

Ordinance No. 14-08

AN ORDINANCE AUTHORIZING THE VILLAGE ADMINISTRATOR AND FISCAL OFFICER TO ENTER INTO A THREE-YEAR CONTRACT WITH BORDER ENERGY TO PROVIDE ELECTRICAL SERVICES TO THE VILLAGE OF THORNVILLE AND DECLARING AN EMERGENCY

WHEREAS, the Village of Thornville's current contract to provide electrical services to the Village will soon expire; and

WHEREAS, the Village of Thornville has been working with Worthington Energy Consultants, LLC to obtain estimates from various energy providers; and

WHEREAS, Worthington Energy Consultants, LLC has negotiated the lowest rate with Border Energy regarding the Village's electric services; and

WHEREAS, Council for the Village of Thornville now, at the recommendation of Worthington Energy Consultants, LLC, wants to accept the offer made by Border Energy, as being the best value, and enter into a three-year (36-month) contract with Border Energy.

NOW, **THEREFORE, BE IT ORDAINED** by the Council of the Village of Thornville, County of Perry, State of Ohio:

SECTION 1: The Village Administrator and Fiscal Officer are hereby authorized and directed to enter into a three-year (36-month) contract with Border Energy to provide electrical services to the Village of Thornville at a rate of .06898 kw/h.

SECTION 2: All prior legislation, or any part thereof, which is/are inconsistent with this Ordinance is/are hereby repealed as to the inconsistent parts thereof.


SECTION 3: It is hereby determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that any and all deliberation of this Council and any of its committees that resulted in such formal action were in meeting open to the public, in compliance with all legal requirements of the laws of the State of Ohio.

SECTION 4: Council declares this to be an emergency measure immediately necessary for the preservation of the public peace, health, and safety of this municipality and the further reason that the electric rate offered by Border Energy to the Village is available only for a limited time. Wherefore, provided this Ordinance receives the required affirmative votes of Council, this Ordinance shall take effect and be in force immediately upon passage by Council.

Passed in Council this 27th day of May, 2014.


Gavin Renner, Mayor

ATTEST


Sharon Brussee, Clerk of Council

APPROVED:

Approved as to form this 23rd day of May 2014

A handwritten signature in dark ink, appearing to read "Brian Zets", written in a cursive style.

Brian M. Zets, Esq.
Village Solicitor

BORDER

E N E R G Y

Environmental Disclosure Information

Projected Data for the 2014 Calendar Year

<p>Generation Resource Mix</p> <p>A comparison between the sources of generation used to produce this product and the historic regional average supply mix.</p>	<p>Supplier's Product</p> <table border="1"><thead><tr><th>Resource</th><th>Percentage</th></tr></thead><tbody><tr><td>Coal</td><td>55.2%</td></tr><tr><td>Nuclear</td><td>16%</td></tr><tr><td>Natural Gas</td><td>14.5%</td></tr><tr><td>Wind</td><td>1.5%</td></tr><tr><td>Biomass</td><td>1%</td></tr><tr><td>Hydropower</td><td>1%</td></tr><tr><td>Oil</td><td>0.5%</td></tr></tbody></table>	Resource	Percentage	Coal	55.2%	Nuclear	16%	Natural Gas	14.5%	Wind	1.5%	Biomass	1%	Hydropower	1%	Oil	0.5%	<p>Regional Product</p> <table border="1"><thead><tr><th>Resource</th><th>Percentage</th></tr></thead><tbody><tr><td>Coal</td><td>55.2%</td></tr><tr><td>Nuclear</td><td>16%</td></tr><tr><td>Natural Gas</td><td>14.5%</td></tr><tr><td>Wind</td><td>1.5%</td></tr><tr><td>Biomass</td><td>1%</td></tr><tr><td>Hydropower</td><td>1%</td></tr><tr><td>Oil</td><td>0.5%</td></tr></tbody></table>	Resource	Percentage	Coal	55.2%	Nuclear	16%	Natural Gas	14.5%	Wind	1.5%	Biomass	1%	Hydropower	1%	Oil	0.5%
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Note: The generation of this product involves the use of x% of unknown purchased resources. The air emissions and radioactive waste associated with these unknown resources are not included in these charts.

With in-depth analysis, the environmental characteristics of any form of electric generation will reveal benefits as well as costs. For further information, please contact Border Energy Electric Services, Inc. at borderenergyinc.com or by phone at 888-901-8461.

Title: Village Administrator

Title: **President**

Date: May 28, 2014

Date: 5-28-14

Melissa Lumbly
fiscal officer
5-28-14



For office use only



For office use only

Initial BP

31. Contract Price, Terms, and Delivery Points

Start Month	Nov-14
End Month	Oct-17
Duration	36
Term Usage	1,656,534 kWh
Usage Variance	Full Swing
Product	Fixed Price
Contract Price	\$0.06898 per kWh

	EDU	Service Delivery Identifier	Service Address	City, State, & Zip	Term Usage	Rate
1	OPC		CRAIG DR	THORNVILLE, OH 43076	71,403	\$0.06898
2	OPC		CLUM DR GARG	THORNVILLE, OH 43076-0607	45	\$0.06898
3	OPC		MAIN ST N	THORNVILLE, OH 43076-0607	21,996	\$0.06898
4	OPC		PARK DR	THORNVILLE, OH 43076	3,579	\$0.06898
5	OPC		THORNHILL DR	THORNVILLE, OH 43076-0607	23,292	\$0.06898
6	OPC		W COLUMBUS ST	THORNVILLE, OH 43076-0607	341,022	\$0.06898
7	OPC		1 MAIN ST N	THORNVILLE, OH 43076-9409	12,744	\$0.06898
8	OPC		104 FOSTER DR UNIT LIFT	THORNVILLE, OH 43076-8029	21,438	\$0.06898
9	OPC		104 FOSTER DR UNIT LIFT	THORNVILLE, OH 43076-8029	1,452	\$0.06898
10	OPC		145 E COLUMBUS ST	THORNVILLE, OH 43076-8731	7,758	\$0.06898
11	OPC		112 E COLUMBUS ST REAR	THORNVILLE, OH 43076-9701	5,688	\$0.06898
12	OPC		112 E COLUMBUS ST REAR	THORNVILLE, OH 43076-9701	1,044,843	\$0.06898
13	OPC		130 CLUM DR	THORNVILLE, OH 43076	1,452	\$0.06898
14	OPC		130 CLUM DR	THORNVILLE, OH 43076	53,184	\$0.06898
15	OPC		3 N MAIN ST LOWR	THORNVILLE, OH 43076-9444	37,224	\$0.06898
16	OPC		3 N MAIN ST UPPR	THORNVILLE, OH 43076-9444	9,414	\$0.06898

32. Notices: Notices required or permitted to be given under this agreement shall be in writing; the addresses of the parties are as follows:

	Notices to Buyer	Notices to Border Energy Electric Services, Inc.
Attention:	Beth Patrick, Village Administrator	Andy Mitrey, President
Address:	1 South Main Street	4145 Powell Rd.
Address:	P.O. Box 607	
City, State, Zip:	Thornville, OH 43076	Powell, OH 43065
Telephone:	(740) 246-6020	(614) 792-3535
Fax:	(740) 246-5044	(614) 792-3939
E-Mail:	thornvilleadmin@gmail.com	amitrey@border-energy.com
Fed Tax ID:	31-0680951	27-3096543

This agreement constitutes the entire agreement between the parties, notwithstanding any oral statements or representations of any brokers or sales representatives. Any amendment, change, or modification of this contract must be in writing and signed by both parties.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives have executed this agreement effective as of the Effective Date. This agreement will not become effective as to either Party unless and until executed by both Parties

"Buyer"

VILLAGE OF THORNVILLE (ID 3325)

By: Beth Patrick
(Signature)

Name: Beth Patrick

"Border"

BORDER ENERGY ELECTRIC SERVICES, INC.

By: [Signature]
(Signature)

Name: Andy Mitrey

MAKES NO WARRANTIES, WHETHER WRITTEN OR ORAL, WITH RESPECT TO THE ELECTRICITY SUPPLIED UNDER THIS AGREEMENT, INCLUDING EXPRESS, IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE LIMITATIONS SET FORTH IN THIS PARAGRAPH SHALL SURVIVE THE EXPIRATION OR EARLY TERMINATION OF THIS AGREEMENT.

22. Modification of Agreement: Any alteration, deletion or addition to the Agreement shall be effective only if made in a written amendment executed by both Parties. No amendment or modification shall be made to this Agreement by course of performance, course of dealing or consumption of trade, or by the failure of a Party to object to a deviation from the terms of this Agreement.

23. No Third Party Beneficiaries; Relationship of the Parties: There are no third party beneficiaries to this Agreement. Border and Buyer agree that nothing in this Agreement shall be construed to constitute or imply a joint venture, partnership or association or the creation or existence of any fiduciary duty, or similar obligation or liability between Border and the Buyer. Border will not provide, and nothing herein will be construed as the provision of, advice regarding the value or the advisability of trading in "commodity interests" which would cause Border or an affiliate to be considered a commodity trading advisor under the Commodity Exchange Act, 7 U.S.C. § §1-25, et seq., as amended.

24. Severability: If any provision of this Agreement is held to be invalid, its invalidity shall not affect the validity of any other provision of the Agreement.

25. Survival: All confidentiality, indemnity, liability limitation and disclaimer provisions will survive the termination of this Agreement. All obligations provided in this Agreement will remain in effect for the purpose of complying herewith.

26. Taxes: Buyer will be responsible for, pay, and indemnify Border for all Taxes hereunder, whether imposed on Buyer or Border. Border may collect such Taxes from Buyer by increasing invoice charges for the amount of such Taxes. Buyer will provide all requested exemption certificates and information and until provided, Border will not recognize any exemption. "Taxes" shall mean without limitation, all ad valorem, property, occupation, utility, gross receipts, sales, use, franchise, assessment fees, excise and other taxes, governmental charges, emission allowance costs, licenses, permits and assessments, and any such similar taxes other than taxes based on net income or net worth.

27. UCC: Except as otherwise provided in the Agreement, the Uniform Commercial Code ("UCC") or such similar collection of statutory provisions as may have been adopted and are in effect in the state of delivery shall apply to this Agreement and electricity shall be a "good" for purposes of the UCC.

28. Representations and Warranties: Each Party represents to the other that: (a) it is validly existing and in good standing in the jurisdiction of its formation; (b) it has not filed, does not plan to file, or had any bankruptcy proceeding filed against it; (c) execution of this Agreement has been duly authorized and is a valid and enforceable obligation; and (d) it is not a party to or subject to any commitment that may restrict or interfere with the delivery of electricity under this Agreement. Border represents and warrants that it will comply with all local, state and federal laws applicable to competitive retail electric service providers. In addition, Buyer represents to Border during the Term that: (a) it intends to operate its business in substantially the same manner as it has in the previous 12 months and that the Contract Quantities reflected in section 31 reasonably reflect Buyer's anticipated consumption; (b) it understands Border is relying on this representation to purchase products and services (in quantities that closely resemble Buyer's consumption pattern of the previous 12 months) from third parties to serve Buyer's Energy requirements for the Term of this Agreement; (c) it understands that if it operates its meter(s) inconsistent with its usual and customary manner it may cause material detrimental financial impact to Border and that Border will pass along the impact of such changed consumption; (d) the information provided concerning its account(s) and meter(s) is true and correct; (e) any transactions entered into by Buyer related to this Agreement are understood by Buyer and made at Buyer's sole election in the exercise of independent judgment and Buyer assumes any risk associated with them; and (f) it is purchasing these services for its commercial business, strictly for its own use, and its aggregated usage during any twelve (12)-month period is, or will be, greater than 15,000 kWh. If any of the foregoing representations or warranties turns out to be false or the Buyer's consumption specified in section 31 materially change by an amount greater than twenty five percent (25%) as compared to past practice, or the supply group assigned by the EDU to Buyer's account(s) changes, Border may, in addition to other Remedies provided for herein, adjust the Contract Price to account for the adverse change, but only to the extent that the adjustments are equal to the actual incremental costs resulting from the misinformation. Buyer understands that the EDU is required by PUC to communicate with Buyer following a notice of change of CRES provider to confirm the change was authorized and that such communication may indicate that Buyer may cancel or rescind the change within a certain period of time. Buyer acknowledges that a change to (or continuation of) Seller as CRES provider is authorized by this Agreement, that such notice does not afford Buyer an opportunity to rescind a duly executed supply agreement without penalty and that a cancellation or rescission in response to such notice would be an Event of Default by Buyer hereunder. Buyer further understands the EDU may charge switching fees to the customer upon the transfer of service to the CRES. Buyer has the right to request from the CRES provider, twice within a twelve month period, up to twenty-four months of the customer's payment history, to the extent it is available, without charge.

29. Information Disclosure. Buyer understands that by executing this Agreement, Seller will be provided certain basic information about Buyer by the EDU, including, but not limited to, account number, data about meter readings, rate class and electric usage, Buyer's address(s) and telephone number, and whether or not Buyer is on a budget billing plan or payment arrangement or as otherwise approved by the PUC Bureau of Consumer Services.

30. Other Costs, Charges and Credits:

Costs (Included in Contract Price):

- Spot Market Energy
- Transmission Congestion
- Transmission & Distribution Losses
- Inadvertent Interchange
- Regulation
- Synchronized Reserve
- Operating Reserves
- Reliability Must Run (RMR)

- Synchronous Condensing
- Reactive Services
- Meter Correction
- Real-time Economic Load Response
- Scheduling, Control & Dispatch
- Transmission Owner Scheduling, Control & Dispatch
- Reactive Supply & Voltage Control

- Black Start Service
- NERC & RFC Changes
- Network Integration Transmission Service
- Expansion and RTO Start-Up Cost Recovery
- Locational Reliability (a.k.a. Capacity)
- Transmission Enhancement Charges
- Renewable Requirements

Pass-Through Charges & Credits (at cost):

Applicable EDC (Electric Distribution Company) tariff charges
All applicable taxes (gross receipts, state, and local)



E N E R G Y

Energy focused. Customer driven.

4145 Powell Rd
Powell, OH 43065

Large Commercial Electric Sales Contract

This **COMMERCIAL ENERGY SALES AGREEMENT** ("Agreement") is entered into and made by and between Border Energy Electric Services, Inc. ("Border") and the buyer of retail electricity identified herein ("Buyer"). This Agreement shall be effective as of the date signed below (the "Effective Date"). Border and Buyer may be individually referred to as "Party" or collectively as "Parties". The Parties hereby agree as follows:

1. **Purchase and Sale:** Border shall sell and Buyer shall purchase and receive electric energy for Buyer's facility(ies) as specified in section 31 ("Delivery Point(s)") at the price(s) per kilowatt hour (kWh) specified ("Contract Price"). The electric energy will be delivered to a point or points on the transmission system as identified by the Electric Distribution Utility ("EDU") operated by the Independent System Operator/regional transmission entity ("ISO"). Delivery to meters corresponding to each Delivery Point will be made by the EDU.
2. **Metering:** All energy delivered hereunder ("Usage") shall be and can only be, measured by the EDU at meters located at each Delivery Point. Actual Usage shall be the primary method of calculating the monthly charges for Buyer. However, Border may use estimated Usage if measurements of actual Usage are not received timely from the EDU, in which case Border will make appropriate adjustments upon receipt of actual Usage. Border cannot guarantee a switch of Buyer's account(s) to Border will occur by a specific date, and Border shall not be liable for delays in this process caused by the ISO or the EDU. The Service Start Date shall be the date upon which a particular account is switched to Border. The Service Start Date is typically the scheduled read date that occurs in the month and year identified as the Start Date as specified in section 31. The Service End Date is typically the scheduled read date that occurs in the month and year identified as the End Date also specified in section 31. Each account may have a separate Service Start Date and Service End Date. Border acknowledges and represents that it is familiar with the rules and procedures of the local distribution company (EDU) regarding transfer of service to a competitive retail electric service provider ("CRES"). If the EDU requires Buyer to install additional metering and/or related equipment at any service address, Buyer will be solely responsible for all charges and arrangements required by the EDU.
3. **Pricing:** Buyer will pay (1) the Contract Price times the Usage, plus (2) for Usage that is for a time period outside of the Term, any amounts calculated per Paragraph 5 below. The Contract Price per kWh includes energy commodity charges and the costs identified in section 30. The costs and any taxes also described in section 30 will be passed-through to Buyer without markup. Contract Price specified in section 31 as "Rate" shall mean the Buyer's price per kWh will be the consumption-weighted hourly LMP charge for the applicable location and time period plus the following items: i) Operating Reserves at the rate published by PJM for the billing period and ii) the LMP Adder. A broker or consultant may have been involved in the negotiation of this contract and such broker or consultant's fee or commission may also be included in the Contract Price charged to Buyer.
4. **Billing & Payment:** Border or the EDU will invoice Buyer the total amount due for electricity delivered to Buyer during each month according to the EDU's billing cycle and meter read. Such invoice shall also include all applicable Taxes, EDU and ISO Charges and other charges allowed pursuant to this Agreement and the appropriate EDU tariff. Under Consolidated billing, the buyer shall be billed and agrees to pay for electric energy in accordance with the EDU's tariff, which includes, without limitation, when payment is due and late payment charges. For all amounts billed directly by Border, past due amounts will incur a late payment charge of 1.5% per month or the maximum amount allowable by law (the "Interest Rate"). Border charges \$25.00 for each returned check (or ACH). Buyer shall be responsible for any and all collection costs incurred by Border. Border reserves the right to convert Buyer from Consolidated billing to Dual Billing, or from Dual Billing to Consolidated Billing if such a conversion will facilitate more timely billing, collections and /or payment.
5. **Pricing Parameters Outside the Contract Term:** For periods during the Usage occurs outside of the time period between the Service Start Date and the Service End Date, Border may charge the incremental cost or value of providing electricity to Buyer, based on the difference between the Contract Price and the hourly LMP charge for the applicable location and time period plus retail margin, broker fees, the costs identified in section 31 including any other similar Charges incurred by Border during the course of the Term. Appropriate adjustments to the foregoing amounts will be made for partial months.
6. **Disputed Amounts:** If there is a good faith dispute regarding any invoice, Buyer will pay the undisputed amount of any invoice by the applicable due date, and the Parties will attempt to expeditiously resolve the dispute. Notice of any dispute must be provided within a reasonable period of time and as otherwise required by applicable law. In no event shall the disputed portion include a dispute for Taxes.
7. **Blend and Extend - Rate Adjustment and Term Extension:** At any time during the Term but no more frequently than monthly, Buyer may request that the Term be extended or shortened and the Contract Price then in effect be changed. Upon request, Border will submit an offer to Buyer reflecting a revised Contract Price and new Term. Buyer will be under no obligation to accept such offer.
8. **Adding and Deleting Delivery Points:** Buyer is not permitted to add or delete Delivery Points without the prior written consent of Border.
9. **Performance Assurance:** If Border determines, in its reasonable discretion, that Buyer's creditworthiness or ability to perform under this Agreement has become unsatisfactory (including, but not limited to, Buyer's late payment of any amounts due under this Agreement), Border may require that Buyer provide collateral for its obligations in the form of cash, letter(s) of credit, corporate or personal guarantees, or other security in form and amount reasonably acceptable to Border ("Performance Assurance"). Border may require a deposit in the amount of two average months of customer billings. Deposits will be returned after one year of service and no more than one late payment has occurred. If Buyer fails to provide Performance Assurance within three (3) business days of receipt of such notice, an Event of Default shall be deemed to have occurred.
10. **Term:** This Agreement shall commence on the Effective Date and shall continue in effect through the last occurring Service End Date (the "Term") unless sooner terminated as otherwise provided in this Agreement.
11. **Assignment and Binding Effect:** Neither Party may assign this Agreement without the express written consent of the other Party, which consent shall not be unreasonably withheld. However, Border may, without the consent of Buyer, (a) assign this Agreement to any affiliate or to any party succeeding to a substantial portion of the assets of Border, or (b) pledge or otherwise collaterally assign its rights under this Agreement to any entity providing extensions of credit to Border. Any successor or assignee of the rights of any Party shall be subject to all the provisions and conditions of this Agreement to the same extent as though such successor or assignee were the original Party under this Agreement. Any assignment in violation of this Paragraph 11 shall be void.

12. Regulatory Events: If there is a change in law, administrative regulation, rule, ISO design or structure, order, judicial decision, statute, or a change in an interpretation or application of any of the foregoing (collectively, a "Regulatory Event") and such Regulatory Event causes Border to directly or indirectly incur any capital, operating, commodity or other costs (including, but not limited to increased Taxes) relating to the provision of services contemplated herein above those existing prior to the date of the Regulatory Event, then Border shall be permitted to pass through the economic effects of such Regulatory Event to Buyer. For the avoidance of doubt, an increase in the rate for Network Integration Transmission Service by the EDU as approved by the FERC shall be a Regulatory Event.

13. Confidentiality: Neither Party shall disclose the terms of this Agreement to a third party (other than the Party's affiliates, employees, lenders, counsel, consultants, accountants and other parties who have agreed to keep such terms confidential), except in order to comply with applicable law. Each Party shall notify the other Party of any proceeding of which it is aware which may result in disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this Paragraph 13.

14. Event of Default: An "Event of Default" means (a) a representation or warranty made by a Party to this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true during the Term (excluding Buyer's representations in Section 28, subsections (a), (b) and (c) regarding Contract Quantities and Usage, which the Parties agree will not be a basis for an Event of Default); (b) the failure of a Party to perform any covenant set forth in this Agreement which is not excused by Force Majeure or cured within five (5) business days after written notice thereof; (c) Buyer is late in the payment of two (2) or more invoices in any six (6) month period; (d) the failure of Buyer to provide Performance Assurance in accordance with Paragraph 9; (e) the failure of Buyer to utilize Border as its sole supplier of electric energy for its Delivery Point(s) at any time during the Term (including but not limited to a switch of Buyer's electric service to another provider); (f) a Party makes an assignment or any general arrangement for the benefit of creditors or otherwise becomes bankrupt or insolvent; or (g) the EDU disconnects service to one or more of Buyer's accounts as a result of Buyer's non-performance. The Party alleged to have taken, caused or been affected by any of the actions set forth above shall be considered the "Defaulting Party" and the other Party shall be considered the "Non-Defaulting Party."

15. Termination: Where there exists an Event of Default, the Non-Defaulting Party may terminate this Agreement upon notice to the other Party (a "Termination"). Upon Termination, the Non-Defaulting Party reserves the right to provide an invoice to the Defaulting Party for the sum of (i) any remaining amounts due under this Agreement pursuant to Paragraph 4; and (ii) an amount ("Settlement Amount") representing the then current replacement value of this Agreement together with, but without duplication, all losses and costs incurred by the Non-Defaulting Party as a result of maintaining, terminating, obtaining or re-establishing any hedge or related physical or financial positions applicable to this Agreement. Payment shall be due within five (5) days of invoicing. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other arising from this Agreement through netting, in which case all amounts owed by each Party to the other Party shall be netted so that only the excess amount remaining due shall be paid by the owing Party. Under no circumstance shall a Settlement Amount be due from a Non-Defaulting Party.

16. Entirety of Agreement: It is the intention of the Parties that this Agreement contains all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of the electricity, and supersedes all prior agreements, written or oral.

17. Force Majeure: Except for obligations for the payment of money, if either Party is rendered unable, wholly or in part, to perform its physical obligations under this Agreement (including but not limited to the delivery or receipt of electricity hereunder) due to Force Majeure, the physical obligations of each Party will be suspended for the duration of any inability to perform for up to twenty (20) consecutive days. A Party claiming Force Majeure (the "Claiming Party") will notify the other Party by written confirmation, describing the nature, and estimated duration of such inability to perform. The cause of such inability to perform will be remedied with all reasonable dispatch. "Force Majeure" means any event or occurrence (including, but not limited to "Acts of God") that is beyond the control of a Party and that: (a) is not the result of the negligence of the Claiming Party; and (b) which, by the exercise of due diligence, the Claiming Party is unable to avoid or cause to be avoided. A claim of Force Majeure may not be based on: (a) Buyer's inability to economically use electricity purchased under this Agreement; (b) Buyer's election to close, sell, abandon or materially curtail or discontinue operation of Buyer's facilities due to any economic circumstance; (c) a Party's inability to acquire electricity at a particular price; or (d) a Party's ability to sell electricity at a price above the Contract Price.

18. Forward Contract: The Parties acknowledge and agree that this Agreement and the transaction(s) contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United Bankruptcy Code.

19. Governing Law/Counterparts: This Agreement will be interpreted in accordance with the substantive and procedural laws of the State of Ohio without giving effect to laws and rules governing conflicts of laws. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and be deemed binding through the use of facsimile signatures.

20. Indemnification: Each Party will indemnify, defend and hold harmless the other Party, its officers, agents, and employees from any claims, damages and actions of any kind arising from personal injury (including without limitation, death), tangible property damage or any other damages arising from or out of any event, circumstance, act or incident occurring or existing with respect to the energy provided pursuant to this Agreement, whether or not control and title to the energy is vested in Buyer. It is understood Border will not be responsible for any damages associated with failure to deliver the electric energy or any other damages alleged to have arisen prior to delivery to Buyer's meter(s). This provision survives the termination or expiration of this Agreement.

21. Limitation of Remedies, Liability, Damages & Disclaimer of Warranties: FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED, SUCH EXPRESS REMEDY WILL BE THE SOLE AND EXCLUSIVE REMEDY. IF NO EXPRESS REMEDY IS PROVIDED, A PARTY'S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. THE PARTIES INTEND THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSES RELATED THERETO INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE CHARACTERIZED OR DEEMED TO BE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN PARAGRAPH 28, BORDER EXPRESSLY DISCLAIMS AND