

**NV ENERGY OPTIONAL PRICING PROGRAM RATE  
AGREEMENT  
BETWEEN**

**NEVADA POWER COMPANY d/b/a NV ENERGY [SIERRA PACIFIC POWER COMPANY  
D/B/A NV ENERGY]**

**NV Energy**

**AND**

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**Customer**

**\_\_\_\_, 2019**

This **NV ENERGY OPTIONAL PRICING PROGRAM RATE AGREEMENT** (the “Agreement”) dated as of \_\_\_, 2019, is made by and between NEVADA POWER COMPANY, a Nevada corporation doing business as NV Energy (“NV Energy”) [SIERRA PACIFIC POWER COMPANY, a Nevada corporation doing business as NV Energy (“NV Energy”)] and \_\_\_\_\_ (“Customer”). NV Energy and Customer are also each referred to as a “Party” and collectively as the “Parties.”

## RECITALS

WHEREAS, NV Energy is an electric service provider, as defined in NRS Chapter 704;

WHEREAS, Customer is currently taking retail electric service from NV Energy under the applicable tariff rate for its various facilities;

WHEREAS, Customer has requested electric service tariff Schedule NVEOPPR – Schedule NV Energy Optional Pricing Program Rate (the “NVEOPPR Tariff”), the terms of which allows NV Energy to enter into agreements with customers who meet certain requirements; and

WHEREAS, it is the intent of the Parties that this Agreement serve as the agreement between the Parties under the NVEOPPR Tariff to facilitate Customer contracting for renewable energy to directly apply to the Customer’s annual energy consumption.

NOW THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

## **AGREEMENT**

1. **DEFINITIONS.** As used in this Agreement, defined terms shall have the meaning set forth in this Agreement or as set forth in this Section 1.

1.1 **“Action”** means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

1.2 **“Affiliate”** means, with respect to NV Energy, Berkshire Hathaway Energy Company and its direct and indirect wholly-owned subsidiaries and, with respect to Customer, any other Person who, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such Person.

1.3 **“BTER”** means the base tariff energy rate.

1.4 **“BTGR”** means the base tariff general rate.

1.5 **“Business Day”** means any day, other than a Saturday, Sunday or legal holiday, on which commercial banks in Clark County, Nevada, are generally open for the transaction of business.

1.6 **“DEAA”** means the deferred energy accounting adjustment rate.

1.7 **“Event of Default”** has the meaning set forth in Section 7.1.

1.8 **“Effective Date”** has the meaning set forth in Section 4.1.

1.9 **“Generating Facilities”** includes the following, but not limited to, solar photovoltaic facilities, and any new solar photovoltaic facilities later used in the NVEOPPR Tariff: (a) Copper Mountain Solar 5 facility, (b) Battle Mountain Solar facility, (c) Dodge Flat facility, (d) Fish Springs Ranch facility, (e) Eagle Shadow Mountain Solar facility and (f) Techren Solar V facility.

1.10 **“Governmental Entity”** means any federal, state, or local government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.

1.11 **“kWh”** means kilowatt-hour.

1.12 **“NRS”** means the Nevada Revised Statutes, as amended.

1.13 **“NV Energy Optional Pricing Program Rate Tariff”** has the meaning set forth in the recitals hereto.

1.14 **“PC”** or **“Portfolio Energy Credit”** means a unit of credit which equals one kilowatt-hour of electricity generated, acquired or saved (or deemed so), all as calculated by the PUCN Regulatory Operations Staff and certified by the PC Administrator pursuant to the Renewable Energy Law (or by a successor Governmental Entity pursuant to a successor law if the Renewable Energy Law is replaced, superseded or preempted by another law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada), and certified by WREGIS.

1.15 **“Person”** means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, Governmental Entity, or other entity.

1.16 **“Program Participation Rate”** is the rate over the Term of this Agreement as set forth in Exhibit B, and shall be based the most recent twelve (12) months’ historic results for the following unavoidable costs: (a) gas transportation, (b) legacy renewable energy contracts, (c) excess energy production and (d) any existing wholesale capacity. [is the rate over the Term of the Agreement as set forth in Exhibit B, and shall be adjusted annually on April 1<sup>st</sup> of each year of the Term based upon the previous 12 month historic results for the following unavoidable costs: (a) gas transportation, (b) legacy renewable energy contracts, (c) excess energy production and (d) any existing wholesale capacity.]<sup>1</sup>

1.17 **“PUCN”** means the Public Utilities Commission of Nevada and any successor entity thereto.

1.18 **“Renewable Energy Law”** means an act of the Nevada Legislature relating to energy, or any law that affects Customer’s renewable energy consumption or that requires certain electric service

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<sup>1</sup> Language varies depending on whether customers chooses a fixed or variable rate.

providers to comply with the portfolio standard for renewable energy, and providing for other matters relating thereto, codified as NRS 704.7801 through 704.7828, inclusive, and the rules and regulations of WREGIS, and the regulations, guidance and other requirements promulgated thereunder, in each case as such laws, regulations, guidance and requirements may be amended, preempted or superseded.

1.19 **“Renewable Resource Rate”** means the rate in dollars per kWh, set forth in Exhibit A attached hereto, and as can be amended as provided for herein.

1.20 **“Subscription Amount”** means the amount of kWh the Customer has subscribed to pursuant to the NVEOPPR Tariff and provided for in Exhibit C.

1.21 **“Tax”** or **“Taxes”** means the applicable federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.

1.22 **“Term”** has the meaning set forth in Section 2.1.

## 2. **TERM AND TERMINATION.**

2.1 Term. The term of this Agreement commences on the Effective Date, and terminates \_\_\_ years after the Effective Date (the “Term”). Customer may extend the Term one time, under the same terms by providing written notice to NV Energy of its intent to extend the Term of the Agreement no later than one year prior to the termination of the Term. Failure to provide timely notice by Customer voids the right to extend the Term.

## 3. **SUBSCRIPTION AMOUNT.**

3.1 Subscription Amount. Customer’s annual and quarterly Subscription Amounts are set forth in Exhibit C. Except as provided in section 3.2, the Subscription Amount shall not exceed Customer’s actual previous 12-month usage unless Customer provides verification of expected load growth in writing to NV Energy no later than December 1 of each calendar year of the Term. Customer shall not have the right to use any unused amounts of any Subscription Amounts; such amounts not consumed by Customer shall not be carried forward to future periods. If the amount of energy consumed by Customer during any quarter is greater than the Subscription Amount, Customer shall pay NV Energy the BTER and DEAA rates in effect at the time of such over subscription for the amount of energy in excess of the Subscription Amount.

3.2 Onetime Adjustment. After eighteen (18) months from the Effective Date of this Agreement, Customer may request from NV Energy a onetime adjustment to the annual and quarterly Subscription Amounts set forth in Exhibit C in an amount not to exceed twenty percent (20%) of the annual Subscription Amount set forth in Exhibit C. NV Energy will determine whether to increase the Subscription Amount based on available resources in its sole discretion.

4. **ENERGY SUPPLY.**

4.1 **Sale of Energy.** Commencing ninety (90) days after the later of: (a) the date this Agreement is approved by the PUCN, or (b) the commercial operation date of any of the Generating Facilities (the “Effective Date”), NV Energy shall sell electrical energy to the Customer pursuant to NV Energy’s applicable tariffs and the NVEOPPR Tariff. Customer shall pay:

4.1.1 For electrical energy up to the quarterly Subscription Amount set forth in Exhibit C, the applicable rates set forth in the Customer’s applicable tariff, except for the BTER and DEAA, the Renewable Resource Rate and the Program Participation Rate; provided, however, that if Customer uses electric energy less than ninety percent (90%) of the quarterly Subscription Amount in any quarter, the Customer shall pay the Renewable Resource Rate and the Program Participation Rate for the difference between such usage in the quarter and ninety percent (90%) of the Subscription Amount for the same quarter; and,

4.1.2 For all electrical energy supplied by NV Energy in excess of one hundred and ten percent (110%) of the quarterly Subscription Amount, Customer shall pay their otherwise applicable rate including the BTGR rates, the public policy rates and the BTER and DEAA for such amount.

4.2 **Customer Acknowledgements.** Customer acknowledges and agrees that:

4.2.1 NV Energy retains all PCs and capacity from the Generating Facilities;

4.2.2 For the Term, Customer shall maintain bundled electric service from NV Energy under the tariff applicable to the Customer pursuant to the terms of such tariff, except as provided herein, Customer is not responsible to pay the BTER or the DEAA rate of the Customer’s applicable tariff;

4.2.3 This Agreement is entered into pursuant to the NVEOPPR Tariff, and all terms and conditions of the NVEOPPR Tariff are incorporated into this Agreement by this reference to the extent such terms and conditions are consistent with this Agreement. It is the intent of the Parties that this Agreement is consistent with the terms and conditions of the NVEOPPR Tariff.

4.3 **Renewable Resource Rate.** For the Term, the Renewable Resource Rate shall be calculated based on the amount per kWh set forth in Exhibit A. NV Energy, in its sole and reasonable discretion, may modify the Renewable Resource Rate, if NV Energy adds a new solar photovoltaic facility for use in the NVEOPPR Tariff; provided, however, that any such change shall not increase the Renewable Resource Rate

4.4 **Program Participation Rate.** For the Term, the Program Participation Rate shall be [fixed/variable] pursuant to Section 1.17, and the amount per kWh set forth in Exhibit B.

4.5 **Monthly Invoices.** Beginning the first month after the Effective Date, NV Energy shall include on the Customer’s regular monthly invoice: (a) the specific amount of kWh used from the Subscription Amount, (b) the amount owed by Customer under the Renewable Resource Rate and (c) the amount owed by Customer under the Program Participation Rate. If Customer’s quarterly usage exceeds

the Subscription Amount, the last invoice of each quarter will show the amount of kWh in excess of the Subscription Amount and the amount owed applying the applicable BTER and DEAA rates.

4.6 Payment Terms. The otherwise applicable payment terms as issued on each monthly NV Energy invoice, as provided by tariff schedule or schedules pursuant to which Customer receives bundled electric service or by other written agreement of the Parties, will apply to all amounts due under this Agreement. NV Energy may charge a fee as set forth in Schedule MC for the late payment of a bill.

5. **ASSIGNMENT.**

5.1 Neither Party shall assign this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of the other Party (which consent shall not be unreasonably withheld, delayed or conditioned). However, NV Energy may assign this agreement without consent of Customer if NV Energy is legally required to make such an assignment to a third party. Except as provided herein, any attempted assignment of this Agreement without such consent shall be null and void.

5.2 NV Energy may, without the consent of Customer, assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or in part, if such assignment or delegation is made to: (a) Sierra Pacific Power Company; (b) any successor to Buyer, provided that such successor is a public utility holding a certificate of public convenience and necessity granted by the PUCN pursuant to NRS Chapter 704, where such assignment does not occur by operation of Law; or (c) a Person (other than a natural person) as otherwise required by Law.

6. **NOTICES.**

6.1 Method of Delivery; Contacts. Except for the monthly invoice under Section 5.3, each notice, consent, request, or other communication required or permitted under this Agreement must be in writing and delivered personally, sent by certified mail (postage prepaid, return receipt requested), or by a recognized international courier or overnight delivery service provider, and addressed to a Party as follows:

Customer:

With a copy of all notices also delivered to:

NV Energy:

NV Energy  
6226 W. Sahara Ave., M/S 13  
Las Vegas, NV 89146  
Attention: Manager, Energy Supply Contract Management

With a copy to:

NV Energy  
6226 W. Sahara Ave., M/S 2  
Las Vegas, NV 89146  
Attention: General Counsel  
Facsimile No.: 702-402-5300

6.2 Receipt of Notice; Change of Information. Each notice, consent, request, or other communication is deemed to have been received by the Party to whom it was addressed (a) when delivered if delivered personally; (b) on the third (3<sup>rd</sup>) Business Day after the date of mailing if mailed by certified mail; or (c) on the date officially recorded as delivered according to the record of delivery if delivered by courier or overnight delivery. Each Party may change its contact information for purposes of the Agreement by giving written notice to the other Party in the manner set forth above.

7. **DEFAULT; REMEDIES.**

7.1 With respect to a Party, there shall be an “Event of Default” if:

7.1.1 Such Party fails to pay any amount due pursuant to this Agreement within the period specified in the NVEOPPR Tariff or within thirty (30) days after such amount is due when no other period is specified in the NVEOPPR Tariff, provided NV Energy shall provide written notice of such non-payment to Customer and Customer shall have ten (10) days to cure such non-payment;

7.1.2 Such Party is in breach of any representation or warranty set forth herein or fails to perform any material obligation set forth in this Agreement and such breach or failure is not cured within thirty (30) days after written notice of the default is provided to the defaulting Party from the non-defaulting Party; provided, however, that the cure period shall be extended by an additional thirty (30) days if the defaulting Party is unable to cure within the thirty (30) days, but is pursuing a cure with reasonable diligence;

7.1.3 Such Party files any voluntary petition in bankruptcy, or such Party’s creditor’s files an involuntary petition, which involuntary petition remains undischarged for a period of thirty (30) days.

7.2 Termination. Upon the occurrence of an Event of Default, the non-defaulting Party shall provide notice of the default to the defaulting Party and shall specify in such notice the basis for the Event of Default. If the Event of Default is not cured, the non-defaulting Party may provide notice to the defaulting Party that the Agreement has terminated. The termination shall be effective upon transmittal of the notice by any means specified in this Agreement to the defaulting Party. The defaulting Party shall remain liable for any obligations that Party had pursuant to the Agreement prior to the date of termination, in addition to any other surviving obligations specified herein or remedies available pursuant to Section 7.3.

7.3 Remedies. Subject to Sections 7.1, 7.2 and 7.4, upon an Event of Default by a Party, the other Party shall have, in addition to any other remedies available to such Party at law or in equity, the



right, but not the obligation, to terminate or suspend this Agreement (other than payment obligations relating to obligations arising prior to such termination or suspension).

7.4 Damages. In the event this Agreement is terminated by NV Energy due to an Event of Default by Customer prior to the end of the Term, Customer shall be liable for damages equal to the Renewable Resource Rate for the Subscription Amount from date of termination to the end of the Term. NV Energy shall use commercially reasonable efforts to mitigate damages by marketing to other persons the Subscription Amount that would have been purchased by Customer under this Agreement. In the event NV Energy is able to sell or internally use such Subscription Amount that would have been purchased by Customer under this Agreement, the damages due from Customer will be adjusted to reflect the value of such sales or internal use. This Section 7.4 is intended to be the exclusive damages available to NV Energy in the event of termination of this Agreement due to an Event of Default by Customer. Each Party shall use commercially reasonable efforts to mitigate damages.

## 8. MISCELLANEOUS PROVISIONS.

8.1 Limitation of Liability. Notwithstanding anything to the contrary contained in this Agreement, neither Party shall be liable to the other Party or a third party for any consequential, indirect, exemplary, expectation or incidental damages, including but not limited to damages based on lost revenues or profits. This Section shall survive the expiration or earlier termination of, or any default or excuse of performance under, this Agreement.

8.2 Taxes, Fees or Charges from Governmental Entities. Customer is responsible for any Taxes, fees or charges including but not limited to those from Governmental Entities imposed as a result of this Agreement. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any Tax, fee or charges including but not limited to those from Governmental Entities. NV Energy shall be entitled to any and all tax benefits associated with and resulting from its association with the Generating Facility or any production therefrom.

8.3 No Waiver. The failure or delay of either Party to enforce any of the provisions of this Agreement at any time, or to require performance by either Party of any of the provisions of this Agreement at any time, will not be a waiver of any provisions, nor in any way affect the validity of the Agreement, or either Party's right to enforce each and every provision hereof.

8.4 Remedies. All rights and remedies of either Party provided for in this Agreement are cumulative and in addition to, and not in lieu of, any other remedies available to either Party at law, or in equity.

8.5 Governing Law; Venue. This Agreement is governed by and must be construed in accordance with the laws of the State of Nevada, without giving effect to its conflict of law provisions. In the event the PUCN has jurisdiction over a civil action or remedy brought under this Agreement, the Parties agree that they will first seek to initiate such action before the PUCN. In the event the PUCN lacks jurisdiction over such a dispute, the Parties agree the dispute will be brought in the federal district court of Nevada. In the event the federal court lacks jurisdiction over such a dispute, the Parties agree the dispute



will be brought in the Nevada state district court in Clark County, Nevada. Both Parties agree that they will not initiate an Action against the other Party in any other jurisdiction.

8.6 Waiver of Jury Trial. To the fullest extent permitted by law, each of the Parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Agreement. Each Party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which jury trial cannot be or has not been waived.

8.7 Integration. This Agreement represents the entire and integrated agreement between NV Energy and Customer and supersedes all prior and contemporaneous oral and written communications, representations, and agreements relating to the subject matter of the transaction, except as otherwise expressly stated herein.

8.8 Amendments. Any change, modification, or amendment to this Agreement is not enforceable unless consented to in writing by the Parties and executed with the same formality as this Agreement.

8.9 Severability. If any portion or provision of this Agreement is invalid, illegal, or unenforceable, or any event occurs that renders any portion or provision of the Agreement void, the other portions or provisions of this Agreement will remain valid and enforceable. Any voided portion or provision will be deemed severed from this Agreement, and the balance of this Agreement will be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The Parties further agree to amend this Agreement to replace any stricken portion or provision with a valid provision that comes as close as possible to the intent of the stricken portion or provision.

8.10 No Third-Party Beneficiaries. Nothing expressed or implied in this Agreement is intended, or should be construed, to confer upon or give any person or entity not a party to this Agreement any third-party beneficiary rights, interests, or remedies under or by reason of any term, provision, condition, undertaking, warranty, representation, or agreement contained in this Agreement.

8.11 Headings; Exhibits; Cross References. The headings or section titles contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement, nor should they be used to aid in any manner in the construction of this Agreement. All exhibits and schedules attached to this Agreement are incorporated into this Agreement by reference. All references in this Agreement to Sections, Subsections, Exhibits, and Schedules are to Sections, Subsections, Exhibits, and Schedules of or to this Agreement, unless otherwise specified. And, unless the context otherwise requires, the singular includes the plural and the plural includes the singular and the neuter includes feminine and masculine.

8.12 Performance of Acts on Business Days. Any reference in this Agreement to time of day refers to local time in the State of Nevada. All references to days in this Agreement refer to calendar days, unless stated otherwise. If the final date for payment of any amount or performance of any act required by this Agreement falls on a day other than a Business Day, that payment is required to be made or act is required to be performed on the next Business Day.

8.13 No Business Formation. Nothing in this Agreement creates a partnership, joint venture or other similar business construct between the Parties.

8.14 Survival. To the extent necessary to reflect the intent of the Parties under this Agreement, the provisions of Section 1, 4, 7 and 8 shall survive the termination of this Agreement.

8.15 Representations and Warranties.

8.15.1 Customer's Standing. Customer represents that, as of the date of this Agreement, it (a) is duly organized, validly existing and in good standing under the laws of the State of Nevada, and (b) is licensed to do business in the State of Nevada.

8.15.2 Customer's Authority; Enforceability. Customer has the full entity power and authority to execute and deliver this Agreement and the other transaction documents to which it will be a party in connection with the transactions contemplated hereby, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Customer of this Agreement and the other transaction documents to which it will be a party in connection with the transactions contemplated hereby, and the performance by Customer of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary entity action, and assuming due and valid authorization, execution and delivery thereof by the other Party, will be when delivered, valid and binding obligations of Customer, enforceable against Customer in accordance with their terms.

8.15.3 No Pending Actions, Suits or Proceedings Against Customer. Customer represents that, to its knowledge, as of the date of this Agreement, there are no Actions pending or threatened against Customer in any court or before any administrative agency that would prevent its performance under this Agreement.

8.15.4 NV Energy's Standing. NV Energy represents that, as of the date of this Agreement, it (a) is duly organized, validly existing and in good standing under the laws of the State of Nevada, and (b) is licensed to do business in the State of Nevada.

8.15.5 NV Energy's Authority; Enforceability. NV Energy has the full entity power and authority to execute and deliver this Agreement and the other transaction documents to which it will be a party in connection with the transactions contemplated hereby, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by NV Energy of this Agreement and the other transaction documents to which it will be a party in connection with the transactions contemplated hereby, and the performance by NV Energy of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary entity action, and assuming due and valid authorization, execution and delivery thereof by the other Party, will be when delivered, valid and binding obligations of NV Energy enforceable against NV Energy in accordance with their terms.

8.15.6 No Pending Actions, Suits or Proceedings against NV Energy. NV Energy represents that, to its knowledge as of the date of this Agreement, there are no Actions pending or threatened against NV Energy in any court or before any administrative agency that would prevent its performance under this Agreement.

8.16 Confidentiality. Customer has no expectation that any of the terms of this Agreement will be treated as confidential by NV Energy, and NV Energy has no obligation to seek confidential treatment of this Agreement.

*[Signature page follows]*

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties as of the Effective Date.

**NEVADA POWER COMPANY d/b/a NV ENERGY  
[SIERRA PACIFIC POWER COMPANY d/b/a NV  
ENERGY]**

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

\_\_\_\_\_

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

**EXHIBIT A**

**RENEWABLE RESOURCE RATE**

The Renewable Resource Rate shall be \_\_\_\_\_ per kWh.

**EXHIBIT B**

**PROGRAM PARTICIPATION RATE**

The Program Participation Rate shall be \_\_\_\_\_ per kWh.

**EXHIBIT C**  
**SUBSCRIPTION AMOUNTS**

Annual Subscription Amount: \_\_\_\_\_ kWh

1<sup>st</sup> Quarter Subscription Amount: \_\_\_\_\_ kWh

2<sup>nd</sup> Quarter Subscription Amount: \_\_\_\_\_ kWh

3<sup>rd</sup> Quarter Subscription Amount: \_\_\_\_\_ kWh

4<sup>th</sup> Quarter Subscription Amount: \_\_\_\_\_ kWh