B RTU with Associated Equipment	11,936.41
Escanaba 69 Substation - 418000 - 670	1996	RTU Addition	6,374.65
Escanaba 69 Substation - 418000 - 670	1958	Steel Structures - 1 Lot	90.12
Escanaba 69 Substation - 418000 - 670	1958	Switch - Control	1.35
Escanaba 69 Substation - 418000 - 670	1997	Transducers	3,231.19
Escanaba 69 Substation - 418000 - 670	1996	Transducers	7,468.63
			<u>33,182.15</u>

\* Includes tranfer trip equip on Esc #1 69KV Line

Schedule 2.4(b)

Escanaba 69 Sub - UPPCO - ATC Joint Assets

Location	Vintage	Description	UPPCo Net Book Value
Escanaba 69 Substation - 418000 - 670	1976	Relay & Control Panel OCB 695	74.41
Escanaba 69 Substation - 418000 - 670	1958	Relay & Control Panel OCB 695	517.98
Escanaba 69 Substation - 418000 - 670	1962	Relay & Control Panel OCB 695	3.26
Escanaba 69 Substation - 418000 - 670	1965	Relay & Control Panel OCB 695	0.98
Escanaba 69 Substation - 418000 - 670	1989	Relay : Westinghouse IRD-8	1,678.32
			<u>2,274.95</u>

## Schedule 2.11

<b>Vendor</b>	<b>Service provided and terms(contract or PO when service provided)</b>
ABLE TECHNOLOGY	safety valve repairs- write PO as needed
AECOM USA INC	Environmental consulting -write PO as needed
ALSTOM POWER INC	stoker parts- write PO as needed
AMERICAN WELDING & GAS	Contract in place - welding gases
ARJAY AUTOMATION INC	instrumentation supply write PO as needed
AT&T MOBILITY	phones
AUTOMATION PRODUCTS INC	no contract
BASLER ELECTRIC CO	new generator exciter purchase spring 2010(Jay 1815)
BAYVIEW TRUCK & AUTO SERVICE INC	dump truck and loader repairs write PO as needed
BEAUMONT BIRCH SUPPLY CO INC	parts supply, write PO as needed
BICHLER GRAVEL & CONCRETE CO	gravel supply write PO as needed
BOSK CORP	PO written as needed(vacuuming, labor)
CHAMPION CHARTER SALES & SERVICE	equipment supply write PO as needed
CHATFIELD MACHINE CO	machining write PO as needed
CITY OF ESCANABA	water/sewer bill
CONGER INDUSTRIES INC	fork truck repairs write PO as needed
COOPER OFFICE EQUIPMENT INC	copy machine lease(plant will buy copier)
CR MEYER & SONS CO	labor for turbine overhaul(rates on file, write PO as needed)
DETROIT STOKER CO	stoker parts write PO as needed
DIAMOND POWER INTERNATIONAL INC	soot blower parts write PO as needed
DIAMOND POWER SPECIALTY CO	soot blower parts write PO as needed
ECOLAB INC	chemical supply open PO with set pricing
EK DRIVER TESTING	CDL testing for employees write PO as needed
EMERSON PROCESS MANAGEMENT	instrumentation supply write PO as needed
ESKY QUICK LUBE	local oil change as needed open PO
FEDEX FREIGHT	parts shipment no contract
FUREY FILTER & PUMP INC	pump/filter supplier PO as needed
GERARD CHIMNEY CO	gunnite purchase order for stack repair, no open PO
GRAINGER INC	parts catalog purchases

GREAT LAKES TV SEAL INC	borescope services write PO as needed
H2O IN MOTION INC	lab testing write PO as needed
HALRON LUBRICANTS INC	lubricants write PO as needed
HAWK MTN LABS INC	environmental testing, write PO as needed
HYDRITE CHEMICAL CO	chemical supply open PO with set pricing
INDUSTRIAL MAINTENANCE SERVICE INC	local labor for boiler work write PO as needed
JACOBS ENGINEERING GROUP INC	Engineering support(stack work), write PO as needed
JOHNSTON PRINTING & OFFSET	log book supply, write PO as needed
KLENZOID EQUIPMENT CO	water treatment membranes write PO as needed
KOBAS ELECTRIC CO INC	electrical contractor write PO as needed
MICHIGAN DEPT OF ENERGY LABOR & ECONOMIC	no contract
MICHIGAN DEPT OF NATURAL RESOURCES	no contract
MIRON CONST CO INC	stack work, no open purchase order
MJ VAN DAMME TRUCKING INC	dust control chemical application open PO with pricing
NALCO CO	boiler chemicals open PO with pricing
NET LEC LLC	phone services
NEUNDORFER INC	precipitator inspection write PO as needed
NEXUS SOLUTIONS	opacity monitor software maintenance, contract expires 3/2011
NORTHERN MACHINING & REPAIR INC	local machining - write PO as needed
NORWAY SPRINGS INC	drinking water - open PO with pricing
NOVASPECT INC	distributed control system service open PO
OSGOOD STOKER CONSULTING CO	stoker grate consultant write PO as needed
OSI ENVIRONMENTAL INC	oil and grease disposal, contract in place
PEARSON ASBESTOS	asbestos abatement - open PO with rates in place
POMPS TIRE SERVICE INC	local tire pay as needed
POWER INDUSTRY CONSULTANTS INC	Dave Myer's services - contract in place through 12/14/2010
REGENCO	turbine repairs from spring 2010 - PO is with WPSC
RICHERS REFRIGERATION & AIR CONDITIONING	no contract, write PO as needed
ROLAND MACHINERY	heavy equipment repair - write PO as needed
ROY NESS CONTRACTING & SALES INC	carpentry and masonry - write PO as needed
SICK MAIHAK INC	opacity monitor service - write PO as needed
STATE OF MICHIGAN	boiler inspection services for operating certificate
STENBERG BROTHERS INC	septic tank pumping - open PO with rates

STROPICH OIL CO	vehicle maintenance - write PO as needed
TELNET WORLDWIDE INC	telecom provider
THE JAMAR CO	outage repairs to boiler and plant - write PO as needed
THE PLUM COMPANY	Stoker repairs/parts write PO as needed
TIMBERLAND ENGINEERING INC	local engineering firm write PO as needed
TRIMEDIA CONSULTANTS	local engineering firm write PO as needed
UNITED CONVEYOR SUPPLY CO	ash disposal parts/services write PO as needed
UP ENVIRONMENTAL SERVICES	boiler water disposal write PO as needed
UPS	package delivery services
VAN ERT ELECTRIC CO INC	electrical contractor use PO as needed
VERIZON WIRELESS	phone services
WASTE MANAGEMENT CORP	garbage pickup corporate contract in place
WERNER ELECTRIC SUPPLY CO	electrical parts write PO as needed
WOS OPTICAL	employee prescription safety glasses corporate contract in place
YOKOGAWA CORP OF AMERICA	instrumentation write PO as needed
Z&R ELECTRIC SERVICE INC	motor and breaker repairs write PO as needed

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GENERATING FACILITIES OPERATING AGREEMENT  
BETWEEN THE UPPER PENINSULA POWER COMPANY  
AND THE  
CITY OF ESCANABA, MICHIGAN

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GENERATING FACILITIES OPERATING AGREEMENT  
BETWEEN THE UPPER PENINSULA POWER COMPANY  
AND THE  
CITY OF ESCANABA, MICHIGAN

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GENERATING FACILITIES OPERATING AGREEMENT  
BETWEEN THE UPPER PENINSULA POWER COMPANY  
AND THE  
CITY OF ESCANABA, MICHIGAN

---

0.1 AGREEMENT, made and entered into as of the 12<sup>th</sup> day of December 1986, and amended as of the \_\_\_ day of \_\_\_\_\_, 2002, between the UPPER PENINSULA POWER COMPANY, a Michigan corporation, herein termed "Company," and the CITY OF ESCANABA, MICHIGAN, a Michigan municipal corporation, herein termed "City."

WITNESSETH:

0.2 WHEREAS, the Company owns electric facilities and is engaged in the generation, transmission, distribution, and sale of electric capacity and energy in the State of Michigan, and

0.3 WHEREAS, the City owns electric facilities and is engaged in the generation, transmission, distribution, and sale of electric capacity and energy in Escanaba, Michigan, and its environs, and

0.4 WHEREAS, the Company and the City are interconnected at the City's generating plant and at the Company's Delta Substation, and

0.5 WHEREAS, the Company and the City have entered into an Interconnection Agreement dated 12/12/86, and

0.6 WHEREAS, the City owns generating facilities consisting of a generating plant, hereinafter referred to as the "Plant," located in the City of Escanaba, and a combustion turbine, hereinafter referred to as the "CT," also located in the City of Escanaba (referred to collectively herein as the "Generating Facilities"), and

0.7 WHEREAS, the Company currently operates and maintains the Plant on behalf of the City, and

0.8 WHEREAS, it is in the interest of both parties to have the Company continue to operate and maintain the City's generating Plant on behalf of the City, and

0.9 WHEREAS, it is in the interest of both parties to have the Company operate and maintain the CT on behalf of the City,

1.0 NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

ARTICLE 1

GENERATING FACILITIES DESCRIPTION

1.1 The Plant consists of two generating units, each having a nominal rated output of 12,650 kW, located on property owned by the City, situated on the shore of Lake Michigan in the City of Escanaba.

1.2 The CT consists of one General Electric 17,812 kW MS 5001 LA turbine S/N 179401 and one General Electric 21,176 KVA air cooled generator S/N 8384301, located on property owned by the City, situated on the shore of Lake Michigan in the City of Escanaba.

ARTICLE 2

GENERAL FACILITIES OPERATION

2.1 The City agrees to employ the Company as the City's agent to operate and maintain the Generating Facilities under the terms and conditions of this Agreement. The Company agrees that it will act as the City's agent to operate and maintain the Generating Facilities for the City under the terms and conditions of this Agreement.

2.2 The City shall provide all fuel and spare parts attendant to the operation of the Plant.

2.3 Except for fuel and spare parts, the Company shall provide all supervision, labor, materials, supplies, and insurance attendant to the operation and maintenance of the Generating Facilities. The City shall reimburse the Company for the costs of

operating and maintaining the Generating Facilities, which costs shall include the following:

2.3.1 The cost of providing all supervision, labor, materials, and supplies as charged by the Company to the FERC Uniform System of Accounts in connection with the operation and maintenance of the Generating Facilities;

2.3.2 An amount equal to all fringe benefits and employment tax costs incurred by the Company in connection with providing supervision, operating and maintenance labor for the Generating Facilities, exclusive of any such costs which may be included in 2.3.1, above;

2.3.3 An amount equal to all insurance premiums and taxes, if any, which shall be paid by the Company in connection with the operating and maintenance of the Generating Facilities, exclusive of any such costs which may be included in 2.3.1, above;

2.3.4 An amount equal to the cost of all administrative and accounting labor, including payroll taxes, fringe benefits, computer expense, and travel expense provided by the Company in connection with the operating and maintenance of the Generating Facilities including the preparation of billing to the City but exclusive of any labor or expenses incurred by corporate officers of the Company, except those officers specifically agreed to by the Parties;

2.3.5 An amount equal to the interest on all funds expended by the Company in connection with the operation and maintenance of the Generating Facilities from the date of such expenditure to the date the City makes payment to the Company as described in Article 2 previously. Interest shall be charged by the

Company at the current prime rate of interest quoted to the Company by the principal lending institution with which the Company is currently doing business, and shall include a factor to account for compensating balancing costs;

2.3.6 A management fee initially equal to \$25,000/year, which shall be subject to adjustment from year to year by multiplying the ratio of the Producer Price Index, as published in the month prior to the anniversary date of this agreement by the Bureau of Labor Statistics to the Producer Price Index published in the month prior to the effective date of this agreement.

2.4 The Company shall prepare and submit to the City an annual budget covering the projected cost of operating and maintaining the Generating Facilities at least ninety days prior to the beginning of the coming year for the City's approval. It is the City's responsibility to supply to the Company, in a timely manner, the projected monthly energy to be generated by the Generating Facilities so that budgeting can be completed.

Except in case of emergency, the Company will notify the City any time it becomes apparent that a single expenditure in excess of \$5,000 not included in the Generating Facilities budget will be necessary, before such expenditure is made. The City shall respond promptly in writing to all such requests, either approving or disapproving the request.

2.5 The Company shall bill, and the City shall pay, for all costs incurred in the operation and maintenance of the Generating Facilities as they occur. The Company will prepare an estimated bill to cover the costs for a month no later than five working days

after the end of the month. Each estimated bill will be adjusted to actual and rendered to the City together with the next following estimated monthly bill.

The City agrees to pay all bills rendered within ten days after receipt thereof.

2.6 The Company agrees that, as long as the Company is employed by the City to operate the Generating Facilities, the Company shall at all times maintain the Generating Facilities in a good state of repair and operating efficiency. At the end of each year of this Agreement, the Company shall furnish the City with a study and analysis of the operations of the Generating Facilities.

2.7 The Company agrees at all times to defend, indemnify, and save harmless the City from any and all liability, loss, cost, damage, or expense resulting from its own negligence in the operation of the Generating Facilities, from claims and demands of the Company's employees for wages, salaries, or other forms of compensation or employee benefits and for injuries or death and from any and all claims and demands of contractors employed by the Company and of persons and corporations from whom the Company purchases materials and supplies; and the Company agrees not to permit any liens for labor, mechanics, materialism, attachments, judgments, or otherwise attach to the Generating Facilities by reason of any default of the Company and promptly to cause to be dissolved and discharged any such liens that may be filed against the Generating Facilities or other property of the City.

2.8 The City shall, at its own cost and expense, carry property and general liability insurance covering the Generating Facilities for the City's benefit in an amount customary for such a facility in the industry. The Company shall not be liable to the City

for any injury to or destruction of the Generating Facilities from hazards covered by such insurance except as described in paragraph 2.7.

2.9 If the City fails, for any reason, to obtain insurance as described in paragraph 2.8, then it shall so notify the Company and the Company shall provide property and general liability insurance covering the General Facilities. The level of coverage provided by this insurance shall be consistent with the coverage the Company provides for its own generating plants. If the Company carries such insurance for the City's benefit, the City will be responsible for the payment of all premiums and any and all deductibles and/or expenses not covered by said insurance.

2.9.1. The Company shall provide the City with a summary of the terms and conditions of the property and general liability coverage described in paragraph 2.9. The City shall review the terms and conditions of the property insurance coverage on an annual basis and notify the Company by May 31<sup>st</sup> in writing of their acceptance or rejection of said coverage. If the City rejects said coverage, the City's obligation under paragraph Section 2.8 shall apply automatically.

2.10 If, at any time, the City obtains insurance as described in paragraph 2.8, then paragraphs 2.9 and 2.9.1 of this Agreement will be rendered void automatically and permanently.

2.11 If any damage from any hazard not described in paragraph 2.7 shall occur to the Generating Facilities during the term of this Agreement or any renewal thereof, the Company agrees to proceed diligently to complete the repair, replacement, and restoration of the Generating Facilities as promptly as reasonable practicable. The City shall pay all costs of the repair, replacement, and restoration of the Generating Facilities.

The City shall have the right to have its representatives present to inspect and supervise any such repair, replacement, and restoration of the Generating Facilities for the purpose only of determining that such repair, replacement, and restoration is carried out as herein provided.

Provided, however, that if in the opinion of both parties the Generating Facilities is so substantially damaged or destroyed as not to be operable and cannot be economically repaired, replaced, and restored to normal operating condition within a period of six months, the Company shall have the right to cancel and terminate this Agreement without liability to the City except to pay over to the City any proceeds of insurance held by the Company on account of such damage or destruction.

2.12 At all times while the Company is employed to maintain and operate the Generating Facilities, the Company agrees to furnish all supervision and materials and supplies necessary for the efficient operation of the Generating Facilities and generation in the Generating Facilities of the City's requirements of electric energy, and at all times to keep on hand adequate quantities of materials and supplies and to employ an adequate staff of trained and experienced supervisors, operators, and personnel for the operation of the Generating Facilities. The Company agrees at all times to maintain and operate the Generating Facilities as directed by the City so as to enable the Generating Facilities to supply the City with a dependable supply of electric energy in the quantities required by the City without interruption or curtailment except only when prevented from doing so by force majeure.

Such maintenance and operation of the Generating Facilities by the Company shall be carried out by the Company as agent for the City subject to the

provisions of this Agreement, but it is understood and agreed that all persons employed in the operation of the Generating Facilities shall be employees of the Company and subject to the Company's exclusive control and direction. In the purchase of all materials and supplies pursuant to Section 2.3, the Company shall make all such purchases on the Company's own credit and for the Company's own account.

2.13 The Company shall act as the City's agent in soliciting the annual fuel requirements for the Generating Facilities in the competitive market from reputable suppliers and endeavor to obtain fuel at the least cost consistent with the maintenance of an adequate and reliable supply of fuel. The Company will be responsible for negotiating a purchase agreement from the supplier utilizing the recommendations provided by the Company and approved by the City. The City will pay the suppliers for the cost of the fuel and provide the Company with all invoice information pertaining to the fuel purchase. The Company will keep records of its determination of the cost of fuel per 1,000,000 BTU and make such records available to the City at any time.

### ARTICLE 3

#### GENERAL PROVISIONS

3.1 The City and the Company both agree that they shall promptly join in and diligently and in good faith prosecute any application or petition to the Federal Energy Regulatory Commission and the Michigan Public Service Commission necessary to accomplish the terms of the contract. It is understood and agreed that either party shall have the right to cancel and terminate this Agreement in its entirety without liability to the

other in the event that this Agreement is disapproved by either the Federal Energy Regulatory Commission and/or the Michigan Public Service Commission.

3.2 Both the City and the Company agree to make available to each other at all reasonable times all books and records pertaining to any of the transaction contemplated hereby or necessary to enable either party to make any reports required by law or contract.

3.3 Neither the City nor the Company shall assign this Agreement nor any rights hereunder without first obtaining the prior consent thereto of the other; and no such consent shall be deemed a consent to any different or subsequent assignment; provided, however, and it is expressly agreed that the Company shall have the right at any time or from time to time to pledge this Agreement and all or any rights of the Company hereunder with the Trustee or Trustees under any mortgage, deed of trust, or indenture of the Company, the City hereby expressly consenting to any such pledge by the Company; but such pledge shall not relieve the Company of any obligations hereunder. The provisions of this Agreement shall not be separable; and any pledgee or other person succeeding to the rights of the Company shall be bound to operate the Generating Facilities and deliver electric energy to the City, or cause the same to be done, in accordance with the terms of this Agreement.

3.4 In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, other than the make payment due hereunder, it is agreed that on such party's giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such

notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period; and such cause shall as far as possible be remedied with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of government and peoples, civil disturbances, explosions, break down of machinery or equipment, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term likewise includes (a) in those instances where either party hereto is required to obtain servitudes, rights of way grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses, and (b) in those instances where either party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permission from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and suppliers, permits and permissions.

It is understood and agreed that the settlement of strikes shall be entirely within the discretion of the party having the difficulty and that the dispatch shall not

require the settlement of strikes by acceding to the demands of the opposing party or parties when such course is inadvisable in the discretion of the party having the difficulty.

3.5 Any matter which this Agreement provides may be arbitrated; it may be submitted to arbitration in accordance with the rules of the American Arbitration Association by an impartial Board of three arbitrators who shall be chosen, one by the City, one by the Company, and the third by the two members first chosen as aforesaid.

The party desiring arbitration shall select one arbitrator and notify the other party thereof; and thereupon the other party shall within ten days thereafter choose a second arbitrator. If the other party fails within said ten days to choose a second arbitrator, or if the two arbitrators first chosen fail within ten days after the second arbitrator is chosen to choose a third arbitrator, the party requesting arbitration shall have the right to apply to the Circuit Judge of the Judicial Circuit in which the City is located or to the American Arbitration Association to select the other arbitrator or arbitrators. Both parties shall have the right to be represented by Counsel and to present witnesses and other evidence to the Board of Arbitrators and to cross-examine any witnesses. The Board of Arbitrators shall furnish to the City and to the Company transcripts of the testimony and evidence presented to it and of its findings and decision.

Any modification of the management fee to be paid to the Company for maintaining and operating the Generating Facilities made by the Board shall conform to Section 2.3 of this Agreement and shall be subject to judicial review on the petition of application of either the City or the Company if either deems that such modification of said management fee does not conform to said Section 2.3, but all other decisions of a majority of the Board shall be final and binding on the City and the Company provided

only the Board conducts its hearings properly and lawfully. The expenses of arbitration shall be borne equally by the City and the Company.

3.6 Notices, bills, protests, and communications hereunder shall be deemed to be duly given and properly delivered if in writing and sent by mail postage prepaid addressed to the respective parties at the addresses stated below or such other address as they shall, respectively, hereafter designate in writing, or if personally delivered to any officer of the respective parties at said respective addresses:

Upper Peninsula Power Company	City of Escanaba
600 E. Lakeshore Drive	City Hall
Houghton, Michigan 49931	P.O. Box 948
	Escanaba, Michigan 49829

3.7 This Agreement shall take effect on the \_\_\_\_ day of \_\_\_\_\_, 2002, and shall remain in full force and effect until terminated. It may be terminated at any time by mutual agreement. It may also be terminated upon not less than 36 months' written notice, given by either of the parties hereto to the other party.

3.8 This Agreement is executed in several counterparts, each of which shall be deemed an original; but all of such counterparts shall constitute but one and the same instrument, which shall for all purposes be sufficiently evidenced by any such original counterpart.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed and delivered in its name and behalf by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, each thereunto duly authorized; and the Company has caused this Agreement to be duly executed and delivered in its name and

behalf by its President and its corporate seal to be hereunto affixed and attested by its  
Secretary, each thereunto duly authorized, all as of the day and year first above written.



TRADEMARK REGISTERED

The C Reiss Coal Company  
P O Box 688  
Sheboygan WI 53082-0688

**Storage Contract**

To: City of Escanaba  
410 Ludington  
Escanaba MI 49829

Negotiated Date: April 29, 2010  
Agreement: 853995  
Contract No: Storage Contract

Shipper Contact

City of Escanaba  
Jim O'Toole  
Phone: (906)786-9402 Fax: (906)789-3809

Carrier Contact

The C Reiss Coal Company  
William Jr Reiss - Marketer  
Phone: (920)451-8912 Fax: (920)457-4417

The C Reiss Coal Company agrees to provide storage service to City of Escanaba per the following:

**PRODUCT:** Coal Storage  
**CONTRACT TERM:** July 01, 2010 to December 31, 2011  
**PAYMENT TERMS:** Net 5 days from Invoice Date

**DELIVERY POINT:** FOB CRCC-Escanaba, MI (also point of Title Transfer)  
**DELIVERY MODE:** Truck  
**PRICE:** 7,500.00 \$USD/Month.

Storage Contract

Contract

853995-Storage Contract

**SPECIAL TERMS:**

Coal Storage Contract for approximately 80,000 tons.

Storage charge of \$7,500/month beginning 7/1/10 thru 12/31/11. The C. Reiss Coal Company's contract performance is complete when the coal is loaded into City of Escanaba trucks.

This contract does not provide for a handling rate for inbound shipments of coal to the Reiss Escanaba dock #1 nor does it require a minimum quantity to be shipped outbound from the dock. All coal must be removed from the dock by 12/31/11 or a fee of \$1,000 per day will apply for as long as tonnage remains on the dock.

At any time, with 90 days written notice, during the contract term Reiss may require the City of Escanaba to remove the coal from Reiss Escanaba dock #1. This contract will be terminated after such 90 day notice.

Since this is a storage contract, any other coal handling charges will be separately negotiated.

Upon assignment of this Coal Storage contract to Traxys (or Traxys subsidiary), all or any portion of the coal inventory located on the Reiss Escanaba #1 dock may be sold at any time to a third party by Traxys (or Traxys subsidiary) only after Reiss is provided the opportunity to purchase such coal (right of first refusal) at the same price that was negotiated by Traxys for the sale of coal to a third party or \$70 per ton FOB Reiss Escanaba dock #1, whichever is less.

Traxys (or Traxys subsidiary) shall provide written notice (email with confirmation is acceptable) of any proposed sale. Sale Notice shall specify the proposed customer, sale price, tonnage and approximate sale date and terms of the coal to be sold. Reiss shall have a period of 5 working days from receipt of such written notice to exercise its right of first refusal by written notice to Traxys (or Traxys subsidiary). The 5 working day written notice timetable shall be from Reiss receipt to Traxys (or Traxys subsidiary) receipt of the respective notice. If timely exercised the purchase shall be closed not later than 5 working days thereafter.

**GENERAL TERMS AND CONDITIONS:**

This agreement is subject to the attached General Terms and Conditions which are hereby incorporated into and made a part of this contract as essential terms and conditions hereof. In the event of a conflict between the general terms and conditions attached and specific provisions set forth above, the specific provisions will control.

Accepted and Agreed to this day by:

The C Reiss Coal Company

City of Escanaba

*William Jr Reiss*

William Jr Reiss

Jim O'Toole

Date:

*11/19/10*

Date:

THE C. REISS COAL COMPANY GENERAL TERMS AND CONDITIONS  
Coal Services ( Storage only ) Agreement

1. In the event BUYER shall fail to pay in accordance with the terms hereof, SELLER may, at its option, (1) terminate this contract, unless BUYER makes payment within five business days' after receipt of written notice, (2) suspend loadings until all indebtedness is paid in full, and/or (3) place BUYER on cash delivery basis. No cash discount will be allowed unless specified otherwise. SELLER shall be entitled to interest on past due amounts as set forth in paragraph 3 hereof.
2. SELLER shall not be liable for any demurrage unless otherwise specifically agreed.
3. Should either party (the "BREACHING PARTY") default under this Contract, the other party (the "NON-BREACHING PARTY") shall be entitled to all the rights under this Contract and, except as limited by Section 4 below, applicable law. In addition, where permitted by law, the NON-BREACHING PARTY shall be entitled to recover from the BREACHING PARTY all court costs, and reasonable attorneys' fees and expenses incurred by the NON-BREACHING PARTY incident to such proceedings and interest on past due amounts at 1.0% per month or the highest rate chargeable to the BREACHING PARTY under applicable law, if less than 1.0% per month.
4. SELLER may, from time to time, demand different terms of payment from those referred to in paragraph 2 hereof whenever it appears to SELLER, in its sole discretion, that BUYER'S financial condition requires such a change. Further, SELLER may demand assurance of BUYER'S ability to pay whenever SELLER, in its sole discretion, determines that such ability is in doubt. Any such adequate assurance shall be in the form and amount requested by Seller in its sole discretion. Such assurance may, at the option of SELLER, include, without limitation, any of the following or any combination of the following, (i) the required posting of a letter of credit as security for payment and performance (in a format and issued by a commercial bank acceptable to SELLER); (ii) cash prepayments; or (iii) corporate guarantee. ANY SUCH DEMAND MAY BE IN WRITING OR ORAL AND SELLER MAY, UPON THE MAKING OF SUCH DEMAND, SUSPEND SHIPMENTS HEREUNDER UNTIL WRITTEN ACCEPTANCE OF DIFFERING PAYMENT TERMS OR RECEIPT OF ASSURANCE OF FINANCIAL ABILITY IN A FORM ACCEPTABLE TO SELLER, WHICHEVER HAS BEEN REQUESTED, HAS BEEN RECEIVED BY SELLER. If within the period stated in such demand BUYER fails or refuses to agree to such different terms of payment or fails or refuses to give adequate assurance of ability to pay, SELLER may, at its option, treat such failure or refusal as a repudiation of the portion of this Contract which has not been fully performed. BUYER WAIVES WRITTEN NOTICE OF ANY SUCH DEMAND OR ANY SUSPENSION OR CANCELLATION
5. EXCEPT AS PROVIDED HEREIN, THERE IS NO EXPRESS OR IMPLIED WARRANTY GRANTED HEREIN CONCERNING THE SERVICES PROVIDED HEREUNDER UNLESS PROHIBITED BY LAW.
6. The amount of any future or any increase in any existing tax, fee, levy or other charge not included in the handling and storage price or otherwise paid by BUYER, imposed by any government or agency thereof upon or relating to the performance of the services hereunder shall be added to and become part of the price hereunder, shall be paid by the BUYER and shall apply to all shipments loaded thereafter unless and until further adjustment of price shall be made pursuant to the provisions of this Contract.
7. This Contract constitutes the entire agreement between parties hereto and the terms hereof shall not be altered or changed except by written agreement signed by SELLER and BUYER. THESE STANDARD TERMS AND CONDITIONS ARE DEEMED AN OFFER FOR SERVICES BY SELLER. IF BUYER DOES NOT ACCEPT THIS OFFER BY EXECUTION ON THE FACE HEREOF OR OTHERWISE IN WRITING, BUYER SHALL BE DEEMED TO HAVE ACCEPTED THIS OFFER BY DELIVERING GOODS OR TAKING DELIVERY OF GOODS STORED AND LOADED INTO TRUCK FROM SELLER. ANY ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS AND CONDITIONS WITHOUT ANY ALTERATION OR ADDITION THERETO. Notwithstanding any other provision therein to the contrary, no term in BUYER'S purchase order, SELLER'S invoice, or other document which conflicts with the terms of this Contract, including these conditions of sale, or increases either party's obligations or reduces either party's rights or remedies hereunder shall be binding unless particularly accepted by both parties in writing executed by an officer of each party.

Remedies herein reserved to either party are cumulative and in addition to any other or future remedies, either party may have at law or equity. No usage of trade or prior course of dealing or performance between BUYER and SELLER shall be deemed to modify the terms of this Contract. Any provision of this Contract which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction to the extent permitted by applicable law. The parties hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.
8. The rights and duties of this Contract are not assignable or transferable by either party except that should Traxys (or a Traxys subsidiary) purchase the subject coal referred to in the SA ( attached hereto ) Seller will assign this contract to Traxys (or a Traxys subsidiary). Such assignment is subject to the credit approval of Seller's credit department. Such approval will not unreasonably be withheld.
9. Waiver by either party of any breach by the other party of the terms and conditions hereof shall not be construed as a waiver of any other or continuing breach hereunder.
10. Except for BUYER'S payment to SELLER for any services performed hereunder, SELLER and BUYER shall be excused from the performance of any obligation hereunder when the cause of such nonperformance is due to an event or condition which constitutes "force majeure" hereunder, and in such event the quantities of the goods and services so affected shall be eliminated from this Contract without liability, but this Contract shall otherwise remain unaffected. Force majeure shall be construed to include the event of war, fire, flood, strike, labor trouble from whatever cause arising and whether or not the demands of the employees are reasonable and within the party's power to concede, accident, riot, acts of God, BUYER's plant shutdown, BUYER's or SELLER's equipment failure, the voluntary or involuntary compliance with any law, order, regulation or request of any governmental authority that negatively affects the ability of Seller to store or load the goods or BUYER'S ability to purchase or store such goods, including, without limitation, any compliance (i) that increases SELLER's cost to store, handle and load BUYER's coal or (ii) with a request for any purchase for the purpose of national security and any contingencies of like or different character.
11. BUYER assumes all risks and liabilities arising from or in connection with the presence of SELLER's or its contractors' trucks at SELLER's facilities, transportation of the coal from SELLER's facilities to BUYER's plant and use by BUYER of the coal stored hereunder. By acceptance of the coal stored hereunder BUYER shall indemnify and defend SELLER and hold it harmless from any and all losses, liabilities, damages or claims of any nature or kind, including the payment of attorneys fees, other than those attributable to SELLER'S sole negligence, which shall arise or grow out of any injury to or death of any person (including, but not limited to BUYER and BUYER'S employees, agents, suppliers, invitees or trespassers) or damage to any property (including, but not limited to, the property of BUYER) caused by or resulting from storage, handling and loading into truck, application or use by BUYER of the coal stored hereunder.
12. In the event of default in the performance of any duty or obligation of either party or any subsidiary or affiliate of either party to the other party or any subsidiary or affiliate of the other party whether under this Contract or any other contract between the parties, or any contract between either of the parties and any subsidiary or affiliate of the other, or any contract between any subsidiary or affiliate of both parties, or in the event either party or any subsidiary or affiliate of either party becomes insolvent before satisfaction of any obligation to the other party or any subsidiary or affiliate of the other party; then, in any such event the non-breaching party or any subsidiary or affiliate of the non-breaching party may at its option and without limitation, (a) withhold any payment due the breaching party or any subsidiary or affiliate of the breaching party, (b) withhold or refuse storage and loading to or from the breaching party or any subsidiary or affiliate of the breaching party, or (c) offset and deduct from any payment or delivery of goods due the breaching party or any subsidiary or affiliate of the breaching party under this contract against any payment or delivery of goods due the non-breaching party or any subsidiary or affiliate of the non-breaching party under this contract. The foregoing specific rights shall be cumulative and alternative and shall be in addition to any other rights to which the parties may be entitled, including but not limited to damages for specific performance.
13. In the event of any litigation between the parties, the terms and provision hereof shall be construed in accordance with the laws of the State of Wisconsin. Venue shall be in the County of Sheboygan, State of Wisconsin, U.S.A.