



A Touchstone Energy® Cooperative

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Your Touchstone Energy® Cooperatives

**ATTACHMENT 5**

**PEAK WARNING DEVICE AGREEMENT**

This Agreement, made and dated as of \_\_\_\_\_, by and between **North Western Electric Cooperative, Inc.** (“the Cooperative”), an Ohio corporation not-for-profit, BUCKEYE POWER, INC. (“Buckeye”), an Ohio corporation not-for-profit, and \_\_\_\_\_ (hereinafter called the “Member-Owner”), a \_\_\_\_\_ ;

**WITNESSETH:**

**WHEREAS**, pursuant to the Cooperative’s terms and conditions of electric service, including, without limitation, the Cooperative’s Code of Regulations, applicable rate schedules, tariffs, rules, regulations, policies, and agreement(s), if any, between the cooperative and the Member-Owner relating to the provision of electric service, as they may be revised and supplemented from time to time (“Terms and Conditions of Electric Service”), Member-Owner is purchasing, and the cooperative is selling, all of the electric power and energy which Member-Owner requires for its commercial or industrial facilities located at:

\_\_\_\_\_ (the “Member-Owner Site”); and

**WHEREAS**, on the Member-Owner Site, Member-Owner intends to own and operate an electric generating facility of not less than 25 kW capacity which is more particularly described on Appendix A attached hereto and made a part hereof (“Generation Facility”); and

**WHEREAS**, the Generation Facility will be interconnected and operated in parallel with the electric distribution system of the cooperative in accordance with the Terms and Conditions for Synchronization of Generation, which are attached to the Agreement for Electric Service dated as of \_\_\_\_\_ between the Member-Owner and North Western Electric Cooperative (“Terms and Conditions for Synchronization of Generation”); and

**WHEREAS**, the Member-Owner desires and intends to operate the Generation Facility for the sole purpose of (a) providing back-up electric generation service to the Member-Owner Site when there is an interruption of electric generation service from the cooperative to the Member-Owner Site, (b) minimizing the Member-Owner’s contribution to a PJM 5-CP System Annual Demand, as defined herein, (c) minimizing the Member-Owner’s demand when but only for so long as Buckeye activates the Peak Warning Device (as defined below) for the purposes described in (b) above or

for such other purposes as Buckeye may deem appropriate in its sole discretion, and (d) testing of the Generation Facility; and

**WHEREAS**, the Member-Owner has requested that the cooperative install and that Buckeye control the activation of a peak warning device (“Peak Warning Device”) that may be activated by Buckeye when Buckeye anticipates that a PJM 5-CP System Annual Demand, as defined herein, may occur or when Buckeye may otherwise deem appropriate; and

**WHEREAS**, Buckeye, as the exclusive supplier to the cooperative of all of the electric power and energy which the cooperative requires for resale to its member-owners, including the Member-Owner, is willing to enter into this Agreement solely for the purposes herein stated;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein, the parties hereto hereby agree as follows:

1. The cooperative hereby sells, and Member-Owner hereby purchases, a Peak Warning Device in accordance with the terms of this Agreement, including, without limitation, any additional terms of sale included on Appendix B attached hereto and made a part hereof. The Peak Warning Device is more particularly described on Appendix B hereof. The purchase price for the Peak Warning Device shall be as specified in Appendix B, which Member-Owner shall pay to the cooperative within thirty (30) days from the effective date of this Agreement. The cooperative shall install the Peak Warning Device on Member-Owner’s premises after the cooperative receives payment from Member-Owner therefor. After installation, the Member-Owner shall, at its own cost and expense, maintain, repair, monitor, inspect, test, and otherwise be fully responsible for the Peak Warning Device.
2. After installation of the Peak Warning Device by the cooperative, Buckeye may activate such device whenever Buckeye determines in its sole discretion that a “PJM 5-CP System Annual Demand” (any of the five highest hourly kW coincident demands of all of the member-owners of PJM Interconnection, LLC (“PJM”) as measured and determined by PJM for purposes of determining Buckeye’s annual PJM capacity charges, or such other hourly kW demands used by PJM to determine Buckeye’s responsibility for annual PJM capacity charges, for the applicable PJM planning year (June 1 – May 31), as determined by Buckeye from time to time) may occur or for such other purposes as Buckeye may deem appropriate in its sole discretion. Buckeye may deactivate the Peak Warning Device whenever Buckeye determines in its sole discretion that it is appropriate to do so. Attached hereto and made a part hereof as Appendix C is a summary of the number of periods, and duration of such periods, during which Buckeye has, in the past, activated various types of electric load control switches. The information contained in Appendix C is historical and for informational purposes only and does not indicate that the number of

periods, or duration of such periods, during which Buckeye may activate the Peak Warning Device pursuant to this Agreement will be similar to the number of periods, and duration of such periods, during which Buckeye has activated various types of electrical load control switches in the past as set forth in Appendix C hereof. Buckeye and the cooperative hereby expressly disclaim any representation or warranty that the information contained in Appendix C is an accurate indication of the number of periods, or duration of such periods, during which Buckeye may activate the Peak Warning Device pursuant to this Agreement.

3. Notwithstanding any other provision of this Agreement, if Buckeye (a) fails to activate the Peak Warning Device when a PJM 5-CP System Annual Demand is occurring or about to occur, (b) fails to deactivate the Peak Warning Device when a PJM 5-CP System Annual Demand has ceased to occur or is no longer anticipated to occur, (c) activates the Peak Warning Device when a PJM 5-CP System Annual Demand is not occurring or about to occur, or (d) deactivates the Peak Warning Device when a PJM 5-CP System Annual Demand is occurring or about to occur, Buckeye shall have no responsibility or liability whatsoever to Member-Owner or the cooperative as a result of such activation, deactivation, failure to activate, or failure to deactivate; provided, further, that Buckeye and the cooperative shall have no responsibility or liability whatsoever to Member-Owner or to one another for failure of the Peak Warning Device to activate or deactivate for any reason, or for activation or deactivation of the Peak Warning Device for any reason; provided, further, that after activation or deactivation of the Peak Warning Device, Buckeye and the cooperative shall have no responsibility or liability whatsoever to the Member-Owner or to one another for any failure of the Generation Facility to operate or cease to operate as a result of such activation or deactivation of the Peak Warning Device.
4. Member-Owner shall indemnify and hold Buckeye and the cooperative and their respective trustees, member-owners, officers, managers, employees, agents, representatives, affiliates, successors and assigns harmless from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or relating to the installation, ownership, operation, maintenance, inspection, or testing of the Peak Warning Device or the Generation Facility, including, without limitation, the activation, non-activation, deactivation, failure of deactivation, operation or failure of operation, of the Peak Warning Device. This indemnification includes, but is not limited to, any cause of action brought against Buckeye or the cooperative which is based in whole or in part on a claim that Buckeye or the cooperative was negligent or in violation of law in relation to the installation, activation, non-activation, deactivation, failure of deactivation, operation or failure of operation, of the Peak Warning Device. Member-Owner's obligation to indemnify Buckeye and the cooperative will survive the expiration or termination of this Agreement by any party for any reason.

5. The Member-Owner agrees that it will interconnect and operate its Generation Facility in parallel with the electric distribution system of the cooperative in accordance with the Terms and Conditions for Synchronization of Generation, including such terms and conditions as Buckeye, the Transmission Owner and the Transmission Provider (as defined in the Terms and Conditions for Synchronization of Generation) may require as a condition to their consent to the interconnection of the Member-Owner's Generation Facility. The cooperative and the Member-Owner agree that the Terms and Conditions for Synchronization of Generation shall not be modified without the consent of Buckeye. The Member-Owner agrees that in no event will the Member-Owner deliver into the electric distribution system of the cooperative any of the electric power or energy, ancillary services (including, without limitation, reactive power), or other output of the Generation Facility. The Member-Owner agrees that it shall provide, install, own, operate and maintain, at its own cost and expense, all facilities and equipment as are required to prevent delivery into the cooperative's electric distribution system of any of the electric power or energy, ancillary services (including, without limitation, reactive power), or other output of the Generation Facility.
  
6. The Member-Owner agrees that it shall install, operate, maintain, repair, monitor, inspect, and test the Generation Facility in a safe and reliable manner, and in accordance with manufacturers' recommendations, the National Electric Safety Code approved by the American National Standards Institute, and all applicable laws, governmental rules and regulations. Operation of the Generation Facility by Member-Owner shall be limited solely to (a) providing back-up service to the Member-Owner Site while an interruption of electric service from the cooperative to the Member-Owner Site is occurring, (b) providing back-up service to the Member-Owner Site when an interruption of electric service from the Cooperative to the Member-Owner Site is reasonably anticipated to occur but only until such interruption ceases to occur or until such interruption is no longer reasonably anticipated to occur, (c) reducing the electric demand of the Member-Owner Site when a PJM 5-CP System Annual Demand is reasonably anticipated to occur but only until such PJM 5-CP System Annual Demand is no longer reasonably anticipated to occur or has ceased to occur, (d) reducing the electric demand of the Member-Owner Site when, but only for so long as, Buckeye activates the Peak Warning Device for the purposes described in (c) above or for such other purposes as Buckeye may deem appropriate in its sole discretion, and (e) testing of the Generation Facility in accordance with manufacturers' recommendations. Member-Owner and the cooperative acknowledge and agree that any operation of the Generation Facility, except as expressly provided for in this Agreement, constitutes a violation of this Agreement and of the Terms and Conditions of Electric Service and agree that they will not cause, permit or facilitate the operation of the Generation Facility except as expressly provided for herein.

7. This Agreement shall become effective as of the date first written above and shall continue in full force and effect until terminated in accordance with the terms of this Agreement. This Agreement may be terminated: (a) by the cooperative in the event of nonpayment by Member-Owner in accordance with paragraph 1 above, (b) by any party hereto, without cause, by giving the other parties hereto 30 days prior written notice, (c) by Buckeye or the cooperative, at any time, by giving the other parties hereto 7 days prior written notice, if in the sole judgment of Buckeye or the cooperative, Member-Owner breaches any provision of this Agreement, other than for the payment of money, or violates any of the Terms and Conditions of Electric Service.
8. With respect to the sale, installation, operation, activation, deactivation, and non-activation of the peak warning device, Buckeye and the cooperative hereby expressly disclaim all warranties of any kind, whether express or implied, including, without limitation, warranties of title, merchantability and fitness for a particular purpose. Buckeye makes no representations or warranties that activation of the peak warning device indicates that a PJM 5-cp system annual demand is occurring or about to occur or that deactivation or non-activation of the peak warning device indicates that a PJM 5-cp system annual demand is not occurring or about to occur. Member-Owner acknowledges that the peak warning device may be activated when a PJM 5-cp system annual demand is not occurring or about to occur and that the peak warning device may be deactivated or fail to be activated when a PJM 5-cp system annual demand is occurring or about to occur.
9. In no event shall Buckeye or the cooperative be liable for any indirect, incidental, special or consequential damages, or loss of profits or revenue, suffered by member-owner or any third party, whether in an action in contract, tort or strict liability or other legal theory, even if Buckeye or the cooperative has been advised of the possibility of such damages. In no event shall Buckeye's or the cooperative's liability for any damages, losses or causes of action whether in contract, tort, strict liability or other legal theory exceed the actual dollar amount paid by Member-Owner to the cooperative under this agreement.
10. Neither Buckeye nor the cooperative shall be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to any circumstances beyond its control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, explosion, riot, storm, strike or other labor disturbance, interruption of or delay in transportation, or breakage of or accident to the Peak Warning Device, the Generation Facility, or any other machinery or equipment.
11. This Agreement sets forth the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings and agreements

between the parties hereto with respect to the subject matter hereof. This Agreement may not be modified or amended except pursuant to a writing signed by all of the parties hereto. If any provision of this Agreement is held to be invalid by any court of competent jurisdiction, then the remaining provisions of this Agreement shall nonetheless continue in full force and effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Member-Owner shall not transfer or assign its rights or obligations under this Agreement without the express prior written consent of Buckeye and the cooperative. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to its conflicts of law's provisions. This Agreement may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. The parties hereto acknowledge and agree that, except with respect to the purchase of the Peak Warning Device, this Agreement relates entirely and exclusively to the provision of services and not to the purchase of products or goods.

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

**BUCKEYE POWER, INC**

By (Signature): \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**NORTH WESTERN ELECTRIC COOPERATIVE, INC.**

By (Signature): \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Member-Owner Name: \_\_\_\_\_

By (Signature): \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPENDIX A  
DESCRIPTION OF GENERATION FACILITY**

[Insert description of the generation equipment]



**APPENDIX B  
DESCRIPTION OF PEAK WARNING DEVICE  
AND ADDITIONAL TERMS OF SALE**

[Insert description of the peak warning device, including cost and other terms of sale]

**APPENDIX C  
PEAK CONTROL HISTORY**

[Insert historical data on Buckeye's activation of peak warning devices, including number and duration of activation periods]