

SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS SECONDAMENDMENT TO ASSET PURCHASE AGREEMENT (this “**Amendment**”), dated as of [●], 2019, 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 [●], 2019 between NextEra Energy Transmission MidAtlantic, Inc., an Illinois corporation (“**NEET-MA**”), as assignor, and Purchaser, as assignee (as so assigned, the “**Existing Agreement**”), providing for the purchase and sale of certain transmission assets; and

WHEREAS, the Existing Agreement was previously amended to extend the sunset provision; 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:

ARTICLE I AMENDMENTS

Section 1.1. *Amendments to Existing Agreement.*

(a) The “and” appearing at the end of the second “Whereas” clause shall be deleted and the third “Whereas” clause shall be deleted in its entirety. Seller acknowledges that the separate agreement referred to in that third Whereas clause is not being assumed by Purchaser.

(b) Section 1.01, “Definitions,” shall be amended as follows:

(i) By amending the definitions of “Ancillary Agreements,” “Business Day,” “Outside Date” and “Purchaser” to read in their entirety as follows:

“**Ancillary Agreements**” means the Bill of Sale, the Instrument of Assignment and Assumption of Assumed Liabilities, the Instrument of Assignment and Assumption of Contracts and Easements, the Interconnection Agreement, and the Pole Attachment Agreement.

“**Business Day**” means any day except (i) a Saturday, (ii) a Sunday and (iii) any day on which banks in the State of Illinois are authorized or obligated

to close.

“*Outside Date*” has the meaning set forth in Section 11.01(b).

“*Purchaser*” means Commonwealth Edison Company, a corporation organized and existing under the laws of the State of Illinois, and includes its successors and assigns.

(ii) By deleting the definition of “Franchise Agreement.”

follows: (c) Section 2.03, “Purchase Price,” shall be amended to read in its entirety as

2.03 **Payments.**

(a) *Closing Date Payment and Other Payments.*

(i)

(1) The consideration for the Purchased Assets will be cash in an amount equal to one hundred percent (100%) of the Net Book Value as of Closing Date. An amount equal to one hundred percent (100%) of the Mutually-Agreed Net Book Value as of Closing Date shall be the amount payable by Purchaser to Seller under this clause (1) on the Closing Date by wire transfer of immediately available funds to the account designated by Seller to Purchaser in writing.

(2) Purchaser shall pay to Seller cash in an amount equal to one hundred percent (100%) of the Net Book Value as of Closing Date in order to address the delay from the estimated closing in September 2018. An amount equal to one hundred percent (100%) of the Mutually-Agreed Net Book Value as of Closing Date shall be the amount payable by Purchaser to Seller under this clause (2) on the Closing Date by wire transfer of immediately available funds to the account designated by Seller to Purchaser in writing.

The aggregate amount payable by Purchaser under clauses (1) and (2) of this Section 2.03(a)(i) is referred to as the “*Closing Date Payment*” and shall be subject to post-Closing adjustment pursuant to Section 2.03(b). The

Parties currently estimate the Net Book Value as of Closing Date to be six million, two hundred eighty-one thousand, eight hundred forty-two and 00/100 dollars (\$6,281,842.00), assuming a Closing Date of September 30, 2018 (when the Closing Date is fixed pursuant to Section 2.05(a), the Parties shall re-estimate and mutually agree in writing to the Net Book Value as of Closing Date ("**Mutually-Agreed Net Book Value as of Closing Date**").

(ii) Purchaser shall pay to Seller a community development payment, which shall be payable, at Purchaser's election, either (x) in an annual amount of \$20,000 ("**Annual Payment**") on each of the first ten anniversaries of the Closing Date or (y) in a single payment of \$200,000 on the Closing Date; such payments or payment to be made by Purchaser to Seller by wire transfer of immediately available funds to an account designated by Seller to Purchaser in writing.

(iii) Purchaser shall pay to Seller payments in respect of franchise rights, which shall be payable (x) \$3,500,000 on the Closing Date and (y) annually in the amount of \$30,000; such payments to be made by Purchaser to Seller by wire transfer of immediately available funds to an account designated by Seller to Purchaser in writing.

(iv) Purchaser shall pay to Seller a payment, which shall be payable in a single payment of \$4,000,000 on the Closing Date, and such payment shall be made by Purchaser to Seller by wire transfer of immediately available funds to an account designated by Seller to Purchaser in writing. The payment represents a fee for the cancellation of any obligations referenced in the third Whereas clause of this Agreement to design, develop, construct and energize an approximately 13.8 mile, east-west, 138 kV electric power transmission line from Seller's existing transmission and distribution substation at 15013 Twombly Road in Rochelle, Illinois.

(b) **Post-Closing Adjustments to Closing Date Payment.** The determination of the Mutually-Agreed Net Book Value as of Closing Date by the Parties prior to the Closing pursuant to Section 2.03(a) shall assume that the working capital of the Business at Closing will be zero dollars (\$0.00) and that there will be no additions or improvements to, or deletions from, the Purchased Assets or other changes affecting the Net Book Value as of Closing Date between the date on which

the Mutually-Agreed Net Book Value as of Closing Date and the Closing Date Payment are so determined by the Parties prior to the Closing (such date being referred to as the "**Closing Date Payment Determination Date**") and the Closing Date, provided that, within forty- five (45) days after the Closing Date, the Parties shall adjust the Closing Date Payment to the extent necessary to reflect (i) any difference between (1) the sum of (a) the aggregate amount of Pre-Closing Straddle-Period Receivables paid or payable to Purchaser after the Closing and (b) the aggregate amount of Post-Closing Straddle-Period Payables paid by Seller before the Closing (such sum being referred to as the "**Pre-Closing Receivables/Post-Closing Payables Amount**") and (2) the sum of (a) the aggregate amount of Post-Closing Straddle-Period Receivables paid to Seller before the Closing and (b) the aggregate amount of Pre-Closing Straddle-Period Payables paid or payable by Purchaser after the Closing (such sum being referred to as the "**Post-Closing Receivables/Pre-Closing Payables Amount**") and (ii) any changes in the Net Book Value as of Closing Date that (a) shall have occurred between the Closing Date Payment Determination Date and the Closing Date or (b) shall have occurred before the Closing Date Payment Determination Date but shall not have yet been reflected in the books and records of Seller on the Closing Date Payment Determination Date. If the Pre-Closing Receivables/Post-Closing Payables Amount is greater than the Post-Closing Receivables/Pre-Closing Payables Amount, Purchaser shall pay to Seller the amount of the difference, and if the Post-Closing Receivables/Pre-Closing Payables Amount is greater than the Pre-Closing Receivables/Post-Closing Payables Amount, Seller shall pay to Purchaser the amount of the difference. If:

(x) the Net Book Value as of Closing Date (as adjusted pursuant to this Section 2.03(b)) is greater than fifty percent (50%) of the Closing Date Payment, Purchaser shall pay to Seller the amount equal to two hundred percent (200%) of the difference; or

(y) the Net Book Value as of Closing Date (as adjusted pursuant to this Section 2.03(b)) is less than fifty percent of the Closing Date Payment, Seller shall pay to Purchaser the amount equal to two hundred percent (200%) of the difference.

Any payment to be made under this Section 2.03(b) shall be made by wire transfer of immediately available funds to the account designated by Seller to Purchaser in writing or the account designated by Purchaser to Seller in writing, as the case may be. One half of any payment made under clause (x) or (y) of this Section 2.03(b) shall be considered in respect of Section 2.03(a)(i)(1) and one half any such payment shall be considered in respect of Section 2.03(a)(i)(2).

follows: (d) Section 4.01, “Existence,” shall be amended to read in its entirety as follows:

Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois. Purchaser has full power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it is a party, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby.

(e) Clause (a) of Section 4.03, “No Conflicts,” shall be amended to read in its entirety as follows:

(a) conflict with or result in a violation or Breach of any of the terms, conditions or provisions of Purchaser’s restated articles of incorporation, bylaws or other constituent documents;

(f) Section 5.03, “Grant of Franchise; Compliance with Illinois Law,” shall be amended to read in its entirety as follows: “[Intentionally omitted.]”¹

(g) Article 6, “Covenants of Purchaser,” shall be amended as follows:

(i) Section 6.01, “Regulatory and Other Third-Party Consents and Approvals,” is amended to read in its entirety as follows:^{2, 3}

As promptly as practicable and as a condition to Seller's obligation to consummate the transactions contemplated by this Agreement, Purchaser shall (a) take all commercially reasonable steps necessary or desirable to obtain all Governmental Approvals and all such other third-party consents, approvals and other actions (including the Governmental Approvals and other third-party consents, approvals and other actions set forth on Schedule 3.04) from, and to make all such filings with, such Persons as shall be required of Purchaser in order to consummate the transactions contemplated by this Agreement and the Ancillary Agreements, (b) provide such other information and communication to such Governmental Authorities or other Persons as such Governmental Authorities or other Persons may reasonably

¹ NTD: Would like to discuss approach to franchise rights.

² NTD: Revised to remove the parenthetical phrase that referred to “the CPCN from the ICC”.

³ NTD: Would like to discuss governmental and third party approvals/consents and the status of the process of securing those approvals/consents.

request in connection therewith, and (c) provide reasonable cooperation to Seller in connection with Seller's performance of its obligations under Sections 5.02, 5.03 and 5.04. Purchaser shall provide prompt notification to Seller when any such consent, approval or other action is obtained or taken or any such filing is made and will advise Seller of any communications (and, unless prohibited by applicable Law, provide copies to Seller of any such written communications) with any Governmental Authority or other Person regarding any of the transactions contemplated by this Agreement.

(ii) A new Section 6.06, "Local Office/Facility," shall be added at the end thereof to read as follows:

6.06 Local Office/Facility.

Purchaser or one of its Affiliates shall establish an office or other facility within the City limits of Rochelle, Illinois prior to the first anniversary of the Closing and shall maintain such office for a period of at least seven years.

(iii) 6.07 CTOA

Purchaser and Seller are each a party to the Consolidated Transmission Owners Agreement ("CTOA") and each is a Transmission Owner as that term is defined in the Open Access Transmission Tariff of PJM Interconnection, Inc. ("PJM"). Purchaser acknowledges that, as of the Closing Date, it shall assume all of Seller's rights and obligations as a PJM Transmission Owner under the CTOA. Seller represents that, as of the Closing Date, it has no obligations as a PJM Transmission Owner other than those set forth in the CTOA or as otherwise disclosed in writing to Purchaser.

(h) Section 8.05, "Tax Allocation of the Purchase Price," shall be amended to read in its entirety as follows:⁴

8.05 Tax Allocation of Consideration.

The Parties shall cooperate in the preparation of IRS Form 8594 to report the allocation of the consideration (as determined for U.S. federal income tax purposes) among the Purchased Assets. Purchaser shall prepare and deliver to Seller a draft Form 8594 within thirty (30) days after the Closing Date. If Seller disputes any items in Purchaser's draft Form 8594, Seller shall deliver to Purchaser Seller's written exceptions and proposed changes (such exceptions and changes being referred to as "*Disputed Items*") to Purchaser's draft Form 8594 as soon as reasonably practicable after its

⁴ NTD: Changed the undefined term "Purchase Price" to "consideration".

receipt of Purchaser's draft Form 8594 and not more than twenty (20) days after its receipt thereof (such twenty-day period being referred to as the "**Comment Period**"). The Parties shall use commercially reasonable efforts to reach an agreement on any and all Disputed Items within the period ending on the later of (a) the expiration of the Comment Period and (b) twenty (20) days after Purchaser's receipt of Seller's Disputed Items, provided that, if Purchaser and Seller are not able to reach agreement on some or all Disputed Items, each Party may file such Tax Returns, which shall include such information, as shall be determined by such Party. If Seller does not deliver to Purchaser any Disputed Items within the Comment Period, or if the Parties are able to agree on all Disputed Items, the Parties shall prepare and file the agreed Form 8594, and neither Party shall take any income Tax reporting position that is inconsistent therewith.

(i) Subsection (b) of Section 11.01, "Termination," is amended to read in its entirety as follows:

(b) by either Party, upon the other Party's receipt of written notification of termination from the terminating Party, if the Closing does not occur on or before [●] ("**Outside Date**"),⁵ provided that the failure of the Closing to occur on or before the Outside Date is not the result of any material Breach by the terminating Party;

(j) Section 12.01, "Notices," shall be amended to change the notice addresses for Purchaser as follows:

If to Purchaser:

Commonwealth Edison Company
440 South LaSalle Street – Suite 3300
Chicago, Illinois 60605
Attention: General Counsel
Telephone: (312) 394-4997
Facsimile: (312) 394-3327

with a copy (which shall not constitute notice) to:

Exelon Business Services Company
Law Department
10 South Dearborn Street – Suite 4900
Chicago, Illinois 60603
Attention: Deputy General Counsel – Corporate and Commercial
Telephone: (312) 394-7143
Facsimile: (312) 394-4462

⁵ NTD: Agreement currently refers to June 30, 2019, which needs to be changed.

(k) [Schedule 4.04 shall be amended to read in its entirety as follows:⁶

- Federal Energy Regulatory Commission approval under Section 203 of the Federal Power Act, as amended, of Purchaser's acquisition of the Transmission Assets.]

(l) The Exhibits are amended as follows:

(i) Exhibits A, "Form of Bill of Sale," C, "Form of Instrument of Assignment and Assumption of Assumed Liabilities," D, "Form of Instrument of Assignment and Assumption of Contracts and Easements," E, "Form of Interconnection Agreement," and F, "Form of Pole Attachment Agreement" are each amended (x) to change the phrase "NextEra Energy Transmission MidAtlantic, LLC, a limited liability company organized and existing under the Laws of the State of Delaware" to "Commonwealth Edison Company, a corporation organized and existing under the Laws of the State of Illinois" and (y) to change the reference to "NextEra Energy Transmission MidAtlantic, LLC" on the signature page to "Commonwealth Edison Company".

(ii) Exhibit A, "Form of Bill of Sale," is further amended by amending the third paragraph thereof to read in its entirety as follows:

NOW, THEREFORE, in consideration of Purchaser's payment of the payment referred to in Section 2.03(a)(i)(1) of the APA and the mutual promises set forth herein and in the APA, including Purchaser's promise to make each Annual Payment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

(iii) Exhibit B, "Form of Franchise Agreement," is amended to read in its entirety as follows: "[Intentionally omitted.]"⁷

(iv) Exhibit E, "Form of Interconnection Agreement," is hereby amended to read in its entirety as set forth in Exhibit I to this Amendment.⁸

(v) Exhibit F, "Form of Pole Attachment Agreement," is hereby amended to read in its entirety as set forth in Exhibit II to this Amendment.⁹

⁶ NTD: Under regulatory review.

⁷ NTD: Is there a new Ordinance that should be attached? More may be needed if the Ordinance attached as Exhibit B to Existing Agreement has been passed and the letter agreement attached as Exhibit B to Existing Agreement has been delivered?

⁸ NTD: To be modified as needed to reflect discussions.

⁹ NTD: To be modified as needed to reflect discussions.

ARTICLE II MISCELLANEOUS

Section 2.1. ***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 2.2. ***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 2.3. ***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 2.4. ***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 2.5. ***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 2.6. ***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 I

Interconnection Agreement

See attached.

Exhibit II

Pole Attachment Agreement

See attached.