

## **FIRST AMENDMENT TO EEI MASTER POWER PURCHASE AND SALE AGREEMENT**

This First Amendment to the EEI Master Power Purchase and Sale Agreement dated as of August \_\_, 2020 (this “Amendment”), is made and entered into by and between **Citigroup Energy Inc.** (“Party A” or “CEI”) and **City of Rochelle, Illinois** (“Party B” or “Counterparty”).

WHEREAS, Party A and Party B entered into that certain EEI Master Power Purchase and Sale Agreement dated as of September 2017, as modified, amended and supplemented from time to time (the “Agreement”);

WHEREAS, the parties hereto desire to amend the Agreement as provided herein;

NOW THEREFORE, for and in consideration of the agreements herein made and other good and valuable consideration, the parties hereby agree to the following:

### **I. AMENDMENTS**

1. The Agreement is hereby amended to add a new Section 10.16, as follows:

Section 10.16 U.S. QFC Contractual Stay Requirements.

(1) Recognition of U.S. Regimes. In the event CEI becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of any Relevant Agreement and any interest and obligation in or under, and any property securing, such Relevant Agreement (“**Relevant Interests**”) from CEI will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Relevant Agreement and Relevant Interests were governed by the laws of the United States or a state of the United States. In the event CEI or any Citi Affiliate becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights with respect to any Relevant Agreement against CEI are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Relevant Agreement were governed by the laws of the United States or a state of the United States. The requirements of this Section (1) apply notwithstanding Sections (2), (3) and (4) below.

(2) Limitation on Exercise of Certain Default Rights. Notwithstanding anything to the contrary in any Relevant Agreement or any other agreement, the parties expressly agree that:

(a) Subject to Sections (3) and (4), Counterparty shall not be permitted to exercise any Default Right with respect to any Relevant Agreement or any Citi Affiliate Credit Enhancement that is related, directly or indirectly, to a Citi Affiliate becoming subject to an Insolvency Proceeding; and

(b) Nothing in any Relevant Agreement shall prohibit the transfer of any Citi Affiliate Credit Enhancement, any interest or obligation in or under such Citi Affiliate Credit Enhancement, or any property securing such Citi Affiliate Credit Enhancement to a Transferee upon or following a Citi Affiliate becoming subject to an Insolvency Proceeding, unless the transfer would result in Counterparty being the beneficiary of such Citi Affiliate Credit Enhancement in violation of any law applicable to Counterparty.

(3) General Creditor Protections. Nothing in Section (2) shall restrict the exercise by Counterparty of any Default Right against CEI with respect to a Relevant Agreement that arises as a result of (a) CEI becoming subject to an Insolvency Proceeding; (b) CEI not satisfying a payment or delivery obligation pursuant to such Relevant Agreement or another contract between CEI and Counterparty that gives rise to a Default Right under such Relevant Agreement; or (c) the failure of a Citi Affiliate Support Provider, or any Transferee thereof, to satisfy a payment or delivery obligation pursuant to any Citi Affiliate Credit Enhancement that supports this Agreement or any QFC hereunder.

(4) Additional Creditor Protections. To the extent this Agreement or any QFC hereunder is supported by a Citi Affiliate Credit Enhancement, nothing in Section (2) shall restrict the exercise by Counterparty after the QFC Stay Period of a Default Right that is related, directly or indirectly, to a Citi Affiliate Support Provider becoming subject to an Insolvency Proceeding if:

(a) the Citi Affiliate Support Provider that remains obligated under such Citi Affiliate Credit Enhancement becomes subject to an Insolvency Proceeding, other than a Chapter 11 Proceeding;

(b) subject to 12 C.F.R. 252.84(h), 12 C.F.R. 382.4(h) and 12 C.F.R. 47.5(h), the Transferee, if any, becomes subject to an Insolvency Proceeding;

(c) the Citi Affiliate Support Provider does not remain, and a Transferee does not become, obligated to the same, or substantially similar, extent as the Citi Affiliate Support Provider was obligated immediately prior to entering such Insolvency Proceeding with respect to: (i) such Citi Affiliate Credit Enhancement; (ii) all other Citi Affiliate Credit Enhancements provided by the Citi Affiliate Support Provider in support of other Direct QFCs between CEI and Counterparty; and (iii) all Citi Affiliate Credit Enhancements provided by the Citi Affiliate Support Provider in support of Direct QFCs between CEI and Counterparty Affiliates; or

(d) in the case that the Citi Affiliate Credit Enhancement is transferred to a Transferee: (i) all of the ownership interests of CEI directly or indirectly held by the Citi Affiliate Support Provider are not transferred to the Transferee; or (ii) reasonable assurance has not been provided that all or substantially all of the assets of the Citi Affiliate Support Provider (or net proceeds therefrom), excluding any assets reserved for the payment of costs and expenses of administration in the Insolvency Proceeding, will be transferred or sold to the Transferee in a timely manner.

(5) Burden of Proof. After a Citi Affiliate has become subject to an Insolvency Proceeding, if Counterparty seeks to exercise any Default Right with respect to any Relevant Agreement, Counterparty shall have the burden of proof, by clear and convincing evidence, that the exercise of such Default Right is permitted thereunder.

(6) Effective Date. The provisions of this Section 10.16 will come into effect on the later of the date of this Agreement and the Applicable Compliance Date.

(7) Definitions. For the purposes of Section 10.16, the following definitions apply:

“*Applicable Compliance Date*” means: (a) July 1, 2019, if Counterparty is a “financial counterparty” other than a “small financial institution” (as such terms are defined under, and interpreted in accordance with, the QFC Stay Rules); or (b) otherwise, January 1, 2020.

“*Chapter 11 Proceeding*” means a proceeding under Chapter 11 of the United States Bankruptcy Code.

“*Citi Affiliate*” means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of CEI.

“*Citi Affiliate Credit Enhancement*” means any Credit Enhancement provided by a Citi Affiliate to CEI.

“*Citi Affiliate Support Provider*” means a Citi Affiliate that is an obligor on any Citi Affiliate Credit Enhancement, provided that it is not a Transferee.

“*Counterparty Affiliate*” means a “consolidated affiliate” (as such term is defined in, and interpreted in accordance with, the QFC Stay Rules) of Counterparty.

“*Credit Enhancement*” means, with respect to any Relevant Agreement, any credit enhancement or other credit support arrangement in support of the obligations of CEI or Counterparty thereunder or with respect thereto, including any guarantee, pledge, charge, mortgage or other security interest in collateral or title transfer collateral arrangement, trust or similar arrangement, letter of credit, transfer of margin, reimbursement obligation or any similar arrangement.

“*Default Right*” has the meaning assigned to that term in, and shall be interpreted in accordance with, the QFC Stay Rules, including without limitation any right of a party to liquidate, terminate, cancel, rescind, or accelerate an agreement or transactions thereunder; set off or net amounts owed; exercise remedies in respect of collateral or other credit support or related property; demand payment or delivery; suspend, delay, or defer payment or performance; alter the amount of, demand the return of or modify any right to reuse collateral or margin provided; otherwise modify the obligations of a party; or any similar rights.

“*Direct QFC*” means a QFC that is not a Credit Enhancement. For the avoidance of doubt, for a QFC that is a master agreement that includes a Citi Affiliate Credit Enhancement as a supplement to the master agreement, the Direct QFC does not include such Citi Affiliate Credit Enhancement.

“*Insolvency Proceeding*” means a receivership, insolvency, liquidation, resolution, or similar proceeding.

“*QFC*” has the meaning assigned to the term “qualified financial contract” as defined in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“*QFC Stay Period*” means, in the event of an Insolvency Proceeding, the period of time beginning on the commencement of the proceeding and ending at the later of 5:00 p.m. (Eastern Time) on the first day on which commercial banks in the jurisdiction of the proceeding are open for general business (including dealings in foreign exchange and foreign currency deposits) following the date of the commencement of the proceeding and 48 hours after the commencement of such proceeding.

“*QFC Stay Rules*” means the regulations codified at 12 C.F.R. 252.2, 252.81–8; 12 C.F.R. 382.1-7; and 12 C.F.R. 47.1-8. All references herein to the QFC Stay Rules shall be construed, with respect to CEI or a Citi Affiliate Support Provider, to the particular QFC Stay Rule(s) applicable to it.

“*Relevant Agreement*” means this Agreement and all QFCs entered into under or pursuant to this Agreement together with all related Credit Enhancements between CEI and Counterparty.

“*Transferee*” means, in respect of a Citi Affiliate Credit Enhancement, a person to whom such Credit Enhancement is transferred upon the Citi Affiliate Support Provider entering an Insolvency Proceeding or thereafter as part of the resolution, restructuring, or reorganization involving the Citi Affiliate Support Provider.

“*U.S. Special Resolution Regime*” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.”

2. Each party agrees to provide evidence reasonably satisfactory to the other party of the authority and genuine signature of the individual signing this Amendment.

3. Except as amended hereby, all other terms and conditions of the Agreement shall remain the same and in full force and effect.

**II. MISCELLANEOUS**

This Amendment may be executed in multiple counterparts, each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

Any and all references to the Agreement shall hereafter refer to the Agreement as amended by this Amendment and as the same may be amended, supplemented or modified from time to time. The provisions of this Amendment shall apply to any and all outstanding transactions under the Agreement. Unless otherwise defined herein, capitalized terms not defined herein shall have the same meanings assigned to such terms in the Agreement.

**IN WITNESS WHEREOF** the parties have executed this document as set forth below with effect from the date specified on the first page of this document.

**CITIGROUP ENERGY INC.**

**CITY OF ROCHELLE, ILLINOIS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_