



April 3, 2023

Mr. Cru Stubley
Secretary to the Commission
Public Service Commission of Wisconsin
4822 Madison Yards Way
Madison, WI 53705

RE: Force Majeure Notification Red Barn Wind Farm - Docket 5-BS-256

Dear Mr. Stubley:

In its February 15, 2022 final decision in dockets 5-BS-256, the Commission issued a Certificate of Authority authorizing the acquisition of the 92 MW Red Barn project by WPSC and MGE. In that Order, the Commission approved recovery of the Red Barn acquisition costs at \$162 million (excluding AFUDC), except in the case of a force majeure event. Wisconsin Public Service Corporation ("WPSC") and Madison Gas and Electric Company ("MGE") are required to provide notice to the Commission within 30 days of learning of such an event.¹

WPSC and MGE are providing this filing to inform the Commission of an additional Force Majeure event which has impacted the Red Barn Wind Energy Center ("Red Barn") schedule. The Force Majeure event does not impact the cost to acquire the project.

On March 4, 2023 WPSC and MGE executed an amendment² to the Purchase and Sale Agreement ("PSA") with ALLETE Clean Energy ("ACE"). The amendment documents the agreed upon contract milestone date changes resulting from turbine equipment manufacturing and delivery delays caused by COVID-19 pandemic lockdowns, which interrupted shipments of components necessary to manufacture the turbines.

Per the terms of the PSA, ACE has the right to seek schedule relief for Force Majeure events. The amendment provides schedule relief commensurate with the impact of the event and correspondingly updates the dates upon which liquidated damages will apply. Agreeing to the scheduling changes resulting from the Force Majeure Event is prudent because without doing so, ACE could make a claim for additional schedule relief and, even with the minor schedule modifications, customers will still receive significant benefits from the Red Barn project.

¹ Final Decision at 19 (Order Point 2), Docket 5-BS-256 (February 15, 2022).

² See Confidential Attachment

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Respectfully submitted,

/s/ Catherine A. Phillips
Catherine A. Phillips
Senior Corporate Counsel
WEC Energy Group
Wisconsin Public Service Corp.

/s/ Scott R. Smith
Scott R. Smith
Vice President -
Business and Regulatory Strategy
Madison Gas and Electric Co

FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT (Red Barn)

This FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT (Red Barn) (this “**Amendment**”), dated as of March 1, 2023 (the “**Effective Date**”), is made and entered into by and among Wisconsin Public Service Corporation, a Wisconsin corporation (“**WPS**”), and Madison Gas and Electric Company, a Wisconsin corporation (“**MGE**” and, together with WPS, the “**Buyers**” and each, individually, a “**Buyer**”), on the one hand, and Red Barn Energy, LLC, a Minnesota limited liability company (“**Seller**”), on the other hand. Buyers and Seller are sometimes referred to in this Amendment individually as a “**Party**” and collectively as the “**Parties**.” Capitalized terms used but not otherwise defined in this Amendment shall have the meanings set forth in the Agreement (as defined below).

R E C I T A L S

A. Buyers and Seller are parties to that certain Purchase and Sale Agreement (Red Barn) dated as of May 4, 2021, as amended by that certain First Amendment to Purchase and Sale Agreement, dated as of March 8, 2022, that certain Second Amendment to Purchase and Sale Agreement, dated as of June 3, 2022, and that certain Third Amendment to Purchase and Sale Agreement, dated as of January 18, 2023 (the “**Agreement**”).

B. On December 19, 2022, Seller sent a letter to Buyers requesting schedule relief because of various Force Majeure Events relating to Turbine Supplier, including the COVID-19 pandemic and resulting supply chain interruptions and material, equipment, and labor shortages.

C. The Parties now desire to amend the Agreement as set forth in this Amendment to address the impacts of the Force Majeure Events on the Project schedule.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Amendments.

1.1 Section 5.14.3 of the Agreement is deleted in its entirety and replaced with the following:

5.14.3 Schedule Relief. The milestone dates in the Construction Schedule, the Outside Firm Date, and the Outside Closing Date, shall each be extended on a day-for-day basis for each day that Seller’s performance of its obligations has been delayed or prevented by a Force Majeure Event; [REDACTED]

1.2 Section 10.4.3 of the Agreement is deleted in its entirety and replaced with the following:

10.4.3 Delay Damages. If the Buyers’ Closing CPs Completion Date has not occurred by February 18, 2023, then the Base Purchase Price shall be reduced as provided in Section

2.2.2(c) by the amount calculated as set forth in Section 10.4.3(a) or 10.4.3(b), as applicable (such applicable amount, “**Delay Damages**”).

(a) If the Buyers’ Closing CPs Completion Date occurs after February 18, 2023, but on or before April 19, 2023, Delay Damages shall equal [REDACTED]

[REDACTED]

(b) If the Buyers’ Closing CPs Completion Date occurs after April 19, 2023, but on or before the Outside Closing Date, Delay Damages shall equal [REDACTED]

[REDACTED]

When Seller believes that each of the Buyers’ conditions precedent to Closing set forth in Section 3.3 (other than those conditions that by their nature are to be satisfied at the Closing) (the “**Buyers’ Closing CPs**”) have been satisfied, Seller shall notify Buyers in writing that Seller believes each of the Buyers’ Closing CPs have been satisfied (such notice, the “**Buyers’ Closing CPs Notice**”). Within 30 days after receipt of the Buyers’ Closing CPs Notice, Buyers’ Representative shall notify Seller that Buyers’ Representative either (x) accepts the Buyers’ Closing CPs Notice because all the Buyers’ Closing CPs have been satisfied (or waived by the Buyers) or (y) has determined that one or more of the Buyers’ Closing CPs has not been satisfied, stating in detail the reasons for such determination. If Buyers’ Representative fails to deliver such notice within such 30-day period, Buyers shall be deemed to have accepted the Buyers’ Closing CPs Notice and agreed that all the Buyers’ Closing CPs have been satisfied. If Buyers’ Representative delivers notice to Seller that Buyers’ Representative has determined that one or more of the Buyers’ Closing CPs has not been satisfied, Seller shall take, or cause to be taken, such actions as may be necessary to satisfy such condition(s) precedent and, upon completion of such actions, shall deliver a new Buyers’ Closing CPs Notice to Buyers. The foregoing procedure shall be repeated as necessary until Buyers’ Representative determines that all the Buyers’ Closing CPs have been satisfied (or waived by the Buyers). Notwithstanding the definitions of “LD Days” and “LD2 Days” in Section 10.4.3(a) and 10.4.3(b), respectively, for purposes of determining the amount of Delay Damages, the number of days, if any, between the date on which Seller delivers a Buyers’ Closing CPs Notice and the date on which Buyers’ Representative notifies Seller, in response to such Buyers’ Closing CPs Notice, that one or more of the Buyers’ Closing CPs has not been satisfied shall be excluded from the calculation of LD Days and/or LD2 Days (as applicable, depending on when such days occurred, and without duplication). Nothing in this Section 10.4.3 is intended to, or does, extend the Outside Closing Date beyond the date provided for in this Agreement.

1.3 Exhibit A of the Agreement is amended by deleting the definition of “Outside Closing Date” in its entirety and replacing it as follows:

“Outside Closing Date” means July 18, 2023, as the same may be extended in accordance with Section 5.14.3 (subject to the limitation set forth therein).

2. Representations and Warranties. As of the Effective Date, each Party represents and warrants to the other Parties as follows:

2.1 Corporate Existence, Powers and Authority. Such Party (a) is a limited liability company or corporation, as applicable, validly existing and in good standing under the Laws of the State of Minnesota or Wisconsin, as applicable; (b) has all requisite limited liability company or corporate, as applicable, power and authority to execute and deliver this Amendment and to perform its obligations hereunder; (c) has taken all limited liability company or corporate, as applicable, action necessary to execute and deliver this Amendment, and no other limited liability company or corporate, as applicable, action or proceeding on the part of such Party is necessary to approve or authorize this Amendment or the performance by such Party of its obligations hereunder; and (d) this Amendment has been duly executed and delivered by such Party. Assuming the due authorization, execution and delivery by each other Party of this Amendment, this Amendment constitutes legally valid and binding obligations of such Party, enforceable against such Party in accordance with its terms, subject to the effects of any bankruptcy, insolvency, reorganization, moratorium or other similar Law affecting the enforcement of creditors’ rights generally and to general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

2.2 No Conflicts. The execution and delivery by such Party of this Amendment and the performance by such Party of its obligations hereunder do not and will not: (a) violate or conflict with any provision of such Party’s Corporate Documents; or (b) (i) violate, breach, or conflict with any term or provision of any Law, Permit or Order applicable to such Party or its assets (including, in the case of Seller, the Acquired Assets), (ii) require any Consent (that is required as of the Effective Date and has not been obtained or made as of the Effective Date) of any Authority under any applicable Law, (iii) result in the creation or imposition of any Encumbrance on such Party or its assets (including, in the case of Seller, the Acquired Assets), or (iv) violate or breach, result in a default under, result in the termination or acceleration of any obligation under, permit (with or without notice, lapse of time or both) any party to terminate or accelerate any obligation under, or require the Consent of any Person under, any Contract to which such Party is a party or by which it is bound (including, in the case of Seller, the Purchased Contracts), except for such violations, breaches, conflicts, defaults, terminations, accelerations or Encumbrances as, or such Consent that if not obtained, could not reasonably be expected to have a material adverse effect on such Party’s ability to perform its obligations under this Amendment.

3. No Other Amendments. Except as expressly set forth in this Amendment, there are no changes to the Agreement, and the Agreement, as amended by this Amendment, is and shall remain in full force and effect in accordance with its terms and is hereby ratified by the Parties.

4. Miscellaneous. Sections 1.2 (*Rules of Interpretation*), 11.3 (*Notices*), 11.4 (*Disputes; Choice of Law; Consent to Jurisdiction; Service of Process*), 11.5 (*Waiver of Jury Trial; Remedies*), 11.6 (*Entire Agreement; Amendments and Waivers*), 11.7 (*Multiple Counterparts; Facsimile*), 11.9 (*Invalidity*), and 11.17 (*Relationship of Buyers*) of the Agreement are hereby incorporated herein by reference, *mutatis mutandis*.

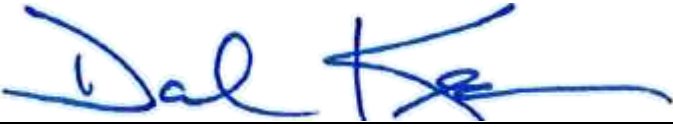
REDACTED

Signature Pages Follow

The Parties have caused this Amendment to be duly executed on their respective behalf, by their respective officers thereunto duly authorized, as of the day and year first above written.

BUYERS:

**WISCONSIN PUBLIC SERVICE CORPORATION, a
Wisconsin corporation**

By: _____

Name: Daniel Krueger
Title: Executive Vice President

**MADISON GAS AND ELECTRIC COMPANY, a Wisconsin
corporation**

By: _____

Name: Jeff Keebler
Title: Chairman, President and CEO

The Parties have caused this Amendment to be duly executed on their respective behalf, by their respective officers thereunto duly authorized, as of the day and year first above written.

BUYERS:


**WISCONSIN PUBLIC SERVICE CORPORATION, a
Wisconsin corporation**

By:_____

Name: Daniel Krueger

Title: Executive Vice President

**MADISON GAS AND ELECTRIC COMPANY, a Wisconsin
corporation**

By: _____

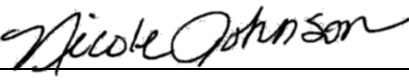
Name: Jeff M. Keebler

Title: Chairman, President and CEO

REDACTED

SELLER:

**RED BARN ENERGY, LLC, a Minnesota Limited Liability
Company**

By: 

Name: Nicole Johnson

Title: President