



APPENDIX B

ELECTRIC GENERATION SERVICE AGREEMENT

BETWEEN

[PARTICIPATING MEMBER OF THE ALLIANCE FOR COMPETITIVE ENERGY SERVICES (ACES)],

Randolph Twp Bd of Ed

AND

Hess Corporation

DATED

April 11, 2012

**ELECTRIC GENERATION SERVICE AGREEMENT
BETWEEN**

ALLIANCE FOR COMPETITIVE ENERGY SERVICE ("ACES") PARTICIPATING MEMBER

Randolph Twp Bd of Ed

AND

RETAIL ELECTRIC POWER SUPPLIER Hess Corporation

DATED APRIL 11, 2012

This Power Purchase Agreement ("Contract") is made effective MAY 1, 2012, by and between Hess Corporation ("**Supplier**") and Randolph Twp Bd of Ed ("**Customer**") also referenced herein as "Party" or collectively as "Parties." This Contract incorporates all transaction-specific Confirmation Agreements, and the Request for Bids for Electric Supply Service ("Request for Bid" or "RFB") issued by the Alliance for Competitive Energy Services ("ACES" on February 29, 2012.

Definitions:

"Award Letter" means the letter issued by the Executive Director of the New Jersey School Boards Association ("NJSBA"), acting as Lead Agency of ACES, notifying Supplier of the bid award resulting from the RFB and memorializing the Contract Price as provided for in Supplier's Bid submitted to ACES.

"Block Energy Price" means a fixed price per kilowatt-hour for a defined block (in kilowatts or "kw") of electricity as defined in the RFB and the Confirmation Agreement. The Block Energy Price is only applicable to the extent that Customer is served under a Block and Index pricing product as defined in the RFB

"Confirmation Agreement" means the Award Letter which memorializes the Contract Price as provided for in Supplier's Bid submitted to ACES, and the list of Customer's accounts to be served under this Agreement, attached hereto as Appendix A,.

"Administrative Fee" shall mean the per kilowatt-hour fee as provided for in the RFB, which shall be included in the Contract Price, collected by Supplier and remitted by Supplier to the ACES Independent Financial Manager.

"Delivery Point" means a point where the PJM transmission grid meets the EDC delivery system.

"EDC" means the electric distribution company, otherwise referred to as the electric utility, in whose service territory Customer's accounts served under this Contract are located.

"FERC" means the Federal Energy Regulatory Commission.

"Fixed Adder" shall be as defined in the RFB, and is only applicable to the extent that Customer is served under a Index Price pricing product as defined in the RFB.

"Fixed Price" pricing product shall be as defined in the RFB

"Kwh" means a kilowatt-hour, which is a standard measurement of electric energy consumption or production.

"NIT" means Network Integration Transmission service tariffs approved by the FERC and implemented and assessed by PJM on load in the applicable EDC transmission zone, including any applicable surcharges, and net of any applicable credits.

"NJBPU" means the New Jersey Board of Public Utilities.

“PJM” means the PJM Interconnection, which is a regional transmission organization or “RTO” that coordinates the movement of electricity in all or parts of thirteen states in the Mid-Atlantic and surrounding regions and the District of Columbia.

“Day-Ahead Locational Marginal Price” means the hourly day-ahead spot energy market price applicable in the PJM transmission zone for the applicable EDC.

“RPM” means the Reliability Pricing Model established and implemented by PJM to establish market prices for generation capacity.

“Renewable Portfolio Standards” means minimum percentages of various forms renewable energy required to be included in each Electric Power Supplier’s energy portfolio pursuant to New Jersey State law and NJBPU regulations.

1. **Nature of Transaction:** Customer and **Supplier** respectively agree to purchase and sell the full electric generation service requirements for the accounts listed, together with such ancillary services that may be shown on the Confirmation Agreements. **Supplier** will serve as agent for Customer in accordance with the policies and procedures of Customer’s electric distribution company (“EDC”) in order to provide supply coordination functions, including, but not limited to, nominating, scheduling and balancing. Customer will utilize **Supplier** as its sole electricity Supplier for all electrical requirements, net of any on-site, behind-the-meter renewable energy project generation, during the term of this Contract for the accounts listed on the Confirmation Agreement.
2. **Contract Term and Sales Period(s):** The effective term of this Contract shall commence with the May 2012 meter reading date for each account listed on the Confirmation Agreements, and shall continue until the __ May 2013 (12-month Contract term) or __ May 2014 (24-month Contract term) meter reading date (check one for selected term, hereinafter referred to as the “Sales Period”). This Contract shall remain effective for the duration of any and all Sales Period(s) specified in the Confirmation Agreement(s). Moreover, if the initial term of this Contract is twelve (12) months, the term may be extended for a term of up to twenty-four (24) additional months or, if the initial term of this Contract is twenty-four (24) months, the term may be extended for a term of up to twelve (12) additional months, by the mutual, written consent of both parties, at a Contract Price to be agreed upon by the Parties, memorialized in a supplemental Confirmation Agreement and established in accordance with applicable law. Any such extension(s) shall be executed no less than twenty (20) days before the termination date. If no such extension is executed the Contract shall terminate at the end of its initial term and Supplier shall initiate a drop of accounts to be effective at the end of the initial term.
3. **Quantity:** **Supplier** shall tender for delivery to Customer, and Customer must accept for receipt from **Supplier**, the Customer’s full power usage requirements, net of any on-site, behind-the-meter renewable energy project generation, for the accounts listed on the Confirmation Agreement(s).
4. **Contract Price:** For each kilowatt-hour (“kWh”) of power delivered to and measured at the Customer meter, Customer shall pay Supplier the Contract Price specified in Supplier’s Bid submitted in response to the Request for Bids and memorialized in the Confirmation Agreement attached hereto. The Contract Price includes all charges, fees and taxes that are imposed on the power prior to its delivery to Customer’s EDC, and shall also include the Administrative Fee. For the Index price pricing product, the Fixed Adder component of the Contract Price, which shall be assessed on each kWh delivered to and measured at the Customer meter, shall include the cost of capacity, transmission, ancillary services, Renewable Portfolio Standards requirements, supplier margin, and the Administrative Fee in the amount specified in the RFB. The Contract Price shall also include energy charges, which will be the sum of the hourly energy usage in each hour multiplied by the PJM zonal Day-Ahead Locational Marginal Price in each corresponding hour, grossed up for State sales and use tax. Customer shall retain the right to convert the Index Price pricing product to a Fixed Price, at a price that is subject to the mutual written agreement of the parties, and that is otherwise in accordance with applicable law. Unless otherwise specified in the Confirmation Agreement, all taxes applicable to such power for which the taxable incident arises upon or after the Delivery Point, including but not limited to sales, use, transfer, gross receipts or energy taxes will also be included in the Contract Price.

5. **Adjustments to Contract Price:** An adjustment to the Contract Price shall be permitted under the following circumstances:
- a) A legislated change in the current 7% State Sales and Use Tax ("SUT"), in which case the price adjustment shall reflect the difference between newly-enacted SUT rate and the 7% SUT rate in effect at the time Supplier submitted its Bid. ;
 - b) In the event of a change of greater than 25% in the aggregate monthly Kwh usage of the Customer accounts receiving service under the Agreement, in which case Seller may adjust the price to reflect the incremental cost of purchasing energy in excess of the 125% bandwidth at market, or any incremental loss incurred by Supplier in re-selling unused energy below the 75% bandwidth at market. Notwithstanding the foregoing, there shall be no price adjustments permitted for aggregate usage reductions, even those that exceed 25%, associated with the operation of an on-site renewable energy project(s) by Customer.; or
 - c) A change in FERC-approved transmission NIT charges implemented after the Effective Date of the Agreement. In such instance Supplier may adjust the Contract Price by a percentage amount up to the percentage change in Supplier's direct total cost to provide Electric Generation Service to Customer directly caused by the change in FERC-approved transmission NIT charges.

6. **Title, Possession and Control:** Supplier shall deliver Customer's electricity requirements to a "Delivery Point". The Delivery Point shall be on the EDC transmission system and will be determined by Supplier at the time of scheduling. Title and risk of loss shall pass to Customer at the Delivery Point, and Customer shall be responsible for obtaining delivery service to its facility from the Delivery Point under the applicable New Jersey Board of Public Utilities-regulated tariffs of Customer's EDC. Customer is responsible for all distribution and service charges imposed by Customer's EDC relative to the delivery of power to Customer's facility. Customer shall be responsible for, and shall cooperate with Supplier in obtaining from its EDC metering and historical load information reasonably necessary to record values of consumed kW and kWh on a continuous basis necessary to allow for proper billing. Supplier shall not be responsible for any variation in the quality, including zero voltage, of the electric service provided by the EDC to Customer.

7. **Transportation Balancing and Overruns:** Supplier will be responsible for any and all charges or penalties imposed by Customer's EDC for failing to deliver Customer's power usage requirements to the Delivery Point on the EDC transmission system..

8. **Billing and Payment:** During the term of this Contract, Supplier shall bill Customer on a monthly basis based on the prior month's delivery of electricity. The monthly billing periods shall correspond to the meter read dates of Customer's EDC. All amounts due hereunder shall be paid within forty-five (45) days of the date of receipt of the invoice. Seller may assess late fees on payments received after the due date, at a rate not to exceed 1% per month. If an amount due is not received from Customer when due, Supplier may issue written notice to Customer, and Customer shall have a five (5) business days cure period from date of receipt of such notice. Upon completion of the 5 business day cure period, if payment of overdue amounts is not made by Customer, Supplier may suspend deliveries, terminate this agreement, and liquidate any power purchased for delivery to Customer during future periods. Notwithstanding the foregoing deliveries shall not be curtailed and interest shall not be accrued, and the Agreement shall not be terminated, where Customer provides written evidence of a good faith billing dispute and pays the undisputed amount. Customer agrees to reimburse Supplier for all reasonable cost that Supplier incurs, including reasonable attorneys' fees, in any attempt to collect undisputed past due amounts from Customer.

9. **Credit:** If, at any time, Customer does not meet Supplier's commercially reasonable creditworthiness standards, Supplier may require Customer to provide credit assurance in a form and amount reasonably acceptable to Supplier, such as a letter of credit, third-party guarantee, deposit or prepayment.

10. **Force Majeure:** Neither Party shall be liable for failure of performance due to causes beyond its reasonable control (force majeure), such as: failure of transmission grid or EDC distribution facilities; acts of God; fire; civil

disturbances; terrorist acts or threats; labor dispute; labor or material shortage; sabotage; action or restraint by court order or public or governmental authority (so long as the Claiming Party has not applied for or assisted in the application for such government action). A Party claiming inability to perform due to force majeure must provide the other Party with prompt notice stating the reason for its inability, and must make reasonable efforts to promptly resolve such inability to perform. Economic hardship, including, without limitation, **Supplier's** ability to sell power at a higher or more advantageous price than the Contract Price or Customer's ability to purchase power at a lower or more advantageous price than the Contract Price, shall not excuse a party's obligation to perform under this Contract.

11. Failure to Deliver/Accept - Exclusive Remedy: If for an unexcused reason either Party fails to perform its obligation hereunder to tender for delivery (in the case of **Supplier**) or accept power tendered for delivery (in the case of Customer), the other Party's exclusive remedy shall be a) in the case of **Supplier** failure, the positive difference, if any, between the price Customer paid for replacement supplies, including administrative fees, brokerage fees and other similar costs, and the Contract Price, multiplied by the quantity of power **Supplier** failed to deliver; or b) in the case of Customer's failure, the positive difference, if any, between the Contract Price and the price **Supplier**, acting in a commercially reasonable manner, obtained from a replacement market, multiplied by the quantity of power not accepted by Customer. A Party shall act reasonably to minimize its damages, which shall include but not be limited to reasonable efforts to obtain replacement supplies or a replacement market, where applicable. In the event that such reasonable efforts are unsuccessful or only partly successful, the Party failing to perform shall be responsible for an amount calculated by multiplying the Contract Price times the quantity of power for which the other Party failed to obtain a replacement supply or replacement market, whichever applicable, in addition to any amounts calculated with respect to replacement supplies or replacement market(s). In calculating damages owed under this Section, Supplier shall net or aggregate, as appropriate: (i) any and all amounts owing between the parties under the Contract; (ii) any amount owed to Customer against any margin or other collateral provided by Customer and held by Supplier relating to the Contract; and (iii) any amount payable to Customer against any amount(s) payable by the Customer to Supplier under any other agreement or arrangement between the parties, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other.

LIMITATION OF DAMAGES: IN NO INSTANCE AND FOR NO PURPOSE SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, REGARDLESS OF WHETHER A CLAIM IS MADE OR REMEDY IS SOUGHT IN CONTRACT, TORT, OR OTHERWISE.

12. Bankruptcy: The Parties specifically agree that this Contract and all Transactions pursuant hereto are "Forward Contracts" as such term is defined in the United States Bankruptcy Code, 11 U.S.C., Section 101(25). If either Party becomes subject to Bankruptcy Code proceedings, it is understood and agreed that the other Party shall be entitled to exercise its right to liquidate this Contract as a "Forward Contract Merchant" under Section 556 of the U.S. Bankruptcy Code.

13. Notices: Notice(s) required hereunder shall be deemed properly made if telecopied, delivered personally or sent by regular or certified mail to the following addresses or facsimile.

Customer Representative:

Supplier Representative:

HESS CORPORATION
ONE HESS PLAZA
WOODBIDGE, NJ 07095
KEVIN GEORGE
PHONE (732) 750-6888
FAX (732) 750-6927

14. Miscellaneous: This Contract shall be construed in accordance with the laws of the State of New Jersey, without recourse to provisions governing choice of law. Any action brought in law or equity with respect to this Contract shall only be filed in the Superior Court of New Jersey, regardless of federal question, citizenship or amount in controversy. Venue shall be laid in the county of the Customer. Prior to the institution of such action, the parties

shall agree to the Alternate Dispute Resolution procedure of mediation under the auspices of the American Arbitration Association, or such other agency upon which the parties may agree. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-signing party, which consent will not be unreasonably withheld or delayed; provided, however, that (i) Supplier may, without the consent of Customer, transfer, sell, pledge, encumber or assign this Contract or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, and (ii) either party may, upon notice to the other, transfer or assign this Contract to an affiliate, which affiliate's creditworthiness is comparable to or higher than that of such party, or transfer or assign this Contract to any person or entity succeeding to all or substantially all of the assets of such party.

EACH PARTY HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER. SELLER HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE ELECTRICITY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

EACH PARTY HERETO KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING HERETO.

AGREED AND ACCEPTED

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CUSTOMER: Randolph Twp Bd of Ed

SUPPLIER: Hess Corporation

BY: _____

BY: 

TITLE: _____

TITLE: Government Sales Manager

DATE: _____

DATE: 4/11/2012

Member	Customer	Fixed Price	LDC	Tariff
Randolph Twp Bd of Ed	08014069810000497275	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014069810000726517	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014069810000726523	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014069810000854973	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014069810000855389	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014069810000856125	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014069810000856263	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014069810000856265	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014069810000913553	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014069810000926184	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014069810000957281	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014069810003038127	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014069810003095715	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014069810005563013	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014069810006452637	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014517980005384044	0.06768	JCP&L	GS
Randolph Twp Bd of Ed	08014069810000494612	0.06768	JCP&L	GS3
Randolph Twp Bd of Ed	08014069810000726317	0.06768	JCP&L	GS3
Randolph Twp Bd of Ed	08014069810000726319	0.06768	JCP&L	GS3
Randolph Twp Bd of Ed	08014069810000726324	0.06768	JCP&L	GS3
Randolph Twp Bd of Ed	08014069810000856165	0.06768	JCP&L	GS3
Randolph Twp Bd of Ed	08014069810006411763	0.06768	JCP&L	GS3
Randolph Twp Bd of Ed	08014069810006411765	0.06768	JCP&L	GS3
Randolph Twp Bd of Ed	08014069810006411768	0.06768	JCP&L	GS3
Randolph Twp Bd of Ed	08014069810000726520	0.07466	JCP&L	RS