



## Contract for Supply of Electricity

Quote Number:	S0183665	Product:	Fixed Price / DMAC / HUB
Business Partner:	0020246256		
Buyer:	Montague County 100 S GRAND ST MONTAGUE, TX 76251	Seller:	TXU Energy Retail Company LLC REP Certification No. 10004 6555 Sierra Drive 1-W-1 Irving, Texas 75039 Attn: Retail Contract Administration
Phone:	(940) 894-2401	Fax:	
		Phone:	(866) 576-6745
		Fax:	(972) 556-6108

### I. TERM

**Primary Term:** The Primary Term for each Premise will begin on the first meter read, and end on the first regularly scheduled meter read, for each Premise occurring on or after the dates listed below in compliance with the Terms and Conditions.

**Primary Term Start Date:** August 23, 2018

**Primary Term End Date:** August 22, 2026

### II. CHARGES

CHARGE	AMOUNT (Monthly Charges will be the total of the items listed in this Article II.)
(i) All kWh Charge (the per kWh "Contract Price")	<p>\$0.0432400 per kWh.</p> <p>The All kWh Charge includes charges for the commodity (including the price impact, if any, resulting from the implementation of the Operating Reserve Demand Curve ("ORDC")), Energy (shaped), Ancillary Services, Qualified Scheduling Entity Charges, Renewable Energy Credit Charges, Reliability Must Run ("RMR"), Reliability Unit Commitment ("RUC"), Line Losses (TDSP), Market Clearing Price for Capacity, ERCOT Administration Fee/ISO Fees, Unaccounted for Energy ("UFE") as defined and specified in the ERCOT Protocols and the applicable TDSP's Tariff in effect as of the date of this Agreement. It will also include the settlement charges to the applicable ERCOT Hub, but will exclude settlement charges for Congestion to the applicable ERCOT Load Zone (i.e., excludes the difference between the applicable ERCOT Hub price and the applicable ERCOT Load Zone price for each fifteen (15) minute interval/block of time contained in the applicable contract billing month) which will be passed through to Buyer without markup by Seller pursuant to "(v) Other Charges" below.</p> <p><b>*Buyer should be aware that the Hub to Load Zone settlement differential per interval potentially could be very volatile, with effectively no cap or limitation on how high such interval costs can go. Market and other conditions potentially could result in significant increases in such costs for extended periods of time for which Buyer nevertheless will remain responsible for paying. Seller has not provided and is not providing under this transaction any risk management or hedges in conjunction with the costs associated with this HUB to Load Zone settlement differential.</b></p>
(ii) Standing Charge	The sum of the Monthly Standing Charges for all ESI IDs as listed in Exhibit A.
(iii) Other Charges	<b>Varies by ESI ID throughout the Term.</b> All charges, other than those listed above or below, imposed upon Seller or Buyer by the TDSP or another party that are allowed or required by the PUCT, ERCOT, or any other governmental or regulatory authority, on or with respect to the acquisition, sale, delivery, and purchase of the Power.
(iv) Taxes	<b>Varies by ESI ID throughout the Term.</b> All taxes imposed by any governmental or regulatory authority on the acquisition, sale, delivery, and purchase of the Power. Includes, but is not limited to, Seller's Texas Gross Receipts Tax and Public Utility Commission Assessment on the acquisition, sales, delivery, or purchase of the Power.
(v) Aggregator/Third Party Fee	The pricing under this Agreement reflects a payment to L5E, LLC in connection with its efforts to facilitate Buyer and Seller entering into this Agreement.

### III. BILLING


**Payment Terms:** Net 30 days from the date of the invoice via CHECK

### IV. SPECIAL PROVISIONS

**INITIAL SECURITY:** An initial cash deposit in the amount of \$0.00 is required within sixteen (16) days from the issuance date of the invoice for the deposit. Once received, the cash deposit may be replaced by a surety bond, or an irrevocable letter of credit either of which shall be (i) in a form reasonably acceptable to Seller, (ii) from an institution reasonably acceptable to Seller, and (iii) in the same dollar amount as the cash deposit. The security shall remain in effect until at least two (2) months after the Primary Term End Date.

### V. TERMS AND CONDITIONS

The attached Terms and Conditions, Exhibit A, Exhibit A-1, and other attachments, as applicable, are incorporated herein by reference.

Buyer Legal Name: Montague County a Texas political subdivision	Seller Legal Name: TXU Energy Retail Company LLC, a Texas limited liability company
By (Name of General Partner or Agent if applicable):	
Its General Partner	
Buyer Signature: 	Seller Signature:
Officer's Printed Name: Rick Lewis	Officer's Printed Name: Gabriel R. Castro
Title: County Judge	Title: Vice President
Date: 8/13/18	Date:

TERMS AND CONDITIONS



Notwithstanding to whom the same is imposed by governmental authority.

"Agreement" means the Contract for the Supply of Electricity that is subject to these Terms and Conditions.
"ERCOT" means the Electric Reliability Council of Texas, Inc.
"ESI ID" means an Electric Service Identifier designation for a particular TDSP Point of Delivery.
"POLR" means the provider of last resort as designated by the PUCT.
"Power" means all of Buyer's non-residential electricity requirements for each of the Premise(s).
"PUCT" means the Public Utility Commission of Texas.
"Premise" means individually, and "Premises" means collectively, each parcel of real property and improvements identified on Exhibit A.
"REP" means a retail electric provider that is certified by the PUCT.
"Seller Point of Delivery" means the point where Seller's suppliers' conductors are connected to the applicable TDSP's conductors.
"TDSP Point of Delivery" means the point where the applicable TDSP's conductors are connected to Buyer's conductors at or near Buyer's Premise(s).
"TDSP" means a transmission and/or distribution provider under the jurisdiction of the PUCT that owns and maintains a transmission or distribution system for the delivery of energy.
"Term" means the time period during which the Agreement is effective as specified in Article I of the Agreement.
"Terms and Conditions" means these Terms and Conditions for Supply of Electricity.
Capitalized terms not defined in these Terms and Conditions shall have the meaning identified in the Agreement.

II. SUBJECT MATTER AND QUANTITY. During the Term Seller shall sell to Buyer and Buyer shall purchase from Seller all of Buyer's Power for the listed Premises. Seller shall cause delivery of the Power to the applicable Seller Point(s) of Delivery and Buyer shall receive the Power at the ESI ID(s) at the TDSP Point(s) of Delivery. Buyer shall use the Power only at the Premise(s). A Premise may have one or more TDSP Points of Delivery.

III. SECURITY AND CREDIT REQUIREMENTS. Seller shall provide the amount of security, if any, stated in Article IV ("Special Provisions") of the Agreement before the Primary Term Start Date. Additionally, if at any time prior to the end of the Agreement Seller later determines in good faith that there has been a material adverse change in Buyer's or Buyer's Parent's credit status or financial condition and/or in electricity market conditions and/or Buyer fails to pay all Charges when due, Seller may demand security (or additional security if initial security was previously provided) from Buyer in an amount and form reasonably acceptable to Seller. Buyer shall provide security to Seller within five (5) business days of such request. Seller shall return the security (and accrued interest, if applicable, at the One Year Treasury Constant Maturity index published by the Federal Reserve Board as of the first auction date after January 1 of the applicable year) less any amounts owed by Buyer under the Agreement, when Seller reasonably determines that such security is no longer necessary.

IV. CALCULATION AND PAYMENT OF CHARGES.
4.1. Seller shall bill Buyer for the Charges for Power delivered to the Premises in accordance with the applicable TDSP's tariffs. Seller shall pay Seller the Charges identified on each invoice by the date specified on the invoice.
4.2. Intentionally Deleted.
4.3. Intentionally Deleted.

4.4. (a) Seller reserves the right to allocate measured consumption to the applicable calendar month for any ESI IDs not installed with an interval data recorder ("IDR"), or for IDRs for which IDR information was not received by Seller in a useable format. (b) If, for whatever reason, the proper meter readings are not communicated to Seller by the TDSP in time for Seller to prepare the invoice for the Charges, Seller shall have the right to reasonably estimate the quantity of the electricity consumed and Buyer shall pay the Charges for the estimated amounts subject to any adjustments which may be necessary following the reading. (c) It is recognized by the Parties hereto that ERCOT has established time periods for disputing and/or correcting certain matters related to the settlement of energy charges. Therefore, notwithstanding any other provisions of the Agreement, in the event of a dispute and/or possible correction, relating to the Agreement, which would involve a settlement with ERCOT that is barred by ERCOT (an "ERCOT Barred Issue"), then, to the extent that adjustment or settlement of such matter via the ERCOT energy settlement process cannot occur as a result of it being an ERCOT Barred Issue, the subject statement, invoice, notice or other matter that is at issue under this Agreement may not be adjusted, but only with respect to such ERCOT Barred Issue (d) If, during the term of this Agreement, Buyer's actual monthly usage for two consecutive calendar months materially differs (i.e., increases or decreases by more than 25% from the monthly contract quantities provided for in this Agreement for each such month, then, upon notice from one Party to the other Party, the Parties agree to (i) work in good faith with one another to reasonably adjust the remaining contract quantities on a forward basis, and (ii) pass through any credits or costs as reasonably determined by Seller associated with effectuating such adjustment. In such event, Buyer may choose whether such credits or costs are passed through (1) as a single amount, or (2) on a monthly basis over the remaining Term.

4.5. Seller, in its sole discretion, may, at the request of PUCT, have the right to force a REP from purchasing a customer to the POLR if the REP is unable to provide service to the customer. Seller shall have the right to terminate the Agreement if the REP is unable to provide service to the customer. Seller shall have the right to terminate the Agreement if the REP is unable to provide service to the customer. Seller shall have the right to terminate the Agreement if the REP is unable to provide service to the customer.

4.6. (a) If (i) Buyer changes any TDSP Point of Delivery for a Premise to a delivery service voltage level that is different than the voltage level in place for such TDSP Point of Delivery at the time the Agreement became effective, or Buyer changes the existing electric meter at any TDSP Point(s) of Delivery for a Premise to a different size/capacity than the size/capacity in place at the time the Agreement became effective, (ii) Buyer causes the ERCOT Deemed Load Profile Type for any of its Premises to change, or (iii) Seller's cost to serve Buyer under the Agreement is otherwise increased as a result of judicial, governmental, quasi-governmental (e.g., ERCOT) or regulatory action, (including, but not limited to, actions with regard to congestion zones, nodal congestion, carbon cap/tax/trade/remediation, renewable energy sources or standards, etc.), then Seller may adjust the Contract Price under the Agreement in order to reflect the increased cost to Seller of serving Buyer thereunder as a result of any such change(s). Seller shall provide Buyer with written notice of the adjustment to the Contract Price pursuant to this Section 4.6, along with a written explanation of the change that includes the effective date of the adjustment and the circumstances giving rise to the increased cost to Seller. Provided, however, in the event that Seller ever does so adjust the Contract Price under the Agreement pursuant to this Section 4.6, Buyer shall have the right, within thirty (30) calendar days after Seller's notice of such increase in the Contract Price, to terminate the Agreement upon thirty (30) calendar days prior written notice to Seller, provided further, however, in the event that Seller should sustain a loss in liquidating the remaining Power quantities under the Agreement as a result of Buyer exercising such right to terminate the Agreement, Buyer agrees to reimburse Seller the amount equal to the product of (i) the remaining quantities of electricity reflected on Exhibit A-1 after such termination multiplied by (ii) the Contract Price minus the then current market value as reasonably determined by Seller. Such amount shall be due and payable on or before the date of Buyer's termination. (b) During the Agreement Term, Buyer shall not consume electricity at any Premises from any source (including self-generation) except for Power sold by Seller under the Agreement however, Buyer may consume electricity from emergency generation during power outages at the Premises and for purposes of testing such emergency generation.

V. ADDITION AND REMOVAL OF PREMISES.

5.1 Buyer shall be entitled to add one or more Premises (and associated electricity quantities as reasonably determined by Seller) to the Agreement by submitting its written request to add the Premise(s) on Seller's then current standard form for such a request and by agreeing to pay Seller an additional lump sum amount equal to, the positive amount, if any, calculated as follows: the sum of (i) the product of (A) the kWh amount of electricity quantities attributable to the additional Premise(s) for the remainder of the Agreement Term as reasonably determined by Seller ("Premise Addition Quantities") multiplied by (B) the then current market based price of a kWh as reasonably determined by Seller minus the Contract Price under this Agreement plus (ii) Seller's reasonable costs incurred to perform the addition(such sum, the "Premise Addition Payment"). In such event, the additional Premise(s) and associated electricity quantities shall be added to this Agreement and thereafter shall be subject to the Charges, monthly usage tolerances, and other terms of this Agreement for the balance of the Agreement Term. Buyer shall pay Seller's invoice for each Premise Addition Payment on or before the end of the time period listed in Article III ("Billing"). In the alternative, Buyer shall have the option to (i) enter into a new separate Agreement with Seller covering the additional Premise(s) at Seller's then-current market based prices, or (ii) contract for such additional Premise(s) with another REP in lieu of adding the Premise(s) to this Agreement, or (iii) covering the Premise(s) under a new Agreement with Seller.

5.2 Buyer shall be entitled to remove one or more, but not all, Premises (and associated electricity quantities as reasonably determined by Seller) from the Agreement only if Buyer either (a) sells or leases the Premises or (b) closes the Premises for the remainder of the Term. Buyer shall provide Seller with thirty (30) calendar days prior written notice (specifying each applicable Premise and the date of removal) if it intends to remove one or more Premise(s) from the Agreement. Unless Buyer sells or leases a removed Premise, as of the date of removal, to a purchaser or lessee who (x) first executes a new contract with Seller upon the same terms as Buyer's contract and (y) is creditworthy as determined by Seller in Seller's reasonable discretion, Buyer shall pay to Seller in respect of each such removed Premise the positive amount, if any, as follows: the product of (i) the kWh amount of electricity quantities attributable to such Premise for the remainder of the Agreement Term as reasonably determined by Seller (the "Premise Liquidated Quantities") multiplied by (ii) the Contract Price under this Agreement minus ninety-five percent (95.0%) of the then-current market value of a kWh as reasonably determined by Seller (such product, the "Premise Liquidation Payment"). Buyer shall pay Seller's invoice for each Premise Liquidation Payment on or before the end of the time period listed in Article III ("Billing").

VI. REMEDIES UPON TERMINATION.

6.1 A material breach of the Agreement includes: (a) the failure of either Party to make any payment due to the other Party pursuant to the terms of the Agreement and such failure is not cured within ten (10) calendar days following written notice of such failure describing the breach in reasonable detail; (b) the failure of a Party to comply with any other material term of the Agreement when such failure is not cured within thirty (30) calendar days following written notice of such failure describing the breach in reasonable detail; (c) a Party becomes or declares that it is bankrupt, or becomes or declares that it is the subject of any proceedings, or takes any action whatsoever, relating to its bankruptcy or liquidation, or is not generally paying its debts as they become due; (d) Buyer enters into another electricity supply agreement for any Premise(s) with another REP that covers any period during the Agreement Term; (e) Buyer sells, leases, closes or otherwise conveys or assigns any of the Premises, except as allowed under Article IV ("Special Provisions") of the Agreement, Article V ("Addition and Removal of Premises") or Section 12.2 ("Assignment") hereof; (f) Buyer's total monthly usage ever decreases to a de minimis amount or fails to exceed a de minimis amount for reasons other than Force Majeure or Seller's breach; (g) any representation of a Party hereunder is not true and correct in all material respects as of the date this Agreement is entered into; or (h) the failure of Buyer to timely pay security to Seller as may be required hereunder. In the event of a material breach of the Agreement by either Party, the non-breaching Party may, in its sole discretion, and without prejudice to any other rights under the Agreement, at law or in equity, immediately terminate the Agreement.

6.2 (a) If Seller terminates the Agreement due to a material breach by Buyer, (i) Seller may, at its sole discretion, elect to bill a REP from existing a customer to the POLR for delivery of electricity to the Premises. Seller shall pay Seller the Charges for Power delivered to the Premises in accordance with the applicable TDSP's tariffs. Seller shall pay Seller the Charges identified on each invoice by the date specified on the invoice. (b) If Buyer terminates the Agreement due to a material breach by Seller, (i) Buyer shall have the right to select any other REP as its electricity provider, and (ii) within thirty (30) calendar days following such termination, Seller shall pay or credit Buyer, in addition to all reasonable direct costs and expenses incurred by Buyer as a result of such material breach and termination, the positive amount, if any, calculated as follows: the product of (A) the Remaining Quantities multiplied by (B) the sum of (i) the lesser of (1) the then current market value of a kWh as reasonably determined by Seller, (2) the price offered by the POLR, or (3) any REP's standard list price offer (or equivalent or similar pricing), minus (ii) the Contract Price.

(b) If Buyer terminates the Agreement due to a material breach by Seller, (i) Buyer shall have the right to select any other REP as its electricity provider, and (ii) within thirty (30) calendar days following such termination, Seller shall pay or credit Buyer, in addition to all reasonable direct costs and expenses incurred by Buyer as a result of such material breach and termination, the positive amount, if any, calculated as follows: the product of (A) the Remaining Quantities multiplied by (B) the sum of (i) the lesser of (1) the then current market value of a kWh as reasonably determined by Seller, (2) the price offered by the POLR, or (3) any REP's standard list price offer (or equivalent or similar pricing), minus (ii) the Contract Price.

VII. FORCE MAJEURE. If either Party is unable to perform its obligations, in whole or in part, due to an event of Force Majeure as defined herein, then the obligations of the claiming Party (other than the obligations to pay any amounts arising prior to the Force Majeure event) shall be suspended, for the duration of such Force Majeure event, to the extent made necessary by such Force Majeure event. The term "Force Majeure" shall mean any act or event that is beyond the claiming Party's control (and which could not be reasonably anticipated and prevented through the use of reasonable measures), including, without limitation, the failure of the TDSP to receive, transport or deliver, or otherwise perform, unless due to the failure of the Party claiming Force Majeure to perform such Party's obligations hereunder, and an event of Force Majeure that affects Seller's suppliers. The Party suffering the event of Force Majeure shall give written notice of such event of Force Majeure in reasonably full particulars to the other Party, as soon as reasonably possible, and shall take all reasonable measures to reduce as much as practicable the duration of such Force Majeure event. Force Majeure shall not include (a) the opportunity for Seller to sell the electricity to be sold under the Agreement to another party at a higher price than that set forth in the Agreement, (b) the opportunity for Buyer to purchase electricity for its Premise(s) from another party at a lower price than that set forth in the Agreement, or (c) the inability of either Party to pay its obligations under the Agreement or any other of its obligations or debts as they become due.

VIII. WARRANTIES AND LIMITATIONS OF LIABILITIES.

8.1 SELLER HEREBY WARRANTS TO BUYER THAT AT THE TIME OF DELIVERY OF ELECTRICITY HEREUNDER IT WILL HAVE GOOD TITLE AND/OR THE RIGHT TO SELL SUCH ELECTRICITY, AND THAT SUCH ELECTRICITY WILL BE FREE AND CLEAR OF ALL LIENS AND ADVERSE CLAIMS. TITLE WILL PASS TO BUYER AT THE TDSP POINT OF DELIVERY. EXCEPT AS PROVIDED FOR IN THE FIRST SENTENCE OF THIS SECTION 8.1, SELLER EXPRESSLY DISCLAIMS AND MAKES NO WARRANTIES, WHETHER WRITTEN OR VERBAL, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS, IMPLIED, OR STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND BUYER WAIVES ALL SUCH WARRANTIES.

8.2 UNLESS OTHERWISE EXPRESSLY PROVIDED HERETO, ANY LIABILITY OF A PARTY TO THE OTHER PARTY UNDER THE AGREEMENT WILL BE LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE HEREBY DENIED. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL DAMAGES, SPECIAL DAMAGES, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS OF LITIGATION. THE LIMITATIONS IMPOSED IN THIS SECTION 8.2 SHALL APPLY TO ALL DAMAGES, INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS OF LITIGATION REGARDLESS OF THE NATURE OF THE DAMAGES, INCLUDING NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE, PROVIDED NO SUCH LIMITATION SHALL APPLY TO DAMAGES



GOVERNMENTAL ADDENDUM TO THE  
CONTRACT FOR SUPPLY OF ELECTRICITY



I. The following new definitions are hereby added to Section I of the Terms and Conditions, to be inserted in alphabetical order, as applicable:

"Code" means the following:

For local governmental entities, Texas Local Government Code, Title 8, Chapter 271, Subchapter I, Sections 271.151 through 271.160, and any amendments thereto; and

For state governmental entities, Texas Government Code, Title 10, Chapter 2260, and any amendments thereto.

"Covered Contract" means the following:

For local governmental entities, a "Contract subject to this subchapter," as such phrase is defined in Section 271.151(2) of the Code; and

For state governmental entities, a "Contract," as such phrase is defined in Section 2260.001(1) of the Code.

II. Section 4.1 of the Terms and Conditions shall be deleted in its entirety and replaced with the following:

Seller will invoice Buyer for the Charges listed in Article II ("Charges") of the Agreement for Power delivered to the Premise(s) during each monthly billing cycle of the Term. Following receipt of such invoice, Buyer shall pay Seller the Charges identified on each invoice on or before the end of the time period listed in Article III ("Billing") of the Agreement. Buyer shall notify Seller in writing on or before the due date if Buyer is withholding payment of any disputed portion of the Charges and shall include a list of specific reasons for the dispute; provided, however, that the undisputed portions of the Charges shall remain due and payable on the due date. If Buyer gives such notice of dispute, the Parties shall pursue diligent, good faith efforts to resolve the dispute during the thirty (30) calendar days following Seller's receipt of the notice. Any amount found payable (including interest) shall be paid within fifteen calendar days of the dispute being resolved. If the Parties are unable to resolve the dispute during the thirty (30) day period and it is subsequently determined that Buyer should pay Seller all or part of the disputed amount, Seller may require that Buyer pay interest on such past due amount from the date such payment was originally due until the same is paid. All past due amounts shall accrue interest at a rate equal to the lesser of (i) one percent (1%) above the "Prime Rate" as published on the first business day of July of Buyer's preceding fiscal year that does not fall on a Saturday or Sunday in the Wall Street Journal under "Money Rates" or an appropriate substitute should such rate cease to be published, or (ii) the highest rate allowed by law, from the date the payment was originally due until paid (including accrued interest).

III. Section 4.5 of the Terms and Conditions shall be deleted in its entirety and replaced with the following:

4.5 If, upon expiration or termination of the Agreement for any reason, Buyer fails either to switch to another retail electric provider or execute a replacement agreement with Seller, then, until Buyer either executes a replacement agreement with Seller or switches to another provider for the applicable Premise(s), Seller may charge Buyer, as the Contract Price for Power utilized at such Premises after expiration or termination of the Agreement, a price per kWh equivalent to Seller's then current "standard list price offer," and the other terms governing such sales shall be identical to those applicable to sales that occurred prior to the termination/expiration of the Agreement. Provided further, however, in the event that after such termination or expiration Buyer should fail to make payment due to Seller or provide security after notice and opportunity to pay/provide, Seller, in its sole discretion and at whatever time chosen by Seller, may (as a result of PUCT rules that forbid a REP from switching a customer to the POLR) direct the TDSP to disconnect electric service to the Premise(s) under such Agreement, except as may be prohibited by law, however, Seller shall not have the right to direct the TDSP to disconnect electric service for the non-payment of amounts that are subject to a bona fide dispute.

IV. The following Section 4.7 shall be added to Article IV of the Terms and Conditions:

4.7 If Buyer notifies Seller in writing of a justifiable concern regarding the accuracy of an invoice, Seller will make the records in its possession that are reasonably necessary to verify the accuracy of the bill available to Buyer during normal business hours. It is understood and agreed that such information and records provided under this Section 4.7 constitute Seller's proprietary and confidential information, the release of which could hinder or harm Seller's competitive position; therefore, such information and records are not intended to be subject to disclosure under the Texas Public Information Act (TPIA) and shall not be released by Buyer, unless (a) otherwise determined by the Texas Attorney General or a court of competent jurisdiction; or (b) prior written approval is obtained from Seller. In the event that Buyer receives a request pursuant to the TPIA that encompasses information or records provided by Seller under this Section 4.7, Buyer shall notify Seller of such request within ten (10) days of receipt. Nothing in this section will require Buyer to pursue a legal challenge in any court to seek to overturn a ruling by the Texas Attorney General's Office or a court requiring disclosure pursuant to the provisions of the TPIA or another provision of law, but Buyer shall (i) cooperate and assist Seller if Seller pursues such a challenge and (ii) make no disclosure until, if, and when Seller's challenge is finally denied. All information and records provided hereunder constitute Seller's property and such information, records, and copies thereof, as well as all notes taken therefrom, shall be returned to Seller promptly after the resolution of the concerns regarding the accuracy of the invoice.

V. The following Section 4.8 shall be added to Article IV of the Terms and Conditions:

4.8 Buyer represents and warrants that as a political subdivision or agency of the State of Texas, it is exempt from state sales taxes pursuant to Section 151.309 of the Texas Tax Code. Seller may request a certificate of exemption from Buyer, and Buyer shall provide such certificate within a reasonable period of time. Thereafter, Seller, to the extent that it is not required to collect or pay such taxes, will not flow through the costs of such taxes hereunder to Buyer.

VI. Section 6.2(a) of the Terms and Conditions shall be deleted in its entirety and replaced with the following:

6.2(a) If Seller terminates the Agreement due to a Material Breach by Buyer, Buyer shall, within thirty (30) calendar days of receipt of Seller's invoice following such termination, pay Seller, in addition to all reasonable direct costs and expenses incurred by Seller as a result of such Material Breach and termination, and all amounts Buyer owes Seller under the Agreement with respect to time periods prior to the termination, the positive amount, if any, calculated as follows as of the date of termination: the sum of (A) the product of (i) the remaining quantities of electricity for the remainder of the Agreement Term as reflected on Exhibit A-1 (the "Remaining Quantities") multiplied by (ii) the Contract Price under such Agreement minus the then-current market value of a kWh as reasonably determined by Seller plus (B) the value of any term extension option rights, if any, that Seller may have under the Agreement. In addition, if the termination was pursuant to Section 6.1(a) or (h) above due to Buyer's Material Breach in failing to make payment due to Seller or provide security after the requisite notice and opportunity to cure, Seller may (as a result of PUCT rules that forbid a REP from switching a customer to the POLR) direct the TDSP to disconnect electric service to the Premise(s) covered hereunder, except as may be prohibited by law, however, Seller shall not have the right to direct the TDSP to disconnect electric service (i) for the non-payment of amounts that are subject to a bona fide dispute, (ii) prior to termination of the Agreement, or (iii) for a termination of the Agreement due to a Material Breach other than non-payment or failure to provide security.

VII. The following Sections 6.3 and 6.4 shall be added to Article VI of the Terms and Conditions:

6.3 The Parties agree that if (i) Buyer is unable to allot or appropriate sufficient funds for Buyer's fiscal year(s) that follow the initial fiscal year of the Agreement Term to continue the purchase of the total quantity of electricity covered by the Agreement, and (ii) otherwise has no legally available funds for the purchase of electricity, Buyer may terminate the Agreement at the end of Buyer's then current fiscal year by (a) giving Seller ninety (90) calendar days written notice to Seller and (b) enclosing therewith a sworn statement that the foregoing conditions exist. In this sole event, Buyer shall not be obligated to make contract payments under the Agreement beyond the end of the then current fiscal year. Notwithstanding the foregoing, Buyer covenants and represents to Seller that upon the execution of the Agreement (a) Buyer has budgeted and has available sufficient funds to comply with its obligations under the Agreement for the current fiscal year, (b) there are no circumstances presently affecting Buyer that could reasonably be expected to adversely affect its ability to budget funds for the payment of all sums due under the Agreement, (c) Buyer believes that funds can be obtained in amounts sufficient to make all contract payments during the full Agreement Term and intends to make all required contract payments for the full Agreement Term, (d) Buyer covenants that it will do all things within its power to obtain, maintain and properly request and pursue funds from which contract payments may be made, specifically, including in its annual budget requests amounts sufficient to make contract payments for the full Agreement Term, (e) Buyer will not give priority in the appropriation of funds for the acquisition or use of additional energy services, (f) if any funds are appropriated for electricity costs, such funds shall be applied first to the cost of electricity to be provided pursuant to the Agreement and that any such funds shall not be used to pay for electric power from any other electric power provider for the accounts covered in the Agreement, and (g) Buyer agrees to notify Seller in writing of such non-appropriation at the earliest practicable time subsequent to the failure to appropriate. As of the termination date of the Agreement under this

Section 6.3, Seller shall have no further duty to supply electricity to Buyer under such Agreement and Buyer shall move service for Buyer's Premises to another REP or the POLR on the date of termination for non-appropriation.

6.4 If Buyer uses its inherent powers as a governmental entity under the provisions of Articles VII, X, or in any other manner to circumvent the intent or terms and provisions of the Agreement, Buyer shall be responsible for contract damages caused by such action.

VIII. Section 8.2 of the Terms and Conditions shall be deleted in its entirety and replaced with the following:

**ANY LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER IN TORT OR CONTRACT OR OTHERWISE IN CONNECTION WITH THE AGREEMENT. THE LIMITATIONS IMPOSED ON REMEDIES AND DAMAGE MEASUREMENT WILL BE WITHOUT REGARD TO CAUSE, INCLUDING NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE. ANY PAYMENT TO WHICH SELLER IS ENTITLED UNDER THE AGREEMENT SHALL CONSTITUTE A BALANCE DUE AND OWED UNDER THE AGREEMENT.**

IX. Article X of the Terms and Conditions is hereby amended for local and state governmental entities to add a new Section 10.4 to read in its entirety as follows:

10.4 The Parties hereby acknowledge and agree that this Agreement is a Covered Contract subject to all provisions of the Code (unless preempted by other applicable law), that Buyer is either a local governmental entity or a unit of state government, each as defined in the Code, with the authority to enter into the Agreement, and that the Agreement will be properly approved and executed. By signing and entering into this Contract, Seller verifies that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

X. Article XI of the Terms and Conditions shall be retitled "Responsibility" and Sections 11.1 and 11.2 thereof shall be deleted in their entirety and replaced with the following:

11.1 As between the Parties, Buyer assumes full responsibility for electric energy on Buyer's side (downstream) of the TDSP Point of Delivery, and agrees to the full extent allowed by law, to and shall hold harmless Seller, its parent company and all of its affiliates (except any which may be the TDSP serving Buyer's Premise(s)), and all of their respective officers, directors, shareholders, associates, employees, servants, and agents (collectively referred to as "Seller Group"), from and against all claims, losses, expenses, damages, demands, judgments, causes of action, and suits of any kind (collectively referred to as "Claims"), including Claims for personal injury, death, or damages to property, occurring on Buyer's side of the TDSP Point of Delivery, arising out of or related to the electric power and energy and/or Buyer's performance under the Agreement.

11.2 As between the Parties, Seller assumes full responsibility for electric energy on Seller's side (upstream) of the Seller Point of Delivery, and agrees to and shall hold harmless Buyer, its officials, associates, employees, servants, and agents (collectively referred to as "Buyer Group"), from and against all Claims, including Claims for personal injury, death, or damages to property occurring on Seller's side of the Seller Point of Delivery, arising out of or related to the electric power and energy and/or Seller's performance under the Agreement.

XI. The following shall be added to the end of Section 12.4 of the Terms and Conditions:

Except to the extent necessary to enforce Seller's rights under the Agreement and to the extent allowed by law, including but not limited to the Code, nothing in the Agreement shall constitute or be interpreted to constitute a waiver of Buyer's statutory and common-law immunity defenses, including sovereign and/or governmental immunity and qualified and/or official immunity; it being intended that such immunities shall in all respects be preserved except as otherwise provided herein.

XII. Sections 12.6 and 12.7 of the Terms and Conditions shall be deleted in their entirety and replaced with the following:

12.6 **Survival.** No termination or cancellation of the Agreement will relieve either Party of any obligations under the Agreement that by their nature survive such termination or cancellation, including, but not limited to, all warranties, obligations to hold harmless, obligations to pay for electricity taken, and obligations for any breaches of contract.

12.7 **Confidentiality.** Seller acknowledges that Buyer is a governmental body that is subject to the TPIA, which requires Buyer to release upon request any information that is defined as public absent a ruling from the Texas Attorney General's Office. Subject to the TPIA or any other court order, rule or regulation requiring disclosure, Buyer agrees to keep all terms and provisions of the Agreement, and any information and records in Buyer's possession that are provided under the Agreement, confidential and not to disclose the terms of the same to any third parties without the prior written consent of Seller. It is understood and agreed that the foregoing constitutes proprietary and confidential information of Seller, the release of which could hinder or harm Seller's competitive position, and therefore is not intended to be subject to disclosure under the TPIA and shall not be released by Buyer, unless (a) determined otherwise by the Texas Attorney General or a court of competent jurisdiction; or (b) prior written approval is obtained from Seller. In the event that Buyer receives a request pursuant to the TPIA that encompasses the foregoing information, Buyer shall notify Seller of such request within ten (10) days of receipt. Nothing in this section will require Buyer to pursue a legal challenge in any court to seek to overturn a ruling by the Texas Attorney General's Office or a court requiring disclosure pursuant to the provisions of the TPIA or another provision of law, but Buyer shall (i) cooperate and assist Seller if Seller pursues such a challenge and (ii) make no disclosure until, if, and when Seller's challenge has been finally denied.

XIII. The last sentence of Section 12.9 of the Terms and Conditions shall be deleted and replaced with the following:

Buyer hereby further represents and warrants to Seller that (a) Buyer is authorized by statute or the constitution to enter into this Agreement, (b) the Agreement has been properly approved and executed, and (c) Buyer's governing body meets more frequently than once per month and will continue to do so throughout this Agreement Term. If any of Buyer's representations or warranties are untrue when made or fail to be true at all times during the Agreement Term, Buyer shall bear full responsibility for all resulting costs and damages.

XIV. Section 12.14 of the Terms and Conditions shall be deleted in its entirety and replaced with the following:

For state governmental entities: Unless preempted by other applicable law, the dispute resolution process provided for in the Code shall be used by Buyer and Seller to resolve any dispute arising under the Agreement. The dispute resolution process provided for in the Code shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by the Seller under the Agreement. If Seller's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in the Code. To initiate the process, Seller shall submit written notice, as required by subchapter B of the Code, to Buyer in accordance with the notice provisions in the Agreement. Compliance by Seller with the Code is a condition precedent to the filing of a contested case proceeding under the Code.

The contested case process provided in the Code is Seller's sole and exclusive process for seeking a remedy for an alleged breach of the Agreement by Buyer if the Parties are unable to resolve their disputes in the ordinary course of business. Compliance with the contested case process provided in the Code is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of this Agreement by Buyer nor any other conduct of any representative of Buyer relating to the Contract shall be considered a waiver of sovereign immunity to suit.

For local and county governmental entities: **[Intentionally Deleted]**

XV. A new Section 12.16 of the Terms and Conditions is hereby added to read in its entirety as follows:

12.16 **Attorneys' Fees.** In any litigation to enforce the terms of this Agreement, the prevailing party is entitled to recover its reasonable and necessary attorneys' fees from the non-prevailing party.

[End of Addendum]

# Exhibit A – Point of Delivery Listing



Legal Name: Montague County

Quote: S0183665

TDSP	ESI ID	ESI ID Address	Congestion Zone	Meter Cycle	Special Start Date	Special End Date	Profile	Meter Type	Standing Charge	ESI Peak KW
TEXAS-NEW MEXICO POWER CO	10400512545390002	102 S RUSK ST UNIT 100W MONTAGUE TX 76251	North	03			NMLIGHT		\$0.00	0
TEXAS-NEW MEXICO POWER CO	10400512539150001	301 AUSTIN ST BARN NOCONA TX 76255-1903	North	09			BUSLOLF	AMSR	\$0.00	9
TEXAS-NEW MEXICO POWER CO	10400513864480001	5 CAPPS CORNER RD SAINT JO TX 76265-9535	North	18			BUSLOLF	AMSR	\$0.00	10
TEXAS-NEW MEXICO POWER CO	10400513350740002	335 FRANKLIN ST UNIT 100W MONTAGUE TX 76251	North	03			NMLIGHT		\$0.00	0
TEXAS-NEW MEXICO POWER CO	10400513864480002	5 CAPPS CORNER RD UNIT 100W SAINT JO TX 76265-9535	North	18			NMLIGHT		\$0.00	0
TEXAS-NEW MEXICO POWER CO	10400515745090001	11339 N STATE HIGHWAY 59 MONTAGUE TX 76251-0000	North	03			BUSMEDLF	AMSM	\$0.00	82
TEXAS-NEW MEXICO POWER CO	10400516009390001	9500 HPS W/P UNIT 9500W STRTLT MONTAGUE COUNTY TX 76251-0000	North	03			NMLIGHT		\$0.00	0
TEXAS-NEW MEXICO POWER CO	10400513291830001	121 S GRAND ST MONTAGUE TX 76251-2700	North	03			BUSHILF	AMSM	\$0.00	88
TEXAS-NEW MEXICO POWER CO	10400512545390001	120 S RUSK ST UNIT 8150W MONTAGUE TX 76251	North	03			NMLIGHT		\$0.00	0
TEXAS-NEW MEXICO POWER CO	10400512545310001	130 GRAND ST BLDG CTHS MONTAGUE TX 76251-0519	North	03			BUSMEDLF	AMSM	\$0.00	140
TEXAS-NEW MEXICO POWER CO	10400513463550001	121 1/2 GRAND ST MONTAGUE TX 76251-0520	North	03			BUSLOLF	AMSR	\$0.00	4
TEXAS-NEW MEXICO POWER CO	10400515675810001	N GRAND ST SEWER MONTAGUE TX 76251-0000	North	03			BUSNODEM	AMSR	\$0.00	0
TEXAS-NEW MEXICO POWER CO	10400513350740001	335 FRANKLIN ST UNIT SEWER MONTAGUE TX 76251	North	03			BUSLOLF	AMSR	\$0.00	1
TEXAS-NEW MEXICO POWER CO	10400514236490001	100 GRAND ST MONTAGUE TX 76251-0519	North	03			BUSHILF	AMSM	\$0.00	46

Total Number of Points of Delivery = 14

@BCL@9405E769

CONFIDENTIAL & PROPRIETARY

Version: MAC – DMAC GOV 10.12.2017



Total Peak kW = 380

Total Monthly Standing Charges = \$0.00

**ESI ID ACKNOWLEDGEMENT**

Buyer represents and warrants that each and every ESI ID and Premise listed in this Exhibit A primarily serves Buyer's commercial non-residential purposes, and that all information listed therein (including the Monthly Contract Usage Quantities on Exhibit A-1) is accurate and correct. Buyer agrees to bear all responsibility, liability, and associated costs with regard to (i) the foregoing representation and warranty, as well as (ii) any missing ESI IDs not listed in Exhibit A, and/or ESI IDs erroneously listed on Exhibit A.

In the event this Exhibit A contains temporary placeholder ESI ID numbers (typically denoted by "TPH" at the beginning of the ESI ID number) for contracted future Buyer ESI IDs, then (i) Buyer shall give Seller at least thirty (30) days prior written notice of the date that each such ESI ID will be energized as a Buyer ESI ID (i.e., when Buyer will begin utilizing the applicable facility located at Buyer's Premise), (ii) Seller will not be obligated to serve any such ESI ID under the Agreement until, at the earliest, after the expiration of at least thirty (30) days after Buyer's written notice has been given to Seller, and (iii), in any event, Buyer's giving, or failure to give, timely notice to Seller shall not affect Buyer's obligation, under the Agreement, to be responsible for all volumes contracted for under the Agreement as reflected on Exhibit A-1.



**Exhibit A-1 – Monthly Contract Quantities**

**Legal Name:** Montague County  
**Total Contract kWh:** 7,908,945

**Quote:** S0183665

Period*	Contract Quantities (kWh)
8/1/2018	332
9/1/2018	78,960
10/1/2018	74,031
11/1/2018	59,647
12/1/2018	73,224
1/1/2019	71,267
2/1/2019	62,968
3/1/2019	62,452
4/1/2019	63,146
5/1/2019	90,878
6/1/2019	110,382
7/1/2019	122,461
8/1/2019	108,134
9/1/2019	91,088
10/1/2019	74,031
11/1/2019	59,647
12/1/2019	73,224
1/1/2020	71,267
2/1/2020	62,968
3/1/2020	62,452
4/1/2020	63,146
5/1/2020	90,878
6/1/2020	110,382
7/1/2020	122,461
8/1/2020	108,134
9/1/2020	91,088
10/1/2020	74,031
11/1/2020	59,647
12/1/2020	73,224
1/1/2021	71,267
2/1/2021	62,968
3/1/2021	62,452
4/1/2021	63,146
5/1/2021	90,878
6/1/2021	110,382
7/1/2021	122,461
8/1/2021	108,134
9/1/2021	91,088
10/1/2021	74,031
11/1/2021	59,647
12/1/2021	73,224
1/1/2022	71,267



2/1/2022	62,968
3/1/2022	62,452
4/1/2022	63,146
5/1/2022	90,878
6/1/2022	110,382
7/1/2022	122,461
8/1/2022	108,134
9/1/2022	91,088
10/1/2022	74,031
11/1/2022	59,647
12/1/2022	73,224
1/1/2023	71,267
2/1/2023	62,968
3/1/2023	62,452
4/1/2023	63,146
5/1/2023	90,878
6/1/2023	110,382
7/1/2023	122,461
8/1/2023	108,134
9/1/2023	91,088
10/1/2023	74,031
11/1/2023	59,647
12/1/2023	73,224
1/1/2024	71,267
2/1/2024	62,968
3/1/2024	62,452
4/1/2024	63,146
5/1/2024	90,878
6/1/2024	110,382
7/1/2024	122,461
8/1/2024	108,134
9/1/2024	91,088
10/1/2024	74,031
11/1/2024	59,647
12/1/2024	73,224
1/1/2025	71,267
2/1/2025	62,968
3/1/2025	62,452
4/1/2025	63,146
5/1/2025	90,878
6/1/2025	110,382
7/1/2025	122,461
8/1/2025	108,134
9/1/2025	91,088
10/1/2025	74,031
11/1/2025	59,647
12/1/2025	73,224
1/1/2026	71,267
2/1/2026	62,968
3/1/2026	62,452
4/1/2026	63,146
5/1/2026	90,878
6/1/2026	110,382
7/1/2026	122,461
8/1/2026	107,915

9/1/2026	3.536
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Total Number of Periods = 98

\* The first and/or last period(s) may reflect partial month volumes based on beginning and ending meter read cycles

# Montague County

## Montague County II



Date Received: Aug 10<sup>th</sup> 2018

ESI IDs: 14

Annual Usage: 949,979 kWh

Start Date: Aug 2018

Fixed	S / kWh							
Suppliers	12 Month	24 Month	36 Month	48 Month	60 Month	72 Month	84 Month	96 Month
ENGIE	\$0.04915	\$0.04930	\$0.04819	\$0.04728	\$0.04658	\$0.04605	\$0.04569	NO BID
Gexa	\$0.04859	\$0.04832	\$0.04751	\$0.04666	\$0.04590	NO BID	NO BID	NO BID
Green Mountain	\$0.04962	\$0.05117	\$0.05047	\$0.04931	\$0.04828	NO BID	NO BID	NO BID
Hudson	\$0.05230	\$0.05120	\$0.04970	\$0.04860	\$0.04770	\$0.04700	\$0.04670	\$0.04650
Reliant	\$0.04996	\$0.05151	\$0.05079	\$0.04961	\$0.04857	\$0.04772	\$0.04703	\$0.04655
TXU	\$0.05012	\$0.04822	\$0.04645	\$0.04508	\$0.04502	\$0.04412	\$0.04355	\$0.04324

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