

DECOMMISSIONING AGREEMENT

This **DECOMMISSIONING AGREEMENT** (this "Agreement") is made and entered into as of this ____ day of _____, 2016 between **CLEAR RIVER ENERGY LLC** ("CREC" or the "Company"), a Delaware limited liability company, and the **TOWN OF BURRILLVILLE, RHODE ISLAND**, a Rhode Island municipality (the "Town"). CREC and the Town are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, CREC is in the process of developing, constructing and operating a nominal 1,000 megawatt natural gas fired electric power generating plant (the "Project") comprised of two (2) nominal 500 megawatt units ("Unit 1" and "Unit 2") in Burrillville, Rhode Island; and

WHEREAS, certain Town boards and departments will be submitting Advisory Opinions to the Rhode Island Energy Facilities Siting Board ("EFSB") with respect to the Company's request for a license to construct the Project; and

WHEREAS, the Town has requested that the Company enter into a written Decommissioning Agreement with the Town, providing for the complete removal or agreed-upon reuse of Project components, structures, utilities, and appurtenances, and site restoration, at the end of the Project's operating life, and for the payment of all costs of decommissioning by the Company, and further requiring that the Company provide financial assurance in an amount adequate to address its obligations for decommissioning.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Company shall complete restoration in accordance with the Decommissioning Report to be submitted to the Town pursuant to paragraph 6 hereof upon the Abandonment of the Project or a portion of the Project (defined below).
2. As part of the restoration process defined by the Decommissioning Report to be submitted pursuant to paragraph 6 hereof, the Company hereby agrees to completely remove all Project equipment, facilities, structures and utilities added to or installed upon the Project site. After such removal activities are complete, including the successful completion of any required soil or groundwater remediation, any affected areas will be regraded and topsoil will be placed, and planted with vegetative cover reasonably acceptable to the Town, including, but not limited to, grasses, bushes and trees, consistent with the reuse or future use that is intended for the project site.
3. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto, their respective successors, assignees and legal representatives.

- A. Assignment Requiring Consent. Except as expressly permitted in this paragraph 3, this Agreement may not be assigned without the written consent of the other Party, and such consent shall not be unreasonably withheld or delayed.
 - B. Permitted Assignment. Notwithstanding subparagraph (A) above, the Company shall be entitled to assign this Agreement, in whole or in part, without the prior consent of the Town to (a) any affiliate of the Company or (b) any person or entity providing financing to the Company or any such affiliate or any collateral agent or security trustee acting on behalf of any such person (each a "Permitted Assignment"). Any such assignment will not relieve the Company of its obligations under this Agreement. In the event of a Permitted Assignment the Company shall, prior to such assignment, provide written notice to the Town of the name, address, entity type and state of incorporation of the assignee, as well as the name and address of the assignee's registered agent in the State of Rhode Island.
- 4. If the Project or a portion thereof ceases to operate or is not in a ready state of operation for twenty-four (24) consecutive months, then the Project, or that portion of the Project, shall be considered "Abandoned," unless the Project has commenced the Decommissioning Process.
- 5. In the case of a Default (defined below) that is not cured in a reasonable time by the Company under this Agreement or if the Project has been Abandoned, the Town and its agents shall have access to the Project site, pursuant to ten (10) days written notice to the Company, to initiate, pursuant to the plans as established in the Decommissioning Report, the removal and restoration process for the Project at the Company's sole expense. To the fullest extent permitted by law, the Company shall indemnify and hold harmless the Town and all of its employees, agents, contractors and subcontractors from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the decommissioning process. Nothing in this Agreement shall be construed to impose upon the Town the duty to affect or complete the removal and restoration process contemplated by this Agreement. As used herein, "Default" means a default by one party of its obligations under this Agreement, which default continues for thirty (30) days after receipt of written notice from the other party of such default; provided, however, that if a default cannot reasonably be cured within such thirty (30) day period and the Company commences and diligently pursues such cure, the time to cure shall be extended for such further period as shall be necessary for the party to cure.
- 6. The Company shall prepare and submit a Decommissioning Report as follows:
 - A. Prior to the date on which the Company commences construction of Unit 1 ("CCD-1"), the Company shall prepare a Preliminary Decommissioning Report that evaluates the estimates of the potential costs of decommissioning and restoration or reuse of the Project site and provides a recommended Financial Assurance. The Company shall complete an environmental site assessment as

required by the Rhode Island Department of Environmental Management prior to CCD-1 and the results of such assessment shall be made available to the Town.

- B. Prior to the date on which the Company commences construction of Unit 2 (“CCD-2”), the Company shall update the Preliminary Decommissioning Report.
- C. Each and every Preliminary Decommissioning Report, Decommissioning Report, Decommissioning Report update, and Decommissioning Completion Report will be evaluated by the Town at the Company’s expense (including reasonable costs associated with consultants hired by the Town for such purpose and pursuant to a mutually agreed upon budget). Neither the Preliminary Decommissioning Report, Decommissioning Report, Decommissioning Report updates, nor the Decommissioning Completion Report will be considered final until the Parties agree to its contents.
- D. The Decommissioning Report for the Project shall be updated every five (5) years from CCD-1 until the twentieth (20th) anniversary of CCD-1. The Decommissioning Report for the Project shall be updated every two (2) years after the twentieth (20th) anniversary of CCD-1.
- E. If the Company fails to timely submit any Preliminary Decommissioning Report, Decommissioning Report, or Decommissioning Report update, the Company shall be obligated to do so within 30 days of written notice from the Town or shall be considered in default hereunder.
 - (i) If the Company defaults on its obligations related to preparing or updating any Decommissioning Report under this Agreement, the Town may immediately hire consultants of its choice for the purpose of preparing or updating the Decommissioning Report at the Company’s expense.
- F. Each and every Preliminary Decommissioning Report, Decommissioning Report, and Decommissioning Report update will:
 - (i) Identify all material current federal, state and local laws, acts, rules, requirements, orders, bylaws, ordinances, regulations, judgments, decrees, injunctions and/or standards applicable to the major aspects of the decommissioning the Project;
 - a) Separately identify all material changes to any environmental requirements since the previous Decommission Report or update.
 - (ii) Identify all current Project property, facilities and equipment to be addressed in the Decommissioning Report or update, including, but not limited to, all aboveground structures and all belowground structures and utilities;
 - a) “Project property, facilities and equipment” shall include any and all real estate owned by the Company related to the Project. If, for

whatever reason, the Company acquires additional property, facilities or equipment related to or utilized by or for the Project at any time, such property shall be identified and included.

- b) The Company shall submit as-built plans to the Town, including any modifications or additions since the previous Decommissioning Report or update.
 - c) The Company shall separately identify all property, facilities and equipment utilized by or for the Project but not owned by the Company.
- (iii) Analyze all reasonable alternatives for restoration of the site to its natural state, as well as proposed alternatives for agreed-upon reuse of the site.
 - a) The criteria to be used in developing decommissioning alternatives based on identification, evaluation, and resolution of then present major environmental and public health and safety issues will be, protection of all segments of the public against risks or danger resulting from the site and evaluation of economic factors regarding the costs and benefits of various restoration options versus the relative public risk. These evaluations will consider factors of health and safety, environmental protection, compatibility with local land use regulations, including both zoning and comprehensive planning designations, and compliance with applicable regulations.
 - b) Describe the proposed details of site restoration, and reasons for selecting the alternative proposed by the Company ("Proposed Alternative");
- (iv) Estimate the cost of each alternative considered, including the Proposed Alternative;
- (v) Provide a budget for the Proposed Alternative;
- (vi) Illustrate the manner in which the following criteria will be met by each alternative:
 - a) Ensure compliance with all legal requirements identified in subparagraph (A) above.
 - b) Identify and set forth a plan to remediate any environmental concerns, including site contaminants, in accordance with current and applicable US Environmental Protection Agency and RI Department of Environmental Management regulations.
 - c) Ensure no significant adverse impact on public health or safety.

- d) Ensure security of the site during decommissioning process.
 - e) Ensure adequate insurance coverage and risk management during decommissioning process.
 - f) Ensure any subcontractors hired will comply with all legal requirements and will be adequately insured.
 - g) Ensure soil clean-up and restoration of soil and groundwater to background levels as defined by the Rhode Island Department of Environmental Management remediation regulations after removal of facilities and equipment, including hazmat and waste.
 - h) Consistent with expected plans or agreed-upon reuse of the property, ensure all disturbed soil surfaces are planted with vegetative common cover native to the region and reasonably acceptable to the Town, including, but not limited to, grasses, bushes and trees, as well as steps necessary to prevent soil erosion.
 - i) Make reasonable efforts to utilize local labor, materials and equipment in connection with the decommissioning process.
 - j) Compliance with noise and local traffic requirements during the decommissioning process.
- (vii) Discuss the methodology for removal of salvageable and non-salvageable equipment and materials at the site, including all facilities and equipment identified in subparagraph (B) above.
- a) The Project components include reusable machinery, equipment and infrastructure and salvageable metals. The turbine generators and other Project equipment are potential candidates for reconditioning and sale in the used equipment market.
 - b) It is the Company's hope that the value of salvage materials may finance all or a portion of the cost of demolition and restoration activities.
 - c) The decommissioning process will not be delayed pending the sale of salvageable equipment or materials, nor shall it be delayed pending receipt of payment for same.
- (viii) Provide a schedule for the site restoration that presents timing of the essential elements of the restoration, as well as the time frame to complete the entire decommissioning process, ensuring work is performed during normal business hours.

- (ix) Provide a communication plan for use during the decommissioning process, including assurance that the Company will timely address the concerns of the Town and its residents, providing an initial response to all inquiries within 10 days, and in all cases will maintain communication with the Town and its residents regarding such concerns.
- (x) If the Parties mutually agree in writing, the following components may be left in place if requested by the site purchaser, unless the removal is required due to health and safety code or building code requirements in place at the time:
 - a) Foundation materials.
 - b) Driveways, parking areas, and roadways.
 - c) Utility infrastructure at least up to the site, including water, wastewater, natural gas, and electrical connections.
- (xi) Provide a final site evaluation plan to be completed following the decommissioning process, including Phase I and Phase II environmental site assessments, and preparation of a Decommissioning Completion Report to be approved by the Town as set forth above. A work plan for the performance of the Phase I and Phase II environmental site assessments will be provided to the Town prior to implementation for review and comment.

7. The Company hereby makes the following financial assurances to the Town:

- A. The Company shall provide Financial Assurance to the Town in incrementally increasing amounts during construction and initial years of operation, after which the Company will maintain Financial Assurance to the Town totaling 125% of the amount recommended by the most recent Decommissioning Report.
 - (i) Prior to CCD-1, the Company shall provide Financial Assurance to the Town totaling 25% of the amount recommended by the Preliminary Decommissioning Report. This Financial Assurance will be maintained, as detailed below, until construction is complete and commercial operation of Unit 1 commences ("COD-1").
 - (ii) Prior to COD- 1, the Company shall provide Financial Assurance to the Town totaling 50% of the amount recommended by the Preliminary Decommissioning Report.
 - (iii) Prior to the first (1st) anniversary of COD-1, the Company shall provide Financial Assurance to the Town totaling 75% of the amount recommended by the Preliminary Decommissioning Report.

- (iv) Prior to the second (2nd) anniversary of COD-1, the Company shall provide Financial Assurance to the Town totaling 100% of the amount recommended by the Preliminary Decommissioning Report.
 - (v) Prior to the third (3rd) anniversary of COD-1, the Company shall provide Financial Assurance to the Town totaling 125% of the amount recommended by the most recent Decommissioning Report.
 - B. Financial Assurance from a creditworthy entity meeting the financial standards of the Town may be in the form of a performance bond, surety bond, letter of credit, or escrow account (collectively "Financial Instrument"). The Financial Instrument shall require notice to the Town of any failure to pay any premium or satisfy any other obligation by the Company, as well as advanced notice to the Town prior to cancellation of the Financial Instrument for any reason. The Financial Instrument shall provide the Town with reasonable opportunity to cure prior to cancellation, consistent with subpart G below.
 - C. Such Financial Assurance shall be adjusted corresponding to the Decommissioning Report updates as referenced in paragraph 6 of this Agreement.
 - D. The Financial Assurance will be adjusted for inflation annually, at a minimum, based on the change in the Consumer Price Index – All Urban Consumers published by the Bureau of Labor Statistics.
 - E. The Company shall provide the Town with a detailed status report concerning the Financial Instrument on an annual basis.
 - F. If the actual cost of the decommissioning and restoration of the Project exceeds Financial Assurance amounts, the Company shall be responsible for any difference.
 - G. If any Financial Instrument required hereunder either lapses or the Company otherwise fails to post the same, the Company shall be obligated to do so within fifteen (15) days of written notice from the Town to do the same or otherwise shall be considered in default hereunder.
 - (i) If the Company defaults with regard to its Financial Assurance obligations under this Agreement, the Town may immediately purchase and maintain a Financial Instrument from an entity of its choice at the Company's expense. Such Financial Instrument shall total 125% of the amount recommended by the most recent Decommissioning Report or update.
 - H. Such Financial Instrument shall be released after the Project has been fully decommissioned as certified by a final Decommissioning Completion Report as mutually agreed to by the Parties.
8. If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure (defined

below), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected Party shall use reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. "Force Majeure" means fire, earthquake, flood, or other natural disaster, condemnation or accident; strikes or labor disputes; war, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency. Force Majeure shall not mean customary inclement weather (in contrast to extreme weather), unavailability of equipment, or economic hardship of the Company.

9. This Agreement shall constitute a covenant running with the land upon which the Project is built. Upon execution, this Agreement may be recorded by the Town with the Town's Registry of Deeds.
10. The Parties agree the Company's compliance with its obligations under this Agreement shall be incorporated as a condition into the Company's EFSB permit.
11. This Agreement shall be governed by and be construed in accordance with the laws of the State of Rhode Island. Nothing in this Agreement or the Financial Assurances shall, in any way, limit the legal remedies that the Town may pursue against the Company or its successors or assignees in the event of a breach of this Agreement, or a failure to fully reimburse and compensate the Town for any costs it incurs under this Agreement or to restore any property affected by the Project.
12. Failure to perform any obligation outlined above is a default of this Agreement. If the defaulting Party fails to timely cure the default, the Party in default will lose its rights, but retain its obligations under the Agreement.
13. Failure to enforce any provision of this Agreement shall not operate as a waiver of any such provision or any other provision. Failure by either Party to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall not operate as a waiver of any right hereunder by the Party so failing.
14. If a dispute arises from or relates to this Agreement or the breach thereof, and if the dispute cannot be settled through direct discussions, the Parties agree to endeavor first to settle the dispute by mediation before resorting to judicial enforcement.
 - A. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of paragraph 14 shall be the exclusive mechanism to resolve disputes arising under this Agreement between the Parties. The Parties agree to use best efforts to resolve any dispute(s) that may arise regarding this Agreement.
 - B. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Company and the Town, who shall use their respective best efforts to resolve such dispute. The period for informal negotiations shall not exceed sixty (60) days from the time the dispute arises, unless modified by written agreement of the

Parties. The dispute will be considered to have arisen when one Party sends the other Party a written notice of the dispute.

- C. In the event that the Parties cannot resolve a dispute by informal negotiations, the parties agree to submit the dispute to mediation. Within thirty (30) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request the American Arbitration Association to appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless modified by written agreement of the Parties. Mediation will occur in Rhode Island. Reasonable fees and expenses related to mediation will be paid by the Company.
 - D. In the event the Parties cannot resolve a dispute by informal negotiations or subsequent mediation, venue for judicial enforcement shall be Providence County Superior Court, Providence, Rhode Island.
 - E. Notwithstanding the foregoing, injunctive relief may be sought in Providence County Superior Court, Providence, Rhode Island, without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.
- 15. If any action at law or in equity is brought by either Party to enforce this Agreement, the prevailing Party shall be entitled to receive from the non-prevailing Party reasonable attorneys' fees and costs incurred, in addition to any other relief to which such prevailing Party may be entitled.
 - 16. This Agreement may be amended, modified or supplemented only by written instrument executed by all Parties.
 - 17. This Agreement has been drafted with the full participation of all the Parties and their counsel of choice, and no provision of this Agreement will be construed against any Party on the ground that such Party or its counsel was the author of such provision.
 - 18. If any section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such section, phrase or portion so adjudged will be deemed separate, severable and independent and the remainder of the Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of the Agreement and the benefits to the Parties are not substantially impaired.
 - 19. This Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which shall constitute one agreement.

[Signature page attached.]