

### THIRD AMENDMENT TO ASSET PURCHASE AGREEMENT

**THIS THIRD AMENDMENT TO ASSET PURCHASE AGREEMENT** (this “**Amendment**”), dated as of \_\_\_\_\_, 2020, is entered into by and between Commonwealth Edison Company, an Illinois corporation (“**Purchaser**”), and the City of Rochelle, Illinois, acting through and on behalf of its Rochelle Municipal Utilities Department (“**Seller**”). Each of Purchaser and Seller is referred to herein as a “**Party**” and, collectively, as the “**Parties.**”

#### W I T N E S S E T H:

**WHEREAS**, the Parties are party to an Asset Purchase Agreement dated as of April 16, 2018, as the result of an Assignment and Assumption of Asset Purchase Agreement dated December 19, 2019, between NextEra Energy Transmission MidAtlantic Indiana, Inc., an Indiana corporation (successor to NextEra Energy Transmission MidAtlantic, Inc., an Illinois corporation (“**NEET-MA**”), as assignor, and Purchaser, as assignee, (as so assigned, the “**Original Agreement**”), providing for the purchase and sale of certain transmission assets; and

**WHEREAS**, the Original Agreement was previously amended to extend the sunset provision; and

**WHEREAS**, the Original Agreement was also previously amended by that certain Second Amendment to Asset Purchase Agreement dated as of December 19, 2019, and that certain Letter Agreement dated as of January 14, 2020 (the “Original Agreement,” as previously amended as set forth in these recitals, is herein called the “**Existing Agreement**”); and

**WHEREAS**, in accordance with Section 12.07 of the Existing Agreement, the Parties wish to amend the Existing Agreement to reflect the Parties’ agreements as set forth in this Amendment.

**NOW, THEREFORE**, in consideration of the mutual covenants, representations, warranties and agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

Section 1     ***NERC-Related Matters.***

(a)     In order to ensure compliance with physical and electronic security requirements in NERC reliability standard CIP-003-7, Purchaser shall, at its own cost and expense, procure and install a fence in the location described under Part I(a) of Exhibit A (the “**Location**”) attached hereto (“**Exhibit A**”). Seller shall provide access to the Location to Purchaser and its contractors for the purposes of installing and maintaining access to the fence and Purchaser’s equipment at the Location. Purchaser acknowledges that Seller is not precluded from self-disclosing compliance issues related to these matters that occurred prior to Closing, if deemed necessary, to the North American Electric Reliability Corporation (“**NERC**”) or its designated Regional Entity, ReliabilityFirst Corporation (“**ReliabilityFirst**”).

(b)     Seller shall provide to Purchaser the exclusive use of, and transition, all

necessary equipment to the fiber optic cable described in Part I(b) of Exhibit A (the “**Fiber Optic Cable**”) in connection with Purchaser’s administration, operation, maintenance, control and management of the Transmission Assets. Seller shall be responsible at its own cost and expense for the maintenance and continued availability of the Fiber Optic Cable. Seller shall use commercially reasonable efforts to investigate, identify and address the cause of any outage of the Fiber Optic Cable, and to address that outage and restore availability of the Fiber Optic Cable. Purchaser shall have the option, but not the obligation, to address any such outage and shall be provided full access to the physical Fiber Optic Cable and all diagnostic information relating to the Fiber Optic Cable for such purpose. If Seller proposes to terminate Purchaser’s use of the Fiber Optic Cable, Seller shall provide no less than one (1) year advance written notice of such termination, and Seller shall reimburse Purchaser for the cost of, at Purchaser’s option, (i) replacing the Fiber Optic Cable or (ii) providing a substitute acceptable to Purchaser to maintain Purchaser’s compliance with CIP-003-7 and operational requirements for the Transmission Assets.

(c) In order to ensure compliance with NERC reliability standard PRC-005-1.1b and PRC-005-6, Seller shall provide to Purchaser any documentation and information in its possession that is necessary to assist Purchaser in timely resolving and, if necessary, challenging the allegations of noncompliance related to testing and maintenance of protection system components subject to PRC-005 that may be due prior to Closing. To the extent Purchaser is assessed a penalty by ReliabilityFirst related to noncompliance for missed PRC-005 testing and maintenance due prior to Closing, Seller shall reimburse Purchaser for any penalty assessed within sixty (60) days of evidence of payment by Purchaser to ReliabilityFirst.

(d) The equipment associated with Seller’s operations not included in the Purchased Assets shall be isolated from the Transmission Assets so that (i) Purchaser can complete full transition of the Transmission Assets to Purchaser’s SCADA system and (ii) Seller is not relying on assets transferred to Purchaser for Seller’s operational needs. Prior to Closing, Seller shall undertake and complete the work required to accomplish such isolation to Purchaser’s satisfaction. The work is necessary to meet Purchaser’s security and operational requirements to ensure Purchaser’s SCADA system is isolated from Seller’s operational environment.

## Section 2 *Revenue Meters.*

(a) The revenue meters described in Part II of Exhibit A shall be included in the Transmission Assets listed in Schedule 2.01(a) to the Asset Purchase Agreement, and shall be conveyed by Seller to Purchaser as a part of the Purchased Assets on the Closing Date under the Bill of Sale.

## Section 3 *Real Estate Matters.*

(a) To the extent prior to or within ninety (90) days after Closing Seller fails to obtain a recordable amendment to the easement agreement identified in Part III(a) of Exhibit A permitting overhead transmission facilities in a form and substance reasonably satisfactory to Purchaser, Purchaser shall be entitled to seek, and Seller shall assist Purchaser in seeking, such an amendment.

(b) At Closing, Seller shall execute and deliver, or shall cause the appropriate department or agency within the City of Rochelle, Illinois (the “City”), to execute and deliver, a covenant to grant easement rights to Purchaser for Transmission Assets located on the parcels identified in Part III(b) of Exhibit A in the form attached hereto as Exhibit B. Purchaser, at its own expense, shall be permitted to record, or cause the recording of, the executed covenant with respect to those identified parcels.

(c) To the extent Purchaser determines that the overhang of any portion of the Transmission Assets, including without limitation, arms or conductors (the “Transmission Asset Overhang”) or the maximum sway of conductors or transmission lines in accordance with utility industry standards or otherwise as required by FERC (the “Blow Out”) is not located entirely within City rights-of ways or previously granted easements, but instead on privately owned parcels identified in Part III(c) of Exhibit A, Purchaser will be entitled to seek prior to or after Closing, and Seller shall assist Purchaser in seeking, (x) easement agreements executed by the applicable parcel owner, in a form acceptable to Purchaser, granting to Purchaser the right to access, place, keep, operate, maintain, improve, replace and support the Transmission Asset Overhang extending across, or necessary for the Blow Out across, such parcels, and (y) such title curative documents, such as subordination and non-disturbance agreements (SNDAs) from any mortgage holder, as Purchaser shall reasonably desire.

(d) To the extent not completed prior to Closing, within ninety (90) days after Closing, Seller will obtain and deliver, subordination agreements, to the extent they are necessary, executed by the applicable mortgage holder, in a form acceptable to Purchaser, for the three mortgages affecting Ogle County Parcel 92 (25-28-400-005) and the mortgage affecting Lee County Parcel 13 (01-06-17-401-005) or, alternatively, deliver documents evidencing that such mortgages have been released.

(e) Seller and Purchaser have acknowledged and agreed that any actions or expenses incurred by Purchaser in connection with matters and defects identified in Sections 3(a), 3(c) and 3(d) above, which the Purchaser agreed to waive as a condition to closing this transaction (subject to Seller’s obligations in the Existing Agreement and this Amendment, including but not limited to in Sections 3(a), 3(c) and 3(d) above and this Section 3(e)), are specifically covered by clause (ii) of Section 10.01(a) of the Asset Purchase Agreement, including, without limitation, costs and expenses incurred by Purchaser for a land agent to obtain, and fees paid by Purchaser to a landowner to obtain the amendment to easement agreement described Section 3(a) above or easement agreements described in Section 3(c) above. The time limit in Article 9 shall not apply for any recovery under clause (ii) of Section 10.01(a) in respect of any such actions or expenses.

(f) Sections 2.05(b)(ii)(2)(c), 6.04 and 7.03(e) of the Existing Agreement are hereby deleted.

(g) Schedule 2.01(b) of the Existing Agreement is hereby deleted and replaced with the revised Schedule 2.01(b) attached hereto as Exhibit C.

(h) With respect to the requirement in Schedule 3.04 of the Existing Agreement for an ordinance from Ogle County, at Closing Seller shall either provide the

referenced ordinance or written evidence reasonably satisfactory to Purchaser that neither the ordinance nor any other permit is required by Ogle County for the Transmission Assets in the County road rights of way.

(i) Seller and Purchaser shall work together to (y) finalize the Instrument of Assignment and Assumption of Contracts and Easements attached to the Existing Agreement as Exhibit D, and (z) negotiate in good faith and finalize a separate Instrument of Assignment and Assumption of Easements which reserves for the City the right to continue to operate its existing underground utility and distribution facilities to the extent permitted pursuant to the easements identified in Part III(i) of Exhibit A, which shall include, without limitation, mutual indemnities of Seller and Purchaser, and otherwise be in form and substance reasonably satisfactory to the parties.

Section 4 **Access.** Seller shall allow Purchaser and its contractors access with reasonable notice and supervision to the Location following the Closing for the purposes of maintaining, repairing and replacing the fence described in Section 1(a) and to access, inspect, maintain, repair, remove and replace Purchaser's equipment located at the Location (i.e., the Caron Road Substation and the Twombly Road Substation); provided, however, no notice or supervision shall be required of Purchaser in the event of an emergency. Such access shall not unreasonably interfere with the ongoing business operations of Seller and shall be only for Purchaser's reasonably qualified personnel.

Section 5 **Amendments and Waivers.** This Amendment may be waived, amended, supplemented or modified only by a written instrument duly executed by or on behalf of the Parties.

Section 6 **Governing Law; Venue and Consent to Jurisdiction.** Sections 12.12 and 12.13 of the Existing Agreement shall apply to this Amendment *mutatis mutandis*.

Section 7 **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Amendment delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment.

Section 8 **No Third Party Beneficiary.** The terms and provisions of this Amendment are intended solely for the benefit of each Party and their respective successors or permitted assigns, and it is not the intention of the parties hereto to confer third-party beneficiary rights upon any other Person.

Section 9 **No Assignment.** Neither this Amendment nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed, and any attempt to do so will be void.

Section 10 **No Other Changes.** Except as expressly amended by this Amendment, the provisions of the Existing Agreement (including any schedules and exhibits thereto) are

hereby ratified and confirmed and shall remain in full force and effect in accordance with their respective terms.

*[Signature pages follow]*

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their respective officers thereunto duly authorized as of the date first above written.

**SELLER:**

**CITY OF ROCHELLE, ILLINOIS**

By: \_\_\_\_\_

Name:

Title:

**PURCHASER:**

**COMMONWEALTH EDISON COMPANY**

By: \_\_\_\_\_

Name:

Title:

## Exhibit A

### **Part I: NERC-Related Matters**

- (a) The Location for the fence is described as follows:
- Caron Road Substation New Control Building between points 2C & 3C
  - Twomby Road Substation Control Building between Coordinates 5D & 7D
- (b) The fiber optic cable runs from Caron Road Substation to Twomby Road Substation.

### **Part II: Revenue Meters**

The existing 138kV revenue metering equipment used to measure energy flows on the transmission system whose assets are being conveyed as a part of the Asset Purchase Agreement, including all revenue meters and associated equipment, including instrument transformers, currently owned by Seller at Caron Road Substation measuring flow on the ComEd Transmission line L16914 (Rochelle Line 1) and at Twomby Road Substation measuring flow on the ComEd 138kV Transmission line L18618 (Rochelle Line 3).

### **Part III: Real Estate Matters**

- (a) Easement Agreement for Utility Facilities, dated as of \_\_\_\_\_, 2014, by Larry A. Brossman, as Successor Trustee of the Roy W. Brossman Living Trust dated February 10, 2006 and the City of Rochelle, an Illinois municipal corporation, recorded on July 14, 2014 as Document No. 2014002711 in the official records of Lee County, Illinois.
- (b) Parcels Affected:
- Ogle County Parcel 61 (25-22-300-007)
  - Ogle County Parcel 66 (25-22-300-006)
  - Ogle County Parcel 67 (25-18-100-002)
  - Ogle County Parcel 68 (25-30-400-002)
  - Ogle County Parcel 69 (25-30-400-003)
  - Ogle County Parcel 73 (25-30-128-003)
  - Ogle County Parcel 76 (25-31-200-007)
  - Ogle County Parcel 77 (25-31-200-008)
  - Ogle County Parcel 81 (24-24-478-003)
  - Ogle County Parcel 84 (24-25-228-001)
  - Ogle County PIN 25-22-300-005

(c) Parcels Affected<sup>1</sup>:

- Ogle County Parcel 19 (25-32-400-016)
- Gap between Ogle County Parcel 19 (25-32-400-016) and 21 (25-32-400-017)
- Ogle County Parcel 21 (25-32-400-017)
- Ogle County Parcel 28 (24-24-478-006)
- Ogle County Parcel 47 (25-19-100-006)
- Ogle County Parcel 49 (25-19-100-019)
- Ogle County Parcel 50 (25-19-100-003)
- Ogle County Parcel 51 (25-19-126-002)
- Ogle County Parcel 52 (25-19-100-010)
- Ogle County Parcel 53 (25-19-100-002)
- Ogle County Parcel 58 (25-19-200-007)
- Portion of transmission line potentially located on Ogle County 25-28-400-004 between Ogle County Parcel 63 (25-27-300-003) and Parcel 92 (25-28-400-005)
- Ogle County Parcel 90 (25-19-100-004)

(i) Easements Affected<sup>2</sup>:

- [Ogle County - Plat of Easement, dated November 6, 2003, and recorded November 19, 2003 as Recording No. 0320592, as affected by that Rider to Plat of Easement, dated November 6, 2003, and recorded November 19, 2003 as Recording No. 0320593 and that Amendment to Rider to Plat of Easement, dated August 28, 2018, and recorded April 9, 2020 as Recording No. 202002062.]
- [Ogle County - Underground-Overhead Utility Facilities, dated December 30, 1977 and recorded March 3, 1978 as Recording No. 466259.]
- [Lee County - Easement Agreement for Utility Facilities dated July 7, 2014 and recorded July 7, 2014 as Recording No. 2014002711.]
- [Lee County - Easement Agreement for Utility Facilities, dated July 7, 2017 and recorded August 23, 2017 as Recording No. 2017003524.]
- [Lee County - Easements as set forth and depicted in that Perpetual Easement for Overhead and Underground Electric Facilities, dated December 19, 2017 and recorded December 19, 2017 as Recording No. 2017005405.]

---

<sup>1</sup> List of parcels affected to be adjusted pending completion of surveying and engineering work. The surveying work did not identify any poles located outside of the rights of way.

<sup>2</sup> City to confirm which easements contain permitted City underground facilities.

**Exhibit B**

**Covenant to Grant Easement**

[See attached]

**Exhibit C**

**Schedule 2.01(b)**

**EASEMENTS**

[See attached]