



A Touchstone Energy® Cooperative

04125 State Route 576 • Bryan Ohio 43506  
Ph. 419-636-5051 • Fax 419-636-0194



Your Touchstone Energy® Cooperatives

**ATTACHMENT 10**

**AGREEMENT FOR [BACK-UP AND SUPPLEMENTARY] ELECTRIC SERVICE**

This Agreement, made and dated as of \_\_\_\_\_, by and between **North Western Electric Cooperative, Inc.** (hereinafter called “the Cooperative”) and \_\_\_\_\_ (hereinafter called the “Member-Owner”), for electric service at \_\_\_\_\_, Ohio, \_\_\_\_\_, Cooperative Location No. \_\_\_\_\_ (hereinafter called the “Premises”):

**WITNESSETH:**

**WHEREAS**, North Western Electric Cooperative, Inc. is a not-for-profit corporation organized under the laws of the State of Ohio engaged in the business of selling electric power and energy at retail with its principal place of business located at 04125 State Route 576, Bryan, Ohio, 43506; and

**WHEREAS**, the Member-Owner [Member-Owner’s affiliate] owns and operates all land and facilities located on the Premises [other than the Electric Generating Facility]; and

**WHEREAS**, the Member-Owner has or will install on the Premises certain member-owned electric generating facilities of approximately \_\_\_\_\_ MW in the aggregate, which electric generating facilities (the “Electric Generating Facility”) are more particularly described in Exhibit E to the Agreement for Interconnection and Parallel Operation of even date herewith by and between the Cooperative and the Member-Owner (the “Agreement for Interconnection and Parallel Operation”); and

**WHEREAS**, the Electric Generating Facility is a certified qualifying cogeneration or small power production facility under the Public Utility Regulatory Policies Act of 1978, as amended, and all governmental regulations lawfully promulgated thereunder (“PURPA”); and

**WHEREAS**, the Member-Owner desires to interconnect the Electric Generating Facility to the Cooperative’s electric distribution system and to [use the output of the Electric Generating Facility to first meet the requirements of the Member-Owner’s electric consuming facilities located on the Premises and then to sell to Buckeye Power, Inc. any such output in excess of the requirements of the Member-Owner’s electric consuming facilities] [OR] [sell the output of the Electric Generating Facility to Buckeye Power, Inc.] under the Agreement to Purchase Power and Energy of even date herewith by and between the Member-Owner and Buckeye Power, Inc. (“Agreement for Purchase of Power and Energy from Qualifying Facility”); and

**WHEREAS**, the Cooperative desires to sell, and the Member-Owner desires to purchase, electric power and energy to meet the requirements of Member-Owner's electric consuming facilities located on the Premises, [including] **[OR]** [not served by] the Electric Generating Facility, under the terms and conditions hereinafter set forth; and

**WHEREAS**, a single meter has been or will be installed for the Cooperative's Location No. \_\_\_\_\_ at the Premises, which meter is capable of registering the flow of electricity from the Cooperative's electric distribution system to Member-Owner's electric consuming facilities on the Premises at the point of interconnection; and

**WHEREAS**, \_\_\_\_\_ receives retail electric service from the Cooperative at Location No. \_\_\_\_\_ for service to \_\_\_\_\_ located on the Premises.

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

1. Subject to the terms and conditions of this Agreement, the Cooperative shall sell and deliver to the Member-Owner, and the Member-Owner shall purchase and receive, all of the electric power and energy which the Member-Owner may need at the Premises up to \_\_\_\_\_ kW [except for any such electric demand and energy which is served by Member-Owner's Electric Generating Facility].
2. Service hereunder shall be alternating current, \_\_\_\_\_ phase, \_\_\_\_\_ cycles, \_\_\_\_\_ volts for Location No. \_\_\_\_\_.
3. The Member-Owner shall pay the Cooperative for service hereunder at the rate and upon the terms and conditions set forth in the Cooperative's [Back-up and Supplementary Electric Service Rate Schedule] **[OR]** [RATE 13], which is attached hereto and made a part of this Agreement as if fully restated herein. The Cooperative's [Back-up and Supplementary Electric Service Rate Schedule] **[OR]** [RATE 13] will be superseded by any new or amended [Back-up and Supplementary Electric Service Rate Schedule] **[OR]** [RATE 13] or any successor rate schedule as approved from time to time by the Board of Trustees of the Cooperative. Payment for the service provided hereunder shall be made at the office of the Cooperative, or at such other place as the Cooperative shall hereafter designate in writing.
4. If the Member-Owner shall fail to make any such payment within fifteen (15) days after such payment is due, the Cooperative may discontinue service to the Member-Owner upon giving no less than fifteen (15) days written notice to the Member-Owner of its intention to do so, provided however, that such discontinuance of service shall not relieve the Member-Owner of any of its obligations under this Agreement.
5. The Member-Owner is or shall become a member-owner of the Cooperative and be

bound by such rules and regulations as may from time to time be adopted by the Cooperative.

**6.** The Member-Owner shall not use the electric power and energy furnished hereunder as an auxiliary or supplement to any other source of electric power and energy and shall not sell or transfer to others the electric power and energy purchased hereunder, without permission of the Cooperative; provided, however, that Member-Owner may operate the Electric Generating Facility upon the terms and conditions and for the purposes set forth in this Agreement, the Agreement for Interconnection and Parallel Operation, [the Cooperative's Back-Up and Supplementary Electric Service Rate Schedule which is attached hereto and made a part of this Agreement as if fully restated herein] and the Agreement for Purchase of Power and Energy from Qualifying Facility. The Member-Owner represents and warrants to the Cooperative that the Electric Generating Facility is a certified qualifying cogeneration or small power production facility under PURPA.

**7.** The Member-Owner shall [use the output of the Electric Generating Facility to first meet the requirements of the Member-Owner's electric consuming facilities located on the Premises. Any output of the Electric Generating Facility in excess of the requirements of Member-Owner's electric consuming facilities shall be sold to] **[OR]** [sell the output of the Electric Generating Facility to] Buckeye Power, Inc. in accordance with the Agreement for Purchase of Power and Energy from Qualifying Facility of even date herewith.

**8.** Whenever the Cooperative's facilities located at the Premises are relocated solely to suit the convenience of the Member-Owner, the Member-Owner shall reimburse the Cooperative for the entire cost incurred in making such change.

**9. (a)** The Cooperative will use reasonable diligence in furnishing a regular and uninterrupted supply of electric power and energy, but does not guarantee uninterrupted service. The Cooperative shall not be liable for damages or other losses in case such supply is interrupted, curtailed, reduced, fluctuates, becomes irregular, or fails, or the commencement of service to the Member-Owner is delayed by reason of an act of God, the public enemy, accidents, labor disputes, orders or acts of civil or military authority, governmental action, loss of power supply, breakdowns or injury to the machinery, transmission or distribution lines or other facilities of the Cooperative, repairs, maintenance or any cause beyond the Cooperative's control; provided, however, that in no event shall the Cooperative be liable for personal injury, wrongful death, property damage or other losses not caused by or due to the gross negligence or willful and wanton misconduct of the Cooperative; provided, further, however, that in no event shall the Cooperative be liable for consequential damages of any nature whatsoever in case such supply of power and energy should be interrupted, curtailed, reduced, fluctuates, becomes irregular, or fails, or the commencement of service to the Member-Owner is delayed; and provided further that the failure of the Member-Owner to receive electric power and energy because of any of the aforesaid conditions shall not relieve the Member-Owner of its obligation to make payments to the Cooperative as provided herein.

**(b)** The point at which service is delivered by the Cooperative to the Member-Owner at the Cooperative's Location No. \_\_\_\_\_ on the Premises, to be known as the "point of interconnection", shall be the point at which the Member-Owner's electric consuming facilities located on the Premises are connected to the Cooperative's electric distribution system. The Cooperative shall not be liable for any loss, injury or damage resulting from the Member-Owner's use of its facilities or equipment or occasioned by the power and energy furnished by the Cooperative beyond the point of interconnection.

**(c)** The Member-Owner shall provide and maintain suitable protective devices on its equipment to prevent any loss, injury or damage that might result from any fluctuation or irregularity in the supply of electric power and energy. The Cooperative shall not be liable for any loss, injury or damage resulting from any fluctuation or irregularity in the supply of power and energy which could have been prevented by the use of such protective devices.

**(d)** The Cooperative will provide and maintain the necessary lines or service connections, metering and other apparatus which may be required for the proper measurement of and rendition of its service. All such apparatus shall be owned and maintained by the Cooperative. A single meter will be installed at the Cooperative's Location No. \_\_\_\_\_ at the Premises, which meter shall be capable of registering the flow of electricity from the Cooperative's electric distribution system to Member-Owner's electric consuming facilities located on the Premises at the point of interconnection.

**10.** In the event of loss or injury to the property of the Cooperative through misuse by, or the negligence of, the Member-Owner or the employees of the same, the cost of the necessary repairs or replacement thereof shall be paid to the Cooperative by the Member-Owner.

Member-Owner will be responsible for any person tampering with, interfering with, or breaking the seals or meters or other equipment of the Cooperative installed at the Premises. The Member-Owner hereby agrees that no one except the employees of or persons duly authorized by the Cooperative shall be allowed to make any internal or external adjustments of any meter or any other piece of apparatus which shall be the property of the Cooperative. The Member-Owner shall provide the Cooperative reasonable access at all times to the Cooperative's meters and other facilities of the Cooperative located on the Premises.

**11.** Metering equipment used in determining the demand and amount of electric power and energy supplied hereunder shall be tested and calibrated, if required, by the Cooperative. If any metering equipment shall be found inaccurate, it shall be restored to the extent possible to a 100.0% accurate condition; or new metering equipment to the extent necessary shall be substituted so that, as far as possible, 100.0% accuracy shall always be maintained. The Member-Owner shall have the right to request that a special meter test be made at any time. In the event a test made at the Member-Owner's request discloses that the meter tested is registering correctly, or within two percent (2%) above or below 100.0% accuracy at full load, Member-Owner shall bear the expense of such meter test.

The results of all such tests and calibrations shall be open to examination by the Member-

Owner and a report of every requested test shall be furnished to the Member-Owner. Any meter tested and found to be not more than two percent (2%) above or below 100.0% accuracy at full load, shall be considered to be accurate in so far as correction of billing is concerned. If as a result of any test, any meter is found to register in excess of two percent (2%) above or below 100.0% accuracy at full load, then the readings of such meter previously taken for billing purposes shall be corrected according to the percentage of inaccuracy so found, but no such correction shall extend beyond the last regular monthly billing period occurring prior to the day on which inaccuracy is discovered by such test, and no correction shall be made for a longer period than that during which it may be determined by mutual agreement of the parties involved that the inaccuracy existed. The Cooperative will bear the cost of the meter test if any meter is found to register in excess of two percent (2%) above or below 100.0% accuracy at full load.

For any period that metering equipment is found to have failed wholly, or in part, to register and for which no alternate metering is available, it shall be assumed that the demand established, or electric energy delivered, as the case may be, during said period is the same as that for a period of like operation during which such meter was in service and operating.

**12.** Duly authorized representatives of the Cooperative shall be permitted to enter the Premises at all reasonable times in order to carry out the provisions hereof.

**13.** This Agreement shall begin on the date first written above and shall continue until the ten-year anniversary of the Commencement Date (as defined in the Agreement for Purchase of Power and Energy from Qualifying Facility) unless extended, terminated or cancelled. Commencing with the tenth (10<sup>th</sup>) anniversary of the Commencement Date, this Agreement shall automatically renew for successive periods of one (1) year each, unless either party provides notice of termination at least 90 days prior to the end of the initial term or any one-year extension of the initial term, in which case the Agreement shall terminate at the end of the then current term. The Cooperative may terminate this Agreement at any time upon material breach by Member-Owner of its obligations under this Agreement. This Agreement shall automatically terminate upon the termination of the Agreement for Interconnection and Parallel Operation or the Agreement for Purchase of Power and Energy from Qualifying Facility.

**14. (a)** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives and assigns; provided, however, this Agreement shall not be assigned by the Member-Owner without the prior written consent of the Cooperative, any such assignment by the Member-Owner being null and void without such consent.

**(b)** This Agreement shall not be effective unless approved in writing by all governmental agencies from which approval is required.

**15.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, except for any conflicts of law's provisions.

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

**NORTH WESTERN ELECTRIC COOPERATIVE, INC.**

By (Signature): \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

By (Signature): \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_