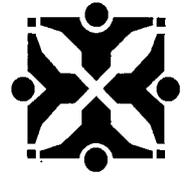


City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: B 149-15

Department Source: Water & Light

To: City Council

From: City Manager & Staff

Council Meeting Date: 6/1/2015

Re: Electric System Capacity Contract

Documents Included With This Agenda Item

Council memo, Resolution/Ordinance, Agreement

Supporting documentation includes: None

Executive Summary

Staff has prepared for Council consideration an ordinance authorizing the City Manger to sign a contract with Dynegy Marketing for purchasing electric system planning capacity to help meet the projected electric system capacity needs through 2026.

Discussion

As part of the 2013 Integrated Resource Plan update (IRP), an updated load and resource projection was developed for the Columbia Water & Light electric system. These projections show the need for additional electric capacity starting in 2016 and recommended future electric system capacity purchases. The IRP projections were based off the assumption that Columbia Municipal Power Plant solid fuel units 6 & 7 would be retired after 2015. In planning to meet these future requirements, staff assumed unit 7 would continue operation and a Request for Proposals (RFP) was issued for Electric System Capacity. The RFP and resulting contract award recommendation to Dynegy Marketing is for electric system planning capacity, purchase of energy is not part of this contract. This recommend capacity contract purchase is for capacity currently located in Midcontinent Independent System Operator (MISO) Zone 4 and Columbia Water & Light's load is currently located in MISO Zone 5. Currently a minimal cost to transfer capacity credit value from MISO Zone 4 to Zone 5 exists. This recommended electric system capacity contract represents an expense of \$12.8 million over the next 10 years. Future changes to this capacity credit transfer cost are expected to remain minimal and considered to be manageable. Staff is recommending this contract with Dynegy Marketing for a capacity purchase to help meet the projected electric system capacity needs through 2026.

Fiscal Impact

Short-Term Impact: None

Long-Term Impact: Stabilizing influence on future electric rates

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Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Not Applicable

Strategic Plan Impact: Not Applicable

Comprehensive Plan Impact: Not Applicable

Suggested Council Action

Approval of the attached ordinance authorizing the City Manager to execute a contract with Dynegy Marketing for purchasing electric system planning capacity.

Legislative History

2/4/15 Water & Light Advisory Review and Endorsement

A handwritten signature in black ink, appearing to read "Paul Johnson", written over a horizontal line.

Department Approved

A handwritten signature in black ink, appearing to read "Milly McCall", written over a horizontal line.

City Manager Approved

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 149-15

AN ORDINANCE

authorizing a capacity purchase and sale agreement with Dynegy Marketing and Trade, LLC for electric system planning capacity; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a capacity purchase and sale agreement with Dynegy Marketing and Trade, LLC for electric system planning capacity. The form and content of the agreement shall be substantially in the same form as set forth in "Exhibit A" attached hereto.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2015.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

CAPACITY PURCHASE AND SALE AGREEMENT

This Capacity Purchase and Sale Agreement between Dynegy Marketing and Trade, LLC (“Seller”), a limited liability corporation organized in the State of Delaware and with authority to transact business within the State of Missouri, and the City of Columbia, Missouri (“Buyer”), a Missouri municipality, is entered into as of the date of the last signatory below (“Effective Date”) and shall be referred to as this “Agreement.” Seller and Buyer being referred to herein from time to time individually as a “Party” and collectively as the “Parties”.

WHEREAS, Seller wishes to sell and Buyer wishes to buy the Product, defined herein, on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows.

ARTICLE ONE: DEFINITIONS

Capitalized terms used herein shall have the meaning ascribed to them in this Article One.

1.1 “Act” means the applicable laws, rules and regulations governing Buyer’s capacity and authority to conduct business, act in the manner undertaken, and to enter into and perform its obligations under this Agreement.

1.2 “Agreement” has the meaning set forth in the Introduction.

1.3 “Applicable Planning Year” has the meaning set forth in Section 7.2.

1.4 “Bankrupt” means with respect to a Party, such Party (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.5 “Breaching Party” has the meaning set forth in Section 3.3.

1.6 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time at the principal place of business of the Party by whom the notice or payment or delivery is to be received.

1.7 “Buyer” has the meaning set forth in the Introduction.

1.8 “Claiming Party” has the meaning set forth in Section 2.2.

1.9 “Claims” means all third party claims or actions (whether threatened or filed prior to or after the termination of this Agreement, and regardless of merit) that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise.

1.10 “Contract Price” means the price in United States dollars (\$U.S.) to be paid by Buyer to Seller for the purchase of the Product, as specified in Section 5.1.

1.11 “Defaulting Party” has the meaning set forth in Section 4.1.

1.12 “Delivery Period” means Planning Years 2017-2018 through 2026-2027.

1.13 “Early Termination Date” has the meaning set forth in Section 4.2.

1.14 “Effective Date” has the meaning set forth in the Introduction.

1.15 “Event of Default” has the meaning set forth in Section 4.1.

1.16 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.17 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets, unless such loss is the direct result of Force Majeure and only for the period necessary for Buyer to remedy the Force Majeure; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply, unless such loss is the direct result of Force Majeure and only for the period necessary for Seller to remedy the Force Majeure; or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price.

1.18 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.19 “Investment Grade Credit Rating” has the meaning set forth in Section 7.3(b).

1.20 “Letter of Credit” means an irrevocable standby letter of credit, issued by a financial institution with a domestic office organized under the laws of the United States (or any state or a political subdivision thereof) having a long term debt rating or deposit rating of at least: (i) A3 from Moody’s and (ii) A- from S&P in form and substance reasonably acceptable to Seller.

1.21 “MECT” means the MISO’s Module E-1 capacity tracking system (or any successor system).

1.22 “MISO” means the Midcontinent Independent System Operator, Inc., or a successor system operator.

1.23 “MISO Rules” means the Midcontinent Independent System Operator, Inc. (“MISO”) Open Access Transmission, Energy and Operating Reserve Markets Tariff as may be amended from time to time (“MISO Tariff”); and/or (ii) the MISO Resource Adequacy Business Practice Manual as may be amended from time to time (“RA BPM”).

1.24 “Moody’s” has the meaning set forth in Section 7.3(b).

1.25 “Non-Breaching Party” has the meaning set forth in Section 3.3.

1.26 “Non-Defaulting Party” has the meaning set forth in Section 4.2.

1.27 “Parental Guarantee” has the meaning set forth in Section 7.1

1.28 “Planning Year” has the meaning ascribed to such term in the MISO Rules.

1.29 “Product” means Zonal Resource Credits.

1.30 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller, as set forth in Section 5.1 hereto.

1.31 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases a replacement for the Product Quantity not delivered by Seller, plus costs reasonably incurred by Buyer in purchasing such substitute Product or, at Buyer’s option, the market price for such Product not delivered as determined by Buyer in a commercially reasonable manner, less any payments due Seller under this Agreement withheld by Buyer pursuant to Section 4.2; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party.

1.32 “Revenue Deficiency” has the meaning set forth in Section 9.12.

1.33 “S&P” has the meaning set forth in Section 7.3(b).

1.34 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells the Product Quantity not received by Buyer, deducting from such proceeds any costs reasonably incurred by Seller in reselling such Product or, at Seller’s option, the market price for such Product not received as determined by Seller in a commercially

reasonable manner, less any payments due Buyer under this Agreement withheld by Seller pursuant to Section 4.2; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party.

1.35 "Seller" has the meaning set forth in the Introduction.

1.36 "Term" shall mean the period from the Effective Date through the end of Planning Year 2026-2027.

1.37 "Transfer Deadline" has the meaning set forth in Section 2.1(b).

1.38 "Zonal Resource Credits" or "ZRCs" means Zonal Resource Credits, as defined in the MISO Rules, from the geographic region identified as Local Resource Zone 4 (as defined in the MISO Rules) as of the Effective Date. One ZRC represents one megawatt of unforced capacity that qualifies to satisfy the resource adequacy requirements of Module E-1 of the MISO Rules.

ARTICLE TWO: DELIVERIES AND RECEIPTS

2.1 Seller's Obligation to Deliver and Buyer's Obligation to Receive:

(a) Seller and Buyer shall accomplish delivery and receipt of the Product Quantity by submitting and confirming the appropriate Product Quantity in the MECT for each respective Planning Year.

(b) Seller shall accomplish delivery of the Product by submitting the appropriate Product Quantity in the MECT to electronically assign the Product Quantity to Buyer. Buyer shall accomplish receipt of the Product Quantity by confirming the appropriate Product Quantity submitted by Seller in the MECT. Due to the fact that each Planning Year of the Product Schedule is not open in the MECT for the purpose of assigning the Product Quantity from Seller to Buyer, the ZRCs that are the subject of this Agreement cannot be transferred on the Effective Date. Seller will transfer ZRCs to Buyer for a relevant Planning Year encompassed by this Agreement by the earlier of: (i) thirty (30) days after the MISO populates the MECT for such relevant Planning Year with Seller's ZRCs; or (ii) ten (10) Business Days prior to the offer window closing for the Planning Resource Auction ("PRA") for the relevant Planning Year ("Transfer Deadline").

(c) For purposes of this Agreement, completion of electronic transfer of the Product Quantity in the MECT shall be deemed to have occurred when Seller has submitted in the MECT, and Buyer has confirmed in the MECT, ZRCs for delivery to and receipt by Buyer.

(d) Notwithstanding anything herein to the contrary, the submitting and confirming of the appropriate Product Quantity in the MECT shall be conducted by the Parties in accordance

with the requirements of the MISO Rules and other applicable rules adopted by the MISO from time to time regarding the MECT.

2.2 Force Majeure: To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

2.3 Buyer's Deliveries: Buyer shall provide a copy of the Act and the ordinance evidencing Buyer's authorization to enter into this Agreement.

ARTICLE THREE: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

3.1 Seller's Failure to Deliver:

(a) In any case of a failure by Seller to deliver all or part of the Product Quantity by the Transfer Deadline, Buyer shall use commercially reasonable efforts to purchase replacement Product Quantity which Seller failed to deliver.

(b) In the event that: (i) Seller fails to deliver all or part of the Product Quantity by the Transfer Deadline, and such failure is not excused by Buyer's failure to perform; and (ii) Buyer provides notice of such failure to Seller at least nine (9) Business Days prior to the offer window closing for the PRA; and (iii) Seller fails to deliver the Product Quantity not previously delivered by the Transfer Deadline within three (3) Business Days after such notice from the Buyer, then Seller shall pay Buyer, within five (5) Business Days of invoice receipt, the positive difference, if any, obtained by subtracting the Contract Price for the Product from the Replacement Price for the Product and multiplying such positive difference, if any, by the portion of the Product Quantity which Seller failed to deliver; provided, however, that if Buyer, after using commercially reasonable efforts, is unable to replace all or a portion of the Product Quantity which Seller failed to deliver, Seller shall also pay Buyer, within five (5) Business Days of invoice receipt, all MISO Capacity Deficiency Charges (as defined in Sec. 2.3 of the RA BPM) specific to Local Resource Zone 4 as of the Effective Date, assessed to Buyer resulting directly from Seller's failure to deliver all or part of the Product Quantity that Buyer was unable to replace using commercially reasonable efforts.

(c) In the event that: (i) Seller fails to deliver all or part of the Product Quantity by the Transfer Deadline, and such failure is not excused by Buyer's failure to perform; and (ii) Buyer fails to provide notice of such failure to Seller at least nine (9) Business Days prior to the offer window closing for the PRA for the relevant Planning Year, then Seller shall pay Buyer, within five (5) Business Days of invoice receipt, the positive difference, if any, obtained by subtracting the Contract Price for the Product from the Replacement Price for the Product and

multiplying such positive difference, if any, by the portion of the Product Quantity which Seller failed to deliver.

3.2 Buyer's Failure to Receive: In the event that for any Planning Year: (i) Buyer fails to receive or pay for all or part of the Product Quantity by the Transfer Deadline, and such failure is not excused by Seller's failure to perform; and (ii) Seller provides notice of such failure to Buyer at least thirty (30) Business Days prior to the offer window closing for the PRA; and (iii) Buyer fails to receive or pay for the Product Quantity not previously received by the Transfer Deadline within three (3) Business Days after such notice from the Seller, then Buyer shall pay Seller for such Planning Year, within five (5) Business Days of invoice receipt, an amount equal to the positive difference, if any, obtained by subtracting the Sales Price for the Product from the Contract Price for the Product and multiplying such positive difference, if any, by the portion of the Product Quantity which Buyer failed to receive or pay for; provided, however, that if Seller, after using commercially reasonable efforts, is unable to resell all or a portion of the Product Quantity which Buyer failed to receive or pay for, the Sales Price for the Product with respect to such quantity that Seller is unable to resell shall be deemed to be equal to zero (0).

3.3 Termination for Continued Failure to Perform: If a Party ("Breaching Party") becomes subject to payment of damages to the other Party ("Non-Breaching Party") under Section 3.1 or Section 3.2, as applicable, and notwithstanding that the Breaching Party has paid such damages, (i) in any two (2) consecutive years of the Term, or (ii) in any three (3) years of the Term whether consecutive or not (in each case, a "Repetitive Failure to Perform"), such Repetitive Failure to Perform shall constitute an Event of Default and the Non-Breaching Party may exercise any and all rights and remedies it would have as the Non-Defaulting Party under Article Four.

ARTICLE FOUR: EVENTS OF DEFAULT; REMEDIES

4.1 Events of Default: An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Three) if such failure is not remedied within three (3) Business Days after written notice;

(d) such Party becomes Bankrupt;

(e) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation,

amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; and

(f) Seller's failure to deliver or cause to be delivered the Parental Guarantee required under Section 7.1, or Buyer's failure to deliver or cause to be delivered a Letter of Credit if and when required under Section 7.2.

4.2 Declaration of an Early Termination Date and Calculation of Settlement: If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than five (5) Business Days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement, (ii) withhold any payments due to the Defaulting Party under this Agreement, and (iii) suspend its performance under this Agreement. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Replacement Price or Sales Price, as applicable, as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party it is commercially impracticable to liquidate and terminate this Agreement or this Agreement may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

4.3 Notice of Payments: As soon as practicable after determination of the Replacement Price or the Sales Price, as applicable, the Non-Defaulting Party shall notify the Defaulting Party of the amount of the Replacement Price or Sales Price, as applicable. Such notice shall include a written statement explaining in reasonable detail the Non-Defaulting Party's calculation of such amount. Payment of the of the amount of the Replacement Price by Seller or Sales Price by the Buyer, as applicable, shall be made within fifteen (15) Business Days after the Non-Defaulting Party's notice is effective.

4.4 Disputes With Respect to Payments: If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Replacement Price or Sales Price, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Replacement Price or Sales Price, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Replacement Price or Sales Price, as applicable, is due from the Defaulting Party, the Defaulting Party shall first transfer to the Non-Defaulting Party cash, letter(s) of credit, or other security acceptable to the Non-Defaulting Party in an amount equal to the Replacement Price or Sales Price, as applicable, calculated by the Non-Defaulting Party.

4.5 Suspension of Performance: Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend its performance hereunder; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days unless an Early Termination Date shall have been declared and notice thereof pursuant to Section 4.2 given (and nothing herein shall be deemed to limit the Non-Defaulting Party's ability to declare an Early Termination Date at any time during the

pendency of such suspension), and (ii) to the extent an Event of Default shall have occurred and be continuing, to exercise any remedy available at law or in equity.

ARTICLE FIVE: PRODUCT QUANTITY AND PRICE; PAYMENT TERMS

5.1 Product Quantity and Contract Price by Planning Year:

Planning Year	Product Quantity (MW)	Contract Price \$/Kw-month
2017-2018	5	2.50
2018-2019	5	2.70
2019-2020	10	2.90
2020-2021	20	3.10
2021-2022	25	3.30
2022-2023	35	3.50
2023-2024	45	3.70
2024-2025	45	4.00
2025-2026	45	4.30
2026-2027	45	4.60

5.2 Payment:

(a) Within five (5) Business Days after the electronic transfer of the Product Quantity in the MECT is completed, Seller shall provide Buyer with an invoice for the total amount due for the Product Quantity transferred by Seller to Buyer. Such invoice shall be due and payable by Buyer on or before the fifteenth (15th) Business Day after Buyer's receipt of such invoice.

(b) Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

5.3 Form of Invoices; Disputes and Adjustments of Invoices: All invoices submitted under this Agreement shall include a written statement and/or such additional or supporting information as shall be reasonably necessary and appropriate to explain in reasonable detail the calculation of any amounts due. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within fifteen

(15) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid.

5.4 Banking Information for Payments: Upon the Effective Date of this Agreement, each Party shall provide to the other Party written notification of the Party's banking information for purposes of the transfer of funds for payments pursuant to this Agreement. A Party may change such banking information by notice to the other Party pursuant to Section 9.7.

ARTICLE SIX: LIMITATIONS

6.1 Limitation of Remedies, Liability and Damages: THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL 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. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR 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 LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE SEVEN: CREDIT AND COLLATERAL REQUIREMENTS

7.1 Seller's Performance Assurance: During the Term, Seller's obligations hereunder shall be secured by an unconditional guarantee provided by Dynegy Inc. substantially in the form attached hereto as Attachment 1 in the amount of \$10,000,000 ("Parental Guarantee"). If a Parental Guarantee terminates, is cancelled, or is no longer effective for any reason, Seller shall deliver to Buyer a replacement Parental Guarantee from a guarantor reasonably acceptable to Buyer.

7.2 Within the latter of either one hundred and twenty (120) days following the end of Buyer's fiscal year or within ten (10) business days of the completion of the City's annual audit,

or at such other times as reasonably requested by Seller, Buyer shall, at the request of Seller, supply or direct Seller to the location at which Seller can obtain a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year and/or such other documents that may be necessary to adequately determine Buyer's creditworthiness. Subject to Section 7.3 below, if Buyer's creditworthiness becomes unsatisfactory to Seller at any time during the Term of this Agreement, as determined by Seller in a commercially reasonable manner, Seller shall so notify Buyer, and Buyer shall have fifteen (15) Business Days to deliver or cause to be delivered to Seller a Letter of Credit in an amount equal to Product Quantity multiplied by the Contract Price for the next Planning Year ("Applicable Planning Year"). Seller shall have the right to suspend its performance under this Agreement until its receipt of such Letter of Credit. Buyer's failure to deliver such Letter of Credit within fifteen (15) Business Days shall be an Event of Default and Seller shall have the right to terminate this Agreement pursuant to Article 4. If Buyer does not pay for the full Product Quantity or any amount due Seller pursuant to Section 3.2, as applicable, for the Applicable Planning Year, Seller may draw upon the Letter of Credit for the amount due Seller under Section 3.2 for the Applicable Planning Year. If Buyer pays for the full Product Quantity or pays Seller the amount due Seller pursuant to Section 3.2, as applicable, for the Applicable Planning Year, Seller shall mark such Letter of Credit "cancelled" and return same to Buyer.

7.3 Notwithstanding Section 7.2, the Parties agree that:

(a) As of the Effective Date, Buyer's creditworthiness is satisfactory to Seller;

(b) Buyer's creditworthiness shall be deemed satisfactory to Seller during any period in which Buyer has an Investment Grade Credit Rating. "Investment Grade Credit Rating" shall mean a minimum rating of BBB- from Standard & Poor's Rating Services, a division of The McGraw-Hill companies, Inc. (or any successor rating agency) ("S&P") and Baa3 from Moody's Investors Service, Inc. (or any successor rating agency) ("Moody's") if rated by both rating agencies; and BBB- by S&P or Baa3 by Moody's if only rated by one or the other rating agency. Such S&P or Moody's credit rating shall be an issuer rating or equivalent or a senior unsecured debt rating, in either case unenhanced by any third party insurance, letter of credit, or other form of credit support; shall be in the name of Buyer; and shall exclude any project-related bonds of Buyer or other bonds of Buyer's affiliated entities; and

(c) Notwithstanding that Buyer has an Investment Grade Credit Rating, if there is a Revenue Deficiency, Buyer's creditworthiness shall be deemed unsatisfactory to Seller and the provisions of Section 7.2 shall apply.

ARTICLE EIGHT: TAXES AND SIMILAR CHARGES

8.1 Parties' Respective Obligations with Respect to Taxes and Similar Charges: Seller shall pay, be responsible for, and otherwise bear all taxes (and similar charges, costs and expenses imposed by any governmental or regulatory authority with respect to any given quantity of the Products) that arise or pertain to periods up to the transfer of title thereof to Buyer hereunder. Buyer shall pay, be responsible for, and otherwise bear all taxes (and similar charges, costs and expenses imposed by any governmental or regulatory authority with respect to any given quantity of the Products) that arise or pertain to periods on and after the transfer of title thereof to Buyer hereunder.

ARTICLE NINE: MISCELLANEOUS

9.1 Term and Termination of Agreement:

(a) The term of this Agreement shall commence on the Effective Date and shall remain in effect until both Parties have fulfilled all of their obligations with respect to this Agreement, or this Agreement has been terminated under clause (b) or clause (c) of this Section 9.1, or under Article Four; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such fulfillment or termination.

(b) Termination by Mutual Agreement. This Agreement may be terminated at any time during its Term upon mutual agreement by both Parties.

(c) Termination due to Change in MISO Rules. The Parties agree that as of the Effective Date Buyer is located in Local Resource Zone 5 and that the ZRCs being purchased by Buyer from Seller under this Agreement are from Local Resource Zone 4. If MISO Rules change such that Buyer is prohibited from using the Seller's ZRCs from Local Resource Zone 4, Buyer may terminate the Agreement with one (1) year's prior written notice to Seller.

9.2 Representations and Warranties:

(a) On the Effective Date, each Party represents and warrants to the other Party that:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(iii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(iv) this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, but subject to any Equitable Defenses;

(v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vi) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

(ix) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery, as applicable, of the Product referred to in this Agreement to which it is a Party;

(x) with respect to the purchase or sale of the Product, it is a producer, processor, commercial user, municipal government with an electric utility, or merchant handling the Product, and it is entering into this Agreement for purposes related to its business as such, or in the case of Buyer, is entering into this Agreement for purposes related to its electric utility; and

(xi) the material economic terms of this Agreement have been negotiated by the Parties.

(b) Buyer represents and warrants to Seller that: (i) Buyer has the capacity and authority to conduct business, act in the manner undertaken, and to enter into and perform its obligations under this Agreement, and all acts necessary to the valid execution, delivery and performance of this Agreement have taken place as required under the Act and the Buyer's ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Buyer are duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Agreement by the Buyer are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, and (iv) the term of this Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law.

9.3 Title and Risk of Loss: Title to and risk of loss related to the Product shall transfer from Seller to Buyer upon the Parties completing the delivery and receipt process in accordance with Section 2.1. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any person.

9.4 Indemnity: To the extent allowed by law, each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 9.3.

9.5 **HOLD HARMLESS AGREEMENT:** To the fullest extent not prohibited by law, Seller shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses

(including but not limited to attorney's fees) for bodily injury and/or property damage caused by the negligence of Seller or any agent or subcontractor of Seller in connection with this Agreement. This provision does not, however, require Seller to indemnify, hold harmless, or defend the Buyer from the Buyer's own negligence.

9.6 Assignment: Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such transfer shall not be effective until (a) the transferee shall agree in writing to be bound by the terms and conditions hereof and a copy of such writing has been delivered to the non-transferring Party, and (b) the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

9.7 Governing Law, Venue, and Waiver of Jury Trial: THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MISSOURI, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. The venue for all litigation arising out of, or relating to this contract document, shall be the United States Western District of Missouri and the Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such court and agree to waive any defense of forum non conveniens with respect to the bringing of an action in such court. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

9.8 Notices: All notices, requests, statements, invoices or payments shall be made or delivered as specified below. Notices, unless otherwise specified herein, shall be in writing and may be delivered by hand delivery, United States mail return receipt requested, overnight courier service, electronic mail, or facsimile. Notices shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day.

If to Seller:

Dynergy Marketing and Trade, LLC
1500 Eastport Plaza Drive
Collinsville, Illinois 62234
Attn: Origination Desk
Email: Dennis.Beutler@Dynergy.com
Mike.Steiner@Dynergy.com

With copies to:

Account Management: Attn: Jeff Vance – Senior Account Manager
Email: Jeffrey.Vance@Dynergy.com
Facsimile: (217) 753-8914

Invoices: Attn: Dawn Burns
Email: Dawn.A.Burns@Dynergy.com
Facsimile: (618) 343-7802

Payments: Attn: Dawn Burns
Email: Dawn.A.Burns@Dynergy.com
Facsimile: (618) 343-7802

With Notices of an Event of Default to:

Dynergy Marketing and Trade, LLC
601 Travis Street, Suite 1400
Houston TX 77002
Attn: Group General Counsel - Commercial
Email: clay.l.smith@dynergy.com
Facsimile: (713) 507-6986

If to Buyer:

City of Columbia, MO
701 East Broadway
P.O. Box 6015
Columbia, Missouri 65205

With copies (as appropriate) to:

Account Management: Attn: Tad A. Johnsen
Email: tajohnse@GoColumbiaMO.com
Facsimile: (573) 443-6875

Invoices: Attn: Jim Windsor
Email: jrjw@GoColumbiaMO.com
Facsimile: (573) 443-6875

Payments: Attn: Jim Windsor
Email: jrjw@GoColumbiaMO.com
Facsimile: (573) 443-6875

With Notices of an Event of Default to:

Attn: Tad A. Johnsen
Director, Water & Light
701 E. Broadway
P.O. Box 6015
Columbia, MO 65205-6015
Email: tajohnse@GoColumbiaMO.com
Facsimile: (573) 443-6875

9.9 General: This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to, or waiver of, this Agreement shall be enforceable unless reduced to writing and executed by both Parties. Waiver by a Party of any right, or any obligations or default by the other Party, shall not be construed as a waiver of any other right, obligation or default, or an ongoing or future waiver of such right, obligation, or default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party's successors and permitted assigns.

9.10 Audit: Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Product Quantity delivered and/or received. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived. The audit rights set forth in this Section 9.9 shall survive the termination of this Agreement for twelve (12) months.

9.11 Forward Contract: The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

9.12 Nature of Buyer's Obligation: The obligations of Buyer under this Agreement which require the expenditure of funds shall be conditional obligations, subject to the availability of funds appropriated for those purposes and payable solely out of revenues received from the sale of electricity to Buyer's retail customers and only when earned by or due Seller in accordance with the provisions of this Agreement and shall not be construed to be general obligations of the City of Columbia or a debt of the City of Columbia within the meaning of the Constitution and the Law of the State of Missouri. Buyer shall not be obligated to levy any taxes, general or special, for the purpose of paying to Seller any sum due under this Agreement. For each fiscal year of Buyer during the Term of this Agreement beginning with the fiscal year

in which the Delivery Period begins, Buyer shall take reasonable steps to: (i) appropriate those funds necessary; and (ii) establish and maintain in effect a schedule of rates and charges that would reasonably be expected to generate sufficient revenues to cover all of the costs Buyer incurs to operate Buyer's electric utility system and supply electricity to its customers, including but not limited to, the cost of procuring the Product under this Agreement. If, at any time during Buyer's fiscal year, Buyer knows or should know that Buyer's schedule of rates and charges with respect to Buyer's customer base would not reasonably be expected to be sufficient to cover all of the costs Buyer would reasonably be expected to incur to supply electricity to its customers during Buyer's fiscal year, including but not limited to the cost of procuring the Product under this Agreement and Buyer has not appropriated sufficient funds to pay Seller for all costs due to Seller during the Buyer's fiscal year ("Revenue Deficiency"), then Buyer shall notify Seller of such Revenue Deficiency as soon as practicable.

9.13 Employment of Unauthorized Aliens Prohibited: Seller shall comply with Missouri Revised Statute Section 285.530 in that Seller shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. As a condition for the award of this contract, Seller shall enroll in E-Verify at www.uscis.gov/e-verify to affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services.

9.14 Change in Law: Buyer and Seller agree that if (i) the MISO or the MISO's Rules are changed in a manner that materially adversely affects Seller's or Buyer's rights or obligations under this Agreement; or (ii) if there is a change in law, directive, rule or regulation or the interpretation thereof that materially adversely affects either Seller's or Buyer's rights and obligations under this Agreement ("Change in Law"), the Parties shall, in good faith, use their best efforts to reform or, if required by applicable law, with respect to Buyer, or the board of directors (or equivalent governing body) of Seller, amend this Agreement in order to give effect to the original intentions of the Parties. If the Parties' good faith negotiations do not result in agreement between the Parties regarding any necessary revisions to this Agreement in order to effect the original intentions of the Parties within thirty (30) days of the Parties having knowledge of such Change in Law, either Party may terminate this Agreement upon fifteen (15) days' prior written notice.

9.15 Attorneys' Fees: In the event of a dispute with respect to this Agreement or the Parties' rights and obligations hereunder, each Party shall bear its own expenses, including reasonable attorneys' fees, incurred in connection with such dispute, including but not limited to any legal proceeding and any appeal with respect thereto.

9.16 No Third-Party Beneficiary: No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any third party, so as to constitute any such Person a third-party beneficiary under the Agreement.

9.17 Compliance with Laws and MISO Rules: Each Party shall comply in all material respects with all federal, state, and local laws, rules, regulations and ordinances and the MISO rules applicable to the Product or this Agreement.

9.18 Entire Agreement: This Agreement contains the entire and integrated Agreement between the Parties relative to the purchase and sale of the Zonal Resource Credits that are the subject of this Agreement, is expressly limited to the terms and conditions specifically set forth or incorporated by reference herein, and supersedes all previous or contemporaneous communications, agreements, representations, promises and conditions relating to the purchase and sale of such Zonal Resource Credits.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Buyer and Seller have each caused their duly authorized representative to execute this Agreement in triplicate effective as of the Effective Date.

CITY OF COLUMBIA, MISSOURI

By: _____
Name: Mike Matthes
Title: City Manager
Date: _____

ATTEST:

By: _____
Name: Sheela Amin
Title: City Clerk
Date: _____

APPROVED AS TO FORM:

By: _____
Name: Nancy Thompson
Title: City Counselor
Date: _____

DYNEGY MARKETING AND TRADE, LLC

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

By: _____
Name: _____
Title: _____
Date: _____

ATTACHMENT 1

This Guaranty Agreement ("Guaranty") is made on this ____ day of _____, 2015 by Dynegy Inc., a Delaware corporation ("Guarantor"), in favor of the City of Columbia, Missouri, a Missouri municipality ("Beneficiary"), in consideration of Beneficiary extending credit to Dynegy Marketing and Trade, LLC ("DMT").

WHEREAS, Beneficiary and DMT have entered into that certain Agreement for Purchase and Sale of Capacity, dated _____, 2015 ("Agreement");

WHEREAS, as part of the Agreement between Beneficiary and DMT, Beneficiary will be extending credit to DMT, and Guarantor wishes to provide this Guaranty to Beneficiary as part of DMT's consideration for the Agreement and to induce Beneficiary to extend credit to DMT; and

WHEREAS, Guarantor will benefit directly or indirectly from the Agreement;

NOW THEREFORE, Guarantor hereby covenants and agrees as follows:

1. GUARANTY. Subject to the terms and conditions contained herein, Guarantor unconditionally and irrevocably guarantees to Beneficiary, its successors, endorsees and assigns, the prompt payment when due of the obligations of DMT to Beneficiary arising under the Agreement (collectively, the "Obligations"). To the extent that DMT shall fail to pay any Obligations, Guarantor shall promptly pay said Obligations. The liability of Guarantor under the Guaranty shall be subject to the following:

- a) Guarantor's liability hereunder shall be and is specifically limited to payments expressly required to be made in accordance with the Agreement (even if such payments are deemed to be damages), and except to the extent specifically provided in the Agreement, in no event shall Guarantor be subject hereunder to consequential, indirect, exemplary, loss of profits, punitive, treble, tort, or any other damages, costs or attorney's fees.
- b) The aggregate amount covered by this Guaranty shall not exceed Ten Million Dollars (\$10,000,000).
- c) This Guaranty shall constitute a guarantee of payment and not of collection. Guarantor shall have no obligation to perform under the Agreement including but not limited to any obligation to buy, sell, deliver, or supply Product under the Agreement.

2. DEMANDS AND NOTICES. Upon the failure by DMT to make payment when due under the Agreement, Beneficiary shall make demand of payment upon Guarantor ("Payment Demand"). A Payment Demand shall be in writing and shall state the amount DMT has failed to pay and an explanation of why such payment is due, with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty. Other than a Payment Demand, Guarantor hereby expressly waives notice of acceptance of this Guaranty, all notices of the making of the Agreement between Beneficiary and DMT, all notices with respect to such Agreement and this Guaranty, and any other notices whatsoever. In addition, Guarantor waives any right to require that any action or proceeding be brought against DMT or any other person, or to require that Beneficiary seek enforcement of any performance against DMT or any other person, prior to any action against Guarantor under the terms hereof.

3. EFFECT OF CERTAIN EVENTS. Beneficiary shall not be obligated to file any claim relating to the Obligations owing to it in the event that DMT becomes subject to a bankruptcy, reorganization or similar proceeding (whether voluntarily or involuntarily), and the failure of Beneficiary to so file shall not affect Guarantor's obligations hereunder. In the event that any payment by DMT to Beneficiary in respect to any of the Obligations is rescinded or must otherwise be returned for any reason whatsoever, Guarantor shall remain liable hereunder in respect to such Obligations as if such payment had not been made.

4. WAIVERS. Guarantor consents to any extensions of time for the payment of the Obligations guaranteed hereunder, to any changes in the terms of the Agreement, and to any settlements or adjustments entered into between Beneficiary and DMT. Guarantor hereby agrees that its obligations under this

Guaranty shall not be released, diminished, impaired, reduced or affected by the failure of Beneficiary to notify Guarantor of any renewal, extension or rearrangement of the Obligations guaranteed hereunder. No delays on the part of Beneficiary in the exercise of any right or remedy shall operate as a waiver, and no single or partial exercise by Beneficiary of any right or remedy shall preclude the exercise of any other right or remedy.

5. TERM. This Guaranty is a general and continuing guaranty and shall remain in full force and effect until the earlier of: (i) April 10, 2019, or (ii) the date the Agreement is terminated, expires, or is fully performed, or (iii) provided that DMT causes a substitute guaranty approved by Beneficiary in writing, which approval shall not be unreasonably conditioned, delayed or withheld, to be delivered to Beneficiary prior to such termination, ten (10) calendar days' after Beneficiary's receipt of written Notice from Guarantor terminating this Guaranty; provided that this Guaranty shall remain in full force and effect after such expiration or termination with respect to all Obligations incurred prior thereto, until such Obligations have been fully satisfied.

6. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein, collectively called "Notice") shall be in writing and delivered by a nationally recognized courier or shipping service, messenger or personal delivery, or certified United States mail return receipt requested, as follows:

If to Guarantor:

Dynergy Inc.
601 Travis Street, Suite 1400
Houston, TX 77002
Attn: Credit Department

If to Beneficiary:

City of Columbia
701 E. Broadway
P.O. Box 6015
Columbia, MO 65202-6015

A Notice shall be effective upon actual receipt, or refusal of delivery, by the intended recipient. Either party may change the address to which Notices to it are to be delivered by giving notice as provided above of such change of address.

7. SETOFFS AND COUNTERCLAIMS. Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses which DMT or any affiliate of Guarantor is or may be entitled to arising out of the Agreement or otherwise, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of DMT.

8. AMENDMENTS AND ASSIGNMENTS. This Guaranty shall inure to the benefit of Beneficiary, its successors, assigns and creditors, and other than as expressly set forth herein, can be modified only by a written instrument signed by Beneficiary and Guarantor. Beneficiary may assign this Guaranty only with the prior written consent of the Guarantor, such consent not to be unreasonably delayed, conditioned, or withheld; provided, however, that no such assignment shall be binding upon Guarantor until it receives written Notice of such assignment from Beneficiary. The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of Beneficiary, which consent shall not be unreasonably delayed, conditioned, or withheld.

9. GOVERNING LAW. THIS GUARANTY SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH; THE LAWS OF THE STATE OF MISSOURI, EXCLUDING ANY CHOICE OF LAW RULES THAT WOULD OTHERWISE REQUIRE THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

10. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

- a) it is a corporation duly organized and validly existing under the laws of the State of Delaware and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guaranty;
- b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty;
- c) this Guaranty constitutes a valid and legally binding Agreement of Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally and by general principles of equity; and
- d) the individual signing below is authorized to bind the Guarantor to its obligations under this Guaranty.

11. PRIOR GUARANTEES. This Guaranty supersedes and terminates all prior guarantees to Beneficiary and its affiliates issued by Guarantor on behalf of DMT with respect to the Agreement.

EXECUTED as of the day and year first above written.

Dynegy Inc.

Christopher Robinson
Vice President and Treasurer

ATTEST:

Name: _____
Title: _____