



A UniSource Energy Company

**Biomass/Biogas (Thermal) Program
Performance Based Incentive (PBI)
Renewable Energy Credit Purchase Agreement**

This Biomass/Biogas (Thermal) Performance Based Incentive (PBI) Agreement (the "Agreement") is hereby made and entered into this ____ day of _____, 20____, by and between Tucson Electric Power Company, an Arizona corporation ("Company"), and _____, ("Customer"). Company and Customer may be referred to individually herein as a "Party" or collectively as the "Parties." Biomass/Biogas (Thermal) is hereby referred to as the "Program."

RECITALS

A. Company desires to increase the number of renewable electricity generation facilities and the consumption of renewable electricity within its service territory, while concurrently reducing the cost of renewable electric generation systems for its customers. In support of these objectives and to further Company's continuing commitment to develop and encourage the use of renewable energy resources, Company has implemented a program to provide financial incentives to its customers to install renewable generating equipment (the "Program"); and

B. Company desires for Customer to participate in the Program and Customer desires to so participate under the terms and conditions contained in this Agreement, _____, Arizona (the "Premises").

NOW, THEREFORE, in consideration of these premises and of the mutual promises herein contained, Company and Customer hereby agree as follows:

AGREEMENT

1. PROGRAM:

Customer shall elect to participate in the Program by entering into this Agreement subject to the following conditions:

1.1 Renewable Energy System

1.1.1 System. Customer shall purchase a renewable energy generating system from any third party of Customer's choice ("Customer System"). To qualify under the Program, any such Customer System must comply with all renewable energy biomass/biogas (thermal) generation technology specific requirements set forth in Attachment A "System Qualifications", which is attached hereto and incorporated herein.

1.1.2 Basis of Payments. Customer environmental credits and Company payments shall be based on the actual metered renewable energy production as explained in Section 5 below. This represents a Performance Based Incentive payment method.

2. SYSTEM INSTALLATION

To qualify for participation in the Program, all Customer Systems shall be installed by or on behalf of Customer in accordance with the requirements set forth in Attachment A, including, without limitation, a proper interconnection with Company's existing power grid. Customer shall be solely responsible for the installation of the Customer System, including all costs and expenses associated therewith.

3. SYSTEM INSPECTION

Following installation of Customer's System, Company shall inspect the Customer System for compliance with the applicable requirements set forth in Attachment A. If the Customer System or installation is found to be not in compliance for any reason, Company will notify Customer of the deficiencies causing the noncompliance. Company will have no further obligations under this Agreement until all such deficiencies are remedied by Customer to Company's reasonable satisfaction.

4. SYSTEM ENERGY OUTPUT

Customer, upon receipt of payment by the Company for the Performance Based Incentive, assigns by operation of this Agreement all resultant associated environmental credits, specifically including those created under the Arizona Corporation Commission's Renewable Energy Standard and Tariff (REST) program (the "Renewable Energy Credits"). Company's right to Customer's credits assigned hereunder shall continue until the last day of the month of _____ in 20____ and shall survive any termination of this Agreement.

5. RENEWABLE ENERGY CREDIT PURCHASE

Subject to the Customer System passing the Company inspection set forth in Section 3 above and to Customer's compliance with the remaining terms and conditions of this Agreement, Company shall no more frequently than monthly, nor less frequently than annually, pay to Customer \$_____ per metered AC kilowatt-hour of net renewable energy production from the Customer System installed under this Agreement, provided that said System is operational within 180 days after execution of this Agreement. Payment shall not be for less than \$25.00 unless a full twelve (12) months has elapsed since the last such payment. All such payments shall be made by Company within thirty (30) days of the end of each calendar month in which energy is generated by the Customer System and received by Company. The Customer System's first payment shall be determined by Company following Company's receipt of a copy of the City or County building permit associated with the installation of the Customer System, and a successful Customer System inspection pursuant to Section 3 above. Energy for payment shall be calculated at the conversion rate of 3,415 Btu per kWh as recorded on the dedicated performance customer supplied meter to allow for monitoring of the amount of useful heat produced.

6. RIGHTS FOR CREDITS

Company shall have the right to purchase Renewable Energy Credits from the Customer System so long as the Customer System is installed on the Customer's premises until the end of the month and year noted in Section 4. Customer shall not offer to sell or trade Renewable Energy Credits from the Customer System to any other party until the expiration of this Renewable Energy Credit Purchase Agreement as set forth in Section 4 above.

7. METER READING

No more often than once per month nor less often than once per year during the term of this Agreement, Company shall read the Customer System renewable energy production meter for purpose of determining the payment amount per Section 5 above. Customer shall provide Company with reasonable access to its Customer System to conduct any such readings.

8. WARRANTY

COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND HEREUNDER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ITS PERFORMANCE OF ANY SERVICES OR PROVISION OF ANY GOODS HEREUNDER.

9. LIMITATION OF LIABILITY

COMPANY'S ENTIRE LIABILITY ARISING OUT OF ITS PERFORMANCE UNDER THIS AGREEMENT SHALL BE LIMITED TO CLAIMS DIRECTLY ATTRIBUTABLE TO COMPANY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT. IN NO EVENT SHALL COMPANY, ITS EMPLOYEES OR AGENTS BE LIABLE TO CUSTOMER FOR LOSS OF PROFITS OR ANY OTHER SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGE, HOWEVER CAUSED, RESULTING FROM COMPANY'S PERFORMANCE HEREUNDER.

9. TERMINATION

If either Party shall at any time commit any material breach of any covenant or warranty under this Agreement and shall fail to cure the same within thirty (30) days following written notice thereof, the non-breaching Party may terminate this Agreement, in whole or in part. This Agreement may also be terminated at any time by mutual written agreement of the Parties.

10. MISCELLANEOUS

Modification, Waiver and Severability. This Agreement may not be modified or supplemented except by written instrument signed by the Parties. No waiver of any default or breach hereof shall be deemed a waiver of any other default or breach thereof. If any part of this Agreement is declared void and/or unenforceable, such part shall be deemed severed from this Agreement which shall otherwise remain in full force and effect.

- 10.1 Assignment. This Agreement and the rights, duties, and obligations hereunder may not be assigned or delegated by the Customer without the prior written consent of Company.
- 10.2 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Arizona, without regard to the choice of law provisions thereof. Venue for any dispute arising hereunder shall be any court of competent jurisdiction located in Pima County, Arizona.

- 10.3 Entire Agreement. This Agreement is the final integration of the agreement between the Parties with respect to the matters covered by it and supersedes any prior understanding or agreements, oral or written, with respect thereto.
- 10.4 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement.
- 10.5 Titles and Captions. Titles or captions contained in this Agreement are inserted for convenience and for reference only and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.
- 10.6 Expenses and Attorney's Fees. In the event of a breach or threatened breach of any term or provision of this Agreement, the non-breaching party shall be entitled to all of its remedies available at law or in equity, unless otherwise limited in this Agreement, and in addition shall be entitled to be reimbursed for all of its reasonable costs and expenses in enforcing this Agreement (if successful), including, but not limited to, reasonable attorney's fees. This section shall survive termination or expiration of this Agreement for any reason.
- 10.7 Force Majeure. Neither Party shall be liable to the other for failure to perform its obligations hereunder to the extent such failure results from causes beyond its reasonable control, including strikes, climatic conditions, acts of God, governmental laws, regulations, orders or requirements, interruptions of power or unavailability of equipment or supplies.
- 10.8 Customer Sale of Facility. In the event Customer sells or otherwise transfers the Premises where the Customer installed the Customer System, Customer shall inform Customer's successor-in-interest of this Agreement, and if said successor-in-interest wishes to assume the Agreement, Customer shall be responsible for assigning the Agreement. In such instance, the successor-in-interest shall expressly assume all of Customer's obligations hereunder in writing, and this Agreement shall not be affected, nor shall Company's rights hereunder be disturbed in any way, including, without limitation, Company's continued right to all power output and credits assigned pursuant to Section 4 hereunder. Should Customer's successor-in-interest not wish to assume this Agreement, Customer shall be responsible for informing Company in writing of the transfer and such non-assumption.
- 10.9 Notices. All notices under this Agreement shall be in writing and shall be given to the Parties thereto by personal service (including receipted confirmed facsimile), or by certified or registered mail, return receipt requested, or by recognized overnight courier service, to the Parties at the Addresses set forth below. All notices shall be deemed given upon the actual receipt thereof.

Company:

Tucson Electric Power Company

PO Box 711

Tucson, Arizona 85702

Fax: (520) 918-8350

Attn: Renewable Energy & Energy Efficiency Group

[signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of _____, 20_____.

TUCSON ELECTRIC POWER COMPANY

By: _____

Title: _____

CUSTOMER

By: _____

Print Name: _____

Address: _____

Phone: _____

TO BE FILLED IN BY UTILITY

Estimated Annual Energy Reserved: _____ kWh

Estimated Annual Payment \$ _____

Date Reserved: _____

Application Process
ATTACHMENT A
Biomass/Biogas (Thermal) System Qualifications

All biomass/biogas (thermal) Customer Systems must meet the following system and installation requirements to qualify for Tucson Electric Power Company's ("TEP" or the "Company") Renewable Energy Credit Purchase Program. Capitalized terms not defined herein shall have the meanings ascribed to them in the Renewable Energy Credit Purchase Program Agreement.

1. Biomass/Biogas (thermal) system installations involving a regulated boiler or pressure vessel are required to comply with all Arizona state boiler regulations; provide a qualifying boiler inspection identification number; and keep all applicable permits in good standing.
2. System must include a dedicated performance meter to allow for monitoring of the amount of electricity produced.
3. System must include a dedicated performance meter to allow for monitoring of the amount of useful energy produced.
4. Pre-operational/or pre-commissioning energy savings and design output for the system will be verified by submitting either a testing certification for a substantially similar system prepared by a publicly funded laboratory or by submitting an engineering report stamped by a qualified registered professional engineer. The engineering report shall provide a description of the system and major components, design criteria and performance expectations, applicable standards and/or codes, and a brief history of components in similar applications.
5. The system will have a material and labor warranty of at least five years.
6. The system must meet Arizona DEQ environmental standards.
7. The Customer System must meet Company and Arizona Corporation Commission interconnection requirements for self-generation equipment.
8. Installation must have been made after January 1, 1997.
9. All Customer System installations must be completed in a professional, workmanlike and safe manner.